

Damiano de Felice

Challenges and opportunities in the production of business and human rights indicators to measure the corporate responsibility to respect

**Article (Accepted version)
(Refereed)**

Original citation:

de Felice, Damiano (2015) *Challenges and opportunities in the production of business and human Rights indicators to measure the corporate responsibility to respect*. [Human Rights Quarterly](#), 37 (2). ISSN 0275-0392 (In Press)

© 2015 [The Johns Hopkins University Press](#)

This version available at: <http://eprints.lse.ac.uk/56863/>

Available in LSE Research Online: June 2014

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.



Challenges and opportunities in the production of business and human rights indicators to measure the corporate responsibility to respect

Damiano de Felice
d.de-felice1@lse.ac.uk

Abstract: Business and human rights indicators, ratings and indices have proliferated in the past few years. Yet, measuring respect for human rights by corporations is not an easy task. This article offers an overview of the most prominent business and human rights measurement initiatives and draws attention to the normative, methodological, practical and political challenges related to the production of valid and emancipatory measures of corporate respect for human rights. The objective is to move the debate forward, from the if (should we use indicators?) to the how (how to create better initiatives?).

An edited version of this manuscript will appear in HUMAN RIGHTS QUARTERLY, Volume 37, Issue 2, May 2015.

Twenty years ago, one of the recommendations of the World Conference on Human Rights in Vienna was that we employ and analyze indicators to help measure our progress in human rights.

Only robust and accurate statistics can establish the vital benchmarks and baselines that translate our human rights commitments into targeted policies, and only they can measure how effective those policies truly are.

Navi Pillay, United Nations High Commissioner for Human Rights, 10 May 2013¹

I. INTRODUCTION²

In 2008 the United Nations (UN) Human Rights Council sanctioned the existence of a corporate responsibility to respect human rights by unanimously “welcoming” the “*Protect, Respect and Remedy*” Framework for Business and Human Rights developed by Professor John Ruggie, then Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises.³ Three years later, the Council offered the first authoritative guidance on how companies should meet this responsibility by unanimously “endorsing” the *Guiding Principles on Business and Human Rights (GPs)*, the final document of Ruggie’s mandate as SRSG.⁴ In short, business enterprises are expected to act with due diligence

¹ Navi Pillay, Opening Statement to the Launch of “Human Rights Indicators: A Guide to Measurement and Implementation” (May 10, 2013), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13512&LangID=E>.

² This paper would not have been possible without the invaluable support and feedback from Ann Sofie Cloots, Charline Daelman and Irene Pietropaoli. I also thank Luke Smitham for editing the manuscript and all participants in the Cumberland Colloquium on “Measuring the Corporate Responsibility to Respect Human Rights” and the 2013 EISA Young Researchers’ Workshop for raising numerous points that have been fundamental in refining my arguments.

³ John G. Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HRC/8/5 (Human Rights Council), Apr. 7, 2008. The governance framework proposed by Ruggie rests on three pillars: (1) the state duty to protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) greater access by victims to effective remedy, both judicial and non-judicial.

⁴ John G. Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, U.N. Doc. A/HRC/17/31 (Human Rights Council), Mar. 21, 2011. For a comprehensive account of Ruggie’s mandate as SRSG, see JOHN G. RUGGIE, *JUST BUSINESS* (New York, W. W. Norton & Company 2013).

to avoid infringing on the rights of others and to address adverse impacts with which they are involved.⁵

Since 2011, key elements of the corporate responsibility to respect human rights have been internalized by international organizations, standard-setting bodies, governments, multi-stakeholder initiatives, civil society organizations and business enterprises themselves. To mention just one example for each category, the Organization for Economic Co-operation and Development (OECD) has updated its Guidelines for Multinational Enterprises and added a chapter on human rights that explicitly draws on the GPs;⁶ ISO26000, a new social responsibility standard adopted by 93% of the membership of the International Organization for Standardization, has a human rights clause that is closely aligned with the UN Framework;⁷ the British government published a National Action Plan to implement the GPs where it set out clearly the expectation that “the GPs guide the approach UK companies should take to respect human rights wherever they operate”;⁸ the Principles on Freedom of Expression and Privacy of the Global Network Initiative explicitly recognize that “Information and Communications Technology companies have the responsibility to respect and protect the freedom of expression and privacy rights of their users”;⁹ the Centre for Research on Multinational Corporations (SOMO) published a guide for civil society organization on how to use the GPs to support local communities, workers and other rights holders;¹⁰ Nestlé has partnered with the Danish Institute

⁵ For a detailed guide on the corporate responsibility to respect human rights, see OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide* (Geneva, United Nations 2012).

⁶ OECD, *Guidelines for Multinational Enterprises* (2011), Chapter 4.

⁷ International Organization for Standardization, *ISO 26000: Guidance on Social Responsibility* (2010), Sub-Clause 6.3.

⁸ Government of the United Kingdom, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* Sept. 4, 2013, Chapter 3.

⁹ Global Network Initiative, *Principles on Freedom of Expression and Privacy 1* (2008).

¹⁰ SOMO et al., *How to Use the UN Guiding Principles on Business and Human Rights in Company Research and Advocacy* (2012).

for Human Rights (DIHR) to conduct a human rights gap analysis of its corporate policies and procedures.¹¹

This unprecedented convergence around a common set of standards – together with the advent of technological innovations that permit to easily obtain information about the human rights footprint of brands and products all around the world – has spurred widespread interest in how to measure *whether* and *how much* corporations are meeting their responsibility to respect human rights. It comes as no surprise, then, that indicators, ratings and indices have taken centre stage as one of the most promising developments in the business and human rights field. Indicators derived from the GPs are now included in management tools (e.g. the GoodCorporation Framework on Human Rights), reporting standards (e.g. the Reporting and Assurance Framework Initiative led by Mazars and Shift), sustainability indices (e.g. FTSE4Good), working methodologies used by providers of information on corporate performance with respect to environmental, social and governance issues (e.g. EIRIS), multi-stakeholder initiatives' certification schemes (e.g. the Responsible Jewellery Council Assessment Workbook) and ethical ratings (e.g. the Draft Business and Human Rights Index proposed by RightsBusiness).

The Working Group on the issue of human rights and transnational corporations and other business enterprises – the UN body with the mandate to promote the effective and comprehensive dissemination and implementation of the Guiding Principles – confirmed the relevance of the topic on several occasions. In 2012, it suggested that “States and business enterprises should scale up and sustain efforts to implement the Guiding Principles, including ... by establishing measurable and transparent indicators to assess their effective implementation”.¹² In 2013, it specified that “the development of performance indicators that can be used by stakeholders to encourage proper functioning of grievance mechanisms is important, and can be used by

¹¹ Nestlé and Danish Institute for Human Rights, *Talking the Human Rights Walk: Nestlé's Experience Assessing Human Rights Impacts in Its Business Activities* (2013).

¹² UNWG, *Report to the General Assembly, A/67/285 ¶ 79* Aug. 10, 2012.

stakeholders to understand how operational-level grievance mechanisms are working and to hold business enterprises accountable”.¹³ Ruggie himself recently advocated for additional efforts in measuring business and human rights results:

Human Rights Council endorsement of the Guiding Principles has generated a wide array of implementation measures, national and international, public and private. But no systematic assessment is available of overall results to date. There are only anecdotal fragments, which may merely reflect observers’ prior preferences. The Council’s considerations of where and how it can strengthen its own 2011 implementation agenda should be informed by a more robust evidentiary basis ... Therefore, my first suggestion is that the Council arrange for an assessment of major changes in policies and practices that have resulted from the uptake of the GPs, and where such efforts are falling short.¹⁴

The benefits of indicators mainly derive from the potential for standardization, aggregation and, ultimately, comparability (over time and across companies) of human rights information. The production of valid business and human rights indicators could be useful for:

- companies that want to manage their human rights risks and track their progress in the implementation of the GPs;
- investors and consumers who wish to compare the human rights performance of different corporations;
- auditors who are asked to verify the accuracy of human rights policies and due-diligence processes;
- governments willing to adopt evidence-based protective measures;

¹³ UNWG, *Report to the General Assembly, A/68/279 ¶ 41* Aug. 6, 2013.

¹⁴ John G. Ruggie, *A UN Business and Human Rights Treaty?* 3 (John F. Kennedy School of Government, Harvard University), Jan. 28, 2014.

- local communities that are concerned about the human rights footprint of the companies operating in their environs;
- human rights advocates who monitor the human rights impacts of corporate actors;
- researchers who are interested in exploring the drivers of responsible corporate behavior.¹⁵

Notwithstanding these promises, measuring human rights is not an easy task.¹⁶ In particular, business and human rights indicators risk producing (1) invalid results and (2) non-emancipatory effects. First, by simplifying and standardizing complex but partial data, indicators often depict misleading pictures of corporate performance. Second, the way in which indicators are currently produced disempowers human rights victims and legitimate centers of power (such as the Human Rights Council and national Parliaments) at the expenses of distant Economic, Social and Governance (ESG) experts. Quantifying specific aspects of the corporate responsibility to respect human rights might also end up condoning human rights abuses and giving unwarranted prominence to easily measurable (but not necessarily more important) issues.

Against this background (and the shortage of public discussion on the topic)¹⁷, this article maps the business and human rights measurement landscape and draws attention to its more problematic features. The article is structured as follows. Section 2 clarifies the object of analysis

¹⁵ See, for example, Ariel Colonomos and Javier Santiso, *Vive La France! French Multinationals and Human Rights*, 27 HUMAN RIGHTS QUARTERLY 1307 (2005).

¹⁶ James R. Scarritt, *Definitions, Dimensions, Data and Designs*, in GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES 115, 115 (Ved P. Nanda et al. eds., Boulder, Colo., Westview Press 1981); Robert Archer, *Introduction to the Special Issue*, 1 J HUMAN RIGHTS PRACTICE 333, 335 (2009); TODD LANDMAN AND EDZIA CARVALHO, MEASURING HUMAN RIGHTS 131 (London and Oxford, Routledge 2009).

¹⁷ The Institute for Human Rights and Business ranked “Improving non-financial risk measurement in the Financial Sector” as one of the top 10 business and human rights issues for 2010: Institute for Human Rights and Business, *Top Ten Business and Human Rights Issues: 2010* (2009), http://www.ihrb.org/top10/business_human_rights_issues/2010.html#. Yet, the topic has not featured any more in the lists from 2011 to 2014. According to James Harrison, many toolkits and methodological frameworks “talk of the importance of developing a series of ‘indicators’ which are then utilized to measure human rights impact. But there is little detail about how this should be done in practice”: James Harrison, *Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment*, 3 JOURNAL OF HUMAN RIGHTS PRACTICE 162, 177 (2011).

by specifying what business and human rights indicators are. Section 3 introduces the reader to a representative sample of measurement initiatives in the business and human rights field. Section 4 explains how to align indicators with the GPs but also highlights the problems deriving from the fact that the GPs have left many normative questions unanswered. Section 5 displays the most daunting methodological and practical challenges to produce valid business and human rights indicators. Section 6 emphasizes that indicators are not simple technical tools; in fact, their production poses important political questions. The article concludes by suggesting the use of judgment-based measures (like standard-based ratings and surveys) and calling for additional research on specific initiatives. The ultimate objective is to move the discussion forward, from the *if* (can we measure respect for human rights by corporations?) to the *how* (how to produce valid and emancipatory indicators?).

While this article represents, to the knowledge of the author, the first-ever academic reflection on the challenges and opportunities offered by business and human rights indicators, it builds on a long-lasting strand of research on state-focused human rights measures.¹⁸ Indeed, Raworth acknowledges that “although the framework of international law is only one particular conception of human rights, and its focus on state conduct alone is considered by many to be problematic, the issues that arise in the attempt to develop indicators under this framework are also relevant to alternative conceptions of rights”.¹⁹ Still, the results from this literature cannot simply be copy-pasted to the new field. First of all, the evolution of business and human rights norms is still in its

¹⁸ Human Rights Quarterly has dedicated particular attention to the topic of measuring human rights. In addition to the articles cited throughout the text, see Rhoda Howard, *Evaluating Human Rights in Africa*, 6 HUMAN RIGHTS QUARTERLY 160 (1984); Michael Stohl et al., *State Violation of Human Rights*, 8 HUM. RTS. Q. 592 (1986); Jack Donnelly and Rhoda E. Howard, *Assessing National Human Rights Performance*, 10 HUMAN RIGHTS QUARTERLY 214 (1988); Robert E. Robertson, *Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social, and Cultural Rights*, 16 HUMAN RIGHTS QUARTERLY 693 (1994); Clair Apodaca, *Measuring Women’s Economic and Social Rights Achievement*, 20 HUMAN RIGHTS QUARTERLY 139 (1998); Deborah Maine and Alicia Ely Yamin, *Maternal Mortality as a Human Rights Issue*, 21 HUMAN RIGHTS QUARTERLY 563 (1999); Sakiko Fukuda-Parr, *Millennium Development Goal 8*, 28 HUMAN RIGHTS QUARTERLY 966 (2006); Judith V. Welling, *International Indicators and Economic, Social, and Cultural Rights*, 30 HUMAN RIGHTS QUARTERLY 933 (2008).

