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### **Business Responsibilities for Human Rights and Climate Change - A Contribution to the Work of the Study Group on Business and Human Rights of the International Law Association**

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**Sara L Seck, “Business Responsibilities for Human Rights and Climate Change” – A Contribution to the work of the Study Group on Business and Human Rights of the International Law Association  
(DRAFT 3: May, 2017, by Sara L Seck)<sup>1</sup>**

**Abstract**

This contribution to the work of the International Law Association’s Study Group on Business and Human Rights considers the relationship between business responsibilities for human rights and climate change. While it is now widely accepted that the adverse effects of climate change undermine the enjoyment of human rights, and that businesses have a responsibility to respect human rights, the relationship between business responsibilities for human rights and climate change is unclear. This paper first considers state duties to protect human rights from climate change harms, including harms arising from business activities, and second, considers how the business responsibility to respect rights might apply to climate harms experienced by the most vulnerable. In conclusion, the paper considers whether human rights violations arising from climate change may be considered salient risks that demand a response that aligns with the 2011 UN Guiding Principles.

**Introduction**

The relationship between human rights and climate change has been firmly on the agenda of the United Nations (UN) Human Rights Council since at least 2008,<sup>2</sup> and was the subject of a report in 2016 by Professor John Knox, the Special Rapporteur on Human Rights and Environment.<sup>3</sup> It is now accepted that the adverse effects of climate change undermine the enjoyment of a broad range of human rights, including rights to life, to health, to food, to water and sanitation, to adequate housing, to culture and equality, to freedom of movement, and to self-determination, with the worst effects felt by the most vulnerable.<sup>4</sup> Yet the implications of climate change for business and human rights remain unclear. This lack of clarity was evident in the keynote address of the former Special Representative on

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<sup>2</sup> Human Rights Council (2008) Resolution 7/23 Human rights and climate change, A/HRC/RES/7/23, United Nations, online: [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_23.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf); Human Rights Council (2009) Report of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights, A/HRC/10/61, United Nations, online: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Study.aspx> or <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>

<sup>3</sup> John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: climate change*, UNHRC, 31st Sess, UN Doc A/HRC/31/52 (2016), online: [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx) [Knox, *Climate 2016*]

<sup>4</sup> United Nations Office of the High Commissioner for Human Rights, Human rights and climate change, online: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>

Business and Human Rights, Professor John G Ruggie, during the opening plenary of the UN Forum on Business and Human Rights in Geneva in November 2016.<sup>5</sup> The focus of his keynote was upon the relationship between the Sustainable Development Goals (SDGs)<sup>6</sup> and the 2011 UN Guiding Principles on Business and Human Rights.<sup>7</sup> Yet in highlighting the importance of business not “cherry-picking” implementation of the SDGs, Ruggie stated:

“On what basis will they pick? The answer is: materiality, or put simply, business risks and opportunities. But business and human rights in the first instance is not about what is material to the firm: it is about the salient risks, or most severe potential harms, that business activities and relationships pose to people. Salient risks may turn out to be material to the business if they are left unattended. But a traditional materiality test will often miss them. Nor can business initiatives to promote social goods substitute for failing to address salient risks. **This is a fundamental difference between human rights and climate change: in human rights there is no equivalent to buying carbon offsets.**” [emphasis added]

This statement very much begs the question. It is clear that climate harms can be severe, and pose salient risks to people, and it is clear that these risks arise as a consequence of anthropogenic greenhouse gas emissions emanating from business activities and relationships among other sources. Yet, what is the relationship between international law on business and human rights, and climate change? The answer is simply not obvious. Nevertheless, given Professor Ruggie’s statement, it would appear curious that in Marrakech, concurrently with the UN Business and Human Rights Forum, thousands of people from around the globe gathered to participate in the 22<sup>nd</sup> Conference of the Parties of the UN Framework Convention on Climate Change (COP 22),<sup>8</sup> and the participants included coalitions of business actors and investors committing to act on climate change.<sup>9</sup> Might these commitments reflect

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<sup>5</sup> John G Ruggie, “Keynote Address, United Nations Forum on Business & Human Rights”, Palais des Nations, Geneva, Switzerland (14 November 2016), online:

<http://www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf>

<sup>6</sup> *Transforming our World: the 2030 Agenda for Sustainable Development*, GA Res A/RES/70/1, UNGA, 71st Sess, UN Doc A/RES/70/1, (2015), UN Doc, online: United Nations

<https://sustainabledevelopment.un.org/post2015/transformingourworld> [2030 Agenda for Sustainable Development].

<sup>7</sup> *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UNOHCHROR, 17th Sess, UN Doc A/HRC/17/31, (2011), online: Office of the High Commissioner for Human Rights

<[http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)> [UN Guiding Principles]

<sup>8</sup> United Nations Framework Convention on Climate Change, Marrakech Climate Change Conference – November 2016, online: [http://unfccc.int/meetings/marrakech\\_nov\\_2016/meeting/9567.php](http://unfccc.int/meetings/marrakech_nov_2016/meeting/9567.php)

<sup>9</sup> See the We Mean Business Coalition, online: <https://www.wemeanbusinesscoalition.org> and We Mean Business, Take Action, online: <https://www.wemeanbusinesscoalition.org/take-action>. Commitments made by businesses and investors, among others, are then fed into the UNFCCC NAZCA tracking system, online:

<http://climateaction.unfccc.int>. See further Global Climate Action, online: <http://climateaction.unfccc.int> (stating: “At the twenty-first session of the Conference of the Parties (COP 21) in Paris, it was agreed that mobilizing stronger and more ambitious climate action by all Parties and non-Party stakeholders is urgently required if the goals of the Paris Agreement are to be achieved.”)

at a minimum an acknowledgement by some of the existence of a business responsibility to respect the human rights of those most vulnerable to climate harms?

This brief contribution will provide an introduction to state obligations with regard to human rights affected by climate change, then consider how the responsibility to respect rights as elaborated in the UN Guiding Principles might apply to businesses in the climate change context. The focus of this analysis will be upon the impact of climate change on human rights, rather than human rights violations arising from the implementation of measures designed to mitigate climate change, a topic that has received comprehensive study elsewhere.<sup>10</sup>

## 1. Climate Change and Human Rights: State obligations

In the days leading up to COP21 in Paris, the UN High Commissioner for Human Rights issued a statement “that urgent, effective and ambitious action to combat climate change is not only a moral imperative, but also necessary in order to satisfy the duties of States under human rights law.”<sup>11</sup> Subsequently, in February 2016, the Special Rapporteur on Human Rights and the Environment released a comprehensive report designed to clarify state obligations “to protect against the infringement of human rights by climate change.”<sup>12</sup> According to the Special Rapporteur, state duties arise both with regard to decisions about “how much climate protection to pursue” and to decisions relating to the nature of implementation measures for mitigation and adaptation.<sup>13</sup> While state climate obligations flow from “the nature of their obligations to protect against environmental harm generally,”<sup>14</sup> the scale

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In decision 1/CP.21, the commitments from all actors are recognized, including those launched through the Lima–Paris Action Agenda, as well as the urgent need to scale up the global response to climate change and support greater ambition from governments.

At COP 22 in Marrakech, a High-Level Event on Accelerating Climate Action was held to highlight outcomes from the Action Events throughout the conference and culminated with the launching of the Marrakech Partnership for Global Climate Action; a new framework to catalyse and support climate action.”

See further on the Marrakech Partnership for Global Climate Action, online:

[http://unfccc.int/files/paris\\_agreement/application/pdf/marrakech\\_partnership\\_for\\_global\\_climate\\_action.pdf](http://unfccc.int/files/paris_agreement/application/pdf/marrakech_partnership_for_global_climate_action.pdf)

<sup>10</sup> See for example Damilola S Olawuyi, *The Human Rights-Based Approach to Carbon Finance* (Cambridge University Press, 2016); Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (New York: Routledge, 2016) at Chapter 7.

<sup>11</sup> Knox, *Climate 2016*, *supra* note 3 at para 17. See United Nations Office of the High Commissioner for Human Rights, *Burning Down the House*, online: OHCHR

[www.ohchr.org/EN/NewsEvents/Pages/BurningDowntheHouse.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/BurningDowntheHouse.aspx) [OHCHR, Burning]; see also UNEP, *Climate Change and Human Rights* (Nairobi: UNEP, 2015), online: UNEP

<http://www.unep.org/NewsCentre/default.aspx?DocumentID=26856&ArticleID=35630> [UNEP, *Climate Change and Human Rights*]; UNICEF, *Unless We Act Now: The Impact of Climate Change on Children* (New York: UNICEF 2015), online: UNICEF [http://www.unicef.org/publications/index\\_86337.html](http://www.unicef.org/publications/index_86337.html) [UNICEF, *Climate Change and Children*].

