

Business & Human Rights

1. Dialogue on the role of business in society;
2. The UN Guiding Principles on Business and Human Rights (UNGPs);
3. FIFA and Human Rights;
4. Case Study – Access to treatment for HIV/AIDS;
5. Case Study – Framework Convention on Tobacco Control (FCTC)
6. Case Study on Human Rights and the Environment – Climate Change Litigation (pros and cons)
7. Discussion / Conclusions

Dialogue on the Role of Business in Society

How is business organized in society?

Locally?

Nationally?

Globally?

Opening Dialogue on the Purpose of Business in Society

- What is the purpose of the business *corporation*?

Opening Dialogue on the Purpose of Business in Society

- What is the purpose of the business corporation?
- To whom do businesses owe responsibilities?

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- Do businesses have social responsibilities?

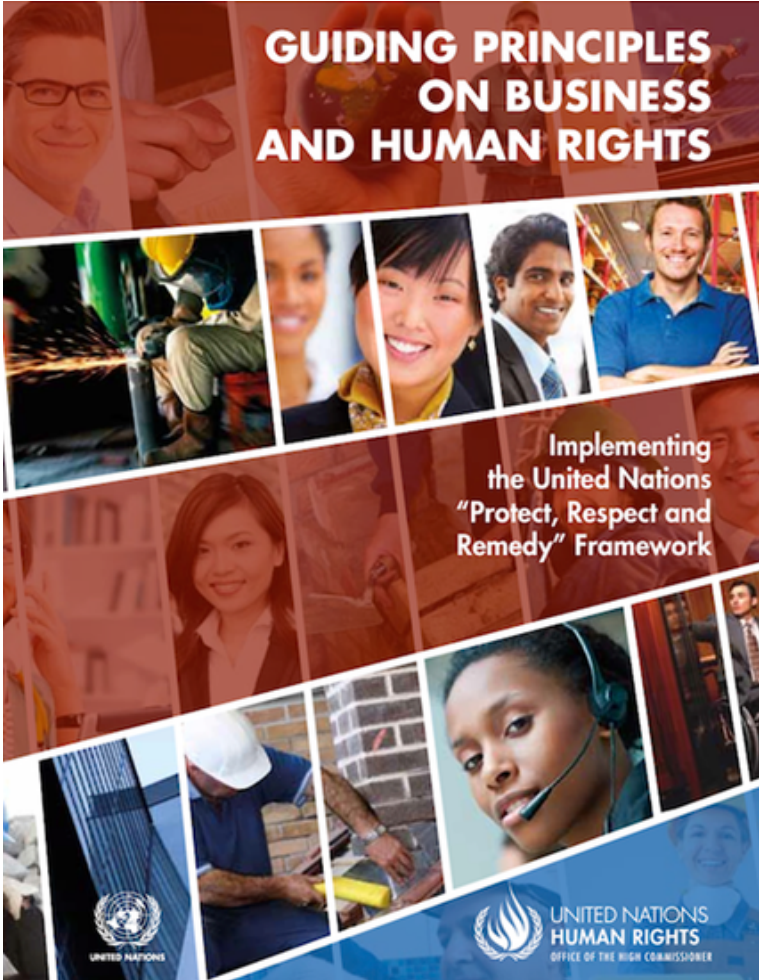
Opening Dialogue on the Purpose of Business in Society

- What is the purpose of the business corporation?
- To whom do businesses owe responsibilities?
- Do businesses have social responsibilities?
- What does it mean for a business to respect human rights?

Opening Dialogue on the Purpose of Business in Society

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- To whom do businesses owe responsibilities?
- Do businesses have social responsibilities?
- What does it mean for a business to respect human rights?
- To whom do managers and company directors owe responsibilities? What about shareholders?

UN Guiding Principles on Business and Human Rights



“Knowing and Showing” Business Respect for Human Rights

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“Knowing and Showing” Business Respect for Human Rights

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- Why would a business want to **know** that it respects human rights?
- Why would a business want to **show** that it respects human rights?
- Who bears human rights **risk**? People or businesses?

