

# The International laws and National laws: Corporate Obligations and Accountability on Human Rights

(Mối liên hệ giữa pháp luật quốc tế và pháp luật quốc gia đối với hoạt động của các tập đoàn xuyên quốc gia và trách nhiệm thực hiện quyền con người của các tập đoàn xuyên quốc gia)

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## Abstract

In the current era of globalisation, the need for widespread adoption by business enterprises of socially responsible business practices is becoming more ever critical. Corporate Social Responsibility (CSR), as these practices are collectively known, is moving beyond a voluntary paradigm, in the face of legal obligations and government monitoring, because it engages human rights issues, including labor and environmental rights. The challenge for governments is to establish public policies to bind corporations to human rights obligations. Vietnam is moving fast towards global economic integration as a result of joining of the World Trade Organisation (WTO). Privatisation and a rapid increase in foreign investment are, however, not merely beneficial to the economy. Business enterprises struggle to find ways of doing good business whilst at the same time fulfilling their obligations on human rights in the context of CSR principles. Firms need to find ways to make themselves sustainable and competitive but in ways that are compatible with international standards on human rights such as those embodied in International Labor Organisation (ILO) conventions and the United Nation (UN) Global Compact. Vietnamese enterprises are learning from Multinational Corporations (MNCs) and foreign invested companies about growing brand reputations and markets but seem slow in adopting CSR practices. This paper addresses the meaning and importance of CSR and propose reasons why Vietnamese businesses need to embrace human rights perspective in CSR strategies. Some prominent examples of successes and failures of CSR in Vietnam are presented with the aim of identifying recommendations for enhancing human rights oriented CSR in Vietnam.

Key words: Corporate Social Responsibility, International Laws, Criminal Liability, CSR standards, Corporate Governance, Human Rights.

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## **Introduction**

Corporate Social Responsibility (CSR) is the conventionally understood as a voluntary code of conduct regarding the implementation of environmentally, ethically and socially responsible practices as elements of business strategy. Concerns and questions have, however, arisen in global debates about human rights violations, unfair labor practices, social and environmental destruction that are by-products of the development process. Proponents of CSR practices call for more explicit understandings and interpretations of CSR and Human Rights in businesses.

This paper is organised as follows. First, the idea of CSR is introduced in the context of its recent development in connection with acceptance of corporate obligations to play their part in the supporting human rights remedies. In the paper it is argued that CSR is a necessary tool in the ethical conduct of conduct business but is not sufficient to guarantee sustainable economic growth and human rights. Privatisation, including the operations of MNCs, may tend to reduce the commitment of the state to protect and promote human rights and to leave these needs in the hands of private sector. In any case, the business sector, as a non-state actor, is playing a more important role in the system for protecting human rights. Businesses should therefore now take their obligations further by protecting, promoting and provide remedies for violations of human rights. There are clear ways to improve business conduct in relation to human rights obligations. These imply an established legal framework with enforcement and judicial functions, and an active civil society with concerns and capacity to monitor violations, and engagement of the media to provide public with needed information.

### **Corporate Social Responsibility or Corporate Accountability on human rights**

There are tensions in distinguishing corporate responsibility and corporate accountability. The concept of Corporate Social Responsibility (CSR) refers to the “attempt to get corporations to behave responsibly on a voluntary basis, out of either ethical or bottom-line considerations” (Karlner and Bruno, 2002). Corporate Accountability (CA), on the other hand, refers to notion of “requiring corporations to behave according to social norms” (Karlner and Bruno, 2002:14).<sup>1</sup> Each notion refers to a new formulation for holding corporations accountable to their human rights obligations alongside state obligations and the active participation of civil society.

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<sup>1</sup> The concepts are discussed further in detailed in Andrew Clapham. Human Rights Obligations of Non-State Actors. p 195

CSR, as a specific idea, originated in the early 1970s. "CSR is about business giving back to society" Traditionally in the United States, CSR has been defined much more in terms of a philanthropic model. This comes with the idea that companies make profits, unhindered except by fulfilling their duty to pay taxes. However, CSR evolves in its concept and practice. The World Business Council for Sustainable Development defines CSR as *"the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large"*.

One main argument against CSR include Adam Smith where he praised self-interest, not altruism, of the firm ensures social welfare. Milton Friedman appraised that only social obligations of business are to maximize profits and obey the law but business needs to protect consumer from the government.

