Good Business:

THE ECONOMIC CASE FOR PROTECTING HUMAN RIGHTS

DEC. 2018

Dr. Başak Bağlayan, Ingrid Landau,
Marisa McVey & Kebene Wodajo

BHR Young Researchers Summit

Frank Bold

ICAR INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE

AUTHORS

Dr. Başak Bağlayan

Researcher, Faculty of Law, Economics and Finance, University of Luxembourg

Ingrid Landau

PhD Candidate, Melbourne Law School, University of Melbourne

Marisa McVey

PhD Candidate, School of Management, University of St Andrews

Kebene Wodajo[1]

PhD Candidate, School of Law, Shanghai Jiaotong University

SUPPORTING ORGANIZATIONS

The creation of this report was supported by the following organizations:

BHR Young Researchers Summit

Frank Bold

International Corporate Accountability Roundtable

The Institute for Business Ethics at the University of St. Gallen

NYU Stern Center for Business and Human Rights

TABLE OF CONTENTS

FOREWORD

This publication is the result of a collaboration between the Business and Human Rights (BHR) Young Researchers Summit, Frank Bold, and the International Corporate Accountability Roundtable (ICAR).

The BHR Young Researchers Summit was founded in 2015 by the Institute for Business Ethics at the University of St. Gallen (Switzerland), the NYU Stern Center for Business and Human Rights (USA), and the *Business and Human Rights Journal* (BHRJ). The first summit was held in 2016 in St. Gallen, Switzerland. The summit sought to connect a geographically dispersed community of young scholars in the interdisciplinary field of business and human rights and to provide them with a platform to discuss their dissertations and postdoctoral research projects, share experiences, and collaborate with peers. As the organizers of the event, we select and sponsor 12 to 15 scholars each year out of some 50 applications from across the globe. We see this as an investment in the future of business and human rights. The innovative research projects that these talented scholars present to us will shape the future of our field.

In 2017, we explored with Frank Bold and ICAR tapping into our pool of talented young researchers, and particularly the incoming 2018 cohort, for a collaborative research project. Our goal was to provide the young researchers with a platform for their scholarship and offer the supporting organizations a tool for their advocacy on business and human rights. We decided to have the researchers focus on evidence-based economic arguments for companies to promote human rights. Thus, the idea of adding a BHR Young Researchers Project to the BHR Young Researchers Summit was born. The idea became more tangible during an additional workshop day for the selected project group at the 2018 BHR summit at NYU Stern. The end of the 2018 summit marked the beginning of the in-depth research phase for our team of four young researchers, who wrote the various sections of this report over the coming months.

We are most grateful for the support of the two funding organizations, ICAR and Frank Bold, and our colleagues who helped to organize the BHR Young Researchers Summit at NYU Stern in 2018. In particular, we would like to thank Professor Michael Posner, the director of the NYU Stern Center for his continued support of the BHR Young Scholars Summit. We are also indebted to Paul Barrett, the deputy director of the NYU Stern Center, for his excellent support copy-editing this publication.

Amol Mehra and Sara McGrath of ICAR were with us for the project workshop and helped draft the outline. Nicole Vander Meulen supported the finalization of the report. We would also like to thank the ICAR designer Shannon Thomas. At Frank Bold, Filip Gregor backed the process from the inaugural workshop through final publication and provided thoughtful guidance throughout the process.

We also thank Johanna Schenner, a member of the 2018 young researchers group, for her input on the role of corporate reputation in relation to the economic arguments outlined in this report.

Our greatest thanks go to our young scholars who wrote this report and worked relentlessly on this publication over the past months, on top of their regular dissertation and post-doc projects. Their ambition to highlight lesser-known arguments for corporate engagement in human rights makes this publication distinctive. Their work underscores the growing evidence that respecting human rights is not only a moral imperative for business, but an economic necessity.

The content of this report reflects the views of the researchers, who have worked independently. It is not representative and may not reflect the positions of the supporting organizations.

Dr. Dorothée Baumann-Pauly, Research Director at the NYU Stern Center for BHR

Professor Florian Wettstein, Co-director at the Institute for Business Ethics at the University of St. Gallen

EXECUTIVE SUMMARY

The United Nations Guiding Principles on Business and Human Rights (UNGPs) summarise an international consensus that States have a duty to protect human rights, corporations are responsible for respecting human rights, and victims should have access to effective remedy.

The UNGPs have been particularly helpful in clarifying that the State duty to protect and corporate responsibility to respect are interconnected, yet different and mutually independent. This means that corporations should respect human rights regardless of the existence of State regulation in a given matter. Furthermore, this corporate responsibility does not depend on other considerations such as whether or not there is a risk to businesses themselves or on the potential benefits and costs of respecting human rights. This is not to say that the concept of corporate responsibility releases States from their own duty to protect human rights, including through effective policies, legislation, regulations, and adjudication. To the contrary, States should do what is possible and necessary to promote, encourage and, not least, mandate the corporate responsibility to respect human rights through their policies, laws, and regulations.

The problem is that the exact boundaries of a corporate responsibility to respect human rights, especially in the context of complex transnational business relationships, are not sufficiently specified. As put in UNGP 14, "The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership, and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts."

In these grey zones, States as well as companies are reluctant to assume responsibility precisely because of concerns about the financial implications of doing so. While there is ample evidence on the costs of corporate-related human rights abuse borne by society - whether in terms of 1,134 lives lost in Rana Plaza accident, 20.9 million people estimated by ILO to be victims of forced labour, or $1bn needed to restore the environment damaged by oil extraction in Niger Delta - the financial implications for companies, however, are still poorly understood.

Getting more clarity on the costs and risks to companies that result from adverse human rights impacts might help to break the impasse in the implementation of human rights due diligence in companies' practice as well as in law.

For this reason, the Business and Human Rights Young Researchers Summit, supported by and in collaboration with the ICAR and Frank Bold, launched a project on evidence-based economic arguments for companies to promote human rights. Four talented participants of the Summit's 2018 cohort conducted in-depth research and led the initial project idea to the publication of this report. Through extensive desk research the four authors unearth available evidence in support of economic arguments for corporate human rights respect in four areas:

1. Managing how companies affect human rights;
2. Responding to government incentives intended to protect human rights;
3. Handling the costs of litigation over corporate abuses; and
4. Anticipating trends for sustainable business.

The data compiled in this report lead to three broad conclusions:

First, the findings of the research show that corporate human rights abuse can have a significant impact on businesses and this impact is growing consistently.

Second, despite this evidence there is insufficient focus in the business and human rights debate on human rights risks facing companies and the implications of these risks for companies' economic position and development, as well as on the importance and the beneficial effects of properly integrating corporate responsibility to respect human rights.

Third, the failure of companies to properly consider such risks appears to be facilitated by a narrow (and sometimes misguided) understanding of their legal responsibility, which is out of sync with growing societal expectations concerning responsible business conduct. In this respect, a more precise regulation of corporate responsibility that would lead to better prevention and mitigation of adverse human rights impact, would likely have beneficial effect for both affected people as well as for companies, which are involved with such impacts.

The main purpose of our research was to identify and organise existing research on this topic. As we anticipated, the state of the research is far from comprehensive. Nevertheless, in each area, we have discovered convincing evidence indicating that costs of ignoring human rights as well as opportunities linked to respecting human rights are underestimated and deserve much greater attention in research, business practice, and public policy making than they currently do. Below we provide a short summary of these findings.

Part 1 looked at the social impact of embracing or ignoring human rights by companies in two dimensions: workplace and community relations. By establishing strong human rights-based policies in the workplace, businesses can benefit from greater loyalty and significantly increased productivity - as demonstrated for example by Better Work Programme implemented in garment factories in Vietnam -, avoid supply chain disruption, and minimise legal risk. Failing to implement human rights standards can significantly harm a company's stakeholder and community relations. These costs generally come in the form of diverting staff to deal with community conflict, as well as lost opportunity costs. Positively engaging with communities can prevent these costs, as well as provide financial rewards in the long term.

Part 2 demonstrated how governments are increasingly using economic leverage as a tool to promote corporate respect for human rights. For example, governments have started to insert human rights language into international trade and investment agreements. Moreover, the UNGPs have reinforced the obligation of States to protect human rights, which also extends to States' economic relations with private actors. Utilising human rights standards in public procurement contracts has become common in countries implementing the UNGPs by adopting NAPs on business and human rights. There are also various developments in the field of export credits and trade-related initiatives, which add further economic incentives for businesses to respect human rights. So far, little research has been conducted on the impact of these opportunities on companies' bottom line. On the other hand, systemic risks to business caused by such policies can be demonstrated by withdrawal of EU GSP+ preferential tariff system from products from Sri Lanka due to failure to meet human rights obligations, with a consequence of imposing extra import duties of 9.6% to Sri Lankan exports to the EU.

In **Part 3,** a cost analysis of corporate abuse-related lawsuits identified five types of costs: financial cost, cost for out-of-court settlements, information-disclosure cost, reputational damage, and potential decline in stock price. A review of 151 such litigation cases shows a rapidly increasing trend in these lawsuits, steadily rising direct financial costs, and that companies are increasingly opting for out-of-court settlements, despite the substantial expense associated with it. Furthermore, corporate abuse-related lawsuits attract a great deal of negative attention, potentially damaging a company's reputation and credit rating, no matter the final court decision. The cumulative effect of these costs, at least temporarily, is to hurt a company's stock performance. The Deepwater Horizon accident and subsequent lawsuits not only resulted in an out-of-court settlements with a record amount of $18.7 billion, but they also diminished BP's stock price permanently to half of its original value.

Looking to the future, **Part 4** noted the complex role of consumers and investors in driving responsible business behaviour. Certainly, there is evidence that consumer scrutiny is intensifying, yet some sectors remain almost impervious to human rights concerns. However, with the opinionated scepticism of Millennials and Generation Z, and greater consumer access to information on corporate human rights impact, failing to identify and manage those impacts may have serious consequences for businesses. Investor scrutiny is increasing, with more investors considering sustainability and long-term options. Businesses of all sizes are beginning to demand more from each other in terms of human rights. These trends will intensify alongside the rise of mandatory ESG reporting and more specific and effective public policies promoting and requiring focus on sustainability by financial actors and in public procurement. By failing to anticipate, contribute to, and collaborate with other businesses on human rights issues, companies' risk being surpassed by competitors or enduring steep and costly learning curves.

This report is a first step toward building more evidence-based research on the so-called 'business case' for corporate human rights responsibility. It is hoped that a) scholars will find inspiration to continue such research in order to build a more and more robust foundation of evidence; b) policy-makers will leverage on such evidence to make smarter and more effective policies encouraging and requiring human rights respect by businesses; and c) practitioners see value in such arguments to foster and promote the continuous integration of human rights considerations in their strategies and operations.

INTRODUCTION

Most, if not all, businesses face human rights challenges in their operations and business relationships. This is an unavoidable reality of doing business in today's complex, globalised economy. Labour rights abuses occur in company operations and supply chains in sectors such as manufacturing and food and beverage. Extractive companies confront conflict with local communities and rights violations by public and private security forces. Information and communication technology (ICT) companies face allegations of privacy rights violations and complicity with repressive regimes.

Many multinational businesses recognise the human rights risks associated with their operations and are taking steps to prevent and mitigate them. There are many reasons a business may choose to do so. The law may require it. The company may seek to ensure that its social impacts are aligned with its stated purpose and values. For some, the goal is as simple as doing the right thing.[2] But in a world where businesses are increasingly expected to account for their social and environmental impacts, respecting human rights is not just an ethical or legal imperative. It is also smart business from an economic perspective.

This report focuses on economic arguments for respecting human rights. For a company, engaging with human rights issues in its operations and supply chains can be difficult, time-consuming, and costly. Are there business justifications and rationales for doing so, despite these costs? What are the potential economic drawbacks when a business fails to respect human rights? What opportunities does strong human rights performance present to business, now and into the future?

Over the last decade, expectations of companies with respect to their social and environmental impacts have evolved significantly. The UN Human Rights Council's endorsement in 2011 of the UN Guiding Principles on Business and Human Rights (UNGPs) transformed the global context in which we talk about the so-called 'business case' for responsible corporate behaviour. It clarified and shifted understanding of the role and impact of business in society, and has led to unprecedented convergence of international and national frameworks on business and human rights. The UNGPs have also diminished common arguments associated with the business case *against* taking steps to ensure corporations are operating in a manner respectful of human rights. These arguments have included that 'human rights are the concern of governments,' and that 'business cannot be expected to be familiar with human rights'.[3] As an Economist Intelligence Unit report revealed in 2015, four out of five executives surveyed now believe that human rights are a matter for business as well as governments.[4]

Despite these positive developments, many businesses still do not take steps proactively to identify, prevent, mitigate, and account for their adverse human rights impacts. They do not take their human rights responsibilities seriously. Nor are regulatory frameworks sufficiently developed to require them to do so. In some cases, the failings of businesses to turn their attention to the adverse human rights impacts associated with their activities are brought to the attention of the global community. The collapse of the Rana Plaza complex in Bangladesh in April 2013, which claimed over 1,100 lives, is one such example. Revelations of forced labour on fishing vessels within the supply chains of global food brands is another. Many other human rights abuses by commercial entities go unreported but nonetheless have serious consequences for victims and communities.

In recent years, many business rationales for respecting human rights have been identified within the business community itself, and by activists and scholars. This report seeks to assemble this evidence and present compelling economic arguments for respecting human rights in a succinct and accessible form. It is hoped that this report will be useful to:

- Civil society organisations engaging with businesses on human rights issues;
- Business practitioners seeking to understand the implications of human rights for their businesses, and/or seeking to convince others, both within and outside of their companies, of the need to engage with human rights;
- Shareholders and investors engaging with companies on human rights risks in the context of environmental, social, and governance (ESG) performance; and
- Government officials designing and implementing corporate accountability requirements, who may be required to defend the economic as well as the social benefits of such regulatory initiatives.

Under the UNGPs, states have the overriding duty to protect against human rights abuse by third parties, including by corporations. Business enterprises have a responsibility to respect human rights. This means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. Businesses should put in place:

- a policy commitment to meet their responsibility to respect human rights;
- a human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights; and
- processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.[5]

The Evolution of the Business Case for Respecting Human Rights

Economic arguments for respecting human rights have evolved alongside the business and human rights field itself. For much of the latter part of the twentieth century, the social responsibilities of business were conceptualised by way of corporate social responsibility (CSR). Through a CSR lens, social concerns were viewed as matters of management discretion and authority in response to risks to reputation, social and political legitimacy, and ultimately to profit.[6] In many cases, they were seen as optional additions to a company's activities, rather than being concerned with, or part of, its core operations. Consistent with the optional nature of CSR, a number of studies in the field sought to interrogate the relationship between a company's social performance and its financial performance.[7] Many of these studies were narrow in orientation, presuming that a business case for CSR existed only when there was a clear and direct link to firms' financial performance. Only a few studies took a broader approach, recognising the direct, and more complex indirect, relationships between CSR and firm performance.

While this report has taken account of this CSR literature, it recognises that a number of important developments have moved us beyond such limited understandings of corporate responsibility. The notion that, in addition to its pursuits of profits, business should be responsible to their workers, communities, and other stakeholders is increasingly widespread. The globalized nature of the economy, alongside advances in technology, mean that businesses implicated in human rights violations face significant risks of being held accountable by consumers, investors, employees, communities, business partners, governments, and NGOs. In this environment, respect for human rights is increasingly seen as a matter of risk management and good governance. Such a perspective is reinforced by the UNGPs' concept of human rights due diligence, which advises businesses to identify risks and possible impacts and take steps to mitigate these risks and provide a remedy where necessary.

Consistent with the UNGPs, this report considers economic arguments for the minimum expectations on business: to avoid and mitigate adverse human rights impacts or 'to do no harm'. Businesses also have opportunities to take additional voluntary actions that promote and advance human rights, including through social investment, advocacy, and philanthropy. While valuable, and likely to draw increased attention in the context of the business community's adoption of the UN Sustainable Development Goals (SDGs), philanthropic efforts cannot substitute for the responsibility of a business to ensure it respects human rights in its operations, supply chains, and business relationships.

WHAT ARE ADVERSE HUMAN RIGHTS IMPACTS?

The UNGPs make clear that for business, the responsibility to respect human rights means seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts.

An **adverse human rights impact** occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. Businesses can have an adverse impact directly or indirectly (through contractors, suppliers, or business partners) on virtually all internationally recognised human rights.

Internationally recognised human rights include, at a minimum:

- The rights in the International Bill of Human Rights, meaning those in the Universal Declaration of Human Rights, as codified in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and
- The principles and rights in the ILO's Declaration on Fundamental Principles and Rights at Work, namely:
    1. Freedom of association and effective recognition of the right to collective bargain;
    2. Elimination of all forms of forced or compulsory labour;
    3. Effective abolition of child labour; and
    4. Elimination of discrimination in respect of employment and occupation.

In addition to this minimum list, the UNGPs make clear that companies should also pay attention to additional standards covering the human rights of individuals from groups or populations that may be particularly vulnerable to negative impacts.

Report Approach and Structure

This report identifies four key economic drivers for respecting human rights (Figure 1). For each of these drivers, the report considers two dimensions. The first dimension is **cost and risk reduction:** that is, the way in which business interests are served by avoiding and mitigating adverse human rights impacts. Examples are the costs of managing worker and community conflicts (see Part 1) and human rights litigation (Part 3). The second dimension concerns the potential to **gain competitive advantage:** how firms may use positive performance on human rights to differentiate themselves from their competitors. Examples include attracting investment and accessing procurement opportunities (Part 2). While it is useful to distinguish between the two, it is also important to recognise that in many cases, respect for human rights may do both: minimise business risk and deliver tangible business benefits.

Figure 1: Key Economic Drivers for Respecting Human Rights

Part 1 of the report focuses on workforce and stakeholder relations. Companies that fail to respect the human rights of workers they engage directly and indirectly through their supply chains face a number of risks. These include workplace injuries and illnesses, high labour turnover, and the increased prospect of employee-related litigation. Companies may also face disruptions to their operations and supply chains when workers take collective action to protest unacceptable working conditions. Conversely, the benefits of companies respecting labour rights include increased loyalty and productivity. Part 1 draws upon the ILO's Better Work Programme, now operating in a number of countries around the world, as a case study to illustrate these dynamics. This section also highlights the significant business costs associated with protracted community conflicts, drawing on examples from the extractives sector.

Part 2 focuses on the economic incentives that public authorities offer to companies that can show they are taking effective action on human rights. Increasingly, governments and public agencies are using economic leverage as a tool to ensure and enhance compliance with human rights, as well as with environmental and labour standards. This section focuses on three of the most common State-based economic incentives: public procurement, export credit support, and trade incentives.

Part 3 highlights the costs to businesses arising from human-rights related domestic and transnational litigation. Companies around the world face an 'expanding web of liability' and increasing risks of being held legally accountable for failing to take proactive steps to identify and mitigate human rights abuses.[8] Litigation – even when settled prior to formal judgement – poses significant financial and reputational risks. The more a company proactively engages in responsible supply chain management, the better positioned it will be to avoid and defend against human rights-related legal claims.

Part 4 looks to the future. Public, business, and regulatory understandings of the human rights responsibilities of business have evolved rapidly, and they will continue to do so. The section identifies key market trends, including intensifying consumer and investor scrutiny of corporate human rights performance, and even businesses increasingly demanding more of each other. Five key regulatory trends are also identified.

The report's **conclusion** draws together important findings and identifies a number of areas where more research is needed.

It should be noted that while business **reputation** is not a separate section in this report, it is a theme that cuts across all key economic drivers identified above. In boardrooms and offices around the globe, reputation is now recognised as a major source of business risk.[9] Quantifying the precise contribution of reputation to corporate profits and value is challenging and complex.[10] But there is little doubt that an improved reputation benefits a business financially, while a sullied public profile can do significant harm.[11]

Methodology

The objective of this report is to identify the business case for respecting human rights; to compile, analyse, and synthesize available evidence on such arguments; and to make all of this subject matter available in an accessible form. The initial stage of the project involved the identification of four key economic drivers for human rights respect (the four parts of this report). Each of these drivers was the subject of extensive desk research. The types of theoretical and empirical literature reviewed and analysed included research reports (drawing on quantitative and qualitative sources); laws and regulations; court cases; media reports; and academic articles from a range of disciplines, including law, economics, management, and political science. The research was global in scope, and undertaken in English, French, and German. Analysis of the material focused on exploring the different economic drivers, and, to the extent possible, identifying and quantifying the costs and benefits associated with negative and positive human rights impacts. Feedback on a draft version of the report was generously provided by the following individuals:

Amol Mehra

Sarah McGrath

Nicole Vander Meulen

Filip Gregor

Florian Wettstein

Dorothee Baumann-Pauly

Paul Barrett

A key limitation of this report is its reliance on secondary sources. In-depth case studies and qualitative or quantitative research exploring the identified drivers would shed further light on these issues. The global scope of the project is both a strength and a limitation. While it enables a broad view of global trends and examples from many jurisdictions and relating to various issues, it also limits the report's capacity to detail the economic drivers in specific industries or in regard to particular business models. Economic arguments for human rights respect are often specific, depending on such factors as industry sector, supply chain footprint, stakeholder expectations, business strategy, and organizational culture.[12] For this reason, we hope the general arguments outlined in this report may help lay the groundwork for more detailed, industry- and company-specific research going forward.

PART 1: MANAGING HOW COMPANIES AFFECT HUMAN RIGHTS

The global nature of business today is such that regardless of size or model – be they multinational corporations (MNCs), small and medium sized enterprises (SMEs) or business-to-business (B2B) – companies affect both people in their host countries and across the world. One example of this impact can be seen in the proliferation of complex supply chains across many sectors of business. Supply chains for a single company can span multiple countries with vastly different legal and regulatory frameworks.[1] According to the International Labour Organization (ILO), more than one in five jobs are estimated to be linked to global supply chains,[2] with around 453 million people working in supply chains in 2013 alone.[3] Being part of this global society has multiple benefits for businesses,[4] with opportunities to access new labour markets, emerging technology, as well as a reduction of production costs. It is also well established that as powerful economic, social, and political actors, businesses can also be a force for good in society. While a company's purpose may be to make profit, doing so can generate positive consequences. Companies supply goods and services, create jobs, and can contribute to the alleviation of poverty,[5] as well as spread and build upon 'best practice' and international standards.[6]

As business increasingly permeates our society, one must also consider the risk of negative impacts on human rights enjoyment. Access to new labour markets in this global society and reduction of production costs can lead to exploitative practices. Examples of the negative effects are well established elsewhere in this report,[7] but one of the most recent and illuminating examples for corporate impact on global society is the collapse of the Rana Plaza factory complex in 2013. The tragedy killed more than 1,100 workers in Bangladesh and brought renewed attention to the need for businesses to take responsibility for their global supply chains.[8] Many of the workers in the building produced clothes for European and American apparel brands. Worldwide media covered the disaster, activists demonstrated outside stores of well-known brands, and Bangladeshi workers rioted.[9] The Dublin-based low-cost clothing company Primark paid out around $3.2 million in short-term aid to victims and their families,[10] and a Rana Plaza Donor's Trust Fund was set up, totalling around $30 million.[11]

Alongside the moral argument for preventing human rights violations, mitigating these negative impacts is also in businesses' own interest. This section will aim to unpack the economic implications of corporate impact on a society's human rights. This impact on society is varied and wide-ranging, given the unsurprisingly close connection and frequent interaction between business and people. This particular section will focus on groups whose human rights are most likely to be affected by a company's actions. First, since businesses are essentially made up of, controlled, and shaped by people, a company's most direct human rights impacts will be on its own workforce. Secondly, beyond the workforce, the human rights of other members of society can also be affected by a company's actions. These groups range from communities living in close proximity, to those whose data is being used by a company.

With this in mind, this part unfolds as follows. Section 1 will look at the research behind how respecting human rights both internally and externally can benefit workplace productivity through attracting and retaining valuable employees, avoiding supply chain disruption and litigation. Section 2 looks at one particular group of stakeholders, those who live in close proximity to extraction activity, in order to examine how effective community conflict management can circumvent high financial and opportunity costs, as well as examine the financial benefits of involving stakeholders in the management of human rights risks.

1. Workforce

Human rights provide a common language, baseline, and a framework (through instruments like the UDHR and the UNGPs) for treating people with basic human decency. Rights are grounded in human dignity, citizenship, and equality, all of which individuals must enjoy both outside and within the workplace. The UDHR emphasises the need to respect the inherent dignity of humanity, the right to just and favourable conditions of work, the right to rest and leisure, and the right to an adequate standard of health and well-being. The workplace is an important space where these rights ought to be upheld. Framing workplace issues like poor working conditions, harsh treatment, and low wages as human rights challenges can empower workers and support business' understanding of its obligations to employees, regardless of geographical location or political context. Ensuring the workplace is a positive environment, one where everyone is treated with respect and dignity, is therefore extremely important, and upholding these rights can also benefit the firm. The research below looks at two ways human rights are a positive force in the workplace, first through respecting the human rights of its employees and, secondly, by ensuring external company values match human rights standards. A firm that respects human rights internally and externally can profit from a more loyal, engaged, and productive workforce, as well as avoid supply chain disruption and employee-based litigation claims.

