

Newsletter

# Business and human rights



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## Editorial



We continue to see major developments related to business and human rights. In the last 12 months alone, Switzerland, Germany and Norway have adopted due diligence legislation and the European Union (EU) will present its proposal for a supply chain legislation on 5 December. Although these are European developments, the impact will

be felt globally, as European companies will increase their supply chain engagement and will request greater transparency and commitment from their suppliers. Transparency and responsible business conduct are now a basic requirement to participate in the global market. The International Organisation of Employers (IOE) has developed and launched extensive guidance in the past months on the UN Guiding Principles for SMEs, on human rights due diligence, on human rights and investment treaties as well as human rights and climate change. The aim is to support companies and employer federations to better adopt to and fully engage in the business and human rights agenda.

The negotiations on a binding treaty on business and human rights continued with the 7<sup>th</sup> session of the Intergovernmental Working Group on business and human rights taking place in October in Geneva. The third revised draft treaty, which was the basis for the negotiations, continues to diverge in important aspects from the UN Guiding Principles and is not implementable. The 7<sup>th</sup> session of the IGWG highlighted again that there is no agreement between countries on any of the major provisions of the draft treaty.

The ILO will publish a report at the end of the month with key findings whether the normative and non-normative work of the ILO is fit for purpose to address decent work deficits in supply chains. A technical tripartite meeting will convene in January and February 2022 in Geneva to assess existing gaps and to develop recommendations, which will be adopted by the ILO Governing Body in March 2022.

You will find more information on these and many other developments within this newsletter. At the end, allow me to introduce myself: My name is Gabriella Rigg Herzog and I am the new Chair of the IOE Policy Working Group on Human Rights and Responsible Business Conduct. In my day job, I lead the work of the US Council for International Business (USCIB) on human rights and I have a long career in the field of responsible business conduct. I would like to use the opportunity to thank my predecessor in the position, Mthunzi Mdwaba, for his great engagement for the IOE's work on human rights and his outstanding commitment to drive the business and human rights agenda forward.

## Evolving Laws

### International News

#### UN Business and Human Rights Treaty Third Revised Draft

In August 2021, the intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (IGWG) published a third revised draft treaty on business and human rights (Third Revised Draft) - available [here](#).

The International Organisation of Employers (IOE) developed a fact sheet and a position paper on the third revised draft treaty, which can be found here: <https://www.ioe-emp.org/news/details/just-released-ioe-biac-businesseurope-position-on-third-revised-draft-treaty-on-business-and-human-rights>

The Third Revised Draft is broadly similar to the Second Revised Draft in terms of structure, purposes and content, with some changes to provisions on its scope, purpose and access to remedy:

Expansion of scope to cover all internationally recognised human rights and fundamental freedoms, not solely core human rights instruments, ILO Conventions and customary law.

Additional aim of the proposed treaty 'to clarify and ensure respect and fulfilment of the human rights obligations of business enterprises'.

Victims would be guaranteed the right to remedy that is not only fair, adequate, effective, prompt and non-discriminatory, but also appropriate and gender-sensitive, and including access to individual or collective reparation.

More detailed requirements for victims' access to remedy, including for State courts and non-judicial mechanisms to overcome the specific obstacles which women, vulnerable and marginalized people and groups face in accessing mechanisms and remedies are also included.

The Third Revised Draft was debated at the [7th session](#) of the IGWG from 25-29 October 2021. 68 UN member states participated in the seventh session of the IGWG (compared with 67 in 2020, 89 in 2019, 92 in 2018; 99 in 2017; and 80 in 2016). The IOE and USCIB represented business throughout the complete 7<sup>th</sup> session of the IGWG. For the first time, the United States participated in person to the session. They raised strong concerns about the content of the third revised treaty as well as the process, but did not engage in the negotiations on concrete wording. The EU took part in the session but had no mandate to negotiate. Instead, the EU provided general comments. For the first time in the process, [concrete negotiation](#) on the text of the third revised draft treaty took place. Please find the [concrete text proposals](#) by the countries on the text in the separate annex. Only a limited number of governments participated in the negotiations. Most suggestions came from Palestine (90 comments), Egypt (52 comments), Brazil (47 comments), Panama (40 comments), Iran (29 comments), China (32 comments), South Africa and Cameroon (26 comments each), Cuba (23 comments), Namibia (21 comments) and Mexico (20 comments).

