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Untangling the authority of external experts in the corporate implementation of the UN Guiding Principles on Business and Human Rights

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ABSTRACT

The UN Guiding Principles on Business and Human (UNGPs) explicitly ask corporations to rely on “external expertise” for policy guidance, human rights due diligence (HRDD), and remedy. The broad conceptualization of expertise in the UNGPs signifies an amorphous, neutral, and largely unregulated community of consultants, human rights institutions, NGOs, impact assessors, and auditors (among other actors). I argue that external experts exert significant governance authority in the business and human rights space. Through empirical analysis of experts orbiting two multinational corporations, I identify experts as knowledge providers, diplomats, critics, and legitimizers in the corporate implementation of the UNGPs. In doing so, this work adds nuanced political dimensions to expert authority in business and human rights, offering evidence of its manifestations and limitations. Finally, I advance some considerations and suggestions for future research, particularly vital in the context of incoming mandatory HRDD legislation.

Introduction

Business and human rights constitute a relatively new field of study and practice, filled with interpretive possibilities and unsettled and contested boundaries. Much scholarly and legislative attention has been paid to the interactions and power dynamics between states, corporations, and rightsholders (Santoro, 2015). Indeed, the importance of these groups is reflected in the three pillars of the UN Guiding Principles on Business and Human Rights (UNGPs): the state obligation to protect, the corporate responsibility to respect, and access to remedy for victims of business-related abuses (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2011). Yet the polycentric, nonbinding impetus of the late John Ruggie’s “principled pragmatism,”¹ and the flexibility this affords companies in the responsibility to respect human rights, means that the implementation of the UNGPs and human rights due diligence (HRDD) is, in reality, “mediated and influenced by the interpretive and implementing work of many actors, with many and varying goals” (Partiti, 2021: 135). In the decade since the inauguration of the UNGPs, some of the key actors involved in this interpretation and implementation remain obscured (Mende, 2021, 2022; Sarfaty, 2020).

As such, this article provides analysis of the external experts in business and human rights, who often move in the space between states, corporations, and rightsholders. The nomenclature

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of “external expert” comes directly from the UNGPs (OHCHR, 2011: 17) and incorporates an amorphous group of actors. In this study, the external experts range from management consultants, government departments, NGOs, international organizations, impact assessors, human rights institutions, and sustainability ratings providers to trade unions. This group might seem disparate at first glance, yet they all provide external assistance to companies in implementing the UNGPs. They are all therefore “intimately connected with how a company behaves, performs, and responds to adverse human rights impacts” (Ramasastry, 2021).

Given this connection, there is undoubtedly much to be explored on experts’ authority on the business and human rights governance system, and indeed, on how this very expertise is produced, legitimized, and in turn used to legitimize corporate human rights activity. In business and human rights, there remains a rather limited understanding of the types of expert organizations, the activities they perform, and their interactions with other actors.

In this contribution, I focus on the manifestations and limits of this authority, specifically with respect to the corporate implementation of the UNGPs and the exercise of HRDD.² I offer this analysis through insights gleaned from external experts orbiting two European multinational corporations (MNCs): an oil and gas company and a bank. The focus on implementation is vital for a number of reasons. HRDD is the cornerstone of the UNGPs’ second pillar and has been touted as the “key mechanism” through which to address corporate human rights abuse (McCorquodale & Nolan, 2021). Although the overall effectiveness of HRDD in preventing harms continues to be questioned (Fasterling, 2017; McCorquodale & Nolan, 2021; Smit et al., 2020), little empirical work has looked at the practical implementation of the UNGPs, and still less research has focused on the role of experts in implementation (McVey et al, 2022; Obara, 2017; Scheper, 2015). Meanwhile, the march toward incorporating the UNGPs and HRDD into current and future regulatory regimes continues (UN Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIWG; see OEIWG, 2021; ECCJ, 2021).

Within this context, this research makes a number of interrelated contributions in the study of business and human rights, and of contested authorities in global regulatory governance. First, I identify external experts’ role in business and human rights in coconstructing and operationalizing corporate human rights implementation. Second, whereas the UNGPs classify external experts as passive and neutral advisors, I instead point to their authority as governance actors within the corporate implementation of human rights, whose roles include knowledge provider, diplomat, critic, and legitimizer. Within each of these roles, I demonstrate how experts exercise power and the varying degrees of legitimacy through which they are able to exert authority in business and human rights. By doing so, I energize Mende’s (2021, 2022), triadic understanding of governance authority in business and human rights advanced in this issue—which comprises of three key elements: power, legitimacy, and a connection to human rights as “public interests”—and further invigorate the understanding of HRDD as a relational, social, and political practice. From this, I argue that in these different roles, external experts exercise governance authority and are deserving of much closer attention as critical actors in the business and human rights space.

I first embed the study in the UNGPs and growing literature of expertise in business and human rights. I then provide an overview of data collection and analysis, and examine the manifestation of expertise and their work in implementing the UNGPs. Finally, with this expert work in mind, I look to the future of business and human rights research and regulation.

Contextualizing external experts in business and human rights

The UNGPs and beyond

This article purposefully does not provide a static definition of the “external expert” in business and human rights; instead, I follow their presence within the UNGPs and related guidance to

derive an initial understanding of the term. As will be demonstrated, because this categorization remains a fluid one, it encompasses an ever-evolving and increasingly variable range of both public and private actors.

In acknowledging the context-driven nature of human rights impacts, the UNGPs suggest that companies look to external expertise to assist in a variety of different tasks, particularly in the exercise of HRDD. For instance, external expertise can be used to inform corporate policy statements (OHCHR, 2011: 17) and in the assessment of relevant human rights risks (OHCHR, 2011: 19).

When assessing human rights impacts—and when direct stakeholder consultation is not possible—the UNGPs ask companies to consider reasonable alternatives, such as “consulting credible, independent expert resources, including human rights defenders and others from civil society” (OHCHR, 2011: 20). The more complex a situation and its potential impact on human rights, the stronger the case “for the enterprise to draw on independent expert advice in deciding how to respond” (OHCHR, 2011: 22).

With respect to Pillar III—access to remedy—external experts may act as adjudicators for the purposes of operational-level grievance mechanisms (OHCHR, 2011: 31; Grama, 2022). In certain instances, the UNGPs remain (characteristically) vague as to who these experts might be. For example, the level of expertise necessary to ensure a policy statement is adequately informed, “[w]ill vary according to the complexity of the business enterprise’s operations. Expertise can be drawn from various sources, ranging from credible online or written resources to consultation with recognized experts” (OHCHR, 2011: 19).

Some of the actors considered under the UNGPs to be credible external experts can be found in the Commentary of Principle 23 (dealing with human rights context) and include “governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives” (OHCHR, 2011: 24).

Looking outside of the text of the UNGPs themselves, the Interpretive Guide (OHCHR, 2012), to the UNGPs provides further illumination, particularly regarding the construction of experts’ legitimacy. The OHCHR deems experts as credible if they are used successfully by other business enterprises; developed by those who are trusted and respected by stakeholders; and referred to, used, or trusted by other respected individuals (in industry, academia, and civil society; see Office of the United Nations High Commissioner for Human Rights [OHCHR], 2012: 26). Here experts’ legitimacy is not only tied to their connection to the public interest cause of human rights (Mende, 2021, 2022) but also to their association with and usage by other actors in a wide range of spheres within business and human rights.

In terms of their actual function, the Interpretive Guide suggests that it may be both “reasonable and necessary” for external experts “to carry out some due diligence processes” (OHCHR, 2012: 35). In particular, where there is a history of distrust with affected stakeholders, it may well be important for the company to identify “a neutral third party” who can support and assist such stakeholder engagement (OHCHR, 2012: 35).

