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Human Rights Policy Engagement

The Role of Companies



BSR®

About This Report

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The research conducted for the purposes of this report focused on: an analysis of the drivers and roadblocks to corporate engagement on human rights policy issues in the United States and on the international stage; corporate engagement best practices; direct engagement with corporate partners on pressing policy issues.

Based on this research, BSR has developed recommendations for companies on engaging in advocacy on behalf of important human rights policies, frameworks, and institutions, while highlighting the reasons why the private sector has an important role to play in this space.

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Executive Summary

While many multinational corporations around the world have embraced the UN Guiding Principles on Business and Human Rights (the Guiding Principles) by assessing and mitigating their human rights impacts across their operations and beyond, a recent global reversal of human rights gains creates a new and unique opportunity for business to leverage its influence in support of policy frameworks that protect and support human rights.

The reversals of human rights norms, policies, and enforcement practices, particularly over the past two years, can be felt around the world. From the rise of right-wing nationalist movements to threats against the United Nations' human rights bodies, this reversal has undone many of the achievements built through bipartisan support over the last several decades—achievements that have benefited the private sector in many ways. The alignment between business interests and policies that support and uphold human rights standards are numerous; they include the promotion of the rule of law and the development of stable and predictable geopolitical environments, which are most hospitable to business growth. Human rights policies also help to establish global norms in many areas affecting companies, thereby ensuring a level and fair playing field for issues like labor standards, privacy and freedom of expression issues, and more. Additionally, supporting human rights policies helps companies align their values and actions with those of their employees. Increasingly, employees are demanding that employers reflect their personal values not just in corporations' business operations, but also in the ways that employers engage on policy issues, both domestically and internationally.



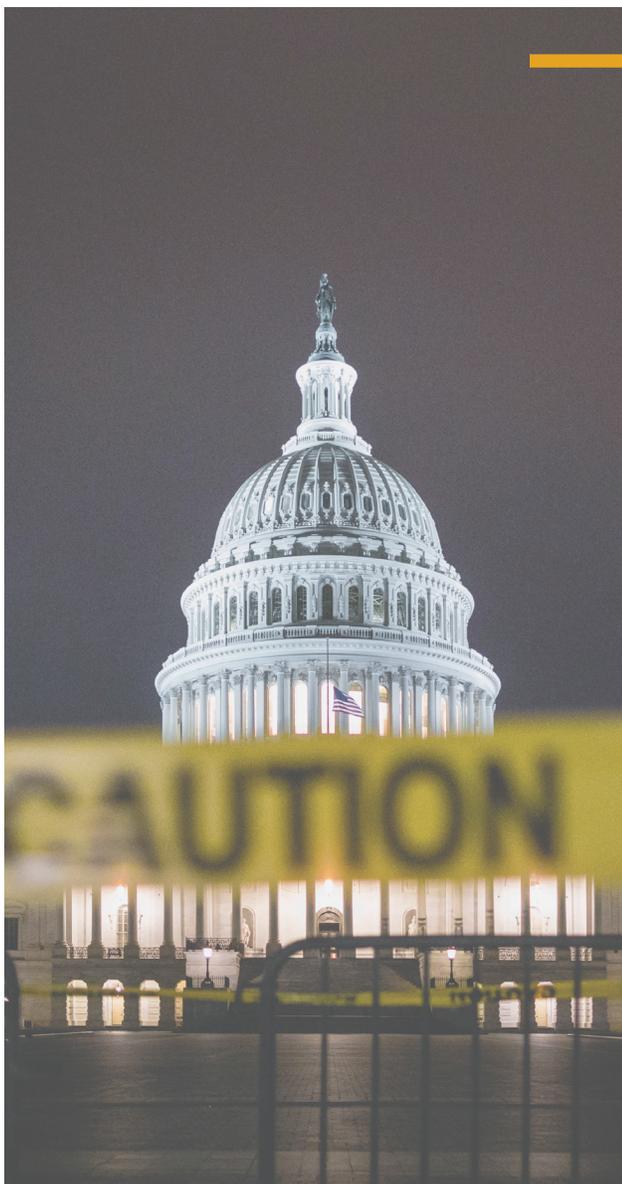
While the benefits to engaging on human rights policy topics are numerous, companies should certainly be aware of the barriers to such engagements. These include a lack of leverage with governments on key policy topics and corporate teams' limited bandwidth, both in sustainability roles as well as government affairs functions. Moreover, companies fear backlash or retaliation from certain administrations against businesses perceived as taking a stance contrary to an administration's policy positions.

While these barriers are significant, companies can and should overcome them, given the severity of the threat to key human rights institutions, policies and frameworks—and the importance of such institutions, policies and frameworks to the private sector. For companies wishing to engage on these important policy questions, BSR suggests taking the following five steps to gain buy-in internally and externally, and to also improve the chances of successful engagement.

- 1 Identify the business relevance of the impacted policy**
- 2 Identify the intangible benefits, such as alignment with corporate or employee values**
- 3 Assess a company's ability to have an impact on the policy issue at hand, then focus on identifying where a company has leverage**
- 4 Understand the political context (In this situation, is the government with which you are working actively opposed to the policy in question?)**
- 5 Navigate tradeoffs to understand existing internal and external barriers and the potential impact of failing to engage**

Engaging on these important topics, while difficult, is essential to protecting the human rights institutions, policies and frameworks that have supported businesses and helped them establish a foothold in developing nations. Human rights organizations and initiatives have done so by creating a more level playing field, strengthening the rule of law, and establishing more business-friendly environments. Companies engaging on these topics will not only gain important reputational benefits with key stakeholders for defending human rights within their spheres of influence, but will also help to ensure that the institutions, policies and frameworks that help them to do business around the world are defended and maintained, as envisioned by the Guiding Principles.

