Comments on the Climate Action 100+ Just Transition Draft Indicator

Submitted by Rights CoLab, the Sierra Club Foundation, and Business & Human Rights Resource Centre

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We appreciate the opportunity to comment on the draft Just Transition Indicator. The Just Transition Indicator is unique among Climate Action 100+ Net-Zero Company Benchmark indicators because it concerns social factors. Decision-useful social indicators are critical to the mitigation of systemic climate risk, as progress toward the Paris Agreement will fail unless the net-zero transition has its own "social license to operate." Even if companies follow a net-zero pathway, if they do so in a manner that harms society, their actions will negatively rebound on them as well as their investors. Rather, decarbonization can serve to achieve a more equitable society, and the Just Transition Indicator, properly constructed, can guide that.

A successful climate transition must be grounded in principles of equity and justice. While wealthy nations and people contribute disproportionately to climate change, the most economically vulnerable are the most at risk. Policy makers have finally become attuned to this dynamic and have made it a priority. It is therefore material to investors that companies proceeding on a net-zero pathway disclose their impacts on workers, communities, and consumers across their value chains in a way that facilitates accountability for environmental justice.

The success of Climate Action 100+ can be attributed in part to its support from its mainstream investors. Mainstream investors, particularly those domiciled in the United States, rely on financial materiality to guide their transactions and engagement. While social risks are difficult to measure and data quality needs continuous improvement, much progress is being made in defining how social indictors can be decision-useful, and mainstream investors are now recognizing the financial materiality of social risks.

We believe the draft Indicator can be strengthened by incorporating financially material equity and justice metrics that reveal the full range of human rights risks to workers, communities, and consumers. By so doing, the drafters will acknowledge what companies and investors have already come to understand: the need for companies to secure a social license to operate.

Below we describe existing work on the financial materiality of social risks that provides a foundation we can build upon, and then offer detailed comments on each of the Draft's sub-indicators.

Why financial materiality matters

Investors demand disclosure and action when they perceive a social risk to be financially material. Decision-useful information that can guide investment and engagement up to and including voting is financially material. While neither the Benchmark nor the September 2020 letter introducing the Benchmark to each target company explicitly mention "financial materiality," it is evident from the statements in that letter that Climate Action 100+ coalition investors consider the Benchmark's disclosures to be financially material. For example:

> "Investors working through Climate Action 100+ are now seeking more robust and comparable information on how focus companies are realigning their business strategies and operations with the goals of the Paris Agreement and a net-zero emissions future. Such insights will ***help promote and inform investment decisions*** that create long-term value for investors' beneficiaries."
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> "Accordingly, investors have developed the Climate Action 100+ Net-Zero Company Benchmark…with more guidance on specific company actions and ***disclosures of most relevance to investors' decisions***."
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> ***"Your reply will inform investor engagement priorities*** with your company going forward (emphasis added)."

A key reason for the success of Climate Action 100+ is that it has attracted large, mainstream investors who are guided by financial materiality. These same investors have begun to embrace a concept of financial materiality that is forward looking, allowing for considerations of potential risk as material risk.[1] This expanded notion of financial materiality not only provides an opportunity to address the risks to people of a climate transition, but it also makes it essential that a Just Transition indicator does so. In this way, financial materiality, couched in terms of "potential risks" to companies and investors, can reinforce the language of the Just Transition Indicator.

[1] The Sustainability Accounting Standards Board (SASB), a financially material ESG standards compendium that is widely endorsed by Climate Action 100+ investors, has asserted that the concept of financial materiality should incorporate potential risk. In its draft revised Conceptual Framework for defining financial material risks, SASB uses the example of GHG emissions to assert that "potential risk" is material to long-term value creation: "An investor assesses GHG emissions of a portfolio relative to the 1.5 degree warming scenario set out by the Paris Agreement, as carbon emissions are tied to the risk of increased operating expenses in the future due to *potential* carbon pricing regulation [emphasis added]." https://www.sasb.org/wp-content/uploads/2020/08/Invitation-to-Comment-SASB-CF-RoP.pdf), p. 24.

