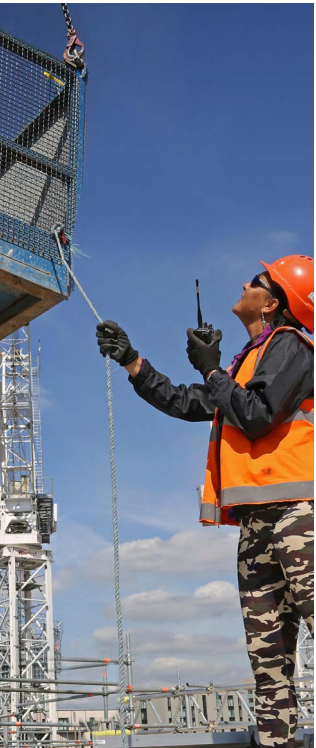




TOP 10 Business and Human Rights Issues 2023





TOP Business and **10** Human Rights Issues **2023**

As 2023 approaches, the climate agenda remains a critical challenge even as a series of cascading crises shake the stability of the global order itself – from the ongoing war in Ukraine and its impacts on energy, food prices and supply chains, to persistent inequalities and rising threats to democratic governance in all regions.

Debates on the future of the global economic and political order have not given adequate attention to the enormous influence of commercial entities that provide the financial, legal, and technical infrastructure and advice necessary for all businesses to operate. This includes investors, lawyers, management consultants, and other private sector actors who provide services and support to governments and companies of all kinds.

The United Nations Working Group on Business and Human Rights highlighted in its UNGPs 10+ Road Map that these business actors have a responsibility and role in driving better business processes and practices, and in aligning their advisory services to prevent or mitigate adverse human rights impacts.

What will it take to see these influential sectors embed human rights due diligence more fully into their own business models, and in the advice and support they provide to others?

IHRB's 2023 Top 10 list shines the spotlight on this important area, by exploring the roles and responsibilities of these sometimes less visible firms, and by proposing steps they should take to avoid links to human rights abuses and instead serve as responsible entities who foster corporate respect for human rights around the world.

As always, we welcome your comments, feedback, collaboration, and ideas.

STRATEGIC ENABLERS

Scrutinising the role of management consultants
in business decisions that harm communities
and wider society



STRATEGIC ENABLERS

Scrutinising the role of management consultants in business decisions that harm communities and wider society

Most major companies hire management consultancy firms to help them develop or implement strategy and guide their decisions in the competitive marketplace. These decisions often include whether or not to enter a market or exit a country, with whom to merge and consolidate their operations, the kind of partners to seek, as well as whether to expand operations or downsize. Targets that companies seek to achieve are usually determined on parameters that are driven solely by business objectives – increasing profit, efficiency, and market dominance, while complying with the law. Approaches solely focused on those parameters, however, will likely consider human rights related issues to be secondary, if not irrelevant.

Leading consulting firms have faced increased scrutiny over their advice, in cases involving [conflict of interest](#) during the opioid controversy in the United States, as well as [marketing investment destinations](#) with a poor human rights record, such as Saudi Arabia. The COVID-19 pandemic created [new business opportunities](#) for consulting companies offering advice on how to lay off employees. Management consultancy companies have been [examined in the past](#) over the usefulness of their services, and [the role of some firms](#) has been scrutinised in great detail. Sometimes, unethical or irresponsible actions are only known after [a whistleblower exposes the company](#), and instead of taking rights-enabling decisions, such firms distance themselves from employees.

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In 2023 and beyond, consulting firms will have to examine the impact of their advice in a more holistic manner.

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While the international community is rightly focused on the actual conduct of companies, there is likely to be increasing attention paid to the roles consulting companies play in enabling decisions that lead to adverse human rights impacts. Hiring a few senior managers of ethnic minority origin from elite schools is fine, but the impact is undermined if the consulting firm recommends mass layoffs to clients where employees losing jobs are disproportionately from ethnic minorities. Such actions cannot be compensated by offering cosmetic services on sustainability or by their own laudable policies on inclusiveness when recruiting minorities and LGBTQI communities.

In 2023 and beyond, consulting firms will have to examine the impact of their advice in a more holistic manner. That will mean public profiles matching private conduct, and professed commitment to corporate responsibility not being undermined by more lucrative work offering strategic advice to business.

