

# **The Corporate Human Rights Benchmark: sparking a race to the top? Dr Chijioke Chijioke-Oforji<sup>1</sup>**

The Corporate Human Rights Benchmark (CHRB) has arisen amid widespread concern about the activities of transnational corporations in the global south. The benchmark, which is grounded on the UN Guiding Principles on Business and Human Rights—a global normative framework for responsible business conduct—assesses the performance of 101 publicly traded companies from different parts of the globe, against a range of human rights metrics and indicators. This article examines the structure and effects of the CHRB. It argues that the benchmark, although embryonic, can be characterised as a quasi-monitoring tool for the UN Guiding Principles. The article further argues that the benchmark has introduced a positive competitive environment for ranked companies to race to the top on Human Rights. This is reinforced by the considerable reputational and financial pressures that have been generated against poorly performing firms.

**Keywords: Governance, Benchmarks, Corporate Social Responsibility.**

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## I Introduction

The use of benchmarks, rankings and indicators in transnational governance is expanding rapidly.<sup>2</sup> Notable examples include the Corruption Perceptions index published by Transparency International (TI) and the World Bank's Worldwide Governance Indicators (WGI).<sup>3</sup> Both benchmarks measure complex social phenomena – corruption and public sector governance – across several countries and quantify these ordinarily weighty socio-economic challenges in simple and accessible terms for end users.

This growth in the use of benchmarks has attracted scholarly attention in the Global Governance and International Law disciplines.<sup>4</sup> One example is a widely-appraised book by Kingsbury and others in which they note the normative appeal of benchmarks, rankings and indicators as 'technologies' of global governance.<sup>5</sup> Notwithstanding this appeal, the role, function and effects of benchmarks in the governance of socio-economic problems remain poorly understood.

This paper sets out to address this gap. It examines, first, the idea of governance through benchmarks. Drawing from an interdisciplinary literature mainly within the social sciences, it considers the nature, characteristics, appeal and effects of Benchmarks. This is followed by a study of the Corporate Human Rights Benchmark (CHRB) – an embryonic benchmark developed by a

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<sup>2</sup> Alexander Cooley and Jack Snyder, *Ranking the World: The politics of International Rankings and Ratings* (Cambridge University Press, 2015) p.8.

<sup>3</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry 'Introduction: Global Governance by Indicators' in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.1.

<sup>4</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry 'Introduction: Global Governance by Indicators' in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.1. see also: André Broome and Joel Quirk 'The politics of numbers: the normative agendas of global benchmarking' (2015) 41 *Review of International Studies* 813. See also: Alexander Cooley and Jack Snyder, *Ranking the World: The politics of International Rankings and Ratings* (Cambridge University Press, 2015) p.8.

<sup>5</sup> *Ibid* at p.10.

multi-stakeholder coalition of investors and civil society organisations which ranks the performance of 101 publicly listed companies against six broad themes grounded on the UN Guiding Principles on Business and Human Rights (UNGPs).

The following section examines the design and components of the CHRB, positioning it as a quasi-monitoring tool for the UN guiding principles. This is followed by an analysis of the discernible effects of the Benchmark and its potentially transformative role in inducing behavioural changes amongst its targets.

## II the Role of Benchmarks in Global Governance: An overview

In an age of ever increasing interconnectivity in social, economic, political and cultural terms, benchmarks, indicators and rankings have emerged as useful instruments in the monitoring of complex social, economic and political phenomena.<sup>6</sup> By ‘benchmarks’, this paper speaks of a wide range of comparative assessment or evaluation techniques often described in varied nomenclature such as rankings, datasets, indicators, indexes, external analyses that systematically assess the performance of actors, populations, or institutions against identified themes, outcomes, standards and metrics.<sup>7</sup>

Notable examples include the Corruption Perception Index, published annually by TI – a civil society organisation (CSO), which ranks countries by their perceived levels of public sector corruption.<sup>8</sup> The WGI, which ranks over 200 countries according to six governance attributes also fits comfortably within this paradigm.<sup>9</sup> Other examples include the Ease of Doing Business Index

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<sup>6</sup> Alexander Cooley and Jack Snyder, *Ranking the World: The politics of International Rankings and Ratings* (Cambridge University Press, 2015). p. 7.

<sup>7</sup> André Broome and Joel Quirk ‘The politics of numbers: the normative agendas of global benchmarking’ (2015) 41 *Review of International Studies* 813,

<sup>8</sup> Transparency International ‘Explanation of how Individual Country Scores of the Corruption Perceptions Index are Calculated’ (2017) <[https://www.transparency.org/news/pressrelease/explanation\\_of\\_how\\_individual\\_country\\_scores\\_of\\_the\\_corruption\\_perceptions](https://www.transparency.org/news/pressrelease/explanation_of_how_individual_country_scores_of_the_corruption_perceptions)> Accessed 20 May 2019.

<sup>9</sup> World Bank ‘Worldwide Governance Indicators’ (2019) <<https://info.worldbank.org/governance/wgi/#home>> Accessed 20 May 2019.

of the World Bank<sup>10</sup> and the subject-matter of this paper, the Corporate Human Rights Benchmark which ranks the performance of 101 Corporate giants against the six broad measurement themes, all of which are grounded on the UNGPs.<sup>11</sup>

In studying benchmarks, it is useful to keep two broad analytical distinctions in mind. The first is the structural components of benchmarks, and the second refers more to the probable effects of these instruments.

