

BOUNDARIES AND POSSIBILITIES OF THE INTERCHANGE BETWEEN HUMAN RIGHTS AND COMPANIES

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This issue of *Direito GV Law Review* is composed of two parts. The first part contains a dossier, which gathers the articles regarding the theme “Business and Human Rights”. This part was conceived and edited in partnership with Ângela Pires Terto, UN Brazilian Human Rights Advisor, Silvia Generali da Costa, associate professor at the Federal University from Rio Grande do Sul (Universidade Federal do Rio Grande do Sul – UFRGS), and Flávia Scabin, professor and researcher at the São Paulo Law School of Fundação Getulio Vargas (FGV DIREITO SP). The second part of the volume presents unpublished articles on many subjects, received by the journal’s continuing submission process.

In this editorial, we will discuss the main theme, the manuscripts received, and the evaluation process. Finally, we will briefly present the published articles.

The connection between Human Rights and companies started to be prominent on the international agenda in 1990s, especially because of the new realities engendered by the process of corporate globalization.¹ The opening up of markets, coupled with the expansion of companies and their chains beyond the borders of their country of origin and the increase of their economic capacity² – therefore their capacity to influence the context of their operations – has forced the inclusion of companies as a subject in the discussion on the commitment to Human Rights, traditionally focused on States (FUNDAÇÃO GETULIO VARGAS, 2017).

This was due to increasingly frequent evidences of child labor and forced labor in the supply chains of large transnational corporations, to a series of socio-environmental disasters associated with business and to the involvement of companies with paramilitary groups from countries in conflict.³ Within the national States, the economic growth, associated with the implementation of infrastructure projects, put companies at the center of major Human Rights

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- 1 The concept of corporate globalization is employed by Ruggie (2013, p. 17) to designate the process of productive restructuring by which transnational corporations have succeeded in establishing corporate networks that have surpassed national economies and have built up clusters of economic activities subject to a single global strategic vision.
- 2 According to data compiled by Global Justice Now (2016), from a direct comparison between annual corporate income and annual country revenues, 69 of the 100 largest economies in the world were companies in the year 2015. These data were presented by Fortune Global 500.
- 3 John Ruggie summarizes the “Chiquita Brands” case as an example of indirect involvement of companies in Human Rights violations. The company in question was considered an accomplice in parastatal violence

violations, especially in developing countries. Forced displacement of traditional communities,⁴ contamination, increased violence and sexual exploitation of children and adolescents are some of the examples of the sixteen rights violations that are recurrently associated with the construction of dams, according to the Council for the Defense of Human Rights (CONSELHO DE DEFESA DOS DIREITOS DA PESSOA HUMANA, 2007), based on the analysis of denunciations made against seven hydroelectric projects.

Facing this reality, individuals and communities negatively affected by corporate globalization began to use the language of Human Rights to express their demands and seek redress for the human costs involved in this process.

In that sense, Human Rights advocates and transnational corporations went into a clash to answer how Human Rights rules could be embedded in both corporate and government practices. At the international level, the UN Sub-commission on the Promotion and Protection of Human Rights had been working since the beginning of the 1990s to draft the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights*.⁵ In 2003, the text was presented to the former Commission on Human Rights (currently Human Rights Council), where it faced strong resistance from companies and did not succeed.

At that time, the companies described the attempt as “privatization of Human Rights”, because it transferred obligations to companies that were considered to be the sole responsibility of the State (RUGGIE, 2013, p. 19). However, over the years companies have undergone a process of understanding about the economic effects and risks of disrespecting Human Rights, even when

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when accused of recruiting right-wing paramilitary forces in Colombia to protect its facilities and when those groups were accused of killing guerrillas and trade unionists (RUGGIE, 2013, p. 155).

- 4 The most emblematic case in Brazil recently has been the expulsion of riverine families for the construction of the Belo Monte hydroelectric plant in the Xingu. According to Scabin et al. (2017, p. 125), “the expulsion of a social group from a traditionally occupied territory intensifies inequality, social conflict, segregation and dispersion of families and puts an end to a complex network of kinship and neighborhood that were efficient mechanisms of mutual aid and territorial protection”.
- 5 However, as early as the 1960s and 1970s, the activities of transnational corporations began to be debated, especially as regards their impact on labor and social policies. These concerns served to create the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration), by the ILO in 1977. The principles advocated in this international instrument provide guidance on employment, training, working and living conditions and relations for transnational corporations, governments, employers and workers (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 2002).

these are understood only as social norms. Shell's case in Ogoni, Nigeria, is an example of how a transnational corporation may lose its social license to operate in a certain location through popular mobilization even before its legal license is formally canceled by the government (RUGGIE, 2013, p. 148).

The resumption of the discussion on business and Human Rights within the UN took place with the nomination of John Ruggie as Secretary-General's Special Representative on Business & Human Rights, which resulted, after years of studies and visits to the different continents, in the publication of the report entitled "Protect, Respect and Remedy: a Framework for Business and Human Rights", in 2008, and the adoption of the *Guiding Principles on Business and Human Rights* (CONNECTAS, 2012), by the United Nations Human Rights Council, in 2011.

