

Business Recognition of Human Rights **Diego Quiroz-Onate**

Background

In 2003 the Sub-Commission on the Promotion and Protection of Human Rights approved the *'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'* in an attempt to pull together a comprehensive list of human rights duties for businesses. As you know the Norms have been hugely controversial. The main controversy led by the business sector and the US Government relates to the notion of the UN acting as regulator of the business sector. Taking into considerations this controversy the UN Commission on Human Rights (now Council) decided, rather than adopting the Norms, to call for the Office of the United Nations High Commissioner for Human Rights to examine the scope and legal status of existing initiatives and standards and to pass (adopt) Resolution 2005/69 of the UN Commission on Human Rights on *'Human rights and transnational corporations and other business enterprises'* requesting the Secretary-General of the UN to appoint a special representative on this issue¹ (The US Government, along with Australia and other country, voted against the Resolution with 49 countries voting in favour and with 1 abstention).

During the summer of 2006 I had the exciting experience of being actively involved in a research project conducted by John G. Ruggie the appointed United Nations (UN) Secretary General's Special Representative (SRSG) for Business and Human Rights and Professor of International Affairs at Harvard university. Professor Ruggie was senior adviser for strategic planning to the UN Secretary-General from 1997 to 2001, and the architect of the UN Global Compact.

The UN mandate

The UN mandate Business and Human Rights is ambitious, but extremely difficult to achieve within two years, not least because it has no budget attached to it. I am sure all of you acknowledged the historic magnitude of the issues addressed in Professor Ruggie's mandate. For those who are not familiar with it, briefly I could say that the main task it is intended to be a "ground-clearing effort" in this matter (Ruggie, 2006), as set out in the Resolution it includes:

- To identify and clarify standards of corporate responsibility and accountability for transnational corporations and business enterprises with regard to human rights;
- To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation;
 - To research and clarify the implications for transnational corporations and other business enterprises of concepts such as "complicity" and "sphere of influence";
 - To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; and
 - To compile a compendium of best practices of States and transnational corporations and other business enterprises

¹ See Chap. XVII, E/CN.4/2005/L.10/Add.17

Based on such the mandate requires him to make recommendations for consideration by the Human Rights Council, in light of its desire to strengthen the promotion and protection of human rights as it relates to business.

The mandate is structured around identify” and “clarify,” to “research” and “elaborate,” to “compile” compendia and “develop” materials and involves:

- Regional consultations
- Sectoral consultations
- Site visits, and
- Research

As a result of these activities the SGSR for Business and Human Rights has produced a Report (“*Business and human rights: mapping international standards of responsibility and accountability for corporate acts*”) ² to the UN Human Rights Council with 4 Addenda as to April 2007:³

1. State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries, 12 February 2007
2. Corporate responsibility under international law and issues in extraterritorial regulation: summary of legal workshops, 15 February 2007
3. Human rights policies and management practices: results from questionnaire surveys of Governments and the Fortune Global 500 firms, 28 February 2007
4. Business recognition of human rights: Global patterns, regional and sectoral variations, 8 February 2007.⁴ This paper focuses on this research.

At Harvard University

A legal research team (6 people) was formed last summer (2006) at the John F. Kennedy School of Government, Harvard University. The work carried out under the direction of the SRSG concentrated on paragraph a) *identify and clarify standards of corporate responsibility and accountability with respect to human rights*, of his mandate. In identifying those standards, which are not only legal, a key indicator is provided by business, collective initiatives and socially responsible investment funds’ adoption of human rights related policies and practices in the environments in which they operate.

The research, which was presented to the UN Human Rights Council, summarises the human rights standards referenced by those actors. This study complements the UN Secretary General’s Special Representative survey of the human rights policies and management practices of the Global Fortune 500 companies.⁵ The two studies together comprise the most comprehensive analysis yet conducted on the subject of business and human rights.

² See SRSG Report at <http://www.ohchr.org>

³ An additional Report was present to UN Human Rights Council in 2007 - *Human rights impact assessments: resolving key methodological questions*, 5 Feb 2007, available at <http://www.ohchr.org>

⁴ A/HRC/4/35/Add.4. The document can be read at www.ohchr.org

⁵ See *Human Rights Policies & Management Practices of Fortune Global 500 Firms: Results of a Survey*, Business and Human Rights Resource Centre, available at <http://www.reports-and-materials.org/Ruggie-survey-Fortune-Global-500.pdf>

The study

The study is threefold. Part I lays out the publicly available information of more than 300 companies that use human rights policies and management practices. Part II identifies the human rights standards included in selected collective initiatives, both industry-based and multi-stakeholder. Part III examines the human rights criteria for inclusion employed by socially responsible investment (SRI) indices. This paper is devoted to Part I of the Report.