<sup>12</sup> Knox, *Climate 2016*, *supra* note 3 at para 37.

<sup>13</sup> Knox, *Climate 2016*, *ibid* at para 33.

<sup>14</sup> Knox, *Climate 2016*, *ibid* at para 37. See further *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John H. Knox: Mapping Report*, UNOHCHR, 25th Sess, UN Doc A/HRC/25/53, (2014), online: United Nations Mandate on Human Rights and the Environment <<http://srenvironment.org/wp-content/uploads/2014/03/A-HRC-25-53-clean-final-version-1.doc>> [Knox, *Mapping*].

and complexity of climate change transform it into a truly global challenge as “[g]reenhouse gases emitted anywhere contribute to global warming everywhere.”<sup>15</sup> Despite this, and although still impossible to establish with certainty, improvements in scientific knowledge are making it easier to trace causal chains between individual contributions and climate harms.<sup>16</sup> Nevertheless, the approach of states to the climate problem has not been one of trying to “describe the extraterritorial human rights obligations of every State in relation to climate change” but rather to treat “climate change as a global problem that requires a global response,” in accordance with the duty of international cooperation.<sup>17</sup> According to the Special Rapporteur, “[t]he failure of States to effectively address climate change through international cooperation would prevent individual States from meeting their duties under human rights law to protect and fulfil the human rights of those within their own jurisdiction.”<sup>18</sup> However, while some human rights obligations relating to climate change must be implemented immediately, others, including the reduction of greenhouse gas emissions, “can be expected to vary based on differing capabilities and conditions” in accordance with understandings of progressive realization of social, economic, and cultural rights.<sup>19</sup>

In his 2016 climate report, the Special Rapporteur classifies state obligations to protect against the infringement of human rights affected by climate change into procedural obligations, substantive obligations, and obligations in relation to vulnerable groups.<sup>20</sup> State procedural obligations include “duties: (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm.”<sup>21</sup> While States have “adopted an exemplary practice in the assessment and provision of information about climate change” through the work of the Intergovernmental Panel on Climate Change, Knox argues that within their national environmental assessment legislation States should also assess “the climate effects of major activities within their jurisdiction” including fossil fuel development, as well as climate impacts on vulnerable communities.<sup>22</sup> In terms of public participation, every state “should ensure that their laws provide for effective public participation in climate and other environmental decision-making, including by marginalized and vulnerable groups.”<sup>23</sup> There must be “real opportunities” to be heard, and “the rights of freedom of expression and association must be safeguarded for all people in relation to all

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<sup>15</sup> Knox, *Climate 2016, ibid* at para 34.

<sup>16</sup> Knox, *Climate 2016, ibid* at paras 34-36.

<sup>17</sup> Knox, *Climate 2016, ibid* at paras 41-42. See also Atapattu, *supra* note 10 at 89 (observing that the extraterritorial application of law in the socio-economic rights context may be better understood as the application of the “general international law principle of non-interference.”)

<sup>18</sup> Knox, *Climate 2016, ibid* at n27.

<sup>19</sup> Knox, *Climate 2016, ibid* at paras 47-48.

<sup>20</sup> Knox, *Climate 2016, ibid* at paras 50-64 (procedural), paras 65-80 (substantive), and paras 81-84 (vulnerable groups).

<sup>21</sup> Knox, *Climate 2016, ibid* at para 50.

<sup>22</sup> Knox, *Climate 2016, ibid* at paras 52-54. See also Article 4(1)(f) of the UNFCCC cited by Knox at para 55.

<sup>23</sup> Knox, *Climate 2016, ibid* at para 58.

climate-related activities.”<sup>24</sup> Finally, states should ensure that their legal systems provide for “effective remedy for all human rights violations, including those arising from climate-related actions.”<sup>25</sup>

Substantive environmental rights give rise to state obligations to “adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights.”<sup>26</sup> These obligations apply where environmental harm is caused by private actors including businesses, as well as governmental entities, and includes an obligation to provide remedies for human rights abuses caused by corporations.<sup>27</sup> While States do have “discretion to strike a balance between environmental protection and other societal goals such as economic development and the promotion of other human rights” the Special Rapporteur highlights that “the balance struck cannot be unreasonable or result in unjustified, foreseeable infringements of human rights.”<sup>28</sup> This obligation requires each State to “protect those within its jurisdiction from the harmful effects of climate change” including through the formulation and implementation of “national adaptation plans” and by “building the resilience of socioeconomic and ecological systems.”<sup>29</sup> With regard to mitigation, the duty of international cooperation requires states to not only implement their current intended nationally determined contributions, “but also to strengthen those contributions to meet the target set out in article 2 of the Paris Agreement.”<sup>30</sup> However, although Knox does not address this, meeting the targets in the Paris Agreement cannot be sufficient from a human rights perspective, given that climate change has already caused immense harm to the most vulnerable through extreme weather events such as typhoons, and warming of the Arctic.<sup>31</sup> It is not clear how the obligation to provide remedies for human rights abuses caused by businesses would apply here.<sup>32</sup>

Finally, the Special Rapporteur discusses the “heightened duties “ of states “with respect to members of certain groups that may be particularly vulnerable to environmental harm, including

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<sup>24</sup> Knox, *Climate 2016*, *ibid* at paras 59-60.

<sup>25</sup> Knox, *Climate 2016*, *ibid* at paras 62-3.

<sup>26</sup> Knox, *Climate 2016*, *ibid* at para 65, citing Knox, *Mapping*, *supra* note 13 at paras 44-57.

<sup>27</sup> Knox, *Climate 2016*, *ibid* at para 66, citing UN Guiding Principles, *supra* note 7.

<sup>28</sup> Knox, *Climate 2016*, *ibid* at para 67.

<sup>29</sup> Knox, *Climate 2016*, *ibid* at paras 68-69.

<sup>30</sup> Knox, *Climate 2016*, *ibid* at paras 70-77. He continues, at para 78: “This challenge should not be underestimated. Keeping the increase in global temperature to well below 2°C requires States to move rapidly and steadily towards a world economy that no longer obtains energy from fossil fuels.” See further UNFCCC, 21st Sess, COP21, UN Doc UNFCCC/CP/2015/L.9 (2015), Annex, Article2, online: UNFCCC

<<http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>> [*Paris Agreement*]

<sup>31</sup> See for example the experience of the Philippines with extreme weather including typhoons as discussed in the Philippine Climate Petition and related materials, *infra* note 80. See also Sheila Watt-Cloutier, *The Right to be Cold: One Woman’s Story of Protecting Her Culture, the Arctic, and the Whole Planet* (Penguin Canada, 2015).

<sup>32</sup> The issue of remedy for climate harms more generally is the subject of intense controversy under the climate regime. See for example Maxime Burkett, “A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy” in Shawkat Alam, Sumudu Atapattu, Carmen G Gonzalez, and Jona Razzaque, eds, *International Environmental Law and the Global South* (Cambridge University Press, 2015) 435; Meinhard Doelle, “Loss and Damage in the UN Climate Regime: Prospects for Paris” (February 19, 2015), online SSRN: <https://ssrn.com/abstract=2567368>; and, more generally, UNFCCC, the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, online:

[http://unfccc.int/adaptation/workstreams/loss\\_and\\_damage/items/8134.php](http://unfccc.int/adaptation/workstreams/loss_and_damage/items/8134.php)

women, children and indigenous peoples.”<sup>33</sup> Impacts on vulnerable communities should be identified in climate change assessment processes, and those who are marginalized or vulnerable should be “fully informed of the effects of climate change” so that they may “take part in decision-making processes” and have their concerns taken into account, as well as seek remedy for rights violations.<sup>34</sup> Obligations to “facilitate the protection of vulnerable communities wherever they are located” are part of the duty to cooperate at the international level, and embedded into the Paris Agreement.<sup>35</sup>

The 2016 Report of the Special Rapporteur provides useful insights into the relationship between the state duty to protect human rights and climate harms. However, the climate report does not consider business responsibilities, aside from a brief reminder that according to the UN Guiding Principles for Business and Human Rights “corporations themselves have a responsibility to respect human rights” and all pillars of the “normative framework for business and human rights apply to all environmental human rights abuses, including impairments of human rights in relation to climate change.”<sup>36</sup> Other earlier sources have also considered state obligations in relation to climate justice. Indeed, in 2014, the International Law Association adopted a set of Legal Principles Relating to Climate Change, designed to articulate state duties.<sup>37</sup> Yet while the ILA Principles offer insights into the relationship between state duties to address climate change and sustainable development, equity, international cooperation, and obligations of prevention and precaution, for example, they are largely silent on the link between climate change and human rights, and offer nothing on business responsibilities.<sup>38</sup> A *Declaration on Human Rights and Climate Change* drafted by the Global Network on the Study of Human Rights and the Environment in 2016 provides in Principle 17 that “All States and business enterprises have a duty to protect the climate and to respect the rights set out in this Declaration.”<sup>39</sup> While the *Declaration* provides a comprehensive set of 24 Principles including the right

<sup>33</sup> Knox, *Climate 2016*, *ibid* at para 81.

