

Human Rights and Sustainability: A Corporate Perspective

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One of the most important social phenomena resulting from the spread of capitalism, democracy, and market economics has been the recognition of global, immutable human rights, driven principally through treaties and declarations of the International Labour Organization and the United Nations. A principal catalyst has been the dominant economic and political position played by the United States in the post–World War II world community.

However, the mindset of American business on human rights since the 1950s has been complex. Business leaders have been proponents of free markets, the rule of law, adherence to the laws of the countries in which they operate, and the application of their workplace best practices globally. But they also have consistently taken the position that their internal workplace practices should reflect the normal legislative and regulatory process of the country in which they operate and should not be imposed by treaty. In particular, upholding internationally recognized human rights based on declarations and treaties has not been viewed as part of business activity. In our view, this is not a position on which global U.S. business can hope to survive and thrive in today's globalized economy.

Notwithstanding the substantial overall economic gains in the last century, we live in a world of vast economic inequality and social diversity. The difference in income per head between the richest industrial and the poorest non-industrial nation today is about 400 to 1 (Landes 1998). Two hundred fifty years ago, the gap between the richest and poorest countries was around 5 to 1, and the difference between Europe and South Asia was about 2 to 1 (Bairoch 1979). At the extremes, the gap is still growing, and some countries continue to grow poorer in absolute terms (De Long 2004).

Meanwhile, today's world is increasingly interconnected and increasingly more complex. Falling trade barriers, instant communications, relatively fast and inexpensive transportation, and rapidly changing technologies are shaping the world economy. More recently, rising energy, food, and commodity costs; higher levels of consumer consumption; and increased urbanization have built further stresses into the global economy.

As a consequence of these global dynamics, it has become clear that many pressing social problems, ranging from lack of respect for human rights to adequate food supply and high food prices to climate change, are beyond the capacity of any sector or nation to solve in isolation. The emerging consensus is that cross-sector international collaboration, creativity, and courage will be required to address these major global problems.

In this context, the 21st century brings a new set of expectations to international business. It is no longer sufficient to provide a quality product or service. Today, expectations of business are broader, and social dynamics are inextricably linked to business success. For a business to maintain quality and its license to operate, make a profit, minimize burdensome regulation, serve consumers, and obey the law, it must address the following social expectations.

First, business should help enhance the sustainability of the communities it serves. Leading companies understand that if the communities they serve are not sustainable, the business itself will not be sustainable. Companies must devise sustainability strategies linked to their core business and capabilities in order to enhance their license to operate in communities and to garner the trust and goodwill of business partners and consumers both locally and worldwide. Their sustainability strategies must meet the needs and objectives of the business and its shareholders while simultaneously enhancing the factors driving community-level business success.

Second, any successful sustainability strategy must build on the aligned efforts of the business as well as relevant government and civil society actors as the key to accelerating sustainable development. It is in businesses' interest to harness the collective resources and skills of other sectors in order to address the social issues that are barriers to continued business success. To effectively address the world's most pressing problems, these efforts need to capitalize on the comparative advantages that civil society, government, and business can each bring to the table.

And third, a successful business must be—in both perception and reality—a functioning part of every community in which it operates. In the 21st century, successful companies are genuinely and routinely

engaged in the public debate in the communities where they do business. Particularly for global companies, this engagement helps preserve their vital license to operate, building trust and goodwill, and helps ensure that businesses address risks and opportunities at the community level in a timely manner.

Business and Human Rights

Human rights are universal and indivisible—their realization enables a wide range of social goods, including freedom, wealth, opportunity, and equality. Governments have a duty to uphold their citizens' rights as reflected in national laws and regulations. And yet many countries are failing to uphold this responsibility, largely as a result of inadequate labor inspection, judicial systems, or budgetary resources.

Beginning in the early 1990s, media, civil society, and social investors began pressing companies to step into this void by providing social compliance systems for their global supply chains. Ever since, companies have faced practical and institutional barriers in substituting themselves for the labor inspection and enforcement role of governments. Nevertheless, the primary accountability remains with government to protect its citizens and enforce the law.

