



Human Rights

Several multinational corporations have begun examining their human rights impacts in recent years. As more corporations are learning, environmental health and human well-being go hand in hand, and it makes good business sense to assess the potential risks of doing business in particular states or business sectors. As consumers become more aware of such issues, the importance of corporations' respect for human rights throughout their operations becomes vital to their viability as a global business.

Companies have been implicated in human rights issues for many years, dating back to the creation of the modern enterprise. There is now general acknowledgment that companies can affect the environmental, social, and economic fabric of the societies in which they operate.

In 2009, over 70,000 companies were operating cross-border (and thus known as transnational corporations), and between them over 700,000 subsidiaries and millions of suppliers were adding to the complexities of global commerce. In his February 2006 interim report, John Ruggie, professor of human rights and international affairs at Harvard's Kennedy School of Government and the United Nations secretary-general's special representative on business and human rights, stated: "The rights of transnational firms—their ability to operate and expand globally—have increased greatly over the past generation as a result of trade agreements, bilateral investment treaties, and domestic liberalization . . . [I]n light of this transformation in the institutional features of the world economy, it is hardly surprising that the transnational corporate sector—and by extension the entire universe of business—has attracted increased attention by other social actors, including civil society and states themselves."

Companies not only come under scrutiny with regard to their own conduct; they often must answer for the actions

of other businesses in their supply chain. It has become important for large retailers to examine the compliance of their suppliers in accordance with international standards to ensure that the final products sold are produced in a way that does not abuse human rights. A key question for business representatives in such circumstances is to determine how far down the supply chain their responsibility goes.

Companies are also connected to human rights abuses when operating in countries with poor human rights records. Companies may become involved in situations where state-provided security brutally cracks down on protestors at a company site. Although the state may be directly responsible for the human rights violations, the company is also implicated.

Efforts to reconcile the rapidly expanding global economy with the international system of human rights protection have significantly increased since the beginning of the twenty-first century. Nongovernmental organizations (NGOs), trade unions, governments, and the United Nations have developed several initiatives to encourage improvements in the practices of business everywhere. Similarly, responsible businesses have taken the lead in developing innovative business models that can respond to human rights challenges.

Despite progress, "more efforts are needed to prevent and repair the business-related human rights abuses that are still occurring today, and more must be done to maximize the contribution business can and does make to human rights around the world. There's no doubt that much progress has been made in recent years on the business and human rights agenda and we should celebrate that but also redouble our efforts to ensure that the lessons learnt become part of a much wider circle and that there is accountability" (Mary Robinson, president of Realizing Rights: The Ethical Globalization Initiative and honorary

chair of Business Leaders Initiative on Human Rights, speaking at the International Seminar on Business and Human Rights in Paris, December 2008).

Companies interested in better understanding the sustainability of their business will often explore both the environmental and social (human rights) impacts their operations may have. There are links between the environment and the need to respect human rights; for instance, the right to health and the right to water have clear environmental components, and they are dependent upon one another.

Global Protection of Human Rights

Human rights include such rights as the right to privacy, the right to life, the right to freedom of expression, the right to a standard of living adequate for health and well-being, the right to security of person, the right to work, and the right to vote. The human rights system dictates that individual states have a duty to meet their human rights obligations as described in international treaties and other sources of law. It also makes it possible for individuals to bring a case against a state for an alleged abuse of their human rights.

At the core of the international human rights regime are three agreements that form the International Bill of Human Rights:

- The Universal Declaration of Human Rights (1948)
- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social, and Cultural Rights (1966)

The Universal Declaration of Human Rights is the only globally accepted document setting out the rights of human beings. In part, it was formulated in response to the atrocities committed during World War II. At 1993's World Conference on Human Rights in Vienna, all 171 states in attendance reaffirmed their commitment to the Universal Declaration. The three agreements that comprise the International Bill of Human Rights have inspired numerous human rights treaties and more specific documents that relate to the rights of women, children, people with disabilities, migrant workers, indigenous peoples, and others. A complete list is available at the website of the Office of the United Nations High Commissioner for Human Rights (2009).

Companies can affect any of the recognized human rights in the international system. With the Universal Declaration of Human Rights at its core, the international human rights regime has become a key tool for exploring the balance of power between corporations, individuals, communities, and governments.