UN Guiding Principles on Business and Human Rights

Protect, Respect and Remedy Framework

“The Three Pillars”

- State duty to Protect Human Rights
- Business Responsibility to Respect Human Rights
- The Right to a Remedy

UN Guiding Principles on Business and Human Rights

Reviewing the Protect, Respect and Remedy Framework

- Who/what has a **duty to protect** human rights? Why?

UN Guiding Principles on Business and Human Rights

Protect, Respect and Remedy Framework

- Who/what has a **duty to protect** human rights? Why?
- Who/what has a **responsibility to respect** human rights? Why is this not stated as a duty in the UNGPs?

UN Guiding Principles on Business and Human Rights

Protect, Respect and Remedy Framework

- Who/what has a **duty to protect** human rights? Why?
- Who/what has a **responsibility to respect** human rights? Why is this not framed as a duty?
- What is the **right to a remedy** and how is such a right guaranteed/provided?

FIFA and Human Rights

Report by John Ruggie

Risks to People v. Risks to Business (Recommendation 3):

- “Traditional enterprise risk management systems focus on **risks to the enterprise itself**. When it comes to considering human rights risks, the essential starting point is risk to people”
- “FIFA should include **risks to people** in its systems for identifying and assessing risks associated with its activities and business relationships.”

Case Studies of Business and Human Rights in Global Health Issue Areas

- 1. Access to treatment for HIV infection**
- 2. Framework Convention on Tobacco Control**
- 3. Climate Change Litigation**

1. TREATMENT ACTION CAMPAIGN



TREATMENT ACTION CAMPAIGN

- By mid 1990s, HIV/AIDS affected > 40 million people worldwide.
- Over previous 20 years, > 30 million people died.
- 1999 - Médecines Sans Frontières (MSF) was the global “hub” for the campaign for access to essential medicine.
- At the height of the HIV/AIDS pandemic, a global activist campaign was underway to gain access to expensive ARV drugs.
- Main target of the campaign was “Trade Related Intellectual Property Rights” (TRIPS – WTO).

TREATMENT ACTION CAMPAIGN

- In 1990s, ARV treatment cost \$10,000 – \$15,000 per person/year.



Photo source: The Himalayan Times, September, 2015

<https://thehimalayantimes.com/health/who-ramps-up-hiv-drug-push-with-call-for-early-treatment-for-all/>

TREATMENT ACTION CAMPAIGN

- Global pharmaceutical industry opposed **compulsory licensing**, i.e. opposed allowing domestic generic drug manufacturers to produce the drug at very low cost for export to other countries where people could not afford the drugs.
- Many of the global pharmaceutical companies worked together to oppose compulsory licensing, claiming that it violated WTO Rules (TRIPS).
- 39 Pharmaceutical companies sued the South African government, claiming that South Africa's *Medicines and Related Substances Control Amendment Act* was in violation of WTO Rules.
- U.S. government, under the Clinton administration, supported the Pharmaceutical companies.

TREATMENT ACTION CAMPAIGN

- U.S. Clinton administration brought a case against Brazil at the WTO, using the WTO dispute settlement mechanism, with EU support.
- Activists campaigned on the slogan “patients before patents,” among others.
- After a long and hard fought global campaign, the US withdrew the case against Brazil.
- The WTO issued a declaration stating that public health measures that are necessary for public health are not barred under TRIPs.
- Key issue was whether trade law trumped human rights/public health.

TREATMENT ACTION CAMPAIGN

- WHO Executive Board in 1998 called on its member States:

“...to ensure that **public health rather than commercial interests have primacy** in pharmaceutical and health policies and to review their options to safeguard access to essential drugs.”
- Civil society mobilization was critical: NGOs were involved in the drafting of the resolution.
- In 2001, UN Human Rights Commission (now the Human Rights Council) adopted a resolution on “Access to Medication in the Context of Pandemics such as HIV/AIDS.”

