GO FAST, GO FIRST, GO FURTHER

LEADING BUSINESS ACCOUNTABILITY IN A NEW ERA

A report for the Business & Sustainable Development Commission

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EXECUTIVE SUMMARY

The private sector is increasingly expected to play a leading role in development, particularly within the context of the new Sustainable Development Goals (SDGs). Achieving the SDGs has a clear benefit for businesses as stable, more equal and well-educated societies, and healthier and more prosperous populations lead to new and stronger markets.

As expectations of businesses evolve there are competing visions of their contribution, from a simple financing function to more integrated activities sometimes akin to civil society. However, there is one area on which there is little or no disagreement: to maximise positive development outcomes, businesses need to fully understand, take responsibility for, and learn from the whole range of their impacts. In other words, they need to be accountable.

This now-conventional wisdom has emerged after many years of discussion in the corporate accountability sector. But there is still a vast gap between rhetoric and reality, as businesses across the world too often find themselves on the wrong side of the development, criticised for harming rather than helping.

It is time, then, in the new SDG era, for a reassessment of business accountability. What opportunities are there? And what should be the priorities of those businesses that seek to be leaders?

In this brief paper we offer an answer to that question. Go fast. Go first. And go further.

The launch of the SDGs has reenergised the development sector and reemphasised the urgency of radical transformation of business behaviour – even the leading companies are still some way away from where we had hoped they would be at this stage. The world can no longer afford such tardiness. We urge all business leaders now to **go fast** to drive momentum towards the better accountability needed to achieve the SDGs.

Sometimes this tardiness is the result of a reticence to implement the changes required before the rest of the sector, or before the arrival of government pressure or legislation. We now urge businesses to **go first** i.e. not to wait for others to move, be they peers in the private sector or government regulators.

We insist that companies that want to be recognised as leaders **go further**, innovating alongside government and energising peers in the development of accountability mechanisms. Businesses must not wait for governments to act or use poor government policies as an excuse not to do the right thing – they will only be able to play a transformational role in development if they first transform themselves.

Accountability has three equally important dimensions: responsibility, answerability, and enforceability. A shift towards more accountable business behaviour in these areas would have a dramatic effect on our ability to achieve the SDGs. In particular, the existing business accountability landscape can be made significantly more robust with respect to four critical areas:

1. Environmental and human rights impact. When businesses engage with, and seek consent from, affected communities, they reduce risks to themselves for businesses and increase opportunities for development.

2. Labour rights and standards. One of the most important contributions of businesses to the SDGs is the creation of jobs; but for these jobs to be transformational, they must be decent, include means for participation, and support social protection for families.

3. Paying tax. Increasing tax bases is key to governments being able to provide better health care, education and social protection. Businesses should pay their fair share of tax where economic activity takes place.

4. Lobbying. While lobbying can be a valuable part of the policy-making process, it can also have a distorting effect via undue influence, unfair competition and regulatory capture. There are ways to mitigate this.

In each of these four areas we present specific recommendations, most of which are related to three core areas on which we call on business to move **fast**, **first** and **further**.

- **Compliance.** We call on businesses to urgently ensure compliance with all relevant international and national accountability measures, norms and laws related to the Sustainable Development Goals. This will require having an internal policy of compliance, as well as rigorous implementation standards. They should also require third party suppliers and contractors to comply to these same standards and be prepared to terminate contracts should these standards not be upheld.

- **Public reporting.** We call on businesses to immediately commit to implementation of the highest level global sustainability reporting standards in each jurisdiction in which they operate. This includes reporting on wages, taxes paid, and information on lobbying activities.

- **Participation.** We call on businesses to ramp up their approach to stakeholder participation, from affected communities (including through Free Prior Informed Consent, where appropriate) to workers

If business leaders redouble their efforts to be accountable for their behaviour across the board, they will demonstrate their indispensability to the project of making the world a better and more sustainable place. If they do not, they will remain the target of criticism, be unsustainable in the long-term, and are unlikely to thrive financially, or otherwise.

INTRODUCTION

'The draft outcomes document and the draft SDGs recognize the positive role of businesses to support and drive development. At the same time, in our view, they do not sufficiently reflect the fact that governance gaps in many situations enable business activities across a range of sectors and countries to undermine respect for human rights. Accordingly, it is critical to ensure that recognition of the increased role of business in development is coupled with adequate accountability.'

UN Working Group on Human Rights and Business 2015[1]

The new Sustainable Development Goals (SDGs) represent the most ambitious development agenda the world has ever seen. It aims to end extreme poverty, combat climate change and reduce inequality by 2030[2]. Such ambition, however, requires resources. It is estimated that meeting the goals will cost between $3.3 trillion and $4.5 trillion a year, well over $2 trillion more than current spending and investment levels.[3] This funding gap will not be filled by public sources, so must, in large part, be met by the private sector. According to UN Secretary-General, Ban Ki-moon, "Governments must take the lead in living up to their pledges. At the same time, I am counting on the private sector to drive success."[4]

There is no doubt about the important and often transformational role the private sector can play in development: it has the capacity to stimulate economic growth and job creation, provide investment, and share the resources and knowledge needed to solve challenges, local and global.

But the centrality of major private sector actors, especially multinationals, in plans to meet the SDGs is not such well-trodden ground. The private sector has never before been called upon to play such a central role in development. Viewing businesses as partners, not just resources, is still an emerging idea, a "new paradigm" according to the UN Global Compact, which has been working on these issues for 15 years.[5] The Millennium Development Goals made only a passing reference to the private sector, calling on technology companies to enhance cell phone availability and internet penetration and pharmaceutical companies to provide access to affordable essential drugs in developing countries[6]. Leadership and responsibility go hand in hand and it is evident that some business leaders are beginning to take these new expectations extremely seriously.[7] If they are achieved, businesses will reap the rewards as stable, more equal and well-educated societies, and healthier and more prosperous populations result in new and stronger markets.

However, private sector activities in developing countries, particularly those of large multinational corporations (MNCs), are complex. Today's dominant narrative is sometimes in danger of slipping into seeing businesses as an unalloyed purveyor of positive outcomes, rather than acknowledging that too often their actions have been prejudicial to development progress and human rights.