1.1 Respecting Human Rights in the Workplace

Lower productivity, profitability and high turnover can, in many cases, be offset through 'humanising' workers by giving adequate thought to human rights. Utilising core labour rights, the Better Work Programme, whose mandate is to improve labour standards and competitiveness in global supply chains, has been able to enhance workplace productivity by advising companies and providing training on labour standards. An independent review of the Programme demonstrated its causal effect on a wide range of working conditions in garment factories, including preventing abusive practices, curbing excessive overtime, and closing the gender pay gap.[12]

One example of the link between productivity and human rights was demonstrated by the effect of sexual harassment in the work place. Sexual harassment is not only a violation of peoples' rights, but the Better Work impact assessment found that it also directly affects the productivity of a business. In its factories in Jordan, efficiency was significantly lower in factories where worker concerns surrounding sexual harassment were high.[13] As a result of the Better Work Programme and their focus on labour and human rights, many factory workers no longer feared workplace accidents and sexual harassment decreased in most countries where the Programme was active.[14] These kind of positive effects of respecting human rights were exemplified in other studies which focused on the right to collective action and demonstrated that cooperating with union members and meeting union demands improved employee morale.[15] These interactions create an environment where workers feel their needs are met and where they are treated with a baseline of human dignity. Furthermore, Better Work Vietnam (See Case Study 1 below) demonstrated that better working conditions were linked to higher levels of worker productivity. After four years of participation with Better Work, average profitability increased by 25%[16] and proper training for supervisors, particularly female supervisors resulted in a 22% increase in productivity.[17]

CASE STUDY 1

APPAREL SECTOR IN VIETNAM

Research from the Better Work impact. Assessment in 2015 showed strong evidence supporting the economic case for better working conditions.[18] The Better Work programme is a partnership between the International Labour Organisation (ILO) and the International Finance Corporation (IFC). Its objective is to "improve labour standards and competitiveness in global supply chains."[19] The impact assessment collects data on factory characteristics, performance, and workplace practices from factories enrolled in Better Work Vietnam. The data collection took place between 2010 and 2013 and more than 5,100 workers in 185 factories. Provided responses.[20]

KEY FINDINGS

- Factories experience a 5.9% boost in profitability when workers perceive improvements in working conditions traditionally associated with 'sweatshops' including improvements in their sense of physical security and assurance in wage payments.
- Similarly, profitability is 7.6% higher where workers. Experience a comfortable environment and trusting workplace.
- Profitability improves in factories with better working conditions because workers are more productive. Workers in factories with better working conditions reach their daily production targets up to 40 minutes faster than similar workers who are working in factories with worse conditions.[21]

By respecting human rights internally, a company can avoid costly and disruptive risks.[22] Sometimes supply chain disruptions are unavoidable, occurring as a result of natural disasters, but others occur when the workforce feels their labour or human rights are at risk. Such disruptions are especially problematic in low-wage employment in the Global South. For example, in the apparel sector in Cambodia in 2014, forced overtime, poor-working conditions, low-wages, and anti-union discrimination by factories that supply companies like H&M and Zara resulted in reoccurring strikes and walk-outs of tens of thousands of workers across 300 factories.[23] And in 2015, strikes and go-slows by the workers at Nhava Sheva Port in India, brought on because workers were 'left in the lurch' without income or permanent jobs due to precarious contracts, halted almost all operations, creating vast backlogs and congestion at key terminals.[24]

As for those in higher-wage employment – typically in the Global North – in 2015, the Harvard Business Review reported on the growing body of work in organisational psychology demonstrating that not only was a "cut-throat environment harmful to productivity over time, but that a positive environment will lead to dramatic benefits for employers, employees, and the bottom line."[25] In the U.K., for example, the combined costs of sickness absence, non-employment, effects on unpaid work and output losses is £26 billion a year.[26] And across the Atlantic, it's estimated that more than $500 billion in the U.S. economy and 550 million workdays are lost each year due to workplace stress.[27] Workplace stress and disengagement also leads to high turnover costs associated with recruitment, training, lower productivity, with estimates stating that replacing a single employee can cost approximately 20% of the employee's salary.[28]

Aside from avoiding disruption, another key reason to internally respect and uphold human rights in the workplace is the mitigation of legal and financial risk from employee-based litigation. The broad range of transnational tort litigation is better analysed elsewhere in this report (see Part 3) but focusing on workplace disputes can illuminate the real economic risk of overlooking human rights such as adequate health and safety. Share prices react to even the threat of liability.[29] Take the seminal tort case in the U.K., *Lubbe v Cape*.[30] Mr. Lubbe was injured at work while manufacturing asbestos in a South African subsidiary of Cape Plc, a U.K. based company. After judgment was handed down by the House of Lords in 2000, Cape's share prices dropped sharply on the London Stock Exchange.[31]

Without visibility from source to retail, companies may be unaware of human rights violations in their supply chains. Human rights due diligence (HRDD), as set out under the UN Guiding Principles for Business and Human Rights, can help mitigate supply chain disruption and minimise legal risk by increasing transparency and ensuring suitable grievance mechanisms. In a study by the British Institute of International and Comparative Law (BIICL) and the commercial law firm Norton Rose Fulbright, it was found that 19% of those companies surveyed that did not implement specific HRDD identified adverse human rights impacts on their operations.18 The study found that the need to implement HRDD was key to meeting investor expectations as well as achieving a contemporary commercial necessity: sustainable supply chains.[33] However, caution should be given when implementing HRDD process to ensure it is directed at substantive, transparent goals and not simply a form of superficial human rights compliance that exists as a 'one-off' practice.[34]

Research also found that non-employment human rights issues were being overlooked.[35] Focusing strictly on more highly-regulated human rights issues like workforce management and health and safety, while extremely important, should not take away from other non-regulated human rights issues like community relations. Section 2 deals with the cost of community conflict.

1.2 Identification with a Company's Human Rights Values

In today's competitive job market, having a 'job for life' is becoming a thing of the past. A 2017 Investec survey in Britain found that more than half of survey respondents were planning to change careers within the next 5 years.[36] And according to LinkedIn, young workers in the U.S. typically change jobs 4 times in their first 10 years after graduation.[37] Moreover, workers are increasingly looking for something more than a pay check and a 9-to-5 experience. This is particularly true for Millennials and Generation Z.[38] Millennials represent an increasing share of the workforce, across a range of sectors and organisational levels. Yet, in general, they express little loyalty to their employers.[39] The challenge of attracting and retaining valuable employees can be addressed in a number of ways, including improving the social and human rights record of a company.

1.2.1. Loyalty

A research study spanning 29 countries, undertaken by Deloitte in 2016, demonstrated that Millennials with a college degree and working in predominantly private sector organisations want to contribute to the positive impact business has on society. Seventy-three percent of the participants believed that business was a force for good in society.[40] The findings suggest that Millennials are increasingly choosing employers because they identify positively with a company's values.[41] Indeed, 56% of the Millennials surveyed have "ruled out working for a particular organisation because of its values or standard of conduct".[42] For this age-group, the top two values to ensure long-term business success were how a company treated its employees and its ethical values.[43] These two values directly correlate to respecting human rights, within the workplace (by addressing employees' right to non-discrimination, rest, and leisure), and externally through its ethical values (by recognising and acting on the idea that the actions of business enterprises can affect the enjoyment of human rights by others). Other studies in line with the theory of social identity have demonstrated that employees are proud to identify with organisations that have favourable reputations.[44] Richard Allan, Facebook's Vice President for public policy in Europe, stated in a 2018 New York Times Article:

> *"We employ very thoughtful and principled people...They work here because they want to make the world a better place, so when an assumption is made that the product they work on is harming people it is impactful."*[45]

Another way to look at retaining talent through human rights is identifying and emphasising a company's sustainability practices. What is often not recognised is that human rights are essential to achieving sustainable development.[46] In a 2011 study by the Society for Human Resources Management, companies with strong sustainability programs were compared to companies with poor programs. The former had 55% better morale, 43% more efficient businesses processes, 43% stronger public image, and 38% better employee loyalty.[47] As Kellie McElhaney, director of the Center for Responsible Business at Berkeley's Haas School of Business, pointed out: "for today's 'millennials' entering the workforce, engagement in sustainability is a must-have, not a nice-to-have".[48]

1.2.2. Productivity

Aligning business with human rights principles can also ensure workplace productivity and positive employee engagement. It has been well established that positive work cultures are more productive.[49] And, while there has not been extensive research into how directly human rights correlate with productivity, examples below demonstrate how, on one hand, ignoring human rights can cost businesses and, on the other, how respect for human rights can contribute to a positive (and thus, more productive) workplace culture.

An unhappy workforce is a costly workforce. When looking at how the workplace identified and reacted to a company's values, the 2016 study by Deloitte (above) revealed the adverse effects of unethical corporate behaviour on workforce productivity, with 49% of Millennials refusing to undertake a particular task at work because it went against personal values or ethics. Geographically, the level of refusal ranged from 20% in Japan to 71% in Colombia and was generally higher in Latin America.[50] A disengaged workforce and one with a high refusal rate are expensive. It is estimated that actively disengaged workers cost the U.S. $483 billion to $605 billion each year in productivity.[51] Yet, in the 2017 Gallup survey on the 'State of the American Workplace', businesses in the top quartile for employee engagement – but otherwise spanning a wide range of sectors and sizes – had 21% higher profitability, 20% higher sales, and 17% higher productivity than those in the bottom quartile.[52] Similar results were found in a decade-long study by the Smith School of Business at Queen's University in Canada, small to medium business organisations with high employee engagement scores experienced 15% higher employee productivity, 65% share price increase, and 26% less employee turnover.[53]

2. Community Relations

Section 2 will explore the issue of human rights and the cost for business of failing to manage stakeholder relations and how companies can do better, as well as looking at the benefits of engaging with the wider stakeholder community. Much of the research below concerns the extractive industry, since this sector is commonly seen to have a very direct impact on peoples' lives and garners the most media attention when things go wrong (see, for example, the BP Deepwater Horizon oil spill). It is important to be mindful of the fact that the research also mostly focuses on stakeholders who live in close proximity to the extractive work and represents one particular example of community conflict. Yet, due to the global nature of business and the proliferation of supply chains across industries, conflicts with stakeholders can arise with businesses in any sector, and due to a wide range of issues. In 2017, the NGO Global Witness reported that for the first time ever agribusiness surpassed mining as the most dangerous sector to oppose with 47 human rights defenders killed across the globe protesting against the expansion of palm oil, fruit, and sugar plantations.[54] In the Philippines alone, 8 members of the Taboli-manubo were killed protesting the expansion of Silvicultural Industries coffee plantation.[55]

2.1 The Cost of Community Conflict for Business

Positive and productive community engagement is a key part of understanding and mitigating any negative impacts business may have upon human rights. The 'social licence to operate' is a term used to identify the intangible but ongoing approval or acceptance of businesses by affected communities. It is distinct from the legal or regulatory licence granted by the government of a country.[56] A company is 'granted' a social licence when its operations meet stakeholder expectations and social norms.[57] Effective community engagement can be done through human rights-based tools like consultation, impact assessments, and operational-level grievance mechanisms[58] Even where the community is involved in consultation processes around resource development, the "potential for mismatched expectations among the many stakeholders in these operations is high."[59] While it is difficult to quantify the positive benefits of effective community engagement, the research and Case Study 2 below demonstrates instances when the lack of a social licence risks serious consequences for a business.

Large scale-natural resource projects often generate social conflict.[60] These conflicts arise when a group of people believes their human rights have been abused by a company. Such conflicts can lead to a company's social licence not being granted or being revoked. A 2008 study of 190 international oil projects by Goldman Sachs found that, due mainly to non-technical (i.e. political or stakeholder related) delays, the time it takes for new projects to come onstream had almost doubled over the previous decade.[61] Conflict with communities in particular has been shown to have high financial, opportunity, and personal costs to companies and their personnel.[62] Activist campaigns in the media can negatively impact upon market valuation[63] and large-scale projects have been completely abandoned in the face of community opposition.[64] A 2014 study by Rachel Davis and Daniel Franks quantified the costs of getting stakeholder engagement wrong in the extractive sector.[65] The research used confidential interviews with industry representatives, analysis of 50 publicly available cases, and field work in Peru. Worryingly, it demonstrated that in the extractive industry, community conflict management receives little attention, despite the fact that extractive community conflict is often well publicised[66] and also generates the same broad negative conditions as technical, contractual, or regulatory problems.[67] Other sectors, which perhaps do not attract the same attention, may have even less of an incentive to invest in stakeholder management techniques, even when doing prevents long and short-term financial loss.

Indeed, the study found that the greatest costs of conflict were opportunity costs, with companies losing out on future projects, expansion plans, and future sales.[68] In terms of productivity, one striking figure from the study showed that a major "world-class mining project" with capital expenditure of $3-5 billion was to suffer costs of around $20 million per week of delayed production, largely due to lost sales.[69] Almost half of the cases analysed involved some type of blockade, a third involved a fatality or injuries, damage to property, or the suspension or abandonment of a project.[70] The community conflict costs most overlooked by the company were identified as indirect costs by diverting staff to deal with the conflict, in particular those in senior management roles. While the working assumption in the mining industry is that around 5% of an asset manager's time is devoted to managing community conflicts, Ruggie points out that the 2014 research by Davis and Franks identified instances where time spent on these conflicts made up 50% and 80% of the asset manager's work.[71] Finally, the study found that there may also be costs associated with staff retention and recruitment rates.[72] Case Study 2 below further demonstrates the risks of ignoring the human rights of communities in close proximity to business activities.

2.2 Benefits of Positive Stakeholder Relations

Engaging with affected communities is not only a matter of mitigating risk. Inclusion and engagement of these groups can also be financially rewarding. It's becoming increasingly clear that companies who are run with a view to the long-term interests of their stakeholders are more likely to prosper than those who take a short-term, shareholder approach.[73] The Network for Business Sustainability found that when a company performs well (i.e. above average for its industry), good stakeholder relations help sustain it for a longer period of time.[74] Furthermore, when a company performs poorly, good stakeholder relations help it bounce back faster.[75] Similarly, in 2014, a study found empirical evidence in support of the argument from instrumental stakeholder theory that increasing stakeholder support enhances the financial valuation of a firm, holding constant the objective valuation of the physical assets under its control.[76]

3. Conclusion

This part sought to illuminate some examples of corporate impact on society and link these to the economic implications of respecting human rights. Drawing on evidence from a wide variety of industries and geographical locations, it demonstrated the effect of respecting or ignoring human rights on those most affected by a company's actions: the workforce and those living in close proximity to corporate activity. In the workplace, employees are motivated by a company's internal dedication to human rights, through compliance with labour standards, as well as external corporate practices. Businesses that fulfil these criteria are likely to have a more productive and more profitable workforce, and avoid costly risks. Positively engaging with community relations and build and retain a social licence to operate. Effective management of community stakeholder relations can even be financially rewarding in the long-term. By understanding the corporate impact on society, and implementing a proper human rights strategy inside and outside its walls, a company can reap the financial benefits, while effectively managing risks.

CASE STUDY 2

OCCIDENTAL IN ECUADOR

Occidental Petroleum is a multinational petroleum and natural gas extractive company, headquartered in Houston, Texas. Occidental was, until 2006, Ecuador's largest investor, making up around 20% of Ecuador's total production[77]. However, in 2006, the Achuar people who live on the borders of Peru and Ecuador protested against Occidental Petroleum's oil production in the rainforest, after it was found that the company had been polluting nearby rivers and streams with around 9 billion gallons of highly toxic waste between 1971 to 2000[78]. To the indigenous communities, these rivers are vital for survival. A study by the Peruvian health ministry in affected communities showed that all but two of the 199 people tested had unsafe levels of heavy metals in their bloodstream[79]. The events resulted in a state of emergency in Ecuador, after the protestors took over an Occidental pumping station, and forced the closure of two pipelines and a local airport. There were hundreds of injuries[80].

ECONOMIC CONSEQUENCES FOR OCCIDENTAL

- Closure of two pipelines and local airport.
- In 2007, the Achuar people sued Occidental in a Californian federal court, alleging that Occidental had knowingly caused pollution that resulted in deaths, birth defects and damage to habitat.[81]
- The case was finally settled out of court in 2015 after a long legal battle. Occidental paid an undisclosed amount to the Achuar community.[82]
- After the protests of 2006, Occidental's contract was revoked by the Ecuadorian government[83], its share price falling by 2.2%.[84]

PART 2: RESPONDING TO GOVERNMENT INCENTIVES INTENDED TO PROTECT HUMAN RIGHTS

The extent to which noncompliance with human rights standards can hurt the economic bottom-line of businesses is documented elsewhere in this report.[1] This section focuses on situations where an economic relationship exists between the state and businesses. Specifically, the section analyzes economic incentives and disincentives that public agencies can employ to promote respect for human rights.

'Companies that engage in international trade and overseas investment often rely on home governments for access to export credit, investment guarantees and other support services (such as trade missions) that help them to export to or invest in global markets'.[2] Increasingly, governments are using economic leverage as a tool to enhance compliance with human rights, as well as environmental and labour standards, by conditioning conveyance of economic benefits upon corporations' performance in these areas. Several developments in international policy have reinforced this trend. The UNCTAD World Investment Report 2018 notes that most of today's new international investment agreements (IIAs) include sustainable-development-oriented reform elements.[3] The report finds remarkable differences between the IIAs concluded in 2000 and those concluded in 2017. According to the report, of the 13 agreements concluded in 2017, all but one explicitly recognise that 'the parties should not relax health, safety or environmental standards to attract investment; and 11 refer to the protection of health and safety, labour rights, the environment or sustainable development. in their preambles'.[4] Further, the report notes that some recent IIAs, such as the Intra-MERCOSUR Agreement, contain innovative features that have rarely been encountered in earlier IIAs, 'including a "best efforts" obligation for investors to respect the human rights of the people involved in investment activities and to promote the building of local capacity and the development of human capital'.[5]

Similar developments can be observed in the field of trade law. Governments have begun in the 1980s and 1990s to incorporate human rights language in their preferential trade agreements (PTAs).[6] Canada, Mexico, and the U.S. were the first countries to include explicit human rights provisions in a trade agreement.[7] 'NAFTA includes labor rights in a side agreement, as well as transparency (access to information) and public participation obligations in both the body and side agreements'.[8] Today, many of the world's most important trading nations include human rights language in their PTAs.[9]

The UNGPs also emphasise that the State's duty to protect extends to the activities where the State acts as an economic actor.[10] In line with the UNGPs, several governments have started to condition regulatory approvals for business activity on 'due diligence applied to both overseas and domestic projects and include human rights within the standards they set for business'.[11] As such, compliance with human rights standards allows businesses to obtain preferential treatment by governments. Conversely, noncompliance carries business risks, such as limited access to export credit, loss of government procurement opportunities, and becoming less attractive to banks and investors.[12] Among various examples of economic incentives and disincentives at the disposal of public agencies, the following focuses on three of them: (1) public procurement, (2) export credit support, and (3) trade incentives.

1. Public Procurement and Government Contracting

Public procurement refers to the purchase by governments and State-owned enterprises of goods and services.[13] **Socially Responsible Public Procurement (SRPP)**, which includes human rights considerations, 'aims to set an example and influence the marketplace by giving companies incentives to implement socially responsible supply chain and management systems'.[14]

Public procurement contracts represent a 'significant share' of the total global economy.[15] According to a recent study published in the *Business and Human Rights Journal*, public procurement contracts worldwide are estimated to be worth €2 trillion annually.[16] Governments in OECD member states spend on average 12% of their gross domestic product (GDP) on public procurement and an average of 16% in the EU and 20% worldwide.[17] Public authorities are the principal buyers in many sectors including energy, transport, waste management, social protection, and the provision of health or education services.[18]

Their significant purchasing power provides governmental agencies with considerable leverage to influence corporate behavior. While large companies have experienced SRPP since the mid-1990s,[19] the UNGPs drew renewed attention to economic links between State and business under the heading of *State-business nexus*. Guiding Principle 4 provides that States should take additional steps to protect against human rights abuses by business enterprises owned or controlled by the State. The subsequent two principles contain direct references to situations where governments enter into commercial relationships, including through public procurement. Guiding Principle 5 addresses the issue of "contracting out" or privatizing the delivery of services. Guiding Principle 6 addresses the issue of states conducting commercial transactions generally, and points out to procurement activities specifically. The commentary to Guiding Principle 6 states that procurement provides States, individually and collectively, with a unique opportunity to promote awareness of and respect for human rights by businesses, including through the terms of procurement contracts.[20]

Furthermore, there is a growing trend to include procurement provisions in National Action Plans (NAPs) adopted to implement the UNGPs. All of the NAPs released to date, with the exception of the Lithuanian NAP, refer to the need for measures to integrate human rights into public procurement practices, to varying degrees.[21] For example, the U.K. 2016 Updated NAP states that the U.K. Government will continue to ensure that 'procurement rules allow for human rights-related matters to be reflected in the procurement of public goods, works and services...'

and that the 'UK public bodies are required to have due regard for equality-related issues in their procurement activity'.[22] It is to be expected that most future NAPs will also include procurement provisions which will contribute towards a climate where human rights become central to public purchasing decisions. While this is a move in the right direction, the overall lack of monitoring of compliance, however, detracts from the full value of these policy instruments.

The 2030 Agenda for Sustainable Development includes targets on public procurement. According to Target 12.7, to ensure sustainable consumption and production patterns, states should 'pro mote public procurement practices that are sustainable, in accordance with national policies and priorities'

- The legal basis for public procurement in the European Union is provided by the following Directives:
  The Public Sector Directive (2014/24/EU) updates the rules for public supply, service and works contracts.

  The Utilities Directive (2014/25/EU) updates the rules in the transport, water, energy, and postal sectors.
- The Concessions Directive (2014/23/EU) updates the rules for awarding concessions contracts.

Various other measures foresee that human rights are integrated into public procurement processes. For instance, in the EU, 3 new directives entered into force in 2014 that 'explicitly welcome the use of social and human rights related criteria within procurement processes in a way most would not have thought possible only a few years ago'.[23] While the core function of these directives is to support and facilitate the free movement within the EU of goods, services, capital, and workers, they also create wide regulatory space for the Member States to implement human-rights-oriented public procurement policies at all stages of the procurement process. The EU procurement laws contain an overarching 'social clause' that requires EU Member States to take appropriate measures to ensure in the performance of a contract economic operators comply with applicable environmental, social, and labour law obligations including ILO Conventions.[24] More specifically, in the exclusion phase, for instance, the procurers are required to exclude bidders that have been convicted of child labour or other forms of trafficking in human beings,[25] and they may exclude bidders due to non- compliance with environmental, social, or labour law obligations.[26]

Similarly, in the award phase, the EU procurement laws for the first time incorporate social considerations, meaning that price and cost are no longer the only criteria on which to award a contract.[27] In 2016, for example, the Irish government, enacted public procurement regulations in response to the directives, which require 'economic operators to comply with applicable obligations under ILO core conventions in performing public contracts'.[28]

Various other jurisdictions have incorporated human rights standards into their procurement rules and regulations.[29] An example is the Federal Acquisition Regulation (FAR) in the U.S. that prohibits federal contractors that source their goods or services domestically from discriminating on the basis of various categories such as race and national origin. The FAR also requires contractors to pay all employees in the U.S. the prevailing wages and benefits for the locality in which the work is performed.[30] In addition, the FAR prohibits the use of forced child labour and reliance on human trafficking in relation to U.S. federal contracts sourced abroad.129 In the U.K., the U.K. Modern Slavery Act (2015) requires certain public buyers to report on their efforts to prevent modern slavery, human trafficking, and forced labour in their supply chain.[32] The Japanese government too is among those committed to sustainable public procurement: Based on the UNGPs, the Tokyo Organizing Committee for Olympic and Paralympic Games developed a Tokyo 2020 Sustainable Sourcing Code for goods and services to be procured for the 2020 games.[33] Through conducting procurements in accordance with this Sourcing Code, the Tokyo 2020 Organising Committee aims to contribute to integrating sustainability into the preparations and operations of the Tokyo 2020 Games.[34] The committee also established a grievance mechanism, in order to receive reports of noncompliance with the Sourcing Code and respond with a view to resolving reported cases.[35]

Some constitutions also protect human rights by means of public procurement. The South African Constitution, for example, 'allows organs of the State to implement a preferential procurement policy in the allocation of contracts for the protection and advancement of persons that were previously disadvantaged by unfair discrimination'.[36]

The growing body of national regulation and policy commitments regarding human rights in public procurement is a welcomed development. The compliance monitoring mechanisms, however, are often lacking or ineffective, with a few notable exceptions such as the practice of Swedish County Councils and several U.S. cities that are cited below.

Procurement provisions may be strengthened by requiring the contractors to detail how they plan actively to work towards production of the goods and provision of services, provide periodic updates on implementation, and agree to facilitate government monitoring efforts, among others measures. Further, clarity and harmonized rules will ensure the effectiveness, predictability, and fairness thus creating a level playing field.

