

IN FOCUS

Human Rights and the Private Sector

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1. What is meant by corporate accountability? How does it differ from corporate social responsibility?

The term corporate accountability describes efforts to hold corporations accountable for the harmful impacts their operations have on communities and the environment in which they live. Early corporate campaigns responded to foreign companies' involvement in the Pinochet coup in Chile in 1973 or support for the Apartheid government in South Africa. In the following decades, a number of incidents became the subjects of international campaigns for justice.¹ They also led to the crystallisation of specific proposals intended to mitigate harmful impacts, build accountability mechanisms and provide remedies. These include the development of social and environmental standards; changes in company reporting and directors' liability; prior consultation with communities and the development of non-judicial accountability mechanisms.²



Corporate social responsibility, by comparison, refers to voluntary efforts to integrate concerns about human rights and the environment into a corporation's business model, mostly through the adoption of auditing and monitoring mechanisms. Corporate responsibility or corporate citizenship also describes multi-stakeholder initiatives aimed at fostering dialogue between businesses and civil society.

2. What are some international standards and guidelines for corporate accountability on human rights?

The 1990's saw the development of a plethora of voluntary codes including the UN Global Compact in 1999, but little progress was made towards developing a legally binding instrument. Multilateral Financial Institutions use their own social and environmental standards,³ while all private sector banks use some version of the International Finance

¹ Examples include the Bhopal disaster in India, in which at least 3,000 people died as a result of a toxic gas leak from Union Carbide's factory and Shell's alleged complicity in the arrest, detention and execution of Ken Saro-Wiwa and eight other Ogoni activists in Nigeria.

² In addition, many private banks operating internationally have signed up to the Equator Principles, while Free Prior Informed Consent is now a key principle in jurisprudence relating to indigenous peoples.

³ Only the European Investment Bank explicitly references human rights.

Corporation's Performance Standards to guide their investments. The Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises is the only set of normative standards that is backed by governments and is specifically aimed at promoting responsible business conduct. The OECD Guidelines are the only instrument with an implementation mechanism at the national level, through National Contact Points, but these are only mandated to investigate, make recommendations and offer their good offices in mediation. Finally, Professor John Ruggie is nearing the end of his mandate as the UN Secretary General's Special Representative in Business and Human Rights and will submit his proposals in June 2011.

3. What mechanisms are in place for deterrence and redress of corporate violations of human rights?

The most effective mechanisms continue to be those established by national legislation such as the Alien Tort Claims Act⁴. In the UK, tort law has been successfully used in claims against multinational corporations as in the case against Trafigura for illegally dumping toxic waste in Cote d'Ivoire. Other pieces of legislation such as the Bribery Act (2010) and the UK Companies Act (2006) are also promising. In Canada, the Crimes Against Humanity and War Crimes Act allows companies to be held criminally responsible for international crimes, but there have not yet been any cases. Non-judicial mechanisms such as the World Bank Inspection Panel, the International Financial Corporation's Compliance Advisor/Ombudsman, and the OECD's National Contact Points have some potential for stopping or at least mitigating destructive projects, negotiating compensation, or mediating between corporations and communities.

4. What are some of the entry points for funders if they want to support these efforts?

There are many entry points for funders wishing to support corporate accountability work. The Business and Human Rights Resource Centre's website at www.business-humanrights.org is an excellent starting point. The most straightforward way of getting involved in corporate accountability work is to support individual cases such as the one filed in Canada against Anvil Mining, which allegedly provided logistical support to the Congolese Armed Forces to suppress a small scale uprising. In the course of this operation, serious human rights violations were reportedly perpetrated against the civilian population by the military. Anvil's vehicles transported Congolese soldiers, as well as civilians who were allegedly taken outside the town and executed by the military. The key organisations behind this case are Rights and Accountability in Development (RAID) and Global Witness. A critical way for funders to get involved is by providing support for organisations engaging in corporate research. Other ways include: setting up legal funds for legal cases, or funding organisations focusing on legal strategies such as Earth Rights International and Environmental Defenders Legal Centre. Funders might also wish to consider providing support for the development of soft law instruments⁵ – a long term endeavour but nonetheless crucial if the accountability gap is to be addressed.

⁴ The recent Second Circuit ruling in *Kiobel v Royal Dutch Shell* casts some doubt on the future of the Alien Tort Claims Act.

⁵ Soft law instruments are quasi-legal instruments which are not necessarily legally binding. Soft law is primarily associated with international law.

5. What are some barriers to entry for funders?

The “resources” section, just below, offers three excellent “entry points” for funders interested in learning more about getting involved. In the meantime, corporate accountability work is complex. There are no legally binding instruments specific to corporations and there are no focal points other than the work of the UN Secretary General’s Special Representative on Business and Human Rights – a process that will come to an end in summer 2011. While some cases concern clear violations of civil and political rights, most cases of corporate abuse involve violations of social and economic rights or the rights of indigenous peoples and some donors may not be familiar with relevant theoretical work or jurisprudence. Building corporate accountability piece by piece includes work at many different fora and a considerable amount of experimentation. For some donors the risks are considerable and the outcome unclear, but for others this is an exciting journey in uncharted territory.

RESOURCES:

- 1) Join us at [IHRFG’s San Francisco Conference in January 2011](#). The plenary theme is *Human Rights Grantmaking and the Private Sector*.
- 2) Visit the Business and Human Rights Resource Centre’s *Getting Started Portal* for resource, toolkits, and guides <http://www.businesshumanrights.org/GettingStartedPortal/Intro>.
- 3) Visit the online consultation portal of the UN Secretary General’s Special Representative for Business and Human Rights, Professor John Ruggie. Review his draft of the Guiding Principles for companies, states, and other stakeholders on how they can implement the UN “Protect, Respect and Remedy” Framework, by taking practical steps to address business impacts on the human rights of individuals: <http://www.srsgconsultation.org>.
- 4) Contact Theodoros Chronopoulos, Programme Director of Social Justice, The Sigrid Rausing Trust at theodoros@srtrust.org with questions or comments.