With this in mind, business accountability must play a central role in any assessment of how the private sector supports or hinders the achievement of these ambitious goals, from the smallest enterprise to the largest conglomerate.

This paper explores what is meant by "accountability". How can this concept apply to business as development enters a new era, the era of the SDGs. What principles can strengthen accountability measures? It then weighs up the pros and cons of voluntary and mandatory measures to encourage or enforce accountability. And it looks at four critical areas (environmental and human rights impact, labour rights and standards, paying tax and lobbying), offering recommendations for how existing business accountability landscape can be made more robust.

WHAT IS ACCOUNTABILITY?

"[Accountability is] the obligation of those in authority to take ***responsibility*** *for their actions, to* ***answer*** *for them by explaining and justifying them to those affected, and to be subject to some form of* ***enforceable*** *sanction if their conduct or explanation for it is found wanting."*

Office of the United Nations High Commissioner for Human Rights [8]

Accountability is central to modern political analysis. It ensures that commitments move from aspirations to reality, offers a way to drive up standards and encourages long-term behaviour change.

Attempts to address accountability in relation to businesses are not new. In the 1990s, a UN-based initiative, the 'Norms on Transnational Corporations and Other Business Enterprises', sought to impose on companies the same range of human rights duties that States have accepted for themselves under treaties they have ratified: "to promote, secure the fulfilment of, respect, ensure respect of and protect human rights". However, the Commission on Human Rights declined to act, instead establishing a mandate for a Special Representative on the issue of human rights and transnational corporations and other business enterprises.

The work of the Special Representative – John Ruggie – has had three distinct phases. The first phase identified and clarified existing standards and practices to build shared knowledge and resulted in the "Protect, Respect and Remedy" Framework. The second made the recommendation that the Council support the "Protect, Respect and Remedy" Framework, which it did. And the final phase was the operationalisation of the Framework which resulted in the UN Guiding Principles on Business and Human Rights.

These Principles are grounded in recognition of:

1. States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
2. The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights;
3. The need for rights and obligations to be matched to appropriate and effective remedies when breached.

However, in the absence of direct obligations on businesses, ensuring accountability can be complex. While the UN Guiding Principles do not create new international laws, they have created a global platform for action and remain the most important tool for guiding business accountability. As set out in the quote at the top of this page, accountability can be understood to comprise three main aspects: responsibility, answerability and enforceability. We now look at each in turn.

Responsibility

Responsibility means the identification of duties and standards by which behaviour can be objectively assessed.[9] In the case of the private sector, while it has been agreed that business will have an expanded role to play in achievement of the SDGs, the multi-faceted nature of this responsibility is not yet adequately articulated.

References to regulatory frameworks around labour rights and environmental and health standards were dropped from both the Financing for Development (FFD) and SDGs documents, as well as references to mandatory reporting on environmental, social and governance practice. The most concrete statements around corporate responsibility are found in the FFD Outcome Document which recognises the need for policies and regulatory frameworks to "better align private sector incentives with public goals"; [10] and in the SDGs text, Goal 12.6 which encourages companies, "especially large and transnational companies" to adopt sustainable practices and integrate sustainability information into their reporting cycles and annual reports.[11]

Some standards and duties which define business responsibility already exist, at least in part, in the UN Guiding Principles on Business and Human Rights (and the commentary) and UN Global Compact's 10 principles.[12] This articulation of business responsibility encompasses the outcomes sought by the SDGs and includes additional human-rights specific elements. The Global Compact, however, describes itself as "more like a guide dog than a watch dog". While those companies that fail to report progress for two consecutive years are expelled – and in 2014, ten percent of companies (totalling over 650) were expelled – the impact of expulsion on a business is not clear.

Answerability

Answerability requires people in authority to proactively justify their actions and decisions to affected communities and respond to their concerns, both in general and in the case where there is a clear impact.[13] At present however, business accountability is still often considered only in its most traditional sense – to shareholders. Based on existing corporate governance laws businesses remain answerable first and foremost to their shareholders. This is understood almost exclusively in financial terms and takes into account other issues only by proxy impact on this monetary value.

This narrow view of answerability drives company behaviour and priorities in ways that are at times less than supportive of achieving the SDGs. When asked to reflect on his decision to hike the price of Daraprim, a malaria drug, by more than 5000%, Martin Shkreli, former CEO of Turing Pharmaceuticals, said, "My shareholders expect me to make the most profit. That's the ugly, dirty truth."[14]

Therefore, redefining to whom a company answers is central to achieving business accountability in terms of the SDGs and global development and for some companies this conversation has already started. One example is the decision of over 1000 companies to be certified as 'B Corporations' which define themselves as "better companies – better for workers, better for communities and better for the environment". In order to join companies have to "meet rigorous standards of social and environmental performance, accountability and transparency."[15]

Despite encouraging initiatives, answerability primarily exists only loosely in the form of potential reputational risk and its resultant financial impact. At times this works and businesses increasingly feel the need to justify their actions from a social perspective. In order to be truly accountable, however, this must be transformed to take into account the effect of business activity on the likelihood of achieving the SDGs and human rights through the participation of affected stakeholders in business policy-making and activity in a more robust way.

To fulfil their responsibility to respect human rights as they contribute to development goals, companies should identify and assess any actual or potential human rights impacts. This may mean, in line with the UN Guiding Principles, meaningful consultation with groups affected by a company's practices and other stakeholders, such as direct employees, supply chain employees, national governments affected by tax avoidance and lobbying practices, and international consumers (whose ability to make a contribution to sustainability through consumption is shaped by the products and services on offer), not forgetting potential shareholders who are seeking to invest in companies contributing to a more sustainable world.

