



BUSINESS

On the Margins of Profit

Rights at Risk in the Global Economy



HUMAN
RIGHTS
WATCH



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Summary	1
Background: Understanding the Different Ways Business Activity Can Infringe Human Rights	4
Impacts: A Selection from Reporting by Human Rights Watch	7
Right to Security of the Person.....	9
Economic and Social Rights	16
Civil and Political Rights.....	21
Non-Discrimination	27
Labor Rights.....	32
Rights of Communities or Groups including Indigenous Peoples.....	39
Right to an Effective Remedy and Accountability.....	44
Findings	48
Conclusion	50
Acknowledgments.....	52

Summary

Business activity around the world has a profound effect on people's lives and livelihoods, but international debates about business conduct frequently neglect to fully consider the many ways that businesses can advance or impede the enjoyment of human rights.

Existing corporate social responsibility initiatives, many of which have emerged in response to specific controversies, typically cover only a limited set of rights and apply selectively to individual companies or industries or particular country contexts, such as conflict areas. There are no widely agreed overarching standards for all businesses, but instead many different standards that address select human rights, select companies or industries, or select countries or situations. The result is a messy and inconsistent patchwork of voluntary pledges that have limited application, generally do not fully align with international human rights norms, and in any case are frequently disregarded in practice.

A common global approach is needed to consistently protect human rights in the face of business-related abuses and promote conduct by companies that respects and advances human rights.

This report—the outcome of a project by the Center for Human Rights and Global Justice (CHRGJ) at New York University School of Law and Human Rights Watch—helps lay the factual foundation for such an approach by detailing the different ways in which business practices affect human rights. It presents examples drawn from more than 10 years of Human Rights Watch research that describe a wide variety of business-related abuses and obstacles to the justice sought by victims of these abuses.

To assist readers in making sense of this diverse set of materials and as an analytical contribution to the literature on business and human rights, we have grouped the case material under seven overarching categories rooted in core international human rights instruments:

- Right to security of the person
- Economic and social rights
- Civil and political rights
- Non-discrimination
- Labor rights
- Rights of communities or groups including indigenous peoples
- Right to an effective remedy and accountability

Our key findings include:

- Business impacts on human rights are not limited to sectors that have received the most attention to date, in particular apparel manufacturing and the extractive industries. Rather, the activities of all types of businesses—large and small, domestic and international, public and private—in all sectors can implicate human rights. To properly combat business-related human rights abuse, this broader set of actors and contexts needs to be addressed.
- In assessing the impact of business activity on human rights, it is important to focus as much on corporate ties with third parties that commit abuse (such as suppliers or government security forces) as on cases in which businesses themselves directly cause harm.
- Economic interests and other factors can lead governments to neglect victims of business-related abuses. If business-related abuses are to be curbed, greater attention needs to be paid to governmental obligations in the face of abuses perpetrated or facilitated by private actors.
- Individuals whose rights are affected by businesses often are unable to obtain meaningful redress; in too many cases, they face retaliation for even trying. This finding reinforces the need to promote access to justice for victims of business-related abuses and the importance of further examination of the reasons states are not providing appropriate remedies and reparations.
- Many companies have not ascribed to business standards addressing relevant human rights and, even when codes of conduct or commitments to social responsibility exist, they often are not adequately implemented. Additional standards and compliance mechanisms are needed.

While this report does not purport to include every business-related human rights abuse documented by Human Rights Watch, let alone reflect incidents of abuse documented by other organizations, of which there are many, it provides an overview and conceptual framework for understanding the impacts business activity can have on human rights. It is intended to complement research and analysis of these important issues by the United Nations (UN) and others.¹

Our overarching conclusion is that global intergovernmental standards on business and human rights are needed. Such standards will be important in their own right and will provide a common framework and a spur for domestic and other efforts to address the full range of abuses documented below.

¹ The UN Special Representative on human rights and transnational corporations and other business enterprises, Professor John Ruggie, announced in mid-2007 that he would examine global patterns of abuses allegedly involving companies and the policy implications that might be drawn from them. Letter from John Ruggie, Special Representative to the UN Secretary-General on business and human rights, to the International Network on Economic, Social, and Cultural Rights (ESCR-Net), August 29, 2007, <http://www.reports-and-materials.org/Ruggie-letter-ESCR-Net-29-Aug-2007.pdf> (regarding ESCR-Net's survey of corporate human rights abuses). The initial findings of this study were presented in December 2007. See John Ruggie, "Corporate Responsibility to Respect Human Rights," summary report of the Special Representative on business and human rights on consultation in Geneva, December 4-5, 2007, <http://www.reports-and-materials.org/Ruggie-Geneva-4-5-Dec-2007.pdf> (accessed February 7, 2008).

Background: Understanding the Different Ways Business Activity Can Infringe Human Rights

Internationally recognized human rights outlined in core human rights instruments guarantee all people equal and inalienable rights by virtue of their inherent human dignity.² These instruments appropriately pay particular attention to the role of states, as the primary duty holder under international law, in upholding these rights. The state's role includes protecting individuals and communities from human rights abuses committed by businesses and other non-state actors. Businesses and other actors, however, also have responsibilities themselves. As the preamble of the Universal Declaration of Human Rights phrases it, "every organ of society" does.³

The moral and legal debate over how to define the human rights responsibilities of businesses tends to be argued on an abstract level. Considerable effort, for example,

² UN Office of the High Commissioner for Human Rights (OHCHR), "International Law – The Core International Human Rights Instruments," undated, <http://www2.ohchr.org/english/law/index.htm#core> (accessed February 11, 2008). The core international human rights instruments are the Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), and the following nine core treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969; the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976; the International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987; the Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003; the Convention on the Rights of Persons with Disabilities (CPD), adopted December 13, 2006, G.A. Res. 61/611, U.N. Doc. A/61/611 (2006), not yet in force; and the International Convention for the Protection of All Persons from Enforced Disappearance (CED), adopted December 20, 2006, G.A. Res. 61/177, U.N. Doc. A/61/488 (2006), not yet in force.

³ Additionally, the preambles of both the ICCPR and ICESCR recognize that others beyond states—specifically individuals—have human rights responsibilities, which likewise may cover juridical persons (including businesses) as well as natural persons. Moreover, there is a broad consensus that businesses are subject to direct responsibility for human rights abuses that amount to international crimes, including enslavement, genocide, war crimes, and crimes against humanity. For a discussion of the potential for business entities to be held legally liable for grave violations of international law, see, for example, Anita Ramasastry and Robert C. Thompson, *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law* (Norway: Fafo, 2006), <http://www.faf.no/pub/rapp/536/536.pdf> (accessed November 15, 2007). On the direct responsibilities of business in relation to the laws of war, see, for example, International Committee of the Red Cross (ICRC), "Business and international humanitarian law: An introduction to the rights and obligations of business enterprises under international humanitarian law," November 11, 2006, <http://www.icrc.org/web/eng/siteeng.nsf/html/business-ihl-150806> (accessed November 15, 2007).

has been made to raise awareness about the fundamental concept of complicity, under which business may share in responsibility for abuses by third parties, as well as to elaborate on the applicability to business of basic human rights principles. Yet confusion over basic factual matters persists. At the most fundamental level, there is no shared assessment of the extent of the impact that business practices have on human rights. Instead, available information can be interpreted in very different ways.

For example, the frequent observation that certain industries, such as the extractive industries, have faced repeated human rights controversies, when presented without reference to examples from a range of other industries, can form an impression that human rights problems are highly segmented and limited to a few sectors. By the same token, the special attention given to the particular problems that can arise in certain business contexts, such as areas of violent conflict or so-called weak governance zones, when considered in isolation, can suggest that business-related abuses do not occur on a global scale. Likewise, the connection between business activity and certain sets of rights, especially labor rights, can lead to assumptions that other rights are intrinsically less affected by business practices.

The striking nature of some types of abuses in which companies have been implicated, including war crimes, can draw attention away from systematic and entrenched abuses that may be considered unremarkable. The frequent and natural tendency to focus on particularly egregious abuses can obscure the fact that many other business impacts on human rights can cause serious harm to affected individuals and communities, particularly when they disproportionately affect certain groups or exacerbate existing discriminatory patterns in communities.

The lack of common understanding of the nature and scope of the problem has important implications. One result is that, to date, many debates about business responsibility and policies aimed at improving corporate conduct have neglected to fully consider human rights issues. For example, a number of business initiatives that address human rights have emerged in response to specific problems and define their scope accordingly. They therefore typically have a limited reach and apply only to individual companies or industries or particular country contexts.

Even within their particular zone of application, moreover, such industry- or region-specific initiatives have not always been fully consistent with international human rights standards. Indeed, at present there is no widely recognized set of standards on business and human rights that provides an overarching framework and reference point for these diverse initiatives.

In order to foster a more complete understanding of the role, effects, and responsibilities of business in relation to human rights, and thereby to help shape appropriate solutions, it is helpful to take stock of the cross-cutting ways in which enjoyment of rights can be harmed as a result of business activities.

Impacts on human rights may result from such core business activities as employing staff, building or utilizing facilities, consuming and manufacturing materials or providing services, and interacting with community members and governments. As the nature of business operations continues to change and evolve so too will the ways and contexts in which such operations can affect human rights.

Impacts: A Selection from Reporting by Human Rights Watch

This section analyzes the human rights impacts of business activities by grouping examples and case materials from past Human Rights Watch reports into seven overarching categories rooted in core international human rights instruments:

- Right to security of the person
- Economic and social rights
- Civil and political rights
- Non-discrimination
- Labor rights
- Rights of communities or groups, including indigenous peoples
- Right to an effective remedy and accountability

The clustering of rights under these categories is intended to facilitate an overview of the broad range of rights that are impacted by business activity and does not imply any hierarchy of rights, any rigid division between the rights listed under each category, or indeed that any specific right could only be included under one category. On the contrary, the rights that appear in these different categories remain closely related, and the categories frequently overlap, reflecting the fact that human rights are by nature universal, indivisible, and interdependent. The prohibition against discrimination, to take the most obvious example, is cross-cutting and applies in all of the categories.

Human rights norms at times explicitly provide for protections for particular segments of society such as women, children, migrants, or persons with disabilities.⁴ These discrete protections have arisen in part as recognition that each of these populations may be particularly vulnerable to abuse or exploitation as a result of marginalization or discrimination. In this report discussion of the rights of women, children, migrants, and persons with disabilities is incorporated or “mainstreamed” into the presentation of business impacts under the various categories identified

⁴ For example, CEDAW, CRC, CMW, CPD, and the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities all address the enjoyment of rights by members of particular groups.

above. The report retains a distinct category only for communal rights afforded to particular groups, namely minorities and indigenous communities.

The descriptions of rights impacts presented below are offered as illustrations of past occurrences, and not as current accounts of the facts. They are not intended to establish responsibility or assign blame. Rather, they serve as a means to achieving a more complete understanding of the problems that need to be addressed.

Right to Security of the Person



Miners work in the grueling conditions of an open pit gold mine in Watsa, northeastern Congo. © 2004 Marcus Bleasdale / VII

As used here, the term “right to security of the person” refers to the right to life and to physical and psychological integrity.⁵ Abuses of this right include abuses such as extrajudicial killings, use of lethal or excess force, torture, and cruel, inhuman, or degrading treatment, including rape and sexual violence.⁶ Serious and grave abuses of these rights may amount to crimes under international law. Such abuses include war crimes, crimes against humanity, genocide, torture, enforced disappearances, rape, and sexual slavery.⁷

⁵ The United Nations Human Rights Committee has given the term “security of person” an independent meaning from “liberty and security” to reflect needs of personal security, in addition to the detention issues with which it is frequently associated and which are addressed elsewhere in this report. The use of the term in this report draws on language from Article 3 of UDHR (“Everyone has the right to life, liberty and security of person”) and Article 5(b) of ICERD (“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”). UDHR, art. 3; ICERD, art. 5(b).

