



“Traduttore, Traditore?” Translating Human Rights into the Corporate Context

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Abstract

This paper critically investigates the implementation of the UN guiding principles on business and human rights (UNGPs) into the corporate setting through the concept of ‘translation’. In the decade since the creation of the UNGPs, little academic research has focussed specifically on the corporate implementation of human rights. Drawing on qualitative case studies of two multinational corporations—an oil and gas company and a bank—this paper unpacks how human rights are translated into the corporate context. In doing so, the paper focuses on the “resonance dilemma” translators encounter, the strategies used to make human rights understandable and palatable, and the difficulties that emerge from this process. We contend that the process of making human rights understandable and manageable can change their form and content, which may act as an obstacle to human rights realisation and corporate accountability for human rights.

Keywords Business and human rights · Translation · UN guiding principles on business and human rights · Responsibility to respect · Resonance dilemma

Introduction

Human rights “were not designed with corporations in mind” (Bishop, 2012, p. 122), and human rights instruments are traditionally aimed at protecting the individual against the power of the state (Ratner, 2001). As the power and influence of corporations has intensified in the last few decades, we have witnessed something of a shift in this state-based formulation. Business and human rights has thus emerged as both a major concern for human rights activists and as a subject of academic enquiry (Santoro, 2015). Consequently, an array of new actors, including corporations,

have entered into “the discourse and practice of...human rights implementation” (Methven O’Brien & Ford, 2019, p. 218). Yet, to quote Obara (2017, p. 249), much of the discussion still centres on why companies should respect human rights, while “far less is known about what companies actually do in practice and how human rights are understood and managed”.

Drawing primarily on the late Sally Engle Merry’s (2006a, 2006b, 2015; Levitt & Merry, 2009; Merry & Coutin, 2014; Merry & Levitt, 2019) extensive work on the translation of human rights into local contexts, this paper provides insights into how human rights are made ‘manageable’ in the corporate context. In particular, through undertaking case study fieldwork in two multinational corporations (MNCs)—an oil and gas company and a bank—this paper provides an empirical analysis of how human rights, through the UN guiding principles on business and human rights, are ‘translated’ and put into practice in organisational settings.

This paper makes a number of distinct contributions. Studying the translation of human rights into the corporate context provides important insights into the negotiations and compromises that occur in the process. For instance, when bringing human rights into the corporate context, the UNGPs provided translators with a useful framing of human rights norms, resonating in the corporate context, by

An Italian proverb, originating from linguistic translation. In the process of translating, the translator inadvertently becomes the traitor, since once something is translated, it is inextricably changed, and cannot perfectly represent the original meaning.

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virtue of their perceived legitimacy, familiarity and flexibility. Yet, the analysis presented in this paper also highlights how transposing human rights into the corporate context is far from a neutral process (Levitt & Merry, 2009; O’Kelly, 2019). As the title of this paper alludes to, this process may lead to a departure from the original intended meaning—that is, they are “translated, *redefined and adapted* to the new circumstances” Merry and Levitt (2019, p. 146, *emphasis added*). When actors translate human rights into the corporate context, they often encounter a “resonance dilemma”—or where rights ideas and practice need to resonate with existing value systems in order to be accepted (Merry & Levitt, 2019). In managing this dilemma, actors turn to strategies to ensure human rights are understandable and palatable. As such, human rights norms may be neutralised to avoid controversy. Further, and despite intentions to the contrary, the translation of human rights into the corporate context also has the potential to displace rightsholder experience, and formalise human rights grievances into quantifiable and therefore manageable categories (Scheper, 2015). We argue that the consequences of this translation process have important implications for the corporate accountability for human rights, potentially reducing the capacity of human rights as a radical critique of corporate action.

The paper is structured as follows. The section on “**Business and Human Rights: Context and Scholarship**” delineates the business and human rights context, highlighting current gaps in the literature and emphasising the need to disrupt current business and human rights research silos. The “**Translation**” section introduces the idea of translation as a way of conceptualising how human rights, through the UNGPs, are brought into the corporate space and is followed by our “**Research Approach**”, which provides an outline of the research design and methods. We then present our findings and analysis of the process of translating human rights into the corporate context and finally, the “**Discussion**” considers the implications of these findings. The paper concludes with a consideration of the contribution and limitations of this research and provides suggestions for future research in this area.

Business and Human Rights: Context and Scholarship

The field of business and human rights grew out of a concern for “how businesses may impact human rights and the various ways in which such violations can be prevented and addressed” (Bernaz, 2017, p. 3). Multinational corporations (MNCs) play an ever increasing role in the global political economy, having a direct and enduring impact on people’s lives (Nolan, 2016; Scherer & Palazzo, 2011). Yet, accountability gaps between “the scope and impact of economic

forces and actors and the capacity of societies to manage their adverse consequences” abound (UN Human Rights Council, 2008, p. 3).

These factors are exacerbated by the discrepancy between the transnational nature of MNCs, the “territorially limited assumptions for the traditional state-centric international human rights system” (Gear & Weston, 2015, p. 26), and the separate legal personalities of parent and subsidiary entities (Yilmaz Vastardis & Chambers, 2018). For these reasons, no binding and effective global accountability mechanisms exists to hold the corporate entity as a whole accountable for their human rights abuses (Schrempf-Stirling & Wettstein, 2017). Into this void, many diverse attempts have been made to bridge regulatory gaps in the form of national legislation, policy initiatives, and even case law, all with varying degrees of success. Arguably, the most promising of these mechanisms (to date) have been the UNGPs, which identify and clarify business responsibilities for human rights (Neglia, 2016). This tripartite, soft law framework created by Professor John Ruggie is based on the state obligation to *protect*, the corporate responsibility to *respect*, and access to *remedy* for victims of business-related abuses (Office of the UN High Commissioner for Human Rights (OHCHR), 2011). While the UNGPs are not without criticism (Deva & Bilchitz, 2013; Fasterling & Demuijnck, 2013; Macdonald, 2011; Melish, 2017; Simons & Handl, 2019; Venkatesan, 2019), they have been widely recognised by the business community, becoming the “global reference point for businesses to demonstrate their respect for human rights” (Kemp & Vanclay, 2013, p. 83). Key concepts introduced by the UNGPs, such as human rights due diligence (HRDD),¹ now form the basis of recent binding legislative and treaty initiatives, a trend that is set to continue.²

In the academic discipline of business and human rights, there have been increasing calls to move beyond legal-based scholarship and to more fully engage with a range of disciplinary perspectives in the field (Buhmann et al., 2018). As Gonzalez-Salzberg and Hodson (2020) observe, a purely legal analysis of human rights may neglect everyday understandings, lived reality and the societal impacts of human rights policy and initiatives (see also, Coomans et al.,

¹ Principle 17 of the UNGPs defines HRDD as a process through which companies can ‘identify, prevent, mitigate and account for’ how they address their actual and potential adverse human rights impacts (OHCHR, 2011, p. 17).

² Mandatory HRDD initiatives have been introduced in France and the Netherlands. The EU has also developed a proposal for mandatory human rights and environmental due diligence requirements for business (European Coalition for Corporate Justice, 2020), and the most recent draft of the globally binding Treaty on business and human rights contains provisions for HRDD (Open-Ended Intergovernmental Working Group OEIWG), 2020).

2010). Human rights are “quintessentially ethical articulations” (Sen, 2004, p. 321), and, as such, the link between ethics and human rights also “naturally translates into the realm of business and human rights and business ethics” (Maher et al., 2021a, 2021b, p. 3). In particular, interventions from business ethics form an integral part of this expanding interdisciplinary conversation, framing business and human rights in ways that reflect the complexities and dynamics of globalisation (Brenkert, 2016; Cragg, 2000). In particular, scholarship in this area has focussed on the foundations (Scherer & Palazzo, 2011; Scherer et al., 2016; Werhane, 2016; Wettstein, 2009) and scope (Arnold, 2016; Bishop, 2012; Hsieh, 2015, 2017; Macdonald, 2011) of corporate responsibility. Other business ethics scholarship has addressed the determinants and effects of human rights litigation strategies on corporate defendants (Schrempf-Stirling & Wettstein, 2017), and the potential of extraterritoriality as a corporate accountability mechanism (Bernaz, 2013).

While emerging business ethics scholarship on business and human rights contributes to a more interdisciplinary engagement in the field, there still remains a notable methodological gap across the business and human rights literature. In particular, “little scholarly attention has yet been paid to the *translation* of human rights in business practice” (Goethals, 2019, p. 287, *emphasis added*) and, more specifically, qualitative empirical research into the implementation of the UNGPs by corporations remains lacking. As Goethals (2019, p. 288) observes:

“Several scholars in law, business ethics, and management and organization studies have therefore called for more empirical research to understand corporate and management strategies and motivation to implement human rights standards and processes in practice, while others have highlighted the need for research at the micro-level that specifically addresses this gap.”

Existing qualitative empirical research remains largely policy orientated, focussing on corporate reporting, pre-UNGPs (Deva et al., 2019), while others have focussed on the implementation of HRDD in a cross-section of companies (McCorquodale et al., 2017; Smit et al., 2020). A small subset of research has begun to attend to the subjective understandings and interpretation of human rights by internal actors (Goethals, 2019; McBeth & Joseph, 2005; Obara, 2017; Obara & Peattie, 2018). While these studies comprise an important contribution to business and human rights, demonstrating the organisational realities of human rights implementation, they do not focus on how specific initiatives like the UNGPs are implemented in practice nor what effects implementation might have on the content and form of human rights (Scheper, 2015).

This question is a crucially important one, not only because how human rights guidelines are implemented in the corporate context will ultimately define the range of outcomes which can be achieved through such policies, but also because of the current momentum for mandatory HRDD regimes. Compounding this, existing enquiries into implementation tend to overlook the work of ‘external experts’ (Monciardini et al., 2019; Partiti, 2021; Van Ho & Terwindt, 2019). These actors are frequently relied upon by companies to better understand their responsibilities under the UNGPs and provide assistance with carrying out HRDD (OHCHR, 2011, p. 16). Their impact on corporate human rights implementation therefore requires investigation in tandem with internal actors (Deva, 2020). Thus, there is still a need to focus specifically on the implementation of the UNGPs, while including those outside of the company walls who are crucial to their implementation.