CAPITAL PROVIDERS

Holding investors to account for adverse impacts on people and planet



Credit: Raunaq Singh Chopra / Climate Visuals

CAPITAL PROVIDERS

Holding investors to account for adverse impacts on people

Most investors remain at early stages of the journey to integrate concern for human rights into their investment strategies. The ongoing political influence of capital, along with entrenched short term profit motives of many corporate boards and managers, means that ensuring greater participation, accountability and non-discrimination in investment decisions are still viewed primarily as additional transaction costs to most asset managers, rather than appropriate actions that benefit all.

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The year ahead will see continued efforts to move the responsible investment agenda to the mainstream, and to connect it to related issues, such as the roles of financial institutions in delivering just transitions to a net-zero world.

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As part of its UNGPS 10+ project, the UN Working Group on Business and Human Rights [concluded](#) that despite some progress, human rights issues “are still rarely addressed in a systematic or principled way among the institutional investor community” with the vast majority of investors not yet engaging with their own human rights responsibilities. [Ongoing efforts to exclude the financial sector](#) from proposed EU legislation that would make companies responsible for involvement in human rights abuses highlights the scale of the challenge in addressing the social and environmental roles and responsibilities of capital providers.

The UN Working Group’s recommendations point to the broad range of actions needed to make faster progress in this area. They include integration of human rights due diligence requirements into the mandates, operations and investment activities of State pension funds, sovereign wealth funds and development finance, as well as developing practices to ensure that the actual and potential human rights impacts of investees are fully assessed prior to new investments.

The year ahead will see continued efforts to move the responsible investment agenda to the mainstream, and to connect it to related issues, such as the roles of financial institutions in [delivering just transitions](#) to a net-zero world.

Advocacy, practical [guidance](#) and [benchmarks](#) assessing financial institutions’ impacts on people and planet from groups like the Investor Alliance for Human Rights, and the World Benchmarking Alliance as well as new efforts such as the [Advance initiative](#) launched by the Principles for Responsible Investment (PRI), which aims to harness the collaborative energies of more than 220 investors with over US\$30 trillion in assets under management to address social issues and human rights are all hopeful signs of what is possible. The role of venture capital firms and private equity providers to companies that have not yet launched initial public offerings before regulations can impact their conduct will also increasingly face close examination.

LEGAL ADVISORS

Establishing norms and responsible performance standards for lawyers and others who advise companies



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Establishing norms and responsible performance standards for lawyers and others who advise companies

The past year saw continuing debates over the legal profession and its roles and responsibilities as an influential societal actor with powers that touch the lives of individuals and communities in numerous ways. Attention has focused, on one hand, on disturbing increases in state actions that may [limit and restrict the practice of law](#) and even threaten the safety of lawyers who fight [corruption](#) or protect vulnerable groups. On the other hand, ongoing concerns surround the roles of legal firms who advise corporations, with many such firms still not appearing to give adequate attention to how their legal advice and actions may directly or indirectly impact respect for human rights.

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Renewed attention should be given to mainstreaming leadership initiatives by legal associations, including those who engage constructively in government consultations relating to responsible business conduct, as well as to promoting the importance of business and human rights guidance and training opportunities for lawyers.

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Attention to the responsibilities of legal firms has only been heightened by global efforts to combat money laundering and terrorist financing, in addition to financing of weapons of mass destruction, addressed during 2022

by the [Financial Action Task Force](#) including in the context of sanctions and legal services provided to individuals and entities linked to Russia’s invasion of Ukraine. Some [legal groups responded](#) to criticisms and have launched processes to examine the role of lawyers as “ethical gatekeepers”, raising their own concerns over threats to fundamental principles such as attorney-client confidentiality.

Despite these controversies, there is little doubt that legal firms representing corporations are instrumental in determining how businesses manage their human rights risks. These firms are sometimes viewed as taking overly narrow legal approaches at the expense of advising steps to implement effective corporate human rights due diligence.

In the year ahead, renewed attention should be given to mainstreaming leadership initiatives by legal associations, including those who engage constructively in [government consultations relating to responsible business conduct](#), as well as to promoting the importance of business and human rights guidance and training opportunities for lawyers such as those developed by the [International Bar Association](#). Towards that end, the launch of [a global business and human rights law association](#) by 22 leading law firms is a step in the right direction.

