Achieving SDGs by Respecting Human Rights: A Pathway for Companies

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Outline

1) Business responsibility to respect human rights under the UNGPs

2) Business and SDGs: Entry points

3) The current challenges

4) The way forward: Follow the UNGPs and then look beyond

5) Role of incentives and disincentives
1. Business Responsibility to Respect HRs

- The UN Human Rights Council endorsed the UNGPs in June 2011

- The UNGPs apply to all business enterprises and covers all human rights

- Organised around Three Pillars:
  
  I. State *duty* to *protect* human rights
  
  II. Business *responsibility* to *respect* human rights
  
  III. Access to *effective* remedy
Business responsibility to respect HRs means:

- Avoid infringing on the human rights

- Address adverse human rights impacts
Businesses are expected to adopt the following *policies and processes* to discharge their responsibility to respect HRs:

1) Declare a **policy commitment** to respect human rights [Principle 15(a) → 16]

2) Conduct **human rights due diligence** (HRDD) [Principle 15(b) → 17-21]

3) Put in place processes to enable **remediation** of any adverse human rights impacts [Principle 15(c) → 22]
HRDD is the key process that companies should adopt to comply with their responsibility to respect human rights (A/73/163)
HRDD is a 4-step process

- Assessing impacts
- Integrating findings
- Communicating responses
- Tracking responses
HRDD is increasingly becoming legally binding:

- UK Modern Slavery Act (2015)
- French Duty of Vigilance Law (2017)
- Indonesian Ministerial Regulation for Fishing (2017)
- Australian Modern Slavery Act (2018)
- Dutch Child Labour Due Diligence Act (2019)
- Initiatives in other countries + BHR treaty process?
Businesses enterprises should also provide for or cooperate in remediation through legitimate processes when they identify to have caused or contributed to adverse impacts [Principle 22]

They should establish operational-level grievance mechanisms [Principle 29], which should be effective as per Principle 31
2. Business and SDGs: Entry Points

- There are several entry points regarding the role of business in achieving SDGs
Para 67 makes a reference to states ensuring that businesses respect labour rights and environmental and health standards in accordance with relevant international standards and agreements such as the UNGPs.

SDG 17 calls for the Global Partnership for Sustainable Development.
There are other entry points too:

- Provide access to justice (SDG 16)
- Changing unsustainable consumption (para 28)
- Mobilization of resources to achieve the 2030 Agenda (para 41)
3. The Current Challenges

- What is expected from businesses under two separate frameworks (UNGPs and SDGs) has raised several challenges
i) SDGs as an opportunity to make more profits?

- Business and Sustainable Development Commission in its January 2017 report (*Better Business, Better World*), observed: ‘We make the case that businesses adopting this plan will transform their own prospects and could outperform those stuck in yesterday’s economic game: this is about return on capital, not just responsibility.’
The Report further noted that ‘the Global Goals opens the 60 biggest market “hot spots” worth up to US$12 trillion a year in business savings and revenue in the four examined economic systems alone by 2030’

Such a marketing of SDGs is problematic – it tends to undermine the responsibility of business to respect human rights reflected in SDGs
ii) Back to corporate philanthropy?

- Rather than conducting ongoing HRDD, companies might be tempted to cherry-pick certain SDGs to gain a social license to operate.

- This would bring back the idea of corporate philanthropy.
iii) Tension with the current business model?

- While SDGs require reduction in consumption, many companies rely on increasing consumption to make profits
iv) States passing the buck to companies?

- The demarcation between the responsibility of states and companies in relation to SDGs is not always clear.
v) Persecution of partners?

- While SDGs calls for partnership with civil society, many states and companies see CSO and human rights defenders as obstructing development projects.
vi) **Rising economic inequalities?**

- If economic inequalities continue to rise, will it suffice for businesses to merely respect human rights?
4. The Way Forward: Follow the UNGPs and then Look Beyond

• To overcome these challenges, businesses should follow the UNGPs as a minimum and then may wish to go beyond

• In other words, respect all human rights first before accomplishing any or all SDGs
Examples of connecting UNGPs and SDGs

• Let me offer some concrete examples of how respecting human rights as per the UNGPs will also contribute to SDGs
Example 1

- Companies are expected to respect all economic, social and cultural rights under the ICESCR

- Companies should pay living wage to workers to respect several rights, e.g., the right to the enjoyment of just and favourable conditions of work
Example 2

- Companies are expected to respect the right to equality and not discriminate on the basis of sex or sexual orientation

- They can take gender-transformative measures to deal with:
  - Sexual harassment
  - The gender pay gap
  - Under-representation of women on boards

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The Working Group has recently developed gender framework and guidance to assist states and businesses (A/HRC/41/43)
Example 3

• Companies are expected to respect all labour rights

• They should **eliminate worst forms of labour exploitation** such as:
  
  ✓ Child and forced labour
  ✓ Modern slavery
  ✓ Human trafficking

UNGPs and SDGs Continued ...
Example 4

- Companies are expected **not to pollute the environment**

- This would mean:
  - Using less fossil fuel
  - Applying less polluting technologies
  - Promoting sustainable consumption
  - Adopting the precautionary principle
Example 5

- Companies are expected to provide for or cooperate in remediation of adverse human rights impacts

- They should establish **effective operational-level grievance mechanisms**
5. Role of Incentives and Disincentives

- Most of the companies are rational actors

- So, states and other actors should offer incentives and disincentives to change corporate behaviour
For example, states can use multiple **levers** at their disposal (e.g., public procurement, export credit, trade support) to promote responsible business conduct.
Similarly, stock exchanges can also contribute to “making numbers more humane”