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HUMAN RIGHTS

RESPONSIBLE BUSINESS
CONDUCT AS A
CORNERSTONE OF THE
2030 AGENDA – A LOOK
AT THE IMPLICATIONS

A DISCUSSION PAPER
JUNE 2019

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INTRODUCTION

This discussion paper aims to provide practitioners working with business, human rights and/ or sustainable development with an overview of **the connections** between human rights, responsible business conduct and the 2030 Agenda for Sustainable Development (2030 Agenda), **the opportunities** an integrated approach brings for the realisation of human rights and sustainable development and the possible **implications** of an integrated approach in practice.

With the adoption of the 2030 Agenda, the world's leaders indicated a global pathway for transformative change in which business has a key role to play. Many of the Sustainable Development Goals (SDGs) and targets explicitly support and/ or require private sector activities and investments to be fully realised. The 2030 Agenda reiterates the need for responsible business conduct and sets out in its paragraph 67 the ambition to “foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards”. Responsible business conduct is inherent to many SDGs in particular Goal 8 on decent work and economic growth, Goal 12 on responsible consumption and production, Goal 16 on peace, justice and strong institutions and Goal 17 on partnerships for the goals. A range of actors, including UN bodies, civil society organisations and parts of the business community have underlined the critical importance of placing implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) and other frameworks outlining responsible business conduct, such as the OECD Guidelines for Multinational Enterprises, at the centre of action by business in support of the 2030 Agenda.

However, current practice by business and states is not always aligned with this conceptual foundation. Some businesses are addressing the 2030 Agenda and the UNGPs in silos. Others focus on activities that can positively contribute to achieving certain SDGs while overlooking the adverse human rights impacts of their business activities. Paradoxically, they might thereby be undermining other SDG targets for example related to respect for fundamental labour rights under Goal 8. At the state level, efforts intended to address business-related human rights abuses also need to be better connected to 2030 Agenda implementation processes and vice versa. Despite broad conceptual agreement on the mutually supporting nature of the 2030 Agenda and human rights when it comes to business, unanswered questions remain regarding the practical implications of combining these frameworks.

Against this backdrop, Chapter 1 considers the connections between responsible business conduct and the 2030 Agenda and reiterates that the implementation of the UNGPs can be the single most important contribution by business to the realisation of the SDGs. Chapter 2 then considers what the 2030 Agenda and the UNGPs bring to each other arguing that the 2030 Agenda should be harnessed to advance responsible business conduct. Chapter 3 concludes by unpacking how business and states can work jointly with the 2030 Agenda and the UNGPs in practice.

CHAPTER 1

UNDERSTANDING RESPONSIBLE BUSINESS CONDUCT IN LIGHT OF THE 2030 AGENDA

In September 2015, the UN General Assembly unanimously adopted the 2030 Agenda as “a plan of action for people, planet and prosperity”. It provides a comprehensive and universal framework uniting the environmental, social and economic dimensions of sustainable development. The 2030 Agenda and its 17 SDGs “seek to realize the human rights of all” while encouraging all stakeholders to focus on implementation by “acting in collaborative partnership”¹

The 2030 Agenda aims at “unlocking the transformative potential of (...) the private sector, and incentivizing changes in financing as well as consumption and production patterns to support sustainable development.”² Business and industry is recognised as one of the 2030 Agenda’s nine “Major Groups”, which play a crucial role with regards to sustainable development.³

The role of business in achieving Goal 8 on decent work and economic growth, Goal 9 on industry, innovation and infrastructure and Goal 12 on responsible consumption and production is evident but participation and change by business is needed to fulfil the vast majority of the goals and targets.

Consequently, a vast number of business associations and individual businesses have embraced the SDGs,⁴ and various platforms and initiatives have emerged to harness the power of business in realising the SDGs.⁵ Today, the 2030 Agenda is a leading narrative about the role of business in society.

1.1 HUMAN RIGHTS AND RESPONSIBLE BUSINESS IS EMBEDDED IN THE 2030 AGENDA

The 2030 Agenda and human rights are interwoven and inextricably tied together. This is acknowledged in the aim of the 2030 Agenda “to realize the human rights of all”.⁶ An analysis by the Danish Institute for Human Rights (the Institute) shows that over 90% of the SDG targets can be linked directly to international and regional human rights instruments and labour standards (see Box 1).⁷

BOX 1: THE HUMAN RIGHTS DIMENSIONS OF THE SDGS

The Human Rights Guide to the SDGs (<http://sdg.humanrights.dk/>) is a searchable database highlighting the links between SDG targets and more than 70 international human rights instruments, labour standards and environmental agreements. The Guide illustrates the human rights anchorage of the 2030 Agenda and is an essential tool, also relevant for businesses, to develop a rights-based approach to sustainable development implementation, monitoring and reporting. Some examples of the links between the SDGs and internationally recognised human rights include:

- **Goal 8 on decent work and economic growth**, which contains measures to respect labour rights. Targets 8.7 and 8.8 call for the immediate eradication of forced labour and elimination of the worst forms of child labour and the promotion of safe and secure working environments for all workers, reiterating the requirements of International Labour Organization (ILO) Convention 192 on the Worst Forms of Child Labour and ILO Convention 29 on Forced Labour;
- **Goal 10 on reduced inequalities within and between countries**, which promotes the reduction of inequality and safeguards against discrimination. Target 10.3 aims to replace discriminatory laws, policies and practices with appropriate legislation, policies and action, in line with the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No. 111 on discrimination in employment and occupations, among others;
- **Goal 5 on gender equality**, which reiterates many of the obligations contained in the Convention on the Elimination of All Forms of Discrimination Against Women and other equality instruments;
- **Goal 1 on no poverty, Goal 2 on zero hunger, Goal 3 on good health and well-being, Goal 4 on quality education and Goal 6 on clean water and sanitation**, which relate to the normative contents of the right to an adequate standard of living and the rights to food, water, health and education, enshrined in the International Covenant on Economic, Social and Cultural Rights and other human rights conventions.

Human rights norms and their interpretation by monitoring bodies serve as authoritative guidance on most of the substantial elements that the 2030 Agenda seeks to realise. The AAAQ framework (Availability, Accessibility, Acceptability and Quality), provides useful guidance on how to respect, protect and fulfil the substantive content of many economic and social rights.⁸

The UNGPs lay out how human rights standards apply to business (see Box 2).

