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HUMAN RIGHTS AND BUSINESS: HOW CHANGE HAPPENS

PHIL BLOOMER, BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE AND VICKY DODMAN, CORPORATE HUMAN RIGHTS BENCHMARK¹

“Our Mother Earth – militarised, fenced-in, poisoned, a place where basic rights are systematically violated – demands that we take action.”

Berta Caceres, Civic Council of Grassroots and Indigenous Organizations of Honduras (COPINH)

“Our ambition is to embed the promotion of human rights into every function, every role, and every corner of our organisation.”

Marcela Manubens, Global Vice-President, Social Impact, Unilever

INTRODUCTION

International business has created a billion jobs in Asia. Around the world, a billion people have escaped absolute poverty in the last 20 years, with two thirds of this attributed to the growth of economies, particularly in East Asia. Women in countries such as Bangladesh have obtained jobs in global supply chains, often gaining some economic empowerment within their families as a result.

At the same time there is probably no global supply chain that does not contain some element of modern slavery. Women workers manufacturing luxury goods and fast fashion get paid poverty wages. Land and water grabs have ballooned since the global financial crisis of 2008, particularly affecting indigenous peoples. Tax

¹ Phil Bloomer is Executive Director of Business and Human Rights Resource Centre and Vicky Dodman is Director of Corporate Human Rights Benchmark.

avoidance has denied many billions of dollars to the national coffers of poor and rich countries: funds that should be invested in the rights to health and education of the people.

This brief catalogue of the contribution of businesses to fulfilling human rights globally, and of their roles in the systemic abuse of rights, illustrates why the issue of business and human rights has grown significantly in importance over the last 20 years. Improvements in business practice can lead to major improvements in the lives of poor and vulnerable people. Conversely, unscrupulous business practice often leads to disaster for communities and workers alike. This contrast explains why the terrain of business and human rights is one of conflict and cooperation.

Traditionally, human rights discourse focused on the responsibilities of the state to uphold the rights of citizens, and was dominated by legal and constitutional experts. But the growth in power and influence of business over workers and the communities they operate in, around the world, has brought the issue of business and human rights to the fore.

UNITED NATIONS GUIDING PRINCIPLES AND THE UN INTERNATIONAL BINDING TREATY

In June 2011, there was a game-changing agreement between states and companies. In a rare moment of consensus, these actors agreed the [UN Guiding Principles on Business and Human Rights](#) (UNGPs). The UNGPs set out three pillars:

- the need for states to protect people from corporate abuse;
- the responsibility of companies to respect human rights;
- the imperative of both to provide access to remedy for victims when abuse occurs.

The UNGPs gave considerable impetus to the business and human rights agenda, generating a substantial up-tick in action by leading companies and states to implement the Principles. The UNGPs advocate a ‘smart mix’ of voluntary action, government incentives, regulation and law to drive corporate action to respect human rights. A number of the world’s largest companies have taken unprecedented steps to identify their salient human rights risks, and take systemic action to embed human rights further into their business practice.

But it is equally fair to say that the pace of implementation in many companies, outside the leadership group, has been glacial, and governments have been at best timid in their approach, and at worst negligent in implementation. Only 12 states have developed a National Action Plan in the five years since the UNGPs were agreed, with a further 27 reportedly ‘in progress’. Every state was expected to have developed a National Action Plan by June 2013. Equally, the ambition of existing National Action Plans is generally low, with few pointing to a strong ‘smart mix’ of normative and regulatory action.

This has led some governments, notably Ecuador and South Africa, and over 400 civil society organisations in the Treaty Alliance, to call for an international binding treaty to enshrine in international law minimum standards of corporate respect for human rights, and insist on international legal accountability when abuse occurs. The debate on the treaty is currently focused on its scope. Key questions include which human rights it should cover; whether it will include mandatory due diligence to avoid abuse, or only focus on contexts where abuse occurs; which businesses will be covered by the treaty; and how the challenge can be addressed of achieving remedy when abuse occurs. The treaty has gained support from diverse actors, but the negotiations look like they will be slow and tortuous, as has been the case with previous efforts of this kind.

Initially, many saw these two proposals – the UNGPs and a binding treaty - as competing initiatives. But increasingly the movements for both have seen the two as complementary: the threat of a binding treaty can help spur action by states and companies to implement the Principles; and the successes and failures of the Principles can demonstrate where a binding treaty can focus its efforts to achieve maximum impact in outlawing abuse.

