

Buying A Man's Silence:  
The Failure to Hold Corporations Accountable for Human Rights Violations and the Path  
Forward

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## Introduction

With the onset of trade liberalization and the process of globalization, corporations across the globe have experienced unprecedented growth and power in the international realm. In recent reports conducted by *The Institute of Policy Studies*, 51 of the 100 largest economies in the world are private companies, with the United Nations also reporting that corporations accounted for 4.3% of the world GDP in 2000 (Anderson and Cavanagh; “Are transnationals bigger than countries?”). Through this growth, there is much room for unchecked power that is receiving little to no accountability, especially in the human rights framework. This can be evidenced through the numerous reports of deaths at the hands of corporate activities, including indigenous communities from Chevron activities in Ecuador, civilians from gas leaks from Union Carbide in India, and many more (“Corporations”). Not only do the activities involve bodily harm, but corporations can engage in forced labor activities, perpetuate inequality, and exacerbate economic crises.

To better understand the historical exclusion of corporations in the human rights framework, I pose the following question for analysis: What attempts have been made to integrate corporations into the human rights framework? Why have these attempts failed in holding corporations accountable for human rights violations?

In order to analyze attempts to integrate corporations into the human rights framework, this paper will review the history of the human rights framework and the philosophical discussion over the arbiters of human rights, which resulted in the exclusion of corporations in the human rights framework. After establishing this foundational knowledge, there will then be a discussion on past attempts to integrate corporations into the human rights framework, and, consequently, why these attempts have failed. With this critique, possible pathways for

accountability that the modern human rights framework can undertake to effectively respond to all human rights violations will be outlined. At the conclusion of this analysis, it is abundantly clear that the current human rights framework systematically fails in maintaining accountability for corporations that commit human rights violations and requires reform to effectively uphold the human rights designated to humans across the globe.

### **History of the Human Rights Framework and Its Lack of Corporate Inclusion**

In the aftermath of the Second World War, the discussion of human rights is one that has pervaded much of the field of international relations. As the world witnessed the ramifications of a far-reaching war that impacted areas of human life, the economy, politics, and more, it became clear that states were to concretely address the fundamental rights that are available to and maintained by human beings across the world. The United Nations was founded to address such concerns, and provide a platform for states to discuss the variety of issues that arise across the globe (Shah et al. 4). Furthermore, its founding document, the United Nations Charter, makes clear that the goal of the international organization is “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (“Chapter I: Purposes and principles (articles 1-2)”).

As the first step taken by the United Nations to address the concept of human rights, the Universal Declaration of Human Rights was adopted in 1948. Though recognized by many nations and members of the United Nations, there are numerous states and United Nations members that argue that the treaty is not legally binding. With human rights being incorporated into a variety of treaties since the first iteration of the United Nations’s Universal Declaration of Human Rights, there are increasingly prevalent concerns over to whom and to which human rights, and, in turn, human rights violations, apply to. In the foundation of the United Nations

and the consequent debate over the definition of human rights, it was of great debate as to whether states, individuals, private entities, or more can be held accountable for human rights violations, presenting two key philosophical schools.

The primary philosophy on which the modern human rights framework is founded ascribes to the idea that “the bearers of human rights are human beings, who are entitled to certain standards of treatment by virtue of being human” (Isiksel 296). By this assumption, the argument in the drafting in the human rights framework details that because human rights are designated to human beings, it is necessary that human beings alone are the ones to be held accountable for any potential human rights violations. Alongside this foundational understanding of who is responsible for human rights violations, it is critical to relate this philosophical argument to the time in which the human rights framework was drafted in the 1940s. Suffering the effects of the Second World War, states were perceived as the strongest forces of potential human rights violations that were in the most need of accountability, thereby establishing that “human rights law dictates that the individual should be protected against the State” (Tamo 151). Though this perception in the wake of gross human rights atrocities by states of the Second World War may reign true, it simultaneously fails in recognizing the role that non-state actors play in human rights violations, whether it be that of corporations, terrorist organizations, and more.

Separately, the second philosophical school of thought ascribed to the idea that non-state actors can and should be held accountable for human rights violations. This claim to corporate accountability for human rights has been described to “[circumscribe] the circle of inclusion ... whose omission has allowed the off-label use of human rights norms to proliferate ... that human rights represent ‘the normative gloss of globalized capitalism at its imperial stage,’” making clear

that this philosophical school believe that the omission of corporations feigns human rights as a system of imperial, economic projection on the international stage (Isiksel 299). The key counterargument that this sect of human rights activists and academics needed to address, however, is the idea that there is no legal precedent for viewing corporations as subjects under law. Despite this counter argument, it has been outlined that the “key innovation of postwar international law is widely seen as the recognition of nonstate actors as bearers of certain rights and duties alongside states,” providing a wide body evidence that states have integrated corporations into their own internal judicial systems (Isiksel 301). A prime example of this could perhaps be the United States, which established in a landmark Supreme Court case in 1886 that corporations can be included in the definition of a “person” in the Fourteenth Amendment, thereby allowing corporations to be lawfully provided equal protection (Isiksel 301). Though this provides a basis for domestic accountability for corporations, this argument fails to take into account the transnational corporations, and whether a country does or does not have the jurisdiction to hold a corporation accountable for human rights violations in another country.

Though there are substantive arguments to come from these two philosophical schools, the human rights framework in its foundation was created in only holding states and individuals accountable for human rights violations, primarily stemming from the “responsibility to protect, respect and fulfill human rights, which States owe to their citizens” (Tamo 151). There has been a recognition from the international community and human rights advocates that the current framework is failing in upholding any form of private accountability, presenting a variety of past actions that can provide effective modes of analysis for future attempts to integrate private accountability into the human rights framework.

