

# **Mainstreaming Human Rights in Sustainable Business**

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## **1. Introduction**

Over the past decades, companies have been responsible for many positive impacts (employment, access to products and services), but also for many human rights abuses, directly through their operations or indirectly through their subsidiaries and supply chain partners. The growing impact of business on society has led to an increased focus on its contributions to a sustainable society. A new social contract for business is emerging, which includes the responsibility to both minimize negative societal impact and create positive societal impact in sustainable ways.

The World Business Council for Sustainable Development (WBCSD) defines a sustainable society as “a world where people live well and within the planet’s resources” (WBCSD 2010). One could say that, both human rights and respect for planetary boundaries are regarded as necessary conditions for a sustainable society. Respect for planetary boundaries supports the conditions for a sustainable planet by setting a limit for our adverse impacts, the “planetary boundaries” (Stockholm Resilience Centre, 2009).

Human rights can be seen as necessary for realizing human well-being and allowing people to live in dignity. From a legal point of view, human rights duties apply primarily to states. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfill human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

However, since the endorsement of the United Nations Guiding Principles in 2011, human rights are also a company’s business: companies, too, have the responsibility to respect human rights. Human rights can be considered to be the “people dimension” of a sustainable society and sustainable business. Hence, to mainstream sustainable business requires mainstreaming human rights as an integral part of business strategies and operating models.

When it comes to respecting, protecting and fulfilling human rights, state and business each have their own roles, strengths, and contributions. They both contribute by minimizing negative impacts and creating positive ones.

The main global instruments in this respect are the already mentioned United Nations Guiding Principles on Business and Human Rights (UNGPs) and the United Nations Sustainable Development Goals (SDGs). These frameworks have opened the way to further integrate the field of corporate social responsibility (CSR) with those of business and human rights and sustainable development.

## 2. Requirements, expectations and attitudes

### 2.1 Requirements and expectations

Business efforts to respect, protect and fulfill human rights are often focused on their value chain and driven by three types of requirements or expectations:

- (1) complying with regional, national, and local legislation is a legal duty, and non-compliance may lead to legal liability for damage and to fines;
- (2) respecting human rights, in line with the UNGPs, is a “soft law” (not legally enforceable) responsibility, wherein, despite the absence of fines, non-compliance can lead to loss of investment opportunities, goodwill, and possibly legal liability; and,
- (3) contributing to one or more SDGs is an opportunity, wherein failing to do so might not have any negative consequences for the company, but the company could anyway miss out on positive effects.

These distinctions determine the priorities for businesses. Contributing to one or more SDGs is only credible and sustainable if the legal compliance is in order, and if a comprehensive due diligence process secures respecting human rights in the company’s operations, including those of their business partners. Therefore, legal compliance and human rights due diligence must be embedded in the operational model, while SDGs may be included in the business strategy.

### 2.2 Attitudes: inactive, reactive, active and proactive

Companies react differently to societal expectations to minimize negative and create positive impacts. In the management literature, four different attitudes or phases are identified: inactive, reactive, active, and proactive. Inactive companies limit themselves to complying with binding legal duties (and even that can be in a limited way). Reactive companies will comply with the UNGPs and/or the Organization for Economic Cooperation and Development (OECD) Guidelines, but only inasmuch as is necessary to protect their reputation and stifle criticism from governments or civil society (Van Tulder c.s. 2014, Van Dam 2015).

By contrast, active and proactive companies will pursue opportunities offered by one or more SDGs, and align them with their legal obligations and their responsibility to respect human rights. The active business case connects these opportunities to the company’s strategic objective of creating social impact. The proactive business case goes further, looking beyond the company’s strategic objectives to promote structural solutions for complex social problems. Proactive human rights business cases make a seamless connection with the SDGs.

### **3. Two main international frameworks guiding business's conduct**

#### *3.1 U.N. Sustainable Development Goals: an opportunity to contribute to the fulfillment of human rights*

The U.N.'s 2015 Sustainable Development Goals define the global priorities for development towards a sustainable society. They cover social and economic development issues like poverty, hunger, health, gender equality, education, global warming, urbanization, environment and social justice. To a large extent, the SDGs are directed to outcomes that contribute to fulfilling human rights and respecting the planetary boundaries by both minimizing negative impacts and creating positive impacts.

