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A Human Rights Based Approach in Private Sector Collaboration

Purpose and framework

The purpose of this Brief is to provide guidance on how to apply a human rights based approach when collaborating with the private sectors. It also includes some useful references.

In Sweden the interpretation of a HRBA has been elaborated in the [Policy for Global Development \(PGD\)](#) and the government's [Aid Policy Framework](#) (section 3.2.2.). Sida staff can access further information and HRBA tools on Sharepoint. Applying a human rights based approach entails

- Assessing how the initiative will further the realisation of human rights as laid down in the UN Human Rights Conventions and how it will ensure to do no harm.
- Planning and monitoring how the values and principles underpinning these UN Conventions (non-discrimination, participation, accountability and transparency) are applied in the programme design and processes
- Developing capacities of those who have power and formal obligations to protect, respect and fulfil human rights obligations
- Empowering men, women, girls and boys (with hope, assertiveness, knowledge, skills, tools, communication channels, legal mechanisms etc.) to enable them to address their situation and claim their rights individually and collectively

Foreign Direct Investments plays an important role for a country's development. Economic, social, and environmental sound investments are essential for sustainable development and for creating an enabling environment for people living in poverty. Through the creation of more and decent jobs, economic and social rights of women and men living in poverty can be enhanced.

Applying a human rights based approach can help to identify business collaboration opportunities that coincides with the Swedish development goals. For example collaboration with businesses willing to apply and develop inclusive business models (i.e. companies whose core business empowers poor and marginalised women and men as workers, distributors, producers, entrepreneurs and leaders), businesses willing to make socially and environmentally responsible investments and initiatives where the business sector plays an important role for the respect of workers social and economic rights.

Existing human rights tools for Sida's collaboration with the private sector

Sida's guidelines

[Sida's guidelines for CSR \(Corporate Social Responsibility\)](#) According to the CSR Guidelines, Sida should address a) State responsibility to protect human rights, b) corporate responsibility to respect human rights and c) shared responsibility to provide remedy for victims of human rights abuses. These are called the "Ruggie principles" and were endorsed in June 2011 by the United Nations Human Rights Council . The principles are designed to ensure that companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur.

Protect:

The pillar Protect refers to states responsibility to protect human rights. Sida broadens the concept of responsibility to protect to include the environment, labour legislation, anticorruption and gender equality.

Respect:

The second dimension targets the business responsibility to respect human rights. Sida has a responsibility to respect human rights and other social and environmental issues in its own processes, while its role as an authority can influence the behaviour of companies how they act. This can be achieved by placing requirements on cooperation partners in procurement situations, in agreements and cooperation with companies.

Remedy:

Access to formal legal systems is often worst where the need is the greatest. Without proper remedying mechanisms, duties and obligations become vague. Therefore, effective remedying mechanisms play an important role in the state's duty to protect and the corporate responsibility to respect. Extrajudicial mechanisms, regardless of whether they are state-run or independent, should be in agreement with the principles on legitimacy, accessibility, predictability, rights perspectives, fairness and openness.

According to the PGD, Sweden shall also contribute to increased knowledge and observance of universal codes of conduct and instruments, such as the [UN Global Compact principles](#) and the [OECD Guidelines for Multinational Enterprises](#) through a continuous dialogue with representatives of government, the private sector and civil society in cooperation partner countries. These tools also support a human rights based approach.

UN Global Compact

The UN Global Compact is a strategic policy initiative for businesses to align operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. The Global Compact aims to mainstream these principles around the world and to assist the private sector in the management of increasingly complex risks and opportunities in the environmental, social and governance realms. The Global Compact provides a practical framework for the development and implementation of policies and practices to help advance sustainable business models and markets. The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core principles in four areas:

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises is an international instrument for the promotion of responsible business conduct and cover areas such as Human Rights, employment and industrial relations, the environment, anti-corruption, consumer interests and competition. The guidelines provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The OECD Guidelines for Multinational Enterprises are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting. The recommendations express the shared values of the governments of countries from which a large share of international direct investment originates and which are home to many of the largest enterprises (OECD, 2011). The guidelines stipulate that National Contact Points should be established to help solve conflicts through dialogue when companies do not follow the guidelines and respect for human rights. The National Contact Points acts as mediators and can support the individual to get remedy.