⁶ See, for example, right to life at UDHR, art. 3, and ICCPR, art. 6(1); right to security of person at UDHR, art. 3, and ICERD 5(b); right to freedom from torture and cruel, inhuman, or degrading treatment at UDHR, art. 5, and ICCPR, art. 7; see also, CAT; CED.

⁷ See, for example, the four Geneva Conventions of 1949 and their two Additional Protocols of 1977; the Genocide Convention of 1948; the Rome Statute of the International Criminal Court; CAT; CED.

Human Rights Watch's research demonstrates that business involvement in such abuses arises in a multitude of contexts. Rights in this category have been affected by businesses both directly and through ties to third parties who engage in abusive treatment.

Human Rights Watch research provides numerous, but not exhaustive, examples of direct abuses carried out in a business context:

- Businesses that run or partially staff detention facilities have been implicated in abuses of the right to freedom from ill-treatment, for example, when private US contractors at Abu Ghraib prison in Iraq were alleged to have engaged in acts of torture, rape, intimidation, and humiliation of detainees.⁸
- Companies that produce or trade in products that directly impact human rights, such as antipersonnel landmines, have negatively affected the right to life.⁹
- Supervisors of female agricultural workers in the US, and of beauticians and domestic workers in Saudi Arabia, have allegedly raped and sexually assaulted workers.¹⁰
- Supervisors have beaten children working on Egypt's cotton plantations and in a multitude of industries in India.¹¹
- Employers have made employees work in conditions that are degrading or life threatening, for example, in US meat and poultry processing plants.¹²

⁸ CHRGI, Human Rights First and Human Rights Watch, *By the Numbers: Findings of the Detainee Abuse and Accountability Project*, vol. 18, no. 2(G), April 2006, <http://hrw.org/reports/2006/cto406/>, pp. 6, 19-20.

⁹ The Arms Project of Human Rights Watch (now Human Rights Watch/Arms) and Physicians for Human Rights, *Landmines: A Deadly Legacy* (New York: Human Rights Watch, 1993), see especially, chapt. 3, "Global Production and Trade in Landmines," pp. 35-106, and appendix 17, "Antipersonnel Landmine Types and Producers," unnumbered; and Human Rights Watch, *Exposing the Source: U.S. Companies and the Production of Antipersonnel Mines*, vol. 9, no. 2 (G), April 1997, <http://www.hrw.org/reports/pdfs/g/general/general2974.pdf>, pp. 5-7, 9, and appendix A, pp. 12-22.

¹⁰ Human Rights Watch, *Fingers to the Bone: United States Failure to Protect Child Farmworkers* (New York: Human Rights Watch, 2000), <http://www.hrw.org/reports/2000/frmwkr/>, p. 52; *Bad Dreams: Exploitation and Abuse of Migrant Workers in Saudi Arabia*, vol. 16, no. 5(E), July 2004, <http://hrw.org/reports/2004/saudio704/>, pp. 57-63.

¹¹ Human Rights Watch Children's Rights Project and Human Rights Watch/Asia, *The Small Hands of Slavery: Bonded Child Labor in India* (New York: Human Rights Watch, 1996), <http://hrw.org/reports/1996/India3.htm>, pp. 28-29, and testimonials in chapt. V, "Children in Bondage," pp. 65-161; Human Rights Watch, *Underage and Unprotected: Child Labor in Egypt's Cotton Fields*, vol. 13, no. 1(E), January 2001, <http://www.hrw.org/reports/2001/egypt/>, pp. 14-15; *Small Change: Bonded Child Labor in India's Silk Industry*, vol. 15, no. 2(C), January 2003, <http://www.hrw.org/reports/2003/india/>, pp. 27-28, 34-35.

- Employers have physically abused, psychologically tormented, sexually assaulted, and threatened bodily harm against women and child domestic workers in many countries, including Morocco, Singapore, and the United States.¹³

In all of these cases, the abuses were accompanied by government failures, at times systemic failures, to protect human rights and ensure that perpetrators were held accountable.

Businesses also can be implicated in abuses through their ties to third parties: if they fail to ensure that their operations do not depend upon, benefit from, or contribute to human rights abuses committed by others, they risk being complicit in those abuses. Situations that can give rise to responsibility for human rights abuses range from outright collusion between the company and the abuser to instances of corporate indifference to human rights. Companies have affected the right to physical and psychological integrity through their ties to security forces, including government security forces as well as private security forces.

Human Rights Watch has reported on numerous incidents associated with company security arrangements, such as the following:

- Companies in Indonesia's pulp and paper industry have hired private thugs who intimidate or assault members of neighboring communities; government security personnel who receive funding from the companies have assisted or acquiesced in these attacks.¹⁴
- Government and private security forces have responded with excessive, sometimes lethal, force against striking workers in China's heavy industries

¹² Human Rights Watch, *Blood, Sweat, and Fear: Workers' Rights in U.S. Meat and Poultry Plants* (New York: Human Rights Watch, 2005), <http://www.hrw.org/reports/2005/usao105/>, see especially, chapt. IV, "Worker Health and Safety in the Meat and Poultry Industry," pp. 24-56.

¹³ Human Rights Watch, *Swept Under the Rug: Abuses Against Domestic Workers Around the World*, vol. 18, no. 7(C), July 2006, <http://hrw.org/reports/2006/wrdo706/>, pp. 10-13, 16-20; *Hidden in the Home: Abuse of Domestic Workers with Special Visas in the United States*, vol. 13, no. 2(G), June 2001, <http://www.hrw.org/reports/2001/usadom/>, pp. 12, 18-19, 21-22.

¹⁴ Human Rights Watch, *Without Remedy: Human Rights Abuse and Indonesia's Pulp and Paper Industry*, vol. 15, no. 1(C), January 2003, <http://www.hrw.org/reports/2003/indono103/>, pp. 32-44, 57-58.

and protesters demonstrating against a massive power plant in India and oil companies in Nigeria.¹⁵

- In Colombia, a variety of businesses—ranging from multinational corporations in agricultural and extractives sectors to local cattle-ranching businesses—have been implicated in killings and other violence against trade unionists through their ties to paramilitary groups.¹⁶ In addition, oil companies operating in Colombia have used highly abusive state and private security forces to secure their facilities.¹⁷

Companies also have been implicated in abuses by third parties in many other contexts. For example:

- Both public and private arms trading and transport companies in Europe, Central Asia, and elsewhere have provided lethal military equipment to highly abusive governments or armed groups that are subject to arms embargoes or otherwise should be blocked from receiving weapons based on the risk of their misuse.¹⁸
- Companies have provided logistical or other support to known human rights abusers that enable more abuses. For example, government forces used oil

¹⁵ Human Rights Watch, *Paying the Price: Worker Unrest in Northeast China*, vol. 14, no. 6(C), August 2002, http://www.hrw.org/reports/2002/chinalbro2/chinalbro802-03.htm#P397_85990, pp. 18, 20, 22-25, 31-33; *The Enron Corporation: Corporate Complicity in Human Rights Violations* (New York: Human Rights Watch, 1999), pp. 99-105; *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (New York: Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/nigeria/>, pp. 9-12, 123-124, 152-154.

¹⁶ Letters from Human Rights Watch to British Petroleum Company Plc. (now BP), Occidental Petroleum Corporation, and Ernesto Samper, then president of Colombia, April 1998, <http://www.hrw.org/advocacy/corporations/colombia/>; Maria McFarland Sánchez-Moreno, Esq., principal specialist on Colombia at Human Rights Watch, testimony before the US House of Representatives Committee on Foreign Affairs, Subcommittee on International Organizations, Human Rights, and Oversight, Subcommittee on the Western Hemisphere and the House Committee on Education and Labor, Subcommittee on Health, Employment, Labor and Pensions, Subcommittee on Workforce Protections, June 28, 2007, <http://hrw.org/english/docs/2007/07/23/colomb16458.htm>.

¹⁷ Letters from Human Rights Watch to British Petroleum and Occidental Petroleum, April 1998; Human Rights Watch, "Corporations and Human Rights," in *World Report 1999* (New York: Human Rights Watch, 1999), <http://www.hrw.org/worldreport99/special/corporations.html>.

¹⁸ See, for example, Human Rights Watch, *Ripe for Reform: Stemming Slovakia's Arms Trade with Human Rights Abusers*, vol. 16, no. 2(D), February 2004, <http://hrw.org/reports/2004/slovakia0204/>, chapt. VI, "Arms Exports to Human Rights Abusers," pp. 43-52; *Angola Unravels: The Rise and Fall of the Lusaka Peace Process* (New York: Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/angola/>, chapt. IX, "Arms Trade and Embargo Violations," pp. 89-141; *Afghanistan: Crisis of Impunity—The Role of Pakistan, Russia, and Iran in Fueling the Civil War*, vol. 13, no. 3(C), July 2001, <http://www.hrw.org/reports/2001/afghan2/>, pp. 4, 30-31; *Worldwide Production and Export of Cluster Munitions*, April 2005, <http://hrw.org/backgrounder/arms/clustero405/>, pp. 3, 12-14.

company infrastructure in southern Sudan to carry out attacks targeting civilians and to wage indiscriminate and disproportionate military attacks that destroyed entire villages and displaced thousands of people.¹⁹

Two Human Rights Watch reports addressing the business impacts on the right to security of the person are described in more detail below.

The Curse of Gold: Democratic Republic of Congo²⁰

Local and international business activity has been part of the dynamic of power and violence in the Democratic Republic of Congo (DRC). A 2005 Human Rights Watch report showed how companies involved in the mining and trading of gold were linked to human rights through their ties to warlords who control goldmines in the northeast corner of DRC. In one case AngloGold Ashanti, one of the world's largest gold producers, decided to explore for gold in northeastern DRC without adequately considering human rights.

In order to gain access to the gold-rich area, and in return for assurances of security for its operation and staff, AngloGold Ashanti provided logistical, financial, and political support to a murderous armed group that controlled the area. The company did so at a time when it was widely known that the armed group was responsible for grave abuses, including war crimes and crimes against humanity. The group, led by a brutal warlord, flaunted its guns in the streets, forced people to work in the gold mines in miserable conditions, and conducted killing sprees and used torture in nearby villages.

The company had in place a corporate code of conduct that included human rights standards and made public commitments to corporate social responsibility, but in developing ties with the Congolese warlords the company

¹⁹ Human Rights Watch, *Sudan, Oil, and Human Rights* (New York: Human Rights Watch, 2003), <http://www.hrw.org/reports/2003/sudan1103/>, pp. 41-42, 65-69, 189, 251-273, 428-429, 434-435, 438-449, 524.

²⁰ Human Rights Watch, *The Curse of Gold: Democratic Republic of Congo* (New York: Human Rights Watch, 2005), <http://hrw.org/reports/2005/drc0505/>, pp. 2-3, 58-83, 97-98, 111-117; Lisa Misol, "Private Companies and the Public Interest: Why Corporations Should Welcome Global Human Rights Rule," in Human Rights Watch, *World Report 2006* (New York: Human Rights Watch, 2006), <http://www.hrw.org/wr2k6/>, pp. 4-5.

failed to uphold its own business principles to ensure that its activities did not adversely affect human rights.

The business activities of a set of companies that purchased gold mined in DRC also affected human rights, providing a revenue stream for the abusive armed groups. A network of smugglers illegally funneled gold out of DRC to Uganda, where it was bought by multinational companies in Switzerland and elsewhere. The companies that purchased gold from this network knew, or should have known, that it came from a conflict zone in DRC where human rights were being abused on a systematic basis.

