


DEVELOPMENTS IN THE FIELD

Striving for a Rapid Transition: How Companies are Approaching Integrating Respect for Human Rights in Their Climate Action

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Abstract

Globally, companies are developing and implementing their strategies to reduce greenhouse gas emissions to limit the global temperature increase to 1.5 degrees Celsius above pre-industrial levels, in line with the Paris Agreement. However, there is also growing recognition and awareness of the potential negative impacts of these activities on human rights. Recent pressure from international normative standards and ESG expectations, emerging legislative developments, and legal precedents are driving companies to consider human rights impacts across their climate action. This piece explores some of the human rights risks associated with the transition to renewable energy; the transformation to regenerative agriculture; the scaling up of the circular economy; and the implementation of nature-based solutions. It then explores the challenges of conducting effective human rights due diligence given the scale and scope of the transitions needed and provides examples of how companies are seeking to respect human rights in their climate action.

Keywords: climate action; human rights due diligence; just transition; regenerative agriculture; renewable energy

1. Introduction

As companies' climate action plans advance to reduce greenhouse gas (GHG) emissions in line with the Paris Agreement, recognition of their potential adverse impacts on human rights is also increasing. Changing legal, normative and policy expectations and increasing reputational pressures are compelling companies to conduct human rights due diligence on their climate action. Climate action describes the activities and decisions taken to respond to climate change and its impacts. It includes the reduction of GHG emissions, or climate mitigation, and efforts to adapt to the current and future impacts of the climate crisis, or climate adaptation. Company transition plans and commitments to net zero are underpinned by their climate actions. To aid further understanding and identification of the challenges in practice, this piece focusses on the human rights risks in four climate actions: the transition to renewable energy, the shift towards regenerative agriculture, the expansion of the circular economy and the adoption of nature-based solutions. It also explores the significant challenges of conducting effective human rights due diligence throughout these extensive transitions, providing examples of how companies are working to integrate respect for human rights into their climate action.

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II. The Changing Expectations for Business on Climate and Human Rights

Increased awareness from stakeholders about the potential human rights impacts of climate action, alongside legal, normative and policy developments, are driving companies to develop more holistic approaches to climate and human rights. Companies are expected to significantly reduce their GHG emissions to limit the global temperature increase to 1.5 degrees Celsius above pre-industrial levels. However, under the Paris Agreement, the transition to lower carbon economies should also be just and equitable. This means that, alongside expectations for companies to rapidly implement climate action, stakeholders, including regulators, are also expecting and, in some cases, mandating, companies to respect human rights in their climate mitigation and adaptation activities.

International normative standards for business, including Chapter VI of the revised OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, recognise the need for companies to conduct risk-based due diligence on environmental activities, including their efforts to reduce emissions. Environmental, social and governance (ESG) reporting requirements, ratings and corporate benchmarks are increasingly measuring company progress on human rights and climate indicators more holistically.¹

Legislation is also driving a more holistic approach to climate and human rights. The recently adopted European Union (EU) Corporate Sustainability Due Diligence Directive includes requirements for companies to conduct human rights and environmental due diligence as well as to adopt and implement climate transition plans.²

Court cases have demonstrated that companies which do not respect human rights in their climate action may find their projects delayed or stopped altogether. In *Sør-Fosen sijte v Fosen Vind DA*, the Supreme Court of Norway held that a renewable energy company's licences for wind power developments were invalid due to the significant adverse effects on the cultural rights of Sami reindeer herders.³ In 2019, the Environment and Land Court of Kenya ordered a full restart of a consultation process for a renewable energy project after it was determined that the Indigenous pastoralist communities who lost access to their grazing land and cultural sites as a consequence of the project had not been properly consulted.⁴ The Colombian Constitutional Court is currently exercising its judicial review powers over a Reducing Emissions from Deforestation and Forest Degradation (REDD+) project that Indigenous communities of the Pirá Paraná River of Colombia claim violates their rights to self-determination, cultural integrity and autonomous governing of the territory. The claimants argue that all climate change mitigation and adaptation measures must protect and ensure the enjoyment of Indigenous Peoples' fundamental rights in their respective territories.⁵

III. Human Rights Risks Associated With Company Climate Action

Some of the common climate actions implemented by companies are the transition to renewable energy, the shift to regenerative agriculture, the scaling up of the circular

¹ EU Commission CSRD, Directive of the European Parliament and of the Council as regards corporate sustainability reporting 2022 (EU); World Benchmarking Alliance (WBA), Climate and Energy Benchmark (1 November 2021) <https://www.worldbenchmarkingalliance.org/climate-and-energy-benchmark/> (accessed 17 May 2024).

² Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence 2024 (EU).

³ *Sør-Fosen sijte v Fosen Vind DA*, Supreme Court of Norway, HR-2021-1975-S, (2021).

⁴ *County Government of Turkana v National Land Commission et al*, Environment and Land Court of Kenya, ELD 42 of 2019, (2019).

⁵ *Pirá Paraná Indigenous Council and Association of Indigenous Traditional Authorities of river Pirá Paraná 'ACAIPÍ' v Ministry of Environment and Sustainable Development and others*, Colombian Constitutional Court, T-9.312.858, (2022).

economy and the implementation of nature-based solutions. Each of these activities can have adverse human rights impacts. Under the United Nations Guiding Principles on Business and Human Rights (UNGPs), companies are expected to conduct human rights due diligence on their operations and activities to identify and mitigate or address potential or actual adverse human rights impacts. As with all corporate operations and activities, companies should conduct human rights due diligence on their climate action to identify and mitigate, or address, the risks to people.

Human rights risks and impacts are present in the transition to renewable energy from the mining of the critical minerals needed for the transition, to the manufacturing of solar panels and the deployment of solar and wind projects. In the Democratic Republic of Congo, 15 to 30 per cent of the cobalt needed globally to produce batteries for electric vehicles is sourced from artisanal mining operations, where child labour is widespread.⁶ Most mine sites for critical minerals for the energy transition are located on or near Indigenous or traditional community lands worldwide.⁷ The deployment of renewable energy projects has been linked to the acquisition of Indigenous Peoples' lands without their free, prior and informed consent (FPIC), interference with sacred and traditional sites, environmental destruction and biodiversity loss. In the Norwegian and Kenyan cases cited above, failure to obtain FPIC led companies to lose their operating licenses or have to restart consultation processes.

The shift to regenerative agriculture has been linked to human rights abuses. Because regenerative agriculture may result in smaller crop yields than conventional agriculture, farmers may resort to child and forced labour as they seek to increase crop yields and profits. Hazardous working conditions due to longer working hours and less industrialised processes may also result from shifts away from conventional farming. Loss of livelihood for smallholder farmers who may be left behind in favour of large commercial farms with higher crop yields is also a potential adverse impact. Because of the continued use of pesticides, the risks to health and to the right to a clean, healthy and sustainable environment typically associated with large agribusiness will persist even in this new context. Regenerative agriculture activities have also been linked to threats against environmental human rights defenders.

There is a risk of forced and child labour in the scaling up of the circular economy, as more waste workers are needed to process recycled goods. There is also a risk of adverse impacts on workers' health from hazardous working conditions in recycling centres. In Turkey, for example, the demographic for informal waste workers is comprised of some of the most marginalised communities in the country, including child workers, migrants and refugees. In 2022, Human Rights Watch found that some workers at a plastic recycling facility and residents living near a facility in Adana were experiencing respiratory problems, severe headaches and skin ailments. The organisation also found that those working in the factories had little access to protective equipment and little to no access to medical treatment for occupational illnesses.⁸ Closing loops to scale up the circular economy may also cause workers to lose their livelihoods as supply chains are shifted or reduced.

Nature-based solutions can lead to violations of customary land and carbon rights of local peoples, including Indigenous Peoples and traditional communities. Violence by security forces, sexual harassment and gender-based violence at project sites⁹ and threats to

⁶ World Economic Forum, *Making Mining Safe and Fair: Artisanal cobalt extraction in the Democratic Republic of Congo*, (World Economic Forum, 2020).

⁷ John R. Owen et al, 'Energy Transition Minerals and their intersection with land-connected peoples,' (2022) *Nature Sustainability*, 203, 204.

⁸ Human Rights Watch, *It's as if they're poisoning us*, (United States of America: Human Rights Watch, 2022).

⁹ SOMO and Kenya Human Rights Commission, *Offsetting human rights: Sexual abuse and harassment at the Kasigau Corridor REDD+ Project in Kenya*, (2023).

environmental human rights defenders are additional risks associated with nature-based solutions.

