



The Rule of Law and Corporate Actors: Measuring Influence

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Accepted: 2 August 2024
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Abstract

This article proposes an approach for conceptualizing and assessing the extent to which corporate actors impact the rule of law environment in different societies. To achieve this, the methodology for the Corporate Actors and the Rule of Law Index is developed based on a reimagined methodology derived from the Rule of Law Index by the World Justice Project, originally conceived in a state-centric manner. The methodology proposed in this article includes the following factors: preventing corporate capture and corporate contribution to structural inequality, corporate integrity and transparency, meaningful stakeholder engagement; order and security; impact on the regulatory sphere; corporate accountability for human rights abuses; access to grievance mechanisms. Measuring the influence of corporate actors on the rule of law and indicating the dynamic of this influence significantly contributes to the overall understanding of the rule of law environment. The absence of such measurement distorts the comprehension of the balance of power in a society, impedes the development of legal regulation, obstructs the identification of problematic issues in ensuring the rule of law, and hinders efforts to address them.

Keywords Corporate actors · Rule of law index · Corporate power · Corporate capture · Corporate impact on the rule of law

1 Introduction

The rule of law is a product of the long-term development of legal culture, one of the three pillars of the European framework (along with human rights and democracy). The rule of law requires that all persons, institutions, and entities, *public and private*, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights

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norms and standards.¹ A strong rule of law is essential as a foundation for economic and social development.

Today, in theory and practice, there is a rapidly growing understanding that corporate actors have a significant impact, positive or negative, on strengthening the rule of law and that such actors should act as addressees of the rule of law requirements, given their powerful influence on society, communities, groups, and individuals.² As Jeremy Waldron emphasizes in his recent book, “it (the rule of law principle) must apply to the main ways in which ordinary people and businesses are subjected to and affected by the exercise of power in society (certainly by the exercise of public power and *maybe by big centers of private power as well*).”³

Historically, we tended to think of the state as the most powerful actor, which remains largely accurate, and that the rule of law, to a large extent, tells us what the state can and cannot do.⁴ The rise of corporate power and influence has coincided with their increased involvement in human rights-related issues.⁵ Realizing that corporations in certain ways affect our lives just as much as the state does, they seem to hold just as much power over us. In this context, how do we ensure that they also, regardless of their power or position, have to follow this set of rules and can only behave in certain ways, including with respect to our human rights?⁶

In recent years, we have witnessed the development of legal instruments on business and human rights, particularly the 2011 UN Guiding Principles (UNGPs) on Business and Human Rights, unanimously endorsed by the UN Human Rights Council. The UNGPs are organized into three pillars. Pillar one reiterates that the state has a duty to protect against human rights abuses by third parties, including businesses. Pillar two establishes that businesses have a responsibility to respect human rights. Under pillar three, both states and businesses should ensure that victims have greater access to effective remedies, both judicial and non-judicial. Although the UNGPs are not a legally binding instrument, they are a globally accepted consensus on the human rights responsibilities of companies. They have become an authoritative standard and are used in standard-setting by other international organizations,

¹ ‘What is the Rule of Law—United Nations and the Rule of Law. United Nations and the Rule of Law’, <[https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20\(UN,and%20which%20are%20consistent%20with](https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20(UN,and%20which%20are%20consistent%20with)> accessed 7 April 2024. Tom Bingham’s definition is quite similar: “The core of the existing principle is, I suggest, that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.” [Bingham (2010). *The Rule of Law*, Penguin Global].

² See ‘Corporate rule of law responsibility’, Utrecht University <<https://www.uu.nl/en/research/resilient-rule-of-law/research-themes/corporate-rule-of-law-responsibility>> accessed 7 April 2024; ‘Rule of Law and Corporate Actors’ <<https://ruleoflawbiz.org/category/podcasts/>> accessed 7 April 2024; ‘Rule of Law | UN Global Compact’ <<https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law>> accessed 7 April 2024.

³ Waldron (2023).

⁴ ‘Podcast with Lucas Roorda: Business and Human Rights: A New Lens on Rule of Law and Access to Justice’ <<https://ruleoflawbiz.org/business-and-human-rights-a-new-lens-on-rule-of-law-and-access-to-justice/>> accessed 7 April 2024.

⁵ Amerson (2011).

⁶ Ibid.

governments, businesses, and law societies.⁷ For example, the UNGPs' language is now found in the Organization for Economic Co-operation and Development Guidelines for Multinational Enterprises.⁸

At the same time, the business and human rights (responsible business conduct) framework does not explore the correlation between corporate impact on the rule of law and corporate impact on human rights, since those standards tend to remain focused on human rights and labour rights. Perhaps the UN Global Compact stands out as an exception, particularly for its development of the Business for the Rule of Law Framework.⁹ However, the Framework considers the rule of law from the state-centric perspective by “highlighting that strong rule of law—including the protection of investments, property rights (including intellectual property), contractual rights, and legal identity—is essential as a foundation for economic and social development.”¹⁰ The UN Global Compact Business for the Rule of Law Framework, paying specific attention to engaging responsible business to support the building/strengthening of legal frameworks and the promotion of more accountable institutions, does not address the question of corporate influence on the rule of law. This article aims to fill this gap by developing an approach to measure corporate actors' influence on the rule of law in given countries.

The article proceeds as follows. Section 2 clarifies the concept of the rule of law as a system of principles aimed at tempering power in a society. Not only the state, but also corporate actors have power in society and the ability to impact human rights, influence decisions on the distribution of public goods, and democratic processes. This raises the question of whether the rule of law can temper the power of corporate actors. Since this issue has not received sufficient attention in the academic literature, except for a very limited range of publications, the literature review is supplemented by a synthesis of the ideas expressed in a series of Rule of Law and Corporate Actors Podcasts¹¹ and Talks.¹² Section 3 describes the developed methodology, which is based on the methodology of the Rule of Law Index applied by the World Justice Project, namely a general population poll (GPP), and qualified respondents' questionnaires (QRQ). This choice is explained as follows. Firstly, this methodology, used since 2010, has gained recognition despite some reasonable critiques,¹³ which have also been taken into consideration in this article. In fact, today it is the only methodology that allows us to assess the overall rule of law environment in different countries and regions, as well as monitor the dynamics of its change. However, this methodology is very limited in reflecting the influence of corporate actors on the overall rule of law environment. Only a few questions are

⁷ Ruggie and Sherman (2017).

⁸ Bernaz (2017, p. 202).

⁹ 'Business for the Rule of Law Framework'.

¹⁰ Ibid.

¹¹ 'Podcasts—Rule of Law and Corporate Actors' <<https://ruleoflawbiz.org/category/podcasts/>> accessed 7 April 2024.

¹² 'Talks—Rule of Law and Corporate Actors' <<https://ruleoflawbiz.org/category/talks/>> accessed 7 April 2024.

¹³ See in particular: Ginsburg (2011). accessed 20 July 2024.

devoted to identifying the potential influence of corporate actors on the rule of law in a country. Secondly, the use of a similar methodology would potentially allow comparisons to be made between the general rule of law environment from a state-centered perspective and the rule of law environment as it is influenced by corporate actors. Section 4 briefly concludes.

2 The Rule of Law and Tempering the Exercising of Corporate Power

2.1 The Rule of Law Conceptualization

As Tom Ginsburg rightly noted, efforts to measure complex social phenomena such as the rule of law are challenging. The first challenge arises from what is known as conceptualization.¹⁴ “A short look at the literature demonstrates that the rule of law concept is not so easy to define. During the past decade, many scholars attempted to determine what the rule of law actually means, what it should mean, or at least what its core features are or should be”.¹⁵ This paradox of the rule of law is articulated by Ronald Dworkin: “that ideal demands certainty and condemns ambiguity in the law. But that is great uncertainty and alleged ambiguity in the ideal itself.”¹⁶

Agreeing with Martin Krygier that “no one ... can dictate a uniquely correct meaning of the rule of law, or any uncontested stipulation of the values it serves”,¹⁷ this article also adopts his approach, redirecting attention to the purpose of the rule of law—its function, rather than its form. This, he argues, is the institutionalized *tempering of the arbitrary exercise of power—by the state, and by other actors’ arbitrary exercise of power*, and its institutionalized tempering.¹⁸

There are different ways in which citizens are made vulnerable to power. As Krygier noted, if arbitrary power is a problem, law should be involved in the exercise of power, not merely as a vehicle or instrument but as a channel, limit, constraint, and tempering agent. The object of the rule of law is to temper or moderate the exercise of power, not exclusively in the direction of states. “The power to harm individuals if exercised arbitrarily can plausibly be alleged of corporations within and outwith states; non-state organisations, among them terrorist and financial organisations, oligarchs, Mafiosi, warlords, tribal elders; international ratings agencies and financial institutions.”¹⁹

¹⁴ Ginsburg (2011, p. 270).

¹⁵ Bedner (2010).

¹⁶ Dworkin (2012). Keynote Speech: The Rule of Law. European Commission for Democracy Through Law (Venice Commission) in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law under the auspices of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe. Reports of the Conference on «The Rule of Law as a Practical Concept. Lancaster House, London.

¹⁷ Krygier (2016). accessed 27 July 2024.

¹⁸ Krygier, M. Ibid.

¹⁹ Krygier, M. Ibid. See also: Krygier (2023), accessed 27 July 2024.

