

The Adverse Human Rights Risks and Impacts of European Companies: Getting a glimpse of the picture



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Antwerp, October 2014

Acknowledgements

This study is the outcome of work undertaken by a number of staff members, interns and volunteers of IPIS. Whilst it is not possible to name all the individuals involved in this project, IPIS would like to extend its sincere gratitude to all those who contributed to this paper with their comments, time and initiative.

International Peace Information Service (IPIS) is an independent research institute, providing governmental and non-governmental actors with information and analysis to build sustainable peace and development in Sub-Saharan Africa. The research is centred around four programmes: Natural Resources, Business & Human Rights, Arms Trade & Security, and Conflict Mapping.

Executive Summary

This report presents the findings of a study undertaken by IPIS and commissioned by the European Coalition for Corporate Justice on the extent to which European companies are identified in concerns about adverse human rights risks and impacts. Gathering concerns raised regarding the human rights risks and impacts of companies listed on the UK's FTSE 100, France's CAC 40 and the German DAX 30, this study has found that over half of these companies have been identified in allegations or concerns regarding adverse human rights risks and impacts reported on between 2005 and early 2013. Many of these risks and impacts relate to operations outside the European Union, with the most severe often alleged to occur in countries in which rule of law and institutions are weak.

The risks and impacts identified in claims canvassed by this study indicate that the range of rights and impacts potentially affected by European companies is comparable to those identified by the then UN Special Representative on Business and Human Rights in his 2008 study. The study also highlights that human rights concerns raised often present sector specific trends. Thus for example, whilst the European extractives sector has raised particular issues surrounding security and human rights as well as the impact of environmental harm on rights enjoyment abroad, companies retailing or producing goods for consumption are often associated with adverse human rights risks or impacts, particularly around labour rights and sourcing, through business structures or relationships in their supply chains. These findings indicate a need to guarantee that human rights due diligence is carried out by companies, particularly as regards operations abroad, through mandatory regulation. This is necessary to ensure both that those engaging in responsible human rights practices benefit from a level playing field, and to drive human rights considerations beyond communications departments and into corporate management practices. Indeed, in some cases, this study has found allegations of concerning corporate practices regarding the management of human rights related information. Only the future will tell whether the new European legislation on the disclosure of non-financial information, which imposes reporting requirements on certain large companies, will truly provide all stakeholders with the information they need on human rights risks and impacts.

This report comes at a time when concerns about the human rights impacts of transnational businesses have led some states to call for a legally binding international instrument on business and human rights. Such calls have been met by assertions that the implementation of the UN Guiding Principles on Business and Human Rights remains in its infancy. It is hoped that this study may assist in devising a clearer picture of the work that lies ahead in implementing the UN Guiding Principles on Business and Human Rights effectively through the EU's corporate social responsibility agenda. Specifically, the report highlights the urgency of the need for the EU and its Member States to ensure that companies are effectively discharging their duty to put in place human rights due diligence, and address the obstacles to access to justice for victims of corporate abuse - an issue that has largely been ignored until now.

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Introduction

2011 was a milestone year for the advancement of standards regarding business and human rights. The United Nations Human Rights Council's endorsement of the UN Guiding Principles on Business and Human Rights finally marked the promulgation of standards explicitly addressing the adverse human rights impact of business activities that could be mutually agreed upon by both States and private actors. Whilst responses to the efficacy of the UN's approach have been mixed,¹ the Guiding Principles have nevertheless generated considerable momentum around managing human rights risks and addressing the adverse impacts of corporate activity at the international, regional and national levels, influencing the shape of change in Europe.

Understanding and implementing the Guiding Principles themselves will require the cooperation of all governments, as well as businesses and civil society. Indeed, their promulgation was only the first step in the long and challenging process of their actualisation. As one of the world's leading trading centres and host to some of the most globally powerful transnational corporations, the European Union (EU) has a key role to play in this process. Over the last ten years, the EU has sought to pioneer the promotion of Corporate Social Responsibility (CSR). It is under the auspices of this agenda that it seeks to contribute to the operationalization of the UN "Protect, Respect, Remedy" Framework for business and human rights.

To build a clearer picture of the work that lies ahead in implementing the UN Guiding Principles, the European Coalition for Corporate Justice commissioned IPIS to conduct research into the extent to which European companies are identified in concerns about adverse human rights risks and impacts. It is hoped that a quantitative assessment in this regard and some indication of the range of human rights issues raised with regard to companies listed in three powerful EU Members States (the UK, France and Germany), can help to better inform key actors in Europe's contribution to furthering the business and human rights agenda.

Indeed, it is hoped that this study might be used to inform discussion in developing policies and legislation to implement the UN Guiding Principles on Business and Human Rights.

Corporate Social Responsibility, Human Rights and the EU

In 2001, the European Commission (EC) published a Green Paper on Corporate Social Responsibility heralding the EU's first CSR policy. The EC anticipated that a strong policy in this regard could contribute to the EU's strategic goal of becoming "the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and a greater social cohesion"².

The last ten years, characterised as they have been by growing economic crisis and developments in the field of business and human rights, have seen the EC's approach to CSR change substantially. Whereas in 2001 the EC defined CSR as something "whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders *on a voluntary basis*",³ by 2011 that notion had evolved to denote "the *responsibility* of enterprises for their impacts on society."⁴ At a multi-stakeholder forum on CSR the Commission explicitly stated that "CSR must be based on respect for legislation and collective agreements. Public authorities should 'set policies and regulations necessary to [...] ensure corporate accountability. [They] should make use of a smart mix of voluntary and regulatory measures."⁵

This evolution in the EU's understanding of CSR reflects how this concept has moved beyond notions of corporate philanthropy to denote corporate responsibility and increased accountability. It mirrors progress made at the UN level, and is how references to 'CSR' are understood in this report.

The EU's implementation of the UN Framework started in 2010 with the EC's publication of a report on the existing legal framework governing the application of human rights and environmental standards to EU companies operating outside the European Union.⁶ This study indicated that the European legal framework already considerably contributes to the implementation of the UN Framework, though many legal gaps and incoherent policies persist.⁷

European Commission Vice-President, Antonio Tajani, welcomed the Human Rights Commission's adoption of the UN Guiding Principles, highlighting their importance as a key reference point for the EU's renewed CSR policy.⁸ That renewed strategy was outlined in a 2011 EU Communication on CSR, released in October of

UN mobilization on Business and Human Rights

In 2008 the United Nations Human Rights Council (HRC) unanimously adopted the UN "Protect, Respect and Remedy" Framework on business and human rights in its resolution 8/7. This Framework provided a long awaited authoritative focal point for international efforts on managing business impacts on human rights. It is founded on three pillars:

- The **State duty to protect against human rights abuses** by third parties, including businesses, through appropriate policies, regulation and adjudication;
- The **corporate responsibility to respect human rights**, which requires companies to undertake due diligence to avoid infringing upon the rights of others and address the adverse impacts of their business activities;
- The **need for greater access by victims to effective remedies**, both judicial and non-judicial.

