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The Civil Rights Audit: Harnessing A Powerful ESG Tool To Transform Your Organization's Culture

Major corporations have increasingly come under scrutiny for their environmental and social impact. Though still tasked to ensure profit for shareholders, corporations are now expected to work toward limiting the impacts of climate change and creating a more equitable society. A corporation's **Environmental, Social, and Governance (or ESG)** metrics can help chart its progress in building a better future. ESG metrics are used to show both the impact of a corporation's investments and business practices on the environment and stakeholders, including employees and customers. As pressure from investors and customers to do more for society and the environment mounts, corporations have now begun to regularly publish sustainability reports, include **ESG metrics** within annual reports, and make **commitments to improving** their metrics.¹

ESG gained prominence as a strategy to strongly encourage corporations to address growing environmental concerns and reward corporations that took climate change seriously.



However, **the social element of ESG** has particularly gained traction in recent years with rising movements against sexual harassment in the workplace, hate crimes against Asian Americans, and police brutality against African Americans.² The *Stop Asian hate movement* and the protests around the police brutality murder of George Floyd galvanized the corporate world to **take public action**, with two-thirds of the companies in the Standard and Poor's 500 realizing statements in **support of ending racism**.³ However, there are lingering concerns that these statements did nothing to address the root causes of structural racism in the United States or provide a roadmap to eradicate those causes.⁴ In response to this perceived apathy, activist shareholders have begun pushing companies to conduct civil rights, or holistic, third-party investigations into a company's racial, gender, and accessibility practices and policies and their impact on all stakeholders.⁵ This paper will **explore how the civil rights audit is a powerful ESG tool** that can be harnessed to **hold a corporation accountable** while improving outcomes for all internal and external stakeholders regardless of background.

¹ Mark S. Bergman et al, "Introduction to ESG," Harvard Law School Forum on Corporate Governance, published August 1, 2020, <https://corpgov.law.harvard.edu/2020/08/01/introduction-to-esg/>.

² Meredith Mandell, "Placing an Emphasis on the 'S' in ESG," *New York State Bar Association Journal*, March/April 2022, 24.

³ Laura W. Murphy, "The Rationale for and Key Elements of a Business Civil Rights Audit" (Washington DC: The Leadership Council on Civil and Human Rights and the Ford Foundation, 2021), 4.

⁴ *Ibid.*, 4, 6, and 8.

⁵ Ron S. Berenblat and Elizabeth R. Gonzalez-Sussman, "Racial Equity Audits: A New ESG Initiative," Harvard Law School Forum on Corporate Governance, published October 30, 2021, <https://corpgov.law.harvard.edu/2021/10/30/racial-equity-audits-a-new-esg-initiative/>.

ESG: The Promise and Limitations of Reporting Civil Rights Data

Originally a strategy to eliminate problematic companies from investment portfolios, ESG metrics have more recently become a key indicator of how seriously companies are addressing social justice issues. Metrics trace a company's progress (or lack thereof) in three key areas:

- **E (or Environmental) metrics** track a company's impact on the planet. Key measures here include a corporation's carbon footprint, water usage, and active steps taken to fight pollution.
- **S (or Social) metrics** highlight how a company treats a range of stakeholders, including employees and customers. Data such as board demographics, salary information, history with communities of color, and employee recruitment are taken into consideration.
- **G (or Governance)** looks at how a company governs the E and S categories and takes under consideration the construction of a corporation's board, the political contributions of board members, a board's history of sustainability oversight and compliance, salaries of corporate executives, and any financial maleficence of executive or board members.⁶

Increasingly, CEOs view ESG as a necessity in today's competitive business landscape. In 2019, nearly 200 CEOs signed a letter calling for the **creation of a modern economy that uplifted all Americans**, not just shareholders.⁷ This letter echoed the words of Larry Fink, the CEO of the world's largest money-management firm BlackRock, who a year earlier **urged companies to look beyond profit margins** and consider their broader societal impact:



Companies must ask themselves: What role do we play in the community? How are we managing our impact on the environment? Are we working to create a diverse workforce? Are we adapting to technological change? Are we providing the retraining and opportunities that our employees and our business will need to adjust to an increasingly automated world? Are we using behavioral finance and other tools to prepare workers for retirement, so that they invest in a way that will help them achieve their goals.⁸

⁶ Bergman et al, "Introduction to ESG."