Despite this, the guide also carries a warning about the overinvolvement of experts in HRDD, which may lead to failure in properly “embedding” respect for human rights into core business operations, and may also—in situations where engagement with affected stakeholders is delegated to these experts—undermine the capacity of MNCs to “truly understand the perspectives of those it may have an impact on and to build trusting and productive relationships with them” (OHCHR, 2012: 35).

Finally, we might also look for clues about experts in Shift and Mazars’ Reporting Framework and Assurance Guidance (Shift & Mazars, 2015, 2017).³ The Reporting Framework echoes the UNGPs and the Interpretive Guide, stating that for human rights impacts where stakeholder consultation is not possible, “reasonable alternatives” should be used, such as “consulting a variety of credible, independent expert resources ... through which they can gain insight into the likely

or typical perspectives of affected stakeholders” (Shift & Mazars, 2015: 51). Consulting these stakeholders “can help ensure that the company’s conclusions on salient human rights risks are well founded” (Shift & Mazars, 2015: 51).

The Assurance Guidance further enhances this description of expertise, recommending that the assessment and external assurance of a company’s human rights performance under Pillar II should be undertaken by external experts, including “professional firms and sustainability consultants” (Shift & Mazars, 2017: 11). For Shift and Mazars (2017, p.19), expertise equates to,

Expertise in internationally recognized human rights standards, in the UN Guiding Principles on Business and Human Rights, in human rights risk assessment, in human rights issues typically relevant to the company’s industry and operating contexts, in processes for engaging stakeholders, including vulnerable groups and other stakeholders affected by the company’s business. (Shift & Mazars, 2017: 19)

What deductions can we make from these references to external experts in the UNGPs and the related guidance? First, it is clear that experts are viewed as essential actors in fulfilling Pillar II of the UNGPs, the corporate responsibility to respect. The language of the UNGPs is ostensibly apolitical, denoting experts as neutral actors in business and human rights, mostly working in between corporations and rights-holders, sometimes acting as adjudicators or credible proxies for affected rights-holders. They can include traditionally public or private bodies, ranging from national human rights institutions to professional service firms, and their legitimacy is tied to their usage by other trusted actors in the business and human rights ecosystem. Their role in HRDD is largely driven by context, which means the function and roles of experts can be extremely varied. Mindful of this context, this article examines their manifestation and affects in the implementation of the UNGPs.

External experts in the business and human rights literature

In parallel with the discussion of external experts in the UNGPs, I turn next to what has been written about external experts in the business and human rights literature. Although there remains a vast interdisciplinary literature on the study of expertise in adjacent fields (law, anthropology, political science, regulation and governance, business and accounting),⁴ the significance of experts and their authority is not yet reflected in the empirical business and human rights literature. One reason for this is probably the relative infancy of specific business and human rights expertise that has materialized in the decade since the UNGPs (Deva, 2020). The below discussion sheds light on the emerging body of research in business and human rights that has begun to recognize the power of experts on the operationalization of the UNGPs and on the global governance of business and human rights as a whole.

In an investigation into how companies construct meanings of compliance under the United Kingdom’s Modern Slavery Act, Monciardini et al. (2021) found that external “compliance professionals” (in this case, consultants and lawyers) exert power by framing and filtering information about the salience of risk related to modern slavery. Partiti (2021) emphasized this crucial interpretive role given to experts as intermediaries by the UNGPs, while also warning of the potential for inconsistencies in this interpretation process through the drafting of best practice and guidance documents.⁵ Here he drew on the tradition in international relations of regulatory intermediaries in global governance (Abbott et al. 2017a, 2017b, 2017c).

John Ruggie, the nonprofit organization Shift, and the OHCHR were all highlighted in Partiti’s work as politically powerful interpretive intermediaries, giving meaning to the general principles of the UNGPs and shaping the boundaries of HRDD. McVey et al. (2022) drew on legal anthropology to demonstrate the power of experts as translators of human rights into the corporate context. Here, experts must navigate the dilemmas of this translation work and negotiate the meaning and form of human rights, with concerning consequences of neutralization, displacement of rights-holders experience, and formalization of human rights.

Moreover, there is already a growing literature around human rights impact assessors (Harrison, 2011; Götzmann, 2019; Kemp and Vanclay, 2013; Majekolagbe et al., 2020). The political power exercised by these experts has been acknowledged, wherein “an assessment is always an exertion of power” (Scheper, 2019: 264; see also Scheper and Zajak, 2019) in the decisions they make to include, exclude, classify, and communicate information. In a further acknowledgment of the power of social auditors, Van Ho and Terwindt (2019) contemplated a duty of care for third parties at risk of suffering damages from their negligence under English law, arguing that these auditors now exercise a form of private regulation with limited accountability.

The literature so far appears to focus largely on the discursive facet of experts’ power in business and human rights or power over knowledge. In his discussion of the various sites of corporate power in business and human rights, Birchall (2021:11) saw discursive power as the power a corporation has “to shape knowledge of human rights and the wider epistemic framework in which human rights exist.” In the context of business and human rights experts, the literature has emphasized their ability to impact human rights-relevant knowledge and shape underlying ideas and norms, as well as to interpret guidance, classify information, and frame business and human rights issues (Fuchs, 2004, 2007; Lukes, 1974/2005).

Although this article limits itself to better understanding the impact and authority of experts in the implementation of the UNGPs, other commentaries have pointed to the (potentially negative) influence of experts on wider business and human rights regulation and practice.

In defining the evolution of business and human rights so far, Deva (2020) suggested that there are three phases or “eras.” The first, the “business *or* human rights” era, is emblematic of the shareholder primacy model, in which businesses were not seen as entities that could be held responsible for human rights (Deva, 2020: 2; emphasis original). This then leads us to the second phase, the “business and human rights” era, which is distinguished by a slow march toward corporate responsibility and the development of standards and guidance, such as the UNGPs and HRDD (Deva, 2020: 3–5). It is the third era that is the focus of this article—namely, “the business *of* human rights” (Deva, 2020: 5), which is marked by the cooptation of human rights language by business for profit, and the “mushrooming” of a private industry of HRDD consultants (Deva, 2020: 5).

Scheper similarly pointed to this expert industry as a result of the current manifestation of HRDD: The concept of human rights is transformed into a managerial target that needs to be operationalized and measured (Scheper, 2015; see also McVey et al., 2022). Here, “knowing and showing human rights responsibility becomes a commodity” (Scheper, 2015: 737). Likewise, for Birchall (2021: 63), when businesses outsource their responsibility to respect human rights to independent external experts, these experts then become invested in making and maintaining a market for their services and are incentivized to “construct [corporate] responsibilities in an achievable way.”

Methodology

To empirically capture the various dimensions of expert authority in the implementation of the corporate responsibility to respect, this research draws on qualitative data originally gathered across two case studies: an oil and gas (OilGas) company and a bank (CashMoney).⁶ Although the case studies formed the basis of a wider study, this article focuses specifically on the experiences of the experts and their work.

To identify the two case studies, I focused strategically on MNCs actively undertaking HRDD and reporting underpinned by the UNGPs and headquartered in Europe. In particular, I sought out early corporate adopters of the UNGPs with a (relatively) long engagement with human rights reporting and due diligence practices, and who had routinely worked with external experts to conduct HRDD. After a preliminary analysis of the two case studies via publicly available

information, purposeful selection of participants was initially employed for both case studies and their external experts, in order to identify individuals or groups of individuals who were knowledgeable or experienced with the research area at hand (Patton, 2015). Continued contact with these key “gatekeepers” then produced a snowball effect, wherein participants would recommend other potential participants (Patton, 2015). Data collection took place between October 2018 and October 2019 through semistructured interviews with 20 external experts and with various representatives from the two companies. All interviews were anonymized, conducted confidentially, and in person, wherever possible.