One Swiss company, Metalor, claimed it actively checked its supply chain to verify that acceptable ethical standards were being maintained, yet bought gold from the network for five years without raising serious questions about its provenance. The proceeds from the international sale of this gold provided local warlords in DRC with the means to gain access to money, guns, and power to perpetuate their reign of terror on local villagers.

Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution²¹

During the conflict in Bosnia and Herzegovina from 1992 through 1995, thousands of women and girls suffered rape and other forms of sexual violence. The grim sexual slavery of the war years was followed by the trafficking of women and girls for forced prostitution. As described in a November 2002 report, Human Rights Watch found substantial evidence that employees of a US corporation were involved in human trafficking.

²¹ Human Rights Watch, *Hopes Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina for Forced Prostitution*, vol. 14, no. 9(D), November 2002, <http://www.hrw.org/reports/2002/bosnia/Bosnia1102.pdf>, pp. 5-6, 50, 62-68; Human Rights Watch, "Bosnia and Herzegovina," in *World Report 2003* (New York: Human Rights Watch, 2003), <http://www.hrw.org/wr2k3/contents.html>, p. 324.

In 1999 DynCorp, a US-based government contractor working under contract with the NATO-led Security Forces (SFOR), repatriated a group of contractors after allegations emerged that the men had “purchased” women from local brothels for the purpose of sexual and domestic slavery. Again in 2000 two DynCorp contractors returned home after the US Army Criminal Investigation Division (CID) learned of allegations of the purchase of women and weapons from local brothel owners. The CID investigation uncovered evidence of their involvement in the abuses that violated the women’s right to physical integrity and freedom from torture or other inhumane treatment. In one case, a DynCorp site supervisor was apparently caught on tape raping a woman; in another case, a DynCorp employee withheld the passport of a woman he “purchased.”

When Human Rights Watch looked into these cases in 2002 it found that there had been no prosecutions against DynCorp employees in either Bosnia and Herzegovina or the US for criminal activities related to trafficking. In 2007 the problem of impunity of US government contractors for abuses committed overseas had yet to be adequately addressed, as evident in contractor scandals in Afghanistan and Iraq (addressed further below).

Economic and Social Rights



An injured meatpacking worker at home with her husband. The serious injury rate in the meatpacking industry is about five times the national average, making it the most dangerous job in America. © 1999 Eugene Richards / VII

Economic and social rights²² relate to the right of all humans to the basic necessities of life, including but not limited to food, water, social security, clothing, health care, education, and housing.²³ Businesses have affected this category of rights in myriad ways.

²² In discussing categories of rights, cultural rights are often grouped together with economic and social rights, most obviously in the ICESCR. In this report, we have opted to address cultural rights explicitly in the section on the rights of communities or groups. Cultural rights, like all rights, remain interdependent and interconnected. For example many economic and social rights such as the rights to food, water and health have direct implications for the right to life and right to bodily and personal integrity.

²³ See, for example, right to education at UDHR, art. 26(1), ICESCR, arts. 13(1), 13(2), and CRC, art. 28(1); right to health at UDHR, art. 25(1), and ICESCR, art. 12; right to housing at UDHR, art. 25(1), and ICESCR, art. 11(1); right to necessary social services and social security at UDHR, arts. 22, 25(1), ICESCR, art. 9, and CRC, art. 26(1); right to food at UDHR, art. 25(1), and ICESCR, art. 11(1); right to clothing at UDHR, art. 25(1), and ICESCR, art. 11(1); right to water, including sanitation, at UDHR, art. 25(1), and ICESCR, art. 11(1); and right to an adequate standard of living at UDHR, art. 25(1), and ICESCR, art. 11(1). These rights also are reflected in other core human rights instruments that specifically address them in relation to the elimination and prevention of discrimination.

Human Rights Watch research provides several examples of business conduct that has negatively affected economic and social rights, including the following:

- A US company has declined to halt supplies of bulldozers that the Israeli army has used in the occupied Palestinian territories to raze homes, destroy agriculture, and shred roads in violation of the laws of war and with serious consequences for people's access to adequate food and housing.²⁴
- Employers in Ukraine have arbitrarily limited economic opportunities for women, perpetuating poverty and reinforcing discrimination.²⁵
- Construction employers in the United Arab Emirates (UAE) have subjected their employees to housing and working conditions dangerous to their health and safety and failed to accurately report worker injuries and deaths.²⁶
- US meatpacking-industry employers have prevented workers who suffer injuries from seeking treatment at plant health clinics unless their wounds were traumatic and visible.²⁷
- Transnational labor recruitment agencies based in Indonesia have confined prospective domestic workers at training facilities for months in overcrowded and unsanitary facilities where women have little or no access to health care, are deprived of adequate food and rest, and at times suffer physical and sexual abuse as well as anxiety and depression associated with their ill-treatment.²⁸

²⁴ Human Rights Watch, *Razing Rafah: Mass Home Demolitions in the Gaza Strip* (New York: Human Rights Watch, 2004), <http://hrw.org/reports/2004/rafah1004/>, see, for example, pp. 2-3, 10-12, 94-101, 10-110, 113-115; see also, letter from Human Rights Watch to Caterpillar, Inc., October 29, 2004, <http://hrw.org/english/docs/2004/11/22/isrlpa9706.htm>; "Israel: Caterpillar Should Suspend Bulldozer Sales," Human Rights Watch news release, November 23, 2004, <http://hrw.org/english/docs/2004/11/22/isrlpa9711.htm>.

²⁵ Human Rights Watch, *Women's Work: Discrimination Against Women in the Ukrainian Labor Force*, vol. 15, no. 5(D), August 2003, <http://www.hrw.org/reports/2003/ukraine0803/index.htm>, pp. 3-4, 8-10, 18-38.

²⁶ Human Rights Watch, *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*, vol. 18, no. 8(E), November 2006, <http://hrw.org/reports/2006/uae1106/index.htm>, pp. 8-9, 21-24, 40-45.

²⁷ Human Rights Watch, *Blood, Sweat, and Fear*, pp. 42, 54, 57, 65, 74.

²⁸ Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, vol. 16, no. 9(C), July 2004, <http://hrw.org/reports/2004/indonesia0704/>, pp. 33, 78.

- A Taiwanese company dumped toxic waste in Cambodia, which led to at least one death and undermined local residents' rights to environmental, health, and livelihood protections.²⁹
- Government-managed cotton cooperatives used hazardous pesticides in Egypt's cotton fields without adequate protection for the child laborers whose health was at risk.³⁰
- Plantations in El Salvador have employed children to carry out inherently dangerous work in sugarcane fields, endangering their right to health.³¹
- Businesses in El Salvador, Ecuador, Egypt, and the United States have undermined working children's right to an education by limiting their ability to attend school.³²

Additional examples show that businesses have also negatively impacted people's right to water, which can also affect their rights to life, health, food, and livelihood:

- A US energy company's diversion of large quantities of water left villagers in India with barely enough water to sustain themselves, sparking protests that were then systematically suppressed.³³
- US agricultural employers have not provided child workers with adequate drinking water and sanitation facilities, with serious negative effects on the children's health.³⁴
- Pollution from Nigeria's oil industry has severely affected the livelihood of local communities, ruining crops, destroying fishing grounds, and damaging drinking water supplies.³⁵

²⁹ Human Rights Watch, *Toxic Justice: Human Rights, Justice and Toxic Waste in Cambodia*, vol. 11, no. 2(c), May 1999, <http://www.hrw.org/reports/1999/cambotox/>, pp. 6-9, 10-11, 25-33.

³⁰ Human Rights Watch, *Underage and Unprotected*, pp. 11, 16-18. See also, for example, Human Rights Watch, *Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador's Banana Plantations* (New York: Human Rights Watch, 2002), <http://hrw.org/reports/2002/ecuador/2002ecuador.pdf>, pp. 24-37; Human Rights Watch, *Fingers to the Bone*, pp. 16-22, 25-26.

³¹ Human Rights Watch, *Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation*, vol. 16, no. 2(B), June 2004, <http://hrw.org/reports/2004/elsalvadoro604/elsalvadoro604.pdf>, pp. 11, 16-19.

³² Human Rights Watch, *Turning a Blind Eye*, pp. 41-43; Human Rights Watch, *Tainted Harvest*, pp. 44-47; Human Rights Watch, *Underage and Unprotected*, p. 13; Human Rights Watch, *Fingers to the Bone*, pp. 48-50.

³³ Human Rights Watch, *The Enron Corporation*, pp. 45-46.

³⁴ Human Rights Watch, *Fingers to the Bone*, pp. 2, 26-30.

Two examples detailed below illustrate additional impacts.

Forgotten Schools: Right to Basic Education for Children on Farms in South Africa³⁶

In a 2004 report on South Africa, Human Rights Watch examined public schools located on private commercial farms that are the only accessible sites of education for many children who live on the farms with their parents or relatives. The investigation found that, despite some efforts to improve practices, farm owners' actions were interfering with many children's ability to attend school.

These South African farm schools, which at the time constituted 13 percent of all state-funded schools and educated approximately 3 percent of public school students, are a legacy of the apartheid era. At the end of the apartheid period, half of the African children living on white-owned commercial farms were not enrolled in school. Whereas farm owners originally established and managed schools as they saw fit, efforts were made starting in 1994 to convert the farm schools to ordinary government-managed public schools with limited farm owner responsibility.

Human Rights Watch's report revealed that some private farm owners were deliberately obstructing children's physical access to schools or preventing schools from functioning by suspending their water supply. In other cases, farm owners had closed schools in an attempt to evict workers whose children attended the farm school on their property. While government officials and police occasionally intervened in such cases to try to ensure children's access to schools, such interventions were often insufficient.

³⁵ Human Rights Watch, *The Price of Oil*, pp. 7, 53-74.

³⁶ Human Rights Watch, *Forgotten Schools: Right to Basic Education for Children on Farms in South Africa*, vol. 16, no. 7(A), May 2004, <http://hrw.org/reports/2004/southafrica0504/southafrica0504.pdf>, pp. 1-3, 8-13, 15, 20-23, 35-37.

Without Remedy: Human Rights Abuse and Indonesia's Pulp and Paper Industry³⁷

The massive pulp and paper industry located in Riau province on the island of Sumatra, Indonesia, has decimated huge swathes of Sumatra's lowland and tropical forests. A 2003 Human Rights Watch report showed that the environmental destruction also harmed the local population, which is largely rural, poor, and dependent on the forests for its livelihood.

Many local communities in Riau use the affected lands for subsistence and for commercial cultivation of dryland rice and tree crops, while millions of others depend on income from rubber or other forest products. Human Rights Watch found that the wholesale destruction of forests by pulp and paper companies in Riau, together with their reliance on employees from outside the province, made it increasingly difficult for members of forest-dependent communities to seek a livelihood and adequate standard of living. These problems were compounded for indigenous communities for whom the forests hold great cultural value.

When community members attempted to directly challenge company practices, they faced unresponsive courts and unaccountable and often brutal government security forces and company-sponsored militias. Corruption contributed to the government's failure to protect those seeking to investigate and publicize human rights abuses and environmental crimes.

³⁷ Human Rights Watch, *Without Remedy*, pp. 3-5, 9-12, 30, 33-36, 46-49, 64-66.

Civil and Political Rights



A man stands next to a poster advertising US internet search engine Yahoo in a Beijing subway station. © 2006 AFP

This category of rights encompasses rights to personal and political liberties.³⁸ It includes, among others, the right to liberty of the person (including freedom from arbitrary arrest and detention), freedom of peaceful assembly, freedom of opinion and expression, freedom of information, freedom of movement, freedom of religion, the right to property, the right to found a family, and the right to privacy.³⁹ Contrary to the commonly held view that business activities have little to do with civil and political rights, these rights frequently have been affected by companies in a variety of contexts, as shown in various Human Rights Watch reports.