These and related examples illustrate how the legal community can work collectively to establish clear responsibility standards for the field, and build greater capacity within the legal profession to address business and human rights related challenges.



RISK EVALUATORS

Reforming the role of credit rating agencies and those who determine investment worthiness of states and companies

RISK EVALUATORS

Reforming the role of credit rating agencies and those who determine investment worthiness of states and companies

Credit rating agencies (CRA) assess the financial strength of business and government entities, especially their ability to service debt. The “Big Three” rating agencies (Standard and Poor’s, Moody’s, and Fitch Ratings) collectively [control nearly 95% of the credit ratings market](#), and hold enormous influence on market expectations and lending decisions of public and private investors.

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COVID-19 significantly increased already entrenched sovereign debt challenges for many countries, and in combatting climate change, this problem compounds further.

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Over recent years, CRA have received intense criticism for their role in contributing to the 2008 global financial crisis, and worsening subsequent [sovereign debt crises](#) – costing investors billions. Critiques include: [conflicts of interest](#) due to profit-driven business models; lack of meaningful competition due to the oligopoly of the big 3; [flawed methodologies](#) and [false ratings](#); [government policy encroachment](#); [political bias](#); [rating shopping](#); and [lack of accountability](#).

In 2021, a UN expert assessed the “outsize” and “procyclical” role of CRA in sovereign debt crises in a [report to the UN Human Rights Council](#). The

report noted that by reducing fiscal space of countries, rating agencies affect local populations’ livelihoods significantly, limiting investment in much-needed social protection, food, health, or education as well as measures needed to tackle poverty and inequalities, contributing to failures in delivering on [development goals](#).

COVID-19 significantly increased already entrenched sovereign debt challenges for many countries, and in combatting climate change, this problem compounds further. In the wake of climate shocks such as large-scale floods, risk of default and lack of liquidity makes funds inaccessible just when needed, alongside limited use and acceptance of natural disaster and pandemic clauses in sovereign debt and bond contracts, which the industry has resisted. Also critical is the role of insurance companies providing political risk insurance and general insurance, which could encourage others to take irresponsible actions.

Agencies have adopted some [ESG factors](#) in recent years, but a [flawed business model](#) persists. [COP27’s historic agreement to create a “loss and damage” fund](#) is an important first step in acknowledging that the financial system is failing to provide developing countries with necessary resources to invest in climate resilience. Reforming the international debt architecture can no longer be [postponed](#) and an emerging [global coalition](#) driving the “[Bridgetown Agenda](#)” seeks to reform the broader global financial architecture, including how ratings agencies function.

Reforming the financial order won’t happen overnight, but must begin somewhere. If calls come to fruition to hold a 2024 [Bretton Woods at 80](#) meeting to agree fit-for-purpose reforms, then 2023 will be the critical year for finding, forcing, and fulfilling the necessary institutional and multilateral leadership.

SYSTEM BUILDERS

Embedding human rights considerations
in all stages of computer technology



Embedding human rights considerations in all stages of computer technology

As the world becomes more interconnected, governments continue to pursue different and often competing approaches to technology systems, protocols, and standards. This is evident in technologies relating to personal information, where data is recorded, stored, shared, traded, and sometimes manipulated, often without knowledge or informed consent of individuals. Engineers developing technology to enable seamless data sharing produce useful apps and programs that make life more convenient, from returning customers not having to enter identifying data repeatedly, to improving machine learning through algorithms that predict behaviour and anticipate consumer needs. Such technology can be beneficial, but can also have sinister manifestations when governments, companies, or other entities whose intent is to impose surveillance or cause harm obtain this information.

Tracking technology can enable positive impacts for customers. [Cloud-based technology](#) helps parents know where their children are, but can also assist governments that have little regard for human rights [to monitor dissidents](#). Facial recognition software allows [construction companies](#) to improve security so only authorized individuals enter sites, but has also been used by some [governments](#) to identify members of ethnic groups and restrict their rights. Mobile phone companies need to track customers to bill for [roaming charges](#) as well as to ensure during health emergencies that people infected by a dangerous virus or otherwise at risk can be identified.

