Making sense of managing human rights issues in supply chains
Key themes and observations

Beyond compliance and audit – A deeply embedded governance: Our interviews demonstrate that companies are increasingly noting the shortcomings of traditional code of conduct and audit processes and are exploring more innovative approaches.

“We know our supply chain better than anyone else.”

Interviewee

Finding solutions beyond the first tier: It is apparent that there are limited practices in place for HRDD beyond the first tier of the supply chain. Any leverage exercised tends to be through the first tier supplier or collective engagement with peers or other stakeholders.

Overview of affected rights: Whilst the interviewees highlighted a range of human rights which are at risk of adverse impacts in supply chains, forced labor and child labor came up most frequently across sectors.

Small and medium-sized enterprises: SMEs can find implementing HRDD challenging, but they can nonetheless have an impact through their own processes, and larger businesses can help by engaging in capacity building.

The role of collective action initiatives: Collective action, including through sectoral, cross-sectoral and multi-stakeholder initiatives, is particularly beneficial where the nature of the supply chain is more opaque, and when seeking to exercise leverage beyond the first tier.

“It is important for the whole industry to develop something that really works.”

Interviewee

The role of States and regulation: Interviewees were generally supportive of clear regulation, given a desire for legal certainty. There is also a broad expectation that regulations incorporating HRDD elements will evolve in terms of scope of application and rigor of requirements.

“We would like to see more regulation. It would force our tier two, three and four suppliers to improve their processes – and our competitors. We rely on the whole industry.”

Interviewee

Remedy to impacted people: In addition to the developing case law around the recognition of a legal duty of care based on principles of control, non-judicial mechanisms for financial and non-compensatory redress continue to develop. Examples include state-based procedures (e.g. OECD National Contact Points) and industry initiatives (e.g. the Bangladesh Accord on Fire and Building Safety arbitral procedure).

The drivers for supply chain-related HRDD: Interviewees confirmed the avoidance of legal risks and reputational risks as two of the key incentives for conducting HRDD. Other notable drivers included meeting investor expectations and the need to achieve sustainable supply chains – a commercial necessity.

Internal challenges and opportunities: A number of organizational challenges and opportunities were observed. In particular, interviewees reported efforts to simplify internal rules and processes, in part through the development of new and centralized tools, and the need for ever closer inter-departmental coordination between key functions such as procurement, legal, internal audit and CSR.

The supplier’s perspective: Without effective collaboration between industry peers in carrying out HRDD, and alignment of purchasing practices with human rights expectations, suppliers may be subject to unnecessary cost and time burdens to comply with multiple audits, training and screening requirements of their customers.

For the full report on managing human rights issues in supply chains, visit our microsite: nortonrosefulbright.com/hrdd
Making sense of managing human rights issues in supply chains

Summary of the results of the Human Rights Due Diligence in Supply Chains project run by Norton Rose Fulbright and the British Institute for International and Comparative Law in 2017-2018

Background

The UN Guiding Principles on Business and Human Rights (UNGPs) set out globally accepted standards around the human rights impacts of business. They introduced the concept of human rights due diligence (HRDD) to “identify, prevent, mitigate and account for” actual or potential adverse human rights impacts a company may be involved in through its own activities or business relationships, including those in the supply chain.

HRDD as defined by the UNGPs is broader than simply the initial screening of human rights impacts of a supplier, as could be understood under the ordinary transactional meaning of “due diligence”.

Norton Rose Fulbright and the British Institute of International and Comparative Law (BIICL) previously conducted a study on the law and practice of HRDD. This study highlighted that HRDD is a comprehensive, context-specific, dynamic and ongoing process which should enable the company to address its actual and potential human rights impacts, even where corporate human rights obligations are not (yet) contained in regulation. It also showed that companies which use dedicated HRDD processes are more likely to identify human rights impacts than companies which do not adopt a specific human rights lens when approaching matters such as health and safety (for which companies have established existing processes).

One of the key themes which emerged during the previous study was the challenges in implementing HRDD in the supply chain. Many companies struggled with determining “how far is far enough”. Common practical challenges were highlighted such as how to engage beyond the first tier, where no contractual relationships exist, and how to undertake HRDD when information about supply-chain related human rights risks is not readily available.

Our previous study highlighted the need for further research into the management of human rights issues in the supply chain. This study was accordingly undertaken as a follow-up to our previous project, with a specific focus on supply chains.

