

Multinational corporations and human rights in Asia

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The responsibility of business to protect and promote human rights is a rapidly evolving concept in the private sector. Corporate social responsibility (CSR) is now seen as a mechanism to incorporate human rights policy in the business model. While CSR was once an idea adamantly rejected by economists such as Milton Friedman who argued that the only “business of business is business”, ethical corporate values is now seen as making good business sense. Spectacular corporate scandals such as Enron have also helped push the concept forward, together with increasing demands from international organizations and local civil groups that business behave responsibly and incorporate human rights values into its corporate culture.

The United Nations Global Compact, possibly the most influential driver of CSR, argues that human rights are the cornerstone to managing an ethical business. Although the Compact is a voluntary agreement lacking in monitoring and enforcement measures, many human rights advocates see it as a soft law approach to business that will one day lead to a legally binding convention. With over 67,000 multinational corporations employing more than 90 million people, 20 million of whom live in the developing world, these businesses have an enormous sphere of influence. In fact, the 300 largest corporations control 25 per cent of the world’s productive assets, are involved in 70 per cent of world trade and control 90 per cent of global technology.¹ Despite this global reach however, only around 5,500 multinationals have signed up to the Compact. Moreover, while the Compact remains voluntary, the onus for human rights protection and promotion largely remains under the control of business, explaining their poor human rights judgment on numerous occasions. These businesses also lack proper training on issues of human rights. Multinational corporations operating in Asia are no exception, with many companies accused of complicity in direct or indirect human rights violations.

Nonetheless, CSR is fast becoming a corporate norm that needs to be understood by human rights defenders, in order to engage business on this critical issue. This article seeks to point out a few of the conversations occurring within the business community regarding CSR, as well as encourage human rights defenders to take part in the discourse.

Corporate social responsibility in Asia

The World Bank defines corporate social responsibility as “The commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life, in ways that are both good for business and good for development.”² While this definition has been largely accepted by the business community, many sceptics fail to see the concept as sustainable. Not only do business managers have difficulty understanding why their company should cut into shareholder profit and engage in community projects that do not guarantee a return in investment, human rights defenders may also see CSR as nothing more than a sophisticated public relations campaign or a mechanism for corporations to cover up their ill doings. In fact, many companies proclaim the CSR mantra but fail to incorporate real change.

Corporations in the extractive industry have been especially notorious for using CSR to rebuild their image after suffering bad press for human rights violations, including Freeport in Indonesia, Unocal in Burma, as well as now defunct Enron in India and Indonesia. All three companies have been accused of

¹ Gabel, Medard and Henry Bruner, *Global Inc.: An atlas of the multinational corporation* (New York: New Press, 2003).

² World Bank, *DevComm Sustainability Program*, <http://web.worldbank.org> (accessed 1 October 2008).

complicity in human rights atrocities, which involved tacit support for government troops arbitrarily arresting and gunning down protestors. Stohl et al. argue that Enron is a special example as it remains the only company to date that has had a full Amnesty International and Human Rights Watch report written on its Asian business operations.³ It is ironic that while Enron was denying the charges, *Fortune Magazine* listed the company as one of the most admired North American businesses in 2001.

Despite the dramatic collapse of Enron, the company had in fact been acting ‘legally’ in the developing countries where it was accused of unethical practices. Many Asian governments rule by law, rather than in accordance with the law; in other words, “The law is used for whatever the ruler’s objectives are; it isn’t an end in itself... the separation of the judiciary from the government makes little sense in such an environment... Rather than be independent of government, the judiciary is an arm of it”.⁴ In these circumstances, companies align themselves with corrupt and authoritarian regimes and enter into mutually beneficial contracts at the expense of the poor and weaker sections of society. Governments offer attractive tax incentives, land, as well as guarantees on security and resources to multinational corporations, the price of which is paid by exploited workers or displaced communities. In countries such as India, the Philippines, Burma and especially Cambodia, companies stand idly by while state security officers seize land through violent ‘economic development’ campaigns. The region’s underdeveloped legal systems also contribute to endemic corruption; in Indonesia for instance, former President Mohamed Suharto reportedly embezzled up to an estimated USD 35 billion. Elite politics and poorly paid police and judicial officers also play a role.⁵

Why should business care about human rights?

In a 2003 issue of the *Harvard Business Review*, an article discussing the implications for American companies caught up in human rights violations noted that these companies could be held legally liable, as seen in the Unocal case in Burma: “In a potentially devastating footnote for global business, the court ruled that other theories of third party liability beyond aiding and abetting, such as negligence could be used, to link the violations of a state actor to a private corporation.”⁶ The article suggests that companies need to clarify their relationships with government officials, develop transparent policies identifying a separation of business activity from government action, as well as monitor the company’s relationship with their business partners. Regrettably, most companies that have human rights policies see the issue as risk management rather than good business ethics. This has been one of the major challenges faced by corporate social responsibility and the United Nations Global Compact—to get businesses to see beyond the legal aspects.