### **Key takeaways from the seventh session of the IGWG**

Although there continues to be no agreement on major provisions of the draft treaty and support for the text of the third revised draft treaty remains very limited, the process entered a new phase with negotiations on wording.

The scope of the treaty continues to remain highly contested. Whereas some States welcomed the draft's application to all business enterprises (such as EU), others argued that a proper reading of Human Rights Council resolution 26/9 restricted the scope of companies that can be covered by the instrument, so as to exclude domestic companies (such as China, Cuba, Ethiopia, Iran, and the Philippines).

The text proposals which were made during the seventh session of the IGWG distance the draft treaty even more from the approach of the UN Guiding Principles, making it less implementable and potentially jeopardizing any possible consensus building even more. The fact that only a very limited number of countries participated in the negotiations underlines not only the limited support for the treaty, but also aggravates the fact that a small number of countries push this process in directions not supported by important actors. The call for consensus-building in the opening by many states is not reflected in the document.

As non-governmental actors can only comment on provisions, but are not part of the negotiations itself, the leverage of IOE, ICC and USCIB in this process has declined even further.

The fact that the document with the wording proposals coming out of the seventh session of the IGWG is now the basis for the next draft treaty will make the engagement with regards to the fourth revised draft treaty even more challenging.

## Next steps

The Chair of the IGWG, the Ambassador of Ecuador, will invite a group of Ambassadors in Geneva to act as “Friends of the Chair”, which shall reflect a balanced regional representation, to start consultations with a view to facilitate and advance work on the draft legally binding instrument during the inter-sessional period. Under the guidance of the Chair, the “Friends of the Chair” should convene and lead consultations among States on the draft legally binding instrument, taking into consideration the concrete textual suggestions, comments, and requests for clarification made during the seventh session.

The Chair will update the draft legally binding instrument taking into consideration the compilation of the concrete text proposals submitted by States during the seventh session and the outcomes of the consultations as reported by the “Friends of the Chair”, and circulate it, including by publishing it on the working group’s website, no later than the end of July 2022.

## UN Human Rights Council recognises the right to a clean, healthy and sustainable environment

### **The UN Human Rights Council has recognised the human right to a clean, healthy and sustainable environment.**

Passing with 43 votes in favour and 4 abstentions (Russia, India, China and Japan) the UN Human Rights Council’s [Resolution 48/13](#) called on the UN General Assembly to “consider the matter” of the human right to a clean, healthy and sustainable environment:

- **Not legally binding ... but reflective of binding laws:** The resolution points out that “more than 155 States have recognized some form of a right to a healthy environment in, inter alia, international agreements or their national constitutions, legislation or policies.” Though Human Rights Council resolutions by themselves are not legally binding, the Council underscores the fact that linking human rights and the environment is far from a new concept in hard law.
- **A new Special Rapporteur:** The Human Rights Council also approved a [second resolution](#) establishing a Special Rapporteur on the promotion and protection of human rights in the context of climate change—an important vehicle to carry forward this work in practice.

- **Indisputable links between the environment and human rights:** The resolution points to the connections between environmental health and the most basic elements of human well-being. It underscores that “the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations” and that “environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights.”
- **Obligations and responsibilities for both government and business:** The resolution makes clear that States “have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges.” UN High Commissioner for Human Rights, Michelle Bachelet, reiterated this by [calling](#) on Member States to “take bold actions to give prompt and real effect to the right to a healthy environment.” Companies have the responsibility “to respect human rights, including the rights to life, liberty and security of human rights defenders working in environmental matters, referred to as environmental human rights defenders.” The resolution cites the UN Guiding Principles on Business and Human Rights, cementing the responsibilities of companies towards addressing environmental harm and climate change within the existing soft law framework of the UNGPs.

