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International Human Rights Policies: Benefits and Challenges for Multi- National Companies

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International Human Rights Policies: Benefits and Challenges for Multi-National Companies

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Agenda

- Introduction
- Increasing Focus on ESG/DE&I
- What Are International Human Rights Policies?
- Why Adopt International Human Rights Policies?
- What Should International Human Rights Contain?
- Interaction with Local Law
- Implementation and Enforcement



The ESG Phenomenon

- ESG refers to **Environmental, Social, and Governance** criteria, which investors use to screen investments.
- In 2020, 85% of investors said they considered ESG factors in investing, up from 73% in 2017. See <https://www.cfainstitute.org/-/media/documents/survey/future-of-sustainability.ashx>.
- In 2020, 90% of investment professionals said they expect their firm's commitment to ESG research will increase, up from 72% two years earlier. *Id.*



How Is ESG Measured?

- ESG ratings can vary depending on the provider due to the different methodologies, metrics, data and weightings.
- Top ESG rating providers, include:
 - MSCI ESG Ratings
 - Sustainalytics
 - Bloomberg
 - Moody's
 - S&P



The E in ESG

- **Environmental factors** refer to an organization's environmental impact(s) and risk management practices. These include direct and indirect greenhouse gas emissions, management's stewardship over natural resources, and the firm's overall resiliency against physical climate risks (like climate change, flooding, and fires).



The S in ESG

- **Social factors** refer to an organization's relationships with stakeholders. Examples of factors that a firm may be measured against include human capital management (HCM) metrics (like fair wages and employee engagement) but also an organization's impact on the communities in which it operates.



Social Factors and DE&I

- The “social” component of ESG includes diversity, equity, and inclusion (DE&I) initiatives.
- DE&I initiatives have been common within U.S. companies for decades.
- What was once viewed as largely a western concept, however, has become more common throughout the world due to a confluence of factors including globalization, demand for such programs from clients and investors, and the spread of social movements such as “#MeToo” and “Black Lives Matter” beyond the borders of the United States.
- Investor demand for DE&I is motivated, in no small part, by the fact diverse companies have been found to perform better than their non-diverse counterparts.



The G in ESG

- **Corporate governance** refers to how an organization is led and managed. ESG analysts will seek to understand better how leadership's incentives are aligned with stakeholder expectations, how shareholder rights are viewed and honored, and what types of internal controls exist to promote transparency and accountability on the part of leadership.



Social Factors: Stakeholders

- **Employees:** The social factor looks at equal treatment in employment and are enshrined in law in many jurisdictions.
- **Vendors and Suppliers:** The social factor also takes into account the practices of vendors and suppliers, with a focus on ensuring all parts of the supply chain are engaged in socially responsible practices.
- **The Community:** The social factor looks at how companies impact the communities in which they operate, with a particular emphasis on ensuring companies do not exploit communities and/or select communities because of their more lax practices.



Social Factors: The Pitfalls to Avoid

- Socially irresponsible practices are especially likely to endanger a company's reputation.
- Employers should avoid the following pitfalls:
 - Wage inequality
 - Unsafe working conditions
 - Human rights violations



Social Factors: Supply Chain Issues

- The expansion of global supply chains has been driven by a business model expressly designed to take advantage of low wages and inadequate regulation and enforcement.
- For example, the Rana Plaza Building, located in Bangladesh, collapsed in April 2013. As a result, more than a thousand people lost their lives and thousands more were badly injured. This event provoked strong criticism of the transnational corporation's actions.
 - Despite the fact that the building's eviction was requested the day previous after discovering major cracks, the owners of the textile factories demanded many garment workers to carry on with their tasks, claiming that the building was safe.
 - The factories produced clothing for brands such as *Benetton*, *The Children's Place*, *DressBarn*, *Mango*, *Monsoon*, *Inditex*, and *Primark*, as well as for distribution companies such as *El Corte Inglés*.
 - The event at Rana Plaza triggered significant movements within the textile and other industries addressed to supply chain responsibility, considering the amount of players involved in production of a given good, in the fight against human trafficking, slave work and inappropriate working conditions.
- Following the collapse, an international pact that involved the creation of a team of inspectors to evaluate fire, electrical, structural and worker safety in factories supplying signatory brands.
 - Nearly all U.S. clothing chains, citing the fear of litigation, declined to sign an international pact.