Methodology

The study thus searches for indicators expressing or referencing rights included in the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights and its two Optional Protocols. In addition, the 1986 UN Declaration on the Right to Development, bribery and core labour rights developed by the International Labour Association (ILO) are acknowledged, in particular:

1. freedom of association and the effective recognition of the right to collective bargaining (ILO Conventions 87 and 98)
2. elimination of all forms of forced or compulsory labour (ILO Conventions 29 and 105)
3. the effective abolition of child labour (ILO Conventions 138 and 182), and
4. the elimination of discrimination in respect of employment and occupation (ILO Conventions 100 and 111)

These four labour standards are considered the basic working conditions that all workers are entitled to regardless of status or nationality.⁶

The study extends to identify accountability mechanisms for companies, supply chain inclusion, anti-bribery and anti-corruption policies, corporate engagement with external stakeholders together with discover the human rights instruments to which the selected companies, collective initiatives, and indices refer to. It is beyond the scope of the research to assess how effectively the stated policies and practices are actually implemented.

Universe

- Fortune Global 500 firms
- The Business and Human Rights Resource Centre
- The Global Compact
- Collective initiatives and SRI indices websites

Frame of reference

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

Definition of rights

- Labour rights

⁶ *ILO 1998 Declaration on Fundamental Principles and Rights at Work*

- Other Human rights

Defining "business recognition"

By "business recognition" of human rights it is meant policies and management practices described by private enterprises in publicly available sources on June and July 2006 (Business Recognition of Human Rights 2006) Data for Collective initiatives and SRI indices is also constructed upon publicly available sources of information.

Part I. Company Policy and Practices

Introduction

This research scrutinises the actual policies of a broader cross-section of firms from all regions (including developing countries). To establish the social standards follow by firms globally it is required first to identify, understand and consider the current human rights practices use by these business enterprises. The initial aim of this research then was to construct a sampling frame of firms from all sectors and regions of the world. The second aim was to identify the firms with corporate social performance (CSP) disclosure, which allowed the recording. The third aim was to examine the publicly accessible information on human rights policies and management practices to code it. The final aim was the data analyses of the global patterns, regional and sectoral variations in order to determine the current standards.

Target Population

A sampling frame of companies for this study was constructed from a population of almost 500 firms that included:

- (a.) the 103 Global Fortune 500 that responded to the SRSG's questionnaire;
- (b.) the 90 companies listed on the Business and Human Rights Resource Centre's website, as having human rights policies; and
- (c.) the 512 Global Compact companies that had submitted a Communication on Progress for 2005.

(a.) The Fortune Global (FG) 500 is a ranking of the top 500 corporations worldwide as measured by revenue.⁷ The list is compiled and published annually by *Fortune* magazine. In 2006 the UN Secretary-General special representative (SRSG) elaborated on a questionnaire survey of the 2005 Fortune Global 500 companies on the key features of the human rights policies and management practices of these companies.⁸ A total of 103 companies completed the questionnaire.

(b.) The Business and Human Rights Resource Centre's website is possibly the most comprehensive website on the subject. The Resource Centre is an independent non-profit making body, in a collaborative partnership with Amnesty International and leading academic institutions. The purpose of the Centre is to encourage companies to respect human rights and to provide easy, one-stop access to information for

⁷ Revenue is a business term for the amount of money that a company receives from its activities in a given period, mostly from sales of products and/or services to customers (<http://en.wikipedia.org/wiki/Revenue>)

⁸ For a complete detail of this survey, see: "Human Rights Policies & Management Practices of Fortune Global 500 Firms: Results of a Survey" , 1 Sep 2006 at <http://www.reports-and-materials.org/Ruggie-survey-Fortune-Global-500.pdf>

companies, non-governmental organisations and others in order to facilitate constructive, informed decision-making and public discussion. The site extends over 3500 companies, over 180 countries. It receives over 1.5 million hits per month (business and human rights website 2007). The Centre has identified as of June 2006 more than 100 companies, as having human rights policies; enabling the study to document the standards they embodied.

