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An index for responsibility: Challenges of human rights measurement on company level

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Abstract

The paper discusses theoretical and methodological issues regarding the creation of a Corporate Human Rights Responsibility (CHRR) index, with particular focus on the conceptualization and operationalization of CHRR. The paper identifies human rights holders in the corporate sphere of influence and the rights they are entitled to; it then develops a context-sensitive human rights catalogue that is relevant for companies operating in Bosnia. Finally, the paper discusses how a concept like human rights can be operationalized for companies in translating the human rights catalogue into corporate policies. These policies will form indicators that should allow a reliable and valid measurement of CHRR.

Introduction

The present paper comprises theoretical work on the problem of human rights measurement on company level. It addresses the conceptualization of CSR and human rights, how to make human rights applicable to companies, and finally how to measure a company's corporate human rights responsibility.

The reflections presented here are part of a wider PhD research project with the title "Corporate Responsibility, Human Rights, and the Balkans. Do Institutions matter?". The PhD thesis discusses institutional drivers of corporate human rights responsibility (CHRR) in comparing a three-fold sample of private Austrian, Dutch, and Bosnian companies, all operating in Bosnia and Herzegovina (hereinafter: Bosnia). An ordinal regression model will measure the impact of various institutional factors on CHRR, which is the dependent variable.

The aim of the paper is to conceptualize and operationalize CHRR in a way that a measurement tool, sensitive to the local context and its particular settings, can be developed in order to launch a first pre-test phase. Therefore, the following questions will be discussed throughout the paper: What does CHRR encompass? And how can human rights as a macro-level concept be measured on the organizational (corporate) level?

The PhD project is embedded in a neo-institutionalist framework which assumes that individual and organizational behavior is shaped by institutional constraints. While in many aspects, the framework will draw on rational choice institutionalism and assume that rational actors pursue their own interests within the institutional setting also the search for legitimacy is an important aspect to understand firm behavior. Organizations gain legitimacy by pragmatically responding to the demands of their stakeholders, and by responding to normative and cognitive institutional pressures (Suchman 1995, 572). The theoretical and methodological reflections in the paper should be understood in the light of the project's neo-institutionalist framework.

The paper aims to contribute to the discussion on how to measure Corporate Social Responsibility (CSR) and CHRR, as current CSR research agenda calls for further theory development and for the refinement of empirical research (Godfrey and Hatch 2007; Lindgreen et al. 2009; McWilliams et al. 2006). Hereby, a clarification of the term "corporate human rights responsibility" is particularly important, as the frequently unclear use of the term "CSR" in current research has led to problems of comparability and has produced little coherent results (see, e.g., Clarkson 1995; Melé 2008).

Corporate Human Rights Responsibility

Corporate human rights responsibility is one particular aspect of CSR, usually located in the social dimension, which increasingly develops to a "discourse of its own" (Buhmann et al. 2011, 2). In contrast to the broad CSR debate, CHRR focuses on human rights only. For a first understanding I define CHRR as responsible corporate conduct toward human rights; the rather blurry definition will be refined below.

CSR and CHRR build on two fundamentally different concepts: While the first is a management strategy for good corporate conduct on the micro-level (Crane 2008, 9), the latter

draws on human rights which address state conduct on the macro-level (Zerk 2006, 44). The challenge is to bridge the gap between these two concepts and operationalize human rights in a way that they are also applicable to corporate conduct.

Human rights are a legal concept and recognizes only states as subjects, which have three kinds of obligations toward human rights: the obligation to respect, protect, and to fulfill/remedy human rights. In contrast is still debated which kind of human rights duties apply to companies (see below). Under current international human rights law companies are not liable for human rights violations, a fact that has favored a “global governance gap” in the protection of human rights.

What is currently missing in the debate on CHRR is systematic research on how companies themselves tackle the problem of human rights. In the remainder of the paper I will discuss the development of a measurement tool for CHRR which should assess corporate commitment to human rights—the CHRR index.

Of Indices and Indicators

The development of the CHRR index requires a thorough conceptualization of CHRR and its operationalization via the identification of a number of specific human rights indicators.

Generally, indicators are rating scales that build on composite information which enables performance-related ranking and transforms qualitative statements into comparative quantitative information (Andersen and Sano 2006, 8). Human rights indicators as specific types of indicators carry “(...) information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights“ (OHCHR 2008, Footnote 3).

The above mentioned gap between human rights as a macro-level concept and corporate responsibility on the micro-level is also present in research. While empirical CSR research usually focuses on the micro-level in assessing organizational practices¹ (see, e.g., Turker

¹ CSR research focusing on the macro-level is still not very widespread, although there has been some development recently, especially when it comes to institutional drivers of CSR (see, e.g., Gjolberg 2009; Midtun et al. 2006).