The debate about the role of business in addressing human rights is following the same pattern as the environmental debate, which began in earnest 20 years ago. Companies are moving from denial of responsibility for human rights to signing the United Nations Global Compact commitment to human rights principles and adopting codes of conduct, supplier standards, and social compliance activities. Moreover, companies are increasingly realizing that good human rights practice can be a source of competitive advantage, and they are reaching across industries to build cross-sector solutions to human rights issues. Businesses increasingly understand that positively impacting human rights is in the interest of their employees, the communities in which they operate, and their own bottom line.

Historical Perspective

The foundation of today's human rights doctrine and international law is the Universal Declaration of Human Rights (UDHR), unanimously adopted by the members of the United Nations on December 10, 1948. At a fundamental level, it clarified for the first time the internationally accepted rights that all people could consider indivisible and interdependent.

To further codify the declaration, the United Nations in 1966 adopted two covenants that now enjoy almost universal ratification

worldwide—the International Covenant on Civil and Political Rights (<http://www2.ohchr.org/english/law/ccpr.htm>) and the International Covenant on Economic, Social and Cultural Rights (http://www.unhchr.ch/html/menu3/b/a_ceschr.htm). Together, these three landmark documents make up what is considered the International Bill of Human Rights. They encompass traditional labor and employment rights, along with a wide range of other rights.

These human rights documents were targeted toward states—and, indeed, states remain the organs of society responsible for ratifying the covenants and for reflecting their standards in national law. Although the UDHR calls on “every organ of society” to strive to respect rights and to contribute to ensuring their universal recognition and enjoyment, until the 1980s there was very little focus on the role of business in respecting human rights.

In 1984, one of the world’s worst industrial disasters took place in Bhopal, India, raising a wide range of new questions about businesses’ obligations to the health and safety of workers and the remuneration of victims of industrial accidents. Civil society and student campaigns on divestment from South Africa on the issue of apartheid also began gaining traction in the mid-1980s. Civil society took its arguments against apartheid straight to American companies’ shareholder meetings, forcing discussions about complicity and the responsibilities of foreign business operations in states violating human rights. By 1988, more than 170 American companies had sold their holdings in South Africa (Paul 1988).

The 1990s saw a growing intensity of the debate among the media, companies, and civil society on human rights issues. In many cases, companies were perceived as more powerful than states, and society began to ascribe to companies the responsibilities that had in the past been limited to states. Most often, working conditions in the developing-country supply chains of major multinationals came into question in circumstances where governments were unable or unwilling to enforce their own labor laws.

In the absence of government action to uphold human rights, businesses began to self-regulate to act in their own defense. Nike, Reebok, Levi Strauss, and Gap, Inc. were among the retailers first pushed by media and civil society campaigns to address the complex issue of low labor standards in the developing world. When these multinational companies began to look into labor conditions in their supply chains, they found that many of their suppliers’ workplaces had standards far below their own and far below what most Western consumers would consider acceptable.

Particularly in countries in which the state was unwilling or unable to uphold its own labor laws, multinationals like these found themselves in the difficult position of having to assess and enforce human rights standards in their suppliers' workplaces. As a result, these companies adopted codes of conduct and supplier standards and they created processes to monitor supplier performance. These early codes drew primarily on standards of the International Labour Organization (ILO) as their fundamental underpinning. In particular, these codes reflected ILO standards encompassing freedom of association, collective bargaining, discrimination, forced labor, and safety and health. As a consequence, human rights began to find its way into business practice—serving as a useful, internationally recognized, defensible set of standards against which companies could assess their business partners.

These early social compliance efforts were largely focused on sending auditors to supplier workplaces to conduct assessments against the company's code. Business used a tool it was familiar with—auditing—to enforce its social compliance rules. These efforts largely fall into what corporate responsibility expert Simon Zadek calls the second stage of corporate responsibility—compliance (Zadek 2004; see Table 1). In this stage, Zadek explains that companies will do “just as much as we have to,” adopting a policy-based, compliance-driven approach to human rights as a cost of doing business.

