
Exploring human rights due diligence

Good practices and challenges for business enterprises



Risk advisory group

Providing a holistic and interconnected approach across practices and geographies – to manage your risk in the right way.

To manage your business and risks strategically, advice is needed that is based on a holistic consideration of the issues across multiple disciplines, and an understanding of both local and global implications. With our holistic approach, we also bring our deep industry knowledge to anticipate issues proactively, and to arrive at creative, commercially-sound solutions to businesses' risk issues.



Overview of findings

- Where companies **undertake express human rights due diligence**
 - most do so with reference to the UN Guiding Principles on Business and Human Rights
 - actual or potential human rights impacts are more likely to be detected
 - impacts linked to the activities of third parties are more likely to be identified
 - findings are more likely to be reported both internally and externally
 - the CSR function, which has a company-wide mandate, will most often have responsibility for the identification, response to and monitoring of human rights impacts often in co-operation with other functions particularly the legal department
 - human rights experts are more likely to be engaged
 - the effectiveness of actions taken in response to identified issues is more likely to be monitored.
- Where companies **do not undertake express human rights due diligence**, but rather incorporate human rights issues into **other due diligence processes**
 - the exercise is more likely to result in highly regulated human rights issues such as health and safety and labour related rights being considered, most likely in response to the prevailing legal imperatives
 - issues which are connected to unregulated or less regulated areas are unlikely to be identified or monitored at all (including impact on third party relationships)
 - the human resources function will usually be responsible for human rights-related work, which likely correlates to focus on regulated issues highlighted above
 - the effectiveness of the company's human rights-related actions are less likely to be monitored
- There is a **higher tendency to undertake express human rights due diligence** among companies which have in the past been connected to **allegations of human rights impacts** or where allegations were made in the same sector, country or context.
- The most commonly used methods for **identifying human rights impacts** were desktop research and studies, audits (internal or external), investigations, independent expert reports and stakeholder and supplier consultations. Grievance mechanisms seem to be under-utilised.
- **Contractual provisions** and **Codes of Conduct** were the primary method for preventing or addressing human rights impacts.
- **Training** is frequently limited to non-human rights specific topics such as health and safety or other regulated areas. Given the ease with which training can be rolled out within a company which already has training sessions in place, relative to the potential preventative and comprehensive impact of training, it appears that companies are not currently capitalising on the full advantage of human rights training.
- **Leverage** over the human rights impacts of business partners is generally perceived to be higher with suppliers and retailers or distributors, and lower with governmental entities (but in the mining sector 54.54 per cent of respondents acknowledged leverage over governmental entities).
- **Consultations** with employees are routine in most sectors, and the same is true of consultations with local communities by extractives. Certain stakeholders may be overlooked across all sectors, e.g. product end-users or transportation providers.
- Many companies indicated that a **collective approach** between companies assists significantly where individual company action is unlikely to result in change.
- We identified the following **prevalent challenges**
 - Many companies struggle to determine “how far is far enough” when engaging in supply chain due diligence.
 - Information on third parties' or country-specific human rights risks may not be readily available.
 - It can be difficult to change a company's focus from risk to the business to impacts/risks to rights-holders, as required by the Guiding Principles.
 - Managing responsibility for impacts caused by third parties.
- Our research showed that, although individual companies and sectors differ, **human rights due diligence looks similar across sectors and corporate structures** which is likely the function of wide acceptance of the Guiding Principles.

Key impacts identified by sector



Mining

Involuntary relocation/community resettlement

Impacts on indigenous communities in the vicinity of the operations

Impacts on non-indigenous communities in the vicinity of the operations

Environmental impacts

Impacts on land

Impacts on water

Security

Potential impacts of fly-in, fly-out workforce

Gender discrimination and other forms of discrimination

Health and safety

Artisanal mining

Supply chain issues, including conflict minerals



Energy

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Impacts on land

Impacts on water

Security

Potential impacts of fly-in, fly-out workforce

Gender discrimination

Health and safety

Supply chain issues

Labour rights



Financial institutions

Involuntary relocation

Impacts on indigenous communities in the vicinity of the operations

Impacts on non-indigenous communities in the vicinity of the operations

Discrimination

Providing finance to governments known to abuse human rights or which international sanctions have been imposed for human rights abuses

Supply chain issues



Technology and innovation

Labour issues

Child labour

Living wage

Health and safety

Discrimination

Supply chain issues, including conflict minerals

Privacy

Freedom of expression



Life sciences and healthcare

Right of access to medicine

Right to health

Safety of patients taking medicines

Conduct of clinical research including clinical trial of medicines

Living wage

Other employment aspects

Child labour

Privacy

Freedom of movement

Supply chain issues

Executive summary

of results of a human rights due diligence project run by Norton Rose Fulbright and British Institute for International and Comparative Law

Human rights due diligence – a snapshot

Top incentives for conducting human rights due diligence

reputation

avoidance of legal risk

compliance with reporting requirements

compliance with applicable laws

Human rights due diligence legal framework

It is clear human rights due diligence is assuming a hard law dimension through:

Corporate law

Reporting obligations

Slavery and human trafficking regulations

Sector and region specific regulation

Industry standards and law

Legal claims for remedies for human rights impacts

Directors' duties

Investor requirements

Procurement rules

CSR requirements

State-based grievance mechanisms such as OECD National Contact Points

Prevalent challenges

Determining “how far is far enough” when engaging in *supply chain due diligence*

Information on third parties or country-specific human rights risks is not readily available

It is difficult to change a company’s focus from risk to the business to impacts/risks to rights-holders

Managing responsibility for impacts caused by third parties is a common issue

Practical tips

Contractual provisions (including specific human rights clauses) are the current most common action used to prevent, mitigate or remedy adverse impacts followed by codes of conduct, inspections and training. The effectiveness of these other tools can be facilitated through clauses in contracts with counterparties (e.g. requiring inspection rights or compliance with codes)

Main methods for **identifying human rights impacts** are desktop research and studies, audits (internal or external) investigations, independent expert reports and stakeholder and supplier consultations. Grievance mechanisms seem to be under-utilised

Human rights-specific training enables a company to capitalise on the important preventative impact of training

Human rights due diligence is most effective where it is **cross-departmental**, including involvement from CSR, legal, operational and the board.

Collective approach between companies assists significantly where individual company action is unlikely to result in change

Major differences between companies which carried out specific human rights due diligence and those which engaged other types of review mechanisms

77%

of respondents who **had** conducted a specific human rights due diligence process identified actual or potential human rights impacts during the process

19%

of respondents who **did not** conduct human rights due diligence identified adverse human rights impacts

74%

of respondents who **had** conducted a specific human rights due diligence process identified actual or potential human rights impacts linked to activities of their third party business relationships

29%

of respondents who **did not** conduct human rights due diligence identified adverse human rights impacts linked to activities of their third party business relationships

Global business and human rights group

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