

# Putting the ‘us’ back in business

*An analysis of effective institutional conditions needed for a holistic and embedded human rights framework to achieve a more normative conduct of business in the ICT sector*

HHUMR5133

Candidate number: 4013

Submission Date: 07 November 2019

Number of words: 4,954/5,000



## **Abstract**

This paper aims to demonstrate that using an embedded understanding of institutions provides a more holistic perspective of the means available for achieving more effective human rights practices in businesses. In relation to the ICT sector, my research question is: What are some of the institutional conditions necessary for effective human rights and human rights due diligence practices in businesses? To provide insight into this, I use academic theory to discuss three institutional conditions necessary: the internalisation of norms such as for collaboration/cooperation and transparency; normative frameworks like codes of conduct; and formally sanctioned self-regulation, particularly for fast-paced industries where laws are slow or ineffective.

Then, using Apple and Microsoft as case studies, I discuss their human rights due diligence model and general approach to human rights, how it has been applied in their operations, what challenges they have encountered, and how they responded. I then discuss these in relation to the best practices. I conclude that, while not without flaws, if these three institutional conditions are taken together, they help build a more holistic path forward for businesses to respect and promote human rights. These findings fit contemporary theory that the way forward for business and human rights begins with the need for multiple institutional conditions to work together simultaneously. Using a restructured understanding of institutions, I provide a small insight into the way new perspectives can promote responsible business, and help us understand better the embedded role of business in society and nature.

# Table of Contents

<i>Abstract</i> .....	<i>i</i>
<i>Table of Contents</i> .....	<i>ii</i>
<b>1. INTRODUCTION</b> .....	<b>1</b>
1.1. Problem Statement.....	1
1.2. Research Question and Structure .....	1
<b>2. CONTEXT</b> .....	<b>2</b>
2.1. Business and Human Rights .....	2
2.2. Embedded Institutions .....	2
<b>3. THEORETICAL: BEST PRACTICES</b> .....	<b>3</b>
3.1. Internalised Norms .....	3
<i>3.1.1. Collaboration and Cooperation Norm</i>	
<i>3.1.2. Transparency and Disclosure Norm</i>	
3.2. Codes of Conduct .....	5
3.3. Formal Self-Regulation .....	7
<b>4. PRACTICAL: ICT CASE STUDY</b> .....	<b>8</b>
4.1. Apple Inc. ....	8
4.2. Microsoft Corp. ....	10
4.3. Additional Findings .....	11
<b>5. CONCLUSION</b> .....	<b>12</b>
<b>ANNEX: BIBLIOGRAPHY</b> .....	<b>13</b>

# **1 Introduction**

## **1.1 Problem Statement**

This study is placed in the context of the information-communication-technology (ICT) sector, due to the increasingly invasive yet global role such companies play in people's everyday lives. This is both in terms of product development and the supply chain, as well as creating services and how they are subsequently used. ICT companies like Apple and Microsoft are among the largest, most influential in the world, and thus have ample opportunity to either violate or promote human rights. This makes the ICT sector of prime and contemporary importance to assess.

Nevertheless, applying human rights practices in such organisations is a complex task, and studies demonstrate that companies do not perform often central tasks like their human rights due diligence (HRDD) effectively (McCorquodale, Smit, Neely, & Brooks, 2017). Without effective application and follow up, human rights impacts may not even be identified before they occur, much less prevented (*ibid.*). With companies as influential and far-reaching as those in the ICT sector, it is essential to ensure that businesses are both accountable for their violations as well as competent in preventing them. It is thus imperative to determine the conditions that steer such companies towards the promotion of human rights.

## **1.2 Research Question**

Along this line of inquiry, this paper examines: What are some of the institutional conditions necessary for effective human rights and human rights due diligence practices in businesses? The aim of this paper is not to provide an extensive or all-encompassing list of effective conditions, as this has been done elsewhere (see CIDSE, 2013; Shift, 2016). Instead, I focus on demonstrating the interlinkages and interconnections of an embedded process that works across multiple institutions to create change within ICT sector.

Using academic literature, I examine the differing perspectives to provide three relevant best practices. I then assess two central ICT companies: Apple Inc. and Microsoft Corp. against these by examining the approach they take to human rights and HRDD and what challenges they encountered. I find that it is through deploying a simultaneous approach using several types of institutional conditions that is most effective. I conclude that it is through this type of integrated framework that change occurs (Deva, 2012, p.200-231; Andreassen & Vinh, 2016, p.11), but argue that it is first necessary to shift our own understanding of such actions towards a renewed comprehension of the very concept of institutions.