In the first instance, benchmarks share several structural components. These include the relative simplification of complex phenomena into clear, universal, objective and unambiguous terms.<sup>12</sup> From this vantage point, benchmarks are said to reduce complicated socio-economic problems such as corruption, public sector governance and corporate social responsibility into simple, comparable and accessible data for end-users, who include policymakers and increasingly, knowledge-based communities.<sup>13</sup>

This simplicity is part of the central appeal of benchmarks because it permits the evaluation of phenomena that are by their nature extremely multifaceted, context-specific and in many instances, non-commensurable.<sup>14</sup>

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<sup>10</sup> World Bank 'Ease of Doing Business Rankings' (2019) <<https://www.doingbusiness.org/en/rankings>> Accessed 20 July 2019.

<sup>11</sup>Corporate Human Rights Benchmark '2018 Key Findings' (2018) <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 July 2019.

<sup>12</sup>Dolf Lintelo, Tamlyn Munslow, Rajith Lakshman and Kat Pittore 'Assessing the Policy Impact Of 'Indicators': A Process- Tracing Study of the Hunger and Nutrition Commitment Index (Hanci)' (2016) Institute of Development Studies Evidence Report No. 185, 12 <<https://pdfs.semanticscholar.org/8fd9/854507dad9c49d002395d4575c2cb1a533f.pdf>> Accessed 20 May 2019.

<sup>13</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry 'Introduction: Global Governance by Indicators' in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.8. See also: Stefano Golinelli 'Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance' (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36, 2* <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019.

<sup>14</sup> Stefano Golinelli 'Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance' (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36, 2* <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019. See also: Kevin Davis, Benedict Kingsbury and Sally Engle Merry 'Introduction: Global

Yet, the ease through which benchmarks simplify complex phenomena may also mean that they overlook context-specific peculiarities in favour of standardised or universal outcomes.<sup>15</sup> Under such circumstances, contextual detail may be ‘lost in translation’ in the pursuit of quantification and comparability.<sup>16</sup> While this may allow for a black and white view of the world, it also leaves room for criticism about the appropriateness, accuracy, neutrality, selectivity and bias of certain benchmarks.<sup>17</sup>

Besides simplifying complex phenomena, another characteristic of benchmarks is their rhetorical appeal or force.<sup>18</sup> This is borne out, often, in the title of the benchmark itself which is usually an indication of what the instrument purports to measure or assess.<sup>19</sup> For instance, the Aid Transparency Index does exactly what its title implies – assess the ‘transparency’ of major development agencies.<sup>20</sup> This is equally true of the Corporate Human Rights Benchmark which ranks corporate respect for Human Rights.<sup>21</sup>

Rhetorical labelling of this kind serves two functions. First, it provides the benchmark with a distinct and separate identity from instruments of a similar purpose but, more so, it asserts the claim that the underlying phenomena exists and that the benchmark exists to measure it.<sup>22</sup> This

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Governance by Indicators’ in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.8

<sup>15</sup> André Broome and Joel Quirk ‘Governing the world at a distance: the practice of global benchmarking’ (2015) 41 *Review of International Studies* 819,827.

<sup>16</sup> *ibid.*

<sup>17</sup> Sally Engle Merry ‘Measuring the World: Indicators, Human Rights and Global Governance’ (2011) 52(3) *Current Anthropology* 83, 87.

<sup>18</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry ‘Introduction: Global Governance by Indicators’ in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.8.

<sup>19</sup> *ibid.*

<sup>20</sup> Publish What You Fund ‘2018 Aid Transparency Index’ (2018) <<https://www.publishwhatyoufund.org/the-index/2018/>> Accessed 20<sup>th</sup> May 2019.

<sup>21</sup> Corporate Human Rights Benchmark ‘2018 Key Findings’ (2018) <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 July 2019.

<sup>22</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry ‘Introduction: Global Governance by Indicators’ in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.8. See also: Sally Engle Merry ‘Measuring the World: Indicators, Human Rights and Global Governance’ (2011) 52(3) *Current Anthropology* 83, 84.

imbues the instrument with a certain intellectual or rhetorical appeal that is ultimately conveyed to end-users.<sup>23</sup>

Alongside the above, benchmarks also possess a rank-ordered or what Kingsbury and others describe as an ordinal structure.<sup>24</sup> Ordinal, in this context, refers to the positioning of the subjects of the benchmark in an order of magnitude, significance or importance.<sup>25</sup> This is commonplace in many influential benchmarks where leaders are typically represented at the apex whilst laggards are placed at the bottom. Such ordering permits the ranking or comparison of the target actors against the underlying metrics or standards that have informed the benchmark.<sup>26</sup>

A final component or characteristic of benchmarks is their purpose as evaluative instruments. ‘Evaluative’ in this context means that benchmarks set standards against which performance is to be measured.<sup>27</sup> The standards in question are typically suggested by the title of the benchmark – corruption, human rights, respect for the rule of law, etc.<sup>28</sup> To the extent that a benchmark is used to evaluate performance against a given standard rather than another, the use of that benchmark embodies a theoretical claim about the superiority of the underlying standard in evaluating actors’ conduct.<sup>29</sup>

Having considered the structural components of Benchmarks, it is important to analyse their probable effects. Here, the literature speaks of at least, two interrelated effects: knowledge, and governance or regulatory effects.

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<sup>23</sup> *ibid.*

<sup>24</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry ‘Indicators as a Technology of Global Governance’ (2012) 46(1) *Law and Society Review* 71, 76.

<sup>25</sup> *ibid.*

<sup>26</sup> Kevin Davis, Benedict Kingsbury and Sally Engle Merry ‘Introduction: Global Governance by Indicators’ in Kevin Davis, Benedict Kingsbury and Sally Engle Merry (eds) *Governance by Indicators* (Oxford University Press, 2012) p.8.

<sup>27</sup> *ibid.* at 9.

