

Connecting the Climate Change and Business & Human Rights Agendas

IHRB Briefing

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The IPCC Special Report on Global Warming of 1.5°C (2018) notes that:

*“[a] sizeable and growing literature exists on how best to operationalize climate equity considerations, drawing on other concepts mentioned in the Paris Agreement, notably its explicit reference to **human rights**. Human rights comprise internationally agreed norms that align with the Paris ambitions of poverty eradication, sustainable development, and the reduction of vulnerability. In addition to defining substantive rights (such as to life, health, and shelter) and procedural rights (such as to information and participation), human rights instruments prioritise the rights of marginalized groups, children, vulnerable and indigenous persons, and those discriminated against on grounds such as gender, race, age or disability.”²*

Context

Climate change has been described as “the greatest threat to human rights of the 21st century.”¹ The direct and indirect effects of climate change, and the wide range of responses to it, all have significant implications for human rights. Rising temperatures will lead to water stress, affecting both the right to water and to food, predicted increases in disease will set back advances in the right to health, inundations from sea level rise threaten the right to housing and the right to an adequate standard of living – to name just a few expected impacts.

The two parallel agendas of climate change and human rights are finally beginning to converge into more joined up approaches to addressing these challenges. Each area has frameworks for prompting action by the private sector, putting responsibility at the heart of the agenda. Human rights can add value, and are increasingly seen as crucial, to addressing climate change. This Briefing explores the synergies that can be gained from combining the narratives and practices of the two fields. Given the urgency and magnitude of the climate crisis, the good news is that synergies - whereby the whole becomes greater than the sum of its parts – do exist and more are likely to be discovered as practice evolves. This is not yet well charted territory, given that the vast majority of approaches and tools to address climate change focus almost exclusively on technical issues. For now, this Briefing provides an overview to begin to stimulate further thinking and discussion.

About this Briefing Series: This is the first in a series of briefings from IHRB and partners that will explore this wide-ranging landscape, including just transitions, integrated due diligence, remedy in the climate change context, convergences and differences in law and tools between environmental and human rights disciplines, the role of finance, structuring climate investments, and more.

What do human rights add to climate change responses?

There is growing recognition that climate change impacts will profoundly affect societies across the globe. The Paris Agreement acknowledged the human rights dimensions of climate change.³ The Intergovernmental Panel on Climate Change (IPCC) articulated the multilayered equity asymmetries that are at the core of the climate crisis (See IHRB [Briefing on Just Transitions](#)), and at the core of the inequalities the climate justice movement⁴ seeks to address. The IPCC joins a growing chorus of voices that recognise that human rights are as central to shaping responses to climate change as actions to reduce greenhouse gas (GHG) emissions. The extent to which human rights norms and standards are prioritised in national, regional and international strategies will play a significant role in determining whether the world is on a degenerative or regenerative path in responding to climate change.⁵

As internationally agreed normative and legal standards, human rights:

- highlight the many different dimensions of a dignified existence that can and will be affected by climate change (**substantive rights**);
- reinforce the importance of the voices of those affected by climate change and stress the need to ensure access to information and meaningful participation in decision-making (**procedural rights**);
- affirm the importance of a continued focus on the **different dimensions of equity** that should underpin approaches to addressing climate change including – addressing the disparities between those benefiting from climate impacts and those suffering consequences, focusing on the most vulnerable, and protecting future generations;
- underline the importance of building **accountability** into climate change actions at all levels; and
- help define the **social outcomes** that can flow from a more sustainable global economy (e.g. less inequality, less discrimination, and more freedoms).

What does the business and human rights framework add?

The 2011 [UN Guiding Principles on Business and Human Rights](#) (UNGPs) provide an authoritative framework that not only reaffirms state duties to protect against adverse human rights impacts caused by non-state actors including business, but also establishes the corporate responsibility to respect human rights. The UNGPs are not an internationally binding legal instrument, but a widely accepted set of performance expectations that can be and are increasingly incorporated into national legislation, contractual relationships and other legal developments at all levels. Nearly a decade since the unanimous endorsement of the UNGPs by the UN Human Rights Council, attention is turning to whether and how the corporate responsibility to respect human rights can contribute to addressing climate change. The [OECD Guidelines for Multinational Enterprises](#) (OECD Guidelines) are aligned with the UNGPs and nest the corporate responsibility to respect human rights in a broader framework of responsible business conduct (RBC). There are several reasons for exploring how the business and human rights framework can strengthen business action on climate change.