⁷ Business Roundtable, "Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans,'" published August 19, 2019, <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

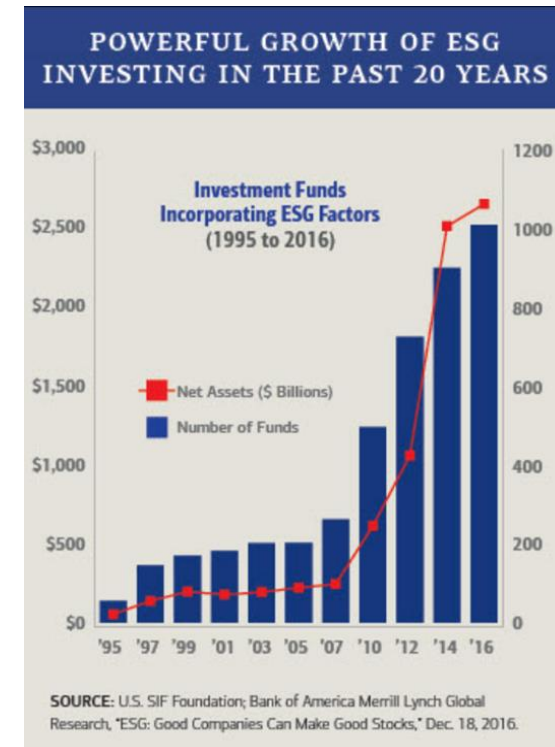
⁸ Larry Fink, "Larry Fink's 2018 Letter to CEOs: A Sense of Purpose," BlackRock, <https://www.blackrock.com/corporate/investor-relations/2018-larry-fink-ceo-letter>.

ESG: The Promise and Limitations of Reporting Civil Rights Data (Continued)

The **emerging power of millennials and Generation Z**, two generations known for activism, are driving the charge toward corporate reform. Millennials have helped **spreadhead the move toward sustainable investing**, spurring a record \$51.1 billion contribution to sustainable funds in 2020, up from around \$5 billion in 2015.⁹ Generation Z looks to continue this trend, with 40% of the group **looking to invest with companies committed to social justice**.¹⁰

ESG performance will also become increasingly important as a tool to recruit and retain talent, as **Millennials and Generation Z** will make up an estimated 72 percent of the workforce by the end of this decade and are increasingly **picking their places of employment based on companies' commitments to social justice**.¹¹ Corporate ESG performance around race came to the forefront of national discussion following protests after George Floyd's murder during the summer of 2020. Corporate social media channels were flooded with statements of solidarity and support for protestors in the streets and pledges to work toward a better future. However, as companies promised millions to diversity initiatives and further action on race, shareholders and regulatory agencies went to work pushing for meaningful systemic change. **Challenging companies that released statements but took only token action**, investors pushed for widespread sharing of companies' diversity data, including workforce and board demographics.¹² The Securities and Exchange Commission (SEC) explored forcing public companies to disclose data such as workforce turnover rates and demographic information, while also allowing Nasdaq to require companies trading in their exchange to release board demographic data.¹³

Some **shareholders demanded** even more from their investments, pushing for the exploration of companies' relationships with suppliers, customers, and the broader community, as well as an **investigation of past discriminatory practices**.¹⁴



[ESG Investment Has Grown Rapidly Within The Last Decade](#)
(Image Source: Bank of America Merrill Lynch Global Research)

⁹ Alicia Adamczyk, "Millennials spurred growth in sustainable investing for years. Now, all generations are interested in ESG options," CNBC, published May 21, 2021, <https://www.cnbc.com/2021/05/21/millennials-spurred-growth-in-esg-investing-now-all-ages-are-on-board.html>.