Enforceability

Enforceability requires mechanisms by which compliance with agreed standards can be judged and failure to comply addressed.[16] Reporting against agreed standards (by the company itself or external actors) provides a means of monitoring corporate performance and as such is an important dimension of, and step towards, enforceability. A new initiative, the new UN Guiding Principles Reporting Framework, provides a way for companies to better understand their human rights policies, processes and performance. Crucially, this information is being made available in a publicly accessible online database, increasing transparency and enabling a broad spectrum of stakeholders – from citizens to investors – to hold companies to account for their performance[17].

Reporting, and the subsequent monitoring, however, is just the first step in enforcement. While reporting makes the necessary information available, it does not mean that the necessary steps are taken to address conduct that fails to meet agreed standards. What that requires is for governments to enforce laws that are already in place and for business to ensure that they are appropriately responsive to demands for accountability from affected communities, governments and other stakeholders.

These three aspects of accountability – responsibility, answerability and enforcement – can manifest through specific business behaviours and these are examined as part of the discussion on the key main focus areas. Responsiveness is examined in the analysis of voluntary codes and mandatory standards, participation is considered in relation to environmental and human rights impact and transparency is discussed in relation to paying tax.

VOLUNTARY CODES AND MANDATORY STANDARDS

Standards, whether voluntary or mandatory, should ensure businesses deliver on the three aspects of accountability outlined above. Companies should be *responsible* for transparently adhering to standards; they should be *answerable* to stakeholders affected by their actions; and, especially where regulated, standards should be effectively *enforced*, both by the company itself, and by governments.

The perception of standards is changing. Once characterised as costly and unnecessary bureaucracy, an increasing number of companies are now adopting the position that compliance through demonstrably adhering to standards, particularly around sustainability, can have both tangible and intangible benefits.

These benefits include cost reductions as a result of consuming natural resources more efficiently, increased employee morale as a result of the demonstrating good business responsibility, creating a competitive (and often first-mover) advantage by understanding the implications of sustainability to business models, access to new capital and markets by recognising that investors assess organisations' sustainability performance, and managing risks by being better aware of the sustainability risks in supply chains.

SustainAbility, a think tank that works on business leadership on sustainability, described the 1990s as the "Transparency Decade" as a result of businesses finding themselves under pressure to produce economic-social-environmental reports following a series of major incidents[18] such as the Exxon Valdez oil spill. SustainAbility had thought that the "Transparency Decade" would lead into the "Trust Decade" but the financial crisis and more corporate scandals showed that there are still significant changes in business behaviour needed before trust is a suitable term to describe business practices.

While the "Trust Decade" remains elusive, the increasing number of companies recognising the value of standards means that there is now a virtuous circle of companies to providing more information on their sustainability impacts within their mainstream annual filings which then, in turn, fuels investment in tighter controls, more robust data systems and independent assurance[19], and so on and so forth.

In the case of sustainability reporting, some of the first movers towards voluntary disclosure have been companies in the mining sector – suggesting that sustainability reporting is within the capacity of all businesses, even those in often controversial sectors[20]. While a significant proportion of sustainability reporting is still completed on a voluntary basis, many countries are introducing regulatory reporting measures on sustainability matters. In 2013, a KPMG report surveyed the policy practice on corporate reporting in 45 countries and identified 134 "separate mandatory policies covering different aspects of [corporate responsibility] reporting and a further 53 voluntary policies".

Box 1: Examples of mandatory reporting policies

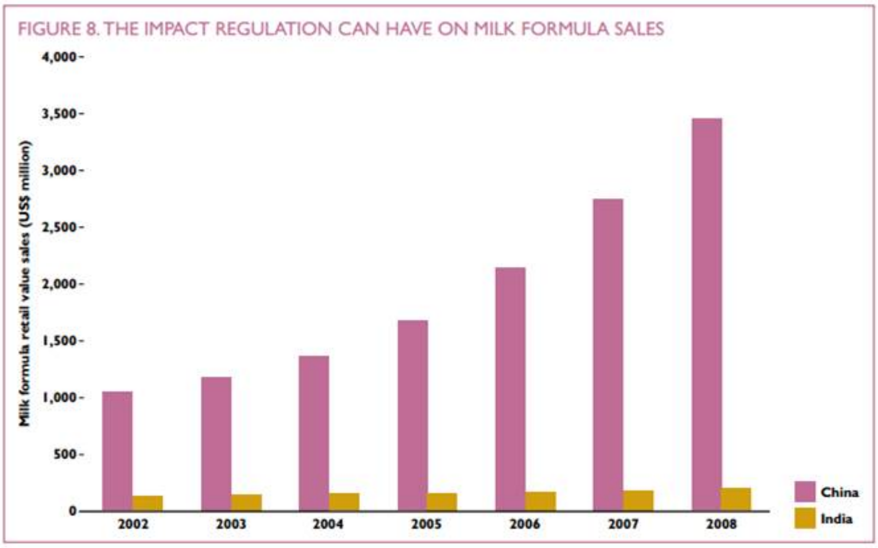
- In Brazil, the Sao Paulo stock exchange requires that listed companies apply a report-or-explain approach to corporate responsibility. This initiative was recently scaled up to cover integrated reports and has been renamed "Report or explain for Sustainability or Integrated Reports"
- India was a world first in introducing a mandatory CSR spending requirement for companies with a certain net worth (including foreign multinationals operating in India.
- The UK's Modern Slavery Act which requires companies covered by the Act to produce a "slavery and human trafficking" statement for each financial year setting out what steps they have taken to ensure that slavery and human trafficking is not taking place in its business and supply chains.
- The European Directive of disclosure of non-financial information (to be transposed into national legislation by December 2016) requires large public interest entities e.g. listed companies and banks will have to disclose in their management reports relevant useful information on the policies, main risks and outcomes relating to at least: environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery issues, and diversity in their board of directors.

References for Box 1 [21][22][23][24]

The US is conspicuous by its absence and is yet to establish national legislation fostering full environmental, social and governance monitoring. It is worth noting that in those countries that do have legislation in place, it is not yet as effective or robust as it could be. Critics of the European Commission's Directive of disclosure of non-financial information say that it is expected to capture just one in seven companies and those companies are free to choose which indicators and standards they use for reporting (rendering comparisons meaningless), reporting will be audited but not verified and no sanctions are in place for those companies that fail to comply – although Member States could chose to incorporate sanctions when they transpose the directive into national law.