Over the past quarter century, motivated by values and by interests ranging from the need to operate in stable environments to addressing stakeholder expectations, the business community has embraced a commitment to respecting human rights. Major multinational corporations have embraced the Guiding Principles and other industry and issue-specific human rights standards. In addition to—and in support of—this very important development, business has a unique opportunity to support the development of policy frameworks and actions protecting human rights. While business has neither the legitimacy nor the capacity to address human rights-related challenges alone, a full-fledged business commitment to human rights should include constructive public policy engagement.



In recent years, new threats to global peace and security have emerged, as well as rising income inequality. Violent conflict and economic dislocation have also triggered mounting migration and displacement. At the same time, as some governments and the international community have tried to address these challenges, the rise of populism and nationalism and a drift to illiberal democracy in many countries have undermined such governmental and international efforts.

Over the last several years in the U.S. and beyond, a strong political shift has ignited policy reversals on the human rights protections and programs that contribute to the broader environment and enable business to respect and support human rights in the workplace, marketplace, and community. At a time when more companies than ever are addressing human rights issues across their business operations and supply chains, these relatively recent policy changes undermine the state duty to protect human rights, such protections serve

as an essential foundation for and complement to the corporate responsibility to respect human rights. Because of these policy reversals, companies are increasingly exposed to human rights-related risks that they can neither diminish nor manage alone.

This discussion paper explores the ways in which companies can—and should—support public policies and initiatives that attempt to build complementary and mutually reinforcing government and corporate efforts promoting and respecting human rights around the world. Business can demonstrate its support by defending established standards and institutions currently under threat. Companies can also express their intentions by promoting new policies and frameworks that both reinforce the state duty to protect human rights and the corporate responsibility to respect human rights as articulated by the Guiding Principles. Such efforts can create a “virtuous circle” in which business efforts are more successful while governments and others play their role more effectively.

Of course, companies determine their policy and advocacy opportunities carefully, in alignment with established commitments, wider priorities, and available resources. When they decide to engage, there is rarely one right approach or

form of engagement. Instead, companies should approach their possible roles and actions with pragmatic flexibility keeping in mind the issues at stake and their assessment of how they can most effectively contribute to positive outcomes.

This paper briefly explains why certain human rights institutions, policies, and frameworks are fundamental to helping business thrive, both domestically and internationally. It identifies examples of important human rights institutions, frameworks and policies currently under threat, and assesses stakeholder expectations of companies’ role in defending them. Finally, it presents a framework for informing company engagement on human rights-related public policy with governments and international institutions.

At a time when government commitments to protect human rights are diminishing, when rule of law is also under assault in many parts of the world, and when business understands both the practical and principled value of human rights, the opportunity for companies to play an active role in promoting government action to ensure a stable, fair, and predictable operating environment has never been more important.

The Current Climate in the U.S. and Globally

The rollback of human rights protections in the U.S. and around the world is one of the defining features of today's world. Over the past two years, U.S. commitments initially embraced by both Republican and Democratic administrations have been scaled back or abandoned. Most noticeable have been the [U.S. withdrawal from the UN's Human Rights Council](#) in June 2018; the challenge to human rights in the U.S.'s foreign policy through [proposed budget cuts](#) earlier last year; the forced retirement of dozens of senior Foreign Service Officers, and related detrimental changes to human rights [monitoring and reporting programs](#); and statements by the president, two secretaries of state, and other senior officials that have been seen separately and cumulatively to dismiss human rights. The reversal of many gains made over the last four and a half decades (from the Ford through Obama administrations), with bipartisan congressional support, has troubled many in the human rights and broader foreign policy communities.

These reversals are apparent both through the widely perceived erosion of moral authority anchoring the international community's American leadership, and the disruption of specific policies and programs reflecting and reinforcing that authority and leadership. Over the past two years, this erosion and disruption has made human rights less prominent in American foreign policy and public diplomacy. This, even as the U.S. State Department's Bureau of Democracy, Human Rights,



and Labor (DRL) and U.S. Labor Department's Bureau of International Labor Affairs (ILAB) remain largely intact, and dozens of human rights and labor officers at dozens of posts abroad continue to protect human rights activists and to report on human rights violations. Moreover, retreat in Washington comes amidst significant challenges to human rights in other parts of the world.