## 2 Context

### 2.1 Business and Human Rights

In the complex field of business and human rights, there is a large variation on if and how human rights are respected, despite the extreme potential for corporations to violate human rights. To address this, the UN Guiding Principles on Business and Human Rights (UNGPs) (2011) established that businesses indeed have a responsibility to respect as well as remedy violations (Hiller & Hiller, 2014, p.118). Businesses must deploy an ongoing HRDD process that identifies potential or actual impacts, prevents harm, and remedies violations of human rights from direct or indirect operations of the business (Taka, 2016). The company then accounts for how they address their most egregious, or salient human rights impacts. While this is often presented as just ‘risk management’ (Fasterling, 2017), it is in fact a dynamic and iterative process that helps to ensure businesses fulfil their human rights obligations. The UNGPs, as well as other frameworks like the OECD Due Diligence Guidance for Responsible Business Conduct (2018) outline this, and it is here that the normative context for this paper lies: I do not argue *if* businesses have a responsibility to protect human rights. The question this paper deals with, is rather a matter of *how* to fulfil them (Andreassen & Vinh, 2016, p.13)

### 2.2 Embedded Institutions

To create a responsible corporation, Surya Deva’s (2012) influential book *Regulating Corporate Human Rights Violations*, argues for the ‘humanising’ of business. He assesses the many historical and existing institutional frameworks and concludes that the way forward is through an integrated framework of simultaneous corporate regulations rather than a hierarchy of sequential regulatory strategies (p.178-181). I support and further this key message, but suggest that to achieve this way forward it is first necessary to redefine of our own understanding of institutions. To demonstrate, in this paper, instead of using the very concept of institutions to distinguish an organisation or entity (such as a state government or corporation) *from* society or nature, I will instead use institutions with a perspective of organisations as *embedded in* society and nature.

To achieve this perspective, a widening of the definition of institutions is necessary, and need include three central and interlinked aspects of society: conventions, norms and formally sanctioned rules (Vatn, 2015, p.77-83). As is achieved through Campbell’s method of using institutional theory to create best practice scenarios for corporate social responsibility, and as is alluded to in Deva’s (2017) perception of businesses as ‘organs of society’, I argue that the

way forward needs to begin by first using this embedded perspective on business and institutions that mirror the complexity and dynamic nature of our interconnected world.

“Institutions are the conventions, norms and formally sanctioned rules of a society. They provide expectations, stability, and meaning essential to human existence and coordination. Institutions support certain values, and produce and protect specific interests” (Vatn, 2015, p.78-79). Conventions can become legally codified, such as with traffic rules; and norms must be in place that breaking the law is wrong and encourage one to follow formal rules to begin with (ibid., p.78-88). The process is neither exclusive, hierarchical nor static. Because institutions are socially constructed, conventions may be reshaped with new knowledge or understandings, norms may shift as society adjusts to new changes, and laws may be rewritten to address new challenges.

### **3 Theoretical: Best Practices**

Using relevant academic literature, I use this embedded view of institutions to establish three best practices to incite change within corporate behaviour towards their human rights obligations. Given the length limitations of the paper, this list could not be exhaustive in its depth for each topic nor its breadth of topics covered. Thus, only three institutional conditions are discussed: internalised norms (collaboration and transparency), codes of conduct, and self-regulation. While other conventions and legal regulations are undoubtedly essential to consider for a comprehensive analysis, these three were selected based on their specific relevance and interest to the ICT sector.

#### **3.1 Internalised Norms**

Norms define the ‘right way to act’ and support an underlying value or interest (ibid., p.81). They are an important institution for creating conditions for positive organisational change towards respecting human rights because they have the power to shape change both from *outside* the corporation, as well as from *within* (Deva, 2017, p.67-68). Campbell (2007) argues that corporates are more likely to behave responsibly when they are operating in an environment where “normative calls for such behaviour are institutionalized” (p.959) and when “normative or cultural institutions are in place” (Galaskiewicz in ibid., p.949). In other words, when norms that encourage positive changes in business behaviour are internalised into the corporation, progress can begin. While there are many norms, two in particular will be discussed below.

### 3.1.1 Cooperation and Collaboration Norm

An essential institutional condition for positive organisational change, is when there are norms in place for cooperation and collaboration (Scalet, 2006). This is especially evident when it comes to the involvement and engagement of various groups of internal and external stakeholders (Campbell, 2007). Campbell argues that iterative dialogues with stakeholders like investors, employees, communities and unions create conditions that are more likely to lead to responsible business practices (p.961-962). However, there are some unique challenges for the ICT sector, such as having a limited view of their ‘relevant’ stakeholder groups with whom they engage (McCorquodale, Smit, Neely, & Brooks 2017, p.210). This may be in part because there are so many users of and people effected by ICT services and products (ibid.).