<sup>34</sup> Knox, *Climate 2016*, *ibid* at para 82.

<sup>35</sup> Knox, *Climate 2016*, *ibid* at paras 83-4.

<sup>36</sup> Knox, *Climate 2016*, *ibid* at para 66.

<sup>37</sup> Lavanya Rajamani et al, *International Law Association – Washington Conference (2014): Legal Principles Relating to Climate Change* (Washington, DC: The International Law Association’s Committee on Legal Principles Relating to Climate Change, 2014), online:

<https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1253&StorageFileGuid=f93d2f56-5629-40aa-a940-34c7da6e8545>

<sup>38</sup> *Ibid*. Draft Article 7 does speak to the obligation of prevention, and the need for states to exercise due diligence in order to meet this obligation, but offers no specific detail with regard to business actors and does not ground the obligation in a human rights frame. Indeed, the sole mention of human rights is found in draft Article 10(b): “Climate Change and International Human Rights Law: States and competent international organisations shall respect international human rights when developing and implementing policies and actions at international, national, and subnational levels regarding climate change. In developing and implementing these policies and actions, States shall take into account the differences in vulnerability to climate change of their populations, particularly indigenous peoples, within their borders and take measures to ensure that all their peoples’ rights are fully protected.”

<sup>39</sup> Global Network on the Study of Human Rights and the Environment, *Declaration on Human Rights and Climate Change*, (2016) <http://gnhre.org/declaration-human-rights-climate-change/> [GNHRE Declaration] at Principle 17 (“All States and business enterprises have a duty to protect the climate and to respect the rights set out in this Declaration.”) However, the GNHRE does not elaborate further on specific steps that business enterprises should take in order to implement this duty and respect rights.

of “human beings, animals and living systems” to a “secure, healthy and ecologically sound Earth system,” the GNHRE *Declaration* does not elaborate further on steps business enterprises should take in order to implement the duty and respect the listed rights.<sup>40</sup> Other sources include the International Bar Association’s 2014 *Climate Justice* report,<sup>41</sup> and the ‘Oslo Principles on Global Obligations to Reduce Climate Change’, adopted by a group of legal experts on 1 March 2015.<sup>42</sup> The Office of the High Commissioner for Human Rights has also documented its “key messages” on human rights and climate change, in which it confirms that States as duty-bearers have “an affirmative obligation to take effective measures to prevent and redress climate impacts” both direct and indirect, and so “to mitigate climate change” as well as to ensure that all rights holders “have the necessary capacity to adapt to the climate crisis.”<sup>43</sup> These last three sources have also considered the role of businesses as duty-bearers with a responsibility to take action on climate justice. The next section will briefly examine each of these in turn.

## 2. Business Responsibilities for Human Rights Affected by Climate Change

While the focus of the COP21 in Paris was clearly on whether or not States would reach a new climate agreement, a submission made by the OHCHR to COP21 in November 2015 highlights that “businesses are also duty-bearers” and that businesses must “be accountable for their climate impacts and participate responsibility in climate change mitigation and adaptation efforts with full respect for human rights.”<sup>44</sup> According to the OHCHR, several considerations “should be reflected in all climate action” so as to “foster policy coherence and help ensure that climate change mitigation and adaptation efforts are adequate, sufficiently ambitious, non-discriminatory and otherwise compliant with human rights obligations.”<sup>45</sup> These considerations are:

1. To mitigate climate change and to prevent its negative human rights impacts
2. To ensure that all persons have the necessary capacity to adapt to climate change
3. To ensure accountability and effective remedy for human rights harms caused by climate change
4. To mobilize maximum available resources for sustainable, human rights-based development
5. International cooperation

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<sup>40</sup> Ibid at Principle 2.

<sup>41</sup> International Bar Association Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (London, UK: International Bar Association, 2014) <[www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx](http://www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx)>.

<sup>42</sup> Oslo Principles, *Oslo Principles on Global Climate Change Obligations*, online: Global Justice Program <<http://globaljustice.macmillan.yale.edu/news/oslo-principles-global-climate-change-obligations>> [*Oslo Principles*].

<sup>43</sup> OHCHR, “Key Messages on Human Rights and Climate Change”, online: [http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages\\_on\\_HR\\_CC.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf) [OHCHR, Key Messages]. These messages are reflected in OHCHR’s submission to the 21st Conference of Parties to the UNFCCC. See OHCHR, “Understanding Human Rights and Climate Change,” Submission of the Office of the High Commissioner for Human Rights to the 21<sup>st</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (26 November 2015), at 4 (paragraph 8), online: OHCHR <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> [OHCHR Understanding].

<sup>44</sup> OHCHR Understanding, *ibid*.

<sup>45</sup> OHCHR, Key Messages, *supra* note 43.

6. To ensure equity in climate action
7. To guarantee that everyone enjoys the benefits of science and its applications
8. To protect human rights from business harms
9. To guarantee equality and non-discrimination
10. To ensure meaningful and informed participation<sup>46</sup>

Yet, the while the commentary to each of these considerations could examine how they might apply to businesses, instead, the focus is exclusively on the role of States, with the sole exception of consideration 8, according to which:

8. The United Nations Guiding Principles on Business and Human Rights affirm that States have an obligation to protect human rights from harm by businesses, while businesses have a responsibility to respect human rights and to do no harm. States must take adequate measures to protect all persons from human rights harms caused by businesses; to ensure that their own activities, including activities conducted in partnership with the private sector, respect and protect human rights; and where such harms do occur to ensure effective remedies. ***Businesses are also duty-bearers. They must be accountable for their climate impacts and participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights. Where States incorporate private financing or market-based approaches to climate change within the international climate change framework, the compliance of businesses with these responsibilities is especially critical.***<sup>47</sup> [emphasis added]

While a first step, there is clearly room for greater clarity on what precisely is required of businesses as duty-bearers, and the relationship between the duties and responsibilities of businesses and those of states. For example, what should the role of business be where a state has chosen not to incorporate private financing or market-based approaches to climate change, or the approaches adopted are clearly inadequate? As the business responsibility is independent of the state duty under the UNGPs, it would seem that there is more to be said here. Moreover, how, where, and to whom should businesses be held accountable for their climate impacts?

A different set of expectations emerge from the “Oslo Principles on Global Obligations to Reduce Climate Change”, adopted by a group of legal experts on 1 March 2015.<sup>48</sup> The Oslo Principles claim to “identify and articulate a set of Principles that comprise the essential obligations States and enterprises have to avert the critical level of global warming”.<sup>49</sup> Legal responsibility for climate change is said to rest not only with states, but also with “enterprises”: “[w]hile all people, individually and through all the varieties of associations that they form, share the moral duty to avert climate change, the

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<sup>46</sup> *Ibid*

<sup>47</sup> *Ibid* at 3.

<sup>48</sup> *Oslo Principles*, *supra* note 42.

<sup>49</sup> *Ibid* at 1. The Oslo Principles do not consider adaptation to climate change, among other “crucial initiatives”, instead focusing upon mitigation. *Ibid* at 2-3.

primary legal responsibility rests with States and enterprises”.<sup>50</sup> This responsibility arises from a duty of humanity as “guardians and trustees of the Earth” to “preserve, protect and sustain the biosphere” as part of the “common heritage of humanity”.<sup>51</sup> The Oslo Principles claim to reflect existing legal obligations to “respond urgently and effectively to climate change in a manner that respects, protects, and fulfils the basic dignity and human rights of the world’s people and the safety and integrity of the biosphere.”<sup>52</sup> These are derived from “local, national, regional, and international” sources of law including “international human rights law, environmental law, and tort law” as well as the Precautionary Principle.<sup>53</sup> The Oslo Principles thus explicitly view climate change as a human rights issue.<sup>54</sup>

While the Oslo Principles claim that both States and enterprises have obligations to ensure that global average temperature increases remain below a 2 degrees Celsius threshold, obligations to reduce GHG emissions are qualified by cost, and obligations to refrain from new activities with excessive GHG emissions are qualified by indispensability “in light of prevailing circumstances”.<sup>55</sup> The obligations of States are “common but differentiated” and considered on a per capita basis with least developed countries subject to less stringent obligations.<sup>56</sup> More specific State obligations are proposed, including Principle 21 which requires States to refrain from subsidizing in any form facilities that create “unnecessarily high or, in the given circumstances, unsustainable quantities of GHG, either within or outside their territories.”<sup>57</sup> The Commentary suggests that a consequence of this Principle may be that States are legally obligated to enact legislation preventing financial institutions within their jurisdiction from “enabling, inducing or instigating such activities.”<sup>58</sup> Yet curiously the Oslo Principles do not take the position that States (or at a minimum, developed States above an identified per capita emissions level) have an obligation to prevent such activities from being carried out at all, even those that take place within State territory or jurisdiction, or under effective State control.