The UNGPs and OECD Guidelines...

... are the most authoritative framework for business action relating to human rights: The IPCC⁶ and Paris Agreement rightly focus on the importance of equity in addressing climate change. The UNGPs and OECD Guidelines provide a framework for “translating” the at times amorphous concepts of equity into more concrete and recognisable approaches for business. They both connect with accepted business tools of due diligence and management systems, and build bridges to other international frameworks and concepts. While there is as yet no authoritative guidance on addressing climate change and human rights through a business and human rights lens, the application of these RBC instruments by and to relevant sectors, issues, and context specific challenges provide concrete models for developing such guidance.

... recognise business as a core actor with responsibilities independent of government action: The Paris Agreement only briefly addresses the role of

UN agencies and experts have drawn attention to many links between climate change and human rights. For an overview of many of these reports on human rights see: UN Special Rapporteur on Human Rights and the Environment, *“Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”* (2019).¹⁶

non-state actors. The UNGPs focus squarely on and set expectations for both government and business. They recognise each play distinct, but complementary, roles in improving the protection of human rights. Importantly, the UNGPs are clearer than many other frameworks that business' human rights responsibilities should be implemented whether or not states have adopted binding legislation or other mandatory measures.

... reinforce the focus on the impacts of business operations:

The UNGPs, OECD Guidelines, and the Paris Agreement share an outward facing approach requiring businesses to look beyond risks and impacts of climate change and human rights abuses *on* their operations, to instead consider impacts *of* their operations. The UNGPs and OECD Guidelines build on the long-standing approach in environmental law of addressing impacts of business on the environment - adding a specific focus on impacts on people and their rights.

... reinforce the importance of accountability through reporting:

The human rights principle of accountability finds expression in a number of ways in the UNGPs and OECD Guidelines. Businesses are expected to "know and show," meaning they should "know" what their impacts are on peoples' rights through carrying out due diligence, and "show" this by tracking and reporting to stakeholders what they are doing to respond to the impacts identified. The discipline of "knowing and showing" is gaining traction in the climate change field, with an increasing number of companies reporting on targets and results aligned with the Paris Agreement, and an ever-wider range of investors⁷ and regulators requiring them to do so. The importance the human rights field attaches to involving stakeholders in such processes offer lessons that could enrich climate change due diligence and reporting; no doubt there are lessons to be learned from the climate change community that would improve human rights due diligence.

... reinforce the importance of accountability through remedy:

When negative human rights impacts cannot be avoided or mitigated, the UNGPs and OECD Guidelines make clear that they must be remedied. There has been a dramatic increase in climate laws around the world,⁸ but most focus on government duties and on the important priorities of mitigation and adaptation going forward, not on remedy for past harms. The rising tide of climate change litigation⁹ involving businesses and the increasing sophistication in attributing emissions to specific actors¹⁰ has powerful sanctioning and signalling effects that will begin to drive faster and more profound

corporate action. What they may do less successfully, however, is provide meaningful remediation to those already harmed. OECD National Contact Points have to date also addressed a growing number of cases of climate-related impacts of individual businesses.¹¹ It is clear that new thinking and approaches are needed that can deliver adequate remedies and accountability across a far broader scale than can be achieved only through litigation.

... provide a practical, step by step approach: Built on long-standing business practices – due diligence and management systems – familiar to environmental practitioners, the UNGPs and OECD Guidelines provide a common basis for starting discussions between human rights and climate disciplines. What climate change adds to the mix are two particularly crucial dimensions – a specific outcome and the urgency of getting to that outcome. Going through the motions of due diligence – i.e. treating it as only an obligation of means – is not enough when it comes to climate change. Climate change demands that due diligence is treated as obligation of results.¹² Paris Agreement alignment is prompting businesses to set clear targets to meet 1.5°C relevant pathways and to take responsibility for doing so, adding a clear message of urgency. IHRB's [Briefing on Just Transitions](#) explores briefly what that practical approach could look like in transition contexts.

Six Main Business Responsibilities for Climate Change

The UN Special Rapporteur on Human Rights & the Environment identified 6 responsibilities of businesses on climate change:

- reduce greenhouse gas emissions from their **own activities** and their **subsidiaries**;
- reduce greenhouse gas emissions from their **products and services**;
- minimise greenhouse gas emissions from their **suppliers**;
- **publicly disclose** their emissions, climate vulnerability and the risk of stranded assets;
- ensure that people affected by business-related human rights violations have **access to effective remedies**; and
- support, rather than oppose, **public policies** intended to effectively address climate change.