¹⁹ Kate Raworth, *Measuring Human Rights*, 15 ETHICS & INTERNATIONAL AFFAIRS 111, 117 (2001).

infancy in comparison with state-focused human rights law. Second, state obligations and corporate responsibilities are fundamentally different: while states are generally responsible for all human rights violations committed under their jurisdiction, the problem of attribution is much more complex for corporate abuses.²⁰ Third, if states amount to less than 200, it is estimated that today there are more than 100,000 multinational corporations and 900,000 foreign affiliates.²¹ These differences justify the decision to also draw some insights from the academic literature on measuring corporate social responsibility issues.²²

II. BUSINESS AND HUMAN RIGHTS INDICATORS

The traditional way to assess the human rights performance of a company looks at the *individual* level, takes *context* into account and is offered in *narrative* form: a judge, a treaty body, a human rights NGO re-trace the events leading to an alleged human rights abuse suffered by an individual (or a group of individuals) and ascertain whether the behavior of the corporation met its responsibility to respect human rights (and/or complied with relevant obligations under national and international law). For instance, in 2010 a lawsuit was filed before a Canadian Court against

²⁰ The problem of attribution affects all types of human rights impact assessment: see Erik André Andersen and Hans-Otto Sano, *Human Rights Indicators at Programme and Project Level: Guidelines for Defining Indicators Monitoring and Evaluation* (The Danish Institute for Human Rights 2006) 22–23; Fernand Raine, *The Measurement Challenge in Human Rights*, 4 SUR: INTERNATIONAL JOURNAL ON HUMAN RIGHTS 7, 14, 24 (2006); Ian Gorvin, *Producing the Evidence that Human Rights Advocacy Works*, 1 J HUMAN RIGHTS PRACTICE 477, 481 (2009); Claire Thomas, *Evaluation at Minority Rights Group*, 1 J HUMAN RIGHTS PRACTICE 488, 492 (2009).

²¹ Robert D. Hormats, *The Continuing Importance of Investment in the Global Economy*, presented at World Investment Forum (Doha, Qatar 2012).

²² For comprehensive reviews of this literature, see Sarah Elena Windolph, *Assessing Corporate Sustainability Through Ratings*, 1 JOURNAL OF ENVIRONMENTAL SUSTAINABILITY 61 (2011); and Cory Searcy, *Corporate Sustainability Performance Measurement Systems*, 107 J BUS ETHICS 239 (2012). In addition to the references throughout the text, the following reports and articles are particularly relevant for the discussion that follows: Seb Beloe et al., *Values for Money: Reviewing the Quality of SRI Research* (SustainAbility/Mistra 2004); Johan J. Graafland et al., *Benchmarking of Corporate Social Responsibility*, 53 JOURNAL OF BUSINESS ETHICS 137 (2004); Aaron K. Chatterji and David I. Levine, *Breaking Down The Wall Of Codes*, 48 CALIFORNIA MANAGEMENT REVIEW 29 (2006); MARC J. EPSTEIN, *MAKING SUSTAINABILITY WORK* (Berrett-Koehler Publishers 2008); Thomas O. Wiedmann et al., *Companies on the Scale*, 13 JOURNAL OF INDUSTRIAL ECOLOGY 361 (2009); Magali Delmas and Vered Doctori Blass, *Measuring Corporate Environmental Performance*, 19 BUSINESS STRATEGY AND THE ENVIRONMENT 245 (2010); SustainAbility, *Rate the Raters Project* (2012), <http://www.sustainability.com/projects/rate-the-raters>.

a Canadian mining company, Hudbay Minerals, over the alleged murder of Adolfo Ich Chamán, a respected Mayan Q'eqchi' community leader and an outspoken critic of the harms caused by mining activities in Guatemala. The claim focuses on the allegation of a human rights abuse against an *individual*, takes the *context* of potential complicity with other private actors into account and describes the event in *narrative* form: the judge is called to decide whether on September 27, 2009, HudBay Minerals “negligently authorized the excessive use of force by its security personnel in response to Mayan Q'eqchi' communities that were peacefully opposing the illegal occupation of historic Mayan land”.²³

While the individual-contextual-narrative approach is appropriate to determine whether a company abused the human rights of a *specific* individual or group of individuals, it suffers from important limitations if the objective is to measure the human rights performance of a company *in general terms*. How to know whether abusive behavior in a specific case is the rule or just an exception? How to compare and aggregate information from different projects, factories, countries of operation, etc.? The move from the specific to the general is where business and human rights indicators step in.

In an imaginary continuum of human rights measures, indicators – the building blocks of ratings and indices – sit on the opposite end of the individual-contextual-narrative approach.²⁴ Indicators simplify and standardize human rights data (often taking context out of the equation) in order to aggregate different pieces of information and permit their comparison.²⁵ In addition, they take no

²³ Choc v. HudBay Minerals Inc., CV-10-41 1159 §2 (Ontario Superior Court of Justice, 2010).

²⁴ For a similar distinction between “qualitative” and “quantitative” approaches to human rights (even though the terminology is misleading, as indicators can be both quantitative and qualitative), see Filip Spagnoli, *Human Rights, the Quantitative Approach*, SSRN Scholarly Paper ID 1407512 (Rochester, NY, Social Science Research Network), May 16, 2009.

²⁵ Confirming the importance of the simplifying power of indicators, see Andersen and Sano, *supra* note 20, at 10; Sally Engle Merry, *Human Rights Monitoring and the Question of Indicators*, in HUMAN RIGHTS AT THE CROSSROADS 140, 141 (Mark Goodale ed., Oxford University Press 2013). For a skeptical view on aggregating human rights information (because of its inherent focus on the individual), see John F. McCamant, *A Critique of Present Measures of “Human Rights Development” and an Alternative*, in GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES 123, 123–123 (Ved P. Nanda et al. eds., Boulder, Colo., Westview Press 1981).

narrative form.²⁶ A business and human rights indicator can be defined as a named collection of rank-ordered data that purports to represent the past or projected human rights performance of a corporation and whose results are conveyed through a self-contained verbal or numerical expression, such as a count (257), a percentage (15%), a verb (agree/not agree), etc.²⁷ The table below offers a number of examples.

Table 1: Examples of business and human rights indicators

<i>Indicator</i>	<i>Potential results</i>
The company has adopted a policy statement which includes a commitment to respect the International Bill of Human Rights	Yes/No
Percentage of suppliers screened on the basis of human rights performance	From 0% to 100%
The importance of human rights for the company according to its employees	Very important/important/not important (percentage of responses from a survey of employees)
Number of human rights lawsuits against the company	From 0 upwards
General respect for human rights by the corporation according to human rights experts	From 1 to 5 (average result of a survey of business and human rights experts)

III. BUSINESS AND HUMAN RIGHTS MEASUREMENT INITIATIVES

If according to Rosga and Satterthwaie, “it is fair to say that there is an emerging market in human rights indicators”,²⁸ this is particularly true with respect to business and human rights.

While the synopsis below briefly portrays a representative sample of initiatives that measure the

²⁶ Human rights advocates and trade unions have a strong preference for human rights information to be reported in narrative form. See ITUC, Statement on the Shift-Mazars Discussion Paper on “Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights” 5 (2013).

²⁷ This definition is adapted from Kevin E. Davis et al., *Indicators as a Technology of Global Governance*, 46 LAW & SOCIETY REVIEW 71, 73 (2012). For similar definitions of human rights indicators, Maria Green, *What We Talk About When We Talk About Indicators*, 23 HUMAN RIGHTS QUARTERLY 1062, 1065 (2001); Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation* (United Nations 2012) 16.

²⁸ AnnJanette Rosga and Margaret Satterthwaie, *The Trust in Indicators*, 27 BERKELEY JOURNAL OF INTERNATIONAL LAW 253, 255 (2009).

corporate responsibility to respect human rights, Table 2 offers a more comprehensive overview of the business and human rights measurement landscape. The objective is to demonstrate that all corporate stakeholders have showed lively interest in measuring respect for human rights by corporations and that the production of indicators has already become a standard practice within the business and human rights community.

Management tools. According to the GPs, in order to verify whether adverse human rights impacts are being addressed, “business enterprises should track the effectiveness of their response”, and “[t]racking should ... [b]e based on appropriate qualitative and quantitative indicators”.²⁹ Aaronson and Higham confirm that “[l]ike other organizations, private business will need to rely on metrics (means or indicators to understand social phenomena) so they can monitor their performance over time. Such metrics can help firms link the conceptual discussion about human rights to actual implementation”.³⁰ The Danish Institute for Human Rights (DIHR) has produced a Human Rights Compliance Assessment tool that enables companies to identify the degree of due diligence in place to ensure respect for human rights.³¹ The tool incorporates a database of 195 questions and 947 indicators, each measuring the implementation of human rights in corporate policies and procedures. Companies answer the relevant questions and receive a final report identifying areas of compliance and non-compliance in their operations. Numeric scores allow companies to track their performance year to year.³²

Reporting frameworks. The GPs require that, in order to account for how they address their human rights impacts, “business enterprises should be prepared to communicate this externally”. External reporting “should cover ... indicators concerning how enterprises identify and address

²⁹ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, GP 20.

³⁰ Susan Ariel Aaronson and Ian Higham, *Re-Righting Business*, 35 HUMAN RIGHTS QUARTERLY 333, 359 (2013).

³¹ Danish Institute for Human Rights, *Human Rights Compliance Assessment 2.0* (2010), <https://hrca2.humanrightsbusiness.org/>.

³² Danish Institute for Human Rights, *What’s New In The HRCA* (2010), <https://hrca2.humanrightsbusiness.org/Page-WhatsNewInTheHrca-68.aspx>.

adverse impacts on human rights”.³³ The Global Reporting Initiative’s (GRI) G4 Sustainability Reporting Guidelines, which are widely recognized as the most authoritative sustainability reporting standard in the marketplace, now include a specific section on human rights.³⁴ The “Human Rights sub-Category” consists of twelve indicators and covers implementation of due diligence processes, incidents of human rights violations and changes in stakeholders’ ability to enjoy and exercise their human rights. Among the human rights issues included are non-discrimination, gender equality, freedom of association, collective bargaining, child labor, forced or compulsory labor, and indigenous rights.³⁵

³³ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, GP 21.

³⁴ Global Reporting Initiative, *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures 70–75* (2013).

³⁵ Global Reporting Initiative, *G4 Sustainability Reporting Guidelines: Implementation Manual 173–97* (2013). See also UN Global Compact et al., *A Resource Guide to Corporate Human Rights Reporting* (United Nations 2009).

Table 2. Illustrative list of measurement initiatives using business and human rights indicators

Name	Producer	Time	Focus	Brief description
1. Management tools				
GoodCorporation Framework on Human Rights	GoodCorporation	2012	Human rights	A set of responsible management practices that organisations can use to measure and improve the robustness of their policies and systems
Indicadores Ethos para Negócios Sustentáveis e Responsáveis	Ethos Institute of Business and Social Responsibility	First version: 2000. Latest version: 2013.	Corporate sustainability (including specific indicators on human rights, labor rights and stakeholder engagement)	A voluntary tool designed for companies to support the process of incorporation of sustainability in their management
Human Rights Compliance Assessment Tool	Danish Institute for Human Rights (DIHR)	First version: 2005. Second and latest version: 2011. Yearly update since then.	Human rights	A self-assessment tool to be used by company staff to evaluate human rights-related policies, procedures and performance
Human Rights Matrix	The Business Leaders Initiative on Human Rights	First version: 2003. Latest version: 2009.	Human rights	A self-assessment tool designed to support a company in understanding human rights in relation to its policies, procedures and initiatives
UN Global Compact Self Assessment Tool	DIHR, the Confederation of Danish Industries, the Ministry of Economic and Business Affairs and the Danish Investment Fund for Developing Countries	2010	Corporate sustainability (including specific indicators on human rights and labour rights)	A self-assessment tool to test the company's performance on all ten UN Global Compact principles
2. Reporting frameworks				
Children's rights in sustainability reporting: A guide for integrating children's rights into the GRI reporting framework	UNICEF	2013	Children's rights	A practical tool to help companies with reporting and communicating on how they are respecting and supporting children's rights, through their policies, processes and operations in the workplace, marketplace and community
G4 Sustainability Reporting Guidelines	Global Reporting Initiative	First version: 2000. Latest version: 2013.	Corporate sustainability (including specific indicators on human rights, labour rights, product responsibility and relationship with society)	Guidelines to enable all organizations to report the sustainability information that matters

