Direct and indirect influence of transnational corporations on human rights

BY

ELENA SOKOLOVA¹

¹Elena Sokolova has gained diverse international working experiences in the non-for-profit and corporate sectors with focus on external relations and business development. She holds a Master of Science in Business Administration, specialization - International Relations, and a Bachelor in International Economics. She currently works as Account Manager for MasterCard Europe with clients from Eastern Europe. Prior to that, she has been active in non-for-profit organization management by being the President of AIESEC, the world's largest youth-driven international platform, in Belgium (2010-2011).
Introduction

This article presents an innovative model to detect and control risks related to the direct and indirect influence of the actions of Transnational Corporations (TNCs) on local populations. Risk detection and management plays a central role in conflict prevention and this tool may help TNCs in finding the balance between short-term, operational objectives, i.e. fact-finding and monitoring, negotiation, mediation from a short-term perspective, and the more long-term objective of securing sustainable profitability. Its implementation and further fine-tuning can hopefully lead to a gradual propagation of values and norms geared towards sustainability which in turn will, hopefully, become habits embedded in the mind-set of people.

The business sphere is an important source of investments and employment opportunities. TNCs are capable of facilitating economic growth\(^2\), and of raising living standards of populations\(^3\). They encourage research and development, therefore leading technical progress and raising productivity of industries\(^4\). Corporations ensure business revenues for their numerous suppliers, invest resources in education of their labour force and contractors\(^5\). TNCs are often wealthier and more powerful than national governments. By conducting operations globally, they facilitate peaceful international relations\(^6\).

Background information to TNCs

Although TNCs bring immense benefits, their functioning is often correlated with negative impacts as well. By establishing subsidiaries in other countries, their local expansion can lead to the bankruptcy of local producers. Local governments might lose their economic sovereignty when hosting major corporations\(^7\). Businesses can monopolise the markets and affect consumer preferences. Besides, operations of facilities of TNCs often cause environmental damages\(^8\).

One of the major spheres largely influenced by corporations is human rights. Through employment practices, operations touching local communities and supply chain management businesses can impact all ranges of human rights, including civil, political, economic, social,  

\(^8\) Consult e.g. Greer & Singh (2000).
cultural and labour rights. Moreover, the scale of this influence grows constantly. Even though TNCs create value for their stakeholders and social wealth, facilitating economic development, their activities often lead to abuse of human rights of their workers, local communities, and customers. Numerous violations have been detected in the industries of extraction and retail, particularly in the regions of Africa, Asia and Latin America.\footnote{UN (2008), p. 7.}

**Accountability of TNCs**

The first concerns about corporate accountability regarding human rights appeared in the 1970s and were brought to light by public protests against unfair corporate practices\footnote{Feeney (2009), p. 162}. Since then, various tools have been developed at the international level to tackle the issue: guidelines, voluntary initiatives, certification schemes, and socio-economic indices (See table 1 below, last page). The most advanced framework “Protect, Respect and Remedy” has been developed by John Ruggie, the United Nations Special Representative on the issue of human rights and transnational corporations. The framework makes it very clear that it is the States' obligation under the international law to defend their citizens from human rights' abuses by corporations. The Ruggie framework also underlines the need for corporations to build business models that respect human rights\footnote{Ruggie Framework (2011), p. 13.}. Such an approach ensures clarity and guarantees more protection to the parties touched upon by the violations. At the same time, the framework still remains voluntary. Precisely because it is not legally binding, it is difficult to estimate whether companies and states will really implement all the recommendations. Also, if cases of abuses occur, it will be challenging to provide continuous protection and compensation to the victims\footnote{De La Vega et al. (2011), p. 8.}.

