

Due diligence of transnational companies in India

Abstract

Due diligence is the minimum framework for responsibility and reparation for damages in matters of human rights that may arise during and after the production processes of companies have been carried out. In other words, an alternate strategy for encouraging businesses to voluntarily engage with the externalities that their operations may create. This paper aims to evaluate the notion of due diligence in international corporations situated in India using a qualitative case study technique. In this regard, due diligence and its guiding principles are defined to assess the transparency and management responsibility of international companies in India. Then, cases related to positive and negative aspects of due diligence in this Asian country are presented. Finally, conclusions are given. The results lead to the conclusion that even though India is a desirable destination for international investments in industries like electronics, fashion, IT, finance, and the automotive sector, foreign firms have not yet demonstrated that they have complied with due diligence requirements. The most vulnerable population continues to be subjected to cycles of poverty, slavery, and mistreatment because some of the jobs paid by large corporations represent the only means of economic subsistence.

Keywords: India, due diligence, human rights, international corporations

Volume 6 Issue 1 - 2024

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Received: March 26, 2024 | **Published:** April 18, 2024

Introduction

The corporate codes of conduct of transnational companies were revived as part of the call to conduct economic activities based on the promotion and voluntary protection of fundamental human rights when Kofi Atta Annan, the Secretary General of the United Nations, addressed the danger of socioeconomic instability in relations between countries in 1999.^{1,2} Since then, transnational corporations have used the voluntary corporate citizenship initiative as a non-normative tool to attain public responsibility, particularly for issues like the environment, workers' rights, and human rights. Thus, the key aspects were transparency, the healthy defense of the own interests of companies, labor organizations and civil society.

The United Nations Global Compact was established in order to make progress in the areas that influenced the voluntary corporate citizenship program. The Rio Declaration on Environment and Development, the United Nations Convention United against Corruption, the Declaration of Human Rights, and the International Labor Organization's Declaration of Principles regarding fundamental rights at work served as the foundation for these ten principles.³ Each area specifically draws attention to the call for transnational corporations to uphold and respect the defense of fundamental international human rights, to refrain from complicity in the infringement of human rights, and to value initiatives pertaining to freedom of affiliation, the right to collective bargaining, the abolition of child labor, the abolition of forced and coerced labor, and the abolition of discrimination in the workplace.⁴ Similarly, with regard to matters like prevention, embracing and cooperating with initiatives that foster increased accountability and safeguarding, distributing eco-friendly technologies, and combating corruption in all its manifestations, including bribery and extortion.

This served as the introduction to The UN Guiding Principles on Business and Human Rights—UNGPs,⁵ a global framework designed to mitigate the risk of adverse effects of company operations on human rights, which were later proposed in 2008. These are founded on the framework of protecting, respecting, and remedying, which is based on three principles:^{6,7} 1) the state's obligation to protect human rights, 2) the obligation of corporations to uphold human rights, and

3) the necessity of enhancing victims of business-related abuses' access to remedies. Since their introduction, these business activity principles have been acknowledged globally as the benchmark for the behavior expected of governments and corporations with regard to human rights.

In this way, problematizing transnational companies' activities through these guiding principles allows due diligence to be valued as a concept that protects and promotes dignity, non-discrimination physical, mental, individual, and collective freedom, decent employment, the eradication of child labor, environmental protection, anti-corruption efforts, and the promotion of environmentally friendly technology. In other words, when examining business activity, it considers all of the interconnected parts of human existence that are valuable on a moral, material, physical, and mental level.

In this order, the multinational corporate reality has left its mark since 1970 in regard to incidents that have historically highlighted the necessity for due diligence to better company conduct. The iconic Watergate case in 1970 demonstrated how bribery and the direct relationship between Nixon administration officials and officials from other governments resulted in the largest worldwide corruption scandal. Then, in 2001, Enron was another example of a company that failed to exercise due diligence. Because bribery and influence peddling enabled them to secure contracts in South Asia, Africa, Central America, and South America. After that, in 2009, Odebrecht, the building business that does not build, was revealed, emphasizing its noncompliance with Due Diligence, a byproduct of money laundering involving officials from Latin American countries, Swiss banks, and Monaco.^{8,9}