The worsening environment for human rights is not only a matter of principle and policy, it is directly relevant to business. In the U.S., [examples](#) of such threats to, or rollbacks of, human rights protections relevant to business include:

- A [ban on travel](#) into the U.S. from several predominantly Muslim countries, including for refugees, an action that sparked an immediate outcry from many companies
- Proposed budget cuts to key human rights programs at the U.S. Departments of State and Labor in 2017 and 2018, including cuts to [DRL](#) and [ILAB](#)
- [Repeal of the Fair Pay and Safe Workplaces Executive Order](#), which aimed to ensure that federal contractors were providing safe and fair workplaces for employees, and encouraged compliance with federal labor and civil rights laws
- [Withdrawal from the UN Human Rights Council](#) and a prohibition of State Department/DRL officials from attendance at the November 2018 Annual Forum on Business and Human Rights apparently due to the event's connection to the HRC
- Threats to repeal section 1502 of the Dodd-Frank Act, concerning conflict minerals

- U.S. withdrawal from the Extractives Industry Transparency Initiative, a highly successful multi-stakeholder collaboration to advance transparency of and respect for human rights in the extractives sector, often in countries with very poor human rights records

American leadership's retreat on many important human rights issues comes at a time when democratic values and institutions are also being challenged, civil society is under pressure, and human rights defenders around the world are under attack. According to the Freedom House "[Freedom in the World 2018](#)" report, "71 countries suffered in net declines in political rights and civil liberties, with only 35 registering gains. This marked the 12th consecutive year of decline in global freedom." This is partly due to the U.S.'s retreat "from its traditional role as both a champion and an exemplar of democracy amid an accelerating decline in American political rights and civil liberties." In countries that have historically been democratic and human rights stalwarts, such as France, the Netherlands, Germany, and Austria, right-wing populists have made gains in popular votes and have won parliamentary seats, further threatening many human rights norms and institutions. The currents of populism and nationalism threaten a broader drift to illiberal democracy already apparent in many countries, including the Philippines and Brazil, Israel and Turkey, Poland and Hungary (and, many fear, the U.S.).

The long-term costs of the private sector and other actors's failure to counter such rollbacks on human rights are hard to predict and to quantify. Nonetheless, it is likely that without stakeholders, including the private sector, working together to support human rights policies, we can expect



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— "Freedom in the World 2018",
a Freedom House report

many adverse impacts affecting companies' ability to operate around the world. This includes, but is not limited to, further erosion of human rights standards and rule of law protections around the world, an erosion of U.S. leadership on human rights and continued damage to the U.S.'s longstanding image and negative reactions from stakeholders to the private sector for not using its leverage to address this retreat.

Building on recent examples of corporate activism in the U.S., Europe, and Australia—some led by CEOs and senior executives, others led by employees—an important and urgent new agenda for business advocacy for human rights-related policy is emerging.

This new agenda has antecedents stretching back two decades to the positive, pivotal role played by companies and their representatives; including the U.S. Council for International Business (USCIB), as the U.S. employer representative to the ILO, in developing and supporting the [Declaration on Fundamental Rights and Principles at Work](#) (widely known as the ILO Core Labor Standards). Similarly, dozens of American companies across industry

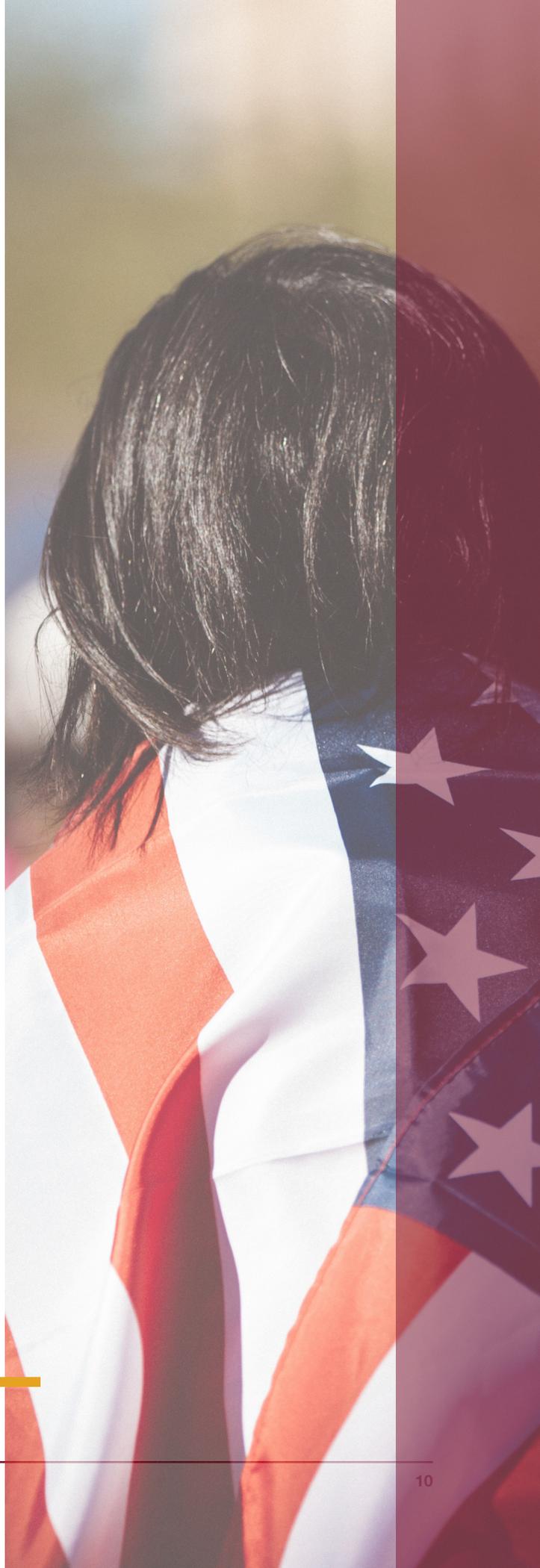
sectors were consulted on the development of the "protect, respect and remedy" framework formalized by UN Special Representative for Business and Human Rights John Ruggie in 2008. These companies, along with responsible investors, then supported the Guiding Principles, which the UN Human Rights Council unanimously endorsed in 2011. Moreover, the U.S. government closely consulted with this cohort and additional stakeholders while developing its National Action Plan for Business and Human Rights, a plan consistent with and supportive of the Guiding Principles. The plan was completed and released in late 2016.