Traditionally, fulfilling human rights was considered to be a task of governments, but it has become clear that the problems and challenges the world is facing are so substantial that cooperation with other sectors is necessary. The SDGs make an explicit call on business to participate in partnerships with governments and civil society to contribute to their achievement. Companies are encouraged to start by directing efforts upstream or downstream in their own value chains (SDG Compass, 2015). They can develop proactive business cases to identify the most prominent SDG opportunities in their value chain and create innovative products and services, or other innovative solutions, within their operating model. The SDGs provide the private sector with a lens through which to translate global needs and ambitions into business solutions across the value chain.

Many businesses are taking on this challenge and implementing SDG projects in their business operations. This stimulates a race to the top, setting ambitions for sustainability jointly with other stakeholders, and stimulates companies to “do good” (Van Tulder 2018). At the same time, the ability of businesses to create (sustainable) societal impact is increasingly determining their license to operate (Wilburn 2011).

Nevertheless, businesses need to take into account that “doing good” cannot make up for causing harm. Contributing to one or more SDGs is not credible or sustainable if at the same time the company is involved in human rights abuses, either directly or through its business partners. For example, a company that aims to contribute to a SDG 1 project (no poverty), but does not have a system in place to detect and prevent child labor in its supply chain, can be easily accused of “SDG-washing” (Buhmann, 2018). Even companies whose core business it is to contribute to sustainable development, may at the same time generate negative impacts on people, societies, and the environment. The windmill industry, for example, which contributes to the sustainable energy transition, has been linked to human rights abuse in their supply chain, through the extraction of raw materials like cobalt and copper, necessary for the production of wind turbines (Action Aid/Somo 2018).

Hence, when a company embarks on a SDG mission, it needs to ensure that it has its house in order when it comes to respecting human rights, both in its own operations and in the operations of its business partners. This means complying with the United Nations Guiding Principles or the OECD Guidelines for Multinational Enterprises.

### 3.2 *UN Guiding Principles on Business and Human Rights: business's responsibility to respect human rights*

States' international human rights law obligations require that they respect, protect and fulfill the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises (UNGPs, Principle 1, Commentary).

However, under current international law, as well as under many national legal regimes, it appears to be difficult to steer a business's conduct to prevent them from, and hold them to account for having negative impacts on human rights. In many countries, human rights are insufficiently covered by law, and, if they are, the authorities may not adequately enforce the law. This is partially due to strong competition between countries to attract foreign investment. On the one hand, this has led to a "race to the bottom" between countries pursuing foreign investment; on the other, companies benefit from the low level of regulation, because it enables them to externalize costs, by forsaking human rights protections for workers, other individuals, and communities, while also putting the environment at risk.

In 2005, heightened attention to this regulatory gap resulted in the appointment of a special UN representative for business and human rights, Professor John Ruggie, who went on to create a worldwide momentum for the issue of business and human rights. In 2008, he delivered the "Protect, Respect and Remedy Framework," identifying the state's duty to protect, as well as business's responsibility to respect, human rights (wherever businesses operate and whatever their size or industry). In 2011, this framework was implemented by the UN Guiding Principles on Business and Human Rights. Unanimously endorsed by the UN Human Rights Council, the UNGPs cover all human rights, including civil rights (such as the rights to life, health, and property) and social and economic rights (such as the right to decent working conditions and prohibitions against child or slave labor).

The responsibility to respect human rights includes a due diligence process, in which actual or potential negative human rights impacts are detected, prevented or mitigated, and their consequences addressed, whether these negative impacts come from the company's own operations or through those of their business partners (such as subsidiaries, suppliers, customers, joint venture partners, or local governments). In other words, companies must know—and show—that they respect human rights in all their operations. Access to effective remedies is recognized as a fundamental right of individuals and communities, wherever business enterprises abuse human rights.

