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ABSTRACT

Over the last decade we have seen new and diverse coalitions being created to drive change in business behaviour. In this article, the author analyses whether human rights language still retain their potential to promote social change. While analysing the business and human rights movement, his answer is a “yes, but”. The author argues that human rights remain a vital tool for social change. But, he adds, when social movements are bolstered with a diverse coalition of actors to achieve a common goal, then the opportunities to achieve transformational and systemic change are greatly multiplied. As an example, the author describes the advocacy made around the Dodd-Frank conflict minerals’ bill in the United States and its special relevance to victims in the Democratic Republic of Congo. For the author, human rights often lend a vital inspirational role (endorsing the rightness of the struggle); a powerful and universal language (understood nationally and globally and bringing diverse interests together); and a compelling rationale for fair treatment in the face of injustice.

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ESSAY

ARE HUMAN RIGHTS AN EFFECTIVE TOOL FOR SOCIAL CHANGE?: A PERSPECTIVE ON HUMAN RIGHTS AND BUSINESS

Phil Bloomer

Are human rights an effective tool for change? The answer must be a resounding 'yes, but'. Human rights have inspired and underpinned some of the greatest movements for change in our world. They express some of the highest aspirations of humankind. And their implications for our present societies are transformational. The 'but' refers to the need for human rights movements to evolve and be relevant to the evolving drivers of human rights abuse in our world. One I'd like to consider here is the rising inequality in our societies.

We live in a time of hyper-inequality: seven out of ten of the world's population live in countries where inequality has risen in the last three decades. Oxfam recently stunned many of us with the calculation that the population of one double-decker bus (85 people) own the same wealth as the poorer half of the world's population (3 billion) (SLATER, 20014).

This rise in inequality is across the world: in the USA, after one of the deepest recessions in its history, the richest 1% have captured 95% of all income gains since 2009 (SAEZ, 2013). In India, the wealth of the billionaire community increased twelvefold in 15 years (INEQUALITY..., 2014). This same wealth could have eliminated absolute poverty twice over in India, with all its attendant violation of basic rights such as education, health, water, food, housing. And in Africa, according to Ventures Africa magazine, the number of billionaires has more than doubled in the last decade to 55 billionaires, with a combined wealth of US\$143bn (THE RICHEST..., 2013).

The dangers of this hyper-inequality are now recognised as unsustainable, a source of human rights violations, a waste of human potential, an economic inefficiency and a threat to political participation, by diverse leaders: Pope Francis, the International Monetary Fund (IMF) chief, Christine Lagarde,

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the World Economic Forum, US President Barack Obama, Brazilian President Dilma Rousseff and the Central Committee of the Chinese Communist Party have all recently devoted speeches and meetings to inequality. Unsurprisingly, the proposed solutions often remain anaemic and insipid, though more recently the taboo 'R' word (redistribution) has been heard in the halls of the IMF.

What is new is that movements for human rights and broader social justice are increasingly combining their narratives to drive action on inequality. After all, the achievement of the right to a livelihood, health, and education is often profoundly redistributive—both in terms of wealth and power. Our own organisation, the Business & Human Rights Resource Centre, has a portal devoted to tax avoidance since 2009—a simple recognition that if companies and elites can avoid fair taxation, then a State's aspiration to realise the rights to health, education and water, for instance, will be still-born.

The rise of inequality of power and wealth has developed, not through fate, but through our societies' ideas and systems. Human rights are one of the most powerful shared, universal counter-concepts we have to tackle injustice and inequality.

1 Business and human rights

Traditionally, the State has been seen as the primary duty bearer, held responsible for realising the human rights of their citizens as well as protecting their rights from violation. Most of the international human rights treaties are aimed at States. However, the Universal Declaration of Human Rights' preamble calls on "every individual and every organ of society" to promote and respect human rights, which, according to Professor Louis Henkin, a leading international law scholar, "excludes no one, no company, no market, no cyberspace" (HEINKIN, 1999, p. 25). Human rights are based on the inherent dignity of every person; they are those basic rights and freedoms to which all humans are entitled. They have been spelled out in internationally agreed standards. The international community has declared all human rights "universal, indivisible, interdependent and interrelated."

Yet, companies are now some of the most powerful actors in our world. Our rapidly globalising economy over the last thirty years has led to many transnational corporations becoming larger economic entities than whole nation-States. Their power and wealth have brought them increasingly to the centre of the human rights stage. Regarding human rights, these companies do not get to pick and choose, from a smorgasbord, those issues with which they feel comfortable.