A concern for the restraint of arbitrary power is one element that is common to most theories of the rule of law. However, this concern takes a particular shape: the restraint of public power. From Dicey to Fuller, the limitation of government power in the interest of its citizens is seen as the thing to worry about.²⁰ However, as previously mentioned, non-state actors can influence our lives as significantly as the state, wielding comparable power over us. Any power, including private power, which could significantly impact individuals' and communities' lives—e.g., the power of private corporations or employers—should be limited by law.²¹ The rule of law is really about structuring and regulating the conduct of powerful actors. That is the whole idea of the rule of law.²²

The context of shifts in power between state and non-state actors,²³ particularly corporate actors, and the need to rethink the rule of law concept is gaining increasing support in academic literature. The first attempt to shed light on this aspect can be traced back 60 years. For instance, in 1965, Dwijendra Lal Mazumdar justified the conclusion that “the emergence of the modern corporation as a system of significant nongovernmental power would seem to call for an extension of the rule of law to the exercise of nongovernmental power not only by the modern corporations but also by other nongovernmental institutions or authorities which may possess similar power and may be in position to use it, in socially significant ways, in large sectors of the life of a modern community.”²⁴ In recent literature, this idea has undergone substantial further development. Jacquelyn Veraldi in her article “Private Power, the Rule of Law and the European Union” argues that “it is not just public but also private actors that hold sufficient power over individuals to trigger rule of law-related obligations. Indeed, individuals, corporations, and other non-State actors may exercise power over various aspects of society, the economy, and politics, presenting numerous risks, including political influence, corruption, and lack of accountability. If the EU is to be considered based on the rule of law, it must at a minimum require Member States to preclude private actors from arbitrarily wielding their power over weaker individuals.”²⁵

Taking the factor of non-state power into consideration, the rule of law could be defined as a set of principles that have a specific purpose to temper or moderate the exercise of power for protecting human rights from arbitrariness.

²⁰ Kampourakis et al. (2022, pp. 76–94).

²¹ Podcast with Viktor Smorodinsky: Access to justice and business in times of difficult economic conditions, <<https://ruleoflawbiz.org/access-to-justice-and-business-in-times-of-difficult-economic-conditions/>> accessed 7 April 2024.

²² Podcast with Lucas Roorda (2023). Business and Human Rights: A new lens on rule of law and access to justice—Rule of Law and Corporate Actors. <<https://ruleoflawbiz.org/business-and-human-rights-a-new-lens-on-rule-of-law-and-access-to-justice/>> accessed 7 April 2024. See also: Gowder (2024).

²³ Buyse et al. (2021).

²⁴ Mazumdar (1965).

²⁵ Veraldi (2023). See also: Rachel Griffin (2022). Public and Private Power in Social Media Governance: Multistakeholderism, the Rule of Law and Democratic Accountability. *SSRN Electronic Journal*, f10.2139/ssrn.4190500ff. fhal-03940697f; Tushnet and Bugarcic (2022).

2.2 Two Dimensions of Corporate Power

The discussion about corporate power and the potential of the rule of law to temper or moderate it begins by defining the concept of power and determining if corporate influence could be characterized as power.

In the literature, various dimensions of corporate influence are explored, often described as manifestations of power. One of the most notable recent contributions to this field is David Birchall's article "Corporate Power over Human Rights: An Analytical Framework".²⁶ In this article, power is defined as "the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate."²⁷ From this, Birchall defines "corporate power over human rights as the production, by business enterprises, in and through social relations, of effects that shape the capacities of individuals to enjoy their human rights. More simply, corporate power over human rights is the ability of business enterprises to shape individuals' human rights realization, retrogression, or possibilities."²⁸

In this context, Ioannis Kampourakis, Sanne Taekema, and Alessandra Arcuri emphasize that "private actors exercising power in ways that are comparable to and often indistinguishable from state power. This is done through, for example, the expansive use of private legal ordering that assumes characteristics of bindingness for stakeholders and communities,²⁹ the assumed power to resolve disputes extrajudicially,³⁰ or the provision of social services that extend beyond wages, like housing or healthcare in the context of corporate social responsibility programs³¹—all of which contribute to a high degree of dependence of workers' and communities' livelihoods on corporations."³² The abusive use of labour contracts by employers, or of service contracts in sub-contracting; the extent of entitlements and immunities encapsulated by various forms of property rights, including investment protection; environmentally unsustainable corporate conduct that goes largely unaddressed; the exploitation and monetisation of data by big tech companies that may harm privacy rights; all these problems are problems of arbitrary power too.³³ Individuals, even whole communities, find themselves dependent on the arbitrary power of large corporations.³⁴

Recent developments at the intersection of the political and economic spheres consider corporate power as a threat to democracy as well.³⁵ Corporations have become extremely powerful actors and are increasingly able to shape governance

²⁶ Birchall (2020).

²⁷ Barnett and Duvall (2005).

²⁸ Birchall (2020, p. 44).

²⁹ Kampourakis (2021).

³⁰ Van Loo (2016).

³¹ Atal (2017).

³² Kampourakis et al. (2022, p. 82).

³³ Kampourakis et al. (2022, p. 88).

³⁴ Sempill (2018).

³⁵ Staats (2004). See also: Hillman et al. (2004), Detomasi (2015), Scherer et al. (2014).

at national and supranational levels.³⁶ For instance, the negative external effects of corporate activities on people and the planet, the ambivalences of lobbying or corporate donations, and practices concerning data and artificial intelligence are burning issues connected to multiple grand challenges.³⁷ Corporations significantly influence the mass media, provide public goods through philanthropy, and limit access to resources like land and water for the local population owing to changes in ownership.³⁸ They can fund political campaigns, hire well-connected lobbyists, create think tanks to circulate business-friendly ideas, access the media, and promote the exchange of their personnel into government positions.³⁹ Business interests have long held a preferential position in lawmaking for structural reasons. Their importance for investment and employment provides them with a privileged position in dealings with government, since critical market functions such as jobs, prices, production, growth, standard of living, and economic security depend on business activity.⁴⁰ Government thus has incentives to facilitate business performance by providing business with benefits, including tax breaks, subsidies, or business-favorable regulation.⁴¹

As Surya Deva mentioned, corporate power could have different manifestations as business could play different functions in society. Based on that, corporate power could obtain a public or private nature.⁴² In terms of origin, corporate power does not resemble typical public power, but in terms of its impact on the public, considering how many people are impacted, it is definitely a very pervasive example of power.⁴³

The fact that traditionally business is not considered as a holder of power that could impact individuals, communities, and society as a whole, particularly by influencing the political system and capturing political power, could be explained by the predominance of liberalism and its significant impact on the Western legal tradition.⁴⁴ Polanyi's *"The great transformation, the political and economic origins of our time"* explains the view of corporations as private actors, linking the rise of the market economy to the separation of economic and social relations. This ideological shift has legitimized the market and reversed the dependency, embedding society within the market. Polanyi argues that this transformation, marked by the separation of politics and economics, has confined organizational thought to market

³⁶ Fuchs D (2007). Business power in global governance. In Lynne Rienner Publishers. <https://doi.org/10.1515/9781685853716>.

³⁷ Kroll and Edinger-Schons (2023, 33(3), 349–362).

³⁸ Klein (2007). The shock doctrine. The Rise of Disaster Capitalism. Penguin, McGoey L (2016). No such thing as a free gift: The gates foundation and the price of philanthropy. Verso; Pearce (2012); Reich (2006); Reich (2008).

³⁹ Vogel D (1983); Farnsworth and Holden (2006, pp. 475–76).

⁴⁰ Lindblom Charles (1980).

⁴¹ Ibid.

⁴² 'RoL Talk 1. The rule of law in the face of rising corporate power over human rights'. Speakers: Surya Deva, Karin Buhmann, Ioannis Kampourakis and David Birchall, <<https://ruleoflawbiz.org/rule-of-law-and-corporate-actors-fall-talks-series/>> accessed 7 April 2024.

⁴³ Ibid.

⁴⁴ Hathaway, (2020).

enterprises, neglecting the interaction between politics and the economy. To restore citizen power, he advocates for a democratically controlled, socially embedded economy, reclaiming citizens' decision-making power in economic matters and revitalizing the political sphere.⁴⁵

Florian Wettstein discovers one of the manifestations of the separation of politics (as the public sphere) and economics (as the private sphere). He explains that conventional corporate social responsibility (CSR), shaped by neoliberal thought, adheres to the private–public dichotomy of liberal theory, viewing states as public actors and corporations as private. This model separates private economic activities from public political ones, aiming to protect individual freedom from state and citizen interference. Much of CSR theory, particularly what Scherer and Palazzo call the positivist stream of CSR research,⁴⁶ sees corporations as apolitical and responsible only within the private domain. This perspective limits corporate responsibility to private concerns, excluding broader public issues unless privatized.⁴⁷

A review of the literature identifies two main dimensions of corporate power: companies' direct impact on individuals, communities, and the environment by business operations or their chains of actions, and companies' influence on state governance by intervening in political processes to serve their corporate interests. In this context, cases of private power identified by Gerald Postema in his Law's Rule could be taken to illustrate the first dimension of corporate power: the power of employers over workers, the power of property owners and managers over those who would use that property, the power of suppliers of goods and services to impose boilerplate terms on counterparties.⁴⁸ Lobbying serves as an example of the second dimension.⁴⁹

2.3 The Rule of Law Assessments

The past two or three decades have been marked by attempts to go beyond theoretical and philosophical debates relating to what the rule of law is or is not. These attempts have partly been fueled by the wave of indicator-driven assessments that have become popular in both the business and public sectors.⁵⁰

⁴⁵ Polanyi (1983).

⁴⁶ Scherer and Palazzo (2007, p. 1106).

⁴⁷ Wettstein (2020).

⁴⁸ Postema (2022).

⁴⁹ See: Veraldi, J. Ibid.; Social LobbyMap—EIRIS Foundation—Pioneering the next steps for sustainable finance. <<https://eirisfoundation.org/social-lobbymap/>> accessed 27 July 2024.