BOX 2: THE UNGPS AND RESPONSIBLE BUSINESS CONDUCT

The UNGPs were unanimously endorsed by the UN Human Rights Council in June 2011 and are the first universally accepted international framework on business and human rights. The three-pillar framework of the UNGPs articulates the respective duties and responsibilities of states and businesses vis-à-vis human rights, reiterating the state duty to protect, outlining the business responsibility to respect, and articulating the roles of both states and businesses in ensuring access to effective remedy for business-related human rights harms.

Importantly, the UNGPs set forth that businesses must “know and show” respect for human rights by exercising human rights due diligence. Human rights due diligence is a process to identify, prevent, mitigate and account for how a business avoids and addresses adverse human rights impacts which it causes or contributes to, or which are directly linked to its operations, products or services through business relationships.

The term ‘responsible business’ or ‘responsible business conduct’ is increasingly being used to designate the undertaking of business due diligence to prevent and address impacts, also in connection with the environment, anti-corruption and so forth.

The UNGPs are considered to be the global authoritative standard on business and human rights and are reflected in the OECD Guidelines for Multinational Enterprises, as well as a range of other international instruments, including the International Finance Corporation’s Environmental and Social Performance Standards. An increasing number of states and businesses are developing policies and plans for UNGPs implementation.⁹

Given the intrinsic links between human rights and the 2030 Agenda, the UNGPs should guide businesses in working with the 2030 Agenda. This is explicitly recognised in the 2030 Agenda:

“Private business activity, investment and innovation are major drivers of productivity, inclusive economic growth and job creation (...) We call on all businesses to apply their creativity and innovation to solving sustainable development challenges. We will foster a dynamic and well-functioning business sector, while protecting labour rights and environmental and health standards in accordance with relevant international standards and agreements and other on-going initiatives in this regard, such as the Guiding Principles on Business and

Human Rights and the labour standards of the International Labour Organization (ILO), the Convention on the Rights of the Child and key multilateral environmental agreements, for parties to those agreements.”¹⁰

The 2030 Agenda is a comprehensive framework which reflects all major multilateral agreements and frameworks that have been adopted over the past decades, including those addressing the role and responsibility of business towards society. The Addis Ababa Action Agenda (AAAA), which “is critical for the realization of the Sustainable Development Goals and targets”,¹¹ highlights that harmonisation of efforts in support of responsible business is crucial:

“We encourage businesses to adopt principles for responsible business and investing, and we support the work of the Global Compact in this regard. We will work towards harmonizing the various initiatives on sustainable business and financing, identifying gaps, including in relation to gender equality, and strengthening the mechanisms and incentives for compliance.”¹²

However, despite these references, the first years of implementation of the 2030 Agenda have resulted in some concern that the 2030 Agenda could imply a regression to business philanthropy and early interpretations of Corporate Social Responsibility (CSR).¹³

Part of this concern is linked to framing of the 2030 Agenda as ‘an opportunity agenda’ for business without also highlighting its intrinsic compliance components.¹⁴ In reality, many of the SDGs and targets include clear elements of compliance in line with international human rights law and labour standards (see Box 1). Picking the most attractive SDGs based solely on opportunities fails to recognise that the 2030 Agenda is underpinned by the same human rights standards that underpin the UNGPs. International human rights and labour standards require that businesses avoid and address the adverse human rights impacts of their business activities. Addressing the adverse impacts of business activities can be done hand in hand with activities which maximise the positive impacts of business activities, but respect for human rights must set the baseline. As established by the UNGPs, a business cannot offset human rights abuses with commitments or activities to support or promote human rights in another area.¹⁵

1.2 THE TRANSFORMATIVE POTENTIAL OF HUMAN RIGHTS DUE DILIGENCE

Far from being a ‘negatively focused’ approach, thorough respect for human rights by business has the potential to make invaluable and sustained contributions to societies. As such, the implementation of the UNGPs can be the single most important contribution by business to the realisation of the SDGs.

The world is still a long way from realising human rights of all and achieving sustainable development. Between 21 and 48 million people are estimated to

work in forms of modern slavery; around 85 million of the estimated 168 million child labourers are in hazardous forms of work; and more than 2.3 million people die annually as a result of occupational accidents or work-related diseases.¹⁶ Marginalised communities lose livelihoods, access to healthcare and clean water when land is taken or used without respect for their rights in the name of large agricultural projects, infrastructure construction, energy projects and other activities – oftentimes carried out in the name of development, and sometimes with financial support from development finance institutions.¹⁷

Ending business-related human rights abuses is a necessary step for people to live in dignity, and for the sustainable development goals for decent work, access to education, health care and food to be reached. Along these lines, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group on Business and Human Rights) noted in 2018 that:

“robust human rights due diligence enables and contributes to sustainable development. For businesses, the most powerful contribution to sustainable development is to embed respect for human rights in their activities and across their value chains, addressing harm done to people and focusing on the potential and actual impacts.”¹⁸

The misperception in viewing the UNGPs as lacking positive and attractive elements has arguably contributed to obscuring their value and relevance to guide business’s contributions to the SDGs. Envisaging long-term respect for labour rights throughout an apparel value chain, addressing livelihood implications associated with a large-scale agricultural lease, or taking the necessary steps to ensure appropriate privacy protections in relation to the provision of information and communication technologies provide a few examples of how due diligence can make a long-term contribution to society (see Box 3).

BOX 3: SUSTAINABLE DEVELOPMENT THROUGH HUMAN RIGHTS DUE DILIGENCE – A CASE DATABASE

This database (biz.sdg.humanrights.dk) features cases of corporate human rights due diligence activities and shows how these connect with and contribute to the realisation of the 2030 Agenda's goals and targets, by including illustrative examples of how implementation of the UNGPs can contribute directly to the SDGs.