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

Scholarship of a largely Foucauldian and constructivist nature suggests that the most pervasive effect of benchmarks are their knowledge-based effects.<sup>30</sup> These effects are central to benchmarks since they are, by definition, social constructions bearing specific logics, values, interests and knowledge claims.<sup>31</sup>

The knowledge effects of benchmarks manifest themselves in several ways. The first is through the creation of identities and standards— determining, for instance, who is vulnerable and to what or who should provide solutions.<sup>32</sup> The knowledge-based effects of benchmarks can also manifest through the creation of normative criteria regarding the parameters of appropriate conduct and performance.<sup>33</sup>

These logics and knowledge claims may prove sensitive in areas of high public salience such as human rights, socio-economic development, corporate responsibility and corruption and can impel public authorities and other actors to respond affirmatively to the logics contained therein (governance or regulatory effects).<sup>34</sup>

Besides unveiling logics and norms of appropriate conduct, benchmarks can also induce governance or regulatory effects. By governance effects, this paper speaks of the direct and indirect ways in which benchmarks exert regulatory authority and inspire affirmative changes on the part

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<sup>30</sup> Stefano Golinelli 'Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance' (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36*, 3 <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019. See also: André Broome and Joel Quirk 'The politics of numbers: the normative agendas of global benchmarking' (2015) 41 *Review of International Studies* 813, 816-7. See further: Maria Uribe 'Development through data? A case study on the World Bank's performance indicators and their impact on development in the Global South' IRPA Working Paper – GAL Series No.5/2012, 13 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2167366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167366)> Accessed 20 August 2019. See also: Sally Engle Merry 'Measuring the World: Indicators, Human Rights and Global Governance' (2011) 52(3) *Current Anthropology* 83, 84.

<sup>31</sup> *ibid.*

<sup>32</sup> Golinelli n 29.

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.* See also: Leonard Seabrooke and Duncan Wigan 'How Activists use Benchmarks: Reformist and Revolutionary Benchmarks for Global Economic Justice' (2015) 41(5) *Review of International Studies* 887, 889.

of their subjects.<sup>35</sup> This coheres with the argument of Uribe<sup>36</sup> and Cooley<sup>37</sup> who note that benchmarks often act as mechanisms for formal and informal global regulation by embodying values, logics and norms of appropriate conduct.<sup>38</sup>

Regulatory effects of the kind described above occur partly as a consequence of the knowledge claims propagated by benchmarks but they are also reinforced by the financial and reputational pressures associated with benchmarks.<sup>39</sup> Financial pressures typically arise where target actors stand a real chance of incurring serious financial or commercial liabilities and costs in the event of a dismal performance on a benchmark.<sup>40</sup> In this sense, the benchmark may therefore act as a tool of ‘ex-post’ conditionality by linking the financial objectives of the target actor to a satisfactory performance on the benchmark.<sup>41</sup>

One example often identified in the literature is the humanitarian policymaking sphere where actor performance on reputable benchmarks often determines the continued allocation of development funding.<sup>42</sup> Financial costs of the kind described above are said to constrain the behaviour of target actors, nudging them towards better performance and behaviour (governance effects).

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<sup>35</sup> *ibid.*

<sup>36</sup> Maria Uribe ‘Development through data? A case study on the World Bank’s performance indicators and their impact on development in the Global South’ IRPA Working Paper – GAL Series No.5/2012, 13 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2167366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167366)> Accessed 20 August 2019.

<sup>37</sup> Alexander Cooley and Jack Snyder, *Ranking the World: The politics of International Rankings and Ratings* (Cambridge University Press, 2015) p.7.

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.* See also: Stefano Golinelli ‘Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance’ (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36, 3* <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019.

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.* See also: Stefano Golinelli ‘Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance’ (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36, 3* <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019. See also: Maria Uribe ‘Development through data? A case study on the World Bank’s performance indicators and their impact on development in the Global South’ IRPA Working Paper – GAL Series No.5/2012, 13 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2167366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167366)> Accessed 20 August 2019.

<sup>42</sup> Maria Uribe ‘Development through data? A case study on the World Bank’s performance indicators and their impact on development in the Global South’ IRPA Working Paper – GAL Series No.5/2012, 13 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2167366](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167366)> Accessed 20 August 2019. See also: Ole Sending and Jon Sande Lie ‘The limits of global authority: World Bank benchmarks in Ethiopia and Malawi’ (2015) 41 *Review of International Studies* 993-1010.

Alongside financial pressures, the regulatory or governance effects of benchmarks can also be reinforced by reputational pressures.<sup>43</sup> Benchmarks induce such pressures through their status as symbolic judgements about an actor's performance.<sup>44</sup> For instance, a dismal showing on a benchmark is likely to pass a symbolic judgment about an actor's behaviour including the propriety of the actor's practices.<sup>45</sup> This in turn, generates serious reputational or behavioural pressures on poorly performing subjects.<sup>46</sup>

These pressures are likely to be amplified in areas of high public salience where activist networks may seize on the disconcerting performance of an actor in their often vocal campaigns.<sup>47</sup> Indeed, Seabrooke and Wigan have argued that activist networks utilise the symbolic judgments of benchmarks in persuading poorly performing targets to change their practices and behaviours.<sup>48</sup> Under such circumstances, it is not implausible that benchmarks may in fact induce meaningful changes which may include serious improvements in culture, behaviour, practices and performance.

### **III The Corporate Human Rights Benchmark as a Case Study.**

Having set out the structural components and effects of Benchmarks, this section examines the rise and nature of the CHRB.

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<sup>43</sup> Stefano Golinelli 'Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance' (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36*, 3 <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019.

