The Interrelationship Between Human Rights & Corporate Social Responsibility Promoting Moral Capitalism

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Abstract: In 2014, over 100,000 transnational corporations (TNC) were operating with over 1 Million foreign affiliates, generating an estimated US$7 trillion in value added, employing over 64 million workers and exporting goods and services valued at more than US$28 trillion. With increased globalisation, national governments, even the most powerful among them, face growing difficulty in controlling the activities of these powerful and rich corporations (Sethi, 2003). The desire to gain control of natural resources was the driving force behind the conquest of non-European peoples and the establishment of colonies. A significant proportion of corporate violations of human rights or complicity in such abuses take place within third world countries. The social norm was that capitalism works best through a system of ethics and trust for successful use of market mechanisms and institutions. Rather, the practice of immoral capitalism has deeply generated environmental degradation, corporate oligopolies, and economic gorillas, economic inequalities, where less that 20% of humanity controls the wealth of nations and the gap between rich and poor countries has grown 10 times during the past thirty years. Post-colonial international rules had been developed to justify and protect post-colonial interests. Juxtaposition of western concepts of law provided the necessary protection of private property. Expectedly, new independent states have claimed sovereignty and control over their natural resources requesting for a new international economic order rather than the pre-existing rules which were tainted by undue economic and political influence. In response, the international community has generated global codes of ethics and social responsibility to regulate the conduct of business without addressing the causative factors of the inequality, nor any retributive justice for past corporate violations and ethical breaches.

Already, many local and transnational, business organisations practice corporate social responsibility (CSR) with integrated human rights policies. However, there is need for students of Law, judges, legislatures and corporate administrators to understand the nature and boundaries of the practice of each concept and the respective results. Accordingly, this paper simply seeks to reorient the questions on the true interfaces and boundaries of Human Rights, and CSR and also to review the international framework for administering CSR.

Keywords: CSR, Corporate Violations, Immoral Capitalism, Corporate Oligopolies, Economic Gorillas, Corporate Philanthropy.

1. Introduction

There is great misconception by corporate administrators and also various segments of the society as to the nature of CSR and human rights in the practice of corporate governance.

The two terminologies have been used in many instances interchangeable as many organisations tend to misunderstand the expected outcomes from the practices.

Being voluntary, CSR, as a concept is intended to achieve sustainability based on the recognition that government alone cannot champion societal success and that philanthropy enhances profitability.

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1 UNCTAD, World Investments Report (2014)
3 World Bank data
4 Texaco v. Libyan Arab Republic Award (1977). 53 ILR 297. Libya claimed that their actions were in exercise of their sovereignty.
Furthermore, responsible business conduct has been the subject of discussion by international institutions like the United Nations in terms of human rights being the DNA of business. Thus, modern corporate power, is humongous and transcends that of many nations which calls for institutional checks and controls to ensure inclusivism and morality in business.

Codes of conduct and practices by professional bodies, industries and national agencies have been drafted to guide and enhance compliance with human rights especially in agriculture and manufacturing where slave labour and environmental degradation are rampant.

International trade agreements with substantive provisions have also been adopted for transnational corporations to create a regime of good corporate practices.

2. The Nature of CSR and Human Rights

CSR as a concept consists in companies’ voluntary demonstration of concern, respect and protection of the interests of stakeholders like employees, the environment, creditors, consumers as a commitment to manage its role in society in a responsible way. The two main components of the definition of CSR, are the outcomes in terms of “business impacts”, “commercial success” and wider societal goals. The other aspect concerns the voluntariness of CSR as not being mandated or required by legislation.

With global challenges and exponential wealth, the expectation of human society is that companies should no longer base their actions on the needs of their shareholders exclusively, but that they should be paternalistic towards the society in which the company operates. Thus, their obligations and standards are not the minimum but are a platform for inclusive, ethical, dynamic corporate governance.

In contrast with human rights, CSR efforts are management-driven and corporate-determined policies designed to assist the business enterprise, its reputation and positive social end; a body of social expectations called a “social norm” on which a corporation’s “social license to operate is based,” i.e. a “standard of expected conduct.”