Key Performance Indicators for ESG 3.0	DVFA Society of Investment Professionals in Germany in conjunction with EFFAS European Federation of Financial Analysts Societies	2010	Sustainability (including specific indicators on health & safety and supply chain management)	A reporting framework for ecological, social and corporate governance aspects built on requirements of investment professionals
Oil and gas industry guidance on voluntary sustainability reporting	IPIECA, API and OGP	First edition: 2005. Second and latest edition: 2010.	Sustainability (including specific indicators on human rights, labour practices and community & society)	The Guidance aims to assist oil and gas companies in developing and enhancing the quality and consistency of their sustainability reports
Reporting and Assurance Framework Initiative	Mazars and Shift	Started in 2013. Expected completion in 2015.	Human rights	A project to develop public reporting and assurance frameworks based on the UN Guiding Principles on Business and Human Rights
3. Sustainability indices				
Dow Jones Sustainability Indexes	S&P Dow Jones Indices (data provided by RobecoSAM)	Launched in 1999 and regularly updated since then	Sustainability (including specific indicators on labour practices and human rights)	A family of indexes tracking the financial performance of the largest companies that lead their industries in terms of corporate sustainability
Euronext Vigeo Indices	NYSE Euronext (data provided by Vigeo)	Launched in 2013 and regularly updated since then	Sustainability (including specific indicators on human rights and community involvement)	A family of indices composed of the highest-ranking listed companies as evaluated in terms of their performance in corporate responsibility
FTSE4Good Index Series	FTSE (data provided by the Experts in Responsible Investment Solutions, EIRIS)	Launched in 2001 and regularly updated since then	Sustainability (including specific indicators on human & labour rights, and supply chain labour standards)	A family of benchmarks and tradable indices which include only those companies that meet certain sustainability criteria
Global Compact 100	Global Compact (data provided by Sustainalytics)	Launched in 2013 with planned regular updates	Sustainability (including specific indicators on human rights and labour standards)	A stock index composed of a representative group of Global Compact companies selected based on their adherence to the Global Compact's ten principles, and evidence of executive leadership commitment and consistent base-line profitability
STOXX ESG Leaders Indices	STOXX Limited (data provided by Sustainalytics)	Launched in 2011 and regularly updated since then	Sustainability	A rule-based and fully-transparent series of environmental, social and governance indices
4. Sustainability standards				
Audit Protocol to Assess	A group of corporate	2013	Human rights	A methodology for the determination of the

Compliance with Key Performance Indicators	participants in the Voluntary Principles on Security and Human Rights initiative			level of implementation of, and compliance with, the tenets of the Voluntary Principles
EO100™ Standard	Equitable Origin	2012	Sustainability (including specific indicators on human rights, social impact, community development, fair labour & working conditions and indigenous peoples' rights)	The first stakeholder-based, comprehensive social and environmental certification, certificate trading and eco-label system for oil and gas exploration and production.
ETI Management Benchmarks	Ethical Trading Initiative	2010	Labour rights and working conditions	The benchmarks are the means by which ETI sets out its expectations of members and measures members' progress in applying the ETI Base Code and Principles of Implementation.
RJC Assessment Workbook	Responsible Jewellery Council	2013	Sustainability (including specific indicators on responsible supply chain & human rights and labour rights & working conditions)	A document containing instructions for members and auditors on how to complete self-assessments and certification
Social Fingerprint®	Social Accountability International	2010	Decent work and supply chain management	A program of ratings, training, and toolkits designed to help companies understand and measure their social impact now, and then learn how to improve it
5. Human Rights Impact Assessment tools				
Business Guide for Conflict Impact Assessment and Risk Management	UN Global Compact	2002	Conflict and human rights	A guide for companies to develop strategies that minimize the negative effects and maximize the positive effects of investing in areas of conflict or potential conflict
Children's Rights in Impact Assessments: A guide for integrating children's rights into impact assessments and taking action for children	UNICEF and Danish Institute for Human Rights	2013	Children's rights	A guide for companies to assess their policies and processes as they relate to their responsibility to respect children's rights and their commitment to support children's rights
Getting it Right: A step by step guide to assess the impact of foreign	Rights & Democracy	2008	Human rights	A step-by-step process for those wishing to take stock of the positive and negative human rights impacts of an investment project in their community, including a 75-

investments on human rights				page compilation of questions derived from international human rights law
Human Rights Impact Assessment Toolkit	NomoGaia	2012	Human rights	A four-phase process of human rights impact assessment, starting with data gathering and scoping, and culminating with a set of rights scores contrasting baseline human rights conditions and impacts
Human Rights Assessment of Goldcorp’s Marlin Mine in Honduras	On Common Ground	2010	Sustainability (including specific indicators on human rights, labour rights and access to remedy)	An assessment of the human rights situation around, and related to, the presence and operations of the Marlin Mine, in San Miguel Ixtahuacán and Sipacapa Municipalities, Guatemala.
6. Ethical ratings				
100 Best Corporate Citizens List	Corporate Responsibility Magazine (data provided by IW Financial)	Every year since 2000	Corporate responsibility (including specific indicators on human rights)	One of the most influential corporate responsibility ranking entirely based on publicly-available information
Access to Medicine Index	Access to Medicine Foundation (data provided by MSCI; since 2013, by Sustainalytics)	Published every two year since 2008	Access to medicine	An independent initiative that ranks the world’s twenty largest pharmaceutical companies according to their efforts to make their products more available, affordable and accessible in developing countries
Behind the Brands	Oxfam	Launched in 2013 with planned regular updates	Agricultural sourcing policies (including specific indicators on workers’ rights, women’s rights, land rights and right to water)	A scorecard that assesses the agricultural sourcing policies of the world’s ten largest food and beverage companies
Draft Business and Human Rights Index	RightsBusiness	Discussion paper published in 2013	Human rights	An index that provides a shorthand measure of business engagement with commonly identified and important private sector human rights practices and responsibilities
GoodGuide	Dara O’Rourke, Professor of environmental and labor policy at the University of California at Berkeley	Founded in 2007. Version 2.0 released in 2011. Regularly updated since then.	Sustainability (including specific indicators on human rights, workers’ rights and community relations)	A website and smartphone app to search or browse over 145,000 food, toys, personal care and household products and learn about the best and worst products in a category

Note: The table is an illustrative, not comprehensive, list of existing initiatives using business and human rights indicators. The purpose is not to offer a complete overview of the business and human rights measurement landscape, but to show that using indicators has become a standard practice for all stakeholders in the business and human rights field.

ESG data providers and sustainability indices. Investors are expected to meet their responsibility to respect human rights by using their shareholders' rights to engage with the managers of controversial companies in which they invest and/or by screening abusive corporations out of their portfolio.³⁶ Both strategies require the ability to measure and compare corporate performance (over time and across companies).³⁷ To meet this need, responsible investors usually purchase human rights ratings from specialized providers of information on ESG corporate performance.³⁸ For instance, Sustainalytics instructs its 80 analysts to use specific human rights indicators in order to track companies' preparedness in managing their exposure to human rights risks and their performance in respecting human rights.³⁹ In addition to bespoke corporate ratings, ESG data providers also provide the raw data for the creation of sustainability stock indexes.⁴⁰ The Dow Jones Sustainability Indexes (DJSI), for instance, use RobecoSAM's annual Corporate Sustainability Assessments (CSA) to assign companies a Total Sustainability Score between 0 and 100 and detect sustainability leaders: only the top 10 % of companies from each industry is included in the indexes.⁴¹ The questionnaire used for the CSA is industry-specific and contains

³⁶ Institute for Human Rights and Business, *Investing the Rights Way: A Guide for Investors on Business and Human Rights* (2013).

³⁷ See Aaron Bernstein, *Incorporating Labor and Human Rights Risk Into Investment Decisions*, Occasional Paper Series 2 (Capital Matters, Pensions and Capital Stewardship Project Labor and Worklife Program Harvard Law School), Sept. 2008; Aaron Bernstein, *Quantifying Labor and Human Rights Portfolio Risk*, Occasional Paper Series 4 (Capital Matters, Pensions and Capital Stewardship Project Labor and Worklife Program, Harvard Law School), Jun. 2009.

³⁸ Antonio Márquez and Charles J. Fombrun, *Measuring Corporate Social Responsibility*, 7 CORPORATE REPUTATION REVIEW 304 (2005); Steven Scalet and Thomas F. Kelly, *CSR Rating Agencies*, 94 J BUS ETHICS 69 (2010). For critical reviews, see Globescan, *Experts Trust Ratings Organizations Less Than NGOs and Employees as Judges of Sustainability Performance* (2010); econsense, *More Transparency, More Efficiency, More Acceptance* (2012).

³⁹ Ilse Griek, UN Forum on Human Rights: Assessing the Ruggie Framework (2012), <http://www.sustainalytics.com/assessing-ruggie-framework>; Farnam Bidgoli, *Benchmarking the Responsibility to Respect*, presented at Meeting on a Human Rights Performance Benchmark (Aviva Investors, London 2013).

⁴⁰ For a critical view, see Stephen Fowler and Chris Hope, *A Critical Review of Sustainable Business Indices and Their Impact*, 76 JOURNAL OF BUSINESS ETHICS 243 (2007); For more information on the relationship between sustainability and stock exchanges, see the research documents produced by the Sustainable Stock Exchanges Initiative, such as: Principles for Responsible Investment et al., *2012 Sustainable Stock Exchanges Report: A Report on Progress* (United Nations 2012).

⁴¹ S&P Dow Jones Indices and RobecoSAM, *Dow Jones Sustainability World Index Guide* (2013). As a general introduction to the index, see also Ivo Knoepfel, *Dow Jones Sustainability Group Index*, 8 CORPORATE ENVIRONMENTAL STRATEGY 6 (2001).

approximately 80-120 pre-weighted indicators on financially relevant economic, environmental and social factors.⁴² In the questionnaire for the Metals and Mining Industry, the Labor Practice and Human Rights Indicators weigh 4% of the total score.⁴³

Sustainability standards. The development of business and human rights standards for specific industries, regions or vulnerable groups often takes place through multi-stakeholder initiatives, that is, formal platforms that bring together the expertise of representatives of government, business and civil society.⁴⁴ Many of these initiatives have produced indicators to assess the performance of participating companies and, in specific cases, certify their meaningful participation. The Voluntary Principles on Security and Human Rights (VPs), for instance, is a multi-stakeholder initiative that promotes implementation of a set of principles that guide oil, gas, and mining companies in their engagement with public and private security providers to ensure human rights are respected in the protection of corporate facilities.⁴⁵ In 2013, fourteen VPs corporate participants created the Key Performance Indicators (“KPI”) Volunteer Group and developed assurance mechanisms to validate implementation of the Voluntary Principles.⁴⁶ Explicitly drawing on the GPs, KPI No. 6 asks whether “the company has a procedure or mechanism to address human rights incidents by public/private security forces relating to the company’s activities”.⁴⁷

⁴² RobecoSAM, *Measuring Intangibles: RobecoSAM’s Corporate Sustainability Assessment Methodology* (2013).

⁴³ RobecoSAM, *RobecoSAM’s Corporate Sustainability Assessment 2013: Criteria Weightings Per RobecoSAM GICS Industry* (2013).

⁴⁴ Multi-stakeholder engagement is one of the requirements included in the Standard-Setting Code of ISEAL, a non-governmental organisation whose mission is to strengthen sustainability standards systems: ISEAL Alliance, *Standard-Setting Code* (2010). For an overview of multi-stakeholder initiatives, visit the website of the Institute for Multi-Stakeholder Initiative Integrity (a project that examines the impact and value of voluntary business-related human rights initiatives): MSI Integrity, *What are MSIs?* (2013), <http://www.msi-integrity.org/>.

⁴⁵ Voluntary Principles Initiative, *The Voluntary Principles on Security and Human Rights*, <http://www.voluntaryprinciples.org/>.

⁴⁶ Voluntary Principles Initiative, *Annual Report 2013: Summary of Voluntary Principles Implementation Efforts During 2012* Apr. 2013 3.

⁴⁷ A group of Voluntary Principles Member Companies, *Audit Protocol to Assess Compliance with Key Performance Indicators 5* (2013).

Human Rights Impact Assessment (HRIA) tools. According to the Guiding Principles, “in order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”.⁴⁸ Companies operating in difficult environments increasingly respond to this requirement by conducting project-level HRIsAs, whose fundamental purpose is to provide a reasoned, supported and comprehensive answer to the question: “How does the project affect human rights?”⁴⁹ In 2012 NomoGaia produced a “Human Rights Impact Assessment Toolkit” which recommends a four-phase process for HRIsAs.⁵⁰ Phase II, entitled “Human Rights Topics Catalogs”, is dedicated to identifying baseline human rights conditions in the project area, against which project impacts can be compared. Human rights issues are divided into more than 300 ‘topics’ and ‘subtopics’ (that is, indicators). Each subtopic is associated with an ‘impact score’ for the intensity and extent of impact likely to result from project activities.⁵¹

Ethical ratings. As responsible citizens can influence corporate behavior through their consumption practices (such as ethical shopping and boycotts),⁵² it comes as no surprise that consumers have been targeted with simplified and comparative information about corporate performance on sustainability issues, including human rights. As part of its GROW campaign,

⁴⁸ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, GP 18. During the first two years of its mandate as SRSG, Ruggie monitored ongoing HRIA initiatives. Its findings are presented in John G. Ruggie, *Human Rights Impact Assessments - Resolving Key Methodological Questions*, A/HRC/4/74 (Human Rights Council), Feb. 5, 2007.

⁴⁹ The Impact Assessment and Project Appraisal dedicated a Special Issue to “Human Rights and Impact Assessment”: see, for instance, Deanna Kemp and Frank Vanclay, *Human Rights and Impact Assessment*, 31 IMPACT ASSESSMENT AND PROJECT APPRAISAL 86 (2013); Geordan Graetz and Daniel M. Franks, *Incorporating Human Rights into the Corporate Domain*, 31 IMPACT ASSESSMENT AND PROJECT APPRAISAL 97 (2013); James Harrison, *Establishing a Meaningful Human Rights Due Diligence Process for Corporations*, 31 IMPACT ASSESSMENT AND PROJECT APPRAISAL 107 (2013).

