



**Keynote speech by Prof. Surya Deva  
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**at**

**a Workshop on “Environment, Human Rights and Business: A framework  
for addressing environmental protection challenges” organized by the  
Council of Europe’s Steering Committee for Human Rights**

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Distinguished panellists, ladies and gentlemen,

I would like to thank the Council of Europe's Steering Committee for Human Rights as well as the German Presidency of the Committee of Ministers for inviting the UN Working Group on Business and Human Rights to speak at this important workshop.

Articulating the relationship between "Environment, Human Rights and Business", which is also the theme of this workshop, will be a central issue in the 21<sup>st</sup> century. In my remarks today, I will approach this relationship from a "business and human rights" lens and share some thoughts on how to ensure inclusive and sustainable development.

It is now well established that business enterprises have a responsibility to respect all human rights. The Guiding Principles on Business and Human Rights (Guiding Principles), which were unanimously endorsed by the UN Human Rights Council in June 2011, played a major role in establishing this minimum floor. In the last ten years, we have seen an impressive uptake of the Guiding Principles by all stakeholders.

What guidance do the Guiding Principles provide us about the responsibility of business regarding the environment, including climate change? Although this may appear surprising, the Guiding Principles do not expressly mention environmental rights or climate change anywhere. This "climate change blankness" is not unique to the Guiding Principles:<sup>1</sup> the OECD Guidelines for Multinational Enterprises, another leading international standard in the business and human rights field, do not expressly deal with climate change despite having a dedicated chapter on the environment.<sup>2</sup>

This does not, however, mean that businesses have no environmental responsibilities under these international standards. In fact, businesses will not be able to discharge their responsibility to respect human rights under the Guiding Principles unless they integrate environmental considerations into their human rights due diligence and remediation processes. This is so because of inherent interlinkages between human rights and the environment,

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<sup>1</sup> To address this, the UN Working Group on Business and Human Rights will release later this year an Information Note on what the Guiding Principles entail for states and businesses in relation to climate change. See 'Climate Change and the UNGPs', <https://www.ohchr.org/EN/Issues/Business/Pages/Climate-Change-and-the-UNGPs.aspx>

<sup>2</sup> The OECD Guidelines though talk about reducing greenhouse gas emissions (Chapter VI, para 6).

something which is reinforced by the Framework Principles on Human rights and the Environment developed by the former UN Special Rapporteur on the environment, Professor John Knox.<sup>3</sup>

Moreover, the commentary to Guiding Principle 12 provides that “business enterprises may need to consider additional standards” depending on circumstances. Standards relating to the environment and climate change would be a suitable candidate for inclusion in such additional standards that businesses must consider as part of their minimum responsibility.

Corporate integration of environmental considerations into human rights issues would also be in line with changing societal expectations and legal regulations. Consumers, shareholders and institutional investors are increasingly expecting companies to reduce their carbon footprints and disclose regularly information about measures taken or planned in this regard. In line with the Guiding Principles, these expectations extend not only to climate change caused by companies but also to climate change contributed to or directly linked to their products or services through their business relationships.

The evolution of mandatory human rights due diligence laws in Europe is also pushing businesses to consider adverse impacts on both people and the planet in a holistic manner. The French Duty of Vigilance Law expressly includes risks to the environment as part of vigilance plans to be developed by covered big companies. The European Commission’s proposal for a mandatory human rights and environmental due diligence law also points towards the need for businesses to identify, prevent, mitigate and remediate impacts on both human rights and the environment.<sup>4</sup> Moreover, climate change-related cases before courts and other non-judicial institutions are likely to push businesses to consider climate change and environmental issues as part of human rights.

Although human rights due diligence should be a critical tool to prevent adverse impacts on the environment and climate, we should not see this as a panacea. Human rights due diligence *alone*, even if mandatory, is unlikely to save the planet. Additional more transformative

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<sup>3</sup> 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/37/59 (24 January 2018).

<sup>4</sup> See also European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

changes would be needed in the current economic order. One may need to ask whether the current model of economic growth and lifestyles is sustainable. In other words, whether we should go back to bikes or towards battery-operated vehicles. Moreover, both States and businesses should appreciate that due diligence in the climate change context may mean adopting different approaches, for instance, to identify impacts and consult relevant stakeholders.

Although preventive steps on the part of businesses are critical, they are rarely “full proof”. Access to remedy and corporate accountability should be an equally important component to the goal of protecting the environment. As the Working Group on Business and Human Rights highlighted in its 2017 report to the UN General Assembly, remedies – in order to be effective – should combine preventive, redressive and deterrent elements.<sup>5</sup> Moreover, remedial mechanisms for climate change would also need to find innovative solutions to unique challenges posed by standing requirements, attribution, ascertaining contributions of different actors, and global dimensions of adverse impacts.

In the closing, let me highlight six additional issues that we should consider:

1. Both States and businesses should keep in mind that the impact of environmental pollution or climate change is not felt by all rights holders in the same way. Women and girls may, for example, be likely to experience differentiated and disproportionate impact of climate change. Therefore, it will be critical to adopt a gender responsive approach in conducting human rights due diligence as well as providing remediation. The Working Group’s 2019 report to the UN Human Rights Council provides useful practical guidance on how to do this in practice.<sup>6</sup>
2. Transition to green economy and climate change adaptation measures should also be human rights compatible, otherwise this would worsen the situation of vulnerable or marginalised individuals and communities.

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<sup>5</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘Access to effective remedies under the Guiding Principles on Business and Human Rights’, A/72/162 (18 July 2017).

<sup>6</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, ‘Gender dimensions of the Guiding Principles on Business and Human Rights’, A/HRC/41/43 (23 May 2019).

3. Environmental human rights defenders and climate activists have a central role to play in protecting the planet. However, they are facing increasing threats from both States and businesses. Defending these defenders from harassment, arbitrary arrest, unlawful detention and at times killing would therefore be essential.
4. Coherence in corporate governance is another issue that we should pay greater attention going forward. For example, companies which publicly claim to respect human rights and the environment should not be allowed to lobby governments in the dark to dilute environmental standards or delay plans to phase out fossil fuel. Businesses should also abandon policies and practices aimed at promoting unsustainable consumption as part of responsible business conduct.
5. Although mandatory measures are essential, States would also need to provide incentives to encourage businesses to move towards a zero carbon economy. They should also work towards achieving policy coherence: trade and investment policies, for instance, should take cognisance of environmental and climate change considerations.
6. Because of transnational dimensions, protecting the environment and mitigating climate change would require collective actions on the part of both States and businesses. International cooperation and partnerships would be essential, for instance, to ensure access to technologies needed to save the planet.

I look forward to the discussion today. Thank you very much for your kind attention.