

PRI RESPONSE

CALL FOR INPUTS: EXTRACTIVE SECTOR, JUST TRANSITION AND HUMAN RIGHTS

15 May 2023

ABOUT THE PRI

The Principles for Responsible Investment (PRI) works with its international network of signatories to put the six Principles for Responsible Investment into practice. Its goals are to understand the investment implications of environmental, social and governance (ESG) issues and to support signatories in integrating these issues into investment and ownership decisions. The PRI acts in the long-term interests of its signatories, of the financial markets and economies in which they operate and ultimately of the environment and society as a whole.

The six Principles for Responsible Investment are a voluntary and aspirational set of investment principles that offer a range of possible actions for incorporating ESG issues into investment practice. The principles were developed by investors, for investors. In implementing them, signatories contribute to developing a more sustainable global financial system.

ABOUT THIS CALL FOR INPUT

The United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (“Working Group”) will present a report to the UN General Assembly’s 78th Session in October 2023 on “Extractive Sector, Just Transition and Human Rights.” The report aims to provide practical guidance to States, business enterprises and other key stakeholders on how best to design and implement just, inclusive, and rights-based energy transition programs, investments and projects that advance the UNGPs. The Working Group is seeking input from a range of stakeholders (including States, international organisations, national human rights institutions, civil society organisations, research centres, policy makers, academia, lawyers, law firms, arbitrators, investors, industry associations, trade unions, human rights defenders, and Indigenous Peoples).

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KEY RECOMMENDATIONS

The PRI welcomes the Working Group's intention to provide the UN General Assembly with further information to ensure that the economic transition is just and takes into consideration the basic rights of all individuals, including the wide range of stakeholders involved in the mining sector value chain. To this end, the report prepared by the Working Group should:

- Highlight the importance for governments to adopt a whole-of-government approach to the economic transition, coordinating policy measures to ensure consistency between financial, fiscal and industrial policy and effectively manage sustainability outcomes. The aim of policy intervention in this area should be achieving a sustainable and equitable economy that supports natural and social systems.
- Stress how mandatory due diligence regulations, in line with international standards, should be at the centre of any regulatory intervention to ensure that extractive sector operations do not impact negatively on human rights. This would allow to go beyond what until now has been a focus on disclosure and transparency and drive action and behavioural change on sustainability issues.
- Recommend that energy transition plans and programmes should be designed with a set of minimum safeguards in mind. Stemming from the International Labour Organization's Core Conventions and the Universal Declaration of Human Rights, the PRI supports the following as minimum standards for decent work:
 - Worker voice and social dialogue;
 - Access to benefits, health & safety and social protection;
 - Access to a living wage; and
 - Equal opportunity and diversity, equity and inclusion.
- Emphasise the role of institutional investors in supporting companies in the extractive sector mitigate and remediate their potential and actual human rights impacts. This goes beyond the important first step of adopting policy commitment and includes conducting risk-based due diligence in line with international standards and employing all the tools and leverage at their disposal, such as stewardship and collective engagement. Even when not causing or contributing to negative human rights impacts, investors can and should play an enabling role on remedy through their engagement with holding companies. Initiatives such as [Advance](#) and the [Global Investor Commission on Mining 2030](#) can support investors in this.
- Highlight how, individually and collectively, investors can play a supportive role to ensure the extractives sector - their holding companies - offers operational-level grievance mechanisms and access to remedy. To this end, investors should work with other organisations and stakeholders to provide or enable remedy, taking into account the circumstances and their leverage.

DETAILED RESPONSE TO SELECTED QUESTIONS

State duty to protect human rights

Question 1: How can States better advance human rights-compatible energy transition laws and policies that ensure responsible business conduct in all aspects of energy transition efforts and programs (e.g., including, but not limited to, design, approval, financing, implementation, and reporting of energy transition programs)?

Just transitions are underpinned by fundamental responsible business conduct practices. However, most states do not yet mandate corporate human rights due diligence, while many have yet to ratify core ILO Conventions. The push for a just transition is a useful opportunity to create level playing fields which advance responsible business conduct, which will have a positive impact beyond the climate transition.

In order to ensure that the transition is achieved successfully, and benefits the environment and society, States should align financial and economic policy with sustainability goals.

