



**PAIRVI OCCASIONAL PAPER SERIES**

**March 2010**

## **The Integration of Human Rights at Indian Corporations**

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## **I. Foreword**

The aim of this paper is to provide an insight into how the integration of human rights in the core business processes creates a business case and allows the company and the stakeholders as well to benefit from the ethical and circumspect operations. Businesses all over India put serious effort and money into CSR but many times they violate basic rights due to the lack of an integrated human rights policy. This does not only ruin their reputation that they spent crores of rupees on, but by turning local communities against them, they can also get in situations where they have to pay expensive compensations or lose business opportunity. With examples, this paper would like prove that conducting a conscious human rights policy and re-considering the core business policies in order to assure the compliance with the basic human rights, is not only an increasingly expected behaviour on behalf of governments and consumers, but also a business case that companies can benefit from.

## **II. The Status of Human Rights in Businesses in India**

### **1. Why Business and Human Rights**

The respect, promotion and fulfillment of human rights are the duty of every government and administration that acts responsibly for the good of their citizens and communities. In the reality though, this principle suffers from many insufficiencies and violence. Often the national administrations fail to guarantee that these basic rights of every human being are efficiently protected or sufficiently fulfilled, either by non-compliant legislation or because they don't have the capacity to ensure such circumstances under these rights can be fulfilled. This is where and why the role of companies applies in terms of human rights. Although businesses are not obligated by the international law to mind human rights beyond the legal compliance of the host country, they are important players if it comes to human rights, either talking about violating or supporting them. They can have a positive impact on human rights through creating jobs, boosting economic growth, reducing poverty and increasing demand for the rule of law<sup>1</sup>, but through the same influence and possible impact on their stakeholders' life they can do as much harm as well, especially in countries and regions, where the state fails to act firmly and effectively against human rights abuses. We believe that private businesses bear the responsibility not just to respect the certain rights that are incorporated in the host country's laws, but to look at human rights as a coherent concept and ensure that as far as the business operations go these rights are respected, promoted, and fulfilled.

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<sup>1</sup> Business and Human Rights Toolkit, HM Government (undated),  
<http://www.fc.gov.uk/resources/en/pdf/3849543/bus-human-rights-tool.pdf>

## 2. Country Overview

To fully understand the following positive and negative examples, first we have to discover the human rights context, in between Indian companies operate. It is not hard to imagine, that running a business in an entirely developed region of the world will create mostly different human rights concerns than the same would do in a rural area of India. The difference doesn't only derive from the economic differences though, but has other aspect as well (cultural difference, habitual relationship between employers and employees, customer relations). The situation of human rights in India is a complex one, as a result of the country's large size and tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic, and its history as a former colonial territory. The Constitution of India provides for Fundamental rights, which include freedom of religion and clauses also provide for Freedom of Speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad.<sup>2</sup> The report Freedom in the World 2006, issued by the Freedom House, gave India a political rights rating of 2 and civil liberties rating of 3, earning the designation of "free". Under this surface though, there are several issues that bring up human rights concern, beginning from the rights of Dalits and indigenous people to the right to housing, and the problem of forced displacement.

The Danish Institute for Human Rights issues risk assessments about countries with human rights issues every year. In the latest edition of this country risk assessment, in 2005, 13 rights have been categorized as "at high risk", 5 as "at medium risk" and 2 as "at low risk". The assessment investigated the rights from two aspects, before assigning a company risk rating. First the law of the country was examined to see if the country has incorporated the given human right in its law, then the prevailing cultural and social practices were investigated. The 13 human rights at high risk are the following:

- Right to Freedom from Discrimination
- Right to Freedom from Forced Labour and Servitude
- Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment
- Right to Freedom of Movement
- Right to Own Property
- Right to Peaceful Assembly and Freedom of Association
- Right to Work and Just and Favourable Conditions at Work
- Right to an Adequate Standard of Living
- Right to Health
- Right to Food
- Right to Adequate Housing
- Right to Participate in Cultural Life
- Right to Education

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<sup>2</sup> [http://en.wikipedia.org/wiki/Human\\_rights\\_in\\_India](http://en.wikipedia.org/wiki/Human_rights_in_India)

### **3. Corporate Social Responsibility in India**

Corporate Social Responsibility has a long tradition and a cultural heritage in India. Companies of dynasties like the Tatas or the Birlas conducted a high level of corporate trusteeship and nation-building, long before CSR became a popular concept. Currently more than 80% of the Indian companies have some kind of social responsibility program that well exceeds some of India's counterparts such as Malaysia, Japan, Korea, Thailand, Singapore or the Philippines, countries that are economically more prosperous than India.<sup>3</sup> Contrary to this, only 17% of the Indian companies have a written CSR policy. In an online research in 2009 about corporate social responsibility activities and reporting, 49% of the 1000 largest Indian corporations got the lowest score of zero on a scale from zero to five, and only five companies received a four, the highest score in the survey<sup>4</sup>. Indian CSR pursuits tend to address social problems like poverty, health, education and cultural development. The CSR activity often reflects the orientation of the narrower top management, and they are commonly executed by trusts and foundations created by these companies, for their own CSR purposes, another reason why the CSR performance of Indian businesses fall short in contemporary international rankings that are usually based on the continued emphasis on the corporate bottom line.

This shows that the commonly used CSR practices, even if they are fortunately widespread in the country, remain remote from the actual processes and impacts of the companies, and do not lay enough emphasis on accountability and transparency. The integration of human rights into the core business processes however is capable to provide the CSR pursuits with a new structure putting the concept in a brand new perspective. CSR can stop being a remote activity that only requires a share of the companies' profit, and can become an essential principle of the corporate governance and a cornerstone of the companies' policy forming<sup>5</sup>.

So far only a few corporations committed themselves to integrate the human right into their core business. Our purpose is to show, that this is not only an increasingly expected practice in business life, but also an opportunity for companies to enhance their embedment in local markets, approach new customers and enter new market-segments.

### **4. Human Rights Translated to Business**

Talking about the fundamental rights, the basic revelations that we can base our consideration on, are the *Universal Declaration of Human Rights* formulated by the UN in 1947 and the two amendment of it, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Convent on Civil and Political Rights* (ICCPR) entry into force 1976. Although we can not make a difference between the two covenants in importance, in practice the rights listed among

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<sup>3</sup> Sunyoung Lee, Corporate Social Responsibility, undated

<sup>4</sup> Social Funds, <http://www.socialfunds.com/news/article.cgi/2672.html>

<sup>5</sup> Chirs Avery 2006, The difference between CSR and Human Rights

the Civil and Political Rights are much commonly and effectively regulated by the national legislations and therefore they are rarer a subject of human rights violation in business life. On the other hand the fundamental rights, that the ICESCR consists of, are much harder to regulate by law by their nature. Articles like the Right to Work (Article 6) or the Right to an Adequate Standard of Living (Article 11) are hardly in the freedom or in the ability of national governments to regulate them or even if they attempt to do so, it is usually beyond their capacity to have them fulfilled. Hence the role of companies is considerably more relevant in case of these rights, and businesses have to learn how to comply with these fundamental principles.

The articles of ICESCR are the following:

- Article 1: Right of self-determination
- Articles 2 to 5: Overarching principles
- Article 6: Right to work
- Article 7: Right to enjoy just and favourable conditions of work
- Article 8: Right to form trade unions and join the trade union, and the right to strike
- Article 9: Right to social security, including social insurance
- Article 10: Right to a family life
- Article 11: Right to an adequate standard of living.
- Article 12: Right to health
- Articles 13 and 14: Right to education
- Article 15: Rights to take part in cultural life, to benefit from scientific progress, and of the material and moral rights of authors and inventors.

The rights listed among the ICCPR are the more manifest, better regulated but yet, when violating them, the expected consequences can also be heavier.