In many ways the State rightly remains the primary duty-bearer for human rights, but a growing number of international and national companies know they are increasingly being held to account for their human rights performance. Unfortunately this accountability is still increasingly exercised through the court of public opinion, more than the court of law.

Corporate legal accountability for human rights abuse has not been moving in the right direction. In 2013, the opportunity for victims of abuse to demand

extra-territorial corporate accountability and remedy diminished significantly through the US decision in *Kiobel v. Royal Dutch Petroleum Co.* (UNITED STATES, 2013), and in 2012, the removal of legal aid to extra-territorial cases in the United Kingdom. But in the same year, we had the apparel companies reacting collectively, if far too late, to begin to ensure workers' safety in their supply chain after the Rana Plaza factory collapse in Bangladesh that killed over 1,100 people;¹ Coca-Cola announcing a "zero tolerance" to land grabs in its supply chains (supplemented in March 2014 by PepsiCo² announcing a similar policy), and electronics giants continuing to lobby for action to ensure "conflict-free minerals" in their supply chain.³

The court of public opinion for companies is intimately linked to a company's social licence to operate. And the social licence to operate is closely connected to a company's respect of human rights. Many major companies understand that they increasingly need to demonstrate public benefits that deliver aspects of the common good through good-quality jobs, products, services and proper taxation, for instance. If these are compromised by poverty wages and abusive working conditions, massive tax evasion, or irresponsible legacies, their social licence to operate is compromised. For example, in Peru, India and Brazil, mining companies have faced months of paralysis due to protests for their irresponsible practices that have compromised their social licence to operate at huge financial cost. Equally, Google, Starbucks and Amazon have all felt considerable heat from revelations of their highly-creative tax avoidance in the UK.

Increasingly, companies are being judged by their record on human rights. There are increasing demands and action for transparency on companies' human rights performance. Business & Human Rights Resource Centre's website⁴ tracks reports on the human rights impacts (positive & negative) of over 5,600 companies in 180 countries. The site is updated hourly, and receives over 1.5 million hits per month. Users include companies, NGOs, investment firms, governments, consumer organizations and journalists. We also have a rising number of "Rankings" of companies in key sectors: Access to Medicines Index and Behind the Brands Index, to name two.

The concern about the extraordinary economic power and reach of transnational corporations and the need to set out their responsibilities led, in 2011, to the establishment of the UN Guiding Principles for Business and Human Rights (UNITED NATIONS, 2011). These are voluntary principles that set out the duty of States to "protect" human rights, of business to "respect" human rights and of both to ensure there is adequate "remedy" for those whose rights are abused. They are an important advance in setting out what is expected from business—the floor rather than the ceiling of standards of behaviour. They have created a powerful dynamic in some companies and States which has spurred internal advocates of human rights to push for change in core business models. Nevertheless, it remains a disappointment that, after almost three years since their adoption, only two States (UK and Netherlands) have an official National Action Plan on business and human rights and only a handful of companies

have an implementation plan (including Rio Tinto, Adidas and Microsoft). As John Ruggie said in September 2013, “The stakes are high; the time is short; the cost of getting [business and human rights] wrong is incalculable while the opportunities from getting it right are legion” (RUGGIE, 2013).

2 The Movement for Business and Human Rights

Human rights only become a tool of substantial social change when they are in the hands of movements for social change. If the current State of business and human rights is not transformational, it will require a movement to shift it. Over the last decade we have seen new and diverse coalitions being created to drive change in business behaviour. Their strength often lies in their networked approach, keen sense of communications and agility (all of which have been strengthened by new communications technology).

One powerful aspect of business and human rights is that it naturally brings together an analysis based on the political economy of human rights: i.e. understanding which are the political and economic forces that are defining our currently unsustainable path and how can we re-direct them to the goals of human rights and shared prosperity. In this way, the issue of “business and human rights” can increasingly contribute to diverse movements for change based on a common cause. It requires our human rights movement to sometimes be humble in working with other movements and also creatively tactical in working with media and social media, as well as individuals and sections of companies or States which share the same specific goal.

This approach is regularly being applied to diverse struggles: the dispossession of peasants through land grabs by governments and agribusiness; environmental damage by mines; access to medicines for the poor in the face of some pharmaceutical giants drive to assert their universal patents; living wage and safe working conditions in apparel supply chains; collusion of tech companies with repressive governments to censor the web; and tax evasion and avoidance by international companies.

These same causes increasingly bring together actors who have only infrequently collaborated before: trade unions; human rights organisations; women’s, development and environmental organisations; as well as grassroots and community organisations and progressive companies and governments.