Translation

To attend to the gaps discussed above, we draw on a range of insights and conceptual tools from legal anthropology scholarship. In particular, we draw on a branch of legal anthropology shaped by the work of Sally Engle Merry, and concerned with exploring how transnational concepts, such as human rights, get “translated” into “specific situations and contexts” (Golan & Orr, 2012, p. 786; Goldstein, 2013; Levitt & Merry, 2009; Merry, 2003, 2006a). This work studies “the localization or indigenization of transnational concepts [such as human rights] within particular communities”, highlighting “the ways in which transnational concepts and language are deployed, translated, and reworked in the process of dissemination.” (Goldstein, 2013, p. 111). Research in this tradition has explored how NGOs and other civil society actors translate universal ideas of human rights to local communities (Golan & Orr, 2012; Levitt & Merry, 2009; Unnithan & Heitmeyer, 2014), and the effects of translating human rights norms into quantitative indicators and audits (Merry, 2015, 2016, 2019; Merry & Coutin, 2014).

The word ‘translation’ in the context of this paper is used to depict a non-linguistic process, demonstrating how the meaning of human rights is developed in corporate settings. If we strip the process of translation back to its basics, it is the taking of something from one context and making it understandable in another. Yet, as Czarniawska and Sevón (1996) recognise, this process far surpasses a purely linguistic interpretation. Translation is dynamic and inherently political, impacting on the constant construction and reconstruction of issues.

Human rights as a subject matter provide fertile ground for translation. They are “mandatory claims...fecund with interpretive possibilities” (Sarat & Kearns, 2001, p. 7) and

with political contestation at their core (Pahuja, 2007). Despite their cementation in the Universal Declaration of Human Rights and other legal frameworks, the appeal of human rights persists because they embody multiple meanings. As Sarat and Kearns (2001, p. 7) observe:

“They can both constitute us as subjects and provide a language through which we can resist that constitution and forge new identities.”

Critical scholars have previously admonished this lack of unitary meaning and inherent flexibility. For example, Whyte (2019, p. 16), drawing on a Foucauldian interpretation of rights, comments that the language of human rights is “notoriously slippery, marked by a tactical polyvalence”. Arguably, such flexibility invites the reconstruction and co-construction of rights within a corporate space. Business and human rights—and perhaps more specifically, the UNGPs—also involve a process of translation, where rights are invoked as a “bridging of norms and law, incorporated within familiar business frames of account-giving and metric production” (O’Kelly, 2019, p. 4).

Employing an analytical approach informed by legal anthropology scholarship is particularly relevant and applicable to the context of corporate business and human rights implementation for several reasons. As Goethals (2019, p. 294–295) notes, such an approach has provided important insights into the translation of human rights “in local contexts where human rights are ‘foreign ideas’... [or] unfamiliar”.³ We suggest that the implementation of the UNGPs into the corporate context is analogous to the translation of ‘unfamiliar’ human rights ideas into local contexts. Corporations have emerged as significant actors in global governance, particularly with respect to human rights. As such, they are now also significant sites of human rights translation and discursive power (Sarfaty, 2012, 2021). Nevertheless, the idea of human rights in general, and HRDD in particular, does “not sit easily with the corporate aim of profit maximisation” or with “corporate governance theories [that] remain rooted in the prioritisation of enhancing shareholder value” (Muchlinski, 2012, p. 157). In this regard, we believe there is merit in attempting to better understand how corporate actors “speak about” human rights and how they might “aspire to expand or interpret them in new ways” (Wilson, 2007, p. 350).⁴

³ Goethal’s (2019) innovative work further supports the need for business and human rights research with an anthropological lens. Goethal’s uses “rights-talk”, a term developed through a fusion of legal anthropology (Merry, 2003) and business ethics (Werhane and Radin, 2007) to better understand how migrant workers in the UK hospitality industry articulate and evaluate human rights.

⁴ Translating human rights as a concept has also clearly permeated into business practice. For example, a 2017 study by the British Institute of International and Comparative Law (BIICL) on HRDD processes highlighted that:

Furthermore, as Merry (2006b, p. 39) contends, a central aspect of the process of translation relates to “the people in the middle”—that is “those who translate the discourses and practices from the arena of international law and legal institutions to specific situations”. In the context of legal anthropology, “people in the middle” can include actors such as NGOs, activists, advocates, and consultants. These actors or ‘translators’ take the “ideas and practices of one group and present them in terms that another group will accept” (Levitt & Merry, 2009 p. 446). Translators tend to occupy “a liminal position”—i.e. they are “capable of flexibly and easily moving between transnational and local cognitive styles, worldviews, logics, values, norms, meanings and conceptions” (Golan & Orr, 2012, p. 786). As we outlined above, ‘external experts’ are becoming increasingly prevalent and influential in the context of business and human rights, advising companies in relation to their human rights responsibilities and HRDD. In this respect, we suggest that such external experts, in addition to those working in an internal capacity in the company on human rights issues, may occupy a similar liminal position or “double-subjectivity” (Merry, 2006a, p. 181)—whereby they are able to move between universal human rights and corporate discourses.

In addition, legal anthropological scholarship calls attention to the “moral and political dimensions” of translation (Goethals, 2019, p. 295). Human rights can be “easily adopted if they are packaged in familiar terms...but they are more transformative if they challenge existing assumptions about power relationships” (Merry, 2006a, p. 222). For translators, this means often finding themselves in between “competing normative agendas, or at least agendas that coexist uneasily” (Goodale, 2007, p. 32); for example, an NGO or donor might be simultaneously committed to “human rights, social justice, environmental protection, and economic development”. In this regard, translators are often faced with what Merry and Levitt (2019, p. 150) refer to as a “resonance dilemma”—that is, the recognition that in order to be embraced in a local context, human rights norms need to “resonate” with existing local norms. As Merry (2006b, p. 41) observes, “the higher degree of...resonance, the greater the likelihood it will be successful” in terms of yielding support. However, “resonant discourses are less radical than nonresonant ones...Choosing resonance requires sacrificing ideals...and possibly excluding significant groups and their demands” (Merry, 2006b, p. 41).

We suggest that both internal managers involved in promoting human rights policies in their companies and

Footnote 4 (continued)

“Interviewees frequently referred to the importance of...translating human rights for internal company staff who may not have a human rights background.” (McCorquodale et al., 2017, p. 208).

external experts hired for conducting HRDDs, are confronted with a similar “resonance dilemma”—which, as indicated, has a normative and ethical dimension. They see themselves as translators of human rights policies into business corporations and devise strategies to make the UNGPs understandable and palatable. It is a difficult process that requires legal expertise, communication skills and on-the-ground knowledge of the business world and/or of rights-holders’ situations. In order to ensure the understandability and diffusion of the UNGPs within the corporate context, employees and external experts need to frame human rights in a way that resonates. However, by promoting the wider acceptability of human rights within the corporate context, they are potentially reducing their transformative potential. In translating, practices can be “subverted, seized and transformed” (Merry, 2006b, p. 40), and “may require abandoning explicit references to human rights language...and a hijacking of these concepts for different purposes” (Levitt & Merry, 2009, p. 448). In this regard, internal managers and external experts may be faced with difficult ethical decisions to make—since the resonance dilemma they face may involve having to choose between two desirable but incompatible outcomes.

Finally, Merry’s later work on soft law highlights how human rights indicators and frameworks can “translate the language of justice and rights into the technical/rational language of economics and management” (Merry, 2015, p. 376). As normative obligations are transformed into modes of measurement, Merry highlights the possibility that accountability tools and the translation of human rights that occurs through their usage, portray “the role of human rights as a dimension of overall social and economic development...reduc[ing] human rights’ radical critique of social inequality and injustice” (2015, p. 387).⁵ In short, while frameworks and indicators might provide accessibility to human rights in different disciplines, might they also “change human rights as a justice ideology?” (p. 396). Christian Scheper (2015, 2019) also touches upon the notion of translating human rights into the corporate context, highlighting the interpretive elements that arise with the categorisation of context-specific rights grievances from the ground to corporate during human rights impact assessments (HRIAs), and the ability of this process to absorb ambiguities (Scheper, 2019). He emphasises that the universal/local tension that Merry’s work speaks of, is also a likely outcome in the translation of human rights in the corporate sphere. Scheper’s interest lies in the process of human rights, through HRDD, becoming “an object of management knowledge and practice” (2015, p. 740). He further contends that this ‘knowing and showing’ translation of human rights

responsibilities becomes a commodity in and of itself, neutralising the potential human rights norms may have for real and structural change.⁶

For the above reasons, we believe that a legal anthropological informed approach into business and human rights issues allow us to more deeply engage with everyday expressions and interpretations of human rights in the corporate context. Specifically, we aim to address the gaps discussed in Section “[Business and Human Rights: Context and Scholarship](#)” by undertaking an empirical analysis, supported by an anthropologically informed understanding of human rights translation, in order to provide insights into how the UNGPs are being implemented in practice, how human rights are brought into the corporate setting, and the potential dilemmas which arise from this process.

Research Approach

Research Design

In order to explore how human rights are understood, interpreted and implemented in a corporate context, this study employs a qualitative case study approach informed by Stake’s (1995) constructivist/interpretivist approach to case study research.⁷ In-depth, empirically qualitative case studies remain a relatively novel method in business and human rights research (Maher et al., 2021a, 2021b), yet we posit that they are optimal for investigating human rights meaning in different settings, providing further enrichment of the “methodological toolbox” of business and human rights

⁶ Scheper’s work is also reminiscent of earlier predictions about HRDD by Parker and Howes (2012). Using perspectives grounded in compliance and regulation, the authors argue that the framing of the UNGPs as diplomatic initiative ultimately underestimates the capacity of business to “neutralise, deradicalize, individualise and formalise critique” (Parker and Howes, 2012, p. 301). The conception of HRDD under the UNGPs is therefore one that emphasises maintaining management “discretion to reframe and translate outside critiques... into managerial priorities” (2012, p. 298). Of further relevance in the regulation and compliance literature is Gilad’s (2011) work on translating regulation in financial firms.