⁵⁰ NomoGaia, *Human Rights Impact Assessment: A Toolkit for Practitioners Conducting Corporate HRIsAs* Aug. 2012.

⁵¹ NomoGaia, *Corporate Human Rights Impact Assessment: Guided Template for Practitioners* Aug. 2012.

⁵² Lois A. Mohr et al., *Do Consumers Expect Companies to Be Socially Responsible?*, 35 JOURNAL OF CONSUMER AFFAIRS 45 (2001); Deirdre Shaw et al., *Consumption as Voting*, 40 EUROPEAN JOURNAL OF MARKETING 1049 (2006); Behrang Rezaabakhsh et al., *Consumer Power*, 29 J CONSUM POLICY 3 (2006).

Oxfam produces a Behind the Brands' Scorecard that rates the agricultural sourcing policies of the world's ten largest food and beverage companies.⁵³ Based on publicly available information, the Scorecard looks at seven themes, including transparency at corporate level, women farm workers, land and water issues. The indicators for each theme are grouped into four categories (each worth one quarter of the score available for that theme): (i) awareness; (ii) knowledge; (iii) commitments; and (iv) supply chain management.⁵⁴

IV. THE NORMATIVE FRAMEWORK: THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

In a recently published guide on how to produce state-focused human rights indicators, the Office of the High Commissioner on Human Rights (OHCHR) convincingly argues that a conceptually coherent normative framework is necessary to avoid the creation of subjective and random lists of indicators.⁵⁵ While the OHCHR focuses on state obligations, and therefore locates this framework in international human rights covenants and their interpretation by relevant treaty bodies, the obvious starting point for a normative framework in business and human rights are the GPs.

A. THREE LESSONS FROM THE GPS

The GPs offer three implicit but unambiguous requirements on the production of indicators to measure corporate respect for human rights. To begin with, indicators should not limit their focus on those human rights issues that have significant financial consequences for the company: “human rights due diligence can be included within broader enterprise risk-management systems,

⁵³ Oxfam, Behind the Brands' Company Scorecard (2013), <http://www.behindthebrands.org/en-gb/company-scorecard>.

⁵⁴ Oxfam, Behind the Brands: Methodology Summary 3–4 (2013).

⁵⁵ Office of the High Commissioner for Human Rights, *supra* note 27, at 29. For a quick overview of the UN engagement with the topic of human rights indicators (which started in 1990 with a report by Danilo Turk, then UN Special Rapporteur on the Realization of Economic, Social and Cultural Rights), see Rosga and Satterthwaite, *supra* note 28, at 273ff.

provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders”.⁵⁶ UNICEF and DIHR have suggested a list of indicators in order to integrate children’s rights into human rights impact assessments. Following the GPs, the two organizations specified that ‘material’ issues in a children’s rights context should “reflect the perspective of children as key stakeholders; they are considered in terms of the impact experienced by or particular risks facing children”.⁵⁷ In contrast with this approach, many measurement initiatives still concentrate only on those factors that directly affect the bottom line of the company. For instance, the methodology used by RobecoSAM for the creation of DJSI “focuses on sustainability criteria that are financially relevant to corporate performance, valuation and security selection. Not only does this make the results of the CSA assessment particularly relevant for investors, but it also helps companies to focus on sustainability issues that are more directly linked to their success as a business”.⁵⁸

Second, indicators should not follow the CSR strategy of computing positive contributions to human rights protection (such as philanthropic activities).⁵⁹ According to the GPs, “business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations”.⁶⁰ The Human Rights Matrix developed by the Business Leaders Initiative on Human Rights rightly distinguishes between two types of indicators: the ‘Essential’ and ‘Beyond Essential’ steps that a business can take to develop and implement its human rights strategy. Examples of ‘Beyond Essential’ activities include diversity

⁵⁶ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, Commentary to GP 17.

⁵⁷ Danish Institute for Human Rights and UNICEF, *Children’s Rights in Impact Assessments: A Guide for Integrating Children’s Rights into Impact Assessment and Taking Action for Children* (2013) 4.

⁵⁸ RobecoSAM, *Measuring Intangibles: RobecoSAM’s Corporate Sustainability Assessment Methodology*, *supra* note 42, at 1.

⁵⁹ See the methodology proposed by Escrig-Olmedo et al. to offset positive and negative assessments: Elena Escrig-Olmedo et al., *Lights and Shadows on Sustainability Rating Scoring*, REV MANAG SCI (forthcoming).

⁶⁰ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, Commentary to GP 11.

programs, education or health initiatives aimed at a local community, and participation in sector initiatives.⁶¹

Third, the literature on state-focused human rights indicators offers a three-layered categorization of structural, process and outcome indicators: structural indicators reflect the ratification and adoption of legal instruments; process indicators measure duty bearers' procedures to implement their human rights commitments; outcome indicators capture individual and collective achievements that reflect the state of enjoyment of human rights in a given context.⁶² Building on this literature but adapting it to the corporate responsibility to respect human rights as laid down in the GPs (in particular the fact that corporations are not responsible for general human rights outcomes, but only for their human rights impacts), this article distinguishes three categories of business and human rights indicators: policy, process and impact indicators.⁶³

Policy indicators appraise the extent to which a company has committed to respect human rights. As statements of policy are usually publicly available and easily accessible, all business and human rights measurement initiatives include policy indicators. Yet, these indicators are rarely fully aligned with the GPs. Existing indicators are often framed as binary options: either the company adopted a human rights policy or it did not. For instance, RobecoSAM's CSA asks if a company "has publicly committed to support the Universal Declarations of Human Rights as well as if [the] company is familiar with the UN Framework and Guiding Principles on Business and Human Rights".⁶⁴ However, the Guiding Principles are clear that the statement of policy should meet five specific requirements:

⁶¹ Business Leaders Initiative on Human Rights et al., *A Guide for Integrating Human Rights into Business Management* (2006) 14–15; Business Leaders Initiative on Human Rights, *The Human Rights Matrix* (2009) 2.

⁶² Office of the High Commissioner for Human Rights, *supra* note 27, at 34. Landman and Carvalho make a similar distinction between rights-in-principle, rights-as-policy and rights-in-practice indicators: LANDMAN AND CARVALHO, *supra* note 16, at 17.

⁶³ For a similar approach, see Danish Institute for Human Rights, *Human Rights Compliance Assessment (HRCA) Quick Check 6* (2006); NYSE Euronext, *Euronext Vigeo Family: Index Rule Book 8* (2013).

⁶⁴ RobecoSAM, *RobecoSAM's Corporate Sustainability Assessment 2013: Criteria Weightings Per RobecoSAM GICS Industry*, *supra* note 43.

... business enterprises should express their commitment to meet their corporate responsibility to respect human rights through a statement of policy that (a) is approved at the most senior level of the business enterprise; (b) is informed by relevant internal and/or external expertise; (c) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (d) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; and (e) is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.⁶⁵

Policy indicators should abandon the binary approach and reflect this plurality of conditions.⁶⁶ Indicators RE2 of the GoodCorporation Framework on Human Rights makes two steps in the right direction but falls short of fully complying with the GPs: it asks whether “the company has a publically available policy on human rights that has been approved at a senior level”.⁶⁷ The Reporting and Assurance Framework Initiative led by Mazars and Shift and of the Draft Business and Human Rights Index proposed by RightsBusiness are among the few projects that take all the requirements of the GPs into account.⁶⁸ Furthermore, policy indicators should assess the extent to

⁶⁵ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, GP 16.

⁶⁶ The situation with state-focused structural indicators is similar. Most scholars use dummy variables for ratification/non-ratification: Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights*, 36 JOURNAL OF PEACE RESEARCH 95 (1999); Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE LAW JOURNAL 1935 (2002); Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 JOURNAL OF CONFLICT RESOLUTION 925 (2005); Emily Hafner-Burton and Kiyoteru Tsutsui, *Human Rights in a Globalizing World*, 110 AMERICAN JOURNAL OF SOCIOLOGY 1373 (2005); James Raymond Vreeland, *Political Institutions and Human Rights*, 62 INTERNATIONAL ORGANIZATION 65 (2008). Yet, it is sensible to take into consideration whether a treaty was only signed or also ratified, and what types of reservations were filed at the time of ratification: see John Boli-Bennett, *Human Rights or State Expansion? Cross-National Definitions of Constitutional Rights, 1870-1970*, in GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES 173 (Ved P. Nanda et al. eds., Boulder, Colo., Westview Press 1981); LANDMAN AND CARVALHO, *supra* note 16, at 85.

⁶⁷ GoodCorporation, *The GoodCorporation Framework on Human Rights* (2012) 2.

⁶⁸ Mazars and Shift, *Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights: A Discussion Paper* May 2013 22; RightsBusiness,

which the statements of policy refer to a limited or broad range of human rights and/or stakeholders. Sustainalytics, the ESG data provider for STOXX ESG Leaders Indices, competently checks whether companies have a policy not only on human rights in general (indicator S.4.2.1), but also on freedom of association (S.1.1), working conditions (S.1.1.1), elimination of discrimination (S.1.2), the sourcing of coltan (S.2.1.3), data privacy (S.3.1.3) and indigenous people and land rights (S.4.2.9).⁶⁹

According to the GPs, statements of policy are only one part of the story. In order to avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved, business enterprises should also have in place two types of processes (appropriate to their size and circumstances): (1) a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights, and (2) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.⁷⁰ Process indicators include both due-diligence and remediation indicators. For instance, the DIHR's HRCA asks companies both whether "in countries where birth certificates are not common, or are frequently falsified, the company has a procedure for estimating the age of employment for young candidates, such as average height or knowledge of historic events"⁷¹ and whether "workers have access to a grievance mechanism where they can report incidents of discrimination, and they are familiar with the mechanism".⁷²

Process indicators can assess inputs (that is, the financial, human, material, technological and information resources used for the process) or outputs (that is, the actual completion of activities).

Towards a Business and Human Rights Index and Accreditation and Certification Scheme for Businessenterprises: An Introductory Paper (2013) 10.

⁶⁹ STOXX Limited, *STOXX ESG Index Methodology Guide 20* (2013). The CR's 100 Best Corporate Citizens List follows a similar approach and uses policy indicators on numerous human rights issues: see *Corporate Responsibility Magazine, Corporate Citizenship Data Elements 11ff.* (2013).

⁷⁰ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 4, GP15.

⁷¹ Danish Institute for Human Rights, *supra* note 63, at 19.

⁷² *Id.* at 27.

As outputs depend on factors that vary from place to place, there is no monotonic relationship between inputs and outputs. The consequence is that preference should be given to output over input indicators.⁷³ Indicator HU1.d of the Global Compact Self-Assessment Tool (which asks companies whether “workers and managers are trained to respond to workplace emergencies; first aid kits and fire extinguishers are readily available; and escape exits are clearly marked and free from obstruction”)⁷⁴ is more informative than indicator S09-02 of the KPIs for ESG 3.0 proposed by the Society of Investment Professionals in Germany in conjunction with the European Federation of Financial Analysts Societies (which asks companies to report the “total spending in monetary terms on maintenance and safety of production sites, plants etc.”).⁷⁵

Impact indicators concentrate on the adverse human rights impact with which the company is involved. The responsibility to respect human rights requires that “business enterprises (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.⁷⁶ A good examples of an impact indicator is EO100™ Standard’s Performance Target 2.3, which checks if the “operator has not been found guilty (i.e., final verdict of guilty after exhausting all appeals) of a violation of human rights for any of its activities in the country of operation, within the previous three years”.⁷⁷ While impact indicators should evidently represent a cornerstone of human rights measurement, assessing causation and contribution of (or linkage to) adverse human rights impact is difficult and often

⁷³ Office of the High Commissioner for Human Rights, *supra* note 27, at 37.

⁷⁴ UN Global Compact, Global Compact Self Assessment Tool (2010), <http://www.globalcompactselfassessment.org/>.

⁷⁵ DVFA Society of Investment Professionals in Germany and EFFAS European Federation of Financial Analysts Societies, *Key Performance Indicators for ESG 3.0* (2010) 16.

⁷⁶ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, at 13.

⁷⁷ Equitable Origin, EO100 Standard 26 (2012).

highly controversial. The most daunting methodological and practical problems associated with comparing the human rights performance of different companies will be addressed in Section 4.

Before moving on, it is worth stressing why defining a clear distinction between policy, process and impact indicators is particularly important. First, it helps create a comprehensive set of indicators that covers all different aspects of the corporate responsibility to respect human rights.⁷⁸ Second, it compensates for the limitations of each type of indicator: on the one hand, policy and process indicators reward statements and procedures which are not necessarily related to improvements on the ground;⁷⁹ on the other hand, impact indicators focus on past corporate behavior and therefore offer imperfect guidance with respect to changes in corporate attitude and future performance. Lastly, the distinction permits research on the consequences of different policies and processes on actual impacts. Are good scores on impact indicators associated with good scores on policy and process indicators?