And particularly inside India, although there are no specific incidents of risk to human rights caused by transnational corporations, some cases are obvious related to: 1) the Reebok activities supervised by Subhinder Singh Prem, when the creation and manipulation of papers was found financial. 2) Bharti Walmart, as the primary beneficiary in India of the new Foreign Direct Investment (FDI) policy for multi-brand retail, paid members of Parliament to vote in favor of the corporation, including the chief financial officer and some members of the legal team for anti-corruption investigations. 3) Nokia

India in Chennai and Vodafone India are both involved in irregularities. 4) Bharti Airtel and Cadbury India (formerly Mondelez International) are accused of tax cheating. 4) Bharti Airtel and Cadbury India (formerly Mondelez International) face tax evasion charges. And 5) Beam Inc., Teacher's, is being probed for financial crimes.^{10,11}

Each of the incidents is cited as a result of a state with weak general governance, where due diligence is considered to be lacking due to widespread allegations of bribery, illegal commissions, and other violations. In another space, there are efforts by corporations established in India to improve and advance due diligence, such as: 1) Endesa, a leading company in green development and promotion of decent work; 2) CaixaBank, a company with a recognized role in the defense of quality education and financial education; 3) BBVA, a benchmark in promoting excellent education and providing access to digital banking in the country; and 4) Calidad Pascual, which advocates for the right to quality food.¹²⁻¹⁴ Additionally, one of Global Reporting's regional centers is in New Delhi, India. The Global Reporting Initiative (GRI), an independent worldwide organization that provides a standard and global language for communicating the affects and identifying obligations of firms' productive activities.¹⁵

This paper aims to evaluate the notion of due diligence in international corporations situated in India using a qualitative case study technique. Therefore, following the introduction, the second section defines due diligence and guiding principles for assessing the transparency and management responsibility of international corporations in India. The third section presents cases involving both positive and negative aspects of due diligence in this Asian country. Finally, the fourth section presents the conclusions.

Due diligence within the framework of human rights

Transnational corporations are autonomous organizations that manage tangible or intangible assets, operate across national boundaries, and pursue their own foreign policy objectives. Assessing your responsibility and commitment to human rights implies, among other aspects, knowing due diligence.¹⁶

Ruggie defines due diligence as the basic order and significance of a company's obligations and responsibilities with regard to human rights.¹⁷ Also, as the regulatory ecosystem of Business and Human Rights (EDH), which seeks to establish polycentric governance and its decentralized implementation to achieve a comprehensive economic society concerned and responsible for human rights.¹⁸ Likewise, the guiding principles of due diligence are based on three fundamental pillars, "1) the State's duty to protect against violations [...] committed by third parties, among which would be companies, [...] 2) an independent corporate responsibility applicable to rights [...] companies should act with due diligence to avoid infringing the rights of third parties [...], and 3) achieve greater access for victims to effective judicial and administrative measures."¹⁹

Consequently, business due diligence is based on the UNGPs: 17, 18, 19, 20 and 21, legally binding. These principles are based on transparency and management responsibility, and include standards whose essential aspects are: 1) human rights risks, 2) commercial relations, 3) negotiations, 4) project execution standards, 5) physical security, 6) transparency, 7) nature of operations, 8) stability, 9) integration and influence, 10) quantification to management accountability or full picture, 11) security in product testing, 12) financial and non-financial performance, 13) sufficient external communication, 14) legitimation and complaint mechanism,

among other aspects on which the expected behavior of States and transnational companies is considered.

Taking into account the UNGPs on which due diligence in transnational companies is valued within the framework of human rights, they highlight:

Guiding Principle 17

Involves how the company determines what information it needs to understand specific human rights risks, given a specific time and operational context. In other words, it determines risks related to human rights, through evaluation, integration-action, monitoring-communication to demonstrate respect for human rights in business practices.

This principle focuses on detecting and addressing negative human rights consequences related to the company's activities and business relationships. Especially "with its business partners, entities in its value chain and any other non-state or state entity directly related to its commercial operations, products or services".²⁰

Guiding Principle 18

This includes assessing the threats to human rights and figuring out how to operationalize your policy statement in terms of upholding and respecting human rights. In this principle, the human rights risk indicator is the main focus of the due diligence procedure.

