

UN Working Group on
Business and Human Rights
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Proactima is a Norwegian management consulting company, with core business within risk- and crisis management, sustainability, HSE and emergency preparedness. The company was founded in 2003, and every day we contribute to a safer and more sustainable society. We use our experience, competence, and capacity to support private and public sector with risk management. In recent years, our focus has been to support companies in the energy transition, managing transitional risks, as well as risks to people and environment.

With reference to Human Rights Council resolution 44/15, Proactima is pleased to provide our input on the upcoming report “Extractive sector, Just Transition and Human Rights”, to be presented to the UN General Assembly’s 78th Session in October 2023.

We recognize the mandate of the Working Group, to promote, disseminate and implement the UN Guiding Principles on Business and Human Rights (UNGPs). In the following we provide our input to question 1 and 9, which we find the most fundamental for securing human rights and a just energy transition, on which the global community undoubtedly must embark.

The state duty to protect human rights – how to better advance human rights-compatible energy transition law and policies to ensure responsible business conduct

States can better advance human-rights-compatible energy transition laws and policies by requiring a Human Rights Impact Assessment (HRIA) in the Design phase. Based on learnings from recent years’ revelations of extremely high risk for severe human rights violations in production of solar panels and extraction of raw materials, the HRIA must include the entire supply chain including raw material extraction. Since violations of human rights and negative environmental impact often go hand in hand, Proactima recommends the HRIA to be executed in combination with Environmental and Social Impact Assessment (ESIA)¹. In either case, Proactima recommends that States require the assessments to be carried out by independent competent actors. Proactima agrees with FAO, who in 2016 recommended the principles of Free, Prior and Informed Consent

¹ Alternatively, an Environmental Impact Assessment (EIA)

(FPIC) as a good practice also for local communities².

Impact management, i.e., planning for effective impact prevention, mitigation and remediation is an integral part of an impact assessment process. Proactima suggest that States weigh **Remediability** i.e., the possibility to remediate adverse impacts on human rights breaches (by companies) / violations (by States) as an overruling approval criterion. Conditioned remediation is possible, and by requiring an HRIA/ESIA in the Design phase (and by financers in the Financing phase) will enable consistent follow-up in the Implementation and Reporting phases.

All States should make the Impact Assessment documents in all phases publicly available. Document transparency will enhance international learnings from poor practices and also knowledge-building on good practices. Good practices also include enhanced knowledge of the monetary mitigation / remediation costs. Energy transition is both needed and must be just. Thus, counting in just mitigation and remediation costs are highly needed.

Lastly, with land rights as a high actual or potential adverse human rights impact in renewable energy projects, States should establish and/or strengthen the enforcement of land right legislation and ensure that these laws are aligned with internationally accepted human rights.

Corporate responsibility to respect human rights – roles of business enterprises to integrate human rights into ongoing energy transition plans and programs

Business enterprises have a key role in securing a just energy transition, and to address adverse human rights impacts in both plans and programs. To truly embrace this key role, Proactima's experience is that human rights due diligence should and must be an integral part of the enterprise risk management of all business enterprises in the extractive industries (and for all other sectors). This is also suggested in the UN Guiding Principles on business and human rights and advised by the UN Working Group in Business and Human Rights, in their "UNGPs +10 - A roadmap for the next decade of business and human rights"³.

However, risk to human rights does not always have the same priority as risk to business. It is a prerequisite to understand that human rights risks are inherently different from risk to business. Hence, there are key challenges with embedding human rights due diligence into existing enterprise risk management practices. Business enterprises must actively engage with these challenges to fully embrace their important role in securing a just energy transition.

The Norwegian Transparency Act was enforced 1st July 2022. Proactima's experience so far with supporting clients conduct human rights due diligence in accordance with the

² <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>

³ UN Working Group on Business and Human Rights (2021) UNGPs 10+ - A Roadmap For The Next Decade of Business and Human Rights: <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>

OECD Guidelines for Multinational Enterprises, is that merging human rights due diligence and enterprise risk management requires a balance between leadership, competence and knowledge, structure, and culture. These are key building blocks in being successful with risk management in general but is even more important for a human rights-based approach to enterprise risk management. Understanding of risk and risk awareness is key in all these building blocks.

Culture

Culture is about what the actual practice is within an enterprise. In business enterprises there might be a discrepancy between what the structure tells the employees to do (hence what practices and procedures the enterprise has established formally), and what they are actually doing in the day-to-day business. The policies of a company must be reflected both in procedures and actual practices on all levels in the organization.

Competence

Just as knowledge and competence of risk management is vital to succeed with enterprise risk management, knowledge and competence about human rights and business, risk management and human rights due diligence is vital to succeed with responsible business conduct as reflected in the UNGPs. All employees in roles or departments where due diligence is key for raising the human rights standards of the business (operations, procurement, management etc.), should have knowledge and competence within the topic of business and human rights. Furthermore, and more importantly, the business enterprise should identify competence gaps, and seek cooperation with experts, local communities, civil society organizations and others to gain knowledge of the business enterprise's human rights risks.

Structure

The business enterprise needs to have in place processes and procedures that embeds their policy commitment to respect human rights in all activities. This means that businesses must have in place a proper policy commitment that adopts the criteria of UNGPs, and that this is reflected in all formal processes of the company. Proactima's experience is that the human rights due diligence process should be integrated in existing processes such as procurement, HSE and operational risk management, but furthermore that the due diligence process and key findings are reflected in the enterprise's risk management structure.

Leadership

Lastly, leadership is the basis for all enterprise risk management. To secure that structures, culture and competence are under continual improvement, leadership is fundamental. However, the leadership and management team of an enterprise must be committed to respecting human rights and decent working conditions in all activities of the business. To secure continual improvement with structure, culture, and competence, it is crucial that the responsibility to respect human rights are embedded at the highest senior level of the organization.

Bridging human rights due diligence and risk management

To sum up, Proactima strongly suggests that for business enterprises to secure a just energy transition, human rights due diligence should and must be an integral part of the enterprise risk management of all business enterprises in the extractive industries. To illustrate this; imagine an enterprise being a tank ship. It is the responsibility of the captain and crew to steer the ship on a steady course, identify risks and vulnerabilities along the route and make sure the ship steer clear of them.

In our perspective, human rights risks are as important to manage as other risks to be successful in business. In order to steer the ship in a holistic manner, processes of human rights due diligence must be managed on the bridge together with other risks and not as a side-activity because it is increasingly required by the law. Culture, competence, structures and the management of the enterprise must reflect this.

State duty to protect and corporate responsibility to respect

A global energy transition is needed to secure the supply of clean energy. However, there are risks of exacerbating severe human rights violations such as child labor, modern slavery, poverty, and social exclusion. Therefore, design and implementation of the energy transition must be completed in a just manner. Just energy transition requires both that states endorse their duty to protect human rights in all processes of transition projects, such as setting clear requirements of human rights impact assessments (HRIA) and environmental and social impact assessments (ESIA), and that remediation is an overruling approval criterion.

This must be supported by the corporate responsibility to respect human rights, executed through enterprise risk management that integrates human rights due diligence in a holistic manner. Hence, the three pillars that the UNGPs are grounded on are fundamental in securing a just energy transition worldwide.

Yours sincerely
Proactima AS

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