



# The UN Guiding Principles on Business and Human Rights: Implementation Challenges at the Corporate Level in Newly Industrialised Countries

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## **AUTHOR'S NOTE**

“A functioning is an achievement, whereas a capability is the ability to achieve. Functionings are, in a sense, more directly related to living conditions since they are different aspects of living conditions. Capabilities, in contrast, are notions of freedom, in the positive sense: what real opportunities you have regarding the life you may lead.” – Amartya Sen (The Standard of Living, 1987: 36)

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**ABSTRACT**

In 2011, the United Nations (UN) Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGP) as a global standard for preventing business-related human rights abuses. The UNGP provides guidance for implementing the “Protect, Respect and Remedy” framework and offers advice to governments, businesses, and civic organisations to prevent and remedy business-related human rights violations. For businesses, the term “responsibility to respect” portrays corporate responsibility as a moral commitment rather than a political and legal obligation. This paper will assess how the private sector has imposed challenges in the UNGP implementation process based on four dynamics: lack of state incentives, managerial difficulties, victim marginalisation and an underdeveloped public sphere. It will also provide a case study on Chinese manufacturing firms, which will be used to establish that the “respect for human rights” often remains absent in newly industrialised countries, particularly where profitability and productivity are prioritised.

**Introduction**

In 2011, the United Nations (UN) Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights (UNGP) as a global standard for preventing business-related human rights abuses. The UNGP was designed to provide an internationally recognized framework to engage governments, private firms, civil society, and the general public to address corporate social responsibility in respecting human rights (OHCHR 2011, 4). The UNGP provides guidance for implementing the “protect, respect and remedy” framework and offers advice to governments, businesses, and civic organisations to prevent and remedy business-related human rights violations (see fig. 1). The practical applicability of UN guiding principles are frequently brought into question, particularly as human rights abuses frequently persist in corporate activities worldwide, especially in low-income countries.

The first part of this topical paper will assess how the private sector has imposed challenges in the UNGP implementation process from four dynamics — lack of state incentives, managerial difficulties, victim marginalisation and the underdeveloped public sphere. State inaction and victim marginalisation are argued to have an outsized impact on the excessive bargaining power leveraged by the private sector in neoliberal economies. Managerial difficulties focus

on the analysis of a business’s internal operations. The involvement of civil society groups in human rights protection also significantly impacts business activity monitoring. The paper will also touch on a number of examples to illustrate the managerial challenges in the UNGP implementation process.

The second part of the paper will introduce the case of Chinese manufacturing factories. This part will depict workers’ lives in two differently sized Chinese factories and the role of Chinese civil society in the UNGP implementations. Overall, this paper argues that businesses’ respect for human rights remains absent in newly industrialised countries when corporate entities prioritise profitability and productivity over their obligations to rights adherence. Thus, victim empowerment and public engagement are essential elements to make the UNGP’s soft-law expression more effective in practice.

**Literature Review**

The UNGP establishes a conceptual framework to address business-related human rights issues. The terms used in the UNGP reflect the division in the role of state actors and non-state actors in relation to human rights protection. Whereas states have a legal “duty” to protect, corporate actors have a social “responsibility” to respect. The term “duty” evokes a notion of legal obligation (Fasterling and

Demuijnck 2013, 807). It is used specifically to highlight that the state must comply with international law and implement litigation processes to protect against human rights violations. Meanwhile, the term “responsibility” portrays the responsibility of a corporate actor as a moral commitment rather than a political and legal obligation (Arnold 2010, 383). The UNGP is crafted as a series of normative statements to raise the overall awareness for human rights abuses. The principles listed are instrumental in standardising corporate-level administrative policies that provide workers access to grievance mechanisms and remedial processes. However, according to Arnold, the UNGP’s soft-law expressions cannot enforce their principles without local governments introducing legislation and procedures regarding the three pillars (2011, 384).