On the other hand, human rights protections are person-centred with legitimate compliance mechanisms which are not voluntary; but are an expression of human dignity of women, children, minorities, disabled widows and includes freedom from torture, racial discrimination, genocide or slavery. Consequently, the concept of human rights concerns the relationship between the individual and the state in terms of status, claims, and duties to and of the individual (Hung-Chao, 1985) and are widely accepted as standards of international political legitimacy (Donnelly).

The interrelationship between CSR and Human Rights can be easily seen in the right to water which makes substantial difference to the lives of the poor. In India, where the right to water is not enshrined as a fundamental right in the National Constitution, courts, at both state and federal levels, have interpreted Article 21 of the Constitution, i.e. the right to safe and sufficient water and sanitation.

The case of M.C. Mehta vs Union of India illustrates this interrelationship. The case concerned the pollution of the Ganga by the Kanpur Municipal Council and the duty of Government, under Article 21, to ensure better quality of the environment. The Supreme Court of India held that citizens have the right to the use of air, water and earth as protected under Article 21 of the Constitution (the protection of life and personal liberty).

The court emphasised that due to grave consequences of pollution of water and air, the need for protecting and improving the natural environment is considered to be one of the fundamental duties under the Constitution (vide clause (g) Article 51 A of the Constitution.

Judicially, the evolution of the legal status of corporate philanthropy was concretised in AP Smith v Barlow which ruled against a shareholder who opposed the company’s power to make charitable contributions of $1,500 to Princeton University. The outcome was that companies are free to make gifts

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5 The SRSG Report 2009
6 Hung-Chao Tai (1985: 79) – Human Rights in Taiwan: convergence of two political cultures. Although not all institutionalised relationships between individuals and the state are governed by, related to, or even consistent with human rights.
7 J Donnelly, Universal Human Rights in Theory and Practice, 3rd ed. 218,
8 Bon Vista Mansions v Southern Metropolitan Local Council (12) SCC 118, (2004)
9 M.C. Mehta v Union of India
10 98 A 2nd 581
which are of no direct or immediate benefit to it. In *Parke v Daily News*,\textsuperscript{11} the management sought to disburse grants to redundant employees.

However, most international human rights instruments were promulgated before the advent of CSR movements from the 1960s, and do not recognise provision of safe, clean, healthy and sustainable environment as a prerequisite to or interrelated to the enjoyment of human rights.\textsuperscript{12} Moreover, only a few human rights instruments explicitly recognise breach of corporate responsibility for the environment or poverty, climate change as an obstacle to enjoyment of human rights. As a result, many of those harmed by environmental degradation seek redress from human rights bodies indirectly, by arguing that environmental harm impedes their enjoyment of enumerated human rights such as the rights to life, health, privacy and culture.\textsuperscript{13}

In the Swedish case of *Zander v Sweden*\textsuperscript{14} concerning potential pollution of a drinking water well from a nearby dump, the European Court held that there had been a violation of Article 6(1) of the European Convention on Human Rights.

In Nigeria, the necessity for environmental protection is enshrined in the 1999 Constitution of the Federal Republic of Nigeria which provides that: ‘The State shall protect and improve the environment and safeguard the water, air, land forest and wildlife of Nigeria’.\textsuperscript{15}


Unlike CSR which has its origins from the 1960’s,\textsuperscript{16} historically, Human Rights are traceable to the development of natural law originating in Ancient Greece through to the European philosophers.\textsuperscript{17} A key outcome was the notion of a social contract between citizens and rulers that in turn influenced Bills of Rights in England and America, and the Declaration of the Rights of Man and the Citizens in France.

During the Second World War, the focus on human rights was regenerated in the form of the Four Freedoms. These covered freedom of speech and of assembly, and freedom from fear and want. A Global definition of human rights is wider and is embodied within the United Nations Charter. The Universal Declaration of Human Rights (UDHR) is a non-binding declaration adopted by the United Nations General Assembly in 1948.