With the 2011 HRC endorsement of the UN Guiding Principles on Business and Human Rights, a common global platform for the implementation of the UN "Protect, Respect and Remedy" Framework was established. Providing concrete and practical recommendations on the realization of each pillar of the Framework, the Guiding Principles have heralded the start of efforts to operationalise it at national, regional and international levels.

that year. The Communication indicated that companies have a responsibility to identify, prevent and mitigate the possible adverse impacts of their operations on society. Furthermore the EU was explicit in stating that companies should carry out risk-based due diligence and that it expects all European enterprises to meet their corporate responsibility to respect human rights, as defined in the UN Guiding Principles.⁹

As well as redefining CSR, the Commission's policy stipulated an action agenda containing Commission commitments, as well as recommendations for businesses, Member States and stakeholders, in moving the CSR agenda forward.¹⁰ Commitments were made in 8 areas, including notably:

Improving and tracking levels of trust in business – This priority has seen efforts to address green-washing, including public consultation and the presentation of an initial report on the application of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices encompassing corporate environmental claims.¹¹ It has also entailed efforts to gauge public views on the influence of companies on society, with a Eurobarometer survey finding that over one in four Europeans believe that the overall influence of companies on society in their own countries is negative (41%). This average encompassed 37% of UK citizens, 37% French citizens and 46% of German citizens.¹² The same survey also discovered that over 6 in 10 European citizens (62%) say that they do not feel sufficiently informed about what companies do with regard to socially responsible behaviour.¹³ Significantly, a previous survey had found that over eight in ten Europeans (81%) believe that companies have social and ethical responsibilities when investing in developing countries, with almost nine in ten (87%) agreeing that the EU should ensure that companies comply with social and ethical standards.¹⁴

Improving company disclosure of social and environmental issues – In June 2013 the European Parliament adopted new transparency rules for extractives and logging companies, requiring the disclosure of all payments over €100,000 to and from governments on a country basis.¹⁵ These rules were a compromise after heavy lobbying by industry and NGOs. Whilst criticised by some quarters,¹⁶ they are expected to aid anti-corruption efforts in these sectors. Disclosure is also being discussed in banking sector reform.

Recent reform on non-financial reporting marked another significant step towards enhancing transparency. Adopted by the European Parliament in April 2014 and the European Council in September, reforms to the EU's Accounting Directives will require "public interest entities" – most of them large companies (with over 500 employees) – to report annually on at least environmental, social and employee related matters, respect for human rights, anti-corruption and bribery.¹⁷ Reports must include a description of the policies pursued on these matters, including due diligence processes used to identify, prevent and mitigate risks, as well as policy outcomes, principle risks identified and how they are managed. This information should cover both the company's own operations and, where relevant and proportionate, its supply chains and business relationships. Where the company does not pursue policies on any matter stipulated in the rule it must explain why.¹⁸ The reform recognises that risks must be disclosed regardless of what a company considers to be relevant (i.e. material) to the interests of its shareholders – the predominant organising principle of the accounting law before the reform. This legislation represents a first step towards embedding the corporate responsibility to respect human rights and the environment, as expressed in the UN Guiding Principles and OECD Guidelines for Multinational Enterprises, into EU law. Nevertheless, NGOs have criticised the restricted scope of the directive, which excludes many of Europe's major transnational corporations. Moreover, lack of adequate provision for enforcement mechanisms and a failure to provide clear instructions as to the standard of reporting on risks and impacts throughout company operations are said to weaken the rule.¹⁹

Better aligning EU and global approaches to CSR – The Commission has committed to implementing the UN Guiding Principles, inviting Member States to develop national action plans to the same end by 2012. However, despite undertaking to report on EU priorities in implementing the Guiding Principles by 2012 (and annually thereafter), the Commission has still not produced its report. Moreover, of 28 Member States, only four have finalised their national action plans to date. The Commission has nevertheless tried to enhance the global applicability of standards among companies by publishing an introductory guide to human rights for small and medium-sized enterprises (SMEs), as well as sector specific human rights guidance for enterprises in the oil and gas, ICT and employment and recruitment industries.²⁰

Approach to this research

To date, there have been a limited number of studies regarding the extent to which companies are involved in adverse human rights risks and impacts. Numerous NGO reports describe cases in which companies have been implicated in such concerns across the globe, yet very few have endeavoured to enumerate them. There is no institutional system in place to scrutinise the impact of transnational corporations on human rights and the environment. As such, conflicts between companies and civil society are currently predominantly fought through the media and on the internet. Acting as a nucleus for information and interactions in this arena, the Business and Human Rights Resource Centre (BHRRC) has established itself as the key resource. The BHRRC updates its website hourly with news and reports about the positive and negative human rights and environmental impacts of companies worldwide.²¹ As the website contains tens of thousands of articles on the full range of business and human rights issues, it is impossible to grasp the potential adverse risks and impacts of corporate activities at a glance. Moreover, there are numerous reports and articles that the portal is unable to capture. Providing a digestible overview in a given country or region therefore requires some systematic collection of data.

The former United Nations Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, has carried out one such study. Based on a sample of 320 cases posted on the BHRRC website from February 2005 to December 2007, in 2008 the SRSG scoped preliminary patterns of alleged corporate-related human rights harms.

Another 2008 study illuminating the scope of corporate harms was carried out by ESCR-Net. In collaboration with 40 human rights and development organisations, ESCR-Net surveyed 159 cases from 66 countries, involving more than 250 companies operating in over 30 different industries.²² Both studies uncovered the same patterns of harm, concluding that business impacts on fundamental rights are not limited to certain regions, and occur in all sectors and affect all forms of rights.²³

As both studies were conducted in 2008 and are too general to discern conclusions regarding the activities of European companies, the ECCJ commissioned IPIS to conduct a quantitative study of European corporate involvement in claims about adverse human rights risks and impacts.

Methodology

Due to time and resource constraints in preparing the current report, quantitative analysis has focused on an assessment of companies based in three of Europe's most powerful countries: the UK, France and Germany.

Approaches to deciding which companies to analyse and how to define their nationality can differ between studies. For the purposes of *this* study the companies under scrutiny were those publically listed in the UK, France and Germany. The decision to focus on listed companies should not be taken to suggest that the operations of non-listed companies do not equally entail adverse human rights risks and impacts. For broader coverage and reflecting the scope of recent revisions to the EU's Accounting Directives, which covers certain "public interest entities" – a category that includes both some companies incorporated and listed in EU Member States *and* companies registered in third countries but listed on EU regulated markets – this research was not restricted to companies incorporated in Europe.²⁴ Nevertheless, most companies in the study were UK, French or German, in whole or in part.

The first stage of this research involved listing companies traded on the UK FTSE 100, the French CAC 40 and the German DAX 30. Following this, each company was traced on the BHRRC website's 'Individual Companies' section, as well as through the Business and Human Rights Documentation (B-HRD) Project²⁵ search facility to identify relevant human rights related claims made in respect of the company. Having identified companies subject to concerns about adverse human rights risks and impacts, further internet searches were undertaken to clarify the potential scope of claims in this regard.²⁶ Emphasis was placed on capturing claims about risks and impacts raised since 2005. Finally, the OECD Watch database and OECD list of Statements by National Contact Points was consulted to identify cases brought under

A Note on Allegations

In determining the extent to which companies have been identified in concerns about adverse human rights impacts and risks this research is heavily reliant on media and civil society coverage of corporate activities. The inability to guarantee the legal or factual veracity of impacts means that many concerns highlighted in this study are often referred to as allegations – a term adopted for its neutrality in this regard. This is because there is currently no single forum for determining the veracity of charges that a company has had an adverse human rights impact. This is particularly so where the victims of such impacts are in countries where human rights and the rule of law are fragile, and where access to justice is challenging. Many of the allegations identified in this report have been strenuously denied by the companies concerned. Some may since have been addressed. Whilst the report has sought not to include allegations that have since clearly been disproved or withdrawn, there may nevertheless be a risk that some such allegations are captured. It should be noted that the inclusion of an allegation in this report is not an adoption of the allegation itself but simply an identification that an allegation has been made.

In identifying concerns about adverse human rights risks and impacts, the methodology selected sources on the basis of credibility, subject matter and quality of analysis. It also sought to focus on allegations with a higher degree of specificity, rather than general reports implicating a whole sector.