³⁸ As typically formulated, this category also encompasses the right to life and those rights pertaining to the physical integrity of the person such as the right to freedom from torture, cruel, inhuman and degrading treatment (noted above) and the right to freedom from enslavement (noted below). For the purposes of this report, it was more useful to address those rights in relation to other categories.

³⁹ See, for example, right to liberty of the person and right to freedom from arbitrary arrest or detention at UDHR, art. 9, and ICCPR, art. 9(1); right to humane conditions of detention at ICCPR, art. 10; right to freedom of peaceful assembly and association at UDHR, art. 20, and ICCPR, arts. 21, 22; right to freedom of opinion and expression at UDHR, art. 19, and ICCPR, art. 19; right to freedom to receive and impart information at UDHR, art. 19, and ICCPR, art. 19; right to freedom of thought, conscience and religion at UDHR, art. 18, and ICCPR, art. 18; right to privacy at UDHR, art. 12, and ICCPR, art. 17(1); right to personal, home and family life at UDHR, art. 12, and ICCPR, art. 17; right to found a family at UDHR, art. 16, and ICCPR, art. 23; right to property at UDHR, art. 17, ICERD, art. 5(d)(v), CEDAW, art. 15(2), and CMW, art. 15; right to freedom of movement at UDHR, art. 13, and ICCPR, art. 12; and prohibition against slavery and forced labor at UDHR, art. 4, and ICCPR, art. 8. As above, the citations are not exhaustive, and the rights listed here also are reflected in other core instruments.

Examples of business impacts on civil and political rights include:

- Employers and transnational labor recruitment agents in Malaysia, Saudi Arabia, Singapore, the United Arab Emirates, and the US have denied workers' freedom of movement by forcibly confining them and confiscating their passports or other identity papers.⁴⁰
- Oil companies have not fully and publicly disclosed their payments to the Angolan government, compromising the Angolan public's right to information and, by helping to entrench undemocratic and unaccountable rule, impeding their right to participation in public life as well. Banks that have provided the Angolan government with oil-backed loans without transparency also have contributed to the problem.⁴¹
- A company security force in Indonesia has used intimidation tactics, beat several people, destroyed and stole property, and detained villagers in an effort to silence opposition to the company's logging activities; such abuses have impeded, among other rights, the villagers' rights to property, to be free from arbitrary detention, and to exercise their freedoms of expression, association, and peaceful assembly.⁴²
- Private security forces hired by commercial farms in South Africa,⁴³ business owners in Guatemala,⁴⁴ oil companies in Nigeria,⁴⁵ land developers in

⁴⁰ Human Rights Watch, *Swept Under the Rug*, pp. 73-76; Human Rights Watch, *Help Wanted*, pp. 5, 26, 32-33, 40-42; Human Rights Watch, *Bad Dreams*, pp. 48-53, 58, 62, 76, 78; Human Rights Watch, *Maid to Order: Ending Abuses against Migrant Domestic Workers in Singapore*, vol. 17, no. 10(C), December 2005, <http://hrw.org/reports/2005/singapore1205/singapore1205wcover.pdf>, pp. 42-48; Human Rights Watch, *Building Towers, Cheating Workers*, pp. 38-39; Human Rights Watch, *Hidden in the Home*, pp. 12-15.

⁴¹ Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights*, vol. 16, no. 1(A), January 2004, <http://www.hrw.org/reports/2004/angolao104/angolao104.pdf>, pp. 19, 53-57, 60, 76-78; *The Oil Diagnostic in Angola: An Update*, March 2001, <http://www.hrw.org/background/africa/angola/angola-03.pdf>, pp. 5-6, 10.

⁴² Human Rights Watch, *Without Remedy*, pp. 33-46.

⁴³ Human Rights Watch, *Unequal Protection: The State Response to Violent Crimes on South African Farms* (New York: Human Rights Watch, 2001), <http://www.hrw.org/reports/2001/safrica2/>, pp. 91-96, 106.

⁴⁴ Human Rights Watch, *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: Human Rights Watch, 1997), <http://www.hrw.org/reports/pdfs/c/crd/guatemala977.pdf>, pp. 23, 55, see especially, "Abuses by Private Security Forces," pp. 46-49.

⁴⁵ Human Rights Watch, *The Niger Delta: No Democratic Dividend*, vol. 14, no. 7(A), October 2002, <http://www.hrw.org/reports/2002/nigeria3/nigerdelta.pdf>, pp. 2-3, 6-7, 12-14, 29-30.

Angola,⁴⁶ and the US government in Iraq have used intimidation and excessive force against local residents.⁴⁷

- Private security guards in Burundi routinely have held hospital patients against their will in state hospitals until they have provided payment.⁴⁸

Many company practices impinge on the right to privacy, as shown by the following examples:

- Employers in a variety of industries in Botswana, Namibia, Zambia, and Zimbabwe have targeted individuals who defy gender and cultural norms, interrogated them about their sexual orientation, and often fired them if they answered honestly. Those who managed to retain their jobs frequently have faced serious harassment at the workplace.⁴⁹
- Employers in the tourism and export processing industries in the Dominican Republic have mandated HIV testing as a condition to obtain or retain a job.⁵⁰
- Romanian private and public employers have required that job applicants undergo medical examinations (at times including HIV tests) not required by law.⁵¹
- Employers in the US have spied on workers, in some cases to unlawfully monitor union activity.⁵²

⁴⁶ Human Rights Watch, *"They Pushed Down the Houses": Forced Evictions and Insecure Land Tenure for Luanda's Urban Poor*, vol. 19, no. 7(A), May 2007, <http://hrw.org/reports/2007/angola0507/angola0507web.pdf>, pp. 26-27.

⁴⁷ CHRGJ, Human Rights First and Human Rights Watch, *By the Numbers*, pp. 6, 16, 20; "Q&A: Private Military Contractors and the Law," Human Rights Watch questions and answers, October 2, 2005, <http://hrw.org/english/docs/2004/05/05/iraq8547.htm>; "US: Failure to Provide Justice for Afghan Victims," Human Rights Watch news release, February 16, 2007, <http://hrw.org/english/docs/2007/02/15/usint15351.htm>.

⁴⁸ Human Rights Watch, *A High Price to Pay: Detention of Poor Patient's in Burundian Hospitals*, vol. 18, no. 8(A), September 2006, <http://hrw.org/reports/2006/burundi0906/burundi0906webwcover.pdf>, pp. 31-34.

⁴⁹ Human Rights Watch and the International Gay and Lesbian Human Rights Commission (IGLHRC), *More Than A Name: Homophobia and its Consequences in Southern Africa* (New York: Human Rights Watch, 2003), pp. 210-213.

⁵⁰ Human Rights Watch, *A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic*, vol. 14, no. 4(B), June 2004, <http://hrw.org/reports/2004/dro704/dro704.pdf>, pp. 17-25, 35-39.

⁵¹ Human Rights Watch, *"Life Doesn't Wait": Romania's Failure to Protect and Support Children and Youth Living with HIV*, vol. 18, no. 6(D), August 2006, <http://hrw.org/reports/2006/romania0806/>, pp. 50-53.

⁵² Human Rights Watch, *Hidden in the Home*, pp. 17-18; Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (New York: Human Rights Watch, 2000), <http://hrw.org/reports/pdfs/u/us/uslbroo8.pdf>, pp. 104-106, 130, 139, 158, 289; Human Rights Watch, *Blood, Sweat and Fear*,

- Employers in the export processing industry in Guatemala and Mexico have mandated pregnancy testing for prospective workers and as a condition of continued employment.⁵³

Two case studies summarized below provide additional examples of business actions that impede civil and political rights.

Race to the Bottom: Corporate Complicity in Chinese Internet Censorship⁵⁴

China's system of Internet censorship and surveillance is the most advanced in the world and is often aided by extensive private sector cooperation. Companies such as Google, Microsoft, Yahoo!, and Skype, seeking access to the lucrative Chinese market, have assisted and reinforced the Chinese government's system of arbitrary, opaque, and unaccountable political censorship.

As described in an August 2006 Human Rights Watch report, these companies not only have responded to instructions and pressure from Chinese authorities to censor their materials; they also have actively engaged in self-censorship by using their technology to predict the material they believe the Chinese government would want them to censor and then preemptively block users from accessing that material. Through such actions, these companies have been complicit in the Chinese government's censorship of political and religious information and its monitoring of dissent.

The companies have all accepted at least some Chinese government demands without mounting a meaningful challenge to them. By blocking search content,

pp. 89-90; Human Rights Watch, *Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association*, vol. 19, no. 2(G), May 2007, <http://hrw.org/reports/2007/uso507/uso507web.pdf>, pp. 156-58.

⁵³ Such practices simultaneously impede the right to privacy and the right to found a family. See Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force* (New York: Human Rights Watch, 2002), <http://hrw.org/reports/2002/guat/>, pp. 28, 42, 88-101; *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector*, vol. 8, no. 6(B), August 1996, <http://www.hrw.org/reports/1996/Mexio896.htm>, pp. 16-25, 38-40; *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector*, vol. 10, no. 1(B), December 1998, <http://www.hrw.org/reports98/women2>, pp. 15-26, 43, 50-51.

⁵⁴ Human Rights Watch, *"Race to the Bottom": Corporate Complicity in Chinese Internet Censorship*, vol. 18, no. 8(C), August 2006, <http://www.hrw.org/reports/2006/chinao8o6/chinao8o6web.pdf>, pp. 3-8, 13-14, 20-24, 30-72, 106-112.

allowing Chinese officials access to private civilians' email accounts, and censoring news stories, these companies have assisted the Chinese government in violating individuals' right to privacy, freedom of opinion and expression, and freedom to receive and impart information.

Information that companies have provided to Chinese authorities has also been used to jail critics; court documents obtained by human rights groups showed that, as of mid-2006, user data handed over by Yahoo! to Chinese law enforcement officials had assisted in the arrest and conviction of at least four people.

The Enron Corporation: Corporate Complicity in Human Rights Violations⁵⁵

Human rights abuses plagued the Enron Corporation's Dabhol power plant in India in the 1990s. Local opposition to the Enron project began in 1992 over concerns about corruption and the hasty negotiations of the terms of Enron's investment in its subsidiary, the Dabhol Power Corporation (DPC). Farmers complained that DPC had unfairly acquired their land and had diverted scarce water for its needs. Local activists raised concerns over potential environmental damage. DPC ignored or dismissed such concerns.

Villagers tried various avenues to address their concerns about the project—including direct dialogue with the company and judicial proceedings—without success. The government of Maharashtra state, where the power plant was located, also ignored public complaints. As opposition grew, DPC paid local police for security. Those police forces arrested, harassed, and intimidated critics of the DPC power plant. The company's critics, including leading Indian environmental activists and village representatives, were subjected to beatings

⁵⁵ Human Rights Watch, *The Enron Corporation*, see especially, pp. 1-3, 23-24, 29-45, 54-61, 80-82, 99-104; "Enron: History of Human Rights Abuse in India," Human Rights Watch news release, January 23, 2002, <http://hrw.org/english/docs/2002/01/23/india3704.htm>.

and detentions. In one instance in May 1997, police beat and arrested nearly 180 protesters who were demonstrating peacefully outside the company gates. In addition, contractors working for DPC engaged in a pattern of harassment, intimidation, and violence against individuals opposed to the power project, including by carrying out two attacks and issuing one death threat.

Throughout the controversy, DPC denied any wrongdoing by the company or its contractors and maintained that it bore no responsibility for abuses by police. The company, however, could not have been ignorant of the abuses committed by police whom DPC paid and who were stationed at the site for the sole purpose of dealing with the protests. Police refused to investigate complaints and in several cases actually arrested the victims on trumped-up charges.

