# Index

accountability politics, 25. See also corporate accountability

Africa, poverty strategies in, 180–181

SADC and, 182–183

African Commission on Human and Peoples’ Rights, 145–146

Alien Tort Statute (ATS), 171

Alston, Philip, 135

American Revolution, 99

Amnesty International, 130, 165

Annan, Kofi, 17, 18

anti-corruption law, 58

anti-discrimination law, 58

Arnez, Lorena Terrazas, 125

Asia Infrastructure Investment Bank, 74

asymmetrical implementation, of UNGPs, 26–32

ATS. See Alien Tort Statute

“Be Patient” mantra, 176–177

BHR. See business and human rights

bilateral investment treaties (BITs), 74

binding human rights treaties. See also international binding treaty

indigenous peoples under, 126

international norms in, 116–118

non-binding treaties compared to, 118–121

periodic review process for, 120

BITs. See bilateral investment treaties

Bold, Frank, 68

Brazil, 170, 171

business and human rights (BHR). See also specific topics

boundaries of, 105–106

challenges of, 103–109

diversity of, 105–106

as emerging problem, 66

evolution of, 1

at international level, 144–145

as international movement, 150

methodology on, 2–3, 14–15

at national level, 146–147

preventative measures for, 148–149

at regional level, 145–146

remedial measures for, 148–149

as transitional field, 187–193

types of regulations, 189

Business and Human Rights Resource Center, 153

business schools, BHR in curriculum of, 66

CEDAW. See Convention on the Elimination of All Forms of Discrimination Against Women

