

Climate Change and the Human Rights Implications for Business

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A powerful
and balanced
voice for business



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Introduction

The climate is changing. Its impacts are increasingly reflected in our daily news and being felt by people where they live. A sense of urgency now exists as to how we need to react to these changes, but serious gaps between pledges and necessary ambition and financial resources remain.

Both gradual climate change and extreme weather events impact people and their human rights of people, especially those in the vulnerable areas. These areas unfortunately often also involve the most vulnerable people least equipped to deal with the impacts.

Awareness of the climate change-human rights nexus is not a new phenomenon, and has figured in the United Nations Framework Convention on Climate Change (UNFCCC) discussions of many years, whether “explicitly” in references to human rights (such as in the chapeau of the Paris Agreement) or “implicitly” in ongoing workstreams relating to loss and damage, adaptation and resilience or with regard to the impacts of climate action (or inaction) in one country on another country. These issues have taken root in the UNFCCC, as well as throughout the UN system: other environmental treaties are relevant to human rights, and the SDGs continue to offer a multi-dimensional road map that combines energy access, employment, environmental stewardship, sustainable consumption and production and human rights in an integrated package.

Climate change can negatively impact human rights expressed in the UN Universal Declaration of Human Rights, rights often enshrined as obligations on nation states through human rights treaty ratifications and their subsequent inclusion in laws and constitutions. These rights include, for example the right to health, right to life and the right to an adequate standard of living.

Businesses of all sizes and sectors are taking ambitious action across all aspects of climate, both in reducing greenhouse gases (GHGs), increasing energy access to cleaner forms of energy, deploying innovation, and advancing adaptation and resilience for people and their communities, whether impacted by extreme weather events or gradual climate change.

The adoption by the UN Human Rights Council in October 2021 of a resolution recognizing the universal right to a safe, clean, healthy, and sustainable environment will certainly add to the debate about what States and business should do to safeguard the environment and advance sustainability while protecting human rights.

Whilst not binding on States, this resolution will go before the full UN General Assembly and could well be the subject of further discussion and elaboration including the creation of ratifiable instruments. Regardless now of what States might do, this resolution will add additional expectations and complexity to continuing business efforts to tackle climate change, while protecting the rights of people. Business looks forward to exploring the implications of this at both the international and national levels with States, UN Agencies, and wider stakeholders. States will need help to balance the realization of this right as it has to with other competing rights.

Businesses will have to redouble their effort to consider human rights implications of their businesses. Their representative organizations will also have to consider giving advice on due diligence processes and offer solutions to the collective societal challenges posed by climate change.

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The value of a social dialogue in policy making has been a key to the historical development of labour rights within the ILO, and offers a model that could be applied to the climate/human rights nexus.

There are a variety of ways that this could be put into practice:

- All Parties to Paris are expected to develop, review and strengthen nationally determined contributions (NDCs). A key vehicle to better engage and reflect the experiences and perspectives of key stakeholders at the national level relating to climate policy would be to take a fully inclusive approach to NDCs going forward – this should include consultation with important groups, reflecting not only their perspectives and experiences, but also their role in implementation, whether on mitigation or adaptation.
- As Governments plan for recovery and mobilize resources to rebuild, they should pursue synergies with private sector entities to guide and encourage financing and investment to projects and societal activities that provide access to sustainable energy, and support adaptation and resilience options for vulnerable communities.
- Governments and UN bodies should work with employers on “just transition” approaches that are people-centered, particularly in developing countries where so many micro- and small businesses make up the formal economy, and where the informal economy is still a significant part of the overall picture for workers.

In considering the “big picture” of climate change and human rights, it is necessary to work from the foundation of existing agreements in this area, notably in the Paris Agreement itself, as well as in other environmental and sustainability treaties and principles (such as the SDGs) that are adjacent to climate change, environmental protection, and the role of business.

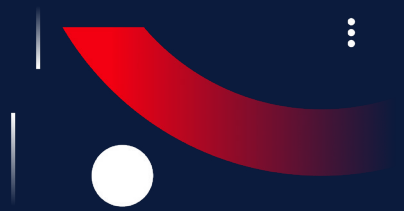
Business should now be thinking about the steps they will may need to take to “respect” this new right even where States fail to act or act incompletely. This includes reviewing their risks to people, how harm that arises is stopped, mitigated, or remedied. It should also take into account the benefits and empowerment that business operations and activities provide to stakeholders, whether they are workers, investors or members of communities.

This nexus between human rights and climate change will also relate to operations and supply chain relationships and has the likelihood of creating significant changes to the human rights ecosystem for business. Given the breadth of the issues inherent in this right, business should demand appropriate state action to ensure the roles and responsibilities of all actors in society, including the State itself, are clearly understood.