Mandatory standards are important because, when implemented and enforced correctly, they can change business behaviour for the better by creating a clear expectations on companies, holding businesses to account, and leading to clear improved development outcomes. One of the best examples of a mandatory regulation that has had a positive transformative effect for children is the case of milk formula sales.

A 2013 Save the Children report on breastfeeding showed that there is a huge disparity in the retail value of milk formula sales between China and India. The International Code of Marketing of Breast-milk substitutes recommends restrictions on the marketing of breast-milk substitutes, such as formula, so that mothers are not discouraged from breastfeeding. The code is weakly enforced in China but strongly enforced in India and the impact it has had on milk formula sales, as shown below, is striking. China issued a national regulation in 1995 forbidding advertising and promotion of 'stage one' formula. However, in the absence of any real recourse; it was widely ignored, demonstrating that standards that are weakly enforced quickly become ineffective.



Euromonitor International, Global Packaged Food: Market opportunities for baby food to 2013, September 2008.

In contrast to mandatory standards, which rely on effectively enforced legislation, voluntary codes can help to educate consumers to create market demand for sustainable products. Despite lacking legislative teeth, voluntary codes and other initiatives such as performance rankings can be incredibly impactful. Those that have had the most success tend to exhibit one (or more) of the following traits:

1. **They use the potential for reputational risk to drive change**

Oxfam's Behind the Brands Scorecard assesses the agricultural sourcing policies of the world's 10 largest food and beverage companies based on publicly available information around corporate transparency, worker's rights, land and water rights and use and activities addressing the impact climate change. In the three years since its inception, the companies included have made significant new commitments to improve social and environmental standards in their vast supply chains.[25] The annual release of the scorecard has become an important public-facing moment in business accountability.

2. **They create competition between companies to drive up standards**

Transparency International's Defence Companies Anti-Corruption index assesses the ethics and anti-corruption programmes of 163 defence companies from forty-seven countries. The 2015 index shows that over a third of companies have improved significantly since 2012, and almost three quarters have improved overall[26].

3. **They engage stakeholders in a meaningful way**

As important stakeholders, shareholder and investor accountability can drive change in business practice and encourage businesses to become much more transparent and report in detail on more than just profit. There are a number of new initiatives seeking to do this. The new Corporate Benchmark on Human Rights will publicly rank the world's largest publicly listed companies on their human rights performance based on the policies, processes and practices they have in place to systematise their human rights approach and how they respond when things go wrong[27]. In addition, the Bloomberg Gender-Equity Index[28] was launched in May this year and provides investors and organisations with data on company gender statistics, employee policies, gender-conscious product offerings and external community support and engagement.

4. **They focus on achieving change in one sector and are specific about the business behaviours and outcomes they want to see (and don't want to see)**

Voluntary codes often require producers and other businesses to either demonstrate specific behaviours and outcomes or provide related policies in order to meet a standard and, in some cases, also receive certification or a label that is recognisable by consumers. Many of these standards are now rapidly growing in size. The 2014 IIED State of Sustainability Initiatives Review[29] found that across the sixteen most prevalent standards initiatives – e.g. Forest Stewardship Council – there was double and triple digit growth in market and performance trends, demonstrating that they are becoming increasingly recognised and mainstreamed.

Box 2: Initiatives of specific importance to the SDGs

- Paragraph 47 of the 2012 Outcome Document of the UN Conference on Sustainability Development (Rio+20) acknowledges the importance of corporate sustainability reporting, and encourages companies, especially publicly listed and large companies to integrate sustainability information into their reporting cycle. Since 2012, a number of governments have formed the Group of Friends of paragraph 47, to advance the promotion of corporate sustainability reporting. The Group is supported by the UN Environment Programme and the GRI.
- The OECD Guidelines for Multinational Enterprises provides recommendations for responsible business conduct, stipulating, inter alia, that enterprises should 1) contribute to economic, environmental and social progress with a view to achieving sustainable development, and 2) respect the internationally recognised human rights of those affected by their activities. Enterprises must ensure disclosure of timely and accurate information. The 44 countries adhering to the Guidelines have made a binding commitment to implement them.

It is clear that both mandatory standards and voluntary codes can have an impact. In considering their role, it is important that reporting – while being a management tool that can improve risk identification and long-term social, environmental and financial performance – is seen as part of the process rather than the end point. Generating data for the sake of more data will be meaningless unless it facilitates the engagement of stakeholders, identifies the problems and barriers to progress, and charts a course for their removal.

On data, an effort to align SDG indicators with corporate indicators has been pointed out as a way of managing data generation and identifying progress within this context.[30] Aligning SDG indicators with corporate objectives will not only allow for comparability of measures of success, but will also set the standards for compliance. Having measurable, comparable targets can drive progress and will allow companies to make public commitments against those targets. In the UK, the International Development Committee in its report 'UK implementation of the Sustainable Development Goals' recommended that the Department for International Development 'ensure a clear line of accountability through its own procurement chains, to ensure that its private sector partners are being held to a clear set of standards on mainstreaming the SDGs into their working practices, and maintaining the same high levels of transparency in the use of public funds that are required of civil society and multilateral organisations.'[31]

Responsiveness

The enforceability component of accountability in particular requires responsiveness on the part of business.

Responsiveness means that when there is something for which a business may be held accountable, that the business responds to such claims adequately, in a timely fashion and in a manner that takes into account the positions and needs of those to whom accountability is owed.

Responsiveness is not limited and cannot be limited to situations in which there has *already* been a potential human rights violation or a failure to meet a commitment. It also includes businesses ability to incorporate the needs and considerations of affected communities and other stakeholders in advance. This may happen through participation, human rights or SDGs-related impact assessments undertaken before business activity has begun or other similar means.

In instances in which a company has not met its responsibility (which includes remediation), there are still other forms of responsiveness that may be necessary. This includes both a company's efforts to comply with court orders or other "hard" accountability mechanisms as well as for "soft" accountability mechanisms, where response voluntary to some extent. And in fact, a business's response to where there is no coercion is perhaps more telling about whether it is in fact holding itself accountable.