This business agenda for human rights advocacy, undertaken with government collaboration, is, in part, a response to the escalating closing of civil society space around the world. The Business Network on Civic Freedoms and Human Rights Defenders is a forum of nearly 20 multinationals for discussion, coordination and action, many of its members endorsed a [December 2018](#) statement declaring that attacks on civic freedoms and human rights defenders are also attacks on business. There is a growing acknowledgment that the rule of law, accountable governance and civic freedoms (including the freedoms of expression, assembly and association) on which both civil society and business depend— exist in a shared space. This shared space is critical for civil society to exist and to exert accountability. It is also crucial for companies's ability to spur entrepreneurship and innovation and, in turn, to secure profitable and sustainable business environments.

The report "[Shared Space Under Pressure](#)", released in September 2018, reflects and reinforces the emergence of this agenda through a comprehensive normative and operational framework for companies to determine whether—and, if so, how—to act

consistently with the Guiding Principles in certain situations. The report advises companies to act with pragmatic flexibility—sometimes privately instead of publicly, and collectively instead of individually—depending on the circumstances, and urges them to consider the risks not only of action, but of inaction as well.

The current weakening of human rights protections and threats to human rights policies, institutions, and frameworks are a clear challenge to the collaborative, normative, standard-setting agenda of the past two decades. Major multinationals and international institutions, certain governments, and elements of civil society—from labor rights to digital rights—have coalesced around that broadly affirmative agenda—even though they have not always aligned with specific issues. Now, with human rights standards and norms under pressure, and in some cases, facing direct threat, business has an opportunity (and a responsibility) to support and protect the very institutions and frameworks that they have helped to develop in their mutual interest.



Business Objectives

As with many environmental, social, and governance (ESG) issues, in addition to legal and principle-based reasons for promoting policies that support private sector action on human rights, multiple business drivers also mold such actions. For human rights, these reasons range from a desire for transparent operating environments based on the rule of law, to meeting employee expectations. Another reason is activating governments to address human rights concerns created by the actions of host countries when necessary. These business drivers include promoting the rule of law and consistent standards, setting norms in a changing environment, improving stakeholder relations, aligning public policy with ESG commitments, and employee expectations.



PROMOTING THE RULE OF LAW AND CONSISTENT STANDARDS

Business has an interest in ensuring the rule of law and transparent legal systems in the countries where they operate. Environments with clear laws and legal transparency are more predictable and stable, making it easier for companies that respect human rights to succeed without being competitively undercut by other businesses. Operating across jurisdictions with more or less consistent standards is also more cost efficient, especially for companies with extensive global supply chains.

While companies can take steps on their own to advance these interests, working with their home country governments is valuable, along with direct company engagement with host country governments. Moreover, international institutions set common standards and promote best practices that inform company policies, practices, and learning.



SETTING NORMS IN A CHANGING ENVIRONMENT

Business engagement on human rights public policy is also important in light of complex and sensitive emerging issues, most of which relate to new technologies and their deployment. Questions swirl around topics like privacy, data protection, protection of democracy, and the potentially discriminatory effects of technologies such as artificial intelligence (AI); facial recognition; the internet of things; as well as the use of existing technologies, such as video uploads.

Recent events have revealed that no consensus yet exists about how to enable innovative technologies in ways that advance human agency while protecting human rights. Indeed,

Facebook founder and CEO Mark Zuckerberg has recently made high-profile calls for policy solutions, just as Microsoft and others have called for policies concerning AI, facial recognition, and other new tools. The World Economic Forum’s Centre for the Fourth Industrial Revolution was founded in 2018 as a hub for policy innovation around emerging technologies. While creating policy can be a slow process, with the absence of regulations in recent years, social cohesion has been harder to maintain, companies have faced significant challenges, and there is a new risk, too: that technologies will not have the social acceptance to be deployed. Business engagement with policymakers—with a human rights emphasis—can help avoid such outcomes.



IMPROVING STAKEHOLDER RELATIONS

What are a company’s obligations when it comes to engaging on human rights policy? The Guiding Principles state that “business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”¹ The Guiding Principles set forth expectations for company human rights policy frameworks, due diligence processes, and remedy mechanisms. However, they do not explicitly address company responsibilities around human rights-related public policy as part of the corporate responsibility to respect human rights alongside the state duty to protect human rights. Are companies expected to support legislation and regulation promoting human rights? Conversely, are companies acting against the spirit, if not the letter, of the Guiding Principles if they lobby against such legislation and regulation or otherwise support public policies that appear to hinder human rights?

It is also important to note that governments sometimes engage by facilitating multi-stakeholder coalitions, which can usefully build bridges and set “soft law” standards that achieve similar goals as laws and regulations—sometimes more rapidly than via the formal policymaking processes. This model has worked successfully with issues ranging from supply chain labor and revenue transparency to the provision of human rights safeguards for security arrangements in the extractives sector.