2009), human rights are measured on the macro-level in evaluating state performances regarding their triple human rights duties (see, e.g., Green 2001; Landmann 2004). The benchmark for human rights measurement is international human rights law; hence the indicator must be closely linked with the rights that it wants to measure (Green 2001, 1067). It must also be clear which kind of duty the indicator measures: Is it about the respect, protection, or fulfillment of the respective right? This certainly affects the shape of the indicator, as does the question if the indicator should focus on the duty bearers or on the rights holders and their enjoyment of human rights (Andersen and Sano 2006, 19 and 29).

Each indicator must meet several quality criteria, such as methodological objectiveness, reliability, and validity. Andersen and Sano (2006, 12-14) suggest to rely on the SMART-criteria to achieve a high quality indicator—indicators must be specific, measurable, attainable, relevant, and time-framed. A specified target group to which the indicator will be applied makes its design easier (Britha Mikkelsen 2005, in Andersen and Sano 2006, 16).

Defining human rights indicators for the micro-level which satisfy all these requirements would be a difficult task; fortunately there exists a solution, offered by the Danish Institute for Human Rights (DIHR). The DIHR developed a Human Rights Compliance Assessment Quick Check for companies (available online for free), which is based on three types of indicators: policy, procedure, and performance. Policy indicators assess if the company has policies or guidelines that target human rights issues; the procedural indicators show if the firm has procedures to implement the rights and make them “effective”, and the performance indicators assess company performance with regard to human rights (Danish Institute for Human Rights 2006, 6). These indicators provide for a comprehensive assessment of how a company is committed to CHRR, they will, however, be selected and adjusted according to the PhD project’s research aims: identifying how companies in Bosnia engage in CHRR.

Conceptualization of CHRR

The conceptualization of the term CHRR is the first step in the tool creation process: We have to identify what CHRR encompasses in order to sort out what the index should measure (face validity). This will occur in two steps. First, I will identify the relevant stakeholders and in a second step, the corporate duties toward CHRR should be identified.

Conceptualization Step I: The Role of Stakeholders

Following empirical literature in organizational research, a conceptualization of CHRR must particularly take stakeholder perspectives into account. It is assumed that business perceptions of stakeholders and stakeholder expectations towards business define what corporate responsibility should encompass—it is, after all, the needs of the stakeholders which should be reflected in CSR or CHRR (Clarkson 1995; Maignan and Ferrell 2000; Turker 2009).

Generally, CHRR is intended to address all relevant stakeholders and to avoid any negative impact on their human rights. “All relevant stakeholders” could mean shareholders and employees, the local community, suppliers and subsidiaries, customers, political actors, etc. Certainly all these groups enjoy the same catalogue of universal human rights, but they will prioritize the rights differently. This affects their perception of and expectations toward CHRR—which, as a consequence, also affects the items the measurement tool should capture (Maignan and Ferrell 2004, 5-7). Thus, if a measurement tool builds on the valuation of corporate responsibility by the different stakeholders with different interests, the result of the measurements will not be consistent (Graafland et al. 2004, 140)—except if the tool was very complex which would require research exceeding the boundaries of the present project.

As a consequence, the project puts the focus on one specific target group of CHRR, which are the employees of a company. The International Labor Organization (ILO) defines employees as “(...) all those workers who hold the type of job defined as ‘paid employment jobs’ (...)” (ILO 2011a). Beside the methodological considerations, employees are considered a central stakeholder group which deserves particular attention: According to Clarkson (1995, 107), employees belong to the group of “primary stakeholders”, whose support is necessary for a company to survive;² Henriques and Sadorsky (1999, 89) classify them together with shareholders as “organizational stakeholders” who have the ability to impact an organization’s bottom line directly. At the same time employees are particularly vulnerable and strongly dependent on their employers, which justifies also a methodological focus on this specific group.

² Secondary stakeholders like media can influence the corporation and vice versa, but in contrast to primary stakeholders they are not essential for its survival (Clarkson 1995, 107).

Conceptualization Step II: Corporate Duties and CHRR

A human rights indicator should measure if the duty-bearer complies with its duties (Rosga and Satterthwaite 2009, 263). At the same time, a measurement tool must be sensitive to what can be realistically expected from a company. Issues exceeding corporate control cannot be added into the index; the tool would then produce distorted outcomes (Graafland et al. 2004, 142). It is therefore important to sort out which duties CHRR encompasses, and which kind of corporate human rights commitment should be measured.

The question if human rights are a legal responsibility for companies has been a disputed subject during the last decade. While many scholars argued that companies should be liable for their abusive practices (e.g., Alston 2005; Kinley and Tadaki 2003/04) there was also consensus that giving companies comparable obligations would pose an inappropriate shift and relieve states from their duties while unnecessarily burden companies (see, e.g., Muchlinski 2001, 16-19; Ratner 2001, 496).