In 2016, the International Learning Lab on Public Procurement and Human Rights published a report that outlines public procurement law and policy frameworks, and discusses the interface between public procurement and human rights in practice.[37] In addition to describing how national and international human rights norms relate to public procurement and mapping of current initiatives, the report also presents the results of a questionnaire-based survey on public procurement and human rights administered in twenty jurisdictions.[38] The report states the aim of the survey as to 'gather further information on the status quo of procurement and human rights in the context of existing law, policy, and practice at the level of each jurisdiction surveyed.[39] One of the questions posed by the authors in the survey was the extent to which *'public purchasers apply any measures to require or incentivize respect for human rights, or penalize failure to respect human rights, by businesses that they contract with?'*.[40] From the responses they gathered, the authors report 'a gradual trend towards the application of measures by public purchasers to require or encourage businesses they contract with to respect human rights, or at least some specific human rights'.[41]

Below are some specific examples taken from the report from various jurisdictions as of 2016.

SWEDEN[42]

One of the examples cited in the Public Procurement Survey concerns a tender for mobile phones launched by Sweden's National Agency for Public Procurement in which the agency introduced an award criterion focused on conflict minerals. Suppliers who could report due diligence procedures in accordance with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas received extra points during evaluation of bids. While ultimately, no suppliers bidding for the tender were able to report such due diligence procedures, the Agency considers that the incentive will encourage suppliers to do so for future procurements. Another example, also from Sweden, concerns the purchasing of medical equipment by the County Councils responsible for the purchase of all goods and services needed to support the delivery of healthcare and public transportation.[43] In 2007, research by a Swedish NGO and British Medical Association found that surgical instruments purchased by the County Councils were produced under hazardous conditions in Pakistan. In response, in 2010, the County Councils launched a co-operation initiative on social responsibility in purchasing with a formalized structure and adopted a collaborative approach to monitoring.[44] A further investigation in 2015 found that child labor and serious health and safety violations had been eliminated from those workshops supplying to County Councils, whereas such abuses persisted in neighboring workshops that not are not covered by the new scheme.[45]

THE U.S.[46]

The Sweatfree Purchasing Consortium (SPC) is an initiative in the U.S. focusing on the apparel sector. The membership of the SPC comprises 14 U.S. cities and 3 U.S. states. The members adopt a sweatfree code of conduct and seek to ensure that the apparel products they purchase are made without sweatshop labour. ("The municipal governments of Los Angeles and San Francisco, for example, require their apparel suppliers to comply with laws in the country of production as well as ILO core labour standards. In addition, Los Angeles and San Francisco retain the Worker Rights Consortium (an independent labour rights monitoring organisation) to monitor their apparel supply chains and report on contractors' compliance with their codes".)

CITY OF DÜSSELDORF (GERMANY)

'Point 7.3 of the Public Procurement Order for the city of Düsseldorf in North Rhine-Westphalia (Vergabeordnung für die Stadtverwaltung Düsseldorf) on execution of contracts stipulates that: "no products of exploitation of child labour are to be procured. Independent certification (for example, a Transfair seal or Rugmark seal) may prove this. If no such certification exists for the product in question, a declaration in the form of acceptance of the additional contract provisions for execution of the works and acceptance of the additional contract provisions of the Procurement Order for Supplies and Services Contracts is acceptable"'.[47]

FRANCE

In the municipality of Angers in the cleaning sector 'an offer which is economically extremely attractive because it proposes a lower number of workers than is appropriate to the surface area to be cleaned, based on average ratios, will be considered abnormally low and rejected if the bidder is unable to explain how he will be able to guarantee such a low price without infringing any applicable laws (such as laws regarding the maximum number of working hours per day').[48]

2. Export Credit and Investment Insurance Guarantees

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.
UN Guiding Principle 4.

'States parties should also consider the use of administrative sanctions to discourage conduct by business entities that leads, or may lead, to violations of the rights under the Covenant. Access to export credit and other forms of State support may also be denied in such circumstances, and in transnational contexts, investment treaties may deny protection to foreign investors of the other party that have engaged in conduct leading to a violation of Covenant rights' *Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017)*

Export credit agencies (ECAs) are primarily public or publicly mandated entities that provide domestic corporations with government-backed loans, guarantees, credits, and insurance to support exports and foreign investments: 'Government-backed export finance is meant to help companies' exports by guaranteeing they will be paid for the goods or services they have invested to produce or provide, and also by providing credit when the overseas buyers wish to wait for the goods to be delivered before paying for them'.[49] The ECAs represent one of the largest sources of public finance and are 'extremely important' for the private sector, both for large and small companies.[50] The OECD reports that in 2005, ECAs in OECD member nations provided US$ 125 billion in credits, insurance guarantees, and interest support.[51] A WTO study in 2016 noted that 'up to 80 percent of global trade is supported by some sort of financing or credit insurance'.[52]

The examples below intend to demonstrate that governments have started to promote better business conduct by making credit and insurance guarantees dependent on recipients' human rights records. The U.K.'s Export Credits Guarantee Department (ECGD), for instance, has been requiring applicants for ECGD support to undergo a 'social impact screening' procedure since 2000.[53] The ECGD 2000 Business Principles state that 'ECGD will, when considering support, look not only at the payment risks but also at the underlying quality of the project, including its environmental, social and human rights impacts'.[54] Similarly, Export Development Canada (EDC) has a dedicated website on CSR that contains a statement on human rights that reads 'EDC values human rights and provides its financing and insurance services with a view to the promotion and protection of internationally-recognized human rights'.[55] The EDC also has a complaints mechanism, which is run by the compliance officer.

In Norway, the Norwegian Export Credit Guarantee Agency (GIEK) has a dedicated website on responsible business conduct which states that all applications are assessed for social (including labour and human rights) and environmental risks, impacts, and consequences.[56] GIEK and Export Credit Norway, which often provide financing for the same projects, have established a formal cooperation pact that includes human rights due diligence based on the expectations of export credit institutions set by the UN Guiding Principles, and is an integrated part of GIEK's and Export Credit Norway's loan and guarantee activities.[57] Complaints raised at the Norwegian NCP, and the willingness of companies involved to cooperate with the NCP forms the part of GIEKs due diligence process.[58] All projects for which financing is considered are submitted to an internal risk classification.[59]

The official Dutch export credit agency, Atradius Dutch State Business (ADSB), will insure export transactions and investments abroad only if they are not 'associated in any way with issues such as bribery or abuses of human rights'.[60] ADSB has a *Policy Statement on Human Rights,* according to which its clients are expected 'to meet their obligations on human rights and, even if the destination country has a less than perfect record on those rights, to conduct their own due diligence procedure, assess the risks of human rights violation, take measures to monitor and mitigate those risks, and communicate the results'.[61] Recently, the ADSB introduced a complaints mechanism covering, among other things, 'negative environmental and social impacts, human rights violations or other detrimental impacts, which affect a complainant and are linked to the operations where a Dutch export or financing is covered by ADSB Export Credit Agency insurance'.[62]

The fact that leading ECAs have been updating their policies and practices to integrate human rights into their existing due diligence processes, in line with the UNGPs, has been clearly acknowledged by the OECD in the latest revision of the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the Recommendation on Common Approaches).[63] In most OECD states, a clear conditionality is established between the granting of export credits and compliance with the standards of the OECD Recommendation on Common Approaches.[64] The revised Recommendation published by the OECD Council on April 7, 2016, states explicitly that ECAs should screen all applications for a 'likelihood of severe project-related human rights impacts'.[65] Where screening identifies a high likelihood of such risks, ECAs should further assess them, including potentially by complementing their existing environmental and social due diligence with human rights due diligence.[66] The uptake of the Recommendation on Common Approaches by all the OECD -affiliated countries would subsequently mean that over 100 billion Euros export credits will be tied to the fulfillment of human rights.

THE ILISU DAM PROJECT, TURKEY

The Ilisu hydroelectric dam in Southeast Turkey is Europe's largest dam project currently under construction.[67] It is also one of the world's most controversial dam projects due to its social, environmental, cultural and political impact: The number of people potentially affected through displacement and resettlement of the construction of the dam is estimated to be as high as 78,000.[68] The dam has also impacted the ancient cultural heritage and the ecosystems.[69] The area where the dam will be located, Hasankeyf, has a history of more than 12,000 years, dating back to the Neolithic period, when it was the site of one of the world's first organized human settlements.[70] The Ilisu Dam project is the most emblematic instance and the first time where three major European ECAs (from Germany-Euler Hermes, Switzerland-SERV, and Austria-OeKB) tried to implement specified social and environmental project conditions and ultimately withdrew export coverage support from European-based suppliers and contractors because of the host government's failure to implement the required standards.[71] Insurance was issued for half a billion USD, one third of the project's estimated cost, and was subsequently withdrawn when the committee of experts appointed jointly by Turkey and ECAs reported that Turkey failed to implement the required standards on displacement and resettlement, the environment, and the protection of cultural heritage.[72]

3. Trade Benefits and Incentives

Trade-related human rights measures are trade restrictions or trade incentives that are conditioned on the performance of certain human rights standards.[73] By their nature, these measures are directed at States and not at businesses directly. However, governments also have various instruments at their disposal through which they can pressure businesses to comply with human rights standards by linking provision of advice or assistance to human rights criteria. These instruments include advice from diplomatic and consular missions, assistance and support to participate in trade missions or trade fairs abroad, and loan guarantees or insurance. The German NAP, for example, proposes to 'introduce human rights due diligence reports into the assessment procedures of the insurance instruments for foreign trade in cases where there is a high probability of serious implications for human rights'.[74]

Thus, in trade relations the economic arguments for corporations to respect human rights surface at two levels: First, corporations have a clear case to respect human rights and to encourage their supply chain partners to subscribe to human rights standards in order to have access to advice and assistance provided by their governments. Second, they also have a clear case to exert influence on their governments to improve human rights conditions in order to ensure that their government continues to derive trade-related benefits from international bilateral and multilateral agreements.

Governments, through agreements such as preferential trade agreements (PTAs) with other governments, have increasingly begun to use 'the economic incentive of enhanced market access as a tool to foster and promote compliance with international human rights norms'.[75] The Danish Institute for Human Rights (DIHR) reports that 75% of the world's governments now participate in PTAs with human rights provisions, including non-derogation clauses; language in the preamble; or language extending Article XX of the GATT/WTO.[76] DIHR also reports that some of these provisions are binding, while others remain rhetorical.[77]

One of the most notable existing practices to promote human rights through trade include the EU's Generalised System of Preferences (GSP) and GSP+ systems. For instance, in order to benefit from GSP+, which entails full removal of tariffs on over 66% of EU tariff lines, the beneficiary country must have ratified the 27 GSP+ relevant international conventions on human and labour rights, environmental protection, and good governance.[78] Although the GSP+ mechanism is not meant to address businesses directly, it is clear that companies have a vested economic interest both in complying with human rights and ensuring that beneficiary country governments live up to their human rights obligations. This has been the case even where the failure of the state to meet its obligations 'has absolutely no connection or relevance to the conduct of their business', as a 2013 study of Sri Lankan garment industry has shown.[79]

GSP+ CONCESSIONS AND SRI LANKAN GARMENT INDUSTRY[80]

In February 2010, GSP+ incentives were withdrawn from all products originating in Sri Lanka following an EU investigation that concluded that the country had failed to meet its human rights obligations under the GSP+ scheme. Leaders within the Sri Lankan apparel sector expressed strong concerns about the potential impact of the GSP+ withdrawal. 'With GSP+ concessions withdrawn, Sri Lankan exports to the EU must absorb extra import duties of 9.6%. This raises the cost of these exports to EU buyers and makes them less competitive in those markets which account for the bulk of Sri Lanka's garment exports. Sri Lanka's garment industry thus appears to have significant financial incentives to pressure the government to adhere to its international human rights obligations'.[81]

Furthermore, since 2006, the 'Garments without Guilt' initiative has promoted Sri Lanka as the *World's #1 Ethical Apparel Sourcing Destination*. The campaign was founded on five guiding principles: ethical working conditions, no child labour, no forced labour, no discrimination on any grounds, and no sweatshop practices. It was monitored by third-party private inspections. The withdrawal of GSP+ benefits 'severely compromised the integrity of the entire 'Garments without Guilt' framework': *'There can be little doubt that the Sri Lankan government's shortcomings with respect to its human rights obligations also tarnish the Sri Lankan apparel industry and its 'Garments without Guilt' campaign'*.[82]

'The GSP+ trade benefits give the Sri Lankan garment industry a clear incentive to take a leadership role in helping the government overcome its human rights problems. Aside from the obvious economic incentives, the withdrawal of GSP+ concessions presents the Sri Lankan garment industry with a valuable opportunity to strengthen its 'Garments without Guilt' brand'.[83]

In addition to the EU, a number of countries have adopted trade agreements, or trade preference programs, that include human rights and good governance clauses. The European Free Trade Area (EFTA) countries—Switzerland, Norway, Iceland, and Liechtenstein, for instance—'have also intermittently adopted the practice of inserting human rights clauses in free trade agreements with third countries.[84] Similarly, 'the Mercosur countries (Argentina, Brazil, Uruguay and Paraguay), as well as Chile and Bolivia, have entered into a protocol providing that any break-down of democracy in a member state may result in the suspension of rights and privileges under the organisation's preferential trade instruments'.[85]

HOPE I AND HOPE II[86]

The U.S. Congress, enacted two laws, HOPE I, in 2006, and HOPE II, in 2008, (the Haitian Hemispheric Opportunity through Partnership Act) in order to create incentives for overseas suppliers to comply with international labor standards, and stimulate foreign investment in the apparel sector in Haiti.

HOPE I gave duty-free status to apparel imports that met certain rules of origin.

HOPE II incentivizes Haitian apparel manufacturers to comply with labor standards 'by offering duty-free treatment for their apparel exports and technical assistance to comply with labor standards. The standards implemented include the right of association; the right to organize and bargain collectively; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor and a prohibition on the worst forms of child labor; and the elimination of discrimination in respect of employment and occupation'.... The manufacturers that comply with core labor rights and that subject themselves to the oversight of Haiti's Labor Ombudsman Office and firm level inspections by the ILO will be rewarded by duty-free access to the United States market'.

4. Conclusion

Several developments in international policy have created a space for governments to use economic leverage as a tool to ensure and enhance compliance with human rights standards. In the field of international economic law, States have started to incorporate human rights related criteria in the treaty language, which was uncommon a couple of decades ago. Furthermore, the UNGPs have reinforced the obligation of States to protect human rights that also extends to States' economic relations with private actors. This has resulted in the adoption of various policies that encourages business to respect human rights as well as encouraged them to pressure their governments to uphold human rights. Among the examples studied in this section, the clearest picture emerges in what is known as public procurement or government purchasing. For example, the trend to incorporate public procurement provisions into NAPs has been adopted by almost all of the governments that have adopted NAPs to date. Various developments in the field of trade and export credits point to the existence of further economic incentives for businesses to respect human rights. However, the examples dealing with all these fields are usually addressed through the lens of State duty to protect human rights, and therefore the development of empirical evidence that would substantiate such economic benefits is just in its infancy.

PART 3: HANDLING THE COSTS OF LITIGATION OVER CORPORATE ABUSES

It is broadly noted by the UNGPs and scholars that businesses now operate under an "expanding web of liability" that results from the rise of cross-border human rights litigations.[1] The increasing risk of human rights lawsuits against companies can be observed from the increasing rate of litigation in recent years. Out of 151 sample cases profiled by the Business and Human Rights Resource Centre (BHRRC) between 1994 and 2018 (see Annex 1), more than half of the proceedings were brought in 2007 and onwards. As the data imply, the number of cases brought between 1999 and 2003 shows an increase of 10.61% compared to the previous period between 1994 and 1998. The number of proceedings filed between 2004 and 2008 rose by 5.95% compared to the previous five years (i.e., 1999-2003). Likewise, the number of lawsuits filed between 2009 and 2013 increased by 3.97% compared to the period between 2004 and 2008. Looking onward, 35 out of the 151 proceedings reviewed (that is about 23.17%) were brought between 2014 and 2018. This progressive increase clearly shows the increasing risk of legal action that companies now face. Moreover, it illustrates that the 'business case for respecting human rights' is becoming stronger, as the litigation risk against corporations grows.

Different factors may explain the increase of lawsuits. Some of the drivers, among others, include easier access to information, low-cost of travelling, and better non-governmental organization (NGO) infrastructures that enable victims to file their cases relatively easily. Added to this, the uncertainty related to the legal standards of care that corporations must observe plays a role in the increased litigation risk against companies because business would not clearly understand where the line for abusive behavior is without such guiding legal standards.

Given this growing risk of litigation against companies, this part addresses whether businesses should be concerned about litigation related to corporate abuses—that is, whether based on litigation risk, there is an economic argument for corporations to respect human rights. For this purpose, this part focuses on a cost analysis of corporate abuse-related lawsuits. Typologies of costs to companies are initially drawn from existing literature and further substantiated through case studies and empirical reviews. Cases are chosen from a mix of different industries and jurisdictions, depending on the availability of relevant information.

1. Financial Cost

Corporate human rights litigation is costly in terms of finance, reputation, and time. As the trend of increasing numbers of lawsuits suggests, some domestic legal systems have developed mechanisms that punish corporate defendants. These include restrictions on the ability of a company to operate in a given economic area, bans on certain procurement opportunities, publication of convictions and penalties imposed, limitations on access to capital, and even confiscation of properties and compulsory winding up.[2]

For instance, the EU Directive 2014/24/EU on Public Procurement, Art. 57 lists various grounds for exclusion of bidders from public procurement (this is studied in detail under Part 2 on Economic Incentives in this report).[3] One of these grounds[4] is conviction by final judgment of using child labor or other forms of human trafficking.[5] This obligation to exclude extends beyond the tendering phase and is reinforced by a requirement to terminate contracts awarded to companies which are subsequently convicted for the same offenses.[6] Even though this provision is narrowly focused on specific kinds of abuses, a plausible case can be made that the scope of such provisions will broaden, rather than narrow in the future.[7] Thus, the economic risk for corporate defendants of being excluded from public procurement is growing. The same goes for the limited application of the provision to 'convicted' companies. There has been criticism that this may be toothless, since corporate human rights cases, mainly criminal proceedings, so far have rarely ended in conviction. As a consequence, some domestic provisions go further. In the U.K., contracting authorities have the discretion to exclude tenderers "...where there is information showing grave misconduct by a company in the course of its business or profession... [which] ...might arise in cases where there are breaches of human rights."[8]

In addition to potential exclusion from public procurement, companies' exposure to litigation (social, environmental, and human rights) may negatively affect their credit rating and access to capital. This is because facing a lawsuit and the potential risk of being a judgment debtor per se are recognized and viewed negatively by credit rating agencies.[9] In other words, corporations involved in litigation will likely face an increased cost of capital to finance their investment.[10] The following table shows a sample of three companies that have faced lawsuits and the impact on their credit rating (by Moody's credit rating agency).

Table 1: Sample Credit Rating by Moody's

Companies	Year	Moody's comments/rating & rationale for rating	Lawsuit/ Settlements
BP Plc.[11]	2013	"Considerable financial uncertainty will continue to weigh on BP plc's credit profile until the size of the ultimate potential financial liabilities arising from the April 2010 Macondo accident and oil spill in the Gulf of Mexico."	Civil lawsuit under the Clean Water Act (CWA) and the Oil Pollution Act; and Criminal Charges
	2014	Downgraded the outlook from stable to negative. The rationale given is "… the court's ruling sets the stage for a CWA liability that could be up to the statutory maximum of $18 billion. This is considerably higher than the $3.5 billion CWA fine BP has already provisioned for, and would take total Macondo costs after taxes well beyond the $40 billion threshold and scope of a stable outlook."	US District Court ruling that BP was grossly negligent in its response to the Macondo accident and oil spill.
	2015	Changed the outlook from negative to positive. The change follows BP's announcement of an $18.7 billion agreement in principle to settle all major federal, state and municipal claims against its wholly-owned subsidiary, BP Exploration and Production Inc., related to the Macondo accident & oil spill.	BP's agreement to settle all major federal, state and municipal claims against BP Exploration and Production Inc.,
Chiquita Brands International Inc.[12]	2014	Colombian terror-related claims against Chiquita are a credit positive; no immediate impact to B2 CFR or developing outlook of Chiquita.	Dismissal of a lawsuit by the 11th US Circuit Court of Appeals.
Chevron [13]	2011	"a potential sizable lawsuit against Chevron Corporation… in Brazil could have a negative impact on the company, but it is too early to judge the full extent of future liability arising from the lawsuit."	The comment follows the news federal prosecutor in the state of Rio de Janeiro is seeking $10.78 billion of damages from Chevron and Transocean Ltd. for an offshore oil leak in Nov. 2011.

2. Cost of Out-of-Court Settlement Proceeding

In recent years, settling legal actions against companies out of court has become common. Our empirical review shows 24.5% of the sampled cases (in the past 25 years) wound up with a settlement. This is the second largest proportion next to cases either dismissed or ruled in favor of the defendant companies. Given this trend, it is essential to look at the economic cost to companies of settling human rights litigation. Our data show a growing number of settlements and increasing associated cost over the years (*see* Table 2). Of course, this trend could be read as strategic behaviour of companies in order to avoid litigation cost. For example, the positive change in BP's credit rating (*see* Table 1) that followed the company's agreement to settle all major federal, state, and municipal claims supports this contention. Two observations can be made about this: First, such strategizing supports our claim that litigation cost is becoming increasingly significant for companies, causing some to settle as a way of containing those costs. Second, our data below show that settling cases by itself has become costly for companies.

Table 3 presents financial cost that defendant companies incurred to settle cases between 1996 and 2018 (the sample lists include only settlements for which the amount is disclosed to the public). Except for a few settlements, the data show that the number and cost of out-of-court settlements progressed at an incremental rate over the years, especially since 2009. For example, the largest settlement before 2009 was $235 million (*DuPont* lawsuits regarding PFOA pollution in the USA) in 2001. After 2009, the cost shows a dramatic increase to $18.7 billion in 2015 (*US Deepwater Horizon explosion & oil spill* lawsuits against BP) and $5.3 billion in 2018 (*BHP Billiton & Vale* lawsuit). Thus, settlement proceedings of lawsuits against companies, just like that of court proceedings, can involve significant economic cost – and both are on the rise.

Table 2: Sample Costs of Out-of-Court Settlement

No.	Years	Cases	Costs of settlement
1	1996	BHP lawsuit (re Papua New Guinea)	AUS$40 million
2	1998	Mitsubishi lawsuit (re sexual harassment in USA)	$34 million.
3	2001	DuPont lawsuits (re PFOA pollution in USA)	$235 million for medical monitoring for over 70,000 people.
4	2000	Coca-Cola lawsuit (re racial discrimination in USA)	$192 million
5	2003	Nike lawsuit (Kasky v Nike, re denial of labour abuses)	$1.5 million

6	2003	Cape/Gencor lawsuits (re So. Africa)	Settlement in three parts: 1) Gencor established and now administers a £35 million trust in South Africa. 2) Cape settled with its 7500 claimants for £7.5 million. 3) Gencor settled with the 7500 claimants for approximately £3 million
7	2004	U.S. apparel cos. lawsuit (re Saipan)	$20 million
8	2009	Nishimatsu lawsuit (re World War II forced labour)	¥ 250 million
9	2009	Pfizer lawsuit (re Nigeria): Nigerian proceeding	$75 million
10	Sep. 2009	Trafigura lawsuits (re Côte d'Ivoire): UK lawsuit.	Trafigura agreed to pay each of the 30,000 claimants approximately $1500 (i.e., $ 45 million)
11	Nov. 2012	Trafigura lawsuits (re Côte d'Ivoire): Netherlands lawsuit.	Trafigura agreed to pay €300,000 compensation and paid a €67,000 fine.
12	Nov. 2012	US Deepwater Horizon explosion & oil spill lawsuits	BP settled for $4.5 billion with the US Department of Justice and Securities and Exchange Commission. BP agreed to plead guilty to 14 criminal charges and to pay a $1.26 billion fine to the Department of Justice. The company will also pay $2.4 billion to the National Fish and Wildlife Foundation and $350 million to the National Academy of Sciences. BP will also pay $525 million to the Securities and Exchange Commission
13	Mar. 2013	Shell/BASF lawsuit (re Brazil)	$316 million.
14	2015	Shell lawsuit (re oil spills & Bodo community in Nigeria)	$68 million (£55 million)
15	2015	US Deepwater Horizon explosion & oil spill lawsuits	BP agreed to pay about $18.7 billion in damages for water pollution caused by the spill, settling claims with the U.S. government and Louisiana, Mississippi, Alabama, Texas and Florida.
16	Jul. 2015	Signal International lawsuits (re trafficking of Indian workers in USA)	Signal settled the David lawsuit and 11 other cases for $20 million.
17	Sep. 2016	KiK lawsuit (re Pakistan)	$5.15 million. An agreement facilitated by the ILO.
18	2017	DuPont lawsuits (re PFOA pollution in USA)	DuPont settled over 3,550 PFOA lawsuits for $671 million
19	May 2018	Gold miner silicosis litigation (re So. Africa)	Six companies targeted in the lawsuit have set aside approximately $400 million to settle.
20	Jun. 2018	BHP Billiton & Vale lawsuit (re dam collapse in Brazil):	$ 5.3 billion

3. Information Disclosure Cost

Litigation proceedings involve disclosure of various types of internal company information. This happens in two ways. Primarily and more directly, production of evidence requires information disclosure.[14] Secondly and indirectly, litigation may create an environment of increased activism that may lead to information disclosure as plaintiffs seek to raise public awareness and put pressure on stakeholders.[15] Both means of information disclosure may pose risks to the firm.

