

PROFILE AND STATEMENT OF MICHAEL K. ADDO

I am Michael K. Addo, a professor of law at the University of Notre Dame and Director of the Law Program at the London Global Gateway. Before joining Notre Dame, I held appointments at the Universities of Exeter and Staffordshire.

I have established an international reputation as an expert in human rights and one of the leading scholars in the field of human rights and international business policy through my research, teaching, and policy engagement. I have published several books, including one of the earliest collection of essays on Human Rights Standards and the Responsibility of Transnational Corporations (Nijhoff 1998), and articles in leading scholarly journals.

I have successfully supervised and examined over thirty doctoral works and many of my students have progressed to successful careers as government legal advisors and human rights advisors at international organizations and as successful university academics.

As a member of the UN Working Group on Business and Human Rights, I served as chair of the Co-ordination Committee of the United Nations Special Procedure Mandate Holders 2015/2016 and served as a member of the Steering Committee of the Addis Ababa Roadmap between the special procedures mandate holders of the Human Rights Council and the African Commission on Human and Peoples' Rights. I am a lawyer by training and an advocate at the Ghana Bar.¹

I was invited by Ms. Desiree Llanos Dee, Climate Justice Campaigner of Greenpeace Southeast Asia (Philippines), one of the petitioners in the human rights and climate change case, to explain the issue of human rights responsibility of transnational corporations and other business enterprises in the second public hearing of the case on May 23-24 at the Commission on Human Rights in Quezon City, Philippines.

I agreed to be a witness and resource person for the petitioners and answer questions to be asked of me.

I submit the following answers to the questions given to me by the legal representatives of the petitioners to form part of my statement, along with my *Curriculum Vitae* to the Commission on Human Rights. I will elaborate and clarify these answers during the public hearing.

¹ My brief profile is available here:

<http://www.ohchr.org/EN/Issues/Business/Pages/Members.aspx>

Q1: *Your profile states you are a member of the UN Working Group on Business and Human Rights. What is that working group?*

A1: The UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (to give its full title) is the body of five experts, appointed by the United Nations Human Rights Council to advise the Council, Member States and other stakeholders on the implementation and dissemination of the United Nations Guiding Principles on Business and Human Rights.

Q2: *What is your role in that working group?*

A2: My role as a member is to contribute to the Human Rights Council mandate to

- a) Provide guidance and advice concerning the dissemination and implementation of the UNGPs
- b) Identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon;
- c) To provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as, upon request, to provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights;
- d) To conduct country visits and to respond promptly to invitations from States.

Q3: *Why was the working group formed? Please give us a brief background.*

The Working Group was formed to operationalize the standards set out in the UN Guiding Principles which were endorsed by the UN Human Rights Council in response to persistent concerns about adverse human rights impacts in the activities of business enterprises.

Before the appointment of the UN Working Group, the United Nations had devoted considerable attention to the development of workable standards to respond to adverse human rights impacts caused by business enterprises.

Q4: *When you say “business”, does it cover all kinds of business?*

A4: Yes it (the Guiding Principles) applies to all business enterprises, regardless of size, sector, ownership or structure.

Q5: *And by human rights, what are those?*

A5: The human rights referred to in the UN Guiding Principles include internationally recognized human rights understood to include, at a minimum, those expressed in the International Bill of Rights and those

set out in the International Labour Organisation's Declaration of Fundamental Principles and Rights at Work.

Q6: *You mentioned that you give advice on the implementation of the Guiding Principles on Business and Human Rights: Implementing the UN “protect, respect and remedy” framework. Please briefly explain the process that led to the development of this UN framework.*

A6: The Protect, Respect and Remedy Framework was proposed by a Special Representative of the United Nations Secretary-General, John Ruggie and adopted by the UN Human Rights Council in 2008. It was the product of three years of multi-stakeholder consultation, discussions and analyses across all continents. By multi-stakeholder consultation, I mean the consultation of all relevant actors involved in the field, including business enterprises, trade unions, government representatives, victim groups, professional bodies, advocacy and civil society groups. This was subsequently followed by another three years of similar consultation to develop operational standards. This culminated in the adoption of the UN Guiding Principles on Business and Human Rights.

Q7: *What is the legal foundation of this framework?*

A7: The legal foundation for the Framework is the current international and national legal standards. In effect, the Framework does not seek to create new legal standard.

Q8: *Please explain the “protect” aspect in the framework.*

A8: The Protect Pillar of the Framework restates the duty that States have assumed in law and as part of their democratic responsibility to protect everyone from human rights abuse within their territory and within their jurisdiction. The protection includes human rights abuse by both government agencies as well as third parties such as private business enterprises.

Q9: *How about the “respect” aspect in the framework?*

A9: The Respect Pillar of the Framework refers to the responsibility that business enterprises have to respect human rights.

