

**REPORT BY THE BUSINESS
AND HUMAN RIGHTS WORKING GROUP**

**STATEMENT ON THE APPLICATION OF THE BUSINESS
RESPONSIBILITY TO RESPECT HUMAN RIGHTS TO
ENVIRONMENTAL HUMAN RIGHTS ABUSES**

The global environmental crisis has reached a tipping point, causing scientists and scholars from around the world to call upon policymakers to recognize the risk of disruption, and even collapse, of societies if this crisis continues to go unchecked.¹ Globally, businesses have been indispensable to the development of societies; their participation now is critical to correcting and reversing these environmental trends.²

The evolving norms around the business responsibility to respect human rights provide an essential framework for addressing the contributions of business activities to environmental harms. The *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (2011) (the “UN Guiding Principles”) is the global authoritative standard establishing the business responsibility to respect human rights.³

¹ International Scholars Warning on Societal Disruption and Collapse. A public letter, signed by over 250 scientists and scholars from 30 countries, calls on policy makers to engage more with the growing risk of societal disruption and collapse due to damage to the climate and environment. The letter invites focus on how to slow, prepare for, and help those already suffering from, such disruptions. The signatories are specialists in a range of subject areas that relate to this challenge, who commonly believe it is time to listen to all the scholarship on humanity’s predicament. The referenced letter and a full list of signatories, at the moment of publication on December 6th 2020, is available at <http://iflas.blogspot.com/2020/12/international-scholars-warning-on.html>. The reference to the letter is for information purposes only and does not constitute endorsement of the letter by the New York City Bar Association’s Working Group on Business and Human Rights. (All sites last visited May 27, 2021).

² “Businesses are a major contributor to the destruction of ecosystems and the loss of biodiversity, through deforestation, land-grabbing, extracting, transporting and burning fossil fuels, industrial agriculture, intensive livestock operations, industrial fisheries, large-scale mining and the commodification of water and nature. Businesses have outsourced many activities that damage ecosystems and biodiversity from high-income nations to low-income nations, exploiting environmental standards that are lower or not enforced.” United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Human Rights Depend on a Healthy Biosphere*, A/75/161 (15 July 2020), para. 75, available at: <https://www.undocs.org/en/A/75/161>.

³ See *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, United Nations Human Rights Office of the High Commissioner (2011), available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. The New York City Bar

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

This position statement emphasizes that environmental harms from business activities constitute adverse human rights impacts. Therefore, the business responsibility to respect human rights under the UN Guiding Principles applies to adverse environmental impacts of business activities.

I. HUMAN RIGHTS DEPEND ON A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

International recognition of the connection between human rights and a healthy environment has existed since the start of the environmental movement in the 1960s. At the United Nations Conference on the Human Environment in Stockholm in 1972, governments adopted a declaration which stated that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself,” and further stated that “Man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”⁴ Since then, the concept of interdependency of the whole range of recognized human rights and the environment has been examined, developed and emphasized by various international human rights bodies and forums as well as at regional and national levels.⁵

The fundamental notion of the interdependency of human rights and the environment is being advanced at the international level under the mandate of the UN Special Rapporteur on Human Rights and the Environment (the “Special Rapporteur”).⁶ As stated in the Special Rapporteur’s report presented to the UN General Assembly in 2018, “a safe, clean, healthy and

Association, by and through its Working Group on Business and Human Rights, and in collaboration with its standing committees, resolved to endorse the UN Guiding Principles in accordance with the *Policy Statement of the New York City Bar Association’s Working Group on Business and Human Rights* adopted in June 2020, available at: http://documents.nycbar.org/files/Working_Group_on_Business_and_Human_Rights_Policy_Statement.pdf.

⁴ See Bratspies, Rebecca M., Do We Need a Human Right to a Healthy Environment? (January 1, 2015). Santa Clara Journal of International Law, Vol. 13, No. 1, 2015, pages 57-60, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2076554; see also United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (the “Right to a Healthy Environment Report”), A/73/188 (19 July 2018), para. 28, available at: <https://undocs.org/A/73/188>.

⁵ For discussion of the so-called “greening” of human rights (i.e. the process of elaborating the understanding that a healthy environment is of fundamental importance to the full enjoyment of a vast range of human rights), see United Nations, General Assembly, Human Rights Council, *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. Preliminary Report*, A/HRC/22/43 (24 December 2012), section II.B, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf; see also *The Right to a Healthy Environment Report*, section II and paras. 29-35.