With regard to information disclosure for evidentiary purposes, victims' (plaintiffs) right to obtain information is the backbone of the right to a remedy. Such information is essential for enabling victims of business-related abuses to build their cases and show the link between the company and the harm suffered. Accordingly, access to information is a right protected at the international and national levels. Internationally, the UN Guiding Principles 21 and 31 require businesses to communicate human rights impacts of their operations in response to stakeholder concerns and victims' right of access to information, respectively. This is further strengthened by Art.19 of UDHR and Art.19 of ICCPR, which oblige governments to protect, respect, and fulfill the same right. At the national level, the U.S. Foreign Legal Assistants Statute (FLA) provides an example.[16] The U.S. FLA allows 'interested parties' who bring an action in domestic proceedings outside the U.S. to request the federal court to obtain documents and testimony from people or companies located in the U.S.

While discovery rules that govern access to information in litigation may vary by jurisdictions, materials often requested for evidentiary purpose may include documents such as memos, meeting minutes, e-mail, photos, video, and data on servers.[17] Such material may help plaintiffs demonstrate the defendant company's knowledge of the alleged abuse and capacity to mitigate or prevent the damage suffered. Beyond internal documents and electronic records, victims may also request disclosure of information on the governance structure of the firm. Doing so enables plaintiffs' lawyers to determine where to file their case and to trace the relationship between the parent company and its subsidiaries with regard to the abuse.[18] However, it is important to mention that the level of disclosure for evidentiary purpose is subject to rules such as privilege and proportionality that limit the extent and type of information disclosed by date, person, place, and relevance.[19]

Civil society organizations such as EarthRights International (ERI) are actively pushing for the use of laws like the U.S. FLA to force more probing corporate disclosures.[20] ERI has filed three FLA actions: one to obtain information from Chevron for a case in Nigeria, another to get documents and testimony from a high-end safari company for an action in Tanzania, and a third to obtain documents and testimony from a U.S. mining company for an action in Peru.[21] The table below lists sample cases profiled by BHRRC for which disclosure was requested.

Table 3: Sample Cases with a Request for Access to Information

No.	Cases	Requested information
1	DynCorp lawsuit (Colombia & Ecuador)	The plaintiffs requested DynCorp to disclose flight location data of operations conducted next to the Ecuadorean border. They argued the flight data would corroborate eyewitness accounts of "Plan Colombia" spray planes entering Ecuador. On 30 April 2010, the court issued an order compelling production of documents with DynCorp's non-spray flight line. The company appealed, arguing that the security risks stemming from releasing the information outweighed the data's relevance to plaintiffs' case. On 23 April 2012, the court dismissed DynCorp's request stating the non-spray data was potentially useful to the plaintiffs' case.[19]
2	ExxonMobil lawsuit (Aceh)	Claimants requested access to the company's internal document with an effort to show a link between the US parent company and the abuse sustained by Indonesian villagers. They got access to information such as "a "daily reports" received by Exxon Mobil on security matters, officials frequent travel to the region to address them and company legal counsel approved requests to provide support to the military, villager complaints were allegedly forwarded to executives in the United States, where company employees could view a live feed from closed-circuit cameras at the Aceh facility that was streamed over an internal computer network."[20]
3	Gas flaring lawsuit (oil companies in Nigeria)	"FLA action [was filed by EarthRights International] that sought documents from Chevron to support ongoing litigation in Nigeria brought by villagers against Chevron Nigeria Ltd. for harms associated with its illegal and dangerous practice of flaring natural gas in their villages. Chevron came to an agreement with the Nigerian communities regarding those documents, [...]."[21]
4	Grupo México lawsuit (re toxic spill in Mexico)	"In April 2016, the communities filed a petition under the FLA Status to the US District Court in Arizona, requesting information from the US-headquartered Southern Copper, Buenavista del Cobre´s parent company, related to the mine's operations and environmental practices. In August 2016, the court granted the discovery petition and ordered Southern Copper to provide the requested information."[22]
5	Hudbay Minerals lawsuits (re Guatemala)	"In late June 2015, the Ontario Court of Justice ordered Hudbay Minerals to disclose internal corporate documentation including information regarding its corporate structure and its control over its subsidiary in Guatemala. In November 2017, 11 Guatemalan women traveled to Canada to give testimony as part of the ongoing discovery procedure."[23]
6	Shell lawsuit (re Nigeria - Kiobel & Wiwa)	"In October 2016, Esther Kiobel filed an application with a New York District Court under the US FLA Statute to gain access to important documents from the original US case, to be used in a lawsuit against Shell in the Netherlands. On 24 January 2017, Cravath Swaine & Moore (lawyers) were ordered to turn over the documents." [24]
7	Thomson Safaris lawsuit (re Maasai in Tanzania)	"The plaintiffs brought the action under a law that allows people to obtain documents and information from individuals or companies in the United States for use in foreign legal proceedings. In April 2014, the court ordered Thomson Safaris and its owners to turn over documents and give sworn testimony about the sale of Sukenya Farm, the alleged home burnings and beatings, and the conversion of the land from Maasai grazing territory to a deluxe private reserve."[25]

The second way litigation may lead to information disclosure occurs when legal proceedings create an environment for increased levels of activism. Victims of corporate abuses, their lawyers, and NGOs commonly run campaigns to put pressure on the company and regulatory bodies.[29] While such activism often occurs even in the absence of a lawsuit, a legal proceeding may create the platform on which campaigns become more effective. A study that reviewed 25 transnational tort litigation cases (including corporate human rights abuses) identified various mechanisms plaintiffs use to create public pressure.[30] These mechanisms include plaintiffs and their lawyers' attempting to leverage internet campaigns, news articles, and documentaries to reach various audiences; community activism such as boycotts and protests; and investment-related techniques that include appearing at annual shareholders meetings, introducing resolutions aimed at reform, and pursuing divestment campaigns.[31] While these measures are not necessarily limited or specific to ongoing litigation, in some cases they are used in an overlapping manner in parallel with legal proceedings.[32] *See* the case study of *Coca-Cola Co.* lawsuit below.[33]

The common feature of information disclosure for evidentiary purposes and in conjunction with plaintiffs' public pressure techniques is that both aim at maximum possible information disclosure. Depending on the type and nature of the information disclosed, this would entail negative financial and reputational (see discussion under subsection 1.4 below) consequences to the defendant firm. For instance, pressure on shareholders to divest stock would cause institutional investors such as pension funds and universities to regard the defendant company negatively.[34] Such investors are putting increasing emphasis on social criteria, which means this risk is increasing accordingly.

COCA-COLA CO. LAWSUIT

In response to various human rights abuses allegedly committed by Coca-Cola Co., lawsuits and campaigns were developed as a tool to force the company to end the abuses. While both campaigns and legal actions play independent roles, campaigners sometimes use ongoing lawsuits to raise awareness and to put pressure on courts. For example, the killercoke website runs its campaign by citing ongoing lawsuits against Coca-Cola in Federal District Court, Miami, Florida and Supreme Court of the State of New York for abuses committed in Colombia and Guatemala, respectively. It is spelled out as follows: "The Campaign called for the main judge, Joseph E. Martinez, who presided over the original lawsuits against The Coca-Cola Co. and its Colombian bottlers in Federal District Court in Miami, Florida, to recuse himself because of serious conflicts of interest and statements he made about the case." "On February 25, 2010, another human rights abuse lawsuit against Coca-Cola was filed in the Supreme Court of the State of New York and later moved to federal district court." This case involves violence - including rape, murder, and attempted murder - against trade unionists and their families at the behest of the management of Coca-Cola bottling and processing plants in Guatemala."

4. Reputational Cost

A firm's overall reputation is a function of its goodwill among stakeholders such as consumers, investors, employees, regulators, creditors, and the community in which it operates.[35] An article published by Ethical Leadership highlights that a significant part of what makes a company valuable depends on its reputation.[36] The same article reports that in the past thirty years the percentage of companies' value emanating from tangible assets has declined from 90% to 25%, while intangible assets like reputation account for 40-60% of corporations' market capitalization.[37] Litigation is one factor that may erode corporate reputation. As demonstrated by studies,[38] corporate defendants often lose in reputational terms just by going to trial. This is true regardless of the outcome of the proceeding.[39] Negative publicity that accompanies the lawsuit can damage a company's reputation independent of whether the defendant wins, loses, or settles.[40] Bad publicity can derive from media reports about the testimony of victims in the courtroom. Class action against Chevron/Texaco for its operation in Ecuador provides an illustration. In this case, the victims of the oil contamination, who were farmers in the areas of the contamination in their traditional clothing, presented the alleged abuse in the courtroom, which was accompanied with significant publicity. For example, the story made a headline in *The New York Times:* "Just Tourists on Broadway, but Barefoot and Craving Roast Monkey."[41] On top of this, damage to reputation is not just a onetime harm; its effect lives across a longer time horizon.[42]

Reputational damage from litigation for corporate-related abuses may make it more difficult for a company to attract business and talent.[43] For the purpose of this sub-section, we will look only at those cost factors that are specific to corporate litigation.

Customers and creditors hesitant to identify themselves with a firm accused of human rights abuses may stop using its goods and services or funding its operations. This, in turn, puts a dent in revenue and increases the overall cost of running the company by increasing the cost of credit.[44] A study by Bruce Haslem *et al.* predicts that environmental lawsuits against companies will likely cause a reaction by consumers, such as boycotts, which will probably hurt the reputation of the defendant firm.[45] Likewise, the bad publicity and the subsequent decline in reputation of the firm may motivate investors to "vote with their feet".[46] The impact of reputational loss related to attracting business is even stronger in business-to-business (B2B) transactions. A study by Murphy, Shrieves, and Tibbs finds that the impact of damage to reputation as a result of legal action is strong for related-party offenses that affect parties, such as suppliers, customers, and investors.[47] The reactionary decision of these parties may include a demand for modification of terms on which they are willing to transact with the firm in question and reduced demand from customers.[48] In addition, the decline in reputation could add to the cost of recruiting new business partners.

As to the cost of attracting talent, the same study by Bruce Haslem *et al.* anticipates that labor and civil rights litigation against companies and related damage to reputation can potentially increase the contracting cost with employees. As mentioned in Part 1, on Corporate Impact on Society (sub-section, Workforce) of this report, companies face such cost because employees prefer to work for firms with favorable reputations. Moreover, when the alleged violation is firm-wide, it may lead to governance change and executive turnover.[49] This is as much true for other types of lawsuits such as those alleging crimes against humanity, environmental damage, and other human rights abuses.[50] Generally, studies show that cost of attracting and retaining talent as a result of bad reputation is particularly stronger when it comes to skilled employees.[51] The primary reason is that people with good skill and talent are often attracted to other talented and skilled people and "talent follows talent".[52] A departure of one skilled and talented employee as a result of bad publicity can cause a chain reaction leading to more departures. These costs are further elaborated in the LafargeHolcim's case study below.

LAFARGEHOLCIM CASE STUDY

Lafarge a French cement factory, now LafargeHolcim after a merger with Holcim (Swiss cement factory) in 2015, charged with complicity in crime against humanity, financing of a terrorist group including the ISIS and endangerment of people's life during its operation in Syria between 2013 and 2015. On June 28, 2018, on a landmark decision, the company was indicted by investigative judges (in France) for the mentioned charges. Related to this legal action, reports/news coming out suggests that the firm has already faced and will face significant damage to its reputation. An article by *Financial Times* warned that "the group's reputation is at stake. It hangs on whether LafargeHolcim can provide satisfactory answers to how — and why — it kept operations going for so long in a region, where morals and ethics were blurred by war." Other events such as the departure of its CEO following the indictment, pressure from the group's main shareholders and the earlier indictment of 8 former executives including its former CEO on a charge of financing terrorism and endangering workers' life can suggest the risk the firm is facing in terms of its deteriorating reputation. While the formal investigation is underway, events will likely be unfolding and the reputational punishment as it stands now will likely be long-lasting.

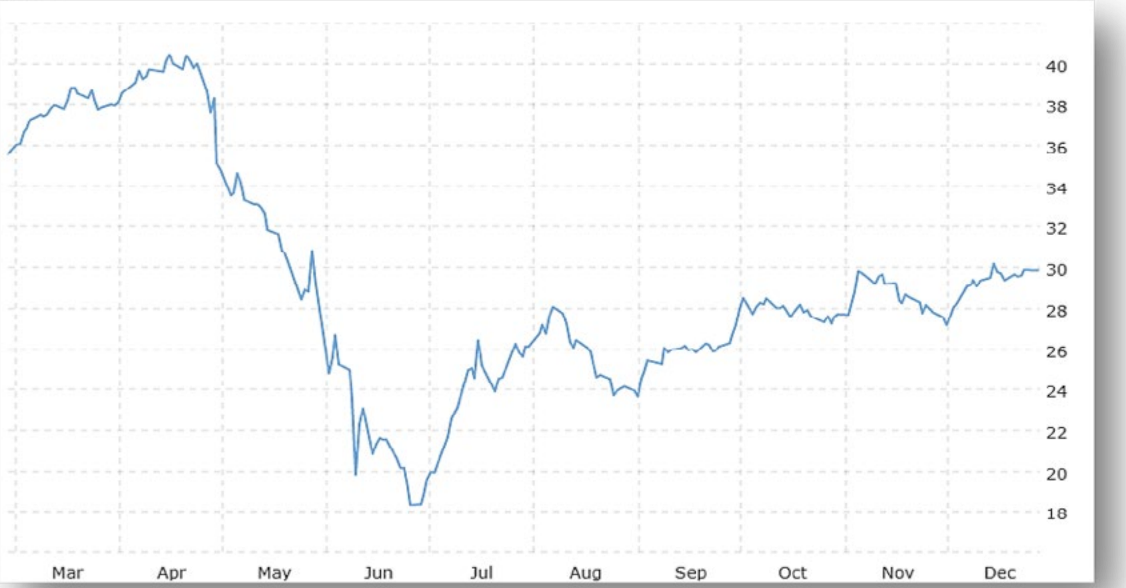
5. Litigation's Effect on Stock Performance

Companies' stock performance serves as a medium that reflects the cumulative cost factors mentioned in previous sub-sections. Studies show that a stock price decline may represent, among others, a combination of cost factors such as legal penalties, lawsuit settlements, fines, and lost reputation by the firm under question.[53] However, the degree of stock performance may vary depending on the types of alleged abuses and the type of cost incurred by the defendant firm. A study on the relation between corporate share value and the abuse of human rights by Vivien Kappel, Peter Schmidt & Andreas Ziegler shows that the U.S. and U.K. firms experience a value decline when human right abuses become publicly known.[54] Another comprehensive survey and study from a broader corporate misconduct perspective by Jonathan Karpoff finds that firms that are liable for contamination of air, water, or land resources face considerable costs that are reflected in the defendant firm's loss in share value.[55] The case study below illustrates the same result.[56]

BP – OIL SPILL (2010)

The blowout on the Deepwater Horizon rig saw numerous impacts beyond the operational losses from containment and clean-up. In financial terms, a failure to pay dividends for three quarters, litigation with individuals and affected US states running to more than $42 billion of payouts, and the need for $38 billion in asset sales. In strategy terms, the company signaled an exit from solar and wind, and was banned from applying for new government contracts in the US. The firm fell from being the second to the fourth-largest oil company worldwide by market value. The cumulative of all these cost factors are well reflected in the firm's stock performance that amounted to a 50% fall in the share price. The figure below illustrates the drop in share value of BP since the incident and followed up lawsuits that covers the time interval between April-December 2010.

Figure 1: BP Stock Performance Between February and December 2010 130



Source: Macrotrends, https://www.macrotrends.net/stocks/charts/BP/bp/stock-price-history

6. Conclusion

The above cost analysis of lawsuits related to corporate abuses identified five types of costs: financial cost, out-of-court settlement, information-disclosure cost, reputational damage, and potential stock-price decline. With respect to financial costs, the report showed the risk that successful litigation may result in the exclusion of companies from public procurement opportunities and the limitation of their access to capital. The empirical review also showed that as litigation becomes more costly, companies increasingly choose expensive out-of-court settlements. However, out-of-court settlement itself has become substantially more expensive in recent years. In addition to financial and settlement costs, this chapter demonstrated that the risk of litigation exposes companies to disclosure of internal company information, which potentially impairs the firm's competitive advantage and harms its reputation. As to reputational damage, bad publicity subsequent to a lawsuit often damages the public image of the firm regardless of the final ruling. Damage to reputation mainly entails costs of attracting business and talent. The last cost factor identified by the report is litigation's negative effect on corporate stock performance. The report showed that the cumulative effect of all of these cost factors may hurt the company's stock performance as corporate abuses become publicly known. Against these findings, the report concludes that the risk of litigation against companies for corporate-related human rights abuse is increasing and so are economic costs it entails. Companies should be concerned about such risk as one of the increasing threats businesses face in their global operation.

Annex I: Table of Cases Reviewed

Years 1994-2018 (25 years)	Number of case litigated		Settlement		Ruling in favour of the defendant company or/and dismissal		Ruling in favour of the plaintiff		Ongoing and/or information not updated	
	Cases in each year	Cases in 5 years	No. of cases in %	No. of cases	In %		In %	Number of cases	In %	Number and in %
1994-1998	1994 (1 case), 1995(1 case),1996 (3 cases), 1997 (3 cases), 1998(3)	11	7.28%	7	18.9%	3	5.17%	1	3.45%	0
1999-2003	1999(5), 2000(3), 2001(8), 2002(7), 2003(4)	27	17.89%	6	16.21%	15	25.86%	6		3 (11.11%)
2004-2008	2004(3), 2005(6), 2006(5), 2007(14), 2008(9)	37	23.84%	11	27.02%	17	29.31%	8	27.59%	2 (7.4%)
2009-2013	2009(6), 2010(8), 2011(8), 2012(12), 2013(7)	41	27.81%	9	27.02%	16	27.58%	6(case 129)		7 (for 2 cases
2014-2018	2014(13), 2015(10), 2016(6), 2017(4), 2018(2)	35	23.17%	4	10.81%	7	12.06%	8	27.59%	15 (Info. For 2 cases has not been updated) (55.56%)
Total		151	100%	37 (24.5%)		58 (38.4%)		29 (19.2%)		27 (17.88%)

NB: some cases have more than one proceeding and litigated under different jurisdictions. Hence, the total number of reported proceeding excides the number of cases filed.

PART 4: ANTICIPATING TRENDS FOR SUSTAINABLE BUSINESS

This part of the report looks to the future. Public, business, and regulatory understandings of the human rights responsibilities of business have evolved rapidly and they will continue to do so. What will the future business and human rights landscape look like? What trends should companies anticipate for business success? What impending risks are there for businesses that fail to take steps to identify, mitigate, and account for their human rights impacts?

The future business and human rights landscape will be defined by the millennial generation. This generation, those born between the early 1980s and 2000, already account for 27% of the global population. By 2025, millennials will make up as much as 75% of the global workforce.[1] This generation is poised to benefit from one of the largest and most rapid intergenerational transfers of wealth ever, with an estimated $24 trillion (USD) expected to be under their control by 2020.[2]

Research overwhelmingly suggests that for this generation, the social responsibility of business matters. Millennials are more environmentally and socially conscious than previous generations. They are also far more likely to evaluate a business by its social impact. According to a Deloitte global survey, almost 9 in 10 millennials (86%) believe that financial performance should not be the only measure of business success.[3]

Beyond the rise of the millennials, other trends also will translate into greater pressure on businesses to be socially responsible. These include the growing reputational risks of being associated with adverse human rights impacts in a company's own activities and its supply chains, businesses increasingly requiring more evidence of responsible business practices from each other, and an increasingly demanding regulatory environment.

1. Market Trends

Looking forward, companies can expect intensifying pressure to account for whether they are running their business in a way that respects human rights. This pressure will come from consumers, commercial partners, mainstream investors, and lenders.

1.1 Intensifying Consumer Scrutiny

The role of consumer preferences in driving responsible business behaviour is complex. On the one hand, studies reveal that a growing proportion of the population, particularly in the developed world, is prepared to pay more for goods and services produced in a socially responsible manner. On the other, increased awareness of human rights issues across many sectors has not yet triggered widespread changes in consumer behaviour and examples of targeted and effective boycotts remain few and far-between. Consumers, in other words, do not consistently make purchases in accordance with their professed principles.

A 2015 Nielsen poll of 30,000 consumers across 60 countries found that 66 % of respondents said they would be willing to pay more for products and services from companies committed to positive social and environmental impact, up from 50% in 2013.[4] A 2015 Walk Free Foundation survey found that 66% of consumers in the U.K. would stop buying a product if they learned that its production involved modern slavery.[5] Significantly for long-term business prospects, up to 72% - nearly three in four – consumers aged 34 and under say that they would pay more for goods produced responsibly. Another 2015 study reported 87% of millennials say they would purchase a product with a social or environmental benefit, and 70% of millennials say they would voice opinions to a company about its CSR efforts.[6]

Yet consumer demand in certain sectors appears relatively impervious to human rights concerns. The enduring appeal of 'fast fashion', despite its association with exploitative labour conditions and below-living wages, is a case in point. Studies continue to investigate the 'attitude-behaviour gap': the disconnect between consumer attitudes, opinions, and beliefs as reported in research and actual behaviours.[7] It continues to be difficult to find concrete examples of consumer boycotts that have significantly and negatively affected sales. But even if a company is not immediately hurt by a boycott, reports of human rights abuse may impact the corporation's reputation among its consumer base. This may not immediately translate into lower sales due to the attitude-behavior gap, but it may nonetheless result in reputational damage and loss of prestige, shaping long-term consumer perceptions of the company.[8] Once consumers come across comparable alternatives, they may shift their consumption elsewhere.

Despite this mixed picture, three trends suggest that consumer-facing companies will face growing risks if they fail to identify and manage their human rights impacts.

1.1.1 The Nature of Millennials as Consumers

Surveys have found millennials to be 'opinionated skeptics'. They are far more likely than their predecessors to want to make a positive impact on the world and also more likely to question the authenticity of marketing claims.[9] They are also more likely to check the product packaging for sustainability credentials rather than simply accepting bold claims at face value.[10] Companies that make sustainability claims without adequate evidence will find themselves increasingly vulnerable to consumer backlash.

Millennials are also far more likely to use social and digital media as their main source of news and to use these avenues to amplify their voices. The internet and social media, along with a globalized economy, have already given individuals and organizations new tools by which to subject companies to greater and faster scrutiny.[11] As this trend gains momentum, and presuming we see a diminishing 'attitude-behaviour' gap, companies associated with human rights violations will face intensified pressure by those who 'walk the talk' on responsible consumption.

1.1.2 Access to Information on Corporate Social Performance is Improving

To date, accessing information on the environmental and social performance of products and manufacturers has presented a major obstacle to consumers interested in social and environmental impacts.[12] Programs that certify or label products, as well as other NGO initiatives, continue to suffer from a lack of standardization and transparency. Nevertheless, these programs are making it somewhat easier for shoppers to compare the human rights performance of brands. One example is Oxfam's 'Behind the Brands' initiative, which was launched in 2013 and enables consumers to compare the performance of corporations in the food and beverage sector across a range of indicators, including transparency, land use, famers', women's and workers' rights, water, and climate change.[13]

In the future, we can expect more use of technologies such as blockchain and Radio Frequency Identification (RFID) to track physical products and transactions from point of origin to point of sale.[14] Such technologies can help companies achieve supply chain transparency and product traceability, and facilitate efforts to ensure that products are produced in socially and environmentally responsible ways. Companies and NGOs are already investigating their potential application across an array of sectors. As uses of these technologies become more sophisticated and widespread, businesses that fail to turn their minds to how their goods and services are produced risk losing market share to companies that can provide credible evidence of their human rights impacts.