With specific regards to financial regulations, these should consider a [toolkit of policies](#) that include:

- Corporate ESG disclosures, including alignment with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and building on recognised international standards like UNGPs, OECD Guidelines, and the ILO Declaration on Fundamental Principles and Rights at Work, among others, for investors to judge how well companies are dealing with the social aspects of the transition.
- Stewardship, including engagement and voting. PRI recently published a report on [How policy makers can implement reforms for a sustainable financial system: stewardship](#).
- Investors' duties to incorporate ESG-related considerations in their investment decision making, to provide sustainability-related disclosures and to report on their ESG incorporation policies and performance targets.
- Taxonomies of sustainable economic activities, defining common and clear criteria to classify projects or investments as green or sustainable and including minimum social and governance safeguards.
- National/regional sustainable finance strategies, that encourage and enable the low-carbon transition and the delivery of the SDGs.
- Corporate and investor-level due diligence requirements, developed in line with widely accepted international standards.

Other considerations to take into account are global policy alignment, to avoid regulatory fragmentation, and stakeholder consultation, to ensure effective policy design.

Question 2: Are you aware of any measures, both mandatory and voluntary, at national, regional, and international levels to foster business respect for human rights in the extractive sector, especially in the context of energy transition plans, programs and activities? If so, are these measures effectively enforced and do they provide the necessary coverage in light of evolving circumstances, including energy transition plans? Is greater clarity necessary in some areas of law and policy? What measures may reasonably correct this situation?

We are aware of only a limited number of such measures directly aimed at the energy transition. Among these, in its Implementation Guidance, the UK Transition Plan Taskforce suggests that “In designing its transition plan, an entity may consider material interdependencies between climate action and the natural environment and stakeholders such as the workforce, supply-chains, communities or customers”. The PRI responded to the consultation before the Guidance was published highlighting how, in terms of social impacts, when designing and delivering on their transition plans, entities should also actively:

1. anticipate, assess, and address social risks of the transition, such as fair allocation of costs and benefits from the transition; and
2. identify and enable the social opportunities of the transition, whereby entities can seize positive social impacts such as creating green jobs with decent work, eradicate energy and fuel poverty, and reduce longstanding inequalities.

Furthermore, the TPT should incorporate guidance on just transition explicitly as an interdependent issue. Investors are increasingly assessing the social impacts and sensitivities of their transition plans through both sectoral and geographical specifics. Such assessment includes material dependencies and impacts on workers, suppliers, communities, and consumers.

As stated in LSE Grantham Institute’s recent report [Making Transition Plans Just](#), as part of the implementation of transition plans, ‘the overall ambition to support the just transition must influence the ways that financial institutions allocate capital to assets and businesses, clients and customers, in the real economy’. The report identifies three keys just transition factors that financial institutions should incorporate in the design and delivery of their plans. These include:

1. Anticipate, assess and address the social risks of the transition;
2. Identify and enable the social opportunities of the transition;
3. Ensure meaningful dialogue and participation in net zero planning.

A number of policies and regulations are aimed at ensuring responsible business conduct in the extractive sectors, which should underpin a just transition. Examples can be discrete initiatives focused on specific social risks (which are likely to be exacerbated by an unjust transition) such as the conflict minerals regulations in the US and EU, and modern slavery regulations in the UK, Australia and California, among others.

Mandatory or voluntary initiatives aimed at due diligence along value chains, such as the upcoming EU Corporate Due Diligence Directive or the Human Rights Due Diligence Guidelines in Japan, can also support the respect of human rights along minerals value chains. This is especially true in the case of mandatory due diligence requirements.

Question 3: What mechanisms or processes should exist at the State level (e.g., inter-ministerial committee, ex ante human rights impact and risk assessment) to assess and ensure that extractive sector operations, including the production and distribution of transition minerals, do not impact negatively human rights? Are these measures effectively enforced and do they provide the necessary coverage in light of energy transition plans, programs and activities?

The PRI sees mandatory due diligence regulations, in line with international standards, as important regulatory tools to ensure that extractive sector operations do not impact negatively on human rights.

This would go beyond what until now has been a focus on disclosure and transparency and drive action and behavioural change on sustainability issues.¹

Question 6: What are the gaps in the development and implementation of existing National Action Plans, legislation, and domestic, regional, or international frameworks (e.g., the Paris Agreement or climate change laws) on business and human rights, particularly in relation to the extractive sector, which if addressed will advance a just and human rights-based energy transition?