For more, see UN Human Rights Council, [The human right to a safe, clean, healthy and sustainable environment](#), A/HRC/48/L.23/Rev.1 (October 2021)

## Regional News - EU

### Potential ban on products linked to forced labour

- The European Commission’s annual [State of the Union Address](#) in September 2021 included an intention to propose a ban on products made using forced labour from entering the EU market.
- The announcement follows [calls](#) by the European Parliament for a legislative proposal on an effective traceability mechanism for goods that may be produced through forced and child labour.
- The development of a proposal for a ban is [expected](#) to be part of the Commission’s Work Programme for 2022.

## OHCHR recommendations to the sustainable corporate governance initiative

The European Commission is advancing on its [sustainable corporate governance initiative](#) which will be released by the end of the year.

The Office of the UN High Commissioner for Human Rights (OHCHR) has [outlined](#) for the European Commission some recommendations and fundamental changes to be made to the European Parliament's (EP) draft human rights and environmental due diligence legislation (which was released on 10 March 2021) to better align it with the UN Guiding Principles on Business and Human Rights (UNGPs).

Some key recommendations:

- “[Capture] the structure, sequencing and logic of human rights due diligence.” The EP’s model legislation does not “fully reflect” all of the elements of human rights due diligence (HRDD) as outlined by the UNGPs. One particular concern is the draft legislation’s indication that a due diligence strategy “is somehow separate from the identification and assessment process needed in order to determine whether an undertaking is or may be causing, contributing to, or directly linked to actual or potential adverse impacts”—key elements of HRDD. In addition, the purpose of HRDD, with its focus on risks to people, is distinct from due diligence in other contexts. For that reason, “care will need to be taken to preserve the distinctiveness of human rights due diligence as a risk management activity.” Also, the EP model legislation underplays the role of leverage in mitigating human rights risks: “Article 4(7) appears to consider ‘leverage’ only as a limiting factor in determining the scope of human rights due diligence exercises; whereas, it is actually of critical importance in helping to define the different opportunities and responsibilities an undertaking may have to address potential and actual harms.”
- **Align definitions of stakeholders and adjust sequencing of stakeholder consultation.** The definition of stakeholders in the model EP legislation does not match the definition in a human rights context by including, for example, shareholders. This broader definition “frustrates the purpose of meaningful stakeholder engagement in human rights due diligence processes,” where stakeholder consultation is intended to focus on the perspectives of people adversely impacted by business activities—not on the perspectives of those entities who impact their human rights. In addition, the OHCHR takes issue with the sequencing of stakeholder consultation under the model EP legislation: “[T]he EP model legislation requires stakeholder engagement only after the identification stage. ... As undertakings cannot accurately identify their impacts on human rights without seeking to understand the concerns of potentially affected stakeholders, failing to require stakeholder engagement at the identification stage can have deleterious consequences for the effectiveness of the law.”
- **Corporate accountability and remedy.** Many commentators have raised the point that there is a strong need for clarity and precision when determining when and how enforcement action will be

taken for non-compliance. The OHCHR underscores that “legal regimes often rely on more than one type of enforcement” – for instance administrative sanctions for non-compliance, and civil liability to remedy harm. The OHCHR highlights that “an important issue for the Commission to reflect upon will be how civil enforcement of the proposed regime can complement other liability regimes under the domestic laws of member States (e.g. the law of tort), which are becoming increasingly utilized in business and human rights cases.”

For more, see Office of the UN High Commissioner for Human Rights, [EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission](#) (July 2021)

## Guidance on due diligence and forced labour

In July 2021, the European Commission published [Guidance on due diligence for EU businesses to address the risk of forced labour in their operations and supply chains](#).

This applies to European Companies and offers “practical guidance on the effective use of existing international, voluntary, due diligence guidelines and principles”. It does not create any legal obligations for companies.

