Roundtable Discussion on Business Structures that Prioritize Human Rights

24 May 2016, 2 -5:30 pm

Columbia University, New York

What we're meeting to discuss

What we call "the private sector" is in fact a diverse array of companies possessing particular structures of ownership and forms of governance. Ownership often determines whose interests the business prioritizes, while governance form defines the rules that determine how decisions are made. Ownership and governance forms can and often do play a defining role in determining the degree to which companies are set up to address a business's responsibilities to communities, workers, and customers. (See below for an elaboration on these terms.)

Yet the business and human rights (BHR) movement has not focused much on the structure or form of companies. As stated by Joanne Bauer and Elizabeth Umlas in a recent paper: "For the most part, the BHR movement has looked to national and international law and policy to regulate business behavior." Attention to new ownership and governance forms, which seem to be off the movement's radar, could help BHR to grapple with some of the difficult questions that continue to stump it. This includes questions surrounding the limitations around the need for a company to find a "business case" to address human rights, and whether a company can be too big to undertake the required human rights due diligence that is the movement's touchstone for responsible conduct.

The purpose of this meeting is to create a conversation about BHR, as well as pressing social issues linked to business such as rising inequality, that isn't agnostic to the structure of businesses. The meeting will explore whether BHR can be advanced by identifying and promoting corporate forms and governance structures that are geared to prioritize respect for human rights, regardless of whether this will lead to greater profits.

Who will be there

Thought leaders from academia, civil society, business, and finance and from the sub-specialities of BHR, impact investing, inclusive business, sustainable finance and corporate responsibility who are asking the question: *How can we re-engineer business for business to* *prioritize social purpose*? It is expected to be a small meeting of no more than twenty key people.

Questions we will explore

- What are the aspects of structure (ownership or governance) that make it easier for businesses to prioritize social and environmental (including human rights) outcomes? What can we observe from the 'positive deviants' that demonstrate different characteristics of business structure?
- How can corporate structure give power to the right stakeholders, so social or BHR outcomes are realized?
- [How] can we reform existing, mainstream structures of business to enshrine a social mission that lends itself to respecting human rights? Should we try to reform traditional businesses?
- Or should we promote alternatives to existing mainstream business structures? If so, how and in what venues?
- Or should we focus our efforts on building the ecosystem in which these new forms can get established and thrive?

Format

1. Welcome and introductions (15 minutes)
2. Presentation of Oxfam's scoping of business structures (Erinch Sahan) (10 minutes)
3. Contributions from attendees on diversity of business structures and the implications of this for social impact or BHR (20 minutes)
4. Presentations on work of two or three attendees who are also focusing on business structures (20 minutes)
5. Plenary discussion on the questions outlined above (2 hours)
6. Discussion of next steps (if any) (15 minutes)

What do we mean by "business structure"

Structure can have both formal and informal aspects, which are found largely in: (a) ownership, or (b) governance. Essentially, these will determine whether a business prioritizes social purpose over profit maximization.

Ownership can entail majority ownership, or controlling ownership (e.g. minority owners with control through preferential voting rights) by a family, foundation or trust, employees, pension-fund members, private equity funds, a community or any other institution or individual. Ownership characteristics can shape the incentives, focus, horizon and purpose of a business.

Governance is the second characteristic and is focused within the internal structures of the business. Characteristics of governance can include the structure and power of the board, power of shareholders over the board or business, articles of incorporation (or corporate charter or other similar document), mechanisms of accountability for managers, dividend-locks (or other mechanism for limiting circumstances under which dividends are paid), processes for setting business goals/KPIs for business and managers, and other processes or mechanisms that shape priorities and power structures within a business.

Characteristics of ownership and governance can play a defining role in scenarios where a business is faced with a choice between prioritizing social goals (e.g. investing into respecting human rights) or maximizing profits. This can occur when a business chooses to pay higher prices for its supplies (e.g. agricultural commodities) in order to allow higher wages to be paid to low-wage workers, where a business pays higher taxes because it decides not to deploy tax avoidance strategies, or where a business prioritizes investment into a less profitable but more beneficial product (e.g. more nutritious food).

Legal forms can shape both ownership and governance characteristics of a company, and its articles of incorporation (or corporate charter) can drive its decision-making. Some legal forms that can have implications for the ability of companies to respect human rights include: Benefit Corporations, Community-Interest Companies (CiC – in UK), Low-profit Limited Liability Companies (L3C – in US), Community Contribution Companies (C3s – in Canada) and Single Member Limited Liability Companies (in US). Mainstream corporate forms, including publicly-listed companies, can also exhibit alternative ownership or governance models (e.g. employee or foundation ownership, or a mission enshrined in a corporate charter).