⁵⁰ See: UNDP. “Global Human Development Indicators”. <http://hdr.undp.org/en/countries> and territories/profiles/ accessed 27 July 2024, The Heritage Foundation. “Index of Economic Freedom, Country Rankings”. <https://www.heritage.org/index/ranking> accessed 27 July 2024; BDO. “International Business Compass, Overall ranking”. <https://www.bdo-ibc.com/index.php?id=35&L=1> accessed 27 July 2024; Reporters Without Borders. “World Press Freedom Index”. <https://rsf.org/en/ranking> accessed 27 July 2024; Freedom House. “Freedom on the Net report”. <https://freedomhouse.org/countriesand-territories/freedom-net/scores> accessed 27 July 2024; International Trade Union Confederation. “ITUC Global Rights Index”. https://files.mutualcdn.com/ituc/files/ITUC_GlobalRightsIndex_2021_EN_Final.pdf accessed 27 July 2024; World Economic Forum. *Global Gender Gap Report: Insight Report*. https://www3.weforum.org/docs/WEF_GGGR_2021.pdf accessed 27 July 2024; The World Bank. *Women*,

We live in an era of measurement and quantification, in which both the supply and demand of numerical indicators are greatly expanding.⁵¹ We rank cities for their level of global integration, universities for their quality, businesses for their environmental practices, and countries on a wide range of development measures.⁵²

On a global scale, the most famous initiative is the Rule of Law Index by the World Justice Project. It defines the rule of law as ‘a durable system of laws, institutions, norms, and community commitment that delivers accountability, just law, open government and accessible and impartial justice.’⁵³ It operationalises this broad definition by scoring states on eight factors and further discovering over 44 sub-factors.

There have been other attempts to develop and apply rule of law indicators. The most recognized are the UN Rule of Law Indicators, the Rule of Law checklist developed by the Venice Commission and the European Rule of Law Mechanism.

The United Nations Department of Peacekeeping Operations (DPKO) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) developed “The United Nations Rule of Law Indicators”.⁵⁴ But, opposite to the WJP Rule of Law Index, this tool measures the strengths and effectiveness of law enforcement, judicial and correctional institutions. It is designed to highlight apparent successes and shortcomings within institutions and to monitor changes over time within countries. It is not meant to support direct comparisons between countries or rank them.⁵⁵ The Venice Commission developed a Rule of Law checklist that uses a number of overall benchmarks (legality, legal certainty, prevention of abuse of powers, equality before the law and non-discrimination, and access to justice), further subdivided into more substantive elements such as *nullum crimen sine lege* and the presumption of innocence.⁵⁶ However, the checklist aims to discover core elements of the rule of law, but not to measure the situation with the rule of law in a specific society or the impact on it by different actors.

The experience of rule of law assessment has also been developed at the EU level. The European Rule of Law Mechanism monitors significant developments relating to the rule of law in Member States. The annual Rule of Law Reports provide a synthesis of developments in Member States and at the EU level. The monitoring covers four pillars: justice systems, anti-corruption framework, media pluralism and

Footnote 50 (continued)

Business and the Law. Washington DC: World Bank. https://www.worldbank.org/content/dam/sites/wbl/documents/2021/02/WBL2021_ENG_v2.pdf accessed 27 July 2024; Transparency International. *Corruption Perceptions Index*. https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1_2021-02-08-103053.pdf accessed 27 July 2024 and many others.

⁵¹ Ginsburg (2011).

⁵² Davis et al. (2012).

⁵³ Botero JC and Ponce A (2011). Measuring the Rule of Law. Working Paper: World Justice Project. <<https://ssrn.com/abstract=1966257>> accessed 7 April 2024.

⁵⁴ Rashid NM (2011). The United Nations Rule of Law Indicators, Implementation Guide and Project Tools—United Nations and the Rule of Law. United Nations and the Rule of Law. <<https://www.un.org/ruleoflaw/blog/document/the-united-nations-rule-of-law-indicators-implementation-guide-and-project-tools/>> accessed 7 April 2024.

⁵⁵ Ibid.

⁵⁶ European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, adopted on 11–12 March 2016, Council of Europe.

media freedom, and other institutional issues related to checks and balances. For each of these pillars, the relevant sub-topics and main existing sources of information are set out.⁵⁷

All mentioned methodologies are state-oriented and do not reflect the corporate impact on the rule of law environment in a society.

One of the rare attempts to address the question of “measuring corporate power” was made by the Global Development Policy Center (Boston University) in the paper “Corporate Power in a Global Economy” (2023).⁵⁸ As it mentions, “a commonly accepted metric measuring corporate power does not exist”. The paper presents several common metrics that could potentially be used to measure corporate power, but it does not apply a rule of law perspective for this purpose nor propose a holistic approach to measuring corporate power. For example, corporate power can be assessed by looking at the strength of countervailing forces that oppose the concentration of corporate power and seek to limit their influence. The most powerful countervailing force to corporate power has historically been labor unions that represent workers’ interests. A decline in union power may signify the ability of corporations to weaken their “opponents”.⁵⁹ Another approach for assessing recent changes in corporate power is to measure their ability to reduce their tax burden.⁶⁰ The different manifestations of corporate power impact are analyzed in the paper, but without proposing the methodology of measuring this impact.

The lack of tools to measure the corporate impact on the rule of law needs to be addressed.

3 Methodology of Measuring the Corporate Actors’ Impact on the Rule of Law Environment

As noted earlier, one of the most recognized methodologies for measuring the overall rule of law environment in different countries is the World Justice Project’s Rule of Law Index.⁶¹ The WJP Rule of Law Index is the first attempt to systematically and comprehensively quantify the rule of law around the world and remains unique in its operationalization of rule of law dimensions into concrete questions.⁶²

The WJP developed the conceptual framework summarized in the Index’s eight factors and 44 sub-factors, in consultation with academics, practitioners, and community leaders from around the world. The factors taken as the key basis of the Index are as follows: limited government powers; absence of corruption; order and

⁵⁷ Rule of law mechanism. European Commission. <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en> accessed 7 April 2024.

⁵⁸ Roach (2023).

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ WJP Rule of Law Index. <<https://worldjusticeproject.org/rule-of-law-index/>> accessed 7 April 2024.

⁶² Methodology Snapshot: Steps to Produce the WJP Rule of Law Index. <<https://worldjusticeproject.org/rule-of-law-index/downloads/Index-Methodology-2023.pdf>> accessed 7 April 2024.

security; fundamental rights; open government; regulatory enforcement; access to civil justice; effective criminal justice; and informal justice (the last one was not used in the 2022 and 2023 Indexes). The Index team developed five questionnaires based on the Index's conceptual framework to be administered to experts [Qualified Respondents' Questionnaires (QRQs)] and the general public [General Population Poll (GPP)].⁶³

The authors of the WJP Rule of Law index mentioned, "this framework borrows heavily from the theoretical work on the nature of the rule of law and is grounded on the basic idea that law imposes limits on the exercise of power by government and private interests. Our framework, however, goes beyond this general principle and explores the ingredients of the rule of law in terms of specific goals or outcomes that rule of law societies seek to achieve and that policy makers might want to influence".⁶⁴ Despite the mention of "limits on the exercise of power by private interests", the methodology proposed by the Index is aimed exclusively at the state-centric dimension of the rule of law. At the same time, this article considers it possible to take as a basis the methodology proposed by the WJP Rule of Law index to develop a similar methodology for measuring the influence of corporate actors on the rule of law environment in a particular society, regardless of whether it is a democratic or non-democratic political regime.

The factors proposed in this article as factors for measuring the corporate actors' impact on the rule of law environment are discovered using various analytical materials, reports, and academic literature on business and human rights,⁶⁵ reports of the UN Working Group on business and human rights and contributions made by different stakeholders in the process of preparing these reports,⁶⁶ case studies related to the negative impact of business on human rights and/or the political system of the state,⁶⁷ examples shared by guests of the Rule of Law and Corporate Actors podcasts,⁶⁸ and a number of expert discussions within the Rebalance project.⁶⁹

The decision to base the methodology on the WJP Index is explained as follows. Firstly, the WJP methodology, in use since 2010, has gained recognition despite some reasonable critiques.⁷⁰ It is currently the only methodology that allows the

⁶³ 2021 WJP Rule of Law Index Questionnaires. <<https://worldjusticeproject.org/2021-wjp-rule-law-index-questionnaires>> accessed 7 April 2024.

⁶⁴ Botero, J. C. & Ponce, A. Ibid.

⁶⁵ E.g. Captured Democracies: A Government for the few (2018). Oxfam International. <<https://www.oxfam.org/en/research/captured-democracies-government-few>> accessed 7 April 2024; <https://biz.sdg.humanrights.dk/salient-issues> and others.

⁶⁶ Reports of the UN Working group on Business and Human Rights. <<https://www.ohchr.org/en/special-procedures/wg-business/reports>> accessed 7 April 2024.

⁶⁷ E.g. How (not) to Do Business and Human Rights in Central and Eastern Europe and Central Asia. Case Studies Edited by: Beata Faracik, Olena Uvarova (2023) <<https://pihrb.org/wp-content/uploads/2023/06/PIHRB-WPS-1-2023-How-not-to-do-business-and-human-rights-in-CEE-CA.pdf>> accessed 7 April 2024.

⁶⁸ Rule of law and corporate actors podcasts. <<https://ruleoflawbiz.org/category/podcasts/>> accessed 7 April 2024.

⁶⁹ Rebalance (2023). <<https://rebalanceproject.org/>> accessed 27 July 2024.

⁷⁰ See in particular: Ginsburg (2011). accessed 20 July 2024.

assessment of the overall rule of law environment in different countries and regions, as well as monitoring its changes. However, this methodology is limited in reflecting the influence of corporate actors on the rule of law environment. Only a few questions address the potential influence of corporate actors on the rule of law in a country. Secondly, using a similar methodology would potentially allow for comparisons between the general rule of law environment from a state-centered perspective and the rule of law environment as influenced by corporate actors.

Following the example of the World Justice Project, the approach proposed in this article examines the influence of corporate actors on the rule of law environment through the following factors (see Fig. 1):

This article elaborates on the “translation” of state-oriented factors from the WJP Rule of Law Index into corporate-oriented factors. These factors are closely interconnected, and their division is fairly conditional. Each factor reflects one of two main dimensions of corporate power—whether it’s the direct impact of business operations on individuals, communities, and the environment, or the influence on state governance through political intervention to serve corporate interests.

