The Corporate Responsibility to Respect Human Rights: An Updated Status Review (2022)

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Abstract: The United Nations (UN) Human Rights Council's Protect, Respect and Remedy ('Three Pillar') Framework on Business and Human Rights and the Guiding Principles on Business and Human Rights (GPs) represent a significant marker in the contemporary evolution of norms on the responsibility and accountability of corporate actors for their social, environmental and human rights impacts. Building on earlier work, this chapter provides an updated exposition and critical assessment of developments since 2011 in law, policy and practice that have sought, in line with the GPs, to advance corporate respect human rights. First the chapter briefly addresses the origins of the GPs and their standing in relation to wider principles and standards of international human rights law (Section 1). It then explains the notion of corporate human rights due diligence as the principal mechanism through which businesses are envisaged, by the GPs, to realise respect for human rights. Here it relates measures being taken by governments and others to legalise corporate human rights due diligence requirements, such as due diligence and supply chain laws recently adopted in France, Germany, Norway and prospectively by the European Union (Section 2). In Section 3, the chapter addresses in turn three elements of the corporate human rights due diligence process: human rights impact assessment (HRIA, Section 3.1); companies' integration of the findings of human rights risk identification and the exercise of leverage (Section 3.2); and corporate human rights reporting (Section 3.3), where we address links to 'ESG' investment practices. In conclusion, given the continuing scale and severity of business-related human rights abuses, but also uncertainties about design and impacts of reviewed regulatory measures, the chapter calls for intensified scholarly inquiry and debate in corporate responsibility research.

Keywords: Human rights, responsible business conduct, supply chain, value chain, due diligence corporate responsibility to respect human rights, UN Guiding Principles on Business and Human Rights, European Union, Council of Europe, non-financial reporting, ESG, trafficking, conflict minerals

JEL Classification: K29, K33, K30, K10, K20, F60, L86

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An Updated Status Review (2022)[1]

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1. Introduction

The United Nations (UN) Human Rights Council's Protect, Respect and Remedy ('Three Pillar') Framework on Business and Human Rights and the Guiding Principles on Business and Human Rights (GPs) represent a significant marker in the contemporary evolution of norms on the responsibility and accountability of corporate actors for their social, environmental and human rights impacts (UN Human Rights Council (UNHRC) 2008, UNHRC 2011)

From an ethical viewpoint, international human rights standards such as the Universal Declaration of Human Rights (UN, 1948) and subsequent international and regional human rights instruments ought to have provided a natural frame for increasingly frequent attempts, during the 1980s and 1990s, to seek redress for business-related infractions of human dignity, fundamental interests, well-being and welfare (Dhanarajan and Methven O'Brien, 2015). Yet legal as well as political obstacles obstructed the use of human rights treaties and courts to challenge corporate misconduct.

Top amongst these, historically, was the limited application of human rights obligations to non-state actors and in the "private sphere" (Clapham, 1996). In general, international human rights law does not establish directly enforceable duties on businesses, even if corporations have indirect responsibilities to comply with substantive standards of protection entailed by human rights through requirements imposed on them via national laws, for instance, in the areas of employment and environment (Methven O'Brien, 2019).

However, such national laws, as well as contractual and investment relationships, may not be fully aligned with international human rights standards, while companies do not always comply with them in any case. During the 1990s concerns grew, furthermore, that liberalisation, market integration and 'regulatory competition' on the global plane were exerting downwards pressure on national social and environmental standards (Davies and Vadlamannati, 2013). Mounting frustration at lack of effective accountability for business-related human rights abuses for victims, in face of the expanding rights and power of corporations, correspondingly triggered popular protests, such as the 1999 'Battle of Seattle', and eventually international political concern (Dhanarajan and Methven O'Brien, 2015; Methven O'Brien, 2022). Many businesses, meanwhile, deferred responding to such disquiet: even by 2010, still 42.8% of FTSE100 policies did not address human rights at all (Preuss and Brown, 2012).

In 2005, UN Secretary General Kofi Annan appointed John Ruggie as his Special Representative on Business and Human Rights (SRSG) with a mandate to identify and clarify standards of corporate

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responsibility and accountability for human rights. An earlier UN-level attempt to transact human rights standards for business had failed to garner cross-stakeholder support. The UN Sub-Commission on the Promotion and Protection of Human Rights had, in its 2003 UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (UN Human Rights Commission 2003) sought to specify legal human rights duties for companies that were broadly co-extensive with those of governments (Methven O'Brien 2009).

Ruggie rejected this approach from the outset. Rather, in pursuit of what he often labelled "principled pragmatism" he emphasised human rights as imposing ethical and social expectations of business (Ruggie 2013). Such expectations, he maintained, were implicit in existing human treaties, so that new international laws to establish corporate duties to uphold human rights were not needed. Accordingly, the 2008 UN Framework and 2011 GPs advanced by Ruggie maintained the state's role as primary bearer of the duty to protect human rights as their first 'pillar'. Alongside, however, they asserted a corporate responsibility to respect, and not harm, human rights, as a second pillar. To give effect to this responsibility, companies should deploy dedicated corporate policies and internal measures, encapsulated in the notion of process, termed "human rights due diligence". Finally, the UN Framework's third "pillar" recognised the right to effective remedy of victims of business-related human rights abuses and corresponding need for accessible remedy mechanisms (UNCHR, 2011)).

Ruggie assessed that this approach, amplifying but remaining anchored in established international legal principles, could more readily find support by states and businesses than new standards tangential to them. Assimilating the UN framework and GPs into government and corporate policy and practice, he claimed, would "reduce corporate-related human rights harms to the maximum extent possible in the shortest possible period of time" (Ruggie, 2008). Arguably supporting this view, international organisations (OECD, 2011 and 2018; COE, 2018; IACHR, 2019, European Commission, 2011), large businesses, and governments, since 2011 have espoused the GPs and undertaken a multitude of initiatives to advance their institutionalisation including, for instance, new laws on due diligence and corporate human rights reporting, multi-stakeholder processes to develop National Action Plans on business and human rights (Methven O'Brien *et al* 2014, Methven O'Brien *et al* 2015; Methven O'Brien Ferguson and McVey 2022) and a multitude of awareness-raising, educational and capacity-building initiatives within industry sectors, individual firms and civil society organisations.

Accordingly, the GPs may have helped to shore up the legitimacy of both market integration and human rights, in the 2010s, by re-orienting human rights norms, if not international laws, to address contemporary threats to individuals, societies and the environment deriving from business activities. Yet doubts have remained about the sufficiency of the GPs' approach (Methven O'Brien, 2011; Deva 2012; Černič and Van Ho, 2015). Data consistently question the GPs' penetration and practical effectiveness. To illustrate, even when a majority of corporate leaders conceded holding responsibility for human rights, only a fifth of their companies had a human rights policy, according to a 2015 study (EIU 2015). In a 2017 analysis, almost half of company respondents were found never to have undertaken human rights due diligence or impact assessment (BIICL, Norton Rose Fulbright LLP, 2017). By 2020, still almost half of the world's largest companies could not demonstrate measures to address human rights risks in their supply chains (Corporate Human Rights Benchmark 2020).