⁷ According to Simmons (2014, p.681), “Case study research may... be conducted from different standpoints—realist, interpretivist, or constructivist, for example”. Stake’s (1995) approach, which informs our paper, might be considered in contrast to Yin’s more widely cited approach to case study research—which is more situated in a positivist tradition (or “qualitative positivism” as Piekkari and Welch (2018, p. 346), refer to it), and thus “prioritise[s] the quest for possible generalisations” (Piekkari and Welch 2018, p. 352) and emphasises a concern for replicability and validity (Hyett et al., 2014). Stake’s (1995) approach, on the other hand, maintains that “no aspects of knowledge are purely of the external world, devoid of human construction” (Stake, 1995, p. 99; see also Hyett et al, 2014; Piekkari and Welch, 2018; Simons, 2014).

⁵ See also: Pahuja (2007) and Sarfaty (2012).

(Goethals, 2019). Drawing on Stake (1995), our research takes an explicitly constructivist position that underpins a qualitative mode of enquiry (Stake, 1995, p. 99; see also Hyett et al., 2014; Piekkari & Welch, 2018; Simons, 2014). In particular, following Stake (1995), our case study approach is both instrumental in design,⁸ in so far as we are attempting to understand how human rights are managed and understood within the corporate context, and collective in the sense that we explore this issue through two case study sites. For the purposes of holistically studying human rights meaning in different settings, the instrumental qualitative case study approach facilitates the understanding of setting and context, allowing for the interrogation of micro-level everyday activities and experiences to reveal social processes, while remaining attentive to the wider, structural context in which these dynamics are happening (Piekkari & Welch, 2018).

To identify potential case studies, we focussed strategically on corporations actively undertaking HRDD and reporting underpinned by the UNGPs. In particular, we sought early corporate adopters of the UNGPs, those with the most comprehensive human rights reporting and due diligence systems, to allow for a richness of data. This search was refined using Shift's reporting framework database,⁹ cross-referencing companies' human rights reporting under the reporting and assurance framework (Shift/Mazars, 2015, 2017) (the reporting framework) with headquarter location and salient human rights issues. The search concentrated on companies domiciled in Europe, a necessary adjustment based on resources and time allocated for in-depth data collection. Given these adjustments, two companies—referred to as OilGas, an oil and gas company, and CashMoney, a bank—emerged as the most feasible case studies. An overview of their relevant characteristics can be found in Table 1 in the Appendix and are expanded upon below.

⁸ In characterising approaches to case study research, Stake (1995) identifies three types of case study design. An *intrinsic* case study approach is employed when “we need to learn about [a] particular case”—that is, where the case itself is the primary interest and motivation for the study (Stake, 1995, p.3; see also Mills et al., 2010). An *instrumental* case study approach is employed “to understand something else”; that is, “one chooses the case to understand some other phenomenon” (Stake, 1995, p. 3). A *collective* case study approach is an expansion of the instrumental case study design to several cases (Simons, 2014; Stake, 1995).

⁹ See Shift's Reporting Framework Database: <https://www.ungprreporting.org/database-analysis/explore-disclosures/>.

Case Studies

OilGas

In his 2006 report to the then UN human rights commission (now replaced with the human rights council), Ruggie stated that ‘the extractive industries [...] account for most allegations of the worst abuses, up to and including complicity in crimes against humanity’ (UNCHR 2006, p. 8; See also, Savaresi & McVey, 2020). Examples of human rights abuses by extractives have been widely publicised and can be found across the globe; including shell in Nigeria,¹⁰ Vedanta in Zambia,¹¹ Chevron/Texaco in Ecuador.¹² And while companies from a wide variety of industries have been confronted by an increasing trend for transnational tort litigation as a means of potential remedy for human rights abuses, extractive companies tend to be a particular target (Enneking, 2019). As such, the extractive industries have been increasingly active in implementing CSR and human rights policies and strategies (Dougherty & Olse, 2014), although the effectiveness of these strategies has been questioned (Maher et al., 2021a, 2021b).

OilGas is an oil and gas company headquartered in a European city, with a presence in approximately 130 countries. It has an active human rights department and employs or collaborates with a number of external business and human rights experts/organisations. Previous to the introduction of the UNGPs, it has developed longstanding partnerships with organisations specialising in ethics and compliance who undertake assessments of the company's operational activities. Anecdotally, it seemed that the company's enthusiasm for human rights was also partially driven at board level, particularly when an influential business and human rights expert was invited to speak to the Executive Board on human rights issues.

Since 2011, OilGas has been particularly enthusiastic about implementing the UNGPs and conducting various HRDD processes, including undertaking HRIAs along potential pipeline sites. Since 2016, it has developed a standalone human rights policy, a roadmap which details progress made in this area and future goals and publishes an annual action plan or human rights update. OilGas' Code of Conduct separately references the company's commitment to human rights. OilGas is also a member of an oil and gas

¹⁰ See generally, Amnesty International (2020). And for specific case law related to Shell's actions in Nigeria, in the UK: *The Bodo Community and Others v The Shell Petroleum Development Company of Nigeria Ltd* [2014] EWHC 1973 (TCC) and in US: *Kiobel v. Royal Dutch Petroleum Co.*—621 F.3d 111 (2d Cir. 2010).

¹¹ *Lungowe v Vedanta Resources plc & another* [2019] UKSC 20.

¹² *Aguinda v Texaco, Inc.*, 303 F.3d 470, 478-79 (2d Cir. 2002).

industry association which requires its members to adhere to certain environmental and social reporting standards.

CashMoney

According to Deva et al. (2019, p. 206), “global finance and capital are levers for advancing corporate respect for human rights” and banks in particular, it has been argued, can play a role as global sustainability regulators (Conley & Williams, 2011). However, the financial sector has been relatively slow to understand its own responsibilities for human rights under the UNGPs. This is largely due to,

“The transboundary nature of international finance and the lack of any clear causal relationships between the provision of finance and any eventual adverse human rights impacts...” (Thompson, 2018, p. 84)

These difficulties have resulted in conflictual perceptions of financial institutions’ human rights responsibilities under the UNGPs, perhaps most notably demonstrated by guidance published by the Thun Group (2013, 2017).¹³ The 2017 guidance effectively ruled out “any question that a bank might cause or contribute to an adverse human rights” (Thompson, 2018, p. 92), through financing or investment activities, where impacts arise solely from the clients’ operations. Direct linkage for adverse impacts could also only be made through a banks’ corporate lending activity, introducing a new concept of “proximity” to distinguish between high and low proximity direct linkage—“based entirely on corporate structuring...rather than any UNGPs concepts” (2018, p. 92). The Thun Group also expressly distanced themselves from the need to engage in human rights remediation in relation to any impacts caused by financed clients (Thun Group, 2017, p. 15), and largely viewed due diligence requirements as dependent on the type of financing involved, emphasising existing environmental and social due diligence measures as sufficient, rather than specific UNGP-informed HRDD (Thompson, 2018).

Unsurprisingly, the Thun Group position has been roundly criticised, leading to the OHCHR issuing clarification on several pertinent issues relating to banks’ human rights responsibilities; in particular, reiterating that, rather than the type of financing involved in a transaction, the severity of adverse human rights impacts remains the most important criterion in determining the scope of due diligence (OHCHR, 2017, p. 4). Despite these clarifications, the difficulties of conceptualising banks’ involvement in human

rights abuse have no doubt led to a number of divergent narratives regarding responsibility.

It’s in this contested context that we turn to our second case study, CashMoney. CashMoney is a European bank which has offices in 15 countries and over 30,000 employees. It provides an interesting contrast to OilGas, since financial institutions enjoy a more ‘behind the scenes’ role, rather than an ‘on the ground’ one like extractive companies. CashMoney appears more progressive than many of its banking competitors both in terms of company mandate and human rights reporting. It specialises in sustainable and green finance products and emphasises its corporate social responsibility role. Previous to the implementation of the UNGPs, CashMoney worked with external experts on sustainability issues and are a signatory to the UN Principles for Responsible Banking. Participants from CashMoney had also been involved in the stakeholder meetings led by Ruggie during the consultation period for the ‘Protect, Respect, Remedy Framework’ (and later the UNGPs). The bank has a human rights statement and has published human rights reports based on the UNGPs in 2016 and 2018, with various updates in between. It employs a dual approach to HRDD, both through its value chain studies on sectors that are deemed to be a potential risk (e.g. cocoa), and through company assessments that integrate HRDD for new and existing clients, and event-driven reviews for companies when a potential human rights impact has occurred. It also maintains an exclusion list for practices that might cause adverse human rights impacts.

A further reason for CashMoney’s enthusiasm for human rights can be gleaned from its membership of a multi-stakeholder initiative (SectorAgreement1). This agreement, starting in 2016, had a three-year mandate and was made up of a coalition including banks operating in that particular European country, government, civil society representatives, banking associations, and trade unions. The agreement monitored human rights performance, focussing on compliance with the UNGPs and the reporting/assurance guidelines in the banking sector, and employed a number of external advisors to assist in HRDD and reporting.

External Experts

In order to better understand the implementation of the UNGPs, each case study also includes participants who are not direct employees of the company but who have been involved as human rights consultants or advisors—broadly umbrellaed under the term ‘external experts’.

The reasons for their inclusion are twofold. First, the framing of corporate responsibility for human rights under the UNGPs explicitly encourages knowledge sharing and the use of external experts, particularly with respect to HRDD (Partiti, 2021). These experts form a rather ‘amorphous’

¹³ The Thun Group is an informal group of international banks comprising of Barclays, BBVA, BNP Paribas, Credit Suisse AG, Deutsche Bank, RBS, Standard Chartered, UBS Group AG, UniCredit, J.P. Morgan, and ING.

community (Majekolagbe, et al., 2021), which is unsurprising given the nebulous definition of external expertise within the UNGPs.¹⁴ A second reason to include these external experts is that—as described in Section “[Business and Human Rights: Context and Scholarship](#)”, despite the significant role assigned to external experts in the UNGPs—on the whole, these actors are critically under researched in business and human rights literature (Monciardini et al., 2019; Van Ho & Terwindt, 2019). Since corporate executives are generally not equipped to implement HRDD, a human rights consulting industry has formed to provide advice and assistance in this area (Deva, 2020; Partiti, 2021). Practically speaking, each case study organisation included a condensed human rights/sustainability team which relied on consultation with external expertise. After exploring each companies’ HRDD and human rights reporting practices, and following an initial correspondence with some participants, it became apparent that broader sampling criteria which included external experts was necessary (See Table 2 in Appendix for an overview of all interview participants and Table 3 for further details of external expert organisations and their affiliations).

