



Human Rights and Business: A Lesson from Vietnam

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Abstract. The purpose of the study is to propose lessons on integrating responsible business and human rights in Vietnamese enterprises through systematizing the theoretical basis and analysing experiences in responsible business implementation and human rights of some businesses in the world. The study shows that implementing responsible business and human rights integration in Vietnamese enterprises is new at level 1, which is the expression of human rights in statements of mission, goals and core values. Businesses need to integrate responsible business and human rights into their business strategies, policies, programs and processes to truly bring human rights issues into their actual business operations. The study also suggests the points that businesses need to prepare to do this problem. The study has important practical implications for Vietnamese businesses in the context of deep international economic integration and the increasing requirements for the implementation of social responsibility and human rights of stakeholders in the business process.

Keywords: Business and human rights · Corporate social responsibility

1 Introduction

It is widely accepted that human rights issues often occur in the context of human resource management, affecting not just businesses' customers, employees, and contractors along the supply chains, but often entire communities and the environment. Over recent years, concerns have been raised about malpractices related to labor rights, health and safety at work and the use of child labor by enterprises. There is an urgent need to prevent human rights violations since recognition is growing that respect for human rights also can be a powerful tool for improving business performance. More recently, however, global efforts have focused on developing diverse measures to ensure that victims of such violations have access to effective remedies when harm occurs. The paper is study into business and human rights based on situation in Vietnamese enterprises. In what follows, the research is conducted to find out whether norms and mechanisms of human rights protection are effective or not in Vietnam's business context, and investigate on how to take all reasonable steps to prevent human rights violations. The structure of this article will be as follows. Following the introduction section, the authors review key

denifications related business and human rights (BHR). The next section present some facts about BHR in the world. The subsequent section provide reviews about which issues integrating BHR in Vietnamese enterprises. The final section concludes the article with some concluding remarks.

2 Business and Human Rights

2.1 Concepts of Business and Human Rights

There is no uniform definition of human rights, but all versions admit that human rights stem from the inherent dignity of the human person, ranging from general rights, such as the right to life, to more specific rights necessary to live a respectful and worthy life, such as rights to education, work, health, or food. Human rights refer to basic rights and freedoms that everyone is entitled to as a human being (Griffin, 2008).

The fact is that businesses make a positive contribution to realization of human rights in wide a range of ways. Business and human rights (BHR) examines the human rights responsibilities of business, which include the respect and protection of human rights along corporate value chains; the avoidance of causing or contributing to human rights violations through business activities and conduct; the provision of remedy to those whose rights have been violated by business (Bernaz, 2017). When it comes to business and society scholarship, certain human rights issues and associated behaviors have been addressed, such as labor rights (Soundararajan et al., 2018), child labor (Ballet et al., 2014), modern slavery (Monciardini et al., 2021), physical integrity abuses (Olsen et al., 2021), or businesses operating in or collaborating with oppressive regimes (Schrempf, 2011).

The United Nations has played a key role in promoting BHR through initiatives for the past several decades. In 1998, a working group of the UN Subcommission on Human Rights started drafting the so-called UN Draft Norms, which were an attempt to introduce mandatory human rights obligations for business (Weissbrodt & Kruger, 2003). In 2011, the United Nations Guiding Principles on Business and Human Rights (UNGPs) built on the “Protect, Respect and Remedy” framework, related to three pillars for action. The first pillar focuses on states’ duty to protect against human rights abuses, the second focuses on corporate responsibility to respect human rights and the third focuses on victims’ right to access effective remedy (Fig. 1).

Two years after the publication of the UNGPs, in 2013, the “encouraging” trends was observed respecting corporate implementation of the UNGPs (Ruggie, 2013). Accordingly, businesses have increased their efforts in implementing the UNGPs or parts thereof. They have started in recent years to adopt human rights policies (Schrempf-Stirling & Wettstein, 2017), publish human rights-specific reports instead of CSR reports, and conduct human rights impact assessments or implement more comprehensive human rights due diligence processes (Götzmann, 2017). In addition, in 2014, the UN Human Rights Council adopted a resolution to restart negotiations on a binding international BHR treaty. By articulating the expectations of governments and businesses, the UNGPs have bridged governance gaps and began to pierce the corporate. The deliberations commenced in 2015 and are currently ongoing (De Schutter, 2016; Kirkebo & Langford, 2020).