In his 2016 address to the UN Business and Human Rights Forum, Professor John Ruggie noted:

“My [final] and perhaps most critical concern is the assumption embedded in this whole discourse that respecting human rights is merely about stopping a negative practice, lacking the more inspirational virtue of making a positive contribution.”¹⁹

Indeed, the transformative power of corporate respect for human rights is a reality; it can concretely improve the lives of individuals, including but not limited to millions of workers involved in global value chains and their families. Workers whose labour rights are respected and who enjoy a living wage can in turn realise their rights to food, housing, health and education, for example. The OECD also recognises that “effectively preventing and mitigating adverse impacts may in turn also help an enterprise maximise positive contributions to society (...)”²⁰

In November 2018, Michelle Bachelet, UN High Commissioner for Human Rights, noted that:

“Businesses already have a framework in the form of the UN Guiding Principles on Business and Human Rights, and a timetable in the form of the 2030 Agenda for Sustainable Development. There is no more crucial way for businesses to contribute than to ensure respect for human rights throughout their supply chains at every step of their business operations.”²¹

CHAPTER 2

WHAT THE 2030 AGENDA AND THE UNGPS BRING TO EACH OTHER

Human rights and the 2030 Agenda are interwoven and mutually reinforcing. As such, responsible business conduct in accordance with the UNGPs is essential to achieve the SDGs and realise human rights of all. In addition, the 2030 Agenda can catalyse respect for human rights by business and the UNGPs provide the guidance for business on how to engage with sustainable development.

2.1 HOW CAN THE 2030 AGENDA CATALYSE BUSINESS RESPECT FOR HUMAN RIGHTS?

Motivation and urgency: The 2030 Agenda is a global agenda that all states, UN agencies, civil society, and the private sector are currently mobilising behind. It provides a rallying cry to address the root causes of harm and inequality in all societies and seeks “to realize the human rights of all”.²² The 2030 Agenda balances the three dimensions of sustainable development (economic, social and environmental), provides a rationale to why actors, including states and business, should take action and indicates the direction of travel.²³ The 2030 Agenda contains a time bound set of goals and targets as well as a set of global indicators to measure progress. This brings an added urgency that the human rights and business agenda can benefit from.

Focus on tackling key challenges of the 21st century: The 2030 Agenda builds upon all major multilateral agreements made over the past three decades and provides a holistic framework to address the challenges of the 21st century. For example, it highlights the need to “[t]ake urgent action to combat climate change and its impacts”.²⁴ While the human rights consequences of climate change and environmental degradation have been increasingly documented,²⁵ and the human rights community is responding,²⁶ initiatives to address climate change, including in a business setting, have often been disconnected from human rights responsibilities.²⁷ Likewise, there has been a strong push in the human rights community to address poverty which is tied to the rights to health, housing and work, amongst others.²⁸ The 2030 Agenda includes as Goal 1, a call to end poverty in all its forms everywhere, and further details a range of targets on what should be done. Moreover, not only does the 2030 Agenda call on business to “apply its creativity and innovation in solving sustainable development challenges”²⁹, it also challenges current production and consumption patterns and identifies alternative, more sustainable ways of conducting business.

Accessible language: Actors who are unfamiliar with or have a somewhat narrow or politicised understanding of what human rights entail may find that the 2030 Agenda provides an alternative avenue to introduce human rights concepts. It provides multiple entry points with time bound goals and targets, which are relatable and understandable to all actors, including business.

New spaces and opportunities for dialogue: The 2030 Agenda has created a range of spaces for states and business to discuss sustainable development. The 2030 Agenda outlines a three-tiered architecture for follow-up and review: a review of progress at the national level drawing on contributions from stakeholders groups, including business; Regional Forums on Sustainable Development organised by the regional UN Economic Commissions;³⁰ and a global annual High-Level Political Forum on Sustainable Development (HLPF).³¹ Since 2016, a Business Forum has been held alongside the HLPF to support business action and partnerships to achieve the SDGs. As such, the 2030 Agenda provides new opportunities for businesses to share best practice initiatives around responsible business conduct in these spaces, where business engagement is growing.³²

Opening for new financial flows and implementation measures: Goal 17 on partnerships for the goals, in conjunction with the AAAA, details the Means of Implementation for the 2030 Agenda, including finance (and taxation), technology, capacity building, trade, policy and institutional coherence, multi-stakeholder partnerships and data. Leveraging private financial flows to realise sustainable development is a key feature of the 2030 Agenda and the AAAA. While the finance gap (between the funds available and the funds required to realise the 2030 Agenda) is yet to be closed, there is an upsurge in so-called blended finance instruments (blending public and private funds, as development banks often do).³³ In 2018, the Blended Finance Taskforce reported that the blended finance market has doubled in size over the previous five years, and is expected to double again over the next four years.³⁴ Where perceptions of risks currently prevent investment on strict commercial terms, blended finance instruments can enable the private sector to ensure a return on investment in projects designed to tackle development priorities, for example, in areas of renewable energy and infrastructure in low-income states.

The growth and innovation around financing instruments holds vast opportunities for businesses and private investors, but also requires strong monitoring to ensure that financing for development will indeed transform societies and realise human rights, including amongst the poorest. Moreover the 2030 Agenda provides for additional measures to support implementation of the SDGs, relating to taxation and corruption. The AAAA stipulates that all businesses should pay “taxes to the government of countries where economic activity occurs and value is created, in accordance with national and international laws and policies”.³⁵ SDG targets 16.5 and 16.6, as well as the AAAA, address corruption and commit states to further increase the transparency and accountability of financial institutions and the

business sector.³⁶ While both corruption and taxation have enormous implications for the realisation of human rights,³⁷ the UNGPs do not explicitly address business responsibility in those areas and most businesses have not identified these areas as relevant to their human rights efforts.³⁸ The 2030 Agenda further details other measures supporting realisation of the SDGs including, for example, public procurement (see Section 3.2.4).