Essential Financially Material Climate Justice Elements of a Just Transition

Climate justice principles demand that benefits and burdens be shared equitably. This notion applies across the value chain of renewable energy, from the siting of clean energy facilities and the hiring of local workforces in a way that is inclusive and advances justice, to the sourcing of raw materials and production of technology and material components. The failure of companies to observe climate justice principles harms both workers and communities and can also have financial consequences.

It is well documented that when communities are not adequately empowered to meaningfully engage in decision making around investments that affect them, clean energy infrastructure can harm them. Over the last ten years, the Business & Human Rights Resource Centre has recorded more than two hundred allegations of human rights abuse associated with renewable energy projects. For example, hydroelectric dam construction has been associated with assassinations of environmental defenders, while large-scale solar and wind farm projects often violate the land rights and harm the livelihoods of local communities. Recent exposés have revealed the extent to which forced labor is present in factories producing polysilicon for solar panels in Xinjiang, China, which rebounds demonstrably on companies as financial impact. Over the last five years, the renewable energy sector is consistently in the top three highest-risk sectors for activists, with over 30 attacks on human rights defenders working in the sector recorded in 2020.

Several recent studies have found that companies subject to allegations of failure to adequately consult or undertake a process of free prior and informed consent (FPIC) with communities suffered significant declines in their market value.[2] The mining of transition minerals is associated with a variety of human rights abuses, often leading to financially material consequences such as protests and work stoppages. In a review of allegations of human rights abuse by the largest companies producing six critical minerals for the renewable energy sector, the Business & Human Rights Resource Centre found that one in eight cases resulted in communities responding through protests, strikes, or blockades against a mine, which have financially material impacts. Reforestation programs, which will be a key strategy of companies in the Climate Action 100+ focus group, have also led to human rights violations when poorly constructed and managed. Companies are also now facing legal liability for the actions of their subsidiaries, which makes it vitally important that they conduct adequate human rights due diligence to ensure that both their subsidiaries and the companies in their supply chains respect human rights.

Recent developments in sustainability accounting and law have shown that increasingly, social elements of the Just Transition, including harms to the most disadvantaged workers,

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[2] David Kreitmeir, Nathaniel Lane, Paul Raschky, “The Value of Names - Civil Society, Information, and Governing Multinationals on the Global Periphery,” SocArXiv. December 18, 2020. doi:10.31235 https://osf.io/aw7sq; Shin Imai and Sarah-Grace Ross, “Empirical Data On How Investors Are Harmed When Companies Do not Disclose Information About Violence and Lack of Indigenous Consent,” Osgoode Legal Studies Research Paper, September 15, 2020, available at SSRN: https://ssrn.com/abstract=3690013; and Carla F. Fredericks, Mark Meaney, Nicholas Pelosi, and Kate R. Finn, “Social Cost and Material Loss: The Dakota Access Pipeline,” First People’s Worldwide, November 2018. https://www.colorado.edu/program/fpw/DAPL-case-study

communities, and consumers, are crossing from being regarded as "non-financial" to being regarded as "financial." Indicators supported by civil society that represent realized or potential financially material risks will attract the highest support and therefore should be prioritized for the Indicator.

A Starting Point

Only two years after its standards were published in final form, the Sustainability Accounting Standards Board (SASB), an initiative to define financially material sustainability disclosure standards, began a project to review its approach to human capital. Its preliminary findings raised the importance of employee well-being, organizational culture, and workforce investment as broad themes of investor interest.[3] Furthermore, it broadened the definition of the workforce to include alternative (part-time and contingent) workers, as well as workers in global supply chains, thereby acknowledging that today's corporate business models depend on these categories of workers. In the coming months, SASB will be formulating metrics to capture the financial materiality of these themes. These are also salient issues for a Just Transition.

A parallel development has been the steady movement toward codification of human rights due diligence for the corporate sector, especially in Europe. As a result, the practice is increasingly gaining a connection to financial materiality. SASB is now studying how it can also incorporate human rights due diligence into its standards. The financial materiality of human rights due diligence has further implications for expansion of the Just Transition Indicator.

Comments on Specific Outcome Sub-Indicators

Achieving a Just Transition requires that the human rights of workers, communities, and customers be respected, and that respect is required throughout the value chain, including small- and medium-sized enterprises (SMEs) within supply chains. Accordingly, we offer the following recommendations on the draft Indicator, particularly in relation to the "Outcome" metrics, along with evidence for their emerging materiality in the eyes of investors.