At times, the Commentary to the Oslo Principles relies on the UN Guiding Principles,<sup>59</sup> yet the four Principles that directly articulate obligations of enterprises do not clearly reflect the business

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<sup>50</sup> *Ibid.* Note that ‘Enterprises’ is not defined.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid* at 3.

<sup>53</sup> *Ibid* at 3: ‘a. The Precautionary Principle requires that: 1) GHG emissions be reduced to the extent, and at a pace, necessary to protect against the threats of climate change that can still be avoided; and 2) the level of reductions of GHG emissions required to achieve this, should be based on any credible and realistic worst-case scenario accepted by a substantial number of eminent climate change experts. b. The measures required by the Precautionary Principle should be adopted without regard to the cost, unless that cost is completely disproportionate to the reduction in emissions that will be brought about by expending it.’

<sup>54</sup> See further Oslo Principles, *Oslo Principles Commentary*, online: Global Justice Program <<http://globaljustice.macmillan.yale.edu/sites/default/files/files/Oslo%20Principles%20Commentary.pdf>> at 15-16 [*Oslo Principles, Commentary*].

<sup>55</sup> *Oslo Principles, supra* note 42 at 4 (Principles 6-8).

<sup>56</sup> *Oslo Principles, supra* note 42 at 5-6 (see for example Principles 13-19).

<sup>57</sup> *Oslo Principles, supra* note 42 at 6.

<sup>58</sup> *Oslo Principles, Commentary, supra* note 54 at 81. Here the Commentary relies for support in part on the UN Guiding Principles for Business and Human Rights. *Ibid* at 81, n260.

<sup>59</sup> *Oslo Principles, Commentary, supra* note 54 at 81, 83-84. Principles 27-29 are also said to align with obligations under the Organization for Economic Co-operation and Development, *OECD Guidelines for Multinational*

responsibility to respect rights. According to Principle 27, enterprises must assess the vulnerability of their facilities and properties to climate change and disclose this information to those likely affected including “investors, clients, and securities regulators,” yet no mention is made of workers or surrounding communities, for example.<sup>60</sup> Principle 28, directed at fossil-fuel production enterprises, provides that disclosure to “investors, securities regulators, and the public” must be made of an assessment of the impact of limitations on future production or use of fossil-fuels arising from the “carbon budget” concept.<sup>61</sup> The focus again is upon those who stand to lose financially, in this case from a change in usage of fossil fuels, rather than focusing upon the climate vulnerable who experience losses linked to fossil fuel emissions. Principle 29 addresses the need for enterprises to conduct environmental assessments that consider the potential carbon footprint of and climate impacts on proposed new facilities.<sup>62</sup> Finally Principle 30 is directed at enterprises “in the banking and finance sectors” who “should take into account the GHG effects of any projects they consider financing.”<sup>63</sup>

While commendable as a first step, the Oslo Principles do not clearly track the business responsibility to respect human rights as articulated in the UN Guiding Principles. Most crucially, the obligations specific to enterprises including fossil-fuel producers in the Oslo Principles appear to focus on assessment and disclosure of harms to the enterprise itself, or its investors, rather than harm to rights-holders. Although Principle 29 and 30 suggest a need to be aware of and reduce the carbon footprint and GHG emissions of a proposed project, there is no suggestion that the aim of assessments should be to seek out alternatives with zero emissions, nor for assessments to actively seek the views of those most vulnerable to climate harms whose voices are essential for rights-respecting decision-making. Moreover, there is no mention of the need for business to take responsibility to remedy climate harms as would be required under Principle 22 of the UN Guiding Principles.<sup>64</sup> This is not surprising, given the challenge of linking the emissions of a specific industry player with specific harms experienced by climate vulnerable populations. But this does not mean that the harms are not felt, or that GHG emissions from businesses are not responsible for these harms, particularly as the wording of Principle 22 specifically contemplates that the responsibility arises even in cases where a business enterprises has merely “contributed to adverse impacts.” Interestingly, the Commentary to the Oslo Principles suggests that the drafters grappled extensively with how to align the obligations of enterprises with concerns that dominate climate law including the need to differentiate between the obligations of developed and

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*Enterprises* (Paris: OECD Publishing, 2011), online: OECD <<http://dx.doi.org/10.1787/9789264115415-en>> [OECD, *Guidelines*] and the International Finance Corporation, *Performance Standards on Environmental and Social Sustainability* (Washington, DC: IFC, 2012), online: IFC <[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes)> [IFC, *Performance Standards*]; See Oslo Principles, *Commentary*, *supra* note 52 at 92-93.

<sup>60</sup> *Oslo Principles*, *supra* note 42, at 7 (Principle 27).

<sup>61</sup> *Oslo Principles*, *supra* note 42 at 7 (Principle 28). This Principle was inspired by the “stranded assets” work of Carbon Tracker. Oslo Principles, *Commentary*, *supra* note 53 at 94.

<sup>62</sup> Oslo Principles, *supra* note 42 at 7 (Principle 29).

<sup>63</sup> *Ibid* at 28-30.

<sup>64</sup> UN Guiding Principles, *supra* note 7 at 20 (Principle 22): “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”

developing/least developed states due to concerns over capacity, as well as the need to differentiate based upon current, historic and per capita responsibilities for GHG emissions.<sup>65</sup> These are not issues addressed in the UN Guiding Principles, although Principle 14 touches upon the idea that the “means through which a business enterprise meets its responsibility to respect” may be “proportional to, among other factors, size.”<sup>66</sup>

Another useful source is the July 2014 International Bar Association (IBA) report *Achieving Justice and Human Rights in an Era of Climate Disruption* (Climate Justice Report),<sup>67</sup> which adopts a ‘justice and human rights-centred approach’ with the explicit intention of “shift[ing] the focus of much-needed reform from purely economic and scientific considerations to the human rights and equity consequences of climate change”.<sup>68</sup> Section 3.1.3 is dedicated to Climate Justice and Corporate Responsibility. However, while the Report “supports the increasing international recognition of corporate responsibility for environmental and human rights harms,” it takes the position that this responsibility “must be accompanied by development of coherent and clear regulatory standards that make compliance possible” and accordingly places the “impetus ... upon states and international organisations to come to coherent and consistent standards to regulate corporates and multinationals within their jurisdiction as part of their efforts to mitigate and adapt to climate change.”<sup>69</sup> Accordingly, the Report presents a “multi-faceted approach to corporate responsibility that will increase the ability of corporations to self-regulate, including in response to increased regulation by states”.<sup>70</sup>

While a multi-faceted approach is clearly necessary, the starting point of the IBA *Climate Justice Report* appears out of step with the UN Guiding Principles according to which the business responsibility arises even where states are not in compliance with the duty to protect.<sup>71</sup> Nevertheless, the IBA does recommend that corporations “adopt and promote” the UN Guiding Principles “as they pertain to human rights and climate change” and that the OHCHR “develop a model internal corporate policy” to advance corporate responsibility specifically in the climate change context.<sup>72</sup> A model policy should require corporate commitment to three steps: first, the adoption of an explicit policy stipulating

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<sup>65</sup> Oslo Principles, *Commentary*, *supra* note 54, at 87-92.

<sup>66</sup> UN Guiding Principles, *supra* note 7 at 14 (Commentary to Principle 14). Principle 14 states: “The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.”

<sup>67</sup> International Bar Association Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (London, UK: International Bar Association, 2014) <[www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx](http://www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx)>.

<sup>68</sup> *Ibid* at 3. The analysis here of the IBA Report draws upon Sara L Seck & Michael Slattery “Business, Human Rights, and the IBA Achieving Climate Justice Report” (2015) 34:1 J Energy Nat’l Res L 75 [Seck & Slattery].

<sup>69</sup> IBA, *Climate Justice Report*, *supra* note 67 at 148.

<sup>70</sup> *Ibid*.