Besides, business practices self-evidently harmful to human rights persist (ILO2020, OHCHR 2022a, OHCHR 2022b) while new ones have continued to emerge, for instance, in the tech sector (Methven

O'Brien, Jørgensen, and Hogan 2021). If obstacles to remediation for victims of corporate human rights harms are now better understood, neither have they yet been dismantled (OHCHR, 2016; EU FRA, 2020). While the GPs' rhetoric may have captured the policy-making "peaks", then, their slow uptake on the ground seems to substantiate enduring truth in the claim that, in many cases, "firms are still not ready to be safe rather than sorry" (Aaronson and Higham, 2013, p. 333).

For some authors, this shows the need for more prescriptive international laws, including a binding UN human rights treaty to address duties directly to companies (Bilchitz, 2013). But would this necessarily yield better results than the GPs, in terms of increased implementation, enforcement and effectiveness of human rights in the business setting? Scholarship indicates many disparate internal and external factors as promoting CSR (Lim and Tsutui 2012; Lim 2017; Pope and Lim 2020) or frustrating compliance, beyond the bare legal or non-legal character of the rules in question (Gunningham *et al*., 2003) while continuing corporate scandals in highly regulated areas seem to bear this out (Russell *et al*, 2016; Methven O'Brien 2022). Governments' respect for human rights is hardly perfect, even where they are obligated under by international treaties or national laws, as many scholars have observed (Hathaway 2002; Neumayer 2005, Goldsmith and Posner 2005, Hathaway 2007, Moyn 2012, Posner 2014; Ford and Methven O'Brien 2017).

If the matter is not settled in social science, neither is its debate over politically. While many states continue to see virtue in the GPs' 'soft law' approach (UNHRC 2014a), others have launched a process to elaborate a new business and human rights treaty (UNHRC, 2014b). For the moment, this global initiative to 'legalise' corporate responsibility for human rights appears to have stalled (Methven O'Brien 2021, Subasinghe, 2021, Botta, 2022). Yet at national and regional levels, some steps are being taken to formalise business responsibilities for human rights in law, and more are in pipeline. Such efforts embrace the enactment of statutory duties on companies to perform human rights due diligence as well as indirect approaches, such as human rights-related disclosure and investor requirements (Methven O'Brien 2020a, 2020b). While potentially far-reaching, the ultimate impacts of this new regulatory mosaic on companies, their conduct, and consequences for rights-holders, governments and markets for now remain unknown.

Building on earlier work (Methven O'Brien and Dhanarajan, 2015), this chapter reviews selected developments since 2011 to consider how the corporate responsibility to respect human rights expressed in the GPs has been interpreted and implemented through law, policy and business behaviour. Section 2 outlines the iterative process of due diligence identified by the GPs as a principal mechanism by which business respect for human rights is intended to be rendered operational. It next highlights new legal due diligence requirements and, relatedly, persisting ambiguities around the character, functions and legal consequences of corporate human rights due diligence procedures. Section 3 deals in more depth with three of due diligence's subsidiary components: human rights impact assessment (section 3.1); integration of the findings of human rights risk identification and impact assessment into company policies and practices (section 3.2); and corporate human rights reporting (section 3.3). Each part identifies expectations of companies under the GPs while also highlighting challenges and dilemmas with reference to cross-disciplinary scholarship, primary legal and policy materials. Section 4 discusses the effects and effectiveness of legal due diligence requirements, with reference to available evidence, while highlighting gaps in knowledge attendant on the still emergent character of this new regulatory field. Section 5 concludes.

2. Human rights due diligence in the GPs and related legal requirements

According to the GPs, a 'corporate responsibility to respect human rights', implied by human rights treaties, requires businesses both to avoid infringing human rights and to address adverse human rights impacts in which they are involved. Businesses should seek to prevent or mitigate impacts that they have "caused or contributed to", as well as those "directly linked" to their operations, products or services through their business relationships, whether contractual or non-contractual (UNHRC 2011, GP13). In terms of subject-matter, the corporate responsibility to respect human rights refers to all internationally-recognised human rights, not just those that are at a given moment binding in any one jurisdiction (UNHRC 2011, GP11).

"Human rights due diligence" as described by the GPs is a cyclical process through which, if they execute it correctly, corporations can fulfil their responsibility to respect human rights. Its first step is adopting a policy to respect human rights (GP15). A high-level statement expressing company commitment to respect human rights is pre-requisite to effective due diligence: board-level 'buy-in', the GPs suggest, is critical to on-the-ground follow-through, especially in the face of conflicting business imperatives. Company human rights policies should furthermore be public, to give external stakeholders a clear platform for engagement with, and scrutiny of, companies whose activities affect them (UNHRC 2011, GP16).

After adopting a human rights policy, due diligence is envisaged as comprising four further steps, in form resembling an archetypal continuous improvement cycle (UNHRC 2011, GPs17-20):

1) Assessing actual and potential impacts of business activities on human rights ("human rights risk and impact assessment");
2) Acting on the findings of this assessment, including by integrating appropriate measures to address impacts into company policies and practices;
3) Tracking how effective the measures the company has taken are in preventing or mitigating adverse human rights impacts; and
4) Communicating publicly about the company's due diligence process and its results.

In light of the right of victims of business-related human rights abuses to access effective remedies, constituting the "third pillar" of the UN Framework, companies should also take steps to remediate adverse impacts of their activities on rights-holders (UNHRC 2011, GP22).

In terms of scope, aligning with the 'corporate responsibility to respect' from which it derives, due diligence should be addressed to business impacts on all human rights enumerated in the International Bill of Human Rights (UN General Assembly 1948, UN General Assembly 1966a; UN General Assembly 1966b) and the labour standards contained in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work (ILO, 1998) at a minimum. Based on businesses' specific circumstances, additional standards, such as those relating to indigenous peoples (ILO, 1989; UN General Assembly, 2007) or conflict-affected areas (UNHRC 2011, GP12) may also be relevant. This breadth does not however imply that due diligence becomes unwieldy. According to the GPs, it remains practicable because companies are permitted to adjust the scale and intensity of the due diligence exercise to their individual character and context, taking into account factors such as company size, industry sector, and the seriousness and extent of human rights impacts to which the company's activities may give rise (UNHRC 2011, GP14).

Since 2011, numerous governance actors have endorsed the GPs explicitly and called on companies to adopt them and apply due diligence. In 2011, for example, the European Union did so in its

Communication on CSR (European Commission, 2011) while in 2014 the UN Human Rights Council followed suit (UNHRC, 2014; Methven O'Brien, Mehra, Blackwell, Poulsen-Hansen 2016). National Action Plans on business and human rights, of which 42 have been adopted globally, with several more in pipeline (DIHR n.d.) likewise generally call on companies to respect human rights and do due diligence as provided for in the GPs (OHCHR, 2016; Methven O' Brien, Ferguson, McVey, 2021).