(c.) The Global Compact. In 1999 The former Secretary-General of the United Nations, Kofi Annan, challenged business leaders to join an international initiative that would bring companies together with UN agencies, labour and civil society to support universal environmental and social principles. This idea became the most important international initiative in this matter. The Global Compact seeks to promote responsible corporate citizenship so the private sector can help to the idea of a more sustainable and inclusive global economy (Global Compact Website 2006). The Global Compact is a purely voluntary initiative with two objectives: i.) mainstream the ten principles in business activities around the world⁹, and ii.) catalyse actions in support of UN goals. As of June 2006 there were 2.600 businesses in 100 countries around the world participants in the Global Compact. The signatory companies commit to submit annually to the Global Compact office Communications on Progress (CoP). The CoP is a communication to stakeholders on the progress the company has made in implementing the Ten Principles in their business activities. 512 Global Compact companies submitted a CoP in 2005.

The frame sampling for the study is drawn from the universe explained which sought a broader representation of firms all around the globe rather than only based on size or a particular sector. Once the research team eliminated multiple listings, the frame sampling contained 425 companies.

Regional distribution

- Africa
- Asia and the Pacific region
- Europe
- Latin America
- North America.

Industry sectors

- Extractive
- Financial Services
- Food and Beverage
- Heavy Manufacturing
- Infrastructure and Utilities
- Information Technology, Electronics, and Telecommunications
- Pharmaceutical and Chemical
- Retail and Consumer Products, and
- Other (residual category)

The final sample contained 314 companies. The final sample became shorter for several reasons:

⁹ For the Global Compact Principles, see: <http://www.unglobalcompact.org/>

- a. Language resource constraints: French, Spanish and English were used. The research team was unable to include companies with information solely in Japanese, Russian, and Chinese.
- b. Companies were excluded when the research team was unable to find information about their human rights commitments in any publicly accessible source.
- c. Only parent companies were included, subsidiaries and holding companies were excluded to avoid duplicate recognition.

Chart 1. **Regional Distribution**

Source: Business Recognition of Human Rights 2006

Chart 2. **Sectoral Distribution**

Source: Business Recognition of Human Rights 2006

Code system: How the information is coded

Following the construction of the frame sampling, the company information was extracted from any CSP disclosure publicly available on:

- (i.) the company's website;
- (ii.) their Annual or CSR Report; and
- (iii.) the 2005 CoP

It is important to remember that not only formal policies (statements) were considered but also business practices. However, unpublished practices of recognition of rights were unable to be included. The information collected focus on specific human rights policies included on among others in corporate codes of conduct, human resources/employee policies, and sustainable development commitments. CSR membership to different international and national initiatives was a common pattern. However, it was not presupposed that membership entailed automatic recognition of the rights promoted by the initiative. The level or degree of support of particular rights was recorded wherever possible

The information was coded in three separate sheets: i.) General; ii. Labour rights; iii) Other human rights, using the fame reference explained above. Additionally, reporting practices, supply chain management systems, anti-corruption policies and community consultation and impact assessment policies in relation to their human rights commitments were also recorded. Environmental or philanthropic programs were recorded when they clearly linked to a human rights purpose as in health, education or development issues.

Findings

List of most recognised human rights in the following descending order:

a. Labour rights

These rights enjoy the widest recognition by business as follows:

- Non discrimination
- Safe and healthy in the work environment:
- Freedom of association
- The right to collective bargaining
- The prohibition on forced labour, and
- The prohibition on child labour

Regional distribution

- Europe
- North American
- Asia & Pacific
- Latin American

Particulars of business recognitions by Industry Sector

- Retail & Consumer Products: At a rate of 56 percent, firms lead in their recognition of the right to a **minimum wage**, exceeding the overall sample average by 20 percent.
- Financial Service: At 37 percent, firms lead in their recognition of the right to a **family life**, a double rate that of many sectors.
- Infrastructure and Utility: lag in their recognition of numerous rights: the **prohibition against forced and child labour**, the right to a minimum wage, the right to rest and leisure, and the right to family life – with recognition reaching as low as 11 percent for some rights.
- Collective initiatives and SRI indices mirror the overall pattern of labour rights

Recognition

Table 1. Labour rights

Source: Business Recognition of Human Rights 2006

b. Other human rights

- The right to privacy: just under 20 percent of the companies
- Security of the person, including freedom from torture and cruel, inhuman, or degrading treatment.
- The right to freedom of thought, conscience and religion, and the right to seek asylum, receive little or no recognition from companies, collective initiatives, or SRI indices.
- Philanthropic contributions are emphasised by companies in areas covered by economic, social and cultural rights. SRI indices use company philanthropic activities as an investment screen. Oposing, the collective initiatives does not use philanthropic activities.