Social Factors: Supply Chain Issues

- Supply chain issues remain, even in countries with stringent labor laws, underscoring the need for companies to self-police.
- A New York Times expose from February 2023 revealed illegal child labor throughout the US, especially among migrant children.
- Further, the public outcry regarding these violations shows the reputational impact supply chain issues/unfair labor practices can have.



Social Factors: Supply Chain Issues

- Days after the initial NYT expose on child labor, the Biden Admin. announced a crackdown on the labor exploitation of migrant children around the U.S., including more aggressive investigations of companies benefiting from their work.
- Democrats are proposing tough new legislation to increase maximum civil fines and criminal penalties for violations of child labor laws.
- For example, Senator Brian Schatz' bill would substantially increase penalties for violating child labor laws to a maximum fine of \$132,270 for routine violations and a maximum fine of \$601,150 for each violation connected with the death or serious injury of a minor. It would also increase criminal penalties for a repeat or willful violation of child labor laws to a maximum of a year in jail.



International Human Rights Policies

- Risks like wage inequality and workplace safety are often addressed by local law.
- However, as addressed above, multinational companies may operate in countries with less stringent rules/employment protections.
- Further, even if companies follow applicable law, they may engage vendors that do not and/or be part of a supply chain in which human rights issues exist.





What Are Human Rights Policies?

- “[A] company’s public expression of its commitment to meet its responsibility to respect internationally recognized human rights standards.” See <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/guide-business-hr-policy.pdf>.





What Should International Human Rights Policies Cover?

- There is no one single definition of or template for a “human rights” policy.
- However, there are several preeminent international labor benchmarking standards that call for the creation of international ethics policies and suggest what such policies should contain.



Benchmarking Standards

- There are many international “benchmarking standards” addressing international human rights.
- The standards upon which many companies base their international human rights/ethics policies include:
 - (1) The International Bill of Human Rights/the United Nations Guiding Principles on Business and Human Rights (UNGPs);
 - (2) International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (ILO Declaration)/ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration); and
 - (3) The Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines).



UNGPs

- The UNGPs are comprised of general principles, which fall into one of three pillars:
 - 1) **Protect:** the state duty to protect against human rights abuses by third parties, including business
 - 2) **Respect:** the corporate responsibility to respect human rights means acting with due diligence to avoid infringing on the rights of others
 - 3) **Remedy:** as part of the state duty to protect against business-related human rights abuse, they must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.



