

Supply chains as information chains.

When can a company say “I did my best to know?”

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Context

Consensus in the state of art:

- ✓ Companies need to know their supply chains and HR risks beyond first-tier supplier. HRIA framework has incorporated the Business Relationships (BR) concept (including suppliers) in different ways (i.e. BR as duty bearers, information on suppliers' legal contexts and HR track record required)
- ✓ Human Rights Due Diligence requires companies to gather information on some of these elements

Key idea

A two-steps framework to conduct supply chain risk identification in order to answer the following question: How can a company say it has taken all reasonable measures to identify HR risks in its supply chain?

Methodology

Revision of the state of the art: soft law (corporate HRIA practices, general HRDD, R2R Guidelines or Frameworks) + hard law (emerging legislation on corporate DD)

Comparative analysis and selection of one basic framework: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from conflict affected areas

Result 1. The model

Two-steps model + identification of indicators for each step: what information does the company need to gather?

A.  Red flag:

a.1. Context screening: geographic red flags; industry sector; HR legal framework; stakeholders; CS monitoring

a.2. Supplier screening: HR performance; HR context

B.  Leverage:

Different typologies of B.R. (two big types: contract-based and vertical integration)

Risk Factors: legal + economic power; kind + amount of information flows; applicable regulatory standards

Result 2. Closing the mental element gap

✓ Potential contribution to mental element theory building for corporation accountability for human rights violations

✓ Can the human rights accepted by a corporation in its decision-making process be proved? YES

✓ How? through the application of the international criminal law mental element standard (to know or to have reason to know)

Conclusions

- ✓ Corporate R2R legal framework needs harmonization (patchwork of soft and hard laws defining different aspects)
- ✓ Lack of legal certainty: different playing fields, no clarity of requirements, reputational risks and legal risks
- ✓ Our model proposes some general basic indicators and can be adapted to specific sectors according to the company's characteristics

