

HUMAN RIGHTS – A BUSINESS DUTY



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As a consequence of the changing power structures in our globalized world, transnational business corporations have gained importance in the international political scenery. This development has a substantial impact on the international protection of human rights.

“It is the absence of broad-based business activity, not its presence, that condemns much of humanity to suffering.” (Annan 2005: 1)

In a very significant way, globalization has changed the world we live in, entailing new and complex challenges for the protection of human rights. Especially international business corporations exercise considerable influence on the rights of individual human beings or demographic groups.

This development has been observed by the International Peace Observers Network (IPON) in rural areas of the Republic of the Philippines as well. Large farming enterprises like Del Monte or Dole act in immediate vicinity of IPON’s partner organizations and their presence naturally affects the daily life of the Human Rights Defenders (cf. Reckordt 2012).

As stated above by former UN Secretary General Kofi Annan, the impact of the business corporations can be positive. Cost-effective and profitable enterprises generate new jobs and by paying taxes, they increase the earnings of the state meaning that the public authorities are provided with the opportunity to finance social services or certain public-spirited initiatives. Positive scale effects to regional development and public revenue might be a consequence.

But from a human rights perspective, it’s not difficult to adduce reasons for negative effects of the strategies and guidelines pursued by some business corporations, either. In fact, many enterprises with an international orientation face a barrage of complex and multi-layered criticism. According to Amnesty International’s research for example, the working conditions in some developing countries are unacceptable and in addition, both the exploration and the ex-

ploitation of natural resources by multinational companies have caused distributional conflicts, human rights abuses and an increase in poverty (Amnesty International 2012: 1; cf. Bauer 2012).

Furthermore, there are few effective mechanisms on the national or international level to prevent corporate complicity in human rights abuses or to hold the business corporations accountable.

Implementing Responsibility of Corporations

The UN Guiding Principles on Business and human Rights present three ways in order to proceed against human rights abuses committed by powerful transnational corporations:

1) States have to lend weight to their existing obligations to respect, protect and fulfill human rights and fundamental freedoms across national or regional borders. They should not be allowed to deal with human rights questions separately from other policy fields.

2) Business corporations as specialized organs of society are obliged to abide by the law and respect human rights.

3) Victims of human rights abuses need an effective access to legal remedies. (United Nations Guiding Principles for Business and Human Rights 2011: 6)

Against this background, the debate about the social responsibility of business corporations has gained momentum over the last couple of years. An intense discussion has flared up concerning the question whether and how economic perspectives of big enterprises and human rights can be made compatible.

George Kell, Executive Head of the United Nations Global Compact, expressed in 2008:

"Companies have a vital responsibility to ensure that the global marketplace is one of inclusion and acts as a force for improving, not injuring, social and natural environments. Because business interests increasingly overlap with development objectives in today's global society, there is a growing need for responsible business practices and partnerships with government and civil society. [...]" (Kell 2008: 1)

The Concept of Corporate Social Responsibility

In this context, Corporate Social Responsibility (CSR) has become an iridescent catchphrase that many international enterprises included in their guiding principles codes of conducts.

CSR is a multi-faceted concept marked by numerous understandings and notions from different perspectives. In general, the definitions usually make reference to a concept, whereby companies integrate social and environmental concerns in their business operations on a voluntary basis. (European Competitiveness Report 2008: 774)

In the "Renewed EU Strategy 2011-2014 for Corporate Social Responsibility", the European commission puts forward a definition that emphasizes the responsibility of enterprises for their impacts on society:

"To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

1) maximizing the creation of shared value of their owners/shareholders and for their other stakeholders and society at large;

2) identifying, preventing and mitigating their possible adverse impacts." (European Commission 2011: 6)

This statement exemplifies a trend towards a more mandatory and binding commitment of multinational corporations that seems to be emerging.

Consequences for the work of IPON

With this in mind, the question arises whether the claim that states are the only responsible actors to uphold human rights still reflects the political reality of the 21st century. Does the legalistic approach followed by many Non-Governmental-Organizations still make sense in a world, where 50 of the 100 biggest economies are in fact multinational companies and new communications technology is erasing national borders?

John Ruggie, United Nations Special Representative for Business and human Rights from 2005 to 2011, underlines that simply taking state-based human rights instruments and asserting that many of their bindings are on corporations as well is not a solution. From his perspective, international enterprises are not public interest institutions and making them duty bearers for the broad spectrum of human rights may undermine efforts to build indigenous social capacity and to make governments more responsible for their own citizenry. (Ruggie 2010: 1ff.)

Hence, it becomes clear, why IPON favors a legalistic human rights approach, shaped by the following definition:

"Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all inter-related, interdependent and indivisible. Universal human rights are often expressed and guaranteed by

law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups." (Office of the United Nations High Commissioner for Human Rights 2009)

Only states can sign and ratify the international human rights conventions and are, as a result, the only ones who can violate human rights. It is their duty to respect, protect and fulfill human rights under international law and the respective state should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

Of course, it is important to recognize and not to deny the increasing significance of transnational corporations in our globalized world, but according to the United Nations, this realization should not result in an equal status of states and corporations. The state as a "born" subject of international law can still be considered as the essential player of international human rights protection.

In this respect, IPON distinguishes between human rights violations and human rights abuses. While the latter can be committed by non state actors, the first (the actual violation) can be only committed by state actors.

Nevertheless, IPON does not disavow the increasing role of private actors, especially in areas of limited statehood, where transnational companies or powerful landlords take over government functions. IPON regards this development with great concern and therefore, in case a certain private group systematically abuses human rights, the organization documents what is happening and reports to the relevant government institutions.

In order to ensure that the interna-

tional protection of human rights is consistent with the ongoing processes of systemic social and economic changes on a global scale, the creation of an effective international human rights regime that includes nation-states, regional organizations, transnational companies and non-governmental organizations might be a first starting point. In this context, the leading role of states as the major subjects of international law should not be questioned, but the creation of such a regime – were states uphold ultimate responsibility – could function as an answer to the changing power structure of our globalized world. ■

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MEMORANDUM OF AGREEMENT: THE ILLUSION OF A SOLUTION

The last issue tackled the precarious situation of the indigenous Mindanao-based Human Rights Defenders (HRDs) of the Panalsalan-Dagumbaan-Tribal-Association (PADATA). Ten years ago, PADATA applied for an Ancestral Domain title so as to gain the exclusive power of disposal over their tribal territory, based on the Indigenous Peoples Rights Act (IPRA, a Philippine law enacted to guarantee the IPs right to land, customary and religious autonomy). However up until now, large parts of the area are occupied by the private rancher Ernesto Villalon who controls this area with the help of private security guards, despite the expiry of his license in 1997. This is a clear violation of the IP's legitimate claim. The land conflict culminated in 2010 when violent acts against PADATA members resulted in the assassination of Welcie Gica. Now, almost three years later, justice seems to be more elusive than ever: the last perceivable effort of the Philippine National Police (PNP) to execute outstanding Warrants of Arrest dates back to July 2012. The National Committee on Indigenous Peoples (NCIP) that is responsible for the implementation of IPRA, made no noticeable progress in the processing of PADATA's land title claim. On the other hand, one of the other state agencies is intervening more frequently than ever: the Department of Environment and Natural Resources (DENR). The DENR awards ranch licenses and grants permits for other non-agricultural land use, and is thus involved in the land conflict. While both the PNP and the NCIP remain inactive,