A first attempt to define the human rights duties of companies was made with the United Nations Draft Norms on the Responsibilities of Transnational and Other Business Enterprises, which suggested a comprehensive list of human rights directly applicable to companies. Companies would have had the duty to promote respect, protect, and secure the fulfillment of human rights. This, however, provoked the rejection of employer organizations and governments, which criticized the Norms for being too burdensome and over-ambitious for business (Clapham 2006, 225-237).

As a consequence, the UN Human Rights Council appointed a Special Representative of the Secretary General (SRSG) for Business and Human Rights, John Ruggie. The SRSG developed the so-called “Protect, Respect and Remedy” framework which re-focuses on the state duties to protect human rights and to provide for effective remedies, while businesses are called to respect human rights and to offer non-judicial remedies within their corporate structures (Human Rights Council 2008). The framework peaked in the “Guiding Principles on Business and Human Rights” (Human Rights Council 2011), which aim to set new international guidelines for business and human rights.

The Guiding Principles and the previous reports by the SRSG state that the corporate responsibility to respect is not a duty and does thus not constitute any obligation in international human rights law, but it is a “standard of expected conduct acknowledged in

virtually every voluntary and soft-law instrument related to corporate responsibility (...)" (Human Rights Council 2010, 12, §55). According to the SRSG, corporate responsibility must draw on the respect for universal human rights—the responsibility to respect applies to the complete international bill of human rights and to international labor law as set by the ILO—but also on the context that each individual company generates, by its business activities, size, profit margin, and the country context. Although "respect" first means that companies must avoid any infringement of human rights (Human Rights Council 2011, 13, §§11-14), it is more complex than just to abstain from violations: "... [D]oing no harm is not merely a passive responsibility for firms but may entail positive steps (...)" (Human Rights Council 2011, 116, §17). The "responsibility to respect human rights" encompasses a human rights policy commitment, a human rights due-diligence process to "identify, prevent, mitigate and account" how companies address their impacts on human rights, and finally processes that enable victims of human rights abuses to access remediation (Human Rights Council 2011, 15, §15).

The UN Human Rights Council adopted the Principles in its 17th regular session in June 2011 and initiated a follow-up mandate in establishing a working group on business and human rights (OHCHR 2011). While civil society expressed mixed opinions on the framework (see, e.g., Amnesty International et al. 2011), business representatives strongly supported the Principles and commended the SRSG's pragmatic approach toward the relationship between business and human rights (International Organization of Employers et al. 2011). Also trade unions supported the framework. The president and the general secretary of the International Trade Union Confederation (ITUC) expressed their organization's support of the Guiding Principles in a public letter directed to the SRSG (ITUC 2011a). A submission by the Global Unions during the multi-stakeholder consultation process for the Guiding Principles also welcomed the framework as a "significant step forward in more effective prevention and redress of business-related human rights abuses" and praised the "clear distinction it establishes between the responsibilities of states and business enterprises, while at the same time linking these responsibilities" (Global Unions 2011, 1).

The Guiding Principles do not solve the problem of the governance gap as they do not establish a legally binding human rights framework for companies. However, the Principles mirror a basic consensus on international level between business and employee organizations on what CHRR means for companies and what can be expected from them regarding human

rights. I argue that a concept on which business and employees can basically agree is a good point of departure for the conceptualization of CHRR, as it would not be over-ambitious and exceed a company's control and capacities. With reference to the Guiding Principles I also conclude that corporate respect for human rights comprises not only the negative duty to abstain from human rights violations, but also positive measures. This is important for the design of the measurement tool: Instead of evaluating if companies are violating human rights, a positive approach that measures the explicit commitment of companies will capture the positive concept of CHRR.

As mentioned above, the framework demands that CHRR should encompass the three aspects of responsibility—policy commitment, due-diligence process with human rights impact assessment, and remediation. However, due to the limited time and personal resources of the present research project, the focus will be put on human rights policies. The present project understands corporate human rights policies as active measures that include a policy statement, an implementation process, and a specific performance.

The “translation” of human rights responsibility into corporate human rights policies allows to bridge the above mentioned gap between macro-level human rights and the organizational level. However, measuring human rights policies does not mean to carry out a human rights impact assessment (HRIA) or a full human rights compliance assessment (HRCA), for which the DIHR’s indicators on which I will draw actually were developed. The present project does not attempt to assess a company’s human rights impact, nor does it carry out a full HRCA. The DIHR’s indicators will thus not be simply copied but selected and adjusted to the project context.