TREATMENT ACTION CAMPAIGN

UN Commission on Human Rights resolution 2001/33

1. *Recognizes* that access to medication in the context of pandemics such as HIV/AIDS is one fundamental element for achieving progressively the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;
2. *Calls upon* States to pursue policies, in accordance with applicable international law, including international agreements acceded to, which would promote:
 - (a) The availability in sufficient quantities of pharmaceuticals and medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them;
 - (b) The accessibility to all without discrimination, including the most vulnerable sectors of the population, of such pharmaceuticals or medical technologies and their affordability for all, including socially disadvantaged groups;
 - (c) The assurance that pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them, irrespective of their sources and countries of origin, are scientifically and medically appropriate and of good quality;

TREATMENT ACTION CAMPAIGN

How did it work?

- Activist campaign involved lobbying and influencing Public Health Ministries, Doctors, and business leaders in the health care/pharmaceutical sectors
- Medical research was undertaken/funded; fund-raising campaigns organized and legal support coordinated for an international campaign.
- Activists targeted companies like Coca Cola, operating globally, with extensive distribution networks. **Why?**
- Heineken, Coke, DaimlerChrysler, Anglo American Gold began to provide treatment for their workers. **Why?**
- World Bank worked with the UNDP to purchase and distribute ARVs.
- Today, treatment with generic ARVs costs about \$150 per year.

TREATMENT ACTION CAMPAIGN – RECENT DEVELOPMENTS

- 2008 – “Hunt Guidelines” proposed by Paul Hunt, Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health.

- Paragraph 45. on “Enhancing shareholder value”:

Pharmaceutical companies operate in complex market and social settings that give rise to a range of responsibilities to various stakeholders. Of course, companies have a responsibility to enhance shareholder value. **This responsibility has to be seen in the context of other social, developmental and human rights responsibilities, especially the pharmaceutical sector’s central societal mission to develop high-quality medicines that are accessible to those in need.**

- Response by Merck to a draft of guidelines was very critical of the “negative and alienating tone” and concerned about “the unintended consequence of supporting arguments for weakening intellectual property protection [2008].
- Debate over the Hunt guidelines continues. Suerie Moon analyzes them in light of the UNGPs. [Moon, Suerie. "Respecting the right to access to medicines: Implications of the UN Guiding Principles on Business and Human Rights for the pharmaceutical industry." *health and human rights* 15.1 (2013): 32-43.

TREATMENT ACTION CAMPAIGN– RECENT DEVELOPMENTS

- India – Novartis lawsuit against India began in 1998. A final decision was reached by India’s Supreme Court in 2013, denying Novartis a patent for “minor changes to existing molecules” in the drug Gleevec.
- Today, 80% of the people treated for HIV in the developing world use drugs produced in India.



Photo source: Chintha, <http://www.chintha.in/images/coverstory/novartis-lawsuit-w-goal.jpg>

2. FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)



FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

- First global public health treaty (entered into force in February, 2005).
- Negotiated under the auspices of the WHO.
- Motivated by “concern of the international community about the devastating worldwide health, social, economic and environmental consequences of tobacco consumption and exposure to tobacco smoke”
- 181 States party to the convention. (most recently, Mozambique in July, 2017)

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

Challenges in negotiation and implementation

Study of transnational tobacco corporations strategic response to undermine the proposed convention:

Weishaar, Heide, et al. "Global health governance and the commercial sector: a documentary analysis of tobacco company strategies to influence the WHO framework convention on tobacco control." *PLoS medicine* 9.6 (2012): e1001249.

- Transnational Tobacco Corporations (TTCs) combined forces to effect a strategic response to undermine the proposed convention.

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

“Frames” used by tobacco companies to undermine FCTC

1. Alleging Damaging Economic Consequences;
2. Depicting tobacco as a high income country issue;
3. Claiming conflicts with trade agreements (WTO rules);
4. Questioning WHO’s mandate to develop a tobacco control treaty;
5. Alleging conflicts with principles of good governance;
6. Alleging conflicts with national sovereignty;
7. Presenting CSR as preferable to State tobacco control policy;
8. Depicting FCTC as setting a bad precedent for other areas;

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

“Frames” used by TTCs to undermine FCTC, cont.

