

# Protection and Promotion of Human Rights and Corporate Social Responsibility

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## ABSTRACT

This paper outlines the responsibilities of transnational corporations and other business enterprises with regard to the protection, promotion and realization of Human Rights. Corporate social responsibility refers to corporate decision making, management, practice, performance and reporting which is ethical, sustainable and has regard to local, social, community and environmental interests as well as financial considerations. This paper looks at what corporations should do and should be able to do in terms of behaving in a socially responsible way to protect and promote Human Rights. It argues that there is a strong link between corporate conduct and social and environmental wellbeing. It discusses the public interests and public values associated with socially responsible corporate behaviour and, by extension, the desirability of public policy frameworks and initiatives to promote corporate social responsibility. Paper concludes that a range of local, national and international initiatives, including of a legislative, regulatory and financial nature, are needed to ensure realisation of the public interest in corporations conducting their business and affairs in a way that promotes and protects human rights.

## Keywords

Human Rights, Corporate Social Responsibility, Codes of Conduct, Corporations

## I. Introduction

Human rights are relevant to the economic, social and environmental aspects of corporate activity. For example, labour rights requiring companies to pay fair wages affect the economic aspect. Human rights such as the right to non-discrimination are relevant to the social aspect. And the environmental aspects of corporate activity might affect a range of human rights, such as the right to clean drinking water. So, while the primary responsibility for the enforcement of international human rights standards lies with national governments, there is a growing acceptance that corporations also have an important role to play. Corporations should respect the human rights of those who come into contact with the corporation in some way. This might be direct contact (for example, employees or customers), or indirect contact (for example, workers of suppliers, or people living in areas affected by a corporation's activities). Many consumers and investors expect corporations to act in a socially responsible manner and the extent to which a company implements a comprehensive Corporate Social Responsibility program can influence consumer and investor decisions.

## A. Corporations and Human Rights Violations

Corporations have since centuries been operating beyond the borders of the country in which they are registered. A range of mechanisms make this possible, from wholly owned subsidiaries, joint ventures or other partnerships with foreign companies to supply chain relationships with contractors and suppliers of goods and services. This has raised the question to which extent

corporations have responsibility for the protection, promotion and realization of human rights, and the ways in which they can be held accountable for human rights violations connected with their activities. Violations leveled against corporations include allegations of crimes against humanity, torture, racial discrimination, genocide, forced labour and child labour, slavery, environmental degradation and a broad array of human rights violations in relation to local communities, especially indigenous people (UN Doc E/CN.4/Sub.2/2003/12/Rev.2, 2003). The extractive sector: oil, gas, and mining (cobalt, diamonds), account for most allegations of the human rights violations, by or involving corporations. The food and beverage industries are also doing human rights violations followed by the clothing and footwear industry, and the information and communication technology sector.

## B. Why are Human Rights Important to Business?

Businesses are increasingly focused on the impact they have on individuals, communities and the environment. It is clear that one of the central measures of a company's social responsibility is its respect for human rights. And while most companies recognize the moral imperative to operate consistent with human rights principles, recognition is growing that respect for human rights also can be a tool for improving business performance. The following are the important reasons for corporations to protect and promote human rights:

### 1. Compliance with both Local and International Laws

Human rights principles are contained in national and international law. Ensuring that business operations are consistent with these legal principles helps companies avoid legal challenges to their global activities. In recent years courts of different countries have considered lawsuits alleging that multinational companies, sometimes through their business partners, have contributed to human rights violations in their global operations.

### II. Satisfying Consumer Concerns

Increased media attention to business' role in protecting human rights has led to increased consumer awareness of the treatment of workers producing goods for the global marketplace and demands for public accountability. Several companies have found themselves the targets of campaigns by human rights, labor rights, religious or consumer organizations highlighting allegations of human rights abuses. Establishing and enforcing a meaningful approach to human rights can help to avoid such campaigns, limit their impact on the company if they occur as well as protect the overall image of the company.