The Special Representative of the UN Secretary-General, Professor John Ruggie, states that the UNGP should be understood as a comprehensive and overarching international legal agreement (2007, 830). He argues that there is standard convergence between states regarding human rights protection. Still, the causes of human rights violations range from various issues regarding the local legal and institutional systems. The UNGP human rights framework developer, Ruggie, has repeatedly emphasised the notion of “social expectation” for the state to regulate corporate conduct (2009, 285). The UNGP framework is primarily based on a top-down power structure. The state takes the primary legal duties to build an accountability mechanism that enumerates norms for human rights protection in business contexts. However, scholars observe that Ruggie’s framework had political constraints which shaped its definitions of corporate responsibilities (Dowell-Jones 2012, 273; Knox 2012, 36; Harper 2020, 73). Dowell-Jones highlights that the non-compliance at the corporate level due to the fear of losing competitiveness de-specify the corporate responsibilities in human rights protection, especially when corporations possess the power to lobby for policy changes (2012, 530). Therefore, the industry’s resistance to corporate

conduct regulations imposes a key challenge to human rights “due diligence”, as corporations who invest heavily into investigating human rights violations find themselves at a disadvantage compared to their unscrupulous counterparts (Sullivan and Hachez 2012, 478). Specifically, human rights due diligence in this context refers to a risk-management method that corporations proactively use to identify, intercept, and diminish prospective and existent human rights impacts (OHCHR 2011, 3). Empirical evidence finds that the private sector perpetuates a bottom-up mechanism where resistance from profit-based firms restricts the state policymaking in the business-related area because corporate human rights regulations are seen as a costly liability which impede profitable returns.

### **State Level: Lack of State Incentives in Neoliberal Economies**

The variances in states’ international trade positions are essential factors of consideration when policymakers draft laws and human rights treaties to accommodate the UNGP. Instead of strengthening the global consensus in human rights norms, the UNGP is mostly enforced in regional or international legally binding treaty forms. At the national level, a number of states implemented the National Action Plan based on local contexts to achieve greater coherence between states and business-related public policy areas. At the international level, inter-governmental organisations such as the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, the Inter-American Commission on Human Rights and the Council of Europe engaged in establishing regional norms to carry out the transnational implementation of the UNGP. However, the regulatory development responding to the UNGP’s endorsement remains insufficient with numerous challenges raised in the private sector to prevent states from prioritising human rights protection on their business regulation agenda.

The first challenge that impedes states’ engagement

“Protect, Respect and Remedy” three pillars framework				
	In relation to human rights	Actions need to be done	Operational principles	Obligation type
State	Primary duty bearer	Protect against human rights abuse within their territory and/or jurisdiction	Enforce laws Provide effective guidance to business Encourage business to address their human rights impacts	Legal
Business	Responsibility to respect	Avoid infringing on the human rights of others Address adverse human rights impacts with which they are involved.	Commit through a statement of policy	Moral
Victim	Access to remedy	business-related human rights victims have the <b>access to remedy.</b>	State-based judicial mechanisms State-based non-judicial grievance mechanisms Non-state-based grievance mechanisms	State implements laws to enforce business to take legal responsibilities

**Figure 1.** *Three Pillars Framework (OHCHR, 2011).*

with UNGP implementation is the fear of deterring foreign investment in the neoliberal economy. Developing countries attract foreign investments as a means for economic and social progress. Free trade and capital flows form a more favourable political economy environment which strengthens global value chains (Seric and Tong 2019, 2). Referring to the flying geese pattern of development by Akamatsu, developed countries’ comparative advantage in technological innovations causes them to shift further away from labour-intensive production to more capital-intensive activities (Korhonen 1994, 105). In this model, the higher-tier country transfers its labour-intensive production to the countries in lower tiers down in the hierarchy. Although today’s modernization pattern does not follow the exact path, the flying geese pattern has accurately depicted the subsequent relocation process of labour-intensive industries from developed to developing countries in a variety of global value chains. Low-income countries gain comparative advantages in the global market with large groups of

cheap labour and thus a more cost-effective working environment. Unfortunately, these cheaper forms of labour often include illegal and child labour.