Perhaps the most critical part of responsiveness is ensuring populations' access to remedy and redress even outside a formal adjudicatory process. Without providing, where appropriate and not otherwise done, an adequate and appropriate remedy or redress, responsiveness falls short of ensuring enforcement and therefore accountability as a whole.

1. ENVIRONMENTAL AND HUMAN RIGHTS IMPACT

The impacts of the private sector on environment and society have long been a target of criticism – especially for resource-intensive companies, which tend to have high impacts. And accounting for these impacts is increasingly discussed in international fora, gaining renewed relevance in recent years with the growing prominence of private sector actors in negotiating and financing the SDGs agenda.

The UN guiding principles on SDGs national implementation policies put accountability, including of the private sector, under the global and national follow up review processes in the context of human rights compliance. However, in addition to accountability at international and national levels, it is important to consider private sector impact, and the extent to which it respect human rights, at the local level.

At the national and local levels, environmental and social accountability should mean not only reducing negative externalities; it should also mean the voices of those most affected e.g. local communities by the actions of private businesses are proactively heard. This must include the most excluded and children, since they are the ones most likely to be adversely impacted by environmental and social hazards – as is the case of indigenous rights to land being put in jeopardy by extractive companies. The SDG commitment to 'leave no one behind' has formally acknowledged this disproportionate impact and has ensured that the whole agenda reaches people who have been traditionally excluded from development opportunities.

Rather than posing a problem to the private sector, however, compliance with social and environmental accountability mechanisms can prevent damage to the business: 'Social and environmental incidents can increase costs, threaten the viability of businesses and thus, increase their probability of default. Moreover, they can threaten global financial stability through their devastating or destabilising effects on the society at large, for instance, by exacerbating climate change or amplifying resource crises and, with it, political tensions.'[32]

Instead of looking at SDG accountability mechanisms as a cumbersome obligation, there are opportunities that can be harnessed that represent win-win scenarios – even for those sectors whose activities have traditionally been seen as incompatible with SDGs compliance.[33]

Participation

Those who are affected by business activity have a right to participate and have their voices heard in the decisions which affect their lives. Participation is a core component of accountability processes, in particular answerability and enforcement, and interlocks with the transparency and accessibility of business information.

For businesses, creating effective spaces of participation offers a number of benefits. An increasing body of evidence shows that where workers are provided opportunities to participate, businesses can gain improved labour relations, reduced staff turnover, and better productivity (see next section). Participation also enables businesses to better manage risk at all levels, providing a deeper understanding of the communities in which they operate, and any potential violations that may occur. By contributing to a culture of respect and active citizenship, participation also supports a more informed and active community, which in itself is good for business.

Mechanisms for participation range from collective bargaining (which is part of the right to freedom of association) and workers' councils, to community consultations. While the means of participation may be context specific, some key features should be consistent: those affected by business activity should be engaged early in the process, with information on rights and impacts communicated in an accessible and timely manner; channels for participation should be clear, with lines of responsibility and the next steps clearly communicated; and a stakeholder analysis should be conducted to identify any access needs and or barriers to participation (such as language needs) which should be overcome.

Civil society can act as a bridge between businesses and communities and support the development of effective and accessible spaces for participation. It can help to facilitate and broker opportunities for engagement, support spaces for participation, and help businesses to develop effective participatory processes.

Free, Prior and Informed Consent (FPIC)

Free, prior and informed consent (FPIC) is a requirement of the Declaration on the Rights of Indigenous Peoples – connected with the human rights of self-determination – and it is usually put as an obligation of States towards indigenous people. FPIC is especially relevant to environmental and social impacts, but it must be read as an obligation in general that can be adapted to several circumstances.

FPIC can empower communities in decision-making processes that affect them while also facilitating knowledge-sharing between businesses and communities, with the potential to reach consensus. It is especially relevant to the extractive sector, but can be modelled for most sector activities that have an environmental and/or social impact in traditionally excluded communities. It means that action should not be taken without the full consent of people affected, particularly indigenous peoples.

Insofar as this avoids community conflict further down the line and pushes the sector towards innovative practices that reduce negative externalities, FPIC can be beneficial for the private sector. Failure to comply with FPIC can represent 'increased costs from delays and/or legal disputes; potential project stoppages or even company withdrawal; reduced access to critical project inputs (as a result of road or river, blockades, for example); and brand and reputational harms and greater difficulty in future projects.'[34]On the other hand, for local communities, the intervention of the private sector can open the opportunity for more jobs, skills training, better water and electricity supply, improved food production, financial benefits and or access to new schools, healthcare facilities and houses.[35]

In the context of the SDGs, both governments and the private sector have the responsibility to uphold these rights. This means not only having an internal policy of non-violation of human rights, but also making sure implementation complies and actively supports such policy.

There are many steps to be taken in order to guarantee a smooth FPIC process that can harness the benefits for both parties as described above: understanding the local context; understanding legal and customary rights; identifying and respecting traditional decision-making structures; collaborating on design and implementation; ensuring full participation and information exchange; reaching consent; and put in place the appropriate accountability mechanisms, such as incorporating FPIC into grievance mechanisms and monitoring and adapting mechanisms.[36]

Recommendations for businesses

- Implement global sustainability reporting standards, that include the identification of key impacts and risks to humans and the environment, in each jurisdiction the company operates to increase business transparency
- Put in place mechanisms that enable the carrying out of human rights due diligence and consultation with populations affected by potential environmental and/or social externalities

2. LABOUR RIGHTS AND STANDARDS

Productive employment and decent work make a significant contribution to global development and are key elements in achieving poverty reduction. The importance of employment to sustainable development is emphasised by its inclusion in the SDGs as Goal 8, which aims to 'promote inclusive and sustainable economic growth, full and productive employment and decent work for all'.[37]

High profile incidences of labour exploitation have cast light on often under-reported abuses. The Rana Plaza disaster in 2013, for instance, placed the issue of labour standards into clear focus with the death of 1,137 people in the collapse of a garment factory building in Bangladesh.[38]