More and more authors underline not only the direct influence of TNCs on human rights, but also the indirect one, for instance through markets' dominance\footnote{See e.g. Chossudovsky (2008).}. Research in this field supports this view. By looking at the prices of essential commodities such as oil, food and water, it is evident that these prices have increased dramatically in the last years and that they have experienced large fluctuations\footnote{See e.g. Chicago Mercantile Exchange( 2011).}. Markets of these commodities have become strongly interconnected. Oil is used in the production of various goods, ranging from agricultural

\footnote{9 UN (2008), p. 7.}
\footnote{10 Feeney (2009), p. 162}
\footnote{11 Ruggie Framework (2011), p. 13.}
\footnote{12 De La Vega et al. (2011), p. 8.}
\footnote{13 See e.g. Chossudovsky (2008).}
\footnote{14 See e.g. Chicago Mercantile Exchange( 2011).}
chemicals to plastic materials for water bottles\textsuperscript{15}. Moreover, fuel and food are increasingly perceived as substitutes due to the increase in the production of biofuels\textsuperscript{16}. Therefore, prices of these goods are closely interconnected.

Oil has become increasingly more expensive as a result of the rising demand from developing countries. This is also caused by a growing the power exerted by OPEC and oil companies, who are able to determine production volumes and prices, and, perhaps, by the speculation on oil futures\textsuperscript{17}. Growth in fuel prices, together with markets and trade liberalization, transit to industrial farming, dominance of agriculture by TNCs and climate change caused food prices to take off\textsuperscript{18}. Water privatisation, encouraged by the International Monetary Fund and the World Bank and carried out by large corporations led to an increase in prices of water supplies\textsuperscript{19}. Price increases on commodities have facilitated the recession prior to most recent economic crisis and deepened its consequences.

As a result, the high expenses borne in particular by people in the poorest countries when purchasing basic goods translate in practice to violation of their right to an adequate standard of living\textsuperscript{20}. Furthermore, the economic crisis, which has aggravated the price increase and worsened the position of low-income layers of the population in terms of the realisation of their fundamental rights. Dominance of the markets by transnational corporations has not been the one and only reason for such a price increase, but it has certainly facilitated it.

**Need of integrated assessments**

In order to make real advancements when it comes to TNCs' respect and protection of human rights, integrated changes driven by legal and voluntary initiatives are needed. Existing proposals include the establishment at international level of a multilateral treaty on corporate accountability\textsuperscript{21}, the Global Law Commission\textsuperscript{22}, the World Court of Human Rights\textsuperscript{23}, widening of the jurisdiction of the International Criminal Court to include corporations\textsuperscript{24}, and

\textsuperscript{15} See e.g. Girard (2008).
\textsuperscript{16} Rosegrant (2008), p. 2.
\textsuperscript{17} Foote & Little (2011), p. 9.
\textsuperscript{18} Angus (2008), p. 7.
\textsuperscript{20} Consult IMF (2009).
\textsuperscript{21} De La Vega et al. (2011), p. 11.
\textsuperscript{22} Anderson & Boyd (2010), p. 36.
\textsuperscript{23} Nowak & Kozma (2009), p. 8.
\textsuperscript{24} Rauxloh (2008), p. 307.
setting up one mandatory international reporting initiative. At national level, countries could introduce stricter human rights legislations when it comes to corporate abuses. Voluntary initiatives, like the United Nations Global Compact, should further work towards the creation of social standards on human rights' respect among businesses. Legislative and voluntary initiatives should consider not only the direct impact of corporations on human rights, but also their indirect influence through markets dominance.

With the increasing role of transnational corporations in the world and the amount of people involved in their operations, a wide range of instruments has been developed to measure their direct impact on human rights. These instruments cover an extensive normative base and specific country knowledge, contain a wide range of indicators, and are ready to be integrated in company processes to ensure monitoring and re-evaluation of progress. There are two main things these instruments are lacking however. Firstly, they are constructed exclusively for corporations’ internal use, thus neglecting public transparency. Secondly, they do not take into account indirect influence of businesses on human rights.

Self-developed model at a glance

Based on the points for improvement of existing models, an own model of assessment was projected, incorporating feedback from Ubeon, Unilever and the United Nations Global Compact Network Belgium. The model was built based on the “AIESEC in Russia State of National Association” model and Global Reporting Initiative framework. Logic and relevance of the produced results have been tested on the data from Shell and Puma reports (see table 2 below).

It is important to keep in mind that this model focuses on the prevention of human right violations, putting aside the proactive engagement of companies in the realisation of fundamental rights.