Besides, taking point of departure in the GPs, governments and others have promoted various norms of their own that encourage or require companies to implement a GPs-style human rights due diligence process, elements of it, or closely related practices. At first, such efforts comprised guidance, for example, the OECD's 2011 revision of its Guidelines for Multinational Enterprises (MNEs) (OECD, 2011) and its subsequent Due Diligence Guidance for Responsible Business Conduct (OECD, 2018). The Equator Principles (EP, 2003), similarly, were revised with an aim to align with the GPs (EP, 2020). While technically non-binding, such standards are still capable of giving rise to practical consequences as well as legal duties, if incorporated voluntarily into corporate policies, purchase contracts (Cutler 2017; Martin Ortega 2018; Göthberg 2019), investment or lending agreements (DIHR 2019, OHCHR, 2021), for example. In some jurisdictions, including Colombia and Peru, such 'voluntary' standards may also be given limited judicial application, for instance, as an aid to interpretation of constitutional provisions (Sanabria and Schonfelder 2021, Corte Constitucional 2016; Debevoise & Plimpton, 2021; SUTREL, n.d.)., with some suggestion of scope for such deployment also in the Inter-American human rights system (*Miskito Divers (Lemoth Morris et al) v Honduras* IACHR, 2021).

Despite such possibilities for legal traction, evidence has continued to suggest that adherence to the GPs and due diligence amongst businesses remains marginal, even in high-risk sectors (Business and Human Rights Resource Centre, 2022). A 2013 study that assessed 200 randomly-selected large European companies found, for instance, that only 33% referred to GPs-aligned standards (UN Global Compact, OECD Guidelines for Multinational Enterprises, or International Standards Organisation's (ISO) ISO 26000 Social Responsibility guidance (ISO 2010)); only 3% to the UNGPs themselves; and 2% to the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) (ILO 2006; European Commission, 2013). A survey of 186 European companies in the same period found that over 80 per cent did not provide public information on checks of their supply chains for linkages to conflict or human rights abuses (Steinweg and ten Kate 2013). By 2016, there were still only three-hundred and fifty corporate human rights policies amongst approximately 80,000 transnational firms worldwide (Business and Human Rights Resource Centre 2016). Perhaps more optimistically, in a 2021 survey of 760 Japanese companies listed on the Tokyo Stock Exchange, 69 per cent said they had formulated a specific policy on respecting human rights or had clearly stipulated it in their company policies, management principles and strategies; 52 per cent replied that they had conducted human rights due diligence and initiated investigations to safeguard human rights. Still, even here, more than one-fifth (21 per cent) expressly replied that they had not taken steps towards GPs implementation (METI, 2021; Human Rights Resource Center, 2021).

At the same time, some early studies indicated potential for the GPs to influence business perceptions and risk analysis where companies did engage with the GPs internally (MacPhail and Adams, 2016, McCorquodale, Smit, Neely, Brooks, 2017). Alongside persisting abuses, this put pressure on governments to 'upgrade' due diligence from a social expectation to a legal requirement. While advocates have sought in this context to extend prevention and accelerate remediation of abuses,

amongst companies, "early adopters" of human rights policies have welcomed the prospect of due diligence legislation as a mechanism to 'level the playing field' with less-compliant competitors (DIHR, ICAR and GBI, 2014; BusinessEurope 2022; Business and Human Rights Resource Centre 2019).

Legal due diligence requirements started to appear at first in indirect form, via duties on companies to report on due diligence processes as featured, for example, within non-financial reporting (EU 2014) and modern slavery statutes (State of California, Department of Justice, 2012; United Kingdom of Great Britain and Northern Ireland, 2015, Australian Government, 2018). Admittedly, some such requirements took the form of 'comply or explain' duties that can barely be reckoned as 'hardening' corporate human rights due diligence into a legal obligation (EU, 2014; United Kingdom of Great Britain and Northern Ireland, 2015). In Brazil, a differently styled, though still disclosure-based measure, intended to encourage company engagement with human rights issues on a thematic basis, is the so-called 'Dirty List' of employers publicly named by authorities to have subjected workers to conditions amounting to modern slavery (ESCR-Net CAWG, 2020).

Subsequent initiatives have however sought to legalise the UNGPs' due diligence concept more directly, firstly, via thematic or sector-specific laws, or alternatively, through 'horizontal' due diligence requirements. Examples of the former concern conflict minerals. Due diligence provisions already featured in s1502 of the US Dodd-Frank Act (US Congress 2010; US Securities and Exchange Commission, 2012), requiring companies to undertake due diligence to verify the presence of such minerals within their products, as well as publicly to disclose their due diligence reports. The EU Conflict Mineral Regulation (European Commission 2017) established due diligence, traceability and disclosure requirements for approximately 600-1,000 EU importers of tin, tantalum, tungsten and gold from conflict-affected and high-risk areas, with reference to the OECD's *Due Diligence Guidance for Responsible Supply Chain of Minerals concerning the sourcing of natural resources from conflict-affected and high-risk areas* (OECD, 2013; OECD 2016). More specifically, under the Regulation, companies must have a 'chain of custody or supply chain traceability system' that evidences, for imported minerals and metals, their country of origin, date of extraction, supplier, and additional data specified for the substance in question in the OECD Guidance (European Commission 2017, art. 4). The EU Regulation was preceded by national laws passed by the Congolese and Rwandan governments, in the early 2010s, requiring companies in the tin, tantalum, tungsten or gold mining sectors to undertake supply chain due diligence also according to the OECD standard, making these jurisdictions amongst the first to enact national due diligence laws (Global Witness, 2014). As a related development, in 2015, the Chinese government launched draft *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains* setting out a five-step process whereby companies review their supply chains for specific risks and publish detailed information on actions taken (China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters, 2015).

Other examples of commodity, product or sector-specific laws include the EU Timber Regulation (EU 2010; European Commission 2021), requiring due diligence by EU traders who place timber products on the EU market; a similar Australian law (Australian Illegal Logging Prohibition Act 2012); and a proposed EU Batteries Regulation that would introduce mandatory requirements for all batteries placed on the EU market to ensure their production does not lead to human rights abuses or environmental damage (EU Commission, 2020). Thematic due diligence laws and other measures are also emerging, for example, on child labour and conflict minerals in Switzerland (Schweizerische Eidgnenossenschaft, 2021, Bueno and Kaufmann, 2021), and on forced labour in the US. The Uyghur Forced Labor Prevention Act (US Congress, 2022, S.65) foresees a Strategy to Prevent the

Importation of Goods Mined, Produced, or Manufactured with Forced Labor in the People's Republic of China (US Congress, 2022) that includes due diligence obligations related to assessing, preventing and mitigating forced labour risk in the production of goods imported into the United States as well as associated guidance (Littenberg, Elliot, Witschi, 2022).