Stronger Together - Early Key Messages

Each of these two international agendas have complex governance structures, legal frameworks, keystone actors, and ecosystems. The discussion below only begins to scratch the surface on synergies, but a few key messages can already be highlighted:

- **It is time to re-examine business models that undermine society's goals:** The climate crisis has shone a spotlight on business models that require profound changes to meet the world's sustainability goals. There has been some nascent attention to business models based on human rights concerns. The climate change agenda provides the legitimacy and urgency needed to deepen and broaden examinations of business models that undermine a range of important societal goals.
- **Contradictions in business positions are becoming more obvious and less acceptable:** The potential overlooked misalignment (or purposeful cynical perpetuation) between stronger company positions on climate change and lowest common denominator positions often adopted by industry associations, are by now well covered territory. Numerous initiatives specifically address these contradictions.¹³ What has not yet been sufficiently reinforced is the importance of coherence across positions on climate change and human rights. It will become increasingly clear that businesses cannot hold themselves out as human rights champions if they are not also taking responsibility for addressing their climate change impacts -- especially businesses that are significant contributors to climate change.
- **Business responsibilities extend beyond direct operations:** Business responsibility for its adverse human rights impacts on people does not stop at the factory gate. The growing acceptance that businesses should report on both their direct and indirect GHG emissions (Scope 1, 2, and 3) significantly reinforces a similar message – that businesses have a responsibility to address impacts throughout their value chain. The combination of the Scope 1, 2 and 3 concept in climate change and responsibilities relating to business relationships in the UNGPs sends the clear message that business responsibility for harms extends beyond a business' direct operations and includes harms in its value chain as well.
- **A longer-term, inter-generational perspective is crucial to setting strategy goals:** The increasing precision of climate change scenarios over extended time frames adds a rigour and structure to addressing inter-generational concerns that human rights alone could not achieve. Together they provide a compelling case for long-term, detailed planning by governments and businesses about how they will address and cope with climate change with a view to making the planet livable for the generations to come, to live lives in dignity and prosperity.



Natalia Gomes / Cobertura Colaborativa

- A forward-looking, preventive approach is crucial:** Human rights law does not have as clear a principle as the “precautionary principle” that underpins environmental law. This core principle emphasises caution and prevention in the face of uncertainty, and particularly in the face of significant potential harms. Human rights law, the UNGPs, and OECD Guidelines stress the importance of prevention by insisting on a due diligence process that is intended to identify and address potential negative impacts before they mature into harms. Together the two disciplines reinforce the importance of businesses taking forward-looking, preventive approaches that are based on structured processes to interrogate potential consequences of action and then acting to prevent negative impacts as a priority. The urgency of climate action increases the importance of this clear message.
- A common basis in management system approaches will help build bridges:** The UNGPs were not developed in a vacuum and drew on experiences from other fields. Environmental management systems (EMS) provided an inspiration for the UNGPs and have been around since the 1990’s. Even though the UNGPs chose to refer “due diligence” to describe the UNGPs management system approach, it shares the same philosophy and the same basic set of steps as EMS. Similarly, environmental impact assessments have been around long before human rights impact assessments and served as the grounding and inspiration for this human rights tool. The similarity of approaches should not only provide some comfort of familiarity to each side, but also important methodology bridges linking the two fields. This common core approach provides ample ground for enriching practices and learning lessons on both sides.
- Accountability for impacts is a core principle:** Human rights law does not have a “polluter pays principle” equivalent but provides for a right to remedy for harms done. Together the two disciplines reinforce the importance of accountability which can be manifested in many different ways with respect to climate change responses. At the sharp end of the stick, human rights arguments are increasingly being used and resonating with judges in strategic climate change litigation, demonstrating the power of combined approaches.¹⁴
- New governance arrangements that cross borders are needed:** Human rights cross traditional sovereign boundaries – the strength of the message lies in the universality of rights that belong to each and every human being. Climate change clearly crosses boundaries too. However, both fields suffer from governance structures that seek to limit responsibilities for extraterritorial impacts and to offshore impacts to other territories and other actors – making them someone else’s problem. Both communities are under pressure to break down these conceptual and legal barriers and advancements in one agenda provide the opportunity to positively influence the other.