Other human rights tools

- The Donor Committee on Enterprise Development (DCED) has highlighted the importance of taking the rights of poor people working in informal economic activity into account when supporting business environment reforms ("Supporting Business Environment Reforms. Practical Guidance to Donors, Annex How Business Environment Reform can promote Formalisation", DCED, 2011).
- The ILO's Global agenda for decent work may be seen as one of the answers to an increased focus on the situation of people in the informal economy. This agenda includes a legal framework with minimum standards as well as policies to promote employment creation, social protection and social dialogue.
- The European Commission has developed guidelines for Small and Medium sized Companies regarding Human Rights based on the UN Guiding Principles on Business and Human Rights. They include sector-specific guidelines for the extractive industry (oil and gas), employment companies and companies working with information and communication.
http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index_en.htm
- Good practices in trade between rich and poor countries developed by the 3DThree program and through Fair trade agreements.

Applying a HRBA in private sector collaboration

The questions below may guide staff to further improve the preparation, assessment and monitoring of interventions and ensure that human rights are enhanced, respected and protected both in programme design and processes. First there are questions related to human rights instruments (L) and to empowerment and capacity development (E), followed by specific questions related to the four human rights principles of non-discrimination (N), transparency (T), participation (P) and accountability (A).

Linking to human rights instruments (L)

How the business sector can support and respect human rights is expressed in [UN Global Compacts principles:](#)

- Businesses should support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human rights abuses.
- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.
- Businesses should support a precautionary approach to environmental challenges; undertake initiatives to promote greater environmental responsibility; and encourage the development and diffusion of environmentally friendly technologies.
- Businesses should work against corruption in all its forms, including extortion and bribery.

When assessing and monitoring initiatives, the overall key question is: Has an analysis been made of the initiative in relation to its human rights consequences – both positive and negative? [Sida's](#)

[due diligence tool](#) will help staff to know more about business partner's maturity regarding Business and Human Rights.

Empowerment and capacity development (E)

According to [Sida's guidelines on Corporate Social Responsibility](#) (CSR), Sida's engagement with the private sector should reinforce the a) State responsibility to protect human rights, b) corporate responsibility to respect human rights and c) shared responsibility to provide remedy for victims of human rights abuses. This means that capacity building of these actors must be a central element of the supported initiatives. Equally important is the empowerment of poor and marginalised women and men as workers, distributors, producers, entrepreneurs and leaders in order for them to be able to engage with business opportunities and monitor compliance to Corporate Social Responsibility commitments. Key questions are;

- Does the intervention empower poor and marginalised women and men?
- Does the initiative enhance capacity of those responsible to protect, respect and remedy human rights to ensure better compliance?
- Does the initiative develop capacity of female and male entrepreneurs, smallholders and employees increasing their economic empowerment?
- Does the initiative empower these stakeholders to monitor compliance to CSR commitments and Global compact principles?
- Have barriers to inclusion of women and marginalised groups been identified?

Non-discrimination (N)

The exclusion of large groups of poor people from market access is an important obstacle to economic growth in general and economic empowerment of the poor in particular. The reasons for market exclusion vary, from cases of clear-cut discrimination to situations where poor people are excluded from markets and economic opportunities due to remoteness, lack of information, knowledge etc. World Bank research shows that mostly people are poor because they are powerless (Voices of the Poor, 2000). World Bank research also shows that as much as 30% of the poor are persons with disabilities. There are strong arguments from an economic as well as from a human rights perspective for interventions supporting inclusion of excluded groups. This requires explicit measures which empower and develop capacity (information, skills, capital, tools, etc.) of excluded groups (such as women, ethnic minorities and people with disabilities).

Key issues to monitor and analyse in assessing support for private sector actors are:

- Have barriers to inclusion of marginalised groups been identified and addressed?
- Are discriminatory policies, laws, regulations or practises identified and addressed?
- Does the intervention make a deliberate effort to facilitate inclusion of vulnerable and marginalised groups (e.g. women, ethnic minorities, people with disabilities etc.)?
- Are there deliberate, targeted measures to support/include vulnerable and marginalised groups (e.g. women, ethnic minorities, people with disabilities etc.)?

Transparency (T)

Stakeholders have the right to information about the purpose, the opportunities, and the monitoring and complaints mechanisms of development interventions. Openness and transparency could in many cases be improved. Program documents are often lengthy and complex for ordinary people to understand and budgets are often not disclosed or discussed. Sometimes transparency is unnecessarily denied, under the pretext of trade secrecy.