Given the broad range of expertise discussed in UNGPs, the range of external experts in this context extends beyond the traditional public–private distinctions (Mende, 2021, 2022) to include participants from management consultants, government departments, NGOs, international organizations, impact assessors, human rights institutions, sustainability ratings providers, and trade unions (see Table 1).

As a result of the flexibility and context-driven nature of the UNGPs discussed above, relationships and types of affiliations between company and the experts were varied. Both companies were part of a corporate responsibility initiative set up by one international expert organization, in which employees could engage in business and human rights workshops.

OilGas worked with a number of international NGOs that had local branches in countries where the company had an on-the-ground presence. They had long-standing relationships with responsible business organizations (which predate the UNGPs).

At the time of data collection, CashMoney was also part of a multistakeholder initiative that brought together financial institutions and a range of stakeholders who supported the banks and assisted in their responsible business conduct. CashMoney also held an annual Human Rights Day at their headquarters (which I attended) to showcase their human rights work in collaboration with expert partners.

During interviews, experts talked about their work in relation to the two companies, particular sectors, and in general. Interviews were complemented with sources such as corporate human rights reports, expert reports and other supporting documentation.

All interviews were recorded, transcribed, and manually coded. Analysis was further complemented by an exploration of the human rights reports of the two companies and documents published by the relevant expert organizations. The research design was informed by social constructionism (Burr, 1995), and the data were analyzed inductively via thematic analysis (Braun & Clarke, 2006). When coding, my primary aim was to understand shared categories and assumptions of experts when they advise businesses on their corporate responsibility to respect under the UNGPs.

In addition to Mende’s (2021, 2022) triadic approach to authority in multilevel governance, this analysis was deepened through close reading of the extensive literature on power (Lukes, 1974/2005; Fuchs, 2004, 2007); regulatory intermediaries in transnational governance (Abbott et al., 2017a, 2017b, 2017c; Brès et al., 2019; Fransen & LeBaron 2019; Partiti, 2021); and, in particular, the literature focusing on the roles played by intermediary actors (Kourula et al., 2019). In the research at hand, experts’ roles comprised four distinct categories: knowledge provision, diplomacy, critique, and legitimization. Understanding these roles is useful for gaining insight not only into the tasks that intermediaries perform (Kourula et al., 2019) but also the manifestations and limitations of their authority.

The many hats of the external expert

In addition to their roles as interpreters and translators—previously identified by Partiti (2021) and McVey et al. (2022)—in the corporate implementation of the UNGPs, experts also act as knowledge providers, diplomats, critics, and legitimizers. Before discussing these in more detail, it

Table 1. List and description of external experts.

External expert organization	Description	Relation to case studies	Participant
NGO1	Peacebuilding organization	Carried out human rights assessments for <i>OilGas</i> in Africa and Latin America and human rights training (ongoing)	P13
NGO2	International peacebuilding NGO	Advocated for communities along Pipeline1 and facilitated dialogue between <i>OilGas</i> and rightsholders and conducted impact assessments (ongoing)	P14
NGO3	Organization specializing in responsible business practices	Longstanding (around 12 years) advisory role for <i>OilGas</i> focusing on various HRDD projects	P6
NGO12	Peacebuilding organization	<i>CashMoney</i> (via SectorAgreement1)	P25, P28
NGO14	Financial NGO	Acts as a watchdog NGO on the banking sector (including <i>CashMoney</i>) on human rights and environmental issues. Not part of SectorAgreement1 (by choice)	P32
HRI1	Human rights institution with BHR expertise	Carried out human rights assessments and HRIAs for <i>OilGas</i> and advised <i>CashMoney</i> (via SectorAgreement1)	P7, P20
HRDDO1	Independent business and human rights specialists	Contextual extractive expertise focusing on HRDD	P8
HRC1	Ethical consulting firm	Carried out advisory work and human rights assessments for <i>OilGas</i>	P11
HRC2	Organization specializing in HRIAs and on the ground fieldwork.	Contextual extractive/financial expertise	P12
GovtMinistry1	Government Ministry	Facilitated SectorAgreement1(<i>CashMoney</i>)	P16
HRC3	Large business and human rights consulting organization	P9 conducted independent HRIA on Pipeline1 for <i>OilGas</i> and HRC3 has an ongoing advisory relationship with the company. Advised <i>CashMoney</i> (via SectorAgreement1)	P9, P22
Financial Association1	Financial association	Advised and acted on financial institutions' behalf (including <i>CashMoney</i>) in SectorAgreement1	P21
HRC4	Small business and human rights consulting organization	Contextual expertise	P22
NPO1	Management consultancy, focusing on responsible business	Contextual expertise	P10
TradeUnion1	International trade union	<i>CashMoney</i> (via SectorAgreement1)	P26
DDP1	Environmental, social and governance (ESG) ratings and research provider	<i>CashMoney</i> has used DDP1 services (ratings and research) for around 15 years	P31
DDP2	Management consultancy	Advises <i>CashMoney</i> on sustainability issues (ongoing)	P29, P30

is important to note that the types of roles described are separated here for the purposes of presentation. However, in the everyday work of business and human rights experts, these functions are not static or necessarily consecutive; they may occur in tandem, or even overlap (Kourula,

2019). Certain types of experts may also be associated more closely with certain roles than others, and this is drawn out below in the examples provided.

Knowledge providers

In the first instance—consistent with their imagined role under the UNGPs and Reporting Framework and the literature on the discursive power of experts discussed above—experts function as knowledge providers for companies. Findings demonstrated that experts were able to access knowledge, spaces, and people deemed inaccessible to corporations. If a company needed to understand certain rights-holders' issues or the nuances of different communities they were engaging with, external experts were able to step in and fill the gaps.

The value of knowledge provision by experts was particularly pronounced at OilGas, ostensibly due to the extractive company's obvious impact on community groups and rights-holders in the construction and management of oil and gas pipelines. There was an understanding within the internal human rights department that rights-holders on the ground were not simply a homogeneous group, whose human rights issues were one and the same, and hence that context-specific knowledge was vital to the company discharging their responsibilities under the UNGPs. The question of "how local does local get?" was therefore important, and this need for a "deeper sense" of contextual human rights issues (P1, human rights senior advisor at OilGas) was one of the main reasons the company partnered with expert organizations. Local NGOs were indispensable in enabling a "deep-dive" into local contexts, in order to understand the nuances of communities. P6 (associate director of Advisory Services—Responsible Business at NGO3), who liaised with local communities and worked with OilGas, further expounded on this:

Very often in the extractive industry, we're talking about people [in the companies] who are really good, and have been trained and gone to school and are focused on their careers on digging holes in the ground. They're not social scientists ... some of them are lawyers, but often not human rights lawyers, they're not experts on working with agricultural communities in some remote corner of Uganda.

There was also an honesty around the lack of specific human rights expertise within OilGas (even within the Human Rights Department itself) and the need to request external help from those more knowledgeable. P11, who was previously employed by OilGas as human rights legal counsel and is now a manager at HRC1 (an ethical consulting firm that also carried out human rights advisory work for OilGas),⁷ was able to provide insights both into what MNCs lack and how experts can help through knowledge provision. They explained that there might be a human rights team to coordinate everything, "But doing the on-the-ground job, they don't have time. And probably, they don't have the capability. You need to rely on experts that have field experience to make sure you do things right."

