Does your business need a human rights strategy?

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Developing Your Business and Human Rights Strategy

How companies can meet their moral and business obligations in a complex and opaque human rights environment.

By N. Craig Smith, Markus Schölz and Jane Williams

Swedish fashion giant H&M's commitment to "operating with respect to human rights across the value chain" recently cost the company $74 million and the wrath of its third biggest — and fastest growing — market.

In late 2020, H&M, along with other well-known fashion brands, publicly announced it was no longer sourcing cotton from China's Xinjiang region due to concerns over the use of forced labor among the country's minority Uyghur population. When a website highlighted the announcement in March 2021, the Chinese consumer backlash was fierce. The company's brands disappeared from Chinese e-commerce sites, landlords in parts of China forced many of the brand's stores to close, and Chinese customs officials issued a warning alleging H&M's cotton dresses contained "dyes or harmful substances" which may endanger a child's health.[1] By the time the company's quarterly results were announced in July, there was little surprise that sales in the three months to May 2021 had fallen by 23%.[2] At the time, Chief Executive Helena Helmersson said the situation remained "complex", noting H&M's commitment to regaining the trust of its customers and partners in China.[3]

No doubt H&M was hit hard by the Chinese reaction. However, with customers, employees, and activists paying increased attention to human rights, businesses that turn a blind eye to violations which occur in their sphere of operations face the risk of being exposed as morally complicit as well as vulnerable to legal action and reputational harm. That's why we believe it's critical for companies to have a human rights strategy and to proactively consider when and how to take the action needed to fulfill their moral obligations, meet shareholder, customer and employee expectations, and keep other stakeholders satisfied.

Drawing on our research in business ethics and sustainability — including discussions with managers, human rights groups, and a close examination of how firms addressed the issue in the past — we have created a framework to help companies develop a business and human rights strategy that is applicable to their situation. The framework we provide offers tools to help companies gauge their vulnerabilities and identify approaches and tactics that will assist them in meeting their social and commercial responsibilities.

Three categories of human rights violations

In our research we observed three broad areas where human rights issues arise in relation to business, and which require consideration when developing a business and human rights strategy.

1. Abuse in the way a company's products or services are made and delivered

This includes abuse by suppliers or contractors but can also occur within a company's own operations. Managing human rights risks in the supply chain is becoming increasingly complicated as geo-political environments change, supply chains become more complex, and human rights defenders leverage digital media to shine a light in areas previously unseen and highlight abuses which occur right under our nose. Sometimes a job may appear normal: picking tomatoes, making clothes, or working on a construction site. What is not seen is the way people are being controlled through intimidation, inescapable debt, removal of passports or threats of deportation. An investigation in the UK in 2019, revealed a slave ring involving more than 400 Polish trafficked workers who were held in appalling conditions and receiving a pittance to work on farms and in factories which supplied major supermarket and building supply chains, including Tesco, Waitrose, Sainsbury's, Homebase, Travis Perkins, Argos and Wickes.[4]

Unsurprisingly, the companies were unaware of the slave conditions their suppliers were providing to workers. In fact, most companies today are vocal in announcing policies to weed out forced labor in their value chains. However, the prevalence of modern slavery in global supply chains has become so entrenched, most multinational firms benefit from it somewhere, often very far down the chain where they have little visibility or leverage.[5]

2. Abuse in the way a firm's products or services are used

While companies may not knowingly create products that violate human rights, they could find themselves complicit when customers employ their products or services to do so -- if not legally complicit, at least guilty in the court of public opinion. Caterpillar, a long-standing supplier of heavy machinery to the Israeli army, found its reputation at risk when evidence emerged of its equipment being used to demolish Palestinian houses and orchards.[6] Demonstrations against the company gained momentum after an army-driven Caterpillar bulldozer crushed and killed American peace activist Rachel Corrie. More recently, research by Amnesty International has found that digital surveillance systems made by European companies were being sold to Chinese security agencies and used to implement a mass surveillance program against minority groups.[7]