- Article 1: Right of self-determination
- Articles 2 to 5: Overarching principles
- Article 6: Right to life
- Article 7: Right not to be subjected to torture, cruel, inhuman and/or degrading treatment or punishment
- Article 8: Right not to be subjected to slavery, servitude or forced labour
- Article 9: Rights to liberty and security of person
- Article 10: Right of detained persons to humane treatment
- Article 11: Right not to be subjected to imprisonment for inability to fulfil a contract
- Article 12: Right to freedom of movement
- Article 13: Right of aliens to due process when facing expulsion
- Article 14: Right to a fair trial
- Article 15: Right to be free from retroactive criminal law
- Article 16: Right to recognition as a person before the law

- Article 17: Right to privacy.
- Article 18: Rights to freedom of thought, conscience and religion
- Article 19: Rights to freedom of opinion and expression
- Article 20: Rights to freedom from war propaganda, and freedom from incitement to racial, religious or national hatred
- Article 21: Right to freedom of assembly
- Article 22: Right to freedom of association
- Article 23: Rights of protection of the family and the right to marry
- Article 24: Rights of protection for the child
- Article 25: Right to participate in public life
- Article 26: Right to equality before the law, equal protection of the law, and rights of non-discrimination
- Article 27: Rights of minorities<sup>6</sup>

## **5. Positive and Negative examples**

In this section we would like to underpin with examples our belief, that conducting the integration of human rights into the core business processes and ensuring full compliance in the respect of human rights, is not only an ethical step from the companies, but it can also create a business case that pays off in the long-run. On the other hand, the violation of these rights can lead to unexpected expenses and missing business opportunity. The case studies pro and contra will be accompanied by short explanations of the characteristic of the certain rights from a business perspective and short practical recommendations on how to implement them.

### **5.1. Labour Rights**

The set of these rights have the longest tradition of embedment into national legislations. Laws have been legislated since 1833, when the England banned the employment of the children younger than 9 years and regulated the working hours of the older children till the age of 18. The International Labour Organization' (ILO) conventions predate contemporary human rights law and the United Nations itself. In recognition of the key role labour rights plays in checking the power of business on society, worker's protections have since been incorporated into every aspect of today's human rights framework. The ILO Declaration on Fundamental Principles and Rights at Work safeguards four fundamental labour rights standards: i) freedom of association and effective recognition of the right to collective bargaining; ii) the elimination of all forms of forced or compulsory labour; iii) the effective abolition of child labour; iv) the elimination of discrimination in respect of employment and

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<sup>6</sup> Monash Universtiy, Human Rights Translated, undated

occupation. In addition of this core set, the right to healthy and safe workplace and the right to adequate remuneration are also clearly protected.

The most applying articles of the ICESCR are the 6, 7 and 8. *Article 6, the Right to Work*, recognises the right of everyone to the opportunity to make their living by work which they freely choose and accept. This implies that one should not be forced to engage in employment and also that one should not be unfairly deprived of employment on the basis of any discrimination, or as a punishment of demanding the enjoyment of other fundamental rights, like collective bargaining. *Article 7, the Right to Enjoy Just and Favourable Conditions of Work*, utters that workers should not be forced under conditions by their employees that prevent them to enjoy other human rights, like The Right to health (ICESCR, Article 12) by evidently harmful impact on their health, Right to family life (ICESCR, Article 10) by forcing them to work such long hours that doesn't allow to have social or private life to workers. Also, Article 7 recognises the right to adequate remuneration that says that the wages paid should enable workers to afford a decent standard of living and woman and man should not be distinguished in terms of salary for the same job. *Article 8, the Right to form trade unions and join the trade union, and the right to strike*, states that those who form or join trade union should be neither discriminated nor discouraged by the company, and they have the right to collective bargaining and exerting pressure on the company through going on strike. Trade unions though shall always obey the law, that controls their possibilities, and certain sectors, where more important issues might be endangered, can be excluded from these freedom (e.g. fire fighters can't go to strike).

### **5.1.1. Negative examples: trade union rights in the Gurgaon-Manesar belt and gender discrimination at Air-India**

In 2009, around 3500 workers of two large auto-component suppliers of the Gurgaon- Manesar belt (Rico Auto and Sunbeam Auto) went on strike after suspending 17 workers because of their pursuit to form their own trade union. Consequently the workers of these companies started the strike as a protest and generated further agitating in the area about fair wages as well. By suspending the workers because of their attempt to live with the right of collective bargaining, Rico Auto and Sunbeam Auto clearly violated their fundamental rights. The following protest and strike caused a massive loss in production and had a harmful impact on the companies' reputation as well.<sup>7</sup>

A death of a 10 years old boy discovered child labour and forced labour, employed in a brick kiln in Namakkal where brick producing is the major industry. The boy and his family was paid a loan that they had to reimburse by working in the kiln for 8 month, with a converted wage of 60 rupees a day. Furthermore they weren't allowed to leave the site and had to live under subhuman conditions. The case counts as a punishable offense and violates not just the right to favourable conditions of work and adequate remuneration but also the fundamental right to self-determination and other civil

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<sup>7</sup> Business Line, 3 October 2009 , <http://www.blonnet.com/2009/10/02/stories/2009100252410200.htm>

freedoms. Against a kiln, a police case has been registered, and an investigation started about other possible child labour cases in the industry.<sup>8</sup>

Air-India was accused with gender discrimination when its policies regarding hostesses came into daylight in 2003. Female hostesses were subordinate to their male colleagues as default, regardless of capabilities or experience and they also they had to meet different criteria than their male colleagues. All crew undergo a weight check before boarding a flight, but women were grounded or penalised if they were overweight. Male crew was permitted to fly even if they were 40 kg in excess. Once a year, women crew members above 35 years had to undergo an internal gynaecological examination, male crew members were not subjected to any form of medical examination. Women were allowed to have only two children while men did not have to adhere to the rule. For a long time, air hostesses were not allowed to wear spectacles, as they would affect their looks.<sup>9</sup>

### **5.1.2. A positive example: Policies at the National Thermal Power Corporation (NTPC) to ensure compliance with Labour Rights**

NTPC, India's largest power company, was set up in 1975 to accelerate power development in India. It is emerging as an Integrated Power Major, with a significant presence in the entire value chain of power generation business. Operating 13 coal based and 7 gas based stations, NTPC with its share of about 19% of India's total installed capacity, generated 26% of the country's power. A consistent high level performer in operation, NTPC provides the benchmark for the Indian power sector.

The NTPC, a signatory of the United Nations' Global Compact, has an extended policy making regarding Labour Rights and related issues. These policies aim to ensure that, in the entire range of treating the workforce from recruiting through remunerating till retiring, fundamental rights are respected and fulfilled.

The recruitment policy had provisions to give preference to marginalized classes of society like the scheduled castes/tribes, economically backward classes, persons uprooted from the project areas, physically handicapped and dependents of regular employees who die in harness. Respectively to the concept of Right to Work, exclusive advertisements and notifications are circulated to accredited SC/ST associations about vacancies for such category candidates. For physically challenged people, NTPC offers equal work conditions and opportunities in different fields. The company continuously seeks the opportunity to establish such positions where this special category of individuals can be employed and so far it is reaching one of the highest numbers of employment in this term in India.

In the name of equality and non-discrimination, NTPC lays a special emphasis on gender equality, under which men and women are equally allowed to go on maternity and paternity leave and in the form of a committee for investigating complaints relating to sexual harassment, working women are properly ensured in their decent work conditions as well.