Some of the key issues concerning labour standards globally include:

- Poverty and low wages: The ILO estimates that approximately 839 million people are employed on US$2 or less per day, representing 26.7% of total global employment.[39]
- The use of child labour: UNICEF estimates that there are 150 million child labourers worldwide. The prevalence of child labour is highest in sub-Saharan Africa, and in the least developed countries where nearly one in four children (aged 5 to 14) are engaged in labour that is considered detrimental to their health and development. [40]
- Contract labour and informal employment: People employed in the informal sector or as contract labour, including temporary and seasonal work, typically experience less social protection, poorer wages, are unable to join trade unions and have less bargaining power. Bringing workers out of informality can reduce working poverty, improve working conditions, and generate much needed tax revenue.[41]
- Occupational safety: Throughout the world the poorest and least protected – often women, children and migrant workers – are among the most affected by poor occupational health and safety. Low-income countries have particularly high rates of deaths and injuries at work due, in part, to the prominence of hazardous activities such as agriculture, fisheries and mining.

For employment to make a positive contribution to the SDGs it must be 'decent'[42] and provided in conditions of freedom, equality, security and human dignity. [43] Opportunities for work must deliver a living wage, security in the workplace, better prospects for personal development, and freedom for people to organise and participate in decisions that affect their lives. The ILO identifies four core standards which are considered fundamental, universal and indivisible principles and rights at work: freedom from forced labour; freedom from child labour; freedom from discrimination at work; and freedom to form and join a union, and to bargain collectively. These four rights are enshrined in the ILO's eight fundamental labour conventions.[44]

In specific relation to supply chain risk, the latest Risk Index Report by the British Standards Institution identified China, India, Vietnam, Bangladesh and Myanmar as the five highest risk countries for human rights violations – together these countries account for 48% if apparel production, 53% of global apparel exports and 26% of global electronics exports[45].

Decent work is a concern for all businesses to address but it presents particular challenges for firms with international supply chains and those operating in the informal sector. The expansion of global production in labour-intensive industries such as manufacturing has been an important source of employment in low-income countries. However, the complexity of global production processes can make it difficult for companies, even with the most sophisticated reporting and auditing systems, to manage labour conditions within their supply chains and ensure that both local and international labour standards are met.

Mechanisms for labour standards accountability

Promoting transparency and building strong, inclusive and participatory accountability frameworks is central to ensuring core labour standards are met and businesses are held to account. The business case for participation is clear. An increasing body of evidence shows that where workers are given spaces to participate, businesses can benefit from improved labour relations and productivity, decreased reputational risk, the fulfilment of legal obligations, and a positive business environment.[46]

As discussed, transparency and accountability are inter-linked. Greater access to information on labour standards can improve understanding of rights, enable companies and civil society to better identify and address failures, and recognise and develop models for good practice.[47]

There are many existing mechanisms that aim to improve business compliance on labour and human rights, including voluntary approaches. The Dhaka principles for migration with dignity, for instance, are a set of human rights based principles that seek to enhance the respect for migrant workers at all stages of employment, from recruitment through to further employment or safe return.[48]

Initiatives to improve transparency and the sharing of information include the Supplier Ethical Data Exchange (Sedex), which supports responsible and ethical business practices in supply chains. Sedex provides on online database that allows business to share and report information on four key areas: labour standards; health and safety; the environment and business ethnics.[49] Transparency is also a core component of the ILOs Better Factories Cambodia project, which has had positive impacts in improving working conditions in Cambodia's garment factories through independent monitoring, training for management and workers, and guidance and advice.[50]

Box 3: Mechanisms to increase worker participation

In Sri Lanka, 23 tea estates have partnered with CARE International to implement a dialogue model of Community Development Forums (CFDs). CDFs function as 'mini-parliaments' that facilitate dialogue between workers, management and the broader community. An internal report notes that the CDF achieved tangible benefits for workers and their employers. Labour relations were improved, worker well-being increased, and productivity per worker rose. The mechanisms also made good business sense; an overall assessment showed that for every dollar invested in CDFs, tea estates made an additional US$26.

In January 2015, IndustriALL Global Union signed a landmark agreement with Total which guaranteed employee rights across the company's international operations – this includes upholding the rights of workers to form trade unions. Crucially, the agreement abides by the guiding principles on Business and Human Rights as well as key ILO Conventions on freedom of association, equal pay, discrimination and child labour.

References for Box 3[51][52][53]

Recommendations for businesses

- Publicly report on labour standards, health and safety, and wages in each jurisdiction businesses operate in and demonstrate progress towards paying a living wage
- Increase worker participation by respecting core labour standards, such as enabling the freedom of association and collective bargaining, as well as innovative models such as Community Development Forums
- Require third party suppliers to comply to the same standards as the main company and be prepared to terminate contracts should these standards not be upheld

3. PAYING TAX

Paying a fair share of tax is at the heart of the social contract between citizens, governments and businesses. The tax businesses pay to governments funds the education of a skilled workforce, the health of a society and the building and maintenance of the infrastructure they need in order to sustain and grown their businesses. Increased revenue must, of course, go hand in hand with greater accountability of policy makers and budget holders.

The importance of domestic resource is explicitly recognised in the SDGs. Under Goal 17 – "Strengthen the means of implementation and revitalize the global partnership for sustainable development" – the very first target is to 'strengthen domestic resource mobilisations, including through international support to developing countries, to improve domestic capacity for tax and revenue collection.'[54] This includes ensuring that businesses pay their fair share.

While a series of high-profile media stories have named and shamed individual companies who engage in complicated avoidance structures to artificially reduce their tax liabilities, this problem is not restricted to a handful of large multinational companies. Tax avoidance has been shown to be systemic and enabled by financial institutions. The "Swiss Leaks" tracked more than $100 billion through 100,000 HSBC accounts, and found that the bank did business with discredited regimes and clients tied to arms trafficking, blood diamonds, bribery, and tax evasion.[55] The "Lux Leaks" documents disclosed tax rulings between Luxembourg and more than 340 companies aiming to reduced their tax liabilities.[56] And, most recently, the Panama Papers shone a light on how the super-rich use secretive offshore tax regimes to avoid paying tax.[57]

Although it is hard to know the exact amounts of money involved, there is no doubt that tax avoidance schemes deprive countries – both rich and poor – of revenue that could be spent on vital services such as healthcare, education and social protection.