¹⁰ Chris Versace and Mark Absy, "How Millennials and Gen Z Are Driving Growth Behind ESG," NASDAQ, published September 23, 2022, <https://www.nasdaq.com/articles/how-millennials-and-gen-z-are-driving-growth-behind-esg>.

¹¹ Lingjun Jiang et al. "ESG as a workforce strategy" (New York: Marsh McLennan, 2020), 11.

¹² Billy Nauman, "US investors demand data in fight against racial discrimination," *Financial Times*, published June 27, 2020, <https://www.ft.com/content/1dffac98-fd4e-4288-8683-8f84e236d335>.

¹³ Mandell, "Placing an Emphasis on the 'S' in ESG," 24.

¹⁴ Peter Reali et al., "ESG: Investors Increasingly Seek Accountability and Outcomes," Harvard Law School Forum on Corporate Governance, published April 25, 2021, <https://corpgov.law.harvard.edu/2021/04/25/esginvestors-increasingly-seek-accountability-and-outcomes/>.

The Civil Rights Audit: Moving Beyond the Performative to Concrete Action

As shareholders call for **more accountability from companies**, the civil rights audit has gained momentum as a tool to force companies to acknowledge and atone for past discriminatory actions, bring meaningful social change to the existing corporate structure, and protect shareholder investments from harm brought on by civil rights controversy. At its core, the civil rights audit forces organizations “to systematically examine significant civil rights and racial equity issues that may exist in a company and to develop **a public plan of action to address them in a thorough, deliberate, timely, and transparent manner.**”¹⁵ Leading civil rights expert Laura W. Murphy contends successful audits should include the following steps:

- Have the support and **active engagement of senior executives**, including the CEO and board of directors.
- **Be rooted in U.S. civil rights law**, focusing on race, gender, and other protected classes.
- Have an **established purpose** within a company and a **shared understanding** of why an audit is being conducted.
- **Be led by an independent person or firm** with deep expertise in civil rights and racial justice as well as adequate resources to complete the audit.
- Identify the various external and internal challenges facing the company.
- Be supported by a team of executives and staff who will make sure the auditor has **access to the company's policies, practices, products, and services** throughout the review for their potential discriminatory impact.
- Result in **a clear plan of action.**

- **Publicly state the findings** in a report that identifies civil rights concerns and addresses the areas where the company has or will take action.
- Have a **clear timeline.**
- Involve **consultation with stakeholders throughout the process**, including civil rights advocates and organizations.¹⁶

Successful audits consider a wide range of quantitative and qualitative sources, including in-depth interviews with employees and external workers' rights groups, public records scans, demographic data, and even the contributions of executives to paint a holistic picture of a company. While auditors will invariably review data from the company, **information should also be uncovered independently through primary research methods.**¹⁷ Successful audits are also flexible and do not rely solely on traditional ESG metrics, which merely report demographic information, to determine a company's progress. According to law professor Alicia Plerhoples, a standardized ESG investigation into a company might miss some of the different ways companies inflict harm on underserved communities; **an audit can help a company avoid blind spots** and address issues such as microaggressions faced by people of color and female employees or executive contributions to anti-civil rights politicians that would be missed by a traditional ESG report.¹⁸

¹⁵ Murphy, “The Rationale for and Key Elements of a Business Civil Rights Audit,” 12.

¹⁶ *Ibid.*, 6.

¹⁷ *Ibid.*, 23; Berenblat and Gonzalez-Sussman, “Racial Equity Audits: A New ESG Initiative.”

¹⁸ Alicia E. Plerhoples, “ESG & Anti-Black Racism,” *University of Pennsylvania Journal of Business Law* 24, no. 4 (2022): 929-930.