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<sup>8</sup> The Hindu, 24 August 2009, <http://beta.thehindu.com/news/states/tamil-nadu/article8223.ece>

<sup>9</sup> Frontline, 2003, <http://www.hinduonnet.com/fline/fl2021/stories/20031024005413000.htm>

NTPC also takes a special care about the health and safety of its employees as well. A number of measurements are taken to ensure the maximum safety at the constructions, operational and maintenance work as well (including the contracted employees too), furthermore the plans are provided with disaster management plans and submitted to a yearly Safety Audit, where external professionals of the area, such as the National Safety Council, Loss Prevention Association of India and Tata Risk Management Services of India conduct their safety check in order to discover every hidden hazard and find accurate solution to eliminate them. Medical services and benefits are provided to the workers during their employment and even after retiring, NTPC has a contributory scheme for provision of medical facilities on superannuation for the employees and their spouses.<sup>10</sup>

Thanks to these policies and the fact, that these principles are deeply embedded in the human resource practices of the company, NTPC is well protected against the possibility of serious human right abuses, moreover these practices and policies don't just ensure the respect of labour and human rights but they also relevantly contribute to their maximum fulfillment. NTPC has won number of awards regarding to corporate governance and human resources and enjoys a really favourable reputation on the job market that attracts the best of the profession.

## 5.2. Environmental Rights

Business can undertake various activities which impact the natural environment in ways that compromise the enjoyment of human rights of surrounding communities and individuals. Peoples' livelihoods and well-being can be seriously jeopardized by business activities which result in the contamination or usurpation of air, water, soil, or other public resource upon which these communities depend. The effects of these types of environmental disruptions can cause direct harm to a number of inter-related human rights, particularly economic, social and cultural rights<sup>11</sup>. The rights that mainly constitute this category are the right to life, the right to health, the right to an adequate standard of living. This latter one has further relevant aspects, couple of them considered as economic rights, such as the *right to food* and the *access to water and sanitation*. The human right to adequate food implies that food should be available and accessible to people in a quantity and quality sufficient to satisfy their nutritional needs, free from harmful substances, and acceptable to their culture. The right includes the possibilities for individuals to feed themselves and their family directly by productive land and other natural resources (e.g. farming, animal husbandry, fishing, hunting, and food gathering) as well as to purchase foods at markets and stores. Human rights entitle everyone to safe, sufficient, acceptable, affordable, and physically accessible water for personal and domestic uses. These uses include water for drinking, personal sanitation, preparation of food, washing clothes, as well as personal and household hygiene. Company activities can impact on

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<sup>10</sup> K.K. Sinha, Director(Human Resources), National Thermal Power Corporation Ltd., New Delhi, Case Story, [http://www.unglobalcompact.org/COP/Case\\_Story/index.html](http://www.unglobalcompact.org/COP/Case_Story/index.html)

<sup>11</sup> ESCR-Net, Collective Report on Business and Human Rights, 2008

access to water if pollution and over-use of local water supplies significantly interfere with people's enjoyment of access to water. Therefore companies and business enterprises, regardless of size or sector, always have to ensure that the nature of their processes or their products don't have any impact on the environment, that would interfere with these rights, furthermore companies have to consider other scenarios as well where harmful impact applies in cases which are beyond normal operation, such as: natural disasters, operating faults, misuse of the product etc, and be prepared to avert or reduce damages.

### **5.2.1. Negative examples: the Bhopal incident and the water issues of the Coca Cola bottling plant in Kerala**

One of the most serious industrial catastrophe happened in Bhopal in 1984, when following a gas-leak from the pesticide plant of United Carbide, 42 tons of toxic MIC was released in the air, killing 2,259 people immediately and causing other thousands of deaths through the long-time effects. The gas leak was a result of a number of mistake and general negligence, made by the supervisors and leaders of United Carbide. Before this very gas leak at least 7 serious accidents happened in the plant, demanding even lives of employees and several warning has been sent to the management of United Carbide, drawing attention to the poor maintenance, insufficient safety measures and the resulting hazard of serious accident. These report and notifications never reach the senior staff or they were ignored. Clearly the safety of the employees and the surrounding communities was secondary for the company and as long as they had the adequate measures on paper, the implementation and organic integration of these guidelines was not important enough to struggle with. After the disastrous incident, United Carbide was bound to pay US\$470 million as compensation, furthermore after a share transaction, United Carbide was obligated to build a hospital with 500 bed capacity to provide free care for the survivors for eight years. Regrettably the contamination of soil and groundwater is still an ongoing issue around the plant in Bhopal, not due to the above disaster but due to the irresponsible treatment of the materials, especially before 1977, when all effluents were simply dumped in an open pit without neutralization. Toxic materials have not been removed from the site since.

An Indian arm of Coca Cola, the Hindustan Coca-Cola Beverages Pvt. Ltd has found responsible for water supply problems in Plachimada village, Kerala, due to the operation of its bottling plant. The plant started its operation in 2000 without any circumspect impact study or any consultation with local organizations or local governments. Although representatives of Coca Cola claim that the company conducted measurements regarding to the groundwater level and the non-exploiting extraction, these studies have never been shared. Residents of the area started to experience the drying up of their wells since the opening of the plant that were essential for their daily life and livelihood. The unusual drought in the following years obviously didn't help the case, however studies and investigations precisely evinced that Coca Cola was running more wells then alleged and was extracting significantly more water that it was advised. Moreover, wells that haven't dried out become useless for supplying water for domestic use due to the high chlorides content, also a liability

of the bottling plant. Experts and environmentalists don't understand how such a water-intensive plant could have been allowed in a drought-prone area like Plachimada. Obviously the water security of the surrounding communities wasn't a factor at the choosing of the site and establishment of the plant and national legislation did not establish a barrier to prevent the irresponsible investment. A typical case where the policies and the practices of the company should have been there to ensure the avoidance of such damaging results and prevent the company from the blame and loss that surrender and compensation cause. The bottling plant of Hindustan Coca-Cola Beverages Pvt. Ltd was shut in 2004 as a consequence of the permanent protests and in March, 2010 the Kerala panel, 14-member committee constituted by the Kerala government, has found the company officially responsible for the losses of the local communities over the 4 years of its operations and obliged the company to pay Rs.216 crore as compensation.

### **5.2.2. Positive example: The special emphasis on environmental values and protection at Power Finance Corporation.**

PFC was set up in July 1986 as a Financial Institution (FI) dedicated to Power Sector financing and committed to the integrated development of the power and associated sectors. As the 7% GDP growth of India continues, the power sector is expected to grow 12% yearly to sustain this. For that however the existing net of thermal power plants has to be modernized and upgraded to higher efficiency. PFC is committed to provide the financial background to this mission and at the same time lies special emphasis on the environmental and sustainability issues concerned in this sector.

So far, PFC has carried out environmental reviews of 28 thermal power plants and provided technical assistance in preparation of Environmental Upgradation Action Plans (EUAPs) with time bound implementation schedule. This has helped in prevention and control of the pollution of air, water and land from these installations. To give extra focus and priority in implementation of environmental schemes, PFC has relaxed several loan conditionalities for environmental upgradation activities. It has sanctioned loans worth US \$ 100 million for schemes related to the augmentation of pollution control facilities and other environment protection schemes upto financial year 2000-01. PFC has also got a provision for financial assistance to power utilities for undertaking studies to improve the performance and to assist in the development of Power Sector. PFC offers various types of Grants/Interest free loans / Soft loans for different types of studies. A grant up to a maximum of US \$ 0.2 million per project is available under this scheme. In all PFC funded new projects, PFC ensures that various requirements of regulatory authorities put in the form of conditionalities are built in various contract documents and adequate fund is available to implement these measures. PFC has also funded several schemes related to augmentations of ESPs and associated ash handling facilities in the old power stations of electricity boards all over the country. Typically these schemes have resulted in reduction of emissions of suspended particulate matter from thermal stations. In the area of waste management, it has been PFC's endeavours to help the utilities appreciate and adopt the "zero discharge concept", particularly in the thermal stations located in the water starved areas of the country. To implement these ideas PFC has been regularly funding activities related to Waste Water Treatment and Recycling as well as Augmentation of Ash Handling Plants for re-circulation of ash water, thereby reducing water pollution load from thermal power stations and

in savings on water bills. Treatment of waste water and its re-use results in reduction in the total water consumption for the station and stops the discharge of waste water containing high amount of suspended solids, high pH etc. into the fresh water bodies near the thermal station.<sup>12</sup> PFC is a perfect example of a company that considers human rights and corporate responsibility and finds an opportunity in promoting and working on them. The recognition of the environmental and sustainability issues of the power sector and the aim to effective handling creates a business case that is not only profitable for the company but also carries a high value for the customer end (i.e. thermal power sector) and highly beneficial for the stakeholders of the thermal power sector and for the environment as a whole.