Data Collection and Analysis

Purposeful selection of participants was initially employed for both case studies and their external experts, in order to identify individuals or groups of individuals that were knowledgeable or experienced with the research area at hand (Patton, 2015). Contact with key “gatekeepers”¹⁵ at both OilGas and CashMoney also had a “snowball effect”, wherein ongoing contact with them allowed greater access to other participants both within each organisation as well as access to external experts (Patton, 2015). A total of 32 in-depth, semi-structured interviews (a combination of in-person and online) were conducted between October 2018 and October 2019. We conducted 5 interviews with internal participants employed at OilGas and 7 with those at CashMoney, and 20 with relevant external experts.

¹⁴ For example, Principle 16 of the UNGPs urges that any corporate policy statements on human rights ‘should be informed by the relevant expertise’ (OHCHR, 2011, p. 16). The level of expertise adapts depending on context, and can be drawn from various sources, including ‘recognised experts’ (OHCHR, 2011, p. 17), though here there is no further definition of who the relevant recognised experts are. The Commentary on Principle 23 (human rights context) gives specific examples of credible, independent external human rights experts, which include ‘governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives’ (2011, p. 26).

¹⁵ ‘Gatekeepers’ are key individuals, usually the initial contact within an organisation or group, that mediate access for the researcher to the case study site and other potential participants (Creswell, 2007).

Interview guides were prepared ahead of each interview (Bryman, 2016). These guides varied depending on the role of each participant. For instance, all participants were asked foundational questions about human rights, while only external experts were asked about how they managed independence when working for companies. The flexibility of the semi-structured interview meant we were able to depart from the interview guide in response to any new information arising throughout the interviews (See Appendix for a sample interview guide prepared in relation to internal participants at CashMoney). All interviews were recorded electronically and transcribed in full by the corresponding author. The names of organisations participating in this research, as well as the identities of individual participants, were anonymized.

A thematic analysis (Braun & Clarke, 2006; O’Dwyer, 2004) of the interview transcripts was undertaken via inductive manual coding in two main stages—within each case and then cross-case to capture mutual themes arising from the data. One of the most emphatic mutual themes to flow from the data collected from both OilGas and CashMoney was that of the translation of human rights into the corporate setting. The findings and analysis concentrate on this key theme, and evidence from both cases will be presented to discuss common aspects of the translation process. The cross-case synthesis (summarised in Appendix, Table 4) offers an opportunity to ‘move upward’ conceptually from cases to theorisation. Within-case idiosyncrasies, or differences between the cases, are detailed in the findings where relevant. However, the translation theme forms the primary basis of analysis and an initial thematic map of subthemes building on the cross-case synthesis can be found in Fig. 1 below. Each of these subthemes will be unpacked further in Section “[Findings—Translating Human Rights Into The Corporate Context](#)”.

Research quality and rigour in qualitative case studies necessarily relies on criteria such as sincerity and credibility to ensure an authentic account of the cases was captured and communicated (Tracy, 2010). In adhering to these criteria, we maintained a reflexive, sincere approach to research design and data collection, continually reflecting on our positionality and taking extensive notes during the data collection process. The choice of thematic analysis further emphasises reflexivity and allowed for constant iteration between data and literature, through iteration and refinement. To ensure credibility throughout the research process, we employed: (i) thick description, ascertaining “tacit knowledge” through immersion in each case study context (Tracy, 2010, p. 843); (ii) “crystallisation” (Tracy, 2010, p. 843), with the use of multiple contextual sources, such as field notes, key documents provided by participants, the corresponding human rights reporting documents produced by both organisations and their external advisors, and reports from various media and NGO sources, and;

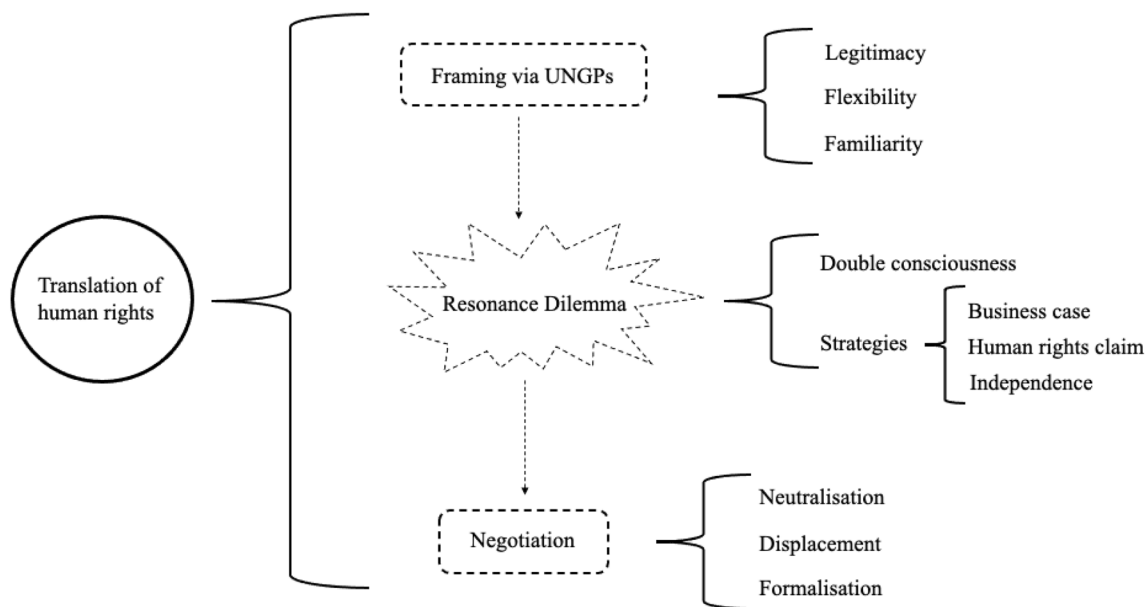


Fig. 1 Translation thematic map

(iii) “multivocality” (Tracy, 2010, p. 844) by contrasting the positions expressed by different types of informants (i.e. internal and external), throughout the data collection and analysis, as they shared their experience on the activities conducted by the same firms.

Findings—Translating Human Rights into the Corporate Context

The findings are explored in greater detail below as follows: the significance of the UNGPs in the translation process, the “resonance dilemma” encountered by translators, and the negotiation of human rights in the translation process.

“Framing” Through the UNGPs—Legitimacy, Familiarity and Flexibility

According to Merry (2006b, p. 41), “framing” refers to “ways of packaging and presenting ideas that generate shared belief” and which “makes an idea persuasive”. Drawing on the application of framing by social movement theorists (for example, Snow et al., 1986), Merry (2006b, p. 41) outlines how human rights ideas are more likely to gain traction in local contexts if they are “resonant with cultural traditions”. In the context of implementing human rights ideas in the cultural context of a corporation, we found that the formulation of the UNGPs appealed to all participants in our study. In effect, the UNGPs represented something of a pre-packaged means of framing human rights that provided

our participants with the discursive tools to facilitate “resonance” in the business context.

For example, when internal participants were asked about how human rights were understood and used in practice at OilGas and CashMoney, the UNGPs were regarded as a fundamental reference point with established legitimacy (referred to as the ‘Bible’ by one participant). Further, external participants pointed to the endorsement of the UNGPs by various influential actors as a reason for why they should be implemented:

The UNGPs have provided a benchmark that increasingly everyone understands and accepts... That’s now not just P9 making that up or some activist was telling you this in some sort of fuzzy language, you can point to a document that governments have endorsed, the companies themselves or their corporate head office, the industry associations that they sign up to have endorsed, so it’s so helpful to have a set of rules, a guidebook to point to... [to ensure] I’m not making things up. P9 (Senior Advisor at HRC3 and Independent Consultant on Pipeline1 for OilGas)

As well as their reputation, the content of the UNGPs and supplementary materials like the Reporting Framework, provided a strong, familiar foundation through which to translate human rights. It was Ruggie’s ambition for the UNGPs to be seen as a means of “prescribing practical ways of integrating human rights concerns within enterprise risk management systems” (Ruggie, 2013, p. 188). More specifically, Ruggie’s consensus-building, ‘principled pragmatism’

approach, employed the strategic use of language, addressing the specific interests of particular stakeholders (Buhmann, 2012), including the business community. As a result, the UNGPs employ the language of business and management in the development of human rights principles.

Take, for example the emphasis on HRDD within the UNGPs. Prior to the UNGPs, the concept of due diligence was primarily applied in the context of commercial transactions (Martin-Ortega, 2014). Invoking the term due diligence in the UNGPs, is a “clever and deliberate tactic”, employed to provide familiarity and appeal to the business community (Bonnitcha & McCorquodale, 2017, p. 900). The use of business terminology is further consolidated in the UNGPs’ supplementary material. As McPhail and Ferguson (2016) note, the Reporting and Assurance Framework provides a greater role for accounting in human rights accountability. Together, this guidance emphasises ‘knowing and showing’ how companies are meeting their human rights responsibilities, references to managing risk and tracking human rights performance, all of which embrace familiar business and management discourse (Scheper, 2015).