Center for Economic and Social Rights, 153

Centre for Research on Multinational Corporations (SOMO), 169

CERD. See Convention on the Elimination of All Forms of Racial Discrimination

China, 163

civil governance, UNGPs and, 48

civil rights. See also human rights

in Global North, 72

civil society

in Global North, 107

metagovernance systems and, 103–104, 107

poverty and, 158–179

social movement theory in, 154, 158–159

civil society organizations (CSOs). See also non-governmental organizations

BHR strategies and, 105–106

Declaration on the Human Rights Obligations of Business and, 74

in Ecuador, 36, 44–45

empowered participation by, 86–92

expressiveness of, 91

four pillars of, 88–90

in international binding BHR treaties, 115
Index

at international level, 87–88
at local level, 87–88
for stakeholders, 88–89
international binding treaties, 65
MNCs and, 70–75
in regulatory environments, 168–172
campaigned by, 170
through coalitions, 171–172
documentation of violations, 168–170
at international level, 161
litigation by, 171
in Treaty Alliance, 36, 57
UNGPs and, 30, 34, 35–36, 37–38, 52–55
civil unrest, 158–159
Coalition of Immokalee Workers (CIW), 121–123
collaborative governance, 13–14
collectives, 100
Companies Act (U.K.), 64
complementarity, in metagovernance systems, 108–109
compliance, corporate. See also regulatory environments
for BHR, 67–70
through corporate culture, 67
under Declaration on Fundamental Principles and Rights at Work, 70
under International Bill of Rights, 70
liabilities from failure of, 68–70
obligations of, 68–70
reorientation of, 67–68
creative, 84
under Declaration on the Human Rights Obligations of Business, 73–74
under International Bill of Rights, 70
under international binding treaty, 114–116
conceptual maps, for BHR, 188–190
conflict zones, 70
civil unrest, 158–159
consumer protection law, 58
Convention of the Rights of Persons with Disabilities (CRPD), 63–64
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 63–64
Convention on the Elimination of All Forms of Racial Discrimination (CERD), 63–64
Convention on the Rights of the Child (CRC), 63–64
corporate accountability, for human rights, 18–19, 60
corporate and securities law, 58
corporate compliance. See compliance corporate governance, UNGPs and, 48
Corporate Social Responsibility, 113–114
countervailing power, 133–134, 136, 156
CPRD. See Convention of the Rights of Persons with Disabilities
CRC. See Convention on the Rights of the Child
creative compliance, 84
criminal law, 58
CSOs. See civil society organizations
cultural rights, in Global North, 72
Dahua, Aurelio Chino, 124–125
Declaration on Fundamental Principles and Rights at Work, 70
Declaration on the Human Rights Obligations of Business, 73–75
BITs and, 74
compliance schemes for, 73–74
CSOs and, 74
international agencies and institutions and, 74
purpose of, 73
Declaration on the Rights of Indigenous Peoples, 57, 167–168
decoupling, 84
democracy. See mass democracy
democratic experimentalism, 13–14
Dworkin, Ronald, 71
EC. See European Commission
ECCJ. See European Coalition for Corporate Justice
economic rights, in Global North, 72
ecosystemic approach, to BHR, 12, 196–199
Ecuador
BHR in, 135
CSOs in, 36, 44–45
Treaty Alliance and, 55
CSOs in, 36, 57
UN Human Rights Council and, 55–56
either/or formulation, of BHR, 65–66
empowered civil society participation, 86–92
expressiveness of, 91
four pillars of, 88–90
in international binding treaties, 115
at international level, 87–88
at local level, 87–88
for stakeholders, 88–89
empowered participatory governance, 24, 53–54
Endangered Species Act (U.S.), 53
environmental law, 58
European Coalition for Corporate Justice (ECCJ), 140
European Commission (EC), 146
experimentalist approach, to UNGPs, 13–14, 22–26
legal pluralism and, 22–23
experimentalist governance, 85
extractive economies, 1–2
extraterritoriality, 108–109
BHR and, 109
Human Rights Council and, 143–144
Fair Food Program (FFP), 121–123
CIW and, 121–123
Fédération Internationale de Football Association
(FIFA), 50–51
FFP. See Fair Food Program
FIFA. See Fédération Internationale de Football Association
Forum-Asia, 153
Foucault, Michel, 99–100
French Revolution, 99
Fundación Pachamama, 56
Fung, Archon, 53
Global Compact, 17, 64
Ruggie and, 81
global framing, 151
Global North
civil society in, 107
human rights in, 72
ICC response to, 72
poverty strategies in, deficiencies in, 176
prioritization of rights in, 72
social movement theory in, 154
UNGPs in, 38–39
Global South
binding international treaties and, 67
extraterritoriality and, 108–109
human rights in, 72
ICC response to, 72
poverty strategies in, deficiencies in, 175–176
social movement theory in, 154
UNGPs in, 38–39, 52
Global Witness, 153
globalization, governance gaps as result of, 99
governance
civil, 48
collective, 13–14
collaborative, 13–14
corporate, 48
empowered participatory, 24, 53–54
experimentalist, 55
global, human rights commitments under, 121–125
FFP, 121–123
Kimberley Process, 123–124
new, 13–14
UNGPs and, 23, 78–80
polycentric
collectives in, 100
metagovernance and, 99, 100, 101–102
UNGPs and, 48–49, 52, 78–80