The guidance recommends that:

- Due diligence should be proportionate to the company's circumstances and context
- Policies and management systems should be tailored and stipulate a “zero-tolerance policy” for forced labour.
- It is made clear that suppliers and staff will not face reprisals for reporting risks or instances of forced labour.
- Key company staff and suppliers should be made aware of what constitutes forced labour.

It lists a range of specific policies and risk factors specific to forced labour and provides recommendations to companies when conducting risk assessments, dealing with risks of state-sponsored forced labour and providing remediation.

The document concludes with a list of relevant EU and international instruments.

For more, see: [Europe: New European Due Diligence Guidance Published to Address Forced Labor in Supply Chains](#) (Global Compliance News, 2021)

## German Supply Chain Act

On 11 June 2021, the German Federal Parliament adopted (with 412 votes in favour, 159 against, and 59 abstentions) the [Supply Chain Due Diligence Act](#) (Lieferkettengesetz):

- **Large companies covered.** The law will enter into force in 2023 and will apply to companies with 3,000 or more employees. Then, from 2024, the law will apply to companies with 1,000 or more employees. This includes foreign companies with a registered office or branch in Germany. (Civil society organisations view this scope as too small: they state it should be large companies with over 250 employees as well as SMEs in sectors with particular human rights risks.)
- **The law obliges companies to comply with human rights and certain environmental due diligence obligations.** Due diligence includes establishing effective risk management and conducting risk analyses systematically, and it is expected for companies' own business and direct suppliers. In the case of indirect suppliers, companies are required to conduct a risk analysis on an ad hoc basis, when they gain "substantiated knowledge" of a potential human rights violation. Works councils with economic committees are entitled to information and consultation on issues of due diligence in supply chains. When it comes to human rights, the law references the UN Guiding Principles on Business and Human Rights. When it comes to the environment, due diligence extends to three environmental conventions which relate to organic pollutants, mercury emissions and hazardous wastes. (Civil society organisations view this as insufficient, as compared to including a general clause relating to environmental damages, and specifically referencing biodiversity loss and climate.)
- **Fines and investigations:** Companies that violate their due diligence obligations can be fined by the competent authority, the Federal Office for Economic Affairs and Export Control (BAFA). Fines are based on the severity of the offense as well as the company's total turnover. This can also result in exclusion from public procurement contracts. Affected parties can request that BAFA take action and investigate whether a breach has occurred. (Civil society organisations question why the law does not provide for a new cause of action allowing affected parties to more easily sue companies before German courts for damages suffered.)

For further info, see [Supply Chain Due Diligence Act](#) (Lieferkettengesetz)

See Initiative Lieferkettengesetz, [What the new Supply Chain Act delivers – and what it doesn't](#) (11 June 2021)

See Initiative Lieferkettengesetz, [FAQ on Germany's Supply Chain Due Diligence Act](#) (October 2021)

For an overview of further comments on the German law, see the Business & Human Rights Resource Centre, [German parliament passes mandatory human rights due diligence law](#) (16 June 2021)

## Norwegian Due Diligence Law

On 10 June 2021, the Norwegian Parliament adopted the [Act on business transparency and work with fundamental human rights and decent work](#) (Proposition 150 L (2020-2021), also known as the Transparency Law):

- **Large and mid-size companies covered.** The law covers all larger companies domiciled in Norway, as well as foreign companies selling products and services in Norway. These are companies meeting at least two out of three (as [reported](#) by ForUM: “1. At least 50 man-years; 2. Turnover of at least 70 million NOK; 3. Balance of at least 35 million NOK.” This is approx. 8,800 companies. The law is expected to enter into force on 1 January 2022.
- **Corporate duty to conduct due diligence with respect to human rights and decent work, coupled with a right to information.** The law requires companies to perform due diligence assessments, and to document how they work to prevent or limit these risks to human rights, including workers’ rights. The baseline is the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises. (The law does not cover environmental due diligence). The due diligence assessments cover the entire supply chain and business partners, and the law requires companies to provide or cooperate to ensure remedy. Companies must report on their assessments, including cases of severe risk or harmful incidents that they uncover in their due diligence assessments. The law grants to any stakeholder the right to request information from a company on how it manage its human rights due diligence – including in relation to a particular item or service offered.
- **Enforcement:** The responsibility for upholding and enforcement of the law will be placed under the Norwegian consumer authority. Companies violating the law face risk of injunction, or fines should they fail to comply. Fines can be imposed on both companies and responsible individuals within a company. (Civil society organisations remark on the fact that civil liability is lacking and the discussion on this topic has been limited.)