TABLE 1
Zadek's Five Stages of Corporate Responsibility

Stage 1: Defensive. “Its not our job to fix that.”
Stage 2: Compliant. “We’ll do just as much as we have to.”
Stage 3: Managerial. “It’s the business, stupid.”
Stage 4: Strategic. “It gives us a competitive edge.”
Stage 5: Civil. “We need to make sure everyone does it.”

Source: Zadek 2004.

Meanwhile, the vast majority of companies remained in Zadek's first “defensive” stage of corporate responsibility on human rights issues in the 1990s. These companies remained convinced that labor conditions in faraway countries were simply not their responsibility—that the obligation to take action remained with the state. However legitimate this claim was in principle, many of these companies soon began to see that society's expectations of them had shifted dramatically. They were now expected to assume some responsibilities of the state, particularly in countries with weak or non-existent governance or rule of law.

By the end of the 1990s, the numerous companies taking action on human rights had produced a proliferation of individual company codes,

many of which varied in their standards only along the margins. But large suppliers in the developing world soon found themselves being audited by multiple multinationals on a regular basis, each time to slightly different codes. Acting independently, the multinationals were without a strategy for streamlining audits and addressing this problem. They had limited mechanisms and tools to cross-check supplier lists to make the process more efficient. And questions began to arise about whether these efforts at social compliance were actually improving conditions for workers.

Addressing Root Causes

As companies sought to improve the effectiveness of compliance-driven approaches, a new branch of civil society organizations began to form to help them in this endeavor. Rather than campaigning against companies for their failures in this area, these enterprising new organizations decided to seize the opportunity to devise ways to make more effective and long-term improvements in supply chain conditions.

Organizations such as the Fair Labor Association (FLA), formed in 1999 as an outgrowth of the Clinton administration's Apparel Industry Partnership, took on the issue of the lack of a global auditing standard and decided to issue its own cross-industry code, which it hoped would be recognized by a wide range of companies. It also took on the question of audit validity and transparency by vetting its own auditors and requiring that findings from audits conducted through the FLA be made public on its website. The FLA and similar organizations began focusing on standardizing and streamlining human rights auditing efforts and providing transparent audit results to society (Van Heerden 2006).

Thanks in part to the innovative work of organizations like the FLA, and due to companies' ongoing efforts to improve their monitoring models, a new way forward began to emerge. This new approach required, among other things, that businesses take a look in the mirror and commit to addressing their own roles in human rights issues in supplier workplaces.

Here Nike served as a leading example. As the company sought to improve the results it was getting from its workplace monitoring program, Nike's social compliance team began to analyze the root causes of the problematic workplace conditions they were finding—and not successfully correcting—via audits. They were reaching the third stage in Zadek's model—managerial—in which they realized that they needed to understand the links between their business and the issues themselves (Zadek 2004).

The Nike team embarked on an in-depth inquiry to answer this question, and their findings were remarkable. Rather than concluding

that all blame lay elsewhere, they determined that, in part, their own procurement practices were exacerbating, and in some cases causing, the chronic workplace problems they were finding in their audits. It soon became clear that this dynamic was embedded throughout the garment industry. Gap, Inc. also publicly reported their finding that their own sourcing practices contributed to the human rights issues their suppliers were grappling with.

As a result of these findings, many leading companies complemented their monitoring work with internal initiatives focused on understanding and addressing the issues caused by their own procurement practices. Many companies took steps to ensure that procurement staff were accountable for social compliance monitoring results, that they were a part of the discussion with suppliers about improving practices, and that they examined their own buying practices to ensure that they were not causing or exacerbating compliance problems.

