

UN Forum on Business and Human Rights: Key Takeaways

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Human Rights

The theme of the 2018 Forum was “Business respect for human rights—building on what works”. The UN Guiding Principles on Business and Human Rights (UNGPs) require companies to conduct human rights due diligence (HRDD) in order to meet their “Pillar Two” obligation to prevent negative human rights impacts throughout their global operations and supply chains. As a result, HRDD was center stage at the Forum, with experts, practitioners, and corporate representatives providing advice and insights on what they have done to meet their Pillar Two obligations and develop effective diligence plans. We have outlined below five key takeaways for businesses that are actively engaged with human rights issues.

1. Standard Practices for Corporate Human Rights Due Diligence Are Clearer, but There Is a Significant Gap between Top-Performers and Other Companies

The UN Working Group on Business and Human Rights (Working Group) presented key findings of their recent report, “[Corporate human rights due diligence—emerging practices, challenges and ways forward](#)”. Presenters reiterated key features of a comprehensive HRDD programme, including considering risks to rights holders (rather than risks to business at the heart of other forms of corporate due diligence), ensuring HRDD is commensurate with the severity and likelihood of adverse impact to individuals, conducting HRDD on an ongoing rather than a one-off basis and conducting meaningful stakeholder engagement. Forum presenters discussed ways in which their companies or organisations applied these principles in distinct or creative ways.

Working Group representatives also highlighted that while some companies have been pioneers in HRDD best practices, the majority of businesses are only just setting out on their journey in crafting HRDD programmes that meet UNGP and other soft law requirements. Companies were encouraged to proactively identify risks rather than simply react to human rights issues when they arise. Challenges identified in the development of HRDD include translating corporate policies into local contexts and conducting HRDD beyond tier one of a business’ supply chain.

2. The Intersection between Human Rights Due Diligence and Corporate Liability Is Growing

In recent and on-going cases in the UK, Canada, and the U.S. in particular, we have seen courts begin to grapple with the extent to which the development and implementation of a

corporate HRDD programme might impact a company's liability. Opinion is somewhat divided on this topic, with some experts stating that increased HRDD has the potential to mitigate risk, while others argue that it potentially increases risk by acknowledging a duty of care at the local level that might not otherwise exist. Regardless, pressure on business to take responsibility for the impact of its operations on human rights continues to mount, both through national legislation and consumer pressure, and it is likely that courts will continue to consider the role of HRDD in assessing questions of corporate liability.

It was noted during one of the sessions that there is a need for further capacity building in national legal systems, and in particular, the training of judges on the international framework surrounding human rights due diligence, in particular the UNGPs.

The treaty—discussed below—would, in its current form, require states to implement civil and criminal corporate liability for human rights violations associated with business activity. In a regional session focusing on human rights due diligence in the African context, participants drew attention to the African Union's draft "Malabo" Protocol, which would amend the statute of the proposed African Court of Justice and Human Rights to extend the court's jurisdiction to international and transnational crimes and include corporations among possible criminal defendants.

3. There Are New Regulations on the Horizon

In recent years, there has been a proliferation of national standards including a "Dirty List" transparency initiative in Brazil, reporting requirements in the UK, and mandatory "duty of vigilance" plans in France. Just this week, the Australian Modern Slavery Act was passed into law.

Other countries with possible legislation on the horizon include the Netherlands, Switzerland, Germany, and Canada. In Germany for example, the government has committed to considering the introduction of mandatory HRDD requirements if 50% of businesses in Germany (with over 500 employees) have not voluntarily implemented HRDD by 2020.

At an international level, there was much discussion of the possible binding treaty on business and human rights. Various country and Working Group representatives and advisors provided an update on the drafting process. Comments on the draft are to be presented by February 2019 and a revised draft is expected by June 2019. Speakers noted some of the key features of the draft, which include a requirement on signatory states to introduce mandatory HRDD, and opined on some of its weaknesses, including the inconsistent terminology when considered in parallel to existing soft law standards, such as the UNGPs. It was suggested that the treaty should include a defense to liability if corporates implement HRDD. See [here](#) for our closer examination of the "zero draft" text.

4. Industry-Specific Human Rights Due Diligence Practices Are Coming into Focus

Over the years, many observers have lamented the lack of industry-specific guidance for human rights due diligence. If this year's Forum was any indication, this may finally be changing.

Several sessions considered HRDD at a sectoral level. Best represented was the technology industry, with corporate representatives from various technology companies sharing their

experience in addressing particular challenges in implementing HRDD, such as the difficulties of engaging a global population of end users of products, balancing apparently competing human rights interests in the context of HRDD (for example the right to freedom of expression and privacy), and obstacles to complete transparency about human rights issues in some countries. However, representatives also described ways in which tech has transformed HRDD, including the use of blockchain technology and artificial intelligence to more accurately monitor and assess activity in supply chains.

Several sessions also focused on HRDD in other industry-specific contexts. Practitioners held sessions exploring HRDD in the mining sector, the world of sport, the information and communication technology sector, the pharmaceutical industry, the commodities sector, and tourism industry, to name a few. In each of these sessions, speakers described the ways in which HRDD considerations have sharpened to fit particular sectoral needs. Companies should continue to watch for developments relevant to their particular field.

5. Human Rights Due Diligence Intersects with Other Hot Topics for Business

Various sessions addressed global “hot topics” through the lens of corporate human rights due diligence. One session examined the interplay between a business’ approach to HRDD and management of climate change risk, which was also alluded to in the opening plenary session. Participants suggested that it is not possible to consider human rights and climate change risks in a silo and that corporates might consider implementing an integrated programme of risk management for human rights and climate change (among other issues). See [here](#) for our recent analysis of taking an integrated approach to management of human rights and anti-corruption risks.

Another session addressed the interplay between HRDD and #MeToo-related issues. Speakers considered how the #MeToo movement has changed perspectives on sexual abuse and harassment, and how those changes have in turn resulted in new considerations regarding gender-specific human rights violations. Sessions also explored other hot topics, such as the ramifications of HRDD for the LGBT community, the use of data analysis to improve HRDD and impact assessments, and the role of socially responsible investors vis-à-vis HRDD.

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