For further info, see Business& Human Rights Resource Centre, [Norway: Parliament passes due diligence law incl. right to information about corporate impacts](#) (14 June 2021)

See Norwegian Forum for Development and Environment, [ForUMs reactions to the Norwegian due diligence law](#) (14 June 2021)

See EECJ, [Norwegian parliament adopts the Transparency Act](#) (14 June 2021)

Mark Taylor, [Mandatory Human Rights Due Diligence in Norway – A Right to Know](#) (12 April 2021)

## Japan large-scale human rights survey

The Japanese Ministry of Economy, Trade and Industry [announced plans](#) in August 2021 to conduct a large-scale survey of listed companies on human rights issues in the supply chain. The survey will target over 2,500 companies and survey results will inform a decision on possible legislative responses.

## UK calls for due diligence legislation

- In May 2021, Unison, the UK's largest trade union which represents workers providing public services, [called for](#) a supply chain due diligence law that would require companies to identify and assess human rights risks, prevent or mitigate these risks, and provide for remedy where appropriate.
- In June 2021, 29 civil society organisations issued a [statement](#) calling for a new UK law requiring companies to undertake human rights and environmental due diligence across their supply chains.

## UK Modern Slavery (Amendment) Bill

- On 15 June 2021, the [Modern Slavery \(Amendment\) Bill](#) (the 'Amendment Bill') was introduced in the House of Lords and is currently at its second reading.
- The Private Members' Bill proposes various amendments to the Modern Slavery Act 2015. These include to make it a criminal offence to supply a false or misleading modern slavery and human trafficking statement or for companies to use supply chains that do not demonstrate minimum standards of transparency.

## French Duty of Vigilance Law

- On 21 October 2021, a Joint Committee of the French Senate and French National Assembly adopted the [Building Confidence in the Justice System Bill](#) which includes a provision that would clarify the issue of appropriate jurisdiction for disputes under the Duty of Vigilance law.
- This provision was previously proposed in the Climate Resilience Bill, and provides that [one or more designated civil courts](#) would have jurisdiction to hear matters relating to the law.

## Australia Forced Labour Bill

- On 23 August 2021, the [Customs Amendment \(Banning Goods Produced By Forced Labour\) Bill 2021](#) passed all stages in the Senate, though without the support of the Australian government.
- If enacted, the Bill would empower the Australian Border Force to issue rebuttable presumptions for specific goods, companies and/or regions with particularly high risk of being associated with forced labour (similar to 'Withhold Release Orders issued under the Tariff Act in the United States).
- The Bill is currently under consideration by the House of Representatives.

## USA Uyghur Forced Labor Prevention Act

In July 2021, the Senate [unanimously passed](#) the Uyghur Forced Labor Prevention Act.

The bill assumes all goods manufactured in Xinjiang are made with forced labour and bans imports into the United States, unless US Customs and Border Protection determine otherwise. It will now be considered by the House of Representatives.

The bill would require:

- The Department of State to report to Congress with an assessment of whether human rights abuses in Xinjiang constitute genocide under U.S. law, and develop an awareness-raising strategy and strategy to address forced labour in Xinjiang.
- The Department of Homeland Security to develop a strategy to prevent the import of goods produced in Xinjiang using forced labour, including a list of entities working with the government to move forced labour or persecuted groups out of Xinjiang.
- U.S. Customs and Border Protection to establish a general presumption that goods produced by such entities are barred from importation into the United States.