'Horizontal' due diligence requirements appear more similar in form to the expression of due diligence in the GPs, lacking sector or product-based restrictions in their scope of application. Such duties feature, for instance, in France's 2014 Loi de Vigilance (République Française, 2017) and laws passed in Germany (Bundestag 2021) and Norway (Stortinget, 2021) in 2021. A draft corporate human rights and environmental due diligence directive in somewhat like terms is under consideration in the EU (European Commission, 2022, Methven O' Brien, Martin-Ortega, 2022). Under this proposal, large limited liability companies, including EU and third-country companies operating in the EU market and smaller companies in designated 'high-risk' sectors (European Commission, 2022, art. 2) would be required to identify, prevent, mitigate and account for their adverse human rights impacts, and also their environmental impacts, in their own operations but also their subsidiaries, contractors and subcontractors, to the extent of their "established business relationships". Under the draft EU Directive, harms resulting from failures of due diligence might attract administrative sanctions or exposure to civil liability in proceedings brought by damaged parties (Methven O'Brien, Martin-Ortega 2022). According to a 2020 survey, a majority (73.37 per cent) of large businesses stand to support such a horizontal EU approach, viewing the existing patchwork of indirect and thematic laws as lacking effectiveness, efficiency and coherence (Smit et al, 2020). Proposals for mandatory corporate human rights due diligence legislation are also emerging in the Americas. In Mexico, a draft General Law on Corporate Responsibility and Due Diligence was presented in 2020 following a recommendation by the country's National Human Rights Council the previous year (OHCHR, 2018). In Brazil, draft legislation has been published to succeed earlier formal guidelines (Serva, Faria, 2022; Thame, 2019; Presidência da República, 2018 - Decree No 9.571/2018; National Human Rights Council of Brazil, 2020 – Resolution No 5/2020)).

Notably, however, horizontal due diligence laws seen to date diverge from the formulation of the responsibility to respect human rights and due diligence under the GPs in one way or another, whether in terms of limiting the personal scope, depth or breadth of due diligence requirements. They also embody significant discrepancies *inter se*, for instance, regarding their personal and subject matter scope, the question of how far down the supply or value chain their requirements extend and regarding what roles 'safe harbour' provisions and civil liability should play within their legislative schemes (Methven O'Brien and Martin-Ortega 2022).

This may not be surprising, given that the UNGPs' loose definition of due diligence was not intended to serve as a template for legislation. Moreover, given John Ruggie's conscious election in the GPs to express a broad corporate responsibility to respect human rights and due diligence as a social expectation, that only crystallised in the dynamic context and relations of the individual corporation, rather than in a legal duty (Ruggie and Sherman 2017; Bonnitcha and McCorquodale 2017a; Bonnitcha and McCorquodale 2017b), the enactment of due diligence laws evidently entails an interesting qualitative transformation (Backer 2017). The character, implications, and associated dilemmas of this transformation into law, are addressed further in Section 4 below. As a prerequisite to that discussion, the following section explores further three key aspects of the due diligence process.

3. Due diligence unpacked: impact assessment, integrating findings and reporting

3.1 Human rights impact assessment

Human rights impact assessment (HRIA) is the first step in the GPs' due diligence cycle. An adverse human rights impact may be said to occur when an action removes or reduces the ability of an individual to enjoy his or her human rights (International Business Leaders' Forum and International Finance Corporation, 2010). An HRIA, then, provides an overview of actual or potential human rights impacts posed by a company's business activities. Companies can be connected to such impacts in a variety of ways, directly or indirectly. According to the GPs, companies may be responsible for: a) *causing* a human rights impact through intended or unintended actions (for example, deliberate discrimination in hiring practices, or accidental pollution of a local waterway); b) *contributing to* a human rights impact, by being one of a number of entities whose conduct together curtails human rights (for instance, where a lead purchaser changes its order specifications at short notice so that its suppliers breach labour standards in fulfilling it); or c) impacts *directly linked* to a business' operations, products or services, through its business relationships, including those with suppliers, joint-venture partners, direct customers, franchisees and licensees (UNHRC 2011, GP13).

The GPs indicate that companies should, in the course of performing an HRIA, draw on internal or independent human rights expertise; undertake meaningful consultation with potentially affected rights-holders and other relevant stakeholders; consider human rights impacts on individuals from groups that may be at heightened risk of vulnerability or marginalisation, and gender issues; and repeat risk and impact identification at regular intervals, for instance, before entering into a new activity, prior to significant decisions about changes in activities, and periodically throughout a project life-cycle (UNHRC 2011, GP18).

Although the GPs' guidance on HRIA remains high-level, a multiplicity of guidance, tools and methods have been advanced by other actors further articulating the steps of screening, planning and scoping, data collection and baseline development, analysing and disaggregating impacts, impact mitigation and management, monitoring, reporting and evaluation (Abrahams, Wyss, 2010; World Bank, 2013; Gotzmann, 2019; UNHRC 2019; DIHR, 2020). Securing effective participation of rights-holders in the HRIA process and follow-up is often given particular emphasis in this context (Columbia Center on Sustainable Investment et al, 2017; Buhmann 2020).

Many sector-specific HRIA resources have also been developed (International Council on Mining & Metals (ICMM), 2012; IPIECA and DIHR, 2013; NomoGaia, n.d., DIHR 2020) as well as thematic HRIA guidance focusing on the rights of children (UNICEF 2014, Save the Children, 2016) and indigenous peoples (IBIS Denmark, 2013, DIHR 2019), for instance. In some cases, companies have devised HRIA methodologies tailored to their own operating environments (Wyss and Bensal 2019). To date, however, few HRIAs have been published (Goldcorp, 2010, Nestlé and the Danish Institute for Human Rights, 2013) making their prevalence hard to ascertain; this may change as new due diligence reporting requirements take effect, see further section 3.3 below). Company HRIAs that have been disclosed have, on the other hand, frequently met with criticism *inter alia* for being too restrictive in scope or in terms of the adequacy of the process adopted (Salcito, 2019; DeWinter-Schmitt and Salcito 2019). Thus, civil society organisations and national human rights institutions (NHRIs) have also undertaken HRIAs (Hamm et al., 2013) that go beyond corporate practice, for instance, in terms of involving rights-holders, an as regards transparency and disclosure (International Federation for Human Rights, 2014; DIHR, 2016; International Centre for Human Rights and Democratic Development, n.d; Tamir and Zoen 2017), with the aims to highlight shortcomings of

specific business HRIAs and more generally to demonstrate the availability of alternative methodologies.