Nevertheless, different civilizations or societies have different conceptions of human well-being and attitude towards human rights issues (Manwoo, 1985)\textsuperscript{18}. Thus, widows in South East Nigeria were usually subjected to draconian rituals before burial of their deceased husbands.\textsuperscript{19} Also, in the practice of non-corporate immoral capitalism, rather than encourage their children to go to school even at primary or secondary level, some parents let out their wards as house maids for monetary rewards or prefer to invest in the education of the male child.\textsuperscript{20} Till date, some entrepreneurs of beer parlours (restaurants) in Nigeria use teenage girls and boys to assist their mothers to operate their businesses resulting in sexual abuse, unwanted pregnancies, and rape (Penna and Campbell, 1998).\textsuperscript{21}

An attempt to provide internationally binding framework for States to regulate activities of business enterprises\textsuperscript{22} was made in the Guiding principles on business and human rights in its Resolution\textsuperscript{23} of 17th

\textsuperscript{11} (1962) 2 WLR 708
\textsuperscript{12} *Ford Motors Co v Dodge* 170 NW 669.
\textsuperscript{13} High Court of South Africa (Witwatersrand) local div. case No. 01/123. 12 cited in Achieving Justice and Human Rights in an Era of Climate Disruption. P. 118
\textsuperscript{14} (1993) ECHR 25\textsuperscript{th} Nov., Strasbourg
\textsuperscript{15} S. 20, Ch. 2: ‘Fundamental Objectives & Directives Principles of State Policy’, CFRN, Act No. 24, 5\textsuperscript{th} May, 1999.
\textsuperscript{16} *Ford Motors Co. v Dodge Supra*
\textsuperscript{17} Thomas Hobbes, John Locke,
\textsuperscript{18} Manwoo Lee, *North Korea & Western notion of Human Rights* (1985: 131)
\textsuperscript{19} These practices are being abrogated based on their repugnancy to natural justice and good conscience.
\textsuperscript{20} Financial Times, (Feb. 16, 2017)
\textsuperscript{21} Penna and Campbell, ‘Traditional African societies had concepts and practices of Social Justice that respect many of the basic values that underlie human rights’. (1998)21
\textsuperscript{22} The UK Joint Committee on Human Rights, for example, has stated ‘that an international agreement should be the ultimate aspiration of any debate on human rights’ and has called on the UK government to work collaboratively both on the regional and global level to this end.
April and 16/6/2011 which applies to all States and to all business enterprises. The framework is based on the following principles:

(a) States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
(b) The role of business enterprises, as specialised organs of society performing specialised functions, to comply with all applicable laws and to respect rights.
(c) Access to Remedies by victims of breaches.

The Guiding Principles confirm the responsibility of companies to respect as part of what is sometimes called a company’s social licence to operate, “doing no harm” is not merely a passive responsibility for firms but may entail positive steps. To discharge the responsibility to respect requires due diligence. In global politics, companies must take steps to become aware of, prevent and address adverse human rights impacts.

In summary, all States are required to take appropriate steps to prevent, investigate, punish and redress abuses through effective policies, legislation, regulations and adjudication e.g.:

1. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investments requiring human rights due diligence.
2. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
3. In conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with human rights abuses.
4. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. Accordingly, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, access to effective remedy, including State-Based Non-Judicial Grievance Mechanisms.

The core objective of the “Protect, Respect and Remedy” framework is to provide a coherent approach to addressing governance gaps and overcoming the problems of individual action by states and corporate actors to develop the normative content of corporate responsibility for human rights.

3. Regulation of Corporate Activities Outside State Jurisdictions

A major limitation of the SRSG is that it did not firmly conclude that a state’s obligation to protect human rights extends to the activities of their corporate nationals operating outside their jurisdiction. This is important as some governments have been complicit in supporting their corporate nationals through financing, provision of export credits and political risk insurance, participating in government trade missions abroad and entering into bilateral investment treaties.

Various courts in America, National courts, European Court of Human Rights and the Human Rights Committee already declare that a state may be responsible “because of acts of their authorities, subsidiaries, associates whether performed within or outside national boundaries, which produce effects or violate international human rights law outside their own territory”.  