PROVENANCE'S SHORE TO PLATE

In response to rising concerns with human rights abuses and environmentally irresponsible practices in the Indonesian fishing industry, UK-based Provenance has successfully piloted a system that enables consumers to be confident the fish they are buying are caught by fishermen with verified social sustainability claims. Shoppers can simply hover their smartphones over the product to track its journey from sea to plate.[15]

1.1.3 Approaches to Influencing Consumer Behaviour are Becoming more Sophisticated

In the past, approaches to promoting responsible consumption have tended to involve a simple 'stimulus-response' model, whereby NGOs expose poor corporate practices and invite consumers to punish companies for their harmful practices.[16] The failure of this approach to transform mainstream consumption patterns is prompting new ways of thinking about how to conceptualise, encourage, and facilitate the use of consumer power to improve corporate human rights performance. If models of consumption, as well as production, are important drivers of human rights violations in supply chains, then consumers also have a responsibility to change. Companies such as Patagonia are taking steps to encourage their customers to adopt more responsible and sustainable consumption habits. Looking to the future, we can anticipate more examples of corporations, as well as NGOs and governments, taking steps to transform consumer habits and mindsets.[17]

1.2 Intensifying Investor Scrutiny

Environmental, social, and governance (ESG) factors, once at the fringe of the investment community, are now rapidly becoming mainstream. The following trends suggest that sustainable investment is likely to grow in coming years.[18]

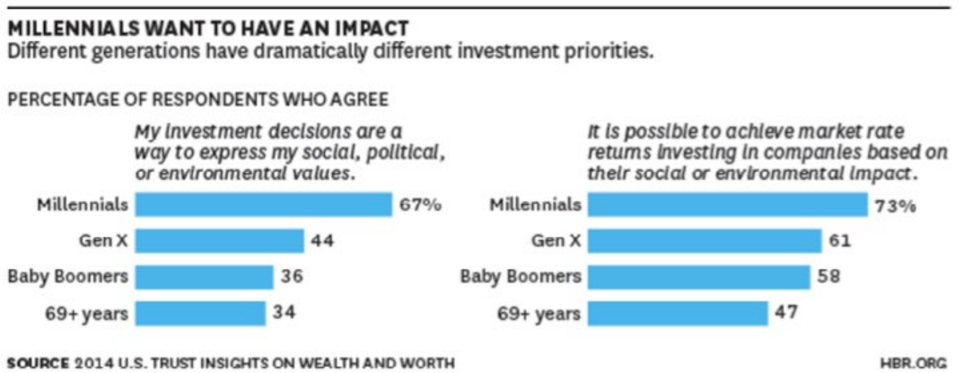
1.2.1 More Investors are Seeking out Sustainable Investments

The amount of assets professionally managed under responsible investment strategies is rising rapidly, more than 25% since 2014.[19] What were once large regional differences – with America and Europe much more likely than other regions to take ESG considerations into account – are diminishing.[20] Signatories to the *Principles on Responsible Investment,* the world's largest alliance of socially responsible investors, now account for $81.7 trillion of assets under management.[21] A 2017 EY global survey of more than 320 institutional investors found that 68% reported that non-financial performance has played a part in their investment decisions, up from 52% the previous year. It also found that 80% of institutional investors surveyed said that companies did not adequately disclose environmental, social and governance (ESG) risks that could affect their current business models.[22] Initiatives by the OHCHR and OECD Working Party on Responsible Business Investment are adding momentum to the trend of investors actively considering companies' human rights impacts.[23]

> *"... companies that do not proactively assess and manage human rights risks face potential legal, reputational, and other risks with financial implications. Meaningful disclosure of human rights performance can play a significant role in reducing a company's human rights risks, contributing to a company's competitive advantage, and strengthening its long-term financial stability"*
>
> – Coalition of 87 investors, representing $5.3 trillion assets under management, 2015.[24]

Individual investors are also increasingly seeking out sustainable investments. A significant proportion of investors in the future will be women and millennials, both of whom tend to favour sustainable investing.[25] Millennial investors have been found to be twice as likely than others to invest in companies or funds that target social or environmental outcomes.[26]

Figure 1: Investment Priorities of Various Generations



Source: Harvard Business Review, https://hbr.org/2014/10/impact-investing-needs-millennials

We have seen that reputational damage arising from failing to manage human rights risks has the potential to affect a company's share price in the short term. BP experienced a 47% drop in share value (a loss of over £50bn in market capitalization) within three months of the explosion of its Deepwater Horizon rig oil in the Gulf of Mexico in 2010.[27] More recently, images of the violent removal of a passenger from a flight led to almost $1 billion being wiped off United Airline's value in the following days.[28] Even where companies do not experience significant long-term negative effects on their value, repercussions may be felt in the form of decreased levels of trust and engagement by employees and external stakeholders.

Companies that fail to respect human rights can expect to face increasing risks of capital divestment. Shareholder and NGO-led divestment campaigns are becoming more common and can inflict significant reputational damage. Studies reveal an increasing receptiveness to such campaigns among investors. A 2016 study found 32% of institutional investors said they would immediately rule out an investment if there were evidence of human rights risks, compared to 19% a year earlier.[29] A 2015 study by Morgan Stanley's Institute for Sustainable Investing has found that those under 35 are twice as likely to sell an investment position due to corporate behaviour that is perceived to be unsustainable.

> *Ask someone to name the demands that activist hedge funds make of companies, and they'll likely list corporate governance issues such as board changes and executive compensation, or perhaps some form of restructuring. In fact, the largest number of shareholder resolutions filed by investors — the method through which activists work — now concern social and environmental issues."*
>
> – George Serafeim, Harvard Business Review[30]

1.2.2 More Investors are Considering Long-term Horizons

While short-term profit maximisation remains alive and well, there are signs of a broader shift towards long-term value. Globalisation, the internet and social media, climate change, and changing community and stakeholder norms have all contributed to the growing relevance of ESG factors in many investors' decisions.[31]

A growing number of studies confirm that companies managed for long-term value creation perform better.[32] A 2017 McKinsey Report found that companies that operate with a long-term mindset have consistently outperformed their industry peers since 2001 in revenue and earnings, investment, and job creation.[33]

Calls by prominent financial actors for companies and investors to look to long-term value is adding further momentum to this trend. Both the chief executives of BlackRock and Vanguard, the world's two largest asset managers, have urged CEOs to focus more on long-term growth plans and risk, rather than quarterly reports.[34]

The increased focus on long-term value is also being driven by public policy. According to the UNPRI, the largest 50 economies in the world have almost 300 policy instruments that encourage investors to consider long-term value drivers, including ESG factors. More than half of these were created between 2013 and 2016.[35] Pressure on public bodies to adopt policies that will support long-term value creation are only likely to become more pronounced in the future.[36]

1.2.3 ESG Regulation is Being Adopted Around the World

A growing number of countries require companies to disclose ESG information, including relating to labour and human rights. These regulations are often issued by stock exchanges, such as in the case of the U.K., the United States, Malaysia, Hong Kong, and Indonesia. In Europe, the EU's *Non-Financial Reporting Directive (2014/95/EU)* requires companies with more than 500 employees to disclose, among other things, information on policies, risks and outcomes regarding human rights 'to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity.'[37] Mandatory ESG reporting is only more likely to spread across the globe in line with the growing recognition among regulators that companies listed on these exchanges will need to comply with global best practice to meet international investor expectations.[38]

State efforts to improve the comparability and reliability of company disclosures on human rights risks by imposing mandatory reporting requirements are now found in California, the U.K., and France. These regulatory innovations are discussed further below.

1.2.4 Understandings of Fiduciary Law are Evolving

Fiduciary law, as it applies to the governance of trusts and other investment vehicles, was once seen as a potential obstacle to incorporating ESG risks into investment decision making. But national and international developments are contributing to the growing understanding that consideration of ESG risks is permissible, and indeed may even be required.[39] In a number of jurisdictions, regulators have taken steps to clarify that ESG factors can be considered in investment governance.[40] Under its Action Plan on Financing Sustainable Growth, the EU is pursuing a harmonised approach to this issue, taking steps to clarify that asset managers, institutional investors, insurance distributors, and investment advisors should include economic, social, and governance (ESG) factors in their investment decisions and advisory processes as part of their duty to act in the best interest of investors or beneficiaries.[41] A recent report co-authored by the PRI UNEP Finance Initiative and The Generation Foundation concluded that 'failure to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is a failure of fiduciary duty.'[42]

While legal requirements vary between countries, it is now uncontroversial that in certain circumstances *not* taking ESG matters seriously, rather than doing so, will risk breaching fiduciary responsibilities.[43] At a minimum, adequate management of human rights risks is now widely seen as a good indicator of prudent company management and so of material interest to all investors.

1.3 The Issue of Metrics

Despite intensifying pressures on companies to report on ESG factors, metrics for measuring a company's social performance - its operational impacts on the labour and human rights of workers and communities - are failing to meet steadily rising investor demand.[44] An array of dashboards, tools and reporting frameworks have been developed to assist owners and managers of capital in integrating human rights into their investment decisions.[45] But these have serious weaknesses which limit the capacity of investors to assess risk and identify strong performers.[46] These limitations include a focus on policies and process rather than on actual impacts, inadequate disclosure to stakeholders and investors, reliance on a narrow set of data sources and a lack of standardization of social performance metrics.

Studies such as *'Putting the "S" in ESG,'* published by the NYU Stern Centre for Business and Human Rights, have proposed tangible ways for improving measures of social performance.[47] Over time, we can expect the gap between existing measures of social performance and investor and stakeholder demands for better quality data to drive improvements in social performance metrics. Importantly, we are likely to see an important shift from companies simply reporting on policies and processes, to furnishing more comprehensive details on implementation and impact. We can also anticipate that legislative developments directed at clarifying the nature and scope of a company's responsibilities with respect to human rights risks in their operations and supply chains (see below) will help drive and clarify the scope of a company's reporting obligations.

2. Business-to-business Transactions

2.1 Looking ahead, businesses will demand more from each other.

While enterprises of all sizes risk impinging on human rights, at present it is overwhelmingly larger businesses that are the target of stakeholder pressure and public disclosure regulation. However, there are signs that this is changing. Human rights requirements are increasingly finding their way into private legal enforcement instruments, such as transportation carriage arrangements, long term mining investment agreements, merger and acquisition representations and warranties, loan covenants, and joint venture agreements.[48] As businesses demand more from those in their supply chains, small and medium-sized companies will also be asked to account for their human rights impacts.

Sooner rather than later, smaller businesses that ignore human rights concerns, or have opaque supply chains of their own, risk losing clients and customers.[49] These developments pose commercial risks but they also present opportunities for SMEs. Those with credible human rights policies and systems in place may find it easier to access businesses, governments, and financiers, who recognise that partnering with a business that effectively manages human rights risks means reduced risks to themselves.[50]

For years now, it has been common practice for multinational businesses, particularly in sectors such as garments and extractives, to include human rights criteria in their supply chain risk policies and procedures. These measures typically include, at a minimum, human rights criteria as a precondition for tendering to supply or as factor taken into account when selecting suppliers. Successful suppliers are often also required to provide some form of certification, submit to inspections or audits to ensure compliance, or formally commit to adhere to the buyer's or retailer's code of conduct. These risk minimization programmes, which emerged in a rudimentary form in the 1990s, are becoming more widespread and more sophisticated.

Increasing numbers of businesses are incorporating human rights requirements into their commercial contracts and purchase orders, and this trend is only likely to continue.[51] A recent global survey of 275 general and senior counsels found that just under half (46%) reported encountering human rights clauses in commercial contracts. The same research found that 51% of those surveyed report they have changed the way they manage supply chains in response to human rights concerns.[52] The legal profession's growing engagement with human rights is adding further momentum to the trend towards inclusion of human rights clauses in commercial contracts.[53]

The introduction of human rights reporting requirements in many jurisdictions (see below) are further driving the inclusion of human rights clauses in contracts. The obligations on large organisations in the U.K.'s Modern Slavery Act to report on modern slavery risks in their operations and supply chains and on how they are addressing these risks, for example, only apply to businesses with an annual turnover of more than £36 million. But this law is having a 'cascading effect' whereby companies obliged to report under the law are asking their subcontractors and suppliers to report on measures taken to eliminate modern slavery and forced labour in their operations and supply chains. In coming years, we can expect to see a growth in frameworks, mechanisms, and resources to assist and enable smaller and medium-sized companies to meet their responsibility to respect human rights.

Finally, we can anticipate continued strong growth in business accreditation schemes that recognise commercial enterprises committed to pursuing social and environmental, as well as financial, value. An increasing number of companies around the world are achieving 'B Corp' status, and France is currently considering introducing a scheme to recognise 'Social Purpose

Corporations' (*L'enterprise à mission*).[54] With verified high levels of social performance, such businesses are well-positioned to develop commercial relationships with other businesses looking for responsible business partners and suppliers.[55]

2.2 Lenders will be more likely to take into account the human rights performance of companies with which they do business.

For businesses, this is likely to mean the growing possibility that applications for finance will require evidence of appropriate management of human rights risks.

Recent years have seen a growing awareness of the influence financial institutions have on their clients and their business partners, and the potential for using this leverage to help drive responsible corporate behaviour. Understanding of the nature and extent of accountability by financial institutions for negative impacts committed by their clients is evolving rapidly.[56] Attention to lenders and human rights began with efforts in the early 2000s directed at ensuring that major project loans are accompanied by evidence of proper management of human rights risks. Among the most well-known initiatives in this area are the Equator Principles, which have now been adopted by 94 financial institutions in 37 countries.[57] Less than 10 years later, the UN Guiding Principles have significantly advanced understanding of the responsibilities of financial institutions with respect to human rights. It is now clear that the responsibility to respect human rights and the obligation to conduct human rights due diligence apply equally to the financial sector, and goes beyond project finance to encompass all general corporate loan activities by financial institutions. In 2016, the Dutch Banking Sector Agreement on International Responsible Business Conduct regarding Human Rights, further raised the bar on responsible banking behaviour.[58]

As understanding of the pivotal role financial institutions can play in improving corporate respect for human rights evolves, these institutions are only likely to face greater pressure to conduct customer- and sector-specific human rights due diligence on loans and investments.[59] Efforts to implement more sophisticated management and operational capacity to manage such risks will translate into a more demanding financial environment for businesses of all sizes.

2.3 As already outlined, governments and other public authorities are recognising that they, too, have obligations to address human rights abuses in their supply chains.

Many states have significant purchasing power as business actors in their own right. The U.S. federal government is the largest single purchaser in the global economy, with annual procurement spending that totals between $350 and $500 billion.[60] Across the globe, according to the OECD, public procurement contracts account for an average 12% of GDP.[61]

There are signs that States are demanding more with respect to the human rights performance from private entities with which they do business. A large majority of published National Action Plans (NAPs) refer to the need for measures to integrate human rights into public procurement practices.[62] There is also growing recognition among host state entities of the need to integrate the management of human rights risks into investment project contracts with business investors.[63]

Human rights considerations are increasingly finding their way into major contracts for resource exploration or exploitation such as in oil, gas, or mining; large agricultural projects; and infrastructure projects. Businesses that tender for major sporting events, such as the World Cup, are also facing greater human rights scrutiny.[64] In the future, businesses that fail to prevent human rights impacts face a heightened risk of missing out on government tendering opportunities.

States can do much more to ensure their own purchasing practices are respectful of human rights.[65] There is mounting pressure on States to do so, from civil society and intergovernmental organisations. There is also a growing body of guidance for government departments and other public authorities and institutions on concrete measures they can adopt to prevent human rights abuses by those from whom they are procuring goods and services.[66]

3. Regulatory trends

To be successful in the future, businesses will need to navigate an increasingly complex and demanding regulatory environment. Companies best placed to face this rapidly evolving regulatory landscape will be those that are taking steps to understand their human rights impacts and to mitigate and prevent these impacts in their own operations and in their supply chains.

Recent years have seen the steady implementation of measures to advance business respect for human rights through national policy and law. While the current state of business and human rights regulation is still regarded by many as insufficient, there is little question that the regulatory trend is towards greater transparency and higher standards.

In the future, the types of initiatives we now see as ground-breaking – such as France's Devoir de Vigilance Law - will not appear radical. Indeed, they are more likely to be seen by the millennial generation and its successors as tentative but inadequate steps in the right direction.

Drawing on recent developments, it is possible to anticipate at least five major regulatory trends in business and human rights. For business, these trends all point towards a future of intensifying regulatory pressure and increased material incentives to take action on human rights, as well as heightened reputational, financial and legal risks arising from inaction.

KEY TRENDS AT A GLANCE

1. Public international standards on business and human rights will continue to evolve;
2. Mandatory disclosure of human rights impacts will become more widespread and more demanding;
3. Companies will face greater legal accountability for their human rights performance;
4. More effective individual and collective avenues of redress will be developed for victims of corporate human rights abuses; and
5. More collaborative solutions to human rights challenges are likely.

3.1 Public international standards on business and human rights will continue to evolve.

The recent proliferation of State-based initiatives on business and human rights has been driven by, and is itself driving, an unprecedented convergence of *international* standards on business and human rights. The corporate responsibility to respect human rights, and its operationalising concept of human rights due diligence, embodied in the UN Guiding Principles on Business and Human Rights is now found in the vast majority of international public and multi-stakeholder regulatory instruments on business and human rights. These include revised OECD Guidelines for Multinational Enterprises, as well as in its general and sector-specific guidance materials on responsible supply chain management,[67] the UN Global Compact, the International Finance Corporation's Performance Standards, and ISO 26000.[68] Endorsements by regional bodies and leaders' summits such as the G7 and Council of Europe, have lent further momentum to these global norms.[69] The ascension of the concept of human rights due diligence has been so swift that it has recently been described by its architect Professor Ruggie as 'the new normal'.[70] The possibility of a binding treaty on business and human rights being adopted by the international community remains alive. In July 2018, the open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights released the first official draft of the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. While a final instrument capable of being ratified by UN member-states likely remains far off in the future, many recognise the initiative's potential to build upon and consolidate business and human rights advances in years to come.[71]

3.2 Mandatory disclosure of human rights impacts will become more widespread and more demanding.

The U.S. broke new ground on the regulation of human rights risks in corporate supply chains in 2010 when it enacted section 1502 of the Dodd-Frank Act.[72] Similar but stronger requirements concerning conflict minerals are to apply across the EU from 2021.[73] Modern slavery reporting requirements are now found in California and the U.K.. They are imminent in Australia,[74] and other Asia-Pacific jurisdictions are likely to follow suit.[75]

In February 2017, France raised the global bar on state-mandated corporate responsibility initiatives with its Devoir de Vigilance law.[76] While this law applies to France's largest companies,[77] it is anticipated to have a cascading effect. French companies are required to develop and implement annual vigilance (due diligence) plans. Such plans must involve reasonable due diligence measures to identify risks and prevent serious violations with respect to human rights and fundamental freedoms, and the health and safety of persons and the environment which result from activities of the company and companies it controls. Due diligence measures must also extend to the activities of subcontractors or suppliers with whom the company has established commercial relationships. Companies are also obliged to publicly disclose their plans and to detail how their plans are being effectively implemented. The French law builds on existing disclosure regulation not only in its scope, but also in its approach to compliance. Companies that fail to publish a plan face periodic penalty payments.[78] Furthermore, these penalties may be pursued by any person with standing, including individuals affected by the company's actions, non-governmental organisations and trade unions. In the Netherlands, a law requiring companies to take action with respect to the risk of child labour in their supply chains has passed the lower house of the Parliament.[79] Similarly, in Switzerland, a proposal for a mandatory human rights due diligence law has passed the National Council and is now deliberated upon in the Council of States (see below).

In jurisdictions with mandatory reporting requirements, regular civil society benchmarking of company reports will continue to ratchet up reporting and performance standards. If a high incidence of non-compliance and/or 'superficial' reporting persists, this is likely to fuel calls for the progressive strengthening of regulatory pressure on companies. Calls for stronger and broader regulatory measures are likely to come not only from civil society, but also from businesses that see their efforts to adopt responsible business practices being undermined by competitors that fail to do so.

Businesses would also be wise to anticipate the expansion of mandatory reporting requirements to a broader set of human rights. In the UK, a 2017 Joint Committee on Human Rights recommended the Government bring forward legislative proposals to expand due diligence for all relevant human rights, not just modern slavery.[80]

3.3 Companies will face greater legal accountability for their human rights performance.

We are likely to see more regulatory interventions targeted at ensuring not only that companies report on how they are seeking to prevent and mitigate adverse human rights impacts, but also that these policies and processes are implemented. Under the French Devoir de Vigilance law, a company that fails to implement its plans effectively may be subject to civil liability. It may also be required to provide compensation to cover the effect of any harm that would have been prevented by the exercise of due diligence. The scope of a company's civil liability under the law is limited to that under the general law of tort, and remains unclear.[81] However legal experts have noted that the very existence of such a possibility constitutes a significant legal, financial and reputational risk for companies and will encourage implementation of vigilance plans in order to monitor and control human rights-related risks.[82]

The Swiss Council of States (Senate) is considering a proposal that would require large Swiss companies,[83] and smaller companies whose activities pose particular risks to human rights, to conduct due diligence on human rights and environmental impacts within Switzerland and overseas.[84] Under the proposal, companies will be held liable for activities of subsidiaries that cause injury to life and limb or property. If passed by the Senate, this initiative will place Switzerland at the forefront of the rapidly growing trend to embed corporate responsibility for adverse human rights impacts into national laws.[85] This trend towards the strengthening of liability schemes for human rights abuses is likely to accelerate in coming years.

Businesses can also expect to see greater use of legally-binding arbitration processes to resolve business and human rights disputes. The Accord on Fire and Building Safety in Bangladesh's binding international arbitration process is widely regarded as a harbinger of legally binding corporate human rights obligations through international arbitration.[86] Business and human rights is recognised in commercial arbitration as 'the new frontier',[87] with efforts already underway to develop a set of arbitral rules in international disputes concerning business-related human rights abuses.[88] Future possibilities include a role for the Permanent Court of Arbitration in business and human rights disputes or the creation of a new Court of Arbitration for business and human rights.[89] In the future, businesses can anticipate greater use of arbitration both by victims of human rights violations, and by other businesses to resolve disputes involving human rights, such as where a supplier fails to comply with certain contractually imposed human rights obligations.[90]

3.4 More effective individual and collective avenues of redress will be developed for victims of corporate human rights abuses.

Today, access to remedy remains a key challenge. Affected individuals and communities rarely receive adequate remedies for human rights abuses, and only a limited number of companies make efforts to incorporate into their due diligence processes any lessons learnt from their failure to comply with human rights standards. Many National Action Plans (NAPs) fail to consider the issue of access to justice at all.[91] As outlined below, however, businesses can anticipate important developments in both State and non-State based mechanisms. These impending developments will translate into mounting pressure on businesses to ensure that they have credible and meaningful individual and community grievance mechanisms in place, as well as growing risks for businesses that continue to ignore human rights concerns.[92]

Domestic tort litigation will continue to explore the boundaries of judicial remedies for human rights abuses against corporations as well as individual directors and officers, particularly in multinational corporation's home courts.[93] Even where cases are unsuccessful or settled, beneficial procedural rulings will be built upon in future cases.[94] Each case that reveals ongoing procedural and substantive legal obstacles to access to justice only adds further momentum to calls for legislatures to take steps to improve judicial access to justice for victims of corporate human rights abuses. In 2017, the European Union Agency for Fundamental Rights (FRA) published an Opinion in which it proposed reforms to improve access to remedy for human rights breaches.[95] The European Commission is also considering improvements to EU collective redress mechanisms, and civil society has come out strongly in support of proposed reforms.[96]

State non-judicial redress mechanisms are also likely to be strengthened. In January 2018, Canada raised the global benchmark with the announcement that it will create a Canadian Ombudsperson for Responsible Enterprise (CORE). This independent ombudsman's mandate will include investigating allegations of human rights abuses linked to Canadian corporate activity globally. The ombudsman will also report, recommend remedy, and have monitoring functions. It will be empowered to compel witnesses and documentation from Canadian companies operating overseas that have been accused of human rights violations. While initially focusing on the mining, oil and gas, and garment sectors, the Ombudsman's remit is anticipated to be expanded to other business sectors in the near future.[97] This development has obvious and significant implications for Canadian businesses. But it is also anticipated to have broader effects: offering an innovative State-based effort to compel businesses to recognise and address their impacts on human rights capable of being emulated by other nation-states.

The 48 OECD National Contact Points (NCP) around the globe are also likely to incrementally improve their effectiveness. Since 2011, non-compliance with the human rights chapter of the OECD Guidelines for Multinational Enterprises has proven the most prevalent form of complaint lodged with these mechanisms. As a state-based non-judicial remedy mechanism, the NCP system continues to suffer from serious weaknesses in structure and operation.[98] However advocacy efforts by civil society to reform these mechanisms on a country-specific basis and within the OECD are ongoing and are likely to lead to strengthening of this mechanism in coming years.

3.5 More collaborative solutions to human rights challenges are likely.

Awareness of the limitations of individual self-regulatory approaches to tackling persistent human rights violations is driving a trend towards more co-ordinated and collaborative approaches to managing human rights risks. Often created in the wake of a crisis, we now find multi-stakeholder initiatives (MSIs) in almost all global industries, covering a range of labour and human rights issues from labour rights in clothing and agriculture to indigenous peoples' rights in the extractive sector, and privacy and freedom of expression in the ICT industry.[99] MSIs recognise that while companies each have their own responsibilities to respect human rights and to implement robust systems to do so, many human rights challenges are the product of industry-wide structures and practices. Pooling resources, expertise, and leverage can be the most effective and sustainable way of tackling industry-wide human rights problems. For business, MSIs can also help create a level playing field. Civil society and international organisations such as the ILO and OECD are strong supporters of multi-stakeholder collaboration, and the model of Shared Responsibility proposed by the World Economic Forum's Global Agenda on Human Rights has only added further momentum to this trend.[100]

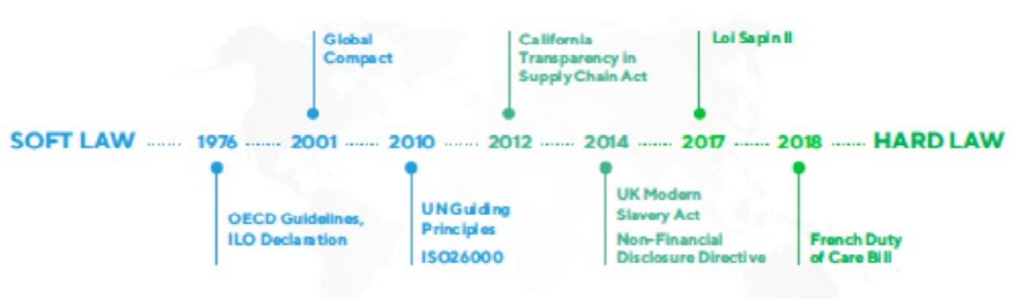
Looking to the future, businesses can expect to face mounting pressure to demonstrate how they are collaborating with their peers, governments and stakeholders to reach sustainable and effective solutions to systemic human rights challenges.