3.1 Factor 1: Preventing Corporate Capture and Corporate Contribution to Structural Inequality

According to the WJP Index, the first factor “Limited government powers” measures the extent to which those who govern are subject to law. This factor addresses the fundamental principle that rulers are subject to legal restraints. It comprises the means (checks and balances), both constitutional and institutional, by which the powers of the government and its officials and agents are limited and by which they are held accountable under the law.⁷¹

In the context of corporate impact on the rule of law, ineffective limitation of corporate power manifests in “corporate capture of the political and regulatory sphere where businesses engage political processes in support of policies that respond to their own interest and priorities, even when such policies are inconsistent with human rights protection and promotion.”⁷² This describes dynamics in which corporate actors “[attempt] to influence ... public policies and regulations ... whether by providing covert, deceptive or misleading evidence or data, by manipulating public opinion or by using other practices intended to manipulate the decisions of public officials” or “the means by which economic elites undermine the realization of human rights and environmental protection by exerting influence over domestic

⁷¹ Botero, J. C. & Ponce, A. Ibid.

⁷² UN WG Report (2022). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on Business and Human Rights. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/432/83/PDF/N2243283.pdf?OpenElement>> accessed 7 April 2024.

and international decision-makers and public institutions.”⁷³ The manifestations of corporate capture involve community manipulation, economic diplomacy, judicial interference, legislative and policy interference, privatizing the use of public services (including public security services), revolving door practices, shaping narratives, and the capture of academic institutions.⁷⁴ A demonstration of corporate capture may occur through lobbying efforts that result in human rights infringements. For instance, lobbying for looser regulation, weaker protection for workers and consumers, and lower taxes that deprive governments of the funding they need to level the playing field and provide social safety nets for their citizens. Another example could be avoiding or minimizing tax payments through practices such as shifting profits to subsidiaries in tax havens where companies conduct little meaningful business activity.⁷⁵ These business models and strategies contribute significantly to structural inequality.⁷⁶

3.2 Factor 2: Corporate Integrity and Transparency

While many forms of corporate political engagement are not inherently harmful or irresponsible, close contacts between businesses and political processes can provide opportunities for actors who engage in bribery, fraud, or other corrupt acts. This is particularly the case where transparency and oversight requirements around corporate political engagement are lacking. It is well established that transparency in public decision-making processes reduces the likelihood of corrupt behaviour because it lowers the information barrier, allowing for scrutiny and monitoring, and that limited transparency can enable corruption to thrive.⁷⁷

Corruption is the abuse of entrusted power for private gain. Integrity in business dealings and avoiding corrupt practices is part and parcel of responsible

⁷³ UN WG Report (2022). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on Business and Human Rights. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/432/83/PDF/N2243283.pdf?OpenElement>> accessed 7 April 2024.

⁷⁴ ES-CR-Net Input (2021). International Network for Economic, Social and Cultural Rights (ESCR-Net) input on corporate capture and corporate political engagement. <www.ohchr.org/sites/default/files/documents/issues/executions/40thanniversary/state-replies/2022-07-19/ESCRNet_Final_Submission_UNWG_BHR_Corporate_Capture_Nov_2021.pdf> accessed 7 April 2024.

⁷⁵ Tackling inequality: An agenda for business action (2023), WBCSD.

⁷⁶ See also: A/78/160: Role of business in realizing the right to development—Report of the Special Rapporteur on the right to development, Surya Deva (2023) <<https://www.ohchr.org/en/documents/thematic-reports/a78160-role-business-realizing-right-development-report-special>> accessed 27 July 2024.

⁷⁷ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises Corporate influence in the political and regulatory sphere: ensuring business practice in line with the Guiding Principles on Business and Human Rights (2022) <<https://undocs.org/Home/Mobile?FinalSymbol=A%2F77%2F201&Language=E&DeviceType=Desktop&LangRequested=False>> accessed 27 July 2024.

business conduct.⁷⁸ The OECD notes that corruption can harm democratic institutions, undermine attempts by citizens to achieve higher levels of economic, social, and environmental welfare, and impede efforts to reduce poverty. As a result, it has created a full chapter on the topic in its Guidelines for Multinational Corporations (MNCs) to remind enterprises that they have an important role to play in combating these practices.⁷⁹

Corruption involving business actors harms the human rights of workers and communities affected by it.⁸⁰ For instance, a study conducted by the International Corporate Accountability Roundtable (ICAR) and Global Witness, authored by Olivier De Schutter, shows that “driven by the rising demand for food, fuel, and commodities, companies are all too often striking deals with corrupt State officials without the consent of the people who live on it. The last decade has seen an upsurge in land grabs for industries like mining, logging, agribusiness, and infrastructure projects, with local communities rarely consulted or compensated.”⁸¹ As another example, in 2017, the UK Serious Fraud Office affirmed its probe into allegations that British American Tobacco (BAT) engaged in bribery and corruption in East Africa to impede the enactment and enforcement of tobacco control laws, which have been instrumental in preserving millions of lives in the Global North.⁸² Global supply chains are often susceptible to corruption, as companies and their agents may pay bribes to gain access to markets. Bribes may be paid to avoid government health and safety inspections, for example, in factories.⁸³ Corruption risks in business operations, involving supply chains, partnerships, or operations in countries with high levels of corruption, pose a dual threat. There is not only a risk of bribery occurring through the company, its agents, or business partners, but also a heightened risk of human rights abuses.⁸⁴

⁷⁸ Doing business honestly without corruption. <https://www.government.nl/binaries/government/documenten/leaflets/2023/01/17/honest-business/75246_BuZa_Eerlijk+Zakendoen_EN_v2.pdf> accessed 7 April 2024.

⁷⁹ Corruption—National Action Plans on Business and human rights. <<https://globalnaps.org/issue/corruption/>> accessed 7 April 2024.

⁸⁰ Connecting Business and Human Rights with Anti-Corruption, Preliminary concept note by the UN Working Group on Business and Human Rights, <<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/WGCorruptionBHR.pdf>> accessed 7 April 2024.

⁸¹ De Schutter (2016). Tainted Lands Corruption in Large-Scale Land Deals, The International Corporate Accountability Roundtable & Global Witness, <<https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5900a525c1de58cc5ea95389/1493214509185/Tainted+Lands+Report.pdf>> accessed 7 April 2024.

⁸² Oke, J. (2017). SFO investigating British American Tobacco p.l.c. Serious Fraud Office. <<https://www.sfo.gov.uk/2017/08/01/sfo-investigating-british-american-tobacco-plc/>> accessed 7 April 2024.

⁸³ A/HRC/44/43: Report on connecting the business and human rights and the anticorruption agendas, 18 June 2020. <<https://www.ohchr.org/en/documents/thematic-reports/ahrc4443-report-connecting-business-and-human-rights-and-anticorruption>> accessed 7 April 2024.

⁸⁴ Ibid.

3.3 Factor 3: Meaningful Stakeholders Engagement

The Rule of Law Index developed by WJP uses the factor of open government, defining it “as a government that shares information, fosters citizen participation in decision-making, and empowers people with tools to hold the government accountable.”⁸⁵ All mentioned factors are equally important for corporate actors—businesses should share information with stakeholders, foster stakeholder participation, and empower people with tools to hold companies accountable if negative impact occur. For measuring the corporate impact on the rule of law, meaningful stakeholder engagement by companies is the most relevant indicator.

The theme of stakeholder engagement runs across the UN Guiding Principles on Business and Human Rights, and is critical to a company’s efforts to meet the corporate responsibility to respect human rights. Stakeholder engagement is understood to be “an ongoing process of interaction and dialogue between a company and its potentially affected stakeholders that enables the company to hear, understand, and respond to their interests and concerns, including through collaborative approaches.”⁸⁶ Meaningful engagement with stakeholders is a core source of information for enterprises to understand their impact and its implications for those potentially or actually affected.⁸⁷ Meaningful engagement with rightsholders and civil society, including human rights defenders (HRDs), that is gender-sensitive and intersectional, is critical to a due diligence process that effectively identifies human rights impacts and responds to their concerns.⁸⁸

The Special Rapporteur on the right to development, Surya Deva, in his Report “Role of business in realizing the right to development” emphasized that “most businesses are not ensuring the meaningful participation of people. Participation is not identical to the consultation that many businesses may already conduct as part of human rights due diligence—the former requires recognition of the agency of people and the co-sharing of power with them to take decisions. Only by securing such participation of people would businesses ensure that “decisions reflect people’s needs and enable everyone to contribute to transformational change”.⁸⁹

⁸⁵ Dimensions of the WJP Open Government Index. <<https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/dimensions-wjp-open-government-index>> accessed 7 April 2024.

⁸⁶ United Nations High Commissioner for Human Rights, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, p. 8.

⁸⁷ Buhmann (2023).

⁸⁸ Support for meaningful and safe stakeholder engagement as a central aspect of the EU framework on mandatory human rights and environmental due diligence, <https://media.business-humanrights.org/media/documents/Business_Statement_Engagement_MHREDD_finalv4_1011.pdf>. accessed 7 April 2024.

⁸⁹ Role of business in realizing the right to development, the report of the Special Rapporteur on the right to development. *Ibid.*

3.4 Factor 4: Fundamental Rights

Fundamental human rights are the essence of the business and human rights concept. In recent years, we note the development of soft law instruments on business and human rights and in particular of the 2011 UN Guiding Principles (UNGPs) on Business and Human Rights, unanimously endorsed by the UN Human Rights Council.