### **5.3. Right to Life, Liberty & Security of Person**

International human rights law protects the physical and psychological integrity of human beings, and in so doing grants everyone the right to life, liberty and security of person. Extrajudicial killings, slavery and forced labour, slave trading, sexual violence and assault, torture and other cruel, inhuman or degrading treatment and punishment, unlawful, unjustified and inhumane detentions each degrade human integrity, and are all thus legally prohibited. A certain set of these violations may qualify as international crimes, including genocide, torture, crimes against humanity enforced disappearances, and war crimes.

Cases illustrate that business actors may *abuse the right to life, liberty and security of person directly* in different ways, misusing the power and influence that they possess. In such cases the bigger is the difference in strength and power between the company and its stakeholders, the higher the risk such abuses might happen. Companies that operate in such environments where the communities' and individuals' rights are not effectively protected (through low level of local jurisdiction, not satisfactory legislation, or limited access to jurisdiction) are highly at a risk to get tempted to disrespect certain interests and rights of stakeholders that might hold the company back from achieving its goals. The same if the company operates in such areas where the practicing of its core processes on the wrong subject or in a wrong manner leads to serious human rights abuses (e.g. security companies).

Abuses can happen *indirectly through associations with third-parties*, when a company fails to ensure that its operation does not benefit from, or contribute to, human rights abuses committed by those with whom they have contractual or other operational links.

Businesses compromise human rights to life, liberty and security of person when they support abusive governments or non-state armed forces. Businesses act in complicity when they provide such entities with arms, equipment, transportation, services, financing or other logistical support, with the understanding that such assistance would be used to human rights violations, or the groups receiving the aid were known human rights violators.

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<sup>12</sup> Mr. Deepika Malik, PFC's Role In Environmental Management Of Power Sector, undated

### **5.3.1. Negative examples: The complicity of Dabhol Power Corporation in police abuses and the contribution of ONGC to the morally questionable project of the Burmese government**

The power generation giant Enron's subsidiary, the Dabhol Power Corporation has been found complicit in many ways during the implementation of their mega project in Maharashtra, constructing a major electricity power plant. After the privatization of energy market in India, DPC has been established dividing its shares between Enron (50%), General Electrics (10%), Bechtel (10%) Maharashtra State Electricity Board (30%). The project was criticized from the beginning for lack of transparency, its projected high costs, and potential environmental impacts. The deal was so controversial that when the Shiv Sena-BJP government coalition was elected to power in 1995, it suspended the project. Then, in an about-face that renewed allegations of corruption surrounding the project, the Shiv Sena-BJP government renegotiated the project and allowed its construction. Leading Indian environmental activists and representatives of villagers' organizations in the affected area organized to oppose the project and, as a direct result of their opposition, have been subjected to beatings and repeated short-term detention. In many cases, they have been detained for periods ranging from several days to two weeks without being produced before a magistrate as required under Indian law. During mass arrests at demonstrations in villages surrounding the project site, protesters have been beaten with canes or otherwise assaulted by the police, in some cases sustaining severe injuries. Police have also tear-gassed peaceful demonstrations. Police have frequently used laws providing for preventative detention to arrest demonstrators in anticipation of protests, sometimes under suspicion of violence. Governments have authority to counter any genuine threat to public order, however as examined by independent organizations, the demonstrations usually proceeded in a peaceful manner and the state government of Maharashtra has engaged in a systematic pattern of suppression of freedom of expression and peaceful assembly coupled with arbitrary detentions, excessive use of force, and threats.<sup>13</sup> This example of the shameless violation of human rights could be part of many segment of this paper by its extended nature. We could equally consider the rights of indigenous people, the environmental concerns or the alleged corruption issues but clearly, there is another perspective, where DPC can be condemned from. The fact that the abuses and violent acts committed by the police and other government entities happened with the full knowledge of the company that has not only not protested against these but significantly benefited from them, raises the unequivocal case of complicity on behalf of DPC.

International human rights institution, Human Rights Watch is one of the world's leading independent organizations dedicated to defending and protecting human rights. By focusing international attention where human rights are violated, they give voice to the oppressed and trying to force accounting on oppressors for their crimes. In 2007, they drew attention on a major pipeline

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<sup>13</sup> Human Rights Watch, The Enron Corporation, <http://www.hrw.org/legacy/reports/1999/enron/>

construction in Burma (Myanmar), which project was carried out by a number of international and regional gas and oil corporations, among others the subsidiary of India's Oil and Natural Gas Co. (ONGC) and the Gas Authority of India Ltd (GAIL). Based on experience from previous oil and gas projects in Burma, Human Rights Watch expressed concern that the proposed construction of overland pipelines to transport the gas will involve the use of forced labour, and result in illegal land confiscation, forced displacement, and unnecessary use of force against villagers. Revenue from gas sales would also serve to entrench the brutal military rule in the country. Because of these well-founded concerns, Human Rights Watch urged companies with interests in Burma's oil and gas deposits to suspend activity until they can credibly demonstrate that their projects can be carried out without abusing human rights.<sup>14</sup> ONGC didn't consider withdrawing from the ethically questionable operations and expectedly invests an additional \$832.54 in the project in 2010.

### **5.3.2. Positive example: the answer of GE to complicity accusations in female feticide**

General Electrics, through a joint venture with the Indian multinational Wipro Ltd is the market leader in ultrasound machines on the Indian market, which has a value of \$77 million and where sales increased 10% in 2006. These low-cost but reliably working equipments could empower lots of healthcare centres and help doctors and patients as well. Ultrasound machines on the other hand were being used to determine the gender of an unborn child and allow parents to have a sex-selection abortion. In India, especially among the tribal and poorer communities, male babies are overly preferred above females as the boy is looked at as a future maintainer of the family and a guaranty for the family's livelihood, while girls are often associated only with trouble and a fear from the future dowry that will have to be paid to marry her off. India adopted a ban on using ultrasound machines in 1994 for non-medical purposes. The law also bans advertisements for prenatal sex determination, as well as the practice of preconception sex selection. Based the findings on Indian census data and they follow a report in early 2006 from the British medical journal Lancet, which estimated that 10 million baby girls have probably been aborted in the last 20 years. Although GE was perfectly compliant with the laws regarding the sale of these machines, due to the state's low efforts to enforce this law and the so increasing number of female feticide, GE was found complicit in these law and human rights violations, that seriously endangered the company's reputation and influenced it's further opportunity to grow. At first, GE Healthcare India denied accusations of statutory or human rights violations, stating that the company was taking all necessary measures to avoid even the appearance of any form of complicity but then GE Healthcare India's approach to this human rights dilemma has evolved over time. The management recognized that it is required for GE to take a proactive approach to work with stakeholders to prevent misuse, and implement a long-term, multi-faceted approach to help encourage societal changes in support of human rights.