Index

public law and, 48
transnational, 100
weak zones of, 70
governance gaps, 62–63
in conflict zones, 70
through globalization, 99
human rights approaches and, 133
MNCs and, 70–75
SRSG and, 70–75
in weak zones, 70
GPiD. See Guiding Principles on Internal Displacement
greenwashing, 84
Guiding Principles on Business and Human Rights (UNGPs), 2, 11–17. See also international binding treaty; Ruggie, John; Working Group
agenda-setting in, 42
in Asia, 50
boundary debates and, 31
corporate governance and, 48
corporate responsibilities in, 70
CSOs and, 30, 34, 35–36, 37–38, 52–55
dynamic dimension of, 11–12, 41, 63–64
empowered participatory governance and, 24, 53–54
experimentalist approach to, 13–14, 22–26
legal pluralism and, 22–23
FIFA and, 50–51
foundations of, 48–49
framing of, 76–81
future applications of, 41–45
Global Compact and, 17, 64
in Global North, 38–39
in global regime complex, 12
in Global South, 38–39, 52
under hard law, 39
human rights NGOs and, 77
human rights recognized under, 63–64
ICAR and, 54
implementation of, 17–22, 56–57. See also national action plans
asymmetrical, 26–32
as binding international treaty, 33
through dissemination, 27–28
through distributed networks, 40–52
through Draft Norms, 17–18, 34–35
institutional mechanisms of, 42–43
for victims’ demands, 42–43
integrationist approach to, 16
international legalization of, 55–61. See also Treaty Alliance
global support of, 55–57
principled pragmatism and, 59–60
mandates of, 20
metagovernance systems and, 102–107
civil society components, 103–104, 107
collaborative strategies, 106
in Global North, 107
three pillar frameworks of, 102–103
multinational enterprises, 46–47
new governance and, 23, 78–80
NGOs and, 31
norms in
implementation of Draft Norms, 17–18, 34–35
life cycle of, 82
norms in, life cycle of, 82
origins of, 17–19
participation criteria for, 29
through polycentric governance, 48–49, 52, 78–80
rights-based hierarchy for, 47–48
rights-holders and, 82–84
inexpressiveness and, 83–84
legal resources for, 83
limited remedies for, 84
social change theories for, 81–86
under soft law, 39
states’ obligations under, 63–64
static dimension of, 11–12, 63–64
UK support of, 59
UN Human Rights Council endorsement of, 19
Guiding Principles on Internal Displacement (GPID), 118–121
norm cascade and, 119

Hafner-Burton, Emilie, 135
hard law
BHR and, 1, 14
international binding treaty and, 114–115
UNGPs under, 39
health and safety law, 58
human rights. See also specific topics
bottom-up approach to, 120–132
global regime complex for, 12
historical background of, 120–132
legal range of, 58
top-down approach to, 130
human rights abuses
by corporations, 60
OHCHR and, 161–162
powerlessness as factor in, 82
in regulatory environments, 161–162
Human Rights Council, 18–19
BHR agenda at, 140–144
development of, 140–142
extraterritoriality and, 143–144
intergovernmental processes for, 143–144
through WGs, 142
Ecuador and, 55–56
international binding treaty and, 92, 111
OEIGWG and, 72–73
regulatory environments and, 160
Treaty Alliance and, 36
human rights treaties. See binding human rights treaties; international binding treaty, non-binding human rights treaties
Human Rights Watch, 130, 143, 153
humanitarian law, 58
IBHR. See International Bill of Human Rights
ICAR. See International Corporate Accountability Roundtable
IHRNGOs. See international human rights nongovernmental organizations
ILO. See International Labour Organization
implementation of UNGPs, 17–22, 86–87
asymmetrical, 26–32
as binding international treaty, 33
gaps in, 114–116
through dissemination, 27–28
through distributed networks, 49–52
through Draft Norms, 17–18, 34–35
through NAPs, 27, 45, 49, 140
NGOs and, 49
UK adoption of, 59, 64
indigenous peoples
under binding human rights treaties, 126
under Declaration on the Rights of Indigenous Peoples, 57, 167–168
WG on, 20–21
individual, in metagovernance systems, 99–100
Infantino, Gianni, 51
institutional mechanisms, of UNGPs, 42–43
for victims’ demands, 42–43
integrationist approach, to UNGPs, 16
Inter-American Court, 167–168
International Bill of Human Rights (IBHR), 97
International Bill of Rights, 33
corporate compliance under, 70
international binding treaty, for BHR, 114–121
community interventions and, 114
corporate compliance under, 114–116
Corporate Social Responsibility and, 113–114
CSOs and, 65
development of, 92–95
effectiveness of, 115–116
expressive commitments for, 93
Global South and, 67
goals of, 113–114
hard law and, 114–115
Human Rights Council and, 92, 111
international binding treaty, for BHR (cont.)
implementation of, 94
gaps in, 114–116
key concerns of, 113–114
mechanisms for, 115
participation rights in, embedding of, 93–94
poverty under, deficiencies in, 174–177
“Be Patient” mantra in, 176–177
consultations in, 175–176
design flaws in, 174–176
in Global North, 176
in Global South, 175–176
PWDs under, 93–94
soft law and, 114–115, 118
states’ duties under, specification of, 94–95
power-shifting as result of, 95
UNGPs as, 32–41
development of, 34–35
drawbacks of, 36–38
implementation of, 33
political feasibility of, 40
positive-sum efforts of, 38–41
states’ duties under, 44
WG and, 32–36