Summarizing, for the present project CHRR is conceptualized as corporate respect for employee human rights as outlined in the “Respect-Protect-Fulfill” framework and the Guiding Principles by the SRSG for Business and Human Rights. In the context of the present project, this respect is expressed by corporate human rights policies for employees, which draw on the international bill of human rights and the ILO core conventions, and consist of the positive measures of policy statement, implementation process, and performance.

The decisive weakness of the “Respect-Protect-Remedy” framework is the fact that it does not offer a clear catalogue of human rights responsibilities, but refers to context factors and at the

same time to the “universally applicable” international bill of rights. To carry out empirical research it is necessary to identify which concrete rights a company can violate in a given context, and which not (see Deva 2011, 119-122). This is particularly important for the operationalization of CHRR for the measurement tool.

Operationalization of CHRR

The operationalization of employee CHRR as corporate human rights policies will require two steps. As rights can have different priorities in different environments, we first need to identify the prevalent rights which employee CHRR should encompass in the context of Bosnia. The next section will be dedicated to discuss the country context of the project, which, drawing on a document analysis and explorative interviews, will allow to identify the prevalent issues for employee human rights. In a second step I will derive several indicators linked to these rights in context.

Operationalization Step I: Employee Human Rights in Bosnia and Herzegovina

Empirical research in human rights stresses that the contextual adjustment of an indicator is crucial. The external environment, e.g., the geographical location, defines the risks which a company has to deal with—and thus which rights deserve a particular focus (Dreyer et al. 2010, 253).

The next section explains Bosnia’s business landscape and the risks it generates regarding employee human rights. To identify the burning issues I conducted explorative interviews with three foreign trade delegates in Sarajevo, a World Bank officer responsible for private business development, the Executive Director of Bosnia’s Foreign Investors Council, and an officer of the International Finance Corporation, responsible for the IFC’s corporate governance program. For reasons of confidentiality, the interview partners are cited anonymously. Additionally, I conducted a document research on the situation for employees in Bosnia. To identify the rights in focus I analyzed country reports, observations, and requests about employee human rights in Bosnia by international organizations, international and Bosnian NGOs, and trade unions. The analyzed documents encompass the period 2005-2011. Many issues were raised several times; in these cases I cited the most recent source to document that the problem still was relevant.

Bosnia's Business Landscape

Bosnia still suffers from the legacy of the 1992-1995 war between Bosnian Serbs, Muslims, and Croats, regarding both politics and economy. The country was hit particularly hard by the economic crisis in 2008. Since then, GDP per capita was shrinking for the first time after the war, holding currently by approximately 3137 Euro (The World Bank 2011).³ FDI inflows dropped dramatically between 2008 and 2010, from 650,80 down to 44 million Euro, making Bosnia the country in the region with the lowest FDI inflows (UNCTAD 2011). The far biggest investor in the country is Austria, followed by neighboring Serbia and Croatia (Foreign Investment Promotion Agency of Bosnia and Herzegovina 2011).

Bosnia's labor force participation is the lowest in Europe and has also a very low rate of female workers (International Monetary Fund 2010, 11). The economy suffers extremely from job scarcity. While at the end of 2009, 488 496 people were registered as unemployed, in January 2011 the number amounted to 526 686 (Agencija za Statistiku Bosne i Hercegovine 2011).⁴

The reasons for Bosnia's lack of FDI are manifold. First the overall business environment is not very encouraging for both foreign investors and local entrepreneurs. In 2011, the IFC's and the World Bank's Doing Business project ranked Bosnia on 110 place out of 183 countries regarding the "ease of doing business"—the country in the region with the worst score, except for Kosovo (rank 119) (The World Bank and IFC 2011). Bosnia's bad ranking can be attributed to the country's political division into two entities—the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH)—, the autonomous Brčko District, and ten cantons within the FBiH. As harmonization in vital areas such as taxes or social legislation is still lacking, as a consequence business is confronted with costly and time-consuming administrative procedures (Interview World Bank officer, 1 April 2010).

³ The World Bank calculates the GDP per capita in US Dollar, the same goes for other international organizations such as UNCTAD. For reasons of readability all the fiscal numbers are expressed in Euro, as European and also Bosnian statistics are expressed in Euro. Moreover, different organizations use different statistics and have thus different results, however, the World Bank is a reliable source to draw on.

⁴ The statistics on unemployment differ; the CIA World Factbook cites an official unemployment rate of 43,1% in 2010 (CIA 2011), while the Bosnian Statistic Agency, applying the ILO's unemployment definition, estimates „only“ 27,2% (Agencija za Statistiku Bosne i Hercegovine 2011).

Labor force in Bosnia is considered to be skilled, but also inflexible. At the same time, the wage burden is relatively high, compared to the neighbor countries: The average wage in Bosnia is the second highest in the region (only Croatia has higher wages), exceeding even the EU member states Bulgaria and Romania (International Monetary Fund 2010, 11).

