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TOWARDS A HUMAN-RIGHTS-PROOF ENERGY TRANSITION

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To meet their obligations under the Paris Agreement to mitigate their emissions of greenhouse gases, States need to quickly transition to a zero-carbon economy. Yet, concerns have arisen over the human rights implications of States' energy transition programs. This blog argues that a 'human-rights proof' energy transition requires including human rights safeguards – such as procedural rights and risk and impact assessments - in the design and implementation of energy transition programs.



Introduction

The 2015 Paris Agreement has been heralded as a “human rights treaty” (Knox2020), as it is the first multilateral environmental agreement to include explicit references to human rights. More specifically, the eleventh paragraph of the agreement’s preamble states that:

“(…) 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”.

While the language used leaves much to be desired from a normative perspective (States ‘should’ instead of ‘shall’; they are to ‘respect, promote and consider’ instead of ‘respect, protect and fulfil’ as is usual under human rights treaties), the mere inclusion of human rights language in the Paris Agreement sends a strong message to States that human rights matter in relation to their climate policies.

More specifically, human rights and climate policies intersect in three respects. First, climate action is essential for the protection of human rights. Climate change affects many human rights, such as the recently recognized [right to a clean, healthy and sustainable environment](#) and more classic human rights, such as the rights to life, to an adequate standard of living (including access to food and water), to health and to privacy. States are therefore under an obligation to undertake emissions mitigation to comply with their [obligations](#) under human rights law. Second, climate change affects groups differently. International human rights law requires States to design and implement their climate action in a non-discriminatory way, with special consideration for reducing existing inequalities. For instance, women are disproportionately affected by climate change, as they face structural barriers in gaining access to resources such as food, water, land, credit, energy and technology, which makes them more vulnerable to

the impacts of climate change on livelihoods. States' mitigation measures should therefore be [gender-responsive](#), in line with Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Third, positive climate action may infringe on human rights. International human rights law requires States to design and implement climate policies in a way that prevents these from violating human rights. In other words, they need to ensure that the burdens of the energy transition do not fall disproportionately on communities that are already vulnerable, such as local communities in the Global South and Indigenous people.

This blog post focuses on the third dimension. This focus is inspired by the enormous challenge that the energy transition poses to the international community and the risk that this challenge leads to poorly designed programs that perpetuate historical injustices under the guise of environmentalism.

Human rights and the energy transition

To meet their obligations under the Paris Agreement to mitigate their emissions of greenhouse gases, States need to quickly transition to a zero-carbon economy. Yet, concerns have arisen over the human rights implications of States' energy transition programs. These concerns relate to land-intensive mitigation measures on the one hand and the extraction of critical raw materials for the production of renewable energy infrastructure on the other.

The energy transition requires States to set aside huge plots of land, either for forest-based mitigation action (eg. reforestation, biomass fuel production) or for the construction of wind and solar parks. These land-intensive mitigation measures lead to a surge in demand for land, [posing risks](#) to the livelihoods of local communities, especially those that depend on land for their living. An example is provided by a case that was decided by the Norwegian Supreme court in 2021 concerning the construction of two major wind parks on the lands of the indigenous Sami population. The court [ruled](#) that the [Storheia and Roan wind farms](#) project in Norway – Europe's largest onshore wind energy project – infringed on the right of the Sami people to enjoy their culture under Article 27 of the International Covenant on Civil and Political Rights. The Norwegian government had issued licenses for the construction of the wind farms, ignoring the Sami's concerns that the project would interfere with their traditional reindeer herding practices as an integral component of their culture. A request by the UN Committee on the Elimination of Racial Discrimination to suspend the project to study its impact on the Sami's livelihood was equally [ignored](#). It was only after the Supreme Court's ruling that attempts were made by the government and the companies operating the wind farms to (successfully) reach an [agreement](#) with the Sami. The Norwegian case is just one example and one that was ultimately resolved in a human-rights-compliant way. However, it demonstrates the importance of 'human-rights proofing' land-intensive projects in the planning phase.