<sup>44</sup> Stefano Golinelli 'Global Benchmarking Practices and the Development of a Progressive Art of Government: The Case of Land Governance' (2016) *Global governance/politics, Climate Justice & Agrarian/Social Justice: Linkages and Challenges Colloquium Paper No.36*, 4 <[https://www.iss.nl/sites/corporate/files/36-ICAS\\_CP\\_Golinelli.pdf](https://www.iss.nl/sites/corporate/files/36-ICAS_CP_Golinelli.pdf)> Accessed 20 May 2019. For a broader discussion on the idea of 'symbolic judgements' see: André Broome and Joel Quirk 'the politics of numbers: the normative agendas of global benchmarking' (2015) 41 *Review of International Studies* 813, 816.

<sup>45</sup> *ibid.*

<sup>46</sup> Leonard Seabrooke and Duncan Wigan 'How Activists use Benchmarks: Reformist and Revolutionary Benchmarks for Global Economic Justice' (2015) 41(5) *Review of International Studies* 887, 889.

<sup>47</sup> *Ibid.*

<sup>48</sup> *ibid.*

The CHRB is, at its core, a unique evaluative benchmark birthed by a multi-stakeholder coalition of investors, and civil society organisations in 2013.<sup>49</sup> Its main architects include notable investors such as Aviva Insurance plc, Calvert Investments, and the investment research consultancy, EIRIS.<sup>50</sup> The CHRB also draws on significant civil society support and has organisations like the Business & Human Rights Resource Centre and the Institute for Human Rights and Business (IHRB) as part of its governing body.<sup>51</sup>

Substantively, the CHRB is modelled on the norms enshrined in the UNGPs, which serve as a baseline standard for responsible business conduct across the globe.<sup>52</sup> It aims to analyse the performance of major corporations on specific Human Rights issues, including their policy commitments, processes and systems for addressing key risks, responses to serious, human rights-related allegations, and overall transparency.<sup>53</sup> The benchmark therefore serves as a symbolic judgment on a company's performance in the abovementioned areas.

The companies, drawn from three industries – agricultural products, apparel and extractives – are chosen on the basis of their market capitalisation and revenues and are assessed across six broad measurement themes, each with varying weightings and mostly drawn from the UNGPs.<sup>54</sup> The performance of each individual organisation across the measurement themes is then aggregated to produce a single ordinal score which can be up to 100 percent.<sup>55</sup>

In assessing the performance of its targets, the CHRB relies on publicly available information about the human rights practices of its target companies. This includes information sourced from

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<sup>49</sup> Corporate Human Rights Benchmark 'Who we are' (2019) <<https://www.corporatebenchmark.org/who-we-are>> Accessed 20 May 2019.

<sup>50</sup> Neil Hodge 'Gauging Corporate Human Rights Performance' (2015) 62(7) Risk Management 38, 39.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Emily Holland 'Landmark Corporate Human Rights Benchmarking launched' (*Lexology*, 28 March 2016) <<https://www.lexology.com/library/detail.aspx?g=41f18ac5-6e7f-4b5c-8a30-6898afadd52e>> Accessed 20 July 2019.

<sup>54</sup> Corporate Human Rights Benchmark 'Methodology 2018 for the Agricultural Products, Apparel and Extractive Industries' (2018), 31-32 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Methodology%20Web%20Version.pdf>> Accessed 20 August 2019.

<sup>55</sup> Ibid.

a company's website, and periodic financial and non-financial reports. The CHRB also considers annual Corporate Social Responsibility (CSR) and sustainability reports.<sup>56</sup>

In the absence of sufficient publicly available data, the benchmark may also consider external sources such as press articles, reports published by reputable data providers (Dow Jones, Vigeo Eiris, BHRRC and RepRisk), multilateral organisations, trade unions and non-governmental organisations (NGOs). Each external source used in the assessment is often shared with the concerned companies to establish its veracity.<sup>57</sup>

The CHRB may also obtain data from confirmed sources within a target company where it seeks to assess the company's approach to handling serious allegations of abuse (Measurement theme E). Where there are victim protection or confidentiality issues related to an on-going litigation, the CHRB may consider non-publicly available information, albeit on a case-by-case basis. Where it does so, it will indicate that this is the case.<sup>58</sup>

***(a) Key elements and methodology of the Corporate and Human Rights Benchmark***

As set out above, the CHRB ranks the performance of 101 publicly traded companies, from different parts of the Globe, against a range of indicators and themes based on the UNGPs.<sup>59</sup>

Themes embedded in the benchmark include the governance and policy commitments of the benchmarked organisations, human rights due diligence, the existence of remedies and grievance mechanisms, the human rights practices of the ranked organisations, organisational responses to serious HR allegations and last but not least, transparency.<sup>60</sup> The above-mentioned themes are discussed extensively in the following paragraphs.

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<sup>56</sup> *ibid* at 33.

<sup>57</sup> *Ibid*.

<sup>58</sup> *ibid*.

<sup>59</sup> *ibid* at 31.

<sup>60</sup> *Ibid* at 31.

