

BUSINESS AND HUMAN RIGHTS: THE ROLE AND RELEVANCE OF CORPORATE LAW

Panel Proposal for the 2nd Annual UN Forum on Business and Human Rights (2 December 2013)

Background

This Panel proposal seeks to review in a comparative manner the role of corporate law in ensuring that companies comply with their human rights obligations. The term ‘human rights’ is used here in a wide sense so as to include corporate obligations also in relation to labour rights and the environment.

This review will be conducted against the background of the Guiding Principles on Business and Human Rights, which rightly remind states to ensure that ‘laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights’ (Principle 3).

Corporate law has a critical role to play – both from regulators and regulatees perspectives – in ensuring that companies comply with their human rights obligations. From a regulatory point of view, corporate law can affect changes ‘from the inside’ by influencing the decision-making processes of companies. At the same time, corporate law can guide companies to internalise risks to society created by their business activities, strike a balance between business and human rights considerations, and develop a corporate culture which embodies human rights norms as a core strand of doing business.

Recent developments in several jurisdictions show that corporate law could encourage companies to internalise human rights norms in several ways such as the following:

- by clarifying that the company is not merely a profit-maximising entity, rather it is a social institution performing multiple functions concurrently;
- by imposing an explicit duty on directors to take into account human rights while acting in the best interests of the company;
- by providing representation to non-shareholders on corporate boards and/or constituting special committees to deal with human rights issues; and
- by requiring companies to disclose – periodically and through publically available mediums – their policies and actions vis-a-vis human rights.

It is worth noting that in addition to these ‘direct’ influences of corporate law on the behaviour of companies, ‘indirect’ influences under corporate laws could also arise because of other laws. South Africa is a case in point where the Bill of Rights is expressly rendered applicable to companies to the extent it is appropriate to do so. In such a scenario, one can argue that directors of companies incorporated in South Africa are bound to consider human rights while taking decisions under their Companies Act.

Panel Objectives

The Panel seeks to achieve three main objectives. First, it will offer a comparative review of how corporate laws are being employed in different jurisdictions to nudge companies to move beyond the profit maximisation mind-set. In particular, we will look at developments in Australia, India, Norway, South Africa, the United Kingdom, and the European Union level. Second, the Panel will examine pros and cons of each of the models currently adopted by

different countries. Third, based on this comparative review and inputs received from participants, the Panel will come up with some concrete recommendations for states as to how they should harness the potential of corporate law in promoting corporate compliance with human rights norms.

Relevance to the Forum Mandate

One of the objectives of the Annual Forum on Business and Human Rights is to ‘provide advice and recommendations regarding the development of domestic legislation and policies relating to business and human rights’. The Panel aims to look at one particular area of domestic legislation (i.e., corporate law) which should enable states to ensure that companies comply with their human rights obligations. It is hoped that the discussion at the Panel and the consequent recommendations will assist states to make an informed decision as to what revisions to corporate law would be an efficient method to assist companies in internalising and integrating human rights into their decision-making process.

Panellists

The proposed Panel will have five speakers to provide an overview of legal developments in several jurisdictions and lead the discussion around the Panel theme. The following people – who represent diverse academic expertise and come from different geographical regions – have confirmed their participation:

- 1) David Bilchitz, Professor, Faculty of Law, University of Johannesburg; Director, South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC) [[South Africa](#)]
- 2) Surya Deva, Associate Professor, School of Law, City University of Hong Kong [[Hong Kong, China](#)]
- 3) Filip Gregor, Lawyer, Environmental Law Service, Czech Republic; Member of the Steering Group, European Coalition for Corporate Justice (ECCJ) [[Czech Republic](#)]
- 4) Beate Sjøfjell, Professor, Faculty of Law, University of Oslo; Project Leader, Sustainable Companies Project [[Norway](#)]
- 5) Charlotte Villiers, Professor, University of Bristol Law School [[United Kingdom](#)]

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