Even when some companies take the so called ethical route and cease operations on account of human rights, companies from countries with little transparency or ethical framework replace them. For instance, John Ruggie notes that when Canadian oil firm Talisman pulled out of Sudan on human rights grounds, firms from India, Malaysia and China dived in displaying far less regard for human rights.

Many multinational corporations have made ethical decisions based on human rights after consumers demanded that business act when governments failed. The most common example is child labour, which is most certainly a profitable practice, but which is now seen as unethical and illegal. The practice of child labour is now heavily monitored by global businesses in countries with weak regulations or enforcement.

³ Stohl et al., ‘A new generation of global corporate social responsibility’ in *The debate over corporate social responsibility*, ed. Steve May, George Cheney and Juliet Roper, 30-44 (New York: Oxford University Press, 2007).

⁴ Glen Whelan, ‘Corporate social responsibility in Asia: a Confucian context’ in *The debate over corporate social responsibility*, ed. Steve May, George Cheney and Juliet Roper, 105-118 (New York: Oxford University Press, 2007).

⁵ Ibid.

⁶ E. Schrage, ‘Emerging Threat: Human Rights Claims’, *Harvard Business Review* 81, no. 8 (2003): 16-18.

Nonetheless, the push for improving human rights, curbing corruption and strengthening legal infrastructure remains a largely legal issue within firms who employ compliance officers to police the business internally. The problem with this is that even the most legally responsible business may be driven to act illegally in markets where the law does not work. The United States' Foreign Corrupt Practices Act (FCPA) highlights this contradiction as it absolutely bans bribery and fraud, but allows for what it calls 'facilitation payments' to grease the wheels of certain bureaucracies that are seen to be inefficient. Regardless of what amount constitutes a legitimate 'facilitation payment', the practice risks undermining the entire anti-corruption movement.

Corporate social responsibility: Opportunity with accountability

Companies must realize that corruption and a firm's risk of being associated with human rights violations in developing states are both consequences of weak legal institutions. Regardless of the FCPA's provisions that allow facilitation payments, corruption remains a high-risk consequence of doing business in developing states. To counter these, corporate social responsibility can be used as a mechanism for development, with businesses aligning themselves with international organizations such as the United Nations. A company can set up a foundation for instance, providing funding to various aid agencies such as the Bill and Melinda Gates Foundation, which has so far committed over USD 16 billion to fight global poverty and disease.⁷ The Body Shop, Royal Dutch/Shell, General Electric and Coca-Cola have all developed similar programmes. In 1998, the Body Shop worked with Amnesty International to develop the "Make Your Mark" campaign, still seen as the largest corporate-NGO human rights initiative ever organized. Over 3 million people joined the campaign running in 34 countries, to support human rights defenders around the world. At the same time, many companies that have committed themselves to human rights projects have themselves ironically been involved in human rights violations. Royal Dutch/Shell for instance, has allegedly been involved in funding the Nigerian military.

When corporate social responsibility is used for short-term intentions however, the concept will almost always fail. While a business may see value in short-term projects for public relations purposes, the strategy will backfire when the community realizes that the business is more concerned about brand image than developing a sustainable project. In Cambodia for instance, one company built a school for a poor community as part of its CSR, without taking much note of the surrounding land. Subsequently, the local government seized the land around the school and drove the community out of the area. Not only does this affect the company's bottom-line as the original project is now worthless, but it also affects its corporate social responsibility strategy and reputation as a socially responsible business, particularly if it does not build a new school. The lack of human rights awareness and knowledge possessed by CEOs and business managers can be explained by the lack of human rights education in business schools.⁸ In fact, a recently conducted survey of 343 business professors at the top 20 international business schools exposed a fundamental gap in human rights knowledge within business academia.

The debate over corporate social responsibility and the extent to which a company should be involved in capacity building is far from over. As many multinational corporations have clearly violated human rights through unethical behaviour, other companies are learning from their competitors and using CSR frameworks to portray themselves as protecting and promoting human rights. A question mark remains

⁷Bill and Melinda Gates Foundation, *Fact sheet*, <http://www.gatesfoundation.org/about/Pages/foundation-fact-sheet.aspx> (accessed 6 October 2008).

⁸Stephen Frost and Robert J. Hanlon, 'Elite Business School Perceptions and Behaviour towards Corruption, Human Rights and Corporate Social Responsibility'. Conference paper presented at the Anti-Corruption South Asia Summit: Singapore, 9-11 September 2008.

over how genuine their concern is and the sustainability of the concept. This article hopes that by joining the debate, human rights defenders can help to shape the CSR concept in a more effective and just manner.