International Commission of Jurists, 120
International Corporate Accountability Roundtable (ICARI), 54, 131, 140
International Criminal Court (ICC), 72
International Finance Corporation, 49–50
international human rights non-governmental organizations (IHRNGOs), 156–157
International Labour Organization (ILO), 33, 63–64
Declaration on Fundamental Principles and Rights at Work, 70
Declaration on the Human Rights Obligations of Business and, 74
international law
MNCs and, 70–75
poverty under, 180–181
TWAIL, 108–109
International Monetary Fund, 74
International Organization of Standardization, 50
investment law, 58

Jungk, Margaret, 125
Just Business (Ruggie), 158–159, 165
Kimberley Process, 123–124
Kobel v. Royal Dutch Petroleum Company, 60, 143

labor law, 58
law
anti-corruption, 58
anti-discrimination, 58

consumer protection, 58
corporate and securities, 58
criminal, 58
environmental, 58

hard
BHR and, 1, 14
international binding treaty and, 114–115
UNGPs under, 39
health and safety, 58

international
MNCs and, 70–75
poverty under, 180–181
TWAIL, 108–109
investment, 58
labor, 58
post-regulatory, 13–14
privacy, 58
property, 58
public, governance and, 48
reflexive, 13–14
soft
BHR and, 1, 14
international binding treaty and, 114–115, 118
UNGPs under, 39
tax, 58
trade, 58

law schools, BHR in curriculum of, 66
Legal Aid, Sentencing and Punishment of Offenders Act (2012), U.K., 141

legal pluralism, 64

Luhmann, Niklas, 99–100

mandates
for rights-holders, 85–86
of SRSG, 18–19
of UNGPs, 20

mass democracy, 97–98
historical development of, 98–102
mass movements, 97–98
meaning management, 77

Meihofer, Errol, 52, 88
Melish, Tara, 52

metagovernance systems
American Revolution as influence on, 99
conceptual development of, 97–102
defined, 97
French Revolution as influence on, 99

IBHR and, 97
individual in, 99–100
mass democracy and, 97–98
historical development of, 98–102
mass movements and, 97–98
permeability and, 99
Index