Campbell argues there needs to also be private and independent organisation such as non-governmental organisation (NGOs) who monitor corporate behaviour (Campbell, 2007, p.958). Deva supports this argument in his vision of an integrated framework through ‘social sanctions’ that hold companies accountable (Deva, 2012, p. 229-231). However, it is not just through accountability that this needs to happen, but also *collaboration*, particularly with human rights NGOs. Melish (2007) argues that this is in fact necessary, given that the UNGPs have in effect caused businesses to ‘bypass’ such groups. Complying with this is not without significant challenges, as businesses often anticipates conflicting interests between themselves and NGOs, despite the fact that “collaboration and partnership may provide significant opportunities for business and NGOs to create social and corporate value” (Gnyawali & Park in Hiller & Hiller, 2014, p.130).

Furthermore, in what they describe as ‘co-opetition’, Hiller and Hiller (2014) argue that it is imperative for companies within the same industry to join together through collaboration like joint ventures, whilst still engaging in competition within the marketplace (p.131). Especially when it comes to the ICT sector, this is often done from a common interest in setting mutual standards for the future of shared technology and the benefits of co-investing in research and development to address common challenges (ibid.). A good example of this is in the digital consultancy sector, which ‘joined forces’ to use technology and innovation to help build a fossil-free Sweden (FFS, n.d.).

### 3.1.2 Transparency and Disclosure Norm

Additionally, the transparency and disclosure of business operations has many advantages, such as reducing corruption and mismanagement, and increased accountability both socially and in regards to legal regulations (Gilles, 2010; Deva, 2012). In recent years the normative aspect of

transparency have become increasingly essential, and disclosure is increasingly expected. While transparency has developed into an important norm that drives positive change, it is not without significant challenges as well.

The first is the self-interest of organisations, which has greatly shaped the course of how the transparency norm is done in practice. Gilles (2010) demonstrates this issue by making a distinction between norm ‘emergence’ and ‘compliance.’ In summary, a company might support the concept of the norm, such as being transparent is good, but does not follow through with the essential meaning in practice. For example, a company may be considered transparent by disclosing certain information, but also omits critical information as well. This omission is done out of the self-interest of the corporation and can go so far as to shape what ‘corporate transparency’ means (p.104-105).

The consequence of this is the very disclosure landscape we find ourselves in today, where when there is a norm for the disclosure of human rights impacts or transparency of the HRDD process, it is often lacking clear requirements for what needs to be disclosed. The result is which topics to report on and how the topics should be disclosed are at the discretion of the company. If the norm of transparency is not effectively integrated into the company in its full meaning with honesty and integrity, the self-interest and preservation of the company poses a significant challenge to achieving full norm compliance.

Second, beyond not achieving the tenet of the norm itself and risking reputation loss such as ‘greenwashing’, it impacts the decision-making of stakeholders. Deva argues that stakeholders are not fully informed, and concedes that even if they were, there is no guarantee that companies would be rewarded or punished based on the information (Deva, 2012, p.142-143). If the transparency norm is not followed honestly, stakeholders may wrongfully see companies appearing responsible when they are in fact covering up gross human right violations or critical gaps in their HRDD process. For the norm to be followed, companies should disclose not only their positive efforts but negative impacts, as well as their methods for such determinations, like their stakeholder identification and engagement. While it is essential that these take place, it is also important that there are overarching frameworks which stakeholders can assess businesses on, rather than only on the disclosure the company provides.

### **3.2 Codes of Conduct**

It is important to note that while the conventions, norms, and formal rules can be distinguished in theory, in practice, institutions are not generally mutually exclusive and such conditions do not always fall into one single category. The UNGPs at first glance might seem like conventions



in that they set standards, and if they are taken into state law they become formal rules. On their own however, they in effect describe a framework of principles of how one ‘should’ act. Indeed, human rights themselves are norms about the right way to behave. In this setting, such frameworks act as a guide for understanding the different human rights norms, and interpreting what business must do to fulfil human rights.

While the UNGPs have presented the business community with a mandate to respect human rights, some find it is just as confusing as helpful, particularly when trying to put it into practice (McCorquodale and Smit, 2017). Fasterling and Demuiknck (2013) acknowledge that such a framework improves accountability and awareness by making human rights more manageable, but argue against the UNGP’s specific approach because they claim it risks eroding the very norms it aims to promote. As the consequences of the UNGPs are highly debated and have been discussed at length by academics elsewhere, I focus this discussion on a different kind of normative framework and tool for asserting better business behaviour: the corporate code of conduct.

