

Panel 6 – NGO and Business Perspectives on Metrics to Assess Human Rights

Hans Hogrefe, Chief Policy Officer and Washington Office Director, Physicians for Human Rights

Gives introduction → Thanks Professor Susan Aaronson for her innovative work on business and human rights issues.

Gerard Pachoud, Special Advisor to Prof. John Ruggie, UN Special Rep. on Business and Human Rights

The Ruggie Guidelines and Use of Metrics to Assess Business Human Rights Performance

Shifting understanding of “what is human rights” – but it’s also partly the fault of the economic community, who doesn’t like what is not easily quantifiable. It is difficult for people from the econometric world to assess something that is so fluid as human rights.

It is also a question of perspective. For example, Chauffour had doubtfulness of human rights approach, yet believes that improvements in rights in China (free movement, property rights) = growth.

What is true for the IMF & World Bank has been even more true for corporations.

One response to human rights was the CSR movement – but that never gave a robust enough, systemic answer, so the UN tried to bring clarity. So, the UN appointed John Ruggie to clarify. Ruggie has created the Global Compact which was on the intersection of the UN goals, human rights and business – he is deeply committed to the MDGs, although he says he is biased.

He tried to clarify and identify accountability and responsibility for human rights. Before jumping straight to metrics, he had to decide what expectations to be put on companies before you could measure what they do.

Human rights were designed by states, for states regarding dignity of people – so how does this apply to private actors, such as companies? → First part of the mandate was

coming from this approach. The Human Rights Committee was saying to basically transfer same responsibilities; companies said they had nothing to do with human rights. Correspondence came from companies that they wouldn't want re-read today.

Needed to go outside the "dirty" triangle of Geneva-London-New York to find out precisely what could be the responsibility of companies vis-avis human rights.

Came up with specific recommendations – three pillar framework:

- States have a duty to protect human rights
- Companies have to respect human rights
 - Don't replace states with companies; companies don't need to run schools... needed to be clear differentiation between responsibilities
- Need to have access to remedies
 - In case things *do* go wrong, as they inevitably will → judicial or non-judicial
 - Problem is that people of the community have no where to go to complain

Full consensus at the Human Rights Council for approving the framework, and Ruggie got 3 more years for the mandate... since then, he has done many consultations and produce a set of "Guiding Principles" that flesh out the three main principles.

Due diligence processes are necessary for corporations to manage their human rights impact → so of course, they need metrics to do this!

- Causality effect – indicators that mostly don't exist now
- Many companies do some kind of impact assessment that may include human rights, but that usually remains confidential.
- Hopefully we will begin to see the development of a body of literature on the subject
- Metrics will be a key element of how companies can demonstrate human rights

What do you see coming next, over the next 3 years? How is this better than the Global Compact?

- Ruggie has tried to branch out as early as possible from the UN world...
- Trying to input as much as possible the responsibility to respect
- Companies in the OECD (have to??) follow the voluntary guidelines... these are in perfect alignment with the guiding principles
- We are seeing companies start to implement those guidelines.
- We are hoping that the rollout and implementation will exist independently.
- We work closely with the Global Compact to ensure that at the minimum they will be inspired... the GC was never meant to be prescriptive, but this applies to all companies regardless of their status as a signer of the GC.

Faris Natour, Director of Research, Business for Social Responsibility

What he does at BSR is to help companies operationalize Ruggie's principles.

No company uses metrics well yet. There is a huge leadership opportunity for a company to step forward on this. It doesn't mean that nothing is happening in terms of metrics. Companies do measure their performance in some ways:

- Diversity
 - Easy to measure performance; you can see (gender, ethnicity)
- Supply chain labor
 - Not that there are no problems, but companies in some industries (electronics, apparel) – Nike, HP, Gap – go into suppliers' factories, audit and publicize their results on incidences of child labor, forced labor and human rights abuses

- Also somewhat extractives where it's difficult to measure impact but measure input – what percentage of managers have been trained on human rights issues

What do we see around the corner? How is this developing?

- First challenge: What does impact look like?
 - Before we ask what is the right metric, we have to figure out what impact even is. The Ruggie framework goes a long way in explaining that as a company you have a responsibility to respect – non-infringement.
 - Companies have a huge opportunity for *positive* impact, as well.
 - Human rights are fundamentally about dignity; this is probably the most intangible value out there
- Second challenge: really measuring something that's not there; non-infringement... how do you measure the fact that nothing happened?
 - Is it better if more rights violations are reported? It's hard to measure the absence of something bad.
- Third challenge: causality
 - Do a company's actions have an impact, and if they do what is the impact?
 - (Monsanto?...) – labor in cotton fields in India; measuring input metric... how many managers have they trained on human rights and child labor?
 - Going down but why? Auditing?

Where do we go from here?