Key issues to monitor and analyse in assessing support for businesses actors:

- Have effective communication strategies been put in place, which specifically consider accessibility of unbiased information for poor and marginalised groups?
- Does the collaboration partner have a business ethic policy against corruption, extortion and bribery?



Production of décor in Bangladesh. Sweden is contributing to fair and sustainable development through private sector collaboration. Partners in Bangladesh provide safe and just working conditions and economic empowerment of women. In collaboration with H&M. Photo: Wilda Nilsson

Participation (P)

Relevance and effectiveness of programs supported will depend on meaningful and inclusive consultative planning process with stakeholders. This means that information, meeting places and dialogue methods need to be accessible to all stakeholders (means and format of communication) and that deliberate efforts are taken to accommodate women and men living in poverty and their representatives. Consultations take time and effort. Some stakeholders may need some

preparation before being able to understand the issues and participate in consultations. Reference is made to the document Public Participation: International Best Practices Principles (André, 2006).

Experience show that Business Environment Reforms cannot succeed without a continuous dialogue with all actors affected by changes in the regulatory environment. Unfortunately, not all government ministries and agencies in developing countries are well equipped and have sufficient incentives to organise meaningful participation of stakeholders. For this reason, donors who participated in the large business environment reform program in Tanzania, decided to set up an independent entity to provide grant support to private sector associations for their dialogue with the government (see <http://www.best-ac.org>).

Key issues to monitor and analyse in assessing support for business actors:

- Is there a process/forum for people to express their view on the investment/projects' impact on their livelihood (socially, environmentally and economically)?
- Are the workers allowed to form associations and do they have the right to collective bargaining?
- Is there a scope to enhance the capacity of workers associations?



Volvo supports mechanics vocational training courses for youth in vulnerable situations in Addis Ababa, Ethiopia. This will empower the youth and give them job opportunities, encourage companies to take social responsibility and offer good working conditions, while at the same time benefitting from availability of skilled workers. This is a collaboration between Volvo, Sida and Selam Vocational College. Companies always contribute at least 50 % of the project investment. Photo: UNIDO

Accountability (A)

Accountability is first about identifying those with legal and moral responsibilities to ensure that poor women and men are a) protected from rights violations by e.g. discriminatory laws, regulations and practices or by foreign and domestic investors or businesses b) empowered to “take part in, contribute to and benefit from economic growth” and accessing market systems on fair terms. Second, it is about monitoring that those responsible fulfil their obligations in accordance with international laws, principles and agreements.

Those who could be held accountable in business cooperation programs are foreign governments and donors who engage in bilateral agreements, national and local governments who are responsible for laws/regulations and rule of law and large international and national businesses that are responsible to adhere to the national and international laws/regulations and agreements (labour rights, fair compensation etc).

Regardless of size, businesses that Sida partners with are expected to contribute to poverty reduction and enhancement of human rights. They are expected to adhere to certain ethical standards.

Key issues to monitor and analyse in assessing support to business interventions:

- Does the partner have systems in place to monitor and disclose social and environmental impacts according to internationally agreed standards for business, according to internationally agreed standards for business, such as UN Global Compact, OECD guidelines for multinational enterprises, ILO labour rights and the Business and Child Rights Principles?
- Do they disclose their impact in a sustainability report, and is it build on material aspects of sustainability?
- Is there a salary-system in place that ensures fair and just wages based on experience and level of expertise?
- Are complaints mechanisms in place through which stakeholders may challenge decisions or actions that affect them negatively?

Useful links and references

Sidas guidelines for CSR (Corporate Social Responsibility):

http://www.sida.se/Global/KAPSAM/B4D/Sidas_riktlinjer_för_CSR_eng.pdf

Sida's guidelines for Private public partnerships: http://www.sida.se/PageFiles/49984/FINAL_Joint_Declaration_on_expanding_and_enhancing_public_private_cooperation_for_development_FINAL_13_11_11.pdf

Sida's due diligence tool for self-assessments, link [here](#)

Natural Resource Tenure – a crucial aspect of poverty reduction and human rights, Sida Studies No. 23
http://www.sida.se/globalassets/global/sa-arbetar-vi/economic-opportunities/sidastudies23_sida51603en_web.pdf

Children Rights and Business Principles

https://www.unglobalcompact.org/issues/human_rights/childrens_principles.html

Public Participation: International Best Practices Principles: http://www.iaia.org/publicdocuments/special-publications/SP4_web.pdf