Concerns have equally arisen in relation to the extraction of critical raw materials for the production of renewable energy infrastructure. Many of the minerals that are needed for the energy transition are sourced in Africa (eg. coltan, copper) and Latin America (eg. lithium). The rush for these resources may exacerbate already existing harms or provoke new ones. For instance, the Democratic Republic of the Congo (DRC) is the world's largest supplier of coltan, a mineral with strategic importance for the electronics industry (phones, laptops) and the energy transition (batteries for electronic vehicles and other energy storage technologies). The extraction of this mineral in the DRC is associated with [forced evictions, child labour, dangerous working conditions and armed violence](#). These harms have occurred for decades, due to poor regulation and the breakdown of institutions in the DRC due to the armed conflict that has been ongoing since the 1990s. Now that the [demand](#) for coltan is projected to significantly increase in the following years, it is to be expected that such harms will intensify, unless reforms occur in the regulation of the strategic minerals supply chain.

These examples demonstrate the complexity of the energy transition from a human rights perspective. On the one hand, transitioning from 'brown' to 'green' energy is crucial for upholding human rights, while on the other, specific programs or projects aimed at accelerating the transition may infringe on human rights, unless adequate safeguards are built into their design and implementation. This raises the question of what safeguards should be considered to ensure a just and fair energy transition.

Ways forward

Several mechanisms connected to the UN Human Rights Council have recently issued reports which contain recommendations on safeguards that States and corporations should implement to ensure a just and fair energy transition. For instance, the UN Working Group on Business and Human Rights noted in a recent [report](#) on the extractive sector: "Advancing a just transition in the extractive sector requires the fair and equitable distribution of the benefits and burdens of energy transition programmes and the

integration of human rights standards, in particular on meaningful and equal participation and access to remedy for victims of human rights abuses, across the entire extractive sector value chain.” (para. 13). Furthermore, the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change recommended in its [2023 report](#) with respect to mitigation action that new climate legislation should incorporate women’s and indigenous knowledge in decision-making processes, establish provisions on prior and informed consent with regard to indigenous peoples and ensure that businesses, corporations and financial institutions undertake environmental and human rights impact assessments of all mitigation projects.

What these reports have in common is the strong emphasis they place on procedural human rights, most importantly the right to participate in decision-making and to have access to remedies. Public participation is also an integral component of the due diligence process that corporations must increasingly adhere to. For instance, the OECD Guidelines for Multinational Enterprises state that “[m]eaningful stakeholder engagement is a key component of the due diligence process” while noting that “[i]n some cases, stakeholder engagement may also be a right in and of itself.” (para. 28) In addition to the need for broad and inclusive participation in decision-making, it is key to require corporations to assess risks and impacts independently, based on a variety of sources of information, including from the UN and civil society. This is especially important considering the precarious position in which [environmental and human rights defenders](#) find themselves in some jurisdictions. Here again, the due diligence process provides key guidance to corporations on how to identify risks and prevent adverse impacts. Environmental and human rights impact assessments, as referred to in the above report of the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, also play a pivotal role in this resp

Final reflection

This blog focused on ways to reduce the risk that the energy transition leads to poorly designed programs that perpetuate historical injustices under the guise of environmentalism. It identified the inclusion of procedural rights as well as risk and impact assessments in the design and implementation of such programs as key requirements for preventing harm to local communities. States are already under an obligation to implement such safeguards, notably under international human rights law. These obligations do not only apply to their own activities, but also to the operations of corporations domiciled in their territory. Crucially, international human rights bodies, such as the Committee on Economic, Social and Cultural Rights, have [interpreted](#) States’ obligations under human rights law as encompassing a duty to regulate their corporations, including extraterritorially (through their value chains). This duty to regulate has also found recognition in the [UN Guiding Principles on Business and Human Rights](#), which state in their ‘General Principles’ that the Guiding Principles are grounded in recognition of “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms”. Since progress in implementing these respective obligations is slow – the recent [setbacks](#) regarding the EU Corporate Sustainability Due Diligence Directive (CSDDD) are a case in point – it is crucial to remind States of their responsibilities. Ultimately, ensuring a just and fair energy transition is not just a question of morality, it is a matter of legal obligation.