HUMAN RIGHTS AND MARKETS IN OUR NEW CONTEXT

The issue of human rights in business has also grown in importance in our shifting global context of rising chauvinist nationalism and greater migration and refugee flows. With the rise of narrow nationalisms around the world, from India to Turkey and from Hungary to the USA, the momentum to put human rights at the heart of business operations and supply chains is now in greater jeopardy. Human rights defenders who expose and oppose abuse by corporations are increasingly being stigmatised as ‘economic saboteurs’, ‘anti-development’, ‘foreign agents’ and worse. In 2015, Global Witness estimated that 185 environmental defenders were assassinated, and Front Line Defenders reported that 126 human rights defenders were killed. Many of the organisations of environmental and human rights defenders also became subject to laws that restrict their ability to receive international funding, choking off the cross-border philanthropy on which they depend.

Conversely, it is clear that the embedding of human rights in business practice can be one of the most powerful antidotes to the rise of chauvinistic nationalisms: markets that are organised to guarantee human rights in global supply chains could bring shared prosperity and security to a far greater number of people. But in the last 30 years the neoliberal extreme of global markets that are deregulated, privatised and liberalised has brought too much inequality, often in the form of precarious employment and poverty wages, and too much environmental destruction to be sustainable.

A newer opportunity may be presented by the Sustainable Development Goals (SDGs). The SDGs offer a lever for civil society activists to promote markets that serve the common good. Too many businesses and governments are interpreting the role of the private sector in the SDGs as being singularly focused on massive new investment in large-scale projects, often in public-private partnerships. While major infrastructure programmes are needed across poor countries, if human rights are not baked in from the start, then experience tells us that abuse will be common. But more importantly, the single greatest contribution that businesses can make to the achievement of the SDGs would be to respect and promote human rights

in their core business practice: this approach could ensure that all investment pays a living wage; avoids land and water grabs and pollution events, including carbon emissions; and protects civic freedoms and human rights defenders.

Now is the time for civil society to demand transformative shifts in business and human rights. If markets are genuinely to contribute to societies that value freedom, equality, solidarity and human dignity, then markets have to demonstrate they contribute directly to these values.

There is a stark choice: are human rights in business to be a fig leaf for extreme and unsustainable forms of economic globalisation, or a transformative lever to deliver greater equality and ecological stability, and thus act as a bulwark against the rise of narrow nationalisms?

MODELS OF CHANGE

While there is always much to learn, civil society now knows a good deal about what moves markets, and how corporate behaviour relates to human rights. The key motivational levers can be summarised as:

- legal risk and regulation: most businesses are careful to implement laws and regulation where these are enforced by governments;
- reputational risk and reward, among investors, customers and potential employees;
- the threat of disruption to operations, which can lead businesses to negotiate to avoid strikes, demonstrations and blockades;
- market incentives, such as access to new markets, and access to public procurement contracts and export credit guarantees
- peer pressure through voluntary codes.

Effective strategies to pull on these levers of influence usually involve some combination of these factors, the use of both insider and outsider strategies, and an ability to shift between various fora to demonstrate persistence.

Most models of change require the combination of demands for incremental reforms with those for transformational change. But achieving transformative change in existing markets is tough. If it were easy, most markets would be working for shared prosperity and shared security, rather than creating increased inequality, precarious work and environmental destruction. The dominant neoliberal ethos and policies of the past 35 years have made it hard even for ethical companies to sustain their position when they are undercut by unscrupulous companies combing the planet for the cheapest labour or lowest corporation tax and when there are few or weak legal and regulatory obligations. So what lessons can we learn from examples of relative success, even in these tough times?

ACCESS TO MEDICINES AT THE PEAK OF THE HIV/AIDS EPIDEMIC

The obvious example, and one that the majority of civil society will recognise, shows that hard-edged campaigning works. Campaigning that exposes abuse and exploitation through global coverage, motivates mass campaigns of real or virtual protest and builds global, and unusual, alliances that create multiple pressure points on companies is a method that has demonstrated its power time and again. The Access to Medicines Campaign, 1999 to 2003, provides a clear example of how civil society joined with other forces to achieve a 98 per cent reduction in the price of antiretrovirals in Africa, from US\$10,000 per person per year to US\$98, in just three years. It started with the grassroots movement in several African countries and Brazil, India and Thailand, where HIV/AIDS and LGBTI activists organised locally and nationally to expose the tragic human consequences of global patents that kept medicines out of the reach of millions who were filling cemeteries. They demanded action from their governments, and worked with global campaigning organisations, including Médecins Sans Frontières and Oxfam, to add strength to the campaign in Europe and North America, as well as in global fora. The increasingly global campaign exposed the inhuman consequences of the large pharmaceutical companies' insistence on their universal patents, and gained them global opprobrium for their callous and unnecessary profit-seeking in Africa, which committed millions to a slow death from starvation, TB and similar diseases.