ALIGNING PUBLIC POLICY WITH ESG COMMITMENTS

Many stakeholders, most notably investors, have increasingly pressured companies to advocate for policies supporting workers and human rights, and to avoid the misalignment of lobbying with ESG commitments. Human rights in general have seen an uptick in shareholder attention; increasingly, shareholders are demanding transparency on companies’ lobbying efforts and alignment with sustainability and human rights commitments.

For example, a group of 70 investors, including socially responsible investors (SRIs), pension funds, asset management companies, and nonprofit institutional investors recently filed [shareholder resolutions](#) with at least 33 companies requesting “disclosure reports that include federal and state lobbying payments, payments made to trade associations and welfare groups used for lobbying and payments to any tax-exempt organization that writes and endorses model legislation.” Their efforts focus on pressuring companies to align these lobbying efforts with the corporations’ sustainability and human rights commitments, arguing that opaque lobbying practices carry reputational and financial risk for companies, particularly “when a company’s lobbying, done directly or through a third party, contradicts its publicly stated positions and core values. Disclosure allows shareholders to verify whether a company’s lobbying aligns with its expressed values and corporate goals.” They cite “drug pricing, net neutrality, sick leave, shareholder rights and tobacco” as areas where lobbying misalignment is common. Shareholders also focus on the importance of transparency in individual lobbying activities as well as lobbying conducted by trade associations, which are not required to disclose their funding sources, in driving alignment between sustainability and human rights commitments and policy engagements.

Similarly, in October 2017, the United States-based Interfaith Center on Corporate Responsibility (ICCR) launched the Investor Alliance for Human Rights (IAHR), which focuses on building longstanding socially responsible and faith-based investor interest in human rights issues, with the long-term goal of extending that interest to mainstream investors.² In its first year, IAHR was active in mobilizing investors on human rights-related policy issues ranging from gender equality to migrant and refugee rights.

In his annual letter to CEOs, BlackRock Chairman Larry Fink writes that “every company needs a framework to navigate this difficult landscape [referring to a current climate of fundamental economic changes and the failure of government to provide lasting solutions], and that it must begin with a clear embodiment of your company’s purpose in your business model and corporate strategy.” That strategy includes [how companies engage on policy questions affecting their stakeholders](#), including customers, employees, investors, and the communities in which they do business.



EMPLOYEE EXPECTATIONS

Increasingly, meeting employee expectations is one of the strongest drivers for business action on human rights. In one survey,³ three-quarters of millennials indicated that they consider a company’s sustainability commitments, including human rights, in deciding where to work, and [two-thirds](#) report that they would not accept a job with a company that did not have a strong sustainability program. Companies that demonstrate such commitment and action may also strengthen employee engagement while also enhancing their overall

ability to attract and retain talent. When an employer's statements and actions appear inconsistent with the company's expressed values and commitments, today's employees take action. Over the past several years, employees have walked out over the [handling of sexual harassment claims](#); [censorship and data privacies](#); [the sale of products which may be used to further human rights abuses](#); and [contracts with U.S. government agencies](#), entities possibly connected to human rights abuses, specifically connected to [weapons contracts with human rights implications](#).

Immigration-related human rights issues have also galvanized corporate activism. [CEOs](#) and employees of major companies have united in opposition to the Trump Administration's travel ban on people from certain majority Muslim countries. Most dramatic has been corporate support for the Deferred Action on Childhood Arrivals (DACA) program, which designated a special status for undocumented individuals brought to the U.S. as undocumented children, known as dreamers. Employee pressure was part of the reason why over 100 CEOs, including those from IBM, Johnson & Johnson, Apple Inc., General Motors, Amazon.com, Microsoft, Visa and Target Corporation [called publicly for Congress to extend the DACA program](#). [The letter](#) emphasized the economic value immigrants bring to the U.S. and the bipartisan effort by these companies who value immigrant and DACA workers. IBM sent employees to Washington, D.C. to share their personal stories with lawmakers. Companies not only voiced disapproval over this policy change, but over one hundred companies are also [engaging with policymakers to support a DACA solution](#) to help dreamers.

While CEO activism has also attracted attention in the U.S. in connection to human rights issues related to racism, immigration and LGBTQ rights, employee activism may prove to be the more dynamic factor driving overall corporate activism in the next decade.

Barriers to Engagement

While there are many solid business reasons to engage on human rights policy advocacy, barriers also present challenges to such action.

Overall, the current political climate in the U.S., which has experienced a clear retreat from international norms and institutions, including those related to human rights, poses a challenging environment for engagement on human rights policy issues. Moreover, in dealing with a White House that treats opposing voices harshly, companies are understandably reluctant to take positions that counter the current administration's.

Throughout 2018, BSR engaged companies, primarily through sustainability leaders, to identify engagement opportunities related to human rights policy issues through the Business and Human Rights Action Platform. Through that platform, efforts were undertaken, with limited success, to mobilize statements on behalf of:

- U.S. government funding for the democracy accounts (including support for the National Endowment for Democracy, its Center for International Private Enterprise, and the Solidarity Center, closely aligned respectively with the U.S. Chamber of Commerce and the AFL-CIO)
- Support for continued U.S. participation in the UN Human Rights Council
- Focus on human rights in U.S. foreign policy and diplomacy on the part of newly confirmed Secretary of State Mike Pompeo



CE LINE - DO NOT

- U.S. government funding for the U.N. Office of the High Commissioner for Human Rights (OHCHR)

Platform participants identified several hurdles to policy engagement. For companies wishing to become more active with human rights policy, it is important to be aware of hurdles to understand and overcome them. In the Framework for Engaging section below, we present ideas for overcoming these barriers.