### III. Promoting the Rule of Law

Many of the principles enunciated in the Universal Declaration of Human Rights involve the creation of a stable, rule-based society that is essential to the smooth functioning of business. Applying human rights principles thoroughly, consistently and impartially in a company's global operations can contribute to the development

of legal systems in which contracts are enforced fairly, bribery and corruption are less prevalent and all business entities have equal access to legal process and equal protection under law.

#### **IV. Building Community Goodwill**

A multinational's presence can be viewed locally as positive or negative. Avoiding human rights violations will help maintain positive community relations and contribute to a more stable and productive business environment.

#### **V. Supply Chain Management**

Many businesses' human rights policies are designed to promote their global business partners' compliance with human rights and labor rights standards. These policies can also serve as tools to help companies select business partners which are well-managed and reliable and which operate ethically.

#### **VI. Enhancing Risk Management**

The denial of basic human rights often leads to social or political disruption. This in turn can cause labor strife, restricted access to goods and services, or delays in the movement of finished products. And avoiding public controversies reduces the direct costs of resolving high-profile disputes.

#### **VII. Increasing Worker Productivity and Retention**

Protecting the human rights and labor rights of employees and business partners' employees leads to increased productivity, as workers who are treated fairly and with dignity and respect are more likely to be productive. Enterprises that avoid human rights and labor rights violations can also reduce employee turnover and achieve higher product quality.

#### **VIII. Applying Corporate Values**

The denial of basic human rights can undermine the faith of employees and external stakeholders in company integrity to conduct its business consistent with its stated values.

#### **How are human rights relevant to Indian companies?**

A range of Indian laws currently require corporations to comply with human rights standards. While these laws are not always framed in human rights language, the standards they stipulate are in fact based on human rights. Examples include:

- Laws prohibiting discrimination and harassment in the workplace and laws requiring employers to provide equal employment opportunities. Such laws address the rights to equality and non-discrimination, which are set out in various international treaties including the International Covenant on Civil and Political Rights.
- Laws regulating conditions of work. For example, occupational health and safety, terms and conditions of employment, minimum wage, collective bargaining, and prohibition of child labour and forced labour. Such laws address a range of labour rights, which are contained in various instruments adopted by the International Labour Organization and in major international human rights treaties.
- Laws regarding Native Title. Such laws address economic, social and cultural rights including property rights, which are set out in various international treaties including the International Covenant on Economic, Social and Cultural Rights.
- Laws imposing liability on corporations for certain acts which impact on human rights, such as bribery of officials or crimes

against humanity. Such laws are based on standards contained in a range of international instruments, for example the United Nations Convention against Corruption.

In addition to the human rights standards which Indian companies are legally obliged to comply with under domestic laws, there is a broader range of human rights that are relevant to corporate activity. Depending on the specific activities carried out by a corporation, these might include:

- The right to liberty and security of the person.
- The right to an adequate standard of living (including adequate food, water, shelter and clothing), the right to education, the right to health, and other economic, social and cultural rights.
- The right to freedom of thought, conscience and religion.
- The right to freedom of expression.

#### **What is Corporate Social Responsibility?**

There is no universally accepted definition of corporate social responsibility. In its broadest and most common sense, the term corporate social responsibility is used to describe corporate conduct which is ethical and has regard to social and environmental interests as well as financial considerations. Thus, for example, the World Business Council for Sustainable Development defines corporate social responsibility as the "commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life" (Richard Holme and Phil Watts, 2000). In this context, socially responsible corporate conduct is conduct which recognises that corporations have relationships with, and impacts on, not only shareholders but also other stakeholders (including employees, their families, business partners, suppliers, creditors, consumers and local communities), the broader community and the environment. Corporate social responsibility refers to corporate decision making, management, practice, performance and reporting which is ethical, sustainable and has regard to local, social, community and environmental interests as well as financial considerations.