Although they are not legally binding, the UNGPs have become the worldwide standard for business and human rights, and are considered as the foundation of the rather new domain of Business and Human Rights. Over the years, a lot of general and sector-specific guidance has been established for implementing the UNGPs. The United States, the European Union (EU), and the EU's member states have issued legislation that is inspired by or based on aspects of the UNGPs. Moreover, global value chain leaders, financial institutions, and investors increasingly expect their business partners to comply with the UNGPs and/or the OECD Guidelines. The UNGPs expect companies to treat the risk of causing or contributing to gross human rights

abuses as a legal compliance issue, wherever they operate. Hence, the borderline between legal obligations and the corporate responsibility to respect, flowing from the UNGPs (compare section 2), is fluid.

#### **4. An integrated approach for businesses to minimize negative and create positive societal impacts**

So far, scientific and societal focus seems to divide the relationships of business and human rights on the one hand, from business's contribution to sustainable development on the other. This distinction can be useful, but the reality is obviously more complex. A more integrated approach may be more effective.

For instance, take the example of a tea estate in Assam, India (Human Rights Institute 2014). Houses are in terrible disrepair, with leaking roofs and damp, cracked walls (concerning the right to proper housing as well as SDG 11). Many families don't have a toilet (concerning the right to healthy living conditions as well as SDG 6). Workers earn around two-thirds of the minimum wage (concerning the right to a living wage as well as SDG 1), and the levels of malnutrition are very high (concerning the right to food as well as SDG 2), even by India's woeful standards. This is often the cause of fatal diseases, such as diarrhea, tuberculosis, and meningitis (concerning the right to health as well as SDG 3). Workers spray chemicals without protection (concerning the right to health as well as SDGs 3, 8, and 15). On some estates evidence of child labor was found (concerning the ban on child labor and the right to education as well as SDGs 1, 2, and 4). Poorly paid plantation workers and their families are a major source for human traffickers who lure away women and children with promises of a new life, only to enslave them in factories and households where wages are paid to the traffickers but not to the workers (concerning the ban on slave labor and human trafficking, as well as SDGs 1, 2, 4, 5, and 8).

The responsibility to respect human rights is perhaps the biggest driver of the SDGs. Respecting the right to health of workers means not making them live in unfit houses or obliging them to use chemicals without proper protection, is a major contribution to the realization of SDG 3. More structural contributions to the health of workers could be ensured by a system of occupational health services, which would contribute to fulfilling human rights (Buhmann 2018; Shift and WBCSD 2018). Respecting the right of workers to a living wage, or a minimum wage, is a major contribution to the realization of SDG 1. In this way, the UNGPs are a powerful driver for meeting the SDGs. They are certainly an indispensable condition for realizing the SDGs.

#### **5. Concluding remarks**

The emerging social contract between business and society emphasizes business's contribution to sustainable societies, where people live well and within the planetary boundaries. Therefore, mainstreaming sustainable business implies mainstreaming human rights, as an integral part of business strategies and operating models.

It appears that mainstreaming human rights can be implemented by business as a single, integrated approach (UNGPs together with SDGs), using two types of attitudes or business cases (active and proactive) to deliver on three levels of expectations: complying with legislation, respecting human rights, and contributing to the SDGs.

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RSM research for proactive human rights strategies in business

In 2014, RSM, Amnesty international and the Foundation of Peace Sciences created the Special Chair on International Business and Human Rights to conduct research into how companies can develop and implement active and proactive human rights policies. The Chair has a focus on corporate decision-making on business and human rights issues and the role of company lawyers to such decision-making. Another focus is on the role of state-owned enterprises – a hybrid between a state and a business - in respecting and contributing to the fulfilment of human rights.

In 2016, RSM/B-SM (prof. Van Tulder, prof. Van Dam) started to collaborate with ESL (prof. Enneking and prof. Scheltema) on proactive human rights policies and their implementation for business in the context of the EUR Dynamics of Inclusive Prosperity Initiative. The 2018 – 2022 research agenda includes (i) the human rights approach by the Dutch Industry Covenants, (ii) what managerial stances are required for active and proactive business cases, (iii) integrating UN Guiding Principles on Business and Human Rights and UN Sustainable Development Goals. Furthermore, PhD research is conducted on the role of Financial Institutions in preventing company-community conflict.

The research scope and questions are further developed through a conference, to be held early 2019, that includes business, civil society, government and research stakeholders.