This knowledge provision was circumscribed by the methodological approach of the experts or their organization. A "stratum of expertise" was observed, wherein those with on-the-ground contextual knowledge were perceived by both companies and the experts themselves as more legitimate than "desk-based" expertise. Distinctions were often made by participants working at OilGas and CashMoney between on-the-ground and desk-based external expertise. On-the-ground experts were those organizations or individual experts who represented rights-holders in a more direct manner: those who frequently interacted with or had experience working with rights-holders communities, such as NGOs, human rights institutions, and Human Rights Impact Assessment (HRIA) experts. In contrast, desk-based experts gathered and analyzed information from existing sources, without conducting primary inquiries with or alongside rights-holders. This category of experts contained organizations like ESG ratings providers and sustainability consultants.

Some external experts, such as P22 (a consultant at HRC3 and HRC4), considered it impossible to fix "endemic" issues that an MNC, sector, or whole economy had created without examining the on-the-ground context. Here, going on the ground implicitly meant truly "understanding reality":

But if you're sitting in London, it's comfortable to say, "Yeah let's just pay this organization this amount, they'll fix it for us" But you're not fixing anything! But you feel good, right? You feel great. But it's not fixed anything. ... If you go out on the ground, you see it.

This was corroborated by P8 (co-founder and executive director of HRDDO1, independent business and human rights specialists): "And I think there's a growing consensus among long-time practitioners of HRIA [human rights impact assessment] ... around the idea that meaningful engagement with affected stakeholders means talking to affected rights-holders directly and talking to lots of them, and considering the full range of human rights meanings."

Discursive power is "inextricably linked to legitimacy" (Mende, 2020: 7). Through their role as knowledge providers, we can see a limitation of expert authority in action, wherein their discursive power is circumscribed by the perceived legitimacy of the methods used to acquire contextual knowledge about human rights. Different methods provided differing shades of legitimacy in the implementation of the UNGPs. Those methods that were seen to be more connected to the public interest (i.e., human rights) were more legitimate in the eyes of the corporation and other experts (Mende, 2021, 2022). Therefore, those experts who worked on-the-ground exemplified a closer connection to human rights, through their perceived affiliation to affected rights-holders and in their use of these more direct narratives to inform their corporate clients' human rights strategies.

Diplomats

In addition to the discursive power of experts through knowledge provision, external experts involved in the corporate implementation of the UNGPs also engaged in diplomatic work. In this diplomatic capacity, external experts used their connections, brokered and managed relationships, and facilitated dialogue between many different kinds of parties, opening channels that perhaps were previously unreachable or not previously thought about for corporations or rightsholders. Here, we see experts exercising what global governance literature understands as the second dimension of power, or *agenda-setting* power (Fuchs, 2004, 2007; Lukes, 1974/2005), wherein experts define problems and their solutions and implicitly decide which actors should be connected with each other and which relationships should be fostered and managed. Two significant dimensions of this diplomatic work emerged: matchmaking and mediating.

Matchmaking, or connecting different actors, was an important part of the work of trade unions under SectorAgreement1 (of which CashMoney was a member). P26 (an official at an international trade union working within SectorAgreement1) was particularly explicit about this role: "I'm the person who connects people to each other."

P16, who worked as the coordinating policy officer at a government ministry for SectorAgreement1, corroborated this matchmaking role for experts in relation to business and human rights issues, particularly with respect to undertaking HRDD:

For example, we had a cocoa report—we had our colleagues from the embassy call in and we had a discussion, and they could also explain what they are able to do to facilitate, for example in [West African Country 1] or [West African Country 2]. But I also get more bilateral requests from different banks, for example they say, "Ok, we're thinking about this and this investment or this client, but we have some concerns, relating to human rights or relating to other issues," and then they ask us for more information. So, I usually try to match them with colleagues at the embassy or colleagues who work here on a different country or on a different topic, to see if they can provide them with more information that they can use in their due diligence process.

As a government representative in SectorAgreement1, P16 represented an interesting dynamic of this matchmaking relationship, in the context of polycentric regulatory regimes such as business and human rights. Identifying the matchmaking role of governments reflects what Shamir (2008) described as the expanding function of states as facilitators, rather than the authority, in

new forms of governance. Through SectorAgreement1, the government became the intermediate party between corporations and other actors, such as CSOs and rights-holders, using embassies in different countries to connect these actors.

Together with their role as matchmakers (i.e., connecting different actors), external experts also facilitate relationships through mediation. The UNGPs specifically reference experts in the context of nonjudicial grievance mechanisms (OHCHR, 2011: 31), but from the data at hand, external experts' roles in mediation are not limited to these mechanisms: In practice, they were less reactive and more *ad hoc*. Mediation can also denote the process of finding common ground between parties (that may be perceived as ideologically opposed), in order for them to cooperate and work toward a common purpose.

Whereas matchmaking is about creating initial connections, mediation is a role based around repairing or fostering better relationships over a period of time. It is a role that requires more long-term investment on the part of the expert. P7, working as a senior human rights advisor at HRI1, demonstrated: "So, what we've tried to do now more is to have follow up visits [to affected communities], say 6 or 12 months later, and actually talk to community members again ... what has changed, have things changed?"

Mediation also means encouraging conversations between two parties that are spatially distant from one another. For example, those working at OilGas' headquarters in Europe, and rightsholders in a different country impacted by OilGas' pipeline might require mediation to reduce their mutual gaps in understanding, in order to create and implement specific human rights policies. Mediation obliges the expert to move as an intermediary between different groups. It involves enabling dialogue between two parties and acting as a witness to these discussions. P20 (Senior Advisor at HRC4), expanded on this:

But I quickly came to see that all our work is about facilitating conversations, it's about conversations, multi-stakeholder conversations, it's about dialogue. And changing the way people think about these issues and create an "Aha!" moment in terms of the shift in perspective. And so, for the last 8 years, I've been with HRC4, working with companies, working with governments, working with civil society, working across all of them.

Critics

In the implementation of the corporate responsibility to respect, experts also assess companies' performances and offer constructive advice alongside provocations. We can see experts' role as critics as another avenue for exercising discursive power, shaping ideas, framing issues, and changing perceptions within a company. As Barnett and Finnemore (2005: 170) pointed out, "authority involves more than the ability to get people to do what they otherwise would not; authority often consists of telling people what is the right thing to do."

Experts' critical work is distinct from knowledge provision or diplomacy, as, in this role, they are elevated to a place of judgment, both assessing and challenging corporate conduct in relation to human rights. For P9 (senior advisor at HRC4 and independent consultant on Pipeline1 for OilGas), this meant speaking to a company in an "independent auditor mode," which is "less comforting" than other roles.

P20 (senior advisor at HRC4) further elaborated on this role, emphasizing that their personal mission was to ensure human rights realization for rightsholders: "When someone ... puts forward an interpretation of the UNGPs or what's expected of companies that we think is wrong ... we are not neutral. If a company has a blind spot and isn't seeing a specific set of risks for people, we're not neutral. We're advocates for people."

As critics, experts have to choose how exactly to frame this critique. Some, such as P6 (associate director of Advisory Services–Responsible Business at NGO3) opted for a more tactful route, striving to frame criticism constructively so as to avoid a defensive response from the company:

If you speak corporate speak, and you understand some of the basics of the way companies organise, how they operate and what their processes [are]... when you're basically telling someone in very polite, diplomatic terms that they're doing some particular thing very badly, you nevertheless get responses that are not defensive, from the company side. So, I mean we have had some tense company meetings too. Yeah ... again we just try to make it as constructive as possible, we try to make it clear to them that we're not blaming them, and so on, and so forth.

