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BRIEFS

The Responsibility of Business to Respect Human Rights:

*It is not about how profits are spent,
but how they are made*

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When thinking of business, our understanding of violations should not be limited to working life and a company's obligations towards its employees.

Özlem Zingil

Center for Spatial Justice

Özlem Zingil graduated from Marmara University Faculty of Law in 2001. She received her LL.M in Law of Economics from Galatasaray University in 2007 and M.A degree on Cultural Studies Programme from Istanbul Bilgi University in 2011. Currently, she pursues her Ph.D. in Public Law at Istanbul Bilgi University. She has been a member of the Istanbul Bar Association since 2005. In her work, she focuses on human rights law, business and human rights, transitional justice and impunity. In addition to being a freelance lawyer, she has been working at Truth Justice Memory Center since 2017, where she currently acts as the Legal Studies Programme Manager. She also is one of the founders of the Center for Spatial Justice.

Although the first thing that comes to mind when we think of business and human rights is working life and related rights violations, companies, regardless of their size, sector, operational context, ownership and structure, may also negatively impact the environment and violate all internationally recognised human rights through their activities, products and services. Therefore, when thinking of business, our understanding of violations should not be limited to working life and a company's obligations towards its employees.

In fact, business and human rights is an academic and legal field addressing the responsibility of business for human rights violations, as well as a human rights movement centred around the goals of seeking justice for victims of violations, holding business accountable and enforcing their responsibility to respect human rights.

On terminology

“Business” refers to all types of business enterprises, regardless of their size, sector, location, ownership and capital structure. In this brief, the terms “business” and “company” are used interchangeably.

The UN Guiding Principles on Business and Human Rights (“Guiding Principles”) do not narrowly define “human rights” in the context of the responsibility to respect human rights. In light of the current scale of business activities’ negative impact on the environment and the climate crisis, the term “human rights” in the Guiding Principles has in recent years been used in the sense of “human rights and the environment”. In line with the conceptualisation in the Guiding Principles, where the term “human rights” is used in this brief, it should be understood in the broad sense, including the environment.^[1]

Value Added Profit: Impunity

Traditionally, human rights have centred on the relationship between the individual and the state, and in this relationship, human rights violations are considered to be committed by states. This has resulted in the omission of human rights obligations and accountabilities of business from the legal framework of human rights regulations.

As companies cemented their role as important actors in the globalisation process in the 1990s, this raised the issue of the negative impacts of business activities on human rights. Already two decades earlier, in the 1970s, the negative impacts of direct investments made by Western

companies in developing countries had sparked a debate on the responsibility of business for human rights violations.

In 1984, one of the deadliest industrial disasters in history occurred in Bhopal, India, when methyl isocyanate gas leaked from the pesticide plant of the US company Union Carbide Corporation (UCC). Thousands of people living in neighbourhoods near the site of the leak died suddenly in the days following the leak, tens of thousands became permanently disabled and children were born disabled. Despite all this, UCC hesitated to disclose the name of the toxic substance under the pretext that it was a “trade secret”. More than a quarter of a century after the Bhopal disaster, the city and nature have still not recovered. Whether the parent company UCC or its Indian subsidiary Union Carbide India Limited (UCIL) was responsible for the disaster has been the subject of considerable controversy, but in the absence of international regulations, Indian law proved inadequate and only UCIL officials were sentenced to pay US\$ 2,100 in compensation and serve two years in prison.

Whether it be environmental pollution in the Niger River Delta or the industrial disaster in Bhopal, the poor working conditions of workers in supply chains epitomized in Rana Plaza or the deforestation in the gold mining

area in the Mountain Ida range, there are many examples that demonstrate how companies benefit from the accountability gap in human rights violations.[2]

Holding business accountable, but how?

While states, business, rights holders and civil society all agree on the need to fill the gap regarding the responsibility of business for human rights violations caused by its activities, there is disagreement as to how this gap should be filled.

