IHRB

Shaping Policy
Advancing Practice
Strengthening Accountability

How Can the Finance Sector Best Use its Leverage for Human Rights?

Remarks by John Morrison, Chief Executive, IHRB

Export Development Canada Advisory Council on Corporate Sustainability and Responsibility

6 May 2019, Ottawa, Canada

Thank you for the opportunity to join you this evening. I wish just to sow some thoughts for your very interesting and very timely discussions tomorrow. As requested, I will look at the issue of leverage in relation to business and human rights.

The Nature of the Human Rights Challenge

The world is facing a human rights challenge perhaps greater than at any of time since the end of the Cold War. As Frans Timmermans, the First Vice President of the European Union, has said – alongside the climate change crisis we have a comparable crisis in the rule of law and human rights.

There are perhaps two levels to the challenge:

(1) The eradicating of systemic forms of abuse in many places around the world, and deeply entrenched human rights violations that persist. Whilst more children are educated than ever before, and in particular more girls, child labour persists even in its worst forms. Forced labour and human trafficking have never gone away, and new forms have emerged in response to global supply chains where labour itself has become a global commodity. All forms of discrimination, whether they be based on gender, race, religion, ethnicity, disability, sexual orientation or some other factor, persist and even thrive in many places. Whenever these cases are examined anywhere in the world, we see that the real issue is less to do with local cultures (be it Hollywood or Rana Plaza) and much more about power structures and exploitation.

Arguably, the world had been making modest but significant progress in addressing some of these systemic issues since the end of the Cold War, but now a second front has opened up which puts into doubt much of what we had taken for granted over the past two decades.

(2) The current wave of political disruption, the rise of fundamentalism and populism and the introduction of new technologies all bring human rights challenges. Freedom House has monitored year

on year decline in respect for political rights and civil liberties in all global regions since 2005. Just in the past year countries such as Hungary and Serbia fell from being categorised as "free" to "partly free", and countries such as Nicaragua and Uganda from "partly free" to "not free". Journalists and human rights defenders are now deliberately being targeted. Technology brings to this political context some significant advantages that can bolster respect for rights, in particular in the form of free speech and social media, but also poses new risks – such mass surveillance and the development of facial recognition technology and its use in ways that put rights at risk, as we see in the control of minority populations, such as in Western China.

We Have the Standards and Tools, it is Now Time for Application

The past few years have not been wasted, we now have a suite of standards and tools that guide private actors in implementing the corporate responsibility to respect human rights. You are already familiar with the UN Guiding Principles on Business and Human Rights, the IFC Performance Standards and the OECD Guidelines on Multinational Enterprises as being amongst the key pillars of the foundational framework. As you know, the 'Common Approaches' for export credit agencies benchmark against the IFC Performance Standards which take some of this human rights approach. Some ECAs have gone further in terms of alignment and several have joined private sector banks in the further development of the Equator Principles. All of this has given us a much better idea of what business responsibilities for human rights looks like in practice.

Responsibility and Leverage are Different Things

You know that standards such as the UN Guiding Principles on Human Rights and the OECD Guidelines on Multinational Enterprises essentially ask you, and your clients, four questions. Answer these well and you are in good shape:

1. Do you have knowledge of the most salient human rights risks and impacts, including those to which you are directly linked but sit outside your direct control?

2. Have you taken all reasonable steps to prevent or mitigate the harm from occurring?

3. Are you sufficiently transparent, i.e. disclosing the outcomes of your due diligence both in terms of knowledge as well as responses to this knowledge?

4. Are adequate remedies in place for those human rights have been abused?

Four clear questions, easy to ask, much harder to answer. It is in relation to this second question that the question of leverage comes in. Often the necessarily preventative steps and mitigations sit outside of your direct control – i.e. they are not harms you are causing directly, but are things you are contributing to or directly linked to. Therefore, leverage means a company doing what it can to influence the behaviour of others – be they business partners, governments or even civil society. As I have said, this is particularly important in situations where the business activity or service is itself contributing to or is linked to a negative human rights impact. But businesses can act even if they are not linked in this way. Problems can be systemic to whole industries or geographic locations and it is in everyone's interests to work together to achieve change – in other words to use collective leverage.