As discussed above and with many normative frameworks, Deva argues that corporate codes of conducts have both benefits and drawbacks (Deva, 2012, p.74-79). Not only do they allow for the tailoring of sector specific challenges, but corporate codes of conduct are “a more efficient way of regulating corporate conduct and ensuring that companies respect human rights. [...] Codes contribute to efficient regulation in another way - they provide an opportunity for corporations to work together with their stockholders as well as stakeholders to chart a commonly accepted course of conducting business in a humane way” (p.75).

In Scalet’s (2006) article discussing business norms, he argues vehemently against voluntary codes of conduct and Deva (2012) also describes several limitations, such as that vagueness, selectivity, and having limited applicability, implementation and monitoring. However, such practical limitations are solvable if codes are taken seriously (p.79), such as by including some of the suggestions from the UNGPs and OECD Guidance. Developing a statement or code which aims to *clarify* expectations of businesses partners and suppliers for example, could remedy this and be very useful (p.74-79).

Scalet himself concedes that if a firm has internalised other norms, such as that of co-operation, then the gains of these codes may in fact have significant impact and value (Scalet, 2006, p.316-217). It is also argued that the effectiveness of HRDD depends largely on the ‘moral compass’ of the corporation (Fasterling and Demuiknck, 2013). Thus, it is necessary to have institutions simultaneously working together, like the collaboration and transparency

norms. In doing so we see that codes offer unique solutions that allow corporations to flourish and innovate when given a ‘degree of trust’ as moral agents (Deva, 2012, p.207-208).

### **3.3 Formal Self-Regulation**

In a more formalised setting, codes of conduct could provide insight for expectations and eventual self-regulation of a firm or industry. Norms or conventions become formally sanctioned rules once there are conflicting interests require third-party sanctioning (Vatn, 2015, p.82). Self-regulation moves in-between the two, depending on the role and enforcement ability of the third party. Deva describes this type of formal self-regulation as ‘enforced self-regulation’ that involves a mandate from the state as a result of negotiations between the state and firm or industry (Deva, 2012, p.182-184).

There is some divergence in the literature regarding self-regulation. Ayres and Braithwaite (in Deva, 2012), as well as Campbell (2007, p.955-956) assert that effective self-regulation is an institutional pre-condition towards businesses respecting human rights. However, Deva is critical of this type of ‘responsive regulation’ and argues that even if enforced by states, it is largely not done so via partnership as intended, and is thus problematic due to the ensuing ‘business approach’ that company-based rule-making generates. This is especially the case when it comes to setting regulations for what are non-negotiable and fundamental human rights.

Deva argues that self-regulation is “bound to undermine the protection of human rights as well as the efficacy of regulation” (Deva, 201, p.190). He argues against that in practice the benefits are not so clear and that states need to use coercive force and continuous auditing, which defeats the main purpose. Campbell agrees, in part, noting that care must be taken to avoid self-interest, as company self-interest can indeed undermine self-regulation (Campbell, 2007, p.955-956), but asserts that companies will act more responsibility when faced with the threat of stricter, less tailored state regulation (ibid.; Deva, 2012, p.182-184).

While Deva’s argument has validity in theory, in practice the argument is lacking in regards to the reality of the legal regulations and the very nature of some of the ICT risks and opportunities today. As he argues, state laws are often slow, ineffective, and responsive. Indeed, states do not always have the capacity to provide realistic or effective regulation, as has been evident with recent global issues regarding privacy, social media, mass surveillance, machine learning, and many other challenges facing the rapidly changing ICT sector (Frankowski, 2018). There are also future challenges like block chain, facial recognition, and platform economy where states face new hurdles in effective regulation.

In this sense, Deva's main arguments do not all hold true given the practical challenges that are and will emerge at the nexus of the ICT sector and human rights- now and in the decades to come. Thus, in this evolving sphere of ICT, some degree of enforced self-regulation may in fact be essential. While Deva critiques it as a 'shuttling' exercise (Deva, 2012, p.183), the iterative dialogue he describes between the state, corporations, and independent agents represents an important possibility when coupled with the norms of the collaboration and transparency.

## **4 Practical: ICT Case Study**

In an effort to illustrate further the practical perspective of these theoretical best practices, I use two companies as examples of these institutional conditions. Given that this paper falls within the ICT sector, I have selected two 'tech giants' who are respectively the first and third largest companies in the world (based on market-value): Apple and Microsoft (Gray, 2017). For each case I discuss their HRDD model and general approach to human rights, how it has been applied in their operations, what challenges they have encountered, and how they responded. I then discuss these in relation to the best practices from Chapter 3, and provide some additional comments from this study.

