

Working Group on Business and Human Rights

“Corporate human rights due diligence – emerging practices, challenges and ways forward”

Presentation of the Working Group’s report (A/73/163)

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Dante Pesce, Chairperson

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Excellencies

Ladies and Gentlemen

It is an honour to address you in my capacity as chair of the Working Group on Business and Human Rights and present our report on the state of play of corporate human rights due diligence in practice.

Introduction

Business can be a tremendous source for good. Investments by business enterprises generate jobs and innovations, spurring economic, social and technological development. Yet, as we see all too often, irresponsible business conduct can have dire human and environmental cost, and can undermine sustainable development. Making progress in tackling adverse business-related impacts on people’s rights and dignity is a critical and urgent issue.

Our report suggests how: by making human rights due diligence part of standard business practice, by building on emerging good practices and addressing existing governance and market failures.

Background

The background for the Working Group’s mandate and the present report is the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011. It represented a watershed moment in efforts to tackle adverse impacts on people resulting from business activity. They provided, for the first time, a globally recognized and authoritative framework for the respective duties and

responsibilities of Governments and business enterprises to prevent and address such impacts.

The Guiding Principles clarify that all business enterprises have an independent responsibility to respect human rights. In order to meet this responsibility, they are required to exercise human rights due diligence, meaning that they should identify, prevent, mitigate and account for how they address impacts on human rights.

Focus of Working Group report

In our report, we highlight:

- key features of human rights due diligence and why it matters;
- gaps and challenges in current business and Government practice;
- emerging good practices; and
- how key stakeholders — States and the investment community, in particular — can contribute to the scaling-up of effective human rights due diligence.

Why corporate human rights due diligence?

Human rights due diligence is a way for enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved. The prevention of adverse impacts on people is the main purpose of human rights due diligence.

It concerns risks to people, not risks to business. It should be ongoing, as the risks to human rights may change over time; and informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations. Risks to human rights defenders and other critical voices need to be considered.

Growing uptake at policy level

Since 2011, corporate human rights due diligence has become a norm of expected conduct. It has been integrated in other policy frameworks for responsible business. The OECD Due Diligence Guidance for Responsible Business Conduct released earlier this year provides a very important development in that regard. It was endorsed by all 48 adhering Governments, is fully aligned with the Guiding Principles, and provides concrete guidance for due diligence in practice.

The human rights due diligence standard is increasingly reflected in government policy frameworks and legislation, including mandatory disclosure of risks of modern slavery in supply chains. The duty of vigilance law introduced in France in 2017 is a groundbreaking example. The first of its kind, it requires enterprises across sectors to develop a vigilance plan and account for how they identify, prevent and address human rights impacts in their global operations.

Moreover, in the 20 national action plans on business and human rights that have been issued to date, Governments have reaffirmed the expectation that enterprises exercise human rights due diligence.

A growing number of investors are starting to ask enterprises how they manage their risks to human rights. Among business lawyers there is a growing recognition that they should advise corporate clients to exercise human rights due diligence. In the world of sports, both FIFA and IOC are making human rights due diligence an integral part of the selection process for hosting the world cup and the Olympics.

Among business enterprises, a small but growing number of large corporations in different sectors have issued policy statements expressing their commitment to respect human rights. Several are developing practices that involve ongoing learning and innovation on human rights due diligence across operations and value chains.

Business practice: gaps and challenges

However, assessments highlight that the majority of companies do not demonstrate practices that meet the requirements set by the Guiding Principles. This may indicate that risks to workers and communities are not being managed adequately in spite of growing awareness and commitments.

Beyond a small group of “early adopters” – mostly large corporations based mainly, but not exclusively, in Western markets – there is a general lack of knowledge and understanding of the corporate responsibility to respect human rights. Translating corporate policies into local contexts is a challenge across sectors.

Gaps in Government practice

A lack of government leadership in addressing governance gaps remains a major challenge. A fundamental issue is that host Governments are not fulfilling their duty to protect human rights, either failing to adopt a legal framework that meets international human rights and labour standards, or failing to enforce legislation that would protect workers and affected communities.

While some home Governments have introduced due diligence or disclosure legislation, such efforts also remain patchy or uncoordinated. Governments are not providing enough guidance on human rights due diligence and support tailored to national business audiences, including small and medium-sized enterprises. A lack of policy coherence in government practice is part of the overall picture, and Governments are not leading by example in their own roles as economic actors.

Overall assessment

The fundamental challenge going forward is to scale up the good practices that are emerging and address remaining gaps and challenges. That will require concerted efforts by all actors. Governments must provide leadership.

Key message to business enterprises: just get started

In spite of slow progress overall, the good news is that effective due diligence can be done. Practice examples are building up. This, together with the development of numerous tools and resources, means that enterprises can no longer cite a lack of knowledge as an excuse. There is growing evidence that doing the right thing is also the smart thing to do.

Companies should just get started. The first step is to identify actual or potential adverse impacts related to an enterprise's activities or its business relationships.

Lessons from “early adopters” on how to get started are compiled in a companion “practice paper” to the report. The companion paper also identifies good practice elements in relation to a number of aspects of human rights due diligence, including:

- meaningful stakeholder engagement;
- transparency and meaningful reporting on human rights;
- ways to integrate human rights in supply chain management beyond tier one;
- use of leverage to prevent and address impacts caused by business partners;
- multi-stakeholder partnerships to address systemic issues; and
- how respect for human rights should be the bedrock for corporate engagement on the Sustainable Development Goals.

Key message to the investment community: leverage can and should be used

Increasingly, investors are asking questions to companies about human rights policies and human rights due diligence. This practice has become part of a wider trend of integrating environmental, social and governance considerations into mainstream investment decision-making. There is an increasing recognition of the responsibility of investors and financial institutions, and that proper human rights due diligence improves risk management overall and is good for both people and investments.

Key message to Governments: use all available regulatory and policy levers

States have a duty to protect people against business-related human rights impacts. They have a range of levers that they can and should use. They should use a smart mix of effective policy and regulation measures, including:

- national action plans and strengthen policy coherence overall;
- smart legislation and regulation;
- adjudication;
- economic incentives in “economic diplomacy” and public procurement;
- leadership by example in their role as economic actors
- guidance and dissemination of good practice, including for SMEs; and
- multi-stakeholder dialogue and accountability, including in specific sectors.

Recent developments show that action is possible in all these areas, and that government leadership from the top is a critical factor.

Thank you for your attention