polycentricity and, 99, 101–102
collectives and, 100
porosity and, 99
Ruggie on, 102
transnational governance and, 100
treaty regimes as alternative to, 107–109
complementarity in, 108–109
extraterritoriality in, 108–109
UNCGs and, 102–107
civil society components, 103–104, 107
collaborative strategies for, 106
in Global North, 107
three pillar frameworks of, 102–103
Millennium Development Goals, 81
MNCs. See multinational corporations
Montreal Protocol on Substances that Deplete the Ozone Layer, 25–26
Movement of Peoples Affected by Vale, 169
multinational corporations (MNCs), 65
BHR and, compliance with, 67–70
through corporate culture, 67
Corporate reorientation as result of, 67–68
under Declaration on Fundamental Principles and Rights at Work, 70
under International Bill of Rights, 70
liabilities from failure of, 68–70
obligations of, 68–70
CSOs and, 70–75
under Declaration on the Human Rights
Obligations of Business, 73–75
BITs and, 74
compliance schemes for, 73–74
CSOs and, 74
international agencies and institutions and, 74
purpose of, 73
governance gaps and, 70–75
under international law, 70–75
norm cascade and, 82
norm emergence and, 82
norm internalization and, 82
UNGPs and, 70
multinational enterprises
regulation of, 46–47
UNGPs and, 46–47
multi-stakeholder approach
to BHR, 144–145
WG and, 23–24, 29, 30, 31–32
national action plans (NAPs), 27, 42, 49, 140
NCs and, 49
for poverty, 173
UK adoption of, 59, 64
national contact points (NCPs), 49
National Human Rights Institutions (NHRIs), 154–155
NCs. See national contact points
new governance, 13–14
UNGPs and, 23, 78–80
NGOs. See non-governmental organizations
NHRIs. See National Human Rights Institutions
non-binding human rights treaties
binding treaties compared to, 118–121
GPiD and, 118–121
norm cascade and, 119
international norms in, 116–118
periodic review process for, 120
non-governmental organizations (NGOs), 31
for human rights
command-and-control regulation frameworks for, 79
expressiveness of, 85
social change theories for, 82
UNGPs and, responses towards, 77
IHRNGOs, 154–157
Treaty Alliance among, 36, 55, 58
non-state actors, 72
norm cascade, 82
GPiD, 149
norm emergence, 82
norm internalization, 82
“normicide,” 77–78
norms
in binding treaties, 116–118
for human rights, legitimation of, 116–118
in non-binding treaties, 116–118
in UNGPs
implementation of Draft Norms, 17–18, 34–35
life cycle of, 82
obligation thesis, 68–70
OEIGWG. See open-ended intergovernmental working group
Office of the High Commissioner for Human Rights (OHCHR), 161–162
open-ended intergovernmental working group (OEIGWG), 72–73
Oxfam, 170
Paris Conference of the Parties, 25–26
permeability, of metagovernance systems, 99
persons with disabilities (PWDs), 93–94
Pineda, Wendy, 124–125
political opportunity structures, 154–156
political rights, in Global North, 72
polycentric governance
collectives in, 100
metagovernance and, 99, 100, 101–102
UNGPs through, 48–49, 52, 78–80
porosity, of metagovernance systems, 99
post-regulatory law, 13–14
poverty, human rights protections against
in Africa, 180–181
SADC and, 182–183
civil society and, 178–179
government response to, 177–178
role of business groups, 177–178
role of citizen groups, 178
interest groups and, 177
under international binding treaty, 174–177
“Be Patient” mantra in, 176–177
consultations in, 175–176
design flaws in, 174–176
in Global North, 176
in Global South, 175–176
under international law, 180–181
NAPs for, 173
preconditions for, 181–185
through contractual negotiations, 183–185
through regional alliances, 182–183
workers and affected communities and, 179–180
power. See countervailing power; powerless
counterpower asymmetries, human rights and
countervailing power in, 133–134, 136
deliberate shifts in, 135–137
distinction between approaches influenced by,
132–135
governance gaps and, 133
government response to, 136–137
government responsibility for, 85
powerlessness, human rights abuses and, 82
pragmatism, 190–193
principled pragmatism, 28–29, 191
UNGPs and, 59–60
principilism, 190–193
privacy law, 58
property law, 58
Prospect, Respect, and Remedy (PRR)
Framework, 18–19, 174–176
public law, governance and, 48
PWDs. See persons with disabilities
reflexive law, 13–14