Companies and Human Rights

At the website of the Business & Human Rights Resource Centre (2009), news stories feature companies involved in issues such as forced labor, child labor, use of water resources, community relocations, land acquisitions, pollution-related health issues, violence towards trade-union representatives, or employee suicides. These issues can relate to any company, from any sector, in any country.

While there are situations in which companies are directly responsible for human rights abuses, it is more common for companies to be connected to abuses being carried out by others, most often states. In such circumstances, companies are deemed to be *complicit* in the abuses. Some mining companies have faced allegations that their actions assisted rebel groups in attacking and killing civilians, as in situations where rebel groups have been able to use company-owned vehicles or landing pads. Similarly, private air carriers have been accused of moving alleged terrorists from state to state and, therefore, of being in part responsible for the torture these individuals suffered.

The impact companies can and do have on the lives of individuals, whether positive or negative, has been watched much more closely since the beginning of the twenty-first century. Lawyers and human rights activists have sometimes turned to the law and brought complaints to court in order to hold companies accountable for their involvement in human rights abuses.

In 2004, a case involving Unocal, a large U.S. oil company, was settled out of court following allegations that the company had assisted the military forces in Myanmar (Burma) in the use of forced labor to build a pipeline. The case against Unocal, which was brought by a group of Burmese residents supported by international NGOs, was unique at the time since it relied on a U.S. law, the Alien Tort Claims Act, which dates back to 1789. The case set a precedent for many more to be heard before the U.S. courts.

In 2007, Yahoo! Inc. was brought before a U.S. court in California by Chinese dissidents who had been imprisoned in China; they alleged that the subsidiary Yahoo! Hong Kong had provided information to the Chinese government that contributed to the arrest of a journalist. This case was also settled out of court. In addressing these issues, Yahoo!, along with Google and Microsoft, created a new initiative for their sector that looked specifically at dilemmas related to the right to privacy and the right to freedom of expression.

The Global Network Initiative is designed to give guidance to the information and communication technologies (ICT) industry with regards to protecting the right to freedom of expression and the right to privacy. The initiative works in collaboration with NGOs, academics, and

investors to do this. All members commit to work together to advance these two human rights particularly in light of demands from governments to censor or hand over user information.

In 2009, a case involving Shell, a global group of energy and petrochemicals companies, and its operations in the Niger Delta in Nigeria was concluded in a court in New York following accusations that the company was complicit in serious human rights abuses. The case dated back to protests against the company in the 1990s when community leader Ken Saro-Wiwa and eight others were tried and executed by the military government. The case against Shell was settled in June 2009 when the company agreed to a \$15.5 million settlement.

In 2009, a case was filed in the U.K. courts involving Trafigura, a multinational oil-trading company, in relation to the company's alleged involvement in the dumping of toxic oil in Côte d'Ivoire in 2006; over 30,000 claimants from Côte d'Ivoire suffered serious health problems from the toxic oil spill. This case was settled out of court, however, for an amount of £30 million (\$48.5 million). Another case involving the alleged dumping of toxic waste into the Amazon River by the oil company Chevron was also before the courts in 2009. In that case, individuals were seeking US\$27 billion in compensation.

Several complaints have been brought before National Contact Points (national organizations established by governments in the European Union) under the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises in relation to the human rights conduct of companies operating or headquartered in OECD countries. These guidelines are not legally binding, but they are designed to hold companies to account through their home governments. There is a system to allow individuals to bring complaints to their National Contact Point under the guidelines, which has raised awareness of company conduct overseas.

United Nations Responses

In 2003, the United Nations Commission on Human Rights (now the Human Rights Council) produced a document entitled the "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights." This document was the first attempt to set out the obligations of businesses with regard to human rights. At the time, the norms generated a great deal of debate among nongovernmental organizations and businesses alike.

Following various consultations and further research at the United Nations level, it was determined that the norms would not become a legal document. Instead the United Nations created the role of special representative

on business and human rights; John Ruggie was appointed to this role in 2005.