Thus, a company can pose risks related to human rights in various groups such as: 1) employees of the company, 2) communities located around the company's facilities, 3) workers of other companies in its value chain, 4) users of its products and services, and 5) other participants in the development of the products. All diverse groups that can be affected by the company's actions and decisions, as well as product testing.

The critical moments that the company must evaluate within the framework of this principle are those that occur when undertaking an activity or establishing a business relationship. That is, the entry into a market, the launch of a product, regulatory changes or deeper transformations of business activity, the acquisition of companies, and the anticipation of changes in the operational environment.

As a result, this principle establishes a set of ten rules to guide negotiations between states and investors. According to the UN:^{21,22} 1) the preparation and planning of project negotiations to adequately address the consequences, 2) management of possible negative effects on human rights to establish the responsibility to prevent and mitigate the consequences. risks, 3) project execution rules, all in favor of the execution of the project to prevent, mitigate and correct negative effects, 4) stabilization clauses, review and draft that the investment or investor protection clauses do not interfere with the good faith efforts of the State in the application of laws, regulations or policies in a non-discriminatory manner, 5) additional goods or services clause according to the responsibilities and obligations of the State and investors, 6) physical security of the project to guarantee the principles and norms related to human rights, 7) community participation throughout their life cycle, and from early stages, 8) monitoring and compliance with norms within the framework of the project regarding the protection of human rights, 9) mechanisms of redress of grievances for non-contractual damages to third parties to redress grievances, and 10) transparency/publication of contract conditions as a compelling reason for the scope, duration and exceptions.

From these rules, it is obvious that the likelihood of a negative impact on human rights is just as crucial as its severity inside

corporate activity. As a consequence, Guiding Principle 18 cannot be assessed using a traditional cost-benefit analysis, because the potential negative consequences on human rights must include an evaluation, identification, and projection of the effects of the proposed activities and relationships on the diverse group of people that comprise the organization and its environment.

Guiding Principle 19

Integration is the key word of this principle. That is, integration as a micro process consists of collecting each of the possible results as a specific negative consequence, to determine which employees must deal with it and guarantee the adoption of an effective measure. Therefore, integration determines the company's success in incorporating its political commitment to human rights at all levels. Since, it ensures the incorporation of the company's political commitment to human rights into the macro and micro process.

Under this guiding principle, the company's actions are valued to adopt measures and end or prevent negative consequences on human rights. It also assesses the company's ability to influence and mitigate the residual effect.

Guiding Principle 20

Under this principle the company shows the full picture, therefore, it must track the effectiveness of its response using qualitative and quantitative indicators, as well as feedback from both internal and external sources, including affected parties. Therefore, this principle allows us to quantify to manage based on a complete image. In this case, the information obtained through monitoring strengthens: 1) the internal and external process of accountability, and 2) the bases for any level of external communication that is considered necessary and advisable.

The monitoring process makes sense when it includes the company's culture and system to contribute to the incorporation of respect for human rights. Therefore, useful and effective models are those that are capable of amortizing the attention paid to human rights. That is, they must be credible and solid to facilitate the company's exercise of knowing and demonstrating.

In Guiding Principle 19, the company integrates the results of its impact assessments into its internal processes, focusing on continuous improvement. For verification of this effort and reduction of negative impacts of business activities on human rights, Guiding Principle 20 stipulates that qualitative and quantitative indicators be developed both internally and externally to the company in order to monitor the company's actions.

Guiding Principle 21

Accountability is an important task for companies. At an internal level it serves to assess the commercial objectives achieved before investors, while at an external level it serves to demonstrate the potential and real effects that may or may not be affecting human rights. This exercise is of public interest, because it impacts the image and compliance with the company's human rights responsibilities.

Therefore, the actions that the company must take and the conditions to communicate the way it faces risks and communicates them are considered. Thus, the form of communication must satisfy the purpose of executing them. Meanwhile, if the purpose is to communicate, communication may be limited to the affected group, taking into account the levels of education, language and culture. In this principle, due diligence values the highest level of transparency that the company shows in its official and public reports, to help protect the company's reputation and foster greater confidence in its efforts to respect human rights, encompassing issues at the level financial, environmental and social.