A good example of immoral capitalism and Home State responsibility for acts is the Republic of Guinea where a group of billionaires, hedge-fund barons, mining firms, government officials are seeking to turn the Simondou Mountain habitat for chimpanzees into Africa’s biggest iron-ore mine. The huge profit prospect of digging up 2bn tonnes of ore from a country that is among the poorest in the worth is exciting to investors and the government. However, there were strong allegations of bribery and other breaches of corporate responsibilities, business ethics and code-of-conduct standards.

23 UN Human Rights Council Resolution
24 John Ruggie, UN Guiding Principles on Business and Human Rights (UNGPs).
25 Cape Industries v Adams (1990) Ch 433
In 2011, the new Conde government granted partnership development/mining rights to Chinalco, China’s state-owned aluminium firm, in return for a (disclosed) $700m payment. Three years later, i.e. in 2014, the Conde government revoked BSGR/Vale of their Simandou assets, alleging bribery, and other breaches of corporate responsibility for ethical business.

Also, Shell Petroleum, Halliburton, Siemens have been alleged to be involved in unethical businesses and embarking on CSR.

In Vietnam, pollution by local and foreign companies strongly mars stunning landscapes through dam-building, well-digging, intensive farming which corrode the Mekong Delta, where roughly half the country’s rice is grown. Each year, further environmental breaches cause the soil to become saltier as seawater washes up its weakening streams. Nearly two-thirds of Vietnam’s industrial waste water flows into lakes and rivers. A number of villages have high cancer rates, perhaps the result of water supplies laced with lead, creating breaches of human rights and corporate social responsibilities.

Furthermore, with 20,000 miles of coastline, Vietnam is especially vulnerable to climate change. It is estimated that one-fifth of Ho Chi Minh City, could be underwater by the end of the century. Harsher weather and flooding are expected to inflict hardship on the long seaboard. General legal principles liability under tort and crime can be applied in host of foreign jurisdictions to hold both governments and the companies liable.


The example of the coffee industry highlights the potential CSR benefits of industry-wide codes. Coffee is grown in developing countries but consumed in the West. Smallholders are suggested to supply 70 per cent of the world’s coffee, while much of the buying is done by large multinationals. During the 1990s, the coffee market became more a buyer-driven commodity chain. Producer incomes dropped while consumer spending on coffee increased.

As a code, the Common Code for the Coffee Community (4C) is unusual because its participative decision-making processes involve a tripartite structure consisting of coffee producers, the coffee trade and industry and civil society organisations. This structure has the potential to lead to a shared recognition of the coffee industry problem. Codes have been adapted to direct transnational companies towards acceptance of human rights within ethical standards regarding both people and the physical environment. For example, the Sullivan Principles, in South Africa request firms to integrate racial groups in workplace activities, to develop black workers for skilled and managerial role, as well as improve the welfare of black workers through better housing and other community facilities.

Also, the Caux Round Table Principles for Business promotes a form of moral capitalism but mainly on Human Rights, marketing and health and safety issues.

The World Bank and the IMF have operated reform measures under The Extractive Industries Review 2003 in Peru, Tanzania, Indonesia although the measures tended to concentrate on improving policies and institutions in favour of investors, mainly foreign, without commensurately strengthening policies and institutions for the poor and the environment which created the imbalance.

Specifically, the World Bank, a Post-Colonial institution was stated to project only those rights within its laissez-faire scope and those most compatible with neo-liberal economic reform, such as private property and freedom of contract under its good governance agenda.

5. The Imperatives of Moral Capitalism in Agriculture

The United Nations (UN) Food and Agricultural Organisation (FAO) estimates that farmers need to produce 60% more food for the world population estimated to reach 9bn by 2030. It is obvious that

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27 Kolk, (2005)
28 The Sullivan Principles are two corporate codes of conduct developed by the African American preacher Rev. Leon Sullivan. (1977)
29 The Code was written and endorsed by an international group of business leaders in 1994.
30 James Thuo Gathii Social Justice issues arise in the operations of multi-national corporations around the world, (March 12, 2014).
31 According to the FAO, approximately 2.5 billion rural people depend on agriculture for their livelihood; World Bank data suggests that as many as 80% of them may be living on less than $2 a day.
stakeholders’ collaboration between governments, companies, farmers and consumers is needed to improve agricultural output, better profitability, environmental, and socioeconomic sustenance.