<sup>71</sup> UN Guiding Principles, *supra* note 7 at 13 (Commentary to Principle 11): “The responsibility to respect human rights is a global standard of expected conduct. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

<sup>72</sup> IBA, *Climate Justice Report*, *supra* note 67 at 148 [Update: has the OHCHR taken steps in this direction?]

measures to prevent or mitigate climate impacts linked to operations; second, the implementation of a due-diligence process “to identify, prevent, mitigate and account” for “actual climate change impacts” which must then be translated “into active efforts to minimise or reverse” impacts; and third, implementation of “remediation processes that allow for open communication with stakeholders most affected by the corporation’s operations”.<sup>73</sup> The measures to be adopted “must include due diligence of corporate projects, including the environmental practices of the company’s affiliates, and as far as is reasonably practicable, its major contractors and suppliers”.<sup>74</sup> In terms of translating awareness of impacts into active efforts, the Report provides further guidance, stating:

The corporation should consider measures it can implement to assist in achieving the objective of limiting global warming to no more than a 2°C increase. The corporation’s goal should be to implement the most advanced available technology to minimise its carbon footprint. In situations where negative impact on the environment is unavoidable given current technology or if the cost of such technology is prohibitive, the corporation bears responsibility for corresponding mitigation and remediation.<sup>75</sup>

While this is an important statement on business responsibilities for human rights with regard to climate change, it fails to consider that there may be situations where the negative impact on human rights affected by climate change would be so severe that, irrespective of the implementation of mitigation and remediation measures, a proposed project should simply not proceed.<sup>76</sup> This would be in keeping with UN Guiding Principle 13, which explicitly states that the responsibility to respect requires business enterprises to “[a]void causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur” as well as to “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>77</sup> The Guiding Principles do not suggest that adverse human rights impacts are to be avoided only where the cost of doing so falls below a certain threshold, or only where technology permits. Having said this, as Professor Ruggie highlighted in his keynote address, it is salient or potentially severe risks to people that require attention, although severe risks like climate change harms that arise from cumulative contributions rather than a single direct causal link lend themselves to being underestimated and so ignored.<sup>78</sup>

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<sup>73</sup> *Ibid* at 148-9. Specifically, the rationale given for the third recommendation is that ‘internal assessments of potential environmental or human rights impacts can fall short of a complete picture of the actual impact on nearby and distant communities.’

<sup>74</sup> *Ibid* at 148.

<sup>75</sup> *Ibid* at 149.

<sup>76</sup> See further the analysis in Seck & Slattery, *supra* note 68 at 81 (suggesting that conceptualizing the atmosphere as a global public trust would support the necessity of such an approach).

<sup>77</sup> UN Guiding Principles, *supra* note 7 at 14 (Principle 13).

<sup>78</sup> As a result, it is unlikely that Principle 23(c) of the UN Guiding Principles, which provides that businesses should “[t]reat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate”, would generally be understood as applicable to climate change risks. *Ibid* at 21 (Principle 23). A different point is that rights are not necessarily absolute, for, depending on the context, respect for some rights may lead to infringement of other rights. This is not addressed in the UN Guiding Principles.

More promisingly, the Climate Justice Report identifies the need for open communication with affected stakeholders including “nearby and distant communities” so as to obtain a “complete picture” of “climate change impacts, which are not strictly localised to any one area”.<sup>79</sup> Implementation of remediation processes are also to provide opportunities for “open communication with stakeholders most affected by the corporation’s operations.” Yet these recommendations raise practical concerns due to the causal difficulty of linking individual GHG emissions to specific “directly affected” stakeholders, even if, as Professor Knox observes in his 2016 report on climate change and human rights, these linkages are becoming easier to establish.<sup>80</sup> The Task Force makes some suggestions as to what standard would establish causation. One is relying on credible scientific claims of future harm; another is similar in fashion, but has less legal certainty, and that is to adhere to the Precautionary Principle.<sup>81</sup> Alternatively, the Task Force suggests adhering to a standard of partial causation that would require only showing the defendant’s conduct was a substantial factor in bringing about harm, or, avoiding any need to establish an anthropogenic source of climate change harm, a claimant would need only to establish a prima facie case that the defendant is a net emitter of greenhouse gases, creating a rebuttable presumption of causation and shifting the burden of proof to the defendant.<sup>82</sup> Similar strategies have been adopted in some examples of climate litigation, perhaps most notably the Philippines Climate Petition, an attempt to seek an investigation into the accountability of the “investor-owned Carbon Majors”, producers of “crude oil, natural gas, coal, and cement” to whom nearly 22% of estimated global industrial emissions can be attributed since the industrial revolution.<sup>83</sup>

Three other recommendations are identified in section 3.1.3 of the Climate Justice Report to further climate change justice and corporate responsibility. First, businesses are encouraged to incorporate ISO carbon footprint standards in GHG management programs, while states and international organisations should develop and adopt in parallel “clear and implementable objective standards for corporate reporting in respect of human rights issues pertaining to the environment”.<sup>84</sup> The IBA then suggests that international institutions must then monitor corporate compliance with GHG

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<sup>79</sup> IBA, *Climate Justice Report*, *supra* note 67 at 149.

<sup>80</sup> Knox, *Climate 2016*, *supra* note 3 at paras 34-36.

<sup>81</sup> IBA, *Climate Justice Report*, *supra* note 67 at 131. Notably, the Precautionary Principle is not defined in the IBA Climate Justice Report. See *Rio Declaration on Environment and Development*, 14 June 1992, 31 ILM 874, Principle 15, for the most commonly quoted definition: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” See also the definition of the Precautionary Principles in the Oslo Principles, *supra* note 48.

<sup>82</sup> IBA, *Climate Justice Report*, *supra* note 67 at 132.

<sup>83</sup> Greenpeace Southeast Asia and Philippine Rural Reconstruction Movement, “Petition To the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change” (22 September 2015), online: Greenpeace <<http://www.greenpeace.org/seasia/ph/PageFiles/105904/Climate-Change-and-Human-Rights-Complaint.pdf>> [Philippines Petition]. See further Sara L Seck, “Revisiting Transnational Corporations and Extractive Industries: Climate Justice, Feminism, and State Sovereignty” (2017) 26 *Transnational Law and Contemporary Problems* 1 (*forthcoming* summer 2017) [Seck, *Climate Justice*].

<sup>84</sup> IBA, *Climate Justice Report*, *supra* note 67 at 149-50.

emissions limits.<sup>85</sup> This recommendation could be seen as a version of implementation of the business responsibility to respect rights, with due diligence to prevent climate harms requiring first the identification and then disclosure of GHG emissions.<sup>86</sup> However, it does not consider how to integrate “meaningful consultation with potentially affected groups and other relevant stakeholders” into the identification and assessment of human rights risks, including those most vulnerable, as suggested by Principle 18 of the UN Guiding Principles.<sup>87</sup> In practice, there are an increasing number of international tools that have developed to guide disclosure of GHG emissions and climate risks to the business itself, yet few if any take an explicitly human rights-centred approach that would align with the UN Guiding Principles and so require disclosure of salient risks to rights-holders.<sup>88</sup> Having said this, the recently developed and updated implementation guidance to the *UN Guiding Principles reporting framework* does hint at the link between climate change and human rights in the list of relevant information that a company could include in its answer to the second overarching question on the embedding of human rights.<sup>89</sup>

Second, the IBA report draws attention to the state duty to protect human rights and the need for “robust regulation of corporations within each state’s jurisdiction” including the development of “sufficient judicial capacity to hear complaints and enforce remedies against all corporations *operating or based in their territory*”.<sup>90</sup> This recommendation aligns with the UN Guiding Principles in its focus on the role of the state in ensuring access to remedy where human rights have been violated, as well as the Special Rapporteur on Human Rights and Environment’s claim that for states to be in compliance with their duty of cooperation, they must address access to remedy for climate harms.<sup>91</sup> In practice, this is

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<sup>85</sup> *Ibid* at 151-2.

<sup>86</sup> UN Guiding Principles, *supra* note 7 at 17 (Principle 18) and 20 (Principle 21).

<sup>87</sup> UN Guiding Principles, *supra* note 7 at 17 (Principle 18 and Commentary).

<sup>88</sup> See for example CDP, formerly known as the Carbon Disclosure Project, online: <https://www.cdp.net/en>; the Global Reporting Initiative, “Beyond Carbon, Beyond Reports” online: <https://www.globalreporting.org/information/current-priorities/Pages/Climate-change.aspx>; Task Force on Climate-Related Financial Disclosures, online: <https://www.fsb-tcfd.org/about/#>; TCFD Recommendations Report, Executive Summary, online: <https://www.fsb-tcfd.org/publications/recommendations-report/#>; UN Global Compact, “Caring for Climate”, online: <http://caringforclimate.org> and Caring for Climate, “Transparency and Disclosure”, online: <http://caringforclimate.org/workstreams/transparency-and-disclosure/>.