### **Why CSR by the global business?**

Businesses are reaping huge financial rewards from globalisation but there is an on-going need for governments to implement effective legal frameworks and standards to ensure that businesses are accountable to the societies of which they are a part and in which they operate. Globalisation of course brings opportunities for investment and growth in many developing countries. At the same time, the operations of MNCs have increasingly important roles in economies and societies of countries in which they invest. States want to increase investment and promote economic growth so many states do not set rules on CSR, or human rights, beside rules on trade and commerce, product quality and other financial responsibility. MNCs contribute to economic growth but also contribute to social inequality and violations of human rights due to state loose control over MNCS by states keen to promote liberalisation, privatisation and de-regulation of their economies (Reinisch, 2005). On the other hand, MNCs taking advantage of the global economic system tends to exacerbate human rights violations and corruption. Not all MNC take good practices in CSR and respect human rights. There are some bad companies operating in country where there is lack of good governance and where state can not put in place the effective human rights protection system. <sup>2</sup>

The remaining and debating issue is that many states do not recognise the same CSR standards. On the other hand, business turns CSR into the voluntary adoption. New voluntary CSR standards and

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<sup>2</sup> More literature have discussed the issues of corporate liability and in several prominent cases such as UK ruling jurisdiction on Cape Plc harming workers, children from UK's asbestos mining in South Africa. or complaints on abuse of human rights breach of OECD guidelines by foreign companes in garment sector in Guatemala (posted on <http://itglwf.org> on 28 february 2002 and Human Rights Watch Report 2002).

performance measurement tools continue to proliferate, adding to an already complex landscape. At the same time, there is a growing consensus among many in the CSR community that voluntary external standards (ranging from broad, aspirational standards such as the UN Global Compact and the Global Sullivan Principles, to issue-specific standards such as the CERES environmental principles or the SA8000 United States; application for WTO accession, and; the ASEAN Free Trade Agreement (AFTA), which requires the reduction of tariffs and import barriers among all ASEAN member nations by 2006. This means that all firms have to conform to global norms with respect to environment, work environment etc and at the same time be economically efficient in the face of fierce competition.

The challenges are posted for domestic companies to compete with foreign invested in gaining market share not only in terms of resources but also in terms of corporate governance and human rights protection. To adapt global standards or to catch up with global supply chain and adoption of corporate social responsibility are crucial requirements in the new business environment; labor standards need to be consolidated and streamlined.

Other remaining issues for business and human rights within the concept of CSR as voluntary code is that many states do not recognise business' obligations on human rights. The international human rights regime that binds member states with obligations seems less effective in influencing non-state actors like business. However, globalisation also brings forth stronger forces from civil society demanding consumer's rights, labor rights, environmental protection. Civil society run strong and widespread boycotts on unethical products, provide public information on rights violations, via media or internet, and promotion of discourses on business ethics. The continued ignorance of corporate accountability on the part of many firms harms their international reputations and public profiles. Companies now tend to compete by adopting codes of conduct and reporting on their CSR operations which may be more exposed to public monitoring, a key aspect of effective CSR policies.

Over the past several years, the CSR agenda has been characterized in large part by the expansion of boundaries of corporate accountability. Stakeholders increasingly hold companies accountable for the practices of their business partners throughout the entire value chain with special focus on supplier environmental, labor, and human rights practices. Additionally, company purchasing power is being viewed as a unique resource that contributes economic development investment capital, as well as facilitating basic trade of products and services.

Companies are facing increased demands for transparency and growing expectations that they measure, report, and continuously improve their social, environmental and economic performance. Companies are expected to provide access to information on impacts of their operations, to engage stakeholders in meaningful dialogue about issues of concern that are relevant to either party and to be responsive to particular concerns not covered in standard reporting and communication practice. Leadership companies are also investigating various types of audit and verification as a further means of increasing the credibility of their transparency and reporting efforts. Increasingly, demands for greater transparency also encompass public policy; stakeholders want to know that the way companies use their ability to influence public policy is consistent with stated social and environmental goals. As part of this move toward greater disclosure, many companies are putting increasingly detailed information about their social and environmental performance -- even when it may be negative -- onto their publicly accessible websites

#### **Legal frameworks for corporate on human rights: what bind on business on human rights obligations?**

Calls for legal frameworks to support the implementation of CSR at least a decade ago. However, despite the advocacy of civil society and international organisations, the response from government was minimal. The counter argument against legally binding CSR, in international law, is that human rights laws do not require ratification by companies. Others suggest that human rights is a state matter to ensure protect, promote and fulfil, and hence lies beyond business obligations. The argument from corporations against CSR was based on the need for businesses to stay away from politics and human rights and to focus on commercial objectives. The evolution of international human rights law and other 'human-rights related' conventions does, however, recognise non-state actor as legal persons, a recognition that is under litigation.

The purpose is to set stronger binding on corporate with a clearer norms on human rights obligations of corporations including guarantees of equal opportunities, equal treatment, right to security of person, rights of workers generally and, importantly, rights to effective remedies under international human rights laws or other related laws such as business laws and criminal laws. The second purpose is that such human rights norms of international laws are adopted into the national laws, that corporations including MNCs violations on human rights could be dealt with under national jurisdictions.