In the first instance, governance and policy commitments contribute 10% of the entire weighting on the benchmark. In this regard, the CHRB expects benchmarked actors to show multiple levels of commitment to the protection of human rights and fundamental freedoms.<sup>61</sup> Notable indicators here include company level commitments to respecting human rights and the rights of workers.<sup>62</sup> This is clearly based on the UN guiding principles, which also require businesses to respect human rights and put in place policy commitments towards this end.<sup>63</sup>

Within the first theme, ranked organisations are also expected to show a public commitment to industry-specific standards and rights, including, respect for the rights of women, minors and minority groups.<sup>64</sup> This is hardly surprising given the focus of the benchmark on the agricultural products, apparel and extractives industry – all of which are prone to issues of abuse and rights violations. Further indicators within this theme include stakeholder engagement<sup>65</sup> and board level accountability on human rights issues among others.<sup>66</sup>

The second theme considered by the benchmark covers the embedding of human rights into a company's culture and management systems and the idea of human rights due diligence.<sup>67</sup> This theme is so important that it contributes about 25% of the overall weighting on the benchmark.<sup>68</sup> Key elements under consideration by the CHRB include clear layers of responsibility for day-to-day human rights functions, the integration of human rights into the risk management processes of the organisation and the presence of monitoring and corrective actions in the event of human

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<sup>61</sup> Ibid

<sup>62</sup> *ibid* at 42

<sup>63</sup> UNGP 12 and 16.

<sup>64</sup> Corporate Human Rights Benchmark 'Methodology 2018 for the Agricultural Products, Apparel and Extractive Industries' (2018), 46

<<https://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Methodology%20Web%20Version.pdf>> Accessed 20 August 2019.

<sup>65</sup> *Ibid* at 48.

<sup>66</sup> *ibid* at 49.

<sup>67</sup> *Ibid* at 54-55.

<sup>68</sup> *Ibid*.

rights abuses.<sup>69</sup> Other indicators include the existence of processes and triggers for identifying human rights risks and impacts.<sup>70</sup>

Alongside the above, the CHRB also considers the remedies and grievance mechanisms through which ranked companies address adverse impacts on human rights. As a sign of its significance, this theme contributes about 15% of the total weighting on the benchmark.<sup>71</sup> Key indicators assessed here include the existence and operation of grievance mechanisms for employees, external stakeholders and communities.<sup>72</sup> The CHRB also considers the involvement of stakeholders in the design and performance of the grievance mechanism.<sup>73</sup> Other indicators include the commitment of target companies to non-retaliation over complaints and the transparency of the grievance mechanism among others.<sup>74</sup>

The fourth theme contributes 20% of the entire weighting on the benchmark and focuses on key industry-specific risks. For companies in the agricultural products industry, the CHRB considers a number of indicators including payment of the living wage in agricultural operations and in supply chains.<sup>75</sup> The benchmark also considers whether a company has taken active steps to eradicate the risk of Child and forced labour.<sup>76</sup> Other considerations include freedom of association and collective bargaining for workers within the company's operations and in its supply chains.<sup>77</sup> This is broadly similar for companies in the apparels and extractives industry.

The penultimate theme considers the practices of benchmarked companies with regards to serious allegations of abuse and misconduct. This theme is split into three different indicators. The first focuses on whether benchmarked companies respond publicly to serious HR allegations.<sup>78</sup> The

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<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid* at 67.

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*

<sup>75</sup> *ibid* at 76-77.

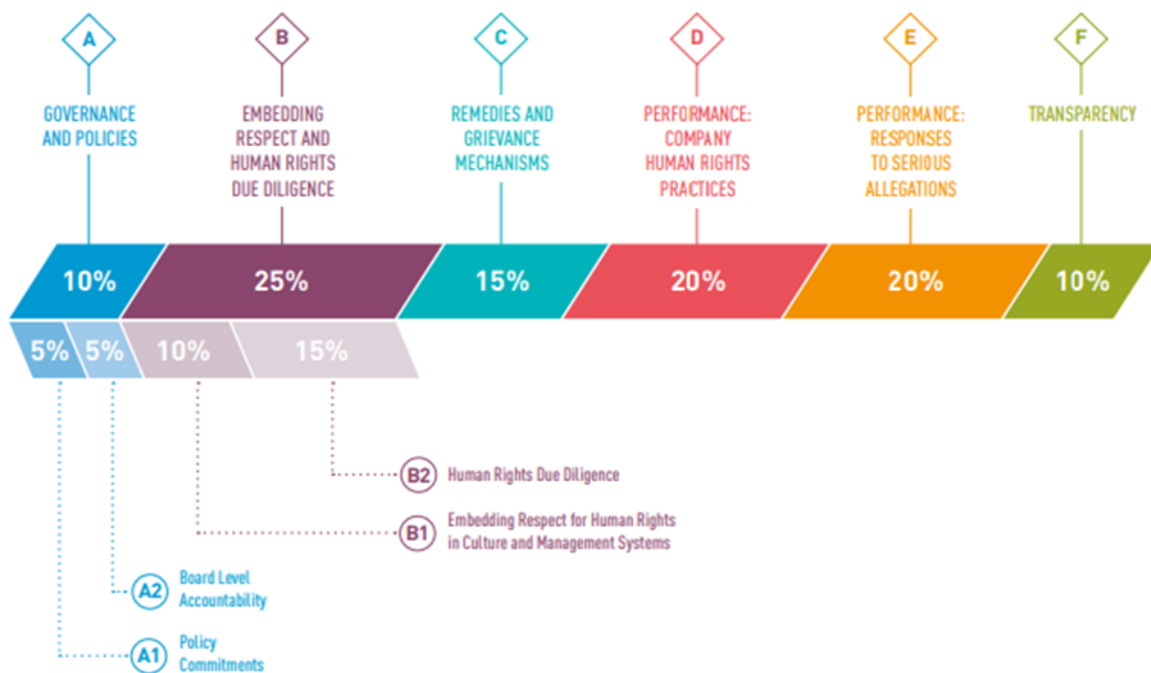
<sup>76</sup> *Ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid* at 98-105.