The key challenges preventing or limiting companies from engaging on human rights policy issues include:

- **Limited bandwidth and lack of business prioritization:**

Many companies described the current political environment as so challenging and contentious that they limit government affairs teams to focusing on the policy priorities that are most fundamental to a company's business objectives—tax, trade, and regulation, above all. Tumultuous politics and high stakes related to these policy issues since 2017 have made it difficult to justify focusing on concerns beyond the basics.

- **Internal silos:**

In many cases, government affairs teams and corporate responsibility/sustainability/human rights teams had limited interactions as they focused on those overriding priorities.

- **Fear of backlash:**

Companies have reported fears of backlash or retribution originating from two key places. Some fear that the White House will retaliate against

statements or actions that appear to challenge or oppose its policies and priorities, especially those related to trade, immigration, and engagement with international institutions. Many companies also fear alienating consumers in an increasingly polarized environment. Therefore, they stick to a neutral or middle-of-the-road approach to policy engagement, even as a few have aligned their brands with controversial stances (as with Nike's decision to feature Colin Kaepernick in its advertising).

- **Lack of leverage:**

Companies have expressed reluctance to engage on an issue if they risk being the lone voice taking a position. This is exacerbated by a “wait and see” approach that many companies take, holding out for another company to engage before committing to their own statement or action (even expressing a concern in a private letter or meeting). When all of the companies potentially interested in engaging on a topic wait for someone else to take the lead, inaction inevitably results.

While these barriers are significant, they can be overcome, as demonstrated by many of the examples cited in the next section, Examples of Successful Policy Engagement. In the final section, Framework for Engaging, we present recommendations for companies as they approach these important and urgent issues.

Examples of Successful Policy Engagement

While the current urgency of policy engagement may be new, given the pressure on human rights around the world, companies have frequently engaged on such policy questions. There are many recent examples of successful engagement that offer lessons, including:

■ **The Business Coalition for ILAB:**

Comprised of leading companies including Gap Inc., Hasbro, and Mars, the Business Coalition for ILAB urged Congress to approve the budget for ILAB, a program that provides invaluable information and engagement on labor and human rights standards around the world. ILAB is responsible for risk management resources frequently used by companies, including the List of Goods Produced by Child Labor or Forced Labor. Participating companies' collective effort ultimately led to the approval of a larger budget, which included continued funding for the [ILAB program](#). Company support for ILAB amidst a threat to its funding reflected longstanding engagement with the bureau's programs and personnel through administrations of both parties, often facilitated by USCIB.

■ **North Carolina bathroom bill response:**

In March 2016, when the state of North Carolina passed the Public Facilities Privacy & Security Act, or HB2, compelling schools and public facilities containing single-gender washrooms to only allow people of the corresponding birth-certificate sex to use them, [companies used their weight to send a strong message to North Carolina's government](#) by pulling out of major business plans, events and developments, amounting to projected \$3.76 billion in lost business over the span of a dozen years. As a result of enormous pressure from both the private and public sectors, the bill was repealed in March 2017. Similarly, [many companies joined campaigns](#) in Texas, Washington, and elsewhere fighting proposed laws that would discriminate against transgendered people.

■ **Support for OHCHR:**

With the 2017 launch of a 5-year partnership, Microsoft has been a key corporate partner of OHCHR. The initiative includes a [\\$5,000,000 grant from Microsoft to OHCHR](#) which will fund the development and use of advanced technology designed to better predict, analyze, and respond to critical human rights situations. Microsoft was also a leading supporter of the development and publication of the UN Standards of Conduct for Business, designed to tackle discrimination against LGBTI people.

■ **Corporate support for federal privacy law:**

Increasingly, information and communication technologies (ICT) sector companies are calling on the U.S. to adopt a federal privacy law that would provide a single set of rules governing how companies protect user data, similar to the General Data Protection Regulation (GDPR) in Europe. Supporting companies include Apple Inc., Facebook, Google and Cisco. In addition to wanting to counter the significant public backlash ICT companies have faced over data privacy concerns, the companies also believe that a streamlined federal privacy law in line with GPDR will lessen their compliance burden by creating consistent and predictable standards.

■ **Withdrawal from trade associations:**

Companies must disclose the money they spend on lobbying efforts. By contrast, trade associations do not have to disclose the names of the individuals and companies who fund them, allowing

companies lobbying for or against issues not aligned with human rights or sustainability commitments to hide behind those trade associations. Recently, Royal Dutch Shell [“became the first major oil and gas company to announce plans to leave a U.S. refining lobby because of disagreements on climate policies, citing \[Shell’s\] support for the goals of the Paris climate agreement.”](#) While this decision was not based on human rights considerations, it nonetheless establishes a model for engaging with trade associations or lobby firms whose activities contradict human rights and other sustainability commitments.

