

# **Guidelines for Civil Society Advocacy on Human Rights and Corporate Behavior**

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## I. Introduction

Note: These guidelines are intended to guide civil society organizations in their advocacy work promoting improved corporate awareness and compliance of human rights. They also apply to advocacy on corporate compliance of environmental and economic impact (the latter understood as economic impact to communities and the general public in as much as they are influenced by corporate behavior). Throughout this document, arguments lent to corporate behavior and human rights advocacy can generally apply to environmental advocacy as well.

Before we get into the role of civil society in corporate human rights compliance, it is useful to briefly reflect on the implications of fundamental international human rights law on all actors of society, including actors of the private sector. The Universal Declaration of Human Rights (UDHR), the most significant and internationally accepted human rights treaty ever signed, reads in its opening paragraph:

The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. (Universal Declaration of Human Rights, 1948)

Of particular relevance to the issue underpinning this discussion, namely corporate responsibility to respect human rights, is that “*every organ of society ... shall strive ... to promote respect for these rights and freedoms ...*”. This unequivocally answers the question of whether corporations or other businesses must heed international human rights law. For civil society organizations advocating for corporate compliance of human rights law, this is a fundamental starting point of any discussion and must frame and underpin all subsequent work, programs, and advocacy strategies.

# Sustainable Development and Human Rights

Over the past quarter century, global interrelations have gone through massive transformations. Alongside the industrialization and globalization of societies and their economies that has occurred over the past two centuries we have seen massive depletion and transformation of natural resources, as well as alarming levels of often irreversible environmental degradation. Parallel to this transformation the human consequences of this transformation, while technology and economic growth and development has increased the life expectancy, health and quality of life for some it has unarguably deteriorated that of many others. Human exploitation is a common expense of economic growth. As a global society, we have awakened to this reversible injustice. The UDHR is a reflection and product of this understanding and attempts to capture the concerns for humanity in the wake of global transformation.

In the last quarter century, as a global society we have even further deepened our understanding of the relationships between *people*, the *planet* and *human relations* and have begun to create a framework and guidance for harmonizing this Earth relevant trilogy. The relationship between people, planet and profit (the three Ps) is at the heart of the development debate, and achieving the notion of what we call “sustainable development” which might be understood as a harmonic and reinforcing relationship between the three Ps, should be our overall long-term goal.

Human rights issues, while the subject of much sociological and political debate in the 19<sup>th</sup> century in the wake of western European industrialization, have only appeared on the global development agenda as legal or rights based issue largely over the past 50 years since the UDHR, and have been largely influenced by the division of world society into two broad ideological camps, capitalism and communism. Subsequently and in great part due to the prevailing predominance of western capitalism, human rights have been categorized principally in terms of civil freedoms of the individual on one hand, and perhaps less so as issues pertinent to basic human development on the other. The former have come to be labeled as civil and political rights, and the latter as economic, social, and cultural rights.

As great political paradigm transformations occurred in the latter half of the 20<sup>th</sup> Century, a shift has occurred in the importance that western global society assigned to these “types” of rights. Since the collapse of the communist paradigm as a viable option for social, political and economic organization, and with the prevailing preference for democratic over dictatorial regimes accompanying this change, western emphasis of the first quarter century (since the UDHR) on civil and political rights, has shifted. Human well-being is gaining ground and occupying a critical place at the center of the development debate. As a consequence, economic, social and cultural have taken on greater importance on the development agenda and more generally as a concern of international law.

We are seeing that human rights issues, particularly economic, social and cultural human rights issues, are appearing on agendas that before ignored any relationship to human

condition. Such is the case for example of trade relations, in which for example, the World Trade Organization (WTO) is slowly recognizing the important impact international trade has on the environment and on people, and more specifically on human rights. Also in the trade realm, regional trade regimes are receiving enormous civil society pressure to consider environmental and human rights concerns. The business sector, the focus of these guidelines, has also received strong pressure from society to recognize corporate impact on human rights of individuals and communities as well as on environmental resources. The pressure on US garment to consider human rights violations in Asia as a result of their production processes, or the boycotts of Shell and other petrol companies for human rights violations which occurred at the expense of oil extraction, are examples of how society channels pressure to the business sector to address human rights obligations.

The general awareness of human rights impact of human activity is growing and this mandates a reflection of such impact on our understanding and agreement over what human rights we ought to protect as a society. The discussion of corporate responsibility for human rights compliance, which is a fairly new development in international relations, occurs in this context.