The first part of the model consists of the two main sections: degree of direct influence and degree of indirect influence. The degree of direct influence is calculated through a range of measures on human rights, employment, anti-competitive behaviour and customer safety.

---

25 For more information on the technical details, see e.g. Gregor (2010), p. 10.
Effectius

reported by companies within the GRI framework\textsuperscript{29}. The degree of indirect influence is focused on market share and several indicators of monopolistic power due to the lack of up-to-date and open information to make a full assessment.

Table 2. Model of evaluation of direct and indirect influence of transnational corporations on human rights

<table>
<thead>
<tr>
<th>№</th>
<th>Indicators</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><strong>DEGREE OF DIRECT INFLUENCE</strong></td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Employment Practices</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Percentage of incidents of discriminations towards which actions have been</td>
<td>0-49%</td>
</tr>
<tr>
<td></td>
<td>taken</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Percentage of employees covered by collective bargaining agreements</td>
<td>0-49%</td>
</tr>
<tr>
<td>3</td>
<td>Percentage of identified operations with significant risk for incidents of child labor, towards which measures have been taken</td>
<td>0-49%</td>
</tr>
<tr>
<td>4</td>
<td>Percentage of identified with significant risk for incidents of forced or compulsory labor, towards which measures have been taken</td>
<td>0-49%</td>
</tr>
<tr>
<td>5</td>
<td>Percentage of employees trained on work-related safety procedures</td>
<td>0-49%</td>
</tr>
<tr>
<td>6</td>
<td>Percentage of employees injured while performing work-related tasks</td>
<td>51-100%</td>
</tr>
<tr>
<td>7</td>
<td>Fatal outcomes while performing work-related tasks</td>
<td>yes</td>
</tr>
<tr>
<td></td>
<td>Average score assigned</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Community Impact</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Percentage of significant investment agreements that include human rights clauses or that have undergone human rights screening</td>
<td>0-49%</td>
</tr>
</tbody>
</table>

\textsuperscript{29} GRI (2011), p. 102-143.
<table>
<thead>
<tr>
<th></th>
<th>Level of danger of company's products for consumers</th>
<th>high</th>
<th>medium</th>
<th>low</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Average Score Assigned</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>C Supply Chain Management</strong></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Percentage of identified risky suppliers and contractors, towards which actions have been taken to ensure human rights protection</td>
<td>0-49%</td>
<td>50-99%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>2</strong> Score Assigned</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Score Assigned</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DEGREE OF INDIRECT INFLUENCE

<table>
<thead>
<tr>
<th><strong>A Indicators of Concentration and Monopolistic Power</strong></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Share of company's sales in the market volume of realization</td>
<td>35-100%</td>
<td>15-34%</td>
<td>0-14%</td>
</tr>
<tr>
<td><strong>2</strong> Percentage of innovative types of products</td>
<td>low</td>
<td>Medium</td>
<td>high</td>
</tr>
<tr>
<td><strong>3</strong> Presence of products-substitutes</td>
<td>no</td>
<td>few</td>
<td>many</td>
</tr>
<tr>
<td><strong>4</strong> Participation of a company in any kind of monopolistic formations (cartels, trusts, etc.)</td>
<td>yes</td>
<td>no</td>
<td></td>
</tr>
<tr>
<td><strong>Total Score Assigned</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The second part of the model comprises a “map” like the one in graph 1 (see below), where the total scores for the simple average on direct influence and simple average on indirect influence are plotted. Their intersection shows the position of the company, where the green colour means high level of respect of human rights (no violations), yellow –(medium), and red (low, large amount of violations). Both types of influence: direct and indirect, - are equally important. Therefore, a company cannot be in the yellow or green area of the graph in case it scores an average of 1 on either direct or indirect impact.
Graph 1. “Map” of the degree of human rights respect

Co1 – Company 1; Co2 – Company 2; Co3 – Company 3

From the graph, it is easy to spot what the areas of improvement for the company are. Company 1 scores 2.35 on its direct impact and 1.45 on the indirect impact. That means that an area of concern should be its market position. Of course, no TNC would like to lower its market share, but it should make sure, that it is not abusing its dominant position and is scoring high on the indicators of monopolistic power from the table 7. At the same time, the score of Company 1 on the degree of direct influence is quite high, but as long as it does not reach 3, it shows a negative influence on human rights. Therefore, this company should refer back to the table with calculations and identify, which groups of indicators are reducing its score for the degree of direct impact, and work on their improvement.