2.2 HOW CAN THE UNGPS CATALYSE THE REALISATION OF THE 2030 AGENDA BY BUSINESS?

Directing businesses' and investors' efforts: the UNGPs clearly define expectations for businesses, requiring them to avoid and address the adverse human rights impacts they cause, contribute to, or are directly linked to through their business relationships. As such, the UNGPs provide a baseline standard of expected conduct for all businesses, as well as a clear step-by-step approach to identifying and addressing human rights concerns within their entire value chains. Businesses committed to the 2030 Agenda should conduct systematic and ongoing human rights due diligence to identify the salient human rights risks connected to their business model and activities. Knowing these risks can in turn inform which actions and themes to prioritise, as part of their contribution to realising the SDGs. Robust implementation of the UNGPs will also be critical in ensuring that financial resources dedicated to the realisation of the SDGs actually fulfil their purpose. Further alignment and integration of human rights due diligence in the environmental and social safeguard policies and mechanisms of both public and private investors is critical to ensuring that financing for development supports the ambition of the 2030 Agenda to realise the human rights of all. As investors prioritise infrastructure or renewable energy projects, for example, the UNGPs provide the standard to be adhered to when appraising, implementing and monitoring such projects. The UNGPs require that businesses “make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization”. Human rights, and the UNGPs, require states and business to engage in participatory processes prescribing ongoing consultation with rights-holders. This resonates with the commitment in the 2030 Agenda to “leave no one behind”. The UNGPs also detail practical and specific actions, including that states should assist businesses operating in conflict-affected areas.³⁹

Accountability and remedy: SDG target 16.3 on rule of law and equal access to justice, and target 16.6 on accountable institutions support efforts towards greater accountability of states. In addition, the 2030 Agenda provides for 3-tiered Follow-up and Review mechanisms and encourages stakeholder participation in these processes. However, the accountability system under the 2030 Agenda remains weak as existing reporting mechanisms are voluntary and do not contemplate independent review or provision of direct recommendations to states. Recommendations from national, regional and international human rights mechanisms, including in the area of business and human rights, can therefore

usefully feed into SDG follow-up and review processes (see Section 3.2.2).⁴⁰ Access to effective remedy is a human rights in itself,⁴¹ and the UNGPs are grounded in the recognition of “[t]he need for rights and obligations to be matched to appropriate and effective remedies when breached”⁴² and reaffirm the right to access effective remedy in relation to business-related human rights abuses in its third pillar.⁴³ Although the UNGPs have been criticised for not creating any accountability mechanism for reviewing business and/ or state implementation of the UNGPs,⁴⁴ and/ or allowing rights-holders to access remedy, they are being used by civil society and National Human Rights Institutions as a tool for evaluating progress by both states and businesses.⁴⁵ In addition, accountability and remedy for human rights abuses connected to business activities has been the subject of increased attention in international fora.⁴⁶ These principles need to be embedded in any business contribution to the SDGs.

The concept of leverage: The UNGPs make clear that when a business detects, or is made aware, that human rights are adversely affected by business partners in its value chain, its responsibility is not to immediately cut all ties, but rather to use its leverage to try to improve the situation. This could include, for example, requesting a supplier addresses its adverse impact and subscribe to a sector-based grievance mechanism. Where a business's leverage is insufficient, it is expected to take active steps to increase its leverage by working in collaboration with other businesses and/ or different stakeholders such as states, inter-governmental organisations, trade unions and non-governmental organisations. If businesses start meeting this expectation to a larger degree, the concept of leverage holds the potential to make business a ‘force for good’ in influencing decision-makers, business partners and others to address systemic human rights abuses. Utilising leverage holds the potential to create a race to the top, including within the industries specifically addressed in the 2030 Agenda such as energy, infrastructure, agriculture and fisheries, and reverse some of the adverse human rights impacts associated with globalisation. The concept of leverage chimes with Goal 17, which aims to strengthen partnerships and highlights multi-stakeholder partnerships and capacity building as key elements in realising the 2030 Agenda.

CHAPTER 3

LOOKING AHEAD: INTEGRATED APPROACHES TO ENSURING RESPONSIBLE BUSINESS CONDUCT AND SUSTAINABLE DEVELOPMENT

The two previous chapters have demonstrated how the 2030 Agenda and the UNGPs are interwoven, mutually reinforcing and complementary. This final chapter turns to what an integrated approach to implementation of the SDGs and the UNGPs looks like from a practical perspective, and what implications this has for businesses and for states, in their efforts to regulate and guide business behaviour.

3.1 BUSINESS: INTEGRATED APPROACHES TO IMPLEMENT THE 2030 AGENDA AND THE UNGPS

3.1.1 OVERCOMING SILOS WITHIN A BUSINESS

Four years after the adoption of the 2030 Agenda, many large businesses have undertaken a number of SDG-related efforts; however, these are not necessarily informed by responsible business principles and standards. Corporate compartmentalisation of the UNGPs and the 2030 Agenda is the first barrier to enabling integrated approaches by businesses. While responsibility for human rights often sits with legal, compliance or sustainability departments, measures to work with the 2030 Agenda can sit with departments ranging from communication and product development to community engagement. In some cases, responsibility can even sit within the CEO's office, reflecting the business's commitment and the political momentum around the 2030 Agenda.

To overcome such silos, sustainability practitioners can make clear that when their business works to improve labour standards for contracted workers, for example, their activities tie in with Goal 8 on decent work and economic growth and could be understood and highlighted as a key element of the business' contribution to the SDGs if so desired. Likewise, business professionals engaged in SDG activities should map out how these activities connect to their business's salient human rights risks. If there is no or little connection, they may need to enhance internal coherence or seek external advice to enable them to engage with the 2030 Agenda through a human rights lens.

3.1.2 IDENTIFYING SALIENT ISSUES HOLISTICALLY

A number of businesses have begun implementing human rights due diligence and there are a range of good practice examples on how businesses are identifying and addressing their salient human rights risks through, for example, human rights impact assessment (see Box 4). However, few businesses are currently identifying

and assessing their human rights impacts holistically or in a manner informed by the 2030 Agenda.⁴⁷ The 2030 Agenda can be useful in highlighting “areas of critical importance for humanity and the planet” that human rights due diligence efforts have not so far been successful in bringing within the scope of many corporate-led human rights analyses or activities.⁴⁸

BOX 4: HUMAN RIGHTS IMPACT ASSESSMENTS

Human rights impact assessment has emerged as a useful methodology for identifying and assessing the impacts of business projects and activities on the human rights enjoyment of workers, community members and other rights-holders. This can include project-level or sector-wide approaches, as well as impact assessments analysing the potential or actual human rights consequences of trade agreements. Visit the Human Rights Impact Assessment Guidance and Toolbox for more information (<https://www.humanrights.dk/business/tools/human-rights-impact-assessment-guidance-and-toolbox>)