CHRB also considers whether companies have appropriate policies in place for dealing with serious allegations of HR abuse.<sup>79</sup> The third and final indicator in this context examines whether target companies have often taken appropriate action to address alleged HR abuses.<sup>80</sup>

Last but not least is the important issue of transparency and reporting.<sup>81</sup> The focus here is on a number of factors including a company’s disclosure practices,<sup>82</sup> and compliance with recognised reporting standards such as the Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB) or the UN Guiding Principle Reporting Framework (UNGPRF).<sup>83</sup> The theme also considers whether the ranked company publishes key, high-quality reports that demonstrate an openness to Human Rights related matters.<sup>84</sup> This theme contributes 10% percent of the overall weighting, making it an important component of the benchmark.



<sup>79</sup> *ibid.*  
<sup>80</sup> *ibid.*  
<sup>81</sup> *ibid* at 106-109.  
<sup>82</sup> *ibid.*  
<sup>83</sup> *ibid.*  
<sup>84</sup> *ibid.*

## Figure 1: Weighting of CHRB Measurement Themes

### *(b) Analysis of the 2018 CHRB benchmarking exercise results.*

Based on the above-mentioned themes, the CHRB has produced ordinal scores showing the performance of 101 leading companies in the high-risk agricultural products, apparels and extractive industries. The results expose a rather disturbing picture of corporate performance in the human rights sphere.

For instance, the 2018 benchmark records an ‘alarmingly low’ average score of 27% for companies ranked on the benchmark, an improvement of just 9 percentage points from the previous average in the pilot 2017 benchmark.<sup>85</sup> Worse, nearly two-thirds of ranked companies score under 30% with over a quarter recording under 10%.<sup>86</sup> Companies in this category include notable brands such as Costco Wholesale, Gazprom, Starbucks, Petrochina and Kraft Heinz among others. This represents shockingly inadequate progress seven years after the UNGPs were agreed and launched.

Thematically, the benchmark finds a rather weak performance by a majority of assessed companies across the key measurement areas. For instance, the benchmark records a low average score of 2.9% out of a possible maximum of 10% in the area of governance and policy commitment, which suggests that a majority of companies are seriously behind in publicly demonstrating their commitments to human rights.<sup>87</sup>

This disconcerting performance is replicated in the second theme which focuses on human rights due diligence.<sup>88</sup> In this respect, the benchmark finds that an alarming 40% of companies score no points across the five indicators used to assess the measurement theme on human rights due

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<sup>85</sup>Corporate Human Rights Benchmark ‘2018 Key Findings’, 13  
<<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 August 2019.

<sup>86</sup> *ibid* at 12.

<sup>87</sup> *ibid*.

<sup>88</sup> *ibid*.

diligence.<sup>89</sup> This is despite clear expectations placed on businesses in the UNGPs to prioritise due diligence and to communicate their approaches transparently and effectively.<sup>90</sup>

In respect of remedies and grievance mechanisms, the benchmark finds, on the one hand, that 85% of companies disclosed information regarding the existence of grievance mechanisms for workers.<sup>91</sup> However, 35 of these companies could not show that their grievance mechanisms properly extended access to remedy to other stakeholder constituencies.<sup>92</sup> This is particularly concerning since the UNGPs explicitly require corporations to provide access to remedy for stakeholders as a whole.<sup>93</sup>

On the transparency of grievance mechanisms, the benchmark finds a staggeringly low level of compliance, with only one third of companies explaining the process of managing grievances.<sup>94</sup> Also, a quarter of companies assessed did not disclose how they provide remedies to affected stakeholders where there are adverse HR impacts.<sup>95</sup> This shows a serious chasm between the provisions of the UNGP and the practices of assessed firms.

Still on the operation of grievance mechanisms, the benchmark finds that external stakeholders are much less involved in the design and management of grievance mechanisms. Indeed, only 17% of assessed companies provided details of some stakeholder involvement in the design and performance of their grievance mechanisms, with the remaining failing to do so.<sup>96</sup> This is a clear

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<sup>89</sup> *ibid.*

<sup>90</sup> UNGP 17-21.

<sup>91</sup> Corporate Human Rights Benchmark '2018 Key Findings', 32 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 August 2019.

<sup>92</sup> *Ibid.*

<sup>93</sup> UNGP 28-31.

<sup>94</sup> Corporate Human Rights Benchmark '2018 Key Findings', 32-33 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 August 2019.

<sup>95</sup> *Ibid.*

<sup>96</sup> *ibid* at 32.

violation of the UNGPs which calls for the co-optation of stakeholders in the design and performance of company-level grievance mechanisms.<sup>97</sup>

In respect of the fourth measurement theme which assesses specific company practices around key human rights risks such as child labour and payment of the living wage, the benchmark paints a chastening picture of corporate disinterest at best or nonchalance at worst. This is revealed quite starkly in the context of the payment of a living wage to workers within company operations and supply chains where the benchmark finds that ‘virtually no companies have demonstrated strong commitments to ensuring there are living wages paid to workers in their own operations and supply chains.’<sup>98</sup>

This is worse in the context of child labour where the benchmark notes that ‘over half of apparel and agricultural products companies are failing to meet expectations on commitments to preventing child labour in their supply chains.’<sup>99</sup> This represents, on the whole, a disappointing level of compliance with the basic norms enshrined in the UNGPs and other multilateral instruments which call for tougher corporate action on child labour and fair pay.

A further area of concern highlighted by the benchmark is the practice of ranked organisations in responding to serious allegations of abuse.<sup>100</sup> Here, the benchmark finds a rather limited, if not, unsatisfactory approach on the part of ranked companies. Of the 96 allegations reviewed by the authors of the benchmark, over a third were not publicly responded to and less than half resulted in meaningful engagement with alleged affected parties.<sup>101</sup> Worse, only 3% of the cases reviewed showed the provision of satisfactory remedies to the victims.<sup>102</sup> This suggests a profoundly weak

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<sup>97</sup> UNGP 31

<sup>98</sup>Corporate Human Rights Benchmark ‘2018 Key Findings’, 13 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 August 2019.