Below, Table 1 summarizes the scope and variables used to evaluate due diligence in accordance with the UNGPs 17, 18, 19, 20 and 21 on human rights.

Table 1 highlights the areas and variables that allow assessing the responsibility of companies in terms of due diligence in all aspects related to human rights. In particular, through the application and voluntary compliance with Guiding Principles 17, 18, 19, 20 and 21, the company will be able to guarantee positive results at the level of human rights during and after carrying out its commercial activities according to continuous evaluation, risk detection in diverse groups, integration of the worker in human rights, complete image and accountability on the part of the company.

Table 1 Scope and variables to evaluate due diligence according to guiding principles 17, 18, 19, 20 and 21 in matters of human rights

Guiding principles	Ambit	Variables
Guiding Principle 17	Continuous evaluation of company activities and commercial relationships.	-Production and management. -Raw material suppliers, product sales.
Guiding Principle 18	Risk in diverse groups when undertaking and developing commercial activities.	-Appropriate conditions of contracts -Assessment of the risks of new activities and commercial relationships
Guiding Principle 19	Integration of the human rights specialist worker into the company.	-Mechanism for transmitting information internally to the company - Interaction with external experts on human rights
Guiding Principle 20	Complete image of the company's activities.	-Health effects -Safety and environmental impact -Infringements regarding worker safety
Guiding Principle 21	Accountability	-Possible violations, real and potential in the supply chain. -Water consumption. -Types of tests and safety conditions in the production of medicines. -Incidents with negative consequences in the company's environment.

Source: own elaboration.

Cases in India related to due diligence

India is considered a land of opportunity, as it represents a vibrant and enticing region for companies wishing to expand or build their global customer bases. This country has achieved rapid rise in sectors such as financial and computer services, agribusiness, mining, brick production, embroidery, carpet making, luxury goods manufacturing, among others. All of this is despite the difficulties posed by measures such as the demonetization of the country's biggest denomination banknote in 2018 and the gradual opening of commerce with non-regional partners.²³⁻²⁵ For this reason, the Indian economy is a place of public scrutiny for the assessment of the commercial activities of large corporations established in the country since 1980.

In this regard, business due diligence deals with voluntary compliance with the UNGPs in areas such as: 1) continuous evaluation of company activities and commercial relationships, 2) risk in diverse groups when undertaking and developing commercial activities, 3) integration from the human rights specialist worker to the company, 4) complete image of the company's activities, and 5) accountability, validate the responsibility and repair of damages that multinational corporations generate in the environment. In this sense, below are the cases of multinational companies in India with a positive or negative relationship in compliance with the guiding principles of due diligence in matters of human rights.

Multinationals in the IT services sector

For financial and computer services, India has concentrated a large volume of investment since 1990 by American and British multinationals that outsourced many routine tasks such as accounting, computer support and payroll. Later, during the first decade of the 21st century, the country advanced as a global leader in service provision until it became Business Process Outsourcing (BPO), business process subcontracting. The initial business typology was call centers and low software factories cost, which later evolved into a space that houses research and development (R&D) centers integrated into a global network of innovation centers that also allows offshoring or subcontracting abroad.^{26,27}

This was a result of harnessing India's various competitive advantages. Among which stand out the high level of educated and English-speaking workforce, excellent international data transfer connection, good Internet access in the main cities and low salaries in contrast to those offered by similar companies in Europe and the United States.

Silicon Valley of India was established in Bangalore, consolidating itself as the Electronic City of the country. Multinationals that took advantage when settling in India are concentrated there. Highlighting in chronological order and external investment multinationals such as: Texas Instruments, Cisco Systems, Hewlett-Packard, Dell, IBM, IBMN, Accenture, EDS, SAP HANA, SAP S/4HANA, HP, Google, Apple, Oracle, People Soft, EMC, AOL, Motorola, Earthlink and Uber.²⁸⁻³⁰ Each one characterized by development center facilities, outsourcing support, customer service, and integration and R&D.

The macro campuses of these multinationals house offices, laboratories in a network of innovation centers located in Bengaluru, Gurgaon and Pune. Until 2007, these organizations hired more than 5,000 employees for the sector, while in 2020 the figure rose to 30,000 million jobs,³¹ highlighting the category of relocation and teleworking for Indian workers sent to headquarters or subsidiaries worldwide.