OECD Guidelines of 1976 focussed primarily on MNCs with the aim of promoting international investment.<sup>3</sup> The Guidelines set standards for respect of human rights and labor standards.<sup>4</sup> It also proposes procedures for handling enquiries, hearing complaints, consultation, mediation and clarification of the Guidelines.<sup>5</sup> The 1977 ILO Tripartite Declaration of principles concerning Multinational Enterprises and Social Reform, together with other ILO conventions also set binding minimum legal standards for the protection of human rights under CSR practices.<sup>6</sup> The UN Global Compact (2007) promotes a CSR agenda by setting out 10 principles dealing with human rights, labor, environment and corruption in business. Although all of the above are voluntary there are on going efforts to set and enforce implementation of minimum legal standards at the national level.

### **International laws:**

Provided that human rights development has been pushing for recognition of non-state actors such as businesses into its binding obligations. More importantly, such development creates the transforming normative standards and corporate behavior on CSR and human rights concerns.

The issue in question is that what law and branches of law effect on businesses. International human rights laws provides the concept of non-state actor in the UDHR “State should protect people from any organ of society”(UDHR, Preamble). This means state has primary obligation to protect human rights, and other organs of the soceity, the non-state actors – such as corpororate, should should hold “due recognition and respect for the rights and freedoms of others” (UDHR, art 29) . This principle is recently adopted in the UN Guiding Principles (the John Ruggie’s framework on Business-Human Rights).<sup>7</sup> This opens the concepts of ‘indirect’ and ‘direct’ obligations where state has direct obligations and corporate has indirect obligations on human rights. It means if corporates fail to respect human rights, or made human rights abuses, state should have responsibility to provide remedies.

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<sup>3</sup> The OECD Guideline has been revised several times. In 2000, the OECD Guidelines for Multinational Enterprises: DAFNE/IME/WPG (2000) and adopted by 30 OECD states

<sup>4</sup> OECD (2001) general policies II.2

<sup>5</sup> The draft UN Code of Conduct on Transnational Corporations failed as states did not get final agreement and received critical attack from Corporations.

<sup>6</sup> Other ILO conventions which Vietnam has ratified including: No. 138 on Minimum age, No. 155 on Occupational Safety, No. 81 on Labour Inspection, No. 100 on Equal Remuneration, No. 182 on Worse From of Child Labour, No. 111 on Discrimination regarding Employment. In addition, the ILO Recommendation No. 189 also gives priority for SMEs and decent work for employees.

<sup>7</sup> The recent adopted UN Guiding Principles: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework Ref. A/HRC/17/31 together with the report of Special Representative John Ruggie on 31 March 2011.

The international human rights laws have set stronger binding on many states which ratify the instruments.<sup>8</sup> Other branches of international laws that directly bind corporates are economic law and humanitarian law. It means that it is individual responsibility in cases of grave human rights violations as per the international criminal laws. The Nuremberg institution, ICC, Geneva Conventions of 1977 (article 3) and UDHR, preamble are amongst laws that provide such legal binding. In addition, ILO conventions have strong legal obligations once the state recognise the Conventions.

There is strong connection between human rights and humanity issues under the international human rights laws and international humanitarian laws. The new dimension to hold corporates with direct obligations on human rights law is under international criminal laws. While UDHR recognises all “actors of the society” liable, it may mean individual liability, corporates or company officials responsibility in cases of grave human rights violations amounting to crimes under international laws.<sup>9</sup>

The principle of indirect responsibility of corporates who makes human rights abused can be applied under human rights legal framework by both international and national laws while international criminal laws could apply the principle of direct responsibility. The development of international law evolved from the increasing effectiveness of ICC.<sup>10</sup> Individuals were sued to ICC. The prominent case that applied international law under national jurisdiction was the prosecution of Frans Van Anraat.<sup>11</sup> Van Anraat, a Dutch business man was broker of thousands of tons of thiodiglicol to Saddam Hussein’s regime. He was arrested and found guilty for his accomplice in genocide and consciously contributing to the chemical warfare of Iraq, including facilitating numbers of attacks with mustard gas on defenceless civilians. Series of trials of Nazi Businessmen at Nuremberg Tribunal. Other example is the trial of Walther Funk, a Nazi businessman who was the President of the Reichbank in 1938-1939 and agreed with Himmler to receive gold and jewels and currency from the SS of which there are items of concentration camp victims. As the President of the Bank, he instructed his subordinates not to ask about this act. The Nuremberg Tribunal found that Funk knew and intended to close the eyes on the

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<sup>8</sup> including International Convention on the Elimination of All form of Racial Discrimination (ICERD), The Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Conventions on Rights of the Child (CRC) etc.

<sup>9</sup> The concept of gross human rights abuses includes crimes against humanity, including enforced disappearances, slavery and torture. The act by companies under this principle include aiding and abetting, ordering, planning or conspiring to commit a crime and responsibility of a superior who fails to prevent or punish the commission of a crime. The International Law Commission (ILC) notes the view that all these forms are forms of complicity under international criminal law.