A tougher lesson for much of civil society to swallow from this campaign is that leading companies that are ahead in integrating human rights into their operations and supply chains can also play a fundamental role in driving systemic change. If done right, there can be a genuine synergy between civil society campaigners and leading companies that seek to respect human rights. These companies demonstrate that human rights in business is not only an ethical imperative; it is also commercially viable, even if it is not always a 'win/win'. Campaigners can use any advances to persuade governments to lift the floor of regulation, such that it describes the minimum standards of corporate behaviour that a state expects in its markets. At the same time, companies can benefit from regulation that prevents less scrupulous companies from undercutting them.

The Access to Medicines campaign allied with the generic medicines industry, who wanted to supply developing country markets, but were blocked by the insistence of large pharmaceutical companies on the universal application of their patents. The campaign also pressed GlaxoSmithKline (GSK), one of the largest such companies, and one that said it wanted to do more, to take leadership, and break from their peers.

Increasingly, civil society is recognising that alongside hard-hitting campaigning to expose abuse, the most effective models of change require that leading companies are given a reputational reward for their efforts. This serves both to encourage further positive innovation, and to increase the reputational risk for companies in the same field that are doing little or nothing to eliminate human rights abuses. Like any other institution and individual, companies are encouraged to go further if they receive praise for doing the right thing. Civil society needs to be alert to corporate whitewash and greenwash, but to give praise where praise is due and change is being advanced. Civil society has sometimes been guilty of 'snatching defeat from the jaws of victory' when many of our campaign demands are met by individual companies yet we still denounce our success as 'failure' for fear of being co-opted.

THE CAMPAIGN AGAINST MODERN SLAVERY

Another example of a successful change strategy is the burgeoning movement to end modern slavery and forced labour in global supply chains. Like so many other international campaigns, this began with local and national activists working in high-risk regions. Many people respond with a humanitarian reflex to the suffering of people trafficked into forced labour, with their passports confiscated, repaying ludicrously high 'recruitment fees' to their gang-masters and held in bonded labour to a contract that was never explained or written in their own language.

Much of the response remains nationally focused, such as on conditions in bricks and yarn manufacture in India. But increasingly, national activists see that forced labour feeds global supply chains. Prawns from Thailand, hazelnuts from Turkey, mica for car paint and carpets from India and minerals for phones from the Democratic Republic of the Congo: the list is long. And the movement has globalised further, in response, over the last decade.

Alongside the vital humanitarian efforts to free slaves and to help them re-establish themselves, there have been four main strategies for systemic prevention and remedy:

- expose the abuse, and demand action by companies;
- undertake strategic litigation to undermine the sense of impunity;
- rank companies to provide reputational risk and reward for leading and laggard companies;
- seek action by states to enact laws, increase regulation and create incentives for businesses to take action.

To drive change in companies, civil society and trade unions have cooperated closely with investigative journalists to expose abuse, particularly in the products of high street brands. The Guardian and Thomson Reuters media companies have collaborated on this.

Civil society has also developed benchmarks to expose the long list of laggard companies that are doing little or nothing to eliminate modern slavery, but also to provide a reputational reward for those companies that are making real efforts to provide leadership. The [Know the Chain](#) initiative reported on three high-risk sectors in 2016: apparel, ICT and food and beverage. Its work makes interesting reading. For food and beverage, just three companies, Unilever, Coca-Cola and Nestlé, received a score of around six (from 10), and the average score for companies' recruitment practice, an aspect crucial to ending bonded labour, was only one. For ICT, five of 20 companies, Apple, Cisco, HP, Intel and Microsoft, obtained a score of six or over, and the average score for recruitment and workers' voice was only two. Both these benchmarks reveal two divides: a divide between the leaders and laggards in each sector, where leaders demonstrate better practice that others could quickly learn from; and a divide between the behaviour of most companies in these sectors and the broad rhetoric companies tend to offer that they are 'doing everything we can to eliminate modern slavery'.