Businesses have the potential and power to impact substantially on local, regional, national and even international communities and environments. Increasingly, corporations are involved directly in production and service delivery which impacts very directly on individual and community welfare, including in the areas of employment, occupational health and safety, transport, essential services such as energy and water, housing, food, education, communications, recreation, and environmental wellbeing and sustainability (Adolf Berle and Gardiner Means, 1967) As the UN Sub-Commission on the Promotion and Protection of Human Rights recognises: Corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities (UN Doc E/CN.4/2005/91, 2005) Recognising these impacts and spheres of activity and influence, particularly as they pertain to the realisation of fundamental human rights, there is a strong public interest in, and value associated with, the conduct of business and corporate affairs to impact positively not only on relevant financial interests, but also on relevant social and environmental interests.

## What Should Corporations Do About Corporate Social Responsibility?

Corporate conduct impacts significantly on social and environmental wellbeing and that there is a need for a normative value framework within which to regulate and evaluate this conduct. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, developed and approved by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2003, are perhaps the most comprehensive, clear and complete standards developed in relation to socially responsible corporate behaviour.

The Draft Norms enshrine, and impose obligations of realisation on corporations in relation to, relevant human rights, including: the right to equal opportunity and non-discriminatory treatment (UN Doc E/CN.4/Sub.2/2003/12/Rev.2, 2003); the right to security of persons; the rights of workers and their families; consumer rights and protections; and environmental rights and standards. The Draft Norms also require corporations to recognise and respect the public interest, development objectives and principles of transparency and accountability. In relation to implementation, art 1 of the Draft Norms provides that: Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights.

A corporation's spheres of activity and influence will vary depending upon its size. However the spheres are clearly envisaged to have contractual, economic and geographic dimensions (UN Sub-Commission on the Promotion and Protection of Human Rights (UN Doc E/CN.4/2005/91, 2005), and to include shareholders, workers, unions, consumers, business partners, suppliers, creditors and individuals or groups directly or indirectly affected by a corporation's activities, including host communities and neighbouring communities (UN Doc E/CN.4/Sub.2/2003/12/Rev.2, 2003). While at this stage the Draft Norms are not legally binding, they envisage a range of operationalisation and enforcement mechanisms. These include:

- Corporations developing and implementing operating procedures that are compliant with the Draft Norms;
- Corporations consulting with stakeholders and communities about their activities, influence and impact;
- Corporations engaging in business only with other corporations, entities and natural persons that comply with the Draft Norms;
- Corporations applying and incorporating the Draft Norms into contracts and other arrangements with other corporations, entities and natural persons;
- Corporations periodically (at least annually) reporting on their activities, operation and performance in relation to implementation of the Draft Norms and social and environmental impacts; and
- Monitoring by the United Nations and relevant international and national mechanisms in relation to implementation and application.

Very importantly, the Draft Norms are not intended in any way to displace or detract from the primary responsibility of states to promote, protect and fulfill human rights. In this respect, art 17 of the Draft Norms imposes on states the obligation to establish

and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and International laws are implemented by transnational corporations and other business enterprises.

In addition to the Draft Norms, there are a number of other international codes and principles that seek to promote corporate social responsibility and human rights-respecting corporate conduct. Relevant instruments include:

- The United Nations Global Compact - the Global Compact is a voluntary corporate citizenship initiative which encourages corporations to, among other things, support and respect the protection of human rights and ensure that they are not complicit in human rights violations;
- The OECD Guidelines for Multinational Enterprises - the Guidelines contain recommendations to business concerning corporate conduct and affairs. Relevantly, the Guidelines recommend that corporations' respect the human rights of those affected by their activities;
- The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy - the ILO Declaration provides guidance to corporations on labour-related aspects of workers' rights, but does not direct itself to other areas of human rights.

