6 Human Rights in the Supply Chain: Influence and Accountability

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1. Introduction

The supply chain is a particularly unclear area regarding the human rights responsibilities of companies. It is characterised by complex relationships and power structures that tend to blur the scope of human rights responsibilities. Issues such as the sphere of influence of lead firms (mainly transnational corporations), cost pressures on suppliers, and legal and institutional frameworks influencing these actors play a major role.

Several concepts have been introduced to capture these complexities in the human rights context. One is the concept of the sphere of influence, a term developed e.g. by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Global Compact (UNGC). Another is the concept of due diligence, which has been introduced by the UN Special Representative John Ruggie into the human rights and business debate. Both concepts seek to assess the human rights responsibilities of companies in this regard.

In the following sections, these two approaches will be analysed in the context of the supply chain and problematic issues of the Ruggie Framework – both on the levels of concept and implementation – will be addressed. A short overview of current corporate initiatives (corporate responsibility to respect human rights, RtR) and legal regimes (state duty to protect human rights) attempting to secure human rights in the supply chain demonstrate that the implementation of the Ruggie Framework cannot on its own provide adequate human rights protection in such situations. I argue that a more extensive international legal framework of human rights protection that is capable of safeguarding human rights in trans-border multi-actor settings of global production and outsourcing is required.

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Radu Mares (ed.), The UN Guiding Principles on Business and Human Rights: Foundations and Implementation

2. The Human Rights Responsibilities of Companies in the Supply Chain

2.1. The Concept of the Sphere of Influence in the Supply Chain

The sphere of influence is a term introduced by OHCHR and UNGC into the human rights discourse. Nowhere is it authoritatively defined. According to OHCHR/UNGC, the sphere of influence “will tend to include the individuals to whom the company has a certain political, contractual, economic or geographic proximity”. The sphere of influence of a company cannot be exactly defined in general terms on the basis of international human rights standards. It needs to be determined on a case-by-case basis, e.g. in the course of a baseline study or a social impact assessment.

According to OHCHR/UNGC, the following criteria are relevant to determine the sphere of influence of a company:

- size
- strategic influence
- the human rights issue concerned
- proximity to (potential) victims and perpetrators of human rights violations
- operational influence
- area of operation

The concept of the sphere of influence has been widely used by companies in reference to their human rights responsibilities. Other organisations have utilised it as an integral element of their tools and analyses in this regard. The majority of transnational corporations (TNCs) that consider themselves to act socially responsible have elaborated in greater detail on what they consider to be their sphere of influence in relation to their suppliers. The following examples can be seen as representative of the majority of policy statements on the company sphere of influence regarding the supply chain.

The energy corporation E.ON UK stipulates the following specific provisions for suppliers:

We aim to implement our Responsible Procurement Policy throughout our supply chain, within our sphere of influence. We also expect that our suppliers encourage and work with their own suppliers to ensure that they also meet the principles of the UN Global

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2 See the Human Rights and Business Learning Tool of the UN Global Compact, the Guideline SR 26000 on Social Responsibility, and the Vienna Human Rights Matrix of BIM/HRCV.