The Need for Improved Human Resources Management

Another dynamic identified in the search for root causes was the need for improved human resources management at the supplier level. It became clear to many companies engaged in active monitoring that their suppliers often lacked the capacity to understand the business benefits of making basic improvements in the workplace. As a result, these companies began to focus on building suppliers' human resources capabilities to drive improved conditions over the long term. For example, they pointed out how much money suppliers could save in reduced overtime payments by reorganizing their worker shift systems. With more streamlined shifts, suppliers would see their costs drop, driving a self-interested push toward reducing work hours that would benefit the workers and satisfy the company codes.

The FLA also underscored the importance of improved human resource management in its monitoring approach. Its search for a model that effectively addressed root causes resulted in what the FLA now calls "sustainable compliance"—a model in which audits ask the question "why" more often than "what." Today, the FLA's top priorities are capacity building among suppliers and development of human resource management skills. FLA president Aurret van Heerden (2006) has noted that this new effort takes greater time, energy, and resources, but it also pays higher dividends in improved conditions.

The first priority of many companies today remains simply monitoring their supply chain—conducting audits to try to ensure that problematic conditions are not present. But leading companies are also complementing these efforts with work to address the root causes of the most chronic and problematic human rights issues they find in their supply chains. This

effort is increasingly seen as the only way to sustainably address the problems and provide real return for a company's investment in compliance. These interventions tend to treat suppliers and business partners more as partners in this work, rather than as subjects of punitive audits.

Although still largely in development, this new social compliance model has the potential to overcome many of the pitfalls that plagued the original monitoring approach. These advances can empower companies to move from Zadek's third stage—managerial—to his fourth stage: strategic. In this way, companies can seek out win-win solutions, be less paternalistic, and engage in more collaborative dialogue with their suppliers about how best to address issues. These strategic efforts protect their brands, create a competitive edge, and begin to address the root causes of human rights problems.

Clarifying the Framework for Business

As leading companies were working to improve their monitoring approaches into the early 2000s, a debate was taking place within the United Nations and among civil society groups on establishing a framework for companies on human rights. This debate festered largely because there was no clear path toward articulating the human rights obligations of companies and how they differed from the obligations of states.

The United Nations' first attempt at providing significant guidance to companies on human rights was a document issued in 2003 called the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*. Beginning in 1998, the UN had appointed a group of experts to tackle the difficult question of what businesses' obligations were with respect to human rights. After many years of work, the group produced its document, containing 23 human rights standards for companies, which came to be known as the UN Norms.

Although the Norms were welcomed by some civil society groups, they were widely panned by business. The offending portion of the document, from a business perspective, was found in its third paragraph, which implied that businesses had the same responsibilities as states to "secure the fulfillment of, respect, ensure respect of and protect human rights." It went on to say that businesses were "obligated to respect" the responsibilities and Norms outlined in numerous state-to-state treaties and conventions on human rights.

This was highly problematic from a business perspective because there were no distinctions made between the responsibilities of states and those of businesses. It introduced a burden of responsibility that most businesses believed was not appropriate. Most agreed that they had an important role to play in respecting rights but maintained that their roles and obligations were different from those of states. Meanwhile,

many civil society groups argued that the Norms were a positive step forward and argued that the UN should adopt the Norms as a formal position on business and human rights.

After years of debate and disconnect on this topic, then-UN Secretary-General Kofi Annan appointed a Special Representative on Business and Human Rights to move the debate forward and to provide the clarity that was still urgently needed. Harvard professor John Ruggie, a leading political scientist and expert on corporate responsibility, was given this task. Ruggie began his mandate in 2005 and spent three years conducting in-depth research and holding extensive consultation with business and civil society.

In June 2008, Ruggie presented his findings to the UN Human Rights Council, which endorsed them. The findings were presented in the form of a policy framework that outlined clearly what Ruggie saw as the differing roles of states and businesses with respect to human rights. Feedback on his report from a wide range of stakeholders has been largely positive. Criticism has come from those hoping that he will expand his work in its next three-year phase to further investigate and clarify his positions on key issues. The business community largely found Ruggie's report to be a helpful contribution to the business and human rights debate, and there are indications that companies will now begin to use his framework as their guide as they formulate their own human rights approaches.