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<sup>14</sup> Human Rights Watch, <http://www.hrw.org/en/news/2007/03/23/burma-natural-gas-project-threatens-human-rights>

GE Healthcare India wanted to demonstrate that it was stringently screening potential ultrasound sales and taking precautions to avoid the post-sale misuse of the ultrasound technology. At present, a single sale of GE ultrasound equipment goes through up to five internal checks — from the initial sales contact to equipment installation — to verify that the customer has a valid PNDD (Pre-Natal Diagnostic Techniques) registration certificate. As noted above, a valid PNDD registration certificate means that the clinic or the user is registered with the local government and provides an affidavit that it will not conduct fetal sex selection using the equipment. Machines are labelled with a sticker that warns that “fetal sex determination is illegal and punishable by law.” Sales people are trained on how to advise end users of the equipment on the implications of the PNDD Act and to escalate any concerns about observed or suspected non-compliance to their managers. They are also encouraged to balance their desire to increase equipment sales with the caution to not participate in sales that may end up in the hands of unscrupulous or unlicensed practitioners. Even if a potential customer has a valid PNDD certificate — but the sales person senses from a customer’s comments or behaviour that the equipment may be used unethically or fall into the wrong hands — the sales person is required by GE Healthcare to terminate all sales discussions.

This screening process does not end after the equipment’s sale. A practitioner must also present a valid PNDD registration certificate before having the equipment serviced by GE Healthcare India or purchasing updated accessories. These internal policies and trainings were seen as necessary steps in increasing safeguards during the sales process to lower the risk that the equipment would be misused. In an effort to further address the issue of female feticide, GE Healthcare India launched a poster campaign that encourages the public to think proactively about how to change attitudes about female feticide, the status of girls and women’s rights. GE Healthcare India has also designed new CSR programs, among them, social investment in initiatives that promote education and equality among girls in India. GE is sponsoring a young, female, Indian tennis star who can set a positive example for a more progressive role for women in Indian society. GE Healthcare has also taken the initiative to meet with government officials to share information about its internal controls and sales practices that go beyond the PNDD Act’s requirements. GE has called upon the government to increase enforcement activities and education programs and pushed for industry-wide action.

Opinions differ on whether these measures of the company were sufficient or not but we can state with certainty that the complaints against GE were not left without a response and these measures fairly indicate the company’s commitment to human rights. Moreover, the level of commitment did not only impact the policy making and general CSR pursuits but it tolled in such core processes as sales and service support, trying to ensure that the question of complicity does not raises if it comes to human rights and GE.<sup>15</sup>

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<sup>15</sup> GE Addresses Ultrasound Machines in India, <http://www.lifenews.com/int451.html>  
GE Citizenship, [http://www.ge.com/citizenship/performance\\_areas/human\\_rights\\_ultrasound.jsp](http://www.ge.com/citizenship/performance_areas/human_rights_ultrasound.jsp)

## **5.4. Rights of Indigenous People**

Indigenous people have inherent rights predicted on their aboriginal or native customary rights, which pre-date the modern state, and which protected under the purview of international law. There are [approximately 100 million indigenous people](#), living across the 28 states of India. Historically they have often been dispossessed of their lands, or in the centre of conflict for access to valuable resources because of where they live, or, in yet other cases, struggling to live the way they would like. Indeed, indigenous people are often amongst the most disadvantaged people in the world. The right of indigenous people to freely determine their economic, social and cultural development is the cornerstone of their collective human rights protections and survival as distinct people and thus actions which impede the exercise of self-determination. Their right to their land and resources, rights to free, prior and informed consent, health, water and food, collective housing rights, cultural rights, right to life and the right to effective remedy can all be endangered by ignorant and exploiting business activity, therefore businesses operating in indigenous people inhabited areas should consider and pay high attention to these aspects.

### **5.4.1. Negative example: Tragic deaths at the construction of Tata Steel plant in Orissa**

The Tata companies and so Tata Steel is one of the most active ones in India when it comes to corporate social responsibility, being the country's biggest grantmaker to NGOs. Contrary to this Tata Steel got involved in a very unfortunate and tragic affair, when policemen opened fire on indigenous people, protesting against further land acquisitions for a new steel plant in Kalinganagar, killing 13 people including 3 women and a 13-year-old boy. Tata claimed innocence in the case, since no representative or officers of the company were present when this unfortunate event happened. However if we examine the antecedents of the case we can understand that with more effort and attention Tata could have made these events avoidable, or at least could have decreased the chances of such a tragedy. When big industry first came in the early 1990s, it was welcomed, however soon the cultural, environmental, and economic costs became apparent. Stone quarries have eaten into hillocks, replaced forests, and devastated what little agriculture there was, thus families that had lived for generations in a village were asked for deeds establishing their legal claims. Hundreds of families vanished, probably moved to cities and increased the number of baggers and slum population. The Ho have a history of resistance and independence. Although formally they belonged to the Mughal Empire, neither the Mughals or the Marathas actually controlled their area and they remember with pride that in 1821, their warriors had successfully beaten back the British. Their October 2004, their declaration not to yield more land to industries continued that legacy. Several times in subsequent months, local villagers collectively thwarted eviction attempts. In May 2005, Kalinganagar villagers braved a baton attack by the police and blocked the construction of a boundary wall by Maharashtra Seamless, another steel company that has been allotted land in Kalinganagar Industrial Estate. Before fleeing into surrounding forests, they knocked the teeth out of

the local administrator who ordered the baton charge. If Tata Steel meant what he it claims about itself that it is a tribal friendly company, the question applies why they insisted to implement their project in an area that is already so troubled and filled with suppressed tension. Moreover in an area, whose indigenous inhabitants clearly and understandably expressed their intention to keep their land and not contribute to further industrialization. The truth is, that Tata Steel might haven not even known about the strong revulsions of the local people, as Tata never conducted any meeting or negotiation with them. Allegedly they had meetings with the local government right before the tragic event although after the death investigation sought details about these negotiations to no avail. Tata turned the blame squarely on the government saying that the government told them that work should commence and directed them to build the boundary wall, thus they were not expecting major trouble. Tata paid the government 335,000 rupees (\$7,600) per acre, and they were supposed to do the rehabilitation, promising that they would take care of everything. However negotiations had been still ongoing on the matter of the rehabilitation package, when the construction started and Visthapan Virodhi Jan Manch (People's Forum Against Displacement, the advocacy organization of the local people) issued an ultimatum that the Tata Steel and Maharashtra Seamless projects would not be allowed to proceed until the issue of rehabilitation was settled. The government and Tata ignored this ultimatum as well. The results are well known.<sup>16</sup>

The question applies how a corporation that is a flagship of corporate social responsibility in India, could get complicit in such a tragic and outraging issue. No doubt, that faithfully to the Tata traditions, Tata Steel aimed to compensate those who had to give up their land and livelihood and had no intention to exploit and ignore them. Yet, the way they handled the issue and the way they were going to implement the compensation, was unprofessional and inadequate. Instead of carrying out the briefings, negotiations and compensation by themselves, they simply transferred money to the government quasi outsourcing the issue, while the government failed to do its duty in an acceptable way. Not surprisingly, the tribal people of the area were equally outraged against the government and Tata.

Although Tata has a human rights policy, it doesn't have guidelines and protocols that would ensure the professional and circumspect treatment of such cases. In such sensitive cases the good intention and sufficient financial funds are often not enough, if they are not accompanied with effective communication and the involvement of stakeholders into the decision making. A principle that was not represented in Orissa in 2005 and 2006.

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<sup>16</sup> Corporate Watch, Stolen for Steel: Tata Takes Tribal Lands in India, <http://www.corpwatch.org/article.php?id=13620>

#### **5.4.2. Positive example: Resettlement and Rehabilitation(R&R) practices at National Thermal Power Corporation (NTPC)**

NTPC, the world's 317<sup>th</sup> biggest company according to Forbes Magazine, is conducting major constructions and serious land acquisition all over India, affecting the right to housing and land of thousands of people. NTPC lays a special emphasis on the resettlement and rehabilitation of the affected communities, ensuring that their rights, interests and dignity are respected throughout this sensitive process.