3. Abuse by regimes where the company operates.

It is difficult to identify a country where human rights abuses of one kind or another do not take place, whether in the form of forced labor, suppression of free speech, racial, cultural or gender discrimination, or unlawful incarceration. The issue is nuanced, and countries differ in their views of what constitutes basic human rights. Recently, we have seen Russia accused of using a military grade nerve agent to poison opposition leader and anti-corruption activist, Alexander Navalny; the U.S. admonished by Amnesty International for the rendition, torture and indefinite detention of prisoners without trial; robust criticism of Australia's mandatory detention and offshore processing of asylum seekers; and evidence pointing to the involvement of Saudi Arabia's Crown Prince Mohammed bin Salman in the murder of journalist Jamal Khashoggi.[8]

Firms can benefit from working closely with governments, but when a regime violates human rights, companies can get embroiled in the scandal. International consultancy McKinsey & Company found itself in such a position over its contract to assist in the organizational transformation of the U.S. Immigration and Customs Enforcement agency. Media reports suggested the consultancy had been redirected to assist in former President Donald Trump's clampdown on illegal immigration, and was responsible for money-saving recommendations that included funding cuts on food, medical care and supervision of detainees.[9] McKinsey global managing partner, Kevin Sneader, insisted the company would not "under any circumstances, engage in work … that advances or assists policies that are at odds with our values."[10] However, the incident gave weight to commentators who have accused the company of nurturing cosy relationships with various regimes where violations of human rights are regularly reported.[11]

Moral and Legal Obligations to Address Human Rights

Historically, responsibility for protecting human rights has fallen primarily to governments — but there are situations where governments are unable, or unwilling, to do so. In this environment, companies as corporate citizens with often significant influence can frequently have a political and moral responsibility to engage.

From the firm’s perspective, there are four reasons why human rights are a priority and why it can be important to act:

1. Morally: Firms need to accept that they can no longer be a corporate bystander; that there are moral duties that call for action. Inaction could be understood as silent complicity.[12]

2. Legally: In many cases, countries have enacted laws which require organizations to act in a way that protects and promotes human rights.[13]

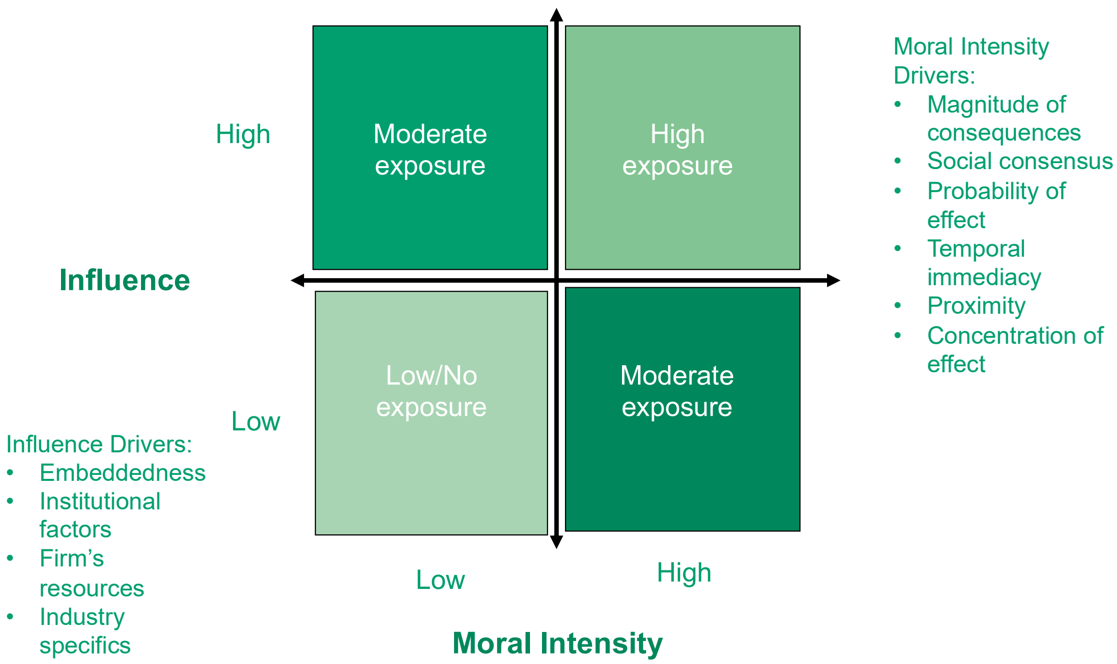
3. Compliance with soft laws: When human rights are not directly supported by laws, other standards may come into play such as the UN Guiding Principles on Business and Human Rights.[14] This document provides a set of guidelines based around a "Protect, Respect and Remedy" framework. Key elements from this have been adopted by the Organization for Economic Cooperation and Development, the European Union, the International Organization for Standardisation (in ISO 26000), and the International Finance Corporation.[15]

4. Reputationally: With social media in particular bringing attention to areas which in the past had been unseen, companies are increasingly vulnerable to being accused of complicity with human rights abuse.