With regards to National Action Plans, as shown by the World Benchmarking Alliance Corporate Human Rights Benchmark, a limited number of governments undertook baseline assessments or ongoing assessments of UNGP implementation to set targets and track progress against. In this setting, national assessments of relevant company corporate human rights performance would be useful.

As highlighted above, mandatory human rights due diligence in line with recognised international standards is one of the main tools at governments' disposal to ensure that the risks of human rights impacts are addressed or minimised.

It is important that these instruments consider the role of the financial sector, including investment companies, in ensuring a just transition. Coherent and consistent implementation of financial regulation will encourage and support investors in integrating social considerations in their investment decisions. These extend to investment regulation (e.g. EU Sustainable Finance Disclosure Regulation), and regulation introducing due diligence requirements (such as the proposed European Corporate Sustainability Due Diligence Directive).

Instruments such as social taxonomies, or environmental taxonomies containing minimum safeguards linked to internationally recognised standards such as the UNGP and OECD Guidelines could ensure the highest possible level of regulatory alignment. However, the development of these instruments – especially social taxonomies – has seen a slowing down in pace, including in jurisdictions, such as the EU, which have been at the forefront in developing this kind of instruments. This trend should be reversed. This would allow capital to be redirected towards more socially sustainable activities.

Question 8: How can States harness the potential of energy transition to accomplish important policy objectives related to human rights, such as achieving local empowerment, gender equality, protection of the environment, mitigation of climate change and realising the Sustainable Development Goals?

It is important that policymakers recognise that energy transition plans are less likely to succeed if they do not factor in their impacts on people. Disproportionately affected communities are likely to resist these plans if there is a realisation that they are pushed ahead without consideration of their situation, especially when consultation processes are limited.

Just Transition is a process of co-facilitation that ensures people most affected by change are included in the decision-making processes that affect them. Focusing on distributive and restorative justice ensures that vulnerable and marginalised communities do not bear the burden of the transition. Here, the focus on procedural justice necessitates that meaningful social dialogue exists for workers as well as all affected stakeholders. Given the high level of contextual distinctness across geographies, a

¹ Environmental Finance (2023), [How to make CSDD fit for purpose: the investor perspective](#).

place-based approach to participation is also often needed to tailor processes and outcomes to local contexts.

Ensuring a just transition should be both reactive and proactive, both in anticipating and managing the consequences of climate action to minimise risks, as well as a more proactive, transformational lens to identify how net-zero can be shaped to address co-benefits such as poverty eradication, decent jobs, and inequality reduction.

States can harness the potential of energy transition to create co-benefits such as social development, but only if these issues are part of the agenda from the beginning. From the outset, transition plans should adopt a people focus, to balance out the necessary technical/engineering focus. This would allow to address the risks of derailment from the left behind and to ensure that sustainable development outcomes are part of the plan.

Corporate responsibility to respect human rights

Question 9: What roles should business enterprises in the extractive sector play to integrate human rights into ongoing energy transition plans and programs to address adverse human rights impacts? Please provide examples if possible.

The extractive sector should aim to manage the impacts of the transition on both workers and communities, with an eye towards maintaining and, where possible, strengthening, their social license to operate. All this should be underpinned by the fundamental element of respect of the UNGP. Up to this moment there has been a strong focus on the just transition out. With interim investor net-zero targets on the horizon, investors are facing pressure to accelerate their plans and focus on decarbonising portfolios; in other words, transitioning out of a low-carbon economy. However, it is equally crucial to consider what it means to transition in, as there are a range of social risks associated with the transition in that need to be managed. This can be achieved by ensuring that current and future workers' and communities' needs, including those of the most vulnerable, are met, and that the views of all stakeholders are meaningfully taken into account, through effective participation processes. To facilitate the transition, companies should look at routes such as formalising work, empowering micro and small to medium-sized enterprises, and getting young people into work.

Energy transition plans and programmes should be designed with a set of minimum safeguards in mind. Stemming from the International Labour Organization's Core Conventions and the Universal Declaration of Human Rights, the PRI supports the following as minimum standards for decent work:

- Worker voice and social dialogue.
- Access to benefits, health & safety and social protection;
- Access to a living wage; and
- Equal opportunity and diversity, equity and inclusion.

These safeguards take a human-centric approach towards the future of work and constitute an important component of the social contract. They are interlinked and underpin each other (i.e. a living wage is often collectively bargained).