During the execution of its first generation projects, though there had been no specific guidelines either from the state or Centre on Rehabilitation and Resettlement, NTPC on its own had implemented limited measures. Progressively, efforts were being made to improve upon the programme implemented earlier. The facilities, considered for the land oustees or nominees of land oustees under the basic guidelines followed by NTPC since 1980, are employment (subject to vacancies and suitability of land oustees), shop allotment, petty contract works. A comprehensive R&R policy was formulated in 1991 and subsequently revised in May, 1993 for implementation at the existing and upcoming projects. As a result, R&R is treated as a responsibility and commitment and not as a charity or welfare measure at the company. The policy has been framed with a clear objective that NTPC will take measures so that project affected people are enumerated on the basis of loss of livelihood and not loss of land alone and on individual basis instead of family basis. The policy, therefore, is applicable to agricultural labourers, tribals, landless labourers cultivating government land, tenant tillers etc. as well. The policy of NTPC recognizes a total twelve categories of affected people, examining their different conditions and trying to offer acceptable solutions for them. Depending on the category, the rehabilitation options includes "Land for land", self-employment such as dairy, poultry, handicraft etc., shops, award of petty contracts, jobs. The resettlement includes developed alternate free house plot in resettlement colony with necessary infrastructure facilities and transport arrangement for belongings and reusable material. For establishing the base line data for each project affected people and to enable the preparation of suitable Rehabilitation Action Plan, a detailed socio-economic survey is conducted through reputed institutions. For old projects, a retrofit socio-economic study is carried out through reputed institutions and a Remedial Action Plan is prepared. In addition the infrastructure facilities are created and augmented based on the finding of these surveys. The Rehabilitation Action Plan or the Remedial Action Plan is finalized in a consultative manner with affected people. These plans include plan for resettling in resettlement colonies, providing them infrastructure facilities and also ways and means of rehabilitation according to NTPC's Rehabilitation and Resettlement policy.

If this practice is effectively followed, the main principles on how to handle such delicate situations i.e. meaningful consultation, adequate and reasonable notice, legal assistance and remedies, adequate compensation, are guaranteed.<sup>17</sup>

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<sup>17</sup> National Thermal Power Corp, <https://www.ntpc.co.in/>

## **5.5. Right to Housing, Forced Evictions & Forced Displacement**

Right to adequate housing is at the centre of an ensemble of life issues, including the child's right to be brought up in a safe environment. Adequacy is defined by seven core components, which together ensure the realization of this right. That is, housing must be secure, have access to basic services, be affordable, habitable, and accessible to all, in a location with access to employment and services, and be culturally appropriate. The lack of any of these elements can be said to pose a risk to the full enjoyment of the right to housing. Accordingly, security of tenure is fundamental in protecting people from being forcibly evicted, or displaced. Importantly, actions which undermine a secure residence also leave people more vulnerable to other types of human rights violations. Poor housing conditions affect health, homelessness and frequent displacements are shown to impair the child's learning. Forced eviction occurs when individuals, families or communities are removed against their will from their homes or lands they live upon, without access to legal or other protections. Forced displacement for its part takes place when individuals, families or communities are forced to flee, or have been forcibly removed from, their lands or homes to avoid the effects of harmful situations, be they natural or manmade disasters, violent conflict, or development projects. In both instances, the defining factor is the lack of consent by those negatively affected. In order to ensure that the right to adequate and secure housing is protected, certain procedural guarantees have been developed to guide governments in cases where evictions are completely unavoidable. States must, before evicting anyone, guarantee that all viable alternatives be explored and that affected persons be genuinely consulted. Affected persons should be given adequate and reasonable notice of eviction. Additionally, legal assistance and remedies should be made available, and in this process affected persons should be able to assert their right to compensation for lost property or goods. In cases where affected persons are particularly vulnerable, governments should, within their means, ensure that resettlement options are available, whether to adequate housing or productive land depending on the situation. While violations of adequate housing generally occur at the hands of the state, business enterprises risk complicity in these abuses when they benefit from them for their operations. Therefore they are expected to examine how their interest might interfere with the affected communities' rights and in order to avoid complicity in case the government fails to ensure that the rights of the affected communities are fulfilled, companies are expected to follow up the case and show proactive behaviour in solving the problematic issues.

### **5.5.1. Negative examples: forced evictions at the Sanskar project and inadequate compensation by AcelorMittal**

On 29 June 2008, the National Human Rights Commission (NHRC) deputed its special reporter Damodar Sarangi to probe allegations that the Orissa government had forcibly evicted over 10,000 villagers from their homes in Bhadrak district to make way for a massive flood-control project - Salandi-Nalia river Sanskar project. The Rs 100-crore project involves widening and deepening of the two rivers - river Salandi and its tributary Nalia - to control annual floods in the area. Earlier on

12 May 2008, the NHRC had asked the state government to reply within four weeks about the allegation of large-scale human rights violations in 50 villages in and around the river Salandi and its tributary Nalia but the state had failed to submit any reply. The NHRC has taken action based on the complaint filed by Advocate Radha Kanta Tripathy in 2007 who has alleged that the state government forcibly evicted thousands of villagers without following any rules and regulations. The state government did not serve any land acquisition notice nor had it taken any step to rehabilitate the displaced villagers. The villagers had been forcibly evicted from their agricultural lands. According to the affected villagers, anti-social elements had been hired by contractors to attack people who protested against the “illegal” acquisition of land.

Across India the tribals have been up in arms against various so called development projects because of the displacement, denial of adequate compensation and rehabilitation to the displaced people. In Jharkhand, the world’s largest steel maker, ArcelorMittal has been facing stiff resistance from the tribals who organized themselves under the banner of “Adivasi Moolvasi Astitva Raksha Manch” in the Torpa-Kamdara region. ArcelorMittal needed around 11,000 acres of land, of which 8,800 acres is required to set up a 12-million-tonne steel plant and 2,400 acres for establishing a township. The tribals claimed that the land identified by ArcelorMittal for the steel project is agricultural land and tribal lands are not transferable to non-tribals.

### **5.5.2. Positive example: The Magarpatta model for land acquisition**

In the late 80’s, the Magar clan, living in Maharashtra, near by Pune, recognized that the rapid urbanization of the city would sooner or later reach their lands, and claim it for its industrialization purposes. The area, still an agricultural zone, has been under Pune’s municipal jurisdiction since the 60’s and it was well known that once required, the government could easily acquire the land under the Urban Land Ceiling Act. The fear of losing their land and livelihood urged the more than 120 families to take their fate in their own hands and make an attempt to turn the thread upon their heads into an opportunity. The Magars decided that they would develop the land themselves. As the name 'Magarpatta' suggests, the Magar clan dominated in the area, owning 40% of the total land and the largest patta (land strip) located next to an industrial area. A young entrepreneur Satish Magar owned around 100 acres of land, otherwise the average landholding per family was between 2 and 4 acres. Together they managed to pool together 400 acres before requesting an architect to draft a private township plan, which was submitted to the concerned departments of the state administration for approval. Amid great apprehension, the families applied for conversion of the entire stretch into a non-agricultural zone. Satish Magar mooted the idea of a company rather than a cooperative so that each family got shares equal to the size of their landholding. The company was registered as the Magarpatta Township Development and Construction Company Limited and Mr. Magar became its managing director. It was after a five-year-long wait in 1998 that the development plan of Magarpatta gathered momentum. Farmers got their land titles (non-agricultural) cleared by 1999. The company was run by the managing director and technical director in consultation with eight board members drawn from the shareholding families. Every family was an equity shareholder of the

company. Each share was equivalent to 1 square metre of land and cost Rs 100, in 1998. Shares could be sold only to member families. The approximate price of an acre of land that was Rs 1.20 crore in 2000 rose to Rs 1.50 crore in 2007. Thirty per cent of the total cost of each construction was earmarked as cost of land at the current price and paid to the shareholders. The families have the option of reinvesting the amount in the company, in the form of a term deposit at an appropriate rate of interest (12.5% for three years, 11.5% for one year, and 10.5% for three months). The most important feature of the model is that the land pattas remain in the name of these families, safeguarding their ownership over the land. The bye-laws of the company ensure preference to family members of shareholders in employment generated by the company. Shareholders may also invest in the construction of commercial spaces that are rented out to companies. Apart from these provisions, shareholders are encouraged to bid for contracts for development work in the township, such as supplying raw material for RCC construction, labour contracts, vending contracts (shops), landscaping, beautification, and security and maintenance contracts. A majority of the 123 families have bought apartments or bungalows for the specific purpose of renting them out to the IT firms that have set up shop here. Almost every shareholding family earns a handsome rent in addition to their other income. A cooperative structure emphasises equality over equity. Each member of the cooperative has an equal say in matters pertaining to the cooperative, and that is binding.