The Convention against Corruption specifies the requirements of the private sector (art. 12) and prescribes participation of society in monitoring (art 13): <http://www.unodc.org/unodc/en/treaties/CAC/>

United Nations Human Rights Council 16 June, 2011 endorsed a new set of global guiding principles for business (Ruggie principles) designed to ensure that companies do not violate human rights:
[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/3D7F902244B36DCEC12578B10056A48F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/3D7F902244B36DCEC12578B10056A48F?OpenDocument)

The ILO's Global agenda for decent work: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

ILO's global agenda for decent work is being implemented in a large number of countries. Regional and country progress reports: <http://www.ilo.org/public/english/bureau/program/dwcp/countries/index.htm>

Good practices in trade between rich and poor countries developed by the 3DThree program:
<http://www.3dthree.org/en/pages.php?IDcat=19> and through Fair trade agreements:
<http://www.fairtrade.se/>

The Institute for Human Rights and Business (IHRB) is a global center of expertise on the relationship between business and internationally proclaimed human rights standards: <http://www.ihrb.org/>

The Danish Institute for Human rights (DIHR), Human rights and business program. Through research, tools and partnership with business actors, DIHR aims to maximise the positive impact and minimise the negative impact of business actors worldwide:

<http://www.humanrights.dk/focus+areas/human+rights+and+business>

Business & Human Rights Resource Centre is an independent resource on the subject. The website is updated hourly with news and reports about companies' human rights impacts worldwide – positive and negative: <http://www.business-humanrights.org/Aboutus/Briefdescription>

The United Nations Office of the High commissioner of Human Rights, A Guide to integrating Human rights to businesses management: <http://www.ohchr.org/.../GuideHRBusinessen.pdf>

ISO's (International Standardisation Organisation) Corporate Social Responsibility Program:
<http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html>

The UN Global Compact outlining 10 human rights principles for companies to embrace, support and enact, within their sphere of influence:

<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

Annika Billing, Maja Forslind, Karin Metell Cueva, University of Gothenburg (2012), "Swedish Development Cooperation and the Private Sector - The role of business in poverty alleviation and the role of donors in promoting private sector contributions to development"

Anseeuw, W. et.al. (2012), "Land rights and the Rush for Land", International Land Coalition:
http://www.landcoalition.org/sites/default/files/publication/1205/ILC%20GSR%20report_ENG.pdf

Ashley, C., "Harnessing core business for development impact", 2009, ODI Background Note

Commission on the Legal Empowerment of the Poor (2008), "Making the Law Work for Everyone"

CGAP (2011), "Reaching the Poorest: Lessons from the Graduation Model", Focus Note No. 69:
<http://www.cgap.org/gm/document-1.9.50739/FN69.pdf>

Davis P. (2011), "The Political Economy of business environment reform: an introduction for practitioners", Donor Committee for Enterprise Development

Donor Committee for Enterprise Development, DCED (2011), "Supporting Business Environment Reforms. Practical Guidance to Donors, Annex How Business Environment Reform can promote Formalisation"

Foresti, M. et al (2010), "Human rights and pro-poor growth", Overseas Development institute (ODI) Project Briefing No. 34

Jones, L. (2012), "How can the making markets Work for the Poor Framework work for poor *women* and poor *men*", Springfield Centre for Business in Development

M4P Hub, "Sharing knowledge on making markets work for the poor": <http://www.m4phub.org/what-is-m4p/introduction.aspx>

OECD (2011), "OECD Guidelines for Multinational Enterprises"

Oxfam (2011), "Making markets empower the poor", Programme perspectives on using markets to empower women and men living in poverty.

Wickeri, E. and A. Kalhan (xxxx), "Land Rights Issues in International Human Rights Law", Institute for Human Rights and Business; http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf

World Bank – Voices of the poor (2000)

Monitoring of Human Rights Treaties per country UN web-page:

<http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>

Study on land rights for the poor by the International Land Coalition: <http://www.landcoalition.org/cpl/CPL-synthesis-report>

Trading conditions that take human rights into account as outlined by the 3DThree program:
<http://www.3dthree.org/en/pages.php?IDcat=19>

Read more in the German development Agency HRBA fact sheet documents

http://www.bmz.de/en/publications/topics/human_rights/BMZ_Information_Brochure_7_2010e.pdf