Finally, the biggest obstacle for FDI and economic development is the country's constant political instability. The political volatility and frequently changing legislation on the one hand and political stalemate on the other frightens investors off and discourages local people to engage in business (The World Bank and IFC 2009, 4; Interview Executive Director of the Foreign Investors Council, 19 February 2011). The bad economic situation leads to an underdeveloped social welfare system; poor access to health care and social services is a common phenomenon (Baab and Busck 2008, 24).

When it comes to the legal protection of human rights, Bosnia satisfies all international requirements. The country has ratified all major international human rights treaties and 81 ILO conventions (Lalović 2008). However, what is written in laws is often not respected in economic reality: Adequate implementation mechanisms are lacking, and the responsible institutions have a poor capacity, which leads to weak law enforcement (ITUC 2011b; United Nations Global Compact and UNDP 2008, 50). CSR is hardly a topic for foreign and local companies, especially as companies have to deal with a variety of challenges in Bosnia's complicated administrative system so that they decline to put additional efforts in other activities which are not genuinely "business" (Interview British trade delegate, 15 February 2010). In other words, in Bosnia the governance gap is reality.

CHRR in Bosnia – rights in focus

A. Non-Discrimination

- Ethnic discrimination

In a war-torn society where the ethnic question prevails in political and even economic discussions the discrimination of minorities is a big problem. Ethnic minorities face discrimination in employment, by being dismissed unfairly, not having equal career opportunities or not getting the job in the first place. Particularly vulnerable are returnees, former refugees who return to their former communities where, after the ethnic cleansing campaigns, they now constitute a minority. The continuous discrimination in employment discourages return or even reverses it. Ethnically motivated dismissals during the war have not been reversed in most cases; reparations for unjustified dismissals were never paid. Apart

from returnees, Roma and other ethnicities than Muslims, Serbs, and Croats are particularly vulnerable in Bosnia's ethnic economy (Amnesty International 2006, 7; United Nations Committee on economic, social and cultural rights 2006, 2 §12; US Department of State 2011, 32). It is not forbidden in Bosnian law to ask for the ethnicity of a (potential) employee, which consequently is "always asked" (Interview International Finance Corporation Officer, 6 April 2010).

- Gender discrimination

Women in Bosnia get lower salaries for equal work, have problems with getting paid maternity leave allowances and are confronted with dismissals if getting pregnant. Women are especially active in the informal sector, which leaves them without social insurance and health care (US Department of State 2011, 26f; United Nations Global Compact and UNDP 2008, 35f). Sexual harassment often goes unpunished and is not a subject in public debate (Freedom House 2011). Job announcements for women sometimes do not call for specific qualifications but for a specific physical appearance or rule them out in the first place (United Nations Committee on the Elimination of Discrimination against Women 2005, 18).

- Sexual Orientation

When their sexual orientation becomes public, gays and lesbians are discriminated in employment: "In some cases, dismissal letters explicitly stated that sexual orientation was the cause of termination, making it extremely difficult for them to find another job" (US Department of State 2011, 33).

- Disabilities

As the Austrian trade delegate stated, people with disabilities are not visible in Bosnia (16 February 2010)—which is suspicious in a country with thousands of war invalids. Indeed, discrimination of people with all kinds of disabilities is reported regarding hiring, career perspectives, and dismissals, but also physical workplace access (US Department of State 2011, 30).

- Nepotism and Bribery

Nepotism is indirect discrimination, in that people are not hired according to their qualifications but their relation with the owner/manager. Nepotism is a big problem in Bosnia's public sector, but cases are also reported in the private sector (Interview Swedish trade delegate, 6 April 2010). A wide-spread practice is also to pay bribes to the management in order to get a job, which discriminates not only against possibly higher qualified, but also financially weak applicants.

B. Freedom of Association and Collective Bargaining

- Trade Union Activism

Employers who impede free association in their companies are barely sanctioned. Organizing workers can be threatened with dismissal or even fired; discrimination of trade union members, especially in “recently established private companies” where the operations of the company are newly defined, are common (ILO 2010a; US Department of State 2011, 34). Moreover, employers hardly provide facilities for employees’ representatives which they need to carry out their work (ILO 2010b).

The right to strike is also severely undermined. In the Federation, a trade union must reach an agreement which “essential” staff stays behind during the strike, before a legal strike is possible; if the employers do not agree the strike is illegal, which makes legal strikes almost impossible (US Department of State 2011, 34).

- Collective Bargaining

Similar problems are reported with collective bargaining. The minimum wages negotiated between government, employers and employee organizations are not recognized by many private employers, and skills in collective bargaining are low—social dialogue needs still improvement (ILO 2009a; Interview Austrian Trade Delegate, 16 February 2010).