<sup>10</sup> More states ratified Rome Statute and more cases are proceed at ICC and other UN Ad-hoc Tribunals

<sup>11</sup> Public Prosecutor v. Van Anraat, LJN AX6406, The Hague District Court, 23 December 2005

criminal act. Also he was accused for indirectly involved in importing slave labor from concentration camp because his bank set up a revolving fund of 12 Mil Reichsmark to the construction of factories. He was found guilty on crimes against peace and humanity.<sup>12</sup> The cases showed it is relevant that company officials could be criminal responsible to the effect that the company's products or services were being used to commit crimes.

There are several challenges of effect of international law to hold corporate accountable for their human rights abuses as follows

- (i) ratification of the state to human rights conventions;
- (ii) political will to incorporate international human rights standards or criminal liability of corporates under respective national laws
- (iii) international criminal laws has not been strong in providing remedies and reparation to the victims of the crimes
- (iv) constraints of national prosecutors to take international laws and investigate when crimes are committed abroad
- (v) voluntary characteristics of CSR that corporates are taking on for their operations and commitment on human rights issues.

### **Regional law:**

Recently, regional human rights mechanism increasingly put pressure on states and companies to comply with CSR standards.

**Europe is Leading the Way:** EU with its community law set more rules and guidelines for companies. In Europe, CSR has moved to a prominent place in both the business and policy agenda. A great deal of this activity has been catalyzed by the public sector. The European Union established clear definitions around CSR that covered four aspects, namely: social and environmental concerns; voluntary codes for business conduct; business strategy; the requirement for businesses to communicate with stakeholders on the matter. The European Commission has placed CSR at the core of Europe's competition strategy, and has issued a Green Paper on CSR and a subsequent communication outlining the Commission's definition of CSR and steps that companies, governments, and civil society can undertake to refine their commitments to CSR. This has led to the creation of a European Multi-Stakeholder Forum on CSR that

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<sup>12</sup> Eg. Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 -1 October 194, Vol 1, p183



will recommend to the Commission how to more fully embed CSR in policy and practice. National governments have also been active; requirements for social and environmental reporting have been established in France and considered in the UK, and Denmark has made efforts to promote cross-sectoral collaboration. European companies have also increased their commitment to CSR, and have participated prominently in the World Summit on Sustainable Development and the UN Global Compact, as well as individual company initiatives. Other initiatives are underway at least at a policy development level in South Africa, Brazil, and Argentina. The Organization for Economic Cooperation and Development (OECD) has done some work to convene member states and private and civil society stakeholders to discuss how it might do more to encourage member states to implement and enforce its Guidelines for Multinational Enterprises.

The European model is much more focused on operating the core business in a socially responsible way, complemented by investment in communities for solid business case reasons. This model is more sustainable because Social responsibility becomes an integral part of the wealth creation process - which **if** managed properly should enhance the competitiveness of business and maximize the value of wealth creation to society. But there is no "one size fits all". In different countries, there will be different priorities, and values that will shape how business act. As with any market-based approach, the model's success depends on transparency. Experience in Europe is beginning to show the benefit of public CSR reporting - not government legislation about what CSR activities companies should undertake, simply a requirement that they disclose their approach to managing CSR issues.

### **National laws**

Companies that demonstrably satisfy or go beyond regulatory compliance requirements are given more free reign by both national and local government entities. In the U.S., for example, federal and state agencies overseeing environmental and workplace regulations have formal programs that recognize and reward companies that have taken proactive measures to reduce adverse environmental, health and safety impacts. In many cases, such companies are subject to fewer inspections and paperwork, and may be given preference or "fast-track" treatment when applying for operating permits, zoning variances or other forms of governmental permission. The U.S. Federal Sentencing Guidelines allow penalties and fines against corporations to be reduced or even eliminated if a company can show it has taken "good corporate citizenship" actions and has an effective ethics program in place.

Some states adopt international laws such as international criminal law in their respective national law. It means that the national jurisdictions can effect on the corporate operating in the countries, following the economic, civil and criminal domestic laws, by applying standards and principles of international laws.

Many states regulate corporate criminal responsibility in domestic criminal law. However, the criminal acts may be defined differently, including accomplice liability – such as aiding, abetting or assisting in commission of a crime or participating in crimes by others or by jointly-such as , instigation, conspiracy, or ordering. Both international and national criminal laws follows the principle of mental state (mens rea) and intent. This applies to the principle perpetrator, aider, abetter, a company or its officials. The German law include criminal liability with two modes – intent and negligence. The UK law found criminal guilty on the basis of knowledge and recklessness – ie. Knowledge about risks of offences.