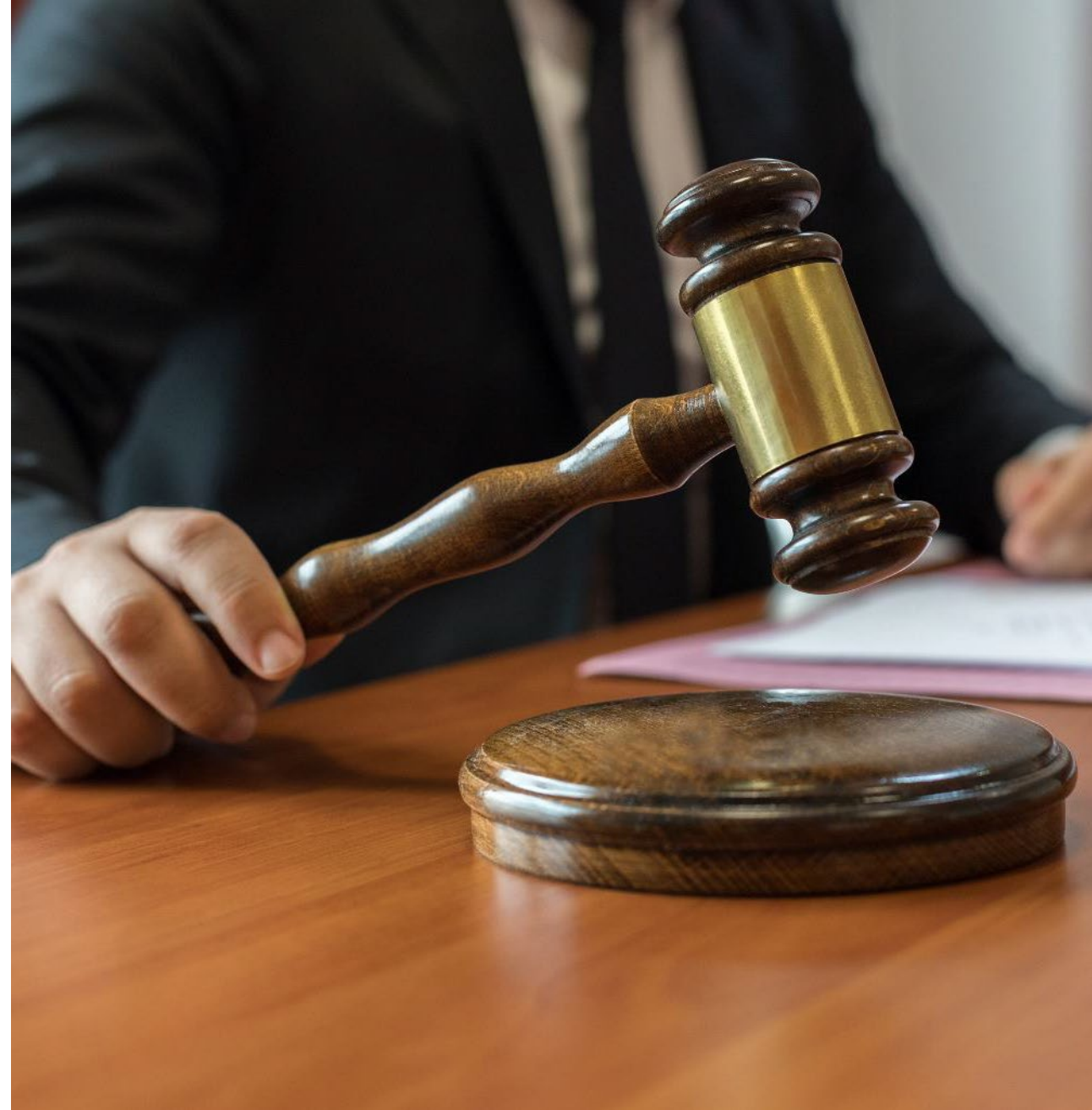
UNGP Respect Pillar

- The principles in the Respect Pillar direct corporations, among other things, to
 - 1) Maintain a statement of their commitment to respecting human rights;
 - 2) Implement a human rights due diligence process; and
 - 3) Implement a process to remediate any human rights impacts to which they contribute.



The Reach of the UNGPs

- The UNGPs have been unanimously endorsed by the UN Human Rights Council, but, as their name suggests, they are merely instructive and are not binding international law.



ILO Declaration/MNE Declaration

- The ILO Declaration sets forth five principles for workplace rights, namely:
 - 1) Freedom of association and the effective recognition of the right to collective bargaining;
 - 2) The elimination of all forms of forced or compulsory labor;
 - 3) The effective abolition of child labor;
 - 4) The elimination of discrimination in respect of employment and occupation; and
 - 5) A safe and healthy working environment.