Despite such benefits, each have [serious human rights implications](#) primarily affecting [privacy](#) rights with significant impacts on journalists, political opponents, and human rights defenders.

Beyond surveillance and tracking, new tools can accentuate [bias](#) and therefore require greater attention by companies and other stakeholders to the full range of human rights risks involved.

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In the year ahead, [legal challenges](#) and policy debates relating to the development and use of such technologies will likely continue to emerge as governments and companies compete more aggressively in the digital domain. Software developers and leaders of technology firms will need to engage in this contested space, and take more proactive steps to investigate potentially harmful impacts of their innovations, and develop ways to prevent harms at every stage of product life cycles.

Responsible tech companies will need a range of responses, including disabling tools that can intrude on liberty or infringe rights by establishing [kill switches](#), as well as preventing software upgrades to some high risk clients, or building safeguards that prevent re-engineering of software for more nefarious purposes. Technology firms are crucial to well functioning societies, and therefore must redouble efforts to ensure products and services do not enable human rights abuses.

CITY SHAPERS

Strengthening accountability and transformation
in real estate finance and construction



Strengthening accountability and transformation in real estate finance and construction

As the World's urban population expands, deep inequalities continue to exist between and within cities and urban areas. Part of the broader [built environment lifecycle](#), the past year has seen increased attention on the role of real estate finance in exacerbating these inequalities: from the [bailout](#) of debt-laden developers in China after home buyers began refusing to make payments on uncompleted apartment buildings, to [links](#) between international corruption and the lack of affordable housing in the United States.

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Much green finance to support the built environment currently flows narrowly to the wealthiest segments of globally prominent cities, often at the expense of communities and nations struggling to meet sustainable development objectives.

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Connections to real estate finance are also visible in two recent examples of corner-cutting and lax enforcement in the construction industry that resulted in unnecessarily high losses of life in building collapses following an [earthquake](#) in Java, Indonesia, and a [landslide](#) on the island of Ischia in Italy.

With approximately [60% of global assets](#) in real estate, there is less an issue with the quantity of finance available for urban areas than with how it is channeled. Currently there is a major

disconnect between private capital citing a lack of [“bankable projects”](#), and local authorities pointing to a lack of available finance for much-needed affordable housing, essential infrastructure, climate mitigation and resiliency projects. In addition, much green finance to support the built environment currently flows narrowly to the wealthiest segments of globally prominent cities, often at the expense of communities and nations struggling to meet sustainable development objectives.

Efforts are underway at many levels to try to bridge this gap. Cities themselves have access to finance initiatives, such as those of [ICLEI](#), [C40 Cities](#), and the [Cities Climate Finance Leadership Alliance](#). The World Economic Forum and UN Habitat have launched a [“global partnership for local investment”](#). From [Chile](#) to the [United States](#), innovation is underway in the bond markets, including for municipal bonds.

The year ahead will see an intensifying spotlight on the ways institutional investors can adopt a [human rights approach](#) specifically in housing. And impact investors are showing [increased](#) awareness of the need to connect investments closely with the lived needs of local communities, through meaningful participation. Responsible action by financial actors and owners in turn creates greater incentives for actors further on in the built environment lifecycle – architects, engineers and builders – to ensure respect for human rights throughout their projects and operations.

With the world becoming increasingly urban, all actors in real estate should implement their own responsibilities and use [rights-based frameworks](#) to ensure that inequality gaps are reduced rather than widened.



PUBLIC PERSUADERS

Upholding standards so that advertising and PR companies do not undermine human rights

Upholding standards so that advertising and PR companies do not undermine human rights

Advertising and public relations industries seek to shape public opinion, usually for commercial gain. Publicity campaigns can serve the common good and advance the human rights agenda, such as public service advertising targeting [tobacco](#) products, opposing [human trafficking](#), and promoting the rights of minorities, including [LGBTQI](#) communities. Such campaigns can transform societal attitudes and help bring about greater respect for human rights. But advertising can also work at cross-purposes with international norms and standards, by reinforcing cultural or societal stereotypes, and perpetuating habits that [adversely impact](#) human rights.