Limitations of a Business and Human Rights Approach

- Due diligence is not a silver bullet – broader considerations of economic development models are needed:** Routine exercises like due diligence are not going to address business models or even more profound challenges of appropriate development models. These issues instead require a sincere commitment to both climate change and human rights at the highest levels of leadership. The combination represents a strong motivation to take a long, hard look at business models at the micro and macro level over the long term, but that examination must be wider and deeper than the routine measures of due diligence.
- Don’t let business and human rights debates about causation stand in the way of urgent climate action:** The UNGPs developed a differentiated framework of company responsibility to respond to human rights impacts, depending on whether a business has “caused, contributed to, or is directly linked to” an impact. But causality is not always clear, nor are distinctions between the categories. Such debates should not become an excuse for delayed action. While the attribution science that will further pinpoint a specific company’s specific

contribution to climate change is still maturing, science and policy makers are clear about major contributors to climate change and are becoming ever clearer about contributions from a far wider range of sectors. The message of urgency of action is clear.

- **Don't let the differences in focus impede needed action:** Human rights focus on people, so the focus is typically on people affected – those in the workforce, those in the local community. There has been only nascent attention to considering how cumulative and sector-wide human rights impacts should be assessed and addressed.¹⁵ Responding to climate change will require assessments that can consider far wider geographic scales from local to planetary boundaries. These differences in focus are an issue to be addressed in forthcoming approaches and tools, rather than a reason to dismiss the integration of the climate change and human rights approaches.
- **Don't let the current absence of tools and guidance slow next steps:** Emerging tools will help businesses apply climate risk assessment at strategic, project, and activity levels. But there is as yet insufficient well-explained, practical guidance for business and other stakeholders on the integration of climate change and human rights impacts that provide a more complete picture of risks to people. This is one of many action points on this growing agenda.

Endnotes

- 1 Mary Robinson, Mary Robinson Foundation for Climate Justice, cited in OHCHR, “[Understanding Human Rights and Climate Change](#),” p. 6.
- 2 IPCC, 2018: [Global warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty](#), V. Masson-Delmotte, P. Zhai, H. O. Pörtner, D. Roberts, J. Skea, P.R.Shukla, A. Pirani, W. Moufouma-Okia, C.Péan, R. Pidcock, S. Connors, J. B. R. Matthews, Y. Chen, X. Zhou, M. I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, T. Waterfield (eds.).
- 3 [Paris Agreement](#) (2015) Preamble, 12 Dec. 2015, in force 4 Nov. 2016 (Paris Agreement). “*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity*”.
- 4 IHRB, “[Just Transitions for All: Business, Human Rights, and Climate Action](#)” (September 2020).
- 5 C. Figueres, T. Rivett-Carnac, “[The Future We Choose: Surviving the Climate Crisis](#)” (2020).
- 6 See the four dimensions highlighted in the IPCC report: IPCC, 2018 (above), Chapter 1, p. 55.
- 7 Such as the Transition Pathway Initiative and Climate Action 100+.
- 8 Grantham Research Institute on Climate and the Environment, [Climate Change Laws of the World](#).
- 9 Setzer J and Byrnes R (2020) [Global trends in climate change litigation: 2020 snapshot](#). London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.
- 10 See for example, Climate Accountability Institute, [Carbon Majors Project](#) (2019).
- 11 See the National Contact Point case databases maintained by the [OECD](#) and [OECD Watch](#).
- 12 Presentation, S. Deva, to British Institute of International and Comparative Law (October 2020). Professor Deva is a member of the UN Working Group on Business and Human Rights that will develop new work on climate change, business and human rights in 2021.
- 13 See for example the Climate Policy Leadership’s [AAA Leadership Framework](#) (2019) and BTeam, “[Addressing Trade Association Misalignment on Climate Policy](#),” (2020).
- 14 Setzer J and Byrnes R (2020) (above).
- 15 See, MCRB, IHRB and DIHR, “[Oil & Gas Sector-Wide Impact Assessment \(SWIA\)](#),” Part 5: Cumulative-Level (2014) and CREER, “[Mining Unseen: Sector Wide Impact Assessment on Human Rights](#),” (2016).
- 16 “[Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment](#)” A/74/161 (Jul 2019), paras 71-72.

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About IHRB

Founded in 2009, IHRB is the leading international think tank on business and human rights. IHRB’s mission is to shape policy, advance practice, and strengthen accountability in order to make respect for human rights part of everyday business.

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Attribution

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