B. OPEN QUESTIONS

Human rights scholars agree that conceptual clarity is a fundamental prerequisite for meaningful measurement: “careful conceptualization is not an afterthought. If one’s measure is not carefully conceptualized, it will likely suffer grave risks to validity, no matter how artfully it is later operationalized”.⁸⁰ Unfortunately, while the GPs offer some guidance on what business and

⁷⁸ For a similar argument with respect to state-focused human rights indicators, see Hans-Otto Sano and Lone Lindholt, *Human Rights Indicators: Country Data and Methodology* (Danish Institute for Human Rights 2000) 67.

⁷⁹ For a similar argument with respect to rules-based indicators of governance, see Daniel Kaufmann and Aart Kraay, *Governance Indicators: Where Are We, Where Should We Be Going?*, 23 THE WORLD BANK RESEARCH OBSERVER 1, 8 (2008).

⁸⁰ David L. Richards, *Measuring Human Rights: A Review Essay*, 12 HUMAN RIGHTS AND HUMAN WELFARE 15 (2012). See also Scarritt, *supra* note 16, at 117; Herbert F. Spierer, *Violations of Human Rights—How Many?*, 49 AMERICAN JOURNAL OF ECONOMICS AND SOCIOLOGY 199, 199 (1990); Richard P. Claude and Thomas B. Jabine, *Exploring Human Rights Issues with Statistics*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 5, 12 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); Robert Justin Goldstein, *The Limitations of Using Quantitative Data in Studying Human Rights Abuses*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 35, 37 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); Russel Lawrence Barsh, *Measuring Human Rights*, 15

human rights indicators should look like, they also leave many questions unanswered. As acknowledged by RightsBusiness, the GPs “do not appear to operate or have been designed as an index and are not always expressed in a measurable format. This may allow for some choice in selecting metrics for the index and being flexible about a lack of granularity and specificity and measurement”.⁸¹ What this means is that the production of numerous business and human rights indicators is not a merely technical exercise, but an implicit normative process in which new standards are actually created.⁸² Two examples should suffice to show that producers of business and human rights indicators cannot avoid taking difficult (and controversial) normative decisions. First, as resources are scarce and time is limited, producers of indicators are often faced with the questions of what human rights and what aspects of the GPs to concentrate on.⁸³ With respect to what human rights to prioritize, the GPs are clear that “the severity of a potential adverse human rights impact is the most important factor in determining the scale and complexity of the processes the enterprise needs to have in place in order to know and show that it is respecting human rights”.⁸⁴ Yet, the concept of severity is open to different interpretations. FTSE4Good Inclusion Criteria for the Global Resource Sector appropriately require “a stated commitment to respecting indigenous peoples’ rights”. However, no other vulnerable stakeholder is taken into consideration.⁸⁵ Labor indicators for RobecoSAM’s CSA cover non-discrimination and freedom

HUMAN RIGHTS QUARTERLY 87, 92 (1993); Todd Landman, *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide* (UNDP), Mar. 2006 91; Yasmine Ergas, *Human Rights Impact*, 1 J HUMAN RIGHTS PRACTICE 459, 461 (2009).

⁸¹ RightsBusiness, *supra* note 68, at 1.

⁸² Rosga and Satterthwaite, *supra* note 28, at 295.

⁸³ Some scholars argue that using a “core set” of human rights to measure the general phenomenon of human rights performance is possible: see Andrew D. McNitt, *Measuring Human Rights*, 15 POLICY STUDIES JOURNAL 71 (1986). Others disagree: see McCamant, *supra* note 25; Harry M. Scoble and Laurie S. Wiseberg, *Problems of Comparative Research on Human Rights*, in GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES 147, 151 (Ved P. Nanda et al. eds., Boulder, Colo., Westview Press 1981).

⁸⁴ OHCHR, *supra* note 5, at 19.

⁸⁵ FTSE, FTSE4Good Index Series: Inclusion Criteria 4 (2013).

of association, but neglect issues as important as child labor or forced labor.⁸⁶ Are these omissions justified?

With respect to what aspects of the GPs should be given priority, producers of indicators are often lured into the strategy of concentrating on those facets that can more easily be measured. Yet, “not everything that counts can be counted, and not everything that can be counted counts”.⁸⁷ The risk is that those aspects that are more difficult to measure will fly under the radar and be tacitly ignored.⁸⁸ For instance, GRI indicator G4-HR10 asks companies to “report the percentage of new suppliers that were screened using human rights criteria”.⁸⁹ The indicator arguably operationalises the due diligence requirement to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.⁹⁰ However, it focuses on only one part of the story. It is good practice to screen suppliers, but the most important thing is to act in case of controversial findings. The indicator implicitly incentivizes companies to screen suppliers without taking actions after the screening.

Second, adverse human rights impacts have different dimensions: severity (killing two union leaders is arguably worse than wounding them), frequency (wounding a hundred employees is arguably worse than wounding ten) and range (wounding three saboteurs and their seven innocent children is arguably worse than wounding ten saboteurs).⁹¹ In the business and human rights

⁸⁶ SAM Research AG, Corporate Sustainability Assessment Questionnaire 62 (DJSI 2012).

⁸⁷ WILLIAM BRUCE CAMERON, *INFORMAL SOCIOLOGY* 13 (New York, Random House 1963).

⁸⁸ Mohamed Chelli and Yves Gendron, *Sustainability Ratings and the Disciplinary Power of the Ideology of Numbers*, 112 *J BUS ETHICS* 187 (2013).

⁸⁹ Global Reporting Initiative, *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures*, *supra* note 34, at 74.

⁹⁰ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, GP 14.

⁹¹ George A. Lopez and Michael Stohl, *Problems of Concept and Measurement in the Study of Human Rights*, in *HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT* 216, 224ff. (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); James M. McCormick and Neil J. Mitchell, *Human Rights Violations, Umbrella Concepts, and Empirical Analysis*, 49 *WORLD POLITICS* 510, 513 (1997). Ruggie uses a roughly similar categorization with a different terminology (scale, scope and irremediable character):

community there is no consensus on how many dimensions impact indicators should take into consideration, and how these dimensions should be weighed against each other.⁹² How to compare the killing of two union leaders and the wounding of twenty indigenous women? The structure of Oxfam's Behind the Brands Scorecard "is such that no artificial weighting was applied. This means that each indicator was weighted equally within each indicator category; and each sub-indicator was weighted equally within each indicator".⁹³ Against Oxfam's position, it is worth stressing that equal weighing is 'artificial' as any other option (in this case, a non-decision actually is a decision). Suffice it to mention that the consequence of equal weighting of indicators and sub-indicators is that "commitment to uphold the GPs" weigh 12,50 out of 100, while "endorsement of the UN Women's Empowerment Principles" weigh 20 out of 100.⁹⁴

Unfortunately, there is no *correct* answer to these normative questions. Human rights experts themselves disagree on how to interpret "severity", on the priority to be given to specific aspects of the GPs over others, and on the importance of different human rights or different dimensions of the same right.⁹⁵ Yet, the drafting history of the UN Framework and the GPs teaches us that there can be *legitimate* answers as results of transparent and participatory processes.⁹⁶ As recognized by Ruggie himself, this was the mandate's secret to success: "apart from the Framework's intrinsic utility, the large number and inclusive character of stakeholder consultations convened by and for the mandate no doubt have contributed to its widespread

Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, *supra* note 4, GP14; see also OHCHR, *supra* note 5, at 19.

⁹² Barsh, *supra* note 80, at 100; Dipak K. Gupta et al., *Creating a Composite Index for Assessing Country Performance in the Field of Human Rights*, 16 HUMAN RIGHTS QUARTERLY 131, 136 (1994).

⁹³ Oxfam, Behind the Brands: Methodology Summary, *supra* note 54, at 7.

⁹⁴ Oxfam, Scorecard September Update (2013).

⁹⁵ As an example of the controversies generated by the GPs, see HUMAN RIGHTS OBLIGATIONS OF BUSINESS (Surya Deva and David Bilchitz eds., Cambridge; New York, Cambridge University Press 2013); and the comments on the book by Ruggie himself: Letter from John G. Ruggie, Comments on "Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect" (Dec. 17, 2013).

⁹⁶ Aaronson and Higham, *supra* note 30, at 345.

positive reception”.⁹⁷ The lesson to be learnt is that the questions outlined above should not be answered by a group of like-minded individuals, however knowledgeable and authoritative they may be.⁹⁸ Rather, decisions must be the object of a genuine debate among various stakeholders, included affected individuals.⁹⁹ The work of the Access to Medicine Foundation in producing the Access to Medicine Index (AtMI), a widely-respected and influential ranking of the largest pharmaceutical companies’ efforts to improve access to medicine in developing countries, offers a good example in this respect.¹⁰⁰ One of the distinguishing features of the AtMI is the rigorous and participatory ‘Index cycle’, a two-year process of consultation with experts and stakeholders to review the previous Index and prepare the methodology for the next one. The Expert Review Committee (ERC), which functions as the strategic advisory committee for the Index methodology, is made up of individuals from a variety of stakeholder group. To complement the work of the ERC, the Foundation hosts several events over the course of the Index cycle to gain insights on diverse perspectives and developments in the access to medicine landscape.¹⁰¹ The history of the Reporting and Assurance Frameworks Initiative (RAFI), a recent project by Shift and Mazars aiming to develop public reporting and assurance frameworks based on the UN

⁹⁷ Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, §8. Ruggie often recalls that the mandate had held almost 50 international consultations, on all continents, and had made site visits to business operations and their local stakeholders in more than 20 countries: see John G. Ruggie, Keynote Remarks at the Annual Plenary of the Voluntary Principles on Security and Human Rights (Ministry of Foreign Affairs, The Hague, Netherlands 2013); John G. Ruggie, Keynote Remarks at Association of International Petroleum Negotiators Spring 2012 Conference (Washington, D.C. 2012).

⁹⁸ The academic literature on CSR offer some interesting examples of scientific methodologies to assess the construct validity of measures for responsible corporate behavior: see, for instance, the standard scale development process used by Duygu Turker, *Measuring Corporate Social Responsibility*, 85 J BUS ETHICS 411 (2009). Similar strategies could be used in the business and human rights field to develop draft measurement scales to be then tested through wider consultations.

⁹⁹ For a similar argument with respect to state-focused human rights indicators, see Barsh, *supra* note 80, at 101; Jan Robert Suesser and Raul Suarez de Miguel, *Metagora: An Experiment in the Measurement of Democratic Governance*, in STATISTICAL METHODS FOR HUMAN RIGHTS 157, 171 (Jana Asher et al. eds., New York, Springer 2008).

¹⁰⁰ For a general assessment of the AtMI, see Jamie Attard, *Access to Medicine Index: Can a Global Scorecard Framework Promote a System of Public Accountability Across the Pharmaceutical Sector to Support Increased Access to Essential Medicines in Developing Countries?* (Open Society Foundations), Spring 2013.

¹⁰¹ Access to Medicine Foundation, Methodology Report 2013 for the 2014 Access to Medicine Index 30–35 (2013).

Guiding Principles, is another example of the perceived importance of consultative processes. RAFI was launched at the beginning of 2013 as a yearly project with mainly an Asian focus.¹⁰² After widespread criticism because of lack of meaningful participatory engagement,¹⁰³ the process was lengthened and consultations were enlarged to encompass the whole world.¹⁰⁴

V. CHALLENGES TO THE VALIDITY OF BUSINESS AND HUMAN RIGHTS INDICATORS

Indicators can be appraised on the basis of different criteria, such as policy-relevance, cost, timeliness, sensitiveness, etc. This section focuses on what is widely considered the most important feature of a “good” indicator: validity. A valid indicator is an indicator that measures what it purports to measure.¹⁰⁵ The next two sub-sections describe the most daunting methodological and practical challenges to the production of valid indicators of corporate respect for human rights.

A. METHODOLOGICAL CHALLENGES

As any simplification and standardization process, the production of indicators may result in large distortions. Two of the most important methodological challenges in producing valid business and human rights indicators are omitted variables and variance truncation.

¹⁰² Mazars and Shift, *Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights: A Discussion Paper*, *supra* note 68.

¹⁰³ All comments to RAFI are collected at the following webpage: Business & Human Rights Resource Centre, Business and Human Rights Reporting and Assurance Frameworks Initiative, <http://www.business-humanrights.org/Documents/RAFI>.

¹⁰⁴ Mazars and Shift, *The Business and Human Rights Reporting and Assurance Frameworks Initiative: Project Framing Document* Oct. 2013.

¹⁰⁵ Barsh, *supra* note 80, at 95; Todd Landman and Julia Häusermann, *Map-Making and Analysis of the Main International Initiatives on Developing Indicators on Democracy and Good Governance* (Eurostat/University of Essex/Rights and Humanity 2003) ¶ 26. In general on measurement validity, see Robert Adcock and David Collier, *Measurement Validity*, 95 AMERICAN POLITICAL SCIENCE REVIEW 529 (2001).