■ **CEO activism on migration, race, and more:**

Since 2017, we have seen historic levels of CEO activism and engagement on social and political issues, including many related to human rights. Some of these issues may not have related directly to business, although they certainly have significant impact on the environment in which companies operate, affecting communities, employees, and more. [CEOs have been vocally opposed to the policy of separating of migrant children from their parents at the U.S.’s southern border, against the travel ban on migrants and refugees from predominantly Muslim-majority countries, and President Trump’s reaction to white nationalist violence in Charlottesville, Virginia.](#) The last resulted in many [CEOs resigning from White House industry advisory councils.](#)

Statement from
Inge Thulin, Chairman of the
Board, President and CEO, 3M



Sustainability, diversity and inclusion are my personal values and also fundamental to the 3M Vision. The past few months have provided me with an opportunity to reflect upon my commitment to these values.

I joined the Manufacturing Jobs Initiative in January to advocate for policies that align with our values and encourage even stronger investment and job growth – in order to make the United States stronger, healthier and more prosperous for all people. After careful consideration, I believe the initiative is no longer an effective vehicle for 3M to advance these goals. As a result, today I am resigning from the Manufacturing Advisory Council.

At 3M, we will continue to champion an environment that supports sustainability, diversity and inclusion. I am committed to building a company that improves lives in every corner of the world.

Statement from **Kenneth C. Frazier**,
Chair and Chief Executive Office, Merck

I am resigning from the President's American Manufacturing Council.

Our country's strength stems from its diversity and the contributions made by men and women of different faiths, faces, sexual orientations and political beliefs.

America's leaders must honor our fundamental values by clearly rejecting expressions of hatred, bigotry and group supremacy, which run counter to the American ideal that all people are created equal.

As CEO of Merck and as a matter of personal conscience, I feel a responsibility to take a stand against intolerance and extremism.



Statements from 3M and Merck executives on resigning from Trump's business councils shared on Twitter (@3M, @Merck)

Framework for Engaging

As we have noted, companies reflect upon multiple considerations in determining whether and how to dedicate resources to influencing public policy decisions regarding human rights. Companies consider several internal and external factors to come to these decisions. Overall, five main questions should be addressed:

- 1 Is the issue relevant to business, and relevant to our company's interests and operations?**
- 2 Are there intangible benefits to be gained by engaging, or risks to be incurred by not engaging?**
- 3 Can we make an impact?**
- 4 What is the political context of the issue at hand?**
- 5 How do we manage any trade-offs relative to important relationships and other priorities?**

Below, we outline several factors that companies can consider in deciding when to engage. Overall, we believe that companies should evaluate these factors with the overall objective of aligning lobbying with their human rights and sustainability agendas and commitments. In presenting this framework, we have tried to acknowledge that human rights issues are sometimes considered extraneous to business, i.e., feel-good or political issues somehow irrelevant to business, or, more often, in conflict with narrowly defined “true” business objectives. Therefore, we have included intangible factors that can, and should, be seen as potentially valuable results of policy engagement on human rights issues, and creating social and political capital with important stakeholders.

We believe the following questions merit consideration:



BUSINESS RELEVANCE

Does this issue have an impact on our business?

First and foremost, it is essential to consider whether and how the issue in question is relevant to business on the whole, and to certain industries and companies specifically. In 2017, companies in different industries expressed their opposition to the Trump administration's restrictive immigration policies adopted targeting Muslims; some corporations saw them as relevant to a broad swath of companies. Conversely, many collaborative efforts in recent years have been industry-specific, whether security and

human rights initiatives in the oil, gas or mining sectors; or supply chain issues at the heart of the apparel and footwear industries.

Thinking broadly is essential when determining whether an issue is relevant to a specific company. For example, some issues address the rule of law, which might seem tangentially or very generally relevant to business, and therefore a lower priority. Yet efforts to preserve the rule of law can pay dividends both for the general operating environment—the shared space—not only of the rule of law, but also for the accountable governance essential to profitable, sustainable business.

Considering the connection to a company’s employees, the communities in which a company operates, and a company’s customers is also valuable when determining relevance. The groundswell of employee activism on diversity and inclusion, immigration, military contracting, privacy, and other issues demonstrates how topics that may not have previously seemed relevant to business now are. Customers are also increasingly—if inconsistently—attentive to human rights issues, with more [polling data](#) suggesting they want companies to support their (the customers’) values.



INTANGIBLE BENEFITS

Is there a values-based reason to prioritize the issue?

In addition to the potential direct, tangible, financial benefits of engagement on some issues, other types of benefits can also have positive results for business.

As indicated above, engagement on issues relevant to employees, communities, and customers can deliver goodwill and a strengthened sense that a company’s actions are in harmony with its stated values. Outward alignment with corporate values can play a powerful role in making the case for engagement and should not be underestimated.

In addition, engaging on human rights issues can create a foundation for building, strengthening, or repairing relationships with key stakeholder groups. For example, Microsoft has worked in concert with human rights and privacy advocacy groups to promote policy frameworks relevant to emerging technologies. This focus serves not only the company’s business interests (creating a predictable framework for bringing new technologies to market), but also strengthens relationships with advocacy organizations. In an environment where trust between companies and stakeholders can be tenuous, this approach can foster trust, which benefits all involved.



OPPORTUNITY FOR IMPACT

Is this issue within our sphere of influence? Do we bring a credible voice on the issue? Is there an opportunity to build an industry coalition? Is there a willing partner in the policymaking world?