From these experiences there are situations that, at the level of due diligence in matters of human rights, allow, at first glance, to

assess the responsibility and reparation of damages of corporations established in India. Positive experiences such as the high literacy rate that is around 90% of the population related and not related to the activities of the companies located in the electronic city of Bangalore. However, other negative experiences related to the type of hiring and the hiring requirements of workers jump out.

In the technology centers of Bangalore, despite having decent jobs and spaces, workers are forced to adjust their accent to British English, as a condition of cultural rapprochement and acceptance. In addition, there is an increase in the relocation of the work of highly qualified Indian workers, who are subcontracted abroad for very low salaries.³² Faced with this contracting experience, there is a political neutrality of the States that allow multinational companies to outsource technological services in India despite the risk and impact on the security and stability of the worker. On the other hand, the limitations to free competition of companies associated with the sector are evident, both locally and internationally, mainly in the United States, the United Kingdom and Germany.

Multinationals in the fashion and beauty sector

Powders, sequins and lots of glitter, the result of the laborious work of Indian hands, shine on the skin and clothes. The global beauty sector, made up of the cosmetics and luxury goods industry, established its supply chain in India during the 1980s. From that date until 2021, the country exhibits dozens of Indian artisans in Kardigar, Mumbai hunched with needles over fabrics embroidering and making luxury garments. The same scenario occurs in Koderma in Jharkhand, where women, men and children are displayed with baskets whose shiny contents reveal the mica extracted from deep abandoned mines, because the State prohibited their exploitation as a result of the damage to wild and forest ecosystems.^{33,34}

About the reality of Karigar in Mumbai, the city is home to a significant number of workshops and export companies that are intermediaries between the brand and the artisans. These factories offer design, sampling and manufacturing services of exclusive fashion garments. But, the case of the absence of safety standards in factories through the outsourcing of work, zero social protection, child labor and slavery, absence of health benefits, places and buildings not suitable for carrying out the work of embroidery and making pieces exclusive from India, reveal the lack of due diligence responsibility in the supply chain of the fashion houses that contract embroidery work in Karigar.³⁵

Cases such as those that occurred in 2005, in Madanpura, Uttar Pradesh, included the liberalization of 450 children between 6 and 14 years of age, slaves who worked between 10 and 14 hours in small embroidery, leather and food factories.³⁶ And in 2018, in Gujarat, 73 children between 8 and 14 years old were released who were making imitation bracelets, earrings and necklaces under inhuman conditions destined for the United Kingdom, Germany, the United States and the Middle East.³⁷ They show the discreet and indirect relationship of Indian intermediaries with large fashion companies such as Dior, Saint Laurent, among other British, German and American brands. That is, the serious conditions in the actions of the fashion empire corporations in Paris, Milan and London, exposed the failure to comply with due diligence in their supply chain.

Consequently, and to repair the damage caused in Karigar, Mumbai, fashion multinationals- Gucci, Saint Laurent, Fendi, Christian Dior, Burberry and Mulberry- signed the Utthan pact or compliance project to guarantee safety in factories in Mumbai and dignify Indian embroiderers. This is based on the standardization of wages and the strengthening of safety in work plants.³⁸

However, this pact is not legally binding and lasted for three years after its signing in 2013. Subsequently, unregulated factories and plants did not meet factory safety standards in India. That is, currently workers do not have benefits, labor protection and other benefits that employees in other parts of the world do receive. Furthermore, it is clear that overtime work hours coincide with the seasonal demand of fashion week in Europe, exposing workers to higher levels of vulnerability during a specific time of year.

Once the Utthan pact was signed, the reality in Indian factories did not change. Although many were forced to move to safer facilities, the increase in the cost of rent meant that once the brands felt the transfer of the cost to the final price of the garments, they canceled orders and moved to unsafe factories but that guaranteed a final price cheaper per garment. Also, at the level of the legal range of working hours indicated in the pact, the fashion houses indicated that the hours had to be lax when orders were placed at the last minute, otherwise the orders would not be paid. In this way, the owners of the factories in Karigar, Mumbai, showed inconsistency between what they wanted to achieve with the pact and what really happened in the embroidery factories in India.