Merry (2006a, p. 138) describes this part of the translation process as “dressing [human rights] in familiar costumes”, and it was apparent that the invocation of a business discourse appealed to those in OilGas and CashMoney:

And when I heard him [Ruggie] explaining and talking about risk, talking about due diligence, which is all the terminology which is used in the bank, all day long, because they have financial due diligence. So, for me, those concepts made sense, they were logical choices. P18 (Head of Environmental, Social and Ethical Risk and Policy at CashMoney)

In addition to the familiar business and management language embedded in the UNGPs, the perceived flexibility endorsed by this framework also appealed to both internal and external participants in our study, thus facilitating a further point of resonance. This flexibility was described as the “genius component” by P6 (Associate Director at NGO3), since it gives companies and their external advisors a significant degree of autonomy over the way in which they fulfil these responsibilities (Fasterling & Demuijnck, 2013). The plasticity of the UNGPs was widely acknowledged and extolled upon by those working at OilGas and CashMoney:

There’s some room for interpretation. I had an external review of our grievance procedure and the person, you know, had some comments which sort of suggested we weren’t aligned with the effectiveness

criteria, but so, I think there’s always room for interpretation and we feel we have aligned quite strongly [with the UNGPs]. P3 (Pipeline 1 Project Land and Social Manager at OilGas)

There is also room for our own interpretations, indeed, because it depends on the sector you’re in or the type of company you finance or the number of investment funds you have... P15 (Sustainability Reporting Specialist at CashMoney)

These “multiple interpretative possibilities” (Behnam and MacLean (2011, p. 49), were evident in the two case studies, since, in practice, the flexibility of the UNGPs allowed participants to view human rights through different frames, using contextualisation as a way of communicating human rights significance to a particular setting or corporate department, and linking human rights to other discursive spheres (Merry, 2015). For instance, some participants saw the connection between business and human rights through a moral lens:

Yeah, well to me it would mean something along the lines of allowing people to live the life, the way they want to live their lives... P19 (Head of Natural Resources Dept at CashMoney)

Some saw it through a development lens:

I think human rights are the aspirational side of human development, from my value base of where we should want the world to go in terms of access and rights for people. P12 (Co-founder of HRC2)

Others saw it as part of social performance:

And, as a social performance person, we’re interested in people’s everyday lives so, it’s just how the freedom and the rights people have to live. And, from a company point of view, the way we respect and afford people to carry on living in full enjoyment of their rights. P3 (Pipeline 1 Project Land and Social Manager at OilGas)

In short, when trying to make human rights resonate in the corporate context, the UNGPs and their supplementary materials provide participants with a desirable framing of legitimacy, familiar terminology and flexibility, allowing for multiple interpretive possibilities and contextualisation. Nevertheless, the UNGPs do not provide a flawless frame for translating human rights. In the translation process, resonance dilemmas still occur, the details and consequences of which are further detailed below.

Confronting the “Resonance Dilemma”—Double Consciousness and Persuasive Strategies

The “resonance dilemma”, where “norms fare better when they are familiar, but to make change, they fare better when they are less familiar” (Merry & Levitt, 2019, p. 150), was clearly apparent in our participants’ reflections.

The majority of internal participants were (or had recently been) directly involved in managing human rights responsibilities, although job and departmental titles varied greatly. Many of the internal actors in both OilGas and CashMoney had an education in international law and/or sustainability or human rights background working in CSOs. Across the board, the internal participants were extremely passionate about human rights, believing in the power of human rights and the integral role played by private entities in their realisation. Since engagement with human rights under frameworks like the UNGPs is relatively new, many of the internal participants interviewed were central to the configuration of human rights-specific structures within their company. For example, P4 (Head of Social Performance/Former Head of Human Rights Department at OilGas) described how setting up OilGas’ human rights committee helped internalise human rights within the organization, providing a mechanism to convince corporate level actors about the benefits of a human rights approach.

At the beginning, people—in the team I had...8 people—saying “why are we talking about human rights? That’s another department at headquarters” ... and I said “no, [taps side of hand on table for emphasis], the grievance mechanism we are applying responds to the UN Guiding Principles and we are talking about human rights”...This is relevant. This perspective, this lens, is relevant. P1 (Human Rights Senior Advisor at OilGas)

Outside of the headquarter-level context, P2 (Former Legal Counsel for Business and Human Rights at OilGas) demonstrated that applying a human rights lens or implementing the UNGPs meant employing the Principles to support tangible, concrete outcomes in different contexts, rather than abstract aspirations.

We try to make it translatable, you know, not make it legalese, not restricted to stuff people have in agreement, but first make it relatable, you know to their issues, then customise it, so if you’re talking to procurement, try to customise it to that context. Because, what it means to someone there is different to someone working in social performance, it’s different to someone who is working on an offshore platform.

It’s in these instances that we see internal translators embodying the “double-subjectivity” or “double consciousness” Merry explores in her work. These actors both know and understand the transnational human rights language and they are also fully embedded within their own organisational context and understand the organisational dynamics of their respective companies and sectors. Being simultaneously able to think in terms of human rights discourse and adopt the point of view of those with whom they are working, translators are ideally positioned to make the connection between the two domains.

I’ve seen that companies, the people that you work with within companies, who are really committed to this, do a really good job of translation, because they obviously know, kind of, what resonates with their companies. P22 (Consultant at HRC3)

Despite their passion and innovation, internal participants spoke of the struggle they encountered on a daily basis through their translation work, specifically through the tension that arose when human rights implementation came into direct contact with the profit-making rationale of the firm. Merry describes this tension in the context of civil society translators, whose vulnerability lies in the potential to be influenced by those who are funding them and institutional frameworks that create opportunities for wealth and power (Merry, 2006b, p. 40). In the corporate setting, the commercial pressure experienced by internal actors is characterised below:

They [internal actors] truly understand what the Guidelines mean, and what they want to achieve, and they’re working very hard to get it implemented in the entire business operations of their banks, but I think it’s very difficult for them to truly act on the Guidelines... the financial motives and incentives are still bigger than what [the] sustainability [department] wants. P25 (Programme Leader at NGO12)

Internal actors spoke of how this tension played out in practice:

Maybe it’s a very nice opportunity to onboard them [a new client] and move them in the right direction. But the business then said it will take them so much money and effort to get them there, that we’re not earning enough money on the client, so we won’t do that. P18 (Head of Environmental, Social and Ethical Risk and Policy at CashMoney)

This tension was particularly emphasised by internal participants from the bank and was markedly apparent when

they were speaking about onboarding prospective clients.¹⁶ This tension may be more explicit in the case of CashMoney, because exercising leverage¹⁷ is typically perceived as one of the main ways in which financial institutions can uphold the UNGPs (OHCHR, 2017), yet in reality, this leverage may be thwarted by the banks' own short-term, commercial interests.

A strategy frequently used by internal participants to deal with this commercial pressure and persuade colleagues at a headquarters level, was to try to link negative human rights impacts to economic costs, embodying what is often termed the 'business case' for human rights (Bağlayan et al., 2018). P4 (Head of Social Performance at OilGas) recalled a situation where they had tried to talk to colleagues about human rights issues on a particular pipeline. The colleagues had implied that P4 was "a bit naïve", pointing out that they worked for a corporation, not an NGO. P4 responded:

Look if you don't take these fragile people into consideration, it could create a risk for the corporation.

In effect, P4 tried to "convey this message [of human rights] to those who are far from these issues" by translating human rights issues into a potential financial risk. P2 (Former Legal Counsel for Business and Human Rights at OilGas) gives another example of this translation exercise:

Respecting human rights comes at a cost for business as well... Maybe what you have to do is perform case studies that show where business enterprises have failed to secure business deals because they have failed to address a human rights issue.

Such attempts to translate human rights on 'business case' terms highlight the potential challenges of translation work—i.e. presenting human rights ideas in a way that resonates with the cultural context of the corporation may increase their adoption rate at the expense of their transformative power. A business case perspective considers the risk of negative human rights impacts to be a purely economic exercise. As such, human rights are rarely pursued as

worthy goals in their own right, particularly if this disrupts the profit-making *status quo*.

In contrast to internal participants, the external advisors of OilGas and CashMoney employed different strategies with respect to the resonance dilemma. Rather than appealing to the corporate context or directly to the UNGPs, they translated human rights ideals to corporate/HQ level by framing rightsholder issues as human rights concerns, as a way to tactically make companies listen to these grievances. Dressing a claim in the form of a right, is to put it—or translate it into—"the strongest available terms" (Koskenniemi, 2010, p. 48). Relatedly,

If you present it as a human rights issue that they need to rectify, it tends to be seen more seriously in the company. It's also a rhetorical language, in which to frame certain issues and get them heard within the company... P6 (Associate Director at NGO3)

It was apparent from participants comments that external advisors translate both "up and down" (Merry, 2006b). That is, as well as translating the rightsholders' position to their interlocutors working for corporate headquarters, external participants also translate to rightsholders by taking human rights ideals enshrined in international law and making them relevant to local issues (Levitt & Merry, 2009; Merry, 2006a, 2006b). In these situations, sometimes the language of transnational human rights was found to be impractical – either linguistically or culturally. P9 (Senior Advisor at HRC3 and Independent Consultant on Pipeline1 for OilGas) demonstrates this:

I can make in my head the translation to human rights. I've done human rights impact assessments where I haven't used the words 'human rights' once. But I could have in another context, you know, human rights could be every third sentence. So, it's very variable... one of my favourite anecdotes is, I've been doing work with IndigenousCommunity1 in a remote area of North America and they do not have a word for human rights in IndigenousLanguage1, so when they translate human rights, they have to take like 20 words to explain the concept! So, when talking about human rights, we say ok, what's an easier word for you to translate [laughs]

Like their internal counterparts, external translators were not free from encountering tensions and dilemmas during their translation work. As P13 (Corporate Engagement Advisor at NGO1, who worked closely with OilGas) articulates, companies' enthusiasm in advertising their work with external organisations could put external translators in a difficult position:

¹⁶ The process a bank undertakes when bringing a new business client onboard. It usually entails conducting due diligence on the prospective client.

¹⁷ In this context, leverage is an advantage that gives power to influence, such as the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact (OHCHR, 2012, p. 7). Financial institutions are perceived to have strong leverage over clients' behaviour and should therefore seek to influence client actions to promote human rights and the implementation of the UNGPs and to stop or mitigate any human rights abuse emanating from a clients' actions.

