

Legislating for corporate human rights and environmental due diligence that works for children: practical considerations

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Why is it relevant to focus on children's rights in the discussion on business and human rights? Please, you have the floor. Thank you, Maria Pia.

One of the key reasons why it is important to focus on children's rights when we talk about business and human rights, and especially considering the legislative initiatives that are being developed, is that, as a lot of speakers before me have mentioned already, voluntary actions are not enough. And this is because they are not bringing the change that we need at the scale and speed that is necessary to effect change in the lives of children.

We know that business' impacts on children's rights can be wide. UNICEF has done a lot of research and published sector and country-specific reports on how businesses can have specific negative impacts on children. The UN Guiding Principles on Business and Human Rights recognize children as one of the groups at risk of marginalisation and vulnerability. There is broad recognition that businesses can have a multitude of impacts on children's rights, however, when it comes to business' practices, especially around environmental and human rights due diligence, children's rights are often overlooked.

We have seen that there is a good understanding around child labour risks and we are seeing an increase of business policies on this topic, but there is less focus on all the other aspects of children's rights that businesses can affect. Even when child rights policies exist, those limited actions are not fully integrated within the overall business strategy. This risks some of those impacts on children going unnoticed.

Childhood is a unique period of physical and mental development and so harms to children during this period can have impacts for the rest of their lives. One example is

children's exposure to pollution and toxic substances. Because of the size of their bodies, and of their organs and their systems being still in development, children have more health related risks compared to adults. Therefore, if businesses do not address specifically child impacts and consider children as an independent stakeholder they will fail to assess them and, therefore, address them. Another issue that often goes unnoticed is how children might be affected by the way parents and caregivers are treated. For example, if parents or caregivers do not enjoy decent working conditions, such as adequate parental leave and breastfeeding provisions, children will also be impacted. Again, it is critical that children's rights are recognised as an independent stakeholder group, with businesses taking their rights and needs into account.

Finally, at the beginning of the conference, we spoke about climate change and COP26. Children need to be part of stakeholder engagement processes, so they can inform the decisions that affect them. Children have an important voice, and that voice needs to be listened too.

How to make sure that children's rights are adequately integrated in mandatory due diligence legislation as voluntary action alone has failed to address the issues?

The key is integration. It is making sure that as part of a wider approach, children's rights are integrated within the broader human rights and environmental due diligence piece of legislation. Prof. Claire Bright gave a broad overview of all the various legislative initiatives that are happening. Obviously, the EU initiative is very significant, not only because of the size of the market that we're talking about, but also due to the influence it will have on legislative initiatives and movements elsewhere, as well as the impact it will have on companies that, even if they're not based in the EU, will want to do business in the EU.

Last year, UNICEF UK published a report highlighting why we need this legislation as well in the UK, but also what would be the key elements of a due diligence requirement to ensure that children's rights are adequately integrated. I will outline some of these key elements here.

One is that such legislation needs to adopt a comprehensive approach to human rights and environmental due diligence. This is because we need to look at impacts holistically: looking at the human rights aspects, but also the environmental aspects and how these are connected too, rather than taking a sector- or a topic-specific approach. Impacts on children's rights happen in an ecosystem of other impacts, and this needs to be considered. Having a broad legislative approach on human rights and environmental due diligence, that also puts together environment and human rights, is one way that to enable the broad spectrum of children's rights that can be affected by business activities to be addressed.

It is also necessary for legislation to recognise children as one of the key stakeholder groups that businesses need to consider. This is in line with the UN Guiding Principles on Business and Human Rights, according which businesses need to give specific attention to certain groups, because they are more at risk of vulnerability and marginalization. Children are specifically identified as one of these groups.

Looking at children as independent stakeholders means really embedding them into the whole due diligence process. It means, for example, for the impact assessment and subsequent prioritisation of issues, asking whether there is going to be a specific impact on children; whether the measures that the business want to take to address identified impacts take into account that children might be those impacted; whether it has been factored that in some circumstances children are more impacted than adults and impacts on them might have lifelong effects. It also means making sure that, children and/or their legitimate representatives are part of the dialogue with companies, that their views are listened to in a safe and meaningful way, and that they can inform decisions that businesses take.

Moreover, it is necessary to avoid unintended consequences. Legislation on due diligence

should not lead to a tick box exercise, with businesses adopting more a risk adverse and compliance focussed approach. Instead, legislation needs to drive the idea that businesses should identify and address the root causes of the relevant child rights issues.

Business interactions with and impacts on children's rights are complex and varied. Because the most serious impacts on children's rights are likely to happen beyond tier one of companies' supply chains, legislation should also go beyond tier one. It is also important to acknowledge that risks to children do not lie only in the supply chain of a company; impacts on children can happen also in relation to the products put into the market.

Finally, legislation should also clarify the standard of care for businesses and this should be based on the international human rights framework, which also includes child rights.

Lastly, other elements that can contribute to making legislation truly effective are:

- a minimum disclosure requirement linked to the due diligence legislation;
- an enforcement mechanism;
- guidance for businesses on what adequate and effective due diligence in certain contexts and specific topics means;
- access to justice. The UN Committee on the Rights of the Child has always been clear that "for rights to have meaning, effective remedies must be available to redress violations". If any legislation on due diligence is going to be meaningful and effective, it needs also to have an element ensuring access to justice.

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