

JUST TRANSITION LITIGATION TRACKING TOOL

March 2024 Interim Report



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TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
RECOMMENDATIONS	4
KEY FINDINGS	5
INTRODUCTION	6
THE CORE FEATURES OF JUST TRANSITION LITIGATION	7
STAKEHOLDERS BRINGING CASES: COMMUNITY-DRIVEN LEGAL ACTION	8
INDIGENOUS PEOPLES AT THE FOREFRONT	8
HUMAN RIGHTS IMPACTS IDENTIFIED	9
RIGHTS OF NATURE AS A STRATEGIC AVENUE FOR LITIGATION	10
CONSEQUENCES FOR COMPANIES: COSTLY DELAYS AND PROJECT CANCELLATIONS	11
REPERCUSSIONS FOR STAKEHOLDERS: THREATS TO HUMAN RIGHTS DEFENDERS AND COMMUNITY PROTESTS ...	12
A BREEDING GROUND FOR LEGAL PRECEDENTS	12
THE WAY FORWARD: ALTERNATIVE BUSINESS MODELS AND THE IMPORTANCE OF COMMUNITY CONSULTATION	13



HUMAN RIGHTS AND BUSINESS CLINIC



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This report is based on an earlier version of the Just Transition Litigation Tracking Tool Database (dated March 2024) and was sent to the Business & Human Rights Resource Centre as initial findings from the project. The final database and analysis is available on the Business & Human Rights Resource Centre's website since July 2024:

<https://www.business-humanrights.org/en/from-us/briefings/unjust-transition-on-trial-communities-and-workers-litigate-to-shape-corporate-practice/>



EXECUTIVE SUMMARY

A just transition to renewable energy is essential for environmental sustainability. While renewable energy projects play an important role in this transition, it is equally imperative that the industry respect human rights of individuals and communities. This report explores legal actions against renewable energy and transition minerals projects that fail to fulfil human rights standards. By examining the human rights impacts and legal demands of rightsholders, this report underscores the critical importance of addressing human rights impacts to ensure a just transition to sustainable energy.



The Just Transition Litigation Tracker includes 54 cases from all over the world. It predominantly includes cases filed after 2015, the year the Paris Agreement on Climate Change was signed. This time frame ensures a focused examination of cases pertinent to the contemporary renewable energy landscape. Four cases were filed before 2015 but were included due to the legal arguments and strategies they pursued. The cases selected for analysis also fall within the scope of specific industries. These industries include solar, wind, and hydropower energy, as well as transition minerals mining projects, including bauxite, copper, cobalt, lithium, manganese, nickel, and zinc.



Local communities, Indigenous populations, governmental bodies, and non-governmental organisations (NGOs) are the main stakeholders that initiated legal proceedings. The identified cases tackle diverse human rights concerns that include, among others, environment, health, access to water, Indigenous rights, land rights, and livelihood impacts. 50% of cases were brought by Indigenous communities, showcasing how Indigenous Peoples are taking a leading role in the fight towards a just energy transition.

Environmental impacts dominate litigation in the mining and hydropower sectors. The database also revealed the importance of linking environmental impacts with human rights, underscoring the interconnectedness of human life and nature. In Ecuador, cases relying on Rights of Nature also supported the rights of impacted communities, highlighting the strategic link between the Rights of Nature and human rights claims.

The Tracker features cases that show the consequences just transition litigation can have on businesses. In 47 of the 54 cases, the stakeholders initiating proceedings asked for the project to be stopped or halted. While many cases are still ongoing, some have resulted in favourable rulings for communities and led to project cancellations or delays.

Initiating legal action can also prove dangerous for human rights defenders. In some cases, claimants were faced with acts of violence and intimidation to discourage legal action. More attention is needed to ensure that individuals and communities pursuing legal action are protected as they work to safeguard human rights within the energy transition.

Important legal precedents have been established through just transition litigation across various jurisdictions. These include the famous Vedanta case which confirmed the extraterritorial responsibilities of parent companies in the UK, and a groundbreaking ruling in Mexico which provides a basis for community members to claim rights to communal land.