## Investor News

### US Corporate Governance Improvement and Investor Protection Act

- In June 2021, the US the House of Representatives passed the [Corporate Governance Improvement and Investor Protection Act](#). The legislation is [under consideration](#) by the Senate Committee on Banking, Housing, and Urban Affairs.

- It would require additional ESG disclosures for publicly traded companies and establish a Sustainable Finance Advisory Committee for the Securities and Exchange Commission (SEC).
- [Section 605](#) of Title VI would also require the SEC to conduct a study and report to Congress within 1 year of the Act's passage on the value to investors of information about the human rights commitments and supplier due diligence. The report would make recommendations for additional disclosure regulations based on the findings, and any actions the SEC planned to take to enhance disclosures based on the findings.

## ESG trends in proxy voting

The [2021 Proxy Preview](#), from Proxy Impact, Sustainable Investments Institute (Si2) and As You Sow, compiles and analyses trends in U.S. shareholder resolutions filed on environmental, social and governance (ESG) issues. The preview reports that at least 435 resolutions have been filed for the 2021 proxy season as of February 2021. What do these numbers reveal about where investors are focusing now?

- **2021 resolutions are building on issues that exploded during the social, economic and political upheaval of 2020.** The events of 2020 “prompted a slew of new shareholder proposals investors will consider in 2021. New angles are most apparent in the big increase in resolutions about racial justice and equal opportunity, but proponents also are raising fresh ideas about worker safety, climate transition planning and lobbying.” For example, in response to the Black Lives Matter Movement, shareholder proponents are “doubling down on shareholder resolutions asking for disclosure of diversity in the workplace and in executive positions. They are seeking more robust efforts to hire a diverse workforce, and they want more information on how companies are managing their workforce programs and rooting out racism. The number of proposals doubled to 68, more than have ever been filed before.” More resolutions are also being filed on issues like CEO-worker pay differentials and worker benefits in the context of decent work and the pandemic.
- **Climate change tops the charts as the most significant ESG issue of the 2021 season.** Amidst a myriad of environmental topics—ranging from deforestation and waste, to plastics, pesticides and water use—climate change is “the dominant environmental topic” among 91 total environmental resolutions filed. And climate themes showed up in other places as well: “Climate-related concerns lay beneath the surface of many other proposals, particularly those about sustainable governance,” including disclosure and lobbying. The authors believe that whether these resolutions move forward will be shaped by U.S. policy and regulatory shifts since 2020: “With the Biden administration promising aggressive action to address climate change, companies and their investors face a completely different public policy context than they have over the last four years. ... Just how

companies will position themselves as they face the Biden administration’s climate plans is on the minds of many investor activists, and explains their focus on [corporate] lobbying.”

- **Resolutions on human rights are taking a wider lens than in previous years.** There are 46 proposals related to human rights this year, and among these are “a panoply of new proposals about racism both at work and more generally. The focus is on systemic racism and the extent to which companies can and should combat it.” These join “older proposals about supply chain risks like child labor” and combatting hate speech online. Many human rights-related resolutions “tread familiar ground” by focusing on conducting assessments and disclosure of human rights risks.

For more, see Proxy Impact, Sustainable Investments Institute (Si2) and As You Sow

## Climate News/COP26

### Climate change litigation

A new [report](#) from researchers at the Grantham Research Institute on Climate Change and the Environment examines climate change lawsuits brought before courts in 39 countries and 13 international or regional courts over the last year:

- **The number of cases related to climate change has grown exponentially, with an increasing number of these categorised as “strategic” cases.** “The cumulative number of climate change-related cases has more than doubled since 2015. Just over 800 cases were filed between 1986 and 2014, while over 1,000 cases have been brought in the last six years.” On top of this, the number of climate litigation cases filed in the Global South is beginning to catch up with those filed in the Global North; there are currently at least 58 cases active in 18 Global South jurisdictions. The authors also highlight the rise in cases considered “strategic”—that is, cases that “aim to bring about some broader societal shift.” They suggest that there is a growing trend towards using climate litigation as an “activist strategy” aiming to shift jurisprudence or shape the behaviour of governments and private sector actors more broadly and over the longer term.
- **Lawsuits are targeting diverse actors and new arguments are being used—including those grounded in human rights.** The authors identified 37 cases globally that seek to “challenge governance inaction or lack of ambition in climate goals and commitments.” At the same time, climate litigation is increasingly being used to target companies and financial actors as well as governments. Corresponding to this diversity, litigants are looking to novel legal strategies and hooks to make their case. For instance, lawsuits targeting the private sector have focused on greenwashing claims, failures in corporate due diligence leading to enhanced financial risk, failure to disclose risks

