



Human Rights Insights: Trends from the Human Rights Working Group's Summer Meeting

OCTOBER 2019

Overview

The second round of 2019 meetings of BSR's [Human Rights Working Group](#) (HRWG) was held between July and September in St. Louis, Tokyo, and Stockholm. Established in 2012, HRWG is a collaborative initiative designed to help companies implement the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), bringing together approximately 40 companies from across sectors. In addition to providing operational-level guidance and best practices in the business and human rights field, HRWG has established a global network of business and human rights professionals. The summer meetings covered a mix of substantive and methodological topics, including:

- » Human rights methodologies, continued from the Spring round of meetings
- » Human rights and supply chains
- » Responsible use of technology and artificial intelligence (AI)
- » Legal trends
- » Human rights governance

During this round of meetings of the Working Group, members discussed important emerging legal trends and changes to how companies are tackling human rights in their supply chains, in addition to reviewing a variety of governance structures to help manage human rights risks across complex multinational enterprises. While it is not meant as a comprehensive summary of the meetings, this document highlights key topics discussed and insights surfaced during the meetings which may be relevant to all BSR members and non-members alike.

BSR member companies interested in joining the Human Rights Working Group should [connect with us to learn more](#).

Human Rights Methodologies

Following the Spring HRWG meetings, which discussed five best practices in respecting and remedying human rights (including the PANEL Approach, Counterbalancing Rights, Identifying Vulnerable Groups, The Donut Problem, and Remedy) as part of BSR's *12 Human Rights Methodologies*, we continued the conversation during the Summer session and unpacked two new human rights methodologies: promoting and measuring human rights.

Described below, these methodologies provide practitioners with concrete steps to consider and address human rights challenges as part of an overall due diligence process as outlined in the UNGPs.

PROMOTING HUMAN RIGHTS

Besides respecting human rights, businesses should go beyond the goal of having no negative human rights impacts to supporting and promoting human rights, as outlined by Principle 11 of the UNGPs. Businesses should proactively undertake commitments or activities that may contribute to the enjoyment of human rights, such as empowering people to know their rights or identifying a vulnerable population and creating pathways to better education and job opportunities.

Examples of companies promoting human rights abound, and generally the most effective are those that utilize their base of expertise to do so. For example, we highlighted a tech sector company using its technology and data platforms to help identify and mitigate human trafficking through social networks.

MEASURING HUMAN RIGHTS

Measuring and reporting methodologies are critical in “knowing and showing” how human rights activities lead to positive and intended outcomes for people. Principle 20 of the UNGPs states that companies should “track the effectiveness” of their human rights programs, including “appropriate qualitative and quantitative indicators” and “feedback from internal and external sources.”

Traditional measuring methodologies that capture inputs (e.g., financing), activities, and direct results (e.g., number of people reached) of human rights interventions can often miss key components that drive long-lasting and desired human rights outcomes and impacts. In contrast, the “outcomes-based metrics” methodology goes beyond inputs, activities, and direct results by also capturing indirect results (e.g., changes in behavior) and long-term impacts (e.g., number of people raised out of poverty or reduction in incidents of identified child labor), which provide a holistic perspective with greater clarity and broader impact coverage. On the other hand, it may be more challenging to assess and report with the outcomes-based metrics methodology as it requires more nuanced methods of measurement. There is a high level of involvement required for outcomes-based approaches in order to make sure they are holistic and accurate.

To overcome the difficulties, companies are best advised to use measurements that clearly distinguish the effectiveness of human rights programs (e.g., the outcomes and impacts they achieve) from the activities of human rights programs (e.g., the extent of due diligence). Companies will have to recognize the limitations of key performance indicators (KPIs) and establish *key performance narratives* (KPNs) that accompany the indicator. Often it is only through a combination of numbers and narrative that the extent of implementation of human rights programs can be conveyed.

Human Rights and Supply Chains

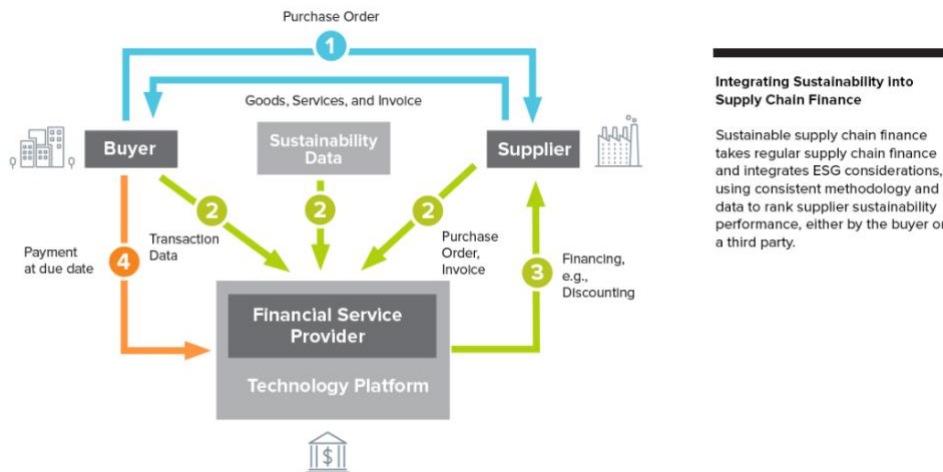
Principle 17 of the UNGPs states that businesses should carry out human rights due diligence to identify, prevent, mitigate, and account for adverse human rights impacts. Though it may be challenging, businesses are expected to conduct due diligence across its value chain, including suppliers, customers, and other business partners, to prioritize areas of greatest risk. In addition to the expectations articulated by the UNGPs, many countries are beginning to pass legislation that requires companies to conduct supply chain human rights due diligence.