9. Stressing that tobacco is a legal product;
10. Stressing that tobacco regulation should be “flexible”;
11. Depicting tobacco control advocates as extremist, radical and not credible;
12. Claiming that tobacco control infringes personal freedoms;
13. Claiming that tobacco is not harmful or its effects minimal;
14. Focusing on preventing youth from smoking and retailer education, rather than State led tobacco control.

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

“Tactics” used by tobacco companies to undermine FCTC:

1. Targeting national FCTC delegations and political actors (via lobbying and infiltration of organizations and committees with influence);
2. Use of scientists to undermine concerns about health impacts;
3. Enlisting and mobilizing allies (including other industry sectors, umbrella business organizations...);
4. Using stakeholder consultation to secure industry participation in consultations and delay decisions;
5. Using the media to convey messages;
6. Countering nongovernmental organizations (as special interests)
7. Intimidation (threats of lawsuits, etc.)
8. Obstructing ratification and implementation;
9. “Roadshow-type” activities;
10. Forming joint ventures with state monopolies to gain market share.

FRAMEWORK CONVENTION ON TOBACCO CONTROL (FCTC)

Findings and Significance of the Study

- TTCs “focused on trying to prevent what they perceived to be the globalization of tobacco control.”
- Researchers found a “globalization of tobacco industry strategy against effective tobacco control policies.”
- The value of the findings:

“lie in their broader relevance to the challenges of developing innovative, international approaches to combat the global burden of NCDs [non-communicable diseases], including via proposals to extend the FCTC governance model to other NCDs. The four leading NCDs (cardiovascular diseases, cancers, chronic respiratory diseases, and diabetes) account for an estimated 60% of all deaths globally... 80% of this burden occurs in low and middle income countries” [at p 9]

Note on: INTERNATIONAL INVESTMENT ARBITRATION

Philip Morris International v. Uruguay

- International Investment Arbitration Tribunal (ICSID) decision of July 2016;
- Philip Morris International [multinational tobacco company] sought compensation from Uruguay for anti-tobacco measures, including a ban on smoking in public places, taxes, and graphic warnings on packages;
- **WHO** and **FCTC** submitted *amicus* briefs on public health evidence to back up Uruguay's packaging and labeling laws;
- While Uruguay won the case, there is lingering concern about **regulatory chill**. Concern over the Tribunal's decision to hear the case, "put a break on the adoption of similar tobacco control measures in Costa Rica, Paraguay and New Zealand."

ENGAGING WITH BUSINESS ON HUMAN RIGHTS

Philip Morris International and Danish Institute on Human Rights (DIHR)

- Danish Institute on Human Rights engaged with Philip Morris International to conduct a human rights assessment (beginning in 2016);
- But, DIHR ended it's engagement with PMI, concluding that:

 “the UNGPs therefore require the cessation of the production and marketing of tobacco.”
- DIHR notes with concern “the use of **CSR** strategies to legitimize tobacco companies.”
- How might companies use **Corporate Social Responsibility [CSR]** activities to legitimize harmful business activity?
- **Do you agree with the DIHR's conclusion?**

HUMAN RIGHTS AND THE ENVIRONMENT

Climate Change

- Paris Agreement (within the UN Framework Convention on Climate Change – UNFCCC), adopted in December 2015;
- Role of private sector: 100 companies responsible for 71% of global GHG emissions since 1988. [Carbon Majors Report 2017];
- Highest emitting investor owned companies (not State owned): ExxonMobil, Shell, BP and Chevron;
- Highest emitting State owned companies: China (coal), Saudi Arabian Oil Co. (ARAMCO) and National Iranian Oil Co;
- United States announce in June 2017 its intention to withdraw from the Paris Agreement. But, many U.S. cities and companies declared, “we’re still in.”

