

The Negative Impacts of Transnational Business Activities on Human Rights as an Urgent Issue of Global Human Rights Protection

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In 2019 the International Labour Organization turned one hundred years old. Yet, its basic concern, particularly to foster social equality, is still of urgent importance on a global scale.

Since the liberalization of global markets and business activities in the 1970's, the importance of the internationalization of goods production and therefore the importance of developing countries to be included into global supply chains has increased.¹ Nowadays, wages and working conditions are seen as factors of competitiveness for states and companies at the same time. With the expansion of the number of companies and locations involved in the production of certain goods, new chances were created for less developed economies to foster their development and enable them to raise the living conditions of their people, which goes hand in hand with the possibility to a betterment of human rights protection.

Nevertheless, there are risks connected with the globalization of goods production,² especially when production steps are transferred to developing countries.³ In those situations, the power structures between employing companies and employees are of a very specific kind. As companies possess vast financial and political power, and the states in which they wish to expand have a vital interest in attracting foreign investments to support their own economic development, the relationship between companies and states on the one hand and employees the other hand are extremely asymmetric.⁴ This puts the latter groups in a very vulnerable position, which often facilitates dangers of infringements of human rights, for example the right to life, adequate standards of living, the right to health, the freedom of association, the right to family life or the right to freedom of expression. As the incident of Bhopal, the Rana Plaza collapse, the Karachi factory fire, the extraction of "Blood Diamonds" or the current situation of construction workers in Qatar show, there are costs connected with the internationalization of production, which very often have to be borne by the working forces of certain world regions. Even if the intention or even the involvement of companies into the human rights related problems stated above are sometimes very difficult to prove or assess, it seems comprehensible that the way modern business is structured is relatively prone to human rights violations along supply chains and that, to a certain degree, companies benefit from this fact.

The complex structure of global supply chains, and with that the unknown number of employees and workers within this field, the various human rights theoretically affected and the growing importance of transnational companies, especially on the alteration of politics of developing countries, make transnational business activities one of the vital questions for the improvement of human rights on a global scale.

Stabilizing the status quo would mean that it would be close to impossible to improve the human rights situation of many people in developing countries. This, in turn, would undermine the universality, indivisibility and meaning of human rights themselves. Thus, modern global business activities

¹ *Elms, Deborah K./ Low, Patrick* (Eds.), *Global value chains in a changing world*, 2013, p. 23.

² *Corporate Human Rights Benchmark 2018 Key Findings*, 2018, p. 12.

³ *Kammerskollegium*, *Global Value Chains and Developing Countries*, 2013, p. 15.

⁴ *FairTrade*, *Who's got the power? Tackling Imbalances in Agricultural Supply Chains*, 2014, pp. 16 f.; *Friedrich Ebert Stiftung* (Ed.), *Who Benefits from trade?*, 2017, pp. 4 f.

have to be reshaped in a way that allows human rights concerns to be considered in business making decisions. On a global scale, there indeed are various incentives to do that. The *OECD Guidelines for Multinational Enterprises* create a framework for companies to adhere to, and in case they do not do so, national contact points in the relevant states enable private persons or entities to file a complaint against companies. The *United Nations Guiding Principles on Business and Human Rights* are a similar, but global attempt to set standards for the reduction of human rights related risks of business activities. *The United Nations Global Compact* follows a similar path. In addition, the United Nations tried to implement the *United Nations Draft Norms on the Responsibilities of Transnational Corporations with regard to Human Rights*. Still, all of these attempts are not legally binding by nature⁵; they either encourage voluntary recognition of human rights concerns or set non-binding standards, which can only be considered as soft law and offer only very limited possibilities of enforcement. In addition, in investment arbitration, which has some legal possibilities to include human rights concerns in the decision-making process of investment tribunals,⁶ this possibility is rarely taken into account. And even if states, like France or the United Kingdom, include binding regulations into their national legislation, this is only a very limited step to tackle the issue at hand.

Looking at the current legal situation, there is no comprehensive and binding approach towards this topic, and the steps taken so far have not shown any substantial improvement for the situation of employees, workers and indigenous people. This makes an ongoing effort to foster binding regulations and offer effective remedies for victims even more important, as without such efforts the struggle for a betterment of human rights is touched from the inside of the mainly privately operated global economic structure, meaning that human rights are confronted on the one hand by authoritarian states and on the other hand by powerful private actors, adding a new frontier to the dangers human rights face in the 21st century.

⁵ *Prochazka, Susanne*, 'Did You Ever Expect a Corporation to Have a Conscience?': Human Rights Obligations of Transnational Corporations, *Queen Mary Human Rights Review*, Vol. 2, 2015, pp. 107 f.; *Simons, Penelope*, International law's invisible hand and the future of corporate accountability for violations of human rights, *Journal of Human Rights and the Environment*, Vol. 3, No. 1, 2012, p. 43.

⁶ *Simma, Bruno*, Foreign Investment Arbitration: A Place for Human Rights?, *International Comparative Law Quarterly*, Vol. 60, 2011.