Research Briefing

The 'In-Betweeners': examining the role and impact of external experts under the UNGPs

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Introduction

A key feature of the UNGPs is that they explicitly encourage businesses to rely on "external human rights expertise" to assist in the implementation of human rights due diligence (HRDD) (OHCHR, 2011: 19). For example, the Commentary to Principle 23 states that:

"*[business enterprises] will often be well advised … to consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives*" (OHCHR, 2011: 26).

The development of mandatory human rights due diligence also has the potential to cement the role of external experts as key actors within the HRDD process. For instance, the EU Corporate Sustainability Due Diligence Directive encourages companies to use "independent third-party verifiers" to support the implementation of their due diligence obligations. These verifiers:

"*shall act with objectivity and complete independence from the company… they shall have experience and competence in environmental or human rights matters and shall be accountable for the quality and reliability of the verification they carry out*" (CSDDD Art 20(5)).

Despite the prevalence accorded to external experts in HRDD processes, the role and impact of these experts have been overlooked in the extant literature, which means our understanding of the effectiveness of HRDD in practice is somewhat limited.

The few studies that have examined the role of external experts in providing HRDD advice have raised a number of significant concerns. For example, Harrison (2023) draws attention to the "power dynamics" between client and external expert, whereby the client may prevent engagement with certain rightsholders (including union members, contract workers, land issues, etc.) as well curtailing aspects of the HRDD process (for example, impact assessment of land issues, reporting and transparency, etc). In addition, Harrison (2023, p.22) also highlights concerns about more "commercially-orientated practitioners", who are able to undercut on price by offering a "superficial" or "less rigorous" assessment process (see also, Ford and Nolan, 2020).

While the extent literature on HRDD experts is limited in scope, it is clear from these studies that there are significant issues that warrant further research. Our study aims to provide further insights into the emerging HRDD field by undertaking empirical research informed by qualitative interviews with 24 experts who have provided HRDD advice to corporations.

Research Approach

Our analysis is informed by empirical data drawn from **24 semi-structured interviews** with HRDD professionals. All interviews took place between November 2021 – April 2024 and were conducted online.

Participants in the study came from a range of different backgrounds – including independent consultants, business and human rights think-tank organisations, national human rights institutions, multistakeholder initiatives and "Big 4" professional service firms.

Summary of Findings

Developments in the Field

Our interviewees reflected on key developments in the field of HRDD, acknowledging that the UNGPs, along with emerging mHRDD, has created **significant demand** for human rights expertise. As one interviewee succinctly put it:

"We are completely, completely overwhelmed with demand. Completely overwhelmed with demand and now we can pick and choose [clients]" (P15).

An acknowledgement of the increasing demand for human rights expertise was also accompanied by observations that HRDD is becoming a **potentially lucrative area of advisory work**, creating opportunities for advisors that "know next to nothing" (P22). In this respect, **concerns about the provision and quality of expertise was identified as a major concern** amongst our participants.

A further area of concern identified by participants was the **emerging dominance of large consultancy firms** offering HRDD advisory services. In particular, participants noted that large consultancy firms were gaining dominance as a result of their ability to compete on price – largely attributed to the **less rigorous HRDD methodologies** they were perceived to offer. For example, as one participant put it:

"We lost out against… [large consultancy firm] that, you know, basically just had the better price offer where we… would have the better background and resume for the task" (P5)

Relatedly, concerns were also raised about the skills and expertise offered by some large consultancy firms.

Skills and Expertise

When asked what skills and experience practitioners in the field should have, interviewees were almost unanimous in recognizing "on the ground" experience as pertinent – for example:

"[BHR experts should have] experience in upstream supply chain companies or countries..." (P4)

"somebody with real on the ground experience, practical experience… who understood what stakeholder engagement meant" (P3)

Most participants indicated that the ideal HRDD advisor would have an understanding of human rights and most likely come from a legal background. In addition to a background in human rights and on the ground experience, a large proportion of participants also acknowledged that experience in the business world was also important - in order to better appreciate the parameters of what was possible within a business context: *"the most important thing is real life expertise working in a company. You know… having the knowledge of what a company… can and can't do" (P17).*

A number of participants in our study noted concerns that **large consultancy often lacked the skills and experience to offer HRDD advisory work**. For example, it was observed that such firms tended to draw on particular methodologies, that were "**compliance-based" or overly standardized**, relying primarily on data that is easily quantified:

"a lot of [large consultancy firms]… create… data templates…That's fine… But the problem is when these providers sell themselves as a solution for human rights due diligence…" (P4)

Relatedly, several participants noted that large consultancy firms lacked the ability to adequately undertake rightsholder engagement and instead tended to offer "a desktop exercise more than in depth dialogue." (P15)

Implications

Findings from our study highlight the increasing demand for HRDD advisory services, along with a lack of available expertise to meet demand. Further, observations of emerging practice highlight concerns about the prevalence of compliance-

based approaches to HRDD and a perceived lack of rightsholder engagement.

One significant implication of these findings was highlighted by a participant from a large consultancy firm who observed that emerging practice over the next few years will shape what is recognized as sufficient legal compliance:

"*There's a lot of flexibility, there's a lot of space for interpretation… but it's almost like the auditors have a very significant* ***co-legislative power***". (P22)

That is, in the case of mandatory HRDD, how business and human rights experts interpret due diligence legislation can determine the meaning and interpretation of the law. In short, the meaning and interpretation of the law may be shaped by a "market that has no idea what to do with it, because there is, quite simply, not nearly enough sufficiently qualified people". (P22)

Findings from our study therefore point to an urgent need to consider:

- The provision of training in HRDD
- The provision of detailed guidance on HRDD
- The establishment of professional HRDD accreditation
- The monitoring of HRDD advisory services by Supervisory Authorities under the CSDDD.

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