Omitted variables. As a proxy measure of corporate human rights performance, GRI indicator G4-HR8 asks companies to report the “total number of incidents of violations involving rights of indigenous peoples”.¹⁰⁶ This indicator risks being an invalid measure of the adverse human rights impacts by corporations because it does not take into account numerous contextual factors that can affect the “score” of a company. To start with, human rights abuses can saturate.¹⁰⁷ For instance, a reduction in the number of incidents could result from the previous (unjustified) arrest of all indigenous leaders. What appears as a good score on G4-HR8 (a low number of incidents) would not derive from an improvement of the situation but from the perverse effects of earlier abuses. Second, data collection is inevitably biased towards events that occur, not events that are averted. Since a policy of intimidation can prevent local communities from protesting and registering complaints, less abuses can be the consequence of self-censure rather than appropriate human rights due diligence. What appears as a good score on G4-HR8 would not derive from responsible behavior but from a climate of repression.¹⁰⁸ Third, some companies have transparent complaint mechanisms and operate in country where human rights defenders have freedom to operate. In these cases, zero, or nearly zero, abuses pass without documentation. Other companies adopt a culture of secrecy and/or operate in closed societies. In these cases, substantial abuses can remain unknown. This asymmetry produces the “paradox of human rights statistics”, according to which “less information on rights violations may imply the existence of more violations”.¹⁰⁹ What appears as a good score on G4-HR8 would not derive from few adverse human rights impacts but from lack of transparency. Many other factors can affect a company’s score on G4-

¹⁰⁶ Global Reporting Initiative, G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures, *supra* note 34, at 73.

¹⁰⁷ I. Richard Savage, *Hard-Soft Problems*, 80 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 1, 4 (1985); Jorge L. Romeu, *Statistical Thinking and Data Analysis: Enhancing Human Rights Work*, in STATISTICAL METHODS FOR HUMAN RIGHTS 65, 69 (Jana Asher et al. eds., New York, Springer 2008).

¹⁰⁸ Goldstein, *supra* note 80, at 51; Claude and Jabine, *Exploring Human Rights Issues with Statistics*, *supra* note 80, at 21; Lopez and Stohl, *supra* note 91, at 218; UNDP, *Using Indicators for Human Rights Accountability*, in HUMAN DEVELOPMENT REPORT 89, 90 (2000).

¹⁰⁹ Spagnoli, *supra* note 24, at 15. See also Goldstein, *supra* note 80, at 45; Barsh, *supra* note 80, at 100; Philip Alston, *Towards a Human Rights Accountability Index*, 1 JOURNAL OF HUMAN DEVELOPMENT 249, 255 (2000).

HR8: some companies face more difficult environments (repressive regimes), more violent resentment (aggressive opposition) or more subtle strategies from opponents (sabotages). How to take them into account?

One potential solution to the problem of omitted variables is using indicators not to make comparisons between companies, but only to track corporate progress over time. A company's context of operation does not change significantly from one year to the other, and this should allow the comparability of longitudinal scores. If one wants to compare different companies, methodological challenges can be limited by using sector- and/or country-specific indicators. Companies operating in the same sectors and/or countries often face similar contextual factors. Sector- or country-level indicators would therefore permit to partially control for these variables. It makes much more sense to compare two mining companies operating in Chad than a mining company operating in Argentina and a garment factory with suppliers in Bangladesh. Lastly, indicators should be accompanied with contextual information in narrative form. The International Integrated Reporting <IR> Framework explicitly recognizes that "suitable quantitative indicators" should be "presented with qualitative information to provide context and improve meaningfulness. Relevant qualitative information includes an explanation of: measurement methods and underlying assumptions".¹¹⁰ The authors of KPI for ESG 3.0 share this view and affirm that they "are fully aware that some aspects cannot be expressed sufficiently in 'numbers alone'. Moreover, they fully accept the fact that management reserves and deserves the right to put performance data into context and provide explanations. For those aspects which require further context, Key Performance Narratives (KPNs) are included. KPNs typically consist of 1-2 specific questions which call for a precise answer with a limit of words".¹¹¹

¹¹⁰ The International Integrated Reporting Council, *The International <IR> Framework* 31 (2013).

¹¹¹ DVFA Society of Investment Professionals in Germany and EFFAS European Federation of Financial Analysts Societies, *supra* note 75, at 7. A similar approach is suggested by IPIECA (the global oil and gas industry association for environmental and social issues), according to which, "because of the complexity and local dimension of these [social] issues, the majority of indicators in this section [on social and economic

Variance truncation and false precision. A potential problem of any measurement tools is little sensitivity. Variance truncation is the degree to which collected information is forced into a limited number of categories (such as in a scale from 1 to 5) thus inevitably placing items that are different in the same category.¹¹² Taking an example from state-focused measures, an indicator that compares the yearly performance of Norway and Somalia on a 1 to 5 human rights scale would not detect any difference between Somalia in 2008 (which might have been a promising year for Somali standards) and Somalia in 2012. Both years would still require a score of 5 in comparison with the 1 of Norway. Similarly, what happens in a 1 to 5 scale indicator of corporate impact on indigenous rights when a company moves from displacing 1,000 people one year to 10,000 the following year? What if 1,000 displaced people had already warranted a score of 5?

One potential solution to variance truncation is the employment of wider scales. For instance, in order to populate the Euronext Vigeo Indices, Vigeo assigns a human rights score ranging from 0 to 100 to more than 2,000 companies.¹¹³ However, this strategy risks falling victim to another problem: false precision. At the conceptual level, is it meaningful to say that two companies have a score of freedom of association of 78 and 85? What does it mean to say that there is 3 times more freedom to unionize in one company than in another? At the practical level, more precise scores require better data. Yet, even with respect to state-focused measures (which rely on more systematic and reliable records), previous analysis has shown that “the available sources of systematic information are neither rich enough, reliable enough in type of content offered (e.g., qualitative descriptions of abusive episodes, numerical estimates of victims, etc.), nor consistent enough in the way that similar episodes are described (no matter how) either within the same

indicators] are based on qualitative descriptions of a company’s management approach”: IPIECA et al., *Oil and Gas Industry Guidance on Voluntary Sustainability Reporting* 84 (2010).

¹¹² Landman, *Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide*, *supra* note 80, at 11.

¹¹³ NYSE Euronext, *supra* note 63, at 8. The same range is used by RightsBusiness, *supra* note 68, at 6.

country or across countries, to support a more-finely-tuned indicator than currently exists at any acceptable level of reliability”.¹¹⁴

Translating respect for human rights into numerical scales is thus a problematic endeavor. On the one hand, small differences in human rights scores (between companies or over time) are unlikely to be perceived as credible measures of genuine variation; on the other hand, large differences would likely be obvious even without the use of indicators. Business and human rights indicators risk ending up documenting in a formal way what everybody already knows.¹¹⁵

B. PRACTICAL DIFFICULTIES

Any good measurement relies on good information. Unfortunately, all human rights data suffer from significant limitations.¹¹⁶ The main sources of information on corporate human rights performance are corporate self-reporting and third-party documentation.

Corporate self-reporting. Companies increasingly include human rights information in their sustainability reports and on their website.¹¹⁷ In addition, they sometimes release facts and figures about specific projects or country of operations.¹¹⁸ Corporate self-reporting has three important advantages: (1) companies are evidently best placed to know their own human rights situation; (2) information is easily accessible; (3) figures are generally standardized (most companies report

¹¹⁴ David L. Richards, *supra* note 80, at 19.

¹¹⁵ Goldstein, *supra* note 80, at 55. See also Judith Eleanor Innes, *Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 235, 252 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); Lopez and Stohl, *supra* note 91, at 229; Carr Center for Human Rights Policy, Report of the Workshop on Measurement and Human Rights 6 (Harvard University 2006).

¹¹⁶ See Spierer, *supra* note 80, at 199; Kenneth A. Bollen, *Political Rights and Political Liberties in Nations: An Evaluation of Human Rights Measures, 1950 to 1984*, in HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 188, 189 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); Goldstein, *supra* note 80, at 41; Landman and Häusermann, *supra* note 105, para. 99.

¹¹⁷ For surveys on human rights reporting trends, see Global Reporting Initiative and Roberts Environmental Center, *Reporting on Human Rights* (2008); J. Emil Morhardt, *General Disregard for Details of GRI Human Rights Reporting by Large Corporations*, 10 GLOBAL BUSINESS REVIEW 141 (2009); Elizabeth Umlas, *Corporate Human Rights Reporting: An Analysis of Current Trends* (Realizing Rights, UN Global Compact and Global Reporting Initiative 2009).

¹¹⁸ See, for instance, Nestlé and Danish Institute for Human Rights, *supra* note 11.

on the same issues in a similar way) and can be aggregated for comparability. The problems with corporate self-reporting lie in its scope and trustworthiness.¹¹⁹ First, while there is already consistent data to populate policy indicators, companies disclose little information on their human rights due diligence procedures and almost nothing on impacts (with a few exceptions, such as employee fatalities). Indeed, it is unreasonable to expect a business enterprise to report on adverse impacts, especially where they are also illegal.¹²⁰ Second, self-reported data is difficult to verify and often contested, in particular with respect to process indicators. For instance, the company may state that it has consulted with all affected stakeholders, but civil society organizations may dispute that consultations excluded some vulnerable groups. An example is the conflict between Mining Watch Canada and Barrick Gold on, amongst other things, the consultations around the development of a grievance mechanism for the Porgera mine in Papua New Guinea.¹²¹

A partial solution to the incompleteness and unreliability of self-reporting may come from recent (and ongoing) regulatory innovations that require corporate disclosure of sustainability information. Reporting on human rights is today compulsory (under a “comply or explain” approach) for: listed companies in the United Kingdom;¹²² listed companies and non-listed companies with more than 500 employees in France;¹²³ state-owned enterprises in Sweden;¹²⁴ state-owned enterprises, listed companies and non-listed companies that exceed at least two of the

¹¹⁹ For a more detailed discussion of the issue, see William S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 JOURNAL OF BUSINESS ETHICS 253 (2003).

¹²⁰ ITUC, *supra* note 26, at 5.

¹²¹ Mining Watch Canada, Letter to Dr. Navanethem Pillay, UN High Commissioner for Human Rights, Regarding Abuse by Barrick Gold of a Non-Judicial Grievance Mechanism for Victims of Rape by Security Guards at the Porgera Joint Venture Mine in Papua New Guinea (2013); Barrick Gold Corporation, Letter to Dr. Navanethem Pillay, UN High Commissioner for Human Rights, Regarding Violence Against Women: Framework of Remediation Initiatives for the Porgera Joint Venture in Papua New Guinea (the Framework) (2013).

¹²² Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 § 414C(4)(d)(iii).

¹²³ Code De Commerce Article L225-102-1; Décret N° 2012-557 Du 24 Avril 2012 Relatif Aux Obligations De Transparence Des Entreprises En Matière Sociale Et Environnementale Article 1.II.3.

¹²⁴ Ministry of enterprise, energy and communications, *Guidelines for External Reporting by State-Owned Companies* (Stockholm, Government of Sweden 2007).

following three size limits (total assets/liabilities of DKK 143 million, net revenue of DKK 286 million, an average of 250 full-time employees) in Denmark.¹²⁵ In April 2013, the European Commission adopted a proposal for a Directive (now being examined by the European Parliament) that would require the largest 18,000 European companies to publish a non-financial statement (always under a “comply or explain” framework) containing information relating to, among other topics, respect for human rights.¹²⁶ Other jurisdictions concentrate on specific human rights issues: the Netherlands requires companies that receive financial support from the State (such as export credit) to report on their efforts against child labor;¹²⁷ every retail seller and manufacturer doing business in California and with annual worldwide gross receipts that exceed one hundred million dollars shall disclose its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale;¹²⁸ any U.S. person whose aggregate investment in Burma exceeds \$500,000, shall provide a concise summary of its due diligence policies and procedures (including those related to risk and impact assessments) that address operational impacts on human rights, worker rights, and/or the environment in Burma.¹²⁹ The problem with these initiatives is that they offer little guidance on what exact data must be disclosed. Standardization and comparability of information are therefore not guaranteed.¹³⁰ In

¹²⁵ Danish Financial Statement Act § 99 (2009) Section 99; Danish Ministry of Business and Growth, *Corporate Social Responsibility and Reporting in Denmark: Impact of the Third Year Subject to the Legal Requirements for Reporting on RSI in the Danish Financial Statements Act* (2012).

¹²⁶ Ruggie shares the view that the Directive will “enable companies to report on human rights related risk in a manner that is ... comparable across companies”: John G. Ruggie, Letter to Rt Hon Dr Vince Cable, MP, Secretary of State for Business, Innovation and Skills, Re: The European Commission’s Proposal on the Disclosure of Non-Financial Information by Companies 1 (2014).

¹²⁷ Minister of the Interior and Secretary of State for Economic Affairs, Human Rights Strategy for Foreign Policy (Jun. 16, 2009), <https://zoek.officielebekendmakingen.nl/dossier/31263/kst-31263-37.html/>.

¹²⁸ The California Transparency in Supply Chains Act of 2010.

¹²⁹ U.S. Department of State, Reporting Requirements on Responsible Investment in Burma (2013).