According to the UNGPs, the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of states' abilities and/or willingness to fulfill their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights. Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation, and, where appropriate, remediation. Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations. The responsibility to respect human rights extends to all companies, but both the UNGPs and the OECD Guidelines note that the means through which businesses meet this responsibility can vary by size, sector, operating context, and risk profile.⁹⁰

The corporate responsibility to respect human rights is described as "the basic expectation society has of business" and "the baseline expectation for all companies in all situations".⁹¹ In short, society expects companies to respect human rights. Under the UNGPs, human rights are those rights protected under the International Bill of Rights, which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and indeed the International Covenant on Economic, Social and Cultural Rights. The recently adopted Corporate Sustainability Due Diligence Directive, for certainty, lists the international instruments which protect human rights covered by the CSDDD.⁹²

According to Surya Deva, the Special Rapporteur on the right to development, "states should change the current legal architecture that facilitates business abuse of human rights or pollution of the environment. Corporate laws and trade and investment agreements are two key components of this architecture. Unless foundational changes are made to the key principles and goals of corporate laws, businesses will not be able to contribute at the scale or with the urgency required to accomplish an

⁹⁰ OECD (2018). Organisation for Economic Co-operation and Development, *Due Diligence Guidance for Responsible Business Conduct*, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> accessed 27 July 2024

⁹¹ Ruggie (2008). Protect, respect and remedy: a framework for business and human rights: report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie. United Nations Digital Library System, <https://digitallibrary.un.org/record/625292> accessed 27 July 2024

⁹² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Final text, <<https://data.consilium.europa.eu/doc/document/ST-6145-2024-INIT/en/pdf>>. accessed 7 April 2024.

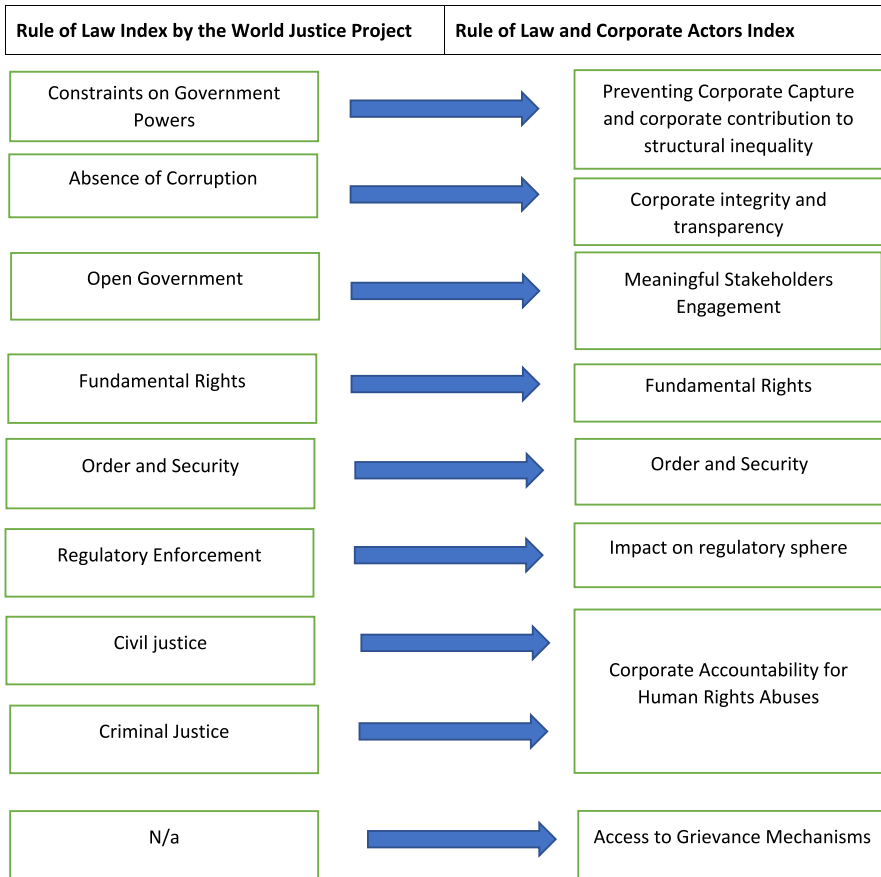


Fig. 1 Developed by the author

inclusive, equitable and sustainable development.”⁹³ Speaking more generally, formal rules to just restrict corporate power are not a sufficient solution. Steps further to identify and transform legal structures that ground corporate power in the first place before human rights should be a prerequisite for this solution. This transformation of corporate power should aim at its restriction by the rule of law and ensure corporate respect for human rights.

Moreover, in cases of gross violations of human rights by states or other actors, companies should step up their support for human rights within their spheres of influence and publicly state their values and principles. Companies struggle to be faithful to their values due to government pressure. “A company, sticking to human

⁹³ Report of the Special Rapporteur on the right to development, Surya Deva (2023). Role of business in realizing the right to development, <<https://www.ohchr.org/en/documents/thematic-reports/a78160-role-business-realizing-right-development-report-special>> accessed 7 April 2024.

rights values, using the leverage of partnership, etc., can indeed sometimes be the only ‘hope’ and instrument for the people trying to protect themselves.”⁹⁴ There are many examples where companies were called to use their power (leverage) to positively impact the human rights environment. In 2019, major Dutch institutional investors appealed to Shell to bring pressure on Brunei Darussalam over a proposed law mandating the death penalty for homosexuality. Leading investment banks such as JP Morgan also boycotted hotels owned by the Sultan of Brunei⁹⁵; the legislation was eventually abandoned. But supporting civic freedoms does not always have to mean stark choices or overt public messaging. In some cases, investors and companies can exert influence discreetly. The business’s power to stop (or minimize) harm should be taken into consideration.⁹⁶

3.5 Factor 5: Order and Security

For the purpose of the WJP, this factor includes three dimensions: absence of crime; absence of political violence, including terrorism, armed conflict, and political unrest; and absence of violence as a socially acceptable means to redress personal grievances; in order to account for the fact that violence might be a manifestation of people taking justice into their own hands.⁹⁷

For the purpose of discovering the corporate impact on the rule of law, this factor is considered from a slightly different perspective, but also through the lens of violence and the risks that companies can be involved in using it against people. While states have traditionally been considered to have a monopoly on the use of force, military and security functions have increasingly been contracted out to the private sector. The list of human rights abuses committed in relation to business activities is extensive, including torture of detainees, shootings and killings of community members, fueling existing conflicts, destruction of property, sexual harassment, and rape.⁹⁸ Affected rights-holders include workers and communities, with women being particularly vulnerable group in this context.⁹⁹ The business and human rights concept pays special attention to situations where businesses operate in conflict-affected

⁹⁴ Deikalo E (2024). BHR agenda and authoritarian regimes: The case of political and human rights crisis in Belarus since 2020, *Business and Human Rights Journal*, Vol. 9, Special Issue 1: Business and Human Rights in Central and Eastern Europe. Region in Transition, 150—156. DOI: <https://doi.org/10.1017/bhj.2023.8>.

⁹⁵ Vandeveld, M. & Morris, S. (2019). JPMorgan bans staff from Brunei-owned hotels over gay law, *Financial Times*. <<https://www.ft.com/content/b0365536-69ca-11e9-80c7-60ee53e6681d>> accessed 7 April 2024.

⁹⁶ Van Ho (2023). Not all parties are equal: understanding the responsibility for reparations in conflict-affected areas, <<https://www.business-humanrights.org/en/blog/not-all-parties-are-equal-understanding-the-responsibility-for-reparations-in-conflict-affected-areas/>> accessed 7 April 2024.

⁹⁷ Botero, J. C. & Ponce, A. Ibid.

⁹⁸ Canadian companies linked to allegations of human rights abuse abroad including killings, torture and forced labour—new reports, testimony, Mining Watch Canada (2023). <<https://miningwatch.ca/news/2023/2/14/canadian-companies-linked-allegations-human-rights-abuse-abroad-including-killings>> accessed 27 July 2024.

⁹⁹ Ibid.

areas, as their activities can inadvertently influence conflict dynamics, and potentially lead to an escalation of violence.¹⁰⁰

For example, a question that could be included in the expert questionnaire for the Corporate Actors and the Rule of Law Index might be the following: To what extent can people freely join together to draw attention to issues of business-related human rights impacts without any risk of prosecution or concern for their safety?

3.6 Factor 6: Impact on Regulatory Sphere

The WJP framework does not look at the presence of particular forms of regulation, nor does it examine how much regulation of a particular activity is appropriate. Instead, it focuses on how well regulations are implemented and enforced, concentrating on ubiquitous situations that all countries regulate: environmental restrictions, public health requirements, workplace safety conditions, and others.¹⁰¹

For measuring corporate influence on the rule of law, this factor is also important. It is closely connected with corporate capture, but here the focus lies on how corporations shape the effectiveness of law enforcement, rather than the law-making process itself. Business actors may be in a position to influence the regulatory sphere, judicial and non-judicial processes. In some cases, business entities may lobby public officials directly to influence the outcome of judicial processes against a business or prevent their initiation in the first place. This practice can carry human rights risks when businesses lobby states to cease legal actions against them related to business-related human rights abuses, for example.

The state's duty to protect human rights requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication.¹⁰² In this context, the state's ability to fulfill this obligation effectively could be significantly limited by business.

International investment agreements can serve as a clear criterion for assessing corporate impact on the rule of law. Most existing international investment agreements reflect an imbalance between the rights and obligations of investors, which can have the unintended effect of facilitating irresponsible investor conduct or making it challenging for states to regulate such conduct. The rule of law environment in a specific state should ensure that all existing and future investment agreements are compatible with their international human rights obligations. States should also invoke international investment agreements to encourage responsible business conduct on the part of investors and hold them accountable for abusing internationally recognized human rights.¹⁰³

¹⁰⁰ OHCHR (2023). Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting. <<https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>> . accessed 7 April 2024.

¹⁰¹ Botero, J. C. & Ponce, A. Ibid.

¹⁰² UN Guiding Principles on Business and Human Rights, <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed 27 July 2024.

¹⁰³ A/76/238: Report on Human rights-compatible International Investment Agreements (IIAs) (2021), <<https://documents.un.org/doc/undoc/gen/n21/208/09/pdf/n2120809.pdf?token=DPOVw2Em1LzVmlYiCH&fe=true>> accessed 27 July 2024.

