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Assessing Human Rights Impacts as a Component of Due Diligence

The UN Protect, Respect and Remedy Framework for Business and Human Rights, and the Guiding Principles, articulate assessment of human rights impacts as an integral component of human rights due diligence. As extractive industry companies are responding to the Framework, many questions are being raised relating to the theoretical and practical challenges associated with such assessment.

The Protect, Respect and Remedy Framework put forward by the UN Special Representative to the Secretary-General on Business and Human Rights, Professor John Ruggie, articulates three distinct yet inter-related pillars: the state duty to protect, the corporate responsibility to respect, and access to remedy. The corporate responsibility to respect is stated as the obligation of companies to: avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved. The process of due diligence, to identify, prevent, mitigate and account for addressing adverse human rights impacts, is stipulated as a component of exercising the corporate responsibility to respect.

In this paper, I will touch on some of the salient issues that have emerged from our work with extractive industry companies seeking to integrate human rights into their systems and processes, including steps to understand, define and exercise human rights due diligence. In particular, I will focus on some of the theoretical and practical challenges relating to the idea, process and outcome of assessing human rights impacts as a component of due diligence. The conversation will be framed by six central questions relating to assessing human rights impacts: Why? What? How? Who? Where? When? For example, why should we assess human rights impacts, and what is necessary for such assessment to make a meaningful contribution to better human rights outcomes for rights-holders, rather than a mere tick-box exercise? How might we most effectively assess human rights impacts, for instance, through integrating human rights into existing environmental and social impact assessment processes, or stand-alone human rights impact assessment? Who needs to be involved for assessment of human rights to be effective, to identify relevant human rights issues, design and implement meaningful mitigation measures? What are the roles of external human rights 'experts', company personnel and rights-holders in this process? Where are the human rights impacts that we are seeking to assess and address, and what does this mean for the process, for

instance, are these impacts in the supply chain, the project-affected community, a host-country environment where human rights are routinely undermined? And if human rights due diligence is intended to be an ongoing process, what does this mean for when in the project-cycle assessment of human rights should occur?

Exploration of some of the theoretical and practical challenges associated with these questions will be undertaken within broader consideration of the concept of due diligence as a way to exercise corporate responsibility to respect, that is, the relationship between due diligence and company respect for human rights. From discussion of these questions, can we deduce insights into what are some of the key elements of how people and systems may need to adapt and change to facilitate meaningful assessment, mitigation and remedy of human rights impacts?