## **Past Attempts to Integrate Corporate Responsibility into the Human Rights Framework**

There have been a variety of attempts put forth from the international community in order to account for the omissions in the human rights framework. Because of this, there is a fragmented approach to the variety of sectors of human rights, whose “several regimes [imply] that issues of international trade and human rights have been developing separately” (Tamo 151). This process of regime fragmentation can be best illustrated by the World Trade Organization, which has, in many cases, supported trade liberalization that has increased inequalities and poverty. By establishing separate regimes to uphold a variety of different standards, a precedent is set that human rights is a standard to be held outside of the economic realm, demonstrating that there is no avenue for corporate accountability for human rights violations.

Alongside this fragmented approach to the intersection of economics and human rights, the United Nations has been plagued by the politicking of nations in the discourse pertaining to human rights and transnational corporate accountability. The first substantive debate pertaining to holding corporations accountable stemmed from Chilean representative Santa Cruz at the United Nations Economic and Social Council in 1972, who claimed that the U.S. International Telephone and Telegraph Company had interfered in Chilean politics (Keller 9) . As a result of this debate, the United Nations Centre on Transnational Corporations was founded in 1977, though its attempt to draft a voluntary, non-binding Code of Conduct for transnational corporations was discontinued due to contrasting interests of states (Keller 6). Another example can be exemplified in the attempts of the UN Sub-Commission on the Promotion and Protection of Human Rights’ failed Draft Code of Conduct for Transnational Corporations due to state objection to the “strong, legally binding nature of their formulation” (Tamo 153).

The most recent and widely recognized attempt by the United Nations to present regulatory guidelines for corporations is perhaps the “Guiding Principles of Business and Human Rights ‘Protect, Respect and Remedy’ Framework” that was proposed by UN Special Representative John Ruggie in November of 2010. With three specific goals, the Guiding Principles sought to address “The State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy, both judicial and non-judicial” (Tamo 154). Furthermore, a Working Group was established for further implementation of the guidelines. Though celebrated for its multilateral approach to addressing corporate responsibility, there were many aspects of the Guiding Principles that are lacking in creating a substance framework for corporate accountability, which subjected it to criticism from civil society and human rights organizations. In a joint statement from Amnesty International, International Federation for Human Rights, Human Rights Watch, and more, it is argued that the Guiding Principles “fail to provide concrete recommendations for enhanced protection of human rights against abuse involving business,” “state that the corporate responsibility to respect human rights exists independently of States’ human rights obligations under national or international law,” and many more shortcomings (“Joint Civil Society Statement on the draft Guiding Principles on Business and Human Rights”). From this standpoint, the Guiding Principles provide no concrete framework pertaining to implementation of human rights norms in relation to businesses, but rather provide vague guidelines that have the potential to regress the productive discussions pertaining to corporate responsibility.

### **Recommendations for Future Actions**

With corporations continuing to experience unprecedented growth, especially throughout the duration of the COVID-19 pandemic, corporations are continuing to violate the human rights framework with little to no accountability (“Prospering in the pandemic: The top 100 companies”). Though past attempts to incorporate corporations into the human rights framework have been unsuccessful in creating comprehensive accountability, it is necessary to learn from these failures in order to create a more effective regime for future use (Khoury and Whyte). The key areas of reform should address the current fragmentation of the economic realm and the human rights field, the politicization of corporate accountability measures, and the lack of an actionable vehicle for corporate accountability.

In order to address these issues, it is necessary to incorporate a multifaceted approach. Across the human rights and economics field, many call for multi-stakeholder initiatives (MSIs), establishing new forms of regulations outside of the human rights framework that promote “collaboration among various public and private actors—such as corporations, governments, CSOs, and rights holders—that have a stake in an issue” (Adeleke). Though there is increasing popularity in this approach because it seemingly links the human rights field and economic field into the same body for discussing voluntary codes of conduct, these multi-stakeholder initiatives include corporate violators in discussions, ignore the larger issue of accountability, and can take the form of corporate whitewashing (Tamo 155; Adeleke). Though these bodies certainly have a stake in the issue of corporate accountability, the establishment of MSIs are not sufficient to address the omission of corporations in the human rights framework.

Taking this into consideration, there should be a renewed effort to incorporate corporate accountability into the United Nations Human Rights Council. Through doing this, there could be further discussions about the ways in which international law is to be interpreted in its current



state, while also establishing “an instrument that legally binds States while imposing direct legal obligations on TNCs with regards to human rights” (Tamo 159; Khoury and Whyte). Because these past attempts have been plagued by politicization, the incorporation of MSIs into these processes will be critical. With their participation, there will be private stakeholders readily available to lobby for states’ commitment to legally-binding forms of corporate accountability. In the situation that these MSIs do not engage in these processes, then there will be more opportunities for activists to shame corporate stakeholders in their attempts to whitewash human rights violations and unethical activities.

Through this solution to the problem, there are opportunities for a variety of sectors to engage in the implementation of corporate accountability. By tying the fields of economics and human rights, there is a less fragmented approach to corporate accountability, alongside an avenue for advocacy by MSIs to rally states to implement substantive accountability measures.

## **Conclusion**

In understanding the unprecedented growth of corporations and their consequent role in human rights violations, it is clear that the human rights framework’s past attempts to hold corporations accountable for human rights violations have failed and are in deep need of reform. Plagued by economic and human rights fragmentation, state politicization, and a lack in concrete forms of accountability, the past attempts to address corporate accountability have been insufficient in enacting corporate accountability and preventing human rights violations. With an approach that incorporates corporations into the discussion for creating a legally-binding form of corporate accountability in the UN Human Rights Council, there are increased opportunities for support among a diverse range of stakeholders, unity among economic and human rights sectors, and a future for concrete forms of accountability.

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