This research aims solely to quantify cases where companies have been identified in human rights concerns. The parameters of this report and resource restrictions mean that it has not been possible to include all company responses to allegations or concerns raised in the report. Nevertheless, companies subject to allegations are often given an opportunity to comment either before a report/article is published or by the BHRRC. Readers are therefore encouraged to refer to the source documents, the BHRRC portal and to individual companies' own websites to ascertain company responses to concerns raised in the report and its annexes.

this complaints mechanism. Some limited identification of voluntary initiative membership was also undertaken.²⁷

In identifying claims regarding risks and impacts this study has been guided by the nexus between human rights and CSR issues identified by the European Commission in its 2011 communication. That communication highlights that CSR covers, at least, human rights issues, labour/employment practices, environmental matters, and bribery and corruption.²⁸ It recognises social and environmental responsibility through supply chains and disclosure of non-financial information as cross cutting issues, referring to the need for good tax governance, including transparency and fair tax competition. Thus, whilst covering for example, direct references to human and labour rights risks and impacts, this study also canvases claims regarding corruption and unethical tax dealings, which are recognised as adversely affecting a State's ability to protect and fulfil rights. Moreover, as environmental impacts can have significant implications for human rights enjoyment,²⁹ whilst environmental issues were not the principle focus of this study, some allegations involving environmental risks and impacts were also included where recognised as having human rights relevance.

The findings of this research are briefly outlined in this report. A list of source documents identifying concerns about specific human rights risks and impacts (by company) is contained in three country annexes to this report. The annexes provide a brief summary of the nature of the concerns raised and also a link to an original document referring to these concerns.

Principle limitations of this study

Under inclusion – This report in no way provides comprehensive coverage of all concerns or allegations made regarding listed companies. Aside from resource constraints, limitations in doing so include: (a) a heavy bias towards English language media by the research team; (b) searches were undertaken under the name by which companies are listed and therefore failed to capture most concerns or allegations relating to subsidiaries; (c) many allegations may never reach Western media because of either linguistic or geographical isolation, lack of media interest or presence, or lack of state tolerance towards dissent; and (d) limited resources mean that NGOs and journalists have a tendency to focus more on ‘big name’ companies than lesser known entities in investigations and reports.

Index changes – Index changes since this research originally began mean that whilst the research focused primarily on companies listed on the relevant indexes in the second quarter of 2013, some companies formerly ranking on these indexes were also covered by the research whilst some currently listed companies were not. This is accounted for in presenting the findings.

Country coverage – The quantity of companies and proportion of index constituents identified in this study cannot be used to draw national comparisons. This is principally because the three indexes studied varied greatly in the nature and quantity of their constituents. Many more UK listed companies were studied than French or German, and NGO reports tend to focus on the largest companies.

Positive human rights impacts – It is axiomatic that in focusing only on adverse human rights risks and impacts, this study does not cover the positive human rights impacts of companies. It cannot therefore be taken as providing the full picture of the human rights position of any of the companies identified. Indeed, there are companies who seek to meaningfully engage with their human rights responsibilities and can make strong and positive human rights contributions.

Accuracy - This study has sought not to include allegations that have been disproved or withdrawn subsequent to their being made. However, due to the wide temporal scope of the study, resource constraints, a delay between the research and publication, and difficulties in accessing such information, it is important to be aware of the risk that some such allegations may have been captured.

Concerns about Adverse Human Rights Risks and Impacts of European Companies



The EU is a major world trading power. Whilst its 28 Member States comprise only 7% of the world's population, the EU's trade with the rest of the world accounts for 20% of global exports and imports. Since 2007 the EU's economy has been the largest in the world, followed by the United States (2nd) and China (3rd).³⁰

The EU is also home to many powerful transnational corporations: a quarter of the 100 largest listed companies in the world are based in EU Member States.³¹ The UK is a home state for some of the largest corporate players with 11 of the world's biggest 100 companies, and 37 of its biggest 500 companies domiciled there. It is followed by France (5 and 24, respectively) and Germany (7 and 19, respectively).³²

What follows will provide some background to each index studied and an outline of findings in respect of each index.



United Kingdom

The United Kingdom has been a European Union member since 1973. It is the third largest economic power in Europe, after Germany and France, and ranks sixth globally. Services, particularly banking and insurance, account for by far the largest proportion of its GDP, whilst oil and gas production and the pharmaceutical industry also make major contributions to the UK economy. Six of the 100 largest companies in the world by revenue are UK domiciled.³³ Royal Dutch Shell and BP render the UK home to two of the ten most profitable companies in the world.

The FTSE 100

The UK's FTSE 100 Index represents the performance of the 100 biggest blue chip companies listed on the London Stock Exchange. All FTSE 100 companies must be designated UK nationals under the Ground Rules for the FTSE UK Index Series,³⁴ as well as meeting other criteria. Companies not incorporated in the UK can nevertheless be assigned UK nationality provided they publicly acknowledge adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code "as far as practicable".³⁵

The size and scale of FTSE 100 company operations make them an integral part of most stock market portfolios in offering stable investments that can weather stock market fluctuations whilst continuing to generate profit. The last few years have seen the FTSE 100 become increasingly concentrated, with three index sectors alone (consumer goods, oil and gas, and finance) making up half of the total index by market value.³⁶ Royal Dutch Shell and BP ranked second and sixth respectively in Fortune magazine's 2014 Global 500 list (measured by revenue).³⁷

In response to the UN Guiding Principles, the UK government launched an action plan for business and human rights in September 2013.³⁸ This was accompanied by amendments to the UK's Companies Act requiring large companies to report non-financial information, including disclosures on human rights

where such information is necessary for an understanding of the business.

Presentation of data

Table A presents the number of FTSE 100 companies identified by the research in claims about adverse human rights risks or impacts. Table A outlines these figures as a proportion of 84 companies listed on the index as at 1 October 2014. Due to changes in rankings since this study began fifteen companies currently on the index were not covered by the research.³⁹ Moreover, allegations or concerns about human rights risks and impacts were identified for ten other companies formerly listed on the index. Nine of these have since ceased to qualify for the FTSE 100⁴⁰ and one other merged with another FTSE 100 company in May 2013.⁴¹ These identifications have not been included in Table A.

For all tables in this report, the categorisation of companies into sectors is simply to illustrate the types of activity in which these companies are involved for the purposes of this study. It does not reflect any official grouping. Some companies may operate in more than one sector (for example, in both the oil and gas and the utilities sector). Here, companies are categorised by their principle activity. It is essential to note that the data presented in tables A to C cannot speak to the severity of risks and impacts within or between sectors, which varies. Nor can it be treated as indicative of efforts undertaken to avoid risks and impacts in any given sector. Some elaboration on the types of risks and impacts identified by sector is provided in the following section.

Table A: FTSE 100 companies identified in concerns about adverse human rights risks and impacts

| Sector | No. companies in sector | No. companies identified |
|-------------------------------|-------------------------|--------------------------|
| Mining, Oil & Gas | 12 | 11 |
| Utilities | 5 | 2 |
| Finance & Investment | 15 | 9 |
| Construction & Engineering | 7 | 1 |
| Consumer Goods ⁴² | 15 | 12 |
| Chemicals & Pharmaceutical | 4 | 3 |
| Aerospace, Defence & Security | 3 | 3 |
| Other | 23 | 2 |
| TOTAL | 84 | 43 |



France

France has the fifth largest economy in the world, ranking second in Europe, after Germany. Its economy is diversified across all sectors and the government has wholly or partially privatised many large companies. Twenty-six of the world's largest 500 companies are French and French companies have a particularly strong presence in the power, public transport and defence industries. France's biggest companies include Sanofi, Total, L'Oreal, LVMH, BNP Paribas, and EDF, all of whom are prominent in their respective fields.⁴³ France also derives a notable income from tourism.⁴⁴