The parameters of HRIA under the GPs hence remain somewhat emergent and contested (Gotzmann 2019). One question is whether HRIA should be integrated into environmental or social impact assessment processes, or undertaken as a separate, "stand-alone" exercise (IPIECA and DIHR 2013, DIHR 2016). As climate change concerns have grown (OHCHR nd), it has been urged that this issue too should be included in the scope of due diligence and hence also impact assessment (Bright and Buhmann 2021) potentially adding further to the analytical complexity of the HRIA exercise. How to achieve neutrality in the conduct of HRIA, given power asymmetries as well as often conflicting interests between companies, communities and public authorities is another enduring challenge (Schilling-Vacaflor, 2012) that has prompted support for 'hybrid' company-community approaches (Tamir and Zoen 2017). Additional questions relate to the potential of "strategic" or sector-wide HRIA, mirroring environmental practice (Wachenfeld, Wrzoncki, and de Angulo 2019); the role in HRIA of human rights indicators (Engle Merry, 2011; Veiberg, Factor and Tedaldi, 2019; Maher 2020); while some have queried the sense of risk-based approaches (Power, 2004; Taylor et al., 2009), and the notion of "impact" assessment itself (Boele and Crispin, 2012). Such matters are likely to grow further in prominence with the inclusion of references to HRIA, and its linkage to liability for corporate harms, in new due diligence laws (Schilling-Vacaflor 2020; Methven O'Brien and Martin-Ortega 2022).

3.2. Businesses responses to human rights risks and leverage

Once they have identified and assessed their human rights impacts, the GPs call for businesses to respond by preventing future abuses and addressing any that have been uncovered. Clearly, the potential range of actions required of companies in this regard is broad. Internally, a company might need to amend recruitment processes or contractual terms for employees; change its purchasing, subcontracting, sales or marketing practices; improve worker accommodation; introduce due diligence for land acquisitions; or, in the tech sector, address content moderation, or AI development or applications, for example. In addition, implementing such changes will usually require the allocation of new resources by the business in question and potentially other actors such as suppliers, for instance, for training and awareness-raising, monitoring and management of human rights impacts on a continuous basis (Gap Inc., n.d.; Nestlé Global, n.d.). Businesses are expected to address all their actual or potential impacts, though the GPs foresee they may need to prioritise amongst them: it is recommended that companies first seek to prevent and mitigate their severest impacts, or those where a delay in response would make consequences irremediable (UNHRC 2011, GP24).

Under the GPs, where impacts are *caused* by elements within the business itself, it should cease or prevent the impact, and provide for, or collaborate in, remediation. If a company has *contributed to* or is *directly linked* to impacts, it should cease its own contribution, exercise 'leverage' over other entities involved, and provide, or cooperate in, remediation. According to the GPs, 'leverage' is a company's ability to effect change in the wrongful practices of another entity, be that a business, a public or other social actor, with which it has a relationship. Modalities of leverage are thus numerous, ranging from capacity building, formal representations or informal lobbying, to amending contract terms for suppliers (Shift, 2013a). If a company has leverage over a business partner, it is expected to exercise it. If, on the other hand, the company lacks leverage, it is expected to seek ways to increase it, for example, by offering incentives, or applying sanctions to the relevant entity, or collaborating with others to influence its behaviour. Where risks or impacts derive from a company's business relationships, rather than from its own activities, the GPs further require it to consider, in determining

appropriate remedial measures, *inter alia* how crucial the relationship is; the severity of the actual or possible abuse; and whether terminating the business relationship would itself have adverse human rights consequences (UNHRC 2011, GP19; cf. Wood, 2011).

If the GPs' notion of leverage appears straightforward, views nevertheless vary on its practical application. Banks, for example, have tended to emphasise constraints on their leverage over those they lend to (Thun Group of Banks, 2013). Outsiders on the other hand argue that they wield substantial influence over clients (BankTrack and The Berne Declaration, 2013; Myerstein, 2013; Backer 2017) and can 'piggy-back' human rights onto other due diligence obligations to which they are already subject in many jurisdictions, for instance, concerning anti-corruption (Finance Against Trafficking, 2014; UNEP Finance Initiative, 2014; Van Dijk, De Haas and Zandvliet, 2018).

Likewise, investors may be regarded as well placed to use leverage to force companies to implement human rights due diligence as a preventative tool (UNHRC, 2021; Aizawa et al, 2018, McCorquodale, Nolan, 2021). But even relatively simple issues such as whether minority shareholders are "directly linked" to investee's adverse human rights impacts for the purposes of the GPs, and therefore expected to exercise leverage, initially attracted disagreement. Two complaints ("specific instances") on this point were lodged under the OECD Guidelines for MNEs (OECD, 2011) in relation to investments by Norway's Government Pension Fund Global and the Dutch Pension Fund in a proposed iron mining development, yielding the conclusion that a minority shareholding does entail investor responsibility to identify, and hence prevent, negative impacts, this finding being later upheld in guidance (OECD, 2014, Ruggie and Nelson, 2015).

Generally, though, the GPs' application to complex and dynamic financial products and relationships seems likely to pose continuing uncertainties and dilemmas, while the impact of investor 'engagement' on human rights also remains unclear (Kolstad 2016). In 2020, investors representing over USD 4.5 trillion in assets under management wrote to the worst-performing 95 companies on the CHRB calling for urgent improvements. Of those companies, only 16 improved their ranking in the next year (McCorquodale 2020) arguably providing to support to those who emphasise divestment over investor 'engagement', and more general critiques of governance gaps presented by the 'financialisation' of sustainability goals (Hiss 2013, Park 2018a). Similar doubts appear warranted regarding the actual human rights impacts of social 'impact' investments (Park 2018b).

Another issue concerns companies' ability to influence the use of their products or services by customers (OECD Watch, 2014). This is relevant, for instance, with regard to policing and military supplies, surveillance equipment and other dual use technologies (Cohn et al., 2012; Wagner, 2012; Frediani, 2014; Wagner and Guarnieri, 2014). Though the export of such products may be permissible under national standards, the GPs require companies to look beyond formal legality to ascertain whether their products or services facilitate human rights abuses (Marotta, 2013). This will be easier to ascertain in some situations more than others (Amnesty International 2019; Schliemann and Bryk 2019). Likewise preventing the use of social media platforms as a medium for hate speech and the organisation of criminal acts is a pressing issue (Council of Europe, 2014; Essers, 2014; Jørgensen, Methven O'Brien and Hogan 2020). Defining the responsibility of internet service providers and achieving transparency, control and accountability over how they balance freedom of expression and other rights and prerogatives is a question not yet fully answered in principle (Zuboff 2019), law, or practice (Klonick 2019, Tommasi 2021).