The Tracker is a testament to the usefulness of embedding community interests within business models to avoid litigation. A shared prosperity approach, including co-ownership and benefit sharing, can help ensure that projects essential to the energy transition also profit local communities. Beyond this, all business models must enact thorough and context-specific human rights due diligence, prioritising the active consultation and participation of local community members. It is only by effectively including communities in the process itself that the energy transition that is desperately needed can tackle climate change in a manner that is fair and just to all.

RECOMMENDATIONS



For Corporations

- Enact robust human rights due diligence that incorporates the active participation and consultation of affected stakeholders.
- Include respect for the environment, Indigenous People, and human rights defenders in corporate human rights policies.
- Publish a human rights policy that is easily accessible to impacted stakeholders and that provides clear guidance on corporate action in business operations and supply chains.



For Governments

- Create a regulatory environment that centres respect for human rights within the energy transition.
- Conduct quantitative and qualitative studies of social and economic conditions of residents in areas where energy transition projects occur, prior to project licensing.
- Provide fair compensation options, consult with residents before implementation, and evaluate project impacts on housing and access to food, cultural values and heritage.
- Provide pre-project compensatory measures, facilitate resident participation in project benefits, and take other participation measures to minimise human rights violations following the implementation of these projects.

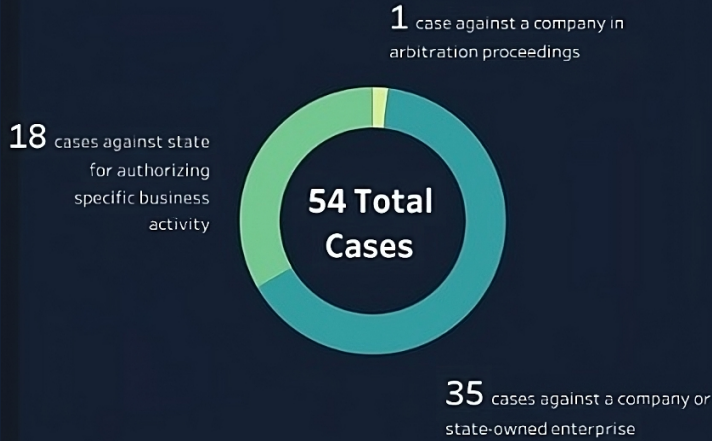


For Civil Society

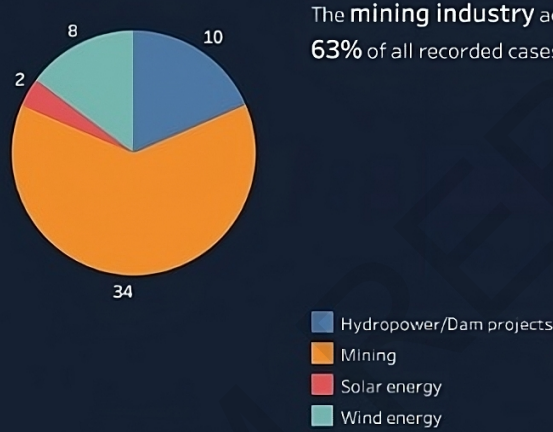
- Conduct research and provide publicly accessible information on the implementation of judgements and final rulings.
- Create toolkits for community members that clearly explain their human rights and the litigation options at their disposal in response to infringements by energy transition projects.

Key Findings

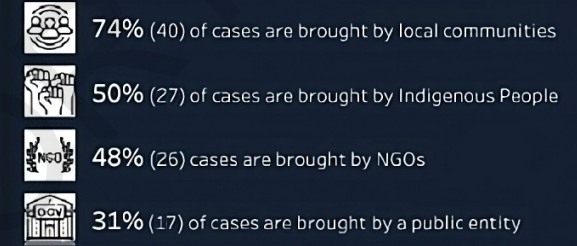
Type of Cases



Industry Breakdown



Stakeholder Analysis



Remedies Sought by Stakeholders

47 cases where the stakeholders asked for the project to be stopped/halted

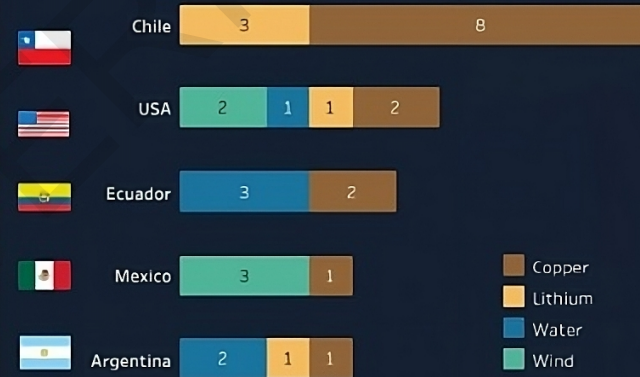
16 cases where the stakeholders asked for financial compensation

2 cases where the stakeholders asked to be involved in profit sharing

Countries where cases were filed



Countries where abuse most often takes place (Top 5)



Copper is associated with **37% (20)** of cases. Almost half of which come from **Chile**.