What's Your Organization's Exposure to Human Rights Violations?

Business leaders seeking to formulate a clear plan for handling these difficult issues need to start by better understanding their organizations' moral obligation to act, as well as their potential vulnerability. To that end, we have identified some key factors driving corporate human rights strategies and used them to create an Exposure Matrix. This managerial tool captures both the moral intensity and the potential influence of a company in a specific situation. Knowing where a firm sits in the Exposure Matrix can help focus managerial discussion and decision-making on an organization's response.

Figure 1. Exposure to Human Rights Issues



Moral Intensity

First described in 1991 by Thomas M. Jones, moral intensity captures the degree to which people see a situation as unethical and demanding of action.[16] Empirical research has confirmed that circumstances high in moral intensity increase the likelihood of ethical intentions.[17] According to Jones, the following factors influence the moral intensity of a particular issue:

- The **magnitude of consequences**. What is the extent of the harm likely to result? Are lives at stake, or is, for example, freedom of speech at risk?

- **Social consensus**. What is the extent to which people in society are in agreement on the moral "rights" and "wrongs" of an issue? A key source of guidance will often be the internationally accepted norms laid out in the United Nations' "Universal Declaration of Human Rights" and "Guiding Principles on Business and Human Rights" (though it must be noted that not all countries are signatories to the Universal Declaration, and it has been accused of Western bias).[18]

- **Probability of effect**. How likely is the issue or harm to happen?

- **Temporal immediacy**. How urgent is the issue — is fast action required to prevent harm?

- **Proximity**. How close is your organization to the issue?

- **Concentration of effect**. What is the proportion of people in a given community affected by the issue?

Take the example of supermarket chains such as Walmart, Carrefour and Tesco criticised for sourcing frozen shrimp from Thailand, the third largest exporter of seafood in the world.[19] Research conducted by Human Rights Watch found the use of forced labor in the Thai fishing industry to be "pervasive".[20] Boats were found to be crewed with Burmese and Cambodian men sold as slaves and forced to work for years at sea without ever seeing shore.

Using our tool, managers in the supermarket chains could conclude that moral intensity is high based on five drivers : 1) there were severe consequences of the abuse, with evidence of considerable suffering; 2) there was broad social consensus pushing for the abolition of forced labor; 3) the abuse was already happening and seemed likely to continue; 4) the urgency of the matter remained high for the affected fishermen; and, finally, 6) the harm was highly concentrated on the enslaved fishermen. However, given the abuse occurred far from their home markets, and the supermarkets sourced the product through third parties, the managers would likely assess their proximity as low (the 5th driver). This moderates the moral intensity for the supermarkets — though not for their suppliers.

Influence

A firm's influence is not always easy to gauge. It may be the case that a large and seemingly powerful company wields little influence on the perpetrators of human rights abuses. Take the example of Shell's oil operations in the Niger delta in the 1990s.[21] As the largest multinational company in the country and a joint partner in oil production with the government, it could be thought that Shell held great sway over the Nigerian government. However, when the company became embroiled in demands for political rights and oil revenues by the local Ogoni people, and protests resulted in nine activists being arrested, convicted and subsequently executed, Shell's calls for a fair trial and appeals for clemency carried little weight. That other oil corporations were eager to take its place in the Niger Delta, further diluted Shell's influence. Despite global condemnation of Shell, it is far from evident that the company could have prevented the executions.[22] Nevertheless, the company's reputation suffered and in 2009 Shell paid $15.5 million to settle a court case over its alleged complicity in human rights abuses.[23]

To account for these nuances when considering an organization's influence, we suggest that business leaders consider the following:

- **Institutional factors**. What are the formal and informal rules and values which shape the environment, including willingness — or pressure to — conform?