Another example is corporate tax evasion and tax avoidance, which undermine states' ability to protect, respect, and fulfill human rights since states are deprived of necessary resources to realize economic, social, and cultural rights, as well as civil and political rights.¹⁰⁴ This question is closely connected with corporate influence on the rule of law environment because a high level of tax evasion and tax avoidance is an indirect manifestation of the ability of corporate actors to prioritize their interests over the public (common) interest, with significant negative impacts on society.

3.7 Factor 7: Corporate Accountability for Human Rights Abuses

Access to justice is central to the rule of law. According to WJP, “this factor measures whether ordinary people can resolve their grievances through formal institutions of justice in a peaceful and effective manner, as well as in accordance with generally accepted social norms rather than resorting to violence or self-help. Access to civil justice requires that the system be accessible, affordable, effective, impartial, and culturally competent.”¹⁰⁵

The business and human rights framework pays special attention to the importance of access to justice in cases of business related human rights abuses as well. There are a range of civil causes of action available to claimants against businesses for human rights abuses. In recent years, cases have been brought for abuses including: causing environmental damage; using forced or child labour; employers interfering in employees' labour organisation rights; causing injury to employees or those impacted by operations; and privacy violations by employers against employees, such as excessive data collection.¹⁰⁶ The civil remedies could provide compensation to the victims by way of damages, apologies, restitution, and address the prevention of harm through, for example, injunctions or guarantees of non-repetition.¹⁰⁷ However, the real access to these remedies varies significantly across jurisdictions due to existing barriers (financial burden, evidentiary hurdles, the burden of proof, the absence of legal possibility for collective or group complaints, lack of access to information and disclosure for victims,¹⁰⁸ and many others) that can make access to justice in business related human rights abuses almost impossible.

¹⁰⁴ A/78/160: Role of business in realizing the right to development—Report of the Special Rapporteur on the right to development, Surya Deva (2023) <<https://www.ohchr.org/en/documents/thematic-reports/a78160-role-business-realizing-right-development-report-special>> accessed 27 July 2024.

¹⁰⁵ Botero, J. C. & Ponce, A. Ibid.

¹⁰⁶ Wessely et al. (2023a). In brief: civil liability for corporate human rights violations in United Kingdom. Lexology. <<https://www.lexology.com/library/detail.aspx?g=c8ee113b-91a0-42c9-9948-b2c183d815c2>> accessed 7 April 2024.

¹⁰⁷ Civil liability for human rights violations. (2022). <<https://www.law.ox.ac.uk/civil-liability-for-human-rights-violations/civil-liability-human-rights-violations>> accessed 7 April 2024.

¹⁰⁸ Overcoming barriers to access to justice for corporate human rights abuses. International Federation for Human Rights. <<https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/overcoming-barriers-to-access-to-justice-for-corporate-human-rights>> accessed 7 April 2024.

Moreover, corporations routinely use a range of judicial procedures to avoid liability for harms they have caused or contributed to, often leaving victims without proper remedy for the on-going harms they face. When successful, these judicial strategies avoid a court decision that confirms corporate liability for human rights abuses or prevent the adoption of legislation or investigations that could adversely impact a company's investments.¹⁰⁹

The UNGPs require States to regulate rights respecting business behaviour not only in civil and administrative law, but also through “criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offense occurs.” Illegal acts may be criminalised in international humanitarian law, anti-trafficking legislation, environmental laws, consumer safety legislation, or workplace safety laws, among others.¹¹⁰

Criminal prosecutions, brought against either corporations or their personnel may be required to realise victims' right to an effective remedy. In 2016, the Council of Europe, in its Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States, heavily advocated for criminal (or equivalent) liability for business-related human rights abuses. With this Recommendation, whose primary purpose was to contribute to the effective implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) at the European level, the COE recommended that Member States consider applying certain legislative measures (including criminal liability) to ensure that business enterprises can be held liable under their respective criminal law for the commission of, inter alia, crimes under international law caused by business enterprises and other offenses constituting serious human rights abuses involving business enterprises. This could also improve access to remedy for victims of business-related human rights abuses and fulfill their obligations of judicial cooperation with each other or with third countries, including criminal investigations.¹¹¹

3.8 Factor 8: Access to Grievance Mechanisms

This factor is not presented in the WJP Rule of Law Index. However, this component plays an important role in ensuring access to justice.

The UNGPs encourage enterprises to establish, or participate in, effective operational-level, or company grievance mechanisms which should be effective, accessible, affordable, adequate, and timely. Similarly, industry, multi-stakeholder, or other

¹⁰⁹ Corporate strategies to avoid responsibility for human rights abuses (2020). <<https://www.somo.nl/wp-content/uploads/2020/07/Mind-the-Gap-summary.pdf>> accessed 7 April 2024.

¹¹⁰ Corporate Criminal Liability—Key resources—Business & Human Rights Resource Centre. Business & Human Rights Resource Centre. <<https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/corporate-criminal-liability/>> accessed 7 April 2024.

¹¹¹ OPINION: Corporate criminal liability as a tool for mandatory human rights/ESG due diligence and disclosure—a missed opportunity. (n.d.). <<https://www.ibanet.org/Corporate-criminal-liability-missed-opportunity>> accessed 7 April 2024.

collaborative initiatives based on human rights standards can also provide grievance mechanisms that can be accessed by those impacted by companies' activities.¹¹²

According to OECD 2023, “operational-level grievance mechanisms for those potentially impacted by enterprises’ activities can be an effective means when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the OECD Guidelines, transparency, rights-compatibility, being a source of continuous learning, and are based on dialogue and engagement with a view to seeking agreed solutions. Such mechanisms can be administered by an enterprise alone or in collaboration with other stakeholders and can be a source of continuous learning.”¹¹³

All mentioned factors aim to identify the impact of corporate actors on the rule of law environment in a specific society in two dimensions: (1) through their direct impact on individuals and communities via business operations or chains of activities, and (2) through their influence on political processes in the state. In both cases, corporate actors capable of making such an impact should be considered holders of power.

4 Conclusions

4.1 Limitations of the Research and its Further Development

This is the first attempt to develop a methodology for measuring corporate impact on the rule of law, requiring further testing and refinement based on its results. The next step involves creating questions for both the general public and experts within the proposed factors of corporate impact on the rule of law.

This paper is also limited by focusing on the national rule of law environment. Businesses shape transnational lawmaking through multiple mechanisms, including lobbying legislators for policy changes, exerting influence over administrative rule-making, and using litigation to affect the interpretation and elaboration of laws over time.¹¹⁴ Scholars have examined the role of business entities in the development of public and private international law, including the making of international rules governing such areas as trade, investment, antitrust, intellectual property, and telecommunications. They have also analyzed the influential position of corporations in the international treaty-making process, including their design, drafting, negotiation, adoption, ratification, and implementation.¹¹⁵ Without doubt, corporate actors

¹¹² Curtze L and Gibbons S (2017). Access to remedy—operational grievance mechanisms. An issues paper for ETI Version 2.0. <https://www.ethicaltrade.org/sites/default/files/shared_resources/ergon_-_issues_paper_on_access_to_remedy_and_operational_grievance_mechanims_-_revised_draft.pdf> accessed 7 April 2024.

¹¹³ OECD. Ibid.

¹¹⁴ Shaffer G (2009). How Business Shapes Law: A Socio-Legal framework. Social Science Research Network, <https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1513622_code702020.pdf?abstractid=1426302> accessed 7 April 2024.

¹¹⁵ Sarfaty (2021).

impact international rule of law noticeably. However, this article does not aim to explore this aspect. This dimension of the corporate impact on the rule of law could be an issue for further research.

4.2 The Composition of the Proposed Methodology

The methodology presented in this article not only reflects the established concepts of corporate responsibility to respect human rights, as articulated by the UNGPs, and responsible business conduct, as outlined by the OECD, but also extends beyond them. Both concepts are intricately linked with the rule of law environment. Furthermore, both are grounded in the understanding that businesses' influence over people, the planet, and society is significant, often leveraging their corporate power. However, both concepts fail to account for the corporate impact on the rule of law.

This article proposes a framework for conceptualizing and assessing the extent to which corporate actors impact the rule of law environment in different societies. To achieve this, the methodology for the Corporate Actors and the Rule of Law Index is developed based on a reimagined methodology derived from the Rule of Law Index by the World Justice Project, originally conceived in a state-centric manner. The developed methodology includes eight factors: preventing corporate capture and corporate contribution to structural inequality; corporate integrity and transparency; meaningful stakeholder engagement; order and security; impact on the regulatory sphere; corporate accountability for human rights abuses; access to grievance mechanisms.

Measuring the influence of corporate actors on the rule of law and indicating the dynamics of this influence significantly contributes to the overall understanding of the rule of law environment. The absence of such measurement distorts the comprehension of the balance of power in society, impedes the development of legal regulation, obstructs the identification of problematic issues in ensuring the rule of law, and hinders efforts to address them. As a practical implementation of the developed methodology, the next step involves elucidating the discovered factors through surveys for the general public and questionnaires for experts, akin to the approaches used in the WJP Rule of Law Index. Additionally, alternative research approach could be applied based on the proposed factors, including conducting interviews, providing cabinet studies for defining indicators for more detailed exploration of each factor, etc.

4.3 Policy Implications

Despite widespread recognition of the significant influence of corporations on human rights, an influence that is of the nature of power, discourse on the rule of law requirements remains focused exclusively on states. Applying the rule of law to corporate actors is limited, in many cases, with “ensuring that the businesses respect the letter and spirit of applicable laws, and do not take action that undermines or

interferes with the administration of justice, or the effectiveness and accountability of institutions”.¹¹⁶

Understanding the influence of corporate actors on the rule of law environment can play an important role in determining the potential of voluntary and mandatory instruments for implementing human rights due diligence (or corporate sustainability due diligence). The corporate influence on the rule of law is a significant factor in ensuring meaningful human rights due diligence, and its substantive exercising in practice.