Clothing production, long a site of egregious worker abuses, has provided a setting demonstrating both new leverage-driven approaches to addressing and redressing harm, and some of their limitations. Company codes of conduct including 'ethical' production commitments in textiles and apparel ranked amongst the earliest business and human rights initiatives, significantly pre-dating the GPs (Compa and Hinchcliffe Darricarrère, 1995; Methven O'Brien 2009; Beckers 2015). Though their uptake by many consumer-facing companies was relatively rapid, strong critiques emerged equally quickly. On one hand, third-party social auditors were observed to rely on a 'tickbox' approach to monitoring workplace standards for purchasers (O'Rourke 2002; Barrientos and Smith 2007, LeBaron and Lister 2015). On the other, lack of coordination amongst purchasers was seen to lead to 'audit-fatigue' for inspected businesses (Prepscius, 2012). Subsequent developments aimed to address such problems, for example, through virtual data-sharing platforms (Sedex, 2014) and capacity strengthening measures for suppliers and stakeholders (Shift, 2013b), as well as participatory and gender-sensitive approaches to monitoring code implementation (Barrientos 2005).

Notwithstanding such efforts, and global fanfare around the GPs, in 2013, over 1000 mainly female garment workers were killed and more than 2500 injured in the Savar building collapse. Various factors contributed to the "Rana Plaza" disaster, amongst them breaches of construction, health and safety regulations and labour standards by local suppliers based in the factory, under contract to well-known European and American brands, as well as defective inspection arrangements and social audits on the part of purchasers. Albeit these problems, as well as a broader context of exploitation and marginalisation of female garment workers in Bangladesh, were widely documented (Alam and Blanch, 2011) and had led to other workplace disasters before (Absar, 2002; Foxvog *et al*., 2013), the Rana Plaza catastrophe, because of its horrendous scale, attracted public outrage, and triggered a significant multi-actor mobilisation.

Brands were convened by the ILO and global unions to coordinate an *Arrangement* for the payment of compensation to workers (ILO, 2013). In May 2013, within a few weeks of the tragedy, brands and retailers entered into a 5-year binding agreement with Bangladeshi and global trade unions. The *Accord on Fire and Building Safety in Bangladesh* committed more than 150 companies to collaborative efforts to ensure safety in almost half of the country's garment factories, through measures such as independent inspections by trained fire and building safety experts; public reporting; mandatory repairs and renovations to be financed by brands; a central role for workers and unions in both oversight and implementation; supplier contracts with sufficient financing; and adequate pricing and worker training (*Accord on Fire and Building Safety in Bangladesh*, 2013; Foxvog et al., 2013; Kenner and Peake, 2017; Rahim, 2020). Other international organisations sought to support these efforts (OECD, 2014a). Still, various companies refused to sign the *Accord*, opting instead for non-binding commitments to improved factory safety. Moreover, the *Rana Plaza Donor's Trust Fund*, set up under the *Accord* had in 2014 received only half the US$40million needed to compensate workers or their families, while only half the companies associated with factories in the collapsed building had contributed to the fund at all (Clean Clothes Campaign, n.d.).

What caused the Rana Plaza disaster, and what steps can be taken to avoid similar events in future? These are pressing questions for business and human rights, but their answers are complex. Clearly the GPs were not, and cannot ever be, a silver bullet solution, in this regard. Some research suggests that codes of conduct and multi-stakeholder initiatives built around them may have protective effects under certain circumstances (Egels-Zandén and Lindholm 2015; Baumann-Pauly et al 2015). To the extent the GPs encourage and provide a benchmark standard for scrutinising such efforts, this appears positive. Yet overall, a global market environment that is intensely competitive, especially for

suppliers, presents systemic if not structural challenges for upholding labour standards (Marslev, 2019) while local social, political and economic factors that global initiatives may struggle to influence also undermine respect for workers' human rights (Siddiqui and Uddin, 2016). Further, while supply relationships in some sectors are relatively static and concentrated (Guglielmo, 2013) contractual networks are as dynamic as they are vast for many companies. Commodities can present their own distinct, if not unsurmountable, challenges, for instance, in terms of traceability (United Nations Global Compact and BSR, 2014). Still, if concerted multi-actor, multi-level responses as seen for Rana Plaza embody some positive potentials in governance terms, the fact remains that it is 'too little, too late' for the families of those who were injured or perished. Inevitably, as long as such man-made disasters continue, the capacity for ethical action by large, resource-rich corporations and their investors will be doubted, while calls for 'hard' international human rights law interventions to hold buyers responsible for the delinquencies of their supply chain will be heard, whether apt to address root causes of abuses, or not (LeBaron and Lister 2021, cf. Mantouvalou, 2018; Backer 2017).

3.3. Corporate human rights reporting

In parallel to ethical investment efforts undertaken for their own sake recent years have also witnessed widening belief in the 'materiality' of social and sustainability issues to fiduciary duties and investor returns (Hopwood et al., 2010; Unerman and Zappettini, 2014; McCorquodale, Nolan, 2021), as foreseen by the idea of the 'triple bottom line' (Elkington 1994). Corporate 'non-financial' reporting, as a device through which companies analyse, document and deliver a public account of their sustainability performance has in tandem become increasingly prominent, to the extent some have pointed to a "disclosure revolution" (Cooper and Owen, 2007; Islam and McPhail, 2011; Hohnen, 2012).

Connecting with these broader trends, the final step called foreseen by the GPs' due diligence process is for businesses to "communicate" on how they address, not just sustainability issues generally, but human rights impacts specifically (UNHRC, 2011, GPs 20-21). This may be done through formal and informal public reporting, in-person meetings, online dialogues, or consultations with rights-holders. Information provided by companies should be: (i) published in a format, and with a frequency, matching the scope and severity of impacts; (ii) accessible to intended audiences; (ii) sufficient to permit evaluation of the adequacy of company responses; (iii) designed not to pose risks to rights-holders or others such as human rights defenders, journalists, local public officials or company personnel, or to breach legitimate commercial confidentiality requirements. Businesses whose operations or operating contexts pose risks of severe human rights impacts are expected to report formally (GP21).

Since 2011, many regulators have advanced new requirements on companies to report on their human rights impacts. For example, in France, 'soft' (comply or explain) obligations mandating corporate social reporting by publicly-listed companies were first introduced in 2001. Matters to be addressed by such reports included employee contracts, working hours, pay, industrial relations, health and safety, disability policies, community relations and environmental reporting. In 2012, the reporting duty was strengthened and extended to human rights, with explicit reference made to the GPs (République Française, 2012; French Ministry of Foreign Affairs and International Department, n.d.). Also in 2012, a 'soft' non-financial reporting duty for the largest 1100 companies and Danish state-owned enterprises was extended to human rights and climate change (Danish Government, 2011, 2012). In 2013, Norway enacted rules requiring companies to report on steps to integrate human rights into their strategies (UNEP, KPMG, 2013) and the UK introduced a requirement on all companies to prepare a "Strategic Report" amongst others disclosing their "position, performance

and future direction" relating to human rights (United Kingdom, 2013). In the same period, the US enacted measures obliging companies to publish information on policies and processes concerning risks to human rights, in connection with new investments in Myanmar (U.S. Treasury Department Office for Assets Control (2013); U.S. Department of State, 2013).