⁶ The Human Rights Council established the mandate for the Independent Expert on human rights and the environment in 2012 (resolution A/HRC/19/10). Mr. John Knox was appointed the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. His mandate was extended in March 2015 as a Special Rapporteur (resolution A/HRC/28/11). Mr. David R. Boyd was appointed the Special Rapporteur in March 2018 for three years (resolution A/HRC/37/8) and in March 2021 the Human Rights Council renewed his mandate for another three years (resolution A/HRC/46/L.6/Rev.1).

sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development.”⁷

Further, in the report, “Human Rights Depend on a Healthy Biosphere,” the Special Rapporteur provides an elaborate account of the specific manifestations of the global nature emergency and its devastating effects on fundamental human rights. It emphasizes the need for urgent actions to conserve, protect and restore the biosphere on which all species depend, including *Homo sapiens*.⁸

The development of the understanding that a healthy environment is of fundamental importance to the full enjoyment of a vast range of human rights has contributed to and strengthened the grounds for the formal recognition by the United Nations of the human right to a healthy environment as has been recommended and proposed by the Special Rapporteur.⁹ The New York City Bar Association has formally expressed its support for such recognition.¹⁰

Importantly, the understanding of the interdependency of human rights and the environment has led to the development of a human rights-based approach to addressing the issues of environmental harm and degradation. This approach clarifies the obligations of States and responsibilities of businesses; catalyzes ambitious action; highlights the plight of the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.¹¹

II. THE BUSINESS RESPONSIBILITY TO RESPECT HUMAN RIGHTS APPLIES TO ENVIRONMENTAL HARM FROM BUSINESS ACTIVITIES

In accordance with a human rights-based approach to environmental harm and degradation, businesses should consider issues of environmental harms from their activities as adverse human rights impacts. Therefore, the responsibility of business enterprises to respect human rights in accordance with the UN Guiding Principles should apply to addressing adverse environmental impacts from business activities.

⁷ The Right to a Healthy Environment Report, para. 2.

⁸ See United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. Human Rights Depend on a Healthy Biosphere*, A/75/161 (15 July 2020), available at: <https://www.undocs.org/en/A/75/161>.

⁹ The Right to a Healthy Environment Report, sections IV and V. See also the Special Rapporteur’s Newsletter # 8 - April 2021, available at: <http://srenvironment.org/newsletter/newsletter-8-april-2021>. A consultation process on the possibility of the global recognition of the human right to a healthy environment has been recently initiated within the Human Rights Council (see Joint Statement of the Human Rights Council core group on human rights and the environment (includes Maldives, Morocco, Slovenia, Switzerland and Costa Rica). available at: https://environment-rights.org/wp-content/uploads/2020/09/StatementCoreGroupHRE_towardsGlobalRecognition.pdf).

¹⁰ Statement of the New York City Bar Association, *Support for the Formal Recognition by the United Nations of the Human Right to a Healthy Environment* (Sept. 2020), available at: <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/human-right-to-a-healthy-environment-un-formal-recognition>.

¹¹ *Supra* note 2, para. 66 of the report.

The concept of addressing environmental harms from business activities as adverse human rights impacts is aligned with the proposition of the UN Guiding Principles that internationally recognized human rights represent the baseline for the potential scope of the responsibility of business enterprises to respect human rights. Specifically, principle 12 of the UN Guiding Principles states that internationally recognized human rights are “understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work” (emphasis supplied). Further, the commentary to principle 12 provides that “depending on circumstances, business enterprises may need to consider additional standards.”

In furtherance of this human rights-based approach, the Special Rapporteur has specifically and repeatedly highlighted the application of the business responsibility to respect human rights to all environmental human rights abuses as follows:

- “[The] **three pillars of the normative framework for business and human rights [the State Duty to Protect; the Corporate Responsibility to Respect; Access to Remedy] apply to all environmental human rights abuses, including impairments of human rights in relation to climate change.**”¹²
- “[I]n accordance with the Guiding Principles on Business and Human Rights, **the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.** Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes, including human rights impact assessments, to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts that they cause or to which they contribute.”¹³
- In relation to climate change specifically: “Businesses must adopt human rights policies, conduct human rights due diligence, remedy human rights violations for which they are directly responsible, and work to influence other actors to respect human rights where relationships of leverage exist. **As a first step, corporations should comply with the Guiding Principles on Business and Human Rights as they pertain to human rights and climate change. The five main responsibilities of businesses specifically related to climate change are to reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce greenhouse gas emissions from their products and services; minimize greenhouse gas emissions from their suppliers; publicly disclose**

¹² United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/31/52 (1 February 2016), para. 66, available at: <https://undocs.org/A/HRC/31/52>.

¹³ The Right to a Healthy Environment Report, para. 18.

their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies. In addition, businesses should support, rather than oppose, public policies intended to effectively address climate change.”¹⁴

- In relation to a healthy biosphere specifically: “All businesses should comply with the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework **as they apply to activities carried out by the business, its subsidiaries or its supply chain that could damage or degrade the biosphere.**

Businesses should **prioritize respect for the rights of indigenous peoples and local communities and peasants**¹⁵ and refuse to seek or exploit concessions in protected areas.