Non-Discrimination



Dalit women honor the late Dr. B. R. Ambedkar, who spent his life fighting “untouchability” and other forms of caste discrimination. © 2006 Sajjad Hussain/AFP/Getty Images

All human beings are entitled to fair and equal treatment and freedom from discrimination.⁵⁶ The prohibition against discrimination applies in respect of all rights. It encompasses discrimination on the basis of gender, race, nationality, or other status.

Nondiscrimination in the workplace is enshrined as a core labor right (as addressed further below).⁵⁷ Businesses can also engage in harmful discrimination in other contexts as well, such as by arbitrarily refusing service to particular categories of customers.

⁵⁶ Prohibitions on discrimination are reflected, for example, in UDHR, art. 2, ICESCR, art. 2, ICCPR, art. 2, and CRC, art. 2. See also ICERD, CEDAW, CMW, and CPD; International Labor Organization (ILO) Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted June 29, 1951, 165 U.N.T.S. 303, entered into force May 23, 1953, and ILO Convention No. 111 concerning Discrimination, Employment and Occupation, adopted July 5, 1958, 362 U.N.T.S. 31, entered into force June 15, 1960.

⁵⁷ See below, “Labor,” for additional explanation.

Illustrations of improper discrimination include, among others:

- A state-owned gold company in DRC has favored workers from one ethnic group over another in compensation and promotions.⁵⁸
- Employers in the Dominican Republic have blatantly discriminated against workers based on their actual or perceived HIV status.⁵⁹
- Saudi employers, consistent with prevailing gender segregation, have forcibly confined many low-paid women migrant workers, including those who work in hospitals and dress shops.⁶⁰ The mistreatment in Saudi Arabia of migrant workers from Asia and Africa also has been aggravated by deeply rooted religious and racial discrimination.⁶¹
- A variety of businesses—and particularly bars, pubs, and clubs—in several southern African countries have openly discriminated on the basis of sexual orientation. These discriminatory practices also have helped create a climate of intimidation that has contributed to violence, in which staff and other patrons in these establishments have assaulted lesbians, gay men, bisexuals, and transgender (LGBT) individuals.⁶²
- Wal-Mart has been accused of illegal sex and disability discrimination in the United States, and its efforts to squeeze out long-term employees who command higher wages have had a disparate impact on older employees.⁶³
- Companies in Guatemala’s export assembly or “maquila” industry have engaged in persistent sex discrimination and abuse against women workers.⁶⁴

⁵⁸ Human Rights Watch, *The Curse of Gold*, p. 78.

⁵⁹ Human Rights Watch, *A Test of Inequality*, pp. 17-28.

⁶⁰ Human Rights Watch, *Bad Dreams*, pp. 3, 18, 47-55, 69-71.

⁶¹ Human Rights Watch, *Bad Dreams*, pp. 1, 15-16, 55, 70-71.

⁶² Human Rights Watch and IGLHRC, *More Than A Name*, pp. 2-4, 150-159.

⁶³ Human Rights Watch, *Discounting Rights*, see especially, pp. 9, 35-36, 39-41, 55-57.

⁶⁴ Human Rights Watch, *From the Household to the Factory*, pp. 49-50, 53-56, 84-102, 106-108. See also, for example, “Stop Sex Discrimination in Guatemalan Maquilas: What is Discrimination on the Basis of Reproductive Status?” Human Rights Watch questions and answers, undated, http://www.hrw.org/campaigns/guatemala/reproductive_status.htm; “Q&A about Pregnancy Discrimination in Mexico: How Does Pregnancy Discrimination Occur?” Human Rights Watch questions and answers, August 1996, <http://www.hrw.org/campaigns/wrp-mexico/ans3.html>.

- In the same industry in Mexico, employers have routinely forced female job applicants to undergo pregnancy screening, usually through urine tests, as a precondition for employment.⁶⁵
- Employers in Guatemala and Mexico's export processing plants also have fired women workers or forced them to resign if they became pregnant. In addition to being discriminatory on the basis of gender, such acts are also contrary to provisions of international human rights law that afford additional protections to pregnant women.⁶⁶

Two additional examples are summarized in more detail below.

Women's Work: Discrimination against Women in the Ukrainian Labor Force⁶⁷

Widespread employment discrimination against women in Ukraine inhibits women's access to jobs, including many stable and well-compensated positions, and limits women's choices as to where they can seek work. Employers in both the public and private sectors regularly specify gender requirements when advertising vacancies and use information regarding family circumstances to deny women employment.

Employers justify their preferences for male employees on stereotypical assumptions about women's physical and intellectual capacities and their family responsibilities. As a result, women are increasingly pushed into low-wage service sector or public sector jobs or seek employment in the unregulated informal sector. Age and appearance requirements also arbitrarily exclude women from jobs for which they are professionally qualified.

⁶⁵ Human Rights Watch, *No Guarantees*, pp. 4, 16-32; Human Rights Watch, *A Job or Your Rights*, pp. 3, 14-23, 26-35, 50-51.

⁶⁶ Human Rights Watch, *No Guarantees*, pp. 4, 25-29; Human Rights Watch, *A Job or Your Rights*, pp. 3, 26-35, 50-51.

⁶⁷ Human Rights Watch, *Women's Work*, pp. 18-37.

Given limited employment options in Ukraine, many women choose to go abroad to seek better economic opportunities, but their choice may leave them vulnerable to being trafficked into the commercial sex industry or other forms of forced labor. While these various discriminatory practices violate both international and Ukrainian domestic laws, government officials have done little to uphold the rights of women in the Ukrainian labor force. In a 2003 report on the problem, Human Rights Watch found that Ukrainian employers demonstrated little knowledge of basic Ukrainian law as well as an unwillingness to apply laws that they knew to exist.

Hidden Apartheid: Caste Discrimination Against India's "Untouchables"⁶⁸

India is home to 165 million Dalits, or so-called untouchables, who are relegated to the bottom of a rigid caste system and subjected to extreme social stigma. In all aspects of their lives, Dalits are physically segregated from non-Dalits because of their "untouchable" status. Despite constitutional protections and legislative prohibitions that nominally protect them, Dalits suffer discrimination on the basis of work and descent. Reporting by Human Rights Watch and CHRGI has helped reveal the ways that businesses in India perpetuate this form of "hidden apartheid." Businesses reinforce the unfair treatment accorded Dalits both through biased service provision and by severely restricting Dalits' job opportunities in accordance with the prevailing caste hierarchy.

Throughout India many businesses refuse Dalits access to their services or facilities. One 2007 study illustrated the widespread nature of such discriminatory practices: it revealed that Dalits are often not allowed to sell milk to cooperatives, are denied barber, laundry, tailoring, and carpentry services, and are refused entry to restaurants and hotels, private health clinics, and cinemas,

⁶⁸ Human Rights Watch and CHRGI, *Hidden Apartheid: Caste Discrimination against India's "Untouchables,"* vol. 19, no. 3(C), February 2007, <http://www.hrw.org/reports/2007/india0207/india0207web.pdf>, pp. 2, 14, 45-46, 81-90, 100, 113; see also, Human Rights Watch, *Broken People: Caste Violence Against India's "Untouchables,"* (New York: Human Rights Watch, 1999), <http://www.hrw.org/reports/1999/india>, pp. 1-14, 209-228; Human Rights Watch, *The Small Hands of Slavery*, pp. 41-44.

all on the basis of their caste. In one-fifth of the villages surveyed, shops forbid Dalits from touching anything during transactions.

Caste-based discrimination also helps fuel exploitation of labor at the hands of both private and public employers, including businesses. Dalits are routinely forced into dangerous and degrading work, often for little or no pay. In keeping with the practice of caste inequality, employers routinely deny free choice of employment and instead strictly assign labor on the basis of caste, assigning Dalits to jobs considered too “polluting” for others. Most notably, an estimated 1.3 millions Dalits in India work for both public and private employers as manual scavengers, a position so degrading that it has been officially outlawed. The workers in these posts endure dangerous and humiliating work, including manually collecting human waste, often without the benefit of protective gear.

Many Dalits, including children, are consigned to work as bonded laborers, while tens of millions of Dalits find work as landless agricultural laborers earning less than US\$1 a day. Upper-caste landowners frequently use caste as a cover for exploitative economic arrangements. Laws designed to prohibit and eradicate exploitative labor arrangements, untouchability practices, and other forms of caste-based abuse are openly flouted and seldom enforced, reflecting continuing social prejudice. Attempts by Dalits to demand their rights, including their labor rights, are routinely met with retaliatory violence and economic boycotts, often taking the form of collective punishment of entire Dalit communities for the perceived transgressions of a few.

Labor Rights



Foreign laborers work to build the Jumeirah Beach luxury apartment complex in Dubai, United Arab Emirates.
© 2006 Abbas/Magnum Photos

Labor rights encompass the right to work as well as the enjoyment of rights at work.⁶⁹ International law recognizes four “core” labor rights: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination with respect to employment and occupation.⁷⁰

⁶⁹ Rather than group labor rights with economic and social rights, as is frequently done elsewhere, we have instead listed rights related to employment under a separate category. The groupings in this report are intended simply to allow for a simplified presentation of various examples and, as emphasized above, should not be read to suggest that the classifications are fixed or that human rights are anything less than interdependent and interconnected.

⁷⁰ The fundamental labor rights are identified in the ILO's Declaration on Fundamental Principles and Rights at Work and are enshrined in eight core ILO conventions: ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, adopted June 26, 1973, 1015 U.N.T.S. 297, entered into force June 19, 1976, and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, adopted June 17, 1999, 38 I.L.M. 1207, entered into force November 19, 2000; ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, 68 U.N.T.S. 17, entered into force July 4, 1950, and ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, adopted July 1, 1949, 96 U.N.T.S. 257, entered into force July 18, 1951; ILO Convention No. 29 concerning Forced or Compulsory Labor, adopted June 28, 1930, 39 U.N.T.S. 55, entered into force May 1, 1932, and ILO Convention No. 105 concerning the Abolition of Forced Labor, adopted June 25, 1957, 320 U.N.T.S. 291, entered into force January 17, 1959; and ILO Convention No. 100, and ILO Convention No. 111. These core labor rights are also preserved in various international human rights instruments, including, for example: freedom of association and right to collective bargaining at UDHR, art. 23(4), ICESCR, art. 8(1), and ICCPR, art. 22; elimination of forced or

Additionally, other economic and social labor rights, including occupational health and safety, compensation in cases of occupational injuries and illness, and minimum wage standards are also reflected in international instruments,⁷¹ as are special protections for mothers, pregnant women, and children in the workplace.⁷²

Human Rights Watch has extensively reported on abuses of workers' human rights in many contexts:

- Employers have used children to carry out dangerous agricultural work in Ecuador, Egypt, El Salvador, India, and South Africa in violation of international standards, which provide for a minimum age of employment and prohibit hazardous work.⁷³
- A range of industries in China, Ecuador, Guatemala, North Korea, and the United States, among other places, have compromised workers' freedom of association.⁷⁴ For example, employers in Ecuador have impeded workers' organizing drives by taking advantage of legal loopholes that allow the unlimited use of subcontracted labor.⁷⁵

compulsory labor at UDHR, art. 4, and ICCPR, art. 8; elimination of discrimination in remuneration at UDHR, art. 23(2), and ICESCR, art. 7; requirement of minimum working age for children at ICESCR, art. 10(3), and CRC, art. 32; and prohibition of employment of children in hazardous occupations at ICESCR, art. 10(3), and CRC, art. 32.