At EU level, the 2014 Non-Financial Reporting Directive adopted a "report or explain" approach not dissimilar to the French and Danish models described above (EU, 2014; European Coalition for Corporate Justice, 2014). Under the 2014 Directive, "public interest enterprises" with more than 500 employees needed to report annually on their principal risks on human rights, environment and social impacts linked to their operations, relationships, products and services, as well as bribery and diversity. In turn this entailed providing information on relevant policies, due diligence procedures for identifying, preventing and mitigating risks, and significant incidents occurring during the reporting period. Voluntary frameworks on corporate human rights reporting were newly established (UN Guiding Principles Reporting Framework) or, where they already existed, aligned to the GPs (Global Reporting Initiative (GRI) (GRI, 2013; GRI, 2022) and extended, in tandem with the above legislative developments, in order to support companies in meeting their requirements (Harper Ho and Park 2019).

Whereas the EU Directive was welcomed as a step towards greater corporate accountability (European Coalition for Corporate Justice, 2014), it was also criticised *inter alia* for its narrow personal scope (it covered only 6,000 of 42,000 large companies incorporated in the EU); its potentially wide-ranging exemptions in relation to information that should be disclosed; weak provisions on supply chain reporting which was required only "when relevant and appropriate"; and for failure to provide for monitoring or mechanisms to sanction company defaults on fulfilling reporting duties: auditors needed only to indicate whether non-financial information was provided, or not (European Coalition for Corporate Justice, 2014).

Given such limitations, along with more general critiques of business efforts to adhere to human rights as mentioned above, and political concerns to accelerate and advance 'green' investment activity, a new EU Corporate Sustainability Reporting Directive was proposed in 2021. Its intention is to provide 'the foundation of a consistent flow of sustainability information through the financial value chain', from companies undertaking business activities to 'analysts in banks, insurance companies, asset management companies or credit rating agencies, for end investors and for non-governmental organisations and other stakeholders that wish to better hold companies to account for their social and environmental impacts'. Its personal scope is broader, applying to all large companies (approximately 49,000). Instead of the non-binding guidance provided for under the 2014 Directive, mandatory EU sustainability reporting standards will follow via delegated acts (European Commission 2021, Baumüller & Grbenic, 2021, Methven O'Brien, 2021).

Such strengthening measures may serve to address shortcomings of the EU's 2014 reporting legislation. Still, scholars consistently question the value of corporate sustainability reporting as an accountability mechanism (Narine, 2015; McCorquodale and Nolan, 2021; Favotto and Kollman 2022). What if, for instance, the businesses that most need to report on human rights are reluctant to do so, given commercial sensitivities, potential legal liability, the likelihood of reputational damage or internal capacity constraints? (Marquis, Toffel and Zhou 2011; Preuss and Brown, 2012, Lim 2017). One survey of corporate reports undertaken for the GRI and the UNGC identified some innovative approaches by companies to human rights reporting but concluded that, overall, it was weak in terms of balance, completeness, and inclusion of the most relevant issues (Umlas, 2009).

Other studies point to the instrumentalization of reporting to serve corporate ends (Diouf and Boiral 2017) in conflict with sustainability goals (Cho et al 2015). Activists and scholars likewise criticise published reports as exercises in "green-" or "blue-washing", based on companies' selective approach to the information that is communicated (Adams, 2004; Horiuchi and Schuchard, 2009; Gray, 2010; Boesso *et al*., 2013).

If the development of universal human rights indicators seems crucial for comparability across company reports, their potential for irrelevance, linkage to perverse outcomes and selectivity is emphasised by others (Engel Merry, de Felice, 2015). At any rate, there is no generally accepted definition of what the 'S' in the ESG should incorporate or how to measure it, so the information generated may be of limited utility in informing due diligence measures (O'Connor and Labowitz, 2017). Geographically, there are also gaps. Although China (Wu and Habek, 2021; Notice for Better Preparing 2008 Annual Reports of Listed Companies, art. 11; CERDS, 2022) and India (Government of India, 2018; SEBI, 2021) have taken steps to require companies to disclose CSR-related information, most such measures do not directly refer to GPs-based due diligence or human rights, exacerbating problems of comparability, while reporting and disclosure requirements are completely lacking in many other jurisdictions.

In addition, civil society actors and researchers may not have the resources or interest to sustain the role, sometimes foreseen for them, of monitoring the content and quality of non-financial reports (The Landmark Project, 2012) even if have some have risen to the task (Martin-Ortega 2017; Stevenson and Cole 2018; Alliance for Corporate Transparency, 2021; Schaper and Pollach 2021). Still, the volume of material requiring review and assessment is astronomical: companies participating in the UN Global Compact (UNGC) doubled from 2016 to 2022, to 16,169 across 161 countries, issuing 92,867 public reports (UNGC2022), for example. Besides, horizontal reporting requirements typically fall short of requiring supply chain transparency, which is viewed as essential to addressing abuses in some contexts (Smit et al, 2020), as exemplified by the Bangladesh Accord which requires signatories to disclose details of their supplier factories (Accord on Fire and Building Safety in Bangladesh, n.d.).

The GPs maintain that "independent verification of human rights reporting can strengthen its content and credibility" (UNHRC, GP21) and 'professional' assurance of corporate sustainability reports has been advanced as one solution to such dilemma (SHIFT, n.d.). Proposed new laws further foresee a role for auditors in this regard (European Commission, 2021, art.1(10), art. 3(12)). But the quality and reliability of assurance has also been consistently questioned (Fonseca, 2010; O'Dwyer et al., 2011; Kaspersen and Johansen, 2014) with many human rights advocates insisting, for example, that only worker-based approaches to monitoring can be trusted (Electronics Watch, 2014; Workers' Rights Consortium, 2016). Ultimately, in this area, it seems likely that a more potent mix of mandatory disclosure rules, participatory monitoring, and continuing, enhanced investor and civil society scrutiny of company information will be needed if reporting's potential as a lever to improve corporate sustainability and business respect for human rights is to be realised (Methven O'Brien and Martin Ortega 2020). Moreover, despite the overlaps, gaps and complexity entailed, there seems no way to avoid the co-existence of a multitude of public and private governance approaches in the domain of corporate human rights disclosure, their oversight and evaluation (Harper Ho and Park 2019).

4. Evaluating the corporate responsibility to respect human rights and due diligence: forward momentum but unclear destination?

