	List of Boxes	page xv
	Preface	xvii
1	Introduction: Learning and Unlearning Business and Human Right 1.1 Unlearning Human Rights: Challenging Traditional Human	s 1
	Rights Thinking	1
	1.2 Unlearning Business: Challenging Corporate Social	
	Responsibility	2
	1.3 Learning BHR: The Human Rights Perspective on	
	Corporate Responsibility	4
	1.4 Rationale and Structure of the Book	6
	Part I Foundations	
2	BHR: Emergence and History of a Movement	11
	2.1 Precursors (1945–1995)	11
	2.2 The Beginnings (1995-2005)	15
	2.3 The Formative Years (2005-2011)	18
	2.4 Maturing of the BHR Movement (2011-ongoing)	19
	2.5 BHR in the Academic Discourse: Emergence of a New Field	21
3	A Brief Introduction to Human Rights	25
	3.1 Philosophy of Human Rights	25
	3.1.1 A Brief History of Thought on Human Rights	26
	3.1.2 Elements of Human Rights	30
	3.1.3 Universalism v. Relativism	31
	3.1.3.1 Absolutism	32
	3.1.3.2 Relativism	32
	3.1.3.3 Universalism	33
	3.1.3.4 Are Human Rights Western?	35
	3.1.4 Foundation and Justification of Human Rights	38
	3.1.4.1 Foundationalist Accounts of Human Rights	38
	3.1.4.2 Non-Foundationalist Accounts of Human Rights	42
	3.1.4.3 Reconciliation of Different Approaches	45

3.2 International Human Rights System	46
3.2.1 UN Human Rights Bodies and Agencies	46
3.2.2 Other Human Rights Bodies and Agencies	49
3.3 International Human Rights Law	52
3.3.1 Kinds of Human Rights	53
3.3.2 Sources of International Human Rights Law	54
3.3.3 International Bill of Human Rights	56
3.3.4 Core Human Rights Treaties	58
3.3.5 Regional Human Rights Conventions	60
Part II Setting the Scene	
4 Corporate Human Rights Violations: Direct and Indirect	65
4.1 A Note on Terminology: Impact v. Violation	65
4.2 Direct Human Rights Violations	66
4.3 Indirect Human Rights Violations	67
4.3.1 Active Complicity	70
4.3.2 Passive Complicity	71
4.3.3 Moral and Legal Elements of Complicity	72
5 Corporate Human Rights Violations: Overview of Issues	77
5.1 Employment Relations	77
5.1.1 Discrimination and Harassment	77
5.1.2 Monitoring and Privacy	78
5.2 Workers in the Supply Chain	80
5.2.1 Child Labor	80
5.2.2 Exploitation and Sweatshop Labor	82
5.2.3 Forced Labor and Modern Slavery	82
5.3 Affected Communities	83
5.3.1 Land-Grabbing and Displacement	83
5.3.2 Security and Protest	85
5.3.3 Conflict	85
5.4 Environment	87
5.4.1 Contamination of Air, Soil, and Water	88
5.4.2 Deforestation	90
5.5 Vulnerable Groups	91
5.5.1 Indigenous Communities and Free, Prior, and Informed	
Consent	92
5.5.2 Migrant Workers	94
5.5.3 Human Rights Defenders	0.5

	Part III Corporate Human Rights Responsibility	
6	Justification of Corporate Human Rights Responsibility	103
	6.1 Human Rights as Ethical Obligations of Business	103
	6.1.1 Ethical Obligations of Business: Beyond Profit-Maximization	103
	6.1.2 Human Rights as Ethical Imperatives of Business:	
	Two Approaches	106
	6.1.3 Corporate Power and Authority	107
	6.2 Human Rights as Legal Obligations of Business	110
	6.2.1 Legal Personhood at the National Level	110
	6.2.2 Legal Personhood at the International Level	112
	6.2.3 Human Rights as Legal Imperatives of Business	113
	6.3 Pragmatic Perspectives on Human Rights Obligations	
	of Business	116
	6.3.1 The Social License to Operate	117
	6.3.2 The Business Case for Corporate Human Rights Responsibility	118
	6.4 Common Objections	122
7	Nature and Extent of Corporate Human Rights Responsibility	126
	7.1 Basic Obligation Types	126
	7.2 Human Rights Obligations in Particular	128
	7.3 Corporate Obligations to Respect, Protect, and Fulfil	
	Human Rights?	129
	7.3.1 The Corporate Obligation to Respect Human Rights	129
	7.3.2 The Corporate Obligation to Protect Human Rights	131
	7.3.2.1 Direct Protection: Relational Contexts	133
	7.3.2.2 Indirect Protection: Structural Contexts	136
	7.3.3 The Corporate Obligation to Fulfil Human Rights	138
8	Operationalizing and Implementing Human Rights Responsibility	
	at the Corporate Level	142
	8.1 Managing Impacts: Human Rights Due Diligence	142
	8.1.1 Human Rights Due Diligence in Law	142
	8.1.2 Human Rights Due Diligence in Business Practice	144
	8.1.3 Human Rights Due Diligence Process	145
	8.1.3.1 Committing to Human Rights: Human Rights	
	Policy Statement	145
	8.1.3.2 Identifying Impacts: Human Rights	
	Impact Assessments	147
	8.1.3.3 Responding to Human Rights Impacts: Operational-level	
	Grievance Mechanisms	148

