

Rethinking due diligence: the need to incorporate bottom-up processes into responsible sourcing programs

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Increased social expectations

Resources extraction is taking place in an environment of increased expectation from stakeholders in all parts of the value chain in terms of social performance

- Project financiers
- Regulators
- Markets and exchanges
- Downstream customers
- Indigenous Peoples and other communities
- Investors and shareholders
- Civil society organisations
- End consumers

Crucially, these expectations have moved ahead of legal compliance, requiring resource companies to demonstrate social performance beyond what is regulated.

Evolving legal landscape

Nevertheless, legal developments at domestic and international level are moving fast to reflect these evolving expectations. The most rigorous of these are based around the concept of human rights due diligence (HRDD).

- UN Guiding Principles on Business and Human Rights (2011)
- EU Corporate Sustainability Due Diligence Directive (2022) - introduces mandatory human rights and environmental due diligence to identify, assess and address adverse impacts of their corporate activities on human rights and the environment - **throughout the value chain**
- EU Battery Directive update (2023) – EU companies must conduct environmental and social due diligence on the batteries they sell in the market, **including verification of the source of raw materials.**
- Plus increasing national laws mandating or encouraging HRDD into extended supply chains

Human rights due diligence (HRDD)

A **human rights due diligence process** aims to identify, prevent, mitigate, and account for impacts on human rights.

Core steps:

- identifying and assessing actual or potential human rights impacts that the company may cause, contribute or be directly linked to
- taking appropriate action and integrating into processes
- tracking effectiveness of actions
- communicating how impacts are addressed

Gaps in the framework

While the UNGPs are the key standard, they have some gaps and also, there has been a shift in expectations since their 2011 release.

- Not enough account of community agency
- Rights-holders viewed as passive objects of corporate processes
- Only passing mention of positive rights impacts

However, expectations around company-community relationships now include:

- significant bottom-up agency to define relationship parameters
- active community role in monitoring impact
- community development and/or benefit-sharing

Key takeaway:

HRDD as described by the UNGPs could be considered inadequate to fulfil the evolving social performance expectations of stakeholders

Ways forward

- To comply with stakeholder expectations and emerging traceability requirements, top-down risk-based responsible sourcing processes by downstream customers are unlikely to be sufficient
- Increasing need for resources companies to demonstrate social sustainability at mine site
- Only plausibly achieved via **significant community involvement**

This could include:

- Collaborative initiatives – resources company, downstream customers, community, government
- Technology – blockchain including some form of bottom-up community input
- Community-validated assurance (e.g. IRMA)
- Community-conducted impact assessments and assurance processes
- Project co-governance, co-design

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