The **ACT (Action, Collaboration, Transformation)** initiative, formally launched in 2015, aims to transform the garment and textile industry and achieve living wages for workers through industry-wide collective bargaining linked to purchasing practices. An agreement between international brands, retailers and trade unions, it is governed by a board comprising 50% companies, 50% unions and has a full-time secretariat. The initiative involves:

1. Industry-wide collective bargaining between employers and unions, and legally enforceable agreements at the national level
2. Purchasing practices of the member brands and retailers that ensure that "payment of the negotiated wage is supported and enabled by the terms of contracts" between global buyers and their suppliers.
3. Government engagement on national minimum wage fixing enforcement mechanisms, national minimum wage fixing enforcement mechanisms, so that they provide an adequately resourced regulatory, inspection, and legal system that ensures that no less than legal minimum wages are paid to workers.[101]

Business can anticipate that MSIs will become more common and encompass a greater number of companies, industries, and localities. Importantly, we can also anticipate the progressive strengthening of such initiatives, in line with evolving understandings of what constitutes a meaningful, effective, and legitimate MSI.[102] Business that fail to collaborate with their peers in a credible and meaningful fashion, or to anticipate the arrival or expansion of MSIs in their respective sectors, risk being left behind or facing a steep and expensive learning curve when pressure to participate in such initiatives mounts.

Figure 1: Regulatory Developments



Source: Ecovadis, https://www.ecovadis.com/landmark-study-csr-clauses-buyer-supplier-contracts-reveals-insights-adoption-sustainable-practices/

4. Conclusion

Public, corporate, and regulatory understandings of the human rights responsibilities of business are evolving rapidly. Extrapolating from current trends, we can anticipate a business environment in which companies across all sectors face a more demanding market and regulatory environment when it comes to human rights. Pressure from consumers, commercial partners, investors, and lenders to account for human rights performance will intensify. The regulatory environment will continue to evolve in the direction of greater transparency and accountability for corporate actors. Businesses positioned for success in this future environment are those taking steps now to prevent and mitigate human rights impacts in their own operations and in their business relationships.

CONCLUDING REMARKS

The objective of this report is to offer a more nuanced and balanced assessment of the 'business case' for human rights. We have sought to make evidence-based economic arguments for companies to respect human rights, illustrating the incentives that ought to encourage this conduct. Each section pulled together available empirical evidence from around the globe and from a multitude of sectors to illuminate the rewards of responsible business behaviour, as well as the risks that come with ignoring human rights.

Part 1 looked at the social impact of embracing or ignoring human rights by companies in two dimensions: workplace and community relations. By establishing strong human rights-based policies in the workplace, businesses can benefit from greater loyalty and increased productivity, avoid supply chain disruption, and minimise legal risk. Failing to implement human rights standards can significantly harm a company's stakeholder and community relations. These costs generally come in the form of diverting staff to deal with community conflict, as well as lost opportunity costs. Positively engaging with communities can offset these costs, as well as provide financial rewards in the long term.

Part 2 demonstrated how governments are increasingly using economic leverage as a tool to promote corporate respect for human rights. For example, governments have started to insert human rights language into international trade and investment agreements. Moreover, the UNGPs have reinforced the obligation of States to protect human rights, which also extends to States' economic relations with private actors. Utilising human rights standards in public procurement contracts has become common in countries implementing the UNGPs by adopting NAPs on business and human rights. There are also various developments in the field of export credits and trade-related initiatives, which add further economic incentives for businesses to respect human rights. So far, however, little research has been conducted on the impact of such policies on corporate behaviour.

In Part 3, a cost analysis of corporate abuse-related lawsuits identified five types of costs: financial cost, cost for out-of-court settlements, information-disclosure cost, reputational damage, and potential decline in stock price. It seems that companies are increasingly opting for out-of-court settlements, despite the substantial expense associated with it. Furthermore, corporate abuse-related lawsuits attract a great deal of negative attention, potentially damaging a company's reputation and credit rating, no matter the final court decision. The cumulative effect of these costs, at least temporarily, is to hurt a company's stock performance.

Looking to the future, Part 4 noted the complex role of consumers and investors in driving responsible business behaviour. Certainly, there is evidence that consumer scrutiny is intensifying, yet some sectors remain almost impervious to human rights concerns. However, with the opinionated scepticism of Millennials and Generation Z, and greater consumer access to information on corporate human rights impact, failing to identify and manage those impacts may have serious consequences for businesses. Investor scrutiny is increasing, with more investors considering long-term options, alongside the rise of mandatory ESG reporting. Businesses of all sizes are beginning to demand more from each other in terms of human rights. By failing to anticipate, contribute to, and collaborate with other businesses on human rights issues, companies' risk being surpassed by competitors or enduring steep and costly learning curves.

The scope of this project is limited to secondary data. Nevertheless, what became clear during the process of the project was that much of the existing research utilises sustainability or CSR discourse as the main lens through which to view economic arguments for responsible business. The lack of empirical research directly linking human rights with the economic implications for business is cause for concern and requires urgent attention.

Four distinct areas for future research emerge from this report. First, scholars should concentrate on the actual implications of economic incentives introduced by States to encourage responsible human rights behaviour by business. Second, regarding emerging regulatory trends in the field of business and human rights, there is a need to look at how these trends nationally and internationally relate to and reinforce one another and how they affect and change business behaviour. Third, how do different sectors and types of companies (such as licensed or registered benefit companies) perform on respecting human rights and how do we effectively measure this performance so that consumers and investors can make decisions upon such performance-related information? And finally, further research is required to look into the increasing financial and non-financial costs of human rights litigation proceedings. To what extent do these costs create a deterrent effect? How do they affect the right of victims' access to remedy? And what role can civil society or NGOs play in these cases, especially those of a transnational nature? We hope that by delivering an extensive overview of existing evidence supporting economic arguments for human rights respect in four key areas, this project provides inspiration for future research and future action.

ENDNOTES

Foreward and Introduction Endnotes

[1] Please note that the order of the authors' names does not denote level of contribution. They are presented in alphabetical order.

[2] John Morrison, "The Business Case for Human Rights – Values, Expectations and Risk," (Presented at Engaging Business: Implementing Respect for Human Rights, Atlanta, Georgia, April 28-29, 2011), https://www.ihrb.org/pdf/IHRB_Speech_2011_04_28_John_Morrison_The_Business_Case_for_Human_Rights.pdf (accessed November 13, 2018).

[3] Ibid.

[4] Economist Intelligence Unit, *The Road from Principles to Practice: Today's Challenges for Business in Respecting Human Rights*, 2015, https://eiuperspectives.economist.com/sites/default/files/EIU-URG%20-%20Challenges%20for%20business%20in%20respecting%20human%20rights%20WEB_corrected%20logos%20and%20UNWG%20thx.pdf, (accessed November 14, 2018).

[5] UN HRC, *UN Guiding Principles on Business and Human Rights: Implementing the United Nations' "Protect, Respect and Remedy" Framework,* A/HRC/17/31, March 21, 2011, Principle 15.

[6] Christine Parker and John Howe, "Ruggie's Diplomatic Project and Its Missing Regulatory Infrastructure," in *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation,* ed. Radu Mares (Koninklijke: Brill, 2012), 273, 278.

[7] Archie B. Carroll and Kareem M. Shabana, "The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice," I*nternational Journal of Management Reviews* 12, no. 1: (2010).

[8] Commentary to UNGP 23. Robert C. Thompson, Anita Ramasastry and Mark B. Taylor, "Translating Unocal: The Expanding Web of Liability for Business zentities Implicated in International Crimes," *George Washington Law Review* 40, no. 4 (2009): 841-902.

[9] Deloitte, *2014 Global Survey on Reputational Risk*, October 2014, https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Governance-Risk-Compliance/gx_grc_Reputation@Risk%20survey%20report_FINAL.pdf (accessed November 14, 2018).

[10] Deloitte LLP, *Gone in 300 Seconds: How Corporate Reputation Influences the value of Business in the Age of Social Media*, 2015, https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/corporate-finance/deloitte-uk-corporate-reputation.pdf (accessed November 14, 2018); Rosa Chun, "Corporate Reputation: Meaning and Measurement" *International Journal of Management Reviews* 7, no. 2 (2005): 91-109.

[11] In the UK, for example, the 2018 Reputation Dividend Report estimates that corporate reputation is now directly responsible for an average of 38% of market capitalisation across the FTSE 100 & 250: Reputation Dividend, *The 2018 UK Reputation Dividend Report*, 2018, http://reputationdividend.com/files/6215/1939/6597/UK_2018_report_Final.pdf (accessed November 14, 2018).

[12] United Nations Global Compact and Business for Social Responsibility, *Supply Chain Sustainability: A Practical Guide for Continuous Improvement,* 2010, 13.

Part 1 Endnotes

[1] Human Rights Watch, *Human Rights in Supply Chains: A Call for A Binding Global Standard on Due Diligence* (May 2016), https://www.hrw.org/sites/default/files/report_pdf/human_rights_in_supply_chains_brochure_lowres_final.pdf (Accessed June 1, 2018).

[2] International Labor Organization, *World Employment and Social Outlook 2015: The Changing Nature of Jobs*, 2015, 131 http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_368626.pdf (accessed May 28, 2018).

[3] International Labor Organization, *Following Decades of Rapid Increase, Global Supply Chain Jobs Shrink*, 2015, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_370189/lang--en/index.html (accessed May 28, 2018).

[4] European Centre for International Political Economy, *The Economic Benefits of Globalization for Business and Consumers*, 2018, http://ecipe.org//app/uploads/2018/01/Globalization-paper-final.pdf (accessed May 17, 2018).

[5] World Bank Group, *A Measured Approach to Ending Poverty and Boosting Shared Prosperity: Concepts, Data, and the Twin Goals*, 2015, https://openknowledge.worldbank.org/handle/10986/20384 (accessed May 29, 2018); See also: Leaders, "Towards the End of Poverty," The Economist, June 1, 2013, https://www.economist.com/leaders/2013/06/01/towards-the-end-of-poverty (accessed August 1, 2018).

[6] Bank for International Settlements, *Understanding Globalisation*, June 18, 2017, https://www.bis.org/publ/arpdf/ar2017e6.pdf (accessed May 29, 2018), 109.

[7] *See* Part 3.

[8] Paul M. Barrett, Dorothée Baumann-Pauly and April Gu, "Five Years After Rana Plaza: The Way Forward," *NYU Stern Center for Business and Human Rights*, 2018, https://static1.squarespace.com/static/547df270e4b0ba184dfc490e/t/5ac9514eaa4a998f3f30ae13/1523143088805/NYU+Bangladesh+Rana+Plaza+Report.pdf (accessed May 4, 2018).

[9] Ibid, 11.

[10] Raveena Aulakh, "Rana Plaza compensation fund short millions," The Star, March 14, 2014, https://www.thestar.com/news/world/2014/03/14/rana_plaza_compensation_fund_short_millions.html (accessed May 27, 2018).

[11] Clean Clothes Campaign, *WE WON!!! Rana Plaza Workers Get Compensation*, June 8, 2015, https://cleanclothes.org/news/2015/06/08/we-won-rana-plaza-workers-get-full-compensation (accessed May 27, 2018).

[12] International Labour Organization, "Improved Working Conditions in the Apparel Industry make Worker's Lives Better and Businesses Stronger," *ILO Newsroom*, September 26, 2016, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_526513/lang--en/index.htm (accessed August 10, 2018).

[13] Better Work, "Progress and Potential: How Better Work is Improving Garment Workers' Lives and Boosting Factory Competitiveness," *International Labour Office*, 2016, https://betterwork.org/dev/wp-content/uploads/2016/09/BW-Progress-and-Potential_Web-final.pdf (accessed August 10, 2018).

[14] Ibid.

[15] Robert C. Solomon and Kristine R. Hanson, *It's Good Business* (New York: Atheneum, 1985).

[16] Better Work, *supra* note 13, 31.

[17] Better Work, *supra* note 13, 43.

[18] Better Work, *Research Brief*: *Working Conditions Productivity and Profitability – Evidence from Better Work in Vietnam*, March 2015, https://betterwork.org/dev/wp-content/uploads/2017/04/ILO-1513-Research-Brief-for-DP-No.-17-Are-Sweatshops-Profit-Maximizing.pdf (accessed June 20, 2018).

[19] International Labour Organization, *Better Work*, 2018, http://www.ilo.org/global/programmes-and-projects/WCMS_084616/lang--de/index.htm (accessed June 20, 2018).

[20] Better Work, *supra* note 18, 2.

[21] Better Work, *supra* note 18, 3.

[22] Kevin B. Hendricks and Vinod R. Singhal, "The Effect of Supply Chain Glitches on Shareholder Wealth," *Journal of Operations Management* 25, no. 5 (2003): 501.

[23] Mong Palatino, "Why Cambodian Garment Workers are on Strike Again," *The Diplomat*, September 25, 2014, https://thediplomat.com/2014/09/why-cambodian-garment-workers-are-on-strike-again/ (accessed August 14, 2018).

[24] Anirban Chowdhury and Neha Tyagi, "Labour Strike at Jawaharlal Nehru Port Trust Terminal Ends After Executives' Assurance," *The Economic Times*, August 13, 2015, https://economictimes.indiatimes.com/industry/transportation/shipping-/-transport/labour-strike-at-jawaharlal-nehru-port-trust-terminal-ends-after-executives-assurance/articleshow/48465869.cms (accessed June 21, 2018).

[25] Emma Seppala and Kim Cameron, "Proof That Positive Work Cultures Are More Productive," *Harvard Business Review*, December 1, 2015, https://hbr.org/2015/12/proof-that-positive-work-cultures-are-more-productive (accessed June 1, 2018).

[26] Equality and Human Rights Commission, *Mental Health is your Business*, 2016, https://www.equalityhumanrights.com/en/advice-and-guidance/mental-health-your-business (accessed June 19, 2018).

[27] Equality and Human Rights Commission, *supra* note 26.

[28] Equality and Human Rights Commission, *supra* note 26.

[29] Halina Ward, "Securing Transnational Corporate Accountability through National Courts: Implications and Policy Options," *Hastings Int'l & Comp. L*. Rev. 24, no. 3 (2001): 451,464.

[30] *Lubbe v Cape Plc* [2000] UKHL 41.

[31] Ward, *supra* note 29.

[32] Norton Rose Fulbright and BIICL, *Making Sense of Managing Human Rights Issues in Supply Chains: 2018 Report and Analysis*, 2018, http://human-rights-due-diligence.nortonrosefulbright.online/ (accessed June 21, 2018).

[33] Norton Rose Fulbright and BIICL, *Key Observations*, 2018, https://human-rights-due-diligence.nortonrosefulbright.online/publications/2018/q2/key-observations (accessed June 21, 2018).

[34] James Harrison, "Establishing a Meaningful Human Rights Due Diligence Process for Corporations: Learning From Experience of Human Rights Impact Assessment," *Impact Assessment and Project Appraisal* 31, no. 2 (2013): 107.

[35] Robert McCorquodale, "Should Human Resources be Managing Human Rights?," *HRZone*, January 3, 2017, https://www.hrzone.com/lead/future/should-human-resources-be-managing-human-rights (accessed June 21, 2018).

[36] Helen Barrett, "Plan for Five Careers in a Lifetime," *Financial Times*, September 5, 2017, https://www.ft.com/content/0151d2fe-868a-11e7-8bb1-5ba57d47eff7 (accessed May 29, 2018).

[37] Guy Berger, "Will This Year's College Grads Job-Hop More Than Previous Grads?" *LinkedIn*, April 12, 2016, https://blog.linkedin.com/2016/04/12/will-this-year_s-college-grads-job-hop-more-than-previous-grads (accessed May 30, 2018).

[38] The Pew Research Center defines Millennials as those born between 1981 and 1997 http://www.pewresearch.org/topics/millennials/ (accessed October 13, 2018). Generation Z are those born during 1998 and after http://www.pewresearch.org/fact-tank/2018/03/01/defining-generations-where-millennials-end-and-post-millennials-begin/ (accessed October 13, 2018).

[39] Deloitte, *The 2016 Deloitte Millennial Survey: Winning Over the Next Generation of Leaders*, 2016, 4, https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millenial-survey-2016-exec-summary.pdf (accessed May 29, 2018).

[40] Ibid., 8.

[41] Deloitte, *supra* note 39,11.

[42] Deloitte, *supra* note 39, 11.

[43] Ibid., 10.

[44] Dane K. Peterson, "The Relationship between Perceptions of Corporate Citizenship and Organizational Commitment," *Business & Society* 43, no. 3 (2004): 296.

[45] Katrin Bennhold, "Germany Acts to Tame Facebook, Learning From Its Own History of Hate," *New York Times*, May 19, 2018, https://www.nytimes.com/2018/05/19/technology/facebook-deletion-center-germany.html (accessed May 29, 2018).

[46] Office of the High Commissioner for Human Rights, "Human Rights and the 2030 Agenda for Sustainable Development," *United Nations*, 2018, http://www.ohchr.org/EN/Issues/MDG/Pages/The2030Agenda.aspx (accessed June 13, 2018).

[47] Society for Human Resource Management, "Advancing Sustainability: HR's Role: A Research Report by SHRM, BSR and Aurosoorya," *SHRM*, 2011, https://www.shrm.org/Research/SurveyFindings/Articles/Pages/AdvancingSustainabilityHR%E2%80%99sRole.aspx (accessed September 1, 2018).

[48] Susanne Gargiulo, "Why Everyone Wants to Work for the 'Good Guys'," *CNN*, November 8, 2012, https://edition.cnn.com/2012/11/07/business/global-office-csr-volunteer/index.html (accessed June 19, 2018).

[49] Seppala and Cameron, *supra* note 25.

[50] Deloitte, *supra* note 39, 11.

[51] Gallup, *State of the American Workplace*, 2016, http://news.gallup.com/reports/178514/state-american-workplace.aspx (accessed June 1, 2018).

[52] Ibid, 68.

[53] Shelley Pleiter, "Engaging Employees," *Smith Magazine (Smith School of Business)*, Winter 2014, https://smith.queensu.ca/magazine/winter-2014/features/engaging-employees (accessed October 1, 2018).

[54] Global Witness, *At What Cost? Irresponsible Business and the Murder of Land and Environmental Defenders in 2017*, July 24, 2018, 9 https://www.globalwitness.org/documents/19392/Defenders_report_layout_AW2_lowres.pdf (accessed August 10, 2018).

[55] Ibid., 15.

[56] Juliette Syn, "The Social License: Empowering Communities and a Better Way Forward," Social Epistemology 28, no. 3-4 (2014): 318, 319.

[57] Melanie Dare, Jacki Schirmer, and Frank Vanclay, "Community Engagement and Social License to Operate," *Impact Assessment and Project Appraisal* 32, no. 3 (2014): 188.

[58] Rachel Davis and Daniel Franks, "Costs of Company-Community Conflict in the Extractive Sector," *Corporate Social Responsibility Initiative Harvard Kennedy School*, 2014, https://sites.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf (accessed May 20, 2018).

[59] Sara J. Bice and Kieren Moffat, "Social Licence to Operate and Impact Assessment," *Impact Assessment and Project Appraisal* 32, no. 4 (2014): 257.

[60] Daniel M. Franks, Rachel Davis, Anthony J. Bebbington, Saleem H. Ali, Deanna Kemp, Martin Scurrah, "Conflict Translates Environmental and Social Risk into Business Costs," *Proceedings of the National Academy of Sciences of United States of America* 111, no. 21 (2014): 7576.

[61] Goldman Sachs, "190 Projects to Change the World," *Goldman Sachs Group*, April 2008.

[62] Davis and Franks, *supra* note 58.

[63] Brayden King and Sarah A. Soule, "Social Movement as Extra-Institutional Entrepreneurs: The Effect of Protests on Stock Price Returns," *Administrative Science Quarterly* 53, no. 3 (2007): 413.

[64] Andrew Dunne, "Conflict With Communities a Big Cost to Business, Researchers Find," Phys.org, May 13, 2014, https://phys.org/news/2014-05-conflict-big-business.html (accessed August 10, 2018).

[65] Global Witness, *supra* note 55.

[66] See for example: Sarah Kent, "Pollution Worsens Around Shell Oil Spills in Nigeria," *The Wall Street Journal*, May 25, 2018, https://www.wsj.com/articles/pollution-worsens-around-shell-oil-spills-in-nigeria-1527246084 (accessed August 10, 2018); Heather Gies, "Honduran Villagers Take Legal Action to Stop Top Mining Firm Digging Up Graves for Gold," *The Guardian*, May 28, 2018, https://www.theguardian.com/environment/2018/may/28/honduran-villagers-take-legal-action-to-stop-mining-firm-digging-up-graves-for-gold (accessed August 12, 2018); Human Rights Watch, "The Hidden Cost of Jewellery," *Human Rights Watch*, February 8, 2018, https://www.hrw.org/report/2018/02/08/hidden-cost-jewelry/human-rights-supply-chains-and-responsibility-jewelry (accessed August 10, 2018);

[67] Davis and Franks, *supra* note 58.

[68] Davis and Franks, *supra* note 58, 20.

[69] Davis and Franks, *supra* note 58, 19.

[70] Davis and Franks, *supra* note 58, 17.

[71] John G. Ruggie, *Just Business Multinational Corporations and Human Rights* (London: W.W. Norton & Co, 2013), 139; Global Witness, supra note 55.

[72] Davis and Franks, *supra* note 58, 20.

[73] David Wheeler and Maria Sillanpää, "Including the Stakeholder: The Business Case," *Long Range Planning* 31, no. 2 (1998): 201.

[74] Pam Laughland, "Stakeholder Relations Sustain Positive Financial Performance," *Network of Sustainable Business*, June 10, 2011, https://nbs.net/p/stakeholder-relations-sustain-positive-financial-perfor-54a3c28d-4123-4339-9500-944e3d59a2bf (accessed June 22, 2018).

[75] Ibid.

[76] Witold J. Henisz, Sinziana Dorobantu and Lite J. Nartey, "Spinning Gold: The Financial Returns of Stakeholder Engagement," *Strategic Management Journal* 35, no. 12 (2014): 1727.

[77] Reuters, "Ecuador Cancels an Oil Deal With Occidental Petroleum," *New York Times*, May 17, 2006, https://www.nytimes.com/2006/05/17/business/worldbusiness/17oil.html (accessed June 20, 2018).

[78] Dan Collyns, "Indigenous Peruvians Win Amazon Pollution Payout from US Oil Giants," *The Guardian*, March 5, 2015, https://www.theguardian.com/environment/2015/mar/05/indigenous-peruvians-amazon-pollution-settlement-us-oil-occidental (accessed June 19, 2018).

[79] Ibid.

[80] Lisa Calvano, "Multinational Corporations and Local Communities: A Critical Analysis of Conflict," *Journal of Business Ethics* 82, no. 4 (2008): 793.

[81] Collyns, *supra* note 78.

[82] Collyns, *supra* note 78.

[83] Reuters, *supra* note 77.

[84] Reuters, *supra* note 77.

Part 2 Endnotes

[1] Examples in Part 1 and Part 4.

[2] Olivier De Schutter, Anita Ramasastry, Mark B. Taylor and Robert C. Thompson, "Human Rights Due Diligence: The Role of States," *ICAR and International Corporate Accountability Roundtable*, December 24, 2012, 33.

https://www.icar.ngo/publications/2017/1/4/human-rights-due-diligence-the-role-of-states (accessed July 25, 2018).

[3] United Nations Conference on Trade and Development, *World Investment Report 2018, Investment and New Industrial Policies*, 95-96, www.unctad.org/diae (accessed November 14, 2018).

[4] Ibid, 96.

[5] Ibid, 98.

[6] Susan Ariel Aaronson and Jean Pierre Chauffour, "The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?," *World Trade Organization*, https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm#fntext3 (accessed on November 14, 2018).

[7] Susan Ariel Aaronson, *Human Rights,* http://siteresources.worldbank.org/INTRANETTRADE/Resources/C21.pdf (accessed November 14, 2018).

[8] Aaronson and Chauffour, *supra* note 6.

[9] Ibid.

[10] *See*, UN HRC, *UN Guiding Principles on Business and Human Rights: Implementing the United Nations*' "Protect, Respect and Remedy" Framework, A/HRC/17/31, March 21, 2011, Principles, 4, 5, 6 and 8. (Hereinafter UN Guiding Principles).

[11] De Schutter, *supra* note 2.