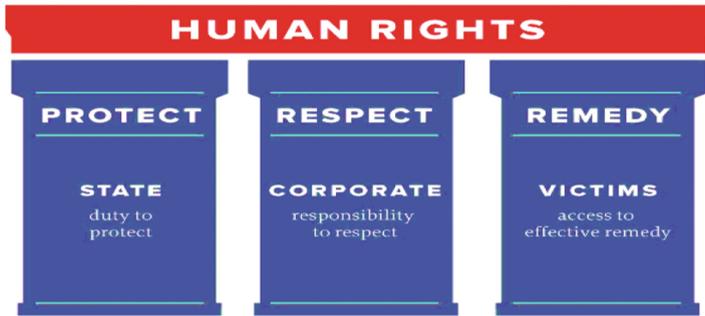


Fig. 1. The three pillars of UNGPs. Source: United Nations, Guiding principles on business and human rights, 2011

2.2 Potential Benefit of Business and Human Rights

There is mounting evidence that the respected workforce is more stable, predictable and productive, all great for corporate bottom line. In other words, there are financial as well as ethical reasons for respecting human rights. According to HM Government (2013), these financial reasons include as follows:

- Protecting and strengthening their corporate image;
- Maintaining and increasing their customer base, as customers favor businesses with higher ethical standards;
- The ability to attract and retain quality employees, leading to lower staff turnover, higher productivity and improved employee motivation;
- Reduced risk of disruption to business operations through conflicts either within the business (e.g. strikes or other labor disputes) or with the local community or other parties
- Reduced risk of legal disputes caused by human rights violations, and therefore also lower legal costs;
- The ability to attract socially aware investors;
- The ability to attract business partners who are themselves careful to avoid the risk of human rights violations.

2.3 Relationship Between BHR and CSR

In today’s business environment, “Corporate Social Responsibility” (CSR) and “Business and Human Rights” (BHR) are often lumped together and used interchangeably. Both CSR and BHR can be seen as a part of a broader movement interested in enhancing and establishing corporate responsibility beyond profit-maximization and wealth creation. These two terms were described as “close cousins”, intertwined, yet carrying distinct identities and traditions (Ramasastry, 2015). In the context of modern-day *slavery* which is still a *prevalent* issue globally, especially in developing nations including Vietnam (ILO, 2022), CSR with welfare initiatives can uplift the lives of the laborers, yet it is not enough to eradicate modern slavery altogether. The concept of BHR comes into the picture to fill this gap.

There is a tendency towards interpretation of BHR as a part or a subset of broader CSR approaches. One of the most striking differences between the two is that BHR emerged predominantly from legal scholarship, while CSR has its root in management studies (Ramasastry 2015). CSR has undergone many theoretical revisions throughout the years. It is considered an “umbrella term” for a wide range of initiatives and processes, which businesses put in place to make sure it meets social and moral expectations while pursuing its economic interests. Meanwhile, the BHR regime amplifies clarity and uniformity. Not only does it define, it provides a framework and a guide for implementation. The expectations are ubiquitous and applicable to businesses regardless of their size, industry and region. The authors examine the differences between CSR and BHR regarding the law, the content and the strategic approach in the implementation of these concepts. Regarding the law, the purpose of CSR is not simply to fulfil legal expectations, but to make positive contributions to human capital, the environment and relations with stakeholders, beyond mere compliance with the law. The actual level of CSR is completely dependent on the organizational culture and ethical leadership. On the other hand, human rights respect is mostly seen as a matter of legal compliance. BHR presents a principle of law underpinning more specific norms, feature as the basic foundation for international and national specific human rights standards (Buhmann, 2006). With respect to the content, the Obara and Peattie (2017) study showed that business entities adopted both negative and positive responsibilities in terms of CSR commitments, while in terms of BHR, business entities generally focused on negative responsibilities. When it comes to the strategic approach, CSR policies and human rights operate in diverse ways (McCorquodale, 2009). As a rule, CSR is managed strategically. Business entities have strategies on how to incorporate social, environmental and ethical standards into their operations and communicate this approach explicitly. They have in place policies and procedures to ensure social responsibility and to annually report on their progress. CSR has become a strategy for increasing profit. CSR also manages some issues of human rights, but does not explicitly present them as such. BHR issues are managed more implicitly. Business entities have to avoid infringing the human rights of others, mostly by respecting national legislation. BHR has not been a part of business strategy, but only one of the compliance issues.