Rights Impacted

79% (43) of cases include Impacts on rights to a clean, healthy and sustainable environment

57% (31) of cases are related to either water pollution, water access issues, or both

52% (28) of cases argue violations of Indigenous rights, including 22 cases of alleged violations of either their rights to FPIC or land rights

9 out of 10 cases in the solar and wind sectors are associated with violations of land rights

INTRODUCTION

The worldwide shift towards sustainable energy sources is urgently needed to ensure an environmentally friendly and sustainable future. However, within this change lies a complex web of challenges of increasing needs for the renewable energy industry and respect for human rights. This report delves into the heart of these challenges, exploring the implications of community-driven legal action against renewable energy and transition mineral projects.



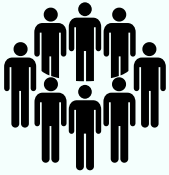
Just transition litigation refers to legal actions, usually brought by rightsholders directly affected by transition minerals or renewable energy projects. Following the definition by scholars Annalisa Savaresi and Joana Setzer, these cases “rely in whole or in part on human rights to question the distribution of the benefits and burdens of the transition away from fossil fuels and towards net zero emissions.”

The methodology used to collect and analyse cases in the Just Transition Tracker, with explanations about the temporal and industry scope can be found on the Business & Human Rights Resource Centre’s Just Transition Litigation Tracking Tool website: <https://www.business-humanrights.org/en/from-us/just-transition-litigation-tracking-tool/>

The database includes 54 cases filed across the world. These include legal actions brought against companies or state-owned enterprises (64.8% of cases), against the state for authorising specific business activities (33.3% of cases), and one case (1.9%) against a company in arbitration proceedings.

THE CORE FEATURES OF JUST TRANSITION LITIGATION

STAKEHOLDERS BRINGING CASES: COMMUNITY-DRIVEN LEGAL ACTION



74% of cases in the database were brought by local communities, showcasing how projects at the centre of the energy transition can be associated with very different realities on the ground. Sometimes these legal actions were also supported by other stakeholders such as NGOs or public entities.

The geographical spread of these cases underscores the global nature of the renewable energy transition's legal challenges. Although a large number of cases came from Latin America, the Tracker also includes cases in Sub-Saharan Africa, East Asia, Europe and North America. Indigenous communities from all these continents played an active role in these proceedings, emphasising the need for a nuanced understanding of local contexts and international cooperation in addressing these issues.



The cases reflect the multifaceted impacts on local communities. Beyond environmental concerns, such as water pollution and threats to a sustainable environment, these legal battles address broader issues like inadequate or absent consultation processes leading to a lack of free, prior, and informed consent. Land rights violations, displacement challenges, and broader impacts on livelihoods emerge as significant threats motivating local communities' recourse to legal action.



50% of cases were brought by Indigenous peoples. Indigenous peoples were predominantly at the centre of cases filed in Latin America. However, this trend is not unique nor specific to that region. The Tracker also identified cases involving Indigenous peoples in the [USA](#), [Norway](#), [Kenya](#), and [Taiwan](#).

Indigenous peoples in these cases often argue for the preservation of their environment, the protection of their land rights, including, where applicable, the right to free, prior and informed consent in line with the [fifth article of the ILO Convention 169](#). These cases also predominantly seek project halts, which seems to be the favoured form of remedy to address the types of human rights violations Indigenous communities allege. Given Indigenous rights are often linked to specific lands and notable areas, monetary compensation doesn't play a central role in human rights claims brought before courts.



A WORLD TOUR OF INDIGENOUS-LED LEGAL ACTION AGAINST ENERGY TRANSITION PROJECTS



- In the United States, Indigenous communities filed a complaint against the Australian mining giants [Rio Tinto and BHP](#), to stop a large copper mine project in Arizona.