¹³⁰ See, for instance, the debate over the first reports submitted by U.S. investors in Burma: EarthRights International, *First Myanmar Investment Disclosures Present Opportunities and Challenges* (Jul. 10, 2013), <http://www.earthrights.org/campaigns/first-myanmar-investment-disclosures-present-opportunities-and-challenges>; Jonathan Kaufman, *Coke’s report on responsible business practices in Myanmar sets standard for transparency on both successes and failures*, EARTHRIGHTS INTERNATIONAL (Dec. 20, 2013), <http://www.earthrights.org/blog/cokes-report-responsible-business-practices-myanmar-sets-standard-transparency-both-successes>.

addition, auditors often do not possess sufficient human rights expertise to verify the truthfulness of the information reported.¹³¹

Third-party documentation. Information on the human rights performance of corporations is offered by an increasing number of external sources, such as non-governmental organizations, the media, international organizations, state agencies, tribunals, etc. While third-party reports often provide invaluable forthright assessments of corporate behavior, the strategy of using these sources to produce valid business and human rights indicators suffers from numerous drawbacks. First, reports are frequently expressed in narrative or anecdotal form, which is difficult to aggregate and standardize for comparative purposes.¹³² Second, the accuracy of the information cannot always be verified. Independent accounts are the object of contestation as fierce as corporate self-disclosure.¹³³ Third, these sources inevitably portray only a partial picture of a company's performance. They never cover all corporate operations, and their findings may reflect the exception (an extraordinary rosy or gloomy picture) rather than the rule. Indeed, many human rights abuses go unnoticed because of the risks incurred by witnesses and victims (torture, disappearances, repression, etc.) and the sheer number of corporations operating worldwide. Human rights scholars have long questioned the ability of human rights NGOs to comprehensively monitor human rights protection in less than 200 states.¹³⁴ What about 100,000 multinational corporations, with more than 900,000 subsidiaries and millions of

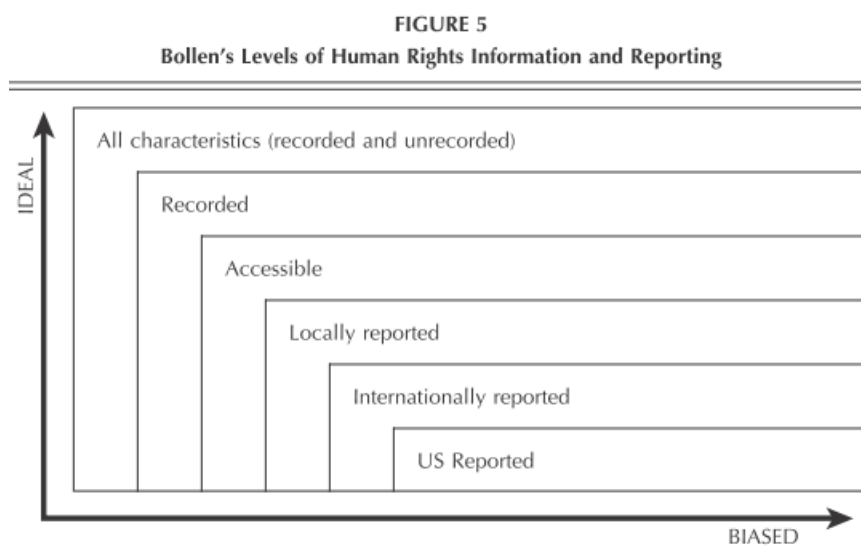
¹³¹ ITUC, *supra* note 26, at 5; Letter from Accountability Counsel, Comments on Shift and Mazars' Discussion Paper: Developing Global Standards for the Reporting and Assurance of Company Alignment with the UN Guiding Principles on Business and Human Rights at 3 (Jul. 2013).

¹³² This is a feature of "old" and "new" reports: see Human Rights Watch, *The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities* (1999); Human Rights Watch, *What is a House Without Food? Mozambique's Coal Mining Boom and Resettlements* (2013).

¹³³ See the numerous corporate responses against allegations of human rights abuses posted on the Business & Human Rights Resource Centre's website: Business & Human Rights Resource Centre, <http://www.business-humanrights.org/>.

¹³⁴ Todd Landman, *Measuring Human Rights*, 26 HUMAN RIGHTS QUARTERLY 906, 923 (2004).

subcontractors?¹³⁵ Fourth, a lot of information is lost in translation. Kenneth Bollen counted six levels of information on human rights violations: all violations, recorded violations, known and accessible violations, locally reported violations (nation-state), internationally reported violations, and violations reported in foreign sources, such as US sources (see figure below).¹³⁶



See Kenneth A. Bollen, *Political Rights and Political Liberties in Nations: An Evaluation of Rights Measures, 1950 to 1984*, in *HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT 198* (1992).

The problem with these six layers is that some information has higher chances to pass from one box to the next, and thus smaller boxes are inevitably biased (that is, they do not embody a representative sample of wider reality). Examples of features affecting the likelihood of business and human rights data moving from larger to smaller boxes include deviation from past practices (new abuses are more likely to make headline news), local information technology, openness of a region to the wider world, media coverage (which is itself dependent on wealth and strategic significance) and windows of opportunities (large, brand name companies are more likely to attract media and civil society attention).

¹³⁵ Unavailability of reliable information across a large number of companies has long been recognised as one of the main problems in measuring corporate social responsibility: Walter F. Abbott and R. Joseph Monsen, *On the Measurement of Corporate Social Responsibility*, 22 *ACAD MANAGE J* 501, 502 (1979).

¹³⁶ Bollen, *supra* note 116, at 198.

Measurement initiatives that use third-party information can employ three different tactics to offset the problems outlined above. To begin with, overreliance on one type of external source should be avoided. Human rights researchers have conspicuously advanced from the first attempts to measure political violence, which were based on data from the New York Times alone.¹³⁷ For instance, RepRisk, an ESG data provider, conducts machined-coded searches for negative stakeholder sentiments in 14 languages across thousands of sources.¹³⁸ Second, potential manipulation of raw information can be detected through the use of statistical methods. Falsification leaves its mark on human rights records.¹³⁹ Examples of “manipulation footprints” are lack of data on a known phenomenon, sudden jumps in related data categories, sudden cessation of a series, and suspicious proximity of data to official benchmarks. Third, standardization of data reporting and categorization would help make the most of available resources. It is particularly difficult to work with already processed data which is available from different sources using different definitions (such as newspapers, archives, police files, reports from NGOs, etc.). The amount of work to “translate” this information in standardized categories is “mind-boggling”.¹⁴⁰ The solution with respect to state violations has been the creation of a common reporting format, named HURIDOCS, which establishes uniform but flexible guidelines for data collection and reporting of human rights violations.¹⁴¹ It would be particularly interesting to establish similar initiatives in the business and human rights domain via the use of harmonized

¹³⁷ Charles Lewis Taylor and Michael C. Hudson, *World Handbook of Political and Social Indicators II. Section I. Cross-National Aggregate Data*. (DTIC Document 1970). For a general critique of existing methods that use newspaper sources, see Joe Foweraker and Roman Krznaric, *Measuring Liberal Democratic Performance*, 48 *POLITICAL STUDIES* 759 (2000).

¹³⁸ RepRisk, Methodology, <http://www.reprisk.com/methodology/>.

¹³⁹ Douglas A. Samuelson and Herbert F. Spierer, *Use of Incomplete and Distorted Data in Inference About Human Rights Violations*, in *HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT* 62 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992).

¹⁴⁰ Goldstein, *supra* note 80, at 47.

¹⁴¹ Judith Dueck, *HURIDOCS Standard Formats as a Tool in the Documentation of Human Rights Violations*, in *HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT* 127 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992); Randy B. Reiter et al., *Guidelines for Field Reporting of Basic Human Rights Violations*, in *HUMAN RIGHTS AND STATISTICS: GETTING THE RECORD STRAIGHT* 90 (Thomas B. Jabine and Richard P. Claude eds., University of Pennsylvania Press 1992).

forms to register events and an agreed-upon vocabulary on adverse corporate human rights impacts.¹⁴²

VI. CHALLENGES TO THE EMANCIPATORY POTENTIAL OF BUSINESS AND HUMAN RIGHTS INDICATORS

Human rights are socially-constructed norms whose fundamental objective is to give voice to the voiceless. This section explores the potential problems arising from the fact that business and human rights indicators are not technical, politically-neutral tools. Rather, they can alter power relations. As indicators become increasingly central to business and human rights governance systems, “it is critical to examine how they are produced and how the forms of knowledge they create affect global power relationships”.¹⁴³

First of all, as highlighted in Section 4, business and human rights norms (such as the GPs) are often too vague for unmediated translation into operational indicators. Those who are in control of the production of indicators thus tacitly, but inevitably, take important normative decisions (even if they are often sold as merely objective and technical ones).¹⁴⁴ As highlighted by Navy Pillay, “devising a policy or statistical indicator is not a norm or value-neutral exercise”.¹⁴⁵ Acting this way, the producers of indicators may surreptitiously become the winners in the struggle over the creation (and acceptance) of new business and human rights norms. More legitimate bodies (such as the Human Rights Council or national parliaments) lose out because of their inability to come up with more precise definitions.

¹⁴² This strategy would run parallel to those initiatives that reduce duplication of efforts in ethical trade auditing. See, for instance, Sedex, The Supplier Ethical Data Exchange, www.sedexglobal.com; Fair Factories Clearinghouse, Software Partners for Responsible International Workplaces, www.fairfactories.org; Ecodesk, The Science of Sustainable Supply Chain, www.ecodesk.com.

¹⁴³ Sally Engle Merry, *Measuring the World*, 52 CURRENT ANTHROPOLOGY S83, S85 (2011). For a similar concern, see also Rosga and Satterthwaie, *supra* note 28; Bal Sokhi-Bulley, *Governing (Through) Rights*, 20 SOCIAL & LEGAL STUDIES 139 (2011); Galit A. Sarfaty, *Regulating Through Numbers*, 53 VA. J. INT’L L. 575, 609ff. (2012); Davis et al., *supra* note 27.

¹⁴⁴ Merry, *Measuring the World*, *supra* note 143, at S86; Rosga and Satterthwaie, *supra* note 28, at 284.

¹⁴⁵ Office of the High Commissioner for Human Rights, *supra* note 27, at iii.

In addition, the mere “language” of indicators, with its aseptic, seemingly objective aspect, may make it more difficult for human rights abusers to be held accountable.¹⁴⁶ There are at least three ways in which this possibility can materialize. First, indicators risk condoning a low level of human rights abuses. From a human rights perspective, every adverse human rights impact is one too many: there is no need to count and measure.¹⁴⁷ What business and human rights indicators often do, in contrast, is give the false impression that a “good” score (for instance, a 2 in a scale from 1 to 5) means “good” behavior.¹⁴⁸ For instance, the GoodCorporation displays the score of a company on its Framework on Human Rights using traffic light colors. Few non-compliant grades guarantee a green-yellow score. Yet, any score that is not “perfect” (i.e., zero abuses) is actually “bad”, and should not receive a positive endorsement, as the green color implies to the eyes of the user. Some companies might also pervert the meaning of ratings. This might be the case of best-in-class approaches, such as the one used by DJSI. Companies included in DJSI are the best in their sectors, but this does not mean that they are perfect, or that abuses do not occur: being better than the others do not always mean being good.

Second, in some circumstances indicators represent less powerful advocacy tools than narratives and anecdotes.¹⁴⁹ Focusing on the *number* dimension of human rights abuses can lead to losing sight of their *suffering* dimension.¹⁵⁰ For instance, a document reporting that a mining company has being complicit in the displacement of 856 individuals or that a fashion brand is associated with the death of 230 workers will arguably not move people more than a report with picture and personal stories of the victims of the abuses. Following Meyer’s advice, “to quantify is

¹⁴⁶ Human rights indicators are part of a larger social trend towards the increasing importance of “numbers” and “audits”: see THEODORE M. PORTER, *TRUST IN NUMBERS* (Princeton University Press 1996); Michael Power, *The Audit Society*, OUP CATALOGUE (1999).

¹⁴⁷ Savage, *supra* note 107, at 4; Claude and Jabine, *Exploring Human Rights Issues with Statistics*, *supra* note 80, at 21.

¹⁴⁸ For a similar argument with respect to state-focused indicators, Alston, *supra* note 109, at 254.

¹⁴⁹ Spagnoli, *supra* note 24, at 8.

¹⁵⁰ Landman, *Measuring Human Rights*, *supra* note 134, at 910; Samuel R. Lucas, *THE ROAD TO HELL...*, 30 WISCONSIN INTERNATIONAL LAW JOURNAL 259, 304 (2012).

necessarily to depersonalize and even dehumanize a topic's content. The supreme value of human rights requires that one always keeps in mind the specific human costs in terms of lives, pain, and suffering that violations of rights entail".¹⁵¹

Third, indicators risk making contestation of misleading information more difficult. While scores and ratings are the outcome of controversial normative and methodological decisions (as seen above), they are often incorrectly presumed to be, or presented as, scientifically objective.¹⁵²

When companies proudly announce their inclusion in the FTSE4Good, the underlying (subjective) choices of the index are rarely discussed. The consequence is that scores on business and human rights indicators will be difficult to challenge because of their aura of objectivity.¹⁵³

Contestation would require detailed (but not media-appealing) proof of the inaccuracy of data input and/or of the methodology used.

VII. CONCLUSION

Indicators, ratings and indices have become a distinctive feature of the global governance landscape in business and human rights. And new initiatives continue to be launched. In July 2012 a dozen leading multi-national corporations (including The Coca-Cola Company, BP, Procter & Gamble, ENI and Nestlé) formed the Global Corporate Community of Practice, a private-sector initiative which provides a safe platform to collect, develop and share best practices on how to use or adapt established methods and tools of risk management to fulfill their

¹⁵¹ William H. Meyer, *Human Rights and MNCs*, 18 HUMAN RIGHTS QUARTERLY 368, 381 (1996).