Businesses should **reduce adverse impacts on ecosystems and biodiversity from their own activities, subsidiaries and suppliers; reduce adverse impacts on nature from the use of their products and services; and publicly disclose their adverse impacts on nature.**

Businesses should support, rather than oppose, laws and policies intended to effectively conserve, protect, restore and ensure the sustainable use of ecosystems and biodiversity.”¹⁶

- In relation to the global water crisis specifically: “Businesses must adopt human rights policies, conduct human rights due diligence, establish transparent and effective grievance mechanisms, remedy human rights violations for which they are directly responsible, and work to influence other actors to respect human rights where relationships of leverage exist. **All businesses should comply with the Guiding Principles on Business and Human Rights as they apply to activities carried out by the business, its subsidiaries or its supply chains.** Businesses should **prioritize respect for the rights of indigenous peoples, local communities and peasants and avoid projects or activities that could jeopardize human rights related to safe, sufficient water and the health of freshwater ecosystems.**

Businesses should reduce water pollution, water use, and damage to freshwater ecosystems from their own activities, subsidiaries and suppliers, reduce use of and adverse impacts on water from the use of their products and services, and publicly disclose their use of and adverse impacts on water. In addition, businesses should support, rather than oppose, laws and policies intended to fulfill human rights and to

¹⁴ United Nations, General Assembly, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/74/161 (15 July 2019), para. 71 and 72, available at: <https://undocs.org/A/74/161>.

¹⁵ This report’s use of the word “peasants”, which some may consider a derogatory or offensive term, is based on the use of this word as a term of art by the Special Rapporteur and in such international law documents as the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (available at: <https://undocs.org/en/A/RES/73/165>).

¹⁶ *Supra* note 2, section III.B of the report.

effectively conserve, protect, restore and ensure the sustainable use of water and freshwater ecosystems.

In order to fulfill their responsibility to respect the human rights to water, sanitation and a healthy environment, businesses should: (a) Make every effort to reduce water use, water pollution and damage to freshwater ecosystems from their facilities, products and supply chains; (b) Accelerate the transition away from fossil fuels; (c) Embrace the economic opportunities presented by water conservation, the construction of water and wastewater infrastructure, and ecosystem restoration; (d) Support the incorporation of rights-based approaches in water and wastewater laws and policies; (e) Contribute to and support efforts to shift towards the goal of a pollution-free circular economy.¹⁷

It should further be noted that the *U.S. National Action Plan on Responsible Business Conduct*¹⁸ reflects a human rights-based approach to environmental issues. Specifically, the plan states that the U.S. government recognizes that environmental issues are integral to responsible business conduct and are affected by, and have an impact on, *inter alia*, human rights, the rights of indigenous peoples, labor rights, land tenure and property rights, anti-corruption, and transparency.¹⁹

Considering issues of environmental harm from business activities as adverse human rights impacts subjects these issues to the elements of the normative framework of the UN Guiding Principles relating to business enterprises (policy commitment, human rights due diligence and remediation), including, in particular, responsibilities to:

- avoid causing or contributing to adverse environmental human rights impacts through their own activities, and address such impacts when they occur;
- seek to prevent or mitigate adverse environmental 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;
- provide for or cooperate in the remediation of environmental human rights impacts which they have caused or to which they contributed including by establishing or participating in effective operational-level grievance mechanisms.²⁰

¹⁷ United Nations, General Assembly, Human Rights Council, *Human rights and the global water crisis: water pollution, water scarcity and water-related disasters, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/46/28 (19 January 2021), paras. 82, 83 and 90, available at: <https://undocs.org/A/HRC/46/28>.

¹⁸ See *Responsible Business Conduct: First National Action Plan for the United States of America* (Dec. 16, 2016), available at: <https://2009-2017.state.gov/documents/organization/265918.pdf>. The National Action Plan was developed and issued by U.S. Secretary of State John Kerry following the Obama Administration's announcement, in September 2014, "that the U.S. government would work with the U.S. private sector and other stakeholders to promote responsible business conduct by U.S. companies operating abroad." See *id.* at 4.

¹⁹ *Id.*, section "Introduction", subsection "Purpose of the NAP".

²⁰ UN Guiding Principles, principles 13, 22 and 29.

Conclusion

As described above, the U.S. government, as well as international bodies and governments around the world, have increasingly recognized the link between human rights and a healthy environment and that environmental harms can be tantamount to human rights abuses. Therefore, the human rights-based approach requires that the business responsibility to respect human rights stipulated by the normative framework of the UN Guiding Principles apply to adverse environmental human rights impacts with which business enterprises are involved.

To effect meaningful change in the environmental arena and truly help mitigate the risk of environmental calamities and large-scale disruptions to societies, we believe lawyers have an essential role to play alongside policymakers and other key decision makers.

As affirmed in the New York City Bar Association's Policy Statement on Business and Human Rights,²¹ "the fulfillment by members of the legal profession in New York City, and beyond, of their duties to serve as an advisor to their clients, as set forth in Rule 2.1 of the New York Rules of Professional Conduct, includes consideration of corporate responsibility to respect human rights, environmental sustainability, and the rule of law." In fulfilling these duties, members of the legal profession in New York City should consider the application of the business responsibility to respect human rights stipulated by the UN Guiding Principles to adverse environmental human rights impacts with which business enterprises are involved.

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²¹ New York City Bar Association, *Policy Statement of the New York City Bar Association's Business and Human Rights Working Group* (June 2020), available at: http://documents.nycbar.org/files/Working_Group_on_Business_and_Human_Rights_Policy_Statement.pdf.