The CAC 40

The CAC 40 reflects the performance of the shares of the 40 largest and most traded companies listed on the Euronext stock exchange in Paris. It is a benchmark index for portfolio management for funds investing in the French stock market. Although the CAC 40 is almost exclusively composed of French domiciled companies, the multinational reach of these companies, which are said to conduct over two thirds of their business and employ over two thirds of their workers abroad,⁴⁵ is said to make the CAC 40 the most popular European exchange for foreign investors, who own around 45% of its listed shares.⁴⁶ CAC 40 companies, Axa, BNP Paribas, Société Générale, GDF Suez and Total ranked in the top 50 of Fortune magazine's 2014 Global 500 list (by revenue).⁴⁷

The CAC 40 has an ethics code that applies to companies on the exchange. Moreover, the *Autorité des Marchés Financiers* has published recommendations for directors to prevent insider misconduct by executives.⁴⁸ Research conducted by Deloitte in 2011 found that of the 40 companies listed on the CAC 40 at that time, 38 undertook to respect human rights in their external communications, either making reference to one of the principle human rights instruments applicable to business at that time, or to sector-specific initiatives such as the Kimberly Process or the Equator Principles. However, only 22 companies at that time had formalized that undertaking through a charter or code of conduct and only 7 exhibited signs of a structured approach dedicated to ensuring respect for human rights.⁴⁹

Presentation of data

Table B presents the number of companies identified by the research in claims about adverse human rights risks or impacts. The figures are again provided as a comparison of the total companies operating in a given sector and covered by the research. Three companies currently listed on the index were not covered by the research.⁵⁰

Table B: CAC 40 companies identified in concerns about adverse human rights risks and impacts

| Sector | No. companies in sector | No. companies identified |
|-------------------------------|-------------------------|--------------------------|
| Steel, Oil & Gas | 3 | 3 |
| Utilities | 3 | 3 |
| Finance & Investment | 4 | 4 |
| Construction & Engineering | 5 | 5 |
| Consumer Goods ⁵¹ | 5 | 2 |
| Chemical & Pharmaceutical | 3 | 1 |
| Aerospace, Defence & Security | 2 | 2 |
| Automobile | 2 | 2 |
| Other | 10 | 2 |
| TOTAL | 37 | 24 |



Germany

Germany is the largest national economy in Europe and the fifth largest in the world. It is also the world's fourth largest exporter.⁵² Germany is the leading exporter of machinery, vehicles, chemicals and household equipment. Seven of the world's largest 100 companies and ten of the 100 most profitable in 2014 were German.⁵³ The automotive industry is the largest industry sector in Germany, generating around 20% of the country's total industry revenue in 2011, with key manufacturers including Volkswagen, Daimler and BMW. Other world renowned German brands include Siemens, Bayer, BASF, and Adidas.

The DAX 30

Germany's DAX 30 is a blue chip stock market index composed of the 30 major German companies trading on the Frankfurt Stock Exchange. The index is open to companies with juristic headquarters in Germany or companies with operating headquarters in Germany with a major share of their stock exchange turnover at the Frankfurt Stock Exchange and juristic headquarters in the European Union or a state of the European Free Trade Association.⁵⁴ Amongst other things, DAX listed companies must be listed on the Prime Standard Segment, which entails compliance with high transparency standards.⁵⁵ They must also make a declaration of compliance with the German Corporate Governance Code, on a 'comply or explain' basis.⁵⁶ The 30 stocks that compose the DAX are said to represent around 80% of the market capitalization listed in Germany. The companies listed on the DAX are also increasingly important to the global economy. DAX 30 companies, Allianz, Daimler, E.ON and Volkswagen ranked in the top 50 of Fortune magazine's 2014 Global 500 list.⁵⁷ In 2011 an Ernst & Young study indicated that 75% of sales for 28 of the 30 DAX listed companies at that time came from outside Germany, with international sales said to account for 95% of Adidas' total, and 91% of Linde's.⁵⁸

Presentation of data

Table C presents the number of companies identified by the research in claims about adverse human rights risks or impacts in a given sector. All presently listed companies were covered by the research.

Table C: DAX 30 companies identified in concerns about adverse human rights risks and impacts

| Sector | No. companies in sector | No. companies identified |
|------------------------------|-------------------------|--------------------------|
| Utilities | 2 | 2 |
| Finance & Investment | 5 | 4 |
| Construction | 1 | 1 |
| Consumer Goods ⁵⁹ | 3 | 1 |
| Chemical & Pharmaceutical | 9 | 7 |
| Automobile | 4 | 4 |
| Other | 6 | 4 |
| TOTAL | 30 | 23 |

Sector specific features of adverse human rights risks and impacts

This section will briefly outline some prevalent features of concerns raised regarding the adverse human rights risks and impacts of major FTSE 100, CAC 40 and DAX 30 companies (including some companies formerly listed on these exchanges). These are addressed within the context of eight broad sectors and some non-exhaustive examples are provided. The features highlighted herein reflect the specific concerns identified in respect of the companies studied in this research, sources for which can be found in the annexes A to C.

Natural Resource Sector

This sector encompasses companies operating predominantly in the oil and gas, energy, mining and steel production industries. Companies in this sector, particularly those engaged in extractive operations, appeared not only to be implicated in the largest number of adverse human rights risks and impacts, but also the most severe.

In the extractives sector, concerns about adverse human rights risks and impacts were often associated with environmental impacts and security arrangements in developing host States. Allegations ranged from complicity in war crimes, fuelling conflict and causing widespread and severe environmental damage, to corruption, aggressive tax practices, and the violation of labour standards regarding living wages and health and safety at work. Notable features of concerns included the following:

Concerns about and allegations of fuelling conflict or severe human rights abuse through security arrangements protecting or facilitating operations.

Examples

Both Rio Tinto and Shell have famously been subject to allegations of complicity in crimes against humanity (and for Rio Tinto war crimes and genocide) regarding severe human rights abuses perpetrated by security forces against communities affected by their operations in Papua New Guinea and Nigeria in the 1980s and 1990s, respectively. Concerns about the role of their activities in social conflicts in Indonesia (Rio Tinto/Freeport McMoRan joint-venture Grasberg Mine) and Nigeria (Shell) have also been expressed since 2007.⁶⁰

In 2009, Total was the subject of claims regarding risks and impacts concerning serious human rights abuses committed by Burmese security forces contracted to protect its operations in Burma, including forced labour, torture, extra-judicial killings and rape.⁶¹

In 2011, Essar Energy was allegedly implicated in funding armed groups in the Chhattisgarh region of India, including claims that the group played such groups off against each other to secure protection for its operations.⁶²

Lonmin's human rights due diligence in its dealings with South African security forces have been questioned after the shooting of dozens of miners during a strike at its operations in mid-2012.⁶³

Existing conflict and militarisation around Xstrata's Tampakan mine in the Phillipines has also seen concerns raised about adverse human rights impacts with claims that the project has observably contributed to the polarisation of communities, fuelling conflict potential and the use of violence.⁶⁵

Concerns and allegations regarding environmental damage having adverse human rights impacts, particularly on health and livelihoods.

Examples

The scope of companies and countries identified as engaging these risks is broad. Alleged impacts can include harm to health and livelihoods through air pollution, ground water and soil

contamination, and fish and cattle poisoning, as well as water depletion, deforestation and mining induced flooding that affects local communities. This can be the result of industrial processes, tailings storage, spills, and, more generally, inadequate environmental precaution or clear up.