⁷¹ See, for example, right to work at UDHR, art. 23(1), ICESCR, art. 6(1), CEDAW, art. 11(1a), and CPD, art. 27(1); right to free choice of employment at UDHR, art. 23(1), and ICESCR, art. 6(1); right to just and favorable conditions of work at UDHR, art. 23(1), ICESCR, art. 7, CMW, art. 25, and CPD, art. 27(1b); right to just and favorable remuneration at UDHR, art. 23(3), ICESCR, art. 7, and CMW, art. 25; and right to reasonable working hours, paid holidays, and rest and leisure at UDHR, art. 24, and ICESCR, art. 7.

⁷² See, for example, prohibition on discrimination against women on the grounds of marriage or maternity at CEDAW, art. 11(2); special protection for mothers and children at UDHR, art. 25(2), and ICESCR, art. 10(2); and special protection for children at ICESCR, art. 10(3), and CRC, arts. 32, 36.

⁷³ Human Rights Watch, *Tainted Harvest*, pp. 2-3, 15-19, 20-22, 24-42, 44, 80-94; Human Rights Watch, *Underage and Unprotected*, pp. 10-18; Human Rights Watch, *Turning a Blind Eye*, pp. 3-8, 11, 13-22, 25-27, 49-61; Human Rights Watch, *Small Change*, pp. 25-40, 53-56, 78-80; Human Rights Watch, *Forgotten Schools*, pp. 37-38.

⁷⁴ See, for example, Human Rights Watch, *Paying the Price*, pp. 10-12, 16-17; Human Rights Watch, *Tainted Harvest*, pp. 57-59, 65-72; Human Rights Watch, *Corporations and Human Rights: Freedom of Association in a Maquila in Guatemala*, vol. 9, no. 3(B), March 1997, <http://www.hrw.org/reports/pdfs/g/guatemala/guatemala973.pdf>, pp. 37-61; Human Rights Watch, *North Korea: Workers' Rights at the Kaesong Industrial Complex*, no. 1, October 2006, <http://hrw.org/backgrounder/asia/korea1006/>, pp. 11-13; Human Rights Watch, *Unfair Advantage*, pp. 91-243.

⁷⁵ See, for example, Human Rights Watch, *Petition Regarding Ecuador's Eligibility for ATPA Designation*, September 2005, <http://hrw.org/backgrounder/business/ecuador0905/index.htm>, pp. 11-13.

- Employers and recruiters in Saudi Arabia, South Africa, the United Arab Emirates, the United States, and elsewhere have abused migrant workers.⁷⁶ In several of those cases, transnational labor recruiters and private labor subcontracting companies have placed migrants in debt bondage, a situation akin to forced labor.⁷⁷
- Businesses in Brazil, DRC, and India, among others, have practiced forms of servitude and slavery, including forced labor and debt bondage.⁷⁸
- Human trafficking for forced labor has taken place in many countries, including Bosnia, Greece, Guinea, Japan, Thailand, Togo, and the US.⁷⁹
- In Indonesia, labor recruitment companies often confine women seeking to migrate to Malaysia for domestic employment at training centers for months prior to their departure, deceiving the women about the type of work they are to perform, the salary they will receive, and the terms and conditions of their work. They also withhold women's wages while they remain at the training centers. In many cases, the practices amount to trafficking in persons.⁸⁰
- Companies operating in a variety of different business sectors and a range of countries—including agriculture plantations in El Salvador, construction firms in the UAE, mining companies in DRC, food processing plants in the US, and manufacturing operations in India—have created hazardous working

⁷⁶ See, for example, Human Rights Watch, *Bad Dreams*, pp. 27-44, 47-53, 57-69, 75-88, 90-105, 108-118; Human Rights Watch, *Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province*, vol. 18, no. 6(A), July 2006, <http://hrw.org/reports/2006/southafrica0806/southafrica0806web.pdf>, pp. 22-50; Human Rights Watch, *Building Towers, Cheating Workers*, pp. 26-47; Human Rights Watch, *Blood, Sweat, and Fear*, pp. 105-117.

⁷⁷ Human Rights Watch, *Bad Dreams*, pp. 2, 20-24, 45; Human Rights Watch, *Help Wanted*, pp. 79-80; Human Rights Watch, *Maid to Order*, pp. 34-37; Human Rights Watch, *Building Towers, Cheating Workers*, pp. 2, 8-11.

⁷⁸ Human Rights Watch, *Forced Labor in Brazil Re-Visited: On-Site Investigations Document that Practice Continues*, vol. 5, no. 12, November 1993, pp. 3-7, 9-19; Human Rights Watch, *The Curse of Gold*, pp. 33-34, 48-50; Human Rights Watch, *Small Change*; Human Rights Watch, *The Small Hands of Slavery*.

⁷⁹ Human Rights Watch, *Hidden in the Home*, pp. 21-22; Human Rights Watch, *Memorandum of Concern: Trafficking of Migrant Women for Forced Prostitution in Greece*, July 2001, http://www.hrw.org/background/eca/greece/greece_memo_all.pdf, pp. 10-13; Human Rights Watch, *Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea*, vol. 19, no. 8(A), June 2007, <http://hrw.org/reports/2007/guinea0607/guinea0607web.pdf>, pp. 42-46; Human Rights Watch, *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan* (New York: Human Rights Watch, 2000), <http://www.hrw.org/reports/2000/japan/>, pp. 22-24, 25-27, 29-31, 32-46, 58-116; Women's Rights Project (now Human Rights Watch/Women's Rights) and Asia Watch (now Human Rights Watch/Asia), *A Modern Form of Slavery: Trafficking of Burmese Women and Girls into Brothels in Thailand* (New York: Human Rights Watch, 1993), pp. 38-74; Human Rights Watch, *Borderline Slavery: Child Trafficking in Togo*, vol. 15, no. 8(A), April 2003, <http://hrw.org/reports/2003/togo0403/togo0403.pdf>, pp. 8-35; Human Rights Watch, *Hidden in the Home*, pp. 21-22.

⁸⁰ Human Rights Watch, *Help Wanted*, see, for example, pp. 4, 27, 28, 35, 80.

conditions, contrary to their employees' rights to a safe and healthy working environment.⁸¹

- In India, Saudi Arabia, South Africa, and the US, employers have engaged in wage exploitation, such as payment of wages below minimum standards and excessive salary reductions.⁸²
- Employers in the US and the UAE, among others, have forced employees to work long hours, prevented employees from changing jobs, or given misinformation in the hiring process, affecting the right to just and favorable conditions of work, including free choice of work.⁸³
- In the United States, employers have committed labor rights violations in a variety of industries, from retail to manufacturing to agriculture to meat processing to domestic employment in private homes.⁸⁴

Three cases involving labor rights are discussed in more detail below.

Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association⁸⁵

In a 2007 report Human Rights Watch showed how Wal-Mart Stores, Inc., the largest company in the world and also the largest private employer in the United States, relentlessly exploits weak US labor laws to thwart the right of its US workers to form and join trade unions at its 4,000 US stores. Wal-Mart employs a sophisticated and determined strategy to prevent union activity at its US stores and, when that strategy fails, quashes organizing wherever it starts.

⁸¹ Human Rights Watch, *Turning a Blind Eye*, pp. 16-25; Human Rights Watch, *Building Towers, Cheating Workers*, pp. 40-45; Human Rights Watch, *The Curse of Gold*, pp. 54-55; Human Rights Watch, *Blood, Sweat, and Fear*, pp. 29-47; Human Rights Watch, *Small Change*, pp. 27-28. See also, Human Rights Watch, *Fingers to the Bone*, pp. 16-35.

⁸² Human Rights Watch and CHRGI, *Hidden Apartheid*, pp. 86-91; Human Rights Watch, *Bad Dreams*, pp. 1-3, 20-22, 36-41, 48-50, 52; Human Rights Watch, *"Keep Your Head Down": Unprotected Migrants in South Africa*, vol. 19, no. 3(A), February 2007, <http://hrw.org/reports/2007/southafrica0207/southafrica0207low.pdf>, pp. 80-93; Human Rights Watch, *Fingers to the Bone*, pp. 2, 12-13, 42-48.

⁸³ Human Rights Watch, *Bad Dreams*, pp. 20-27, 36-38; Human Rights Watch, *Blood, Sweat, and Fear*, pp. 42-43.

⁸⁴ See generally, Human Rights Watch, *Discounting Rights*; Human Rights Watch, *Unfair Advantage*; Human Rights Watch, *Fingers to the Bone*; Human Rights Watch, *Blood, Sweat, and Fear*; Human Rights Watch, *Hidden in the Home*.

⁸⁵ Human Rights Watch, *Discounting Rights*, see especially pp. 5-8, 19, 29-31, 92-93, 125-26, 139-44, 152-54, 161-163.

The company has sometimes illegally disciplined and fired union supporters. More often, it has resorted to subtle but equally effective tactics to defeat organizing. For example, the company has called the police to stop union representatives leafleting outside its stores, snatched pro-union information from workers' hands and from break room tables, and banned talk about unions. The cumulative effect of Wal-Mart's panoply of anti-union tactics is to deprive its workers of their internationally recognized right to organize.

In many cases, the company is able to deny its US workers their right to form and join unions without ever violating weak US labor laws. In violation of international standards, US law generally does not require that workers be given the chance to fully inform themselves of their right to unionize. Even when the authorities find Wal-Mart guilty of illegal conduct, the company faces no fines or punitive sanctions under US labor laws, so there is little to deter illegal anti-union activity in the future.

Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the UAE⁸⁶

The United Arab Emirates hosted at least half a million migrant construction workers in 2006 when it was undergoing one of the world's largest construction booms. These migrant workers faced wage exploitation, indebtedness to unscrupulous recruiters, and working conditions that are hazardous to the point of being deadly. UAE federal labor law nominally offers a number of protections, but employers largely ignore them in the case of migrant construction workers.

According to a 2006 Human Rights Watch report, employers paid construction workers extremely low wages and typically withheld payment for a minimum of two months as "security" to keep them from quitting. In many cases employers

⁸⁶ Human Rights Watch, *Building Towers, Cheating Workers*, pp. 2-14; 26-45, 48-58. See also, Human Rights Watch, *The UAE's Draft Labor Law: Human Rights Watch's Comments and Recommendations*, no. 1, March 2007, <http://hrw.org/backgrounder/mena/uae0307/uae0307web.pdf>.

also withheld workers' passports for the same reason, restricting their freedom of movement. Compounding these problems is the fact that employers often fail to pay recruiting and travel fees (which UAE law obligates them to pay), instead forcing workers to pay these costs by incurring extremely high debts in their home countries; in some cases workers have had to work for years just to repay these fees. Some workers are not paid at all for several months at a time. Workers engaged in the hazardous work of constructing high-rises face high rates of injury and death with little assurance that their employers will cover their healthcare needs. Finally, workers in the UAE are denied the ability to organize and bargain collectively, core labor rights that would give them a tool to combat such abuses themselves.

The UAE federal government has done little or nothing to address the troubled working conditions faced by the construction workers. It has failed to create adequate mechanisms to investigate, prosecute, penalize, or remedy breaches of applicable UAE laws. Aggrieved workers are entitled to seek a hearing before the Ministry of Labor, which arbitrates disputes and refers unresolved cases to the judiciary, but arbitration remains a limited option, so much so that government officials have themselves criticized the process as inadequate and in need of urgent reform.

Underage and Unprotected: Child Labor in Egypt's Cotton Fields⁸⁷

A 2001 Human Rights Watch report found that each year Egypt's agricultural cooperatives—which are effectively government entities—hired over one million children between the ages of 7 and 12 to take part in cotton pest management; children form a particularly high proportion of the wage labor force for cotton cultivation in the country. These cooperatives, though formally established as participatory institutions in which membership is mandatory for most farmers, in effect operate as local arms of the agriculture ministry. Most of the children

⁸⁷ Human Rights Watch, *Underage and Unprotected*.

employed by these cooperatives were well below Egypt's minimum age of 12 for seasonal agricultural work.