In June 2008, Ruggie put forward a framework for business and human rights that was unanimously approved by the Human Rights Council. This framework was made up of three parts:

- The state duty to protect human rights
- The corporate responsibility to respect human rights
- The need for victims of human rights abuses involving companies to have access to remedies

By validating this framework, the Human Rights Council recognized for the first time that companies have a responsibility to respect the human rights of individuals. The framework applies to all companies, irrespective of their business sector and country of operation. In order for companies to meet their responsibility to respect human rights, they must take steps to carry out "human rights due diligence." This due diligence will depend upon the human rights situation in the particular country of operation, the human rights impacts the company may have as a result of the business it runs, and the relationships the company has with other companies, suppliers, customers, or the government.

The guidance provided by this framework is an important step forward in clarifying the debate on the human rights responsibilities of business. The process of defining the obligations of businesses with regard to human rights is due to be concluded in 2011 with the final report from Ruggie.

Company Responses

A number of multinational corporations have been driven to examine the human rights impacts of their business operations globally. Not only does it make good business sense to assess the potential risks of doing business in particular states or business sectors, but reputational damage following alleged involvement in human rights abuses may also be a driving force in this kind of examination. Some companies look at their human rights impacts because of a particular human right that is close to their industry. For instance, the pharmaceutical sector can play a key role in recognizing the right to health and contributing to this right by releasing patents on expensive brand-name drugs and allowing production of affordable generic brands. Similarly, mobile communications companies can ensure better communication and access to information for individuals by connecting communities, and companies providing access to electricity in more remote areas can play a key part in development that is in line with the core purpose of their business. As of 2009, 242 companies had a human rights policy in place; this number increased significantly when

labor rights policies were included in the total. Additionally, over 5,000 companies had signed the United Nations Global Compact, the world's largest corporate-responsibility initiative. Six of the ten principles in the U.N. Global Compact are based on human rights.

Human rights are a concern for all businesses. All sectors can be implicated in human rights abuses in various ways, and a number of companies are engaged in this issue. Furthermore, much work has been done to elaborate the business case for human rights by identifying the key advantages for companies that decide to assess their human rights record and take positive steps to improve it. (See, for example, the U.N. Global Compact [n.d.] and *A Guide for Integrating Human Rights into Business Management* [Business Leaders Initiative on Human Rights et al. 2009].) Some of the advantages for businesses examining their human rights impacts include:

- Reputational risk management
- Staff retention and motivation
- Maintaining the social license to operate
- Managing legal and financial risk

- Following expectations of investors
- Leadership and competitive advantage

Additionally, a number of tools have been elaborated to help businesses translate human rights into operational terms and guidance. A selection of these tools is listed in table 1.

Industry Initiatives

From 2003 to 2009, fourteen multinational corporations worked together as members of the Business Leaders Initiative on Human Rights (BLIHR) to find practical ways to bring the Universal Declaration of Human Rights into a business context. The companies involved were from a variety of different industry sectors including retail, banking, infrastructure, information technology, food and beverages, and oil and mining. They worked closely with expert human rights advisors to tackle the challenging aspects of this debate and provide a collective business voice.

The first three years of the project were dedicated to road-testing the norms established by the United Nations

Table 1. United Nations Business Tools Regarding Human Rights

Name of tool	Description
<i>A Guide for Integrating Human Rights into Business Management</i> (Business Leaders Initiative on Human Rights, Office of the U.N. High Commissioner for Human Rights, United Nations Global Compact)	A generic guide for companies to start integrating human rights into the various aspects of a business management system.
<i>Conflict-Sensitive Business Practice</i> (International Alert)	A tool to ensure that the business practices of companies operating in conflict zones do not contribute to conflict or cause human rights abuses and that they contribute to social and economic development.
<i>Guide to Human Rights Impact Assessment and Management</i> (International Business Leaders Forum, International Finance Corporation, United Nations Global Compact)	A tool to provide companies with a process for assessing potential human rights impacts and making appropriate management decisions.
<i>Human Rights Compliance Assessment</i> (Danish Institute for Human Rights)	A diagnostic self-assessment tool to help companies detect risks of human rights violations caused by the effects of company operations on employees, local residents and other stakeholders.
<i>Community Human Rights Impact Assessment</i> (Rights and Democracy)	A tool to develop a process through which affected communities can understand the impact of foreign investment in human rights terms.
<i>Human Rights Matrix</i> (Business Leaders Initiative on Human Rights)	A tool for companies to map policies and practice against the content of the Universal Declaration of Human Rights and to prioritize against what is essential and beyond essential.