Others, like P22 (consultant at HRC3 and HRC4), did not seem particularly concerned with the company's reaction to criticism. Their focus instead was on ensuring adherence to the UNGPs and the notion of creating systemic change, rather than corporate-level performative action:

When you're out in [South East Asian Country] ... all migrant workers are highly exploitable and being exploited ... you need to go to the root cause of exploitation ... but it is very difficult for companies to think about it in that way. And I often, in my workshops, like I completely shake them up, and say like "Wake up!" like, oh my god. ... "I mean all the stuff you've done here is worthless, you might as well not have done anything." And they're just like, "What?!" And I'm just like, "It doesn't count, it hasn't changed anything."

Nevertheless, P22's strategy to challenge corporate behavior was also about "pushing companies in a way that they can be pushed, toward human rights respect." They were mindful that pushing companies too far might "backfire," and then "you've lost them."

Other external experts, such as P28 (programme officer for natural resources at NGO12), acknowledge this the need to balance challenging companies, while also being constructive in their critique:

So, you have a kind of balancing act going on where banks—they are changing and we should acknowledge that—and we do, but on the other hand, they are not changing fast enough, they are not ambitious enough and we keep telling them that. But also, at least I try to still be constructive, because if you're working together and if you're constantly bashing the other party, then ... they're not gonna be happy and they're not gonna work with you anymore. So, it has to be a balancing act. ... Because you hear stories [of] people who've been kicked out of their land, who's families have been murdered, who don't have access to water anymore, so it forces you to be a critical watchdog. Because if banks say, "Oh, we're doing this, and we want to get credit for it." If it's improvement, you can get credit, but you also have to say, "Well, this is happening on the other side of the world, with your money. So, you've got to do something about it."

The quotes above indicate that external experts can not only be critical but also need to pay attention to how they deliver these criticisms: within the limits of what a company can handle. A certain level of critique is allowed or even welcomed, as it portrays MNCs as taking their human rights responsibilities seriously. But there must also be a practical aspect to this critical work for experts, to ensure MNCs will continue to use their expertise (Brès and Gond, 2014).

Here, the authority of experts as critical friends has certain limits imposed on it depending on the perceived merit of the criticism itself. Still, the experts' balancing act of constructive criticism is not motivated solely by the need to maintain their client relationships. It is also linked to a pervasive notion, apparent in the data, that companies are on individual human rights "journeys" with regard to implementing the UNGPs: "So, you get all these ambitious people, at the top or at the bottom [of a company], and sometimes, it just doesn't work, and often it's due to where the company is on its journey" (P13, corporate engagement advisor at NGO1 who worked with OilGas).

A company's human rights journey or "learning curve" (P32, researcher at NGO14) implied incremental positive progress and change. The journey was a never-ending one, as the challenges of human rights responsibilities are continually evolving.⁸ It nevertheless meant that when experts challenged corporate conduct, any criticism given was often constructed from the perspective that corporate human rights behavior would inevitably get better as they move along their implementation journey.

Another aspect that emerged regarding the role of the expert critic was that criticism was generally provided in private with company representatives, in contrast to the tactic of public

“naming and shaming” of businesses in relation to human rights: “We tend to try and be ... negative behind closed doors. So, my mandate is to criticize companies in conversation with them, as part of my role, and not in a way that I’m sugar-coating anything, if something is bad, I say it” (P13, former corporate engagement advisor at NGO1).

In private, criticism could be given freely. Company representatives and experts could come together to consider human rights conduct and coproduce solutions to the issues at hand. SectorAgreement1 (of which CashMoney was a member) provided a somewhat fruitful backstage for experts to challenge banks party to the agreement. All discussion between parties of SectorAgreement1 remained confidential, meaning experts could provide constructive criticism away from a public audience. P26 (an officer at TradeUnion1) spoke of the need for change from the previous work of the trade union, which tended to focus on publicly blaming and shaming companies. When contributing to the creation of SectorAgreement1, there was a concerted effort by the trade union to advocate for cooperation with financial institutions—while still keeping a critical eye on their performance—in the confidential space the agreement would provide.

Nevertheless, even within the space of the confidential agreement of SectorAgreement1, constructive criticism from experts was often obstructed by the banks’ fealty to client confidentiality, and the related tensions over access to the company’s information.

Client confidentiality plays a dominant role in banks’ reasoning for not disclosing the human rights performance or HRDD practices of their clients (de Felice, 2015; Thompson, 2018). In the case of CashMoney, SectorAgreement1 did not ease this adherence to client confidentiality. There remained a wariness when sharing client information with civil society experts who were also party to the agreement, fearing that these actors had an “ulterior motive” (P16, coordinating policy officer for SectorAgreement1) and would publish any findings of human rights abuse (“Within a month from now, [I’ll be] reading about it all over the internet”: P27, advisor at CashMoney).

Client confidentiality with respect to HRDD remained a source of tension between the banks and the experts, with those at CashMoney contending that the NGOs and other experts at SectorAgreement1 were “underestimating the effort it would take to get rid of client confidentiality and overestimating the impact that would have” (P17, advisor at CashMoney). Therefore, even in this confidential space, it was difficult to understand how banks conducted their HRDD, impeding the ability of experts to offer constructive criticism, much to their frustration:

I think too often it’s just fallen back on as ... an excuse for not doing things, as opposed to ... go ahead and use your leverage, try to take action, and tell us, give us something about your management system, about your approaches, about anonymized examples about how you’ve used your leverage. Tell us about the ways in which your management system has been applied to specific deals, without telling us who the client was. There are other cases where clients would be perfectly willing to have their name revealed because it’s actually a positive story. And yet, banks don’t think to do that, they don’t think to say, “Could we profile you?” So, I think there’s a lot of myth about client confidentiality that there’s a whole space between the excuse-making and the reality of client confidentiality. (P20, senior advisor at HRC4)

Although they were not part of any sector agreement on the implementation of the UNGPs, OilGas were also hesitant to make public the findings of their HRDD process. Although their HRIA methodology was public, the findings of the HRIA on Pipeline1 remained an internal document, despite experts’ wishes to the contrary, due to what the company referred to as political “sensitivities.”

There were exceptions to the private configuration of critiquing corporate conduct, particularly from activist or watchdog NGOs. NGO14—a financial “watchdog NGO” that refused to be a part of SectorAgreement1 (due, in part, to the confidentiality issues considered above)—was vocal in its public condemnation of banks’ approaches to human rights. P32 (a researcher at the organization) elaborated: “Because—as a watchdog type of group—we wanted to be on the outside of that and able to play a critical role and not be committed to support the banks in their implementation, that wouldn’t be a comfortable role for us.”

P32 acknowledged that although the organization has this critical–constructive relationship with banks, those working in the banks “sensed a need” for the work of NGO14. Those working at CashMoney—although they may not have agreed with NGO14’s approach to challenging the bank’s conduct—verified this perspective, acknowledging the necessity of activist organizations:

I think it’s good that those entities exist because they often spark a conversation. ... Their role is to spark the conversation and then it’s someone else’s role to fix it ... if they don’t sit at the table, it doesn’t necessarily mean that we don’t listen to them at all. They do spark things. (P27, environmental and social risk advisor at CashMoney)

Challenging corporate conduct was an important role for external experts but it also offered another opportunity to examine the fallibility of expert authority in business and human rights. Experts may exercise discursive power via critique, but their authority in this role is mediated through the perceived legitimacy of the critique and in the mode of its delivery. How and where to deliver criticism constructively, without disrupting relationships, were significant considerations for experts in order to maintain legitimacy. The role was carefully modulated and often made possible through confidential platforms like SectorAgreement1, but it was not without contestation and sometimes frustrating obstacles. Experts who publicly challenged corporate conduct were acknowledged as an irritating but necessary component of the business and human rights ecosystem.