- In Guatemala, the Maya Q'echi' Agua Caliente community initiated legal against against the [Fenix nickel mine](#) project. The case was brought before the Inter-American Court of Human Rights. The Court [decided](#) in favour of the Indigenous community, finding that the Guatemalan State failed to conduct adequate prior consultation with the Maya Q'eqchi' Agua Caliente community regarding a mining project affecting their territory. Additionally, the Court found that the state's omissions regarding recognition of collective property and prior consultation were linked to deficiencies in domestic law.



- In Argentina, the [Mapuche Community and the other](#) Indigenous communities of the Province of Santa Cruz asked the court to halt a hydroelectric dam project and requested additional measures regarding the protection of cultural, archaeological and historical heritage as well as the remains of Indigenous Peoples in relation to a hydroelectric dam project.



- In Chile, the Atacameño People's Council rejected a memorandum between Chilean firms Codelco and SQM for lithium extraction until 2060, citing lack of community consultation and environmental concerns, while also demanding inclusion in a tripartite dialogue and emphasising adherence to international treaties. The community called on the mining companies to engage in transparent and good-faith dialogue with the public.



- In Kenya, the Indigenous communities of Marsabit county, challenged the acquisition of land in their region by the company Lake Turkana Wind Power Limited. The Environmental and Land Court ruled in their favour, holding that proper statutory and constitutional procedures were not followed in reserving the land for the project.

HUMAN RIGHTS IMPACTS IDENTIFIED

The vast majority of cases have denounced the environmental impacts related to the renewable energy supply chain. 79% of cases in the Tracker related to impacts to a clean, healthy, and sustainable environment.

The mining industry

91% of cases which were brought against mining projects in the Tracker related to environmental impacts. This comes as little surprise given the mining sector poses environmental concerns spanning from physical disturbances to the landscape, to soil, water and air contamination as well as public safety issues. Yet the mining industry plays a crucial role in providing the transition minerals necessary for the production of solar panels and wind turbines. Therefore the human rights impacts at the beginning of the renewable energy supply chain feature prominently in the database. The 2015 lawsuit filed in Mexico against the Buenavista del Cobre mine, a subsidiary of Grupo México, illustrates the severity of impacts which can be associated with transition mineral projects. Following a toxic spill of 40,000 cubic metres of chemicals from the mine into the Sonora and Bacanuchi rivers, the affected communities initiated legal proceedings after suffering from health damages, loss of livestock and crops, and restricted access to drinking water.

The hydropower sector

80% of cases brought against hydropower projects included environmental impacts. Hydropower plants typically require large reservoirs to provide a steady stream of water. These reservoirs drastically change the landscape and rivers they are built on. They can reduce river flows, raise water temperature, degrade water quality and cause sediment to build up, endangering fish, birds and other wildlife. In Guatemala, the Indigenous community Maya Q'Eqchi filed a complaint against the Guatemalan Ministry of Energy and Mining, alleging that the construction of two hydroelectric dams would violate their right to life.

The solar and wind sectors

Solar and wind farms require at least ten times as much space per unit of power as fossil fuel-based energy. Therefore, if impact assessments are not carried out thoroughly and in a rights-respecting manner, land violations are very likely to increase in these sectors. The case of EDF in Mexico exemplifies these challenges. In October 2020, the Indigenous Zapotec community of Unión Hidalgo, along with two NGOs, filed a lawsuit against Electricité de France (EDF) based on the French Duty of Vigilance Law. They claim that EDF did not take adequate measures to prevent human rights abuses and environmental harm during its Gunaa Sicarú windpark project. EDF refuted these claims, and the case is currently ongoing.

RIGHTS OF NATURE AS A STRATEGIC AVENUE FOR LITIGATION



Rights of Nature refer to a legal framework that grants legal rights to ecosystems and natural entities. This ecocentric approach of the law recognizes Nature as a subject of law, allowing individuals and communities to act as legal guardians or representatives for natural elements such as rivers, forests, and mountains.

Ecuador led the way in 2008 by becoming the first country to enshrine Rights of Nature in its constitution. The constitution refers to "Pachamama" (Mother Earth) as a legal entity and affirms the right to respect and support Nature's existence, life cycles, functions, and restoration.