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The year ahead should see greater calls for public affairs companies to engage with experts and affected stakeholders to clarify their own responsibilities, including commitments to ending practices such as sponsoring dubious academic research, inappropriately influencing politicians and officials, and allowing climates to flourish where public interest makes way for private benefit.

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Women’s rights advocates have long opposed [sexist representation of women](#), and [advertising](#) that either reinforces patriarchal hierarchies, or makes [gratuitous](#) use of women to attract attention to products. Such advertising not only demeans

women, it can also encourage [misogynistic](#) behaviour, and lead to [violence](#). Massive efforts to fight against racial discrimination following the murder of George Floyd and strengthening of the Black Lives Matter movement, forced several companies, including [beauty products](#) and [food](#), to drop icons or change branding and imagery.

Beyond advertising, the role of public affairs companies continues to be scrutinised, in particular when lobbying governments and international organisations on behalf of major companies or industry associations in order to influence policies and legislation. While companies have the right to express their views and defend their interests, manipulation of data – as was the case with the [tobacco industry](#), and as persists today when companies deny negative impacts of [climate change](#) on society – continues to contribute to serious harms across the world.

The year ahead should see greater calls for public affairs companies to engage with experts and affected stakeholders to clarify their own responsibilities, including commitments to ending practices such as sponsoring dubious academic research, inappropriately influencing politicians and officials, and allowing climates to flourish where public interest makes way for private benefit. Leaders in this sector will need to carefully evaluate human rights related risks before taking on [governments](#) as clients, in particular those where serious and widespread human rights violations are occurring. Companies hired by governments primarily to improve their images abroad by promoting selective media appearances or sponsoring supplements in influential media, will increasingly be called out for their business decisions. Industry leaders should decide now is the time to step up to the challenge of working with others to examine the impacts of their actions, and ensure business practices are consistent with international human rights standards.



CORPORATE GIVERS

Aligning philanthropic priorities with international standards and the realities of the most vulnerable

Aligning philanthropic priorities with international standards and the realities of the most vulnerable

The widespread emergence of corporate foundations and new forms of business-led giving continue to raise public expectations about what can be achieved through philanthropy, as well as difficult questions concerning motives, long-term sustainability, and potential human rights related impacts of such financial aid. Experts point out that corporate thinking on giving has undergone dramatic changes over recent decades, with many leaders increasingly embracing so-called “shared-value” approaches aimed at creating economic returns by using capital, market access and capacity to tackle social problems. Corporate givers also expect charities to which they donate to be more results-driven and performance-oriented, and the resulting efficiencies can be beneficial for development, provided that the numbers-driven focus does not undermine equity.

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As corporate funders continue to become more strategic about their giving, and as some governments move to mandate business philanthropy, it becomes critically important that those who give also examine the potential impacts of their actions on the rights of individuals, communities and vulnerable groups in societies around the world.

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Numerous potential downsides are frequently noted for this and other forms of corporate philanthropy, including the perpetuation of

longstanding and unequal power relations between different stakeholders, as well as the tendency for large corporate or high net-worth individual grants to be given to major institutions as “safe bets” at the expense of lesser known organisations, issues, or communities. Donors with active business interests may also find themselves compromised, in being required to support causes important for governments or local elites, but which do not reflect the needs of recipients of charity. This doesn’t mean all financial support from companies is unworthy or not effective in achieving legitimate social and human rights related objectives. In fact, the public increasingly expects that major companies should deliver social as well as economic value. But substantial corporate giving may distort priorities, aligning them with donor objectives that may come embedded with agendas or values that may be different from international standards.

As corporate funders continue to become more strategic about their giving, and as some governments move to mandate business philanthropy, it becomes critically important that those who give also examine the potential impacts of their actions on the rights of individuals, communities and vulnerable groups in societies around the world. That includes actively looking to support local organisations working to address problems close to home, and reinforcing responsible business practices that protect and empower workers, contribute to access to health services, social security, and gender equal opportunities. It also means supporting organisations whose activities may disrupt prevailing hierarchies by empowering communities deprived of their rights, by exploring creative solutions consistent with local laws.

Human rights advocates will likely focus increasingly on how business giving is being undertaken at all levels, and corporate givers will need to listen more to the communities they intend to help.