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Perhaps it is frustration at this lack of action by the majority of companies that has encouraged a few states to act. After many years of appealing to companies' better nature, and requesting voluntary transparency and due diligence, a handful of states have introduced moves towards mandatory measures. The State of California introduced the Transparency in Supply Chain Act in 2010. Then in 2015, the UK Modern Slavery Act was enacted. This was groundbreaking as, at the request of civil society, investors and leading UK companies, the Act has extra-territorial reach: it demands a statement on modern slavery from any company that wants a presence in the UK market and has turnover of more than UK£36 million (approximately US\$45 million). The Business and Human Rights Resource Centre, with support from anti-slavery organisations, has established a [Global Registry](#) for companies' compliance statements. The Registry allows comparison and analysis.

In the USA, then-President Obama took two key steps towards mandatory due diligence, and the provision of incentives to eliminate slavery. President Obama closed a gigantic loophole in the long-standing Trade Facilitation and Trade Enforcement Act of 2015. This now means that any company that seeks to import goods produced in a pre-identified high-risk country must demonstrate that forced labour and child labour were not used in their manufacture. Otherwise the goods run the risk of being impounded at the port. This demand for demonstrable due diligence shifts the burden of proof to the importer.

Obama's second innovation came in amendments made in 2015 to the Anti-Trafficking Provisions of the Federal Acquisition Regulation. This effectively makes the US government's tenders for goods and services available to any company that has made a statement regarding their efforts to eliminate slavery, and excludes those companies that have not.

To advance these moves further, there is now a need for something like a Trans-Atlantic Modern Slavery Agreement. Under this initiative, Canada, the European Union and the USA would agree to implement coherent legislation that takes the higher common denominator of these initiatives. Australia also appears interesting in joining, and other G20 members, such as Brazil, China and India, could play a central role.

THE CORPORATE HUMAN RIGHTS BENCHMARK

Strategies of building reputational risk and reward for businesses are reflected in a new initiative. Over the past three years, a multi-stakeholder coalition has come together to make a permanent change in how the marketplace responds to human rights.² The [Corporate Human Rights Benchmark](#) (CHRB) aims to measure the human rights policy

² The multi-stakeholder Coalition is made up of APG Asset Management, Aviva Investors, Business and Human Rights Resource Centre, Calvert Investments, the Dutch Association of Investors for Sustainable Development, Eiris Foundation and Institute for Human Rights and Business.

and performance of the world's 500 largest companies. As a free and public tool it also aims to increase disclosure and transparency across multiple industries.

The power of this ranking was confirmed by an Economist Intelligence Unit survey of business leaders, in which over 40 per cent stated that benchmarking their companies on their human rights performance would make the biggest difference to the human rights commitments of their companies.

The Benchmark will rank large, publicly listed companies against not only their human rights commitments, but also some of their impacts on the ground. It will allow more investors to assess a company's due diligence towards the human rights risks of employees and communities, and build this into their investment decisions; enable talented potential employees to choose employers that reflect their values and make a fuller contribution to society; empower civil society campaign leaders to make quicker, evidence-based decisions on strategies and targets for key sectors; allow consumers to make informed choices about their purchasing decisions; and indicate to governments where national and international laws, regulations and incentives need to be strengthened to set a minimum floor of corporate behaviour.

The idea emerged from the success of both the [Access to Medicines Index](#), which ranks 20 large pharmaceutical companies, and Oxfam's [Behind the Brands](#) ranking of 10 food and beverage companies on their relevant policies and process. Both have been seen to drive tangible change in specific areas: Coca-Cola and Pepsi have both stated that they have 'zero tolerance' of land grabs in their supply chains, and strategies on access to medicines are now embedded in the corporate strategy of GSK and Novartis.

The CHRB has learnt from these indices. It has focused on human rights obligations as expressed in the UN Conventions and the UN Guiding Principles, expanded its reach to cover 100 countries in 2017, with the aim of covering 500 by 2020, and integrated an assessment of a company's performance on human rights, alongside its policies and practices.

The Benchmark should drive a 'race to the top' on human rights by providing a reputational reward for leading companies and a reputational risk for laggards. As with the Access to Medicines Index and Behind the Brands initiative, the simplicity of the ranking quickly communicates each company's relative performance, which allows key decision-makers to make rapid and informed judgements.

METHODOLOGY

There are several significant features of the [CHRB Methodology](#):

- The CHRB is not about developing a new reporting requirement for companies, and companies cannot opt in or out. Companies are assessed, whether or not they report on their human rights performance.
- For its assessments the CHRB relies exclusively on public information disclosed by companies. This has the aim of driving greater public disclosure by companies.