[12] These are also identified among human rights risks by the EY in their human rights statement. EY, *Human Rights, Regulatory developments and requirements for transparency*, August 2015, https://www.ey.com/Publication/vwLUAssets/EY-human-rights/$FILE/EY-human-rights-Regulatory-developments-and-requirements-for-transparency-august-2015.pdf (accessed August 15, 2018).

[13] Organisation for Economic Co-operation and Development, *Public Procurement*, http://www.oecd.org/gov/public-procurement/ (accessed July 25, 2018). For a through study on procurement policies and human rights across jurisdictions, see, International Learning Lab on Public *Procurement and Human Rights, Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, July 2016 (herein after 'Public Procurement Survey'). The Public Procurement Study notes that 'the term public procurement is mainly used in the context of the EU legislation; other systems use other phrases to cover the same concept. For example, in the US, reference is generally made to governmental contracts or public contracts, and the World Trade Organisation relies on the term government procurement', fn 2.

[14] Institute for Human Rights and Business, *Protecting Rights by Purchasing Right: The Human Rights Provisions, Opportunities and Limitations Under the 2014 EU Public Procurement Directives*, November 2015, https://www.ihrb.org/pdf/occasional-papers/Occasional-Paper-3-Protecting-Rights-by-Purchasing-Right.pdf (accessed November 14, 2018), (hereinafter IHRB Study).

[15] European Commission, *Public Procurement*, http://ec.europa.eu/growth/single-market/public-procurement_en (accessed November 14, 2018).

[16] Olga Martin-Ortega, "Public Procurement as a Tool for the Protection and Promotion of Human Rights: A Study of Collaboration, Due Diligence and Leverage in the Electronics Industry," *Business and Human Rights Journal* 3, no. 1 (2018): 76-77.

[17] Ibid, quoting; OECD, "Government at a Glance 2011," *OECD Publishing*, 2011, http://dx.doi.org/10.1787/gov_glance-2011-en (accessed November 14, 2018); European Commission, "Public Procurement," http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/ (accessed October 16, 2018); World Bank Group, *Benchmarking Public Procurement 2016: Assessing Public Procurement Systems in 77 Economies* (Washington: Worldbank.org, 2016), respectively.

[18] European Commission, *Public Procurement,* http://ec.europa.eu/growth/single-market/public-procurement_en (accessed October 16, 2018).

[19] Radu Mares, "Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress," in *The UN Guiding Principles on Business and Human Rights – Foundations and Implementation*, ed. Radu Mares (Leiden, Boston: Martinus Nijhoff Publishers, 2012), 21.

[20] UN Guiding Principle 6, Commentary.

[21] For a list of the National Action Plans, *see*; https://www.ohchr.org/en/issues/business/pages/nationalactionplans.aspx (accessed November 14, 2018).

[22] National Action Plan, UK, *Good Business -Implementing the UN Guiding Principles on Business and Human Rights*, May 2016, 10.

[23] IHRB Study, 5. For an analysis of the human rights provisions of the directives, *see* the IHRB Study, United Nations Conference on Trade and Development, *supra* note 5.

[24] Public Sector Directive, 2014/24/EU, Art 18(2); Utilities Directive, 2014/25/EU, 36(2); Concessions Directive, 2014/23/EU, 30(3).

[25] Public Sector Directive, 2014/24/EU, Art 57(1)(f); Concessions Directive, 2014/23/EU, 38(4)(f).

[26] Public Sector Directive, 2014/24/EU, Art 57(4)(a); Concessions Directive, 2014/23/EU, 38(7)(a).

[27] Public Sector Directive, 2014/24/EU, Art 67(1); Utilities Directive, 2014/25/EU, 82(1).

[28] Eamonn Conlon, "Modern Slavery: Do the 2014 EU Procurement Directives Establish New Routes to Remedy for Victims?," *International Learning Lab*, June 19, 2018, http://www.hrprocurementlab.org/blog/modern-slavery-do-the-2014-eu-procurement-directives-establish-new-routes-to-remedy-for-victims/ (accessed November 14, 2018).

[29] For a survey of existing procurement initiatives relevant to human rights, *see* Public Procurement Survey.

[30] Public Procurement Survey, 15.

[31] Ibid.

[32] Quoted in Martin-Ortega, *supra* note 16.

[33] National Action Plans on Business and Human Rights, *Public Procurement*, https://globalnaps.org/issue/public-procurement/ (accessed November 14, 2018).

[34] Tokyo 2010, *Sustainability*, https://tokyo2020.org/en/games/sustainability/ (accessed November 14, 2018).

[35] National Action Plans on Business and Human Rights, *supra* note 33.

[36] Ibid.

[37] The International Learning Lab on Public Procurement and Human Rights (Learning Lab) is a network of non-governmental organisations, national human rights institutions, academics, representatives of central and local government procurement agencies, government purchasing officers, representatives of other relevant government bodies, and procurement professional associations. The present report, 'Public Procurement and Human Rights: A Survey of Twenty Jurisdictions' is produced by Danish Institute for Human Rights, Harrison Institute at Georgetown Univ., Intl. Corporate Accountability Roundtable, and published on 18 July 2016.

[38] The jurisdictions surveyed include; Australia, Czech Republic, Denmark, EU, Finland, Germany, Ireland, Italy, Netherlands, New Zealand, North- ern Ireland, Norway, Poland, Scotland, South Africa, Sweden, Switzerland, Spain, the United Kingdom, and the United States.

[39] Public Procurement Survey, 25.

[40] Public Procurement Survey, 38.

[41] Ibid.

[42] Public Procurement Survey, *supra* note 13.

[43] Public Procurement Survey, 38.

[44] Public Procurement Survey, 38; *see* also the article by Claire Methven O'Brien Claire Methven, "Human Rights: A New Frontier for Public Procurement," *In Procurement*, February 2016, reporting the same case.

[45] Reported by Claire Methven O'Brien, Ibid.

[46] Public Procurement Survey, *supra* note 13.

[47] European Commission Directorate General, *Buying Social A Guide to Taking Account of Social Considerations in Public Procurement*, October 2010, http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=978 (accessed November 14, 2018), 32.

[48] Ibid., 41.

[49] Nadia Bernaz, "Enhancing Corporate Accountability for Human Rights Violations: Is Extraterritoriality the Magic Potion?," *Journal of Business Ethics* 117, no. 3 (2013): 493, 500.

[50] Karyn Keenan, "Export Credit Agencies and the International Law of Human Rights," *Halifax Initiative Coalition*, January 2008, http://www.halifaxinitiative.org/updir/ECAs_and_HR_law.pdf (accessed November 14, 2018).

[51] WTO, *Trade Finance and SMEs Bridging the Gaps in Provision*, 2016, https://www.wto.org/english/res_e/booksp_e/tradefinsme_e.pdf (accessed November 14, 2018).

[52] *See*, The UK Export Finance, https://www.gov.uk/government/organisations/uk-export-finance (accessed November 14, 2018).

[53] House of Commons Trade and Industry Committee, *Implementation of ECGD's Business Principles*, March 2005, https://publications.parliament.uk/pa/cm200405/cmselect/cmtrdind/374/374.pdf (accessed November 14, 2018).

[54] EDC, *Business Integrity*, https://www.edc.ca/EN/About-Us/Corporate-Social-Responsibility/Pages/business-ethics.aspx, (accessed July 25, 2018).

[55] GIEK The Norwegian Export Credit Guarantee Agency, *GIEK focuses on Sustainability*, https://www.giek.no/responsible-business-conduct/ (accessed August 20, 2018).

[56] National Action Plan of Norway, 24.

[57] Ibid.

[58] Ibid.

[59] Atradius Dutch State Business, CSR *(Corporate Social Responsibility)*, https://atradiusdutchstatebusiness.nl/en/article/csr-(corporate-social-responsibility).html (access November 14, 2018).

[60] Atradius Dutch State Business, *Policy Statement on Human Rights*, https://atradiusdutchstatebusiness.nl/en/article/csr-(corporate-social-responsibility).html (access July 15, 2018).

[61] Atradius Dutch State Business, *Guidelines for submitting a Complaint*,

https://atradiusdutchstatebusiness.nl/en/.../44.106.01.e-complaint-guidelines.pdf, June 2018, (accessed July 25, 2018)

[62] OECD, *OECD Recommendations* (Common Approaches), http://www.oecd.org/trade/xcred/oecd-recommendations.htm (accessed November 14, 2018).

[63] Jurgen Friedrich, *International Environmental "soft Law": The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law* (Berlin: Springer, 2013), 313.

[64] Common Approaches, para. 6.

[65] Common Approaches, paras. 8 and 14. *See*, also, the assessment at Shift, *OECD Includes Human Rights Due Diligence in Recommendations for Export Credit Agencies*, April 14, 2016,

https://www.shiftproject.org/news/oecd-human-rights-due-diligence-export-credit-agencies/ (accessed November 14, 2018).

[66] IDMC, *Lessons Not Learned Turkey's Ilisu Dam*, July 18, 2017, www.internal-displacement.org (accessed November 14, 2018).

[67] Ibid.

[68] Note that, recently, in 20 August 2018, the Dutch OECD NCP published the Final Statement in the complaint against Bresser, a Dutch company which was involved in the relocation of the Zeynel Bey Tomb, a late 15th-century historic building in Hasankey, where the Ilisu dam is being constructed. The NCP found the company in breach of the OECD Guidelines for failing to conduct due diligence in planning to move the cultural heritage. The Dutch NCP, FIVAS, *the Initiative to Keep Hasankeyf Alive and Hasankeyf Matters vs Bresser*, August 20, 2018.

[69] Tim Arango, "Turkish Dam Project Threatens to Submerge Thousands of Years of History," *New York Times*, September 2016, https://www.nytimes.com/2016/09/02/world/europe/turkey-hasankeyf-ilisu-dam.html?smid=fb-share&_r=1 (accessed November 14, 2018).

[70] Christine Eberlein, Heike Drillisch, Ercan Ayboga and Thomas Wenidoppler, "The Ilisu dam in Turkey and the role of export credit agencies and NGO networks," *Water Alternatives* 3, no. 2 (2010): 291-312.

[71] Michael M. Cernea, "Population Displacement and Export Credit," *Brookings*, December 6, 2011, https://www.brookings.edu/opinions/population-displacement-and-export-credit/ (accessed November 14, 2018).

[72] Gudrun Zagel, "The WTO and Trade-Related Human Rights Measures: Trade Sanctions vs. Trade Incentives," 9 *Austrian Review of International and European Law* 9, no. 1 (2004): 119.

[73] German National Action Plan, 18, https://globalnaps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf (accessed November 14, 2018).

[74] *See*, James Yap, "Beyond 'Don't Be Evil': The European Union GSP+ Trade Preference Scheme and the Incentivisation of the Sri Lankan Garment Industry to Foster Human Rights," *European Law Journal 19*, no. 2(2013): 287-288.

[75] DIHR, *What National Action Plans say on Trade*, https://globalnaps.org/issue/trade/ (accessed November 14, 2018). (Article XX governs the general exception for trade in goods).

[76] Ibid.

[77] European Commission, *GSP+*, http://trade.ec.europa.eu/tradehelp/gsp (accessed November 14, 2015).

[78] Yap, "Beyond 'Don't Be Evil'," 287-288.

[79] This example and the quotations therein draw on Yap, "Beyond 'Don't Be Evil'," citations omitted.

[80] Ibid, 295.

[81] Ibid, 298.

[82] Ibid, 300.

[83] Ibid, 287-88.

[84] Ibid.

[85] Example cited in De Schutter et al., *supra* note 2.

Part 3 Endnotes

[1] For further reading on corporate human right litigation see, Jennifer Zerk, "Corporate Liability for Gross Human Rights Abuses Towards a Fairer and More Effective System of Domestic Law Remedies," A Report Prepared for the OHCHR (2014), 31; Judith Schrempf-Stirling and Florian Wettstein, "Beyond Guilty Verdicts: Human Rights Litigation and its Impact on Corporations' Human Rights Policies," *Journal of Business Ethics* 145, no. 3 (2017): 545-562; Elliot Schrage, "Emerging Threat: Human Rights Claims, Memorandum," *Harvard Business Review*, August 2003, https://hbr.org/2003/08/emerging-threat-human-rights-claims (accessed August 2, 2018).

[2] Ibid.,39.

[3] EU Directive 2004/18/EC.

[4] David Hansom, "Mandatory exclusions: a new tool to protect human rights in EU public procurement?" *International Learning Lab on Public Procurement and Human Rights Blog*, November 28, 2016, http://www.hrprocurementlab.org/blog/mandatory-exclusions-a-new-tool-to-protect-human-rights-in-eu-public-procurement/ (accessed January 16, 2018).

[5] Directive 2014/24/EU, Art 57(1)(f).

[6] Directive 2014/24/EU, Art 73(b).

[7] *See* Olga Martin-Ortega, Robert Stumberg, and Marta Andrecka, "Public Procurement and Human Rights: A Survey of Twenty Jurisdictions," in *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, Claire Methven O'Brie, Nicole Vander Meulen and Amol Mehra (International Learning Lab on Public Procurement and Human Rights, 2016): 53. (Hereinafter Public Procurement and Human Rights).

[8] U.K. Foreign and Commonwealth Office, *Good Business: Implementing The UN Guiding Principles on Business and Human Rights*, 2013, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf, (accessed June 14, 2018), 9; See Public Procurement and Human Rights, Ibid., 36.

[9] Pornsit Jiraporn, Napatsorn Jiraporn, Adisak Boeprasert, and Kiyoung Chang, "Does Corporate Social Responsibility (CSR) Improve Credit Ratings? Evidence from Geographic Identification," *Financial Management* (Fall 2014), 506.

[10] Cheng, Beiting, Ioannis Ioannou, and George Serafeim, "Corporate Social Responsibility and Access to Finance," *Strategic Management Journal* (forthcoming): 4, http://nrs.harvard.edu/urn-3:HUL.InstRepos:9887635 (accessed June 14, 2018).

[11] *See*, Moody's, https://www.moodys.com/credit-ratings/BP-plc-credit-rating-118500 (accessed June 17, 2018).

[12] *See*, Moody's, https://www.moodys.com/credit-ratings/Chiquita-Brands-International-Inc-credit-rating-784500 (accessed June 17, 2018).

[13] *See*, Moody's, https://www.moodys.com/credit-ratings/Chevron-Corporation-credit-rating-716000 (accessed June 17, 2018).

[14] Amnesty International and Business & Human Rights Resource Centre, *Creating a Paradigm Shift: Legal Solutions to Improve Access to Remedy for Corporate Human Rights Abuse*, September 4, 2017 https://www.amnesty.org/en/documents/pol30/7037/2017/en/ (accessed June 20, 2018): 19-21.

[15] Jonathan Drimmer and Sarah Lamoree, "Think Globally, Sue Locally: Trends and Out-of-Court Tactics in Transitional Tort Actions," *Berkeley Journal of International Law*. 29, no.2 (2011): 456.

[16] U.S. Foreign Legal Assistance (FLA) Statute, 28 U.S.C. § 1782.

[17] Business and Human Rights Resource Centre, *Access to Information*, https://www.business-humanrights.org/en/corporate-legal-accountability/special-issues/access-to-information (accessed August 4, 2018).

[18] Ibid.

[19] Amnesty International & Business & Human Rights Resource Centre, supra note 14; For more reading, Daniela Levarda, "A Comparative Study of U.S. and British Approaches to Discovery Conflicts: Achieving a Uniform System of Extraterritorial Discovery," *Fordham International Law Journal* 18, no.4 (1994).

[20] EarthRights International, *Foreign Legal Assistance Guide*, https://earthrights.org/publication/foreign-legal-assistance-guide/ (accessed August 3, 2018).

[21] Ibid.

[22] Business & Human Rights Resource Centre, *DynCorp lawsuits* (re Colombia & Ecuador), https://www.business-humanrights.org/en/dyncorp-lawsuit-re-colombia-ecuador-0 (accessed August 3, 2018).

[23] Anil Yilmaz Vastardis, "The Impact of Enhanced Corporate Transparency," *Human Rights Centre Blog University of Essex*, March 3, 2016, https://hrcessex.wordpress.com/2016/03/03/the-impact-of-enhanced-corporate-transparency-on-access-to-remedy-for-victims-of-corporate-human-rights-abuses-some-reflections-on-the-decision-of-the-us-court-in-the-exxon-mobil-case/ (accessed August 4, 2018).

[24] Michelle Harrison, "New Transnational Strategies in Pursuit of Justice," *EarthRight International (blog)*, February 2, 2015, https://earthrights.org/blog/new-transnational-strategies-in-pursuit-of-justice/ (accessed August 6, 2018).

[25] Business & Human Rights Resource Centre, *Grupo México lawsuit* (re toxic spill in Mexico), https://www.business-humanrights.org/en/grupo-m%C3%A9xico-lawsuit-re-toxic-spill-in-mexico (accessed August 6, 2018).

[26] Business & Human Rights Resource Centre, *Hudbay Minerals lawsuits (re Guatemala)*, https://www.business humanrights.org/en/hudbay-minerals-lawsuits-re-guatemala-0 (accessed August 6, 2018).

[27] Business & Human Rights Resource Centre, *Shell lawsuit (re Nigeria - Kiobel & Wiwa)*, https://www.business-humanrights.org/en/shell-lawsuit-re-nigeria-kiobel-wiwa (accessed August 6, 2018); *See* also Amnesty International, *USA: Shell's Law Firm Refuses to Hand over Evidence Critical for Ogoni Nine Case,* September 8, 2017, https://www.amnestyusa.org/press-releases/usa-shells-law-firm-refuses-to-hand-over-evidence-critical-for-ogoni-nine-case/ (accessed August 6, 2018).

[28] Business & Human Rights Resource Centre, *Thomson Safaris lawsuit (re Maasai in Tanzania)*, https://www.business-humanrights.org/en/thomson-safaris-lawsuit-re-maasai-in-tanzania (accessed August 6, 2018).

[29] Helio Fred Garcia and Anthony Ewing, "Defending corporate reputation from litigation threats," *Strategy & Leadership*, 36, no. 3 (2008): 41-45, https://doi.org/10.1108/10878570810870785 (accessed August 6, 2018).

[30] Drimmer and Lamoree, *supra* note 15.

[31] Ibid., 473-486.

[32] Ibid.

[33] Christopher Cairns, "Risk, Reputation, and Rights: The "Added Value" of Voluntary Human Rights Codes and Policies for Multinational Companies Operating in Conflict Situations: A Case Study of Colombia," MSc Human Rights Thesis, London School of Economics and Political Science (August 2008), https://www.business-humanrights.org/sites/default/files/media/bhr/files/Risk-Reputation-Rights-Cairns-Aug-2008.pdf (accessed June 18, 2018). See also http://killercoke.org/ (accessed August 6, 2018) and http://stopcokediscrimination.org/ (accessed 6 August 2018).

[34] Drimmer and Lamoree, *supra* note 15, 483.

[35] Robert Eccles, Scott Newquist, and Roland Schatz, "Reputation and Its Risks," Harvard Business Review, February 2007, https://hbr.org/2007/02/reputation-and-its-risks (accessed June 15, 2018).

[36] Andrew Leigh, "Torrent of Law Suits Trashes Corporate Reputations," *Ethical Leadership*, March 24, 2017, http://www.ethical-leadership.co.uk/law-suits/ (accessed August 6, 2018).

[37] Ibid.; The article does not explicitly mention what other factors constitute the remaining 15-35% of the companies' value. Nevertheless, since it has not exhaustively list all intangible assets other than reputation, one may conclude that the remaining percentage of company value could be attributable to other intangible assets like relationships, brand, people, know-how and other intellectual properties such as patents, trademarks, copyrights, and others. See Global Intangible Financial Tracker (GIFT) 2016: An Annual Review of the World's Intangible Value (September 5, 2016), http://brandfinance.com/images/upload/gift_report_2016_for_print.pdf (accessed September 15, 2018).

[38] Drimmer and Lamoree, *supra* note 15.

[39] Ibid.

[40] Jonathan Karpoff and John Lott, "The Reputational Penalty Firms Bear from Committing Criminal Fraud," *Journal of Law and Economics* 36 (1993): 757–802; Bruce Haslem, Irena Hutton, and Aimee Hoffmann Smith, "How Much Do Corporate Defendants Really Lose? A New Verdict on the Reputation Loss Induced by Corporate Litigation," *Financial Management* (Summer 2017): 328.

[41] Robert Worth, "Just Tourists on Broadway, but Barefoot and Craving Roast Monkey," *New York Times*, March 12, 2002, https://www.nytimes.com/2002/03/12/nyregion/just-tourists-on-broadway-but-barefoot-and-craving-roast-monkey.html (accessed August 3, 2018).

[42] Eccles, Newquist, and Schatz, *supra* note 35.

[43] Leigh, *supra* note 36.

[44] Haslem, Hutton, and Smith, *supra* note 40, 348-349.

[45] Ibid.

[46] Ibid., 348-349.

[47] Deborah Murphy, Ronald Shrieves, and Samuel Tibbs, "Understanding the Penalties Associated with Corporate Misconduct: An Empirical Examination of Earnings and Risk," j*ournal of financial and quantitative analysis* 44 (2009) 1: 56-57,

[48] Ibid., 82; Haslem, Hutton, and Smith, *supra* note 40, 324.

[49] Ibid., 349.

[50] Eccles, Newquist, and Schatz, supra note 35, 3; Business & Human Rights Resource Centre, *BP lawsuit (re Alaska)*, https://www.business-humanrights.org/en/bp-lawsuit-re-alaska; https://www.business-humanrights.org/en/bp-lawsuit-re-colombia; Guardian research, "Deepwater Horizon oil spill, BP Oil Spill Timeline," *The Guardian*, July 22, 2010, https://www.theguardian.com/environment/2010/jun/29/bp-oil-spill-timeline-deepwater-horizon (accessed June 19, 2018).

[51] Corporate Responsibility (CR) Magazine, "The cost of a bad reputation: The Impacts of Corporate Reputation on Talent Acquisition," survey findings, October 2015, http://www.thecro.com/wp-content/uploads/2015/10/Cost-of-a-Bad-Reputation-2015-Final.pdf (accessed October 15, 2018).

[52] Keren Peters-Atkinson, "How a Company's Reputation Impact its Ability to Attract and Retain Top Talent," *Madison Commercial Real Estate Services*, October 29, 2012, http://mondaymornings.madisoncres.com/how-a-companys-reputation-impacts-its-ability-to-attract-and-retain-top-talent/ (accessed October 15, 2018).

[53] Jonathan Karpoff, "Does Reputation Work to Discipline Corporate misconduct?," in T*he Oxford Handbook of Corporate Reputation*, ed. Timothy Pollock and Michael Barnett (Oxford: OUP, 2012), Chapter 18, 368.

[54] Vivien Kappel, Peter Schmidt, and Andreas Ziegler, "Human rights abuse and corporate stock performance – an event study analysis," *Whitepaper*, December 21, 2009.

[55] Ibid., 372.

[56] Richard Smith-Bingham, "Reputation Risk: A Rising C-Suite Imperative," *Oliver Wyman*, 2014: 6, https://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2014/may/ReputationRisk_Final_web.pdf (accessed August 2, 2018).

[57] While the data presented by the figure shows the stock performance of BP at the time of the oil spill incident and at the time of the followed lawsuits, the company's stock performance has changed since then. The overall annual changes in BP's stock performance between 2010 and 2018 shows the following. The annual change in 2010 was -21.35%, while the following years, 2011, 2012 and 2013, changed by 0.50%, 2.08% and 22.73%, respectively. The annual changes in the following two years declined to negative; in 2014 to -15.44% and in 2015 to -12.98%. Between 2016 and 2018, the change in stock performance shows 28.89% in 2016, 28.30% in 2017 and 19.31% in 2018. *See* https://www.macrotrends.net/stocks/charts/BP/bp/stock-price-history (accessed October 1, 2018).

Part 4 Endnotes

[1] Morley Winograd and Michael Hais, "How Millennials Could Upend Wall Street and Corporate America," *Brookings Institute*, May 2, 2014, https://www.brookings.edu/wp-content/uploads/2016/06/Brookings_Winogradfinal.pdf (accessed November 14, 2018).

[2] UBS, *Millennials – the global guardians of capital*, June 22, 2017, https://www.ubs.com/global/en/wealth-management/chief-investment-office/our-research/discover-more/2017/millennials.html (accessed November 14, 2018).

[3] Deloitte, "*Pro-business," but expecting more The Deloitte Millennial Survey* 2017, 2017, https://www2.deloitte.com/global/en/pages/about-deloitte/articles/millennial-survey-pro-business-but-expecting-more.html (accessed November 14, 2018); Shakir Akorede, "Here's what Millennials really want from Business, and Why," *World Economic Forum Youth Perspectives*, September 12, 2017, https://www.weforum.org/agenda/2017/09/heres-what-millennials-really-want-from-business/ (accessed November 14, 2018) .

[4] Nielsen, *Consumer-Goods Brands that Demonstrate Commitment to Sustainability Outperform those that Don't*, December 10, 2015, https://www.nielsen.com/eu/en/press-room/2015/consumer-goods-brands-that-demonstrate-commitment-to-sustainability-outperform.html (accessed November 14, 2018).