The main contribution of the guiding principles (GPs) was to establish that the concept of Human Rights, already defined in the main international treaties and conventions, should also be a standard for business. Therefore, those States that have committed themselves to the GPs must take on new obligations to prevent, investigate, punish and repair violations of rights performed by companies; also, it compels the companies to establish a set of new obligations, to not to violate Human Rights and to face the negative impacts on Human Rights over which they have some responsibility, within their establishments, through their chain operations and in their surroundings.

Brazil was the first country in Latin America to receive an official visit from the United Nations Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, whose mission was to identify the country's efforts and the gaps and obstacles to the protection of Human Rights in business. A number of challenges were pointed out in the WG report, including the low spreading of the new expectations set by GPs, especially among companies (UNITED NATIONS, 2016).

In 2017, in partnership with the Center for Human Rights and Business of FGV, the United Nations in Brazil (UN Brazil) and the Universidade Federal do Rio Grande do Sul (UFRGS), *Direito GV Law Review* held a special call for articles on the theme "Business and Human Rights".⁶

The theme has been the subject of research at FGV since 2013, when the Center for Human Rights and Business was created, under the coordination of Flávia Scabin, one of its professors and researchers. In recent years, the Center has been engaged in various diagnoses on

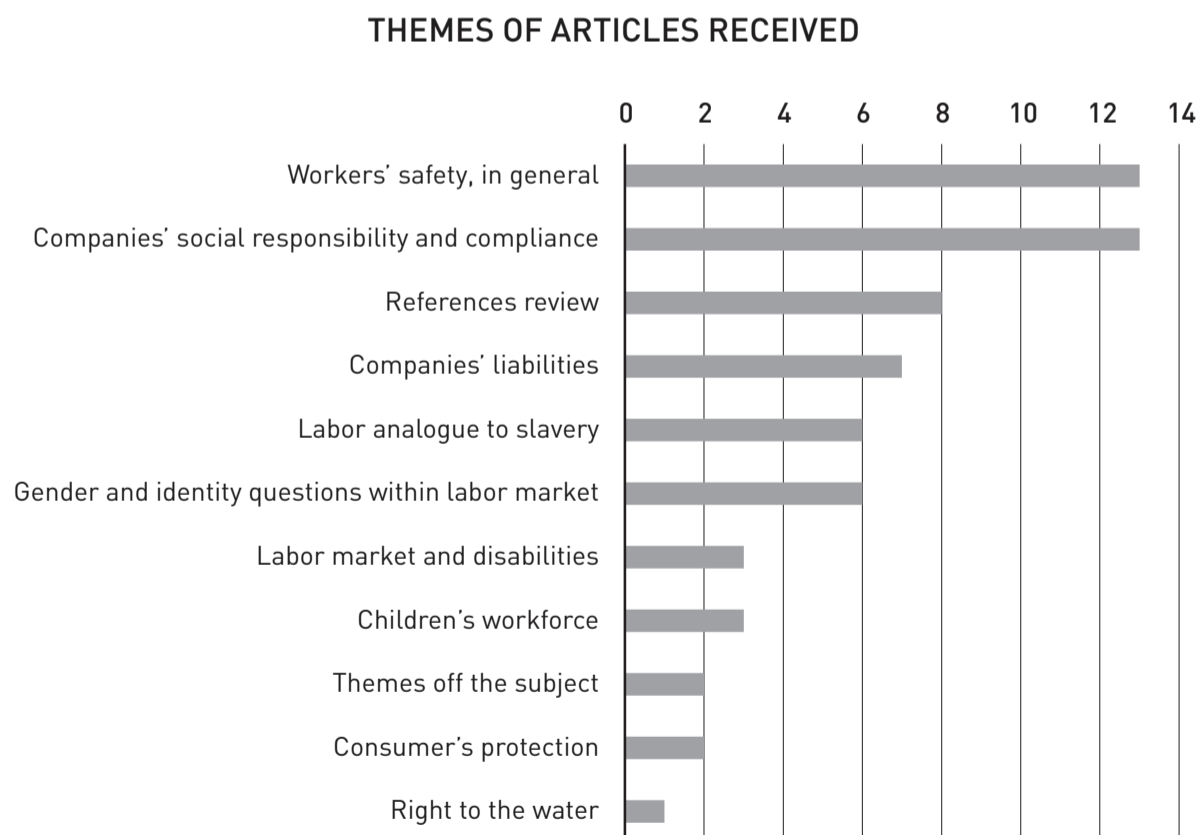
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⁶ The selection of the articles does not imply endorsement of their content by the referred institutions.

such topics as: the impact of large infrastructure projects on the rights of children and adolescents; violations of the fundamental rights of workers in supply chains in the textile industry; and the forced displacement of people in large work fields, among others. Research has already resulted in the creation of parameters for governmental public policies and instruments so that companies can assess their risks and prevent Human Rights violations in their activities.