Establishing grievance mechanisms and official remedial processes for business-related human rights violation victims are often misunderstood as protectionism in the global market (European Parliament 2017, 25). By capitalising on their lower domestic labour costs, countries that pursue economic growth from raw material and manufacturing goods exports are often unwilling to undertake legislative measures responding to the UNGP. Kenya’s representative presented the conflictual issue between labour standards and financial losses at the 2016 UN Forum on Business and Human Rights. He proposed that governments request neighbouring countries to raise labour standards simultaneously to ensure that the whole region could implement human rights protection acts without losing their competitive edge (European Parliament 2017, 7). The proposed solution would seek to elevate the overall labour standards

across the playground to achieve indiscrimination when facing investors. Yet it would not ameliorate the central issue: that there is a lack of awareness of the potential economic losses caused by violating human rights. The Business & Human Rights Resource Centre (BHRRC) survey indicates that businesses prefer a robust governance framework and enforcement on human rights issues, partly because they need to be socially responsible in public eyes to avoid the profit loss caused by criticism (European Parliament, 2017, 13). Local governments can overcome the awareness obstacle with greater coordination within and across governments and businesses.

At the international level, Ruggie mentions that avenues of remedy for non-state abuses remain unclear (2009, 281). In keeping with basic principles of international law, UNGP cannot require states to exercise extraterritorial jurisdiction on corporate violations outside of their national borders (OHCHR 2011, 6). Governments often meet the basic international obligation to provide the remedial framework to state abuses with civil laws, but barriers persist when victims seek access to effective judicial remedies overseas. International institutions need to have more capacity-building work to coordinate states in addressing transnational corporate-related disputes.

One major structural challenge is the lack of agreements in regional governance due to varying social contexts. For example, the ASEAN Economic Community is reluctant to build accountability mechanisms for business-related human rights issues because fragmented governance failed to interlink distinct countries in the community (Harper 2020, 136). Countries like Brunei, Cambodia, Laos, and Vietnam lack the political commitment to the UNGP. In contrast, countries like Thailand and Malaysia made continuous progress in implementing the national action plans. The regional disintegration reflects a silo mentality in which different countries with diverse perceptions and accountabilities of human rights are reluctant to connect and communicate. Similarly, it also reflects a lack of consensus between member

states. Although norm diffusion at the national level is challenging, it must occur before integrating business and human rights into regional and international systems.

All the above-mentioned challenges are linked to a bottom-up approach to policy-making. At each level, private sector interests intersect or even dominate government legal recognition. Under an ideal circumstance proposed by Sen, the government's business and human rights agendas should motivate moral, social, and economic rationales to shape corporate behaviours (2004, 330). Sen's argument provides a top-down configuration in implementing business-related human rights regulations. In reality, outcomes are quite the reverse; businesses' economic and political power grant corporate speech rights in public discourse, which incentivises the government to prioritise corporate interests in production efficiency and profit-making. Hafner-Burton and McNamara find from the logistic regression that controlling for other predictors, firms who have investments or capital in human-rights abusing countries are more likely to lobby for human rights related legislations and shape the US business-related policy landscape (2019, 132).

The bargaining power of the private sector can not only affect national-level lawmaking, but can also potentially incentivise the low-income countries to attract large transnational corporations with underage and underpaid workers. The fragmented attitude on human rights norm diffusion in ASEAN is an illustrative example that shows countries' diverging interests on the UNGP based on their production models and levels of economic development. Consequently, the private sector's involvement in the political sphere and the formation of global value chains have impacted the level of government duty bearing in terms of business-related human rights violations. This bottom-up approach has made the enforceability of government regulations less authoritative and more ambiguous in actual implementations.

### **Corporate level: Managerial and Data Collection Difficulties**

Some have argued that the human rights responsibility framework for firms should consider their varying strengths, size and business activities that determine their capacity to affect human rights (Weissbrodt and Kruger 2003, 912). In fact, although such a framework states that a larger company should take greater responsibilities, this one-size-fits-all approach is limited as it counts the degree of influence as the only indicator of a corporation's capacity to take responsibility. This section will propose other managerial challenges that disrupt the UNGP implementation at the corporate level.