Companies identified in claims about such risks and impacts include Anglo American in Colombia, Zimbabwe, Ghana and South Africa;⁶⁶ Antofagasta's Los Pelambres mine in Chile;⁶⁷ Arcelormittal in Bosnia, South Africa and the US;⁶⁸ BG Group's involvement in the Karachaganak consortium in Kazakhstan;⁶⁹ BHP Billiton in Kalimantan, Colombia, Papua New Guinea, South Africa and Peru;⁷⁰ BP's involvement in the OCENSA pipeline in Columbia, contamination from the Deep Water Horizon spill and gas flaring in the US;⁷¹ Glencore in the DRC and Zambia;⁷² Rio Tinto in Papua New Guinea, the US and Namibia;⁷³ Vedanta in India;⁷⁴ Shell in Nigeria, Russia, Argentina and the Philippines;⁷⁵ Total in Nigeria;⁷⁶ and Xstrata (now Glencore) in Peru and Australia.⁷⁷

Allegations of failure to provide information concerning impacts of operations, particularly their impact on the environment and harm to health, water and food.

Examples

Allegations regarding failures, and in some cases refusals, to disclose information about spills or environmental contamination have been directed at Shell in Nigeria, BHP Billiton in Australia and Peru, and ArcelorMittal at facilities in South Africa, Ukraine and Kazakhstan. Failures to provide such information can leave communities uncertain about the levels of risk to which they are exposed and whether remediation is adequate.

Concerns and allegations regarding adverse impacts on indigenous people's rights, including dispossession of lands or impacts on livelihoods.

Examples

Mongolian herder households allege that the environmental impacts of Rio Tinto's Ok Tedi mine is destroying their traditional lifestyle and causing herd losses, whilst concerns have been raised about conflict with indigenous groups at Xstrata's Tampakan Project in the Philippines.⁷⁸ Moreover, GDF Suez's involvement with Brazil's Jirau hydro-electric dam has seen it associated with alleged violations of indigenous peoples' rights to free, prior and informed consent,⁷⁹ whilst in India Vedanta stands accused of threatening the survival of the DongriaKongh tribe with its plans for mining and refinery expansion, occasioning forced evictions and resettlements, amongst other things.⁸⁰

Concerns and allegations regarding direct and indirect involvement in corruption.

Examples

Concerns about corruption have been raised in respect of dealings on the part of ENRC in the DRC⁸¹ and Kazakhmys in Kazakhstan.⁸² Technip personnel have been convicted for engaging in bribery in Nigeria,⁸³ and Total and its personnel have found themselves the subject of investigations concerning alleged corrupt practices in Iran, Iraq and Italy.⁸⁴ Total is also alleged to have contributed to high level corruption by operating in pre-reform Burma, and ArcelorMittal has seen questions raised about its role regarding the mismanagement of its Social Development Fund in Liberia, as well as claims that its donation of 100 trucks to the country may have breached the combatting bribery provisions of the OECD Guidelines for Multinational Enterprises.⁸⁵

Concerns about or allegations regarding the negotiation of legal frameworks that undermine human rights, including reduced environmental protections or exploitative tax and production sharing agreements.

Examples

BG Group in Kazakhstan, BHP Billiton in Australia, Borneo and South Africa, and ArcelorMittal in Orissa, India, are among companies accused of lobbying for reduced environmental protections. Meanwhile, concerns have been expressed about the terms of Total's production sharing arrangements with Madagascar, which in 2010 was reported to see the country receive only 4%

of oil revenues.⁸⁶ The negotiation of stabilization clauses has been particularly criticized for their impact in locking developing countries with poor environmental and human rights protections into such protections. Tullow is one of many companies that has come under scrutiny in this regard, for example, in relation to its negotiations with Ghana, the DRC and Uganda.⁸⁷

Concerns and allegations regarding labour rights issues, particularly concerning health and safety.

Examples

Carrejon coal mine in Colombia has implicated Anglo American, BHP Billiton and Xstrata (now part of Glencore) in allegations regarding poor health and safety conditions affecting miners' health. Evraz in Russia, Glencore in the DRC and Zambia and ArcelorMittal in Kazakhstan and Romania have also been subject to complaints regarding safe working conditions and labour rights.⁸⁸

Finance

The finance sector has been taken to include companies engaged in insurance, investment, banking, finance, and fund management. The types of allegations in which companies in this sector were identified were less direct than the natural resource sector but were also amongst the most broad and serious, often because they related to the provision of funding or services to companies engaged in activities said to occasion a broad range of harms. Thus, for example, despite their membership of the Equator Principles, a number of banks were among institutions claimed to support (fund or provide services to) projects or companies alleged to occasion significant environmental damage, interfere with indigenous people's rights, undermine weapons prohibitions, or work with oppressive regimes.

Examples

Concerns or allegations regarding support to companies or projects said to be extremely environmentally damaging have been directed at financial engagement with projects involving tar sands extraction (RBS), largescale deforestation (Barclays, HSBC, RBS, Standard Chartered) or other widespread environmental damage (Axa, Deutsche Bank, Societe Generale, BNP Paribas and Credit Agricole).⁸⁹

Concerns or allegations regarding support to companies said to violate indigenous people's rights have been directed at Prudential investment in Vedanta, RBS funding of Vedanta and Canadian tar sands extraction, BNP Paribas involvement in the Nam Theun dam, Societe General funding of the Camisea natural Gas Project, NamTheun, Vedanta and Sakhalin 2; Credit Agricole financing for Nam Theun 2, and Axa financing of Vedanta.⁹⁰

Allegations regarding investment in or the provision of financial services to activities undermining weapons prohibitions have included a 2012 report alleging the provision of financial services to companies involved in cluster munitions production on the part of Barclays, Royal Bank of Scotland, Prudential, Axa, BNP Paribas, Allianz, Commerzbank and Deutsche Bank.⁹¹

Concerns or allegations regarding investments in companies working with oppressive regimes have encompassed claims in respect of Old Mutual's investment in diamond mining in Zimbabwe, Axa funding of Total (operating in pre-reform Burma), BNP Paribas' stake in PetroChina and Lundin Petroleum (operating in Sudan); and Credit Agricole financing for Sinopec (then accused of collaborating with the pre-reform Burmese regime).⁹²

Concerns and allegations regarding investments in companies accused of land grabbing have also been raised.⁹³

Concerns or allegations regarding support for authoritarian and oppressive States have formerly been directed at Lloyds' provision of loans to the Argentinean Junta in the 1980s, and the purchase of Belarusian and Zimbabwean bonds by RBS and Barclays respectively.⁹⁴

Another notable feature of human rights related concerns regarding the actions of financial institutions are concerns about the role of financial activities in corruption. The intimate connection between corruption and human rights has been emphasised by both the UN and civil society organisations.⁹⁵ Financial institutions have been both directly and indirectly implicated in corruption.

Examples

Since 2009, five UK FTSE listed banks have been implicated in money laundering scandals in the US resulting in record fines of US\$1.9 billion, US\$298 million, US\$350 million, US\$340 million and US\$100 million for HSBC, Barclays, Lloyds, Standard Chartered and RBS, respectively.⁹⁶ HSBC, Barclays, Lloyds and Standard Chartered are claimed to have engaged in deliberate wire stripping, with HSBC accused of actively circumventing US safeguards and thereby facilitating money transfer by drugs cartels, terrorist groups and rogue regimes.

Banks have also been accused of facilitating corruption by failing to conduct adequate due diligence in respect of politically exposed persons. For example, HSBC, Barclays and RBS are alleged to have facilitated corruption in Nigeria by seemingly failing to conduct proper due diligence into the beneficial ownership of accounts of high profile Nigerian officials, despite indications of serious corruption risk.⁹⁷ Concerns have been raised about the reliance of Barclays and HSBC on banking secrecy laws and the potential for such laws to frustrate investigations into corruption and impede internal due diligence.⁹⁸ Deutsche Bank has also been identified in concerns about corruption in Turkmenistan for acting as a banker to the Turkmen government, whilst Commerzbank has been the subject of concerns about the risk of enabling corruption by providing loans to an opaque Angolan State-owned oil company.⁹⁹

The impact of financial markets on human rights is felt globally, and where those impacts are detrimental the most vulnerable are invariably hit the hardest. Food speculation has been a particular subject of focus due to its potential for inflating global food prices. Moreover, the human rights links between financial market activities such as collateral debt obligations and other high-risk derivatives trading is also starting to attract attention.

