

# International Trade, Transnational Corporations and Human Rights Project

## What is the Project?

The Australian Human Rights Centre is working in conjunction with faculty members of the Law School to develop a body of teaching and research exploring the interrelationship between international trade, investment and business activities (and related law and policy) and economic and social rights.

With the rapid growth of the global economy, particularly in the last decade, the relationship between the protection and enjoyment of human rights and international commercial activity has assumed new importance. Advancements in transport, information and communications technology have enabled international commercial activity to expand rapidly. Increased international trade and investment has also stimulated changes in commercial activity at the national level, with greater production for export and greater reliance on imports to meet local demand.

Over the past decade, new multilateral rules have provided the framework for progressive reduction of national barriers to international trade and investment and transnational corporations have moved to take advantage of the opportunities offered by the new "global market." The policy context in which the expansion of international commercial activity is taking place is primarily a deregulatory one, a central objective being to foster the free exchange of goods and services and the free movement of capital, investment and labour between national markets and economies.

Serious human rights concerns about these developments have been raised by many organisations, including agencies of the United Nations and non-government organisations. Their concerns relate particularly to the activities of transnational corporations and the effects of trade and investment liberalisation on vulnerable groups in developing countries. The human rights most directly affected are economic, social and cultural rights, which include labour rights, the rights of the family, the right to a high standard of health, the right to an adequate standard of living, the right to education and the right to take part in cultural life.

At the core of many of the concerns is the question of development and how best to assist developing countries to rise out of poverty. There is considerable international debate about the nature of the relationship between liberalisation and economic growth, development and the protection of economic and social rights.

The lowering of national economic barriers and the expansion of the global economy present international human rights law with some fundamental challenges. While transnational corporations can and do provide benefits, such as employment, technological improvements and the provision of infrastructure to the communities in which they operate, they also have the potential to harm the human rights and lives of individuals and to undermine the ability of individual states to protect people from human rights abuses.<sup>1</sup>

The same is true of trade and investment liberalisation which, while it can and does stimulate economic growth, has also stimulated massive internal changes with detrimental economic, social and cultural effects on vulnerable groups. Liberalisation of trade in services is opening up essential services (such as education, health and energy) to increased private participation, especially by transnational corporations. Rules introduced in 1995 relating to trade in agriculture, including in staple grains, have stimulated changes at the domestic level which have stirred fierce opposition in some developing countries.

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<sup>1</sup> David Kinley, Sarah Joseph and Adam McBeth, *The Human Rights Responsibilities of Transnational Corporations: a Legal Study*, New Academy Review, 2001.

National governments have primary responsibility for protecting rights and ensuring that commercial activities, particularly of companies operating from or in their jurisdictions, do not breach human rights standards. However, countries where human rights protections are most needed are often those least able to enforce them. One of the core problems is that many developing countries are deeply indebted to private banks and international financial institutions and find they are dependent on foreign investment to pay these debts. Policies which would discourage foreign investment, such as enforcement of occupational and environmental health laws, could be "economic suicide" for these countries and a political impossibility.<sup>2</sup> Moreover, many developing countries have assumed obligations to liberalise trade and investment rules before their human rights protections are in place.

### **Research undertaken through the AHRC**

Two faculty members of the Law School, Gillian Moon and Justine Nolan, have established on-going research projects through the AHRC and a range of related courses are currently being taught (see bottom of page).

#### **Research Project 1: Human Rights Impacts of WTO Law. (Gillian Moon [g.moon@unsw.edu.au](mailto:g.moon@unsw.edu.au))**

In recent years, a considerable body of literature has been created which argues that the law of the World Trade Organisation is negatively affecting the economic and social rights of many communities, particularly in developing countries. Tracing a solid connection between the negative effects identified and WTO law on its own is difficult because the sources of change have been many. For example, changes have come about in some countries as the result of altered domestic economic policy or structural adjustment programs implemented at the request of the World Bank or International Monetary Fund.

This project is exploring two aspects of this area of concern.