3 Experience in Integrating Business and Human Rights in the World

3.1 Legal Policies

Due to different perceptions in each historical period, the intersection between business and human rights has long received relatively little academic attention. But recently, when CSR issues became common, businesses have also started to integrate these two factors in their activities to create more positive effects. Especially since 2005, when John Ruggie’s appointment as the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, the issues related to business and human rights really have changed at its core. The Ruggie’s framework has since become the state of the art in the debate on business and human rights (Wettstein, 2012).

Regarding each aspect, many international organizations have published clear and specific policies. The United Nations (UN) has established international human rights law with hundreds of documents, typically: The Universal Declaration of Human Rights (UDHR - 1948), the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Together, they are often referred to as the “International Bill of Human Rights”. The UN also put human rights on the agenda to interact directly with countries; established specialized agencies to protect and promote human rights; established mechanisms to receive and resolve complaints, or to periodically examine the human rights situation in countries.

The International Labor Organization (ILO) also produces a series of human rights declarations and conventions such as: ILO Declaration Fundamental Principles and Rights at Work and its Follow-up; C098 – Right to Organise and Collective Bargaining Convention, 1949; C029 – Forced Labour Convention, 1930; C182 – Worst Forms of Child Labour Convention, 1999; C111 – Discrimination (Employment and Occupation) Convention, 1958, and many other conventions.

States are further bound by relevant customary international law principles. However, these principles are only considered the declaratory instruments, and do not in themselves give rise to legal obligations. Those deriving from the UDHR are specific examples.

It is safe to say that human rights issues in general and human rights in business activities in specific have been and have always been deeply concerned by the whole world. Regarding responsible business, international organizations and many enterprises have also introduced a number of specific policies on the basis of considering profit goals and sustainable development.

In 2011, the UN provided business a comprehensive framework to maximize their positive impact and minimize the negative one. The 31 Guiding Principles on Business and Human Rights unanimously adopted by the Human Rights Council, the International Chamber of Commerce and all main business associations.

These principles, spell out the UN “Protect, Respect and Remedy” Framework by John Ruggie, which are the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The Guiding Principles do not create new legal obligations, rather they elaborate on the implications of existing obligations and practices for states and business (Muižnieks, 2016). They are considered a guidance to “Go beyond the philanthropist scope of Corporate Social Responsibility” and the new standard for Sustainable Business.

3.2 Practical Application

The above Guiding Principles have gained wide acceptance around the world. To guide and motivate countries to come up with appropriate action plans, the United Nations has established a Working Group on Business and Human Rights. The Group strongly encourages all States to develop, enact and update periodically a national action plan (NAP) on business and human rights (Working Group on Business and Human Rights, 2022). With its active efforts, the Group has helped countries in general and businesses in particular realize the importance of BHR so that they can come up with clear action plans as well as strong statements. The list of States that have already produced a plan or have taken steps toward doing so has been published as Table 1. In which, there are 3

States that have included a ‘Business and Human Rights’ chapter in their Human Rights national action plans: Georgia, South Korea, México.

Besides, there are 20 states that are in the process of developing a national action plan or have committed to developing one: Argentina, Australia, Azerbaijan, Guatemala, Greece, India, Indonesia, Jordan, Latvia, Malaysia, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Nicaragua, Portugal, Ukraine, Zambia