BUSINESS EDUCATORS

Mainstreaming human rights due diligence into management, legal and other areas of academic training



Mainstreaming human rights due diligence into management, legal and other areas of academic training

The responsibility to respect human rights applies to all businesses, regardless of size, ownership, or countries of operation. But what should this mean for the field of academia? Academia trains current and future business leaders, and shapes thinking on a range of topics, influencing wider discussions on the global economy and business roles in societies around the world.

Treating human rights as a separate topic in business or legal curricula is insufficient and ineffective. Imagine a finance class focused only on rates of return, and not how profits are earned, or a strategy class that only examines downsizing and demergers and ignores adverse impacts on the workforce, or a 'green energy' strategy that disregards consequences of transitions to cleaner alternatives for workers and communities, or a human resources class that does not acknowledge implicit bias. All would result in managers less equipped for the challenges of tomorrow.

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A responsible and sustainable future will require even greater efforts to inculcate human rights-centred education at an early stage in a manager's career.

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Academic experts must continually make the case for human rights due diligence in curricula, given developments including the [backlash](#) against reporting on ESG (environmental, social, governance) criteria, based in part on a poor grasp of the long term survivability of firms.

The role of specialised training and academic expertise will be critical in moving the business and human rights agenda to the mainstream. While some leading business schools have created rights focused [initiatives](#), and centres dedicated to [business and human rights](#) and [responsible business](#), more are now offering such courses as electives towards the end of the course. Other universities have established within their law schools [research groups](#) as well as BHR [networks](#) focused on discussion and training. The ILO recently signed [a memorandum of understanding](#) with [a network of business schools](#) to increase education on labour rights. A forthcoming [primer](#) will provide tools for business and human rights educators. More such efforts are needed, and a [network of scholars](#) is already in place.

A responsible and sustainable future will require even greater efforts to inculcate human rights-centred education at an early stage in a manager's career. Some companies are investing more in improving these skills among their workforce, but this can't remain the exception in academia rather than the rule.

INFORMATION DISSEMINATORS

Ensuring that journalists, media, and social media uphold truth and public interest



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Ensuring that journalists, media, and social media uphold truth and public interest

Over recent decades, traditional media companies – publishers of newspapers and magazines, as well as broadcast organisations, have seen ongoing reductions in revenues, with advertising shifting to the internet and readers unwilling to subscribe to their services. The shortfall in revenues has led to under-investment in controls and processes that ensure accuracy, and some media executives failing to give adequate attention to the role their companies play in providing a public good through quality information in societies around the world.

In a polarising global landscape, media has suffered from a severe deficit of [trust](#) along with many other public institutions. Many media [companies](#) and [organisations](#) have had strong codes of ethics dating back decades, but that has done little to preserve trust. The steady growth in outlets focused on highly partisan reporting, in particular by broadcast channels which give wide currency to [alarmist reports on the pandemic](#), give equal time to those who make dubious claims over [contentious political issues](#), and [biased reporting](#) on religious differences that fuel ethnic conflict, has further divided societies, sometimes with [violent consequences](#).

At a time when [speech that incites violence](#) is on the rise, [truth is under assault](#), and theories that [aim to reinterpret history to set past wrongs right](#) are attacked because they disrupt the status quo, it is crucial for the news media to report fairly and accurately, and [not masquerade opinions as facts](#). Media companies have the responsibility to ensure that their consumers – readers or viewers – have full access to accurate information and their actions should not impede access to receive, or to impart information.

The role of internet portals will continue to be even more crucial, as people rely on tablets, hand-held devices, messaging services, and what they hear and read on the Internet for basic information. [Companies](#) are facing legal actions from victim groups, and some have undertaken [independent examination of their role](#) to take corrective steps. The inadequate response of web based companies to tackle online attacks on [women, women journalists, and human rights defenders](#), has also been documented.

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In the year ahead, online and traditional media will face increasing pressure from users, human rights defenders, and civil society groups to raise their game and uphold the rights they claim to champion. [Arbitrary decisions made whimsically](#) in a reactive manner will only undermine trust in information platforms and [invite regulation](#) and may not lead to a more responsible sector that ensures respect for fundamental rights.

TOP Business and Human Rights 10 Issues 2023

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