Workers: Does the company currently respect all ILO standards and pay a Living Wage?

Recommendation: Add a sub-indicator for workers in supply chains.

A Just Transition cannot be built upon a foundation of abusive labor practices. The fact that both solar and wind power supply chains have been exposed to allegations of forced labor points to an urgent need for decision-useful metrics that address supply chain contracting models and sourcing practices that are well-documented to have a direct effect on the treatment of workers in supply chains. For example, a company can be asked to disclose the percentage of product or

[3] As part of a research collaboration Rights CoLab created to better incorporate human rights into the SASB standards, Rights CoLab has been working closely with SASB on this project. See: https://rightscolab.org/project-harnessing-big-data/

services sourced from worksites and geographies at risk for forced labor, such as migrant communities, isolated worksites, prisons, refugee/internally-displaced persons (IDP) communities, or conflict-affected or high-risk areas – or the percentage of revenue derived from high-risk commodities. The UN Guiding Principles on Business and Human Rights, the OECD Guidelines on Multinational Enterprises, and the EU Action Plan on human rights and decent work in global supply chains are important sources of guidance that represent a global consensus on corporate supply chain responsibility.

Reference for financial materiality: In light of recent regulation – the California, UK, Australian, and forthcoming Canadian modern slavery disclosure legislation, as well as the closing of the loophole on Section 307 of the US Tariff Act of 1930 prohibiting the importation of merchandise mined, produced or manufactured in any foreign country by forced labor – the risks to workers in supply chains of irresponsible procurement practices and failure to conduct due diligence has rapidly become a material issue for companies and investors. As part of its efforts to support SASB in the development of metrics that better reflect these risks, Rights CoLab is maintaining a running list of financially material risks to companies and investors from forced labor, which includes renewable energy, and we expect the forthcoming results of Rights CoLab's data science collaboration with Columbia University to generate evidence of the financial materiality of labor practices for a wide range of industries.

Workers: Does the company retain, retrain and/or compensate workers affected by decarbonization?

Recommendation: Add a metric that calls for disaggregation of information by gender and race.

For investors to be able to assess the impact of company practices on the most vulnerable in society, information must be disaggregated. It is noteworthy that in the United States, for example, the clean energy workforce is disproportionately white and male. This practice is unsustainable for a Just Transition. Disaggregation of company data on outcomes of retention, retraining and/or compensation of workers and new hires by gender, ethnicity where appropriate, and race is necessary that investors can assess the impact of company practices on the most vulnerable in society.

Reference for financial materiality: Diversity, Equity and Inclusion have become rallying points for investor engagement. We refer the Just Transition Indicator drafting committee to SASB's proposition that "workforce investment" should be a financially material disclosure theme (see: Human Capital Management Preliminary Framework, p. 10).

Communities: Does the company pay for and implement land restoration of affected areas?
Communities: Does the company support low-carbon community regeneration initiatives in regions affected by decarbonization?

Recommendation: Enhance these indicators by including a metric that ensures that communities in the new system are not harmed by decarbonization.

While the Indicator recognizes the needs of "old system" communities that may be left behind by the climate transition, the responsibilities of companies that impact communities in the "new system," such as those that may live near renewable infrastructure projects, are less well-defined. Since negative impact often follows from a failure to adequately consult communities, we recommend the inclusion of a metric on effective community engagement. In the case of indigenous communities, adherence to the principle of free, prior, and informed consent (FPIC) is critically important. Soon to be mandated in Europe, corporate human rights due diligence can prevent and ameliorate harms both at headquarters and throughout the value chain and an indicator can be shaped to generate information that assess the extent and quality of human rights due diligence.

Reference for financial materiality: As noted above, there is abundant evidence that failure to secure a social license to operate can have consequences – work stoppages, protests, lawsuits – that affect company profits. The Resource Centre's work has demonstrated that renewable energy companies are not keeping pace with the human rights due diligence required, especially as it relates to land rights and Indigenous rights. With an EU-wide mandatory human rights due diligence law on the horizon, failure to conduct human rights due diligence will also soon become financially material.