One recent example would be the effort to implement the Dodd-Frank conflict minerals’ bill (SEC ADOPTS..., 2012). This ground-breaking legislation in the USA seeks to stymie the flow of wealth to despots in the Democratic Republic of Congo (DRC). Section 1502 of the Dodd-Frank Act requires companies registered with the U.S. Securities & Exchange Commission (SEC) to demonstrate due diligence in their supply chain for any minerals sourced from one of the most terrible killing fields in our world: the DRC and its neighbours.

The need for this legislation was made evident by the immense courage and resilience of human rights and social justice activists in the Kivus region of DRC. Local civil society, working with international organisations like

Global Witness, set out how the mines sustained the militias. These messages were amplified by national and international media, often cajoled and fed by national and international civil society. There was a simple message: this volcanic region is blessed with deposits of rare earth minerals, essential to our mobile phones and computers. These minerals should be a platform for shared prosperity and security for the people of the Democratic Republic of Congo. But the mines that exploit these deposits are usually informal, often using child or slave labour, and are too often controlled by the ruthless tyrants and warlords that lead militias who prey upon the local population through violence and intimidation. These tyrants have become rich and bought their arsenals through exploiting shady business deals through unregulated and unreported trade of their mineral output. But now, with the more regulated and transparent trade by US companies as foreseen by the Dodd-Frank Act, their illicit source of wealth and power may wither and die.

As always, there was long and loud self-interested opposition at the stage of designing the implementation of the Act. The National Association of Manufacturers and the US Chamber of Commerce both opposed implementation, citing infeasibility of reporting and potential economic damage to the poor of eastern DRC. In May 2012, Global Witness, which led much of the international work on conflict minerals, requested the involvement of the Business & Human Rights Resource Centre in seeking responses from eleven companies, the US Chamber of Commerce and the National Association of Manufacturers regarding industry lobbying to undermine implementation of the U.S. Dodd-Frank Act's section 1502.

Seven companies and one business association responded and four declined to respond. Microsoft, General Electric, and Motorola Solutions took a stand and separated themselves from the Chamber's position on conflict minerals. These three wanted their machines to use conflict-free minerals, as part of their global social license to operate, to demonstrate their commitment to removing egregious human rights abuses from their supply chain. It was a great occasion therefore when the SEC voted to adopt rules to implement these conflict minerals provisions on 22 August 2012. And in January 2014, Intel joined in and announced its chips would be "conflict-free" (re: DRC) and invited the entire industry to join them. The bold move by major companies to step out from the "business as usual" position of their business association was critical. The companies have been praised for this specific action and the business associations have lost credibility, but most importantly, the people of eastern DRC may become a little safer in their communities in the not too distant future. This was a diverse and tactical alliance which has achieved this transformational and systemic change in conflict minerals in DRC.

The success has now inspired a similar and more ambitious move in Europe to demand due diligence on imports of minerals and timber from all conflict areas of the world. Again this simple demand for transparency has become a battle royal, with mining interests organizing to stymie any legislation and demanding a weak and non-regulatory approach to transparency.

3 Human rights and the vulnerable

For the poor and vulnerable of our world, human rights often represent one of the very few weapons they have in their highly unequal negotiations for fairness and justice with big business and States. I have met many, many communities of poor, vulnerable and dispossessed who knew nothing of their basic rights and accepted the abuse they received from business and State as inevitable and immutable. Equally, I can think of very few organizations and communities of poorer and more vulnerable people who have defended their assets, gained prosperity and ended repression who have not at least been informed heavily by a human rights framing. Most have used human rights explicitly as an inspiration and justification of their cause and a tool to demand better treatment by government and business. Human rights often lend a vital inspirational role (endorsing the rightness of the struggle); a powerful and universal language (understood nationally and globally and bringing diverse interests together); and a compelling rationale for fair treatment in the face of injustice.

For this reason alone, human rights remain a vital tool for social change. But when these social movements are bolstered with a diverse coalition of actors to achieve a common goal, then the opportunities to achieve transformational and systemic change are greatly multiplied.

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UNITED STATES. 2013. Supreme Court. **Kiobel v. Royal Dutch Petroleum Co**, 133 S.Ct. 1659.

NOTES

1. See: <https://bangladeshaccord.org/>. Last accessed in: Sept. 2014.

2. See <http://www.oxfam.org/en/pressroom/pressreleases/2014-03-18/pepsico-declares-zero-tolerance-land-grabs-supply-chain>. Last accessed in: Sept. 2014.

3. See <http://www.globalwitness.org/library/electronics-companies-must-break-us-chamber-conflict-minerals>. Last accessed in: Sept. 2014.

4. See <http://business-humanrights.org>. Last accessed on: 27 Aug., 2014.