Methodology

Our methodology consisted of a combination of desk-based legal, policy and literature research – including a consideration of legal and other developments at international and domestic level – and empirical insights gained through semi-structured interviews with representatives of ten companies, as well as a roundtable. Interviewees were made up of senior executives and decision makers within their businesses and were selected based on their experience with supply chain HRDD globally and in various sectors, such as electronics, finance, agriculture, extractives, manufacturing, and retail including food, consumer goods and fashion. Following the interviews, we held a closed roundtable in February 2018 which was attended by company representatives from various sectors.

“All companies are on a journey and some are further along than others. We are at the start of the process.”

Interviewee
Effective supply chain management

Supply chain HRDD is best understood as an ongoing, dynamic and context-specific process, as depicted in the diagram below. This summarizes the key stages in a typical supply chain HRDD management program.
Recommendations

“Start somewhere”...“It is important to keep on improving.”

Interviewees

HRDD in supply chains is a new and developing area, and companies are at different stages in terms of the maturity of their program. None of the interviewees indicated that they have accomplished everything they would like to do.

An analysis of those organizations which are perceived as having the most advanced HRDD processes reveals that not all started in the same place. Some companies with established programs, for example, began by first addressing specific risk areas such as occupational health and safety, before adapting those processes to other human rights issues. By contrast, an organization which is just beginning its journey may be best advised to follow a strategy which reflects the methodology in the UNGPs, beginning with an assessment of actual or potential human rights impacts in the supply chain. In all cases, it is important to have a coherent strategy which informs a credible, defensible methodology implemented by individuals with appropriate expertise and resources.

In light of our research, the following recommendations are made:

- **HRDD has to be a robust, substantive and ongoing process.** It should take into account all human rights which the company may possibly impact, and not just those covered by limited regulatory reporting requirements, or human rights risks which are frequently associated with a specific sector.

- **Companies should use a unified and cross-functional internal approach.** For example, a company which spends extensive resources on addressing human rights impacts through HRDD in one business area should ensure these efforts are not contradicted by its buying practices in another (where the occurrence of human rights issues may be less well understood).

- **Comprehensive HRDD requires governance commitments at the most senior level of the company, including board and CEO engagement.** These commitments ought to be underpinned by coherent governance structures which ensure decisions that engage human rights issues are taken by personnel and committees with appropriate authority, experience and appreciation of the issues and associated risks.

- **Internal translation of the importance of HRDD is more likely to be successful if supply chain HRDD is understood as a key component of the company’s commercial goals which include ensuring a quality, stable and sustainable supply chain.**

- **All companies engaged in the movement of materials and products should ensure that their supply chain HRDD includes transportation and distribution suppliers.** This appears to be an area which has received limited attention from companies to date, whereas the potential for human rights issues associated with the shipping sector (for example) has been well documented by NGOs.

- **Those charged with designing and carrying out auditing processes to test adherence to existing human rights standards and policies by suppliers should have appropriate human rights-related experience, working with external experts as appropriate.**

- **Companies should proactively involve local stakeholders, including rights-holders and local civil society organizations, in information-gathering and decision-making processes.**

- **Companies should partake in industry and other multi-stakeholder initiatives in the form of collective action, including those which facilitate the vetting and training of suppliers, in part to assist suppliers in managing the resource demands of participating in customer HRDD exercises.**

- **The use of technology should be explored to reinforce traceability, identification of human rights impacts, stakeholder engagements, grievance mechanisms and certification. Technology used for HRDD should be developed in consultation with human rights experts to be effective and to ensure that the technology does not inadvertently infringe human rights.**

- **Companies should explore ways of ensuring effective HRDD beyond the first tier, including through industry collective action, partnerships with local civil society organizations and human rights experts, operational-level grievance mechanisms for those affected by supply chains, and by encouraging open and honest dialogue with first tier suppliers to increase supply chain transparency.**

- **Companies should participate in consultative processes for regulatory reforms, in order to ensure that enacted laws are realistic and effective. This could be done individually or through industry bodies or other representatives.**

- **Recognizing that supply chain HRDD is a new and developing area, those companies with less-advanced processes, particularly SMEs, should not to be daunted (e.g. when engaging with “leading” companies). It is important to “start somewhere”. As one interviewee commented: “Let’s just start asking the questions. These are the kind of questions that we started asking in health and safety years ago.”**
Global business and human rights group

