

## **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;
5. Case Study – Framework Convention on Tobacco Control (FCTC)
6. Case Study – Climate Change Litigation
7. Discussion

# The Interdisciplinary Landscape of Business and Human Rights



# Opening Dialogue on the Role of Business in Society

How is business activity 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**

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- To whom do businesses owe responsibilities?

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- Do businesses have social responsibilities?

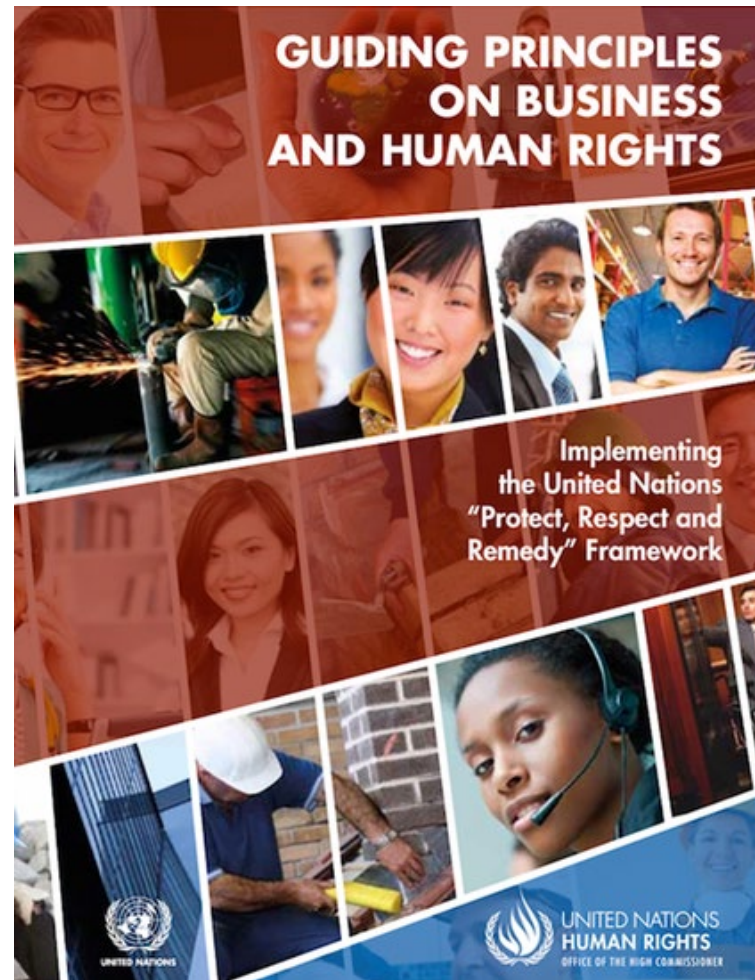
## **Opening Dialogue on the Purpose of Business in Society**

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- 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

- 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?
- To whom do managers and company directors owe responsibilities? Do shareholders have responsibilities?

# UN Guiding Principles on Business and Human Rights



# **UN Guiding Principles on Business and Human Rights**

## **Protect, Respect and Remedy Framework**

### **“The Three Pillars”**

- State duty to Protect Human Rights
- The Corporate 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

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# UN Guiding Principles on Business and Human Rights

## Protect, Respect and Remedy Framework

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

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

# 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**

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

# 1. GLOBAL CAMPAIGN FOR ACCESS TO HIV TREATMENT



# GLOBAL CAMPAIGN FOR ACCESS TO HIV TREATMENT

- 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. (“Access Campaign”)
- 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 the restrictions inscribed in “Trade Related Intellectual Property Rights” (TRIPS – WTO).

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

- In 1990s, ARV treatment cost approx. \$12,000 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/>

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

- Global pharmaceutical industry [PMA] challenged government's that permitted 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 such policies and local laws, claiming that they violated WTO Rules (TRIPS).
- 39 Pharmaceutical companies sued the South African government, claiming that South Africa's *Medicines and Related Substances Control Amendment Act* violated WTO Rules.
- U.S. government, under the Clinton administration, supported the Pharmaceutical companies.

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

- U.S. 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 (including “drop the case” campaign led by MSF), the US withdrew the case against Brazil; the PMA also dropped their case in South Africa.
- 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.

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

- 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.”
- 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.”
- Civil society mobilization was critical: NGOs were involved in the drafting of the resolution.

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

## 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;

# GLOBAL CAMPAIGNS FOR ACCESS TO TREATMENT

## Strategic Pathways

- 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?**
- Today, treatment with generic ARVs costs about \$150 per year. By 2018, 22 Million people worldwide are receiving treatment.
- Today, 80% of the people treated for HIV in the developing world use drugs produced in India.