The Government of India has granted approval to Magarpatta City for development, operation and maintenance of an SEZ for electronic hardware and software, including information technology-enabled services. The area covered under the SEZ is 11.98 hectares. The ingenuity of these tough Marathas, that never fails to impress those who visit Magarpatta, now serves as a business model for future land acquisitions. It proves the possibility that those, who are obligated to give up their land and livelihood for development purposes, can be meaningfully involved into the development so they can be real winners of industrialization, rather than just a source of problem that investors have to satisfy till a certain level not to cause major disruption.<sup>18</sup>

## **5.6. Freedom of Expression & Right to Information**

Freedom of expression and the freedom to seek, receive and impart information are both enshrined in various international, regional and domestic instruments. The inter-related rights to free expression and information entail both negative and positive duties of government in representation of the public interest. That is, people have the right to live free of government restrictions in the open exchange of information, and government repression based upon the use of information to their detriment. In addition to these negative duties, the right to freedom of expression also obliges a positive duty on public bodies to disclose information which may affect the public interest, as its acquisition is fundamental to people's participation in matters affecting them and the realization of all other human

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<sup>18</sup> Rakesh Ganguli, *The Magarpatta model for land acquisition*, 2008

rights. Companies which perform public functions or whose activities may affect the public interest or particular communities are understood to face similar positive disclosure obligations regarding these potential risks and impacts. Indeed, secrecy regarding potential impacts of company activity undermines the public's right to freedom of information, which in turn limits the public's ability to hold government officials and company employees accountable to human rights standards. In this sense, private business actors can profoundly affect people's enjoyment of the freedom of expression and right to information: collusion with repressive governments, refusal to release key information affecting main public matters, such as risks to the environment and health as well as financing arrangements, and interference with people's right to participate in public life, including certain consultation guarantees.

### **5.6.1 Negative example: The ongoing issues of the Bhopal Gas Incident**

Sixteen years after the Bhopal Gas disaster occurred, and Methyl Isocyanate (MIC) leaked from the Union Carbide plant in Bhopal on 2nd and 3rd December 1984, the victims still wait for justice. The payments of pitifully small amounts as compensation, the shrinking of their remedies, including the way the appeals system has been worked to reduce the entitlement of the victims, the difficulties in access to medical care, the disbelief, even all these years later, that they were indeed victims of the disaster, the absence of a legal aid system, the immobility of the state in the matter of the extradition of Warren Anderson of the UCC, the reduced gravity of the charges against the Indian accused and the snail's pace progress of the trial are all heating the people's disappointment and anger against the company responsible for their suffer. The other major problem is the vanishing corporation, where mergers result in the original corporation pretending to a civil death, and the vanishing liability. The takeover of UCC by Dow Chemicals in 2001 is an instance. There are also reports of continuing harm to the people in the vicinity, and to water sources, emanating from the plant site, where chemicals continue to be stored in vats. Safe to say that 16 years after the tragic gas-leak, the circumstances, real impacts and compensation of the victims are still unclear and unsettled. The closing of the plant to outsiders by the Indian government, and the failure to make data public contributes to the confusion. The CSIR report was formally released only 15 years after the disaster. The authors of the ICMR studies on health effects were forbidden to publish their data until after 1994. UCC has still not released their research about the disaster or the effects of the gas on human health.

In terms of the people's right to information, especially in cases where their health and other vital circumstances of life are concerned, Union Carbide should have started disclosing data about their product's effect on human's health well before the disaster happened. Even in a semi-tragic scenario, where we assume that the gas-leak could not have been avoided, if the healthcare bodies of the city (hospitals, healthcare centres, and medicals) had been aware of the possible health damages that MIC can cause, by avoiding the mistreating of the victims (as it happened right after the leak) hundreds of life could have been saved. Likewise, the after-effects could have been moderated by conducting a thorough investigation about the contaminating chemicals left at the site, after shutting down the

plan. Even if such investigation had happened, data of them has never been disclosed and distributed to the affected people.

### **5.6.2. Positive example: The Promotion of Access to Information Act in South Africa**

South Africa has one of the most progressive freedom of information laws in the world, the Promotion of Access to Information Act (PAIA) that came into force in 2001. The Act had a background in the Constitution of South Africa that says in its 32<sup>nd</sup> section:

“Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights; National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

Coming from this quotation, the Promotion of Access to Information Act (PAIA) was approved by South Africa Parliament in February 2000 and went into effect in March 2001. What is unique regarding the Act is the fact that it also includes a provision (as required in the Constitution) that allows individuals and government bodies to access records held by private bodies when it is necessary to enforce people's rights. Individuals can request information if they can effectively prove that the data they seek is affecting their rights. Public and private organizations must publish manuals describing their structure, functions, contact information, access guide, services and description of the categories of records held by the body. The functioning of the Act is monitored by the South Africa Human Rights Commission. It is required under the law to issue a guide on the Act and submit reports to Parliament.

## **III. Initiatives and Organizations for Human Rights in Business**

Worldwide many organizations work on the issue of human rights, and on how it is possible, to integrate it into the business processes, moreover, how to achieve that the respect and fulfilment of human rights become an organic part of the corporate culture and values. These organizations and initiatives vary in approach and aim but each and every of them can provide companies with initial support and useful frameworks to start on the issue of human rights. Some of them offer guidelines and manuals on the implementation itself, others trying to ensure publicity and accountability for those firms that voluntarily commit to their principles and subject to their reporting or accounting conditions.

The next section is aimed to give a short introduction of the main initiatives and organizations working in relation of human rights and business, to provide a general understanding what ways and means a company has if it decides to pick up issue of human rights.

## 1. Introduction of the United Nations Global Compact

*“The United Nations Global Compact is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.”<sup>19</sup>*

The Global Compact, also known as Compact or UNGC is the United Nations’ initiative to encourage businesses to sustainable and socially responsible policies. It is the world’s largest Corporate Citizenship initiative, offering a business framework based on the following 10 principles.

- I. Support and respect the protection of internationally proclaimed human rights.
- II. Making sure that the company is not complicit in human rights abuses.
- III. The freedom of association and the effective recognition of the right to collective bargaining.
- IV. The elimination of all forms of forced and compulsory labour.
- V. The effective abolition of child labour.
- VI. The elimination of discrimination in employment and occupation.
- VII. Supporting a precautionary approach to environmental challenges.
- VIII. Undertaking initiatives to promote environmental responsibility.
- IX. Encouraging the development and diffusion of environmentally friendly technologies.
- X. Businesses should work against corruption in all its forms, including extortion and bribery.

The Global Compact is not a regulatory instrument, but rather a forum for discussion and a network for communication including governments; companies and labour organisations, whose actions it seeks to influence; and civil society organizations, representing its stakeholders. Participation in the Global Compact is a widely visible commitment to the implementation, disclosure, and promotion of its ten universal principles. A company joining the initiative is expected to:

1. Make the Global Compact and its principles an integral part of business strategy, day-to-day operations, and organizational culture;
2. Incorporate the Global Compact and its principles in the decision-making processes of the highest-level governance body (i.e. Board);
3. Contribute to broad development objectives (including the Millennium Development Goals) through partnerships;
4. Integrate in its annual report (or in a similar public document, such as a sustainability report) a description of the ways in which it implements the principles and supports broader development objectives (also known as the Communication on Progress); and
5. Advance the Global Compact and the case for responsible business practices through advocacy and active outreach to peers, partners, clients, consumers and the public at large.