Taking the decision to pay the fair amount of tax (in the country where economic activity has taken place) is one of the most fundamental and impactful things a business could do in contributing to the SDGs. If a country had more domestic resource at its disposal, then we might start to see the meaningful prioritisation of the most excluded communities so as to really deliver on the promise to "leave no one behind".

Alongside legislative clampdowns on tax avoidances, one of the key drivers of increased transparency and accountability in this area has been reputational risk. Alex van der Velden, partner at Dutch investment company Ownership Capital, says: "Aggressive tax planning is an issue investors are increasingly aware of. While it is legal and routine for companies to ensure they only pay the taxes they are required by law to pay, the public ire that has been created by businesses found aggressively pursuing loopholes has been significant and led to serious reputational issues."[58]

Transparency

Transparency refers to openness and public disclosure of activities and information. If businesses are not transparent, stakeholders will not be aware of or understand the activities of business and the impact these have on human rights and the SDGs. In particular, transparency is key to ensuring businesses efforts to meet their responsibilities to respect human rights are fully articulated and made available to the necessary groups and required to ensure answerability.

For example, the right to information as it pertains to the private sector is itself premised or at least can only be made functional through transparency of business activity and information. Reporting what is known as 'ESG' information ('environmental, social and governance', though today this encompasses other issues) may be mandated by governments or voluntarily undertaken by business.

Because it is often extremely difficult, or may be potentially impossible, to determine precisely what business activities and information is relevant to the public, the default position on transparency should be that all business information should be made available to the public. This blanket mandate regarding the public availability of information may be circumscribed in pursuance of legitimate business purposes that would be otherwise impeded by transparency so long the information being protected is not central to a potential human rights violation.

Beyond this, and more importantly for the purposes of this paper, accountability mechanisms are premised on the availability of sufficient, accurate information provided in a timely manner regarding the relevant business activities or policies. This information must also be easily accessible and understandable for affected communities.

Mechanisms for tax accountability

Last year's Financing for Development conference saw the proposed upgrade of the UN tax committee to an intergovernmental body blocked[59]. The blocking countries argued that the Organisation for Economic Cooperation and Development (OECD) was taking the lead on tax issues, but for many the involvement of developing countries in the OECD's work on tax – such its Base Erosion and Profit Shifting (BEPS) project which aims to better align taxation with value creation – has not been embedded from the start, resulting in a process and outcome that isn't as representative as it should be.

A number of initiatives around a business' tax practice have been developed which use transparency as either a way to compare company behaviour (EITI) or recognise those who have gone further than others (Fair Tax Mark):

- The Fair Tax Mark is a way for UK businesses to set a new standard in responsible tax practice – from the smallest shop to the biggest multinational. It helps consumers know that a company is open and transparent about is tax affairs and seeks to pay the right amount of corporation tax at the right time in the right place[60]
- The Extractive Industry Transparency Index (EITI) pushes extractive companies to disclose all the payments they make – for instance how much royalty tax they paid for a mining project[61].

At a country level, there have been some encouraging developments in terms of making businesses more accountable on tax:

- On December 17th, 2014 the Government of Canada passed into law the Extractive Sector Transparency Measures Act as part of omnibus legislation Bill C-43. Under this Act, publicly traded and large private oil, gas, and mining companies must publicly disclose payments to governments, not just in Canada, but around the world.[62]
- Ireland's decision to close down its "Double Irish" tax loophole that enabled many large technology companies to route billions of dollars in royalty incomes through minimally taxed Irish subsidiaries[63]
- The EU's 4th Anti-Money Laundering Directive requires corporates and other legal entities to maintain accurate and current information on their beneficial ownership which must be provided to the government.

Recommendations for businesses

- Publish information, in every jurisdiction that it operates, about how its taxable income, profits and gains are calculated and internationally distributed
- Work with, not against, authorities in poorer countries to help them identify the information they need, sharing skills and building their tax capacities
- Put in place clear boundaries in tax negotiations or dispute resolutions to ensure it doesn't use its economic or political power to obtain preferential treatment
- Support the call for public registries of beneficial ownership, recognising the huge step forwards this would be in creating a fairer global tax system

4. LOBBYING

Lobbying is big business. In 2010, $3.5 billion was spent on federal level lobbying in the US[64]. The biggest companies have more than 100 lobbyists representing them and for every dollar spent on lobbying by labour unions and public-interest groups together, large corporations and their associations now spend $34[65]. Corporate political activities, defined as "any business effort to influence public policy", include political advertising (and other forms of public communications), stakeholder management, legal action, funding political parties and US-style election campaign financing.

Business advocacy and lobbying practices are increasingly in the spotlight as a series of high-profile scandals have shown the influence that they can exert over policy decisions. One such high-profile scandal, in September 2014, resulted in the decision of a Chinese court to find GlaxoSmithKline's local subsidiary guilty of bribing government officials, hospitals and doctors to sell more drugs at higher prices, and fined the company nearly $500 million[66].

Business lobbying can have a distorting effect resulting in undue influence, unfair competition and regulatory capture[67]. This influence can manifest itself in regressive policies which prioritise business needs over societal and environmental needs. In 2010, the European Parliament was developing legislation that would change the way food and drinks are labelled in order to make it easier for consumers to understand how healthy or unhealthy they are. A 'traffic light' system was supported by medical associations and cancer, diabetes and anti-obesity advocates but lost out to the more complicated Guidelines Daily Amounts system preferred by Industry[68]. This decision was seen as a major victory for the confederation of the food and drinks industries of the EU (CIAA), which, according to Corporate Europe Observatory, a Brussels-based transparency NGO, spent some €1 billion opposing the traffic-light system including TV commercials, lunchtime debates with MEPs and "voting recommendations" delivered to deputies[69].