Business alone should not be expected by society to bear the burdens of this resolution.

The debate is only just beginning, and the discussion on the linkage between human rights and climate will evolve hence this paper being titled a “primer” for understanding and action on a dynamic and evolving topic.

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What's different about human rights and climate?

This debate differs from many other human rights issues as adverse impacts and harm that might arise from climate change are not limited to national borders, are historic in nature, and lack any rigorous methodology for attribution and causation.

How for example are those impacted by rising sea levels in the Pacific able to identify who in the world created the harm. This is further complicated by the fact that climate change is not a sudden event, rather it has been cumulative over time. This means that whilst nation State action is important, more global cohesion amongst States is a fundamental requirement in addressing environmental harm going forward. This cohesion exists to a certain degree through the UN Framework Convention on Climate Change (UNFCCC) that dates to 1994 and is now ratified by 197 countries. Within that structure more attention should now be given to collective action to address the global response needed to realistically act to meet the targets set by the Framework.

This does require a willingness by States to have constructive and inclusive national discussions of how their economies may be contributing to what is a global harm, balanced against where these same economies and governments are offering solutions and strengthening adaptation.

State Responsibility to protect

As a human rights issue, the State has, and retains responsibility for the protection, respect, and fulfillment of human rights with regards to its people. It has the responsibility to create laws and policies and it is responsible for the balancing of often competing needs, priorities, and rights of its society in the development of those policies. They are tasked with the decision-making responsibility.

However, we are seeing in this debate on climate a demand for more inclusion and consultation by a range of societal partners in the governmental policy making process.

Governments have under the Universal Declaration of Human Rights affirmed, along with other actors, an obligation to teach and educate their societies, including business, about human rights and to promote their respect.

For business stakeholders, what is required is an ongoing dialogue with Governments about what businesses are doing to respect those rights and what help and assistance, including incentives, could be provided by the State to aid them. In the context of the climate debate, the opportunity exists now under the reporting requirements of the UNFCCC for States to better capture from business and other stakeholders the real efforts being made in addressing climate impacts. Such enhanced reporting can provide a richer source of good practice and perhaps accelerate their adoption more widely.

Governments also need to recognize that adverse environmental impacts occur every day. The opportunity here is for Governments, through dialogue to be clear as to what adverse impacts are proportionate and tolerable. This is not a zero-sum game.

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Business and the environment

This is not a new debate. The role all social actors can play in degradation of the environment has been discussed for decades and legislation on such issues as air quality and water are well established. Companies impact the environment in a multitude of ways, both for good and bad and have historically faced protest and prosecutions for environmental damage.

What is now becoming clearer is that businesses cannot simply look at the harm to the environment alone but should also look at the human rights of the people that their wrongful environmental effects have affected.

Companies should begin to embed human rights responsibilities across departments so that decisions are better researched, coordinated, and actively led by a need to respect the rights of people. Some companies are exploring including the “environment” in human rights due diligence. This is often being undertaken with little to guide them, other than a recognition that environmental harm can hurt people and therefore they need to be addressed just like any human rights harm under the UNGPs. However, more may be needed to help business fully understand the linkages between the two and the development of tools and guidance in line with the UNGPs that can help recognize those harms and effectively respond to them. There is a direct role for the State in helping business to this effectively, especially for small and medium sized enterprises.

However, more is needed to help deepen business engagement in human rights due diligence. Increasingly, some States have, or are considering, regulating human rights due diligence but this tends to be limited to large or export-focused companies.

Thereby, the implications for the informal economy and those operating within it will need to be addressed.

Business needs to be actively involved in those engagements.

Employer organizations are uniquely placed to be the conduit of the business voice.

Representing enterprises of all sizes and sectors, employer organizations can bring practicality to the design and delivery of actions proposed to respond to climate challenges. The practicality point is important. Perhaps more so than in other current issues a society is facing, adaptation to climate changes require policy choices that need a whole of society response to design, implement and remediate impacts on people. Governments need to be more open to seeking and including the views of business in the formulation and implementation of climate action initiatives.

At the end of 2020 approximately 1500 climate change related lawsuits had been filed around the world against both governments and companies, many at this stage targeting fossil fuel users.

Most recently, the International Federation of Human Rights (IFHR) has launched a project to begin a global effort against both Governments and companies for alleged human rights harms arising from climate change. German activists have filed a lawsuit against BMW and Daimler auto makers for refusing to tighten carbon emission targets which the activists claim are exacerbating climate change. These are just two examples of

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increasing legal action and seeking compensation and remedy, even in spite of challenges of how to attribute and assign responsibility.