This map can also be used for the comparison of companies' positions, especially if corporations are operating in the same industry. In this case, both, Company 1 and Company 2 can refer to Company 3 for its human rights practices (although Company 3 still exercises a few violations of fundamental rights and should work on their elimination). Comparisons, when made publicly available, may also encourage companies with low scores to improve their policies in the area of human rights to maintain their goodwill.
Concluding remarks

The model developed by the author represents an intuitive tool for the evaluation of companies’ human rights impacts. It takes into account both the direct and indirect impact of TNCs on human rights as opposed to other instruments. Indicators are easy to calculate based on reports, published by companies. The position of a company on the “map” showcases the level of respect for human rights. The model can be used for monitoring practices and progress, both for the internal and external control of activities of transnational corporations by other stakeholders.

References


Direct and indirect influence of transnational corporations on human rights


Elena Sokolova

Published as part of the Effectius Newsletter, Issue 17 (2012)
Table 1. Comparison of the scope and legal status of existing initiatives and standards on human rights

<table>
<thead>
<tr>
<th>Initiative</th>
<th>Description</th>
<th>Objective</th>
<th>Human rights coverage</th>
<th>Implementation/monitoring</th>
<th>Legal status</th>
</tr>
</thead>
<tbody>
<tr>
<td>OECD Guidelines for Multinational Enterprises</td>
<td>International instrument directed at States and businesses</td>
<td>Promotion and protection</td>
<td>General references plus specific workers’ rights</td>
<td>National contact points to resolve specific instances</td>
<td>Non-binding, but commitment of adhering States to promote</td>
</tr>
<tr>
<td>ILO Tripartite Declaration</td>
<td>International instrument directed at States and businesses</td>
<td>Promotion and protection</td>
<td>Workers’ human rights recognized in ILO instruments</td>
<td>Conventions listed are subject to ILO supervisory mechanisms</td>
<td>Non-binding (Convention s included are binding on States parties)</td>
</tr>
<tr>
<td>Global Compact</td>
<td>Voluntary initiative</td>
<td>Promotion</td>
<td>General reference to human rights</td>
<td>None</td>
<td>Non-binding</td>
</tr>
<tr>
<td>“Protect, Respect, Remedy” framework</td>
<td>International instrument directed at States and businesses</td>
<td>Promotion and protection</td>
<td>General and specific references to a wide range of rights</td>
<td>National and international monitoring, verification and enforcement</td>
<td>Non-binding (But States may introduce legally binding instruments for execution of their duty to protect)</td>
</tr>
<tr>
<td>Alien Tort Claims Act</td>
<td>US National legislation</td>
<td>Promotion and protection</td>
<td>No specific references, although encompass some human rights obligations</td>
<td>Allows United States District Courts to take jurisdiction in matters involving injuries connected with the violation of the law of nations or a treaty to which the United States is a party</td>
<td>Binding on companies</td>
</tr>
<tr>
<td>SA 8000</td>
<td>Certification scheme</td>
<td>Promotion and protection</td>
<td>Workers’ human rights, children’s human</td>
<td>Certification procedure</td>
<td>Non-binding</td>
</tr>
</tbody>
</table>
Direct and indirect influence of transnational corporations on human rights

<table>
<thead>
<tr>
<th>FTSE4Good Index</th>
<th>Mainstream financial index</th>
<th>Promotions and protection</th>
<th>General references to human rights</th>
<th>Reviews information provided by businesses and independent sources to assess companies</th>
<th>Non-binding</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Danish Institute for Human Rights: Human Rights and Business Project</td>
<td>Tools</td>
<td>Promotion</td>
<td>General and specific reference to a wide range of rights</td>
<td>Enters into active dialogue with companies during the research and development phase; delivers training programmes, makes tools available for the assessment of compliance, develops codes</td>
<td>Non-binding</td>
</tr>
</tbody>
</table>