Examples

Deutsche Bank has been the subject of criticism regarding its activities on the financial markets, particularly in the US, where it is said to have been one of the key traders in collateral debt obligations, a major driver of the housing credit bubble.¹⁰⁰ In addition to claims about its role in causing this bubble, Deutsche Bank is also alleged to have contributed to its collapse by betting against mortgages. It is also alleged to have engaged in unlawful evictions of those subsequently struggling to pay off their homes.

Companies identified in concerns about human rights risks associated with food speculation include HSBC, RBS, Lloyds, Societe Generale, Credite Agricole, BNP Paribas, Axa, Munich RE and Commerzbank, with Deutsche Bank, Allianz, and Barclays being most active in such commodities.¹⁰¹

Consumer

This sector has been taken to include companies operating in the following industries: food and beverage, retail, consumer goods, supermarkets and fashion/clothing. The human rights issue receiving the most attention in this sector is that of labour rights. A number of labour rights issues have been raised in the context of the operations of company subsidiaries as regards treatment of the companies own staff.¹⁰² However, increasingly, concerns are being raised about the human rights risks and impacts of companies with regard to labour rights abuses that occur further down the supply chain for agricultural, manufactured and garment products. Here, labour rights violations can occur through suppliers, sub-contractors or through other business relationships.

Examples

Labour rights violations such as poor health and safety conditions, a failure to pay living or at least minimum wages and interference with workers' ability to organise have been documented in numerous textiles suppliers in South East Asia and South America, including in India, Bangladesh, Sri Lanka, the Philippines, Indonesia, China, Thailand and El Salvador. Companies identified in concerns regarding such supply chain issues between 2006 and 2013 include Tesco, Next, Marks & Spencer, Carrefour, Associated British Foods (Primark), and Adidas.¹⁰³

Labour rights supply chain issues are often identified as particularly affecting women workers. Thus, for example, discriminatory impacts have been highlighted in respect of the Sumangali scheme in India, flower picking in Kenya and Colombia, and fruit picking in South Africa.¹⁰⁴

Other supply chain issues raised include concerns about the adverse human rights impacts of suppliers engaged in land grabbing and deforestation. Such issues have, for example, been raised in relation to suppliers of Tate & Lyle, Unilever and Adidas (Reebok).¹⁰⁵

Being closer to consumers, this sector is one in which there appears to be some notable mobilisation at industry level to tackle supply chain issues, with numerous industry initiatives in this regard. Indeed, resolving such issues has proved to be challenging.¹⁰⁶ Nevertheless, concerns have also been expressed that many European companies in the consumer goods sector engage in activities that undermine the efforts of ethical trading programmes. Thus, for example, supermarkets have been accused of engaging in deleterious purchasing practices that transfer risks to workers in a bid to lower consumer costs.¹⁰⁷

Other

Construction: This sector has been taken to include companies involved in the manufacture and supply of building materials, consultancy, and engineering. Prevalent features of concerns about adverse human rights impacts include concerns about these companies' engagement in projects that occasion widespread environmental and human rights impacts, such as large-scale infrastructural projects.¹⁰⁸ Concerns are also expressed about their engagement in projects that support oppressive regimes, which can be seen to implicate these companies in risks related to violations of international humanitarian and criminal law.¹⁰⁹ Corruption too was a feature of allegations regarding this sector.¹¹⁰

Pharmaceutical: Concerns expressed about pharmaceutical companies naturally related to their role and impact on the right to the highest attainable standard of health. Guidance on the role of pharmaceutical companies with regard to the right to health was issued by the UN Special Rapporteur on the Right to Health in the *Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines*.¹¹¹ Prevalent features of concerns about listed companies have related to the circumstances in which clinical trials are conducted, particularly where there are allegations of lack of consent;¹¹² the over aggressive promotion of drugs that risks undermining appropriate health care, including suppression of information;¹¹³ and the inflation of drug pricing and seeking to prevent generics entering the market.¹¹⁴

Security: The security sector has been taken to include both companies engaged in the defence sector and companies engaged in security related outsourcing. Such security outsourcing is becoming increasingly prevalent in the public sector, where the adverse human rights impacts of poor service delivery by contractors may be seen to engage the international responsibility of the outsourcing State for violations of international human rights obligations.¹¹⁵ Adverse human rights impacts have been highlighted in the outsourcing of juvenile and immigration detention services to UK contractors in the UK and Australia.¹¹⁶ Moreover, where private security companies provide services in conflict areas they have also been linked to violations of international humanitarian law.¹¹⁷ Concerns raised about companies more traditionally associated with the defence sector, like arms companies, include corruption¹¹⁸ and the supply of arms or military equipment to oppressive/ human rights violating regimes.¹¹⁹

Automobile: Aside from environmental concerns, among the most prevalent features of allegations about adverse human rights risks and impacts in the automotive sector were labour rights issues¹²⁰ and supply chain issues concerning the sourcing of production materials such as metals and leather.¹²¹

Information and Communications Technology: Notable concerns regarding adverse human rights impacts relating to companies in this sector included corruption and a focus on ICT company operations in oppressive states where such technologies are used to stifle dissidence, including by identifying and locating political dissidents who are subsequently targeted for human rights abuses such as torture.¹²² Thus, for example, whilst concerns have been expressed regarding France Telecom's involvement in helping the authoritarian Ethiopian government to implement general surveillance technology, Siemens has been heavily criticised for its provision and maintenance of surveillance equipment for Bahrain and Iran, where such equipment is said to have been used to facilitate serious abuses against political opponents.¹²³

Final observations

In identifying human rights risks and impacts as they pertain to companies listed in the UK, France and Germany this study's findings confirm that the general trends identified by John Ruggie in his own analysis of corporate impacts worldwide are equally visible in concerns about the operations of European companies.¹²⁴ The range of human rights potentially affected by European companies is broad. Whilst risks and impacts can exhibit sector specific trends, this research highlights that many of the gravest risks and impacts occur outside Europe through sub-contractors, subsidiaries or business relationships. Here, some observations might be made about the application of due diligence, the use of voluntary initiatives, the disclosure of information on human rights impacts, and access to justice.

Due diligence

Just as Ruggie's own study provided a foundation for the development of the due diligence components of the UN Guiding Principles, this study supports the centrality of human rights due diligence to managing human rights risks and impacts. In particular, it reinforces the need for due diligence where companies operate in countries where human rights enjoyment remains a work in progress. In this regard, it underlines the Commission's appeal to large companies to carry out risk-based due diligence to "identify, prevent and mitigate their possible adverse impacts".¹²⁵

Here, a word might be said about the scope of such due diligence over company operations. A number of the companies in this report form part of complex global supply chains. These supply chains are made up of different legal entities, often in diverse legal jurisdictions, with differing legal relationships with the company in question. Some may be subsidiaries, parent companies or members of the same corporate group, whilst others may simply have contractual business relations with the company. Human rights impacts can be affected through any of these relations. In stating that "[corporations'] responsibilities include due diligence to identify, prevent, mitigate, and account for how they address their adverse impacts on human rights",¹²⁶ Ruggie has highlighted that due diligence must be applied not only to the actual and potential impacts arising from a company's own activities but also to those arising from relationships with third parties. Here, "[i]n the case of multinational corporations the 'enterprise' is understood to include the entire corporate group, however it is structured. And business relationships are understood to include business partners, other entities in the enterprise's value chain, and any other non-state or state entity directly linked to its business."¹²⁷ The Office of the High Commissioner for Human Rights has emphasised that such a management process needs to be on-going and undertaken in light of the operating circumstances of the company.¹²⁸

The EU has a crucial role to play in ensuring that in undertaking due diligence to fulfil their human rights responsibilities, companies are able to do so with the benefit of a level playing field. Indeed, the European Commission has recognised the need, identified by Ruggie, for a smart mix of voluntary and regulatory measures to ensure corporate respect for human rights. Such a smart mix renders the first and second pillars of the UN Framework mutually reinforcing, providing it with a much needed cohesion. Given the centrality of due diligence to managing the numerous and sometimes severe human rights risks identified in this study, the need for regulatory tools to embed the concept and practice of due diligence into corporate activities seems compelling, particularly where those activities are international in scope. That mandatory due diligence provides an essential link between the state duty to protect (first pillar) and the corporate responsibility to respect (second pillar), is already recognised in a number of states. Research conducted in 2012 by experts in international law and policy has shown that states all over the globe already make use of due diligence regulations to ensure that businesses respect established standards.¹²⁹ The findings of that research indicate that states have applied due diligence approaches in areas of law that are either analogous to or directly relevant to human rights, such as labour rights, environmental protection, consumer protection and anti-corruption, with some having done so for some time already.

