

# The Path Toward Corporate Accountability on Human Rights

**Author :** Elizabeth Pollman

**Date :** September 2, 2021

Erika George, [Incorporating Rights: Strategies to Advance Corporate Accountability](#) (2021).

Corporate law readers: Do not let this excellent new work by Erika George escape your attention. It is a book focused on human rights. But make no mistake it is about corporations and it richly deserves a spot on your reading list.

The motivating problem in this area is relatively well understood: global human rights slip through the cracks of different regulatory regimes. As Professor George explains: “[C]orporate law fails to adequately address the external effects of the modern corporation and its relationship to society.” Further, “public international law fails to adequately govern the conduct of private nonstate actors.” Multinational corporations influence the ability of many millions of people to enjoy human rights, but these corporations are not currently understood to have the requisite international legal personality to become a party to an existing, binding international human rights treaty. Global competitive pressures discourage home and host states from adopting a level playing field with high standards. Efforts at creating a new, legally-binding international treaty to regulate business have been unsuccessful. The U.S. Supreme Court has narrowed access to courts under the Alien Tort Statute and litigation has proven an unreliable source for a remedy to human rights abuses.

Solutions to this regulatory gap have largely focused on corporate social responsibility (CSR) efforts (and what is more recently described as environmental, social, and governance or ESG). Voluntary standards, soft law norms, and CSR initiatives have grown rapidly in recent years. The effectiveness of these measures to influence corporate conduct is much less well understood than the problem itself.

Critics have viewed voluntary CSR initiatives with skepticism as cosmetic “bluewashing” or as inappropriate distractions from the primary profit-making purpose of corporations. Human rights advocates have regarded voluntary CSR initiatives as weak and unenforceable commitments and have instead pushed for binding international law.

Professor George enters this debate with cautious optimism after years of first-hand research. She argues that the emerging mix of standards, norms, and CSR initiatives “can evolve to become sufficiently strong and influence corporate conduct to become better aligned with respect for fundamental human rights and basic human dignity.” Soft laws and norms are hardening, she observes.

The highlight of the book is the ethnographic research in which Professor George has engaged at the UN Annual Forum on Business and Human Rights since its inception in 2012. Through excerpts from her interviews, the perspectives of stakeholder constituencies and business participants emerge and paint a picture of progress taking place. Legal advisers are counseling companies to treat soft laws as hard law given reputation risk. Companies are slowly integrating the UN Guiding Principles into their existing systems. Human rights issues are reframed as routine due diligence, codes of conduct in supplier contracts, and impact assessments. Human rights advocacy organizations are monitoring corporate activity and providing recommendations instead of just naming and shaming – and companies in turn are recognizing the need to take such reports seriously in order to maintain their social license to operate. Professor George provides a valuable window into years of learning by various constituencies involved in this work.

Further, she explores other mechanisms that have developed to encourage corporate accountability such as industry-specific multistakeholder initiatives across areas ranging from labor rights to security. Ranking and reporting also hold some promise to encourage corporations to take human rights into account. Professor George’s clear discussion helps readers cut through an area filled with acronyms and jargon. She follows with a series of case studies and discourse analyses that give insight into how major corporations such as Nestle, Nike, ExxonMobil, and Microsoft respond through their communications to “crises” related to human rights abuse allegations.

Although the big picture is a story of progress, many challenges and obstacles remain. Professor George, in a clear-eyed critique, shows that access to remedy remains a crucial area of weakness. Further, her research raises questions about whether companies that are giving more attention to human rights issues and reporting are also making a real-world difference in the lives of people in affected communities. Consumers and investors could be empowered with better information to enforce expectations.

The book makes a great contribution by combining an illuminated account of the past decade of important changes with a balanced assessment that there is still much more to be done.

Cite as: Elizabeth Pollman, *The Path Toward Corporate Accountability on Human Rights*, JOTWELL (September 2, 2021) (reviewing Erika George, *Incorporating Rights: Strategies to Advance Corporate Accountability* (2021)), <https://corp.jotwell.com/the-path-toward-corporate-accountability-on-human-rights/>.