This liability could also be created notwithstanding a business operating within the environmental rules set by the Government with no actual legal environmental breach having occurred. Governments may also be joined in such litigation as a codefendant or witness for the company's defense, resulting in penalties and remediation obligations for both.

That raises immediate issues of fairness, as a finding against a company which results in them, stopping, adapting, or restricting their business can have employment and other social consequences both within the company itself but also down the supply chain, both domestic and international. It also adds to concerns about transparency by companies around their human rights efforts. This is a particular concern in countries where expressions against interest i.e., admitting to a problem can involve that company in expensive and extensive litigation.

Another development is occurring that may well add to the developing law on liability. Several countries and indeed national courts are giving legal status to environmental resources to enhance their rights to protection. In Bangladesh and New Zealand for example rivers have been given a distinct legal personality. This trend further undermines efforts around giving effect to a "Just Transition" to a more sustainable economy.

Such a transition should be "just for all" including business, and business should not be expected to shoulder the full responsibility for both making the transition or remediating negative impacts in all cases. Activists may celebrate a ruling that requires a business to shut its operations over emissions, but what happens to the impacted employees and communities around the plant and down the supply chain and to the business itself?

Solutions, in both a policy and legal sense, cannot just stop with the addressing of one problem without factoring in all the unintended consequences that arise from such a solution. It cannot just be about monetary damages and naming and shaming. Fossil fuels, for example are still needed, and whilst companies are taking steps to pivot to alternatives it takes time and all companies or indeed countries cannot do it at the same pace or indeed in the same way. Consumers also must act in ways that reinforce those alternatives and they and governments need to provide clear market signals to business of their expectations around sustainable production practices.

Governments have a key role in determining what is "just". They must also work to ensure they fulfill their obligations to protect the human rights of business and those working for it, as solutions to address climate change are created and put into action.

Everyone, business or otherwise has the right to comment on, and where warranted, to object to government policy or proposed action. What is crucial is to strive for inclusive dialogue and solutions-oriented recommendations that provide more effective policy options where real opportunities are given by Government to business and to other voices in the development of policy and action, the acceptance is needed for effective implementation.

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The Role of Business

Over the last 10 years of the UN Guiding Principles on Business and Human Rights, the role of business in human rights has been well articulated and business action is now taking place to identify, mitigate prevent and remediate human rights harms to people arising from business operations or from business relationships. Evidence of that abounds and does not need to be restated here.

What climate change means for companies and commercial enterprise is to use those exact same tools to look more deeply at how climate change is impacting their businesses both in terms of location or activities, as well as to determining how they may or may not be contributing to it. Companies should in line with the UNGPs engage with its own business but also the value chain.

In doing this, business should ask itself some questions along separate but interrelated paths of enquiry. The actual content of these enquiries may well differ given the exposure a business has to climate changes and their possible contribution to it. Employer organizations should be able to help their members to build the frameworks for these questions to be raised as they may also be most effectively done as an entire business community rather than by each business alone.

As a starting point, business could consider to develop a means of undertaking at least, the following types of issues:

- To address the means of building climate resilience into operations and supply chains and the communities in which it is located.
- To recognize the human rights as explored by the UNGPs are not fixed. They can evolve over time and due diligence processes should adapt to that.
- To identify business actions or activities that are creating adverse human rights effects to people.
- Identify relevant climate change actions that they have caused or contributed to in the language of the UNGPs and undertake responses alone or in partnership with others.
- To strongly engage through their employer and business organizations with Government on the promotion of the business point of view in climate change policies and actions through employer organizations and support those organizations in building their resources and capacities to fulfill that role over time.
- To identify the various stakeholder groups for the purposes of consultation and collaboration on addressing climate change resilience and impact. What are your employees or communities saying about climate impacts? Do you have a robust and inclusive enough consultation process to gather that information?
- To consider the adverse climate and environmental impacts in the short medium and long term and assess these impacts on the business, its people, its communities, and its supply chain especially if those findings require business to make changes its operations or locations of doing business.

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- To consider what other companies located nearby are doing? Are there opportunities to share information and findings and collaborate on solutions?
- To review how the company identifies and prioritizes “risk” to ensure that it is not limited to just risk to the business but also includes the understanding of all risks to people.
- Explore the opportunities for the business in transitioning to a more sustainable future be that in efficiencies, energy usage, products, new markets etc.