Regional distribution

- North American
- European firms
- Asia & Pacific
- Latin America

Particulars of business recognitions by Industry Sector

- Extractives: focus on **security related rights** and the right to development
- Retail & Consumer Products: recognise security related rights at higher rates than other sectors.
- Information Technology (IT) and Retail: recognise the **right to privacy** more than other sectors
- Financial Services and Pharmaceutical and Chemical companies recognise at higher rates the **right to development**.
- There is not a clear pattern of recognition rates for by companies, collective

initiatives, and SRI indices, for example Company policies display greater concern for the right to privacy than the collective initiatives and SRI indices exhibit.

- collective initiatives put a greater emphasis on freedom of movement and minority rights to culture.
- The SRI indices exhibit a particular concern for indigenous rights, including the right to cultural life, the benefits of scientific progress, IPR protection and the right to development.

Table 2. Other human rights

Source: Business Recognition of Human Rights 2006

c. Additional issues

CSP disclosure

- CSP disclosure is significantly high. The most common form is CSR or sustainability reports
- The GRI is the second most used reporting scheme in our sample
- The company reports tend to focus on labour rights, philanthropic activities, and, in the case of a sustainability reports on the company's environmental performance.
- External review or other assurance is rare

Supply management

- North American and European companies lead in their inclusion of human rights standards in supply chain management – two-thirds of the U.S. firms in the

sample, and roughly 60 percent of the Europeans.

- Asia & Pacific and Latin American companies trail by more than 20 percent.
- Retail & Consumer Products firms lead in this regard by as much as 35 percent over other sectors.

Stakeholder engagement

- SRI indices use community consultation and engagement as a screening criterion
- Companies and collective initiative references to this is minimal

Human rights impact assessments

- SRI indices
- Companies and collective initiative references to this is minimal

Anticorruption

- Bribery and anticorruption polices are widely recognised by companies and SRI indices as an screening criterion (except on collective initiatives). However the language is unclear and often is accompanied by an exception clause.

Table 3. Human rights instruments

Source: Business Recognition of Human Rights 2006

Other voluntary initiatives refer to a range of sources used by companies when CSP disclosure, for example:

- SA8000
- Transparency International
- The Ethical Trading Initiative
- The Business Social Compliance Initiative
- The Sullivan Principles,
- The Fair Labour Association
- The Extractive Industries Transparency Initiative
- The Electronics Industry Code of Conduct
- The International Council on Mining and Metals, and

- The Kimberley Process

Sectoral distribution

- Extractive companies: 50 percent refer to the Voluntary Principles on Security and Human Rights¹⁰
- Financial Services: 11 of 38 companies refer to the Equator Principles.
- Other sectors: UNEP/GC Principles for Responsible Investment.

Regional distribution -Voluntary Principles on Security and Human Rights-

- North America: 10 of 12 companies
- Europe: 11 of 17 companies

UDHR

Regional distribution

- Europe: 50 percent
- North America: 36 percent
- Asia & Pacific region: 20 percent
- Latin America: 11 percent
- Africa: two of five companies

Sectoral distribution

- Extractive: 27 of 44 companies
- IT, Electronics and Telecommunications: 19 of 40 companies
- Financial Services: 16 of 38 companies

ILO core conventions

Regional distribution

Europe: 40 percent

North America: 25 percent.

Latin America: 7 percent

Asia and the Pacific: 6 percent

Africa: three of five

OECD

Most of the companies that refer to the OECD Guidelines are European: 29 of 34 companies

Table 2. CSP disclosure and accountability

¹⁰ For the Voluntary Principles on Security and Human Rights, see: <http://www.voluntaryprinciples.org>

Source: Business Recognition of Human Rights 2006

Reporting systems

- Reporting is high but varies: 90 percent of the companies
- 150 companies use the Global Reporting Initiative's (GRI) guidelines¹¹
- Reports most discussed subjects: labour rights, philanthropic activities, and, environmental performance
- External auditors or other assurance processes: 18 of 314 companies
- 13 of the 18 companies that externally verify information are European.

