

Research Assessment Exercise 2020
Impact Case Study

University: City University of Hong Kong
Unit of Assessment (UoA): 19 - Law

Title of case study: Shaping national and international legal and policy frameworks to address corporate human rights abuses

(1) Summary of the impact

Research about the human rights responsibilities and obligations of corporations conducted at City University Hong Kong has had a strong impact on legal and policy frameworks both nationally and internationally. Dr Deva's research has enabled him to drive implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) across South Asia and East Asia and globally by providing expert support to states in developing regulatory frameworks. At the same time, his critique of the UNGPs contributed to building momentum for a legally binding international instrument, the first two drafts of which he has played a key role in shaping. His research on gender dimensions of the UNGPs has further directly influenced policies at the UN and national levels.

(2) Underpinning research

Dr Deva began researching in the areas of Business and Human Rights and Corporate Social Responsibility in 2000, with a focus on exploring means to hold (transnational) corporations accountable for human rights abuses and strengthening access to remedies for victims. Since joining the School of Law at City University of Hong Kong in 2005, he has pursued his research in this field about various regulatory initiatives at both national and international levels. [R1]

In June 2011, the UN Human Rights Council unanimously endorsed the UNGPs. Dr Deva turned his research expertise to analysing and critiquing the UNGPs in terms of their effectiveness and fitness for purpose in the global context. He co-edited a Cambridge volume, *'Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?'* [R2], which identifies gaps and shortcomings in the UNGPs and makes a strong evidence-based case for a legally binding international instrument to complement the UNGPs.

After the UN Human Rights Council adopted a resolution paving the way for a legally binding instrument in 2014, his research has focussed on the possible content of such an instrument, providing concrete text and principles that should be taken into account by those drafting the treaty. [R3][R4] In particular, his research countered the narrative of the treaty being contradictory to the UNGPs and offered a way forward about two interrelated contentious questions about the treaty's scope: (i) should the proposed treaty apply to all business enterprises, or should its applicability be limited only to transnational corporations and other business enterprises with a 'transnational character'; and (ii) should the proposed treaty cover all international human rights, or only selected gross or serious violations of human rights? [R4][R5]

After his appointment to the UN Working Group in 2016, he launched a 'gender lens' project in September 2017 to research the impact of business operations on women and girls and address the gender-blind approach adopted by business and governments in implementing the UNGPs. He conceived the project objectives, designed a methodology and collaborated with

several institutions across the world to organise regional consultations. The resulting report was based on feedback received from consultations and an open call for submissions. The findings of this project were used to develop a gender framework and guidance for the UNGPs which were presented in a report to the UN Human Rights Council in June 2019 [R6].

(3) References to the research

- R1:** Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (London: Routledge, 2012), pp xxi + 269.
- R2:** Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge: Cambridge University Press, 2013) pp xxv + 424.
- R3:** Surya Deva, “The Human Rights Obligations of Business: Reimagining the Treaty Business”, paper presented at a conference on Human Rights and Transnational Corporations: Paving the Way for a Legally Binding Instrument, organized by the Permanent Mission of Ecuador in Geneva during the 25th Session of the Human Rights Council, Geneva (12 March 2014), pp 1-11: https://business-humanrights.org/sites/default/files/media/documents/reimagine_int_law_for_bhr.pdf
- R4:** Surya Deva, “Scope of the Proposed Business and Human Rights Treaty: Navigating through Normativity, Law and Politics” in Surya Deva and David Bilchitz (eds.), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge: Cambridge University Press, 2017) pp 154-182.
- R5:** Surya Deva, “Connecting the Dots: How to Capitalize on the Current High Tide for a Business and Human Rights Treaty” in Surya Deva and David Bilchitz (eds.), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge: Cambridge University Press, 2017) pp 472-494.
- R6:** Surya Deva, UN Working Group on Human Rights and Business, “Gender dimensions of the Guiding Principles on Business and Human Rights”, UNHRC, May 2019: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/146/08/PDF/G1914608.pdf?OpenElement>

(4) Details of the impact

In June 2011, the UN Human Rights Council unanimously endorsed a set of Guiding Principles (UNGPs) that elaborate the respective human rights obligations and responsibilities of States and business enterprises. A Working Group (UNWG) of five experts of balanced geographical representation was set up to promote and support implementation of the UNGPs by member states. As a direct result of his acknowledged research expertise in the field of corporate human rights abuses and in-depth knowledge of the UNGPs themselves, Dr Deva was appointed as Asia-Pacific representative of the UNWG in 2016. [C1][C4]