While international criminal law recognizes the principle of common purpose when committing crimes, which refers to joint criminal enterprises (JCE).<sup>13</sup> The individual participation in a JCE need not involve in commission of a crime, but could be in form of assistance, or contribution with common purpose. Many states recognize this principle – JCE in their respective criminal law.<sup>14</sup> Another principle applied in criminal law and customary law is superior responsibility. The company official is held responsible for involvement of a crime and their superior may be also criminally responsible if they fail to carry out duty to prevent or punish criminal conducts of their subordinates.<sup>15</sup> The cases applying principles under international criminal law and customary law above contribute to the clearer definition of indirect responsibility when it comes to corporate criminal liability.

The principle of extra territory jurisdiction is applied that allows the state to have jurisdictions over the companies operating abroad. The Alien Tock Act of United States is the law of this type. When U.S. or foreign corporations commit human rights abuses abroad, U.S. courts have had the power to hear the victims' claims since at least 1790. The Alien Tort Statute (ATS) allows foreigners to sue in US federal courts for egregious human rights abuses.<sup>16</sup> Earlier this year, the US government argued on the side of

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<sup>13</sup> Many cases before ICTY under customary international law are charges on planning, or conspiring, participating in crimes. Eg. Tadic (ICTY Appeals Chamber) and Brdanin (ICTY Appeals Chamber).

<sup>14</sup> United States, Australia, France, the Netherland, Belgium, Spain, Japan, and South Africa. The French Criminal Code Art 212-3 and Dutch Criminal Code Art 80 regulate and punish conspiracy under national jurisdictions

<sup>15</sup> Case of Krnojelac. ICTY 17 September 2003. Para 171.

<sup>16</sup> The same case could be brought before US Court when it applies the Alien Tort Statute which allows the Nigerian nationals who claim the oil company Shell was complicit in state-sponsored torture and murder in their country. In April 2011 the Bodo community from the Ogoni region of Nigeria brought legal action against Shell in UK court. The claimants sought damages from Shell for oil pollution in the Niger Delta that allegedly destroyed their livelihoods.

victims of human rights abuses at the US Supreme Court. In *Kiobel v. Royal Dutch Petroleum (Shell)*, the government argued that corporations should not be exempt from responsibility for committing human rights abuses. The Supreme Court ordered a rehearing in the case, and asked whether human rights lawsuits could be brought when the abuses happened outside the US. There is no identical provision in Dutch law but nevertheless private actors, including both individuals and corporate entities, may incur criminal liability as well as civil liability in the Netherlands for their involvement in international human rights violations perpetrated abroad.

Legal liability for corporations may be incorporate under national laws including constitutional law, civil law, criminal law, labor laws, companies law, environmental laws, food safety law, production law. However, the level of adoption of international human rights standards in domestic laws and the effect of law may varied, depending on the political will of the state, rule of law and effective of national jurisdiction, ie judges and prosecutors.

There are two examples: China and Philippines where the review of how corporate liability are effective into the domestic laws. ‘

### **The case of China**

China has ratified a number of international conventions on human rights <sup>17</sup> The 1982 Constitution <sup>18</sup> provide “state respects and preserves human rights” (Art 33 of PRC Constitution amended 2004). Chapter II of the PRC Constitution contains an extensive list of fundamental rights as per international standards. The constitution also provided that “all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct”. However, the limitation of the PRC constitution supremacy is that the Constitution is not directly legally enforceable if there is absence of implementing legislation. <sup>19</sup> The labor law of China regulates protection of the rights of workers, labor relations (art 1), right to submit labor disputes for settlement (art 3), right ot organize trade union (art 7). <sup>20</sup> The same law applies to all enterprises, individual economic organizations, state organs, and public organizations

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In August 2011, the parties commenced settlement talks after Shell acknowledged its responsibility for the oil pollution. After the settlement discussions failed, the Nigerian plaintiffs went back to UK court in March 2012. Ref. <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/AlienTortClaimsActUSA>

<sup>17</sup> ICERD in 1981, ICESCR in 2001, CEDAW in 1989, CAT in 1988, CRC in 1992, ICCPR signed but not ratified.

<sup>18</sup> Amended four times in 1988, 1993, 1999 and 2004

<sup>19</sup> Albert H Y Chen, *An Introduction to the legal system of the People’s Republic of China*, LexisNexis, Hong Hong, 3<sup>rd</sup> edition, 2004 p.47

<sup>20</sup> Labor Law of the People’s Republic of Chian, 1994.

(art 2). The law gives power to the public agency to supervise and examine the employers' compliance with the law with regard to the labors' rights. The case of Tany Jin v. Labor Bureau of Dangtu County <sup>21</sup> shows the state obligations in dealing with human rights issues concerning the companies. PRC strengthen protection to workers by other laws – such as Labor Contract Law, Labor Dispute Mediation and Arbitration Law.