Companies need to distinguish how they are involved in an adverse human rights impact from their ability to use leverage to address the impact. In other words, companies cannot diminish their responsibility through diminishing their leverage. If a company is contributing to or linked to a human rights harm and has low leverage to influence the actions of others, then it must take active steps to increase its leverage.

Many of us can remember examples starting in the 1990s of footwear or apparel companies who dropped suppliers when media stories of child labour and forced labour emerged. Ending business relationships suddenly and without any remedial steps in place is hardly likely to lead to better human rights outcomes for the communities in question, or any other workers the suppliers go on to employ once the international brand has left the equation and no longer has any leverage upon the behaviour of the suppliers. A more recent case is that of ANZ bank in Australia, where the OECD national contact point found that the bank had withdrawn from a connection to a Cambodian sugar company when stories of land grabs emerged in 2014. The NCP's statement found that ANZ should have used its leverage to better improve the situation for those most affected by the land grabs. The bank is now considering paying compensation to the communities involved.

Examples of Collective Leverage are Emerging Across Business

There is increasing evidence that leading companies understand that they need to be proactive on leverage. Perhaps the most important way this is done is through collective action. My organization, the Institute for Human Rights and Business (IHRB) is responsible for initiating a number of these approaches to complex issues when governments or businesses or NGOs (or all three) have come to us with a complex set of business and human rights challenges. We have done so on the ground in countries such as Myanmar, Qatar and Colombia, and also globally thematically on issues as diverse as responsible recruitment, commodity trading, the open source ranking of companies for investors, and the issue of a more responsible global sports industry. But beyond our own work, we witness the work of many others and the countless examples of collective action that are emerging across a number of commodities, business sectors, high-risk countries, or – as we see in the Netherlands or Germany – national multi-stakeholder covenants about how their companies should behave abroad.

At its best, collective action on business and human rights makes the fundamental actions for responsibility an issue beyond competitive pressures. Likewise, collective action can significantly increase leverage for better human rights outcomes.

Human Rights Leverage and Finance

As the OECD NCP case relating to ANZ bank shows, there is much that financial institutions can do on their own to increase human rights leverage. I know that Export Credit Agencies (ECAs) do already look to increase their own leverage in terms of a lending decision based on ESG factors. Much of this leverage comes before a loan is agreed and can take the form of due diligence requirements or how the loan itself is structured. But some ECAs are increasing the capacity to monitor Cat A or B investments throughout the lifecycle of the investment. Sometimes this means working with other ECAs to share this burden but also increase leverage should things need to be addressed.

I also know from my more recent experience on the Advisory Council for the European Bank on Reconstruction and Development (EBRD) that the IFIs can be invited into projects specifically because of the social and environmental leverage they bring.

The finance sector does not sit in isolation, and whilst it has been relatively slow to the game, it does also engage in collective action explicitly framed around human rights. It is interesting to see several ECAs now in the Equator Principles group and, for the first time in its history, it is looking to update the Principles even while the IFC Performance Standards remain unchanged. I know human rights are part of this discussion. Initiatives such as the Equator Principles, UNEP FI, the Thun Group or the new Financial Sector Commission on Modern Slavery and Human Trafficking are important industry initiatives that will advance human rights across the sector, and in this way increase the potential for greater leverage. The finance sector has been less familiar with multi-stakeholder approaches but these too are coming. The Dutch Banking Sector Agreement is at the forefront of these – involving not just the leading Dutch commercial banks but also the Dutch development finance institution, government and civil society. The leverage will come in a number of forms. First, the joint mapping of high risk commodity value chains (such as cocoa, palm oil and gold) – so that the banks are aligned on prioritisation and also collective responses to managing risks. A shared database will be developed for these sectors which will aid the decision making of all the banks. The role and potential leverage of each financial actor will be carefully observed and learned from.