Art. 10 of the Constitution of the Ecuadorian Republic mentions: "Nature will be subject to those rights recognized by the Constitution" (Constitution of the Republic of Ecuador, 2008).

This ecocentric approach contrasts with traditional anthropocentric views, emphasizing the interconnectedness of Nature and human well-being.

Ecuadorian neo-constitutionalism views Nature as integral to human well-being, based on the Indigenous principle of "Good Living" or "Sumak Kawsay". Unlike traditional development models, it emphasises coexistence with Nature and State planning that ensures social and territorial equity. It prioritises sustainable practices and intercultural principles in fulfilling rights and responsibilities.



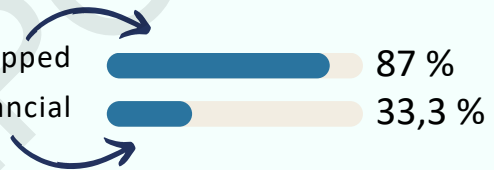
Rights of Nature Cases

In the Tracker, Rights of Nature were featured in the Llumaragua case in Ecuador. The claimants asked the government to stop the mining activities of the National Mining Company EMPRESA NACIONAL MINERA E.P. due to contamination of “Las Gemelas” waterfalls. The mining licence was irregularly granted in an area with a high level of biodiversity, and in which the Environmental Impact Studies omit several of the endangered species. The Court declared the violation of rights of Nature and environmental consultation.

Rights of Nature have also been recognised in different contexts in Colombia and New Zealand.

CONSEQUENCES FOR COMPANIES: COSTLY DELAYS AND PROJECT CANCELLATIONS

47 out of the Tracker’s 54 cases asked for the project to be stopped or halted. Meanwhile, 18 cases included requests for financial compensation.



Request Type	Number of Cases	Percentage
Project to be stopped or halted	47	87 %
Requests for financial compensation	18	33,3 %

Therefore, affected stakeholders primarily sought to safeguard their human rights by eliminating the source of the alleged violations. Many cases are still ongoing with uncertain outcomes.

However, in some cases, the court ruled in favour of immediate project suspension. For example, the Supreme Court of Chile approved the decision to close one of the biggest copper mines in the Chile-Argentina borders, Barrick Gold's Pascua Lama project, due to sanitation issues and alleged violations of the Glacier monitoring plan.

In general, regardless of the type of remedy sought, the enforcement of court rulings remains largely unknown due to limited publicly available information on the implementation of court decisions.

Example of legal action leading to a settlement with the community:

Vedanta Resources filed in the UK. In this case, over 2,500 Zambian villagers, residing near the Nchanga Copper mine owned by Konkola Copper Mines (KCM), alleged that toxic discharge from the mine had contaminated water sources and devastated farmland. Leaked documents revealed sulphuric acid and toxic chemical spillage into water sources, exacerbating the situation. In 2019, the UK Supreme Court ruled that the case could proceed in UK courts. The ruling acknowledged Vedanta's duty of care towards the villagers, emphasising the potential inability to attain justice in Zambian courts. Only after this legal milestone, a settlement was reached, benefiting the local community by addressing health issues and environmental damage caused by alleged pollution.

REPERCUSSIONS FOR STAKEHOLDERS: THREATS TO HUMAN RIGHTS DEFENDERS AND COMMUNITY PROTESTS

Despite progress in court rulings and awareness of just transition cases, some companies use violence and intimidation to suppress protests and coerce plaintiffs into dropping lawsuits, hindering efforts for environmental justice.

The Tracker identified 10 cases that included instances of community protests, strikes or blockades. Certain cases showcased the risks that human rights defenders face in bringing legal action against energy projects. The Tracker features for example a case filed by the family of Berta Cáceres, a Honduras international prize-winning environmental and Indigenous rights activist who was assassinated following her active opposition to the “Agua Zarca” dam. In 2018, Beta Carceres' family, with the support of NGO Environmental Defender Law Center, filed a civil complaint against the Dutch bank FMO which financed the project. The complaint argued that it was a predictable and foreseeable consequence of the bank’s funding the project that the murder and other acts of violence against the community would occur. This was followed in 2022 by a criminal complaint to the Dutch Attorney General’s office, alleging that the Dutch bank, FMO, along with its directors, had engaged in complicit behaviour pertaining to acts of corruption, embezzlement, money laundering, and violence in their involvement with the financing of the Agua Zarca hydro-electric dam project.