To abide by and prepare for this growing legal trend, businesses should map their supply chains all the way to the commodity or raw material level and prioritize engagement with those suppliers and sub-suppliers based on risk.

There are many ways to approach such risk prioritization, including looking at country-level risk, commodity-level risk, supplier category risk, or a combination of many different factors. Where high risk is identified, companies are expected to conduct more detailed assessments and provide remedy where there is sufficient connection via the UNGPs' cause/contribute/directly linked framework.

BSR has several tools that help companies push beyond the first tier of their supply chains, build leverage, and improve remedy and mitigation, such as the BSR Supply Chain Leadership Ladder 2.0 and Human Rights Supply Chain Hotspot Analysis. The Leadership Ladder can help companies land on ambition levels, while the Hotspot Analysis allows companies to narrow down and prioritize where market-level, product-level, or commodity-level impact assessments should take place.

After companies identify where the risks and potential impact are, there are many innovative ways to incentivize suppliers, increase transparency, and improve leverage with suppliers. One example that many leading companies are using to gain leverage with suppliers is innovative supply chain financing structures, through which large brands support suppliers to obtain financing, either by providing it directly or through a more traditional arrangement whereby the brand provides the collateral while the supplier borrows from a lender.



*To know more about supply chain finance, please see: [Win-Win-Win: The Sustainable Supply Chain Finance Opportunity, BSR 2018](#)

Other creative ways to increase transparency and track potential human rights impacts include using blockchain to ensure traceability and using technology and apps to allow workers to report on labor abuses, among others.

Responsible Use of Tech and AI

The increasingly pervasive use of technology in our everyday lives means all companies across industries must address the human rights implications of the technological solutions they employ. Together with the World Economic Forum (WEF), BSR has published a [practical framework for the responsible use of technologies](#) to promote the use of an approach that combines both ethics-based and human-rights-based approaches.

The ethics-based approach takes a broad perspective on matters of right and wrong and includes the perspectives of many traditions, cultures and religions. Meanwhile, the human-rights-based approach draws a framework provided by international laws and treaties to request duty bearers (such as tech companies) to meet their obligations and ensure that rights holders (such as people affected by technologies) have access to an effective remedy.

Many companies have to date used the ethics-based approach to assess the impacts of their products and services, which can be subjective as it may vary by country and culture. Some consider the human rights-based approach to be too rigid and that it does not take cultural variance into consideration. BSR and WEF have made the case that responsible use of disruptive technologies requires both ethics-based and human rights-based approaches, which are complementary rather than oppositional. The two approaches are intended to do different things, and in combination, they will be more powerful and comprehensive.

Throughout the lifecycle of technology, a hybrid approach that combines both ethics and human rights standards can be applied with active participation from technology companies, governments, and other stakeholders, from the earliest phases of creation to the use of technology by the end customer.

One example presented is the use of facial recognition at the 2022 Qatar World Cup. The use of facial recognition at both airports and major sporting venues is increasing, which may lead to impacts on human rights. The potential ramifications of utilizing facial recognition for entry into the Qatar World Cup can be examined using this hybrid approach because the human rights impacts are clear and include threats to security and privacy. Implementers then have a duty to mitigate such potential risks, particularly when operating in an environment such as Qatar where human rights risks are high and the right to privacy and security is not established.

Emerging Legal Trends in Human Rights

EQUAL PAY AND HARASSMENT

Violence and harassment in the world of work remains a prevalent human rights risk and creates an environment that is incompatible with a safe and respectful workplace. In June 2019, with 439 votes in favor, 7 against, and 30 abstentions, the International Labour Organization (ILO) adopted a new convention to combat violence and harassment in the workplace ([C190 - Violence and Harassment Convention, 2019](#)).

The Convention provides a definition for “violence and harassment” and “gender-based violence and harassment,” filling a void created by a lack of a universally accepted definition of such risks. Within scope are workers, trainees, job seekers, workers whose employment have been terminated, and others in both formal and informal sectors, and it accounts for violence and harassment involving third parties, such as clients, customers, or service providers.

Around the same time as the ratification of ILO Convention 190, the United Nations Business and Human Rights Working Group also published a report entitled [Gender dimensions of the Guiding Principles on Business and Human Rights](#). The report looks at the holistic approach through which companies’ actions or omissions may differently affect women and men. It provides a gender lens to each of the Principles articulated in the UNGPs, including a business’s responsibility not to infringe on women’s human rights, to adopt a gender equality policy, and to integrate a gender perspective in due diligence, etc. BSR will dive into this further in the Fall Human Rights Working Group sessions.