to shareholders and perceived breaches of fiduciary duty. There is also an increase in the number of lawsuits grounded in the human rights responsibilities of governments and the private sector: “Over 100 (112) human rights cases have now been identified globally, including in the US, with 29 of these cases filed in 2020 and a further five up to May 2021. The majority (93) of these cases have been brought against governments and a small but significant minority (16) brought against companies.”

- **There are three main areas of climate litigation to watch in the future.** The authors identify three significant trends to look for: (1) value chain litigation “where claimants seek to hold companies responsible for acts and omissions in their value chains and/or supply chains” (especially for companies relying on sectors like palm oil, soy and beef where deforestation heavily contributes to climate change); (2) lawsuits targeting government subsidies, tax breaks and other support to the fossil fuel industry; and (3) “cases focused on the distribution of the burdens associated with action, which may be classed as ‘just transition’ cases,’ focused on the disparities between “historical” high-emitters (usually developed countries) and those bearing the burden of these emissions (usually developing countries and those at heightened risk of climate impacts).

For more, see Joana Setzer and Catherine Higham, [Global Trends in Climate Change Litigation: 2021 Snapshot](#) (July 2021)

## Declaration on Mining and the Energy Transition for COP26

A [declaration](#) signed by over 100 NGOs and civil society organisations voices support for a just transition, referring to the impact of extracting mineral for renewable energy technologies on communities, workers and ecosystems around the world. It argues that transitioning to renewable energy must centre the human rights of Indigenous and frontline communities and mine workers.

## Other

### Update to the GRI standards to integrate UNGPs

The Global Reporting Initiative (GRI) has [released](#) its new 2021 Standards, as a revision to its 2016 Standards:

- **GRI as a “modular system of interconnected standards”:** GRI is comprised of three series of standards: (1) the GRI Universal Standards, (2) the GRI Sector Standards, and (3) the GRI Topic Standards. The GRI Universal Standards apply to all organizations and consist of: GRI 1: Foundation 2021 (GRI 1) which explains how to use the Standards, and clarifies the principles that are

fundamental to quality reporting (e.g. accuracy, balance, verifiability); GRI 2: General Disclosures 2021 (GRI 2) which focuses on the disclosures that will give context for understanding an organization’s impact (e.g. structure and reporting practices, activities and workers, governance, strategy, policies, practices and stakeholder engagement); and GRI 3: Material Topics 2021 (GRI 3) which explains how organisations can determine their ‘material topics’ and what organisations should disclose about their material topics (i.e., the process followed, the list of material topics, and how each topic is managed). Organisations are obliged to use the Sector Standard that applies to their sector – if it is available at the time of reporting (the oil and gas Sector Standard is [available](#), others will follow). Organisations can select GRI Topic Standards to help them report on the material topics determined (e.g. related to waste, occupational health and safety, and tax).