regulation. See responsive regulation
regulatory environments
in Brazil, 170, 171
CSOs and, 168–172
campaigning by, 170
through coalitions, 171–172
documentation of violations, 168–170
at international level, 161
litigation by, 171
enforcement tools, 171
Human Rights Council and, 160
at international level, 160–168
CSOs and, 161
in Ecuador, 162–164
limitations of human rights violations, 161–162
treaty proposals for, 160–164
at national level, 171
through WG, 164–168
corporate engagement and, criteria for, 166–167
membership factors, 165–166
remedies for victims, 167
transparency of, 166
responsive regulation, 13–14
rights-holders
mandates for, 85–86
UNGPs and, 82–84
inexpensiveness and, 83–84
legal resources for, 83
limited remedies for, 84
Robinson, Mary, 50
Rodrı´guez-Garavito, César, 80
Rome Statute, 89
See also Special Representative on Business
and Human Rights
on empowered civil society participation, 90
Global Compact and, 81
on human rights, historical development of,
130–132
on meaning management, 77
on metagovernance, 102
Millennium Development Goals and, 81
“normicide,” 77–78
SADC. See Southern African Development
Community
Saro-Wiwa, Ken, 158–159
Schutter, Olivier de, 39–40
Sen, Amartya, 105
Shelton, Dinah, 117
Siqueira, Flavio, 162
social change, theories of
acculturation-based models, 81–86
human rights approach to, 85
for human rights NGOs, 82
for UNGPs, 81–86
social constructivism theory
core components of, 81
defined, 81
social movement theory, 151–157
in civil society, 154, 158–159
countervailing power and, 156
framework for, 151–154
in Global North, 154
in Global South, 154
organized action and, 156–157
political opportunity structures and, 154–156
sociological institutionalism. See social constructivism
soft law
BHR and, 1, 14
international binding treaty and, 114–115, 118
UNGP5 under, 39
SOMO. See Centre for Research on Multinational Corporations
Southern African Development Community (SADC), 182–183
Special Representative on Business and Human Rights (SRSG), 3, 67–70
Draft Norms and, 34–35
governance gaps and, 70–75
mandates of, 18–19
“normicide,” 77–78
principled pragmatism and, 25–29
PRR Framework for, 18–19, 174–176
stakeholders. See also multi-stakeholder approach
empowered civil society participation for, 88–89
states’ duties and obligations
under international binding treaty, for BHR, 94–95
power-shifting as result of, 95
under UNGPs, 63–64
TANs. See transnational advocacy networks
tax law, 55
Taylor, Charles, 181
Teubner, Gunther, 99–100
Third World Approaches to International Law (TWAIL), 108–109
trade law, 58
transnational advocacy networks (TANs), 186–187
transnational governance, 100
treaties. See international binding treaty
Treaty Alliance
CSOs and, 36, 57
among NGOs, 36, 55, 58
scale of, 58
TWAIL. See Third World Approaches to International Law
UK. See United Kingdom
UN. See United Nations
UNGP5. See Guiding Principles on Business and Human Rights
United Kingdom (UK)
Legal Aid, Sentencing and Punishment of Offenders Act, 141
NAPs adopted by, 59, 64
UNGP5s supported by, 59
United Nations (UN). See also Guiding Principles on Business and Human Rights
human rights Council
Centre for Transnational Corporations, 17
Convention Against Corruption, 143–144
Convention on the Rights of People with Disabilities, 25–26
Development Program, 104–105
Draft Norms, 17–48, 34–35
United States (U.S.)
BHR in, 146–147
Endangered Species Act in, 53
Universal Declaration of Human Rights, 69, 118
Universal Period Review (UPR) process, 154–155
U.S. See United States
victims’ demands, UNGPs and, 42–43
weak governance zones, 70
WFE. See World Federation of Stock Exchanges
WG. See Working Group
Workers Rights Consortium, 25–26
Working Group (WG), 11–12, 15
as binding international treaty, 35–36
data metrics for, 21–22
Human Rights Council and, 142
human rights mechanisms through, 165–168
company engagement and, criteria for, 166–167
membership as factor for, 165–166
remedies for victims, 167
transparency of, 166
on indigenous peoples, 20–21
OEIGWG, 72–73
origins of, 17–19
shortcomings of, 164–168
work of, 19–22
World Bank, 74
World Federation of Stock Exchanges (WFE), 146
World Trade Organization, 74
Wright, Erik Olin, 53
Zerk, Jennifer, 162