C. Social Security and Salaries

- Insurance

There is evidence that employers do not register their employees according to the law and do not pay any social security contributions—which leaves the employees without any social insurance and access to health services. Also paid sick leave is frequently denied (US Department of State 2011, 37; United Nations Global Compact and UNDP 2008, 36).

- Salaries

Together with the lack of insurance, employees are also frequently confronted with the fact that they get their salaries delayed and sometimes not at all (UN Committee on economic, social and cultural rights 2006, 3 §15; Lalović 2008, 78). The minimum wage in the federation is 343 KM (171,5 Euro), in the RS 370 (185 Euro) and 320 KM (160 Euro) in the textiles and footwear sector. The US State Department criticizes that “[n]one of these levels provided a decent standard of living for a worker family” (US Department of State 2011, 37), which is one of the central criteria of the ILO for “decent” work.

- Termination of Contracts

Firing practices are not well regulated in the entities' legislation. This allows employers to display arbitrary practices when it comes to the dismissal of employees, especially in the context of privatizations which are still going on in Bosnia's former state-centered economy (UN Committee on economic, social and cultural rights 2006, 3 §15).

D. Health and Safety and Working Conditions

- Health and Safety

Unsafe practices are common in Bosnia's workplaces, outdated equipment poses particular danger. Workers who jeopardize their health have the right to remove themselves from such a situation; however, this law is hardly applied in practice (US Department of State 2011, 38).

- Overtime

Overtime work is often not appropriately compensated (Lalović 2008, 78), nor is the legally required weekly rest always respected (ILO 2009b). Employers also pressure employees not to consume their annual paid leave, which leads to a loss of paid free days after exceeding the time limit (ILO 2009c).

Non-Issues

When discussing business and human rights two more rights are usually in focus—child labor and forced labor. None was reported as real existing problem in Bosnia; literature even explicitly underlines that these two forms of exploitative labor are no issues in Bosnia—at least not in the formal sector. In the informal sector, especially Roma children are vulnerable to be exploited in organized begging, and human trafficking remains a problem (Lalović 2008, 70f; United Nations Global Compact and UNDP 2008, 52f). As this project discusses human rights problems in the formal business sector, no particular emphasis will be put on these problems, despite they are pressing.

Operationalization, Step II: The Indicators

The issues raised with regard to the four groups of rights above offer a sufficient guidance to defer the human rights indicators from the DIHR HRCA tool, which should comprehensively capture the relevant CHRR in the Bosnian context (see **Box 1** in the Annex). Each right is accompanied by an introductory question which expresses the substance of the right. If the question is marked with a star, I developed it myself with regard to the prevalent human rights issues in Bosnia; the same applies to the indicators marked with a star. This was necessary in

cases where the DIHR tool fell short to capture the entire issues of the Bosnian context. The DIHR has partly classified the indicators differently than I did; different classifications were marked with a footnote.

The DIHR tool is a self-assessment tool and was not developed for interviews. The indicators needed therefore to be adjusted for interview situations; the process is still ongoing. In total, 61 indicators were identified, which still have to undergo further adjustment and a pre-test.

A final remark on terms: The DIHR uses the terms “worker/workers” for its indicators, while I refer to employees. For reasons of coherence I have substituted “worker/workers” with “employee/employees”.

The next steps

The next steps will comprise a further adjustment of the indicators in that they are usable for a questionnaire. Overlapping items have to be removed and the rule of one item per question must be respected; the questionnaire must not be too long. Interview partners will be corporate management or persons in charge with a company’s CSR/human rights policy; if possible, also employee representatives will be interviewed. A pre-test phase with a subsequent factor analysis will allow a further adjustment of the indicators; the tool will then be tested for reliability, criteria, and construct validity. The face validity should be already guaranteed by the conceptualization process (Schnell et al. 2008, 155). The pre-test phase should also include employees, while in the first conceptualization and operationalization phase business perspectives prevailed.

An important problem which still needs to be solved is the sampling process, which will strongly affect the tool. The biggest challenge is how to use the index with regard to different industry contexts. For example, companies in the construction sector will have to deal a lot with safety issues at the workplace, while in the financial sector this will hardly be a very important issue. As a consequence, the index would measure different performances in different industries, even though the companies might put the same effort into CHRR—just differently and according to priority (see Belu 2009, 259). A solution is the weighting of the indicators according to industry; e.g., health and safety measures weigh more in the construction sector than in the financial sector. However, the sampling is not yet completed and thus it is unclear which industrial sectors will be represented in the sample.

A critical reflection on indicators

As we have seen, indicators can be a most useful tool to assess the human rights responsibility of companies. However, one should use them with care and critically reflect about the outcomes they produce.

