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UN FORUM SERIES – Measuring Progress: Lawyers and Climate Change

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One of the most daunting challenges in the implementation of the UNGPs is grappling with the legal relevance of the second pillar, the business responsibility to respect rights. The hostility of grass roots human rights civil society organizations and many “third world” states to the UNGPs rests to a large extent upon an understanding that whatever the business responsibility to respect rights *is*, it most definitely is *not* “legally binding,” whether under domestic or international law.

From this perspective, for the UNGPs to be useful, they should have confronted the long-standing problem of corporate impunity by mandating “legally binding” corporate accountability solutions, whether in international or domestic courts, including through transnational civil litigation. As the UNGPs are seen to have failed to deliver binding legal corporate accountability, they are considered inadequate – and it is this failure that underlies the push for a “binding” international treaty.

It is therefore of great interest to follow the legal community’s efforts since 2011 to grapple with the legal relevance of the UNGPs for lawyers who advise businesses, as well as for law firms themselves as businesses.

If the business responsibility to respect rights is not law, as many seem to think, then one might think that lawyers would not be paying much attention to it. And yet – tentatively – more and more appear to be doing just that. This is perhaps one of the most interesting developments and one of the most promising solutions for implementation and ultimately effectiveness of business and human rights.

The work of the International Bar Association in this area is of particular interest. In 2014, the International Bar Association produced a two-part [Draft Guidance](#) for bar associations and for business lawyers practicing as in-house counsel or in law firms. The aim of the IBA Draft Guidance was to encourage improved understanding of the “relevance and applicability” of business responsibilities for human rights, and to urge greater integration with legal practice.

Feedback was subsequently sought from several bar associations for a period of 12 months, and in October 2015 [Guidance for Bar Associations](#) was adopted by the IBA Council. Further work is underway on Practical Guidance with the aim of presenting a final document to the IBA Council for approval in May 2016.

As highlighted in Chapter II of the IBA Guidance for Bar Associations, entitled “Awareness Raising, Training, and Education,” education is key to implementation of the UNGPs, especially the business responsibility to respect human rights. Bar Associations are not alone in educating lawyers for implementation of the UNGPs, however, with law schools and continuing professional development (CPD) programs playing a central role as well.

Initiatives such as the [Teaching Business and Human Rights Forum](#) (of which the author is a member) are consequently hugely important – providing a network for the sharing of teaching resources including case studies to be used in classrooms around the world, whether as part of an academic program housed in law, business, or another discipline, or as part of a professional educational initiative.

While this all sounds very promising, a different challenge arises where the rights at issue are ones that fall less clearly within mainstream understandings of human rights. A vitally important concern today is the relationship between human rights and climate change, and related understandings of environmental rights and justice.

There is an urgent need to articulate clearly what business responsibilities for human rights require with regard to climate justice, and to articulate these responsibilities in a manner that accords with the understanding of these rights as put forward by those from the global south whose existing vulnerabilities are severely aggravated in a climate changing world. Here there is an immense disconnect between those who argue for criminal accountability for violators of global environmental rights and the urgent need to keep fossil fuels in the ground (see e.g. [Ecocide Law](#) and [Freeze Fossil Fuel Extraction to Stop Climate Crimes](#)), and the content of the business and human rights guidance emerging in this area.

Two recent examples of guidance that grapples with climate change and business responsibilities are the IBA’s 2014 [Climate Justice Report](#) and the 2015 [Oslo Principles on Global Climate Change Obligations](#), both of which will be discussed at a [side event](#) at the upcoming UN Forum in Geneva.

The development of guidance in the area of environmental rights and climate justice must build upon the mandate of John Knox, the [Special Rapporteur on Human Rights and the Environment](#). This includes his mandate focus on [climate change](#), with contributions that include a mapping of human rights affected by climate change, and his work with other Human Rights Council special procedures mandate holders (see e.g. [2014 joint statement](#) to the Secretariat of the UNFCCC).

In the words of the human rights mandate holders, climate change is “one of the greatest challenges of our generation, and it is our generation that must meet it” ([2015 joint statement](#)). Accordingly, if business responsibilities for human rights are to mean anything at all in 2015, they must urgently be called into service to address the problem of climate change.

There are complexities, and missed opportunities. As I have argued [elsewhere](#), the Canadian government’s [2014 CSR Strategy for the Extractive Sector Abroad](#) helpfully confirms the expectation that extractive companies respect human rights in their global operations. Reference is made in the CSR Strategy to international standards that incorporate the business responsibility to respect rights, including the [OECD Guidelines](#) for Multinational Enterprises. The OECD Guidelines have a chapter on the environment that dates from 2000, and the human rights chapter was introduced in 2011.

In 2015, a draft [Stakeholder Engagement Guidance](#) was produced to aid in implementation. Yet nowhere in these well-established international standards is there any guidance on how to align company operations to respect rights affected by climate change.

There is much work to be done.

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