IV. Challenges for Effective Human Rights Due Diligence

The immense speed and scale of the transformations needed to meet climate targets can create challenges for business practitioners to conduct human rights due diligence effectively.

In the context of the energy transition, demand for critical minerals is growing rapidly with some minerals, such as lithium, seeing its demand forecast to surge to sevenfold by 2030.¹⁰ Rapid expansion of mining and processing of critical minerals is needed—but this carries significant risks to local communities and workers. The scale and speed of growth of these markets may compromise upstream companies' ability to implement rigorous and effective human rights due diligence and limit the leverage of downstream companies. The expansion of renewable energy projects requires swift identification of project sites, as well as the issuing of licenses and permits. The typically slow pace of existing licensing and approvals processes (many of which include engagement with local communities and other affected stakeholders) presents a challenge for companies in light of the rapid pace of transition needed. Because of the need to set and meet climate targets quickly, human rights practitioners are often brought into a project late in the process, or not at all. Within a company, human rights due diligence can be viewed as delaying or preventing a rapid transition to reduce emissions.

As mentioned earlier, the significant transformations required in sectors such as waste management and agriculture can have disproportionate impacts on already marginalised groups with little human rights protection, including informal waste workers and smallholder farmers. Human rights due diligence in these contexts will need to be particularly responsive to these impacts and adopt a strong vulnerability lens. Failure to address the adverse human rights impacts associated with climate action on already vulnerable and marginalised groups can exacerbate existing poverty and inequalities.

Conducting human rights due diligence on nature-based solutions can be challenging as there can be a 'green haze' surrounding these projects due to their positive impacts on the environment. This can lead to a reluctance from stakeholders within companies to engage on the human rights issues associated with these projects, particularly when activities to achieve the company's net zero strategy have been prioritized. Often these projects are managed by third-party suppliers and, in the case of carbon offsets, they are purchased from suppliers who may be one or two tiers removed from the projects themselves, adding complexity to human rights due diligence. Such projects may also represent a completely new business activity for companies. Understanding biodiversity-related human rights impacts can be highly complex and context specific. The multiple actors often involved in nature-based solutions, the lack of experience of some companies in these activities and the complex interconnection between biodiversity and human rights can all create additional challenges in identifying and addressing the adverse human rights impacts associated with nature-based solutions.¹¹

¹⁰ BNEF, 'Race to Net Zero: The Pressures of the Battery Boom in Five Charts,' <https://about.bnef.com/blog/race-to-net-zero-the-pressures-of-the-battery-boom-in-five-charts/> (accessed 14 February 2024).

¹¹ The Global Business Initiative on Human Rights, 'Business involvement in biodiversity-related human rights impacts,' https://gbih.org/images/docs/GBI_biodiversity_and_human_rights_briefing_2024.pdf (accessed 22 February 2024).

V. Building Effective Company Approaches to Rights Respecting Climate Action

The Global Business Initiative on Human Rights (GBI) recently published a compilation of some of the ways in which companies are approaching effective human rights due diligence on their climate action to support best practices in integrating climate and human rights.¹² This section provides examples from business practitioners of some approaches and best practices that GBI identified.

Building the human rights lens early in the planning or development of climate action activities can help companies break down siloes and act more quickly to identify and address human rights risks. Engaging with colleagues early can help to identify red flags and avoid the perception that human rights due diligence creates barriers for a rapid transition. For example, an energy company GBI spoke with was expanding its renewable energy business, which required the company to adapt its existing human rights impact assessment processes to fit the context of renewable energy projects. The company recognised that building a human rights lens into the processes surrounding its renewable energy projects early helped it to foster internal support to identify and address the human rights risks associated with each stage of the project.

Climate action may include partnerships or other collaborations with Indigenous Peoples and traditional communities due to their unique knowledge and roles as stewards or custodians of land. Such collaborations may, for example, cover the management of forests for nature-based solutions or the rehabilitation of soil in regenerative agriculture. These collaborations themselves must be based on respect for human rights, including land rights and cultural traditions. Ongoing FPIC processes are necessary to ensure respect for human rights in the use of land for the transition to renewable energy and regenerative agriculture, as well as the implementation of nature-based solutions. Another energy company that spoke with GBI explained that they decided to engage with communities potentially affected by a renewable energy project early on to address human rights-related issues, dispel any misunderstandings and build their trust in the project.

