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UN FORUM SERIES – A cartographer's guide to measurement: mapping where we are, determining where we want to be and getting into the messy inroads of legislation

Damiano de Felice

This post was contributed by Michelle Staggs Kelsall, doctoral candidate in law at the University of Nottingham and former Deputy Director of the Human Rights Resource Centre (for ASEAN).

When I think about measurement, it brings to mind for me a popular children's song that depicts the meticulous workings of an inchworm. 'Two and two are four,' sings the inchworm, 'four and four are eight' she continues, to which the chorus of children replies:

Inchworm, inchworm, measuring the marigolds,
 You and your arithmetic, you'll probably go far,
 Inchworm, inchworm, measuring the marigolds,
 Seems to me, you'd stop and see,
 How beautiful they are

The song is perhaps evocative of the challenge faced by many of us engaged in measuring the implementation of the UNGPs: we are simultaneously grappling with assessing the verifiable, of quantifying progress, whilst trying to keep in focus the bigger picture goals that depict a better alternative to the one we find on the ground. In other words, to keep focused on measuring our small steps whilst still maintaining a vision of a larger purpose – of measuring the inches but maintaining sight of the marigold.

Many of the posts in this blog series to date have focused on data-driven, empirical forms of measurement when assessing 'progress' in the implementation of the UNGPs. [Fiona David's](#) contribution, for example, clearly pointed out the desirability of having hard data to support any claims toward combatting slavery and (in its absence) the use of extrapolation methods to build upon the data that is available. Similarly, Paul Middlekoop's piece on [radical transparency](#) and [Ryan Brightwell's](#) discussion of BankTrack highlight the significance of analyzing publicly available data and the problems associated with a lack of it.

I have thoroughly enjoyed reading these posts, all of which provide important insights into the challenges associated with data analysis and offer sophisticated social scientific appraisals of how to get the metrics right. Yet from a legal perspective, the question of measuring progress is just as much normative as it is empirical: in other words, if you want to measure progress, you need to work out not only where you are, but where you think you *should* be and how you intend to get there.

Key challenges from a measurement perspective then become both pinpointing where you think the situation stands against your own 'vision' for the UNGPs (which can be highly subjective) and obtaining consensus with others you are working with on both the current situation and the endpoint of any implementation process.

As a result, for many lawyers I have worked with, measuring 'progress' has tended to take a decidedly cartographic turn: lawyers speak in terms of 'mapping' the existing legal landscape, assessing what new inroads can be found to better meet the UNGPs' objectives, and attempting to find ways to create those inroads through a mix of 'soft' and 'hard' law options.

This is our answer to collating data: we chart the legal terrain in the hope of being able to push the boundaries of that landscape toward more fair and equitable ends.

It was perhaps this impulse that prompted the [Human Rights Resource Centre's](#) 2013 study on [Business & Human Rights in ASEAN](#). In that Study, the Centre worked with lawyers and legal academics from across Southeast Asia to undertake an elaborate exercise in plotting the legislative outlook of the region in light of the state's 'duty to protect' as formulated under the UNGPs.

The result is a detailed work, which endeavors to provide a 'lay of the land overview' of the extent to which the UNGPs have traction in Southeast Asia.

Amongst other things, the Study

- considered existing gaps in legislation in all ten ASEAN member states, with a view to assisting governments to formulate consistent business and human rights policies and amend legislation accordingly;
- assessed domestic regulatory capacity to enforce the law 'on the books' to hold corporations accountable and ensure access to remedies;
- considered the influence of regional and international trade and investment commitments on maintaining adequate domestic policy space to effect social purpose initiatives; and
- considered overall, the extent to which the State's duty to protect against human rights abuse by third parties (including business) was recognized by each country's legal system.

The Centre is not the only one engaged in legal and regulatory mapping. In their 2014 book on [Business & Human Rights in Southeast Asia](#), editors Mahdev Mohan and Cynthia Morel note that 'constructing a map is essential' when charting the new territory the UNGPs endeavor to cover in the region. Although explicitly rejecting a legalistic approach in their introductory chapter, the chimera of the law remains (perhaps because the editors are both lawyers!): regulatory dynamics need to be assessed against the backdrop of the law's coercive power, both in terms of what a state has committed to doing and what it can be held accountable to do in light of its 'on paper' human rights obligations.

A key challenge when considering progress from a normative perspective, however, is that mapping normativity is messy and fraught with issues of interpretation. States often have conflicting obligations on the books or do not appear to consider human rights uniformly throughout their legislation. Malaysia's [National Human Rights Commission](#) recently pointed out that a root cause of the prevalence of business-related human rights abuse was 'the silo-ing by governments of their processes for regulating human rights compliance away from, or at the periphery of, their processes for regulating business and economic activities'.

To some extent, the same can be said of the lawyers that make assessments around them: we don't often reach agreement as to where we want to be or how we want to get there, and so our maps tend to be charting different aspects of the terrain or placing more emphasis on some forms of regulation or legislation over others. Yet at the same time, it's the conversation around that vision that gets us ever closer to an agreed endpoint and gives us greater clarity on where we actually are.

Some might suggest that measuring progress in normative terms is too subjective. This seems particularly the case in countries where legal and regulatory capacities are considered highly questionable, and one is unlikely to yield much in the way of verifiable findings from looking solely at how laws are written and implemented. Much happens beyond the law that remains hidden by any legal analysis.

Yet perhaps a better approach and a more exciting solution to the problem would be to foster trans-disciplinary research that combines different investigative techniques and forms of measurement to get a more holistic sense of what is happening. Looking at the hard data and the messy exigencies of how legal and quasi-legal processes are panning out at the same time might enrich our understandings in yet new and more interesting ways. To see 'progress' as both being able to count the inches along the stem and conceptualize the marigold in our midst might, in fact, lead to something beautiful yet emerging.

Michelle Staggs Kelsall is an Australian human rights lawyer who, from 2013-2015, was the inaugural Deputy Director of the Human Rights Resource Centre (for ASEAN). She is currently the recipient of a Vice Chancellor's Excellence Award at the University of Nottingham, where she is undertaking a doctoral research on forms of private ordering and private regulation in the palm-oil industry and the corporate responsibility to respect human rights.



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