Question 11: Have you seen extractive sector investors play a role in preventing and mitigating, or in exacerbating, negative impacts of energy transition efforts on human rights? Should investors be required to conduct gender responsive HRDD in meaningful consultation with local

communities, civil society organizations, Indigenous Peoples, and human rights defenders? What remediation responsibility should investors have?

The risk of investors moving too fast to meet net-zero commitments may result in a lack of adequate due diligence on pre-existing or emerging impacts on workers and communities and compromise the opportunity to achieve decent green jobs. Institutional investors have a three-part responsibility to respect human rights:

1. policy commitments;
2. due diligence processes;
3. enabling or providing access to remedy.

Taking an active approach to the just transition enables investors to realise their existing obligations to respect human rights and labour standards. These include ILO's core labour standards, the UNGP, and the OECD Guidelines. These international 'soft law' instruments refer mainly to how investors can encourage investee companies to embed respect for human rights. Investors themselves also need to incorporate these into their due diligence and how they approach responsible business conduct, as set out in the OECD's paper Responsible business conduct for institutional investors.

As part of the Investing in a Just Transition Initiative, the PRI published a [guide for investor action](#) on the just transition. The guide highlights five areas for investor action, including:

1. Investor strategy;
2. Corporate engagement;
3. Capital allocation;
4. Policy advocacy and partnership;
5. Learning and review.

The guide also includes a set of initial questions for investor engagement with companies on the just transition.

When negative human rights impacts are identified, investors should engage with investee companies, including through collaborative engagement platforms aimed at increasing their leverage. The tools at investors' disposal are multiple, and disengagement or divestment should only be used as a last resort. Investors should identify clear and practical thresholds and be transparent about the criteria used to make decisions.

Lastly, as highlighted in the PRI's 2022 [paper](#) on key action areas for investors with regards to Diversity, Equity and Inclusion (DEI), we recognise the relevance of DEI issues to company and investor due diligence, including in relation to the energy transition. However, we also recognise that, at the state, most companies are yet to adequately implement 'general' human rights due diligence.

In line with their responsibility to respect human rights, and to help actively manage their sustainability outcomes, over 220 investors with \$30tn in assets have joined or endorsed the PRI's [Advance](#) initiative, with 121 of them actively participating in engagement with companies. Advance is a stewardship initiative where institutional investors work together to take action on human rights and social issues. Investors use their collective influence with companies and other decision makers to drive positive outcomes for workers, communities and society.

Engagement has started with 40 companies in the metals & mining and renewables sector. As part of the process, three key expectations have been set for the focus companies:

1. Implement the United Nations Guiding Principles on Business and Human Rights (UNGPs) – the guardrail of corporate conduct on human rights;
2. Align their political engagement with their responsibility to respect human rights;
3. Deepen progress on the most severe human rights issues in their operations and across their value chains.

Additionally, the [Global Investor Commission on Mining 2030](#) was launched in January 2023. The initiative is supported by PRI and aims to address key systemic risks that challenge the mining sector's ability to meet increasing mineral demand for the low carbon transition.

With regards to remedy, it is important to realise what kind of connection investors can have to human rights impacts. These are specifically recognised in the OECD Guidelines and elaborated upon in the Guidelines on Responsible Business Conduct for Institutional Investors.² There are impacts that an investor:

- has caused – through its own business activities (e.g. outcomes on its own employees). An investor can “cause” negative human rights outcomes where its own activities remove or reduce someone's ability to enjoy a human right. This will typically be in relation to their operational activities, but where the investor holds a controlling stake in an investee company (e.g. through the majority ownership model in private equity), it can also occur through their investment activities.
- has contributed to – a) through its own business activities where it is one of several contributors or b) through a business relationship or investment activity that induces or facilitates an outcome from an investee company or project. This could occur through investments when the investor holds high ownership stakes and could or should have known about harm, but preventive actions were insufficient.
- is directly linked to – through the activities, products or services of an investee company or project.

As highlighted by the OECD Guidance for Institutional Investors, while investors are usually directly linked to impacts (as opposed to causing or contributing to these), they should still play an enabling role on remedy through their engagement with holding companies. It is important to note that this does not mean that investors can't ever be in the situation of causing or contributing to human rights impacts. Different typologies of investment can cause different levels of exposure (e.g. direct funding of transition projects vs. buying debt or facilitating credits or loans to transition companies), and should investors knowingly fund projects where the risk of human rights impacts are high without conducting appropriate due diligence, then they may arguably be contributing to the impacts.