- Do we really need metrics? The answer is more difficult than we like to think. I do think we need metrics. But just because numbers are assumed to be the best way to measure doesn't mean they necessarily are ideal for this...
- Recommends on the issue of impact that companies have to find ways to measure impact from the ground up; the first step is transparency → Shell is a great example of doing this.
 - Rather than saying they will figure out what's good and how to measure it... they admit that they are facing dilemmas.
- On the issue of causality, he advises companies not to worry about it; don't waste limited resources on trying to figure out whether you're causing the

- problem and to what extent/how efficient is what you're doing. Make it your problem and embrace it, do what you can to fix it, and be transparent about it.
- You want to really try to go back to this ground-up point made earlier: you want to give rights-holders, the people that you're impacting, a stake in the process. Let the community define what good looks like, what they would want to see from the company.
 - Are companies really doing this, are they really operationalizing this? Or is all just fake?
 - There are examples of both but what we've seen in the last couple of years is an incredibly swing towards taking rights seriously.
 - Ruggie's work
 - 60th anniversary of the Universal Declaration raised the issue to attention, he says
 - Raising the issue now with companies that were never thought to take it seriously
 - Companies where even normal consumers would assume they do not have human rights issues are taking this seriously as a core part of their responsibility to respect human rights.
 - I think it will be much better in 10 years.

**Olav Ljøsne, Senior Manager, Communications and International Operations,
Shell Oil Company**

Shell's been dealing for at least 40 years with human rights in different contexts.

Business principles in 1997 (included human rights?)

Continuously updated engagements in human rights since then.

There is no straight-forward answer on the use of metrics → it's an issue that needs to be looked into in more detail. The main concern is simply that we shouldn't make human rights to be a very complicated issue for business.

Thousands of companies around the world impacted should not feel that a discussion about human rights is dangerous, climbing a mountain, needing specialists → keep it

simple, straight and manageable for a company operating anywhere in the world; operating in any environment. It is something that can be managed.

Sees very clearly the framework that has been presented and the main role of business is to respect human rights.

We are operating with security challenges; we have labor issues, corruption, pollution, issues with contractors and communities; getting contractors to understand our thinking around human rights and what they should do.

On the point of metrics: access to energy is a fundamental human right as perceived by many people and not reached by all... Shell touches on human rights with its core business; this is sometimes forgotten

The Ruggie principles have been presented and they are pointing at some very key delivery uses for the business... working on looking at this when they look at new investments, staff behavior, etc...

How can someone in South Africa manage and observe human rights issues? Training is the answer.

Spent much time working in Nigeria basically because of the challenges with human rights issues. Training of staff was one of the key issues. Shell trained 1200 staff in courses arranged by the Danish Institute for Human Rights. We have to see that there are already processes in place.

Communications is important → annual report; transparency!

Annual letter signed by the company each year; human rights is part of that.

How do you account for equality issues in Saudi Arabia... important thing is to remember that Shell is a business. Everyone here has a different background. None of us can do the other's job when it comes to human rights. Shell should never do the job of the government and government should never do the job of business, and same with civil society.

Shell has heavily supported Ruggie's work; still feels like there are gaps.

Operate with respect for staff, society, people around... but also business must have a respect for owners; shareholders → the main drivers of the business.

Chris Jochnick, Director, Private Sector Department, Oxfam America and Co-founder, Center for Economic and Social Rights

There are many different approaches – metrics and human rights are very distinct fields; human rights are about passion and dignity, not numbers... but if you don't quantify it, you run into the problem that you cannot manage it without measuring it!

Started working on this in the 90s with Economic and Social Rights – one of the first challenges was that you couldn't quantify it.

Also, rights were considered nonjusticiable → if this and non-measurable, you have a problem convincing people that these are real rights. Even today, the metrics are still struggling.

When working on economic and social rights, it was always the private sector in the middle of it... but human rights were for states/by states/about states...

Joined Oxfam – bigger in Europe than in the US; one of the biggest development orgs in the world; decided about 20 years ago that their way of understanding poverty wasn't getting there; to get there they started looking at a rights-based approach.

- Structural impediments to poverty reduction
- People have to be their own protagonists

About 10 years ago, Oxfam realized it had to deal with the private sector and found it too powerful to be ignored

- Didn't understand at first what corporations' impact was – weren't looking at the whole supply chain
- Didn't even have a system to frame it, let alone quantify the issue
- Oxfam needed to start measuring the poverty impacts of companies
- We need to understand the impact of a multinational in a developing country on poor people – want to see from the far end of its value chain all the way to the consumer

John Ruggie was originally high on a “sphere of influence” and since cut it out.

- Supply chains
- Lobbying

Coca Cola and a few others committed themselves to the above kind of stakeholder engagement...

Involved in piloting a human rights impact assessment tool with Human Rights _____ in Canada

- Bottom-up
- Workshops with rights-holders
 - They do the measuring; they come out with a report; they decide how to engage a country.