### **4.1 Apple Inc.**

Apple outlines their HRDD process in their most recent Specialized Disclosure Report (2018), where they state: "Apple is committed to going beyond the minimum requirements in order to meet and exceed internationally accepted due diligence standards and protect people in its supply chain [...], as part of its commitment to help to safeguard the well-being of people involved in its supply chain, Apple has integrated human rights impact measurements into its overall minerals due diligence program" (Apple, 2018). It appears that they don't have a dedicated HRDD but rather include human rights factors into their due diligence program. This is interesting given that McCorquodale, Smit, Neely, and Brooks (2017) found in their study, that dedicated HRDD is more effective in detecting human rights risks than when it was part of a different process (p.207-208).

Given that Apple is mainly a hardware company, the source and chain of custody for supply chain is essential to them (Taka, 2016), and they abide by the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016). They apply HRDD in their operations through monitoring and auditing of suppliers, and through the use of codes of conduct that incorporate the UNGPs (Apple, 2018;

Apple, 2019). They have in particular a strong focus on worker' rights, stating "Apple's suppliers are required to provide safe working conditions, treat workers with dignity and respect, act fairly and ethically, and use environmentally responsible practices wherever they make products or perform services for Apple" (Apple, 2019, p.1).

However, implementing HRDD and a respect for human rights has not been without challenges. In 2011, a report about Apple's practices was detailed significant concerns and violations across their supply chain (HRBRC, 2011). In the same year, building on their supplier code of conduct, Apple conducted HRDD and monitored compliance of suppliers through screening, including onsite factory audits, as well as corrective action plans. Their Supplier Responsibility Report disclosed these findings, and acknowledged that there was a significant number of suppliers in violation of their code (Deva, 2012, p.76).

Deva applauds the use of this kind of proactive monitoring of business behaviour, and acknowledges how this helps to foster a transparency norm in their supply chain. While this may be useful for their HRDD, the end impact on violations remains to be fully understood. Despite having this code of conduct with proactive monitoring and training, in 2016, 20% of cobalt minerals still came from suppliers that had not met their requirements (Cuthbertson, 2018). In Apple's 2018 Supplier Responsibility Progress Report, they noted an increase in serious violations, but claimed that it was a result of new suppliers (Murdock, 2018). Such codes should thus not be seen as a panacea, but rather as a tool by which to assess suppliers and partners against. As Ivanhoe (2016) notes, such codes are becoming increasingly rigorous and are moving towards binding their suppliers legally (p.169).

In relation to the theoretical best practices, there is evidence of each being utilised, though it is not fully known to what extent and with what motivations. In addition to the codes of conduct described above, they also present a transparent picture of their supply chain. They produce reports that present the precise results of their HRDD and (human rights) impact assessment processes, which extend beyond legal reporting requirements. These reports detail the efforts they take to engage with stakeholders, and how they work towards being accountable through grievance mechanisms (Apple, 2019). Finally, Apple highlights the fact that they work towards increased collaboration and self-regulation in the industry, such as through the Clean Electronics Production Network and other initiatives to improve chemical management and transparency in the supply chain across the ICT sector. While it can be challenging to distinguish between the norms that are integrated genuinely and those that are adopted out of self-interest, it at least appears that Apple is making significant efforts towards realising their responsibilities toward human rights and assessing the effectiveness of their HRDD.

## 4.2 Microsoft Corp.

Microsoft describes in their Human Rights Statement that their HRDD process is used “to proactively identify and address human rights risks in our operations, supply chains and business relationships” (Microsoft, n.d.). They appear to have a dedicated HRDD which is applied through “corporate wide human rights mapping” (ibid.) to identify their salient issues, as well as human rights impact assessments. While McCorquodale, Smit, Neely, and Brooks (2017) argue that these impact assessments aren’t the same as HRDD, they do have important possibilities for protecting human rights (Kemp and Vanclay, 2013). Microsoft’s goal is “Class-leading due diligence: We aim to conduct best-in-class human rights impact assessments on salient Microsoft action and emerging trends in business and human rights” (Microsoft, 2017a, p.5). This process is also applied through engagement with stakeholders, where they influence other primary actors to undertake due diligence “to identify and mitigate potential human rights impacts” (Microsoft, n.d.).

As with Apple, they use codes of conduct that incorporate international standards and frameworks like the UNGPs, OECD Guidelines on Multinational Enterprises, and the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work. Like Apple, these codes include the responsible sourcing of minerals. However, given that Microsoft is mainly a software company, their supply chain differs in that they too are often part of a greater value chain that incorporates their services. Thus, Microsoft has a slightly different approach to implementing HRDD and respect for human rights.

In their Human Rights Statement, they say, “We respect human rights by seeking to avoid infringing on the rights of others and working to address adverse human rights impacts with which we are involved. Microsoft also commits to promoting human rights. We do this by harnessing the beneficial power of technology to help realize and sustain human rights everywhere. We expect employees, partners, suppliers, customers and governments to share this commitment to ensure that information technology and our business respects and promotes human rights” (Microsoft, n.d.). An important element of this is the idea of *promoting* of human rights. Their perspective is thus not only to respecting human rights by seeking to avoid harm, but also the active and collaborative promotion and fulfilment of these rights.