Investors are considering not only the impacts on people that arise or could arise from their business activities and investee companies, but they are also trying to understand how risks to people can create financial and reputational risk.

To conduct this analysis, investors need different types of data throughout the investment process. But there are gaps in terms of available information and reliable sources – and where this information is available, it can be difficult to access and process at scale. In November 2022, PRI published a report

² OECD (2017), [Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises](#).

on [What data do investors need to manage human rights risks?](#), where we identified four main priorities that stakeholders (including investors and policymakers) should consider. These are:

- **Make the data available**, including by promoting aligning corporate disclosures on social issues with international human rights standards;
- **Make the data accessible**, also by supporting increased data tagging, agreed taxonomies and digital corporate reporting;
- **Verify the data**, by regulating ESG data providers to improve methodological transparency, and enhancing the quality of assurance services for corporate human rights performance and reporting; and
- **Integrate data into the investment and stewardship process.**

Question 13: Should concessions, contracts, and legislation require all business enterprises producing, purchasing, processing, and distributing transition minerals to apply and implement human rights-based impact and risk assessments and due diligence standards, including gender-responsive HRDD and heightened HRDD for conflict-affected areas? If so, how could such processes ensure meaningful participation of impacted communities, particularly vulnerable and historically excluded groups?

Yes. Voluntary approaches to HRDD have yet to create a level playing field or see consistent, robust implementation of the UNGPs / OECD Guidelines. Risk-based due diligence should be at the basis of regulation for at-risk sectors; therefore concessions, relevant contracts and legislation should require robust implementation of international due diligence standard. Due diligence regulation helps support investor's sustainability assessments; enhance risk analysis and processes for impact prevention, mitigation, and remediation; and provide greater understanding of the companies operating in the sector including throughout the value chain. It also enables responsible investors to conduct better-informed engagement with investees, to respect human rights and give due consideration to environmental issues.

Examples of effective participation from affected communities can be taken from other sectors with similar characteristics, such as [forestry](#).

Access to remedy

Question 15: What measures and mechanisms should be provided by extractive sector legislation, bilateral investment treaties, concessions, and contracts to allow individuals or communities affected by extractive activities to seek effective remedy for business-related human rights abuses? What remedies are best suited for this sector?

Grievance mechanisms are an essential tool to identify and remedy human rights impacts. Individually and collectively, investors can play a supportive role to ensure the extractives sector - their holding companies - offers operational-level grievance mechanisms and access to remedy. Investors may also wish to consider establishing their own grievance mechanisms.

Investors can base the development of their own mechanisms, or assess the effectiveness of others' mechanisms, against the following UNGP criteria:

- Legitimate

- Accessible
- Predictable
- Equitable
- Transparent
- Rights-compatible
- A source of continuous learning

Underpinning all of these criteria is the importance of conducting comprehensive and ongoing stakeholder engagement.

Moreover, a “remedy ecosystem” should be created. In many cases, investors should work with other organisations and stakeholders to provide or enable remedy, taking into account the circumstances and the investor’s leverage.

Question 17: Are you aware of any cases submitted to judicial and/or non-judicial instances (e.g., national human rights institutions, national contact points, mediation, etc.) regarding business-related human rights abuses in the extractive sector, particularly in the context of energy transition projects?

While we are not currently aware of specific ongoing cases, the PRI’s Advance initiative employs two main tools to track allegations of human rights impacts for its engagements:

- The OECD [National Contact Points Database](#);
- The Business and Human Rights Resource Centre’s [Transition Minerals Tracker](#).

Good practices and other comments

Question 21: Are there any specific recommendations to States, businesses (including investors), civil society, UN bodies and National Human Rights Institutions that would help further advance a just and human rights-based energy transition in the extractive sector? Any other comments or suggestions about the forthcoming report are also welcome.

Beyond the possible direct human rights impacts of the extractive sector, regulators, investors and other stakeholders should focus on other connected issues that can compound the negative impacts. For example, collective engagement on corruption can ensure that the negative impacts of the transition are minimised, and the positive ones shared fairly. In 2022 PRI supported a [collective engagement](#) on bribery and corruption in Brazil.

The PRI has experience of contributing to public policy on sustainable finance and responsible investment across multiple markets and stands ready to support the work of the UN Working Group on Business and Human Rights further to ensure the respect for human rights and a just economic transition, including in the extractive sector.

Please send any questions or comments to policy@unpri.org.

More information on www.unpri.org