It is undeniable that companies are able to influence investments and potentially generate local economic development, as well as to provoke deep transformations in the environment and in the social field where the business are carried out. Thus, it is very important to discuss the role companies play in the development of the countries in which they are based or operate. In this context, this call aims to foster academic production that deals with the various issues of the connection between Human Rights and companies.

The journal received 64 articles for evaluation within the theme of the special call. The first point to note was that, although the call had enabled as many as twelve thematic axes as a reference,⁷ no great variety was observed in this sense. The articles presented focused on only a few specific themes, as shown in the following chart:



7 (i) The application of the guiding principles on companies and Human Rights in Brazil; (ii) the State's responsibility in the area of "business and Human Rights"; (iii) business tools to control impacts on Human Rights; (iv) access to repair remedies; (v) discrimination in the workplace; (vi) workers' safety; (vii) outsourcing;

We have noticed that many of the articles we received dealt with labor relations and the risks and violations of rights in this area, while a small number of articles brought to the discussion the potential and different impacts caused by business activities, which go beyond of labor relations and may involve the company's interaction with the environment and surrounding communities.

We emphasize the need for more research that can address the responsibilities of companies along their productive chains, the instruments that can be implemented to prevent and control the risks and violations of rights around operations, the challenges and opportunities for policies that can guarantee access to justice for victims of violations. In addition, it is essential to analyze Human Rights violations in an intersectional way, that is, based on the different identity markers of the affected people, such as race, color, ethnicity, gender, age, sexual orientation and gender identity. Other relevant issues relate, for example, to the responsibilities of companies to ensure a diverse and inclusive work environment and the profile of people who are affected by corporate actions and who suffer more from the precariousness of labor relations.

From the methodological point of view, most of the texts received had the bibliographic review as its main or only methodology. The bibliographic survey of what has already been produced in the area is an essential step of the research, and the beginning of the article should point out the advances already reached in the relevant literature. However, we always seek to privilege researches that go a step further, that elaborate new theories, ideas, conceptions and solutions on themes and issues, with especial attention to those based on empirical methods.

Thus, texts that did simple bibliographic reviews or ended up dealing with issues in a very superficial way, only with an indication of the issues faced in the area, did not proceed in the evaluation. As stated in the editorial policy of the journal, we prioritize texts that contribute to innovation, methodological and theoretical, and especially to examine the role of law, legal institutions and national and international legal systems in social and economic development processes, goals hardly accomplished by mere review of literature.

On the other hand, we highlight the reception of quality texts that deeply addressed important issues. After the evaluation process of the journal, we published in this volume four articles dealing with Human Rights and companies from different perspectives.

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(viii) labor analogue to slavery; (ix) children's workforce; (x) leadership and responsibility; (xi) major developments and impacts on the environment; (xii) free themes about companies and Human Rights.

The research by Cecília Barreto and Victor Vasconcellos, entitled “Transgender: are they overcoming barriers of the job market in São Paulo?”, explored the difficulties of access to the labor market faced by transsexual, transgender and transvestite people. The duo conducted interviews with key actors and social actors to outline the difficulties encountered by the transgender population and possible solutions to ensure full access to the right to work.⁸

Also in the context of vulnerable populations, Regiane Oliveira’s research presented the experiences and reports of workers rescued from situations similar to slavery, in the case of Fazenda Brasil Verde, which was decided by the Inter-American Court of Human Rights. His text entitled “Seeking victims’ perspective on remedy: the case of Brazil Verde Farm’s workers” addresses the desires and needs of the rescued workers and the possible legal remedies to remove them from their vulnerable situation.

The article by Maiquel Wermuth and Joice Nielsson also deals with the case of Fazenda Brasil Verde, but from another perspective. The text entitled “The ‘company-camp’ and the production of ‘naked life’: Human Rights and contemporary labor slave under the biopolitical perspective” examines whether companies that keep workers in slavery can be understood in the Giorgio Agamben’s concept of the “camp”, who doesn’t envision the law as a civilizing counterpoint, but rather as part of the process of production of naked life, articulated to relations of exploitation and domination.

Finally, the text written in co-authorship by Gabriel Galil, Manoela Roland, Daniel de Aragão, Paola Angelucci, Arindo Duque Neto and Rafael Neto brings important criticisms about the accountability of companies. The article entitled “Challenges and perspectives on the development of an international legally binding instrument on business and Human Rights” brings the theoretical references of the “architecture of impunity”, defending the insufficiency of the current model of corporate accountability and suggesting alternatives in search of greater effectiveness.

We hope that the publication of these articles can contribute to the discussions and research on the subject, in its many aspects. We remind you that *Direito GV Law Review* is still open to

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⁸ In this context, it should be noted that the UN High Commissioner for Human Rights recently interpreted the Guiding Principles as guaranteeing the rights of LGBTI persons (lesbian, gay, bisexual, transvestite, transgender, transgender and intersex people) and published the *Standards of conduct for businesses: Addressing discrimination against LGBTI people* (UNITED NATIONS, 2017). This may be an invitation to carry out more researches dedicated to this subject, which still has little academic production, especially in the field of quantitative data.

such discussions through our continuous process of submitting articles and we wish you a good reading!

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