We tend to find [that] companies...want to advertise the fact that they are working with us, more so than we would actually advertise...

For our external participants to carry out their work, maintaining a sense of independence from the company was key. The experts saw themselves as standing apart from corporate activities, offering unbiased expertise and, in some cases, passing judgement. P6 (Associate Director of Advisory Services—Responsible Business at NGO3) explained how this independence played out in practice during on-the-ground human rights’ assessments, when working with OilGas and other clients:

We do most of our work on an independent basis, which is to say, the company tells us where they want us to go, and then we talk to whoever we want, we ask them whatever we want. [...] And independence is actually quite important, and it might be one of the other reasons why a company might look, might ask us for support as opposed to somebody else.

In this case, building and maintaining independence was tied to leveraging future corporate engagements. In external translators’ interactions with companies, criticism of their human rights approach was done ‘behind closed doors’, as this offered an opportunity for company and experts to come together to consider human rights conduct and co-produce solutions to the issues at hand. Nevertheless, in trying to keep the willingness of the company to engage on issues of human rights, some experts indicated that they would revert to more resonant forms of pressure, and, by doing so, knowingly exposed themselves to criticisms from NGOs or their peers. As P8 (founder of HRDDO1) reflects:

Clearly there are sensitive politics here...You can easily be slammed as a corporate shill if your report looks too positive.

In this regard, external experts were aware that they could not be seen as too deferential to the company. Therefore, a critical balance had to be maintained between what could be seen as a deliberate lack of transparency for the greater benefits of human rights implementation and what could be seen as counterproductive activism:

So, if you’re working on the side of the company, you’re doing a whitewash for the company. If the community’s paying the bill they say, ‘Oh you’re a troublemaker, you’re an activist’...So, it’s a challenging space to be in because of that easy facile criticism. P9 (Senior Advisor at HRC3 and Independent Consultant on Pipeline1 for OilGas)

It’s clear that both internal and external translators need to work hard and plan strategically in order to make human rights both understandable and relevant for actors working in the corporate sphere. In doing so, they are confronted with a “resonance dilemma”, where human rights are used tactically, in order to make them more palatable to specific actors or contexts. Below, we demonstrate how this dilemma is managed by our translators and illuminate some of the more concerning aspects of the translation process.

Negotiating Human Rights

As seen above, the process of translation is far from frictionless, and internal and external participants in both case studies encountered issues in their attempts to make human rights understandable and relevant into the corporate setting. Participants also gave examples of occasions where human rights concepts became ‘lost in translation’, due to misunderstandings of how human rights were defined, differing perceptions of corporate responsibility for human rights, and a disconnect between human rights norms and the everyday life of the firm.

Yesterday, we had the discussion with the CFO...and they said yeah, I thought human rights was about torture and secret prisons! You know, so for a lot of colleagues in the bank, there’s often a lot of confusion about what we mean about human rights. P17 (ESA Risk Advisor at CashMoney)

As well as a lack of understanding of a definitional nature, there were also issues of visualising the normative character of human rights. P17 also spoke of the challenges in translating human rights to colleagues within the bank who tended to be more quantitatively orientated. Human rights benchmarking had targets that were not as easy to visualise or measure (say, in comparison to environmental targets), so it could be difficult to communicate their importance or urgency. It’s here, when encountering these translational difficulties, that we glimpse some of the consequences of the translation process—namely neutralisation, displacement and formalisation—which we unpack further below.

Neutralisation

When concepts are translated, they are moved from one context and made understandable in another. But in doing so, the concept is intrinsically changed in order to make it understandable in this other context. Many of the participants highlighted the need to focus on this new context and present human rights norms according to the norms and expectations of it. Here, a neutralisation of human rights occurred where rights language was seen as provocative and

actively unhelpful in some circumstances. For example, P9 (Senior Advisor at HRC3 and Independent Consultant on Pipeline1 for OilGas), reflected that when liaising with rightsholders, using human rights language may be an actively dangerous choice due to political sensitivities in the area.

In some contexts...to talk explicitly about human rights might make people less likely to share because they don't want to speak up about human rights because they know perhaps the government is not particularly good about human rights, or so talking about that might get people a little bit scared and nervous, so then let's avoid those terms if it's going to make people scared and nervous.

More often, neutralising human rights language was a strategy frequently employed when advising companies. Here, external experts were especially cautious of “hitting people over the head with the language of human rights” (P20—Senior Advisor at HRC3), deliberately swapping in more neutral language, so as not to disengage the company. If human rights language got in the way of engagement, then one option was to set it aside. This is reflected in P14’s (Extractive expert at NGO2) observation:

For example, I'm normally quite careful not to say human rights violations, I say negative impacts of human rights, because they might be perpetrators, and to say that they're violating sometimes, it's language that places them on the defensive. So, it's more about just speaking about it in the everyday language...

The UNGPs bolstered this neutral approach, by providing the necessary vehicle to recount human rights without the need to risk using incendiary language around corporate actors. One clear semantic example in the UNGPs is the use of the language of impacts rather than violations. This language was conciliatory rather than disruptive. It:

Allows for a conversation that allows people to... build bridges between sides... The UNGPs have taken a step towards kinda softening the language, which is helpful when you need to get a whole bunch of different actors around the table. P9 (Senior Advisor at HRC3 and Independent Consultant on Pipeline1 for OilGas)

In contrast, the UNGPs were rarely seen as a helpful translational guide when engaging with rightsholders. On location at Pipeline1, both internal and external actors alluded to the ‘high-level’ academic and theoretical nature of the framework, in contrast to the use of more general, neutral language employed on the ground, such as ‘fairness’, ‘equality’ and ‘neighbourliness’.

Displacing Rightsholder Experience

The process of translating human rights into the corporate context may leave little room for rightsholder agency on how their grievances should be understood at a corporate level. While we have seen internal and external actors acknowledging their precarious position and vulnerabilities, attempting to navigate very different worlds and make them communicable, the political power of their intermediary position in the business and human rights space becomes more apparent. These actors are knowledge brokers, endowed with the authoritative ability to control the flow of information (Merry, 2006b, p. 40; Morris & Lancaster, 2006), and interpret and change the thing they are translating, dependent on audience. Our study revealed that external experts’ position in the translation process is a particularly powerful one. They are often the link between a company and the impacted rightsholders, translating ‘up and down’. As P13 (Former Corporate Engagement Advisor at NGO1) describes,

So, part of what I do go both from bottom up to international, international back down, so try and link these high-level conversations, which I'm sure are often very dissociative to what's actually happening in practice, once you go on the ground, with the ground and then back up.

P7 (Senior Advisor at HRI1) points out, human rights need to be iterative and grassroots-based:

You can't from headquarters, determine... that's going to be our human rights focus because how do you know that that's going to be relevant in country X, at a particular operation. Making clear that the scoping needs to come from the context, and it can't kind of be predetermined at a headquarters policy level, basically.

We have seen instances where rightsholders’ grievances are tactically communicated through the language of human rights to make a stronger claim, or where the UNGPs are used because they were more familiar in a corporate context. Either way, it is often someone else determining how rightsholders’ issues are presented. It is this repackaging process which Scheper alludes to in relation to HRIAs in the apparel industry, where ‘the assessor exercises power over the assessed by deciding which information to include and exclude...and how to present and communicate this

information’ (2019, p. 264). For experts, speaking for others’ lived experiences, “may first require silencing those in whose name they speak” (Callon, 1986, p. 14).¹⁸ Indeed, as P12 (Co-founder of HRC2) pointed out during their interview,

One of the issues that comes up is this whole question of do the rightsholders adequately understand their human rights? Are you actually using the human rights impact assessment as mechanisms to build their capacity in human rights?

P6 (Associate Director at NGO3) tells of a cautionary tale of their experience (not necessarily at OilGas or CashMoney), where corporate policy frameworks—built from HRIAs which did not accurately reflect the reality of rightsholders grievances—were still used as means of human rights accountability:

I’ve certainly seen human rights assessments where things get brought into it that we—who had engaged in that very same context—had just never crossed our radar. No-one said anything about those things to us, there was no evidence at all that anyone was concerned with those things...

It’s clear that there are many opportunities to repackage rights at every step of the chain(s) of translation—from rightsholders to corporate—and yet, those whose rights may be impacted often do not have that privilege.

Formalisation

Human rights are inherently qualitative, based on the lived experiences of rightsholders, and can therefore be difficult to measure in the way in which companies are used to measuring impact (Maher, 2020). Maher et al. (2021a, 2021b) argue that the rise of the ethical audit to track corporate performance on human rights has been encouraged by the UNGPs managerialistic approach. Practices such as audit or internal HRDD reporting, can privilege quantification, measurement and economic objectives in arenas typically based on subjective experience. Complex and contested social phenomena like human rights impacts—“which can only be subjectively experienced and assessed by affected rightsholders” (Maher, 2020, p. 162)—are translated through quantification.

In the corporate human rights translation process, human rights issues are often quantified to make them easily understood and manageable with the aim of fulfilling corporate

HRDD. This was clear in both case studies. However, the limits of quantification via human rights reporting become apparent in the below example. P1 (Human Rights Senior Advisor at OilGas), demonstrates how human rights grievances can be accounted for under the UNGPs:

We could say that we had around 500 grievances, [and] 360 were resolved...That’s also in line with the UN Guiding Principles, tracking your performance.

Here, the very nature and context of OilGas’ human rights grievances vanish behind the metric of what fraction of grievances have been resolved. Yet this would still be considered a positive engagement with the UNGPs. In this translation process, categories of rights claims or grievances then appear fixed and unproblematic through their adherence to business norms (Broome & Quirk, 2015, p. 821). These interpretations and reclassifications may detrimentally affect the realisation of human rights when data are used to demonstrate formal compliance instead of promoting accountability.

