

Business and Human Rights, Poverty and Power: Bridging the Political Economy Gap

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Contemporary globalization has intensified trade and investment flows and made transnational corporations increasingly relevant to global development and governance. The field of business and human rights (BHR) emerged in this context, broadly relating to the application of human rights standards to business activity. International human rights law applies to states, but corporations have frequently demonstrated a capacity to cause serious human rights violations and to avoid accountability for these violations. Examples of mass fatalities caused by corporate actions include the leak at a Union Carbide plant in Bhopal, oil spills in the Niger Delta by Shell, the Mariana and Brumadinho mining dam disasters in Brazil and the collapse of the factory complex Rana Plaza in Bangladesh.

These events spurred the development of BHR, which can be understood as an interdisciplinary field of law, business ethics and practice, and global governance. The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN in 2011, represent the cornerstone document. The UNGPs are structured on three pillars: the state duty to protect human rights; the corporate responsibility to respect human rights; and victims' access to judicial and non-judicial remedies. The UNGPs restate pre-existing state human rights obligations and define a 'socially-binding' responsibility on corporations to 'do no harm' to individuals' human rights.

BHR arguments have led to some concrete gains, including to corporate accountability and to labour rights in supply chains. However, BHR is also part of a wider human rights movement that is frequently subject to critique. Human rights are alleged to marginalize economic and structural issues, with civil and political rights (e.g. to freedom from torture) taking prioritization over socio-economic rights (e.g. to food), and the focus on human rights violations, such as an act of killing, marginalizing attention away from structural causes and the realization of rights. Most incisively, the critique runs that human rights are a variant of liberal rule-of-law norms that obfuscate the role of 'economic tyranny' in social life.

Human rights standards applied to business could help create a more comprehensive version of human rights, given that businesses are economic actors and their actions shaped by economic rules. Or, BHR could attempt to entrench traditional human rights norms only within business, fixating on corporate acts of killing or speech violations, and defining 'respect' for human rights as not committing these civil and political violations. This may risk making egalitarian and structural concerns, from tax avoidance and lobbying to corporate power over labour, food, and housing markets, less visible. For those concerned with inequality and corporate power, BHR may be part of the problem.

These risks are real but can be overcome. Under the UNGPs, business enterprises should respect 'all internationally recognized rights', including socio-economic rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR; Principle 12), while states are obligated to enact a legal and policy structure that enables business respect for rights and does not incentivize harmful practices (Principle 3). Socio-economic rights include rights to food, healthcare, housing, decent work, education, and social protection. Businesses under the UNGPs should 'do no harm' to these rights, meaning to not deprive any individual of access to these rights. States that have ratified the ICESCR hold obligations to protect socio-economic rights from harm by third parties (including businesses) and to progressively realize universal, affordable, and adequate access to them.

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Human rights issues take many forms, of which the egregious violations and disasters, killing, torture, and war crimes, most dominate the public image. Another major set of issues are those that are more insidious than egregious, and these are particularly relevant to socio-economic rights, business, and business-related rules. Businesses operate in market environments, most notably the privatization and commodification of essential resources and services, that permit profit to be derived from reducing access to socio-economic rights, particularly to decent work and to housing. Corporations deplete the natural world and extract resource wealth from the Global South. Philip Alston, as UN Special Rapporteur on Extreme Poverty and Human Rights, described poverty in the UK as 'a political choice', nicely capturing how business and state interests merge at the expense of society.

According to human rights standards, a business should not be permitted to profit from reducing access to socio-economic rights. Such acts breach the UNGPs and failure to prevent such acts breach states' international legal duties. In practice, there is a continuous stream of examples of businesses, working within the law, profiting from such reductions. A key reason why is that such problems invoke complex political economy questions. For example, a housing market is the result of numerous constructs, from investment law to company law to tenancy protections and welfare law, and numerous actors, including homeowners, tenants, and private equity investors. If the outcome of this complex structure is rising homelessness and extensive housing-related poverty, both of which are human rights breaches, who is the violator and what is the remedy?

This is where BHR can play an important role in establishing a research agenda and promoting the importance of these standards. This approach involves research at 'the state-business nexus', broadly meaning the ways in which states facilitate business practices that create rights-regressive outcomes, and how both state and business human rights standards can be marshalled in defence of rights-holders.

This entails focus on specific issues within the political economy of rights-relevant markets. The destruction of the Amazon rainforest and concomitant harm to indigenous peoples and to nature is constituted through a nexus of politics, law, including international investment law, business practices and finance. As Amazon Watch detail, the rapid expansion of destructive practices is funded by primarily US-based investment firms, practiced by transnational corporations such as agribusiness giant Cargill, and facilitated by domestic and international law. There is clear evidence of human rights abuses in the Amazon, and clear evidence of both state and business breaches. The specific breaches of each actor can be mapped following the standards elaborated in various documents and brought to bear on all parties.

How corporations profit under market conditions that reduce access to socio-economic rights should become a fundamental part of BHR research. The rules in the UNGPs, as well as in the ICESCR, necessitate focus on the state's role in facilitating harmful practices as well as the corporate practices so facilitated. Private equity investments in housing and healthcare have been roundly denounced for their impact on access to housing and healthcare, yet there is still minimal attention paid to these issues within BHR. Private equity investors are adept at exploiting legal opportunities, including the separate legal entities principle in company law, strategic bankruptcies and 'asset partitioning' to avoid liability. The legal structure facilitates business practices that have deleterious effects on access to rights and social development more broadly. Such cases should become central components of BHR research.

While such cases do invoke complexities, the human rights standards are clear: where access to rights is regressing, the state duty is to prevent this, to change the legal incentives, to prohibit the practices, whatever might be best. This is an investigative duty first and foremost, to identify the cause of the problem and remedy that cause. This is not always the way that human rights are understood, but the rules exist. For corporations the same standards apply, if the outcome is one of harm to human rights, that practice must change. There is no distinction in the doctrines between making housing unaffordable for communities and violating freedom of speech. What there is, in the latter case, is greater clarity around exactly what the obligation entails and when it is breached. In our view, this relative lack of clarity has been exploited and exaggerated over time, a point well-made by critical approaches. This can be overcome to allow human rights to challenge inequality, poverty, and alienation today.

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