Ruggie's framework (2008) is centered around the core concepts of "protect, respect and remedy." He maintains that states have a duty to protect rights, that companies have a responsibility to respect rights, and that access to remedies for victims of human rights abuses must be greatly strengthened. This simple and straightforward approach has succeeded in providing a framework within which these complex issues can be discussed—and progress can be made.

Nevertheless, a number of key questions in this debate remain unanswered, in particular about what businesses are obligated to do under international law. Ruggie explained that states have an obligation to protect rights under international law, but he noted that his research showed that very few states had policies, programs, or tools in place to help them understand, identify, and address human rights challenges related to the private sector. He concluded that states are the most critical players on this point and that they bear the most urgent responsibility to step up their efforts. Companies are increasingly facing legal issues in the North for alleged rights violations in the South, which Ruggie noted is only likely to escalate given the lack of international regulation or law on business and human rights.

Ruggie also noted in his report that, given the lack of an international legal framework on human rights, companies are taking the initiative to

self-regulate. The International Chamber of Commerce, International Organization of Employers, and the Business and Industry Advisory Committee issued a comment on Ruggie's report reiterating their belief that companies must obey the law wherever they operate, even if it is not enforced, and follow international standards where law is absent.

Industry and Stakeholder Collaboration

As a result of these developments, companies and industry associations are now seeing that it is in their own interest to define their values and expectations in this area in order to effectively manage risk and avoid complicity in rights violations. To this end, companies have devised a number of industry and stakeholder collaborations.

These collaborations amount to self-regulation, but they should be considered a step forward. These efforts take companies into the final stage of Zadek's model—civil—in which companies realize the value in all relevant actors' addressing rights simultaneously. They seek the "level playing field," often removing incentives for competitive advantage on human rights and intentionally seeking out good practice that reduces risk for all.

Indeed, collaborative approaches are founded on the desire to seek out "shared value" as explained by Michael Porter and Mark Kramer in their seminal *Harvard Business Review* article titled "Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility" (Porter and Kramer 2006). They identify points of intersection between the interests of business and the interests of society, focusing attention on the most critical issues with the highest mutual payoff. They emphasize that businesses must no longer focus on defense or on philanthropic efforts that are only tangentially related to core business objectives. They advocate the creation of shared value in the most sustainable of ways—when companies focus their efforts squarely at the intersection of business and societal benefit.

Many of the voluntary industry and collaborative initiatives currently under way on the topic of human rights seek to create this shared value. One compelling example is the Kimberley Process, whose tagline is "from conflict diamonds to prosperity diamonds" (<http://www.kimberleyprocess.com>). The process seeks to address the violent conflict, human rights abuses, and arms trade that is linked to the diamond business in certain African countries. It has done so by introducing a certification scheme through which the diamond industry can monitor, address, and come into compliance with a code that is intended to benefit mine workers, communities, and society as a whole while providing an appealing product for retail companies to market to Western consumers.

The initiative has stemmed the flow of conflict diamonds from 15% of the market to less than 1%, and it has benefited diamond retailers and diamond-producing communities alike.

Still other initiatives have sprung up to grapple with the fundamental questions Ruggie took on in his mandate. The members of the Business Leaders Initiative on Human Rights seek to find “practical ways of applying the aspirations of the Universal Declaration of Human Rights within a business context and to inspire other businesses to do likewise” (<http://www.blihr.org>). BLIHR’s member companies, including The Coca-Cola Company, have engaged a wide range of other businesses, civil society, and governments in an effort to examine and find answers to these questions.

In late 2008, BLIHR, with the goal of complementing Ruggie’s work, published a *The Guide to Integrating Human Rights into Business Management* (<http://www.blihr.org>) to help businesses understand human rights principles and apply them in business systems. BLIHR seeks to inspire businesses around the world to act on human rights out of self-interest, to the benefit of society. The guidance is helping to articulate a specific way forward for business on human rights, in the context of Ruggie’s framework. This approach helps companies understand the core commitments they can constructively make on human rights, which can include commitments to the following activities:

- Respect human rights.
- Identify their human rights impacts and take action that is appropriate to address them.
- Engage global and local stakeholders on human rights issues.
- Identify and expeditiously resolve human rights issues.
- Focus auditing systems on corrective action and on the identification of win–win opportunities for business partners being audited.
- Address issues that are systemic in nature, building necessary alliances with civil society, government, and multilateral agencies.
- Train and educate business partners and staff on human rights worldwide.