Rights holders need access to effective remedies and accountability for human rights violations by business entities. Meanwhile, business opposes the idea of a direct responsibility for human rights violations similar to the one of states. Instead, companies prefer non-binding standards such as the UN Global Compact, which includes voluntary ethical principles and codes of conduct.[3]

The divergence between the voluntary approach of business and rights holders' demands based on legally binding obligations has created a deep rift. A change of this direction was signalled when the Guiding Principles were endorsed by the United Nations Human Rights Council in 2011.[4]

Consisting of three sections or pillars, protect, respect and remedy, the Guiding Principles set out the obligation for states to protect individuals from business-related human rights violations, the responsibility for companies to respect human rights, and the requirement for both states and companies to ensure access to effective remedies.

Initially, the Guiding Principles were heavily criticised because they did not impose binding obligations on companies. Now we are witnessing that they have paved the way for international, regional and national regulations that impose legal obligations on business regarding the environment and human rights.

The responsibility to respect human rights

More than a decade later, it is now a recognised global standard that business has a responsibility to respect human rights. This means that business enterprises, regardless of their size, sector, operational context, ownership and structure, must avoid violating environmental and human rights and identify the actual and potential impacts of their activities on human rights and the environment, prevent and mitigate violations, and address the negative impacts they create.

→ “Responsibility to respect human rights” means that business enterprises, regardless of their size, sector, operational context, ownership and structure, must avoid violating environmental and human rights and identify the actual and potential impacts of their activities on human rights and the environment, prevent and mitigate violations, and address the negative impacts they create.

Corporate social responsibility

Companies generally share their approaches to human rights and the environment on their websites or in their annual reports under the headings of “sustainability” or “corporate social responsibility”.

Based on the idea that business has responsibilities towards society beyond the aim of increasing profit, the notion of corporate social responsibility focuses on companies’ voluntary contributions to society. The responsibility to respect human rights, which is often confounded with this notion, requires identifying the impacts of business activities on people and the environment and taking steps to prevent, mitigate or cease these impacts.

The activities that companies communicate within the scope of corporate social responsibility may be related to human rights. This is the case when companies build schools or carry out campaigns for girls to go to school or to combat domestic violence.

However, in their corporate social responsibility activities, companies do not pursue the aim of preventing, mitigating or ceasing human rights violations arising from their commercial activities.

A simple example may help to illustrate this situation: A company may build a school in a village where there is no school as a part of its commitment to corporate social responsibility. But what if this village has been relocated due to the construction of a dam in a place of particular cultural and geographical importance, and this dam is being built by the same company?

In this respect, corporate social responsibility is about how businesses spend their earnings/profits, while the responsibility to respect human rights is about how they make their earnings/profits. Therefore, corporate social responsibility activities/campaigns are not a substitute for corporate responsibility to respect human rights (and, correspondingly, their due diligence).

When do adverse impacts on human rights and the environment occur?

An “adverse impact on human rights and the environment” occurs when business activity removes or reduces the ability of individuals to enjoy their environmental and human rights. According to the Guiding Principles, there are direct and indirect ways in which businesses can have an

adverse impact on human rights and the environment, as they may (a) cause the impact through their own activities, (b) contribute to the impact through their own activities, or (c) not engage in an activity that would cause or contribute to an impact, but may be involved since the impact is directly linked to the operations, products or services by a business relationship.

For example, a company contaminating drinking water with its chemical wastes would be a case in point for (a). An example for (b) would be when a company causes, encourages or facilitates adverse impacts

on human rights and the environment through a third party, such as when a supplier is induced to violate labour standards under pressure to fulfil an order because the number of orders is increased at the last minute without changing the delivery date or price. As an example for (c) we can think of a bank providing financial credit to a company for business activities that result in the complete destruction of the ecosystem in a region.

What needs to be done to meet the responsibility to respect human rights?

Transparency, meaningful consultation and communication – The Guiding Principles emphasise a “know-and-show” approach for businesses in the context of their responsibility to respect human rights. *Knowing* means that businesses identify and assess the human rights impacts they cause. *Showing* means that they communicate how they address these impacts with rights holders and stakeholders.

Regarding the Guiding Principles what needs to be done to meet the responsibility to respect human rights?

- *Transparency, meaningful consultation and communication*
- *Commitment to respect human rights*
- *Assessing adverse impacts on human rights and the environment*
- *Processes to ensure the remediation of adverse impacts on human rights and the environment*

In this context, companies should engage in meaningful consultation with all relevant stakeholders, including potentially affected individuals and communities, as well as CSOs, experts, and rights defenders. When concerns regarding impacts on human rights and the environment are raised by or on behalf of affected stakeholders, companies should publicly communicate that they take them seriously and account for how they will address negative impacts.