OECD Guidelines

- The OECD Guidelines are standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards.
- They prescribe the following 15 principles to which companies *should* adhere, which generally relate to sustainability, human rights, health and safety, and ethics.
- Similar to the UNGPs, the OECD Guidelines also provide that companies should:
 - 1) avoid causing or contributing to adverse human rights impacts and address such impacts when they occur;
 - 2) maintain a policy in which they commit to respect human rights;
 - 3) carry out human rights due diligence; and
 - 4) provide or cooperate in remediation of adverse human rights impacts.



Best Practices for Human Rights Policies

- From a best practices point of view, multi-national companies should consider including in their international human rights policies a statement of their commitment to:
 - 1) protecting the health and well-being of employees;
 - 2) prohibiting the use of child labor (in its own operations and those of business partners and suppliers);
 - 3) prohibiting the use of forced labor and taking proactive steps to prevent forced labor (e.g., by ensuring that employees maintain their own documentation and prohibiting the practice of having employees pay recruitment fees in order to obtain employment);
 - 4) complying with all applicable laws and regulations pertaining to wages, hours of work, overtime, and benefits;
 - 5) respecting employees' right to organize;
 - 6) promoting equal employment opportunity and prohibiting harassment and discrimination;
 - 7) prohibiting bribery and corruption; and
 - 8) not using conflict minerals.
- Note that such policies often pertain to the actions of companies' business partners and suppliers as well as the company itself.



Interaction Between International Human Rights Policies and Local Law

- There is no legal mandate to implement or adhere to an international human rights policy, and compliance with international benchmarking standards is entirely voluntary.
- In many jurisdictions, companies are required to adhere to certain ethical standards (e.g., prohibitions on insider trading, and child and forced labor, etc.).
- Compliance with local employment laws often requires acting in accordance with international labor standards.
- Generally, however, the commitments in international human rights policies should be in addition to applicable local employment laws and will not supplant such legal requirements.



Implementation and Enforcement of International Human Rights Policies

- One of the major components of many international human rights policies is that the standards in them apply to entities with which the multi-national company **does business** in addition to the company itself.
- Implementation and enforcement must be both **outward-** and inward-looking.
- Multinational companies must police their own practices and ensure that they are not doing business with entities that do not comply with their ethical standards.



Implementation and Enforcement of International Human Rights Policies cont.

- A policy without an enforcement mechanism of any kind will lack teeth.
- Multi-national companies can “put their money where their mouth is” is by discontinuing practices that do not align with their international human rights policies and even breaking off relationships with external entities that fail to do so.
- The best way to assess whether their practices (or those of the entities with which they do business) align with their international human rights policies is to conduct due diligence.