Legitimizers

In addition to knowledge provision, diplomacy, and critique, experts exercised power by conferring legitimacy on corporate conduct. This may be distinct from their own legitimacy, but only credible experts are able perform this role. As Birchall (2021: 22) suggested, by using experts, businesses “gain the kudos of having a legitimate outside agent manage their human rights issues” and we can see clear examples of this legitimization work below.

P12 (co-founder of HRC2 and an extractive industry human rights specialist) found that their expertise was used to lend credibility to a company that wanted to join a particular industry association. Part of the eligibility criteria for that association required the company to conduct environmental and social due diligence. Employing external experts to undertake HRDD was a way to demonstrate the company was taking the eligibility requirements seriously, wherein experts could act as guarantors to the company’s implementation strategy. P12 went on to speak generally about how the quality of external experts’ previous work with other clients could also confer legitimacy on MNCs’ own implementation of HRDD. For instance, engaging in the services of a human rights institution involved in the UNGP implementation process gave MNCs “more negotiation clout.” There was value in being involved with the human rights institution because of the “credibility of the product that comes out.”

The legitimizing impact of external expertise on corporate action was also clearly demonstrated in both OilGas’s and CashMoney’s advertisement of their human rights work. Each company’s human rights reports detailed which external expert(s) they had worked with and how this expertise had impacted the company’s human rights strategies, and each provided direct quotes from experts on their judgment of its human rights performance. This was also observed while attending CashMoney’s annual human rights conference, where efforts were made to spotlight their various relationships with external experts.

For companies, it demonstrated that the way in which they are realizing their human rights responsibilities is legitimate. By being seen in the same space, in text or in person, and associating with the company, experts were (intentionally or unintentionally) bestowing their blessing on corporate action—even in situations where the expert provided feedback critical of the company’s human rights performance. Companies’ enthusiasm in advertising their work with external experts can perhaps be juxtaposed with a quote from P13 (corporate engagement advisor at

NGO1, who worked closely with OilGas): “We tend to find [that] companies ... want to advertise the fact that they are working with us, more so than we would actually advertise.”

External experts helped to substantiate companies’ collaborative spirit—their willingness to work with others and be seen as partners rather than adversaries when it comes to human rights realization. This was particularly pronounced, at both OilGas and CashMoney, when engaging with NGOs. By working with NGOs, MNCs help to establish the idea that they can overcome the perceived antagonistic relationship between corporation and rightsholders. For example, P3 (Pipeline 1 project land and social manager at OilGas) noted that they had an “open door” policy to listen to NGOs. As P2 (international legal negotiator and former legal counsel for business and human rights at OilGas) further explained:

It demonstrates that companies can work with NGOs ... which is where we should be going. Not companies are here [taps hand on table to one side], NGOs are here [taps table on the other side]. ... To collaboratively provide solutions to environmental issues, human rights issues in our industry in the world, you know, businesses and NGOs, human rights defenders, they need to sit together. And we may not agree together, or agree on everything or think the same way—that’s not possible because the objectives are different—but I think at the end, you can provide remedies or solutions with coalition.

Because the UNGPs carve out a position for external expertise under Pillar II—particularly via HRDD—they are implicitly connected to the public interest (in this case, via human rights). MNCs using legitimate expertise are able not only to satisfy their responsibilities under the UNGPs but also to be (at least seen to be) satisfying these responsibilities to a high standard. Nevertheless, as Mende and Hoff (2022) warn, while the connection to public interests serves as a legitimizing function for governance authority, it does not necessarily mean that public interests are indeed served.

Conclusion

Current formulations of corporate responsibility for human rights actively encourage expert input in the implementation of the UNGPs and in the HRDD process. This expertise has largely remained a neutral and understudied concept, with little consideration given to how it is constructed and legitimized, or to its impact.

Findings in this research demonstrated the multifaceted and crucial roles of external experts. Through their knowledge provision, experts exert discursive power. The strata of expertise observed meant that whether this knowledge provision was seen as legitimate could depend on their methods used to acquire contextual knowledge, mediating experts’ authority in the implementation of the UNGPs.

As diplomats, experts set agendas by making explicit choices on who to link with who (match-making), creating and managing connections in the wider business and human rights ecosystem. They are relied upon to bring disparate groups together and supervise conversations in the hope of achieving human rights-based solutions (mediating). As critics, experts again exercise discursive power. We also saw further limitations of expert authority in this role: how and where to deliver feedback constructively, the reluctance to disrupt relationships, and lack of corporate disclosure impeded their exercise of power as critics. Finally, whether intentionally or not, experts also confer legitimacy onto corporate action, providing a perceived guarantee that businesses were implementing the UNGPs to a certain (high) standard. These rich findings illuminate what external experts do in the corporate implementation of the responsibility to respect human rights, and add nuance and dimension to governance authority in business and human rights.

This research empirically illuminates an integral yet relatively invisible facet of the business and human rights ecosystem. Since the research is based on experts working in two specific contexts, I do not claim to have exhaustively chronicled the full range of interventions by external experts. Nor is the intention of this study to take attention away from the responsibility of MNCs to

respect human rights or exaggerate the work of experts by affording their impact on human rights at the same level of concern as those of MNCs. These matters are not in competition with one another; rather, they are inextricably linked.

Although the place of experts in the architecture of the UNGPs is no doubt intentional, it remains undeveloped. The vague language of the UNGPs creates a space for experts to strategically carve out roles for themselves in business and human rights, and for their authority to emerge in unanticipated and overlooked ways. By ignoring external experts, or treating them as neutral parties, we disregard an important (if distributed) governance authority in business and human rights. Understanding the external experts in transnational governance can act as a window on the complexity and efficacy of the business and human rights regime itself.

Looking ahead, the wider implications of this work can be contextualized within the current push toward incorporating mandatory human rights due diligence into national and regional European legislative efforts, and the binding treaty on business and human rights. Here, we see efforts to transition the UNGPs and HRDD into “hardened” and settled norms, without giving due consideration to important but invisible actors and the political dimensions of their practice.

At a practical level, given the direction of these trends, the scope of HRDD to be undertaken, and the resultant pressure on companies to grapple and comply with new legislation, it is not unreasonable to suggest that demand and reliance on external expertise will only increase. If experts then become invested in making and maintaining a market for their services (Birchall, 2021), HRDD risks becoming a commodity rather than a practice for preventing harm.

Future research should look to the dependence of MNCs on external experts’ benchmarking practices (Broome & Quirk, 2015), their input and influence on global and national business and human rights regulation (Fransen & LeBaron, 2019), commodification and construction of the business and human rights expert market (Brès & Gond, 2014), and the consequences of expert work when it impacts the enjoyment of rights.

Finally, research is also needed to understand the utility of subsequent prevention or mitigation strategies, such as expert liability (Van Ho & Terwindt, 2019). Legal actions against third-party certification companies in the aftermath of human rights abuses by MNCs remain infrequent occurrences, but recent examples speak to a potential shift in understanding expert responsibility and raise questions as to the suitability of certain types of expertise in business and human rights.⁹

Nevertheless, given the entangled nature of business and human rights harms and the increasingly complex web of actors and locations of responsibility (Eckert & Knöpfel, 2021), conceptualizing responsibility and accountability of experts remains a complex task. Shedding light on how their governance authority manifests through their work in the implementation of UNGPs remains the first step in this ongoing conversation.