Commitment to respect human rights—The Guiding Principles recognise that without appropriate policies and processes, businesses cannot meet their responsibility to respect human rights (Guiding Principle 15). The first step is making a policy commitment. It is critical that this policy commitment is approved by the most senior management of the company, is informed by internal and external expertise, includes the human rights expectations of personnel, business partners and other relevant stakeholders, is publicly

available and communicated to all stakeholders, and is consistent with the company's other policies and processes.

Assessing adverse impacts on human rights and the environment – Second, companies should establish a process, a human rights and environmental due diligence to identify, prevent, mitigate and account for how they address their human rights and environmental impacts. Due diligence should be ongoing throughout their operations, rather than on a one-off basis. Due diligence is a duty of care linked to the responsibility to respect human rights and the environment.

Companies should utilise the human rights expertise of CSOs when assessing the impacts of their activities as part of human rights and environmental due diligence. In addition, they should conduct a transparent assessment with the participation of all stakeholders, and regularly publish and announce the results in an accessible manner.



The Guiding Principles provided a starting point in filling the gap concerning the responsibility and accountability of business for human rights violations.

Processes to ensure the remediation of adverse impacts on human rights and the environment

– Finally, companies should have internal mechanisms and processes in place to ensure the remediation of any adverse impacts on human rights and the environment that they cause or contribute to. Providing access to remedies for victims of human rights violations caused by companies is primarily the obligation of the State. However, if a company establishes that its activities have (had) a negative impact on human rights and the environment, its responsibility to respect human rights requires it to actively participate in providing access to remedies. It should ensure that its internal grievance mechanisms are fair, independent and impartial, and make them known to rights holders who are (potentially) affected by the companies' activities. In cases where the adverse impacts of business activity on human rights and the environment cannot be prevented, companies should develop cooperation with affected rights holders and CSOs to mitigate negative impacts.

Recommendations

The data shared by the Corporate Human Rights Benchmark, which has been measuring the extent to which business meets its responsibility to respect human rights since 2017, shows that the largest companies still have not made significant progress in this regard.^[5] The research we conducted in 2021 at the Center for Spatial Justice revealed that the companies realising Turkey's most prominent investment projects lack awareness of the Guiding Principles and their responsibility to respect human rights and the environment.^[6]

The Guiding Principles provided a starting point in filling the gap concerning the responsibility and accountability of business for human rights violations. Negotiations are ongoing at the UN for a binding treaty on business and human rights. There is a growing body of legislation that recognises the responsibility of business for the adverse impacts its activities have on human rights. This includes foreign subsidiaries and supply chains. National Contact Points (NCPs), the grievance mechanism of the

Organisation for Economic Co-operation and Development (OECD), provide a non-judicial remedy in the context of corporate responsibility to respect human rights.[7]

While the first pillar of the Guiding Principles places an obligation on states to protect individuals against human rights violations caused by businesses, Turkey's current Action Plan on Human Rights, published in 2021, addresses the issue of business and human rights only in respect of working life. An approach limited to working life renders the impact of business activities on the environment and human rights invisible and serves but to circumvent the issue. Therefore, as a matter of priority, this narrow approach should be abandoned, and a national action plan should be prepared in line with the provisions of the Guiding Principles.

Companies should not approach human rights and the environment in the limited context of "sustainability" or "corporate social responsibility" but should comply with the requirements set out in the Guiding Principles to meet their responsibility to respect human rights.

Cooperation between those directly affected by violations and CSOs responsible for preventing violations and reporting them if they cannot be prevented is vital when it comes to identifying the adverse impacts on human rights and the environment of business activities and assessing to which extent companies meet their responsibility to respect human rights.

CSOs should monitor the human rights and environmental impacts of business activities based on the standards set by the Guiding Principles and report their findings. In order to ensure effective reporting in line with this objective, mechanisms should be put in place to enable those directly affected by violations to share information with CSOs on a regular basis.

Using the findings of civil society monitoring and the testimonies of those directly affected by violations, CSOs can mobilise and apply to the above-mentioned instruments and mechanisms for accountability at different levels. CSOs should actively use these instruments.