Table 1. States that have produced a national action plan

State	Launched time
UK	September 2013, updated May 2016
The Netherlands	December 2013
Denmark	April 2014
Finland	October 2014
Lithuania	February 2015
Sweden	August 2015
Norway	October 2015
Colombia	December 2015
Switzerland	December 2016, Revised Action Plan 2020–2023 launched January 2020
Italy	December 2016
USA	December 2016
Germany	December 2016
France	April 2017
Poland	May 2017; second edition Polish National Action Plan for the implementation of the UNGPS 2021–2024
Spain	July 2017
Belgium	2017
Chile	2017
Czech Republic	October 2017
Ireland	November 2017
Luxembourg	2020
Republic of Slovenia	November 2018
Kenya	June 2019
Thailand	October 2019
Japan	October 2020
Uganda	August 2021
Pakistan	October 2021

Source: Working Group on Business and Human Rights

It can be seen that the involvement of all stakeholders in the adoption and implementation of NAPs on business and human rights can further accelerate the awareness process from business. Recently, enterprises themselves are becoming more aware of the impact of their activities on human rights. They pay more attention to avoiding harmful effects, as well as promote human rights in their operations, for example in the field of non-discrimination or forced labor. Typically, the Danish Institute for Human Rights has already prepared a specific toolbox for the human rights impact assessment of business projects (Muižnieks, 2016).

The European Union also consistently supports the UN principles and urges their implementation by member states. Business and human rights recommendations are adopted both in terms of policy and practice. A draft mandatory human rights and environmental due diligence law is currently in the process of developing in the EU. France, Germany and Norway have already enacted due diligence laws, while similar initiatives are underway in Mexico and a number of other European countries (GBI & WBCSD, 2021). Thus, mandatory due diligence requirements are the right and popular direction to promote sustainable development for businesses.

For example, there have been increasing demands that multinational corporations should strive to increase the positive effects and minimize negative impact of their activities, especially in countries that are still underdeveloped and weak in the field of human rights protection such as India and South Asia. In fact, India is one of the first countries to statutorily mandate corporate social responsibility through law. However, a government report found that workers in India mostly earn less than half of the accepted minimum wage, 71% do not have a written employment contract, 54% do not get paid leave and nearly 80% in urban areas work well beyond the eight-hour workday (48-hour week) (Daniel Sharma, 2021). These alarming numbers require a mandatory human rights due diligence for companies to be put in place for businesses operating here, and at the same time, impose significant challenges and severe liabilities on companies that procure their products through supply chains. It is expected that Indian companies that conduct business in the EU may be required to comply with European mandatory due diligence laws because this law can also apply to companies that sell or provide services in the internal market. The EU law may go further and require value chain due diligence. Accordingly, the investors, customers and other business partners of Indian companies in global value chains must be required to strengthen their product and customer due diligence. From there, it can improve human rights risk management and create a better policy system on business and human rights (GBI & WBCSD, 2021).

Another example, there have been many companies that have had to receive very serious consequences, greatly affecting their reputation and revenue, when they did not respect business and human rights. Since the late 1990s, when major shoe brands such as Nike, Rebook, and Adidas were condemned for “exploiting indigenous workers” in Asia such as Indonesia, Bangladesh, Pakistan... Calls for boycott against Nike have been made on a large scale, typically at the University of Oregon. More recently, in 2016, when information about the mistreatment of Vietnamese workers by Nike shoe factories (insufficient living wages, poor working conditions, disrespectful treatment, etc.) spread on the media, students from Georgetown University (USA) even flooded

into the principal's office to demand that the school cancel the contract with Nike. This is really a big lesson for Nike itself and businesses today.

For multinational corporations, there have been concerns that the potential from a market as large as China could cause companies to put more emphasis on economic factors instead of human rights in the struggle for the best positions in the market. However, Google's recent confrontation of the Chinese government over censorship rules and a number of cyber attacks on the e-mail accounts of human rights activists, shows a serious attitude and great effort from major corporations in the campaign to improve business and human rights. Google's move was applauded by human rights organizations. This shows the growing important role of the organization, emphasizes the increasing responsibility on the part of enterprises (Wettstein, 2012).

So clearly, experience in the implementation of NAPs will provide valuable elements for on-going UN efforts to draft a legally binding instrument. It may take a long time to complete this instrument but the existing international and regional standards on business and human rights have initially regulated the activities of enterprises and transnational corporations effectively. They have an increasing role and responsibility in promoting business and human rights (Muižnieks, 2016).