In Nigeria, particularly, in the most food-insecure countries, agriculture is crucial for income and employment generation. In Vietnam, the government and 15 companies have set up a public-private task force to drive sustainable agricultural growth by obtaining commitments to pilot new business models that link small-scale farmers to markets or promote environmentally sustainable practices.

The WTO Agreement in Agriculture (AoA) plays a vital role in the economies of many Third World states.


Governments like the United States, the European Union (and its member states), Canada, Japan, Australia, New Zealand, and Chile now negotiate and incorporate human rights, including labour rights, in their trade and investments arrangements.

“Internationally recognised worker rights” is defined under the US Trade Act to include: “(a) the right of association; (b) the right to organise and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labour; (d) a minimum age for the employment of children; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

Similar to the US Trade Act, all ILO members and non-members must obey the rights enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, committing all members to respect and promote principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in employment and occupation.

6.1. Substantive Obligations

In January 1995, the EU General System of Preferences (GSP) initiated withdrawal of preferences of countries which practise any form of forced labour and export of goods made by prison labour. Also, the U.S. Congress revised the 1994 Model BIT and passed the 2002 Trade Promotion Authority (TPA) by which it agreed to strive to ensure non-derogation from laws which weaken or reduce adherence to the internationally recognized labour rights.

6.2. Common Obligations of States to Protect and Provide Security for Foreign Companies

There is Case Law which confirms that the State has a common obligation to provide full protection and security for its foreign investors. This is not a strict liability obligation but does mandate a certain level of due diligence on the part of the host country.

In Noble Ventures Inc. v. Romania, the foreign investors sued Romanian Government under the U.S.-Romanian BIT, claiming, inter alia, that the government had failed to quell frequent strikes and demonstrations by the employees of Combinatul Siderurgic Resita (the claimant’s investments) thereby breaching its obligation to provide full protection and security. The tribunal doubted whether the provision was wider in ambit than the general duty to provide protection and security for foreign nationals found in customary international law of aliens.

In Plama Consortium Limited v. Republic of Bulgaria, the investor argued that the bankruptcy trustee incited workers to go on strike and riot unlawfully at the refinery premises, forcing the factory to close. The investor claimed that police failed to protect the refinery or the management. In defence, the government of Bulgaria argued as follows:

- That the demonstrations, were specifically over non-payment of wages, were peaceful and did not amount to a riot.

32 Beneficiary countries were also required to implement their commitments “to eliminate the worst forms of child labour” in order to remain eligible.
33 ICSID Case, No. ARB/01/11, (2005)
34 ICSID Case, No. ARB/03/24, (2005)
• That police were present at the refinery, and the demonstrations were not the cause of the refinery shut down. The tribunal dismissed the claim because the claimant failed to meet its burden of proof.

6.3. Basic Rights of Foreign Companies

European investors in the South African mining sector invoked BITs (Bilateral Investment Treaties) from Italy and Luxembourg to challenge South Africa’s Black Economic Empowerment program. The government argued that these policies were needed to undo the legacy of apartheid and to comply with its international human rights obligations. The claimants argued that the laws breached the fair and equitable treatment and expropriation clauses and alleged losses of up to $350 million in damages. After years of litigation, the investors dropped their claim. This case shows how foreign investors can use BITs to undermine social and environmental initiatives implemented by national governments.