His research has led to two key impacts in his role in the UNWG. Firstly, he is acknowledged to be “*exceptionally impactful*” by key UN partners [C2] in moving the business and human rights agenda in Asia and globally. The expertise and technical knowledge he has shared in workshops, national and regional conversations and bilateral meetings with senior politicians and officials, judges and business leaders has placed him in a position of trust and respect at the highest level. He has used this position to initiate and lead on convening the first UN South Asia Forum on Business and Human Rights in partnership with the Business & Human Rights (B+HR) Asia team of the UN Development Programme (UNDP), which “*immediately gave momentum to Business and Human Rights work in India, Bangladesh, Nepal, Pakistan and Maldives, among others*” according to UNDP’s B+HR Asia team [C2]. The same source credits much of the recent progress in South Asia to steps taken by the Indian Government to adopt revised national guidelines on responsible business conduct and launch a draft national action

plan (NAP) that Deva played a critical role in developing. These steps by India have inspired other countries in the region to follow suit in a “race to the top” strategy devised and led by Deva [C1]. In East Asia, Thailand, Malaysia and Indonesia have all “*recently committed, also as a consequence of his good offices and support, to drafting NAPs. They have also asked for Prof Surya to accompany such processes to ensure quality of content*” [C2].

In addition to driving implementation of UNGPs, Deva has conducted further research on the gender dimensions of business and human rights. The ‘Gender Lens to the UNGPs’ project that he designed and led [C1] delivered a much clearer understanding of the differentiated and often disproportionate impact of business activities on women and girls. The resulting June 2019 report [R6] contained a gender framework and specific gender guidance for each of the 31 Principles of the UNGPs. The report was widely welcomed and is now being integrated into the work of states, civil society organisations, business associations and UN agencies such as UNICEF and UN Women [C1][C3]. They are considered “*the single most useful practical tool to guide responsible business practices released since the UNGPs*” by B+HR Asia, who are “*in the process of building an entire pan-Asian awareness raising campaign around them*” and feeding their recommendations into technical exercises to develop National Action Plans in India, Indonesia and Malaysia [C2]. The report is also having an impact internally: “*the UNWG’s entire work has now started giving greater attention and prominence to issues concerning the rights of women, girls and persons with different sexual orientation. Apart from influencing framing of country visit reports, the gender report is also informing the UNWG’s forthcoming reports on human rights defenders and conflicts*” [C1]

Further, Deva has been instrumental in the elaboration of a legally binding international instrument to complement the UNGPs. His publications (in particular R2) led the Ecuadorean Ambassador to the UN in Geneva to invite him to present a paper [R3] at a side event to the UNHRC in March 2014 [C5] aimed at generating support for a joint Ecuador-South Africa resolution calling for the creation of a treaty. After adoption of the resolution by the Council in June 2014, an Open-Ended Intergovernmental Working Group (OEIGWG) was established to elaborate a legally binding instrument. Dr Deva was one of a very small number of independent experts invited as a panellist to all five sessions of the group so far [C6][C7] advising states about both the scope and the content of the proposed treaty. [text removed for publication] In particular, the positive influence on the treaty process of Deva’s 2017 co-edited book [R4] is recognized [text removed for publication].

In July 2018, Deva was invited to “*submit suggestions on the core substantive provisions that should be reflected in the draft of the binding instrument*” [C9]. The impact of his research can be seen in the zero draft in: the adoption of a soft hybrid option (page 172 of R4) in the Preamble and Art 3.1; a proposal to cover all internationally recognised human rights (pages 177-178 of R4) in Art 3.2; the suggestion of a wide definition of businesses with a ‘transnational character’ (pages 168-169 of R4) in Art 4.2 of the zero draft.

The zero draft served as the basis for negotiations during the fourth session of the OEIGWG held in October 2018. [text removed for publication] Some of his suggested revisions have been incorporated into the document [C10]. In particular, the new draft adopts the ‘hybrid option’ more explicitly in Article 3 [C8]. The revised draft was published in July 2019 to serve as the basis for direct intergovernmental negotiations to be held at the 5th meeting of the OEIGWG [text removed for publication].

(5) Sources to corroborate the impact

- C1.** Letter from the Secretary of the United Nations Working Group on Business and Human Rights.
- C2.** Letter from the Leader of the B+HR Asia team, UNDP Asia Pacific
- C3.** Links to NGO website announcements welcoming the report
- C4.** Website of the UNWG showing Deva's membership
<https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>
- C5.** <https://www.business-humanrights.org/en/binding-treaty/side-event-at-un-human-rights-council-mar-2014>
- C6.** Official lists of panellists for first 4 sessions of working group confirming Deva's involvement
- C7.** [text removed for publication]
- C8.** Latest draft of the proposed Treaty:
https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraftLBI.pdf
- C9.** Invitation from the OEIGWG to contribute to the zero draft of the treaty
- C10.** [text removed for publication]