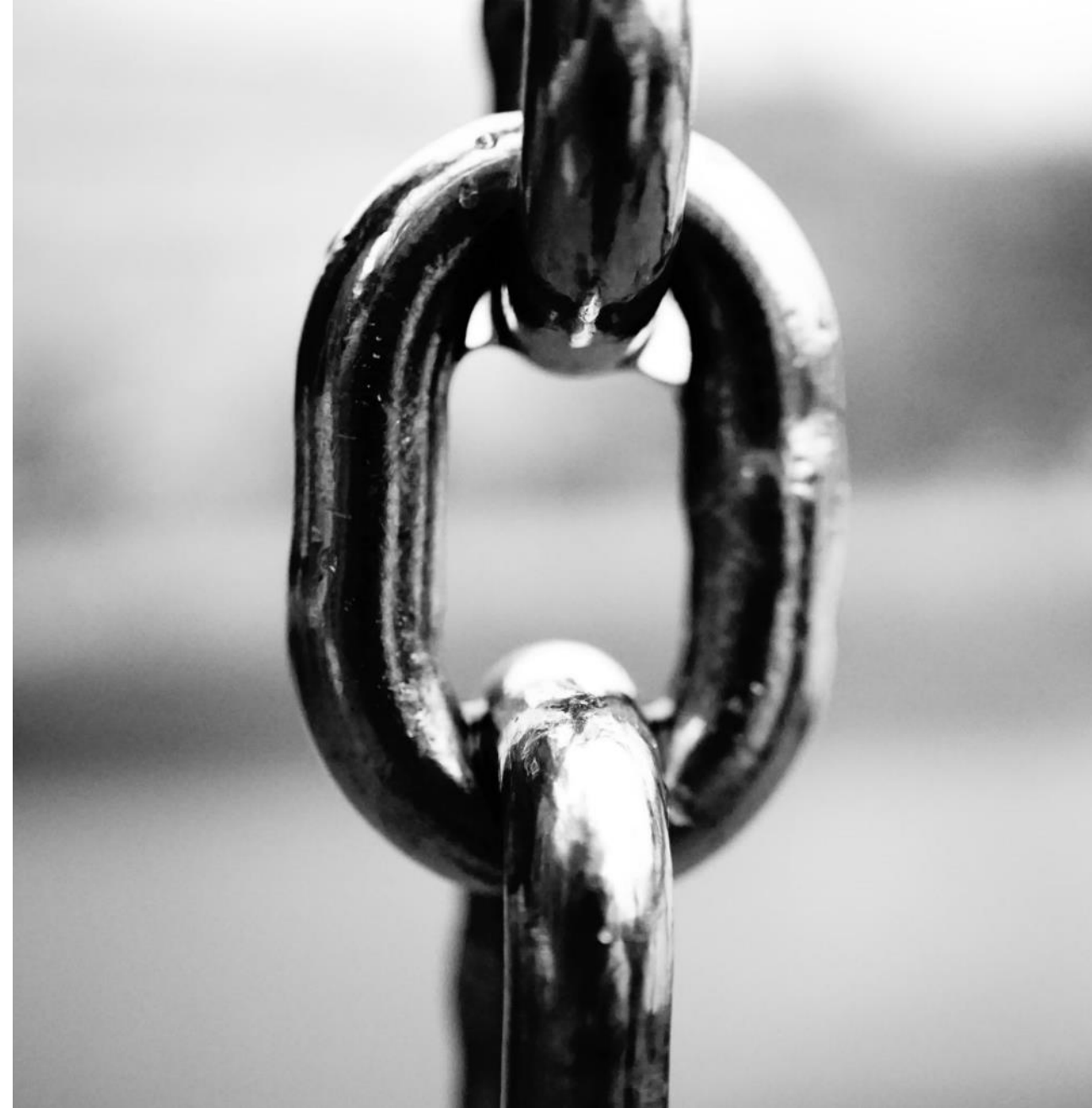
Ethics Due Diligence

- The “benchmarking standards” discussed above prescribe due diligence.
- Various organizations have created “due diligence toolkits.”
- For, example the Organization for Economic Cooperation and Development (“OECD”) has a toolkit. See [OECD Due Diligence Guidance for Responsible Business Conduct – OECD](#).



Breaking the Chain

- Multinational companies may consider having a policy and practice of breaking off relationships with external entities that fail to meet ethical standards.
- Barclays Corporate Banking report indicated British retailers cancelled 7.1 billion pounds (\$9.6 billion) in contracts in 2021.
 - 21% of the retailers it surveyed cut ties with suppliers in the last year because they were not meeting required standards.
 - The most common reasons for cancelling contracts with suppliers were the use of unsustainable materials, unfair working hours and lack of membership of a trade body that monitors ethical and sustainability standards.



Stakeholder Buy-In

- Multinational companies get stakeholder buy-in on international human rights policies by soliciting feedback from interested individuals and entities in all locales in which the company operates
- The roll out of such policies should be done in a well thought out and coordinated manner but should take into account the legal and cultural differences of the various jurisdictions in which the multi-national company operates. A one-size fits all campaign may not be effective and multi-national companies should tailor communications on a jurisdiction-by-jurisdiction basis.



Questions?



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