Part of our Business ethics and anti-corruption group

Sam Eastwood
Head of business ethics and anti-corruption, London
Tel +44 20 7444 2694
sam.eastwood@nortonrosefulbright.com

Milana Chamberlain
Partner, London
Tel +44 20 7444 3810
milana.chamberlain@nortonrosefulbright.com

Claire O’Donnell
Partner, London
Tel +44 20 7444 3759
claire.odonnell@nortonrosefulbright.com

Catrina Smith
Partner, London
Tel +44 20 7444 3542
catrina.smith@nortonrosefulbright.com

Jason Hungerford
Partner, London
Tel +44 20 7444 2474
jason.hungerford@nortonrosefulbright.com

Christian Dargham
Partner, Paris
Tel +33 1 56 59 52 92
christian.dargham@nortonrosefulbright.com

Karsten Kühne
Partner, Frankfurt
Tel +49 69 505096 304
karsten.kuehne@nortonrosefulbright.com

Michael Wiedmann
Of Counsel, Frankfurt
Tel +49 69 505096 226
michael.wiedmann@nortonrosefulbright.com

Orlando Vidal
Partner, Dubai
Tel +971 4 369 6398
orlando.vidal@nortonrosefulbright.com

Wilson Ang
Partner, Singapore
Tel +65 6309 5392
wilson.ang@nortonrosefulbright.com

Stuart Neely
Senior associate, London
Tel +44 20 7444 3289
stuart.neely@nortonrosefulbright.com

Gal Levin
Senior associate, London
Tel +44 20 7444 5034
gal.levin@nortonrosefulbright.com

Nadia Evans
Associate, London
Tel +44 20 7444 3748
nadia.evans@nortonrosefulbright.com

Maria Kennedy
Associate, London
Tel +44 20 7444 2946
maria.kennedy@nortonrosefulbright.com

Kaleem Khan
Associate, London
Tel +44 20 7444 3105
kaleem.khan@nortonrosefulbright.com

Shah Jahan Khandokar
Associate, London
Tel +44 20 7444 2992
shahjahan.khandokar@nortonrosefulbright.com

Robin Adelstein
Partner, New York
Tel +1 212 318 3108
robin.adelstein@nortonrosefulbright.com

Carol Poindexter
Partner, Washington DC
Tel +1 202 662 4610
carol.poindexter@nortonrosefulbright.com

William Troutman
Partner, Los Angeles
Tel +1 213 892 9208
william.troutman@nortonrosefulbright.com

John J. Byron
Senior associate, Houston
Tel +1 713 651 5261
john.byrnon@nortonrosefulbright.com

Christina Lundgren
Senior associate, Houston
Tel +1 713 651 5619
christina.lundgren@nortonrosefulbright.com

Karen Jensen
Partner, Ottawa
Tel +1 613 780 8673
karen.jensen@nortonrosefulbright.com

Benedict Wray
Associate, Ottawa
Tel +1 613 780 8683
benedict.wray@nortonrosefulbright.com

Abigail McGregor
Partner, Sydney
Tel +61 2 9330 8742
abigail.mcgregor@nortonrosefulbright.com

Jehan-Philippe Wood
Partner, Perth
Tel +61 8 6212 3281
jehan-philippe.wood@nortonrosefulbright.com

Marelise van der Westhuizen
Director, Johannesburg
Tel +27 11 685 8863
marelise.vanderwesthuizen@nortonrosefulbright.com

Andre Vos
Director, Johannesburg
Tel +27 11 685 8865
andre.vos@nortonrosefulbright.com

Tina Costas
Director, Durban
Tel +27 31 582 5663
tina.costas@nortonrosefulbright.com

Nicki van Riet
Director, Cape Town
Tel +27 21 405 1205
nicki.vanriet@nortonrosefulbright.com

Todd Petersen
Associate, Johannesburg
Tel +27 11 685 8865
todd.petersen@nortonrosefulbright.com

British Institute of International and Comparative Law

Prof Robert McCorquodale
Founder, Inclusive Law and former Director BIICL
Tel +44 7958030332
robert.mccorquodale@inclusiveLaw.com

Lise Smit
Associate Senior Research Fellow in Business and Human Rights
Tel +44 20 7862 5162
l.smit@biicl.org

Gabrielle Holly
Researcher in Business and Human Rights
Tel +44 207 664 4903
g.holly@biicl.org

Charles Clore House
17 Russell Square
London WC1B 5JP
www.biicl.org

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