For the purpose of civil society advocacy on corporate human rights compliance, the key issue at hand is to deepen understanding of how sustainable development is conditioned by human rights compliance, strengthen our knowledge of what are human rights, what international treaties and national laws frame and enumerate human rights, and to what degree companies and states are responsible for ensuring that the corporate sector comply with internationally accepted and nationally protect human rights. Once we have this know-how, knowledge and capacity we can proceed to designing our advocacy strategies to guarantee human rights in corporate behavior.

## II. The Visibility of Business Impact on Human Rights

Business can have a largely diverse impact on people, and more specifically on human rights. Businesses come in all sizes and shapes; they are of very different types and can have very diverse impacts and implications on individuals and communities. The larger a business is and the more expansive its geographical extension the more likely it is to raise general public concern over potential hazards it may produce to the environment or to individuals and communities. The smaller it is and the less society is familiar with the business, the more likely that its activities and impact will be overlooked or unnoticed by society. Also, the visibility of its impact will be determined by the direct or indirect nature of the impact itself. Employee accidents and/or deaths resulting from hazardous or unsafe production processes will be more visible to society than health impacts of production processes on individuals or communities. Yet statistics may show that far more deaths occur from cancer resulting from contamination and pollution by industry, than from work-related injury.

The degree to which companies will take action in response to social pressure due to non-compliance with environmental or human rights obligations will also vary according to the variant mixes of pressure and incentive dynamics. Over the last several decades, most companies that have responded to social pressure to address environmental and human

rights impacts and obligations have been large multinational companies with high consumer recognition and world-wide visibility; companies such as Nike, Shell, Rio Tinto, Monsanto, etc. are the common targets of anti-business advocacy campaigns. These are the easy targets. Civil society organizations which exert pressure on non-complying companies, tend to aim at large companies because their con-compliance is easiest to identify and to attack through common media channels.

Yet most corporate impact on people and on the environment happens at the very local level, as a result of the activities of small and medium sized companies that generally go unnoticed at the international level, and even at the national level. In this respect, most poor corporate behavior on human rights compliance and on environment impact goes unaddressed by civil society groups, despite the fact that it is the largest source of corporate misconduct. Visibility of misconduct hence, is critical to corporate human rights compliance and to environmental misconduct.

For civil society organizations interested in promoting corporate compliance of human rights norms, the first and most critical step to take is to determine how local businesses (small and large) are impacting human rights and what the extent of the impact really is in terms of overall social conditions. Not all negative impacts may be visible. Impacts may vary in degrees of importance or urgency, while addressing the most visible or larger companies may not get to the heart of the most urgent problems.

### III. Voluntary Codes of Corporate Conduct and International Corporate Law

Voluntary Codes of Conduct date back several decades, and have been an important discussion topic on corporate social and environmental responsibility. They are grounded in ethical and moral self-monitoring initiatives. Yet as most critics of voluntary codes will agree, they are essentially non-binding and optional commitments which companies may or may not choose to abide by in their day to day activities. Even companies sustaining that they adhere to codes of conduct provide little evidence that they actually comply with these codes. Nor is there much in the way of external verification of compliance with codes of conduct on behalf of civil society or state organizations or agencies.

Innumerable codes *do* exist to guide corporate behavior, some of which are company specific while others have been developed in partnership between companies and civil society representatives. The most recent and most talked about internationally promoted code of conduct is Kofi Annan's Global Compact, which offers nine elemental voluntary codes covering labor, human rights and environmental corporate behavior. While many companies have subscribed to these nine principles of corporate social responsibility, or to other codes they remain entirely in the voluntary sphere and depend on the good will of enlightened business to adopt and actually implement.

A useful aspect of voluntary codes is that they serve as strong guidance and educational tools for companies to begin to address their social and environmental impact. In this regard, they *are* indeed an important step towards corporate social and environmental responsibility compliance; but only a step.

Most advocates of greater corporate accountability for social and environmental impact would argue that the logical step to take at a national and even at an international level is to codify codes of conduct converting voluntary codes into binding law, whether at a local or international level. The codification of voluntary codes of conduct is a highly controversial topic, opposed by many companies and many states, which see binding business to international law, for example, as a highly complex and unattainable goal.