Supply Chain Management

Regional distribution

- Europe: 67 percent
- North American: 59 percent respectively. In contrast,
- Asia & the Pacific: 37 percent
- Latin American: 29 percent
- Africa: two of five companies

Community Consultation

Regional distribution

- Europe: 30 percent
- North America: 20 percent
- Latin America: 18 percent
- Asia & Pacific: 10 percent

Problems encountered

- There are a few problems in doing so, but in terms of responsibility/liability the issue is to know how many of the rights apply to corporations and how many form part of customary international law, that is to say do not depend on state consent for their binding effect. Therefore we included all of the rights enshrined in the cited human rights instruments
- Unclear language at the company level: vague or loose policy wording

¹¹ For the *GRI Guidelines*, see www.globalreportinginitiative.org.

- Precision and commitment: statements of company policies often lack exactness. All these make it extremely difficult to determine whether a company is in compliance with their own guidelines and simultaneously, for this exercise, to code the rights. It must be acknowledged that language precision plays an important role in litigation, thus companies avoid specific and clear commitments in order to avoid litigation. In contrast, the language use by collective initiatives and SRI indices draws on international instruments, which makes it easier to determine and measure.
- Different interpretation: there are inconsistencies and ambiguities in how business units transform human rights into policies, even within the same industry. In consequence a right is translated in particular narrow way while others units transport it in their policies in a more broadly way
- Reporting: a frequent difficulty is that even if companies refer to human rights, reporting does not reflect a consistent pattern, it highly varies how companies report, which makes problematic to follow business commitments.

Conclusion

This research enables us to perceive and reflect the standards which the business community itself believes society expects from them. The recognition of human rights by business delineates the current standards which companies have acknowledged (or acknowledge) they must follow when doing business. As a result of this social process, it can be said that business recognition of human rights has improved and increased significantly in the last 10 years.

Labour rights enjoy the widest recognition of human rights. However, if we consider the fundamental rights at work¹² companies recognition varies. For example, the prohibition of child labour reaches as low as 25 percent by region and as low as 40 percent by sector. A similar pattern occurs with other labour rights except non-discrimination and the right to a safe work environment. Latin America and Asia and the Pacific region, recognise labour rights less than North America and Europe.

Modest attention is given to other human rights. Assessing the human rights instruments referenced by companies the most common besides the GC are the UDHR and the ILO. European companies reference the UDHR and ILO as much as 35 percent more than other regions. Companies typically “respect,” “support,” or “recognize” the UDHR. Most of the companies that refer to the OECD Guidelines are European: Only four companies, all European, cite specifically the ICCPR and ICESCR. Three other companies cite the Convention on the Rights of the Child, another company refers to the Convention on the Elimination of Discrimination Against Women, and one company cites the Rio Declaration on Environment and Development.

Anti-corruption policies vary widely from prohibiting the acceptance of “excessive” or “lavish” gifts, money, special favours from business partners to contributions to political parties or candidates. However, several companies note that social amenities, reasonable entertainment, and other courtesies *may* be extended to customers, suppliers, or employees, reasoning that such nominal exchanges are beneficial to

¹² See *ILO 1998 Declaration on Fundamental Principles and Rights at Work*

business. A few companies also reserve space for “culturally appropriate” gifts. There is no definition as to what it all means.

CSP disclosure on the human rights dimension of business also varies widely, ranging from philanthropic news to human rights reports using the GRI model as the most common model for reporting. The supply chain management’s inclusion of human rights standards also varies in approach and substance. Moreover, accountability and stakeholder engagement is rare. In sum there is a long way to walk.

International human rights are standards, either to respect, promote or secure the fulfilment of certain rights. The degree of recognition depends of the actor obligation –no doubt the business sector has an obligation to respect and in some occasions fulfil and promote human rights-. It seems logic to agree with the UN Special Rapporteur on the Right to Food (2005) “In an age when other public and private actors are more powerful than States, human rights must be extended to limit their potential abuses of power against people”.¹³ As demonstrated here, the business community is slowly responding to social expectations, but is it too little too late? Then, a major question follows concerning the effectiveness of voluntary initiatives in promoting respect for human rights.

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¹³ UN says World Bank and IMF “bound by international law”, e-article available at <http://www.brettonwoodsproject.org>. (04.06.07)