It is important to note that *Gender dimensions of the Guiding Principles on Business and Human Rights* also notes that the approaches and guidelines it outlined can be used for any group of vulnerable rightsholders. It is paramount that companies start to incorporate this lens to ensure that the voices and needs of women and other groups, such as children, indigenous peoples, and others, are heard.

In addition to the ILO Convention, many countries are also passing legislation to address issues such as gender-based violence and wage gaps. Following the example of the UK Gender Gap Bill, Ireland has introduced a similar but more ambitious bill to include reporting on non-formal employees and gender percentage in each quartile, as well as sanctions on non-compliances if required gender aggregated data is not provided.

MODERN SLAVERY AND HUMAN RIGHTS DUE DILIGENCE

The trend of countries considering or adopting laws that will require businesses to conduct rigorous due diligence of their operations and supply chains continues, and BSR provided an update on this changing landscape during the Summer meetings of the Human Rights Working Group.

The latest country to pass human rights due diligence regulations is [the Netherlands](#), which requires companies to show that they are addressing the issue of child labor in their global supply chains. Affected companies have an affirmative due diligence obligation and must investigate where there is a reasonable suspicion that the goods or services to be supplied to Dutch end-users have been produced using child labor. The due diligence process is to be based on sources that are reasonably known and accessible to the subject company.

The penalty that the law has outlined is so far the strictest among all existing and draft human rights due diligence and Modern Slavery laws. Failure to carry out due diligence in accordance to the Act and the implementing company's own Plan of Action can result in a fine of up to 10 percent of the worldwide annual turnover of the company. In addition, the company can incur additional fines and a director may even be imprisoned for up to two years if, in the prior five years, a fine previously had been imposed for violating the same requirement of the Act and the new violation is committed under the order or de facto leadership of the same director. Several aspects of interpretation and especially implementation of the law, however, are still to be determined via an instrument known as a General Administrative Order (GAO) in the Netherlands.

[Finland](#) also responded to civil society's call for a law on mandatory human rights due diligence. The Finnish government has committed to mandatory human rights due diligence legislation at the national and EU level which cover both domestic and transnational activities.

Similarly, a draft Corporate Human Rights Risk Assessment, Prevention, and Mitigation Act of 2019 was also introduced in the U.S. The bill is the first in the U.S. to require broad-scale human rights information disclosure and builds upon a strong investor movement calling for more robust ESG reporting. Companies are required to conduct an annual assessment of the human rights risks and impacts in their operations and throughout their value chains, rank those risks on their severity of harm to the rightsholder, and disclose the process and results of their assessment, as well as any actions the company has taken to avoid, mitigate, or remediate the identified risks or impacts.

LABOR PROTECTIONS

Disputes around protections for gig economy workers continue to arise with more complaints being brought in various countries. Following the March 2019 lawsuit against ride-sharing app companies, the U.S. Department of Labor issued an open letter indicating that these workers meet the definition of independent contractors; thus, they are excluded from basic workplace protections (e.g. insurance). On the other side of the globe, however, the Australian Fair Work Commission (FWC) has made judgements based on a case-by-case approach and referred to the "multifactorial test," which they used to conclude that an Uber driver is a contractor while a Foodora delivery driver is an employee. The criteria used in the multifactorial test are not yet aligned.

Human Rights Governance

The UNGPs articulate the need for companies to “define resource allocation, reporting lines, and accountability structures appropriate for the company's human rights risks and opportunities” (Principle 19) as well as “oversight processes that enable effective responses to human rights impacts” (Principle 16). The implementation of human rights in the corporate setting requires a robust enabling environment, and without proper governance, implementation becomes nearly impossible.

To build a robust governance structure for human rights, board level accountability should be established. The board should be aware and informed of the company's human rights commitments and continually updated on progress.

One level down from the board and management oversight, a comprehensive human rights risk approach that integrates into overall business operations is key for proper integration of these commitments. Responsibility for implementation of human rights should be evenly distributed across teams, go beyond the “sustainability” and “community” teams and expand to all business operations and locations that have human rights touch-points.

Many companies have implemented cross-functional human rights committees to provide additional oversight. These groups create enhanced internal learning and cooperation opportunities, allowing efforts to address human rights concerns to be multi-directional rather than hierarchical.

Aside from internal governance structures, some companies have built an external human rights advisory committee to ensure a fresh perspective on a company's potential risks and emerging issues. In addition to bringing in credible, experienced, and insightful experts that could increase the credentials of the company's human rights efforts, the committee could also provide practical advice and expertise when high-profile issues and controversies emerge.

ABOUT BSR

BSR is a global nonprofit organization that works with its network of more than 250 member companies and other partners to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration. Visit www.bsr.org for more information about BSR's 25 years of leadership in sustainability.

www.bsr.org