Suggestions for the purposes of this panel:

- Outreach is the only way to get to real change...
- Can't let imperfection hinder change
 - No one was out to do the perfect study, but to get a conversation going within a framework and now we have Ruggie's excellent framework

Bennett Freeman, Senior VP, Calvert Investments

Investment funds more interested in practice; in indicators – not in policy

- Calvert was ahead of the game and everyone else is now catching up
- You have to *show* what commitments you are making and you are making them

There are now plenty of frameworks available to everyone – plenty of metrics and tools for companies to avail themselves to show what they are doing.

Ruggie's framework

- This really means that companies no longer have an excuse not to take human rights seriously. The creation of the mandate even before doing so much work served to validate and elevate the entire subject.
 - Resisting the whole subject of human rights before
- Now great work on human rights impact assessments
- '08 framework
- Now we have Guiding Principles themselves
- Calvert is NOW starting with the due diligence framework in particular, the heart of the principles that tell companies what they should be doing, and doing a line-by-line analysis of what the operational implications are for companies → from their point of view, investors who care about social responsibility need to be taking into consideration...
- Calvert has a moral commitment to human rights; but they also look at human rights as a MAJOR risk factor for companies... putting together an investors' guide to using the due diligence principles
- Combination of everything learned over the last dozen years is that the message to companies should be SHOW me what you're doing.

Q&A

- Q: [Olav,] are there any lessons that you took from Nigeria on how to deal with a repressive state?
- Olav: We've been operating in Nigeria for about 70 years; lots of different channels... not always easy when you're within a country to start raising issues... raised issues in Nigeria which led them to be worried about their own issues relating to security... raising on the other hand the issue of transparency
- Professor Aaronson: Many firms seem to be good at implementing one human right, i.e. labor, but they really have a hard time with ALL human rights. Do you really think firms are going to truly invest in implementing the Ruggie guidelines?
 - Bennett: Big multinationals, particularly the big brands, will be forced to do so to the extent that NGOs and investors compel them to do so. They will not compel these companies to have perfectly comprehensive policies and practices across the full range, but they will for those rights issues most salient to the company. Companies will focus on the particular issue that is most relevant and highest risk of lawsuit.
 - Olav: Long process ahead of us...
 - Chris: Susan raises a very important issue. Not many companies have the resources or the political will to do something as substantive as Ruggie is calling for; but the framework is flexible and having the framework at least gives us leverage to put pressure on companies that we didn't have before.
 - Faris: It's more expensive in the long-term not to implement than to implement.
 - Gerard: The framework and the guiding principles and what companies should do is extremely flexible and is based on impact (big company, big impact and vice versa)... all about being aware of the situation... Huge step forward and companies will need to pay attention.
- Q: You painted a bleak picture of HR metrics but a good picture of HR as a community and a company issue. Would valuing metrics more and valuing the framework around which you build your metrics? Companies are responsive once human rights are turned into actionable issues. Is that something that you have seen?

- Faris: I'm taking the broader global view of how many companies are out there and how few have even taken the very simple step of acknowledging that this matters. So the picture is bleak for human rights and business right now. It's in companies' own interest to understand and measure their own impact and performance. ...If you can present HR in very specific action items of course it will resonate with business but it might be easier to go back to common sense: don't treat your employees like crap. If you have a strong enough value system...
- Juan Carlos: Faris said companies shouldn't waste time on causality; expand on that, seems counter-intuitive for a company to not concentrate on that when they are the ones causing violations.
 - Faris: If operating in an area w/ major HR issue then it is your problem... don't waste your resources, don't hide behind anything...
 - Gerard: We are relying on causality and linkage, what the GPs are saying is that companies should deal... cause of the contribution...
 - Faris: There is a big opportunity to be missed for positive impact by business if they're not pushing companies to go beyond that.
- Q: Doing Business report, looking at that, how much influence does it have on countries and companies in the absence of a human rights measure... why does the lack of human rights in say Saudi Arabia hurt its business ranking
 - Bennett: Oppression of women is still the single biggest human rights issue faced in the 21st century. Calvert developed in 2004 the Calvert Women's Principles, the first effort to tell companies in a variety of sectors what basic responsibilities they should take with respect to women in the workplace. San Francisco uses these as the basis of its gender equity principles and they have now been donated to UN women's principles...
- Q: Chris, the poverty footprint... process itself is valuable, what other uses does Oxfam make of those tools?
 - Still at a very incipient stage; tool that we're just starting to develop
- Q: With the Ruggie framework, no discussion of the remedies. Could you talk about that? Not just remedies for human rights violations but also a certain sense of retribution...

Gerard: Extremely important aspect that we wanted to push forward... 10-12 principles dealing judicial and non-judicial mechanisms; if the whole

world were Norway there would be no discussion of business and human rights... with judicial remedies yeah, but we need to see non-judicial remedies...