8.1.3.4 Tracking Responses: Human Rights Performance Indicators	151
8.1.3.5 Communicating Responses: Human Rights Reporting	153
8.1.4 Remedying Adverse Human Rights Impacts	154
8.1.5 Implementation Challenges	159
8.1.5.1 Industry and Company-Specificity	160
8.1.5.2 Dedicated v. Non-Specific Human Rights Processes	160
8.1.5.3 Prioritization and Weighing of Risks and Impacts	161
8.1.5.4 Community Engagement	162
8.1.5.5 Effective Collaborations	162
8.1.5.6 Supplier Engagement and Audits	163
8.1.6 Critique of Human Rights Due Diligence	163
8.2 Beyond Managing Impacts: Organizing for Human Rights	165
Part IV Corporate Human Rights Accountability	
9 Transnational Governance and Corporate Human Rights	
Accountability: Preliminary Questions and Foundational Issues	171
9.1 International and Domestic Approaches	172
9.2 Public and Private Approaches	174
9.3 Hard and Soft Approaches	176
9.4 Soft Accountability Mechanisms: Certification, Labels, and	
Stakeholder Pressure	178
9.4.1 Consumers: Certification and Labels	178
9.4.2 Investors: ESG Investment	180
9.4.3 Civil Society: Naming and Shaming	182
10 The UN Guiding Principles on BHR: Foundations,	
Contemplations, Critique	185
10.1 The UN Protect, Respect, and Remedy Framework	185
10.1.1 Pillar One: The State Duty to Protect Human Rights	187
10.1.2 Pillar Two: The Corporate Responsibility to Respect	
Human Rights	188
10.1.3 Pillar Three: Access to Remedy	191
10.2 The UN Guiding Principles on BHR	192
10.2.1 Content of the UNGPs	193
10.2.2 Accountability Regime of the UNGPs	196
10.3 Critical Assessment	197
10.3.1 Key Achievements	198
10.3.2 Main Criticism	199
10.3.2.1 Principled Pragmatism: Accommodating Business	
to Achieve Consensus?	199

	10.3.2.2 Normative Foundation: Social Expectations or	
	Ethical Principles?	200
	10.3.2.3 Enforcement Mechanisms: Hard Duties or Soft	
	Responsibilities?	201
	10.3.2.4 Distribution of Roles and Responsibilities: Clear	
	Division or Blurred Lines?	202
11	Further International Soft-Law Standards and	
	Voluntary Initiatives	206
	11.1 OECD Guidelines for Multinational Enterprises	206
	11.1.1 Content	207
	11.1.2 Accountability Regime	208
	11.1.3 Critique	209
	11.2 UN Global Compact	211
	11.2.1 Content	211
	11.2.2 Accountability Regime	215
	11.2.3 Critique	216
	11.3 ISO 26000	218
	11.3.1 Content	218
	11.3.2 Accountability Regime	220
	11.3.3 Critique	221
	11.4 The Role and Purpose of Multi-stakeholder Initiatives	221
12	Home-State Solutions	226
12	12.1 The State Duty to Protect Human Rights	227
	12.2 Extraterritorial Obligations	229
	12.3 Policy Measures	233
	12.3.1 National Action Plans on BHR	233
	12.3.2 Public Procurement	235
	12.3.3 Export Credit and Investment Guarantees	238
	12.4 Legislative Measures	240
	12.4.1 Accountability by Reporting: Transparency and	
	Disclosure Legislation	241
	12.4.1.1 UK Modern Slavery Act and Australian Modern	
	Slavery Act	242
	12.4.1.2 California Transparency in Supply	
	Chains Act	244
	12.4.1.3 EU Non-Financial Reporting Directive	246
	12.4.2 Accountability by Process: Disclosure and Mandatory	
	Human Rights Due Diligence Legislation	248