Engaging with suppliers to support the transformations necessary for climate mitigation can also help to identify and mitigate adverse human rights impacts. Reskilling and retraining the workforce may also be necessary. Recognising the potential impacts on smallholder farmers of regenerative agriculture, one company interviewed by GBI designed a strategy to address their needs by focusing on low-cost implementation, integrating traditional knowledge and establishing innovative extension models. In implementing nature-based solutions, companies may need to engage with partners carrying out these projects, to ensure they are able to respect human rights throughout project implementation. For example, a company involved in a tree planting project identified the need to engage closely with the partner organisation to build its capacity on human rights. This project was a new activity for the partner. Jointly with their partner, the company put in place principles for approaching nature-based solutions that included avoiding social and environmental harm and conducting meaningful stakeholder engagement. The company also jointly developed a grievance mechanism and guidance for benefit sharing with the local community.

Efforts to mitigate or address adverse human rights impacts caused by the system transformations needed for climate action may also require sectoral or multistakeholder collaboration. As part of its efforts to meet its science-based targets, a food and beverage company decided to significantly expand its circular economy model for packaging, which included design changes to existing packaging and increased recovery of packaging. The

¹² The Global Business Initiative on Human Rights, 'Integrating human rights into company climate action,' <https://gbih.org/business-practice-portal/human-rights-and-climate-action> (accessed 10 January 2024).

company had already identified some of the human rights risks for waste workers from its existing recycling activities. It identified that the collection process varied according to individual companies and that often the sector was highly informal, leaving waste workers particularly vulnerable. The company's increased focus on the circular economy gave it an opportunity to address these concerns, by linking its commitment to reduce packaging emissions with its existing human rights due diligence on informal waste workers. The company is now working with other businesses, civil society organisations and local governments to address some of the root causes of adverse human rights impacts associated with informal waste workers.

There are many additional lessons to be learned from other sectors, such as the fast-moving consumer goods, automotive and apparel sectors, where circularity may increasingly be prioritised to reduce emissions.¹³

VI. Responsible Disengagement: Navigating Climate Transitions

To meet climate targets, companies may be required to transition out of markets or close assets. In these situations, companies should practice responsible disengagement to prevent any potential or actual adverse impacts that might occur. Climate action may require companies to make hard choices in transitioning out of assets or markets because they are not aligned with the company's GHG emission reduction targets. Scaling up the circular economy may lead companies to close the loops on certain materials, subsequently shifting out of some markets. Redesigning value chains from linear to circular may result in shifts away from suppliers and geographies. For example, in the fashion industry, a focus on circular fashion will cause significant disruption to existing clothing manufacturing sites.

Some companies may also move out of markets that are not able or willing to decarbonise rapidly enough to meet their climate targets. For one garment company that GBI spoke with, electrifying factories was identified as essential to reduce its scope 3 emissions. Recognising the need to strike a balance between climate mitigation and respect for human rights, the company included considerations of both aspects in its decisions regarding the regions from which it sourced materials. The company has been using its leverage to encourage suppliers to decarbonise and, in some cases, to encourage governments to facilitate electrification. However, the company also recognised that it may need to shift away from some regions where government authorities are not supporting electrification in line with the company's climate targets. Given the potential human rights implications of such a decision, it is working to strengthen its relationships with governments to build leverage to address these risks.

When necessary and appropriate to disengage, companies should do so responsibly and seek to identify and mitigate the impacts on people and communities of divestment and disengagement decisions.

VII. Conclusion

There is a growing awareness of the human rights impacts associated with climate action and increased stakeholder and legal scrutiny of companies' strategies to identify and avoid these impacts. The human rights risks associated with climate action include impacts on particularly marginalized groups, including children, migrant labourers, refugees, smallholder farmers, Indigenous Peoples and traditional communities. In addition to the significant risks to people, the scale and scope of the transformations needed to reduce

¹³ Fair Circularity Initiative, 'Fair Circularity Principles,' <https://faircircularity.org/fair-circularity-principles/> (accessed 20 May 2024).

emissions create challenges for conducting effective human rights due diligence. Practice in this area is nascent. However, a few areas of strong practice have been identified, including integrating the human rights lens into climate action early, meaningfully engaging with Indigenous Peoples, traditional communities and other stakeholders on projects, working collaboratively with suppliers and partnering with government and civil society to develop solutions to the human rights challenges associated with the transition. However, much more practice is needed to ensure that companies are respecting human rights throughout their climate action, and subsequently contributing to a just transition.

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