Yet one should not overlook the fact that many voluntary codes, such as the Social Accountability 8000 which incorporates human rights standards for business practice, the Caux Roundtable Principles for Business, the CERES Principles (formerly the Valdez Principles), the International Chamber of Commerce Business Charter for Sustainable Development, the ISO standards giving guidance on Environmental Management Systems, and sector codes such as efforts by the petrochemical industry to establish operational norms, or the Dublin Principles on alcohol production and its impacts, are slowly becoming accepted business practice for companies seeking guidance on corporate social and environmental responsibility. What may have been considered inconceivable harmony on norms of conduct before the first code ever appeared, may in fact become inescapable forms of conduct for future corporate activity. Law is none other than the normalization and codification of human activity which derives in most cases from customary practice. In this respect, the conversion of voluntary codes into law is a logical step over time. Once a voluntary code becomes universally accepted as a standard, legislation of the standard can more easily be realized.

In this light, we should not undervalue the importance of codes of conduct. Civil society organizations must continue to assist setting standards, developing codes of conduct where necessary, and pushing for the codification and legalization of these codes as circumstances permit. International law on corporate behavior is already in infant stages and it is only a matter of time before binding international law for corporate behavior appears on the discussion agenda.

#### IV. International Human Rights Law.

The discussion of content of international human rights treaties pertinent to business is beyond the scope of this guideline. Several studies exist on the relevance of international law for the corporate sector. We can briefly highlight some of the more significant human rights treaties that can guide advocacy work on corporate social responsibility. These are:

- The Universal Declaration of Human Rights (UDHR-1948)
- The International Covenant on the Elimination of All forms of Racial Discrimination (ICERD-1965)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR-1966)
- The International Covenant on Civil and Political Rights (ICCPR-1966)

- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-1979)
- The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT-1984)
- The Convention of the Rights of the Child (CRC-1989)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICPRMW-1990)
- The African Charter on Human and Peoples' Rights (1981)
- The American Convention on Human Rights (1969)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

In term of specific human rights that derive from these treaties and conventions many may or may not apply to specific corporate activities. The International Council on Human Rights Policy (ICHRP) suggests that some of the more relevant rights for workers are for example:

- Freedom of association and the right to organize and bargain collectively
- Non-discrimination
- Prohibition of bonded and forced labor
- Prohibition of child labor
- Safe and healthy work environment
- Payment of a living wage (we may qualify as “an adequate” wage), and
- Reasonable working hours and overtime pay.

Others, as the ICHRP also rightly points out, in the realm of economic, social and cultural rights are also significant in terms of the impact of corporate behavior, such as:

- The right to food
- The right to health
- The right to education

- The right to housing
- The rights of vulnerable groups
- The rights of indigenous peoples
- The right to information, and
- The right to a healthy environment

National human rights laws as well as local and international environmental law can and must also play an important role in framing corporate liability for social and environmental impact. Constitutional law for example, provides one of the most convincing and most strong arguments to sway courts to protect victims of human rights abuses. Many constitutions written in the last several decades make reference to human rights treaty obligations as well as environmental protection and access to information as basic and essential rights for individuals and communities.

What is of great relevance for the scope of the topic proposed here is to stress the importance that civil society groups focusing on corporate social responsibility review, study and use international human rights treaties in their advocacy work. Grounding advocacy in international human rights greatly legitimizes pressure on business to heed to human rights obligations and can serve as clear guidance for ongoing advocacy strategies. As was stated in the introduction, international human rights must be the backdrop of advocacy work on corporate social responsibility.

#### V. How do Companies understand Corporate Social and Environmental Responsibility?

Companies are as diverse as are people. Each company will see itself in a different light and determine its place in society based on a unique and personalized set of criteria and social values. While numerous companies have awoken to their role as “corporate citizen” and have taken enlightened steps towards greater accountability for social, environmental and economic impact, these are only a select few. A far greater number have not come to terms with their role in society, or even understand what is its social, environmental and economic footprint. As Milton Friedman suggested, most companies are out to make profit and profit is the only driving force behind their actions. It is most likely that companies will react to pressure from society only when they receive it, and not out of some moral or ethical self-motivated initiative to become good corporate citizens.