As such, while the corporate responsibility to respect (OHCHR, 2011) might be a normative reference, the way in which it is then implemented means it “is transposed to the regimes of business practices” (Scheper, 2015, p. 750). In *CashMoney*, for example, when screening clients in relation to their human rights standards, the company asks:

What type of issues are you dealing with? How are you resolving those? Are you reporting transparently?... it’s more questions that are derived from the UNGPs or the Reporting Framework, than sort of the normative substance of it [human rights]. P17 (ESA Risk Advisor at CashMoney)

P17 goes on to voice their concerns at this approach:

There may be a few conversation items about human rights in the initial phases, and then it’s really the checklist, and possibly follow-up questions based on that analysis. So, yeah that’s also something we are sort of reconsidering, like is this checklist approach useful? Or is it missing a lot?

This raises questions of how human rights can be altered or formalised through this box-ticking, quantification process, where the full complex narrative of grievances may be misrepresented or lost. A right can then become something to be accounted for and managed without the need to engage with it fully (Scheper, 2015, p. 750).

¹⁸ See also an exploration of interpretive role of business and human rights experts in HRDD by Partiti (2021).

Discussion

Informed by legal anthropological scholarship on translation, our analysis of the implementation of UNGPs in the corporate context reveals “the complex and contradictory ways in which human rights translation, in fact, can operate” (Goldstein, 2013, p. 111). In particular, we saw how internal and external participants in OilGas and CashMoney form an intrinsic part of translating human rights into the corporate context. As our analysis demonstrates, these key actors often occupy a “liminal position” (Golan & Orr, 2012, p. 786) meaning they can flexibly move between different discourses and exercise their “double-subjectivity” (Merry, 2006a, p. 181) or “double consciousness” (Merry, 2006b, p. 42). For example, in order to explain the link between human rights and business, and persuade their colleagues at headquarter level and beyond to take on a rights-based perspective, participants drew on their background and knowledge of human rights and international law as well as their understanding of the corporate context. In this way, participants were able to frame human rights by drawing on “symbols, traditions and terminology” from the corporate context in such a way that they could “make the core ideas more attractive to the[ir] target audience” (Golan & Orr, 2012, p. 787). The UNGPs provided a readily accessible reference point for such framing, due to the familiar management terminology they employ along with their inherent flexibility and multiple interpretive possibilities.

However, the process of translation contains “more friction than flows” (Levitt & Merry, 2009, p. 448). The translators’ powerful position as knowledge brokers is accompanied by certain difficulties and vulnerabilities (Merry, 2006a, 2006b). In particular, our participants encountered what Merry and Levitt (2019, p. 150) call the “resonance dilemma”—that is, the recognition that “norms fare better when they are familiar, but to make change, they fare better when they are less familiar”. In this regard, the resonance dilemma embodies a normative and ethical dimension. As ‘translators’ of human rights policies into business corporations, participants devised strategies to make the UNGPs understandable and palatable. This is undoubtedly a difficult process that requires legal expertise, communication skills and on-the-ground knowledge of human rights, rightsholders circumstances as well as the business world.

The majority of the participants in our study had a background in human rights or international law and were, on the whole, strong proponents of the wider diffusion of human rights principles. They viewed their own roles as translators as important to the improvement of current business practices. However, in their quest to make human

rights more understandable and accessible within the business context—i.e. in order for them to make human rights ideas ‘resonate’—their substantive form and content was sometimes adapted or changed. For example, by emphasising the financial risk associated with human rights related issues, internal participants in our study were able to translate human rights into business terms. In doing so, resonance was achieved, but this was arguably at a cost—emphasising human rights in financial transaction terms rather than, for example, the actual rights and perspectives of rightsholders.

This aspect of translation work highlights the vulnerability of translators—they are “vulnerable to charges of disloyalty or double-dealing... [because] their translation skills can undermine the communities they represent” (Merry, 2006b, p. 40). The participants in our study took responsibility for the professional challenge that consists in keeping all parties around the table by making human rights understandable and manageable. However, the ethical dimension inherent to the resonance dilemma was arguably overlooked, with the potential for translation to act as an obstacle to human rights rather than their realisation. While some ethical tensions were acknowledged in the interviews (such as external translators’ need to maintain independence), these were second to the resonance imperative and the desire to keep the communication going. Acknowledging the implications or ethical dimensions of translation risks losing the support of colleagues or clients.

While the translators in our study predominantly described the process of packaging and presenting human rights ideas in a way that made them “more attractive” within a corporate context, “the opposite can also occur” (Golan & Orr, 2012, p. 787). That is, rightsholders issues can be translated or framed in a way that “that increases the chances of their demands [or issues] being accepted” or recognised as human rights issues (Golan & Orr, 2012, p. 787). As our analysis demonstrates, external experts recognised that by tactically framing rightsholder issues as human rights concerns, they could gain more traction and the issues were given greater attention and treated more seriously. In this regard, our interviewees translated both “up and down” (Merry, 2006b, p. 42), playing “a critical role in translating ideas from the global arena down” as well as “from local arenas up” (Merry, 2006b, p. 38). In addition, as both internal and external experts are engaged in translation efforts to bridge the gap between abstract human rights ideals enshrined in international law and their local interlocutors, they do find themselves ‘in the middle’, actively shaping the process of negotiations and eventual compromises on behalf of corporate managers and distant rightsholders. As such, in addition to translating ‘up and down’, they also translate ‘horizontally’ between the interests and concerns of two communities.

The process of translating human rights into the corporate context is, as indicated, fraught with difficulties, requiring constant negotiation that can lead to the toning down or neutralisation of human rights. For example, as outlined in our analysis, translation may require "abandoning explicit references to human rights language", and reframing it "sometimes dramatically, to fit into existing... ideologies" (Levitt & Merry, 2009, p. 448). This was evident when our translators opted for the use of more 'neutral' terms, such as 'human rights impacts', rather than risk the company disengaging as a reaction to the use of terms such as 'human rights violations'. As Levitt and Merry (2009, p. 448) observe, translators operate at an "intersection [where] the possibilities of creative reinterpretation and mobilisation of human rights language takes place"; however, "it is also at this nexus that the risk of rearticulating human rights claims in ways quite different from its overarching framework is most acute".

In addition to the strategy of neutralisation, the managerial turn of HRDD under the UNGPs leads to a formalisation of human rights, which privileges quantification and measurement and takes the appearance of objective categories to be managed, rather than rights to be realised. Through the process of translation, human rights issues can be distilled and categorised in such a way that allows, for example, the numerical presentation of grievances against a company and the number of grievances resolved. As Merry and Wood (2015, p. 207) point out, quantifying rights issues in this manner represents a specific form of translation which they refer to as "commensuration". They go on to explain:

Translation and commensuration both involve redefining the meaning of things, but in different ways. Translation moves something from one frame of reference to another, while commensuration sits several different things side by side in one frame of reference and seeks to add them together on the basis of their similarities *while ignoring their differences.*" (Merry & Wood, 2015, p. 207, *emphasis added*)

While a HRDD process might commensurate grievances, making them the same for the purposes of developing performance indicators or for the purpose of performance measurement, it may overlook or misrepresent the contested and complex nature of grievances. For example, through these "technologies of truth" (Merry & Coutin, 2014), what gets 'counted' as a grievance might rest on what "is easier to measure [or] what is already recognized as measurable"; grievances that are contested or complex may not get 'counted', leading to "disparities... [and] varying levels of attention to issues" (Merry & Wood, 2015, p. 207). In addition, as Merry (2016, p. 25) further contends, those whose experiences are being measured "typically lack a voice in the construction of the categories and measurements". In short, because quantification provides an "aura of objective

truth" (Merry, 2016, p. 1), there is often little question as to the purpose of quantification, the methodology used, how categories are constructed, or how data is interpreted.

We are not suggesting that the negative effects and consequences of translation outlined above were the outcome of the deliberate intentions of individual translators; rather, the process of translating human rights itself, through the UNGPs, creates situations which can potentially alter or defy the intended goals of corporate responsibility and accountability for human rights. From the analysis presented in this paper, Merry's words (and Scheper's (2015) worry) come to mind. Human rights, when brought into a corporate space, are more easily adopted if they are packaged in familiar terms. Yet they can become so diluted by the managerial language used to make them understandable, that presenting human rights ideas in a way that resonates with the cultural context of the corporation may increase their adoption rate at the expense of their "transformative" potential (Merry & Levitt, 2019, p. 153). In short, the translation process can potentially subordinate human rights into manageable objects, rather than transforming business practices.

Conclusions

In this study, we have explored how human rights are brought into the corporate setting and made manageable through the UNGPs. To facilitate this exploration, we employed a case study enquiry of two companies and their external advisors. We unpacked the process of translation alongside insights (primarily) gleaned from a reading of Sally Engle Merry's work on the translation of human rights. Our analysis highlights the "multiple vernaculars of human rights" that can emerge as part of the translation of human rights into the corporate setting (Goldstein, 2013, p. 111) and adds nuance to Merry's study of the "people in the middle" (Merry, 2006b, p. 39).

This study has made a number of contributions to the extant business and human rights and business ethics fields. First, given the limited number of empirical studies conducted in the field, it offers a unique opportunity to understand how human rights, through the UNGPs, are understood and implemented in particular corporate contexts. We shed light on seemingly monolithic corporate entities and their relationship with human rights and find resonance, ethical dilemmas, and contradictions. This is a crucial contribution, because in the decade since the UNGPs' inauguration, little academic research exists to unpack their interpretive nature and how they work in practice, while key concepts from the UNGPs, such as HRDD, continue to be cemented into binding legislation for corporate responsibility. Ultimately, we add our voice to other critical perspectives on the UNGPs, highlighting that their implementation can lead

to situations which undermine progress on human rights realisation. In doing so, this paper has also helped to extend business and human rights research beyond theoretical or doctrinal approaches, further highlighting the need and potential for innovative multidisciplinary research in this area, by combining insights from business ethics and legal anthropology. Our research also contributes to deepening the ethical analysis of the implementation of the UNGPs and the consequences of this implementation. In particular, we draw attention to the ethical dimension of the resonance dilemma faced by translators of human rights as part of the corporate implementation of the UNGPs.