In summary, "business and human rights" is currently a hot topic and receives much attention from all countries around the world. A business that has responsibility and aims for sustainable development will always give strong statements and policies to integrate these two elements in its operations, because "Human rights are the foundation of a healthy society and sustainable business" (Paul Polman, Unilever CEO).

4 The Issues of in Integrating Responsible Business and Human Rights for Vietnamese Enterprises

4.1 Responsible Business Practice in Vietnam

In Southeast Asia, some countries are starting this plan, such as Thailand, Malaysia, Indonesia, etc. In the business sector, the number of multinational companies globally integrating social responsibility into business policies is increasing. Corporate social responsibility (CSR) was introduced into Vietnam by transnational corporations in the mid-nineties through codes of conduct or labor standards that were transferred to suppliers in the country with a particular focus on the Vietnamese textile and garment industry (VBLLI, 2007; Nguyen, M., et al., 2018). Since then, CSR has continued to develop, mainly in the form of voluntary codes of conduct, philanthropic activities, and programs of compliance with social and environmental standards set by foreign corporations in Vietnam. In many cases, compliance with the social responsibility standards set by transnational corporations, especially in Europe and the U.S, during this period motivated businesses in the country exceeds the minimum requirements under national law. The promotion of CSR through transnational corporations is also supported by organizations representing businesses in Vietnam, such as the European and American Chambers of Commerce, by introducing responsible performance standards into investment negotiations (Hamm, B., 2012).

A people-centered approach to corporate responsibility requires businesses to go above and beyond national laws and regulations and take measures to assess risks to

individuals, society, and the environment, addressing possible adverse impacts, including prevention and remediation of abuses of relevant standards, as outlined in the UNGPs (Guiding Principles) 11). Although the Government of Vietnam has focused on strengthening the rights of many groups, in which workers' rights have been given special attention, that is the ratification of seven of the eight core Conventions of the International Labor Organization (ILO, 2020). Since 2017, UNDP has focused on working with Government agencies in Vietnam to promote responsible business practices by training government agencies, connecting agencies with the international economy, and strengthening the broader regulatory framework for responsible business practices (UNDP, 2018).

4.2 Motivation to Conduct Responsible Business in Vietnamese Enterprises

Vietnam is in a period of deep integration through joining international trade agreements, such as the EU-Vietnam Free Trade Agreement (EVFTA) (European Commission, 2020) and the Comprehensive Agreement and Trans-Pacific Partnership (CPTPP), (Government of New Zealand, 2018) has led to an increased focus on responsible business practice. To promote the responsible business practice, it is important to understand why businesses globally, and increasingly in Vietnam, are integrating responsibility into their operations.

The increasing number of Practicing Responsible Businesses is due to increasing awareness of corporate responsibility, and increased respect for social and environmental standards can help protect against risks to the business, expand into new markets, build your customer base and ensure sustainable business growth (The Economist, 2009). For big brands, in particular, ethical consumerism is on the rise, which is demanding more from companies in terms of how the products and services offered are manufactured. In this case, the major brands are exposed to significant reputational risk when they engage in irresponsible behavior. This trend is comparable every year in Vietnam, with a 2015 study conducted by Nielsen showing that 86% of consumers in Vietnam are willing to pay more for products and services from social responsibility and environmental impact companies, the highest in Southeast Asia (Nielsen, 2015).

On the other hand, many governments have recognized the potential risks posed by irresponsible business conduct to society and the environment, and have sought to regulate business practices, e.g. the modern slavery, 2015 from the UK (Modern Slavery Act, UK Public General Acts, 2015), and Corporate Duty of Vigilance, 2017 from France (Law on the Corporate Duty of Vigilance, 2017).

Increasing awareness among NGOs, the media, and trade unions about corporate abuse of social and environmental standards, coupled with the ease of exchanging information online, has created more pressure on businesses to behave responsibly. Many industry associations have recognized the above risks and developed corporate sustainability to protect their industry reputation.

4.3 Integrating Responsible Business and Human Rights in Vietnamese Enterprises

Regarding human capital, McKinsey & Company estimates that “companies with the highest gender diversity are 15% more likely to achieve financial returns than the respective national industry averages” (Hunt, V., Layton, et al., 2015). In terms of investments, properties screened for investment using the Socially Responsible Investment (SRI) Criterion has increased by 25% worldwide since 2014 with a total value of 23 trillion USD (GSIA, 2016). There is a lot of potential for growth in SRI assets in Asia as the region continues to grow, including the growth of ethical millennial consumers.