7. Conclusions

1. Poverty reflects a range of violated human rights and the violation of many human rights is, in turn, a cause of poverty.
2. The rational for CSR is multifarious. Due diligence will mitigate risk, achieve cost savings from litigation and grievances, facilitate access to capital, consumer relationship, human resource management, and innovation capacity.
3. Human rights obligations, as well as treaty-based compliance mechanisms, could be introduced into BITs and other international trade and investment agreements as well as HGAs (Host Government Agreements). Such agreements might include specific investor human rights obligations—not to commit or be complicit in human rights violations amounting to international crimes - and might also include labour obligations as well as obligations relating to environmental impacts, bribery, and corruption.
4. To address the power imbalance between host states and investors, BITs and HGAs should legally incorporate binding human rights obligations for investors, operating in host state’s sustainable development goals.
5. Governments must impose binding obligations on corporate actors and require home states to regulate their corporate nationals.
6. Consensus among states and business actors to develop a treaty with corporate human rights obligations will be useful. Transnational corporate actors and their home states will remain opposed to building legal obligations as long as they are allowed to violate international criminal law norms.
7. There is now a growing acceptance by many transnational business enterprises that CSR policies need to align with human rights. It is still vital that this distinction between CSR policies and human rights protections be maintained.
8. Politicians and businessmen did not always agree on human rights and corporate social responsibility. Obviously, capitalism needs to be more open, and to protect all stakeholders that are too powerless and passive to protect themselves.
9. Also, the ‘race to the bottom’ proposes controls at a state level as there seems to have been a failure to recognise the difference between the goals of industrial capitalism and the abuse of financial capitalism. On this, both the judiciary and government agree on the need to control directors and to ensure that they represent wider interests of stakeholders.

35 A set of policies meant to help disadvantaged South Africans in employment and preferential access to sell shares to the program’s beneficiaries.
36 The International Institute for Sustainable Development called for the development of “model language that can be included in [international investment agreements] to promote human rights values in international investment. Moreover, at least two model treaties have been drafted that include such language.
37 Ruggie missed the opportunity to push states and business actors out of their respective comfort zones.
38 Louis D. Brandeis, George Gilder and the Nature of Capitalism, who are the capitalists.
39 Berle and Means, The Modern Corporation and Private Property, (1932)
40 Professor William Cary, The Race to the bottom in Corporate Governance (1761 – 1834)
41 Within objective standard of director’s duty of care must be expanded and infamous business judgement rule which states that no liability will arise for losses caused by imprudence or honest errors of judgement. i.e. Smith v Van Gorkom, A, 2nd 858 must be considered anachronistic. 488.
10. While at the moment planning is in the legislative lists of the States, it behoves State Governments to review master plans of all locations within their domain in an articulated manner for sustainable development. Actions should be divided into short, medium and long term.

11. Development and democracy have a comparable status in the contemporary world. Reforms that do not respect the rights of citizens (human rights) place their national and international legitimacy at risk.

12. There should be definitive solutions and answers, transparency in environmental decision – making, sharing of expertise or resources and strengthening relationships with all stakeholders.\(^{42}\)

### 8. Recommendations

1. Corporate social responsibility considers numerous community participatory development programmes e.g. poverty alleviation projects, small scale agricultural projects, sinking of boreholes.

2. State governments should demonstrate political will to monitor laws against culture-based abuses against early girl-child marriage, primitive widowhood practices and inheritance laws that are repugnant to civilized norms.

3. Custodians of local culture should attach importance to girl-child education rather than sometimes offering their daughters of school going age as palace brides (Olori). In case a traditional ruler passed away, the fresh occupant of the vacant stool inherits all the wives of the departed. Such breaches of women’s dignity should be stopped.

4. Nigerian professionals in banking, insurance, accountancy (Audit/Tax Consultancy) manufacturing, advertising, aviation and electronic communication are hereby implored to create awareness about what is supposed to constitute corporate social responsibility (CSR) towards the communities where their establishments are located.

5. The incessant threat by restive youths in respect of ecological damage to farm lands, fishing communities and air pollution from gas flaring, in spite of scholarship awards should be coordinated (Michelson et al., 2004).\(^{43}\)

### References


Hung-Chao, T. (1985). Human rights in Taiwan: convergence of two political cultures. Although not all institutionalised relationships between individuals and the state are governed by, related to, or even consistent with human rights. 79.


Penna and Campbell (1998). Traditional African societies had concepts and practices of Social Justice that respect many of the basic values that underlie human rights. 21.


\(^{42}\) Key concepts in corporate social responsibility, Suzanne Benn & Dianne Bolton, sage 2014. pollution is the undesirable physical, chemical or biological changes in earth, land or water negatively impacting on health of the ecosystem. 148