10th OECD Roundtable on Corporate Responsibility Workshop on Human Rights
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Business & Human Rights

- The UN Framework: “Protect, Respect, Remedy”

  - **State duty to Protect**: Need to close the gap between national laws and actual practice.

  - **Corporate responsibility to Respect**: Legal compliance and proactive actions beyond compliance.

  - **Access to remedies**: Judicial remedies must be available; non-judicial processes cannot substitute
“It is generally believed that economic development, coupled with the rule of law, is the best guarantor of the entire spectrum of human rights: from civil and political to economic, social and cultural rights.”

SRSG Interim Report, 2006
State Duty to Protect

- The State’s **legal obligation** to protect their citizens against human rights abuses is **absolutely critical**

- SRSG survey of 65 abuses cases found that human rights abuses are associated with:
  - Low levels of development
  - Conflict situations
  - Weak governance
  - High levels of corruption
  - Lack of basic freedoms

- Only the State can effectively address these issues
Human Rights Country Risks

Overall Risk Score
- 3.75 - 16.74
- 16.75 - 23.17
- 23.18 - 32.13
- 32.14 - 39.54
- 39.55 - 44.56
- 44.56 - 49.59
- 49.60 - 52.79
- 52.80 - 56.94
- 56.95 - 58.94
- 58.94+
- No Data
Corporate Responsibility to Respect

- Not infringe on the human rights of others: **be neutral**
- Starts with legal compliance: ICC, IOE and BIAC policy explicitly states that:
  - Compliance is mandatory and is the **minimum obligation** for all actors in society.
  - Legal compliance with national law is required **even where it is not enforced**.
  - Where national laws are silent or inadequate, companies should be guided by **international standards**.
Corporate Responsibility: Due Diligence Process

- **Scope:**
  - Country risks, company impacts, relationships

- **Context:**
  - Human rights issues covered (more on that later)

- **Components:**
  - Company policies, internal code of conduct
  - Impact assessments
  - Internal integration
  - Tracking and communicating performance
Corporate Responsibility: Stakeholder Engagement

- An extremely important aspect
- Should be part of a Due Diligence process by both parties
- Is more effective if a relationship exists BEFORE a complaint
- Dialog should be the first step in addressing complaints
Access to Remedies

- **Judicial remedies:**
  - Fundamental element of the rule of law
  - Need to address issues of access, corruption, efficiency

- **Non-Judicial processes:**
  - Can not substitute for legal remedies
  - Key process is direct stakeholder engagement
  - Head off disputes before they occur
  - Goal is to minimize number of disputes

- Remedies need to work bottom up, not top down
Current State of Play

- UN Framework widely accepted
- Most engagement has been with a few, very big MNEs
  - Testing aspects of due diligence, impact assessments, etc.
- Many issues are not new:
  - Companies have been working on a range of related issues for decades, some for centuries
- Multi-stakeholder initiatives to address particular issues:
  - Security, corruption, child labor, trafficking, etc.
Current Challenges

- De-mystifying “human rights”
  - International instruments written by States for States
  - Confuse the role of States and companies
  - Need to explain human rights in clear terms

- Terminology
  - Many companies address human rights issues without ever using the words “human rights” (non-discrimination)
Current Challenges

- **Scaling down**
  - Make human rights relevant for all kinds of companies
  - Expectations based on “influence”

- **Conflicts with National Laws vs. International Norms**
  - Parallel means
  - Encouraging changes in Laws and Regulations
Which Rights?

- International Bill of Human Rights:
  - Universal Declaration
  - Covenant on Civil & Political Rights
  - Covenant on Economic, Cultural & Social Rights

- ILO Core Conventions

- But what about emerging rights?
  - E.g. non-discrimination based on sexual orientation, gender identity & expression
BLIHR Essential Steps

- ES 1: Non-discrimination
- ES 2: Right to life
- ES 3: Torture, cruel, inhuman or degrading treatment
- ES 4: Slave, forced or compulsory labor
- ES 5: Liberty and security of person
- ES 6: Liberty of movement
- ES 7: Privacy
- ES 8: Thought, conscience and religion
- ES 9: Opinion and freedom of expression
- ES 10: Incitement to hatred
- ES 11: Peaceful assembly
- ES 12: Freedom of association, including TUs and the right to strike
- ES 13: Take part in public affairs
- ES 14: Culture, religious practice and language
- ES 15: Just and favorable conditions of work
- ES 16: Fair wage and decent living
- ES 17: Safe and healthy working conditions
- ES 18: Rest, leisure and holidays
- ES 19: Social security
- ES 20: Family life
- ES 21: Child labor
- ES 22: Adequate standard of living
- ES 23: Health
- ES 24: Education
- ES 25: Cultural life
- ES 26: Scientific progress
- ES 27: Benefits from productions
- ES 28: Avoiding Complicity
Implications for OECD Guidelines

- Focus on the UN Framework process approach
  - Allows companies to identify the relevant rights in any particular situation
  - Accommodates different ways to respect rights

- Assume that all rights and all groups are covered:
  - Do not try to predict every possible situation (security, conflict, tyranny, corruption, poverty) or affected groups

- Adopt the due diligence approach
  - Due diligence is objective and universally applicable, “sphere of influence” is not
Thank You