- **Industry specifics**. How is influence affected by factors such as the complexity of supply chains, the geographical location of where vital products are sourced, or the degree of concentration or fragmentation of the industry? For instance, the difficulty in tracing cocoa beans to specific producers makes eliminating child labor hugely difficult for chocolate and cocoa companies such as Barry Callebaut.[24]

- **Firm resources**. What can the organization bring to bear to influence the issue? This includes tangible resources including funds, inventory, land and buildings, and intangible ones such as networks, skills, and knowledge.

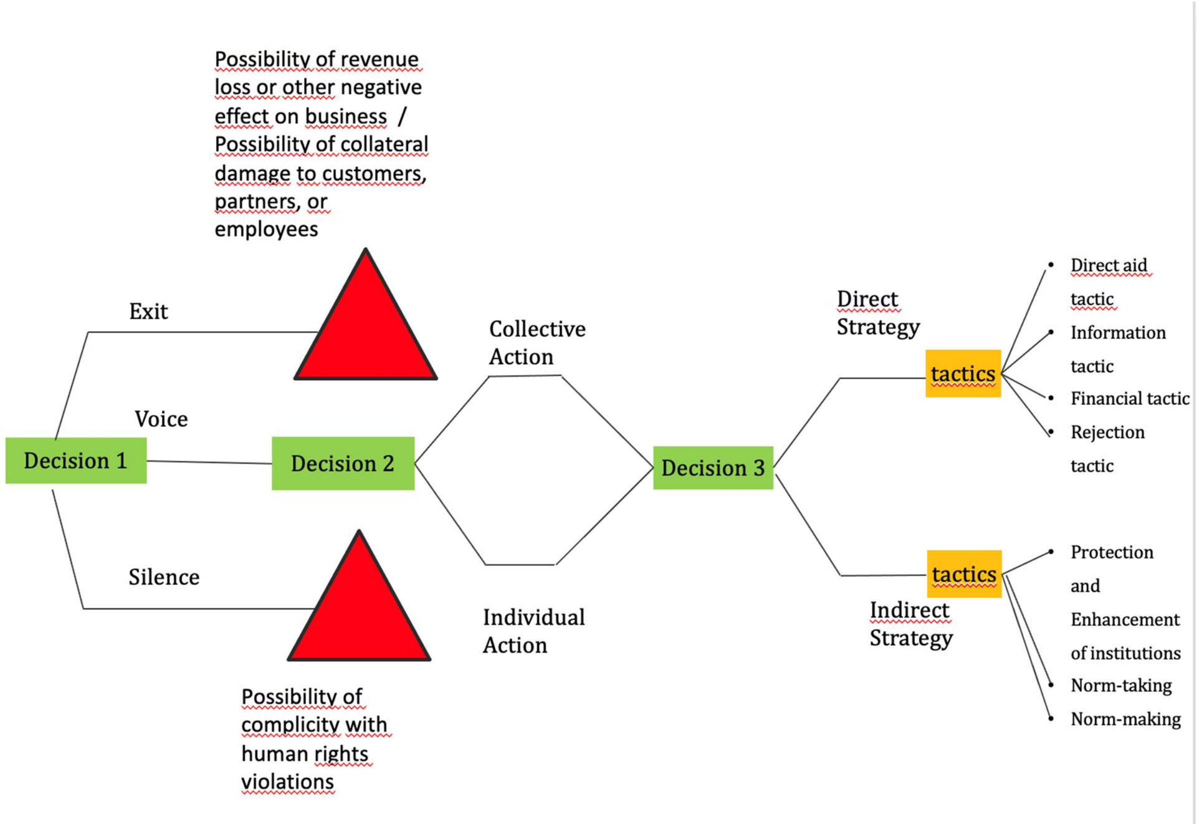
- **Embeddedness**. How closely and on how many levels is the company entangled with the perpetrators of abuse?

Returning to our Thai seafood example, the supermarkets have potential influence by virtue of firm resources — their size and buying power — and the institutional factor of established practices whereby multi-stakeholder initiatives are used to improve supplier practices (e.g., Marine Stewardship Council). However, when it comes to embeddedness, they are not directly involved with the perpetrators using slave labor, and the industry specifics of an opaque supply chain mean that influence is diminished because traceability is low. Taking these influence factors in combination with our assessment of moral intensity, the supermarkets would likely place themselves towards the middle on the exposure matrix. By contrast, Thai Union Group, a Thailand-based global seafood company with familiar brands such as John West, has considerably greater influence by virtue of its embeddedness, resources, and dominance in the supply chain.[25] It would likely be judged to be in the upper right quadrant of the exposure matrix.