Children typically worked 11 hours a day, including a one to two hour break, seven days a week—far in excess of limits set by the Egyptian Child Law. Labor recruitment efforts in both small and large farms targeted children almost exclusively, because their height corresponded to the height of the plants during certain seasons and because it is easier to control children and hire them at a lower wage. Human Rights Watch found that most children in leafworm control work in the cotton fields came from the villages' poorer families, suggesting a correlation between their families' economic circumstances and their own willingness to accept seasonal work.

The disproportionate employment by cooperatives of the poorest rural children means that the latter are especially vulnerable to the ill-treatment, long hours, and health hazards associated with combating pests that attack the cotton plant. Although Egypt has adopted its own Child Law, as well as signed the Convention on the Rights of the Child, the cooperatives run by the agriculture ministry continued to perpetrate these abuses.

Rights of Communities or Groups including Indigenous Peoples



Police detain a demonstrator during a protest in downtown Santiago against a project to build a hydroelectric plant on land in southern Chile owned by Mapuche Indians. © 2002 Santiago Llanquin/AP Photo

This category addresses the rights that members of certain groups hold jointly, by virtue of their shared membership in a community. Human rights principles, as noted previously, can provide special protections for those who may be particularly vulnerable due to their social, economic, or cultural marginalization. Whereas in some cases these rights are exercised by individuals in their capacity as members of a group—such as is the case for migrants or children, for example—in other cases the rights are by their nature collective rights enjoyed by a community as a whole. This category is concerned with the latter set of rights and in particular addresses the rights of groups such as indigenous peoples.⁸⁸

⁸⁸ While there is no strict definition of indigenous peoples for the purpose of international law (see the UN Declaration on the Rights of Indigenous Peoples, September 7, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/47/1 (2007)), a working definition would

The rights of indigenous peoples include the right to recognition of traditional ownership, occupation and use of land, and the right to cultural identity.⁸⁹ Measures to protect other groups at particular risk, such as minorities, are embedded not only in general human rights provisions regarding non-discrimination and equality but also in specific instruments for minorities' rights covering, for example, the rights to practice their language, religion and culture, and to participate in the decisions that affect them.⁹⁰

The activities of businesses often have a disproportionate effect on the communal rights of minorities and indigenous groups. Several reports offer illustrations regarding these often-disadvantaged groups:

- In Indonesia private and military-owned businesses have benefited from the relocation of indigenous communities from traditional land without their free and informed consent or due process protections. Given that that these indigenous communities ascribe great cultural value to forests, business projects that destroy or block access to traditional land also affect their cultural rights.⁹¹

include cultural groups (and their descendants) who have an historical continuity or association with a given region, or parts of a region, and who formerly or currently inhabit the region and who have maintained at least in part their distinct linguistic, cultural, and social/organizational characteristics, and in doing so remain differentiated in some degree from the surrounding populations and dominant culture of the state.

⁸⁹ For example, the Human Rights Committee interprets article 27 of the ICCPR to protect “traditional land tenure” of indigenous peoples “as an aspect of the enjoyment of culture;” ILO Convention No. 169 protects rights of ownership and possession of indigenous peoples over the lands which they traditionally occupy; and cultural identity is addressed in ILO Convention No. 169 (“[p]romoting the full realization of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions”). See ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted June 27, 1989, 28 ILM 1382, entered into force September 5, 1991, art. 2(2b).

⁹⁰ See, for example, indigenous land rights in ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples; rights to practice culture and religion, and to participate in the cultural life of the community at UDHR, art. 27(1), ICESCR, art. 15, ICCPR, art. 27, CRC, arts. 30, 31, CMW, art. 31(1), and in ILO Convention No. 169; and right to participate in the cultural life of the community at UDHR, art. 27(1), ICESCR, art. 15(1a), and CRC, art. 31(2). See also the UN Declaration on the Rights of all Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

⁹¹ Human Rights Watch, *Without Remedy*, pp. 3-5, 9-10, 13-14, 18-21, 33-39, 44, 53-58; Human Rights Watch, *Too High A Price: The Human Rights Cost of the Indonesian Military's Economic Activities*, vol. 18, no. 5(C), June 2006, <http://www.hrw.org/reports/2006/indonesia0606/>, pp. 13, 38-44.

- Businesses have routinely refused to hire members of Roma communities in Macedonia, compounding the effect of high unemployment and forcing them to seek work in the “black economy.”⁹²
- In ethnically Tibetan areas in China, authorities have forcibly relocated Tibetan herders to make way for mining, infrastructure projects, or urban development without their free and informed consent or due process protections.⁹³
- Businesses in a number of countries—often acting in collusion with state security forces—have forcibly evicted indigenous farmers and vulnerable communities from their land, depriving them of access to essential resources and threatening their subsistence.⁹⁴

Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile⁹⁵

A 2004 Human Rights Watch report describes violations of due process in trials of members of Chile’s largest indigenous group, the Mapuche, for crimes committed during land conflicts in the Araucanía region. Business activities served as a spark for the conflicts.

The Mapuche were profoundly affected by the expansion of investment in forestry, hydroelectric projects, and road construction into their traditional lands during the 1990s. Mapuche community members complained that the massive commercial plantations that encircled their communities harmed the ecosystems

⁹² Human Rights Watch, *Out of Limbo? Addressing the Plight of Kosovo Roma Refugees in Macedonia*, December 10, 2003, <http://www.hrw.org/background/eca/macedonia1203/index.htm>, pp. 15, 21-22.

⁹³ Human Rights Watch, *“No One Has the Liberty to Refuse”: Tibetan Herders Forcibly Relocated in Gansu, Qinghai, Sichuan, and the Tibet Autonomous Region*, vol. 19, no. 8(C), June 2007, <http://hrw.org/reports/2007/tibeto607/tibeto607web.pdf>, pp. 3-4, 26-38, 46-48.

⁹⁴ See, for example, Human Rights Watch, *Indivisible Human Rights: The Relationship of Political and Civil Rights to Survival, Subsistence, and Poverty* (New York: Human Rights Watch, 1992), see especially, “Land Alienation for Logging and Commercial Agriculture,” pp. 37-39.

⁹⁵ Human Rights Watch, *Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile*, vol. 16, no. 5(B), October 2004, <http://hrw.org/reports/2004/chile1004/chile1004.pdf>, see especially, pp. 1-3, 7, 14-16, 25-26, 50-51; “Chile: Mapuche Acquitted of Terrorism Charges,” Human Rights Watch news release, November 4, 2004, <http://hrw.org/english/docs/2004/11/04/chile9608.htm>; Human Rights Watch, “Chile,” in *World Report 2007* (New York: Human Rights Watch, 2007), <http://www.hrw.org/wr2k7/wr2007master.pdf>, pp. 190-194.

on which their traditional life depended, including by depriving them of forest plants used for medicinal and ritual needs. Tensions also rose in relation to a hydroelectric project built by the national electricity company over the objections of the local indigenous community. The Mapuche viewed these developments as a threat to their way of life, and they fiercely opposed what they considered encroachment in ancestral Mapuche land.

Despite efforts to address the underlying problems, in many areas the relationship between the communities, on the one side, and the forestry companies and government, on the other, continued to deteriorate. Protests by the Mapuche grew more violent at the end of the 1990s, with clashes between groups occupying disputed land and the police, as well as widespread attacks by Mapuche militants on the private property of timber companies and landowners, sometimes costing millions of dollars. All such crimes committed were already serious offenses under the criminal code, but the government—under pressure from southern landowners, the forestry companies, and the political opposition to act with a firmer hand against Mapuche protesters—instead prosecuted Mapuche under a counterterrorism statute lacking due process protections. In cases involving violence against police, authorities tried them in military courts not meeting the basic requirements of independence and impartiality.

Malaysia: An Unholy Alliance of Politics and Logging⁹⁶

A joint report on the environment and human rights issued by Human Rights Watch and the National Resources Defense Council described how timber companies and government officials, acting together to dispossess indigenous communities for their own gain, endangered the survival of indigenous communities in Malaysia's once-vast Borneo rainforest.

In the state of Sarawak, Malaysia, indigenous people constituted nearly 50 percent of the population at the time the report was researched in 1992.

⁹⁶ Human Rights Watch and the National Resources Defense Council (NRDC), *Defending the Earth: Abuses of Human Rights and the Environment* (New York: Human Rights Watch and NRDC, 1992), pp. 49-70.

By that year, voracious logging of the rainforest by timber companies had already destroyed much of the rainforest that these communities depended on for their survival.

The indigenous people of Malaysia had a recognized legal right to their native land under federal Malaysian law. In practice, however, the Malaysian government made it difficult and prohibitively expensive for these communities to assert native land claims. Other rules made it easy for state governments to overturn indigenous land rights. Using this authority, state officials took over millions of hectares of communal land and divided most of it into logging concessions. Most of the profit from logging went to state officials, which gave them a direct financial incentive to redistribute indigenous land. They would frequently distribute the concessions to their close associates and in some cases to companies they owned themselves.

In this way, local indigenous communities in the rainforest found themselves pitted against Malaysian timber companies and their government backers. The Penan ethnic group, a hunter-gatherer society in Sarawak, and most other indigenous communities in the area were entirely dependant on the rainforest for food, medicine, and shelter, as well as to maintain their customs and way of life. As timber companies arrived to clear trees from their traditional lands, they staged non-violent protests, primarily in the form of human blockades to obstruct logging roads. The timber companies responded by dispatching hired vigilantes to terrorize the protesters with menacing behavior and threats. When that did not work, state security forces arrived to arrest the indigenous blockade participants on criminal charges of obstructing logging activities, confining them in miserable conditions of detention. The timber companies were then free to continue logging seven days a week, 24 hours a day. The resulting land erosion, water contamination, and extinction of wildlife and plant species further threatened the precarious existence of the indigenous communities and the extinction of their ancient cultures.

Right to an Effective Remedy and Accountability



Residents of Katalwadi village in India stand near Enron's Dabhol power plant (in the background). When some villagers protested against the power plant, contractors for the company and police retaliated against them. © 1999 Arvind Ganesan

Victims of human rights abuses are entitled to an effective remedy that offers redress for the harm suffered. This can encompass, among others, the right of access to courts, the right to a fair trial, the right to equal protection under the law, the right to seek reparation and satisfaction, and the right to enforcement of judgments.⁹⁷

These rights of victims, however, are rarely upheld against the interests of powerful companies. In many cases, governments fail even to provide the means to hold business actors accountable (such as by failing to ensure the requisite legislation exists). Governments may also fail to enforce existing laws or regulations that would in practice help to protect human rights. In some cases, businesses use their political and economic clout to ensure government inaction.

⁹⁷ See, for example, right to a fair legal process at UDHR, arts. 10, 11, ICCPR, arts. 9, 14, CRC, arts. 12(2), 40, and CMW, art. 18(2-7); right to equality before the law at UDHR, art. 7, and ICCPR, art. 26; right to seek reparation and satisfaction at ICERD, art. 6; and right to an effective remedy at UDHR, art. 8, ICERD, art. 6, ICCPR, art. 2, CAT, arts. 13, 14.

The various reports touched on above contain examples of obstacles to justice faced by victims of business-related abuses. Two examples are explored here in more detail.

A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector⁹⁸

A 1996 Human Rights Watch report on Mexico showed little government oversight of the maquiladora (export assembly) sector. The government did not enforce domestic prohibitions on sex discrimination and it failed to provide mechanisms for investigation or adjudication of complaints. A voluntary pledge by one US-owned company to stop conducting mandatory employment-related pregnancy testing in its factories also failed to achieve the change sought by the victims: pregnancy-based sex discrimination continued the following year, and the company failed to put in place a concrete plan to monitor compliance with its new policy.