Nevertheless, this study does contain some limitations. Our findings are context bound within the two organisations at hand and are therefore not a generalisable account of how human rights are made manageable in every corporate setting. While the two companies were headquartered in Europe, case and participant anonymity precluded a deeper analysis of the wider role of national or supra-national, socio-political contexts which might shape each organisations' human rights approach. These factors deserve greater attention from future research. Data collected during the course of this research also revealed the power and influence of external experts. The evidence lends credit to what Deva (2020) describes as the emergence of the 'business of human rights' era, where corporations have begun to adopt the language of human rights to serve their own business interests, alongside a growing private industry of external experts. As such, we strongly advocate for more research on the subject of these intermediary actors, their wider role in business and human rights, their engagement with rightsholders, and the dilemmas they encounter in the space between corporation and rightsholder, and their regulation (Partiti, 2021). We further realise that in limiting our analysis to human rights translation in the corporate sphere, rightsholder perspectives remain under-investigated. Ultimately, in order to combat some of the concerns raised in this study, research privileging rightsholder agency and their participation in the business and human rights space should be of the utmost concern for future contributions.

Appendix

Sample Interview Guide for Participants at CashMoney

1. Background/level of knowledge
2. Corporate accountability for human rights

- What do human rights mean to you personally and why?

3. Financial Institutions and the UNGPs

- Why do banks and financial institutions in particular need to look at their effect on human rights? What role do banks play in ensuring corporate accountability for human rights?
- Why do you think banks are becoming interested in the UNGPs and human rights in general?
- Was there pressure from different groups? Who are these groups? External/internal?
- How does legislation affect your work? Can you envisage the effect of this legislation on the company/your everyday work life? How does it affect your implementation of the UNGPs? Does it make a difference because it's a mandatory requirement where the UNGPs and Framework are not?

4. Banking sector in European Country

- Role of the MSI?
- Contribution of CSOs/government?
- HRDD
- Transparency vs human rights due diligence?
- There has been some criticism levied at the MSI that there is a lack of stakeholder/community engagement with a reliance on client statements—do you agree? How do you think this can be remedied?
- Role of external experts/consultants—new market

5. Personal opinion of the use of the UNGPs

- How are human rights/UNGP talked about in your area of work? What words are used to describe them? Positive/negative?
- Have you had training in the UNGPs and the framework?
- How are the UNGPs integrated into your everyday work life?
- How do you think the language of the UNGPs/human rights is utilised when talking to banks/ the financial sector?
- Do the language of the UNGPs or human rights help?
- Are there specific principles/ areas of human rights that you use most often?
- How do the UNGPs assist your understanding of corporate accountability?

Table 1 Relevant characteristics of the two cases

| | OilGas | CashMoney |
|---|--|---|
| No. of employees | 100,000 | 30,000 |
| No. of countries where the company operates | 130 | 15 |
| Evidence of embedding UNGPs | Publication of human rights policies and reporting based UNGPs from 2016 Ethics committee to monitor application of code of conduct and managing ethical concerns arising from business operations Conducting HRDD on operations Collaboration with human rights external experts | Publication of human rights policies and reporting based on UNGPs since 2015 Ethics committee to deal with ethical dilemmas Incorporate human rights due diligence processes when engaging with clients Membership of multi-stakeholder initiative on finance and human rights Collaboration with human rights external experts |

Table 2 List of participants interviewed from October 2018–October 2019

| Participant | Role |
|-------------|---|
| 1 | Human rights senior advisor at OilGas |
| 2 | Former legal counsel for business and human rights at OilGas |
| 3 | Pipeline1 project land and social manager at OilGas |
| 4 | Head of social performance (former head of human rights department) at OilGas |
| 5 | Stakeholder engagement co-ordinator in EastAfricanCountry1 at OilGas |
| 6 | Associate director at NGO3 |
| 7 | Senior advisor at HRI1 |
| 8 | Executive director at HRDDO1 |
| 9 | Senior advisor at HRC3 and independent consultant on pipeline1 for OilGas |
| 10 | Former manager of advisory services at NPO1 |
| 11 | Manager at HRC1 (former human rights legal counsel at OilGas) |
| 12 | Co-founder of HRC2 |
| 13 | Former corporate engagement advisor at NGO1 |
| 14 | Extractive expert at NGO2 |
| 15 | Sustainability reporting specialist at CashMoney |
| 16 | Policy officer for SectorAgreement1 |
| 17 | ESA risk advisor at CashMoney |
| 18 | Head of environmental, social and ethical risk and policy at CashMoney |
| 19 | Head of natural resources at CashMoney |
| 20 | Senior advisor at HRC3 |
| 21 | Sustainability and CSR advisor at financial association |
| 22 | Consultant at HRC3 |
| 23 | Relationship manager for charities (sustainability) at CashMoney |
| 24 | Senior relationship manager for charities (human rights) at CashMoney |
| 25 | Programme leader at NGO12 |
| 26 | Trade union official in TradeUnion1 |
| 27 | Environmental and social risk advisor at CashMoney |
| 28 | Programme officer for natural resources at NGO12 |
| 29 | Partner at DDP2 |
| 30 | Human rights expert at DDP2 |
| 31 | Project manager at DDP1 |
| 32 | Researcher at NGO14 |

Table 3 List and description of external expert, their organisations, and their affiliation with case studies

| External expert organisation | Description | Relation to case studies | Participant |
|------------------------------|--|--|-------------|
| NGO1 | Peacebuilding organisation | Carried out human rights assessments for OilGas in Africa and Latin America and human rights training (ongoing) | P13 |
| NGO2 | International peacebuilding NGO | Advocated for communities along Pipeline1 and facilitated dialogue between OilGas and rightsholders and conducted impact assessments (ongoing) | P14 |
| NGO3 | Organisation specialising in responsible business practices | Longstanding (around 12 years) advisory role for OilGas focussing on various HRDD projects | P6 |
| NGO12 | Peacebuilding organisation | CashMoney (via SectorAgreement1) | P25, P28 |
| NGO14 | Financial NGO | Acts as a 'watchdog' NGO on the banking sector (including CashMoney) on human rights and environmental issues. Not part of SectorAgreement1 (by choice) | P32 |
| HRI1 | Human rights institution with BHR expertise | Carried out human rights assessments and HRIAs for OilGas and advised CashMoney (via SectorAgreement1) | P7, P20 |
| HRDDO1 | Independent business and human rights specialists | Contextual extractive expertise focussing on HRDD | P8 |
| HRC1 | Ethical consulting firm | Carried out advisory work and human rights assessments for OilGas | P11 |
| HRC2 | Organisation specialising in HRIAs and on-the-ground fieldwork | Contextual extractive/financial expertise | P12 |
| GovtMinistry1 | Government ministry | Facilitated SectorAgreement1(CashMoney) | P16 |
| HRC3 | Large business and human rights consulting organisation | P9 conducted independent HRIA on Pipeline1 for OilGas and HRC3 has an ongoing advisory relationship with the company. Advised CashMoney (via SectorAgreement1) | P9, P22 |
| Financial Association1 | Financial association | Advised and acted on financial institutions' behalf (including CashMoney) in SectorAgreement1 | P21 |
| HRC4 | Small business and human rights consulting organisation | Contextual expertise | P22 |
| NPO1 | Management consultancy, focussing on responsible business | Contextual expertise | P10 |
| TradeUnion1 | International trade union | CashMoney (via Sectoragreement1) | P26 |
| DDP1 | Environmental, social and governance (ESG) ratings and research provider | CashMoney has used DDP1 services (ratings and research) for around 15 years | P31 |
| DDP2 | Management consultancy | Advises CashMoney on sustainability issues (ongoing) | P29, P30 |

- Do you think the reporting and assurance techniques like (x) are useful tools in preventing negative human rights impact?

6. Stakeholders and the UNGPs

- Your human rights statement reflects the broader ambition that all clients should respect human rights in line with the UNGPs—who has this conversation with the clients? Can you give examples of positive/negative engagement?
 - Conducting audits on implementation of human rights statement—how do you know the client is tell-

ing the truth? What other sources of information do you use to verify their statements?

- Do you feel pressure when carrying out human rights work internally?

- Do/did you interact with rightsholders involved in land or labour related rights claims during the course of your job? Can you give me examples of these interactions? How do you prioritise different stakeholder groups?

• How does you engage in meaningful consultation with these potentially affected groups/communities and continue to manage this relationship? Is there a

Table 4 Thematic cross-case synthesis of OilGas and CashMoney

| Translation process | OilGas | CashMoney | External experts |
|---------------------------------------|--|---------------------|--|
| The UNGPs | Resonate with familiar business discourse such as risk Corporate terminology is seen as the logical choice | | Provide a benchmark/standard for guidance; Experts seen as legitimate when using UNGPs |
| | Allow room for interpretation and contextualisation; using different frames; flexibility was the genius component | | |
| “Double subjectivity” of participants | Knowledge and ability to deploy UNGPs to support tangible, concrete outcomes in different contexts | | Translating to rightsholders and corporate |
| Encountering the resonance dilemma | Making human rights understandable internally Linking to business case | On-boarding clients | Using human rights language to provide stronger foundation for issues to corporate; human rights language can be impractical on the ground Maintaining independence |
| Negotiation of human rights | Refrain from using explicit human rights terminology; UNGPs provides ‘neutral’ language Use of external experts—building capacity or displacing rightsholders Formalisation through HRDD—measuring performance through quantification; tick-box exercise | | |

specific process you use? Does this vary? Can you give examples? How do the UNGPs guide this relationship?

- Is the language of human rights used in reference to these stakeholders (rights/equality/dignity)? Do the stakeholders themselves use human rights language?
- How does a company know if people feel able and empowered to raise complaints or concerns? Do you think there is sometimes a power imbalance between the complainant and the company (client) (perceived or otherwise)?

7. General/Wrapping up questions

- What are the biggest challenges to the banking sector in terms of human rights—now and in the future?
- Do you think the UNGPs represent a positive contribution to corporate accountability, particularly in relation to affected stakeholders?

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Declarations

Conflict of interest All authors declare that they have no conflict of interest.

Ethical Approval Approval for this research was obtained from the School of Management Ethics Committee at the University of St Andrews.

Informed Consent Informed consent was obtained from all individual participants included in the study.

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