Companies are also finding great value in direct collaboration with civil society on human rights issues. This type of approach is often the only way to get at issues with complex root causes stretching far beyond the scope of any single business.

An example of such collaboration is The Coca-Cola Company’s experience in El Salvador. In response to a challenge from its stakeholders in 2004, Coca-Cola began to engage with a wide range of

groups in El Salvador on the endemic issue of child labor in sugarcane harvesting. To foster a multisector, multistakeholder response to this complex issue, Coca-Cola encouraged the formation of a diverse coalition of industry, suppliers, civil society, and government. Encouraging a local response to this issue produced very positive returns.

In just four years, the Salvadoran industry and government significantly stepped up their efforts to combat child labor in sugarcane, with the incidence dropping by 50% in that time frame, according to the Salvadoran Ministry of Education. Increased numbers of children were either in school or engaged in alternative forms of labor, benefiting the Salvadoran industry and government by demonstrating their ability to address this local issue over the long term and benefiting Coca-Cola and its global stakeholders by demonstrating that multinational companies can play constructive roles in fostering local solutions to human rights problems.

Looking Ahead

For companies taking action on human rights issues, this effort is not a theoretical exercise. For business, human rights must translate into a pragmatic set of standards and actions to be taken by a company, as well as broader initiatives involving alignment between government, civil society, and the business itself.

As Simon Zadek points out, a company undergoes a major shift when it makes the transition from seeing corporate responsibility as opportunity creation rather than simply as risk mitigation. Although the vast majority of human rights work by companies is still firmly in the category of risk mitigation, there is increasing recognition of the business opportunities posed by respecting human rights.

The most immediate human rights opportunity that business gives to society is the provision of jobs, which enables people to fulfill one of the most basic human rights—the right to work. Companies can also improve peoples' rights in the workplace, including rights to compensation, freedom of association, nondiscrimination, and other core labor rights. When businesses provide goods and services, they also help people realize rights, especially when those goods or services improve health or education. When capitalizing on these natural and mutual benefits, companies are reaching for highly strategic shared value, as identified by Porter and Kramer.

Conclusion

A great deal of progress has been made in the last 15 years toward a better understanding of the role of business in respecting human rights. In our globalized and interconnected world, the media and civil society

draw people's attention to rights violations committed in any corner of the world. Faced with negative media coverage of human rights issues related to their brands, companies initially react defensively, denying that they have a role to play in addressing the issues. As pressure increases, they pursue compliance approaches, but with great difficulty and limited returns. As they move to embed their efforts into their management approaches, they begin to see improved human rights outcomes. And as they embrace truly strategic, collaborative approaches, they reach the realm of shared value, where both businesses and societies benefit.

Twenty years ago, the debate about companies' environmental responsibilities was similar—the rationale for action was driven mainly by risk, the understanding of environmental opportunities was limited, and most boardrooms rarely heard mention of environmental issues. Although today human rights topics are similarly absent from most boardrooms, we believe that human rights will increasingly become an aspect of business management viewed by the business community as vital. Beyond simply mitigating risk, we expect that companies will increasingly recognize the opportunities posed by recognizing and respecting human rights.

This increased activity and business commitment will, in turn, result in clearer guidance, parameters, and frameworks on business and human rights. As companies, civil society, and governments increasingly collaborate and innovate, new paths for mutually beneficial action will emerge. Whether called “shared value” or, as John Ruggie remarks in his landmark report, “shared responsibility,” this is the frontier of business and human rights. All sectors and actors bear some responsibility for improving conditions, and all have a constructive and appropriate role to play in spurring the realization of human rights.

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