Moreover, due diligence further links the first and second pillars of the guiding principles to the, as yet little discussed, need to ensure victims of corporate harm access to effective remedies. Here, the

conduct of due diligence can provide a gauge for both the appropriateness of lifting the corporate veil between parent company and subsidiary (a key obstacle to justice for victims of corporate harm) and determination of the existence or degree of liability.

As stated above, this study indicates that the most egregious human rights risks and impacts relate to situations outside the EU, in countries where poverty and corruption pervade and adherence to the rule of law remains fragile. Where some companies can operate in disregard of their human rights impacts or exploit factors at the root of human rights vulnerability, the efforts made by those responsible entities seeking to engage with their human rights responsibilities are seriously undermined, as can be the efforts of agencies seeking to bring about conditions for sustainable development through good governance. The EU's democratic mandate for ensuring that companies operating in such contexts, or forming part of complex global supply chains, respect social and ethical standards has been affirmed by a sizable 87% of European citizenry. Requiring mandatory due diligence to ensure at least the identification and management of adverse risks forms an important part of ensuring such compliance. In further understanding the EU's role in this regard, reference might also be made to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. These principles flesh out the role of states in ensuring human rights enjoyment beyond their own borders, and have been promulgated by international law experts, including current and former UN Special Rapporteurs and members of international and regional human rights bodies, following over a decade of legal research.¹³⁰

Voluntary Initiatives

The last decade has seen a proliferation of voluntary initiatives and codes of conduct for sustainability and human rights. This has been both a response to and stimulator of increased global awareness of corporate responsibility. However, it is also felt to have created what has been described as 'confusion, clutter and chaos' regarding corporate ethics, raising concerns about the effectiveness, motives, credibility and transparency of many initiatives.¹³¹

One of the leading voluntary initiatives addressing corporate human rights issues, amongst others, is the UN Global Compact. A brief canvass of UN Global Compact participation for each company identified in human rights-related concerns or allegations raised between 2005 and 2013, shows that of 43 current FTSE 100 companies identified, 22 are UN Global Compact members; of 24 CAC 40 companies 22 are members and of 23 DAX 30 companies, 19 are members.

Whilst voluntary standards can provide the flexibility required to meet the needs and circumstances of a plurality of parties, this study suggests that further independent empirical research is also needed to discern the true role of such voluntary initiatives (both positive and negative) in securing human rights compliance in real terms. For example, of the 11 current FTSE100 mining, oil and gas companies identified in allegations regarding adverse human rights impacts, eight are UN Global Compact participants. Of these, companies such as BP, Shell and Rio Tinto in respect of whom some of the most serious human rights allegations have been made over the last decade, joined in 2000. France's Total joined in 2002 and controversial miners, BHP Billiton and Xstrata (now Glencore) signed up in 2003 and 2006, respectively.

In the finance sector too, further clarification could be provided about the interpretation of voluntary initiatives such as the Equator Principles and the Principles for Responsible Investment. Of the four CAC 40 companies operating in the finance sector and identified in human rights concerns all but one were signed up to at least one investment related voluntary initiative. All but one of the UK's 9 FSTE100 finance related companies have also signed up to such an initiative. Despite this, a number of these institutions are alleged to be involved, to greater or lesser degrees, with companies or projects that are the subject of significant human rights controversy.

Failures to respond to concerns expressed by civil society about adverse human rights impacts effectively and transparently by reference to the detail of such standards risks undermining public confidence in these initiatives. Indeed, if these initiatives are to form an effective component of the EU's CSR agenda and tackle the issues currently being raised about corporate green/human rights wash then clarification about their impact on European companies may be required. This might include outlining the extent of

their implementation on a general and project level, the interpretation of what such standards require in a given context in practice, internal systems for monitoring and the outcomes of such monitoring, in what conditions stakeholders are engaged, how challenges have been overcome and the extent to which such initiatives evolve to meet changing demand. Initiatives with a higher degree of specificity such as the UN Guiding Principles may be of greater utility in this regard.

Disclosure of information on human rights impacts

Several international standards call on companies to disclose information needed for stakeholders to understand business impacts on human rights and the environment.¹³² The UN Guiding Principles highlight that:

“The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.”¹³³

Users of such information include stakeholders such as “employees, local communities, special interest groups, governments and society at large”,¹³⁴ as well as shareholders and the financial community. This is because such information is crucial not only to determining a company’s level of risk and reputational standing, but also to providing some clarity/certainty to those affected by a company’s activities, to aid other companies to conduct their own human rights due diligence enquiries and to help governments and society at large determine the health of the business sector’s interaction with society.

This research touched upon the numerous difficulties faced by these stakeholders in trying to obtain concrete information on the human rights risks and impacts of European listed companies. Firstly, whilst the BHRRC acts as an invaluable portal for the collection of such data, a large number of allegations and concerns expressed about risks and impacts were not posted on the portal. Secondly, as, to date, civil society has played the principle role in identifying and monitoring corporate human rights risks and impacts, its limited resources have meant more of a focus on big name companies than less high profile companies. Thirdly, whilst the portal provides specific pages for updates on certain human rights controversies surrounding particular companies, in a number of cases it could prove difficult or impossible to discern outcomes or follow up regarding concrete human rights concerns raised. This created uncertainty over whether issues were on-going or historical and the extent to which companies were engaged in managing risks in the specific localities in which they had been identified. Indeed, whilst the BHRRC offers companies an opportunity to respond to allegations or concerns raised, in numerous cases, companies do not do so or do not do so in detail.

Moreover, even where companies provide relatively extensive information on internal management strategies that help them to manage certain human rights-related issues, such reports do not address specific instances of human rights concerns raised. For example, whilst Bayer’s Human Rights Position refers interested parties to its Sustainable Development Report for “detailed information about our commitment to commercially successful and at the same time responsible and sustainable corporate management”, as well as “up-to-date information ... on our activities to support human rights in our sphere of influence”,¹³⁵ this document does not refer to specific instances of human rights related concerns raised in respect of the company’s operations. Moreover, research for this report suggested that there may be a potential disparity between how human rights risks and impacts are interpreted and identified by civil society groups and how they are identified as relevant by a given company.

Where no clear standards are imposed for human rights reporting, investors, shareholders, consumers, stakeholders and society will continue to be unclear about the prevailing human rights risks associated with a given company. This can breed cynicism and distrust of corporate communications in general, such as that evidenced in the recent Eurobarometer surveys referred to earlier in this report regarding the perception of corporate influence at home and abroad.¹³⁶ Indeed, the OECD Guidelines for Multinational Enterprises recognise that “[t]o improve public understanding of enterprises and their interaction with

society and the environment, enterprises should be transparent in their operations and responsive to the public's increasingly sophisticated demands for information."