As a software company and as with many other companies in the changing ICT sector, new challenges are constantly emerging regarding human rights. For example, in light of recent issues with privacy and social media misuse (Frankowski, 2018), Microsoft sees artificial intelligence as an emerging technology that presents ethical risks with potential impact on human rights. They address this and other challenges through extensive reporting for all aspects of their

HRDD process of identifying, preventing, mitigating, and accounting for their human rights impacts. They explain their approach and policies for each salient issue, as well as what actions they have taken to remedy and follow up.

In relation to the theoretical best practices, the sheer amount of transparency makes Microsoft appear compliant with the transparency norm. In addition to the codes of conduct described above, additional codes such as their User Agreement Code of Conduct (Microsoft, 2018a, p.50) are utilised when necessary as an enforcement mechanism to protect human rights. They also take seriously collaboration and cooperation, as is evident through their partnership with the Office of the United Nations High Commissioner for Human Rights, and the creation of the Microsoft Technology and Human Rights Center.

The Center promotes human rights internally through the business culture, operations and strategies. Externally, they work towards promoting and understanding the human rights aspects of the ICT sector (Microsoft, 2018a). Finally, Microsoft appears to have pushed for formal self-regulation for certain technologies like facial recognition (Microsoft, 2018b), self-regulation of the use of ICT platforms to promote terrorism (Microsoft, 2017b), and they have also supported other regulation like the General Data Protection Regulation (Microsoft, 2018a).

### **4.3 Additional Findings**

The strong use of codes by these two companies is as Deva envisioned, where they are not country-specific, apply to subsidiaries, utilize a ‘human approach’ that involves stakeholder engagement, and elaborates how the company implements and integrates its human rights responsibilities into everyday decisions and operations (Deva, 2012, p.205-208). Deva’s concerns about stakeholders not being fully informed erodes with such comprehensive reporting, and the argument by Scruggs, Hertel, Best, and Jeffords (2011) triumphs: while general information does little, specific information demonstrating how the consumer is linked to social and environmental *outcomes* can be very impactful on their relationship to the company.

In his 2012 book, Deva (2012) argues that for corporations to behave responsibly it may be necessary to harness markets that accommodate the human rights agenda. In this scenario, corporate stakeholders should align their choices to human rights norms (p.221). Additionally, the competitiveness in the ICT sector appears to be driving more responsible businesses rather than less, where it is becoming a competitive disadvantage not to respect human rights (Campbell, 2007, p.953). This is positive trajectory that creates this very ‘market for human rights’, where stakeholders are more concerned about human rights and place more demands on companies to carry out HRDD and be transparent about their findings.

## 5 Conclusion

This paper aimed to demonstrate that through a restructuring of the view of institutions towards a more embedded one, a more holistic perspective of the mechanisms available for workings towards better integration of human rights and business is possible. This furthers our ability to understand the tools and regulatory options available to facilitate effective HRDD as well as other efforts and behaviours for respecting and promoting rights- not in the form of a single comprehensive and flawless framework, but rather as a set of interlinked and interconnected institutions that help promote positive business conduct.

To address my research question: What are some of the institutional conditions necessary for effective human rights and human rights due diligence practices in businesses? I have used academic theory and argued that some of the institutional conditions necessary are: the internalisation of norms such as for collaboration/cooperation and transparency; normative frameworks like codes of conduct; and formally sanctioned self-regulation, particularly for fast-paced industries where laws are slow or ineffective.

While this list could not be exhaustive, and there are certainly other important conditions that facilitate positive change in business behaviours and effective HRDD, the three argued for in this paper were done so based on their relevance to the scope of the ICT sector. As was illustrated with the case studies of Apple and Microsoft, while not without flaws, these three institutional conditions- if taken together- help build a more holistic path forward for businesses to respect and even promote human rights.

These findings fit with Surya Deva's consistent argument (Deva, 2012; Deva, 2017) and others (Andreassen & Vinh, 2016) that the way forward for business and human rights begins with the need for multiple institutional conditions to work together simultaneously. Using a restructured understanding of institutions, I aim to have provided a small insight into the way new perspectives can promote responsible business, and help us understand better the embedded role of business in society and nature, and the ever-essential position business is in to either violate or promote human rights.