Contents

χi

12.4.2.1 Dodd-Frank Act, Section 1502 and EU Conflict	
Minerals Regulation	248
12.4.2.2 Dutch Child Labor Due Diligence Law	251
12.4.3 Accountability by Impact: Mandatory Human Rights Due	
Diligence and Liability Legislation	254
12.4.3.1 French Duty of Vigilance Law	254
12.5 Adjudicative Measures: Foreign Direct Liability	259
12.5.1 Reasons for Human Rights Litigation against Parent	
Companies	260
12.5.2 Common Characteristics and Challenges	261
12.5.2.1 Jurisdiction	261
12.5.2.2 Forum Non Conveniens	262
12.5.2.3 Choice of Law	264
12.5.2.4 Attribution	266
12.5.3 US: Alien Tort Claims Act	269
12.5.3.1 Main Features	269
12.5.3.2 Curtailing ATCA I: Kiobel v. Royal Dutch Petroleum Co.	272
12.5.3.3 Curtailing ATCA II: Jesner v. Arab Bank	274
12.5.4 UK: Common Law Duty of Care	274
12.5.4.1 Vedanta Resources Plc v. Lungowe	276
12.5.4.2 Okpabi v. Royal Dutch Shell Plc	279
12.5.5 Canada: Duty of Care Liability Continued	281
12.5.5.1 Araya v. Nevsun Resources	282
12.5.6 Various Civil Law Jurisdictions	285
12.5.6.1 The Netherlands	285
12.5.6.2 Germany	288
12.5.6.3 Italy	289
12.5.7 Corporate Criminal Liability	290
12.6 Home-State Solutions: Criticisms and Responses	292
12.6.1 Imperialism	292
12.6.2 Unintended Consequences	293
12.6.3 Compliance over Engagement	294
12.6.4 Frivolous Litigation	295
13 International Law-Based Solutions	298
13.1 International Investment Law and International Arbitration	298
13.1.1 Integrating Human Rights into International	
Investment Agreements	300
13.1.2 Human Rights Compatible Investor-State Dispute	
Settlement Mechanisms	301

	13.1.3 Arbitration for BHR Disputes Beyond Investor-State	
	Dispute Settlement Mechanisms	304
	13.2 Toward a Binding Treaty on BHR	305
	13.2.1 Elements of a Binding Treaty on BHR	306
	13.2.1.1 Scope	306
	13.2.1.2 Sanctions and Enforcement	308
	13.2.2 Arguments For and Against a Binding Treaty on BHR	310
	13.2.3 Outlook and Prospect of (Current) Treaty Negotiations	312
	Part V Selected Industries and Emerging Discussions	
14	Industry-Specific Issues and Challenges	317
	14.1 Extractive Sector	317
	14.1.1 Issues and Challenges	318
	14.1.2 Sector-Specific Standards and Initiatives	319
	14.1.3 Solutions and Best Practice	320
	14.2 Finance and Banking Sector	322
	14.2.1 Issues and Challenges	323
	14.2.2 Sector-Specific Standards and Initiatives	324
	14.2.3 Solutions and Best Practice	327
	14.3 Information and Communication Technology Sector	328
	14.3.1 Issues and Challenges	329
	14.3.2 Sector-Specific Standards and Initiatives	332
	14.3.3 Solutions and Best Practice	334
	14.4 Garment and Footwear Sector	335
	14.4.1 Issues and Challenges	336
	14.4.2 Sector-Specific Standards and Initiatives	339
	14.4.3 Solutions and Best Practice	340
	14.5 Food, Beverage, and Agribusiness Sector	341
	14.5.1 Issues and Challenges	342
	14.5.2 Sector-Specific Standards and Initiatives	344
	14.5.3 Solutions and Best Practice	345
15	Emerging Discussions and Narratives	348
	15.1 BHR and the UN Sustainable Development Goals	348
	15.2 BHR and Climate Change	352
	15.3 Gender Perspectives on BHR	356
	15.4 BHR in (Post-) Conflict and Transitional Justice Contexts	358

xiii

xiv

16	Conclusion: Building Back Better	364
	Helpful Online Resources and Blogs on BHR	368
	References of Court Cases	370
	Glossary	372
	References	375
	Index	413