Most companies:

1. Lack knowledge of their social, environmental and economic impact
2. Lack interest or do not understand the relevance of their social impact or role in society (beyond providing the immediate and most obvious impact of providing employment and a product or service)

3. May not care about their social and environmental impact, unless it affects their profit margins
4. Lack incentives to change their way of operating towards more a more environmentally efficient use of resources and greater adherence to human rights norms

And in the case they have *at least some* understanding of what it means to be socially and environmentally responsible,

5. Lack ideas on how to transform their productive processes
6. Lack tools to achieve such transformation
7. Lack human and financial resources to finance the change.

Specifically in terms of human rights compliance, most businesses, and most people for that matter, do not know what are human rights, nor do they understand how their activity affects the human rights of their workers, and much less of the individuals in the communities in which they conduct their business. In fact, human rights are commonly mistaken to be solely in the civil and political sphere. This is largely due to the fact that for nearly 40 years, the international arena (in the west and dominated by democratic and capitalist societies) paid much more attention to rights violated by dictatorial and/or communist regimes, and hence centered their concern on civil and political human rights. It is not uncommon for a business leader to think that because he/she does not kill, torture or restrict freedom of association of his/her company's employees, the company is complying with human rights obligations. Economic, social, and cultural rights often go overlooked as human rights, and in many cases, these are rights that are commonly violated by business. Even legal actors such as judges and attorneys fail to consider or assign importance to economic, social and cultural human rights violations perpetrated by business.

Education on human rights definitions and environmental as well as economic impact (as well as the development of ideas on what to do about it) are critical steps for companies and for civil society organizations working in the area of corporate social responsibility to take to make progress.

## VI. Measuring Human Rights Impacts

Measuring social, environmental and economic footprints is another area of great need of attention. We commonly assume, almost by intuition or self-biased speculation, that certain corporations or businesses are violating human rights, contaminating the environment, or negatively impacting the economies of communities. But how do we really know that this is the case, especially when there are no lawsuits, or complaints coming from victims? If we were to sit with companies willing to explore and understand their social and environmental impact, and try to identify compliance, where would we begin? What questions would you ask to determine whether companies are good corporate citizens? Companies will instinctively (as most anyone would) suggest that they are not contaminating, that they are treating their employees fairly, and that they make a positive contribution to community development, surely all with very valid and verifiable arguments. Yet who determines the basis for evaluation? Who sets the standard? Who

determines whether X wage is a fair wage, whether Y use of energy is efficient or whether it is wasteful? Or whether the community is better or worse off with or without the company? This is where measurement standards come into play, and are of critical importance to gain perspective and objectively measure corporate footprints.

Several efforts are underway to develop indicators for companies to use to measure their social, environmental and economic footprint. One such effort is the Global Reporting Initiative, a non-profit international organization that has developed standardized indicators to measure such things as corporate energy use, community relations, and labor standard compliance, among many others. The GRI is an international effort to set a reporting standard which will help compare one company's performance with another's. The GRI by no means attempts to define what the thresholds of performance should be, but rather to standardize a reporting process so that we can more objectively evaluate corporate performance. It leaves the interpretation of the statistics to the experts in each field. What is important is that the information obtained through this indicators measurement process is ordered, systematic and universal in application.

Measurement tools are necessary both for companies to monitor their own activities and processes but also for civil society organizations to monitor corporate compliance. Without effective measurement tools which effectively measure human rights and environmental obligations compliance we cannot begin to address evaluation of business performance on corporate social, environmental, and economic responsibility.

## VII. The Role of Civil Society in Corporate Human Rights Compliance

The following are recommendations for civil society groups in particular to take steps towards more effective corporate compliance of human rights as well as environmental norms. They are intended to give a broad and multifaceted approach to civil society advocacy for corporate social, environmental and economic responsibility. They are by no means exhaustive, but rather set out a variety of issues and strategies civil society groups can explore to improve their corporate social and environmental compliance advocacy.

Civil society groups can further corporate social, environmental and economic responsibility by:

### **1. Deepening their understanding of Human Rights Treaties, Conventions and Obligations of State and non-State Actors.**

Civil society organizations must familiarize themselves with the principle human rights treaties and conventions, some of which are described above. International environmental law can also be of great relevance to human rights issues facing businesses, since environmental degradation often leads to human rights violations. Human rights and the full realization of human rights must serve as a backdrop and ultimate goal for all advocacy work.