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<sup>19</sup> UN Global Compact, <http://www.unglobalcompact.org/>

The UNGC counts 7700 participants and stakeholders in over 130 countries. The annual posting of a Communication on Progress is an important demonstration of a participant's commitment to the UN Global Compact and its principles. Participating companies are required to follow this policy, as a commitment to transparency and disclosure, which is critical to the success of the initiative. In summary, the Global Compact exists to assist the private sector in the management of increasingly complex risks and opportunities in the environmental, social and governance realms.

## **2. Introduction of the Global Business Initiative on Human Rights**

The Global Business Initiative on Human Rights is a global business-led project committed to advancing human rights in business around the world. The initiative provides a platform for companies from different industrial sectors across the world to show leadership as well as providing a supportive environment in which to learn about how to respect and support human rights and integrate them into the management of their business. Major corporations and multi-nationals will work together to create regional business leadership platforms to:

- Raise awareness of human rights, the business case for respecting rights and the practical steps companies can take to integrate a respect for human rights into their business;
- Support and share concrete, practical examples of companies respecting human rights in a variety of industries and locations around the world (e.g. developing policies, processes, procedures and initiatives); and
- Be a leading global business voice on the realities, challenges and opportunities for incorporating human rights into responsible business and sustainable development and so inform national, regional and international policy dialogues.

Current core member companies include ABB, Cerrejon, Flextronics, General Electric Company, Hewlett-Packard, Mansour, Novo Nordisk A/S, Royal Dutch Shell plc, The Coca-Cola Company and Total S.A.<sup>20</sup>

### **3.1. Guide for Integrating Human Rights into Business Practice**

The Global Business Initiative for Human Rights has developed a set of guidance on the issue of the integration of human rights with the purpose to help companies to adopt practices, policies and business behaviour that ensure that human rights will be a matter of respect at the organization. Moreover the company, that uses this guide and ensures the deep integration of human rights principles into the processes, can make sure that the number of human rights violations will be reduced as much as possible and the management will be ready to cure such cases. Also companies will effectively help themselves to avoid involvement with unethical businesses and become complicit through their deals, suppliers, or third parties.

The five steps listed by the guide are the followings:

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<sup>20</sup> Global Business Initiative on Human Rights <http://www.global-business-initiative.org/>

- 1) Step 1: Understand what human rights are
- 2) Step 2: Understand how human rights relate to business
- 3) Step 3: Identify the risk, responsibilities and opportunities for the sector
- 4) Step 4: Build the business case for the company
- 5) Step 5: Get executive commitment and engage colleagues

The document also provides companies with separate guidance on how they can integrate human rights into their *strategy, policies, processes*, how can the improve the *capacity* of their employees and managers so the new policies and processes will be followed properly and how the *performance* in meeting the human rights criteria can be tracked.<sup>21</sup>

### **3. Introduction of Business Leaders Initiative on Human Rights**

In 2003, 14 of the largest corporations of the world decided to establish an organization with the purpose to find practical ways of implementing the Universal Declaration of Human Rights in a business context. In seven years in its operation the initiative has developed a number of tools and guidelines, such as the Human Rights Matrix, the Human Rights Corporate Accountability Guide and they cooperated in the development of the Guide for Integrating Human Rights into Business Practice as well. With these instruments they give precious support for organization that feel committed to implementing the concept of Human Rights in their core operations and they can achieve a high level of compliance with it. The participating companies are the following: ABB Ltd; Avera; Barclays Plc; Ericsson; Gap Inc; General Electric; Hewlett-Packard Company; National Grid Plc; Newmont Mining Company; Novartis Ag; Novo Nordisk A/S; Statoilhyrdo Asa; Coca-Cola Company; Zain.

#### **4.1. The Human Rights and Business Matrix**

The matrix has been created to help companies evaluate and recognise the risks in terms of human rights that they face during their business. As mentioned before these risks can be dependent from the country of operation and also from the sector. The tool provides companies a transparent and easy to use overview of those human rights aspect that are highly recommended to consider in business and the stages to achieve in regard of each right separately. The matrix allows its users to specify three status-level for the cardinal rights: Essential, Expected and Desirable. The cardinal categories used are:

- A. General obligations
- B. Right to equal opportunity and non-discriminatory treatment
- C. Right to security of persons
- D. Rights of workers
- E. Respect for national sovereignty and human rights
- F. Obligation with regard of costumer protection
- G. Obligation with regard of environmental protection

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<sup>21</sup> Guide for Integrating Human Rights into Business Processes,

#### H. General provision of implementation

Based on this, companies can identify their involvement in the question of human rights protection and fulfilment and with the help of the matrix they can easily develop the necessary action-plan to implement the changes.

### **4. Global Reporting Initiative**

The Global Reporting Initiative was formed by the United States based non-profits Ceres (formerly the Coalition for Environmentally Responsible Economies) and Tellus Institute, with the support of the United Nations Environment Programme (UNEP) in 1997. The Global Reporting Initiative produces one of the world's most prevalent standards for sustainability reporting - also known as ecological footprint reporting, Environmental Social Governance reporting, Triple Bottom Line reporting, Corporate Social Responsibility reporting. GRI seeks to make sustainability reporting by all organizations as routine as, and comparable to, financial reporting. In order to ensure the highest degree of technical quality, credibility, and relevance, the reporting framework is developed through a consensus-seeking process with participants drawn globally from business, civil society, labour, and professional institutions. On its website the initiative provides guidelines and online training tools for companies that intend to start on the sustainability reporting and also the reporting companies are represented on the website and a link is provided to their report. The issue of human rights is one of the priorities of the initiative in 2010. The United Nations Global Compact, Realizing Rights: The Ethical Globalization Initiative and the Global Reporting Initiative marked the 60th anniversary of the Universal Declaration on Human Rights with the collaborative project: "Human rights – A call to action" which aims to foster greater integration of human rights principles into corporate sustainability reporting. The objective of the project is to significantly improve companies' understanding of how and why to publicly disclose policies and practice relating to human rights.<sup>22</sup>

### **5. The Danish Institute for Human Rights**

The Danish Institute for Human Rights (DIHR) is an independent, national human rights institution modelled in accordance with the UN Paris Principles. The Institute, which was established by statute in 2002, carries on the mandate vested in the Danish Centre for Human Rights in 1987. This encompasses research, education and the implementation of national and international programmes. The Institute is part of the Danish Centre for International Studies and Human Rights, which also includes a sister institute, the Danish Institute of International Studies. The chief objective of the DIHR is to promote and develop knowledge about human rights on a national, regional and international basis predicated on the belief that human rights are universal, mutually interdependent and interrelated. The Institute believes that societies must be based on the rule of law, where the state

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<sup>22</sup> Global Reporting Initiative, <http://www.globalreporting.org>

protects and confers obligations on the individual while safeguarding the most disadvantaged and marginalized groups in society.

The Institute cooperates with organisations and public authorities in Denmark, with academic institutions and humanitarian organisations in other countries, as well as with the Council of Europe, the EU, the OSCE, the UN, the World Bank and a range of international donors. DIHR offers counselling, tools and knowledge in human rights and business, diversity management, and equal opportunities. The Human Rights and Business Project is the DIHR's commitment to international human rights related business issues. Project is able to observe the development and assessment of human rights projects around the world, and apply those methodologies to the business context. DIHR researchers, advisors and project staff are involved in initiatives as diverse as security-forces training in Central Asia to HIV/AIDS prevention in Sub-Saharan Africa. This wide range of projects forms a basis of experience that the Project adapts and applies to business. From this foundation, projects can be developed quickly, based on existing models, and draw upon experts in a wide range of geographic and topic areas.<sup>23</sup>

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<sup>23</sup> Danish Institute for Human Rights, <http://humanrights.dk>