¹⁵² Tor Krever, *Quantifying Law*, 34 THIRD WORLD QUARTERLY 131 (2013).

¹⁵³ Merry, *Measuring the World*, *supra* note 143, at S84. For a similar argument with respect to the first attempts to measure state performance, see Lars Schoultz, *U.S. Policy Toward Human Rights in Latin America: A Comparative Analysis of Two Administrations*, in GLOBAL HUMAN RIGHTS: PUBLIC POLICIES, COMPARATIVE MEASURES, AND NGO STRATEGIES 77, 84 (Ved P. Nanda et al. eds., Boulder, Colo., Westview Press 1981); Goldstein, *supra* note 80, at 38, 48.

due diligence responsibilities.¹⁵⁴ One of the three GCOP's working committees is specifically dedicated to the topic of measuring actual and potential human rights impacts.¹⁵⁵ In July 2013, a geographically diverse group of academics, free expression and privacy advocates, technologists, and socially responsible investors under the leadership of Rebecca MacKinnon published a draft methodology to assess, compare, and ultimately rank the world's major information and communications technology companies on their policies and practices related to free expression and privacy.¹⁵⁶ The project, called "Ranking Digital Rights", aims to publish an inaugural report covering Internet and telecommunications services companies by the end of 2014.¹⁵⁷ In October 2013, the Sustainability Accounting Standards Board (SASB), a 501c3 non-profit organization that provides sustainability accounting standards for disclosure in mandatory filings to the U.S. Securities and Exchange Commission, released its Conceptual Framework. Notwithstanding the strong emphasis on materiality, and the objective to develop standards that are "cost-effective, comparable and auditable", SASB's concept of sustainability "also includes risk of business complicity with human rights violations".¹⁵⁸

Against a backdrop of growing interest in business and human rights indicators, this article mapped the most representative measurement initiatives on the topic and explored a number of normative, methodological, practical and political challenges to the production of valid and emancipatory measures of corporate respect for human rights. In addition, it suggested some avenues to overcome potential skepticism:

¹⁵⁴ Roger D. Branigin, Meeting the Challenges of Human Rights Due Diligence Through Effective Risk Management, presented at Business and Human Rights: Moving Forward, Looking Back (West Virginia University School of Law 2013).

¹⁵⁵ International Organisation of Employers, New Initiative of the UN Working Group on Business and Human Rights for a Global Corporate Community of Practice (IOE Member Communication G-119 2012).

¹⁵⁶ Ranking Digital Rights, *Phase 1 Criteria Research Draft - Ranking Internet & Telecommunications Companies on Free Expression and Privacy* (2013).

¹⁵⁷ Ranking Digital Rights, Overview, <http://rankingdigitalrights.org/about/>.

¹⁵⁸ Sustainability Accounting Standards Board, Conceptual Framework 8 (2013). SASB's provisional standards for the health care sector – the only ones published so far – include "accounting metrics" (that is, indicators) on human rights issues such access to medicine and drug safety: Sustainability Accounting Standards Board, Pharmaceuticals: Sustainability Accounting Standard (Version 1.0) 9 (2013).

- tracking progress over time is less problematic than comparing scores across companies;
- participatory and transparent processes can alleviate the problems associated with controversial normative decisions and power shifts to unaccountable bodies;
- sector- and country-specific indicators can diminish the irregularities deriving from omitted variables and information bias;
- the strategy of accompanying scores with narrative explanations of the company's contexts of operation can help avoid the political risks linked to an overreliance of self-contained, seemingly objective, quantitative expressions.¹⁵⁹

Recurring to standard-based measures and surveys, so far neglected by the business and human rights community, might also represent a fruitful strategy. Standard-based measures use expert judgment to transform qualitative human rights information into a “score” on a standardized scale that typically is both ordinal and limited in range.¹⁶⁰ These types of measures are widely used to compare states' human rights practices. For instance, the Political Terror Scale relies on two researchers to code countries on a scale from 1 to 5 (the highest the number, the gravest the violations) on the basis of the qualitative narratives found in the annual human rights reports published by Amnesty International and the U.S. State Department.¹⁶¹ The absence of reliable data on corporate human rights abuses worldwide precludes from the creation of standard-based indicators of adverse human rights impacts. Yet, it seems feasible to produce standard-based scales for the human rights policies and processes of at least the largest multinational

¹⁵⁹ The importance of the complementarity between narrative and quantitative human rights information is repeatedly acknowledged: see Goldstein, *supra* note 80, at 49; UNDP, *supra* note 108, at 90–92; Suesser and Suarez de Miguel, *supra* note 99, at 166; Office of the High Commissioner for Human Rights, *supra* note 27, at 26.

¹⁶⁰ LANDMAN AND CARVALHO, *supra* note 16, at 64.

¹⁶¹ Reed M. Wood and Mark Gibney, *The Political Terror Scale (PTS)*, 32 HUMAN RIGHTS QUARTERLY 367 (2010). Similar projects are the Cingranelli and Richards (CIRI) Human Rights Data Project and Oona Hathaway's scale of torture: David L. Cingranelli and David L. Richards, *The Cingranelli and Richards (CIRI) Human Rights Data Project*, 32 HUMAN RIGHTS QUARTERLY 401 (2010); Hathaway, *supra* note 66.

corporations.¹⁶² Experts might be called to assign a score to the corporate policies on the basis of the standards included in the GPs (such as reach within and outside the company, scope of human rights referred to, level of adoption, etc.). In the near future, this might also become viable with respect to human rights processes. Experts may be called to compare the due diligence procedures disclosed under the US Reporting Requirements on Investment in Burma with the requirements included in the GPs and assign them a score on a standardized scale from 1 to 10.

Surveys represent a promising tool as well. Innovative process indicators could select a representative sample of stakeholders and ask them a set of predefined questions on the company's human rights processes, grievance mechanisms and/or adverse impacts.¹⁶³ The questions can focus either on *perceptions* of human rights (e.g., do you deem the corporate grievance mechanism to be sufficiently accessible?) or on *experiences* of human rights (e.g., have you been displaced because of the company's project?).¹⁶⁴ New technologies offer a great opportunity to diminish the costs of running surveys and elicit the views of potentially affected stakeholders.¹⁶⁵ Marks & Spencer (M&S), for instance, relies on a mobile application that returns anonymous survey results to communicate with workers in its clothing supply chain and gather feedback on subjects such as working conditions, job satisfaction and training.¹⁶⁶ Similarly,

¹⁶² Standard-based measures overcome most of the problems associated with reputational scales and content analysis methodologies: see Abbott and Monsen, *supra* note 135, at 503; Turker, *supra* note 98, at 415.

¹⁶³ Numerous surveys have already been conducted on specific human rights issues: see C. Reis et al., *The Prevalence of Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone*, BOSTON, MA: PHYSICIANS FOR HUMAN RIGHTS (2002); ROMESH SILVA ET AL., THE PROFILE OF HUMAN RIGHTS VIOLATIONS IN TIMOR-LESTE, 1974-1999 (Benetech Initiative 2006); Suesser and Suarez de Miguel, *supra* note 99; L. Stark et al., *Measuring Violence Against Women Amidst War and Displacement in Northern Uganda Using the "Neighbourhood Method,"* 64 J EPIDEMIOLOG COMMUNITY HEALTH 1056 (2010); Alina Potts and Kathleen Myer, *Measuring Human Rights Violations in a Conflict-Affected Country*, 5 CONFLICT AND HEALTH 4 (2011).

¹⁶⁴ LANDMAN AND CARVALHO, *supra* note 16, at 91.

¹⁶⁵ As far as employees are concerned, see Chartered Institute of Personnel and Development, *Social Media and Employee Voice* Mar. 22, 2013.

¹⁶⁶ Good World Solutions, Labor Link, <http://www.mylaborlink.org/>.

Walmart uses real-time, anonymized worker feedback to ensure safe factory working conditions throughout its Bangladesh supply chain.¹⁶⁷

Survey methods have their own drawbacks. First, potential victims of corporate human rights abuses can ignore their rights and corporate best practices. This would inevitably invalidate their responses.¹⁶⁸ Second, interviewees can exaggerate some claims because of their political objectives or minimize some problems out of fear of repercussions.¹⁶⁹ Third, there are often difficulties with the sampling frame and the sampling strategy: developing countries may have no census; it might be difficult to reach disadvantaged population; etc.¹⁷⁰ Yet, a strong argument in favor of surveys is validity: surveys elicit the views of the ultimate beneficiaries of human rights.¹⁷¹ According to the GPs, “to enable business enterprises to assess their human rights impacts accurately, [companies] should seek to understand the concerns of potentially affected stakeholders by consulting them directly”.¹⁷² This could also be used against those corporations that dismiss external expert assessments of governance as uninformed pontification by outsiders.¹⁷³

The conclusion of this article is that, while business and human rights indicators have great potential, we should proceed with care. Most existing initiatives lack the legitimacy to take

¹⁶⁷ LaborVoices, LaborVoices will direct a Factory Safety Project for Walmart in Bangladesh (May 16, 2013), <http://www.laborvoices.com/press>. Better Work, a partnership between the International Labour Organization and the International Finance Corporation, also use mobile technologies to reach employees in supply chains: see Better Work, Mobile App Brings Cambodian Labour Law to Users’ Fingertips (Oct. 3, 2013), <http://betterwork.org/global/?p=3650>.

¹⁶⁸ Christopher J. Anderson et al., *In the Eye of the Beholder?*, 38 COMPARATIVE POLITICAL STUDIES 771 (2005); D. Richards, *What Do Citizens Mean When They Say “Human Rights,”* 30 ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION, PHILADELPHIA, PA (2006).

¹⁶⁹ Landman, *Measuring Human Rights*, *supra* note 134, at 914.

¹⁷⁰ Kaufmann and Kraay, *supra* note 79, at 16; LANDMAN AND CARVALHO, *supra* note 16, at 101.

¹⁷¹ The literature on HRIAs emphasises the importance of participation by, and consultation with, affected stakeholders: Gauthier de Beco, *Human Rights Impact Assessments*, 27 NETH. Q. HUM. RTS. 139, 166 (2009); Harrison, *Human Rights Measurement: Reflections on the Current Practice and Future Potential of Human Rights Impact Assessment*, *supra* note 17, at 176.

¹⁷² Ruggie, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, *supra* note 4, Commentary to GP 17.

¹⁷³ For innovative approach on the creation of “participatory numbers”, see Robert Chambers, *Who Counts? The Quiet Revolution of Participation and Numbers*, 296 (IDS Working Papers, Institute for Development Studies), Dec. 2007.

controversial normative decisions and disempower vulnerable stakeholders. In addition, methodological and practical problems seriously affect the validity of their scores. Yet, this should not discourage attempts to overcome these challenges. The production of indicators triggers two fundamental processes in the still-adolescent business and human rights field: clarification of norms and collection of information. First, while today the scope of the state duty to protect human rights is relatively well defined, the exact requirements (and limits) of the corporate responsibility of human rights is still unclear in many circumstances. The creation of indicators requires answering difficult questions on how to move from general principles to operational policies, how to solve difficult trade-offs between different responsibilities, how to set corporate priorities, etc.¹⁷⁴ Second, the business and human rights community is often stuck with a “chicken and egg” question: in a bad political atmosphere, it cannot obtain good data; but good data is needed to improve the atmosphere itself. The creation of indicators requires the disclosure of information which would not be produced or released otherwise.

The final call is for more research on the validity and emancipatory potential of specific measurement initiatives.¹⁷⁵ The business and human rights community risks falling victim of the erroneous “article of faith” that some data are better than no data (which often degenerates into the flat assertion that any data, especially ‘quantifiable and quantified’, are better than no data at all).¹⁷⁶ Yet, indicators are only tools, not ends in themselves. They can be seen “as a crutch, indispensable, but still a crutch ... if it is not proportioned to the needs of the user, it can hinder as well as help”.¹⁷⁷ The question is therefore not *whether* to produce business and human rights indicators (as recognized more than 25 years ago by Claude and Jabine, “it now seems clear that

¹⁷⁴ For a similar view, CSR Europe and Business for Social Responsibility, *Measuring and Reporting Corporate Performance on Human Rights* (2001) 8.

¹⁷⁵ See, for instance, Mark Sharfman, *The Construct Validity of the Kinder, Lydenberg & Domini Social Performance Ratings Data*, 15 J BUS ETHICS 287 (1996); Fowler and Hope, *supra* note 40.

¹⁷⁶ Scoble and Wiseberg, *supra* note 83, at 148. See also Alston, *supra* note 109, at 251.

¹⁷⁷ William H. Shaw, *Paradoxes, Problems and Progress*, 68 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 7, 7 (1973).

although measurement might not represent the central feature, it must play a role in studying, assessing, and planning for human rights”¹⁷⁸ but *how* to do that and conform with the objective of giving power to the powerless.

¹⁷⁸ Richard P. Claude and Thomas B. Jabine, *Editors' Introduction*, 8 HUMAN RIGHTS QUARTERLY 551, 553 (1986).