Sector-wide impact assessments (SWIAs) look at an entire sector of the economy with a focus on typical impacts of business activities within that sector. SWIAs provide an in-depth analysis of the legal and policy framework, and can be a useful tool for a holistic approach that can help businesses identify prevention and mitigation measures they can take both within and beyond their own operations.⁴⁹

To take a few examples, some businesses in the natural resources sector have been at the forefront of conducting human rights impact assessments of specific projects. Some of these have applied sophisticated methodologies in identifying and addressing adverse human rights impacts on workers and communities in connection to their operational sites.⁵⁰ Such practices have contributed to the development of sound methodologies for identifying impacts and designing mitigation action plans to benefit impacted rights-holders. While these are important operational-level human rights due diligence steps, these practices will not necessarily make businesses analyse their business model at large from a human rights and sustainable development perspective. An analysis of the business model could include human rights implications of their contribution to Goal 13 on climate action, but also how lobbying for, and benefitting from, state-investor contracts and/ or large-scale tax exemptions, which impacts on Goal 17 on partnerships for the goals, can have adverse human rights impacts. Another example can be found in food and beverage businesses that for years have been almost exclusively identifying human rights impacts in connection to their upstream value chains, failing to recognise that consumers also constitute a potentially affected group of rights-holders. Frontrunners in the food and beverage sector are beginning to recognise that their downstream impacts on consumers including,

for example, nutritional impacts or irresponsible marketing of their products also deserve attention from a human rights perspective.⁵¹ With 2 billion overweight or obese people worldwide, 1.3 billion tonnes of food wasted every year and almost 2 billion people hungry or undernourished, Goal 12, which among other elements tackle responsible consumption, includes relevant targets to inform business thinking on consumer aspects.⁵²

Businesses across all sectors need to broaden the scope of analysis when they set out to identify their salient human rights issues to ensure that the issues they identify are not peripheral to their societal and environmental impacts, and that complex dilemmas linked to the core of their business model are recognised and addressed. For example, Goal 12 on responsible consumption and production and Goal 13 on climate action can encourage businesses to ask themselves hard questions about their business model and impacts at large, which they might not necessarily have arrived at from analysis of human rights impacts in specific operational settings. The 2030 Agenda can also play a vital role in ensuring that operations-specific information and trends are recognised and accounted for in enterprise-level risk frameworks and development, incidentally shaping the evolution towards business models that contribute to a more sustainable future.

An initial step that businesses can take to identify salient issues holistically is to address the full range of human rights, along with the economic, social and environmental dimensions of sustainable development, in impact assessments.⁵³ A crucial element when identifying issues holistically is engagement with potentially affected rightsholders. The call for “leaving no one behind” of the 2030 Agenda, along with the emphasis of the agenda on partnership and participation,⁵⁴ further highlights the need for an inclusive approach. Although the need for a human rights-based approach to engagement and participation of rights-holders as part of due diligence has been well articulated,⁵⁵ measures put in place by business remain largely inadequate. Therefore the information that businesses need to improve their knowledge of their impacts and design relevant mitigation measures does not surface. A human rights-based approach requires that rightsholder engagement is an ongoing dialogue and that affected individuals and groups can access relevant information in a timely manner. Meaningful engagement and consultation with rights-holders will help businesses to identify and prevent adverse impacts connected to their operations as well as design useful measures to address human rights impacts.

3.1.3 OPERATIONAL AND SYSTEMIC ACTION TO AVOID, ADDRESS AND REMEDY ADVERSE HUMAN RIGHTS IMPACTS

The UNGPs require that businesses take action to reduce the risk of adverse impacts and prevent repetition in the future. The prevention of adverse impacts will often require not only operational-level measures to manage risks but also measures addressing some of the systemic issues that have contributed to the adverse impacts. Indeed, the issues Goal 1 on no poverty, Goal 10 on reduced

inequalities and Goal 16 on peace, justice and strong institutions set out to tackle often lie at the source of human rights abuses occurring in the context of business activities. Human rights due diligence thus includes addressing the root causes of human rights abuses. This will entail using leverage and combining efforts between business peers, government actors and civil society in multi-stakeholder partnership initiatives as envisaged under Goal 17. For example, a recent a mapping of the renewables energy sector to the SDGs, demonstrate goal by goal how SDG alignment by businesses will include both changes to core business as well as collaboration and leverage.⁵⁶

BOX 5: BUSINESS INVOLVEMENT IN TACKLING UNDERLYING CAUSES OF CHILD LABOUR

Poverty and limited access to quality education are typical root causes of child labour.⁵⁷ By paying a minimum wage and requiring suppliers to pay a living wage to allow workers and their families to enjoy their right to an adequate standard of living, for example, businesses can contribute to SDG target 1.1 to eradicate extreme poverty, a root cause of child labour. Businesses can also use their leverage in states where they operate to support efforts to ensure better access to education for children, by other actors, such as governments or NGOs, and become a positive force in realising several targets under Goal 4 on access to education for all, and so address a root cause of child labour.

When businesses engage with suppliers through the use of self-assessment questionnaires or audit programmes to eradicate an issue like child labour in their value chain, for example, they are taking important steps to ensure that **their** business activities are not affiliated with such abuses. Such efforts have become common place in multinational enterprises. However, few multinational enterprises develop activities that go beyond compliance approaches in an effort to tackle the underlying root causes. Returning to the child labour example, operational-level activities (for example, codes of conduct, self-assessment questionnaires, risk assessments and audits) typically do not address the root causes of child labour to ensure that it will not happen again with another supplier. Effectively preventing and eliminating child labour within a value chain, or as worded in SDG target 8.7, “by 2025 end child labour in all its forms”, requires a nuanced and holistic understanding of impacts and development of existing approaches. Businesses should continue to ensure that child labour is not part of their, and their suppliers’, workforce and should continue working with other actors to find alternative solutions for any children found in the workforce. However, to truly be part of eliminating child labour in all its forms, they need to contribute to measures to address the root causes of child labour in their particular industry or in the geography where they operate, demonstrating an understanding that these

contextual factors are an inextricable part of the adverse human rights impacts with which they are involved. In short, taking a more holistic approach to addressing the adverse impacts with which they are involved requires businesses to combine operational efforts with systemic interventions.