Notes

1. Principled pragmatism is “an unflinching commitment to the principle of strengthening the promotion and protection of human rights as it relates to business, coupled with a pragmatic attachment to what works best in creating change where it matters most” (Ruggie, 2006: 20).
2. HRDD is the process through which to “identify, prevent, mitigate and account for actual or potential adverse human rights impacts a company may be involved in through its own activities or business relationships, including those in the supply chain” (OHCHR, 2011: 17–18). It is an ongoing, dynamic, and context-specific approach that extends beyond the traditional initial screening of a supplier.
3. In referring to both the OHCHR and Shift and Mazars to find details about external experts, I also acknowledge that I am simultaneously referencing actors who have previously been called interpretive experts in business and human rights (Partiti, 2021).
4. This article limits itself to the immediate business and human rights literature; however, the study of intermediaries and different kinds of experts in polycentric regulatory regimes is certainly not a new

phenomenon in related fields and, indeed, business and human rights research would benefit from further engagement with this literature. Some of the extant work that has shaped my thinking in this area includes Power (2003), Brès and Gond (2014), Franssen and LeBaron (2019), and Kourula et al. (2019).

5. See also the body of literature on “interpretive entrepreneurs” and how private actors shape international law (Durkee, 2021; Sarfaty, 2020).
6. Ethical approval for this research was obtained from the School of Management Ethics Committee at the University of St Andrews.
7. Although outside the scope of this study, the fluidity (or blurred lines) of the business and human rights expert industry also requires further examination. Indeed, the use of the descriptor “external” to delineate these experts from the corporation may be a misnomer altogether, with instances of revolving doors between the case study companies and expert organizations (as is the case with P11).
8. The journey metaphor was also observed during interviews with internal participants at OilGas and CashMoney, external experts, and an analysis of company human rights reports; it appears to be a trend with companies outside of this particular research. It further reflects the iterative and ongoing process of HRDD. In the study of corporate sustainability, the metaphor has also been critically analysed by Milne et al. (2006) and O’Dochartaigh (2019). Here, journeying provides a “temporal bridge, maintaining and justifying the present into the (unspecified and perfect) future” (Milne et al., 2006: 813) and follows a characteristic trope of a romantic and heroic metaphor (O’Dochartaigh, 2019). Yet, when employed in relation to corporate sustainability reporting, the journey metaphor is a potent ideology, embracing a fundamental lack of transformation (Milne et al. 2006: 823), given the lack of detail specifying the ultimate destination of the journey.
9. See the OECD National Contact Point complaint filed in Italy against auditors RINA SpA after the 2012 Ali Enterprise factory fire in Pakistan in which over 250 people lost their lives. RINA had certified the factory as safe a few weeks before the fire (Saage-Maaß et al., 2021). Another, more recent example is the 2021 case brought by Corporate Accountability Lab (CAL) against NGO Rainforest Alliance (and codefendant Hershey). CAL allege that the defendants misled the public and engaged in false marketing practices by certifying Hershey chocolate as ethical and sustainable, while being connected to child and exploitative labour practices (Corporate Accountability Lab, 2021). See also the 2021 report by the European Centre for Constitutional and Human Rights (ECCHR) on the suitability of the auditing and certification industry for human rights (ECCHR, 2021).

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Consent form

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References

- Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017a). Theorizing regulatory intermediaries: The RIT Model. *The Annals of the American Academy of Political and Social Science*, 670(1), 14–35. <https://doi.org/10.1177/0002716216688272>
- Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017b). Enriching the RIT framework. *The Annals of the American Academy of Political and Social Science*, 670(1), 280–288. <https://doi.org/10.1177/0002716217694593>
- Abbott, K. W., Levi-Faur, D., & Snidal, D. (2017c). Introducing regulatory intermediaries. *The Annals of the American Academy of Political and Social Science*, 670(1), 6–13. <https://doi.org/10.1177/0002716217695519>
- Barnett, M., & Finnemore, M. (2005). The power of liberal international organizations. In M. Barnett & R. Duvall (Eds.), *Power in global governance* (pp. 16–184). Cambridge University Press.
- Birchall, D. (2021). Corporate power over human rights: An analytical framework. *Business and Human Rights Journal*, 6(1), 42–66. <https://doi.org/10.1017/bhj.2020.23>
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101. <https://doi.org/10.1191/1478088706qp063oa>
- Brès, L., & Gond, J.-P. (2014). The visible hand of consultants in the construction of the markets for virtue: Translating issues, negotiating boundaries and enacting responsive regulations. *Human Relations*, 67(11), 1347–1382. <https://doi.org/10.1177/0018726713519278>
- Brès, L., Mena, S., & Salles-Djelic, M. L. (2019). Exploring the formal and informal roles of regulatory intermediaries in transnational multistakeholder regulation. *Regulation & Governance*, 13(2), 127–140. <https://doi.org/10.1111/rego.12249>
- Broome, A., & Quirk, J. (2015). Governing the world at a distance: The practice of global benchmarking. *Review of International Studies*, 41(5), 819–841. <https://doi.org/10.1017/S0260210515000340>
- Burr, V. (1995). *An Introduction to Social Constructionism*. Routledge.
- Corporate Accountability Lab. (2021, November 2). *CAL files suit against Hershey and Rainforest Alliance* [Online]. <https://corpaccountabilitylab.org/calblog/2021/11/2/cal-files-suit-against-hershey-and-rainforest-alliancensbp> [Accessed 7 December 2021].
- De Felice, D. (2015). Banks and human rights due diligence: A critical analysis of the Thun Group’s discussion paper on the UN guiding principles on business and human rights. *The International Journal of Human Rights*, 19(3), 319–340. <https://doi.org/10.1080/13642987.2015.1006884>
- Deva, S. (2020). From “business or human rights” to “business and human rights”: What next? In S. Deva & D. Birchall (Eds.), *Research handbook on human rights and business* (pp. 1–22). Edward Elgar.
- Durkee, M. J. (2021). Interpretive entrepreneurs. *Virginia Law Review*, 107(3), 431–493.
- European Center for Constitutional and Human Rights [ECCHR]. (2021). *Human rights fitness of the auditing and certification industry: A cross-sector analysis of current challenges and possible responses*. <https://www.ecchr.eu/en/publication/human-rights-fitness-audits/> [Accessed 7 December 2021]
- European Coalition for Corporate Justice [ECCJ] (2021). Corporate due diligence laws and legislative proposals in Europe. [Online] Available: <https://corporatejustice.org/publications/comparative-table-corporate-due-diligence-laws-and-legislative-proposals-in-europe-2/> [Accessed 7 December 2021].
- Eckert, J., & Knöpfel, L. (2021). Legal responsibility in an entangled world. *Journal of Legal Anthropology*, 4(2), 1–16. <https://doi.org/10.3167/jla.2020.040201>
- Fasterling, B. (2017). Human rights due diligence as risk management: Social risk versus human rights risk. *Business and Human Rights Journal*, 2(2), 225–274. <https://doi.org/10.1017/bhj.2016.26>