Most significantly perhaps, the present research touched upon some extremely concerning allegations regarding the corporate management of information about human rights risks and impacts in specific instances. In a number of cases, these instances manifested serious potential harm for those affected.

Examples of concerns about corporate treatment of human rights-related information

Total is alleged to have made misleading and false statements about the human rights risks of its Burma operations;¹³⁷ Vedanta is alleged to have tried to interfere with OECD follow up reporting on human rights impacts in India;¹³⁸ Tesco and EDF have both been accused of raising strategic lawsuits against public participation;¹³⁹ GSK was alleged to have intimidated a doctor voicing concerns over the health risks posed by one of its drugs, whilst Imperial Tobacco has been accused of destroying documents concerning the health risks of smoking;¹⁴⁰ Shell, Vedanta, BHP Billiton and ArcelorMittal are among a number of resource companies accused of failing to disclose information regarding the environmental impacts of their operations;¹⁴¹ and Rolls Royce is claimed to have denied its involvement in Sudan until pressed by an NGO investigation and media attention.¹⁴²

Given the centrality of information provision to managing human rights risks and the significance of information to business interests, an approach to reporting that fails to set standards may well fail to guarantee interested parties an accurate picture of the risks or actual impacts that a company's operations involve. This may fail to adequately support effective human rights due diligence.

Indeed, the above findings indicate compelling grounds for the development of reporting standards to specify a criteria for determining "principle risks" as envisaged in the EU's new non-financial reporting provisions, as well as the explicit inclusion of ongoing incidents and impacts in reporting, and clarification of what is to be deemed "relevant and proportionate" for the purposes of supply chain disclosures. The findings also indicate that there may well be a need for the imposition of more rigorous auditing requirements, such as independent assurance, in the implementation of the non-financial reporting directive by Member States. Moreover, given the fact that for some enterprises greater openness and transparency would require a big cultural shift, the implementation, monitoring and enforcement of the new directive by Member States may need to ensure that the directive's "safe harbor clause" – whereby companies may exceptionally hold back information relating to impending developments or matters in the course of negotiation that would be seriously prejudicial to commercial interests – is tightly circumscribed to prevent abuse.

Access to Remedies

The EU has not yet tabled activities that engage with access to remedies for victims of human rights harms occasioned by corporate activity. In 2013 a legal study was developed by a team of experts to identify the principle obstacles to remedies and provide recommendations for legal and policy reforms. This study was released in December 2013.¹⁴³ The present study highlights that the most severe human rights impacts are often experienced outside the EU by individuals and communities in countries where remedies may be difficult to obtain. This raises questions about the role of the EU and its Member States in aiding victims to access remedies where harms are occasioned by powerful European companies, whose revenue might exceed the GDP of some of the countries in which they operate. Indeed, access to remedies (third pillar) is an integral part of the UN Respect, Protect, Remedy Framework and ensuring the efficacy of this framework will require its implementation. It may also require greater recognition of the role of European states in ensuring access to remedies for those harmed by the actions of companies incorporated within their territory and operating in contexts where the rule of law and institutions are weak.

Concluding Remarks

In 2011, EC Vice-President Tajani expressed optimism about the road ahead, stating in response to the endorsement of the UN Guiding Principles that “many European enterprises are world leaders when it comes to human rights”.¹⁴⁴ At that time, this claim was accompanied by the assertion that of companies listed as having explicit reference to human rights in their corporate policies on the Business and Human Rights Resource Centre website, half were European.¹⁴⁵ In finding that over half of those companies listed on major UK, German and French indexes have been associated with concerns about adverse human rights risks and impacts since 2005, this study indicates the need for caution in making such claims. Indeed, some claims regarding adverse human rights impacts identified in this research indicate that claiming adherence to voluntary standards and expressing human rights commitments on paper has not always translated into corporate commitment to respect human rights in practice. Just as the last 60 years has seen various States ratify human rights treaties whilst exhibiting little political will to implement them, companies can likewise be quick to assert their commitment to human rights, yet resist civil society and political bodies’ attempts to establish monitoring and implementation systems to secure their actualisation.

The process for renewing the EU’s Corporate Social Responsibility strategy has already begun. This represents an opportunity for reflection. Having identified some of the more specific human rights concerns and allegations pertaining to companies listed in three of Europe’s major powers it is hoped that this study might contribute to informed discussion on the appropriate regulation of business and human rights at the European level. Indeed, as outlined in the methodology of this report the risks and impacts referred to herein represent only a snapshot of the most readily accessible concerns and allegations regarding such and impacts raised in respect of the few companies canvassed – many of whom receive particular civil society attention in respect of human rights issues. As such, the concerns presented here may represent only a glimpse of the true landscape of adverse human rights risks and impacts.

Endnotes

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- ⁶ CSR reports published by the European Commission are available from the Directorate-General Enterprise and Industry, 'Sustainable and responsible business: Business and human rights' page at: http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm.
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- ⁹ European Commission, *A renewed EU strategy 2011-14 for Corporate Social Responsibility*, n.8, section 4.8, para.D, p.14.
- ¹⁰ *Ibid*, pp. 8-15
- ¹¹ Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending the Unfair Commercial Practices Directive, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, 14 March 2013, COM(2013) 139 final. Available at: http://ec.europa.eu/justice/consumer-marketing/files/ucpd_report_en.pdf.
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- ²³ Ibid, p.6
- ²⁴ Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups, p.6. In the UK, recent criticisms of foreign-based companies listing in London, prompted former director-general of the CBI, Sir Richard Lambert, to remark: "It never occurred to those of us who helped to launch the FTSE 100 index 27 years ago that one day it would be providing a cloak of respectability for companies to challenge the canons of corporate governance." See "Mining: The darker side of the London market", The Independent, 17 October 2012, available at: <http://www.independent.co.uk/news/business/analysis-and-features/mining-the-darker-side-of-the-london-market-8213987.html>.
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- ²⁶ Sector, region or issue specific NGO sites were canvassed such as those belonging to the London Mining Network, Mine and Communities, Platform, Labour Behind the Label, War on Want, Action Aid, Amnesty International, Human Rights Watch, Oxfam International, Greenpeace International, Friends of the Earth, Sherpa, SOMO etc.
- ²⁷ Due to time constraints the only voluntary initiatives canvassed were: the UN Global Compact, the Equator Principles, the Principles for Responsible Investment and the Ethical Trading Initiative.
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- ³³ Fortune Global 500, available at: <http://fortune.com/global500/gdf-suez-44/>.
- ³⁴ See section 4.4.1, Ground Rules for the FTSE UK Index Series, version 12, 1 September 2014, available at: http://www.ftse.com/products/downloads/FTSE_UK_Index_Series.pdf. A number of companies on the index are dual nationals. This is particularly the case for companies from the natural resource sector (including both mining and oil and gas).
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- ³⁶ Richard Hunter, 'The changing face of the FTSE', 5 January 2012, Hargreaves Lansdown, available at: <http://www.hl.co.uk/shares/share-tips/richard-hunter-weekly-comment/richard-hunter-weekly-comments-archive/the-changing-face-of-the-ftse-100>; Ben Brettle 'The changing face of the FTSE 100', 13 May 2014, Hargreaves Lansdown, available at: <http://www.hl.co.uk/news/articles/the-changing-face-of-the-ftse-100>.
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- ⁴⁰ AMEC, Essar Energy, Eurasia Natural Resource Corporation, Evraz, Kazakhmys, Lonmin, Serco Group, Tate & Lyle and Vedanta.
- ⁴¹ Xstrata was taken over by Glencore in May 2013.
- ⁴² This sector has been taken to include companies involved in retail, supermarkets, clothing, food and drink, tobacco and other personal goods.
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