## 2. TOBACCO CONTROL



## **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. (Mozambique became a party in July, 2017)

## RECENT DEVELOPMENTS: INTERNATIONAL INVESTMENT ARBITRATION

### *Philip Morris International v. Uruguay*

- 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;
- International Investment Arbitration Tribunal (ICSID) decision of July 2016;
- 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)

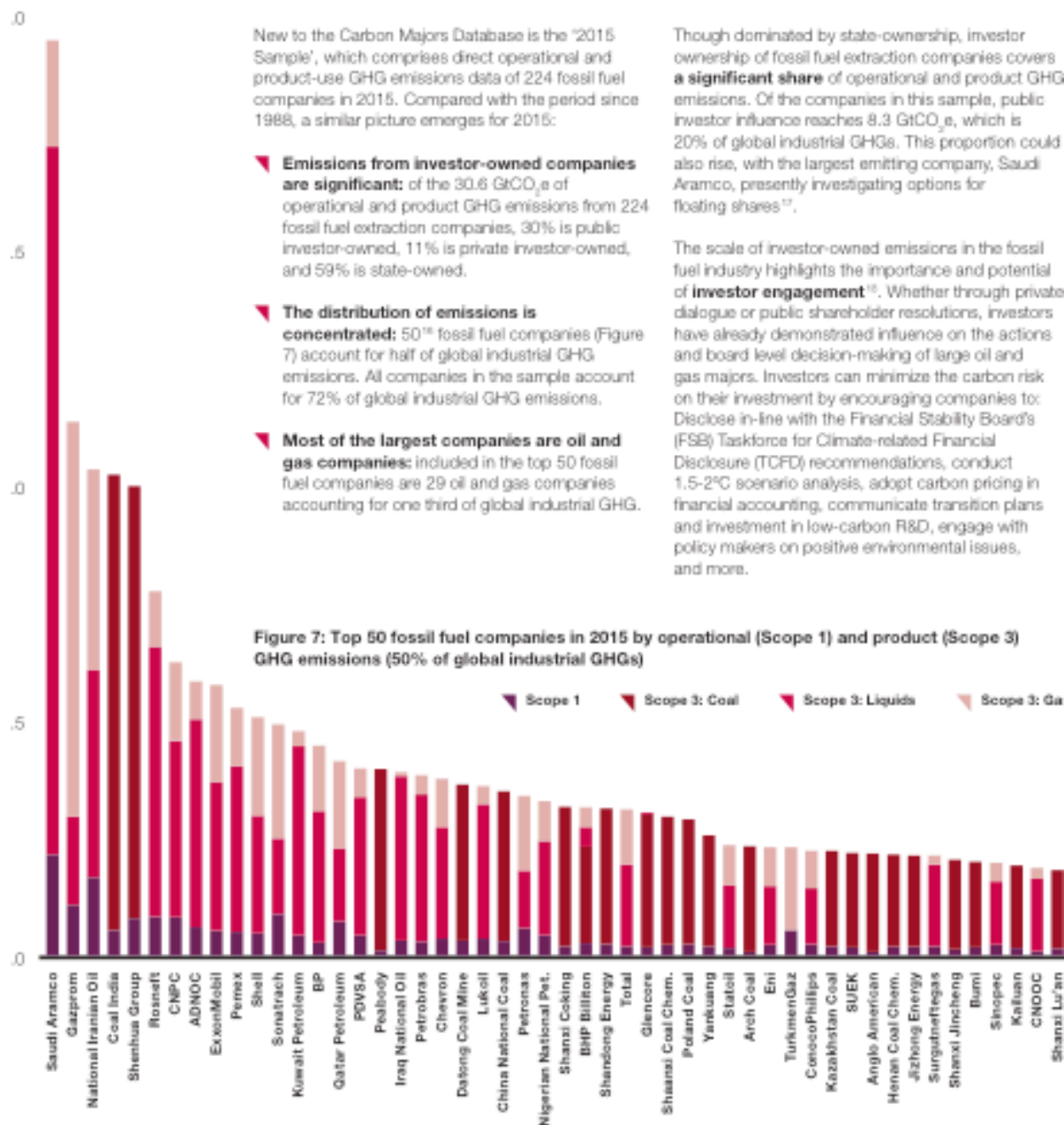
- Danish Institute on Human Rights engaged with Philip Morris International to conduct a human rights assessment (beginning in 2016);
- But, DIHR ended its engagement with PMI, concluding that:

“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 decision to end its engagement?**