The Civil Rights Audit: Moving Beyond the Performative to Concrete Action (Continued)

With their public calls for actionable improvements, audits have garnered the support of civil rights organizations such as the Leadership Conference on Civil and Human Rights and NAACP Legal Defense and Educational Fund as well as members of Congress.¹⁹ Activists and politicians are both drawn to the fact that audits can help **move a company beyond token statements and symbolic gestures and toward meaningful reform.** The Diversity, Equity, Inclusion, and Accessibility (DEIA) programming promoted by corporate America does little to attack the cause of systemic racism deeply rooted in corporate America.²⁰ As argued by Laura Murphy, DEIA programs cannot stop a company from producing products or enacting policies harmful to consumers of color nor can a company's DEIA leaders step in to stop harm perpetrated in another department.²¹ Meanwhile, audits bring accountability to companies, especially in the court of public opinion. Through public reporting, **audits provide a baseline of progress companies need to swiftly achieve to enact systemic change.** Failure to follow through with recommendations will bring about public critique and scorn for companies.

Previous audits of major corporations have led to tangible improvements in those companies' civil rights cultures. Lodging provider Airbnb conducted one of the earliest civil rights audits in 2016. After the audit showed the company could do more to protect guests from discrimination, Airbnb adopted several new policies, including a non-discriminatory policy for all users, antibias host training, and showing a guest's profile picture only after booking to avoid bias in the booking process; it has since rejected over 1 million users who refused to adhere to the company's new policies.²²

After a racial profiling incident in a Philadelphia store, Starbucks conducted its audit; post-audit, it hired a chief inclusion and diversity officer, expanded mental health and family-building benefits for a workforce that is mostly people of color and women, launched a mentorship program for employees of color, and opened new stores in underserved communities nationwide.²³ Finally, Facebook hired a vice president of civil rights, created a permanent, internal civil rights team, banned white supremacy messages from the site, and overhauled advertising policies for housing, employment, and credit products to prevent discrimination against communities of color after its 2020 audit.²⁴

¹⁹ Murphy, "The Rationale for and Key Elements of a Business Civil Rights Audit," 16-17.

²⁰ Ibid., 18; Plerhoples, "ESG & Anti-Black Racism," 911.

²¹ Murphy, "The Rationale for and Key Elements of a Business Civil Rights Audit," 18.

²² Ibid., 25, 29.

²³ Ibid., 32-33.

²⁴ Ibid., 31-32.

The Civil Rights Audit: Moving Beyond the Performative to Concrete Action (Continued)



Graphic from Starbucks' 2019 Civil Rights Audit Touting Company's Equal Pay Policy

N-Touch Strategies Can Help You Build a More Equitable Organization

A successful civil rights audit requires thorough research, expert analysis, and visionary thinking to chart a path forward toward progress. **N-Touch Strategies is well-positioned to do the work necessary to investigate your organization's civil rights impact, help design and implement strategies to make improvements to your organization's performance on civil rights, and present the narrative of your organization's civil rights transformation to the public.** With a history of working with a wide range of clients including multinational conglomerates, federal agencies, and non-profits, **N-Touch can adjust an audit to fit your organizational needs.** N-Touch Strategies' team has experience in both rigorous quantitative and qualitative data gathering and will leave no stone unturned in tracing the entire history of your organization's civil rights impact. And with decades of experience in Organizational Design, Cultural Assessment, and Diversity and Inclusion, N-Touch Strategies can diagnose the root cause of civil rights issues within your organization and suggest and design solutions to those issues. **Our approach to the audit includes:**

1. Conducting a thorough internal and external review of your organization to identify practices that negatively impact internal and external stakeholders' civil rights;
2. Developing a strategic plan with organizational leadership, complete with a timeline to achieve each task, to promote cultural integration of all stakeholders within your community;
3. Writing and disseminating a final report for the public which would summarize the audit results while highlighting the recommended steps to integrate reforms into your organization's culture.

Together, we can implement policies that will help you build a more equitable organization for all stakeholders.

Companies and organizations are now under pressure to demonstrate a commitment to addressing both their problematic pasts and charting a more equitable racial future. The civil rights audit can be a powerful first step in transforming your organization into a force for social change. N-Touch Strategies' team of experts will guide your organization through the audit process and ultimately help position your organization as a change agent in your industry.

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Email us today at consulting@ntouchstrategies.com

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