The UNGP is unable to reach a broader range of companies. Compared to large transnational corporations, small and medium manufacturers, especially those in the newly industrialised region, may not have the resources to develop and implement human rights policies. It is always challenging to translate human rights principles into understandable terms for both business owners and workers. Without help from a professional human rights consultant, most business owners are unfamiliar with international human rights law and other moral frameworks that are deemed fundamental at the international level. Human rights due diligence also requires an extensive information management system, which requires constant internal evaluation, public feedback tracking, and broader stakeholder involvement (Collins 2014, 10). Many small and medium businesses often find human rights-related measures unprofitable and costly to maintain. Therefore, as long as the company is not trapped in a major human rights violation scandal, they rarely adopt a full due diligence measure as required by the UNGP.

This does not mean that large transnational corporations are more socially responsible. Many large corporations create annual social responsibility reports to attract investors and potential clients. However, the focus of these reports typically only demonstrates the company's positive contributions to

social aims, rather than information which might be used to hold them accountable in areas of violation. Businesses are unlikely to relay harmful content in their annual report, knowing that it could negatively impact investor's impression of the company (de Felice 2015, 542). Moreover, companies tend to amplify their contributions; self-reported data is hard to verify. There is no feasible way to assess self-reported data's truthfulness unless states standardise the information with legislative measures.

Lastly, it is challenging for a transnational corporation to implement a policy and ensure that it is followed globally. The case of Toyota provides an elucidating example. Most multinational companies have a comprehensive ESG (environment, social and corporate governance) framework at the corporate level. Still, the execution of the blueprint is less efficient in practice than it is planned to be. Toyota has a consolidated and accessible sustainability statement written on paper (Corporation 2021, 3). However, the company was accused of sweatshop abuses in its aluminium supply chain in Guinea (Mcneill 2013, 10). Toyota's case reflects that, in contrast to principle, not all transnational corporations are effectively moved to train a specialised team that oversees its global value chain transparency. The economic interest in labour-intensive states triggers private firms to neglect their commitment to the public and continuously practise human rights abuses.

Regardless of the company's size, corporate social responsibility must be measurable to provide comparative and progressive human rights ratings if financial investors are expected to screen controversial and abusive companies out of their portfolios. The UNGP states that "[b]usiness enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operation" (OHCHR 2011, 6). The guiding principles request human rights indicators to distinguish between essential and beyond essential indexes. Essential

indexes include labour rights abuses, freedom to associations, elimination of discrimination and other types of operation-based activities. Beyond essential indexes measure the company's involvement in philanthropic activities that contribute to human rights protection, such as diversity programs and local community programs. Most indicators lack clear distinctions between these two types of indices because most sources of information are from corporate self-reporting and third-party documentation, and the results tend to lean towards the company's benefits. Meanwhile, third-party documentation is often expressed in anecdotal form, which is insufficient for comparative purposes (de Felice 2015, 536). Overall, both sources of data mentioned above only portray a partial image of the company's performance. Company self-reporting overemphasises beyond essential indices to demonstrate their community contributions rather than adjusting the business standards to meet the UNGP framework. Third-party documentations attempt to explore within the researched company's internal operations, but lack the resources needed to present a complete picture of firm behaviour.

The methodological challenges of collecting standardised data for human rights indicators can be explained by Bollen's Levels of Human Rights Information and Reporting (1986, 581). Bollen argues that there are six layers to the apparatus of information diffusion regarding human rights violation. Business-related human rights data are more likely to be reported because of the likelihood of media attention, and publicity regarding the company's past practices. The listed problems can be solved with diversified external sources, standardised data reporting and effective falsification processes. Human Rights Information and Documentation Systems (HURIDOCS) is an example of a reporting format that seeks to establish a harmonised framework for human rights violation reporting. This type of uniform format is preferable for developing future business-related human rights indicators, but the difficulty remains as consensus must

be achieved across businesses in the private sector beforehand in order for the format to be implemented.