From this perspective, the 2030 Agenda and the UNGPs are mutually reinforcing; the 2030 Agenda calls on businesses to apply their creativity and innovation to solve sustainable development challenges, while the UNGPs call on businesses to use their leverage to affect change, including change within business relationships. The 2030 Agenda can help pinpoint some of the fundamental and systemic issues that businesses should focus on as part of exercising respect for human rights, and provides goals and targets to guide efforts.

Many businesses are more hesitant and less experienced in recognising and addressing root causes of adverse human rights impacts as part of implementing their due diligence. Some businesses might refrain from tackling systemic issues by lobbying for stronger protection of human rights based on a fear of becoming political or may argue that they struggle to find a legitimate role in doing so. Importantly, the call for business to engage with systemic issues is not a call for them to displace or supplant the role of the state. Scholars have highlighted the risk of unintended consequences of an increased political role of businesses. These can include reduced state capacity and legitimacy and a weakened social contract between citizens and governments, for example due to business involvement in provision of public goods and services.⁵⁸ Importantly, the state obligations to respect, protect and fulfil human rights exist irrespective of any actions that businesses may undertake on human rights. Moreover, business actions must in no way compromise the state's efforts to fulfil its obligations, but instead align with, and support, steps the state is taking to realise the human rights of all and promote sustainable development. However, where the state is not meeting its obligations, businesses should seek ways to honour internationally recognised human rights.⁵⁹ This may include calling for increased human rights protection through sector collaborations, CEO activism in favour of protection of human rights defenders,⁶⁰ and responsible lobbying. Examples of such action by business do exist, for example in 2018 big brands and industry associations came together in a public appeal to the Cambodian government in support of civic freedoms and reform of the garment sector.⁶¹ Similarly, global brands and retailers in the garment, textile and footwear sector and IndustriALL, the global trade union federation representing garment and textile workers, have formed the non-profit organisation ACT, which aims at realising freedom of association, collective bargaining and living wages within global supply chains.⁶² However, such initiatives and action currently remains rare.

In summary, while many businesses have taken a very operationally-focused and risk-management driven approach to due diligence, the challenges underpinning the 2030 Agenda make clear that the due diligence steps articulated in the UNGPs

should be implemented with an eye to addressing systemic root causes as part of exercising respect for human rights. One of the many benefits of such an approach is that it enables business to address and overcome the fundamental issues that underpin business-related human abuses and to drive positive change and outcomes through efforts to avoid and address human rights abuses.

3.1.4 INTEGRATED CORPORATE REPORTING

Transparency, publishing of data, and reporting are critical in ensuring accountability and real progress in realising the 2030 Agenda. Target 12.6 requires states to “[e]ncourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.” As business responds to such encouragements, corporate reporting needs to holistically address human rights risks and contributions to sustainable development instead of reinforcing the perceived disconnect between the two. Target 12.6 represents an opportunity for businesses to report on their efforts to address identified salient human rights issues and thereby demonstrate their contribution to the realisation of the SDGs.⁶³

A 2018 review by Oxfam of the SDG-efforts of 76 of the world’s largest businesses highlights that “there is scarce evidence that companies are applying a human rights lens when designing and implementing their SDG engagement”.⁶⁴ The Global Reporting Initiative and the UN Global Compact have published guidance on how to better integrate reporting on human rights with reporting on the SDGs. This guidance argues for “principled prioritization” for reporting on the SDGs and encourages businesses to report on both their positive and negative impacts on the SDGs.⁶⁵ For financial institutions, this can mean incorporating information on the effects of their environmental, social and governance (ESG) safeguards,⁶⁶ including human rights, with their efforts to demonstrate the development impacts and/ or social impacts of investments. For example, many investors currently report on the number of jobs created, but do not necessarily report with a focus on monitoring and documenting whether these jobs comply with fundamental labour standards embedded in Goal 8 on decent work and economic growth.

3.1.5. USING HUMAN RIGHTS DUE DILIGENCE TO DRIVE ACTIVITIES DESIGNED TO ‘DO GOOD’

Human rights due diligence is equally applicable when businesses develop new business opportunities, innovate and invest with a view to drive sustainable practices. Energised by the call in the 2030 Agenda for “businesses to apply their creativity and innovation to solving sustainable development challenges”,⁶⁷ some businesses have jumped straight to implementing such solutions with a belief that these activities are ‘inherently good’. However, in doing so they have overlooked the fact that all activities need to be informed by, and implemented with, human rights due diligence. Without undertaking human rights due diligence, there is a chance that efforts to ‘do good’ in fact cause harm. Recent examples of this include

abuses of indigenous peoples' rights in the construction of renewable energy projects.⁶⁸ Drawing on robust human rights due diligence, including human rights impact assessments, is critical to ensure that such activities do not cause harm and contribute meaningfully to realising the human rights of all and achieving sustainable development.

In addition, some businesses undertake projects not directly connected to their business operations, but to benefit local communities and/or the host state, often referred to as 'additional goods and services', social investment projects, or 'CSR projects'. Additional goods and services are often provided in conjunction with major investment contracts, including in the natural resources sector where oil and gas or mining businesses through clauses in their contracts with the host governments commit to building water, education or healthcare infrastructure, for example. Such activities can be thought of as 'inherently good' but the same procedures and standards in place for a business's core area of operations, such as undertaking human rights due diligence, may not be applied. However, the corporate responsibility to respect still applies when businesses are delivering additional goods or services and an assessment of risks and the design of prevention measures to avoid and address any associated adverse impacts should still be undertaken.⁶⁹ For example, when businesses build water, transport, education or healthcare infrastructure, they should make sure that contractors have measures in place to ensure responsible business conduct. If not, such businesses risk providing a public good while contributing to, for example, labour or land-related human rights abuses.

3.2 THE STATE: INTEGRATED APPROACHES TO IMPLEMENT THE 2030 AGENDA AND THE UNGPS

The 2030 Agenda and the UNGPs do not create any new international legal obligations for states, but they reiterate binding human rights obligations contained within existing international legal instruments. These obligations exist irrespective of any actions that businesses may undertake on human rights. As part of their human rights obligations, states "must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication."⁷⁰

There is an opportunity for states to harness business enthusiasm to work with the 2030 Agenda and human rights to support their own measures to respect, protect and fulfil human rights.

