

Business, Human Rights and Sustainability: Challenges and Opportunities

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Good afternoon and many thanks to the team for helping organise this event. I would like to thank first and foremost the students from NOVA School of Law who are part of the organisation committee (Dussu Djabula, Mariana Ferreira, Alice Milheiras, Roman Bembinov, Ana Carina Duarte, Margarida Arêlo Gonçalves, Sara Pacheco, Sara Félix, Rafaela Oliveira and Shen Shiping) for their hard work, I would also like to thank the members of the scientific committee of this conference. I would also like to extend a warm thank you to our partners, PLMJ and the Portuguese Chamber of Commerce and Industry for their support.

It's my pleasure to welcome you today. I would have liked to do it in person but with the COVID situation, we felt that it would be wiser to do it online. In my presentation, I am going to focus on the challenges and opportunities of Business, Human Rights and Sustainability.

At the moment, we hear a lot about sustainability, and of the three dimensions of sustainable development: the economic, social and environmental.

A lot of emphasis has been placed lately on the environmental dimension and that is probably linked to the increase of regulation in the field. Recent examples in the EU include the European Green Deal, the green taxonomy, the EU pledge to be the first climate-neutral continent by 2050 and the recently adopted EU Climate Law which writes this goal into law. And of course, this emphasis is important as climate change is accelerating and has serious implications on human rights. On the 8th of October 2021, the Human Rights Council adopted a Resolution which recognised for the first time that **having a clean, healthy and sustainable environment is a human rights**.

However, something that is often overlooked in the discussions on climate change is that

climate mitigation and adaptation measures can, too, have implications for human rights.

In this event, we would like to focus on the social pillar of sustainable development, which of course **encapsulate human rights** and which is the 'weakest pillar' – this is the pillar where most efforts need to be made. It is clear that development cannot be sustainable if respect for human rights is not at the heart of it.

In fact, the preamble of the Sustainable Development Goals affirms that the 17 Goals and 169 targets [...] seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.

I mentioned that I would speak about challenges and opportunities in my presentation. Let me start with the challenges

Companies can be involved in adverse human rights impacts in a variety of way. From the Rana Plaza Building collapse in Bangladesh in 2013 which caused the deaths of thousands of workers working in unsafe conditions in factories supplying goods to European and international brands, widespread use of child labour in the Cocoa Farms in West Africa supplying chocolate companies to issues of forced labour in the cotton industry in China and Uzbekistan, to issues of pollution and climate change-related impacts resulting from mining and oil explorations activities in South America, affecting the livelihoods of local and indigenous communities, the examples are numerous.

But human rights issues arising out of business activities do not just happen in remote locations of the so-called Global South. They are also common in the Global North. Reported examples include issues of discrimination, precarious employment of workers in the hospitality sector and in the gig economy for example, or the working conditions of migrant workers in the agricultural sector to name just a few. These issues have been aggravated by the COVID-19 crisis, and we will have the opportunity to discuss this in various panels.

In this regard, companies have a **crucial role** to play in ensuring the respect for human rights as well as environmental standards in their activities but also throughout global value chains.

– In 2011, the UN Guiding Principles on Business and Human Rights (UNGPs) were **unanimously endorsed by the Human Rights Council**. The UNGPs are a soft law instrument in the sense that they are not legally binding but their legitimacy and influence come from the **broad global consensus** that they created. As I talk about the UNGP, I wanted to take time to mention John Ruggie, the author of the UNGPs, who passed away recently. His sadly missed but his legacy will live on.

Core to the UNGPs, is the corporate responsibility to respect human rights, which arises out of social expectations which requires companies to have in place:

- (a) **A policy commitment** to meet their responsibility to respect human rights;
- (b) **A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

The good news is that a number of companies has shown leadership and adopted HRDD processes which are becoming more robust. The bad news is that there are many laggards.

In the study that I co-authored for the European Commission on due diligence requirements through the supply chain, only just over **one-third of business respondents indicated that their companies undertake due diligence which takes into account all human rights and environmental impacts**. The majority of business respondents which are undertaking due diligence indicated that their due diligence exercise include first tier

suppliers only, which is problematic because quite often the most salient human rights issues are to be found further down the supply chains.

Here in Portugal, the first National Enquiry on Responsible Business Conduct found that **less than one in five companies** having due diligence processes in place. But the regulatory pressure is increasing, which leads me to move to the opportunities part of my presentation.

Important legislative developments are taking place in Europe. What we see in relation to the regulatory landscape, is that a growing number of jurisdictions adopting or considering legislative measures **encouraging or requiring companies** to exercise human rights due diligence.

There are **two types of legislation** in particular that have emerged in Europe in recent years in relation to corporate due diligence:

- **Reporting legislation** which aims to encourage the exercise of human rights due diligence through reporting requirements. Examples includes the UK Modern Slavery Act 2015 which requires large companies doing business in the UK to publish an annual statement of the steps that they are taking to ensure that slavery and human trafficking is not taking place in any of their activity or any of their supply chains.

- **Mandatory human rights due diligence legislation** (mHRDD): which encompasses national legislation requiring companies to undertake substantive human rights due diligence. Some are specific to certain issues or sectors, such as the Dutch Child Labour Due Diligence Act 2019: requires companies selling goods or services onto the Dutch market to exercise due diligence in relation to the risks of child labour being used in their supply chains.

Other examples are overarching, such as **the French Duty of Vigilance Law 2017** which requires large French companies to effectively implement and publish a '**vigilance plan**' setting out the human rights and environmental due diligence measures taken in relation to the companies' own activities but also their supply chains. Earlier this year, laws on mandatory human rights due diligence were also adopted in Norway and in Germany. In Norway, the **Norwegian Transparency Act 2021** will require large Norwegian and foreign companies offering goods and services in Norway to **carry out due diligence** with regard to human rights and decent work. In Germany, the **German Act on Corporate Due Diligence Obligations in Supply Chains** which will require large German companies to exercise due diligence with regard to human rights as well as certain environment-related risks in their own operations and in relation to their tier 1 suppliers, and in certain circumstance also in relation to their indirect suppliers.

At the European level, in our study for the European Commission, the majority of the stakeholders supported the introduction of mandatory human rights and environmental due diligence at the EU level. This was perceived as the regulatory option which would **yield the greatest positive social, environmental and human rights impacts**.

In addition, nearly 70% of companies surveyed anticipated that mandatory human rights and environmental due diligence legislation would benefit business by providing a uniform standard at the EU level (rather than fragmented approaches at the national level) thereby increasing legal certainty and that it would level the playing field.

So the momentum for mandatory HREDD is growing and regulatory changes are coming. Last year the EC committed to introducing a legislative proposal that will require companies to exercise due diligence with respect to human rights and the environment in their operations and throughout their value chains. On the 10th of March 2021, the European Parliament adopted a resolution with recommendations to the European Commission on corporate due diligence and corporate accountability and we are now expected the text of the European Commission in the coming months. I am pleased to report that in his video message addressed to us, the EU Commissioner of Justice, Didier Reynders will tell us a bit

more about this.

I believe that there is an opportunity for companies not just to endure the regulatory changes but to **get ahead of the regulatory wave and show leadership** in terms of sustainable development through the implementation of solid human rights and environmental due diligence processes.

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