HUMAN RIGHTS AND THE ENVIRONMENT

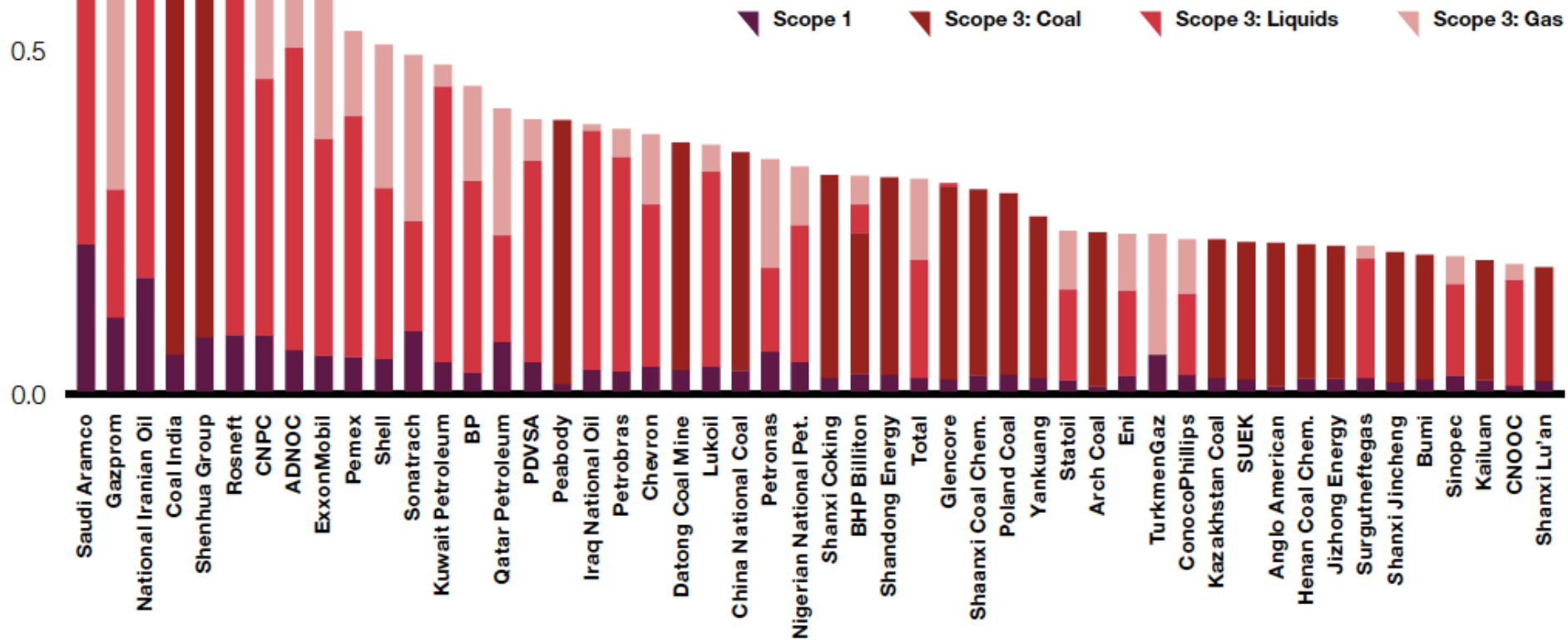
Climate Change

- BHRRC Report noted growing number of climate change related lawsuits;
- What has made climate change litigation more viable over the last ten years?
- What are some of the advantages and disadvantages in bringing climate change lawsuits against major firms?