The Chinese Companies law (Art 5) <sup>22</sup>states that: a company shall comply with the laws and administrative regulations, social morality and business morality and...assume social responsibilities. The same law (art 18) regulate the same for foreign companies. Article 17 requires companies to ..” protect the lawful rights and interests of their staff and workers...”. Article 20 requires shareholders to observe laws, administrative regulations and possibility of paying compensation of abuse right of other shareholders. Other law – the Food Safety Law and Production Safety Law could be applied to corporate accountability. The case of Melamine-contaminated milk products in 2008 was an example of company and companies' executives are held accountable for the victims of human rights abuse. <sup>23</sup> The contamination of milk was investigated and found involvements of intentional corporate conduct. The Higher People's Court of Hebei Province held that Sanlu Group and four other defendants liable for the act. This case reflects effect of different domestic laws on corporate liability. The business law and the criminal law can be applied to give effect on human rights issues. It also implies that victims can exercise other laws to claim justice, not always go for compensation and remedies from the state.

### **The case of Philippines**

Phillippines recognise legal liability for corporations under its constitution, and other statutes – such as Civil Code, Labor Law <sup>24</sup> the Revised Penal Code <sup>25</sup>, the Mining Act <sup>26</sup> and others like Fisheries Code, Forestry Code, Clean Air Act. And especially the Human Right Act which is recognised by the Constitution. The Consitution and the Supreme Court has applied the principle of indirect liability of

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<sup>21</sup> [www.colaw.cn/caselaw/labor.htm](http://www.colaw.cn/caselaw/labor.htm)

<sup>22</sup> PRC Companies Law, 2005 came into force on 1 january 2006

<sup>23</sup> By using milk products tainted melanine of Sanlu Group, with 43% stake of Fonterra Cooperative Group of New Zealand based company, 300,000 children has diagnosed with kidney diseases and many died. Although the different courts in PRC were reluctant to receive individual law suits, under the central instruction, alining with the policy to discourage people to go to court to seek justice. Instead, the state offer compensation package to victims, including treatment. Ref. Qin Xudong, "Calling for Judicial Reform' in Caixin Online <http://english.caing.com>

<sup>24</sup> President Decree No. 442, The labor code of the Phillippines 1974

<sup>25</sup> Act No. 3815

<sup>26</sup> Republic Act No. 7942, The Mining Act of 1995

private corporations. The case of Oposa <sup>27</sup> gives effect to a city ordinance of Manila to cease the operations of oil depots of large petroleum companies Chevron, Petron and Shell in some areas of the city.

The Civil Code provides civil liability of corporations and allows claims for and enforcement of damages on any rights that are recognised by the Constitution's Bill of Rights. The Code also provide legal remedy. Several cases on environmental damages were bought up under the Civil Code. <sup>28</sup> Direct liability is araised from corporate negligences.<sup>29</sup>

In dealing with human rights cases involved business under domestic laws, besides the court, the Human rights commission (HRC), recognized by the Constitution<sup>30</sup> has function to prescribe, monitor and evaluate human rights protection standards. HRC generally can investigate complaints against state actors, it has started to be involved in complaints against non-state conducts. <sup>31</sup>

The principle on extra-territory also applies for hold corporations accountability in Philippines. The case of Marinduque stragedy in 1996 where Marcopper Mining Company dumped 4 millions metric tons of mine wastes into Boac River was the prominent case. <sup>32</sup> in 2005, Marinduque provincial government sued Placer Dome Corporation in the United States for damages and harms on human and health and ecology caused by the company's 30 years operations in Marinduque. However, even the US court rule in favour of the plantiff, a challenges for justice is that Philippines jurisdiction has to give effect to enforcement. Many MNCs in Philippines are allow ed enter into Financial or Technical Assistance Agreement (FTTA) to explore minerals in large scale <sup>33</sup>, this challenges the national jurisdiction to successful rule over the power of the MNCs even when the foreign court is in favour of the victims.

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<sup>27</sup> Social Justice Soceity et all. V Atianza. Ref. G.R No. 156052, February 13. 2008.

<sup>28</sup> Globe Mackay Cable and Radio Corp et all v C.A et al. 176 SCRA 778 (1989)

<sup>29</sup> Case of Professional Services v. Agana. Ref. G.R Mp.126297. January 31, 2007. The court ruled liability of the hospital as corporate negligence and liable for a tortuous act and omission as a result of pieces of gauze were negligently left inside the body of a patient, causing pain and eventually death.

<sup>30</sup> Constitution, Article XIII, section 18

<sup>31</sup> Ref. case of Oceana Gold (2010) committed human rights abuses against indigenous residents of Balangay Didipio. Investigating 180 houses of indigenous people demolition and shooting of one individual

<sup>32</sup> Ref. Marinduque v Placer Dome Inc. 582 F.3d 1083 (2009)

<sup>33</sup> Ref. the Mining Act.

## **Global standards**

Beside the international laws and national law that increasingly effect on corporations' conduct on human rights, other standards are established on voluntary basis but has received large implementation by businesses. The majority of CSR-related standards produced in recent years ask companies to voluntarily develop and implement policies and practices and commit to specific performance standards on various CSR issues. More recently, a limited number of standards have been developed that, rather than providing substantive recommendations for implementation of specific CSR policies and practices, are designed to provide guidance for companies seeking to report on their social, environmental, and economic performance. In many cases, these performance standards and reporting standards are voluntary but receive high adoption and acceptance of corporate around the world.