## Annex: Bibliography

- Andreassen, B.A. & Vinh, V.K. (2016). Business' Duties Across Borders: The New Human Rights Frontier. In Andreassen, B. & Vinh, V.K. (Eds.) *Duties Across Borders. Advancing Human Rights in Transnational Business*. Cambridge: Intersentia. pp. 1-20.
- Apple (2018). Specialized Disclosure Report. Accessed 01 November 2019. Retrieved from: <https://www.apple.com/supplier-responsibility/pdf/Apple-Conflict-Minerals-Report.pdf>
- Apple (2019). Apple Supplier Code of Conduct. Accessed 01 November 2019. Retrieved from: [https://www.apple.com/th/environment/pdf/supplier\\_code\\_of\\_conduct.pdf](https://www.apple.com/th/environment/pdf/supplier_code_of_conduct.pdf)
- Campbell, J. (2007). Why Would Corporations Behave in Socially Responsible Ways? An Institutional Theory of Corporate Social Responsibility. *The Academy of Management Review*, 32(3), 946-967. Accessed 24 September 2019. Retrieved from: <https://www.jstor.org/stable/20159343>
- [CIDSE] (2013). Human Rights Due Diligence Policy: Measures for Effective Implementation. Accessed 29 October 2019. Retrieved from: [https://www.cidse.org/wp-content/uploads/2013/09/HRDD\\_EN\\_Final.pdf](https://www.cidse.org/wp-content/uploads/2013/09/HRDD_EN_Final.pdf)
- Cuthbertson, A. (23 February 2018). Apple Faces Child Labor Scrutiny as It Looks to Take Charge of Cobalt Mines. *Newsweek*. Accessed 01 November 2019. Retrieved from: <https://www.newsweek.com/apple-faces-child-labor-scrutiny-it-looks-take-charge-cobalt-mines-815981>
- Deva, S. (2012). *Regulating Corporate Human Rights Violations: Humanizing Business*. London: Routledge.
- Deva, S. (2017). Business and Human Rights: Time to Move Beyond the Present. In Rodriguez-Garavito, C. (Ed.) *Business and Human Rights: Beyond the End of the Beginning* (pp. 62-75). Cambridge University Press.
- Fasterling, B. & Demuijnck, G. (2013). Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights. *Journal of Business Ethics*, Volume 116(4), 799-814. Accessed 28 October 2019. Retrieved from: DOI 10.1007/s10551-013-1822-z
- Fasterling, B. (2017). Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk. *Business and Human Rights Journal*, Volume 2, 225-247. Accessed 28 October 2019. Retrieved from: doi:10.1017/bhj.2016.26



- [FFS] Fossil-Free Sweden (n.d.). Roadmap: The Digitalisation Consultancy Industry. *Cybercom*. Accessed 01 November 2019. Retrieved from: <http://fossilfritt-sverige.se/in-english/roadmaps-for-fossil-free-competitiveness/roadmap-the-digitalisation-consultancy-industry/>
- Frankowski (08 March 2018). (*Polish*) Big Data: terrifying surveillance vs new opportunities. Medium. Accessed 02 November 2019. Retrieved from: <https://medium.com/@jacekfrankowski/https-medium-com-jacekfrankowski-big-data-terrifying-surveillance-vs-new-opportunities-e73a7edacd7d>
- Gray, A. (16 January 2017). These are the world's 10 biggest corporate giants. *World Economic Forum*. Accessed 01 November 2019. Retrieved from: <https://www.weforum.org/agenda/2017/01/worlds-biggest-corporate-giants/>
- Gilles, A. (2010). Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm. *International Studies Quarterly*, Volume 54(1): 103-126. Accessed 01 November 2019. Retrieved from: <https://www.jstor.org/stable/40664239>
- Hiller, J. & Hiller, S. (2014). A Co-Opetition Approach to Business, Human Rights Organizations and Due Diligence. In Bird, R., Cahov, D., & Prenkert, J. (Eds.). *Law, Business and Human Rights: Bridging the Gap*. Edward Elgar Publishing. pp. 118-140.
- [HRBRC] Human Rights and Business Resource Centre (2011) The Other Side of Apple. Accessed 01 November 2019. Retrieved from: [https://www.business-human-rights.org/sites/default/files/media/documents/it\\_report\\_phase\\_iv-the\\_other\\_side\\_of\\_apple-final.pdf](https://www.business-human-rights.org/sites/default/files/media/documents/it_report_phase_iv-the_other_side_of_apple-final.pdf)
- Ivanhoe, H. (2016). A Human Rights Framework for Compating Corporate Corruption in Global Supply Chains. In Andreassen, B. & Vinh, V.K. (Eds.) *Duties Across Borders. Advancing Human Rights in Transnational Business*. Cambridge: Intersentia. pp. 157-181.
- Kemp, D. & Vanclay, F. (2013). Human Rights and Impact Assessment: Clarifying the Connections in Practice. *Impact Assessment and Project Appraisal*, Volume 31(2), 86-96. Accessed 01 November 2019. Retrieved from: DOI:10.1080/14615517.2013.782978
- McCorquodale, R. and Smit, L. (2017). Human Rights, Responsibilities and Due Diligence: Key Issues for a Treaty. In Deva, S. and Bilchitz, D. *Building a Treaty on Business and Human Rights: Context and Contours*. Cambridge University Press.