Uptake of due diligence, and realisation of the corporate responsibility to respect human rights amongst businesses remains fitful. Still in 2020 almost half (46.2%) of the world's biggest companies did not demonstrate any measures to identify or mitigate human rights issues in their supply chains, for example (Corporate Human Rights Benchmark, World Benchmarking Alliance 2020). Amongst 1,000 of the world's most influential companies examined in 2022, over three quarters (78 per cent) scored zero per cent on human rights due diligence indicators, with only 7 per cent of those assessed meeting all requirements (World Benchmarking Alliance, 2022). Only 5% could provide a clear example of specific conclusions and actions relating to a salient human rights issue, as a result of their assessment process, in the previous three years. According to another 2022 analysis, just 15% of companies include workers in due diligence processes and only 1 in 5 companies provide evidence of responsible purchasing practices (Human Rights Resource Center, Know the Chain, 2022).

New legal norms based on the GPs, including its elements of due diligence and human rights reporting, that might extend and accelerate changes in corporate practice therefore seem needed. On the other hand, evidence on the effectiveness of existing measures in preventing or remediating business-related abuses points in various directions (European Commission et al, 2020; McCorquodale, Nolan 2022; Methven O'Brien, 2022). Analyses undertaken regarding France's 2014 Loi de Vigilance, for example (EDH and BL Evolution, 2018; Shift 2019, Sherpa et al 2019; EDH 2020; EY 2019; Development International e.V 2020; Schilling Vacaflor 2020; Duthilleul, De Jouvenel, 2020; Sherpa, CCFD Terre Solidaire, 2021; Brabant, Savourey, 2021) have found, *inter alia*, that companies' vigilance plans are not transparent in terms of "which risks have been identified by the businesses […] and even less how companies respond to them" (Sherpa, 2019, p.10); and that a substantial minority of companies (44 of 263 French companies subject to the law) did not publish a plan at all. Though 6 companies have been summoned to court or have received formal notices from organisations and unions (Sherpa, CCFD Terre Solidaire 2021), none has yet yielded a final outcome favouring victims, while alert and complaint mechanisms have been spotlighted as inaccessible for users and offering uncertain protection for victims (Schilling Vacaflor, 2020). On the other hand, an assessment of human rights reporting by the 20 largest French companies showed that 55% of companies seemed slightly to improve their human rights disclosure under the influence of new legal requirements (SHIFT, 2019).

Studies similarly present a mixed picture of the impacts of thematic or value-chain specific due diligence laws, as illustrated by the case of conflict minerals. An analysis undertaken in 2013 found only 4 per cent of 330 companies surveyed were voluntarily preparing a public report on how they identified and addressed the risk of funding conflict or abuses in their supply chains (European Commission, 2014b). Against such a benchmark, new regulations appeared likely to prompt positive change in companies' sourcing practices. Yet amongst later assessments of the impacts of new EU conflict mineral rules situation at mines in conflict-affected areas, a number concerningly detected increases in the exposure to conflict and poverty amongst communities the law was aimed to support (Enough Project, 2015; cf. Wolfe, 2015; Diemel, Hilhorst 2018; Wakenge et al, 2021; Stoop et al, 2018).

If the efficacy of due diligence-based import bans (Pietropaoli, Johnstone, Balch, 2021) and related measures (Green, 2021) in combating forced labour and human trafficking has also been queried, 'unilateral' regulatory measures by states in the global North have attracted more general and

fundamental critiques. Whereas their consistency with the right to self-determination (Okowa, 2020) as well as their democratic legitimacy, have been challenged (Knapp, 2022; Ferrarini, 2022), concerns that such laws merely distract from measures that would more directly empower marginalised rights-holders, such as increasing wages, have also been voiced (Lebaron, 2021; Nolan 2022).

A further risk of due diligence laws is that they may result in the imposition on companies of generic due diligence requirements that miss the GPs' purpose of inspiring externally structured but self-authored and context-sensitive transformations in corporate ideals and behaviour. If the challenge is to "create the structural premises for decentralized integration of society by supporting integrative mechanisms within autonomous social subsystems" (Teubner, 1983, p, 255), then balancing soft and hard laws is essential (Ruggie 2020; Choudhury 2018). On this view, what is needed is establishing linking mechanisms between formal legal frameworks and soft law and governance mechanisms deployed by private, social as well as state economic actors (Methven O'Brien and Martin-Ortega 2020, Backer 2020), rather than totally supplanting the former by the latter (Ruggie, 2020). It would hence also seem premature, in an international business and human rights treaty, to nominate specific legislative models for adoption, when strong indications of success for any one regulatory design are currently lacking, and a more open-ended regulatory design, as might be embodied in a framework-style instrument, might on this basis appear preferable (Methven O'Brien 2020, 2022).

Proposals for new due diligence laws nevertheless continue to emerge apace (Parliament of Canada, 2020 proposal of Modern Slavery Act; New Zealand Ministry of Business, Innovation and Employment 2022, Consultation on Modern Slavery and Worker Exploitation). Their risks and limitations, as discussed above, do not entail that such initiatives should be abandoned. On the contrary, it seems plausible that statutory due diligence duties, if backed by adequate support for labour rights and participation, remedies for victims, penalties and administrative enforcement may stimulate positive changes to business practices (Methven O' Brien, Martin-Ortega, 2020). Given the continuing scale and urgency of business-related human rights abuses, what is however in addition needed is to intensify inter-disciplinary scientific as well as social and political scrutiny of the impacts, design and coordination of due diligence laws, supporting and off-set reforms to labour, trade and investment regimes, and development assistance, to provide a better-informed basis for regulators embarking on and charged to oversee and enforce legislative initiatives.

5. Conclusion

The GPs assert the corporate responsibility to respect human rights as a free-standing, universally-applicable minimum standard of business conduct, driven by social expectations, but implied by international law. Though it may arguably be criticised for being a legal "fudge", its hybrid status can perhaps be understood, and forgiven, as a necessary compromise: it recognises, simultaneously, the enduring role of states as *de jure* duty bearers under human rights standards, but also the ethically unacceptable limitations of the latter, given the still state-centric structure of international law, and the harmful externalities affecting people and planet of corporate exploitation of globalisation's governance "gaps".

As disclosed in this chapter, the corporate responsibility to respect human rights embodies a certain culmination of developments in the sphere of corporate accountability for human rights over recent decades, while it has also served as a catalyst for its further evolution. Based on the UN Framework's second 'Pillar', diverse innovations in regulatory praxis have unfolded, across government and the corporate sector, civil society, labour unions and others, in the areas of human rights due diligence,

human rights impact assessment, measures to address corporate impacts on human rights as well as corporate human rights reporting.

Yet overall, change on the ground has remained slow and partial and results achieved to date cannot be deemed satisfactory: severe business-related human rights abuses remain endemic in many industry sectors and countries, while aggregate impacts threaten communities, climate, biodiversity and, for many, existence itself. If it is too soon to draw firm conclusions regarding the "true" impact of the responsibility to respect and due diligence, what can be counted as certain are the pressing needs for constant critique, careful scrutiny of claims of "progress", and a watchful eye on whether current approaches to regulation of the human rights impacts of business are or can be fit for purpose, within current legal, developmental and social parameters.

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