As was extensively demonstrated in the paper, indicators are always deferred in a process which, even if it is as transparent as possible, can never completely rule out the researcher's subjective judgment which indicators are the most suitable to capture a specific situation (see Green 2001, 1082). When it comes to human rights indicators and indices, critics like Merry (2011, S84f) and Meyer (1996, 380) deplore that these give only aggregated information while the experience of violation is a very personal one and can take many individual forms. Indicators and indices might thus contribute to the depersonalization or even dehumanization of the content of the right. Rosga and Satterthwaite (2009, 258 and 270) argue similarly and warn that human rights are qualitative and subjective by nature—a mere quantification of a problem might lead to reduced information on how duty-bearers respond to it. A response to these problems would be that human rights research always must contain a qualitative dimension. The PhD project therefore envisages a qualitative case study on the financial and construction sector.

The most challenging part of the project, however, is not the methodology but the collection of the data. Finding a sufficient number of interview partners in companies who are willing to discuss the sensitive issue of human rights will not be easy. Moreover, managers tend to give their firm better CSR grades than it actually deserves (see, e.g., UNDP 2008, 47). A contrasting employee perspective for each interview would be desirable, but establishing contact with the amount of worker representatives who will be willing and free to discuss human rights at work will be even more difficult. A cooperation with local unions could offer a solution.

The final question which needs to be resolved is to decide from when on a company is responsible toward human rights. How many questions must be answered positively that the CHRR index classifies a company as “responsible”? Here a clear decision rule still must be established.

Conclusion

Companies have the responsibility to respect human rights. This respect is positively connoted and requires active human rights policies. At the same time, corporate responsibility for human rights must be conceptualized and operationalized in a way that does not exceed corporate control and capacities. The aim of the paper was to carry out such a conceptualization and operationalization. The deferred context sensitive indicators must still undergo further adjustment processes, the CHRR index be tested for reliability, construct and criteria validity. Only then it can be assessed if the measurement tool fulfils all the SMART quality criteria and captures a company's human rights responsibility satisfactorily. The project is only about to start.

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ANNEX

Box 1: CHRR Indicators

Non-Discrimination (20 indicators)

“Does the company ensure that its compensation, benefit plans, and employment-related decisions are based on relevant and objective criteria?” (Danish Institute for Human Rights 2006, 24).

- The companies has policies in place to ensure that hiring, placement, remuneration, advancement, training, discipline, retirement and termination decisions within the company are based only on objective factors, and are not connected to the gender, nationality, ethnicity, creed, language, mental or physical disabilities, sexual orientation, social or political characteristics of the employee.
- Job descriptions are clearly defined, utilized by all hiring managers, and frequently updated to ensure that employees are hired and granted promotions by the company only on the basis of the skills, qualifications, and experience required for the position.
- The company distributes a prevention policy on workplace violence and harassment for vulnerable groups such as minorities and women, which notifies employees of their obligations to refrain from violent, threatening or abusive conduct toward others.⁵
- The company has a mechanism to receive reports of workplace violence, including sexual harassment, and promptly investigates all complaints.⁶
- The company addresses stress and ethnic tensions in the workplace which can lead to abusive practices among employees; acts of violence between employees are reported to public authorities—especially when they concern minority groups.⁷
- The company reversed unjustified dismissals based on ethnicity, or it paid reparations.*
- The company does not ask its employees and job applicants for their ethnicity.*
- The company does not ask its employees and job applicants for their sexual orientation.*
- Employment advertisements do not reference irrelevant characteristics.

⁵ The DIHR has categorized this indicator under “Conditions of employment and work”; however, in the present context it fit better in the non-discrimination category.

⁶ See Footnote 5.

⁷ See Footnote 5.

- The company does not ask female job applicants questions regarding their marital status, intent to have children, or number of dependents.
- Motherhood does not lead to dismissal.*
- Sexual orientation does not lead to dismissal.*
- Wage records do not show pay discrepancies for work of equal value.
- The company makes reasonable accommodations to allow disabled employees job opportunities with the company.
- Training programs are equally open to all employees.
- An individual or department in the company is responsible for monitoring company compliance with non-discrimination standards and policies.
- Personal relationships do not favor job applicants before others with equal skills.*
- The financial status of an applicant does not favor him/her before others with equal skills.*
- Employees representatives confirm that the company's employment practices are non-discriminatory.
- Employees representatives confirm that the company has appropriate measures in place to protect employees from harassing, abusive and threatening behavior.⁸

Freedom of Association and Collective Bargaining (8 indicators)

“Does the company recognize the freedom association rights of its employees, including the right to bargain collectively?” (Danish Institute for Human Rights 2006, 31).