### **Victim Level: Voicelessness under Corporate Rule**

The UNGP acknowledges that states are the primary duty bearers in relation to business related human rights abuses. However, even if the state has established a grievance mechanism that mandates corporate responsibility, many uneducated and marginalised human rights victims remain suppressed and voiceless for various reasons. These four types of workers include internal migrants, informal workers, external migrants and child labourers, who are often silenced when they suffer rights violations. These types of workers are often exploited by private firms because they can be paid low wages and easily manipulated.

According to the Harris-Todaro Model, when emerging economies experience structural changes, young labourers migrate from rural areas to engage in the urban job lottery in hopes of a better life (1970, 131). However, due to the inadequacies in infrastructures and unequal access to educational opportunities, these migrants receive minimal education before moving into an urban centre. Their career aspirations are limited to labour-intensive jobs, such as manufacturing, which will just barely cover basic costs of living. These educational limitations also constrain migrants' abilities to recognize human rights violations, or seek remedy when they do occur.

Large waves of urban migration also lead to unemployment in urban sectors, often creating large informal sectors in over-congested cities (Harris and Todaro 1970, 134). The informal sector describes workers who are not formally recognized as being employed. In order to avoid penalties, informal labourers work in less visible spaces and insecure environments (Miller 2007, 142). Meanwhile, the illegality of such economic activity also forces informal workers to deal with disputes privately because they are unwilling to go through court processes. Therefore, when states fulfil their duty to



build remedial frameworks for the formal workers, they typically fail to overcome the pitfalls of informal sectors. Because of the legal precariousness of their work, these informal workers are unlikely to use the formal judicial system when human rights violations occur, even though they are often the most vulnerable working population in a local economy, and urgently need access to remedies.

This phenomenon is not only common when uneducated workers move from rural to urban sectors; international migrant workers travelling from developing to developed countries are also frequent victims of human rights abuses. Japan's Technical Intern Training Program (TITP) was intended to train workers from developing countries through local internship programs. In fact, according to Takamura, foreign technical interns in Japan suffer a substantial degree of human rights violations and discrimination, particularly through legally binding effects that give private firms rights of control to their foreign employees (2021, 3). TITP's lack of accountability mechanism fails to oversee human rights violations in the private sector, enabling illegal overtime hours and the nonpayment of workers' time in Japanese recipient firms. The escalation of foreign labour migration in the neoliberal era is beneficial for both the recipient country governments and their private sectors because imported workers cover workforce shortages in recipient countries at a relatively lower cost. Both governments and private firms are expected to see expansions of such labour import programs; the convergence of their goals lead to further foreign labour exploitations. Meanwhile, foreign workers experience voicelessness and marginalisation due to minimum political participation, financial burdens, and the high costs of returning back to their home countries. The private firms in high-income countries pressure workers financially with loans, agency fees and hefty fines to force foreign workers to remain silent when they experience abuses.

Lastly, child labourers are extremely vulnerable to human rights violations. The UNGP specifically

requires enterprises to set standards to prevent child labour. Nevertheless, child labour is still prevalent in places where monitoring systems are absent. Children working in hazardous and exploitative environments are frequently found in informal sectors, small manufacturing sweatshops and other small-scale business activities (Miller 2007, 140). Before the UNGP was endorsed, the Convention on the Rights of the Child (CRC) had already stated governments' responsibilities for promoting, providing, respecting, and protecting children's rights. However, child labour remains a persistent issue in economies where children work in informal or illegal economies.

Each of these vulnerable groups have made the implementation of the UNGP more difficult, even if some countries have established legal grievance mechanisms to provide access to remedy for human rights victims. The private sector plays a vital role in silencing these victims. First, these vulnerable groups are often exploited by businesses in order to operate at a lower cost and increase profitability. As a result, the private sector is likely to hide their human rights violations through unfair labour contracts and the use of government bribes. Second, large transnational corporations seek to comply with the Global Compact and oversee the global supply chain. Still, outsourcing can happen at all levels of business operation, and it is extremely difficult for actors at the corporate level to track every person involved in violations across the supply chain. Lastly, the creation of large informal economies in urban environments further undermines victims' abilities to pursue justice through existing legal frameworks.