<sup>89</sup> Shift and Mazars, *UN Guiding Principles Reporting Framework, with implementation guidance* (January 2017), online: [http://www.ungpreporting.org/wp-content/uploads/2017/04/UNGPRReportingFramework\\_withguidance2017.pdf](http://www.ungpreporting.org/wp-content/uploads/2017/04/UNGPRReportingFramework_withguidance2017.pdf) at 35, A2, Embedding Human Rights, Overarching Question “How does the company demonstrate the importance it attaches to the implementation of its human rights commitment?” with among relevant information the answer could include: “How the company views the links between human rights and related governance issues such as corruption, taxation, climate change, etc.” This statement dates from January 2017 when the implementation guidance was updated to include relevant information suggestions. See “Reporting Framework Implementation Guidance now with Minor Updates” (9 January 2017), online: <http://www.ungpreporting.org/reporting-framework-implementation-guidance-now-with-minor-updates/>

<sup>90</sup> IBA, *Climate Justice Report*, *supra* note 67 at 152 (emphasis in original).

<sup>91</sup> See for example Knox, *Climate 2016*, *ibid* at para 67, citing UN Guiding Principles, *supra* note 7.

difficult to implement, however.<sup>92</sup> The Task Force then highlights the need for states to identify clear obligations for corporations “so that corporates are able to put in place strategies to comply with regulation” which must “strike the proper balance between under- and over-regulation” and not be “characterised by gaps and loopholes” that would create “enforcement difficulties and hamper the effectiveness of remedies”.<sup>93</sup> As noted above, this is arguably out of step with the business responsibility to respect human rights, as it is no excuse to a human rights violation that a state has failed to regulate as required by the state duty to protect.<sup>94</sup> While the need for legal certainty is generally understood to be essential for efficient business conduct, and a key component of the rule of law, the question in the climate context surely must be why the need for business certainty should take precedence over the needs of the climate vulnerable to be protected from grave harm. The answer to the certainty conundrum must be for businesses to engage in rights-respecting conduct that takes seriously the severity of climate harms for the climate vulnerable, and to act irrespective of the existence of state legislation. That is, certainty is to be achieved by adopting the perspective of those whose rights would be violated.

Having said this, if the perspective of the climate vulnerable were to inform our assessment of current climate solutions such as carbon taxes and cap and trade, it is unlikely that they would meet the state duty to protect. While putting a price on carbon is clearly better than no price, and arguably is in line with the “polluter pays” principle, there is no guarantee that the price will be sufficiently high to reduce anthropogenic emissions to the extent necessary to at a minimum keep global temperature increases below the 1.5° or 2° threshold of the Paris Agreement. In any case, today, many people already suffer from violation of the enjoyment of their human rights due to climate change. Meeting the Paris Agreement threshold would represent compliance with an international climate law target, but does not necessarily represent a threshold at which human rights issues suddenly become salient for the climate vulnerable. Implementation of carbon taxes and cap and trade do not guarantee that climate harms will be prevented, and in any case the funds raised are generally not used to provide remedy to those who suffer climate harms, nor even allocated to future disaster relief.<sup>95</sup> It may be that the answer to certainty from the perspective of the climate vulnerable would be that irrespective of state law, business responsibilities for human rights affected by climate change require all businesses to seek to

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<sup>92</sup> See for example discussion in Seck, *Climate Justice*, *supra* note 83 at 16-22 (noting challenges to the Philippines Climate Petition that allege it would involve the exercise of extraterritorial jurisdiction and so is not permissible under international law).

<sup>93</sup> IBA, *Climate Justice Report*, *supra* note 67 at 152. Given the challenges associated with the design of such regulation, it is not surprising that the Task Force then returns to the importance of regulation “through legislation requiring full disclosure of GHG emissions both at home and abroad”. Moreover, the Task Force does not suggest here, as it does later in the report, that regulation “ultimately” include “more stringent regulation of global fossil fuel reserves” due to the “cumulative carbon budget”, nor does it suggest that regulation could mean a prohibition on fossil fuel extraction. *Ibid* at 176.

<sup>94</sup> See *supra* note 69, citing UN Guiding Principles, *supra* note 7 at 13 (Commentary to Principle 11).

<sup>95</sup> For insights into why they should be used for this purpose, see Craig Brown and Sara L Seck, “Insurance Law Principles in an International Context: Compensating Losses caused by Climate Change”, (2013) 50:4 Alberta Law Review 541-576 (special issue on insurance law).

become carbon neutral, and in the interim to both reduce and offset emissions while taking into account the need to provide remedy for climate harms, consistent with the polluter pays principle.<sup>96</sup>

Recommendation four of section 3.1.3 of the IBA Climate Justice Report turns to sector-specific initiatives in banking and finance. Here, reference is made to the work of the UNEP Finance Initiative, Equator Principles financial institutions, and the OECD's Arrangement on export credit agencies.<sup>97</sup> In this context, the International Finance Corporation's Performance Standards on Environmental and Social Sustainability are of interest<sup>98</sup> as they define the responsibility of clients for managing social and environmental risks and are broadly viewed as international standards for project financing by Equator Principles financial institutions and export credit agencies.<sup>99</sup> The IFC Performance Standards were last updated in 2012 and consist of eight standards that touch on a wide range of sustainability concerns. Performance Standard 1 specifically identifies the business responsibility to respect rights, noting that each performance standard has human rights dimensions that can be identified if clients are guided by the standards when engaging in due diligence.<sup>100</sup> The Performance Standards likewise integrate some consideration of climate change, and treats both human rights and climate change as "cross-cutting topics" that are "addressed across multiple Performance Standards."<sup>101</sup> However, Performance Standard 1 notes that "specific human rights due diligence as relevant to the particular business" may be appropriate to complement social and environmental risk assessment in "high risk circumstances", suggesting that a human rights due diligence process would be the exception, not the norm.<sup>102</sup> The

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<sup>96</sup> A commonly cited version of the polluter pays principle is from the *Rio Declaration on Environment and Development*, 14 June 1992, 31 ILM 874, Principle 16: "National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment." Reaffirmed in United Nations Conference on Sustainable Development, *Rio+20: The Future We Want*, UN Doc A/CONF.216/L.1 (2012) at para 15.

<sup>97</sup> IBA, *Climate Justice Report*, *supra* note 67 at 134. See also United Nations Environment Programme Finance Initiative, *About*, online: UNEP FI <<http://www.unepfi.org/about/>>; Equator Principles, *About the Equator Principles*, online: Equator Principles <<http://www.equator-principles.com/index.php/about-ep/about-ep>>; Organization for Economic Co-operation and Development, *The Arrangement on Export Credits*, online: OECD <<http://www.oecd.org/tad/xcred/arrangement.htm>>.

<sup>98</sup> International Finance Corporation, *Performance Standards on Environmental and Social Sustainability* (Washington, DC: IFC, 2012), online: IFC <[www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/risk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes)> [IFC, *Performance Standards*]

<sup>99</sup> IFC, Equator Principles Financial Institutions, online:

[http://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ifc+sustainability/partnerships/equator+principles+financial+institutions](http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/partnerships/equator+principles+financial+institutions).

<sup>100</sup> IFC Performance Standards, *supra* note 98 at 6 (Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts). Other standards of particular interest to environment include: Performance Standard 7: Indigenous Peoples; Performance Standard 3: Resource Efficiency and Pollution Prevention; Performance Standard 4: Community Health, Safety and Security; and Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Resources.

<sup>101</sup> IFC Performance Standards, *supra* note 98, Overview, at 3.

<sup>102</sup> IFC Performance Standards, *supra* note 98 at 8, n.12.

concerns of affected communities are considered throughout the IFC Performance Standards.<sup>103</sup> Performance Standard 1 mandates the identification of environmental and social risks and impacts including GHG emissions, and, climate change risks in adaptation.<sup>104</sup> Performance Standard 3 provides guidance on pollution prevention and control and in this context seeks the reduction and quantification of GHG emissions.<sup>105</sup> GHG emissions are explicitly linked here to the threat to the public health and welfare of current and future generations.<sup>106</sup> Performance Standard 4 is concerned with community health and safety, and considers climate change impacts to the extent that they exacerbate project impacts on already vulnerable communities.<sup>107</sup> It also places an obligation on clients to “identify those risks and potential impacts on priority ecosystem services that may be exacerbated by climate change.”<sup>108</sup> Performance Standard 6 is concerned with biodiversity conservation and living natural resources, and identifies climate regulation as one of the supporting services, which are regarded as the natural processes that maintain the other ecosystem services.<sup>109</sup> Further detail can be found in the accompanying Guidance Notes.<sup>110</sup>

Despite this evidence that climate change considerations feature within the Performance Standards, there do not appear to be any attempts to bring forward climate change related complaints

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<sup>103</sup> See further Sara L Seck, “Indigenous Rights, Environmental Rights, or Stakeholder Engagement? Comparing IFC and OECD Approaches to the Implementation of the Business Responsibility to Respect Human Rights” (2016) 12:1 *McGill Journal of International Sustainable Development Law and Practice* 48 (in press); and Sara L Seck, “Human Rights and Extractive Industries: Environmental Law and Standards” Human Rights Law and the Extractive Industries, Paper No. 12, Page No. 12-1 – 12-42 (Rocky Mt. Min. L. Fdn. 2016).