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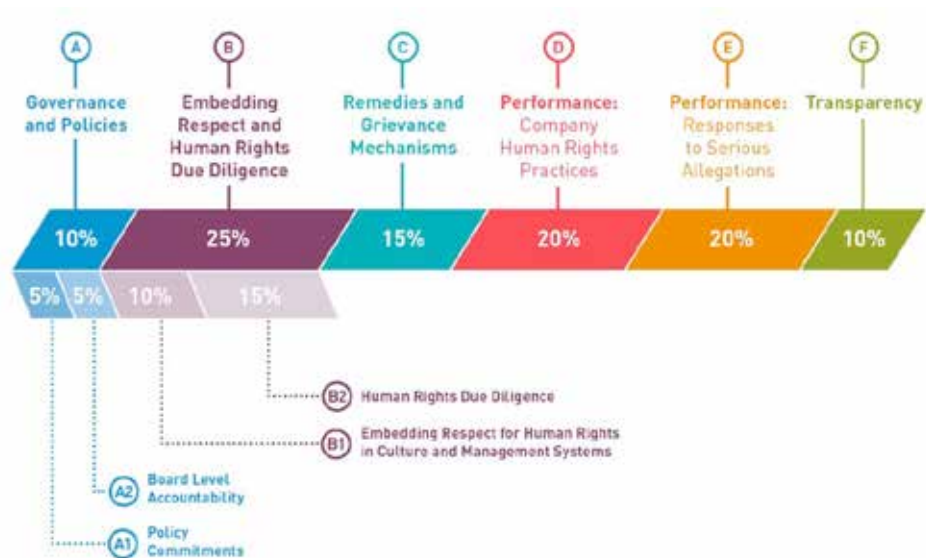
- The CHRБ includes a focus on companies' policies, processes, practices and responses to allegations of abuse, grounded in international and industry-specific standards on responsible business conduct.
- Comparability is another key feature, so that both the best performers and those requiring improvement and intervention can be discerned. This comparability is enabled by the analysis of key industry risks, in order to drill into the specific challenges faced by each industry and identify the best approaches to managing them.

The Benchmark is the first ranking to try to make some assessment of companies' human rights performance. This is not easy to measure. Given the lack of objective assessments in existence at the moment, the Benchmark looks at allegations of abuse made against each company. However, it is not the number of allegations that are made against a company that are important, as some of the worst performing companies are low profile and rarely held to account, but rather how companies respond to allegations of abuse: whether companies engage with those alleging abuse, take adequate steps to prevent future allegations and provide remedy when damage has occurred.

These features are woven into the six CHRБ Measurement Themes, which are also weighted to place greater emphasis on those linked to due diligence, performance and remedy, as set out in the diagram below.

The CHRБ will be expanded and refined over the coming years, in consultation with civil society, business, investors and governments.

Figure 1: Weighting of six Corporate Human Rights Benchmark measurement themes



CONCLUSION

Civil society's insistence that businesses do far more to respect and promote human rights through their operations is not going to go away any time soon. This short article has only had space to outline a small proportion of the crucial research, campaigns and advocacy that are happening around the world. But the learning from each of these efforts is increasing, and civil society is becoming increasingly able to make its efforts count. The strategies we deploy are in some ways unique to each case, and yet there are also common threads to learn from peer organisations and their efforts. Three conclusions are clear:

- Communities and grassroots organisations are on the frontline of struggles and are often the starting points of global campaigns. Civil society should support grassroots and worker-driven approaches to human rights in business to empower those who face the greatest inequality, and will have to sustain and build on changes that any broader campaign achieves.
- Civil society will need to be bold and assertive in the face of great inequalities of power, but also complement campaigning with collaboration with powerful actors we may be less comfortable with, particularly progressive investors and companies.
- Civil society is more effective when it differentiates between leading and laggard companies regarding their respect for the human rights of workers and communities. Benchmarks and rankings can help to highlight better practice, encourage further respect from progressive companies, sharpen the reputational risk for the majority of companies that are doing far too little, and open space for governments to regulate a minimum floor of acceptable corporate behaviour.

In the next decade, the radical shift required to embed human rights in business practice must be combined with the need to ensure a fair and fast transition to a low carbon economy. Civil society faces a huge challenge and has a vital role to play to help re-shape markets so that they deliver shared prosperity and shared security for those on the planet now, and future generations.

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