### **Civil Society: Public Relations Tool**

The UNGP implementation takes place in a multistakeholder environment that involves governments, businesses, and civil society. The framework expects a rich associational community to advocate for policy changes that correspond to widely held principles. The participation of civil society organisations enriches the public sphere and

grants the public with transformative capacity for business-related human rights issues. Contemporary studies overemphasise the vertical relationship between the political and public sphere as a reason for the failed consolidation of political plurality. In fact, the collaborations and frictions between the private and public sectors also hinder civil society's capacity to represent the victims and push corporate social responsibility to the top of corporate agendas. Large corporations exert influence on civil society organisations through financial funding and various forms of partnerships.

The relationship between the private sector and civil society has been described as an antagonistic one. However, this barrier has begun to diminish in recent years as business entities have begun working with non-governmental organisations towards sustainability goals in developing countries, such as clean energy and poverty alleviation (Burchell & Cook 2013, 749). The private-public partnership initiatives are largely beneficial for the UNGP implementation for the following reasons. First, enterprises can relay more information to the public sphere in order to monitor business practices, which enhances the credentials of the civic organisations involved. Second, the private sector's engagement in human rights norm diffusion helps fill in the financing gap and increases the efficient use of resources. Third, as Shamir mentioned, corporate social responsibility is shaped by the interplay between public pressure and the subsequent responses from these corporations (2004, 675). The co-optation between civil society organisations and private firms allows effective communication between the major stakeholders. Nevertheless, empirical evidence shows that the impact of private investments on sustainable development is very uneven. Most collaborations occur in profit-making sectors such as infrastructure and financial services, with little capital resources offered to social factors like education and human rights. The private sector's profit-oriented motivation often neglects many grassroots-based organisations that represent human

rights victims through traditional advocacy means, such as protests and public criticism. Therefore, private-public partnership initiatives often fail to align the public along human rights norms because the projects that receive the most funding from the private sector create more financial capital than social capital.

Another issue with the private sector's uneven involvement in sustainability projects is that civil society organisations are often instrumentalised as a public relations tool for establishing a clean image for companies, even if they carry out rights abuses. Risk public relations specialists help human rights abusers cover up their dirty history. Private investments beyond essential activities are helpful to direct public attention toward the company's philanthropic contributions; public relations firms also monitor media and help potential human rights violators cover up their abuses with good press. One famous case occurred in 2018, when female employees at Microsoft filed 238 discrimination and harassment complaints, claiming that the company had a toxic "boys' club atmosphere" (Solon 2018, 3). The gender-based case soon escalated, and a lawsuit was filed; however, the court denied the class-action status of the gender discrimination lawsuit, leaving Microsoft relatively unscathed. In order to offset the damage done to its reputation, Microsoft collaborated with multiple civil society organisations to launch gender equality initiatives. For example, Microsoft Australia launched a campaign with Male Champions of Change to redefine the role of the men in female empowerment. Without the procession of the lawsuit, the hundreds of accusations against Microsoft have been overshadowed by the company's contributions to gender-based initiatives.

The private sector acts as a resource provider for these initiatives, yet can also be a perpetrator of abuses. Corporate involvement in civil society creates more negative externalities than positive ones. On the one hand, businesses engage in partnerships with civil society organisations to finance sustainability projects for meaningful change. On the other hand, their involvement in advocacy acts as a safety net

to help them reshape public perceptions when the discovery of their human rights abuses create public relations crises.