While each of these instruments is important and has contributed to the development of corporate policy and practice in the area of corporate social responsibility and human rights, the Draft Norms are the focus of this Paper and recommendations for three key reasons. First, they cover not only transnational corporations and multinational enterprises, but all business enterprises (whether international or domestic only) across all industries and sectors (Rachel Chambers, David Kinley and Sarah Joseph, 2004). Second, the Draft Norms contain the most comprehensive and authoritative exposition of human rights law and its application to corporations. Finally, the Draft Norms are expressed and intended to be mandatory in nature and to establish enforcement and complaint mechanisms and monitoring and measurement procedures.

### The United Nations on Business and Human Rights

The latest guidance on business and human rights comes from John Ruggie, a Harvard University professor appointed as the U.N. secretary-general's special representative for business & human rights in 2005 by then Secretary-General Kofi Annan and the Human Rights Commission (which became the Human Rights Council in 2006). Ruggie's mandate was to clarify corporate responsibility with respect to human rights. In a report Ruggie delivered in June 2008 to the Human Rights Council, he presents three fundamental principles to help governments, companies, and civil society manage human rights issues related to business. First, the state has a duty to protect citizens against human rights abuses by third parties, including corporations; second, corporations have a responsibility to respect human rights; and third, victims of abuse need better access to remedy and justice. Ruggie's report is an important milestone in clarifying the role of business in society, but there is much more work to do.

### From Policy to Practice

Simply stating a human rights policy is generally insufficient to make or demonstrate a meaningful commitment to human rights.

There are a variety of steps that can be taken to implement a policy. The first is to ensure that broad human rights principles are made relevant to business. Few would contest the principle, enshrined in the Universal Declaration, that all people have the right to be free from torture. The relevance of this principle to business operations is often less clear. It is clear that human rights are no longer seen as an optional issue about which only small, social enterprises are concerned. Human rights are now being “mainstreamed” within some of the largest, most influential companies in the world. Many questions remain about how companies can make real progress in integrating concern for human rights into their operations, and yet it is equally clear that the outline of how companies can achieve improvements in human rights consistent with their business operations is coming into focus. The successful experimentation of industry leaders, along with the concerns eloquently expressed by committed stakeholder groups, has yielded an initial consensus about how a company can translate broad human rights principles into action.

The nine step framework for action reflects the following broad set of steps that a company can take:

### **1. Identify Human Rights Issues**

The first step is to identify the issues that a company might face. These can vary significantly depending on the industrial sector and the countries in which a company has operations and business relationships. The past years has demonstrated clearly that while most companies have the need to focus on labor standards, companies in the mineral extraction, apparel/footwear, and agricultural industries have distinct issues that require different approaches. Reviewing the potential human rights impact of a company’s operations and relationships will help to focus policy setting and implementation.

### **2. Develop Policy Options**

As noted above, the Universal Declaration of Human Rights and the International Labour Organizations core labor standards are generally the foundation of a company’s policies. These are expanded upon to address the unique issues facing a company. Several oil companies, for example, have developed policies and practices based on the UN Code of Conduct for Law Enforcement Officials to establish guidelines for security personnel working in or near their facilities.

### **3. Operationalizing Policy**

To ensure the policy has the desired impact, many companies have developed guidelines to aid implementation. This process of translating broad principle into practice is essential, and in some cases can be complicated. Yet without doing so, a company’s ability to act, and to communicate internally, to business partners, and to the external world, is substantially limited. The development of policy will be enhanced both by seeking contributions from within the company and reaching out to NGOs and other relevant external stakeholders for their input.

### **4. Dialogue/Outreach/Collaboration:**

For many companies, this is actually the first step. The efforts should involve outreach to academics, as well as stakeholders that expressed interest and concern about the company’s approach to human rights issues, in advance of policy setting. Undertaken thoughtfully, advance consultation with human rights groups and social partners can enhance the basic structure a company puts

in place to address human rights, and will help establish systems of public accountability.

### **5. Educating Key Staff/Training:**

As with any aspect of business, it is critical to ensure that all personnel with the opportunity to “make or break” the human rights policy are educated about what the policy means in practice as well as the philosophy behind the policy.