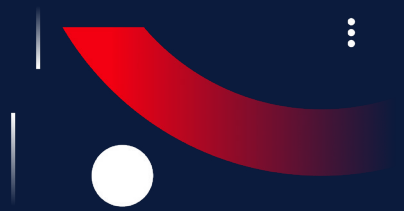
The information gathered through such efforts, needs to be shared widely within the business. All parts of the business need to consider how best to respond to the data and develop appropriate responses. This should also lead, if necessary, through stakeholder and government dialogue, to the development in the worst case, for a human right focused disengagement plan if the business is forced by climate changes that cannot be mitigated, to relocate or that requires changes to business processes or products adversely impacting the human rights of people and their communities. It is important to remember that the human rights impact of climate and the responses taken to address them such as through “just transition” are not the same and should require separate considerations.

The role of employer and business organizations

The role of business as a voice has already been commented on. Below are some further things they could consider to do for members recognizing that there is no one-size-fits-all answer to these challenges:

- Educate members on this evolving debate.
- Create support and sharing networks between businesses of all sizes on approaches to tackling climate change.
- Advocate with Government and others for outreach to any informal economy actors to help them understand but to also share ways forward.
- Make the case to Governments that business and indeed other social actors should be invited into and participate in the making of policy.
- Articulate what business needs to be effective in transitioning to more sustainable production. Support for retraining and employment placement for impacted staff and alternatives to replace economic impacts on communities. Work on what a “just transition” should look like.
- Learn from each other both regionally and internationally. Solutions to work need to have global impact so be willing to share.
- Act as a forum for dialogue and explore solutions to complex issues arising from the cross-cutting nature of climate change and its economic, trade and employment dimensions.
- Identify where law could change to help business be more effective in their climate and human rights

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related efforts. Safe harbor protections for example which allow a defense to an adverse issue that has been disclosed.

- What steps has the organization itself taken to address adverse human rights impacts on the environment. “Show by doing” can help SMEs understand what their own efforts could focus on.
- Address to Government and stakeholders any concerns around rule of law failures or corruption which are undermining or preventing effective measures to address environment and human rights harm.
- Speak with governments about internal policy and implementation coherence around responses to climate change. Just as in a business, Governments cannot look at this in silos.
- Provide example cases that highlight what business is doing and bring those to Governments for inclusion in their UNFCCC reporting.
- Hold Governments accountable for the targets they have sets for themselves (hopefully after full consultation with business), and contribute to the articulation of meaningful metrics to track and report progress.
- Educate the community on the role of business as one actor in what is a whole of society challenge.
- Bring climate into the discussion on the realization of the SDGs and national actions aimed towards their realization by 2030.

There will be more opportunities as this debate develops, and it is important that business organizations closely follow these and consider responses to their members and others.

Remediation

Remediation does have some unique and more complex dimensions.

Causation will give rise to several concerns either around a business’s own direct contribution to the harm or to the definition issue caused, contributed or directly linked? Could other actors, including the State have caused/contributed to it?

What would be the standard of proof and how would responsibility and remediation requirements be attributed? What about historical harm?

Given that harm in the context of environment can also accumulate over time, should you factor in the adverse impacts of those not yet born?

Who is negatively impacted or adversely impacted could also be unclear, as in a climate sense those harms could be felt in different ways by different people around the world at different times?

Where will a victim go if they claim to know they have been harmed but do not know by whom?

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A human rights harm that can be directly seen and responsibility directly identified already create several remediation challenges. Can the purpose of remedy under the UNGPs be achievable' namely seek to restoring a person to the same position they were in or as close as possible before the harm occurred?

These are only some of the more evident questions to ask and there are many more. At the heart of this though is the question which all actors need to explore is whether existing remedy mechanisms are fit for purpose or is something new needed?

Conclusion

Business is acting forcefully to address climate change, but more must be done in the climate debate. It will be critical for business to deal with its approach to climate change action beyond the critical efforts to advance "net zero" and other mitigation-oriented priorities, and consider whether they can also support adaptation and resilience in their communities and with other important stakeholders whom they work with. Whether that relates to addressing water and food security, emergency preparedness and response, and the development of products and services that anticipate the impacts of climate change, the business community can do more considering to factor in and reflect adaptation as is already the case for so many companies looking to scale back emissions and deliver technologies and energy options.

The response to the climate challenge will require a full societal effort, and the UNGPs pertain to human rights protection in connection with climate change as in other areas.

Real impact to alleviate environmental human rights harm to people occasioned by changes to the climate is needed now to meet the targets that Governments, collectively and individually, have set. These goals exist in State commitments at the national level and in universal goals they have set collectively including those in the Sustainable Development Goals which are intended to be met by 2030.

This requires all actors of a society which includes business to act according to their different responsibilities. It requires that each plays its part and that all are engaged in finding and supporting sustainable solutions that protect and respect the human rights of all.



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