[5] Walk Free Foundation, *The majority of UK Consumers would stop buying a product if its manufacture involved modern slavery,* Press Release, March 10, 2015, http://walkfreefoundation.org-assets.s3-ap-southeast-2.amazonaws.com/content/uploads/2016/01/08113036/FINAL-UK-PRESS-RELEASE-100315.pdf (accessed November 14, 2018).

[6] Cone, *New Cone Communications Research Confirms Millennials as America's Most Ardent CSR Supporters,* Press Release, September 23, 2015, http://www.conecomm.com/news-blog/new-cone-communications-research-confirms-millennials-as-americas-most-ardent-csr-supporters (accessed November 14, 2018).

[7] Jeffery Bray, Nick Johns and David Kilburn, "An Exploratory Study into the Factors Impeding Ethical Consumption," *Journal of Business Ethics* 98, no. 4 (2011): 597–608; Guido Palazzo, Felicitas Morhart and Judith Schrempf-Stirling, "Shopping for a Better World: How Consumer Decisions can Help to Promote Sustainability and Human Rights," in *Business and Human Rights: From Principles to Practice*, eds. Justine Nolan and Dorothee Baumann-Pauly (New York: Routledge, 2016), 200-201; Robert Caruana, Michal J. Carrington, Andreas Chatzidakis, ""Beyond the Attitude-Behaviour Gap: Novel Perspectives in Consumer Ethics": Introduction to the Thematic Symposium," *Journal of Business Ethics* 136, no. 2 (2016): 215 -218; Michael J Carrington, Benjamin A Neville and Gregory J Whitwell, "Why Ethical Consumers Don't Walk Their Talk: Towards a Framework for Understanding the Gap Between the Ethical Purchase Intentions and Actual Buying Behaviour of Ethically Minded Consumers," *Journal of Business Ethics* 97, no. 1 (2010): 139-158.

[8] Maxwell Chipulu et al., "Reasoned Ethical Engagement, Ethical Values of Consumers as Primary Antecedents of Instrumental Actions Towards Multinationals," *Journal of Business Ethics* 147, no.1 (2018): 221–238; Richard Levick, "The "Trump Effect": Consumer Boycotts Could Become Pervasive on Both Sides," *Forbes*, December 5, 2016.

[9] Kelsey Chong, "Millennials and the Rising Demand for Corporate Social Responsibility," *BerkeleyHaas*, January 20, 2017, https://cmr.berkeley.edu/blog/2017/1/millennials-and-csr/#fn9 (accessed November 14, 2018).

[10] Nielsen, *The Sustainability Imperative: New Insights on Consumer Expectations*, October 2015, https://www.nielsen.com/content/dam/nielsenglobal/co/docs/Reports/2015/global-sustainability-report.pdf (accessed November 14, 2018).

[11] Reuters Institute for the Study of Journalism and University of Oxford, *Reuters Institute Digital News Report 2017,* https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf (accessed November 14, 2018); Cone, *2015 Cone Communications Millennial CSR Study,* September 23, 2015, http://www.conecomm.com/research-blog/2015-cone-communications-millennial-csr-study#download-research (accessed November 14, 2018).

[12] William Young, Kumju Hwang, Seonaidh McDonald and Caroline J. Oates, "Sustainable Consumption: Green Consumer Behaviour when Purchasing Products," *Sustainable Development* 18, no. 1 (2010): 18 - 31.

[13] Behind The Brands, *Change the way the food companies that make your favorite brands do business*, www.behindthebrands.org (accessed November 14, 2018).

[14] *See*, eg, *EY, Towards Transparent Supply Chains: Closing Intercompany Information Gaps to Create Resilient & Responsible Supply Chains*, 2018, https://www.ey.com/Publication/vwLUAssets/EY-towards-transparent-supply-chains/$FILE/EY-towards-transparent-supply-chains.pdf (accessed November 14, 2018).

[15] Provenance, *From Shore to Plate: Tracking Tuna on the Blockchain*, July 15, 2016, https://www.provenance.org/tracking-tuna-on-the-blockchain (accessed November 14, 2018).

[16] Palazzo, Morhart and Schrempf-Stirling, "Shopping for a Better World," above n 7, 200.

[17] Ibid.

[18] Casey O'Connor and Sarah Labowitz, "Putting the "S" in ESG: Measuring Human Rights Performance for Investors," *NYU Stern Centre for Business and Human Rights*, March 2017, 5-6, https://issuu.com/nyusterncenterforbusinessandhumanri/docs/final_metrics_report_march_16_2017?e=31640827/54952687 (accessed November 14, 2018).

[19] Global Sustainable Investment Alliance, *Global Sustainable Investment Review* 2016, 2017, http://www.gsi-alliance.org/wp-content/uploads/2017/03/GSIR_Review2016.F.pdf (accessed November 14, 2018).

[20] EY, *Is your Nonfinancial Performance Revealing the True Value of your Business to Investors?*, 2017, 12, http://integratedreporting.org/wp-content/uploads/2017/04/EY_Is_your_nonfinancial_performance_revealing.pdf (accessed October 14, 2018).

[21] Estimate as of April 2018: Principles for Responsible Investment, https://www.unpri.org/pri/about-the-pri (accessed November 14, 2018).

[22] EY, *supra* note 20, 6-7.

[23] *See*, eg., OECD, the OECD *Report on Responsible Conduct for Institutional Investors*, 2017, https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf (accessed November 14, 2018) and OHCHR, *OHCHR response to request from Banktrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector*, June 2017, https://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf (accessed November 14, 2018).

[24] Shift and Mazars, *UN Guiding Principles Reporting Framework Investor Statement* (updated 10 June 2016), February 2017, https://www.ungpreporting.org/framework-guidance/investor-statement/ (accessed November 14, 2018).

[25] Jean Rogers, "Millennials and Women Redefine What is Means to be a Reasonable Investor," *Institutional Investor*, October 20, 2016; O'Connor and Labowitz, *supra* note 18.

[26] Morgan Stanley Institute for Sustainable Investing, *Sustainable Signals: New Data from the Individual Investor,* February 2015, https://www.morganstanley.com/pub/content/dam/msdotcom/ideas/sustainable-signals/pdf/Sustainable_Signals_Whitepaper.pdf (accessed November 14, 2018). See also Deloitte's 2016 survey of "millennials,"

[27] James Quinn and Rowena Mason, "BP Oil Spill: Billions Wiped Off Value BP as Share Price Plummets," *The Telegraph*, June 10, 2010, https://www.telegraph.co.uk/finance/newsbysector/energy/oilandgas/7816623/BP-oil-spill-Billions-wiped-off-value-BP-as-share-price-plummets.html (accessed November 14, 2018).

[28] Dominic Rushe and David Smith, "United Airlines CEO Offers Softer Apology after Stock Nosedives," *The Guardian*, April 12, 2017, https://www.theguardian.com/us-news/2017/apr/11/united-airlines-shares-plummet-passenger-removal-controversy (accessed November 14, 2018).

[29] EY, *supra* note 20, 6.

[30] George Serafeim, "The Fastest-Growing Cause for Shareholders in Sustainability," *Harvard Business Review,* July 12, 2016, https://hbr.org/2016/07/the-fastest-growing-cause-for-shareholders-is-sustainability (accessed November 14, 2018).

[31] UNEP Finance Initiative, *Fiduciary Duty in the 21st Century*, September 2015, 13, http://www.unepfi.org/publications/investment-publications/fiduciary-duty-in-the-21st-century/ (accessed November 14, 2018).

[32] Francois Brochet, Maria Loumioti and George Serafeim, "Short-Termism, Investor Clientele and Firm Risk," (Harvard Business School Working Paper, February 2012); Dominic Barton, James Manyika and Sarah Keohane Williamson, "Finally, Evidence that Managing for the Long Term Pays Off ," *Harvard Business Review*, February 7, 2017, https://hbr.org/2017/02/finally-proof-that-managing-for-the-long-term-pays-off (accessed November 14, 2018).

[33] Dominic Barton et al., "Measuring the Economic Impact of Short-Termism," *McKinsey Global Institute,* February 2017, https://www.mckinsey.com/featured-insights/long-term-capitalism/where-companies-with-a-long-term-view-outperform-their-peers (accessed November 14, 2018).

[34] BlackRock, *Text of Larry Fink's 2016 Corporate Governance Letter to CEOs*, https://www.blackrock.com/corporate/literature/press-release/2016-larry-fink-ceo-letter.pdf (accessed October 14, 2018); Vanguard, *An open Letter to Directors of Public Companies Worldwide*, August 31, 2017, https://about.vanguard.com/investment-stewardship/governance-letter-to-companies.pdf (accessed November 14, 2018).

[35] UNPRI and MSCI, *Global Guide to Responsible Investment Regulation*, September 2016, https://www.unpri.org/download?ac=325 (accessed November 14, 2018).

[36] *See* eg., the letter from Larry Fink, CEO of BlackRock in February 2016.

[37] Directive 2014/95/EU of the European Parliament and of the Council 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Art. 19 (a).

[38] Herbert Smith Freehills, *Singapore: Human Rights Reporting by another Name?,* Legal Briefing, July 14, 2016, https://www.herbertsmithfreehills.com/latest-thinking/singapore-human-rights-reporting-by-another-name (accessed November 14, 2018).

[39] *See*, eg., Australian Human Rights Commission and EY, *Human Rights in Investment: The Value of Considering Human Rights in ESG Due Diligence*, April 2017, https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-investment-2017 (accessed November 14, 2018).

[40] OECD, *Investment Governance and the Integration of Environmental, Social and Governance Factors,* 2017, Section I: Regulatory Frameworks.

[41] European Commission, *Action Plan on Financing Sustainable Growth*, adopted March 2013, https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en (accessed November 14, 2018).

[42] Rory Sullivan, Will Martindale, Elodie Feller and Anna Bordon, "Fiduciary Duty in the 21st Century," *UNEP Finance Initiative*, 2015, http://www.unepfi.org/fileadmin/documents/fiduciary_duty_21st_century.pdf (accessed November 14, 2018).

[43] 'Ibid.

[44] O'Connor and Labowitz, *supra* note 18.

[45] Examples include the UN Reporting Framework and the EIRIS Global PLatorm.

[46] O'Connor and Labowitz, *supra* note 18.

[47] Ibid.

[48] John F Sherman II, "Professional Responsibilities of Lawyers under the Guiding Principles," *Shift Viewpoints*, April 2012, https://www.shiftproject.org/resources/viewpoints/professional-responsibility-lawyers-guiding-principles/ (accessed November 14, 2018).

[49] For a British study supporting this conclusion, see Sarah Roberts, Rob Lawson, and Jeremy Nicholls, "Generating Regional-Scale Improvements in SME Corporate Responsibility Performance: Lessons from Responsibility Northwest," *Journal of Business Ethics* 67, no. 3 (2006): 275; *See* also European Commission, *My Business and Human Rights: A Guide to Human Rights for Small and Medium-Sized Enterprises,* December 2012, 2, http://accessfacility.org/my-business-and-human-rights-guide-human-rights-small-and-medium-sized-enterprises (accessed October 14, 2018).

[50] Shift and Mazars, *supra* note 24.

[51] *See*, eg., Antony Crockett, "Human Rights Clauses in Commercial Contracts," *LSE Laboratory for Advanced Research on the Global Economy – Investment and Human Rights Project* (blog), June 4 2014, http://blogs.lse.ac.uk/investment-and-human-rights/2014/06/04/antony-crockett-writes-on-human-rights-clauses-for-commercial-contracts/ (accessed November 14, 2018).

[52] James Wood, "The new risk front for GCs – nearly half of contracts have human rights clauses, LB research finds," September 8, 2016, https://www.legalbusiness.co.uk/blogs/the-new-risk-front-for-gcs-nearly-half-of-contracts-have-human-rights-clauses-lb-research-finds/ (accessed November 14, 2018).

[53] *See*, e.g, International Bar Association, *IBA's Practical Guide on Business and Human Rights for Business Lawyers*, 2016, https://www.ibanet.org/LPRU/Business-and-Human-Rights-Documents.aspx (accessed November 16, 2018).

[54] Béatrice Héraud, "Company Transformation: A Guide to New Social Purpose Business Models," Novoethic, March 22, 2018, https://www.novethic.com/csr/isr-rse/company-transformation-a-guide-to-new-social-purpose-business-models-145584.html (accessed November 14, 2018).

[55] Suntae Kim et al., "Why Companies are becoming B Corporations," *Harvard Business Review*, June 17, 2016, https://hbr.org/2016/06/why-companies-are-becoming-b-corporations (accessed October 14, 2018); Yale Centre for Business and the Environment, Patagonia Inc and Caprock, *Just Good Business: An Investor's Guide to B Corps,* March 2018, https://cbey.yale.edu/sites/default/files/Just%20Good%20Business_An%20Investor%27s%20Guide%20to%20B%20Corps_March%202018.pdf (accessed November 14, 2018).

[56] OECD, *Report Environmental and Social Risk Due Diligence in the Financial Sector*, May 2013, http://mneguidelines.oecd.org/global-forum/2013_ws1_1.pdf (accessed October 14, 2018); OECD, "Expert Letters and Statements on the Application of the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights in the context of the financial sector," Global Forum on Responsible Business, June, 2, 19 (2014), https://mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-3.pdf (accessed October 14, 2018).

[57] Equator Principles, *EP Association Members & Reporting*, http://equator-principles.com/members-reporting/ (accessed August 24, 2018). For critical analysis of these principles, see Manuel Wörsdörfer, "The Equator Principles and the 'Business and Human Rights Debate': hype or hope?," in *Research Handbook on Transnational Corporations*, eds., Alice de Jonge and Roman Tomasic, 139, (Cheltenham UK: Edward Elgar, 2017).

[58] *See* Benjamin Thompson, "The Dutch Banking Sector Agreement on Human Rights: An Exercise in Regulation, Experimentation or Advocacy?," *Utrecht Law Review* 14, no. 2 (2018): 84.

[59] BSR, *Top 10 Human Rights Risks for the Financial Sector*, https://www.bsr.org/our-insights/primers/10-human rights-priorities-for-the-financial-sector (accessed October 14, 2018). Flora Saraiva Rebello Arduini, "Financial Institutions and the International Frameworks on Business and Human Rights: Challenges in Implementation Procedures," *Amsterdam Law Forum* 8, no. 2 (2016): 23; Rusi Whitehalll, "Finance and Human Rights: The Role of Financial Institutions in Combatting Modern Slavery and Human Trafficking," *RUSI*, June 19, 2018, https://rusi.org/event/finance-and-human-rights-role-financial-institutions-combatting-modern-slavery-and-human (accessed October 14, 2018).

[60] *See* Mission Statement, Office of Management and Budget, http://www.whitehouse.gov/sites/default/files/omb/procurement/mission.html (accessed August 5, 2014); Ian Urbina, "The Shopping List as Policy Tool," New York Times, January 25, 2014, http://www.nytimes.com/2014/01/26/sunday-review/the-shoppinglist-as-policy-tool.html (accessed October 14, 2018).

[61] OECD, *2016 OECD Survey on Public Procurement*, http://www.oecd.org/gov/public-procurement/ (accessed October 14, 2018).

[62] Claire Methven O'Brien, Nicole Vander Meulen and Amol Mehra, *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions* (International Learning Lab on Public Procurement and Human Rights, 2016), 20.

[63] *See*, eg, Professor John Ruggie, *Principles for responsible contracting: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators,* May 2011, www.ohchr.org/Documents/Issues/Business/A.HRC.17.31. Add.3.pdf (accessed October 14, 2018).

[64] Fédération Internationale de Football Association, *FIFA's Human Rights Policy,* May 2017, https://resources.fifa.com/mm/document/affederation/footballgovernance/02/89/33/12/fifashumanrightspolicy_neutral.pdf (accessed October 14, 2018); See, eg., The Institute for Human Rights and Businesses, *Mega-Sporting Events Platform for Human Rights*, https://www.ihrb.org/focus-areas/mega-sporting-events (accessed October 14, 2018).

[65] Robert Stumberg, Anita Ramasastry, and Meg Roggensack, *Turning a Blind Eye? Respecting Human Rights in Government Purchasing,* Report prepared for ICAR, September 2014, https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5865d97e15d5dbb208be7740/1483069827972/Procurement-Report-FINAL.pdf (accessed October 14, 2018).

[66] See, for example, The International Learning Lab on Public Procurement and Human Rights, http://www.hrprocurementlab.org/ (accessed October 14, 2018).

[67] OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2016, http://www.oecd.org/corporate/mne/mining.htm (accessed October 14, 2018); OECD, *OECD-FAO Guidance for Responsible Agricultural Supply Chains*, 2016, http://www.oecd.org/daf/inv/investment-policy/rbc-agriculture-supply-chains.htm (accessed October 14, 2018). OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector,* 2017, http://www.oecd.org/investment/mne/responsible-supply-chains-textile-garment-sector.htm (accessed October 14, 2018); OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm (accessed November 14, 2018).

[68] For critical evaluation of human rights due diligence, *see* Dorothee Baumann-Pauly, Ingrid Landau and Justine Nolan, *Submission to the UN Working Group on Business and Human Rights Consultations on Corporate Human Rights Due Diligence*, May 2018; Bjorn Fasterling, "Human Rights Due Diligence as Risk Management: Social Risk versus Human Rights Risk," B*usiness and Human Rights Journal 2,* no. 2 (2017).

[69] In June 2015, for example, the G7 Leaders Declaration emphasised the need to enhance corporate transparency and accountability and recognized the joint responsibility of governments and business to foster sustainable supply chains. In March 2016, the Council of Europe Recommendation called on States to require business enterprises to conduct mandatory human rights due diligence where risks are significant, also recognizing the need to enhance access to justice for victims of corporate abuse.

[70] John G. Ruggie, "The New Normal of Human Rights Due Diligence," *Shift*, March 22, 2018, https://www.shiftproject.org/news/john-ruggie-weighs-in-on-swiss-debate-on-mandatory-human-rights-due-diligence/ (accessed October 14, 2018).

[71] Phil Bloomer and Maysa Zorob, "Another Step on the Road? What does the "Zero Draft" Treaty Mean for the Business and Human Rights Movement?" *Business & Human Rights Resource Centre* (blog), 2018, https://www.business-humanrights.org/en/another-step-on-the-road-what-does-the-%E2%80%9Czero-draft%E2%80%9D-treaty-mean-for-the-business-and-human-rights-movement (accessed November 14, 2018).

[72] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

[73] Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

[74] The *Modern Slavery Bill* 2018 was introduced into the Federal Parliament on 28 June 2018, and, at the time of writing, has been referred to the Senate Legal and Constitutional Affairs Legislation Committee.

[75] Herbert Smith Freehills , *Modern Slavery Law Proposed for Hong Kong*, Legal Briefing, January 8, 2018, https://www.herbertsmithfreehills.com/latest-thinking/modern-slavery-law-proposed-for-hong-kong (accessed October 14, 2018) .

[76] *Loi n° 2017-399, 27 March 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre : JO 28 March 2017, texte n° 1.*

[77] Companies registered in France with either: (a) more than 5,000 employees working for the company and its direct or indirect French-registered subsidiaries, or (b) more than 10,000 employees working for the company and in its direct or indirect subsidiaries globally.

[78] For a detailed discussion of this penalty regime, *see* Stéphane Brabant and Elsa Savourey, "France's Corporate Duty of Vigilance Law: A Closer Look at the Penalties Faced by Companies," *Rev. Int. Compliance*, June 2017. REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES – SUPPLÉMENT À LA SEMAINE JURIDIQUE ENTREPRISE ET AFFAIRES N° 50 DU JEUDI 14 DÉCEMBRE 2017 https://www.business-humanrights.org/sites/default/files/documents/French%20Corporate%20Duty%20of%20Vigilance%20Law%20-%20Penalties%20-%20Int%2527l%20Rev.Compl_.%20%26%20Bus.%20Ethics_.pdf (accessed October 15, 2018).

[79] MVO Platform, *Frequently Asked Questions about the New Dutch Child Labour Due Diligence Law*, April 14, 2017, https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/ (accessed November 15, 2018).

[80] Joint Committee on Human Rights (UK), *Human Rights and Business 2017: Promoting responsibility and ensuring accountability,* Sixth Report of Session 2016-17, April 5, 2017, 42.

[81] Brabant and Savourey, *supra* note 78.

[82] Ibid., 4.

[83] The current proposal covers companies that exceed at least two of the following: 500 employees, annual sales of CHF80 million ($80 million), total assets of CHF40 million.

[84] Nicolas Bueno, "The Swiss Popular Initiative on Responsible Business: From Responsibility to Liability," in *Accountability and International Business Operations: Providing Justice for Corporate Violations of Human Rights and Environmental Standards*, eds. Liesbeth F.H. Enneking et al., (London: Routledge, Forthcoming, 2018), https://ssrn.com/abstract=3125672 (accessed October 14, 2018).

[85] Jessica Davis Pluess, "Responsible Business Debate could cause Ripple Effects Globally," Swissinfo, June 14, 2018, https://www.swissinfo.ch/eng/corporate-responsibility-_responsible-business-debate-could-cause-ripple-effects-globally/44187460 (accessed October 15, 2018).

[86] Jaakko Salminen, "The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?," *American Journal of Comparative Law* 66, no. 2 (2018): 411.

[87] Judith Levine and Kashpee Wahid, "Business and Human Rights: A "New Frontier" for International Arbitration?," *Transnational Dispute Management* 1, 2018, https://www.transnational-dispute-management.com/article.asp?key=2529 (accessed October 15, 2018).

[88] The Business and Human Rights Arbitration project, coordinated by the Center for International Legal Cooperation (CILC), with funding provided by the City of The Hague.

[89] Antoine Duval and Catherine Dunmore, "The Case for a Court of Arbitration for Business and Human Rights," *T.M.C Asser Institute for International & European Law Research Paper*, May 31, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3188102 (accessed October 15, 2018).

[90] Alison Berthet, "Arbitration: A New Forum for Business and Human Rights Disputes?," *Thomas Reuters Arbitration* (blog), October 16, 2017, http://arbitrationblog.practicallaw.com/arbitration-a-new-forum-for-business-and-human-rights-disputes/ (accessed October 15, 2018).

[91] ECCJ, *ECCJ makes key proposals concerning parent companies' duty of care and collective redress to the Commission and the Parliament*, December 4, 2017, http://corporatejustice.org/news/3886-eccj-makes-key-proposals-concerning-parent-companies-duty-of-care-and-collective-redress-to-the-commission-and-the-parliament (accessed October 15, 2018).

[92] Freshfields Bruckhaus Deringer, *Five Trends to Watch Business and Human Rights*, March, 2018, https://www.freshfields.com/globalassets/services-page/regulatory-compliance-and-public-law/business-and-human-rights/07035_bs_mbd_5-trends-in-human-rights_v2_pages.pdf (accessed October 15, 2018).

[93] Marion Cardier, "How courts and advocates are shaping legal doctrine on corporate liability and human rights obligations," *Business and Human Rights Resource Centre*, January 11, 2018, https://www.business-humanrights.org/en/how-courts-and-advocates-are-shaping-legal-doctrine-on-corporate-liability-and-human-rights-obligations (accessed October 15, 2018).

[94] Lisa Smit and Gabrielle Holly, "Vedanta Court Ruling a "Major Victory for Human Rights Campaigners," *Ethical Corporation*, November 22, 2017, http://www.ethicalcorp.com/vedanta-court-ruling-major-victory-corporate-human-rights-campaigners (accessed October 15, 2018).

[95] FRA, *Improving Access to Remedy in the Area of Business and Human Rights at the EU Level*, Opinion No 1/2017, for http://fra.europa.eu/en/opinion/2017/business-human-rights (accessed November 15, 2018).

[96] *See* eg., ECCJ, *supra* note 91.

[97] *See* further Global Affairs Canada, *Responsible Business Conduct Abroad*, http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-rse.aspx?lang=eng (accessed November 15, 2018).

[98] *See*, eg, OECD Watch's, *Remedy Remains Rare*, June 2015, https://www.oecdwatch.org/publications-en/Publication_4201 and *Remedy is the Reason*, June 2016, https://www.oecdwatch.org/publications-en/Publication_4303 (accessed November 15, 2018).

[99] For a list of MSIs, *see* MSI Integrity, *Alliance for Responsible Mining*, https://msi-database.org/database (accessed November 15, 2018).

[100] Global Agenda Council, World Economic Forum, *Shared Responsibility: A New Paradigm for Supply Chains*, November 2015, http://www3.weforum.org/docs/WEF_GAC_Supply_Chains_%20A_New_Paradigm_2015.pdf (accessed October 15, 2018).

[101] Act Initiative, https://actonlivingwages.com/ (accessed November 15, 2018).

[102] *See*, eg., Dorothée Baumann-Pauly, Justine Nolan, Auret van Heerden and Michael Samway, "Industry-Specific Multi-Stakeholder Initiatives that Govern Corporate Human Rights Standards: Legitimacy Assessments of the Fair Labor Association and the Global Network Initiative," *Journal of Business Ethics* 143, no. 4 (2017): 771-787; Mariëtte van Huijstee, "Multi-Stakeholder Initaitives: A Strategic Guide for Civil Society Organizations," *SOMO*, March 2012, https://www.somo.nl/wp-content/uploads/2012/03/Multi-stakeholder-initiatives.pdf (accessed November 15, 2018).