

EDITORIAL

Beyond Human Rights Due Diligence: What Else Do We Need?

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After the unanimous endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs) by the Human Rights Council in June 2011, human rights due diligence (HRDD) has become a common currency widely embraced among stakeholders operating in the business and human rights (BHR) field. The UNGPs envisage HRDD to be the primary tool for businesses to identify, prevent, mitigate and account for adverse impacts of their activities on internationally recognized human rights.

The UNGPs elaborate the concept of HRDD mostly in the context of the corporate responsibility to respect human rights under Pillar II. Yet, the slow uptake of HRDD by many (multinational) corporations has meant that states – mostly in Western Europe at this stage – have started making HRDD mandatory as part of their Pillar I duty to protect against business-related human rights abuses. This rise of mandatory HRDD laws is often applauded with a sense of optimism in encouraging companies to take seriously their human rights responsibilities and for addressing the current corporate impunity for human rights abuses.

Concerns about the suitability of HRDD as an instrument to operationalize the corporate responsibility to respect human rights have been lingering all along. Moreover, although the efficacy of mandatory HRDD laws in bringing positive change on the ground is still being assessed, some doubts about the value of such legalisation have emerged. For example, it is suggested that HRDD might not be able to address the root causes of corporate human rights abuses and that mandatory HRDD laws are likely to merely promote tick-box compliance on the part of targeted businesses. Questions are also being raised whether these laws reflect a neo-colonial shade of international rulemaking due to the exclusion of stakeholders from the Global South in the drafting process.

Against this backdrop, this special issue, *Beyond Human Rights Due Diligence*, contains five articles from leading scholars and practitioners who critically analyse the concept and practice of HRDD from diverse perspectives. David Karp sets the tone by challenging the normative foundation of HRDD rooted in neoliberalism's 'public–private' divide. For Karp, the UNGPs (including the HRDD concept) are an extension and product of, rather than a meaningful response to, the neoliberal world order. As such, they reinforce, rather than challenge, a view of the company as purely private, which inevitably pushes certain human rights violations beyond the scope of corporate consideration. As an alternative, Karp suggests viewing corporations as agents as well as part of our global social structures. As moral agents, companies ought to be guided in their HRDD efforts not by the mere avoidance of harm, but by a more holistic commitment to human equality. As part of our global social structures, they ought to accept a collective and political responsibility to challenge the

current world order, and to act politically to change it to enable human rights to be better respected, protected and fulfilled. Karp outlines this responsibility in what he calls the ‘missing fourth pillar’ of the UNGPs.

Julia Dehm in her article exposes the limits of the emerging concept of climate due diligence – as a variation of HRDD – in dealing with climate change. She advances four critiques: (i) the *insufficiency* of climate due diligence to fully ensure corporate respect to human rights in the context of climate change, (ii) the *conceptual ambiguity* regarding what standard of conduct climate due diligence imposes, (iii) *operational limitations* in conducting climate due diligence due to the spatially and temporally dispersed nature of climate-related human rights impacts, and (iv) *structural limitations* of climate due diligence given the political and economic powers of the fossil fuel industry. As a solution, Dehm proposes regulatory reforms that draw clear ‘red lines’ to constrain or prevent business activities that are incompatible with a rights-based, just transition to a low-carbon society.

Barnali Choudhury, on the other hand, argues that mandatory HRDD law may only be a form of ‘window dressing’, that is, enabling states to put a smart spin on their efforts to address BHR challenges but without addressing some of the root causes of that predicament. She contends that these laws are likely to be an insufficient tool for addressing corporate human rights abuses, because the root cause of many BHR problems is the structural elements and goals of corporate law which often facilitate such abuses. Unless states transform the way in which corporations operate – including by reconceptualizing corporate law – even the best drafted HRDD laws will be inadequate to stop corporate human rights abuses.

Marianna Leite in her contribution contends that the trend to see mandatory HRDD as the ‘sole solution’ to corporate abuses is misleading: it might risk missing entirely the main point of creating economic systems that enable rights-based and rights-driven business models. She argues that while putting in place comprehensive mandatory HRDD laws as a preventative and mitigation tool is desirable, states must also push for transformative macroeconomic policies based on human rights principles to fundamentally change business models.

Juan Pablo Bohoslavsky, Francisco Cantamutto and Lucas Castiglioni examine the relationship between private corporate creditors, sovereign debt and the macroeconomic implications of debt restructuring on human rights. Their article asks readers to re-examine the narrow lens through which HRDD has been applied and to focus on the broader human rights impacts of the financial sector on entire economies. By using a mixture of qualitative analysis as well as empirical data from the two most recent sovereign debt restructurings in Argentina, the authors examine what type of human rights impacts are caused by the process of restructuring, and the trade-offs states are often asked to make in terms of budgeting and their ability to realize the socio-economic rights of their people.

As the *Business and Human Rights Journal* seeks to set the agenda for interdisciplinary futuristic research to grapple with ongoing BHR challenges, we hope that this special issue will trigger serious discussion among scholars, policymakers, civil society organizations, company representatives and other relevant stakeholders about the limits of HRDD and the need for employing other more transformative regulatory tools to ensure that businesses play their part in realizing human rights.