3.2.1 INTEGRATED NATIONAL ACTION PLANNING

The 2030 Agenda and the UNGPs both contain a focus on implementation to realise their respective objectives, although neither of them explicitly call for states to adopt a single broad form of national implementation. Translating human rights from international or regional instruments to tangible rights at the local level

can be done through a variety of ways, including broad national implementation measures, action on thematic and salient issues, or through discrete legislation or policies.

There are a number of means for the realisation of international commitments by states, with a common approach in the human rights field being national action plans (NAP).⁷¹ The UN Human Rights Council and other inter-governmental organisations have explicitly called for the development of NAPs on business and human rights.⁷² As of June 2019, 23 states have adopted NAPs addressing business and human rights and around 14 others have officially launched a process to develop such a NAP (See box 6).⁷³ In the sustainable development context, there are a number of implementation formats including national development plans and national sustainable development strategies that need to build on existing national mechanisms and institutional frameworks.⁷⁴

BOX 6: EXPLORE BUSINESS AND HUMAN RIGHTS NATIONAL ACTION PLANS

www.globalnaps.org is an online 'one stop shop' for information regarding the development of National Action Plans (NAPs) on Business and Human Rights and includes information on how published NAPs refer to the SDGs.

Both the 2030 Agenda and the UNGPs call for policy coherence, and in a statement on the business and human rights dimension of the 2030 Agenda, the UN Working Group called on states developing national plans to implement the 2030 Agenda to ensure:

“coherence with national action plans for the implementation of the Guiding Principles. Conversely, national action plans focused on business and human rights should clarify how the Guiding Principles will be integrated in the context of SDG implementation.”⁷⁵

There are some clear opportunities for integrated planning at the national level as the 2030 Agenda and the UNGPs touch on many common areas relating to business. As of June 2019, of the 17 NAPs addressing business and human rights published since the adoption of the 2030 Agenda in 2015, 13 mention or refer to the 2030 Agenda.⁷⁶

However, in practice a number of challenges remain. First, just as for business actors (see Section 3.1), governmental institutions in charge of business and human rights issues are often not the same ones tasked with implementation of the 2030 Agenda. Another common challenge is that of capacity and resources; both the UNGPs and the 2030 Agenda are broad frameworks touching on complex

issues and a vast set of policy areas, the implementation of which requires intense collaboration and cooperation between different government actors as well as other stakeholders. Integrated planning requires the development of innovative approaches and tools and the sharing of good practices at the regional and global level.

3.2.2 INTEGRATED STATE REPORTING: USING THE SDG FOLLOW-UP AND REVIEW TO STRENGTHEN EFFORTS IN THE AREA OF BUSINESS AND HUMAN RIGHTS

There are some opportunities for more integrated state reporting on business and human rights and the 2030 Agenda. Follow-up and Review Mechanisms set up under the 2030 Agenda can be better used for multi-stakeholder dialogue and reporting on progress in the area of business and human rights.⁷⁷ As an example, in its business and human rights NAP, the government of Chile commits to reporting on the implementation of the NAP in its SDG reporting, particularly under Goal 17.⁷⁸ In 2017, in the context of the Voluntary National Review at the High-Level Political Forum, the government of Chile included numerous references in its report on progress on implementation of the 2030 Agenda to measures set forth in the business and human rights NAP.⁷⁹

While national reviews of progress are country-led and differ from country to country, guidelines on these processes emphasise they should be “open, inclusive, participatory and transparent for all people and will support reporting by all relevant stakeholders”,⁸⁰ and will “build on existing platforms and processes”. National reviews thus offer an opportunity for multi-stakeholder dialogue on business and human rights, or for thematic reviews under a range of SDGs where business is a relevant player. In particular, review of progress on Goal 12 on responsible consumption and production (including target 12.6 to encourage company reporting on sustainability issues) can build on existing efforts to advance national implementation of the UNGPs, as well as on relevant reports, information and recommendations stemming from human rights monitoring bodies.

Indeed, states already report on human rights issues relevant to business, to international monitoring bodies such as the UN, ILO or regional bodies. Conversely, they receive observations and recommendations that should be integrated into the planning and reporting on the 2030 Agenda. Increasingly, recommendations from the Universal Periodic Review process and from treaty bodies address the nexus between business and human rights. The Institute’s SDG-Human Rights Data Explorer (see Box 7) reveals that about a thousand recommendations from UN monitoring bodies (including from country reports of UN Special Procedures such as the UN Working Group on business and Human Rights) are relevant to target 12.6, for example. In addition, recommendations from national human rights institutions should also be considered in the context of SDG review. Increasingly, these institutions investigate and analyse human rights impacts of business and how states are implementing their obligations to protect human rights in the context of business activities, for instance through conducting inquiries or national

baseline assessments on business and human rights.⁸¹ They are therefore a critical source of information on target 12.6 as well as a number of other targets.

BOX 7: SDG - HUMAN RIGHTS DATA EXPLORER

This database (sdgdata.humanrights.dk) enables users to find information from the international human rights monitoring system to develop a human rights-based approach to the SDGs and use this information in reporting on the SDGs.

3.2.3. ENCOURAGING CORPORATE DUE DILIGENCE AND REPORTING

Reporting on human rights is a key element of human rights due diligence as highlighted by the UNGPs. In SDG target 12.6, businesses are explicitly encouraged to integrate sustainability information into their reporting. A number of initiatives, frameworks and standards exist for businesses to report non-financial information. These include the Global Reporting Initiative standards, regulatory frameworks such as the European Union (EU) Directive 2014/95/EU on non-financial reporting, reporting on progress under the UN Global Compact, financial markets initiatives and more.⁸² What and how businesses should report on in the context of the 2030 Agenda has not yet been defined, but in principle corporate sustainability reporting could feed into national reporting on the 2030 Agenda if the right tools and indicators are developed.