- **The definition of ‘material topic’ has been revised to focus on impact:** In the revised Standards, ‘material topics’ are defined as topics that represent an organization’s most significant impacts on the economy, environment, and people, including impacts on their human rights. This differs from the 2016 version, in which stakeholder views were viewed as a primary input. Specifically, the Global Sustainability Standards Board (GSSB) notes in its FAQs that the previous approach “led organizations to prioritize impacts only if the consulted stakeholders highlighted them. Impacts would often be assessed based on their significance to the organization and influence on stakeholders. As a result, organizations would consider the impacts on themselves instead of how they impact the economy, the environment, and society.” The new definition of material topic now focuses on impact – in alignment with the UN Guiding Principles – and the ‘influence on the assessments and decisions of stakeholders’ is no longer a standalone factor that determines whether a topic is material. Of note, human rights impacts are material based on their severity, and the concept of ‘Topic Boundary’ has been replaced with a focus on the organisation’s value chain. Organisations are asked to report on whether the organization is involved with negative impacts through its own activities, or because of its business relationships – with an accompanying description of these activities and business relationships.
- **Stakeholder engagement – focused on impact on people:** The importance of stakeholder engagement in the process of determining material topics has been clarified (in GRI 1) and a new step has been included for organizations to identify relevant stakeholders to inform their choice of material topics (in GRI 3). The definition of stakeholders has been revised: “Stakeholders are individuals or groups that have interests that are affected or could be affected by an organization’s activities.” This definition aligns with the OECD Due Diligence Guidance for Responsible Business Conduct. GRI states that “[c]ommon categories of stakeholders for organizations are business partners, civil society organizations, consumers, customers, employees and other workers, governments, local communities, non-governmental organizations, shareholders and other investors, suppliers, trade unions, and vulnerable groups.” The revised definition no longer includes as stakeholders an “entity or individual whose actions can reasonably be expected to affect the ability

of the organization to successfully implement its strategies and achieve its objectives”. This change enables the GRI Standards to focus on an organization’s most significant impacts on the economy, environment, and people, including impacts on their human rights.

For more, see:

GRI [Resource Centre](#)

GRI Standards, [A Short Introduction to the GRI Standards](#) (GRI, 2021)

GSSB, [GRI Universal Standards Project – GSSB basis for conclusions](#) (GSSB, October 2021)

## IOE launches an Employer’s Guide to fair recruitment

Business cares about fairness: IOE members endorse An Employer’s Guide to fair recruitment.

IOE is pleased to launch an Employer’s Guide to fair recruitment, the purpose of which is to serve as a resource tool for EMBOs to help upskill recruitment practices amongst members, improve productivity outcomes, avoid adverse harm to workers in line with the expectations of the UN Guiding Principles on Business and Human Rights, improve the domestic recruitment market and identify other resources that can be called upon.

Business has long argued that appropriate and effective national regulation that promotes responsible recruitment practices will serve to protect vulnerable migrant workers and job seekers and create a level playing field for the recruitment industry. For example, the global business community has taken a clear position to fight the charging of recruitment fees to jobseekers and workers. The pandemic has revealed significant obstacles to achieving both these objectives, thus making this guide even more relevant.

It is well known that at the heart of any business lies its most prized resource: its workforce. Therefore, fair recruitment practice is the critical element for any business to maximize its investment and boost productivity and innovation. Employers need to ensure the practice of a fair, inclusive, and structured approach to identify, interview and employ the best talent.

This process comes with accountability. Businesses have a responsibility to respect human rights and undertake due diligence to identify and address adverse situations over which they have control. Indeed, this is a business imperative. For responsible enterprises, the importance of compliance with existing laws and regulations goes beyond avoidance of monetary fines and other legal sanctions. It speaks to the protection of brands and corporate reputation, the management and control of risk, and the preservation of a level playing field and fair competition.

This guide is designed to help Employer Organisations (EOs) and their members to better understand the elements of a successful and fair recruitment process creating a level playing field and fair competition in the recruitment process. It offers practical tools to good planning and organizing 'rights-based' interview and selection processes. It also encourages EOs to model fair recruitment processes in their own hiring.

**Additional resources:** the EMBOs can also consult the main international instruments on recruitment for the employers - the [ILO Guiding Principles on fair recruitment and the definition of recruitment fees and costs](#), [IRIS - IOM's flagship initiative](#), [WFC Code of conduct](#) referred to under [Objective 6](#) of the Global Compact for Safe, Orderly and Regular Migration (GCM).

**Upcoming events:** The GCM Objective 6 will be further delved into during [upcoming IOE Africa workshop for employers](#) in March and April 2022 and the [UN International Migration for Review Forum](#) in May 2022.