### **China's Case: Existing Problems in UNGP Uncovered in Practical Business Operations**

The previous analysis on corporate social responsibility is largely based on the Western paradigm, which largely ignores how unique cultures create distinctive interpretations of the role businesses ought to take in human rights norm diffusion. The case of China provides a starting point to expand the Western-centric notion of corporate social responsibility for three reasons. First, according to Li, China's historical tradition of Confucianism and socialist legacy shape the unique relationship between government, corporations, and society (2016, 85). Relational responsibility is deemed more important than individual rights. Second, the government is seeking to implement corporate regulations with Chinese characteristics. The government expects corporations to act as its agents to serve the urban citizens through the social insurance system, which provides a package of life-long benefits to employees. Third, China lacks democratic tradition; thus, the representative system for victims is absent.

Two interviews were conducted by MacCuish to explore further how the UNGP is implemented at the corporate level under China's unique cultural, political, and social background (2021). The first interviewee, Jessica, is a dispatched worker at the largest Foxconn factory in Longhua. She explains the military management system and the mandatory overtime work which is employed in large factories. The second interview was conducted with Daolong, a small nanomaterial factory owner. Daolong showed little knowledge about the UNGP, but he emphasised a people-oriented management style that is culturally infused in his company.

Daolong's company represents the mainstream corporate culture in many Chinese firms. "Everyone in my factory has been working together for a long

time; there is definitely attachment between us," he said, "companies in China are unable to operate if the management team do not show their human kindness." Indeed, Chinese culture is embedded with the concept of Yi Ren Wei Ben (people-orientedness) that enforces a mutual responsibility between employees and employers to sustain harmony and stability within business operations. Corporations are expected to take the social responsibility to provide care for its workers; at the same time, workers are obligated to contribute to the company's long-term development on behalf of the employers (Li 2016, 90). This people-oriented corporate culture is expressed in two ways. Companies are requested to provide social security to the employees, including the protection of worker's rights, equal employment opportunity, insurance and other social benefits. At the same time, people orientation also branches out to the employer's personal life through activities during free time and holiday warmth-giving. These observations reveal several weaknesses of the UNGP: that a western-centric standard reinforces the divergence between the West and the rest. Daolong expressed that the corporate human rights norm already exists in the culture, and a standardised framework is a Eurocentric ideology that is forced upon Chinese firms. The concept of universal human rights set the bottom-line moral standard to be complied with by corporates worldwide, but each country would articulate corporates' particular responsibilities differently based on their distinct cultures (Ruggie 2007, 835). Consequently, a globalised human rights framework must diversify its cultural values to ensure successful and effective implementations worldwide.

Jessica's unpleasant experiences at Foxconn uncover the human rights dilemmas in countries that attract foreign investments with labour-intensive productions. A major difference between Daolong's Chinese corporation and transnational corporations like Foxconn is that multinational business owners have more bargaining power in the global market. For example, according to Jessica, Foxconn signs a

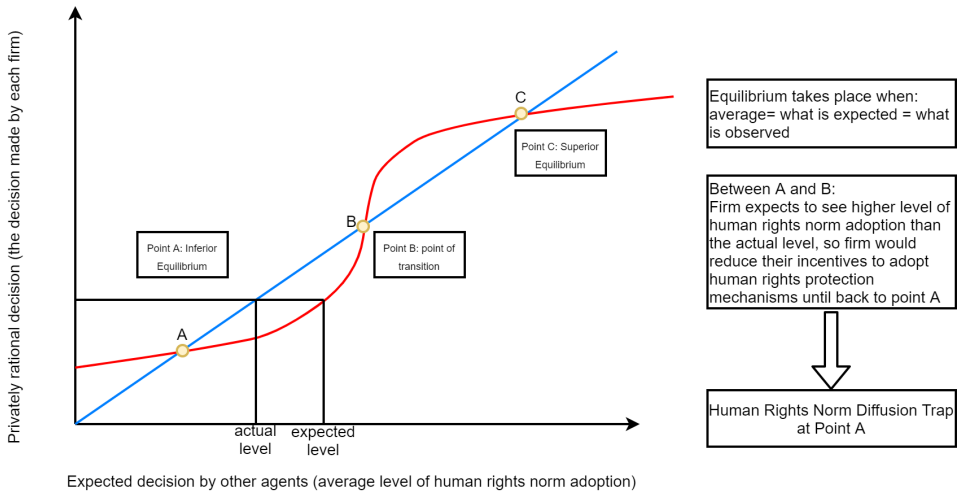
mandatory private contract with employees to state that overtime working is voluntary. Many production line workers are forced to stay after work and during weekends to meet the production goals, even while China's Labour Law regulates that overtime work should not be more than 36 hours per month (Article 41). The UNGP is theoretically based on the institutional theory, which states that firms' social behaviour is significantly influenced by institutional constraints such as laws, regulations, and public monitoring (Burchell & Cook 2013, 743). Foxconn's case reveals that the applicability of institutional theory is limited in this case, largely due to the dominance of shareholders' objectives for profit maximisation. For emerging economies, financial performance is more important than corporate social performance for companies in order to sustain competitiveness in the market. Through private means such as pledges and contracts, large transnational corporations can act