Vietnam’s desire to attract responsible foreign direct investment has identified the importance of establishing clear laws and policies to uphold international standards. This gives business leaders the clarity they need to set their businesses’ long-term economic growth goals and the assurance they need to make larger and longer-term investments. In Vietnam, UNGP is also making efforts to integrate responsible business and human rights into the sustainable development policy of companies that source in Vietnam but are still at the informational level in the workshop. This fact opens up opportunities for the use of UNGP as a framework to review and improve the sustainable development policy of the business community in Vietnam, especially those participating in the global supply chain. Integrating responsible business and human rights is a relatively new issue for most Vietnamese businesses. Only a small number of Vietnamese enterprises have initially implemented the principle of developing a policy of respecting people like Vingroup and Viettel at level 1, which is the business that mentions human rights in its mission, vision, or other statements, namely:

Vingroup declares its corporate mission: “For a better life for Vietnamese people” and considers the human factor as an important value in the 6 core values of Vingroup (core values “prestige - mind - intelligence - speed - quality - humanity”)

Vingroup’s goals are: To gather elite people to create elite products and services; all members to enjoy elite life and contribute to building an elite society. Vingroup wishes to build a lean human resources team with both ethics and talent, where each member is an excellent factor in his or her field of work.

Vingroup’s concept: Its system must be like a healthy, toned person without excess fat. We “treat the sage” and “find the sand to find gold” hope to find the right people, put the right people in the right jobs to promote their full potential, but are also ready to screen the unsuitable people. Vingroup builds relationships with customers, partners, colleagues, investors, and society with goodwill, affection, and humanity.

Vingroup always respects employees as the most valuable asset; building a professional, dynamic, creative and human working environment; practicing preminent welfare policies, create favorable conditions for high income and equal development opportunities for all employees.

It can be seen that Vietnamese enterprises are committed to respecting human rights with a public policy:

- Approved at the highest level of the business;
- Consulted with internal and/or external experts;
- Expressed by provisions for employees, business partners, and other parties directly related to the business’s operations, products, or services;

- Communicated to all personnel within the enterprise, business partners, and other stakeholders;
- Reflected on the necessary operating policies and procedures, thereby integrating them throughout the business.

5 Conclusion

Integrating responsible business and human rights is key to positioning your business to meet tough expectations. Businesses are particularly interested in using the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises as reference points for due diligence obligations on human rights. Effective implementation of human rights enables the company to identify, understand and respond to the human rights risks and issues with which it is involved regularly. Good human rights risk management will require effort, creativity, teamwork, and cooperation. This shows that people can be impacted by business in complex ways. Ideally, human rights due diligence processes would be supported by a policy commitment to meet the company's responsibility to respect human rights, strong support from senior management and key stakeholders effective complaints process. The private sector needs to be reflected and integrated into the core values, functions, and operations of the enterprise.

Responsible business and human rights are not a one-size-fits-all model. Enterprises need to adjust this issue to suit the characteristics of each business. Because Responsible Business and Human Rights focuses on risks to people, which are often complex, and human rights due diligence must go beyond the checklist and available tools. Therefore, dialogue is central to the human rights due diligence process, including dialogue with suppliers, employees, communities, and other stakeholders. The COVID-19 pandemic has made it harder to speak to people face-to-face but has also highlighted the need to put people first. Finally, supply chain partners or colleagues across the enterprise should maintain ownership of human rights due diligence, finding ways to bring them in and engage them in the process.

For Vietnamese businesses in general, it is necessary to take action to prevent and reduce risks in ensuring human rights. Businesses need to clearly define their role in the risk of negative impacts on human rights and integrate the results into relevant functions and processes within the business. On the other hand, Vietnamese enterprises need to review current environmental and human rights policies, assess, integrate and act, monitor, and communicate in their value chains. In addition, businesses need to consider existing operational complaint mechanisms that are a part of or set up to become part of their operations.

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