Customers: Does the company provide affordable goods or services to customers, even if additional decarbonization costs are borne by the company?

Recommendation: Reframe this indicator to reflect a broader notion of accessibility.

Affordability of goods and services is necessary for a Just Transition, but it does not encompass all aspects of accessibility. Seeing access to an essential good, such as electric power, as an equity and justice issue, requires that companies pay particular attention to the implications on vulnerable people of not just of their pricing, but also of appropriate technology selection and other factors of accessibility.

Reference for financial materiality: Failure to pay attention to equality of access can result in the exacerbation of economic inequality, a factor that is rapidly gaining attention for its financial materiality.

SMEs: Does the company establish partnerships with vulnerable SMEs in their supply chain in order to support their role in decarbonization?

Recommendation: Strengthen this sub-indicator by referring to the normative and legal requirement to conduct human rights due diligence throughout the supply chain

Reference for financial materiality: While there is a growing legal risk to companies of failure to conduct human rights due diligence, studies have shown that there is also a correlation of supply chain visibility with improved financial and operating performance. In addition, the OECD Secretariat is likely to take up the topic of responsible disengagement with suppliers in the forthcoming revision to the OECD Guidelines on Multinational Enterprises.

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Communities that are on the front line of both climate change and efforts to ameliorate it are most at risk of suffering any negative consequences of the net-zero carbon transition. As companies move urgently towards decarbonization, it is an imperative that they make a transition that is both fast and fair. The deployment and expansion of decarbonization solutions, and especially large-scale renewable energy, will play an integral role in reducing emissions, but can come at a cost for workers and communities if companies do not ensure respect for human rights in their operations and through their supply chains. As mainstream investors, including those that are backing Climate Action 100+, are reconceptualizing financial materiality, there is convergence taking place across civil society, labor, policy makers, and investors surrounding the need to address the social risks of the climate transition pathway. An ambitious Just Transition Indicator that is inclusive of these risks can provide the support investors are looking for.

Thank you for giving us the opportunity to comment on the Just Transition Indicator. We would be pleased to offer additional assistance to the drafting committee in producing a robust indicator.

Sincerely,

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About the signatories

Rights CoLab advances human rights by fostering collaboration among experts across the fields of civil society, technology, business, and finance. Together we build new ways of organizing civic engagement and leveraging markets to improve the impact, resilience, and sustainability of human rights initiatives. Since 2019, we have been working with SASB to develop and define a strengthened set of disclosure standards that investors can use to persuade companies to improve labor rights for their workforce, including within supply chains. Our coalition of labor experts, data scientists, and SASB partners is focused on improving financially material disclosure that can drive real gains in human rights.

The Sierra Club Foundation, a CA 100+ signatory, is the independent fiscal sponsor of Sierra Club's charitable environmental programs. The Foundation aims to build a diverse, inclusive environmental movement that reflects and represents today's American public and prioritizes important connections between environmental health and social justice. The Sierra Club has endorsed the Equitable & Just National Climate Platform.

Business & Human Rights Resource Centre tracks the human rights policy and performance of over 10,000 companies to advance human rights in business and eradicate abuse. Since 2010, the Business & Human Rights Resource Centre has identified over 200 allegations of human rights abuse related to renewable energy projects. Our just transition work in the natural resources sector focuses on company policy and practice, and the rights of communities within the energy transition. We work to ensure human rights due diligence along the mineral supply chain, and support this through our tools, the Renewable Energy and Human Rights Benchmark and the Transition Minerals Tracker.

ICCR (Interfaith Center on Corporate Responsibility), celebrating its 50th year, is the pioneer coalition of shareholder advocates who view the management of their investments as a catalyst for social change. Its 300-member organizations comprise faith communities, socially responsible asset managers, unions, pensions, NGOs, and other socially responsible investors with combined assets of over $2 trillion. ICCR member work on climate, designed to keep temperature rise to 1.5^{o}C, recognizes the critical importance of a just and equitable transition rooted in core labor standards and human rights. Our report of a 2019 multi-stakeholder convening with energy utilities on the Just Transition is available here. In the months following the Roundtable, ICCR collaborated with the Harvard Initiative for Responsible Investment in a report on investor expectations on just transition, which was issued in October 2020, and is available here.