**2. Identifying what are the most pressing and most urgent social, environmental and economic problems affecting individuals and communities caused by the corporate sector.**

At the very local level, the most visible companies may not cause the most pressing problems and hence detailed local investigation may be necessary to uncover business misconduct. Sometimes addressing high-visibility companies may help strengthen deterrence of future misconduct, but this may not always be the case.

**3. Creating political and social pressure to address the problems identified.**

Civil society can play an important role in educating and pressing for change through education and publicity campaigns, press releases, pressure before government agencies or through contacting the companies themselves demanding redress.

**4. Working with government agencies and legislatures to strengthen regulations and legislation aimed at corporate social, environmental and economic responsibility.**

Many national regulations, national laws and adherence to international law (through signing treaties and local enforcement or harmonization of local with international law) can be strengthened at the local and national level through increased pressure and advocacy before public agents. Where corporate abuse is systematic and where strong public pressure is exerted, the potential for strengthening legal protection mechanisms is greater.

**5. Developing measurement know-how on corporate performance**

Civil society groups must be able to effectively measure and identify corporate performance on human rights and environmental norms compliance. Quantitative evidence has more convincing power before companies and before regulatory and judicial bodies than mere speculation or unsubstantiated or unproven claims.

**6. Working with businesses to educate on corporate social, environmental and economic responsibility**

Advocacy work need not always be anti-business. As suggested above, businesses often ignore their social footprint, and do not understand how they impact human rights or the environment, much less, what to do about it. Civil society organizations can help business develop programs and procedures to address social and environmental footprint, by assisting companies measure their impact, evaluate management systems, product cycle understanding, and transformation processes designed to ameliorate performance and verify internal and public corporate reporting.

**7. Work with academia to insert corporate social responsibility in standard business curricula**

Unfortunately few MBA programs around the world comprehensively address corporate accountability of social and environmental impact. More has been done on the environmental front, especially with the increased acceptance of Environmental Management Systems guidance from ISO. Partnerships with academic centers can help introduce human rights concerns in academic programs designed to raise the awareness of our future business leaders on corporate social and environmental responsibility.

#### **8. Monitoring corporate compliance with national and international law**

Once civil society organizations know the law, once they have identified problem areas and potentially harmful companies in their locality, and once they can effectively measure corporate social and environmental compliance performance they can serve the important role of compliance monitors, blowing whistles when the law is not abided, and they can bring cases to the attention of relevant authorities. To the degree that the information presented is backed by informed legal analysis and evidence, such complaints will likely have large impact before public agents and before tribunals.

#### **9. Informing and disseminating knowledge on corporate behavior**

Information-sharing is one of the most powerful tools available to civil society groups in the struggle to improve corporate social and environmental responsibility. Information sharing should occur both at a local as well as an international. Local information sharing can help educate civil society and businesses and raise awareness of corporate footprints. International information sharing can help inform and better design advocacy strategies, provide best examples of successful and non-successful experiences of other advocacy groups.

#### **10. Ensuring access to justice and protecting victims**

Few cases of corporate environmental degradation and human rights abuse ever make it to local and much less to international tribunals. Litigation can be a costly and time-consuming activity for which few non-profit organizations have the human resources or financial resources to conduct. Nevertheless, the positive results of litigation can go a long way to curb future corporate misconduct. In many cases, free legal advisory and even litigation resources exist to take cases to local and international tribunals. Such channels, where appropriate should be explored.

#### **11. Mobilizing expertise relevant to the abuses identified**

No organization will have all of the necessary expertise to properly evaluate or determine the extent of technical, environmental, social, community and legal implications of identified corporate social and environmental externalities. The internet and local and international institutional relations between organizations and specialists can be very useful to build solid evidence and information about a given problem. This is especially useful when considering litigation against offenders.

The commonly accepted definition of sustainable development points rather at the use of natural resources today so as not to compromise those resources for future generations. Society is progressing beyond this natural resource based understanding of real sustainable development and is increasingly including social and economic elements into this understanding.

Curiously, the collapsed paradigm, the communist paradigm, centered its focus on social, economic, and cultural rights, largely as they are understood by the capitalist and democratic paradigm.

Consider for example the effects of tobacco use and related cancer illness.

A working group was created within the UN Sub Commission on Human Rights to study and draft the first Human Rights Guidelines for Transnational Corporations. This is an important first step towards binding international law delimiting corporate responsibility and liability for human rights and environmental compliance.

See for example, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies*. International Council on Human Rights Policy. 2002.