Corporate sustainability reporting is considered an important element for increased transparency and accountability of business, but in practice these reports have often fallen short of expectations. Analyses of corporate reports reveal some shortcomings in the disclosures of businesses under the EU Directive 2014/95/EU on non-financial reporting, including with regard to human rights.⁸³ In an increasing number of jurisdictions, non-financial reporting is embedded in legislation mandating business due diligence. For example, the French 2017 duty of vigilance law requires large businesses to develop, implement and publish annual vigilance plans detailing steps they will take to detect human rights risks and prevent serious violations, the health and safety of persons and the environment.⁸⁴ Due diligence requirements mandating non-financial reporting are also emerging with regard to specific areas, such as modern slavery (UK Modern Slavery Act 2015) or sourcing of minerals from conflict-affected areas.⁸⁵ These reports may also be useful sources of information with regard to the implementation of specific SDGs and targets such as target 8.7 addressing forced and child labour. As part of the EU sustainable finance action plan,⁸⁶ the EU is considering strengthening disclosure obligations for institutional investors and asset managers on how they address environmental, social and governance risks.

To enhance policy coherence, states can consider strengthening due diligence requirements and non-financial reporting regulation for businesses registered in their jurisdiction. Non-financial reporting requirements should result in disclosure of meaningful data regarding implementation of business respect for human rights and its contribution to the SDGs. Further, the private sectors' formal platform in the Follow-up and Review architecture through the Business and Industry Major Group could be used to enhance corporate transparency and accountability.

Finally, through a mix of policy and regulatory measures, states can shape markets in order to incentivise responsible business conduct. Ensuring that businesses that are respectful of human rights and support the transformation to a sustainable economy are rewarded by the market will be critical to realising the SDGs. Financial measures, transparency and due diligence requirements, public procurement measures as well as strengthened accountability mechanisms are some of the tools states can use to financially incentivise responsible business conduct and sustainable development.

3.2.4 A HUMAN RIGHTS-BASED APPROACH TO FINANCING THE 2030 AGENDA

Without proper financing states will not be able to afford the interventions needed to meet their SDG commitments. It is, however, important that the way that increased financing is raised actually promotes human rights rather than compromising them, and so a human rights-based approach to Means of Implementation is needed (see Box 8).⁸⁷ Adopting a human rights-based approach to finance mobilisation will impact government policies around, for example, trade and investment regimes, but also corporate regulations and behaviour through investment regulations (through the reform of investor-state dispute settlement regimes, for example), and better tax compliance through corporates not actively shifting profits into secretive or no tax jurisdictions.

BOX 8: A HUMAN RIGHTS-BASED APPROACH TO MEANS OF IMPLEMENTATION

A forthcoming publication by the Institute will provide concrete recommendations for what a human rights-based approach to specific Means of Implementation could look like. It will focus on the targets under SDG 17 aimed at improving financing for the SDGs (domestic resource mobilisation, investments, trade, development aid, sustainable debt management, and public-private partnerships) as well as non-financial aspects of SDG 17 (policy coherence, data, science/technology/innovation).

Targets 16.5, 16.6 and the AAAA further address corruption and commit to increase the transparency and accountability of financial institutions and the business sector.⁸⁸ A human rights-based approach should also be adopted in measures designed to realise this aim. In addition, public procurement of goods and services is acknowledged as an element in realising the 2030 Agenda. Target 12.7 of the 2030 Agenda states that actors should “[p]romote public procurement practices that are sustainable, in accordance with national policies and priorities.”⁸⁹ This provides an opportunity for states to not only procure from businesses which deliver the cheapest product quickest but also to prioritise procurement from businesses, which respect the three dimensions of sustainable public procurement; economic, social and environmental. For example, procurement exercises can place a focus on procuring from businesses which have measures to eliminate forced labour and human trafficking, in line with target 12.7, but also as a means of realising target 8.7 and 16.3 to end child labour, forced labour, modern slavery and human trafficking. Public procurement is recognised in the UNGPs as a means for states to meet their human rights obligations and progress in including human rights protections in public procurement exercises is equally progress in realising the social dimension of sustainable public procurement in line with target 12.7.

CONCLUSIONS AND WAYS FORWARD

BUILDING A COMMUNITY OF PRACTICE AND SHARING LEARNING ALONG THE WAY

This paper has reiterated the interconnections between human rights, responsible business conduct and the 2030 Agenda. It has unpacked some of the opportunities an integrated approach to responsible business conduct and sustainable development brings. It has also outlined some of the implications of an integrated approach for business as well as for states. These can be summarised in the following key recommendations.

Recommendations for business

- Ensure internal communication, coordination and oversight across SDG and human rights or responsible business efforts, including in corporate reporting
- Identify salient issues holistically, including by taking all human rights into consideration, engaging with potentially affected rightsholders, and being informed by the 2030 Agenda in the scope of analysis
- Take action to identify the root causes associated with human rights challenges in the value chain and take both operational and systemic action to address them including through partnerships and use of leverage
- Use human rights due diligence to guide and drive activities designed to 'do good'

Recommendations for states

- Undertake integrated national action planning to ensure policy coherence between measures to implement UNGPs and the 2030 Agenda
- Use the 2030 Agenda Follow-Up and Review process to strengthen efforts in the area of business and human rights
- Encourage corporate due diligence and reporting to deliver on the SDGs
- Adopt a human rights-based approach to measures aiming at implementing the 2030 Agenda including financing for development

With a number of states developing measures to realise the 2030 Agenda in conjunction with responsible business frameworks, tailored to their national context, and examples of business starting to look at human rights and sustainable development in an integrated manner, the body of good practices, challenges and lessons learnt is growing.

This paper aims at providing initial elements for reflection and inspiration to practitioners aiming to scale up business respect for human rights. In close collaboration with business and human rights partners, the Institute will continue to clarify and explain the role of business in light of the 2030 Agenda and unpack what an integrated approach to responsible business conduct looks like. Forthcoming initiatives and materials will explore i) how businesses can address systemic

issues as part of their human rights due diligence, and ii) how states can take an integrated approach to implementing the 2030 Agenda and the UNGPs in select areas of policy-making, including in relation to Means of Implementation and public procurement.

The Institute calls on other actors operating in this space to share good practice, to maintain an open dialogue and to pursue collaborations to increase the leverage behind a common understanding of what responsible business conduct means and can offer in relation to sustainable development.

For more examples, see Ackerman 2018.

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