**United Nations Global Compact:** The UN Global Compact was formally launched in September 2000. UN Secretary-General Kofi Annan called on world business leaders to voluntarily “embrace and enact” a set of four pillars and ten principles of human rights; labour standards; the environment and anti-corruption in their individual corporate practices. It is to support complementary public policy initiatives. The standards include specific practices that endorsing companies would commit to enact, as well as a section describing the benefits to business for embracing each principle. ([www.unglobalcompact.org](http://www.unglobalcompact.org); <http://www.unglobalcompact.org/AboutTheGC/index.htm>)

**Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises:** The guidelines are recommendations addressed by governments to multinational enterprises and are voluntary principles and standards, not legally enforceable. Governments adhering to the Guidelines encourage the companies operating within the countries to observe the guidelines wherever they operate. The guidelines were first published in 1976 and updated most recently in June 2000. ([www.oecd.org](http://www.oecd.org))

**The Global Sullivan Principles:** Introduced in 1999, the Global Sullivan Principles expand upon the original Sullivan Principles, which were developed by the late Reverend Leon H. Sullivan in 1977 as a voluntary code of conduct for companies doing business in apartheid South Africa. According to Rev. Sullivan, “The objectives of the Global Sullivan Principles are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all levels of employment, including racial and gender diversity on decision-making committees and boards; to train and advance disadvantaged workers for technical, supervisory and

management opportunities; and to assist with greater tolerance and understanding among peoples; thereby, helping to improve the quality of life for communities, workers and children with dignity and equality.” ([globalsullivanprinciples.org/](http://globalsullivanprinciples.org/))

**Asian-Pacific Economic Cooperation (APEC) Business Code of Conduct:** APEC is billed as “the primary international organization for promoting open trade and economic cooperation among 21 member economies around the Pacific Rim.” The Code, issued as a draft in 1999, is an aspirational standard that draws significantly on a variety of other internationally recognized codes and standards. The drafting of the Code was initiated by business leaders from companies operating in APEC countries and is designed to supplement and support companies’ existing codes of conduct. In addition to providing recommendations for specific “company action” on a range of issues, the Code addresses policy recommendations to APEC country governments.

**Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.**<sup>34</sup> The draft norms were adopted by the Sub-Commission on the Promotion and Protection of Human Rights in August 2003. It was draft with consultation with businesses, non-governmental organizations and unions. However, the Draft Norms received strong resistance from MNCs and corporate for its tendency to be legal binding as it states clearly the possible human rights responsibilities of companies. The Human Rights Commission hence requested further development of norms and standards on human rights obligations on business. The Commission mandated John Ruggie to be Special Rapporteur on the issue. In 2011, the Special Rapporteur submitted to the UN General Secretary his recommendation report and Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework was approved by Human Rights Council in March 2011.<sup>35</sup> This framework is consider between regulatory and voluntary on business obligations on human rights. It highlights state to protect and provide remedies on human rights matters but businesses need to respect human rights including labor rights and environmental rights. In general, John Ruggie’s framework made further progress to recognize business’ obligations on human rights but it is not yet the legal stand and still rely on businesses’ voluntary acts.

**The Global Reporting Initiative** is a reporting standard rather than a performance standard. It was established in 1997 with the mission of designing globally applicable guidelines for preparing enterprise-level sustainability reports including both social and environmental indicators. The GRI is convened by

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<sup>34</sup> E/CN.4/Sub.2/2003/12 (2003)

<sup>35</sup> Ref. A/HRC/17/31

CERES (Coalition for Environmentally Responsible Economies) and incorporates the active participation of corporations, non-governmental organizations, international organizations, United Nations agencies, consultants, accountancy organizations, business associations, universities, and other stakeholders from around the world. . GRI provides all companies and organizations with a comprehensive sustainability reporting framework that is widely used around the world.<sup>36</sup> GRI is thus the clearest reflection of how the sustainable when performance is monitored on an on-going basis and when that data can be provided regularly to senior decision makers to shape company strategy and policy, and improve performance.<sup>37</sup> The GRI first released its Sustainability Reporting Guidelines in 1999 and is now a permanent, independent, international body with a multi-stakeholder governance structure. Its core mission will be maintenance, enhancement, and dissemination of the Guidelines through a process of ongoing consultation and stakeholder engagement. The GRI has begun to add sector-specific supplements, beginning with financial services and tour operators. ([www.globalreporting.org/about/brief.asp](http://www.globalreporting.org/about/brief.asp))