Q10: *Please continue, what is the “remedy” aspect of the framework?*

A10: The Framework acknowledges that business enterprises can cause adverse human rights impacts and so, when this happens there should be avenues to provide remediation. This applies to both governmental and business opportunities for remedy. In other words, remedy covers the range of mechanisms including State judicial and non-judicial mechanism alongside corporate grievance mechanisms.

Q11: Let's go to the Guiding Principles on Business and Human Rights, where did those principles come from?

A11: The Guiding Principles were the outcome of the Mandate from the (former) UN Commission on Human Rights (now the UN Human Rights Council) to the Special representative of the UN Secretary-General to propose standards to operationalize his Protect, Respect, Remedy Framework. The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011.

Q12: What is the legal status of the United Nations Guiding Principles on Business and Human Rights?

A12: The UN Guiding Principles do not create new standards. Rather they restate and consolidate existing international and national standards. They therefore draw their legal significance from these pre-existing sources of law. However, on their own, they represent what has often been referred to as international soft law.

Q13: Are you saying that because the principles are grounded in recognition of existing States obligations, the role of business, and the need for rights and obligations to be matched by remedies, they are applicable to all States and businesses?

A13: Yes, that is correct.

Q14: So States are legally bound to fulfill those existing States obligations?

A14: Yes, they are.

Q15: Then please explain - what are the guiding principles with respect to the State duty to protect human rights?

A15: The State duty to protect against human rights abuse are set out under two broad headings: the Foundational Principles and the Operational principles.

Q16: Foundational principles, first, please continue.

A16: The Foundational Principles set out the broad parameters of States' duties from which one may draw or set out specific obligations. In the Guiding Principles, States are expected to take appropriate steps to prevent, investigate, punish and redress human rights abuses through effective legislation, regulations and adjudication. In addition, they should set out their expectations that business enterprises in their territory/jurisdiction will respect human rights throughout their operations.

Q17: How about the operational principles?

A17: The Operational Principles, drawing from the Foundational Principles set out specific expectations and duties of States, often distinguishing contexts and circumstances.

Q18: Please elaborate

A18: (a) Principle 11 states that businesses “should respect human rights” by “avoid[ing] infringing on the human rights of others and” addressing any “adverse human rights impacts with which they are involved.”

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

Principle 11 is set out as a Foundational Principle and so general in character. The primary object of this principle is to affirm the well-settled standard of behavior in business that the purpose of all business is not to do harm and so in the conduct of their activities, they have this responsibility to avoid causing harm.

Some of the practical implications are set out in the Operational Principles of the Guiding Principles including (a) the commitment at the highest level to respect human rights, (b) undertaking human rights due diligence to identify and avoid potential adverse impacts – the so-called principle of ‘knowing and showing’ and (c) providing remedy in the event of adverse harm.

These lessons are transferrable and applicable in the context of climate change with the expectation that companies should avoid causing adverse human rights harm by causing, contributing or being linked to climate change. They can do so by undertaking due diligence in order to ‘know and show’ that they have avoided all risks of adverse human rights harms in their activities. Climate change poses serious risks to all human rights and so causing, contributing to or being linked to climate change violates human rights, including the rights to life, liberty, food, housing and sanitation, water, freedom of movement, health, labour rights, slavery, cultural rights. This can be especially acute on particular communities and groups including children, women, indigenous peoples, people with disabilities, minorities, migrants and older persons.

(b) Principle 12 explains that rights that must be respected by all businesses include, at minimum, the rights recognized in the International Bill of Rights (UDHR, ICCPR, ICESCR) and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

In practice, the significance of this principle to the climate change debate is to affirm the view that climate change poses risks to all human rights as set out in the International Bill of Rights and the ILO Declaration of Fundamental Principles and Rights at Work.

- (c) Principle 13 states that “[t]he responsibility to respect human rights requires that business enterprises:
- “avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and seek 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.”

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

This Principle relates to the precise nature of the cause of harm in terms of direct causation or indirect causation by contribution or association (linked). The Guiding Principles see that the business responsibility to respect human rights still applies in all of those different circumstances even if in different ways. Business enterprises must avoid causing adverse human rights harm through climate change or contributing to such adverse human rights harms. They must also seek to prevent or mitigate such adverse human rights harms when their activities are linked to the harms arising from climate change.

- (d) 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.”

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

Every business enterprise, regardless of size or sector is expected to respect human rights. This is important for the climate change discourse because each business is expected to carry out its human rights responsibilities autonomously even if the individual roles and contributions differ.

- (e) According to Principles 15 and 16, to meet their human rights responsibilities, businesses should implement policies and processes appropriate for their size and circumstances, so as to safeguard human rights in all aspects of their operation.