# HUMAN RIGHTS AND THE ENVIRONMENT

## Addressing Climate Change – Paris Agreement / Climate Litigation

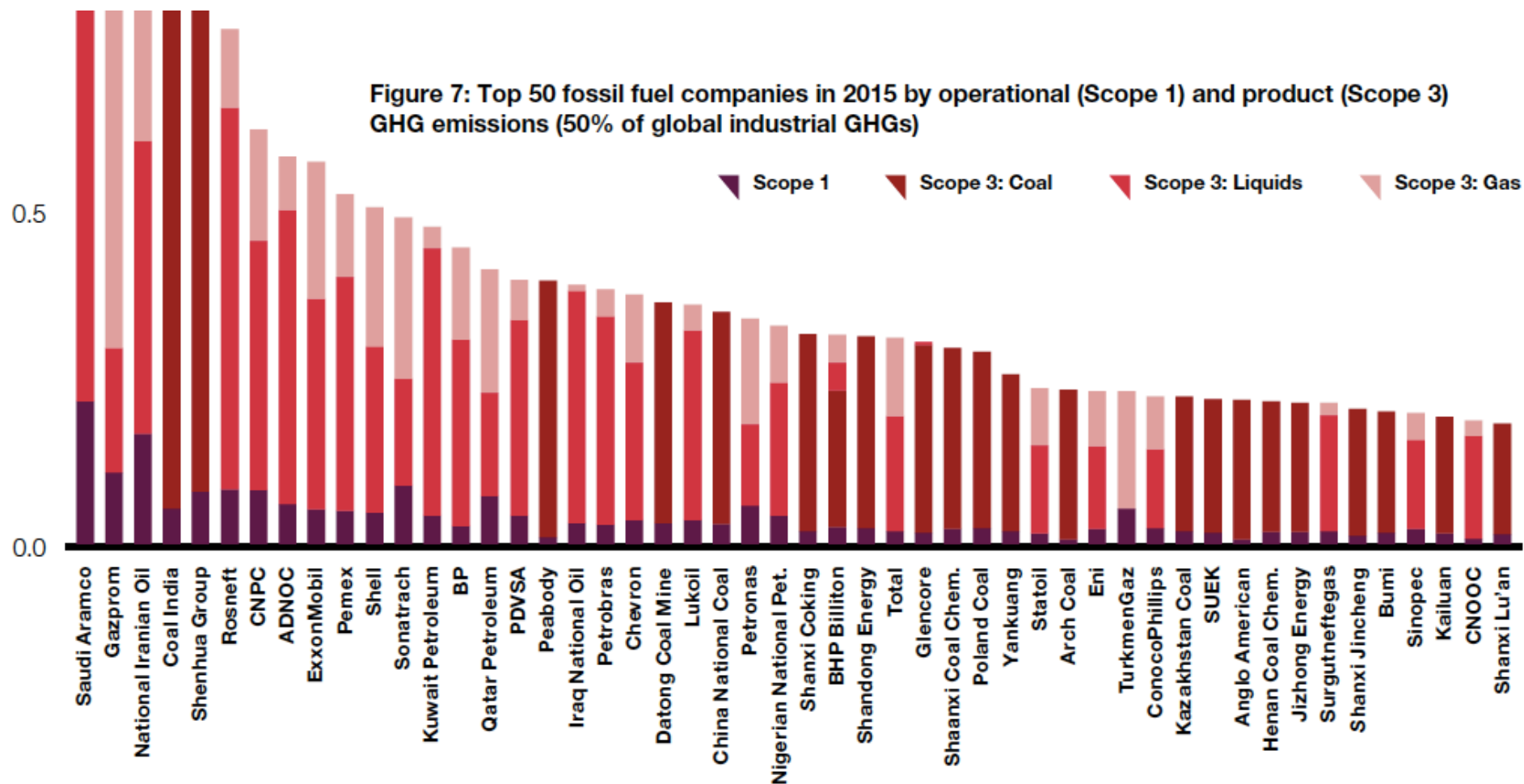
- Paris Agreement (within the UN Framework Convention on Climate Change – UNFCCC), adopted in December 2015;
- United States administration announced in June 2017 its intention to withdraw from the Paris Agreement. But, many U.S. cities and companies declared, “we’re still in.”
- Role of private sector: 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;



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

# HUMAN RIGHTS AND THE ENVIRONMENT

## Climate Change



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

# HUMAN RIGHTS AND THE ENVIRONMENT

## Addressing 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?

## **Reconsidering the role of business in society today**

- What is shareholder capitalism?
- What is stakeholder capitalism?
- What do we mean by short-termism?
- What is long term value creation? How is it different from short termism?
- What is the long term “business case” for respecting human rights?

**Thank you**