Engagement should also align with opportunities for meaningful impact. Impact may be linked closely with relevance: Policymakers are more inclined to listen when a company has a stake in the outcome of a policy or initiative. Moreover, companies can benefit from building relationships and earning credibility with relevant policymakers, earning goodwill for their support of certain institutions and programs beyond their own immediate interests. In the U.S. context, key agencies focused on human rights are the State Department's DRL, USAID, and the Labor Department's ILAB.

The first two years of the Trump administration have created a greater need for companies to engage in preventing policy backsliding, a shift from promoting policy advances. In addition to promoting, a willingness to prevent remains an important and urgent opportunity for impact, especially in contrast to the past several decades, when a high degree of human rights policy continuity flowed between Republican and Democratic administrations alike.



POLITICAL CONTEXT

Is there a governance gap? Does the government in question pose a barrier or a threat to human rights? Can the government be a human rights ally?

Understanding the political context affecting human rights policies is important before deciding whether and how to engage with the topic. For example, is the problem that a government action interferes with human rights, or that governments are failing in their duty to protect? Or is there a lack of proper governance on a human rights issue; perhaps poor or unenforced non-discrimination laws, which can be addressed through proper engagement with government authorities? These examples require a different course of action than a situation in which a government or one of its branches, is a potential ally. In many instances, companies may identify allies in government partners for addressing human rights impacts in foreign markets. For example, organizations like USAID, the United Kingdom's Department for International Development (DIFD), Germany's Gesellschaft für Internationale Zusammenarbeit (GIZ), and other development agencies have been strategic partners with the private sector in promoting human and labor rights in developing nations.

Before a company engages in support of or defense of human rights policy, it is essential for the organization to understand the policy's political context and its threats—and to identify strategic allies for engagement. A mapping of such stakeholders and their position or impact on the issue is a critical step prefacing engagement on a policy issue.



NAVIGATING TRADEOFFS

What are the internal/external barriers to engaging? Does this impact other core business objectives?

As much of this paper makes clear, multiple internal challenges can keep companies from leveraging their assets to advocate for human rights policy frameworks. These challenges relate to limited resources; the incentives and priorities of the government relations function; and, at times, the corporate responsibility/sustainability team's relative lack of influence over a company's overall policy agenda. Moreover, policymakers don't always prioritize these issues, whether due to an understaffed executive branch or political opposition to protecting human rights through international cooperation. There are no simple solutions for these dilemmas. Nonetheless, pressure to align internal advocacy and external corporate responsibility and sustainability strategies with policy advocacy is essential.

Companies must also consider the risks of not taking stances on certain issues, as well as of taking them even when controversial. While there is an understandable reluctance to take on the Trump administration, the issues and policies, institutions and programs at stake still warrant consideration, as do the expectations of a company's employees and customers, stakeholders and shareholders. There are also short- and long-term political and reputational factors to weigh.

Companies are ill-advised to pick fights with this administration (or governments anywhere). At the same time business operates in increasingly polarized political environments where never taking a stand is inadvisable. A useful caution to companies in this environment is to avoid partisanship—on either side—but to support and defend policies and programs that over the years have commanded wide, if not universal, bipartisan support of corporate America and the United States of America.

Conclusion

As the Guiding Principles make clear, the corporate responsibility to respect human rights entails a range of activities—from due diligence, monitoring and remediation to making policy commitments and reporting on progress. In an environment where human rights are under threat and when the key institutions, frameworks, and policies that have upheld and supported the human rights regime are being challenged, companies can step up to slow the rollback of these important protections, and, in fact, they have a responsibility to do so. The expectation that companies can supplement, if not supplant, governments—and fill governance gaps—is a core premise of the Guiding Principles. Moreover, a variety of stakeholders, including investors, consumers, and employees share this expectation.

Engagement on these issues is important for a variety of reasons, all of which ought to be considered carefully. The human rights institutions, policies, and frameworks in question have supported businesses and helped them establish a foothold in developing nations by creating a more level playing field, strengthening the rule of law, and establishing more business-friendly environments. Furthermore, companies that defend human rights within their spheres of influence stand to reap important reputational benefits with key stakeholders. Conversely, they stand to suffer significant reputational harm for failing to do so, or for lobbying against important human rights topics, particularly if those engagements run contrary to a company's public commitments and values.

Engaging in these issues is understandably very difficult in today's polarized political climate. Companies face limited bandwidth on the number of issues they can engage on. They also have, an urgent need to address priority business topics like taxes and trade—and due to the current political environment's uncertainty and the Trump administration's volatility, companies often face negative backlash for not falling in line with the administration's priorities.

While these barriers should not be downplayed, we provide many examples of successful engagements and best practices demonstrating that successful engagement is possible. By identifying the business relevance of human rights engagement while highlighting the intangible benefits of such engagement, companies can successfully stand up for human rights policies by focusing their energy where their leverage and influence can be the greatest. They can do so individually or in coalitions with peer companies, civil societies, or other actors. By working in coalitions, both internally and externally, to develop engagement strategies, companies can, and should, play a crucial part in standing up for human rights around the world.

Endnotes

1. "Guiding Principles on Business and Human Rights." Publication. Guiding Principles on Business and Human Rights. New York, Geneva: United Nations, 2011.
2. Investor Alliance for Human Rights, Investor Alliance for Human Rights, investorsforhumanrights.org/
3. Job Hopping Analysis: Trends by Generation & Education Level. LiveCareer, 2018, Job Hopping Analysis: Trends by Generation & Education Level.



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