Moreover, once a sufficient amount of empirical data has been collected, the potential for expanding human rights due diligence should be analyzed. This expansion could involve developing a more comprehensive approach that considers not only the impact of companies on human rights through abuses but also their influence on human rights by affecting the rule of law in a broader sense.

The developed methodology could also be used by corporate actors to reconsider corporate policies and business models, eliminating those that contribute to the negative impact on the rule of law environment.

The Index developed based on the proposed methodology can be utilized for various purposes: (i) to compare the general rule of law dynamics with the corporate impact on the rule of law, potentially signaling the role of corporate actors; (ii) to link the corporate impact on the rule of law with business and human rights (corporate sustainability) developments in specific countries; and (iii) to observe the dynamics of corporate impact on the rule of law in connection with other developments. In the longer term, it can address the limitations of the existing concept of human rights due diligence and propose a more holistic approach. Corporate sustainability due diligence should not only focus on specific human rights impacts but also promote responsible conduct by considering the corporate impact on various aspects of social life.

Acknowledgements The author would like to acknowledge the financial support from the Horizon project “Rebalancing disruptive Business of multinational corporation and global value chains within democratic and inclusive citizenship processes” (101061342—REBALANCE).

Declarations

Conflict of Interest No competing financial or non-financial interests are declared.

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¹¹⁶ ‘Business for the Rule of Law Framework’, UN Global Compact (2015) <<https://unglobalcompact.org/library/1341>> accessed 7 April 2024.

References

Books

- Bernaz, N. (2017) Business and human rights. In: History, law and policy. Bridging the Accountability Gap.
- Bingham, T. (2010) The rule of law. Allen Lane, London.
- FRA (2014) An EU internal strategic framework for fundamental rights: joining fundamental rights: joining forces to achieve better results. Publications Office of the European Union (Publications Office), Luxembourg.
- Karnaukh B, Uvarova O (2022) Civil liability for human rights violations. A handbook for practitioners. Bonavero Institute of Human Rights, Ukraine.
- Klein N (2007) The shock doctrine. Penguin.
- Lindblom Charles E (1980) Politics and markets: the World's political economic systems. Basic Books.
- McGoey L (2016) No such thing as a free gift: The gates foundation and the price of philanthropy. Verso.
- Pearce F (2012) The land grabbers: the new fight over who owns the Earth. Beacon Press.
- Polanyi K (1983) The great transformation, the political and economic origins of our time. Gallimard (original ed. 1944).
- Postema GJ (2022) Law's rule: the nature, value, and viability of the rule of law. Oxford University Press.
- Reich R (2008) Supercapitalism: the transformation of business, democracy, and everyday life, 6th edn. Knopf Publishing Group.
- Roach B (2023) Corporate power in a global economy. An ECI teaching module on social and environmental issues, economics in context initiative. Global Development Policy Center, Boston University.
- Ruggie JG (2013) Just business: multinational corporations and human rights, 1st edn. W. W. Norton & Company.
- Tamanaha B (2004) On the rule of law. History, politics, theory. Cambridge University Press. <https://doi.org/10.1017/CBO9780511812378>
- Tushnet M, Bugarcic B (2022) Power to the people: constitutionalism in the age of populism. Oxford University Press. <https://doi.org/10.1093/oso/9780197606711.001.0001>
- Waldron J (2023). Thoughtfulness and the Rule of Law. <https://doi.org/10.2307/jj.7941375>
- Wessely A, Leader D, Roberts D, Bridge L., & Holland, O. (2023) In brief: civil liability for corporate human rights violations in United Kingdom. Lexology.

Book Chapters

- Buhmann K (2023) Human rights, business and meaningful stakeholder engagement. In: Bonnafous-Boucher M, Rendtorff JD (eds) Encyclopedia of stakeholder management. Edward Elgar, pp 150–155
- Crane A, Matten D, Spence LJ (2008) Corporate social responsibility: In: Global context. In: Corporate social responsibility: reading and cases in global context. Routledge, pp 3–20
- Held D, McGrew A, Goldblatt D, Perraton J (2000) Global transformations: politics, economics and culture. In: Pierson C, Tormey S (eds) Politics at the Edge Political Studies Association Yearbook Series. Palgrave Macmillan, London, p 16. https://doi.org/10.1057/9780333981689_2
- Reich R (2006) Philanthropy and its uneasy relation to equality. In: Damon W, Verducci S (eds) Taking philanthropy seriously: beyond noble intentions to responsible giving. Philanthropic and nonprofit studies. Indiana University Press, pp 7–49
- Wettstein F (2020) The history of 'business and human rights' and its relationship with corporate social responsibility. In: Deva S, Birchall D (eds) Research handbook on human rights and business. Edward Elgar Publishing eBooks. <https://doi.org/10.4337/9781786436405>

Journal Articles

- Amerson JM (2011) What's in a name? Transnational corporations as bystanders under international law. *St. John's Law Scholarship Repository*. <https://scholarship.law.stjohns.edu/lawreview/vol85/iss1/1/> Accessed 27 July 2024.
- Atal MR (2017) White capital: corporate social responsibility and the limits of transformation in South Africa. *Extract Ind Soc* 4(4):735–743. <https://doi.org/10.1016/j.exis.2017.10.007>
- Barnett M, Duvall R (2005) Power in international politics. *Int Organ* 59(1):39–75. <https://doi.org/10.1017/S0020818305050010>
- Bedner AW (2010) An elementary approach to the rule of law. *Hague J Rule of Law* 2(1):48–74
- Birchall D (2020) Corporate power over human rights: an analytical framework. *Bus Human Rights J* 6(1):42–66. <https://doi.org/10.1017/bhj.2020.23>
- Buyse A, Fortin K, Leyh BM, Fraser J (2021) The rule of law from below—a concept under development. *Utrecht Law Revi* 17(2):1–7. <https://doi.org/10.36633/ulr.771>
- Davis KE, Kingsbury B, Merry SE (2012) Indicators as a technology of global governance. *Law Soc Rev* 46(1):71–104. <https://doi.org/10.1111/j.1540-5893.2012.00473.x>
- Deikalo E (2023) BHR agenda and authoritarian regimes: The case of political and human rights crisis in Belarus since 2020. *Bus Human Rights J* 4:150–156
- Detomasi D (2015) The multinational corporation as a political actor: ‘Varieties of capitalism’ revisited. *J Bus Ethics* 128(3):685–700. <https://doi.org/10.1007/s10551-014-2099-6>
- Dworkin R (2012) Keynote Speech: The Rule of Law. European Commission for Democracy Through Law (Venice Commission) in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law under the auspices of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe. Reports of the Conference on «The Rule of Law as a Practical Concept. Lancaster House, London.
- Farnsworth K, Holden C (2006) The business-social policy nexus: corporate power and corporate inputs into social policy. *J Soc Policy* 35(3):473–494
- Ginsburg T (2011) Pitfalls of measuring the rule of law. *Hague J Rule Law* 3(02):269–280. <https://doi.org/10.1017/s187640451120006x>
- Gowder P (2024) Finding Leviathan in hegel: the private rule of law and its limits. *Law Philos*. <https://doi.org/10.1007/s10982-024-09497-1>
- Griffin R (2022) Public and private power in social media governance: Multistakeholderism, the rule of law and democratic accountability. *SSRN ElectronJ*. <https://doi.org/10.2139/ssrn.4190500ff.fhhal-03940697f>
- Hambrick DC, Wovak AJ (2021) CEO sociopolitical activism: a stakeholder alignment model. *Acad Manag Rev* 46(1):33–59. <https://doi.org/10.5465/amr.2018.0084>
- Hathaway T (2020) Neoliberalism as corporate power. *Compet Change* 24(3–4):315–337. <https://doi.org/10.1177/1024529420910382>
- Hillman AJ, Keim GD, Schuler D (2004) Corporate political activity: a review and research agenda. *J Manag* 30(6):837–857. <https://doi.org/10.1016/j.jm.2004.06.003>
- Kampourakis I (2021) The Postmodern Legal Ordering of the economy. *Indiana J Glob Leg Stud* 28(1):101–152
- Kampourakis I, Taekema S, Arcuri A (2022) Reappropriating the rule of law: between constituting and limiting private power. *Jurisprudence*. <https://doi.org/10.1080/20403313.2022.2119016>
- Krygier M (2016) The rule of law: pasts, presents, and two possible futures. *UNSW Law, Research Paper No.* 2016–31. <http://ssrn.com/abstract=2781369>.
- Krygier M (2023) The Ideal of the Rule of law and Private Power. Working Paper, CEU Democracy Institute. <https://democracyinstitute.ceu.edu/articles/ideal-rule-law-and-private-power> Accessed 27 July 2024.
- Kroll C, Edinger-Schons LM (2023) Corporate power and democracy: a business ethical reflection and research agenda. *Bus Ethics Environ Respons*. <https://doi.org/10.1111/beer.12608>
- Matten D, Crane A (2005) Corporate citizenship: Toward an extended theoretical conceptualization. *Acad Manag Rev* 30(1):166–179. <https://doi.org/10.5465/AMR.2005.15281448>
- Mazumdar DL (1965) The modern corporation and the rule of law. *Univ Pa Law Rev* 114(2):187. <https://doi.org/10.2307/3310892>
- Ruggie JG (2008) Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational

- Corporations and Other Business Enterprises, John Ruggie. United Nations Digital Library System, <https://digitallibrary.un.org/record/625292>. Accessed 27 July 2024.
- Ruggie JG, Sherman JFIII (2017) The concept of ‘Due Diligence’ in the UN guiding principles on business and human rights: a reply to Jonathan Bonnitcha and Robert McCorquodale. *Eur J Int Law* 28(3):921–928. <https://doi.org/10.1093/ejil/chx047>
- Sarfata GA (2021) Corporate Actors as translators in transnational lawmaking. *AJIL Unbound* 115:278–282. <https://doi.org/10.1017/aju.2021.39>
- Scherer AG, Palazzo G (2011) The new political role of business in a globalized world: A review of a new perspective on CSR and its implications for the firm, governance, and democracy. *J Manag Stud* 48(4):899–931. <https://doi.org/10.1111/j.1467-6486.2010.00950.x>
- Scherer AG, Palazzo G (2007) Toward a political conception of corporate responsibility: Business and society seen from a habermasian perspective. *Acad Manag Rev* 32(4):1096–1120. <https://doi.org/10.5465/amr.2007.26585837>
- Scherer AG, Palazzo G, Matten D (2014) The business firm as a political actor. *Bus Soc* 53(2):143–156. <https://doi.org/10.1177/0007650313511778>
- Scherer AG, Rasche A, Palazzo G, Spicer A (2016) Managing for political corporate social responsibility: New challenges and directions for PCSR 2.0. *J Manag Stud* 53(3):273–298. <https://doi.org/10.1111/joms.12203>
- Sempill JA (2018) What rendered ancient tyrants detestable: the rule of law and the constitution of corporate power. *Hague J Rule of Law* 10(2):219–253. <https://doi.org/10.1007/s40803-018-0069-2>
- Staats JL (2004) Habermas and Democratic Theory: the threat to democracy of unchecked corporate power. *Polit Res Q* 57(4):585–594. <https://doi.org/10.1177/106591290405700407>
- Van Loo R (2016) The corporation as courthouse. *Scholarly Commons at Boston University School of Law*. https://scholarship.law.bu.edu/faculty_scholarship/30/. Accessed 27 July 2024
- Veraldi JD (2023) Private power, the rule of law and the European Union. *Hague J Rule of Law* 2023(15):471–491. <https://doi.org/10.1007/s40803-023-00200-5>
- Vogel D (1983) The power of business in America: a re-appraisal. *Br J Polit Sci* 13(1):19–43. <https://doi.org/10.1017/S0007123400003124>
- Windfuhr M (2012) Wirtschaft und Menschenrechte als Anwendungsfall extraterritorialer Staatenpflichten. *Zeitschrift Für Menschenrechte* 2:95–118
- Wright PM (2023) Woke Corporations and Worldview: The perils of CEOs making moral proclamations from shaky moral foundations. *Acad Manag Perspect* 37(3):252–269. <https://doi.org/10.5465/amp.2021.0187>

Online Articles and Reports

- 2021 WJP Rule of Law Index Questionnaires. <https://worldjusticeproject.org/2021-wjp-rule-law-index-questionnaires>. Accessed 27 July 2024.
- A/76/238: Report on Human rights-compatible International Investment Agreements (IIAs) (2021), <https://documents.un.org/doc/undoc/gen/n21/208/09/pdf/n2120809.pdf?token=DPOVw2Em1LzVmlYiCH&fe=true>. Accessed 27 July 2024.
- A/78/160: Role of business in realizing the right to development—Report of the Special Rapporteur on the right to development, Surya Deva (2023) <https://www.ohchr.org/en/documents/thematic-reports/a78160-role-business-realizing-right-development-report-special>. Accessed 27 July 2024.
- A/HRC/44/43: Report on connecting the business and human rights and the anticorruption agendas, 18 June 2020. <https://www.ohchr.org/en/documents/thematic-reports/ahrc4443-report-connecting-business-and-human-rights-and-anticorruption>. Accessed 27 July 2024.
- Canadian companies linked to allegations of human rights abuse abroad including killings, torture and forced labour—new reports, testimony, Mining Watch Canada (2023). <https://miningwatch.ca/news/2023/2/14/canadian-companies-linked-allegations-human-rights-abuse-abroad-including-killings>. Accessed 27 July 2024.
- Captured Democracies: A Government for the few (2018) Oxfam International. <https://www.oxfam.org/en/research/captured-democracies-government-few>. Accessed 27 July 2024.
- Civil liability for human rights violations (2022) <https://www.law.ox.ac.uk/civil-liability-for-human-rights-violations/civil-liability-human-rights-violations>. Accessed 27 July 2024.

- Connecting Business and Human Rights with Anti-Corruption, Preliminary concept note by the UN Working Group on Business and Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/WGCorruptionBHR.pdf>. Accessed 27 July 2024.
- Corporate rule of law responsibility, Utrecht University <https://www.uu.nl/en/research/resilient-rule-of-law/research-themes/corporate-rule-of-law-responsibility>. Accessed 27 July 2024.
- Corruption—National Action Plans on Business and human rights. <https://globalnaps.org/issue/corruption/>. Accessed 27 July 2024.
- De Schutter O (2016) Tainted Lands Corruption in Large-Scale Land Deals, The International Corporate Accountability Roundtable & Global Witness, <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5900a525c1de58cc5ea95389/1493214509185/Tainted+Lands+Report.pdf>. Accessed 27 July 2024.
- Dimensions of the WJP Open Government Index. <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-open-government-index/dimensions-wjp-open-government-index>. Accessed 27 July 2024.
- Doing business honestly without corruption. https://www.government.nl/binaries/government/documenten/leaflets/2023/01/17/honest-business/75246_BuZa_Eerlijk+Zakendoen_EN_v2.pdfx. Accessed 27 July 2024.
- ESCR-Net Input (2021) International Network for Economic, Social and Cultural Rights (ESCR-Net) input on corporate capture and corporate political engagement. http://www.ohchr.org/sites/default/files/documents/issues/executions/40thanniversary/state-replies/2022-07-19/ESCRNet_Final_Submission_UNWG_BHR_Corporate_Capture_Nov_2021.pdf. Accessed 27 July 2024.
- How (not) to Do Business and Human Rights in Central and Eastern Europe and Central Asia. Case Studies Edited by: Beata Faracik, Olena Uvarova (2023), <https://pihrb.org/wp-content/uploads/2023/06/PIHRB-WPS-1-2023-How-not-to-do-business-and-human-rights-in-CEE-CA.pdf>. Accessed 27 July 2024.
- Methodology Snapshot: Steps to Produce the WJP Rule of Law Index. <https://worldjusticeproject.org/rule-of-law-index/downloads/Index-Methodology-2023.pdf>. Accessed 27 July 2024.
- OHCHR (2023) Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting. <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>. Accessed 27 July 2024.
- Overcoming barriers to access to justice for corporate human rights abuses. International Federation for Human Rights. <https://www.fidh.org/en/issues/business-human-rights-environment/business-and-human-rights/overcoming-barriers-to-access-to-justice-for-corporate-human-rights>. Accessed 27 July 2024.
- Podcast with Lucas Roorda: Business and Human Rights: A New Lens on Rule of Law and Access to Justice, <https://ruleoflawbiz.org/business-and-human-rights-a-new-lens-on-rule-of-law-and-access-to-justice/>. Accessed 27 July 2024.
- Podcast with Viktor Smorodinsky: Access to justice and business in times of difficult economic conditions, <https://ruleoflawbiz.org/access-to-justice-and-business-in-times-of-difficult-economic-conditions/>. Accessed 7 Apr 2024
- Rebalance (2023) <https://rebalanceproject.org/>. Accessed 27 July 2024.
- Report of the Special Rapporteur on the right to development, Surya Deva (2023) Role of business in realizing the right to development. <https://www.ohchr.org/en/documents/thematic-reports/a78160-role-business-realizing-right-development-report-special>. Accessed 27 July 2024.
- Reports of the UN Working group on Business and Human Rights. <https://www.ohchr.org/en/special-procedures/wg-business/reports>. Accessed 27 July 2024.
- Rule of Law/UN Global Compact <https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law>. Accessed 27 July 2024
- Rule of Law and Corporate Actors <https://ruleoflawbiz.org/category/podcasts/>. Accessed 27 July 2024.
- Rule of law mechanism. European Commission. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en. Accessed 27 July 2024.
- Social LobbyMap—EIRIS Foundation—Pioneering the next steps for sustainable finance. <https://eirissfoundation.org/social-lobbymap/>. Accessed 27 July 2024.
- Support for meaningful and safe stakeholder engagement as a central aspect of the EU framework on mandatory human rights and environmental due diligence. https://media.business-humanrights.org/media/documents/Business_Statement_Engagement_MHREDD_finalv4_1011.pdf. Accessed 27 July 2024.

- Tackling inequality: An agenda for business action (2023) WBCSD, <https://tacklinginequality.org/files/flagship.pdf>. Accessed 27 July 2024.
- Talks—Rule of Law and Corporate Actors <https://ruleoflawbiz.org/category/talks/>. Accessed 27 July 2024.
- UN Guiding Principles on Business and Human Rights https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. Accessed 27 July 2024.
- UN WG Report (2022) Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on Business and Human Rights. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/432/83/PDF/N2243283.pdf?OpenElement>. Accessed 27 July 2024.
- Van Ho T (2023) Not all parties are equal: understanding the responsibility for reparations in conflict-affected areas. <https://www.business-humanrights.org/en/blog/not-all-parties-are-equal-understanding-the-responsibility-for-reparations-in-conflict-affected-areas/>. Accessed 7 Apr 2024.
- Vandevelde M, Morris S (2019) JPMorgan bans staff from Brunei-owned hotels over gay law. Financial Times. <https://www.ft.com/content/b0365536-69ca-11e9-80c7-60ee53e6681d>. Accessed 27 July 2024.
- Wessely A, Leader D, Roberts D, Bridge L, Holland O (2023b) In brief: civil liability for corporate human rights violations in United Kingdom. Lexology. <https://www.lexology.com/library/detail.aspx?g=c8ee113b-91a0-42c9-9948-b2c183d815c2>. Accessed 27 July 2024.
- What is the Rule of Law—United Nations and the Rule of Law. United Nations and the Rule of Law, [https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20\(UN,and%20which%20are%20consistent%20with](https://www.un.org/ruleoflaw/what-is-the-rule-of-law/#:~:text=For%20the%20United%20Nations%20(UN,and%20which%20are%20consistent%20with). Accessed 27 July 2024.
- WJP Rule of Law Index. <https://worldjusticeproject.org/rule-of-law-index/>. Accessed 27 July 2024.

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