- pp. 216-237.
- McCorquodale, R., Smit, L., Neely, S., & Brooks, R. (2017). Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises. *Business and Human Rights Journal, Volume 2*, 195-224. Accessed 01 November 2019. Retrieved from: doi:10.1017/bhj.2017.2
- Melish, T. (2017). Putting ‘Human Rights’ Back into the UN Guiding Principles on Business and Human Rights: Shifting Frames and Embedding Participation Rights. In Rodriguez-Garavito (Ed.) *Business and Human Rights: Beyond the End of the Beginning*. Cambridge University Press. pp. 76-96.
- Microsoft (n.d.) Human Rights Statement. Accessed 01 November 2019. Retrieved from: <https://www.microsoft.com/en-us/corporate-responsibility/human-rights-statement>
- Microsoft (2017a). Salient Human Rights Report. Accessed 01 November 2019. Retrieved from: [https://download.microsoft.com/download/0/0/6/00604579-134B-4D0E-97C3-D525DFB7890A/Microsoft\\_Salient\\_Human\\_Rights\\_Issues\\_Report-FY17.pdf](https://download.microsoft.com/download/0/0/6/00604579-134B-4D0E-97C3-D525DFB7890A/Microsoft_Salient_Human_Rights_Issues_Report-FY17.pdf)
- Microsoft (2017b). Facebook, Microsoft, Twitter and YouTube announce formation of the Global Internet Forum to Counter Terrorism. Accessed 01 November 2019. Retrieved from: <https://blogs.microsoft.com/on-the-issues/2017/06/26/facebook-microsoft-twitter-youtube-announce-formation-global-internet-forum-counter-terrorism/>
- Microsoft (2018a). Human Rights Annual Report. Accessed 01 November 2019. Retrieved from: <https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE2FMZY>
- Microsoft (2018b). Facial recognition technology: The need for public regulation and corporate responsibility. Accessed 01 November 2019. Retrieved from: <https://blogs.microsoft.com/on-the-issues/2018/07/13/facial-recognition-technology-the-need-for-public-regulation-and-corporate-responsibility/>
- Murdock, J. (08 March 2018). “Apple: Human Rights Violations in Supply Chain Double in A Year, Report Reveals.” *Newsweek*. Accessed 01 November 2019. Retrieved from: <https://www.newsweek.com/apple-human-rights-violations-supply-chain-double-year-reports-reveals-836247>
- OECD (2016). The OECD Due Diligence Guidance for Responsible Mineral Supply Chains. Accessed 22 September 2019. Retrieved from: <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>
- OECD (2018). Due Diligence Guidance for Responsible Business Conduct. Accessed 22

- September 2019. Retrieved from: <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>
- Scalet, S. (2006). Prisoner's Dilemmas, Cooperative Norms, and Codes of Business Ethics." *Journal of Business Ethics*, Volume 65, 309-323. Accessed 01 November 2019. Retrieved from: DOI 10.1007/s10551-005-5356-x>
- Shift (2016). Doing Business with Respect for Human Rights: A Guidance Tool for Companies. Accessed 11 October 2019. Retrieved from: [https://www.businessrespecthumanrights.org/image/2016/10/24/business\\_respect\\_human\\_rights\\_full.pdf](https://www.businessrespecthumanrights.org/image/2016/10/24/business_respect_human_rights_full.pdf)
- Scruggs, L., Hertel, S., Best, S.J., & Jeffords, C. (2011). Information, Choice and Political Consumption: Human Rights in the Checkout Lane. *Human Rights Quarterly*, Volume 33(4),1092-1121. Accessed 01 November 2019. Retrieved from: <https://doi.org/10.1353/hrq.2011.0062>
- Taka, M. (2016). A Critical Analysis of Human Rights Due Dilligence Frameworks For Conflict Minerals: Challenges for the Electronics Industry. In Andreassen, B. & Vinh, V.K. (Eds.) *Duties Across Borders. Advancing Human Rights in Transnational Business*. Cambridge: Intersentia. pp. 183-207.
- Vatn, A. (2015) Environmental Governance: Institutions, Policies and Actions. Edward Elgar Publishing. pp. 77-86.
- United Nations (2011). Guiding Principles on Business and Human Rights. Accessed 08 September 2019. Retrieved from: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)