- Fransen, L., & LeBaron, G. (2019). Big audit firms as regulatory intermediaries in transnational labour governance. *Regulation & Governance*, 13(2), 260–279. <https://doi.org/10.1111/rego.12224>
- Fuchs, D. (2004). The role of business in global governance. In S. A. Schirm (Ed.), *New rules for global markets: Public and* (pp. 133–154). Palgrave Macmillan.
- Fuchs, D. (2007). *Business power in global governance*. Lynne Rienner.
- Gram, B. (2022). Company-administered grievance processes for external stakeholders: A Means for effective remedy, community relations, or private power? *Wisconsin International Law Journal*, 73(1), 71–143.
- Götzmann, N. (2019). Handbook on Human rights impact assessment. Edward Elgar.
- Harrison, J. (2011). Human rights measurement: Reflections on the current practice and future potential of human rights impact assessment. *Journal of Human Rights Practice*, 3(2), 162–187. <https://doi.org/10.1093/jhuman/hur011>
- Kemp, D., & Vanclay, F. (2013). Human rights and impact assessment: Clarifying the connections in practice. *Impact Assessment and Project Appraisal*, 31(2), 86–96. <https://doi.org/10.1080/14615517.2013.782978>.
- Kourula, A., Paukku, M., Peterman, A., & Koria, M. (2019). Intermediary roles in regulatory programs: Toward a role-based framework. *Regulation & Governance*, 13(2), 141–156. <https://doi.org/10.1111/rego.12226>
- Lukes, S. (2005). *Power: A radical view* (2nd ed.). Palgrave Macmillan (Original work published 1974).
- Majekolagbe, A., Seck, S. L., & Simons, P. (2020). Human Rights and the Impact Assessment Act: Proponents and Human Rights and the Impact Assessment Act: Proponents and consultants as duty bearers. In M. Doelle & J. Sinclair (Eds.), *The next generation of impact assessment: A critical review of the Canadian Impact Assessment Act* (pp.443–465). Irwin Law.
- McCorquodale, R., & Nolan, J. (2021). The effectiveness of human rights due diligence for preventing business and human rights abuses. *Netherlands International Law Review*, 68(3), 455–478. <https://doi.org/10.1007/s40802-021-00201-x>.
- McVey, M., Ferguson, J., & Puyou, F.-R. (2022). “Traduttore, Traditore?” Translating human rights into the corporate context. *Journal of Business Ethics*, advance online publication. <https://doi.org/10.1007/s10551-021-05028-3>.
- Mende, J. (2020). *Business authority in global governance: Beyond public and private*. (WZB Discussion Paper, No. SP IV 2020-103). Wissenschaftszentrum Berlin für Sozialforschung (WZB), Berlin [Online] https://www.researchgate.net/publication/350845138_Business_Authority_in_Global_Governance_Beyond_Public_and_Private. [Accessed 7 December 2021]
- Mende, J. (2021). Private actors, NGOs and civil society in multilevel governance. In A. Benz, J. Broschek, & M. Lederer (Eds.), *A research agenda for multilevel governance* (pp. 171–189). Edward Elgar.
- Mende, J. (2022). Business authority in global governance: Companies beyond public and private roles. *Journal of International Political Theory*, advance online publication.
- Mende, J., & Hoff, A. (2022). The governance authority of non-state actors in the business and human rights regime. *Journal of Human Rights*, 21(5), 593–603. <https://doi.org/10.1177/1350508406068506>
- Milne, M., Kearins, K., & Walton, S. (2006). Creating adventures in wonderland: The journey metaphor and environmental sustainability. *Organization*, 13(6), 801–839. <https://doi.org/10.1177/1350508406068506>
- Monciardini, D., Bernaz, N., & Andhov, A. (2021). The organizational dynamics of compliance with the UK Modern Slavery Act in the food and tobacco sector. *Business & Society*, 60(2), 288–340. <https://doi.org/10.1177/0007650319898195>.
- O’Dochartaigh, A. (2019). No more fairytales: A quest for alternative narratives of sustainable business. *Accounting, Auditing & Accountability Journal*, 32(5), 1384–1413. <https://doi.org/10.1108/AAAJ-11-2016-2796>.
- Obara, L., J. (2017). “What does this mean?”: How UK companies make sense of human rights. *Business and Human Rights Journal*, 2(2), 249–273. <https://doi.org/10.1017/bhj.2017.7>.
- Open-ended Intergovernmental Working Group. (2021). Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises: Third revised draft – 17 August 2021 [Online] <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf> [Accessed 7 December 2021].
- Office of the United Nations High Commissioner for Human Rights. (2011). *Guiding principles on business and human rights: Implementing the UN “protect, respect, remedy” framework* [Online]. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf [Accessed 7 December 2021].
- Office of the United Nations High Commissioner for Human Rights. (2012). The corporate responsibility to respect human rights an interpretive guide [Online]. Available: <https://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf> [Accessed 7 December 2021].
- Partiti, E. (2021). Polycentricity and polyphony in international law: Interpreting the corporate responsibility to respect human rights. *International and Comparative Law Quarterly*, 70(1), 133–164. <https://doi.org/10.1017/S0020589320000469>.
- Patton, M. (2015). *Qualitative research and evaluation methods: Integrating theory and practice*. Palgrave.
- Power, M. (2003). Auditing and the production of legitimacy. *Accounting, Organizations and Society*, 28(4), 379–394. [https://doi.org/10.1016/S0361-3682\(01\)00047-2](https://doi.org/10.1016/S0361-3682(01)00047-2).

- Ramasastry, A. (2021). Advisors or enablers? Bringing professional service firms into the guiding principles fold. *Business and Human Rights Journal*, 6(2), 293–311. <https://doi.org/10.1017/bhj.2021.28>.
- Ruggie, J. G. (2006). “Promotion and protection of human rights”: Interim report of the special representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (U.N. Doc E/CN.4/2006/97). UN Commission on Human Rights. <https://digitallibrary.un.org/record/569408?ln=en>.
- Saage-Maaß, M., Zumbansen, P., Bader, M., & Shahab, P. (2021). *Transnational legal activism in global value chains*. Springer.
- Santoro, M. (2015). Business and human rights in historical perspective. *Journal of Human Rights*, 14(2), 155–161. <https://doi.org/10.1080/14754835.2015.1025945>.
- Sarfaty, G. (2020). Translating modern slavery into management practice. *Law & Social Inquiry*, 45(4), 1027–1051. <https://doi.org/10.1017/lsi.2019.77.s>
- Scheper, C., & Zajak, S. (2019). Human rights and transparency politics in global production networks. In M. Mullen, D. Polomski, T. Soares, J. Cassinerio, M. D’Cruz, & V. Hongsathavij (Eds.), *Navigating a new era in business and human rights* (pp. 33–39). Article 30.
- Scheper, C. (2015). From “naming and shaming” to “knowing and showing”: Human rights and the power of corporate practice. *The International Journal of Human Rights*, 19(6), 737–756. <https://doi.org/10.1080/13642987.2015.1009264>.
- Scheper, C. (2019). Assessing human rights impacts in global value chains: Can HRIA go beyond social audits in the apparel industry? In N. Götzmann (Ed.), *Handbook on human rights impact assessment* (pp. 256–271). Edward Elgar.
- Shamir, R. (2008). The age of responsabilization: On market-embedded morality. *Economy and Society*, 37(1), 1–19.
- Shift & Mazars. (2015). UN [Online]. https://shiftproject.org/wp-content/uploads/2015/02/UNGPRReportingFramework_withguidance2017.pdf [Accessed 7 December 2021].
- Shift & Mazars. (2017). UN guiding principles reporting framework – guidance part II: Assurance of human rights performance and reporting [Online]. https://www.ungpreporting.org/wp-content/uploads/UNGPRF_AssuranceGuidance.pdf [Accessed 7 December 2021].
- Smit, L., Holly, G., McCorquodale, R., & Neely, S. (2020). Human rights due diligence in global supply chains: Evidence of corporate practices to inform a legal standard. *The International Journal of Human Rights*, 25(6), 945–973. <https://doi.org/10.1080/13642987.2020.1799196>.
- Thompson, B. (2018). The Dutch Banking Sector agreement on human rights: An exercise in regulation, experimentation or advocacy? *Utrecht Law Review*, 14(2), 84–107. <http://doi.org/10.18352/ulr.440>
- Van Ho, T., & Terwindt, C. (2019). Assessing the duty of care for social auditors. *European Review of Private Law*, 27(2), 379–402. <https://doi.org/10.54648/erpl2019020>.