Response to questionnaire
November 30th 2023

Input for the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change

Finnwatch expresses gratitude for the opportunity to provide input to the UN Special Rapporteur on the promotion and protection of human rights in the context of climate change's report on corporate accountability in the context of human rights and climate change.

We have focused our attention on parts three and four of the questionnaire. We have one answer for question d in the third part, and one combined answer for the three questions in the fourth part of the questionnaire.

3. Net zero accountability and greenwashing
d) What role does the carbon market play in greenwashing?

Like any other environmental action, also the use of carbon credits can be miscommunicated or its effect overstated. The fact that the carbon market and the marketing claims based on carbon credits have not been sufficiently regulated has led to cases, where carbon credits have been used to greenwash the climate performance of some products. The poor quality of carbon credits has usually been the reason: the company has made a claim that it has offset some or all of its climate impact with credits that have little or no claimed impact on climate. This has been, without a doubt, problematic greenwashing.

In order to avoid such greenwashing there should be regulation for the use of carbon credits. Such regulation is needed so that the carbon market can fulfill its important role as a way to finance climate action and implement internal carbon pricing within companies, but also as a way of bearing responsibility for the unabated emissions (more on this see our answer on 4a–c).

The much needed regulation can be done with many different and sometimes overlapping instruments. So far, the market has been mostly uncontrolled as the main instruments (the rules of the Clean Development Mechanism (CDM) and the self-regulation by certification schemes) have been rather weak, which has led to a poor quality in terms of climate impact but also to negative human rights impacts. While such regulation has been insufficient in the past, there are clear signs of improvements. The CDM is being replaced by the article 6 of the Paris Agreement and while the negotiations on the details are still on-going, it is obvious that lessons have been learned and the upcoming market rules will likely be more robust. The certification schemes are also reacting to the flaws in their operations that researchers, NGOs and the media have brought forward in recent years. This self-development is further driven by the Core Carbon Principles set by the ICVCM.

These developments alone do a lot to avoid past mistakes in the carbon market. Still more can and should be done, especially on the demand-side of carbon credits i.e. how the companies are using these credits. The national regulation should for example set criteria and oversight for the transparent use of carbon credits and for the marketing claims that are

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justified with such use. As carbon credits are typically produced and consumed in different countries, a national legislation requiring high quality for the carbon credits in reporting or marketing rules affects through corporate demand to the global supply of carbon credits. Such a shift in demand is already taking place by the companies that seek to mitigate reputational risk from low quality credits by sourcing credits of high quality.

We often encounter concern that offsetting is used instead of emission reductions rather than to complement them. While this may sometimes be the case, the evidence on the overall situation points towards the opposite: three recent reviews by carbon market analysts (Ecosystem Marketplace, MSCI/Trove and Sylvera) have estimated that companies that offset their emissions actually reduce their emissions more than their non-offsetting counterparts.

We are worried that if all forms of offsetting are dismissed instead of demanding structural changes that seek to secure the climate integrity and strengthen the human rights safeguards, the development of the market will be more in the hands of such actors that have little interest in either. Worst case scenario is that the carbon market will not be developed and effective solutions for negative emissions (that we desperately need, also according to IPCC scenarios) will not emerge.

4. UN Guiding Principles on Business and Human Rights
a) To what extent are the UN Guiding Principles on Business and Human Rights being applied with respect to climate change?
b) Are these Guiding Principles effective with respect to climate change?
c) What other measures should be applied, if they are not effective?

The main weakness of the UNGPs is that they are a non-binding soft–law instrument. To tackle this issue, there are promising developments especially in the European Union. The on-going negotiations of the Corporate Sustainability Due Diligence Directive (CSDDD) should be quickly concluded in the European Union and the national implementation of the directive should be started. Climate responsibility and climate transition plans should be included in the directive within the scope of the due diligence and they should have credible means of implementation. The minimum level content of the transition plans must be defined in the directive, and they must include setting emission reduction targets for scope 1, 2 and 3 emissions in accordance with the 1.5 degrees climate goal.

With regards to further understanding the interlinkages between climate crisis and UNGPs we welcomed the much needed Information Note that was published in June 2023 by the Working Group on the issue of human rights and transnational corporations and other business enterprises. While we have for years based our work on corporate climate climate responsibility on the human rights-based approach of the UNGPs, it is very important that this connection is explicitly made by the authoritative voice from the OHCHR saying that “business enterprises have obligations and responsibilities with respect to climate change”. The information note includes very important aspects of corporate climate responsibility such as including climate impacts in the human rights due diligence, disclosure of GHG emissions and ensuring just transition.

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However, in our opinion the two references to carbon offsets (paragraphs 19 and 22 in the Note) are somewhat at best unclear and at worst misguided. While we strongly agree that carbon offsets should not be used to achieve science-based emission reduction targets, it is our view that companies should complement such reductions with offsets to bear responsibility for those emissions that cannot be immediately cut.

We have based this view on the UNGPs: as all carbon emissions to the atmosphere currently have negative human rights impacts, companies' responsibility to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services requires offsetting all unabated emissions.

The Note seems to say that such action to mitigate the damage from unabated emissions, even when done in addition to science-based reductions, is not acceptable. If this is the correct interpretation, it is very unclear what is the human rights based reasoning behind it. On the other hand, if the information note intends to say that avoiding or replacing science-based emission reductions with offsets is not acceptable, the wording should be more clear to avoid harmful misunderstandings.

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Without further clarification the Note leaves such companies – and organizations like Finnwatch that are promoting the utilization of UNGPs – in a difficult position: Can companies offset their unabated emissions in addition to implementing ambitious and science-based emission reductions, or is this in contradiction with the UNGPs?

Offsetting unabated emissions in addition to ambitious emission cuts should be well in line with the UNGPs and the other parts of the Note. It is a way of setting an internal price for carbon emissions, financing further emission reductions or carbon removals and thus facilitating the "just transition to a zero-carbon economy" as called by the Note.

We are worried that if all forms of offsetting are dismissed instead of demanding structural changes that seek to secure the climate integrity and strengthen the human rights safeguards, the development of the market will be more in the hands of such actors that have little interest in either. Worst case scenario is that the carbon market will not be developed and effective solutions for negative emissions (that we desperately need, also according to IPCC scenarios) will not emerge.

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