- The company has a policy recognizing the freedom of association rights of its employees.
- The company recognizes employees' organizations for collective bargaining purposes.
- The company does not discriminate or take adverse actions against employees exercising employee rights, participating in union activities, or reporting suspected legal violations.
- The company engages in collective bargaining and holds regular consultations with authorized employees' representatives concerning working conditions, remuneration, dispute resolution, internal relations and matters of mutual concern.
- The company recognizes the minimum wages negotiated between government, employers and employee organizations.*
- The company allows employees' representatives reasonable access to the employees and the company facilities necessary to carry out their responsibilities.

⁸ See Footnote 5.

- The company recognizes the right to strike.*
- Employee organizations confirm that the company recognizes their position, allows them access to employees and facilities, and engages with them in good faith during the collective bargaining process.

Social Security and Salaries (11 indicators)

*Does the company register all its employees according to law and enables them access to social and health insurance?**

“Does the company provide a living wage, which enables employees to meet the basic needs of themselves and their dependents?” (Danish Institute for Human Rights 2006, 50).

*Does the company give proper notice of termination of work contracts and respects an appropriate period of time when dismissing employees?**

- The company does register all its employees according to law.*
- The company pays the legally required social contributions for its employees.*
- The company guarantees its employees paid sick leaves.*
- The company knows whether minimum wage in the country of operation is sufficient to meet basic needs and to provide discretionary income.
- The company has a policy stating that employees are entitled to a living wage, sufficient to meet basic food, clothing and housing needs, as well as provide for some discretionary income.
- The company pays wages at regular times and does not take deductions from wages for disciplinary measures, or other deductions which are not authorized by national law without the freely given consent of the employee.
- Overtime hours are not required for employees to earn a living wage.
- The company provides reasonable notice of impending changes in operations that will affect employment at the company, such as anticipated mergers and layoffs.
- The company respects has a standardized procedure for dismissal.*
- Employee representatives and trade unions confirm that all employees are granted paid sick leave.*
- Employee representatives that the company pays employees a living wage.

Health and Safety and Overtime (21 indicators)

“Does the company ensure that its employees are afforded safe, suitable and sanitary work facilities?” (Danish Institute for Human Rights 2006, 37).

“Does the company ensure that the work week is limited to 40 hours⁹, overtime is voluntary, infrequent (...) and that employees are given reasonable breaks while working, and sufficient rest periods (...)?” (Danish Institute for Human Rights 2006, 55).

- The company has effective health and safety prevention and remediation policies and procedures in place which comply with industry, national and international standards.
- The company has a disciplinary plan which applies to all violations of the company’s health and safety standards.
- Employees have access to hygienic sanitary facilities.
- The company documents accidents and adjusts its processes to prevent recurring problems.
- After an accident, employees receive further preventive training.
- The company routinely monitors its production processes, machinery and equipment to ensure that they are safe and in good working order.
- The company has a procedure or process for receiving and responding to health and safety complaints, such as designating a health and safety representative or committee.
- Employees and managers are trained to respond to workplace emergencies and first aid kits are readily available.
- The company has implemented the following safety standards: accessible emergency exits, fire extinguishers, and appropriate ventilation.
- The company respects the decision of employees to remove themselves from unsafe practices and does not sanction them in any way.*
- Company policy and procedure dictate that all employees are provided with the protective equipment and training necessary to safely perform the functions of their position.
- All employees are protected against processes, substances and techniques, which are obnoxious, unhealthy, toxic or harmful.
- Employees are appropriately trained on machines, equipment, and working techniques.
- Company hours are limited to 40 hours per week by company policy and practice.
- Company hours are limited to 10 hours per day by company policy and practice.*
- Overtime is voluntary, infrequent, and remunerated at minimum rate.

⁹ The DIHR refers to a 48 hour week, however, Bosnian law allows only a 40 hour week.

- Weekly rest periods of at least 24 hours are respected, as are daily brakes of at least 30 minutes.
- The company grants its employees their annual paid holiday.*
- The company policy allows female employees paid maternity leave according to law.
- Employee representatives confirm that the employees are adequately trained and provided with the necessary protective equipment.
- Employee representatives and tradeunions confirm that all employees are granted paid holiday each year.

Remedy (1)

- The company has mechanisms for hearing, processing, and settling the grievances of employees, regarding non-discrimination, freedom of association and collective bargaining, social security and wages, health and safety and overtime.*

Source: Danish Institute for Human Rights (2006). *Human Rights Compliance Assessment (HRCA) Quick Check*. Human Rights & Business Project, Copenhagen: The Danish Institute for Human Rights, at http://www.humanrightsbusiness.org/?f=compliance_assessment/hrca_quick_check (1 July 2011). Where * , the author.