Multinationals in the automotive and electronics sector

For the global electronics and automotive industries, India represents the main supplier of mica, the base mineral in electronic chips, as well as lasers, radars and automotive paint. The main mica centers, mines, treatment plants and final sales places are concentrated in Jharkhand, Koderma and Giridih. In Jharkhand and Giridih, mica not only includes exploitative child labor, it also destroys lives and the environment. In this town in India, death from asphyxiation in mining pits, serious health problems such as tuberculosis, are some of the other damages caused by the extraction of mica for the global industry.³⁹

Added to this situation is the fact of deforestation caused by mining activity, despite the existence of a forestry law enacted in 1980 that prohibited the extraction of mica in underground mines. However, the abandoned mines were illegally occupied by local contractors who illegally exploit the mineral, using women and children not only for low wages but also because of the physical condition of their hands, flexible and small, ideal for extracting the mineral.⁴⁰ In Koderma, the mica sales centers obtain it in processing plants, which in turn obtain their supplies from extraction in illegal mines, through the work of children and women in dangerous and extreme health and safety conditions in the mines.^{41,42}

The main consequence of this is, according to the National Commission for Protection of Child Rights,⁴³ in India about 22,000 children between 6 and 14 years old drop out of school and work as scavengers in illegal mines. of mica. Added to this is the disappearance of wild species in the area as a result of mining and deaths due to collapses in the mines, as well as due to diseases arising from this economic activity.

This situation, within the framework of due diligence, caused multinational companies to the Responsible Mica Initiative (RMI) as a principle in their supply chain. The main objective of this initiative is to remove children from child labor in the mines and reintegrate them into education.⁴⁴ However, the results have not been positive, children continue to work in the mines, as well as women and men exposed to dangerous activities because it is the only source of employment and income for the subsistence of these people and their families.

The RMI has wanted to repair the damage done to the diverse group working in the mica mines in India, so each company that uses mica pays a membership to repair the damage to workers in Jharkhand, Koderma and Giridih. Additionally, the objectives of the sustainable mica supply chain of electronic and automobile corporations are: 1) increase livelihood schemes, 2) access to a quality education, 3) improving health and nutrition and access to government schemes, and 4) the formalization of a sustainable mica industry respectful of all environmental issues.

Discussion and conclusion

Business due diligence is the minimum framework for responsibility and reparation for damages in matters of human rights that may arise during and after the production processes of companies have been carried out. This allows each company in the world to recognize the consequences of its activity, recognizing the positive effects it can generate, as well as the problems of disrespect for the human rights of diverse groups of the population related directly and indirectly to the corporation.

And although due diligence is part of a voluntary principle to comply and carry out activities within the acceptable framework to the possible damages caused by the activities of corporations, it was in 2011 when the UN developed Guiding Principles that allow the damages to be assessed and quantified caused by corporations if they do not comply with due diligence.

On the other hand, India, since 1980, has been an attractive geographic center for investments in sectors such as fashion, IT, finance, automobiles and electronics. This has allowed us to recognize corporate experiences that allow us to assess the due diligence of corporations with investments in India and with supply chains anchored in that country.

Emblematic cases such as the liberation of slave children in jewelry, embroidery, leather factories, among others, as well as silent deaths, accidental deaths of considerable groups of people, have focused attention on compliance with due diligence of foreign corporations that are attracted for the Indian economy. The measures are still timid and there is a discreet complicity between intermediaries, the State and corporations, while the most vulnerable population continues subject to cycles of poverty, slavery and mistreatment because some of the jobs paid by large corporations represent the only form of economic subsistence.

In order for the Indian economy to achieve sustainable growth, both the public and private sectors need to commit to promoting corporate responsibility. This implies that organizations assimilate the values of Indian society in order to maintain a harmonious working relationship with their employees. In addition, they should set achievable production goals through efficient use of available inputs, demonstrate administrative integrity in dealing with the side effects of their activities, demonstrate flexibility and readiness to incorporate new technological advances into the production process, and facilitate effective communication with suppliers, consumers, and government agencies.

Acknowledgments

None.

Conflicts of interest

The authors declare that there is no conflict of interest.

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