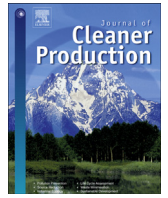




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A tool for improving the management of social and human rights risks at project sites: The Human Rights Sphere

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ABSTRACT

This paper identifies and addresses the challenges of implementing the corporate responsibility to respect human rights in practice at project sites. To support on-ground operational staff, we offer the Human Rights Sphere (HRS), a practical tool we developed from empirical research in three large-scale projects and from an analytical literature review. The tool is consistent with the United Nations Guiding Principles on Business and Human Rights (UNGPs). The HRS comprises seven steps through which the understanding and addressing of the social and human rights impacts of projects and corporate human rights due diligence procedures can be enhanced. The HRS describes the various groups of rights-holders to be considered, the social and environmental impacts they may experience, and how these impacts can be linked to actual or potential human rights impacts. The HRS shows how corporate mitigation and compensation practices have to be improved to prevent human rights harm to workers and communities. The HRS presents a comprehensive picture of the human rights side of projects and is presented as a practical tool that can be utilized by operational staff at all project phases. By utilising the HRS, multinational corporations will be better equipped to address the adverse human rights impacts of large projects.

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1. Introduction

Around the world over past decades, large projects have inadequately considered the social impacts experienced by local communities, and mitigation measures have failed to restore their livelihoods and have contributed to their further impoverishment (Cernea and McDowell, 2000; World Commission on Dams, 2000; Oliver-Smith, 2009). In addition, projects have caused environmental harm, which has been detrimental to the cultures, health and livelihoods of local communities (Alstine and Afonis, 2013; Banks et al., 2013; Pegg and Zabbey, 2013), especially Indigenous peoples (de Schutter, 2009; Knox, 2012; Anaya, 2011; Hanna and Vanclay, 2013; Hanna et al., 2014, 2016a). Project sites and supply chains were characterized by adverse impacts on the mental and physical wellbeing of workers and their families because of unsafe working conditions, the use of child and forced labour, discrimination, and other illegal and/or harmful actions (Barrientos and Smith, 2007; Seidman, 2007; Wright, 2008; Labowitz and

Baumann-Pauly, 2014; Siddiqui and Uddin, 2016; see also businessandhumanrights.org). Analyses of the atrocities committed by governments or by public or private security forces have revealed the complicity of companies in these human rights violations (Bismuth, 2009; Maogoto and Sheehy, 2009; Ruggie, 2008b; Wright, 2008).

The emblematic cases of corporate involvement in human rights abuses, the international and legal standing of human rights, and the fact that powerful multinational enterprises are involved in these abuses but are not regulated at an international level, have highlighted the need to clarify corporate human rights responsibilities (Ruggie, 2008a). As the United Nations Special Representative on business and human rights from 2005 to 2011, John Ruggie's mandate was to develop a global governance framework explicating the human rights obligations of governments in relation to business and the specific human rights responsibilities of companies. Ruggie (2008a) explained the occurrence of corporate related human rights abuse as arising from a 'governance gap'. This refers to the fact that many governments are unwilling or unable to hold businesses, which are operating in their countries or abroad, to account for their adverse impacts on the local environment or people.

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In 2008, Ruggie presented the 'Protect, Respect, and Remedy Framework', which consisted of three principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedy for victims of business-related abuse (Ruggie, 2008a). Simply put, the Framework prescribed that "states must protect; companies must respect; and those who are harmed must have redress" (Ruggie, 2013, p. xxi). In 2011, the Framework was operationalized in the *United Nations Guiding Principles on Business and Human Rights* (UNGP), which was endorsed by the Human Rights Council (UN, 2011), and is regarded as the leading global standard prescribing corporate responsibilities with regard to human rights.

The endorsement and publication of the UNGP has activated much high-level policy debate amongst government, academic, NGO and corporate actors interested in human rights (O'Brien and Dhanarajan, 2016). Multinational enterprises across a wide range of sectors have developed their human rights policies and made public statements of commitment to respect human rights (World Economic Forum, 2013). Global business associations have adopted the UNGP and have established guidelines for their members, notably the International Council on Mining and Metals (ICMM, 2012) and IPIECA (the global oil and gas industry association for environmental and social issues) (IPIECA, 2012, 2014; DIHR and IPIECA, 2013). Some companies have established internal functions of human rights advisors or managers (Shift, 2012a, 2012b). However, the implementation of the corporate responsibility to respect human rights at the local level of project sites remains limited and the effective protection of communities and workers is still hampered (Deonandan and Morgan, 2016; Haines, 2016). Elaborations on a Treaty on business and human rights have continued, which may eventually result in the establishment of an international legally binding instrument to regulate business enterprises with regard to human rights (UNCHR, 2014; Bilchitz, 2014; de Schutter, 2016).