Another example is a lawsuit brought by Indigenous Peoples from Peru before the UK High Court regarding a dispute over the disclosure of documents from the mining company Xstrata. The claimants alleged that Xstrata engaged in various tactics, including payments and provision of logistical support, equipment, and vehicles, and active encouragement of law enforcement to mistreat protesters. Furthermore, the claimants argued that the company failed to implement adequate measures to prevent the violation of protesters' human rights.

A BREEDING GROUND FOR LEGAL PRECEDENTS

The Tracker features important legal precedents across various jurisdictions:



- In Brazil, a 2018 court ruling ordered mining giant Vale to pay two Indigenous tribes \$26.8 million for damages related to river contamination and public health issues caused by the company's nickel extraction activities in the northern state of Pará, Brazil. Additionally, the judge ordered Vale to suspend operations at its Onça Puma nickel mine, which has been operational for a decade, until it fulfils specified environmental criteria and devises plans to mitigate and compensate the Xikrin and Kayapo tribes.



- In Norway, the Supreme Court ruled in October 2021 that the licences of two wind farms harming the livelihoods of the Sámi People were invalid. Citing the provisions of Article 27 of the International Covenant on Civil and Political Rights regarding the cultural protection of ethnic, religious, or linguistic minorities, the Court held that the violation of Indigenous Peoples' rights cannot be justified, even in the name of the renewable energy transition. Following that, the State of Norway (responsible for the two wind farms through the state-owned company Statkraft) and the Sámi reindeer herders reached a partial agreement in which 7 million Norwegian crowns (\$674,211 USD) will be paid each year, for 25 years to the Indigenous community. Additionally, not only will the Sámi People have access to additional winter grazing areas, but the company will also have to seek the Indigenous community's consent again after 25 years for the extension of the wind farms' licences.



- In Mexico, a precedent was established for community land rights, bringing additional recognition to the individual and collective nature of Indigenous Peoples' rights. In a case involving the Mexican wind farm developer Desarrollos Eólicos Mexicanos S.A de C.V. (Demex), a subsidiary of the Spanish company Renovalia Energy, and the agrarian and Indigenous community of Unión Hidalgo, the court ruled that the land that Demex leased through contracts with individuals in the community was communal land, not private property as originally and improperly considered. As such, the individual contracts of the 11 non-conforming community members were nullified, and the land of Unión Hidalgo was legally recognised as common use. As Juan Antonio López put it, this ruling of the Agrarian Tribunal "establishes a historic precedent in the defence of land and territory for agrarian and indigenous communities by recognising the legal nature of the lands of Unión Hidalgo as common use lands, as established by the Presidential Resolution for the Recognition and Titling of Communal Property dating from 1965".

These examples show that companies must take proactive action to avoid harm to individual and communities human and environment rights.

THE WAY FORWARD: ALTERNATIVE BUSINESS MODELS AND THE IMPORTANCE OF COMMUNITY CONSULTATION

Co-ownership models may provide a promising avenue to avoid some of the community conflicts that the Tracker has highlighted to date. As a key element of a shared prosperity approach, co-ownership models with commercial partners enable involvement of communities and potential for benefit sharing. That being said, a co-ownership model on paper does not automatically ensure that litigation will be prevented, as seen in the case against Gitson Energy in Kenya, in which a community ownership model including community benefit sharing was employed in the wind power project, but still resulted in a legal dispute over consultation relating to land acquisition.

All business models therefore have to enact thorough and context-specific human rights due diligence, and pay particular attention to the consultation and participation of local community members. Numerous projects ended due to consistent community pushback such as the Mexico wind park involving French company EDF, while contracts have been nullified by governments to ensure greater community engagement and assessments as seen in lithium mining activities in Chile.

From human rights impacts identification and assessment, the development of mitigation plans, and the monitoring of impacts over the lifetime of a project, active participation and consultation of communities throughout the human rights due diligence process is vital. By including communities from the start of planning through the operations of projects, energy transition projects will better meet the needs of local communities and face the greatest environmental challenge of our century, thereby contributing to a just energy transition for all.

INTERIM REPORT



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