Source: United Nations Global Compact (2007).

Commission on Human Rights in 2003 (refer to the previous section, United Nations Responses) and commenting on their practical implementation. The next three years were spent developing tools for companies to use that translated human rights into business-friendly language. The BLIHR program ended in March 2009 and inspired two new legacy organizations: The Institute for Human Rights and Business and the Global Business Initiative on Human Rights.

Several sector-specific initiatives have also been designed to explore human rights challenges, some in response to particular human rights dilemmas within different business sectors. A selection of these initiatives follows.

Retail

During the 1980s and 1990s, many companies created codes of conduct based on the practical guidance provided by the International Labor Organization to stop both child and forced labor, to ensure freedom of association for trade unions, and to stop discrimination. The anti-sweatshop movement led efforts to encourage companies to assess their human rights records, which affected key brands producing clothing, footwear, and other textiles. This movement brought together companies, governments, trade unions, and NGOs, and resulted in several initiatives that remain in place, including the Fair Labor Association, which focuses on ending sweatshop labor and improving working conditions in factories worldwide; the Ethical Trading Initiative, which works in partnership with companies, trade unions, and voluntary organizations to better the conditions of workers globally; and the International Labor Organization, in particular the Better Work program, which is focused on improving labor conditions in supply chains, particularly in countries such as Cambodia, Vietnam, Jordan, and Lesotho.

Extractives

Sectors with heavy environmental footprints such as the oil and gas or mining sectors have examined their human rights impacts most often with regard to their relations with communities (including indigenous groups) or governments. For instance, mining companies may need to consult with local indigenous groups who claim rights to the land they wish to use; if these negotiations are successful, they help ensure the company's *social* license to operate. Additionally, serious problems can arise if negotiations are unsuccessful, resulting in clashes between the state-provided security forces and community members. Key initiatives involving companies from the extractives sector include: the Extractive Industries Transparency Initiative, which works with governments, companies, and civil society groups to improve governance by calling for

transparency on company payments and government revenues from oil, gas, and mining activities; the Voluntary Principles on Human Rights and Security, which focuses on guidance for the oil, gas, and mining sectors with respect to aligning their security operations, whether public or private, with human rights requirements; and the Kimberley Process, which is designed to prevent conflict diamonds from entering the market by establishing a certification procedure for the goods.

Finance

Two separate initiatives are aimed specifically at the finance sector in light of the role played by banks and other investment institutions in funding company projects with human rights risks. The Equator Principles (n.d.) provide social and environmental guidance for project finance, and the United Nations Environment Program Finance Initiative (2009) has created a human rights tool kit aimed at lending managers.

Information and Communications Technology

A recent collaborative effort between companies, civil society organizations, investors, and academics produced the Global Network Initiative. This initiative is aimed at the ICT sector in light of the challenges these companies face to comply with local laws and regulations that conflict with the internationally recognized human rights of freedom of expression and privacy.

Linked to this, the electronics industry has faced problems similar to those of the retail sector in terms of allegations regarding working conditions, working hours, and child labor. The Electronics Industry Citizenship Coalition (2009) was created in part to address such considerations by providing a collective code of conduct for the industry.

Where Next?

The next phase of the debate on the human rights responsibilities of business lies in the exploration of human rights dilemmas for new and expanding business sectors such as ICT. Additionally, as greater challenges develop concerning access to natural resources, transnational corporations should play a key role in developing solutions given their involvement in water and/or land access. Similarly, as the expanding global economy increases demand for migrant labor, companies can play a key role in the movement of workers and in ensuring that their human rights are respected.

As the human rights debate continues to evolve and as business operations continue to impact the lives of individuals globally, companies are well advised to explore their

potential and actual human rights impact as part of their overall business strategies on sustainability.

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See also Activism—NGOs; Corporate Citizenship; CSR and CSR 2.0; Equator Principles; Fair Trade; Information and Communications Technology (ICT); Investment, Socially Responsible (SRI); Risk Management; Social Enterprise; Transparency; United Nations Global Compact

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