Is a similar approach viable in countries such as Canada and if not what might be an interesting option? Canada has long had an interest in the mining sector globally and making it both more responsible and sustainable. Has the potential leverage of the financial sector, in all its forms from project finance, through to export credit for associated technologies and services, as well as insurance, been fully mapped both upstream and downstream? The recent disaster in Brumadinho in Brazil reminds us that mining remains high-risk in human rights terms and so the pressure for financial sector scrutiny is likely to increase. Was the mining sector using its collective leverage to improve standards in tailings dams and community awareness of all risks? Put simply, the sector was not. Much in the same way as BP was not engaged in cross-sector discussions on the human risks of deep water drilling prior to the Deepwater Horizon disaster.

In contrast, and despite its many limitations, it remains true that collective leverage through the Voluntary Principles on Security and Human Rights is associated with fewer reported violations by public and private security amongst the companies participating, compared with the 1980s and 1990s. So to end, what more could Export Development Canada consider in terms of the use of its own leverage?

Example One: Increasing Leverage in Relation to Mobile Assets, such as Shipping

A range of potential investments might not be fixed projects but rather mobile assets, such as aircraft, shipping or railways. For the Norwegian Export Credit Agency (GIEK), for example, shipping is a key concern and so the ECA aims to use its leverage beyond individual transactions. GIEK has taken an active interest in ship-breaking conditions in India and Bangladesh in efforts to reform these as this is where nearly all the world's ships will end their lives. Similarly, GIEK attended one of our meetings in London this week looking at how human rights due diligence could be applied to the whole lifecycle of a ship – from raw materials, construction, life on the high seas to breaking. Conditions can be very poor, sometimes dangerous – undermining not just human rights efforts, but also any commitments to sustainable oceans. Finance can be an important lever, perhaps the most significant lever of all, in improving conditions in the industry. One major commodity trader and shipper has told me that it was the expectations of financial institutions that has driven the company's human rights commitments – more than the threat of legislation, poor reputation, NGOs, investors or any of the more traditional levers.

What other moveable assets can be mapped in the way several of us have started to map shipping? How can collective leverage be best used?

Example Two: Increasing Leverage in Relation to New Technologies

Digital technology might not be a major part of your portfolio at present but I am sure it is on your radar. It stands to disrupt the mining sector in many ways: increased automation and artificial intelligence might have a dramatic effect on employment, big data can expedite innovation, and shared ledger technologies such as blockchain, could radically transform traceability and accountability. In terms of trade finance, a broad range of financial institutions, including ECAs, have started to consider the social benefits that lower cost and more traceable finance might deliver. At a time when the whole architecture of free trade is under much greater scrutiny, more accessible access to global value chains for smaller and poorer businesses throughout the world must be a good thing.

Whilst the potential upside of technological innovation is very attractive, the risks must also be better understood. We know only too well how the irresponsible management of social media platforms has contributed to genocide, in the case of Myanmar. It has also challenged the democratic process in my own country and led to a range of privacy, child safeguarding, and other concerns such as facial recognition technology that I mentioned earlier. What does it mean when this kind of personal data meets the blockchain? A few years ago we worked with the Swedish Export Credit Agency to begin to think about what respecting human rights means in business sectors such as Tech, not well served by the more project focused nature of the IFC Performance Standards. Now is the time to exercise human rights leverage in how some of these new technologies will develop and the finance sector is one again key.

Similarly, a few years ago, we worked with the British Foreign Office to produce guidance for UK exporters in the Tech Sector on a range of human rights risks associated with dual-use technology.

Governments are not aligned on some of these issues, as we have seen on the issue of Huawei deals for 5G infrastructure – and the public disagreement between the 5 Eyes at present. The leverage issue is simply this, what can be done now to make sensitive issues pre-competitive, to flag common concerns as well as developing exciting new areas of technology which stand to be of human rights benefit. On issues such as digital technology, it is best to make these moves now – as now is when the leverage is greatest.

I hope these thoughts have been helpful and I look forward to questions or other perspectives on the leverage question.