beyond government regulations and take limited legal responsibilities.

Referring to the multi-equilibrium model in macroeconomic modelling (fig. 2), the private sector fails to coordinate to diffuse human rights norms due to firms' self-interest in sustaining the comparative advantage emerging from the cheap labour force. Such coordination failure frequently happens in newly industrialised countries, making human rights norm diffusion at the corporate level less likely to be achieved.

In an interview with Jasmine Zhang, a human rights activist at China Labor Watch, Zhang expressed that China's totalitarian regime has made worker empowerment more challenging. The UNGP assumes the capability of labour unions, affected communities and civil society organisations to demand corporate accountability. However, China's public sphere only fulfils the function of self-organisation, and has little to

Apply Multi-Equilibrium Model to Corporate-Level Human Rights Norm Diffusion



**Figure 2.** Coordination Failure: each company makes independent decisions, but one company's decision depends on another company's decision. Companies' inability to coordinate their actions leads to all companies' inactions in an industry (the UNGP implementation is stuck at inferior equilibrium A). Thorough human rights norm diffusion (superior equilibrium C) requests companies in an industry to pass beyond point B (Cooper & John 1988, 44).

no sway over its authoritarian political system. Instead of being used by civilians to advocate for rights and curtail infringements (by either corporations or the central government), civic organisations are used by the Chinese government as tools to help extend its own policy agendas (Hsu 2010, 261). For example, China's labour unions are directly influenced by the central government. These groups focus solely on service provisions like job fairs and political symposiums, and fail to act as a representative mechanism to advocate for human rights victims. Indeed, the framework suggested by the UNGP is incapable of remedying the absence of a robust public sphere in China and many other developing countries. The guiding principles assume the presence of robust civil societies where workers can unionise and defend their rights. But in countries where corporations and public spheres are largely controlled by the state, the UNGP cannot provide any means to remedy (OHCHR 2011, 2).

### **Conclusion: The Changing Business-Related Human Rights Landscape**

Ten years have passed since the establishment of the UNGP, and challenges pertaining to the implementation of human rights norms still exist around the globe. The role of the private sector in contributing to these challenges must be studied thoroughly in order to better understand the inextricable linkages between the existing economic systems and human rights. Foreign direct investment, global value chains, and corporate social responsibility agendas all pose unique governance challenges in regards to firm behaviour and rights infringements. Local government inaction, failed consensus between countries, marginalised victims, and the instrumentalization of the public sphere are all relevant.

Despite these challenges, many forces are continuing to shape the current human rights landscape. The rise of multimedia has sped up information transmission and often engages real-time comments from both victims and the general public

to monitor and pressure human rights abusers. Some speculate that the comparative advantage of labour-intensive production in the global market will diminish as artificial intelligence flourishes in physical and virtual forms. It is suggested that future studies address some of the following questions: will these economic, social, technological, and political changes reduce the private sector's bargaining power in policy-making? Will these changes drive new challenges? To achieve a truly standardised grievance mechanism for business-related human rights violations across the globe, institutions must be created to address and remedy rights violations which are committed by corporations in other nation states. These changing landscapes require the global community to update these guiding principles to reflect voices and needs at the grassroots level.

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