First, it is identifying areas of conflict or potential conflict between WTO law and policy and human rights law and policy.

Secondly, the project is exploring possible relationships between the two bodies of public international law: WTO law and international human rights law. WTO law, in particular, has been described as having developed in "splendid isolation." The problems resulting from such 'fragmentation' are not unique to these two fields of international law but, given the fundamental importance of economic and social rights, there is some urgency in the quest to find a process or set of principles for resolving inconsistencies which arise between the two sets of law.

#### **Research Project 2: Redefining 'Materiality': Enforcing corporate responsibility for human rights through public reporting. (Justine Nolan: [justine.nolan@unsw.edu.au](mailto:justine.nolan@unsw.edu.au) )**

The influence of corporations on the economic and political life of most countries has increased greatly in recent decades. This power should be accompanied by responsibility. Voluntary efforts undertaken by business, in collaboration with non government organisations and at the behest of government and intergovernmental organizations<sup>3</sup>, have to date been the

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<sup>2</sup> Garrett D. Brown, "The Global Threats to Workers' Health and Safety on the Job" in *Social Justice*, Vol. 29, No. 3, 2002.

<sup>3</sup> Examples include United Nations Global Compact, the OECD Guidelines for Transnational Enterprises, and sector specific guidelines such as the Equator Principles, the Fair Labor Association or Social Accountability International.

overwhelming *modus operandus* chosen to ensure that companies assume appropriate responsibility for various human rights obligations.

However, voluntary efforts can serve as precursors to binding formal rules. Evidence of this trend is emerging in recent attempts to redefine the parameters of corporate reporting to include both financial and non-financial (for example, human rights) matters that are “material” to a company’s performance and value. This means, in many cases, replacing ‘single bottom line’ (i.e. profit based) thinking and practices with ‘triple bottom line’ (i.e. social, environmental, economic) thinking.

Given the relatively recent passage of these corporate reporting initiatives in mainstreaming a limited set of human rights issues, many questions still remain as to the value and effectiveness of mandatory corporate reporting of non-financial issues as a means of promoting greater corporate accountability and how it can be best enforced.<sup>4</sup> Some of the key outstanding questions include:

- What to report on? (there is more legislation covering environmental reporting than social reporting or integrated reporting and there is little consistency between jurisdictions);
- Which companies? (the various legislative measures employ different triggers including public listing, number of employees, turnover, environmental emissions, or a combination of these); and
- What kind of legislation? (company law is a frequent home for reporting requirements – particularly as part of a new wave of comprehensive reviews of company law around the world but it is not the only forum).

## Related courses

A number of courses offered by the Law School enable students to undertake study in the field of international trade, investment, transnational corporations and human rights. They include:

LAWS2182 International Human Rights Law and Advocacy  
LAWS2184 Human Rights in the Global Economy  
LAWS4181 Contemporary Issues in International Human Rights  
LAWS4189 Transnational Business and Human Rights  
LAWS4187 International Trade Law: Environment & Development

## Community and other liaison

The Australian Human Rights Centre liaises regularly with others working in these the field of international trade and human rights and the human rights impacts and responsibilities of transnational corporations. The project has been developed within an international context and

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<sup>4</sup> For example, the French New Economics Regulations, do not contain any substantial penalties for non compliance. Consider, however, the enforcement provisions of Proposition 65 in the USA. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces or that are released into the environment. In judging the effectiveness of enforcing the reporting requirements, the penalties are in part the key, both because they are potentially heavy (up to \$2500 per offence, at the jury’s or judge’s discretion; each single unit of product sold without a required warning can constitute a separate offence), and because they can be enforced by citizen suit. See David Roe, “An Incentive-Conscious Approach to Toxic Chemical Control”, *Economic Development Quarterly* Vol. 3 No. 3 1989 179-187.

involves dialogue with academic and community-based researchers in Europe, the United States and Asia.

From time to time, the Centre organises public seminars on topics related to the project and uses its web site to publicise seminars, talks and other events organised by other bodies.

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