To effectively implement respect for human rights throughout the business, project operational staff need to become trained in understanding the human rights implications of project activities and in what they can do to address these issues in relation to their assigned work and responsibilities (Boele and Crispin, 2013; Posner, 2016). To support operational staff in comprehending the human rights impacts of large projects, we provide the 'Human Rights Sphere' (HRS), a tool to facilitate the implementation of the corporate responsibility to respect human rights. Projects here refers to dams, mines, oil and gas drilling, factories, ports, airports, pipelines, electricity transmission corridors, roads, railway lines and other infrastructure including large-scale agriculture, forestry and aquaculture projects (Vanclay et al., 2015). According to the UNGP (UN, 2011), project-affected communities and workers can no longer merely be perceived as stakeholders, but must be considered as rights-holders with legitimate interests and rights that need to be respected (see also Kemp and Vanclay, 2013). The HRS shows how human rights impacts and risks are related to various groups of rights-holders in the operational context of projects. Human rights impacts and corresponding corporate responsibility can be understood in relation to the environmental and social changes and impacts experienced by various groups of rights-holders (Kemp and Vanclay, 2013; Vanclay, 2002; Vanclay et al., 2015).

The application of the HRS will increase human rights awareness in companies, and will lead to improvements in the design and practice of impact assessment, mitigation, compensation, livelihood restoration, and impacts and benefits agreements, resulting in improved human rights awareness in companies that can positively affect workers, communities, and thus society as a whole. The HRS

shows how companies and their projects can contribute to sustainable, local and inclusive development. It illustrates human rights concepts providing important insights and a vision to improve corporate practice at the local level of project sites. The HRS elucidates what a human rights based business approach could look like and how it can be implemented.

2. What is the corporate responsibility to respect human rights?

The corporate responsibility to respect human rights requires that all business enterprises should "avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved" (UN, 2011, p. 13). 'All business enterprises' means all sizes and types of companies, regardless of ownership (UN, 2011). Below we elaborate on the current understanding of human rights and human rights principles, the meaning of adverse human rights impacts, and what the responsibility to respect entails.

Human rights are commonly understood as being those "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being" (Sepulveda et al., 2004, p. 3). Human rights are widely accepted as being generally-agreed values, and exist to ensure human dignity and the fulfilment of basic needs of all human beings around the world. Human rights are universal (apply to all people everywhere), inalienable (cannot be lost, surrendered or transferred), indivisible (all rights are regarded as equally important), and interdependent and interrelated (they influence each other) (HRBA Portal, 2016). The contemporary understanding of human rights became established in the Universal Declaration of Human Rights (UDHR), which was adopted in 1948 in response to the atrocities of the Second World War (UN General Assembly, 1948). In addition to the UDHR, there are two other key human rights agreements: the International Covenant on Civil and Political Rights (ICCPR) (UN General Assembly, 1966a); and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (UN General Assembly, 1966b). Most (but not all) states have ratified these two Covenants. Together, the three documents are known as the International Bill of Human Rights (UN, 1996).

The understanding of human rights has been clarified by the set of principles established in the human rights based approach (HRBA) (Stamford Agreement, 2003; HRBA Portal, 2016), a framework intended to assist all actors – including UN agencies, governments, NGOs, and international financial institutions – in realising human rights in development projects and programs (World Bank, 2013). The HRBA (Stamford Agreement, 2003) describes the following human rights principles: equality and non-discrimination; participation and inclusion; and accountability and the rule of law (Stamford Agreement, 2003).

Governments have the primary obligation to respect, protect and fulfil human rights, and to safeguard a life of dignity for all people without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (UN General Assembly, 1948). In signing up to the ICESCR, governments commit to undertaking steps to progressively realize the economic, social and cultural rights outlined therein. The United Nations accepts that the fulfilment of these rights can be hampered by a lack of resources, and therefore that these rights can only be achieved over time (OHCHR, 2015). However, to ensure a life of dignity, governments must, with immediate effect, meet the minimum essential levels for each of these rights (UNCHR, 2008). Thus, a human rights perspective represents ideals for the continuous improvement of the living conditions of all, as well as a requirement for immediate action when basic standards of living

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