<sup>104</sup> Performance Standard 1, *supra* note 98 at 7-8. See further André Abadie and Michael Torrance, “Performance Standard One: Assessment and Management of Environmental and Social Risks” in Michael Torrance, ed, *IFC Performance Standards on Environmental & Social Sustainability: A Guidebook* (Markham, ON; LexisNexis Canada 2012) 37. [hereinafter Torrance, *IFC Guidebook*]

<sup>105</sup> Performance Standard 3, *supra* note 98 at 22, 24 See further Tina Costas, “Performance Standard Three: Resource Efficiency and Pollution Prevention” in Torrance, *IFC Guidebook*, *supra* note 194 at 120, 128-135. The “quantification of GHG emissions will be conducted by the client annually in accordance with internationally recognized methodologies and good practice.” Performance Standard 3 at 24.

<sup>106</sup> Performance Standard 3, *supra* note 98 at 22. Performance Standard 3 explicitly states that the “client will consider alternatives and implement technically and financially feasible and cost-effective options to reduce project-related GHG emissions during the design and operation of the project.” PS3 at 24.

<sup>107</sup> Performance Standard 4, *supra* note 98 at 27 and 29. For example, “communities that are already subjected to impacts from climate change may also experience an acceleration and/or intensification of impacts due to project activities.” Performance Standard 4 at 27.

<sup>108</sup> Performance Standard 4, *supra* note 98 at 29.

<sup>109</sup> Performance Standard 6, *supra* note 98 at 40, n1.

<sup>110</sup> IFC Guidance Notes: Performance Standards on Environmental and Social Sustainability, online: [www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN\\_English\\_2012\\_Full-Documents.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/e280ef804a0256609709ffd1a5d13d27/GN_English_2012_Full-Documents.pdf?MOD=AJPERES) For example, Guidance note 2 provides that it is the responsibility of clients “to consider their potential contribution to climate change when developing and implementing projects and to minimize GHG emissions from core business activities to the extent that this is cost-effective” (at 2) It also recognizes that environmental impacts associated with GHG emissions are considered “to be among the most complex to predict and mitigate due to their global nature” (at 2) Guidance note 33 provides that in dictating the extents of climate change considerations in the risks and impacts identification process, “a projects vulnerability to climate change and its potential to increase the vulnerability of ecosystems and communities to climate change” should be considered (at 12).

to the Compliance Advisor Ombudsman (CAO).<sup>111</sup> Since the CAO has come into existence, it has handled over 300 cases,<sup>112</sup> yet while “[l]rreparable environmental damage” to a “unique ecology” has been raised in a complaint concerning the development of a gold mine in Columbia,<sup>113</sup> and several complaints have raised air pollution issues more generally,<sup>114</sup> climate change has not yet been specifically considered. More generally, the World Bank Group and the IFC have been subject to criticism for continuing to financially support oil, gas, and coal projects, despite repeated recommendations that such funding no longer be provided.<sup>115</sup> While the WBG has increased funds for renewable energy, and funding for climate mitigation and adaptation, support for fossil fuel projects has continued, including projects that transition from oil and coal to gas and reduce gas flaring.<sup>116</sup> Yet in 2013, the World Bank spent \$1 billion on fossil fuel exploration projects.<sup>117</sup> Germany has more recently insisted that the World Bank no longer support fossil fuel exploration and development.<sup>118</sup>

Another international standard of broader application that merits attention is the OECD Guidelines for Multinational Enterprises,<sup>119</sup> currently adhered to by 48 countries including all OECD

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<sup>111</sup> The CAO can engage in a review of a complaint if: it relates to a project in which the IFC is participating or actively considering; the issues raised are environmental and social in nature; and the complainant is affected by the issues. CAO, *2013 Annual Report: Compliance Advisor Ombudsman (CAO)* (Washington, DC: Office of the CAO, 2013) at 8, online: Compliance Advisor Ombudsman <<http://cao-ombudsman.org>>

<sup>112</sup> See Compliance Advisor Ombudsman (CAO) database for cases handled online: [www.cao-ombudsman.org/cases/](http://www.cao-ombudsman.org/cases/)

<sup>113</sup> Colombia/Eco Oro-01/Bucaramanga, online: [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=187](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=187)

<sup>114</sup> Colombia/Alqueria-01/Cajica, online: [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=201](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=201); Albania/Kurum Hydro-01/Bradashesh, online: [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=237](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=237) (steel plant); Kazakhstan/Lukoil Overseas-01/Berezovka- [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=104](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=104) (oil and gas condensate field); Uruguay/Orion-02/Gualeguaychu-Argentina- [www.cao-ombudsman.org/cases/case\\_detail.aspx?id=152](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=152) (greenfield eucalyptus pulp mill).

<sup>115</sup> Janet Redman, “Dirty is the New Clean: A Critique of the World Bank’s Strategic Framework for Development & Climate Change” (October 2008), at 2-3, online: [www.foe.org/system/storage/877/c4/f/419/2008\\_DirtyIsNewCleanReport.pdf](http://www.foe.org/system/storage/877/c4/f/419/2008_DirtyIsNewCleanReport.pdf); <https://www.theguardian.com/environment/2015/apr/17/world-bank-fossil-fuel-lending-leapt-in-2014-despite-its-calls-to-end-subsidies>;

<sup>116</sup> See for example 2015 Annual Review, online:

[www.ifc.org/wps/wcm/connect/2eaabb804ae4b8799548bdbfe70b6aa3/WBG+in+Extractive+Industries+-+2015+Annual+Review+.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/2eaabb804ae4b8799548bdbfe70b6aa3/WBG+in+Extractive+Industries+-+2015+Annual+Review+.pdf?MOD=AJPERES) (discussing the relationship between gas flaring and climate change at 18; identifying climate change as one of the challenges confronting the Governance of Extractive Industries (GEI) at 25; and describing the China Gas project, a proposed IFC investment as aiming to “reduce local pollution and GHG emissions by supplying natural gas to residential, industrial and commercial as well as transport users through pipelines and CNG/LNG refilling stations, substituting coal and oil which are more polluting and carbon intensive fuels” at 36.)

<sup>117</sup> Sophie Yeo, “World Bank spent \$1billion exploring for new fossil fuels in 2013” *Climate Home* (10 April, 2014) online: <http://www.climatechangenews.com/2014/04/10/world-bank-spent-1bn-exploring-for-new-fossil-fuels-in-2013/>

<sup>118</sup> Karl Mathiesen, “Germany tells World Bank to quit funding fossil fuels” *Climate Home* (1 December, 2016) online: <http://www.climatechangenews.com/2016/12/01/germany-tells-world-bank-to-quit-funding-fossil-fuels/>

<sup>119</sup> See Organization for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (Paris: OECD Publishing, 2011), online: OECD <<http://dx.doi.org/10.1787/9789264115415-en>> [OECD, *Guidelines*]

members and a smaller set of non-OECD countries.<sup>120</sup> The Guidelines consist of nine subject specific chapters, with overarching chapters on “Concepts and Principles” as well as “General Policies.” The human rights chapter was introduced in the 2011 revision, in order to implement the business responsibility to respect human rights of the UNGPs.<sup>121</sup> Leading into the 2011 revisions, the suggestion was made by an IBA Working Group, among others, that the Environment Chapter of the OECD MNE Guidelines be amended to clarify its application to climate change.<sup>122</sup> Many of the suggested changes were adopted, including the recommendation that enterprises should reduce greenhouse gas (GHG) emissions as part of improving corporate environmental performance through supply chains, as well as a recommendation that enterprises should promote environmental awareness among consumers through the provision of accurate information on GHG emissions. The Chair of the OECD Working Party on Responsible Business Conduct suggested in November 2015 that these changes, along with changes to the disclosure chapter, create the expectation that businesses will “do their due diligence” on climate impacts, including climate impacts that arise along their value chain.<sup>123</sup> Yet to date there have been very few attempts to raise climate change issues as specific instances with National Contact Points (NCPs),<sup>124</sup> the non-judicial grievance mechanisms established in all adhering countries to which specific instance complaints may be brought.<sup>125</sup> Of NCP specific instances that have raised climate change concerns, none appear to date to have been accepted for consideration.<sup>126</sup>

Beyond the OECD MNE Guidelines themselves, it is useful to consider the extent to which sector-specific guidance integrates human rights and climate change guidance. For example, a Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector<sup>127</sup> was released in 2015 which explicitly incorporates the importance of business respect for the rights of indigenous peoples, and also provides guidance on gender considerations in stakeholder engagement.<sup>128</sup> Yet it is silent on climate change. On the other hand, the 2016 OECD-FAO Guidance for Responsible Agricultural