**Social Responsibility Investment:** SRI engagement is considered as a strategy first and foremost to reduce *social, environmental and ethical (SEE)* risks in investee companies that have increased sourcing products from the developing world. Second, it was a strategy to ensure that the investee company is benefiting from SEE opportunities. Responsible investors use both these strategies in order to protect and enhance shareholder value. SRI could be other pressure for corporate for raising their CSR commitment is from growing investor pressure and market-based incentives. While socially responsible investors have been pressuring companies on their social, economic, and environmental performance for the last 30 years, CSR is now more and more part of the mainstream investment scene. The last few years have seen the launch of several high-profile socially and/or environmentally screened market instruments (e.g., indexes like the Dow Jones Sustainability Indexes, FTSE4Good, and the KLD/Russell/Mellon products, as well as screened investment offerings from Morgan Stanley, Citigroup, Credit Lyonnais and Vanguard). This activity is a testament to the fact that mainstream investors increasingly view CSR as a strategic business issue. Many socially responsible investors are using the shareholder resolution process to pressure companies to change policies and increase disclosure on a wide range of CSR issues, including environmental responsibility, workplace policies, community involvement, human rights practices, ethical decision-making and corporate

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<sup>36</sup>Home page of Global Reporting Initiative. Retrieved on 15th June of 2012 via: <https://www.globalreporting.org/information/about-gri/Pages/default.aspx>

<sup>37</sup>Home page of Global Reporting Initiative. Retrieved on 15th June of 2012 via: <https://www.globalreporting.org/information/about-gri/Pages/default.aspx>



governance. Activist groups are also buying shares in targeted companies to give them access to annual meetings and the shareholder resolution process. The development of standards in mainstream financial institutions where such screens are mostly adopted by large banks and multilateral institutions has created certain impacts beyond SRI community.

SRI engagements with companies that have just begun to accept that labour standard issues need to be addressed in their supply chain are more likely to lead to corporate change. For those companies that have put the first steps in place to improve their supply chain labour standards, several interviewees thought the next step of SRI engagement should focus on ensuring companies streamline the processes and procedures in place. One company interviewee said *“it is helpful when investors highlight examples of best practice and propose ideas or initiatives that they see as potential solutions to problems”*. Responsible investors could ask companies the extent to which improving supply chain labour standards has had an impact on product quality, security of supply, productivity and/or absenteeism.

**Social Accountability 8000** is a standard that specifies requirements for social accountability to enable a company to develop, maintain, and enforce policies and procedures in order to manage those issues which it can control or influence; and demonstrate to interested parties that policies, procedures and practices are in conformity with the requirements of this standard. The requirements of this standard apply regardless of geographic location, industry sector, or company size. The standard is maintained by Social Accountability International and covers standards and monitoring programs for child labor, forced labor, disciplinary practices, nondiscrimination, wages and benefits, working hours, health and safety, freedom of association and collective bargaining, and management systems. ([www.sa-intl.org](http://www.sa-intl.org))

**ISO 26000:** The idea of building a guideline for social responsibility was first raised in 2001 in the Committee on Consumer Issue of International Standard Organization (check words) (ISO).<sup>38</sup> ISO 26000<sup>39</sup> is the international standard that provides guidance to all types of organizations to become social responsible in their work. It applies to a wide range of organizations, regardless of their size or locations.<sup>40</sup> ISO26000 has 7 core subjects (i) corporate governance (ii) Human rights (iii) Labour Practices (iv) The environment (v) Fair operating practices (vi) Consumer issues (vii) Community involvement and development.

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<sup>38</sup> Lars Moratis and TimoCochuis (2011), ISO 26000 The Business Guide to the new Standard on Social Responsibility, published by Greenleaf Publishing Limited

<sup>39</sup> ISO 26000 was issued on 1<sup>st</sup> November 2010.

<sup>40</sup> ISO/FDIS 26000:2010(E).Guidance on social responsibility. Final draft.

## **Conclusion**

International laws and national laws increasingly becomes power over the human rights concerns. The states continue their mandate to respect, protect, and fulfill human rights obligations for its over natural persons within its legal framework and jurisdiction. However, given the on going debate on non-state actor – ie business responsibility on human rights, especially when human rights abuse arised, there are more states which recognize the corporate liability on the subject matter under various national laws – such as civil law, criminal law, environmental law, labor law and other resources law. International human rights law, international criminal law with customary law principles on corporate liability for crimes increasingly influence on the juridication in favour of human rights abuses against corporations. In the meantime, the increasing power of international law and jurisdiction like ICC still require the state’s willingness and ability to maintain rule of law. Multi-national companies (MNCs) may not continue its super power if they are wrong doers. In the meantime, the development of other standards and voluntary code of conducts receive high attention and commitment on MNCs. More MNCs adopt standards to improve their corporate governance, CSR and reputation. So the existence of both regulatory and non-regulatory systems are becoming complimentary for improving CSR and its responsibility to respect human rights.

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Business and Human Rights: [www.business-humanrights.org](http://www.business-humanrights.org)

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