Three Key Decisions in Developing and Executing Your Human Rights Strategy

The insights gleaned while assessing a firm's exposure to human rights issues can also be used during the development and execution of a firm's response strategy. To help business leaders work through this, we have created a decision tree which highlights the key choices that may be made and their potential consequences.

Figure 2. Decision Tree



Decision 1 – Exit, voice, or silence?

The first decision a firm must make is *whether to get involved*. Based on the conclusions reached using the Exposure Matrix, business leaders must decide if the issue requires further attention and possibly action. Is it so serious to warrant divesting operations and/or possibly leaving the country? If not, what other options are available?

To borrow from Albert Hirschman's famous treatise, *Exit, Voice and Loyalty*, firms have the option of leaving the environment where abuse is being committed; taking action to help change the situation; or maintaining business as usual while continuing to monitor the situation and the company's exposure.[26] Deciding on the best option is not always straightforward. Nor is flight always the most appropriate action: Pulling out of a country can not only seriously impact the firm's bottom line, it can also harm the communities in which it operates, such as by eliminating local jobs or ending prosocial initiatives the company has taken. This was the argument often made against exiting apartheid South Africa by businesses and in favor of staying and pursuing constructive engagement.[27]

If a firm makes the choice to continue operating and work to address systemic human rights abuse within its environment, it needs to develop a nuanced strategy and be very deliberate about how and with whom it interacts.

Decision 2 – A collective or individual approach?

This brings us to the second decision, that of the approach. If a company chooses to stay and take action, it must decide whether the issue is best addressed by the company individually, or collectively with other firms or stakeholders?

An individual approach can be most impactful when companies are influential and when time is of the essence. In 2010, Microsoft became aware that Russian government agencies were using allegations of software piracy as an excuse to search the offices of NGOs and harass political activists and journalists. It eliminated that pretext by offering free software to nongovernmental organizations and independent journalists.[28]

As a large company with vast resources, Microsoft had the power to take individual action. Less powerful firms, or companies reacting to a situation where the abuse is widespread, the protagonist too dominant or the sense of urgency low, may choose to act collectively, teaming up with other firms and/or stakeholders.

An example of collective action can be found in the reaction of companies in the garment sector after the 2012 Rana Plaza tragedy in Bangladesh.[29] More than 1100 factory workers died when the eight-storey building collapsed. The disaster highlighted the problem of unsafe working environments that was systemic across the state. Companies in the sector worked together to introduce the Accord on Fire and Building Safety in Bangladesh, an independent, legally binding agreement between global brands, retailers and trade unions. Since the Accord's creation, engineers have inspected more than 2000 garment factories, addressed more than 150,000 safety hazards, and helped set up Safety Training Programs which have educated more than 1.4 million workers in proper workplace safety practices.

Decision 3 – Action and tactics

Having decided on a collective or individual approach, firms are faced with the question of whether to take direct action to stop human rights violations, or whether more can be done by indirectly influencing the institutional settings in which they operate.

In Bangladesh, the adoption of the Accord on Fire and Building Safety was an indirect strategy through which firms were able to create new industry standards. However, if the situation had been different, for example if ready-made garment brands had become aware that a particular factory presented extreme and urgent threat to life, they may instead have chosen direct action such as putting pressure on politicians or legal enforcement agencies to close or force repairs of the building.

Having made a choice on whether to act directly or indirectly, firms have an array of tactics at their disposal. The tactics they choose should take into consideration the influence drivers identified in the Exposure Matrix.

Direct tactics

- *Direct aid*. In this case, a company uses its core business to protect and promote human rights as Microsoft did when providing software to the Russian NGOs.

- *Providing information*. This includes companies using their research and communication resources to provide background analyses, develop position papers, testify as expert witnesses, or even directly lobby for human rights. The large German supermarket chain, Edeka, protested xenophobia by taking products made outside Germany off its store's shelves, replacing them with signs bearing anti-racism messages.