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

The policy commitment is essential to an effective respect for human rights. It is the font from which all policy guidelines concerning operational activities of the company emanate. It underscores, the

appreciation that business activities can cause human rights harm through climate change and so a commitment from the highest level of the enterprise to avoid causing, contributing or being linked to harm is critical for an effective response to climate change.

- (f) Principle 17 states that businesses should also carry out human rights due diligence, which includes “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

This is the pivotal action to (a) know and show and (b) take steps to prevent, mitigate or redress any harm. It is through due diligence that any enterprise will understand the exact nature of its role and contribution to climate change and so define exactly how each enterprise can prevent, mitigate or remedy any harms from climate change.

- (g) Principle 22 states that where businesses “identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”

Could you please explain what this means in practice and the relevance of this principle in the context of climate change?

This principle is straight forward enough. The general responsibility is to prevent adverse human rights harm through climate change by undertaking due diligence to know the emerging risks. If however, the process fails, they should provide remediation. Remediation covers a wide range of actions from *restitution in integrum* to apologies and all that may lie between.

Q19: Could you please explain the concept of corporate human rights due diligence, that is “the process by which a company can ‘know and show’ that it respects human rights”?

A19: Corporate human rights due diligence refers to mechanisms and processes to reveal the potential impacts of the enterprise’s activities. For human rights purposes, due diligence is expected to reveal as much of the risks to the company as it does for other third party stakeholders. Effective due diligence must assess real human rights impact which should be tracked across the entire business operations and any lessons learned should be incorporated into the enterprise’s policies. Best of all, the lessons and policies should be communicated widely.

Q20: Based on those principles then how should States ensure that businesses within their control or whose acts can be attributed to States are not violating or infringing the human rights of the citizens?

A20: The Guiding Principles are especially clear that the duties of States are derived from their binding international obligations and so for them, it is a matter of compliance. This therefore goes for the State as an economic actor and also in their activities with enterprises with whom they conduct commercial transactions.

Q21: *Let's go to the corporate responsibility to respect human rights. Why do you say "responsibility" and not "duty" like that of the State?*

A21: The choice of vocabulary is to reflect the differentiated and yet complementary roles of the different actors under the UN Guiding Principles on Business and Human Rights. This is especially true in the international context where the Guiding principles are situated. Here States have direct obligations and duties as a result of the undertakings that they have willingly made through treaties or other sources of law. These are therefore seen as duties. Companies on the other hand do not have such direct international obligations and so in this context their roles are set out in terms of responsibilities. This should however not diminish the significance of corporate responsibilities because, they can also be drawn from national legislation or guidelines following States' implementation of their international obligations.

Q22: *What is the legal foundation of that corporate responsibility to respect human rights?*

A22: The legal foundation of the corporate responsibility to respect human rights should lie in national law.

Q23: *Please enumerate the foundational principles of corporate responsibility to respect human rights...*

A23: (a) The commitment to respect human rights; (b) Avoid causing, contributing or being linked to adverse human rights harm; (c) Prevent, mitigate or remedy any unavoidable adverse impacts.

Q24: *How does a business show that it respects human rights? (Operational principles)*

A24: By knowing and showing as well as tracking the lessons arising from human rights due diligence.

Q25: *You mentioned human rights due diligence, please expound or give examples.*

A25: (a) OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector; (b) OECD-FAO Guidance for responsible Agricultural Supply Chains; and (c) OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear sector.

Q26: In case of human rights abuse, violation, infringement or risk of any of those, what is the remedy?

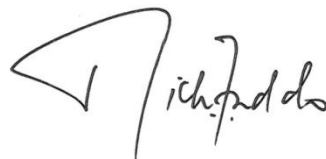
A26: A remedy is a form of remediation that is context and time specific. A remedy, to be valuable, has to be effective and for this it should reflect the expectations of the victim in its preparation and outcomes. Effective remedy must also be open to a bouquet of options including, restitution, compensation, deterrence, rehabilitation and satisfaction (cessation, truth, apology and guarantees of non-repetition).

Q27: How about the business enterprises— what should they do to remedy human rights abuse, violation, infringement or risk of any of those resulting from their business operations?

A27: Business enterprises must also provide for effective remedy along the terms set out in the answer to question 26. This may be provided through corporate grievance mechanism. A good corporate grievance mechanism must be accessible, predictable, transparent, equitable, human rights compatible and legitimate.

Q28: The UN Working Group on Business and Human Rights, has decided to focus its 2018 report to the UN General Assembly on emerging practice and innovations of corporate human rights due diligence across sectors. While this report is still being developed, could you provide some insights on some of the lessons learned, main obstacles and success stories from practical experiences that may be relevant to this national inquiry?

A28: This is still at the consultation stage.



20/05/18

Michael K. Addo
Signature and Date of Signing