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid* at 44-46.

<sup>101</sup> *ibid* at 45.

<sup>102</sup> *ibid* at 46.

effort on the part of major companies in dealing with serious allegations of abuse and misconduct and in respecting the cornerstone principles of the UNGPs.

The findings of the benchmark are not entirely negative: there are a number of promising signs. This includes the performance of major corporations like Adidas, Rio Tinto, BHP Billiton, Marks & Spencer Group, Unilever, Vale, ENI and VF whose leadership of the benchmark is clear to see. These companies all achieve above 60% and are ranked in this way given their good standing across the various themes of the benchmark.<sup>103</sup>

The leaders of the benchmark also show sound organisational practice across major measurement themes including those that require them to demonstrate policy commitments, embed respect for HR, provide access to remedy, deal with key industry risks and provide public access to key company-specific practices (transparency).<sup>104</sup> This provides a silver lining and perhaps an opportunity for cross-organisational learning and improvements across the piece.

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<sup>103</sup> *ibid* at 12.

<sup>104</sup> *ibid*.

BAND RANGE	COMPANY	INDUSTRY	BAND RANGE	COMPANY	INDUSTRY
80-90%	Adidas	AP	20-30% (cont.)	Rosneft Oil	EX
70-80%	Rio Tinto	EX		McDonald's	AG
60-70%	BHP Billiton	EX	Pernod-Ricard	AG	
	Marks & Spencer Group	AP&AG	Kroger	AG	
	Unilever	AG	The Hershey Company	AG	
	Vale	EX	Suncor Energy	EX	
	ENI	EX	Exxon Mobil	EX	
50-60%	VF	AP	Ahold Delhaize	AG	
	The Coca-Cola Company	AG	PTT	EX	
	Kellogg	AG	Grupo Mexico	EX	
	Royal Dutch Shell	EX	LVMH	AP	
	Inditex	AP	Aeon Company	AP&AG	
	Freeport-McMoRan	EX	L Brands	AP	
	Anglo American	EX	Target	AP&AG	
	Gap	AP	Sysco	AG	
40-50%	Hennes & Mauritz	AP	Compass Group	AG	
	BP	EX	Nonisk Nickel	EX	
	Hanesbrands	AP	TJX Companies	AP	
	Total	EX	Anadarko Petroleum	EX	
	Nestle	AG	Marathon Petroleum	EX	
	Repsol	EX	Yum! Brands	AG	
	PepsiCo	AG	Canadian Natural Resources	EX	
	Diageo	AG	Kohl's	AP	
	Petrobras	EX	Tapestry	AP	
	Woolworths	AG	Phillips 66	EX	
	30-40%	Glencore	EX	PetroChina	EX
		ConocoPhillips	EX	BRF	AG
		Next	AP	Costco Wholesale	AP&AG
Ecopetrol		EX	Starbucks	AG	
Danone		AG	Nordstrom	AP	
Heineken NV		AG	Falabella	AP&AG	
Equinor		EX	Devon Energy	EX	
Tesco		AP&AG	Oil & Natural Gas Corporation	EX	
Nike		AP	Gazprom	EX	
General Mills		AG	Ross Stores	AP	
Under Armour		AP	Kraft Heinz	AG	
20-30%		Archer Daniels Midland	AG	China Petroleum & Chemical	EX
	Chevron Corporation	EX	China Shenhua Energy	EX	
	Kering	AP	Macy's	AP	
	Fast Retailing	AP	Shoprite	AG	
	Wesfarmers	AG	Prada	AP	
	Coal India	EX	CNOOC	EX	
	Associated British Foods	AP&AG	Hermes International	AP	
	Mondelez International	AG	Surgutneftegas	EX	
	Carrefour	AG	EOG Resources	EX	
	Sasol	EX	Alimentation Couche-Tard	AG	
	Goldcorp	EX	Valero Energy	EX	
	Lukoil	EX	Monster Beverage	AG	
	Wal-Mart Stores	AP&AG	Heilan Home	AP	
	Occidental Petroleum	EX	Kweichow Moutai	AG	
	Anheuser-Busch InBev	AG			
			0-10%		

Figure 2: Company Results by Band

## IV Discernible Impacts of the Benchmark

Having analysed the major components and findings of the CHRB, this section considers its discernible impact. At the centre of analysis are the obvious effects unleashed since the creation of the benchmark in 2017 and how these effects are shaping the preferences of ranked organisations.

The first notable effect is the creation of values, logics and norms of appropriate conduct for corporations in the HR sphere. The benchmark achieves this through its status as the foremost attempt to assess the performance of major corporations against their human rights duties and obligations.<sup>105</sup>

Alongside the above, the benchmark has also introduced a positive competitive environment for companies to race to the top on HR.<sup>106</sup> This is borne out in the responses of a number of target companies following its introduction. In one instance, Nestle, a poor performer on the 2017 pilot acknowledged that there was ‘more work to be done.’<sup>107</sup> The company also suggested that it was willing to ‘better understand... potential gaps.’<sup>108</sup>

Another benchmarked company, Tesco, expressed its displeasure at its 2017 performance, noting that ‘the benchmark clearly shows that there is more we can do both in terms of our work and our reporting, and we will reflect on the benchmark... as we continue to evolve our efforts.’<sup>109</sup>

The need for continuous improvements has also been highlighted by top performers such as BHP Billiton whose response to the 2017 pilot noted:

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<sup>105</sup>Corporate Human Rights Benchmark ‘Progress Report’ (2018), 6 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Progress%20Report%20Web%20Final.pdf>> Accessed 20 August 2019.