NOTES

1. Following the adoption of the Guiding Principles, a series of publications were prepared by the Office of the United Nations High Commissioner for Human Rights. For the full text of the Guiding Principles, including an explanatory commentary on each principle, see https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf; for the interpretive guide, see: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf
2. For the Bhopal disaster, a landmark violation in the field of business and human rights, see: <https://www.youtube.com/watch?v=lwPSDMUtNmK>; for the Rana Plaza disaster, see: <https://www.youtube.com/watch?v=pEbFnAMHHps>. About a year before the Rana Plaza disaster, 258 people had lost their lives in a fire at the Ali Enterprises garment factory in Karachi (Pakistan). When it turned out that the factory was producing for the German retailer KiK, the victims took legal action in Germany. For a video explaining how the fire occurred, see: <https://forensic-architecture.org/investigation/the-ali-enterprises-factory-fire>
3. Designed in 2000 as a learning platform, the UN Global Compact aims to raise awareness of its ten principles in the areas of human rights, labour standards, environment and anti-corruption. The Global Compact is signed by unilateral declaration and signatories are expected to report their progress in implementing the ten principles every year (Communication on Progress Report) (See: <https://unglobalcompact.org>).
4. John Ruggie, the UN Secretary-General's Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, who is the architect of the Guiding Principles, describes the process of drafting the Guiding Principles in detail in his autobiographical book published in 2013. See: Ruggie, J.G. (2013). Just Business Multinational Corporations and Human Rights. W.W.Norton & Company: New York
5. For the methodology, data sets and research reports of the Corporate Human Rights Benchmark, see: <https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark>
6. For the Center for Spatial Justice's work on corporate accountability, including the aforementioned research, see: <https://mekandaadalet.org/program/sirketlerin-hesap-verebilirligi>
7. As mentioned in the introduction, in the 1970s, when the responsibility of business for human rights violations

began to be debated, first the UN and then the OECD started to develop codes of conduct for multinational enterprises. The OECD drafted the Guidelines for Multinational Enterprises which were adopted in 1976. Since their introduction, the OECD Guidelines for Multinational Enterprises have been revised six times, most recently in 2023, to remain fit for purpose considering changing global conditions and to ensure their continued relevance. For example, the 2000 review clarified the role of the National Contact Points, which were designed as a grievance mechanism, in handling submissions. With the 2011 review, the regulations of the Guiding Principles were integrated in the OECD Guidelines for Multinational Enterprises. In the last revision in 2023, current issues such as climate change, the situation of rights defenders and supply chains were included in the OECD Guidelines for Multinational Enterprises. Since the 2011 review, the National Contact Points are tasked with assessing submissions made to them in line with the framework of “business enterprises’ responsibility to respect human rights” outlined in the Guiding Principles. The NCPs have addressed more than 600 complaints to date. As a party to the OECD Guidelines for Multinational Enterprises, Turkey also has a National Contact Point. (For detailed information, see: <https://www.sanayi.gov.tr/anlasmalar/utn-ncp>) Rights holders and CSOs do not necessarily have to file their complaint to the National Contact Point of the

country where the enterprise’s activity takes place. For example, if there is a National Contact Point in the country where the enterprise is established, they can also file their complaint to this NCP. Thus, it is also possible to make strategic complaints. This is exactly what was done in respect of the Zeynel Bey Tomb, which had to be moved within the scope of the Ilisu Dam and HEPP Project in Hasankeyf. In the case of Hasankeyf, civil society actors from Norway and Turkey filed complaint to the National Contact Point of the Netherlands, which assessed that the Dutch company Bresser, which undertook the relocation of the Zeynel Bey Tomb, had caused a violation of the right to protection of cultural heritage due to its activities in Hasankeyf. This decision of the Dutch National Contact Point is a precedent as it is the first assessment to recognise that the right to culture and/or the right to cultural heritage and its protection are within the scope of business enterprises’ responsibility to respect human rights. For the complaint filed to the Dutch National Contact Point and the assessment, please see: <https://www.oecdwatch.org/complaint/fivas-et-al-vs-bresser/> Following the 2023 review, it is now possible to file complaints to the OECD’s National Contact Points concerning violations of a wide spectrum of human rights, including cultural rights, climate change and against rights defenders caused by business activities. Complaints can also be filed by CSOs and can be submitted free of charge.

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