<sup>120</sup> See OECD Guidelines for Multinational Enterprises: About the OECD Guidelines for MNEs online:

<http://mneguidelines.oecd.org/about/>

<sup>121</sup> John Ruggie and Tamaryn Nelson, “Human Rights and the OECD Guidelines for MNE: Normative Innovations and Implementation Challenges” (2015) Corporate Social Responsibility Initiative working paper No.66. Cambridge, MA: John F. Kennedy School of Government, Harvard University online:

<https://www.hks.harvard.edu/index.php/content/download/76202/1711396/version/1/file/workingpaper66.pdf>

<sup>122</sup> See the International Bar Association Working Group on the OECD Guidelines for MNEs: Response to the UK Consultation on the terms of reference for an update of the OECD Guidelines for MNE (2009) online:

<http://www.ibanet.org/Document/Default.aspx?DocumentUid=F9FF1FD1-D837-4074-8EBB-5F084A9DA597>

<sup>123</sup> Roel Nieuwenkamp, “Two secrets concerning a value chain approach to corporate climate change risk-management” *OECD Insights* (29 November, 2015) online: <http://oecdinsights.org/2015/11/29/two-secrets-concerning-a-value-chain-approach-to-corporate-climate-change-risk-management/>

<sup>124</sup> See OECD Guidelines for MNE: National Contacts Point online: <http://mneguidelines.oecd.org/ncps/>

<sup>125</sup> See OECD Guidelines for MNE: Database of specific instances online: <http://mneguidelines.oecd.org/database/>

<sup>126</sup> See OECD Watch, Germanwatch v. Volkswagen (7 May, 2007) online:

[http://www.oecdwatch.org/cases/Case\\_119?searchterm=climate+change](http://www.oecdwatch.org/cases/Case_119?searchterm=climate+change); OECD Watch, Greenpeace Germany v.

Vattenfall (29 October, 2009) online: [http://www.oecdwatch.org/cases/Case\\_170](http://www.oecdwatch.org/cases/Case_170); OECD Watch, Norwegian

Climate Network et al v. Statoil (28 November, 2011) online:

[http://www.oecdwatch.org/cases/Case\\_248?searchterm=climate+change](http://www.oecdwatch.org/cases/Case_248?searchterm=climate+change).

<sup>127</sup> See the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive sector online:

<http://mneguidelines.oecd.org/OECD-Guidance-Extractives-Sector-Stakeholder-Engagement.pdf>

<sup>128</sup> *Ibid* at appendix B and C; at 75-85.

Supply Chains refers on several occasions to the need to reduce GHG emissions and address climate change impacts.<sup>129</sup>

### 3. Conclusions

This paper has examined the relationship between human rights and climate change, and the business responsibility to respect human rights under the UN Guiding Principles. As noted by Professor Ruggie, a key question is whether human rights risks are “salient” which he defines as the “most severe potential harms, that business activities and relationships pose to people.”<sup>130</sup> Given the nature of the climate change problem, it is easy to overlook the severity of the harms due to the challenge of proving causation between specific emissions and specific harms, and the collective nature of emissions. Yet if business responsibilities for human rights are to be meaningful, understandings of salience must account for both existing and future climate harms. Indeed, Mary Robinson, in her capacity as the Special Envoy of the UN Secretary-General on Climate Change has described climate change as “the greatest threat to human rights in the twenty-first century.”<sup>131</sup>

Although there is no concrete evidence to date that a business’ failure to respect the human rights of climate vulnerable populations will lead to legal accountability, there is no question that potential litigants and their lawyers are actively considering and implementing novel litigation strategies designed to reach this end.<sup>132</sup> Moreover, in a first, Chevron has acknowledged to shareholders that

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<sup>129</sup> See OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016) online: <http://mneguidelines.oecd.org/rbc-agriculture-supply-chains.htm> at pages 29 and 65.

<sup>130</sup> Ruggie Keynote, *supra* note 5.

<sup>131</sup> Knox, *Climate 2016*, *supra* note 3 at para 23. A further consideration is whether respect for human rights is sufficient to address the climate problem. For example, the 2016 GNHRE *Declaration on Human Rights and Climate Change*, *supra* note 39 provides in Principle 17 that “All States and business enterprises have a duty to protect the climate and to respect the rights set out in this Declaration”. The GNHRE does not elaborate further on steps business enterprises should take in order to implement this duty and respect rights. What is made clear in Principle 2, however, is the focus on human rights may not be enough: “All human beings, animals and living systems have the right to a secure, healthy and ecologically sound Earth system.” While the most recent report by Professor Knox is his capacity as the Special Representative on Human Rights and Environment may assist in breaking down the divide between humanity and other with its focus on the relationship between biodiversity and human rights (stating in para 5: “The full enjoyment of human rights thus depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights”), Knox acknowledges that “components of biodiversity also have intrinsic value that may not be captured by a human rights perspective.” John Knox, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: biodiversity*, UNHRC, 34th Sess, UN Doc A/HRC/34/49 (2017), online: [http://srenvironment.org/wp-content/uploads/2017/02/A\\_HRC\\_34\\_49-Final.pdf](http://srenvironment.org/wp-content/uploads/2017/02/A_HRC_34_49-Final.pdf)

<sup>132</sup> See for example cases discussed in David Estrin, “Limiting Dangerous Climate Change: The Critical Role of Citizen Suits and Domestic Courts – Despite the Paris Agreement” CIGI Paper No. 101 (May 2016). While not in relation to climate change, the International Law Association has considered the issue of transnational access to remedy for human rights violations. See International Law Association, Resolution No. 2/2012, “International Civil Litigation and the Interests of the Public” adopting the *Sofia Guidelines on Best Practices for Civil Litigation for Human Rights Violations*, <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1117&StorageFileGuid=0e1adc5c-ec25-4b20-9646-b435e7daf446>. The International Law Association has also considered transnational enforcement of environmental law, again not with a focus specific to climate change. See International Law Association,

climate litigation poses a material risk that merits disclosure.<sup>133</sup> In another recent development, Walmart announced in April 2017 that it will remove a “gigaton of greenhouse gas emissions from its supply chain by 2030.”<sup>134</sup> Walmart’s move is arguably at least partially in accordance with the UN Guiding Principles, if viewed as the implementation of findings of human rights due diligence across relationships through the exercise of leverage.<sup>135</sup> It is also part of a trend.<sup>136</sup> As of April 29, 2019, 2,138 companies and 479 investors have committed to climate action, according to the NAZCA website, which tracks climate action commitments by “companies, cities, subnational, regions, investors, and civil society organizations.”<sup>137</sup> While the nature of the commitments to date would (likely) not meet the responsibility to respect human rights in accordance with the UN Guiding Principles, they arguably represent the beginning of a solidification of social expectation that non-state businesses do have independent responsibilities to respect the rights of the climate vulnerable. Perhaps in time this social expectation will grow from a responsibility to prevent climate change, to a responsibility to remedy past and future climate harms. Already, according to some, a failure to act may even be a crime.<sup>138</sup>

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Resolution No. 6/2006, “Transnational Enforcement of Environmental Law”, adopting the Rules proposed by the Committee.

<sup>133</sup> Madeline Cuff and James Muarry, “Oil giants are waking up to carbon bubble risks” (March 15, 2017), online: GreenBiz, <https://www.greenbiz.com/article/oil-giants-are-waking-carbon-bubble-risks>

<sup>134</sup> Anya Khamayzer, “Walmart’s plan to lift a gigaton of carbon from its supply chain” (April 19, 2017), online: GreenBiz, <https://www.greenbiz.com/article/walmarts-plan-lift-gigaton-carbon-its-supply-chain>

<sup>135</sup> See UN Guiding Principles, *supra* note 7, at 18 (Principle 19 and Commentary). What precisely would be required of human rights due diligence in the climate context is unclear. The topic of due diligence and the business responsibility to respect rights has been the subject of a section of the (draft) Second Report of the International Law Association’s Study Group on Due Diligence in International Law (July 2016) at 27-39, online: <https://ila.vettoreweb.com/Storage/Download.aspx?DbStorageId=1427&StorageFileGuid=ed229726-4796-47f2-b891-8cafa221685f>

<sup>136</sup> See for example World Economic Forum, “Scaling Up Climate Action through Value Chain Mobilization” (January 2016), online: <https://www.weforum.org/reports/scaling-up-climate-action-through-value-chain-mobilization>

<sup>137</sup> NAZCA Tracking Climate Action, online: <http://climateaction.unfccc.int>

<sup>138</sup> See for example Alex Pashley, “Exxon put on mock trial in Paris for ‘climate crimes’” (06/12/2015) *Climate Home News*, online: <http://www.climatechangenews.com/2015/12/06/exxon-put-on-mock-trial-in-paris-for-climate-crimes/>