<sup>106</sup> Ibid at 7.

<sup>107</sup> Ibid at 8.

<sup>108</sup> *ibid.*

<sup>109</sup> *ibid* at 20.

‘The results of the CHRB have been shared widely within BHP, including with the Board and the CEO. While the result is welcome, we are also conscious that our score leaves significant room to improve our human rights performance. We have therefore carefully reviewed the assessment to identify those areas where we may be able to improve. As part of that work, in FY2017 we established a Human Rights Policy and Practice Working Group... This group will propose a number of recommendations across the business from managing human rights risk in the supply chain, to the processes used to identify and manage human rights risk.’<sup>110</sup>

The above remarks suggest that the benchmark has unleashed a positive competitive environment among its targets and that ranked companies are mindful of their performances and the corresponding need for improvements.

This competitive environment has been reinforced, in part, by the financial and reputational pressures unleashed on firms assessed on the benchmark. Such pressure can be seen in the decision of Union Investment, a leading German investment group, to use CHRB data in engaging with its portfolio companies.<sup>111</sup> The objective of this engagement is to encourage poorly performing portfolio companies to improve their standing on the benchmark by taking more affirmative action on Human Rights.<sup>112</sup> Union Investments has also mooted the idea of ‘negative listing’ where poor performers are excluded entirely from its portfolio.<sup>113</sup>

A further source of pressure is the efforts of investor coalitions following the release of the benchmark. One example is the UNGP Reporting Framework Investor Coalition – a group of 85 investors with over USD 5 trillion AUM – who are engaging proactively with CHRB benchmarked

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<sup>110</sup> *ibid.*

<sup>111</sup> Corporate Human Rights Benchmark ‘Progress Report’ (2018), 8  
<<https://www.corporatebenchmark.org/sites/default/files/documents/CHRB%202018%20Progress%20Report%20Web%20Final.pdf>> Accessed 20 August 2019.

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid* at 36.

companies on their approach to Human Rights.<sup>114</sup> These investors have written to all CHRB benchmarked companies, setting out their expectations on human rights and requesting proactive action, including clear improvements on their CHRB performance.<sup>115</sup>

There are signs that the competitive environment and associated pressures are changing behaviours and practices across the board. This can be seen in the improved performance of a number of companies in the 2018 benchmark. These include ENI, Adidas, Vale, Diageo and Danone all of whom score at least, 25% more than their previous scores in the 2017 pilot benchmark.<sup>116</sup> The CHRB attributes this dramatic rise to the commitment of these companies in improving their performance across the processual elements of the benchmark.<sup>117</sup>

More so, Coca-Cola – a poor performer on the 2017 pilot – has since issued its first stand-alone human rights report, partly as a reaction to the Benchmark.<sup>118</sup> These examples support the idea that the CHRB is inducing change in corporate perception and understanding of their Human Right obligations and gradually driving a race to the top.

## V Concluding remarks

This article considered the rise of benchmarks as technologies of global governance. It examined, in particular, the Corporate Human Rights Benchmark (CHRB) a benchmark created by a multistakeholder coalition of investors and civil society organisations which assesses the performance of 101 publicly traded companies from different parts of the globe, against a range of Human Rights metrics and indicators. The article argued that the CHRB has introduced a positive competitive environment for companies to race to the top on Human Rights through the

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<sup>114</sup> *ibid* at 7.

<sup>115</sup> *ibid*.

<sup>116</sup> Corporate Human Rights Benchmark ‘2018 Key Findings’, 12 <<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>> Accessed 20 August 2019.

<sup>117</sup> *Ibid*.

<sup>118</sup> Mike Scott, ‘Business Starts to Take Human Rights Seriously as Laws and Benchmarks Start to Bite’, *Forbes* (21 May 2018), <<https://www.forbes.com/sites/mikescott/2018/05/21/business-starts-to-take-human-rights-seriously-as-laws-and-benchmarks-start-to-bite/#6c7b66317f5d>> Accessed 18 July 2019.

creation of norms and logics of appropriate conduct. This is reinforced by considerable reputational and financial pressures that have been generated against poorly performing firms. However, if the CHRB is to remain an effective driver of change, a number of reforms may be necessary.

First, the authors of the benchmark should consider broadening its scope beyond the extractives, agricultural and apparels industries to other sectors with a high risk of abuse. There are signs that the CHRB is taking this seriously given reports of the possible inclusion of the ICT sector in the 2019 Benchmark. The inclusion of new sectors might therefore allow for a more perceptive ranking of corporate compliance with human rights obligations and enable concerned stakeholders to hold corporations to account.

The CHRB should also engage more proactively with benchmarked companies to encourage discernible behavioural shifts. This could be formalised by way of an advisory committee where benchmarked organisations can reflect on their scores, share best practices and explain probable steps being taken to improve their performance. These steps and any organisational changes should then be disclosed publicly to keep a public profile of CHRB-induced change.

The CHRB should further consider enhancing the impact of the benchmark by co-opting public authorities and regulators in its work. A potentially useful idea might be the use of the Benchmark as a screen in awarding public procurement contracts or in the provision of overseas investment finance. This should encourage a race to the top whilst providing strong public endorsement for the benchmark.

Ultimately, the success or failure of the CHRB rests on its ability to create meaningful, long-lasting change in corporate respect for human rights. The initial signs are undoubtedly positive but achieving the long-term goals of the Benchmark will require a sustained commitment from all parties including the authors of the CHRB, its targets and stakeholders.