The Enron Corporation: Corporate Complicity in Human Rights Violations⁹⁹

The example of DPC and its parent company Enron in India, discussed at length above, is also informative. The company was allegedly able to bypass review procedures and secure approvals for the Dabhol project despite overwhelming opposition from area residents and some government regulators because it engaged in corruption and collusion with other officials. Communities faced difficulty getting a fair hearing in the courts in part due to alleged political favoritism shown to the company.

⁹⁸ Human Rights Watch, *A Job or Your Rights*, pp. 3, 5, 23-26, 50.

⁹⁹ Human Rights Watch, *The Enron Corporation*, see especially, pp. 1-3, 23-24, 29-45, 54-61, 80-82, 99-104.

The state government of Maharashtra, which had previously filed a suit against Enron on the grounds of corruption in securing the DPC project, was convinced to reverse its position and drop the claim after a renegotiation of the project with Enron. The terms of the new agreement were in some ways more onerous for the government than the deal it had previously criticized, leading to suspicions that it had been improperly influenced by the company. When villagers, frustrated at their failure to secure effective legal redress, took up protests, company contractors and police retaliated against them for having dared to challenge the company.

Several other Human Rights Watch reports touch on business privileges and the absence of remedies for victims or accountability:

- A company that dumped toxic waste in Cambodia was alleged to have bribed officials at every step in the process, subverting the oversight role that the government should have played.¹⁰⁰
- Because of inadequate government oversight, transnational labor agencies in several countries have in effect been given primary responsibility for informing workers about their rights and for responding to cases of abuse, often leaving migrant domestic workers with almost no opportunity for effective redress.¹⁰¹
- Jurisdictional challenges and legal obstacles have meant that few cases have gone forward against private contractors accused of crimes in the Abu Ghraib detainee abuse cases and similar ones in Afghanistan.¹⁰²
- When contractors in Bosnia and Herzegovina were implicated in sex trafficking, the only punishment they endured was being fired, the very same treatment that DynCorp gave the whistleblowers who exposed the conduct. The contractors were not eligible for prosecution in Bosnia and Herzegovina

¹⁰⁰ Human Rights Watch, *Toxic Justice*, pp. 2, 3, 9, 37, 34.

¹⁰¹ See, for example, Human Rights Watch, *Help Wanted*, pp. 3, 21-22, 52, 84.

¹⁰² Human Rights Watch, *By the Numbers*, pp. 6, 19-20; "Q&A: Private Military Contractors and the Law," Human Rights Watch questions and answers; "US: Close Legal Loopholes Allowing Contractors to Act with Impunity," Human Rights Watch news release, October 2, 2007, <http://hrw.org/english/docs/2007/10/02/usint17002.htm>.

because the company repatriated them to the United States almost immediately after they came under suspicion. A US law passed in 2000 gave the US government jurisdiction over the contractor employees, but implementing regulations to allow such prosecutions were not adopted until 2006.¹⁰³

- In Guatemala, regulations governing the actions of private security forces have not been enforced, allowing abuses to be carried out with impunity.¹⁰⁴
- In the Dominican Republic, where women were often tested for HIV as a condition of work in violation of national law, private employers continued the abuse with impunity.¹⁰⁵

¹⁰³ Human Rights Watch, "Bosnia and Herzegovina," in *World Report 2003*, p. 324.

¹⁰⁴ Human Rights Watch, *Guatemala's Forgotten Children*, p. 47.

¹⁰⁵ Human Rights Watch, *A Test of Inequality*, pp. 1, 17-23.

Findings

Several themes emerge from the above examination of situations in which business activity undermines human rights.

First, business impacts on human rights are not limited to sectors that have received the most attention to date—in particular apparel manufacturing and the extractive industries—and existing initiatives are insufficient to address the full scope of the problem. The case material above demonstrates that the activities of all types of businesses, large and small, domestic and multinational, public and private, can implicate human rights. To fully combat business-related human rights abuse, a broader approach encompassing all business actors and contexts is needed.

Second, in assessing the impact of business activity on human rights, it is important to focus on company ties to third parties that commit abuse as well as cases in which businesses themselves directly cause harm. Such third parties are often government agents—such as security forces—working in coordination with companies or on behalf of company interests. Other times the negative human rights impact stems from business failure to take adequate steps to prevent misconduct by employees, suppliers, or others with whom it has business relationships. This finding is significant because it demonstrates that businesses' role in relation to human rights is not limited to obvious cases. It also makes clear that efforts to address corporate conduct must take into account that businesses can affect human rights through their association with others as well as on their own.

Third, governments often fail to protect their own citizens, as well as non-citizens, from abuses by businesses. The relative power of companies in relation to the governments of countries in which they operate, particularly in economically disadvantaged states, can contribute to this gap in protection, but it is also found in wealthy countries. This gap is exacerbated by close relationships between business and government officials and by the unrepresentative nature of some governments whose officials have ties to businesses, though democratic governments are obviously not immune to undue influence by moneyed interests. The key lesson to

be drawn here is that if business-related abuses are to be curbed, governments need to do a much better job of regulating business conduct. Further study of the motivations or circumstances that underlie state inaction would help inform more effective responses.

Fourth, individuals whose rights are affected by businesses are often unable to attain satisfactory resolution of their claims or are denied redress altogether. In some cases, individuals and communities who try to enforce their rights through protests or through judicial means have been subject to retaliation. The inability to obtain redress compounds the original violation and itself constitutes a violation of victims' rights. This finding reinforces the need to promote access to justice for victims of business-related abuses and the importance of further examination of the reasons states are not providing appropriate remedies and reparations.

Finally, the examples presented here indicate that many companies have not yet ascribed to business standards addressing human rights or disregard codes of conduct or company commitments to social responsibility, where they exist. Taken together with the rest of the analysis in this report, the clear conclusion is that existing efforts to address the impacts of business activities on human rights are insufficient.

Conclusion

Companies create jobs and economic opportunities, and can be a positive force for human rights improvements when they engage in responsible practices. They also can act in a way that is neutral with regard to human rights. Yet, too often, as the examples in this report illustrate, business actors themselves engage in abusive behavior or contribute to human rights violations, often with lasting effects on individuals and communities the world over.

Globalization has led to widespread growth in commerce and the reach of business, but human rights protections have lagged behind. There are no clear, common rules to prevent business-related human rights abuses and provide adequate remedies and reparation when they occur.

The scope of abuses points to the need to develop global standards that define a common benchmark for business conduct. Such standards would not only motivate businesses to reform their practices, but also would help ensure that governments do more to prevent and punish business-related abuses. Ultimately, of course, what is needed is not merely better standards setting common rules for business conduct or more vigorous state enforcement of laws and regulations, though both are essential, but concerted action by all relevant actors to ensure that business activities do not impede the enjoyment of human rights.

This report has sought to contribute to an improved understanding of the impact of business activities on the rights of individuals and communities. Many colleague organizations, scholars, and other experts are working toward the same end. Greater awareness of business-related abuses and the harm suffered by the victims, it is hoped, will help spur action to meaningfully address the problem.¹⁰⁶

¹⁰⁶ In mid-2008, the United Nations special representative on business and human rights, John Ruggie, is anticipated to issue his final report and recommendations to the Human Rights Council in Geneva. That occasion provides an important opportunity for the Council to reflect on the subject of business and human rights and consider next steps. Over 200 civil society groups and individuals wrote to Prof. Ruggie in October 2007 to convey their views and suggestions. Joint letter from civil society groups and concerned individuals to John Ruggie, first issued on October 10, 2007, with 141 signatories and updated on October 25, 2007, to reflect an additional 100 signatories, http://www.escr-net.org/usr_doc/OpenLetter_Ruggie_FinalEndorsements.pdf. Prof. Ruggie's response, dated October 15, 2007, is available at [http://www.escr-net.org/usr_doc/ESCR-Net_Open_Letter_\(2\).pdf](http://www.escr-net.org/usr_doc/ESCR-Net_Open_Letter_(2).pdf).

Human Rights Watch and CHRGJ, along with other non-governmental organizations and institutions, recognize the need for a variety of efforts on several fronts—including within companies, industries, and countries—to strengthen the protection of human rights in relation to business activities. Yet unless these diverse efforts can be made more consistent and effective, unless they are fully aligned with human rights principles, and unless they are far-reaching in their application, they will continue to fail to protect individuals and communities from harm. For that reason, we believe that a UN declaration or other international instrument that defines a common benchmark for business conduct is essential. Clearly articulated and widely endorsed global standards would create a framework for concerted action to ensure that business behavior around the world is human rights compliant.¹⁰⁷

¹⁰⁷ Joint letter from civil society groups, October 25, 2007.

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CHRGJ aims to generate substantive, cutting-edge, and sophisticated contributions to human rights research and legal scholarship, and to actively engage in public affairs by making original and constructive contributions to ongoing policy debates relating to human rights. It achieves these aims by undertaking rigorous legal analysis and disseminating studies in several key research and project areas, which include a focus on non-discrimination; economic, social, and cultural rights; and the accountability of non-state actors for human rights abuses. CHRGJ is directed by Professors Philip Alston, Smita Narula, and Margaret Satterthwaite. Jayne Huckerby is CHRGJ's research director.

Human Rights Watch and CHRGJ joined together in January 2007 to launch a project on the impact of business on human rights. The project is carried out under the auspices of the International Human Rights Clinic (a program of the Center) at NYU School of Law. The project is co-directed by Lisa Misol, senior researcher in the Business and Human Rights Program at Human Rights Watch, and Smita Narula, assistant professor of clinical law and faculty director of CHRGJ at NYU School of Law. Contributors to the project include International Human Rights Clinic students Christen Broecker, Joshua Rosenthal, Marie Scheffers, and Bill Van Esveld; NYU's Law Students for Human Rights volunteers Yu-Jie Chen, Daniel Firger, Rosalia Gitau, Delia Hou, Sandy Mayson, and Camille Oberkamp de Dabrun; and CHRGJ interns Christie Daly, Priyanka Palani, Amelia Rawls, and Leanne Webster. Additional assistance was provided by Carly Tubbs and Kelin Hall, associate with the Business and Human Rights Program and Metcalf summer intern at Human Rights Watch, respectively.

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On the Margins of Profit

Rights at Risk in the Global Economy

Business activity around the world has a profound effect on people's lives and livelihoods. Companies can play a positive role in society when they conduct themselves responsibly, but they do not always do so. Countless people are harmed each day when businesses fail to respect basic human rights.

This report details the different ways in which business practices affect the human rights of individuals and communities the world over. It presents dozens of examples drawn from more than 10 years of Human Rights Watch research that describe a wide variety of business-related abuses and obstacles to the justice sought by victims of these abuses.

These examples show that the activities of all types of businesses in all sectors of the economy can implicate human rights. They also make clear that business activities can negatively impact the whole spectrum of human rights, and that governments frequently fail to protect victims and to

ensure justice when abuses occur. The problem is not confined only to some countries; instead, the abuses span the globe.

Existing corporate social responsibility initiatives are insufficient to address the full scope of the problem. They offer a patchwork of many different standards that address select human rights, select companies or industries, or select countries or situations.

A common global approach is needed to bring company conduct into line with internationally recognized human rights and to protect those who are at the margins of the global economy. Clearly articulated and widely endorsed international standards would create a framework for concerted action—within and across companies, industries, and countries—to ensure that business behavior is human rights compliant.

An Indonesian girl plays at an abandoned logging site in Riau province, on the island of Sumatra, Indonesia. The massive pulp and paper industry located in Riau has contributed to rampant deforestation in the province. The devastation of the environment also has harmed the local population, which is largely rural, poor, and dependent on the dwindling forests for its livelihood.

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