

Presentation - Making financing for development more accountable

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The reason that we choose to make this report is that in the **SDGs**, which are most comprehensive, there is **no attempt to secure that corporations - one of the stakeholders with most influence on development - act in a sustainable way and respect human rights**. Only an encouragement to partner for sustainable development. This **will not be enough to secure a profound transformation to sustainable development and a life with dignity for all till 2030**.

Because of this it is **extremely important that FfD takes on the role to create a framework that sets all companies on a path to sustainable development and respect for human rights**. The report proposes how this can be done.

To ensure that domestic and international investments respect human rights and support sustainable development, states must adopt a regulatory framework that offers effective means of **legal protection** against **business-related human rights abuses** and provides **remedy for those harmed**.

Human rights here include the whole spectrum of **civil, political, social, economic, and cultural rights**, as well as the **human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**, human rights law includes both procedural and substantive obligations relating to the environment.

The **previous FfD process has largely failed to integrate measures to ensure that reliance on the private sector to deliver development outcomes does not come at the expense of human rights**. The 2002 **Monterrey Consensus** emphasizes the **positive development impacts** of the private sector and prioritises the **promotion and protection of foreign investments**, without any accompanying commitments to **prevent any adverse impacts** from private sector activity. **Doha Declaration** has a **similar approach**.

Since 2008, the **business and human rights agenda has significantly advanced with the unanimous adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) by the Human Rights Council in 2011**. This policy framework contains three core **principles or pillars**:

1. the **state duty to protect against human rights abuses by third parties, including business**, through appropriate **policies, regulation**
2. the **corporate responsibility to respect human rights, which includes that they have to act with due diligence** to avoid harming the rights of others

Human rights due diligence means that business enterprises have to

- **identify, map and assess potential risks or consequences on HR of their operations**
- **take measures to prevent a negative impact**
- **report on this and their success**

This way corporations can **mitigate and account for the harms they may cause, and regulatory bodies can assess an enterprise's respect for human rights.**

The obligation of states to take measures to prevent, regulate, investigate and prosecute actions by business entities that violate HR means there is a clear role of the state in ensuring that the private sector complies with due diligence..

3. the need for greater **access by victims to effective remedies**, judicial and non-judicial.

In 2011 the OECD Guidelines for Multinational Enterprises, which cover a range of topics, including human rights, employment, environment, disclosure, corruption and taxation, **were updated to include the UNGP and due diligence.** Adhering governments are required to ensure that these guidelines are implemented and observed, and to **establish national contact points where complaints can be settled.** Although not binding this process can result in clarification of facts, compensation, and changes in corporate policies and practices.

The “**zero draft**” of the FfD3 Outcome Document has a more advanced approach to corporate accountability than previous resolutions, but it **fails to explicitly integrate the developments in international policy on business and human rights that have occurred since Doha.** The **Elements Paper**, prepared for the first Drafting Session in January, did include the UNGPs as it proposed to “**implement the UN’s Guiding Principles on Businesses and Human Rights (UNGPs) core labor standards of the ILO, and relevant environmental standards, with enforcement and accountability mechanisms.**” However, in the zero draft, this has been deleted.

This means that the current draft thus **fails to refer to the single most important and widely-recognised normative framework in the field of business and human rights**, the UNGPs. The zero draft does not call for **the adoption of measures to fulfil states’ obligations to protect against human rights abuses of the private sector** when undertaking development activities, **nor does it make any commitments to provide access to remedy for those harmed by corporate abuse.** The zero draft also lacks reference to the new process within the UN Human Rights Council to negotiate an international treaty on business and human rights.

The omission of the UNGPs in the zero draft is **in spite of the commitment “to pursue policy coherence for sustainable development at all levels and by all actors”.**

On the positive hand, **the zero draft “agree to create strong regularly frameworks on ESG practices, and mandatory integrated reporting for large companies”.** Since the UNGP are not internationally binding, and doesn’t have any international enforcement mechanism,

this would be important to speed up and strengthen the implementation of the due diligence part of the UNGP.

The UNGP only becomes a legal and binding tool when nationally implemented in national laws. Only 5 states have launched national action plans yet, with various means of implementation and types of reporting. A **standardized global set of mandatory integrated reporting would ensure that all reporting covers urgent areas and create a level playing field**. However, commitment to effective national implementation of UNGP must complement the paragraph on mandatory reporting to ensure due diligence – the obligation both to identify and prevent risks + reporting on this and success, and remedy (consequences) in case of violations.

Another measure which is crucial to ensure corporate accountability in FfD is to secure that trade and investment treaties don't have a negative impact on human rights. The elements paper proposed to "**commit to human rights impact assessments of all trade and investment agreements**" and to "**elaborate and implement binding environmental, social and human rights standards**". Unfortunately this is omitted in the zero draft. Since trade and investment agreements normally overrule HR and environmental agreements today, this would be one of the most transformative trade measures in FfD to achieve sustainable development.

A third field of great importance – where the zero draft proposes big improvements – is financial **transparency**. Public **CbC** and public **registers over beneficial owners** of companies, funds and trusts are crucial to discover and prevent both corruption and tax evasion that hinder states to fulfill human rights.

It would also be important to agree that **all tax incentives granted to foreign investors should be transparent and open to judicial oversight**, so as to ensure the accountability of such fiscal policies. When it comes to **extractive industries**, there should be **commitment to adopt laws requiring contract** disclosure.

To sum up; to ensure that the private sector contribution to development respects human rights and the environment our recommendations focus on:

1. the state duty to ensure that fiscal tax policies, tax evasion, and corruption do not undermine human rights and sustainable development
2. operationalization and implementation of the UNGPs, including mandatory reporting and access to remedies
3. making trade and investment agreements consistent with human rights by assessing their impact on people and the environment

Ensuring that a framework for development finance is consistent with existing human rights and corporate accountability standards should be one of the key efforts in the run up to FfD3 in Addis Ababa.