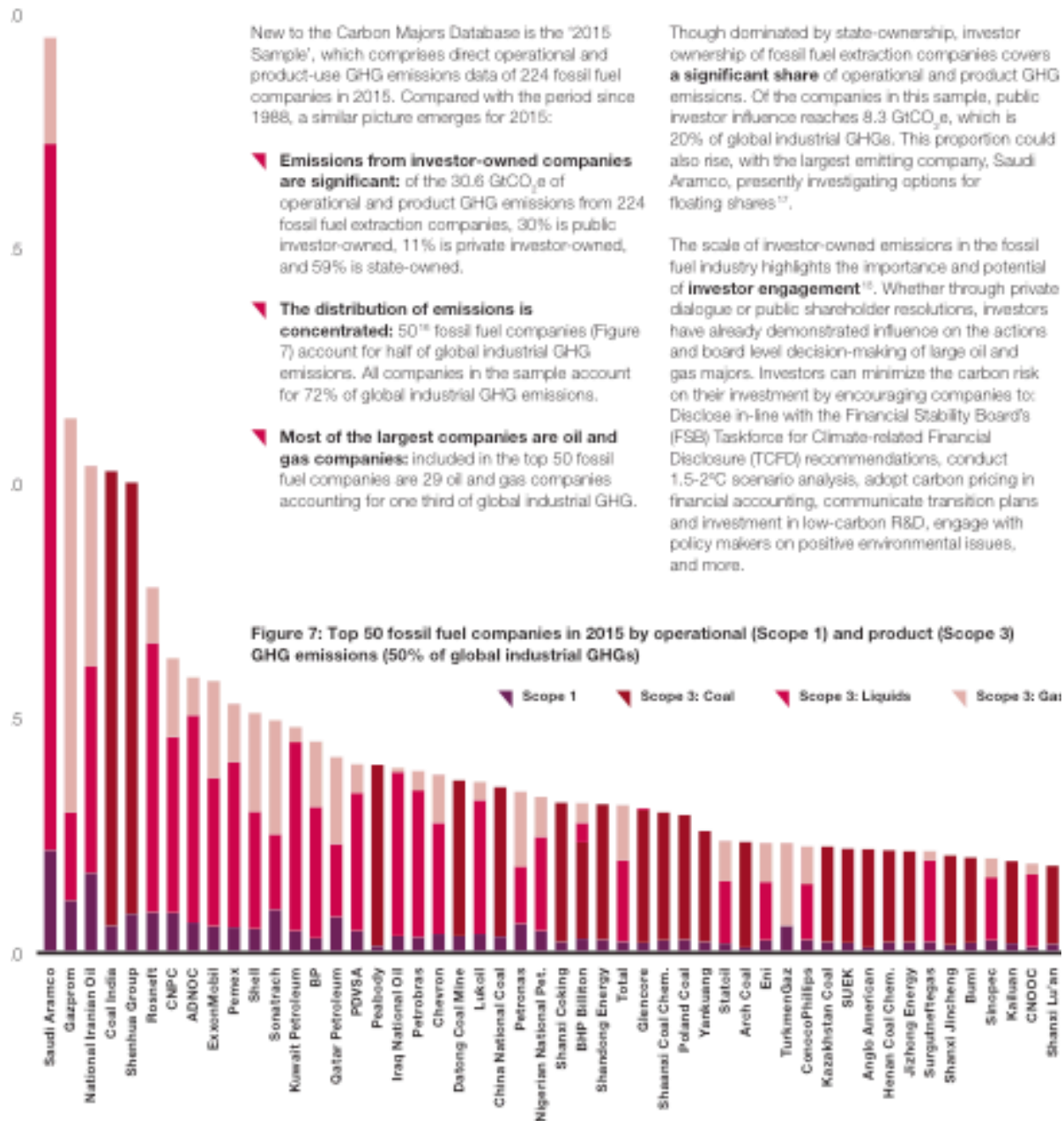
HUMAN RIGHTS AND THE ENVIRONMENT

Climate Change

Figure 7: Top 50 fossil fuel companies in 2015 by operational (Scope 1) and product (Scope 3) GHG emissions (50% of global industrial GHGs)



Source: The Carbon Majors Database, CDP Carbon Majors Report, 2017.



HUMAN RIGHTS AND THE ENVIRONMENT

Environmental impacts of Extractive industry activity



Photo source: Environmental Justice Atlas
<https://ejatlas.org/conflict/chevron-texaco-ecuador>

Thank you