### **6. Developing Appropriate Internal Capacity:**

Several companies have found that managing human rights issues requires internal capacity and expertise. Just as environment, health and safety functions have developed in most multinational companies, more and more such businesses are establishing human rights specialists. The value of doing so helps make sure that a company has: (1) proper expertise on this complex topic; (2) the ability to monitor a fast changing environment; (3) sufficient knowledge and communication skills to engage in meaningful outreach with NGOs and the public sector; (4) the ability to manage instances when a human rights policy might be violated, and (5) the authority to ensure that company personnel are held accountable for implementation.

### **7. Communication with Business Partners:**

Just as internal capacity is critical, so too is ensuring that business partners understand and act upon a company’s concern for human rights. Business partners take many forms: vendors, subcontractors, and governments, amongst others. This means that communication with business partners also takes many forms. Steps to be taken by companies should include: training of vendors on codes of conduct and other human rights standards; including compliance with human rights and labor rights standards in contractual agreements and appropriate dialogue with public officials about the need to ensure a climate in which human rights are respected.

### **8. Internal Accountability:**

Few business policies are implemented effectively without systems of accountability, and human rights is no different. By establishing performance benchmarks and holding designated staff responsible for implementation, a company is more likely to be successful. This can happen in a range of ways: some companies have ultimate responsibility in senior management; some companies choose to take a country by country approach; some choose both. Internal accountability is taken one step further by companies that, through a variety of means, implement some form of independent verification or public, verified reporting.

### **9. Independent Verification and Public Reporting:**

Recent events demonstrate the growing importance the consuming public places on increased transparency and independent systems of public accountability.

### **IX. Conclusion**

Corporations bear the responsibility to respect human rights, that the State has a duty to protect against human rights abuses by companies, and that both the State and businesses must provide more effective access to remedies for human rights violations. Despite the assurance that corporations’ duty to respect human rights essentially means not to infringe on the rights of others – put simply, to do no harm, the framework recommended to the United Nations could impose on businesses an array of expansive obligations that require close attention by corporate

management and boards. To discharge their responsibility to respect human rights, corporations would be required to conduct a broad due diligence process to become aware of, prevent and address adverse human rights impacts, purportedly in the same way as corporations already must assess and manage financial and related risks. Corporations have the potential and capacity to, on the one hand, contribute significantly to, and on the other hand, derogate significantly from, human rights in local, regional, national and even international communities and environments. At its best, corporate social responsibility is corporate governance and conduct that contributes to the realization of human rights.

Corporations cannot say that their business is only to attend to their own business and earn profits for shareholders. It is the community that supplies the infrastructure, employees and security (by the police), legal protection and several other services, both tangible and intangible, and corporations cannot ignore this fact. On the contrary, corporations are guilty of misusing natural and human resources, polluting the environment and causing various crises in society. It is the duty of the corporations to mitigate the damage that they have done, stop perpetrating further damage to the environment, give equal pay for equal work without gender discrimination, maintain safety and security at the workplace and maintain confidentiality. These are the first and essential duties of Corporate Social Responsibility. Further, though philanthropy and social work are welcome, it is a good Corporate Social Responsibility programme that will help corporations reap rich rewards by building a better brand, perhaps at costs lesser than what is spent on advertising and marketing. Thus Corporate Social Responsibility is not a favour done to society, but a bounden duty to be performed to protect and promote human rights.

While the extent of corporate social responsibility in India has increased significantly over the last decade, it still remains very low. Only a very few corporations demonstrate a developed understanding of the relationship between corporate social responsibility and business. There is a manifest need for policy and incentives to promote corporate social responsibility and encourage companies to contribute to the realisation of human rights within their spheres of activity and influence. Recognising the links between public values and interests, corporate activity and the realisation of universal human rights, corporate social responsibility should be promoted, regulated and evaluated within a human rights framework.

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