Exploring human rights due diligence

Good practices and challenges for business enterprises
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.

- **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.

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## Key impacts identified by sector

<table>
<thead>
<tr>
<th>Mining</th>
<th>Energy</th>
<th>Financial institutions</th>
<th>Technology and innovation</th>
<th>Life sciences and healthcare</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involuntary relocation/community resettlement</td>
<td>Involuntary relocation</td>
<td>Involuntary relocation</td>
<td>Labour issues</td>
<td>Right of access to medicine</td>
</tr>
<tr>
<td>Impacts on indigenous communities in the vicinity of the operations</td>
<td>Impacts on indigenous communities in the vicinity of the operations</td>
<td>Impacts on indigenous communities in the vicinity of the operations</td>
<td>Child labour</td>
<td>Safety of patients taking medicines</td>
</tr>
<tr>
<td>Impacts on non-indigenous communities in the vicinity of the operations</td>
<td>Impacts on non-indigenous communities in the vicinity of the operations</td>
<td>Impacts on non-indigenous communities in the vicinity of the operations</td>
<td>Living wage</td>
<td>Conduct of clinical research including clinical trial of medicines</td>
</tr>
<tr>
<td>Environmental impacts</td>
<td>Environmental impacts</td>
<td>Environmental impacts</td>
<td>Health and safety</td>
<td>Living wage</td>
</tr>
<tr>
<td>Impacts on land</td>
<td>Impacts on land</td>
<td>Impacts on land</td>
<td>Discrimination</td>
<td>Freedom of expression</td>
</tr>
<tr>
<td>Impacts on water</td>
<td>Impacts on water</td>
<td>Impacts on water</td>
<td>Supply chain issues, including conflict minerals</td>
<td>Other employment aspects</td>
</tr>
<tr>
<td>Security</td>
<td>Security</td>
<td>Security</td>
<td>Privacy</td>
<td>Child labour</td>
</tr>
<tr>
<td>Gender discrimination and other forms of discrimination</td>
<td>Gender discrimination and other forms of discrimination</td>
<td>Gender discrimination and other forms of discrimination</td>
<td>Supply chain issues</td>
<td>Freedom of movement</td>
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<td>Supply chain issues</td>
<td>Supply chain issues</td>
</tr>
<tr>
<td>Artisanal mining</td>
<td></td>
<td>Artisanal mining</td>
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</tbody>
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## 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

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

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

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Specific Human Rights Due Diligence</th>
<th>Adverse Human Rights Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>77%</td>
<td>Had conducted a specific human rights due diligence process</td>
<td>Identified actual or potential human rights impacts during the process</td>
</tr>
<tr>
<td>19%</td>
<td>Did not conduct human rights due diligence</td>
<td>Identified adverse human rights impacts</td>
</tr>
<tr>
<td>74%</td>
<td>Had conducted a specific human rights due diligence process</td>
<td>Identified actual or potential human rights impacts linked to activities of their third party business relationships</td>
</tr>
<tr>
<td>29%</td>
<td>Did not conduct human rights due diligence</td>
<td>Identified adverse human rights impacts linked to activities of their third party business relationships</td>
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### 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

### Practical tips

#### Contractual provisions

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.

Collective approach between companies assists significantly where individual company action is unlikely to result in change.
Global business and human rights group

a part of our Business ethics and anti-corruption group