Lobbying can, however, be a valuable part of the policy-making process, enhancing democratic participation and providing valuable insight to decision-makers. During the development of the Modern Slavery Bill, the Ethical Trading Initiative – an alliance of companies, trade unions and voluntary organisations – partnered with the British Retail Consortium to deliver the message that ethical and responsible businesses that want to eliminate modern slavery in their supply chains need a level playing field – all businesses need to be accountable for managing risks of slavery in their supply chains. Subsequently, the UK Government included a reporting requirement for businesses in the Bill, recognising that companies that are committed to ethical trade welcome the inclusion of legislation that hold businesses accountable for their actions.

In relation to the SDGs, businesses can play an important role engaging with governments (in national and international policy dialogues) to support those policies that would accelerate their achievement such as gender equality, employment, accountable and inclusive institutions, and tackling climate change; or more broadly in support of an enabling environment for enterprise and investment. Encouragingly, this is already happening. For instance, this year has seen companies in the US mobilise against state laws that permit and protect discriminations about LGBT people[70]. However, there has been a significant corporate present in the formation of the SDGs raising concern that acknowledging the role of businesses in the SDGs must not mean giving them undue influence on policymaking and ignoring their responsibility in creating and exacerbating many of the problems that the SDGs are supposed to tackle[71].

Similar to a company's tax practices, aggressive or subversive policies around advocacy and lobbying have become an area of significant reputational risk. Many companies have developed public position papers on their advocacy and lobbying practices, often in the wake of high-profile (and costly) scandals. In one such paper GSK states that, 'We recognise concern that inappropriate political advocacy or 'lobbying' can result in undue influence, often to the detriment of public interest and balanced public policy' and that it has a 'zero tolerance towards bribery and corruption'.[72]

Mechanisms for lobbying and advocacy accountability

In 2010, the OECD Council adopted the Recommendation of the Council on Principles for Transparency and Integrity in Lobbying following their creation in 2009. The Recommendation is the only international instrument addressing concerns over lobbying practices, offering guidance on how to meet expectations of transparency and accountability, and support a level playing field in public decision making. While lobbyists might be expected to prefer to preserve the self-regulatory status quo, this is not necessarily the case. Surveys performed by the

OECD have shown that an increasing number of lobbyists now recognise the need for mandatory disclosure of information. In 2013, 70% of those lobbyists surveyed believed that transparency of lobbying activities should be mandatory for all lobbyists, up from 61% in 2009[73].

Four years later, the OECD published its third volume of 'Lobbyists, Governments and Public Trust' to report on progress in implementing the Recommendation and the results are encouraging with 41% of OECD countries having already acted to set or tighten existing lobbying standards. To put it into context, more countries have introduced lobbying regulations in the past five years than in the previous sixty years.

Recommendations for businesses

- The board (or a designated board member) must oversee the group's political activities and receive regular reports from management
- Make publicly available, as standard: a breakdown of their global lobbying expenditure, policies and procedures for lobbying, a complete list of their global membership of trade associations and report details of membership fees and payments to trade associations, details of secondments to or from the public sector and details of payments made to membership groups that undertake lobbying activities on their behalf
- Require any third party lobbyist to comply with their policies and procedures

CONCLUSION AND RECOMMENDATIONS

This paper recognises the central role that the private sector is expected to play in development, particularly within the context of the SDGs. However, it simply won't be possible for it to fulfil this role without significant changes to what currently constitutes "business as usual".

This paper has explored what is meant by accountability and how this concept can be applied to business as development enters the era of the SDGs. Accountability can be understood to compromise three main aspects, all of which are crucial – they are responsibility, answerability and enforceability. It is important to acknowledge that business accountability is not a new issue, and neither are attempts to address it. The UN Guiding Principles on Business and Human Rights, although they do not create new international laws, are one of the most important tools we have.

Voluntary codes and mandatory standards can both play an impactful role in increasing accountability and Governments must also play their part in enforcing existing mandatory standards. A number of companies are realising that compliance through demonstrably adhering to standards and codes, particularly around sustainability, can have both tangible and intangible benefits.

In this paper we argue that businesses need to go first, go fast and go further, particularly in the areas of environmental and human rights impact, labour rights and standards, paying tax and lobbying and our recommendations are listed below. Businesses will not be able to play a transformational role unless they themselves transform.

Recommendations for businesses on environmental and human rights impact

- Implement global sustainability reporting standards, that include the identification of key impacts and risks to humans and the environment, in each jurisdiction the company operates to increase business transparency
- Put in place mechanisms that enable the carrying out of human rights due diligence and consultation with populations affected by potential environmental and/or social externalities

Recommendations for businesses on labour rights and standards

- Publicly report on labour standards, health and safety, and wages in each jurisdiction businesses operate in and demonstrate progress towards paying a living wage
- Increase worker participation by respecting core labour standards, such as enabling the freedom of association and collective bargaining, as well as innovative models such as Community Development Forums
- Require third party suppliers to comply to the same standards as the main company and be prepared to terminate contracts should these standards not be upheld

Recommendations for businesses on paying tax

- Publish information, in every jurisdiction that it operates, about how its taxable income, profits and gains are calculated and internationally distributed
- Work with, not against, authorities in poorer countries to help them identify the information they need, sharing skills and building their tax capacities
- Put in place clear boundaries in tax negotiations or dispute resolutions to ensure it doesn't use its economic or political power to obtain preferential treatment
- Support the call for public registries of beneficial ownership, recognising the huge step forwards this would be in creating a fairer global tax system

Recommendations for businesses on lobbying

- The board (or a designated board member) must oversee the group's political activities and receive regular reports from management
- Make publicly available, as standard: a breakdown of their global lobbying expenditure, policies and procedures for lobbying, a complete list of their global membership of trade associations and report details of membership fees and payments to trade associations, details of secondments to or from the public sector and details of payments made to membership groups that undertake lobbying activities on their behalf

- Require any third party lobbyist to comply with their policies and procedures

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