- *Granting or withdrawing financial aid*. Firms may choose to provide financial support to organizations, politicians or political parties that promote human rights. In the wake of the George Floyd protests and the Black Lives Matter movement in the U.S., many major companies including Apple, Amazon and Facebook endorsed the movement and pledged millions of dollars to fight racism.

  Alternatively, firms may withdraw financial aid if they feel human rights are being abused. Denmark's Danske Bank has an exclusion list publicly identifying 27 companies it refuses to do business with for moral reasons.

- *Rejection*. This may include declining to participate in business events, engaging in civil disobedience or, in extreme cases, discontinuing some business operations in a particular country. Google's refusal to provide the Chinese government access to user data and partial withdrawal from the country falls into this category. Companies protesting apartheid in South Africa chose to house workers of different races in common facilities in defiance of provisions of the Group Areas Act. Merck's CEO Ken Frazier used this tactic when he very publicly broke with former President Trump and resigned from the administration's manufacturing council after the former president proved unwilling to hold white supremacists to account for the violence that accompanied their August, 2017, protests in Charlottesville, Virginia.

Indirect Tactics

When companies feel they are too small or not in a position to make a difference through direct action, or if the violations are widespread, they may opt to take indirect engagement strategies which influence the institutional setting in which the offenders operate. This is an area in which partnering with other organizations can be particularly effective.

Indirect engagement strategies include tactics such as:

- *Protection and enhancement of institutions*. This tactic is focused on the support, establishment, or enforcement of well-ordered institutions. A good example is the Norwegian oil company Statoil (now Equinor) which provided human rights law training to judges in Venezuela.[30]

- *Norm-taking*. Organizations may voluntarily sign up to, and comply with, non-legal norms and standards that go beyond legal requirements, such as the UN Global Compact or for the ISO 26000. This is a particularly strong tactic when adopted by an industry leader with the influence to encourage other power players in the sector.

- *Norm-making*. This takes the norm-taking tactic a step further with the development, or co-development, of new standards that supplement hard law. By acting collectively or alongside other multi-stakeholder initiatives, organizations can individually create rules of the game that define guardrails for corporate behavior. One example is the Fair Labor Association, a collaborative initiative convened in 1996 to improve working conditions in the apparel and footwear industries.

Deciding which of the possible tactics to employ is often not so clear cut as may appear from the examples provided. Firms should explore these options but exercise judgment as to how well they apply to the specifics of their own situation.

In some cases, the best way forward is to develop an innovative approach. Amsterdam-based smartphone manufacturer Fairphone was faced with a human rights dilemma when it came to sourcing cobalt (a vital mineral for battery devices). Around 60% of the world's cobalt production comes from the Democratic Republic of Congo, where child labor and poor working conditions present huge human rights challenges. Rather than looking elsewhere to source its cobalt (leaving the country's small-scale miners with no source of income), Fairphone created an alliance linking small-scale mining operations with the global electronics and automotive supply chain while establishing control and monitoring mechanisms to ensure children were kept out of the mines and enrolled in local schools.[31]

When Leaving Is the Best Option

There may be times when in balancing the tension between the moral and business imperative, leaders feel the best — or only — choice is to leave, be it a problematic supply chain, a market where its products are implicated in human rights abuses, or even an entire country. The decision then will be whether to take the high ground and exit with fanfare signalling why the firm is leaving – as Netherlands company Henrik Graszdoen, did when it announced it would not be supplying grass for the 2022 FIFA soccer World Cup in Qatar. A spokeswoman explaining its withdrawal cited the harshness of labor conditions observed at the new stadium worksites along with the many deaths which had been reported as occurring during construction.[32] Alternatively, but with less potential impact on the human rights abuse, a company's leadership might decide to withdraw gradually and quietly, protecting company assets and communicating the move as a change of direction for the organization.

Whatever approach and form of engagement a company chooses, if the evaluation on the Exposure Matrix suggests that there is high moral intensity, and the company has some power to influence the situation, our analysis indicates that indifference and inaction towards human rights abuse is no longer an option.[33]

Companies are increasingly expected to assume political responsibilities and doing nothing when there is an arsenal of options available might easily be interpreted as – at minimum – silent complicity with human rights violations.

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