

May 23, 2023

Human Rights Due Diligence: Challenges of Method, Power and Competition

James Harrison, University of Warwick

Mark Wielga, NomoGaia



Plan for Session

1. Present context, methods, key findings and recommendations of study (20-25 minutes - James)
2. Overview of challenges and opportunities (10 minutes - Mark)
3. Q&A about session (20 minutes)

Will send link to policy brief, video and paper after session.

Context: Why is Human Rights Due Diligence Important?



1. THE KNOWLEDGE PROBLEM

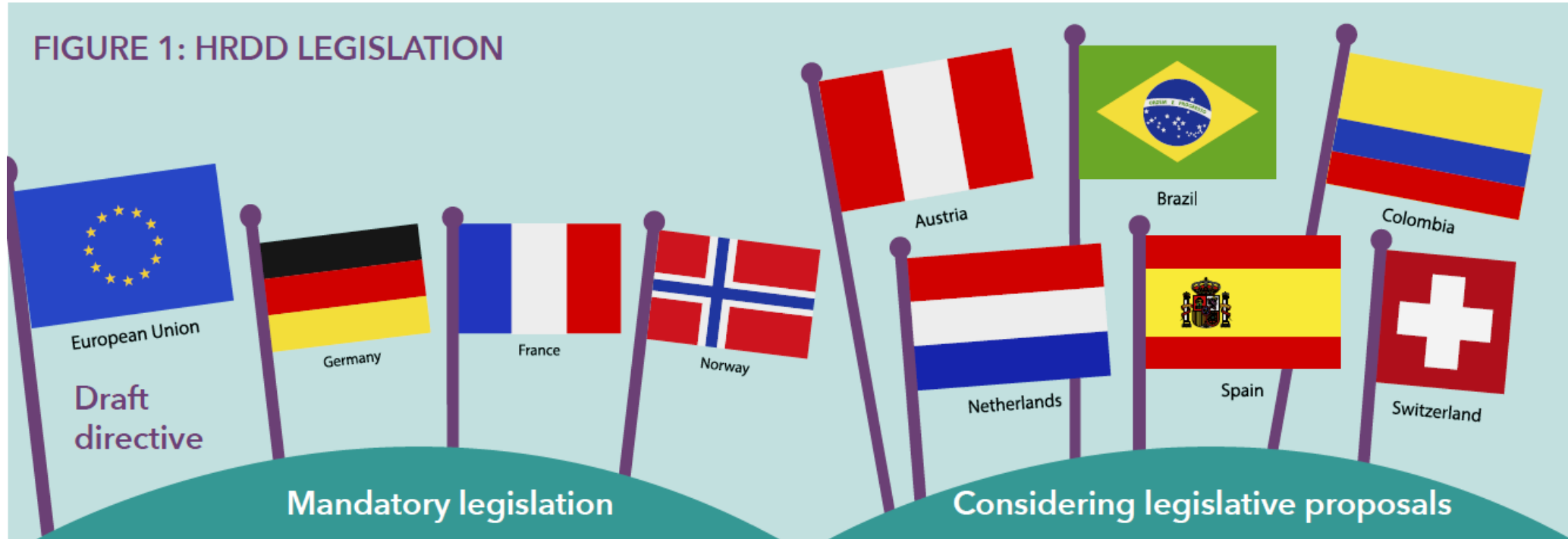
The difficulty in finding out where human rights abuses will happen/are happening and who is responsible for them in a world of complex production processes and value chains.



2. THE ACTION PROBLEM

How to effectively address human rights abuses, provide remedies to affected rightsholders and prevent future abuses occurring.

Mandatory HRDD Legislation



Reason for Research and its Methods

- Lack of detailed research into the practice of HRDD.
- Public reporting on HRDD by companies is very limited.
- Study is based on interviews with twenty-two of the leading ‘practitioners’ of HRDD.
- Individuals were asked about their own practice of HRDD and how they saw practice in the field more generally.

The Findings - Three Key Challenges



1 **methodological uncertainty** about key aspects of the process;

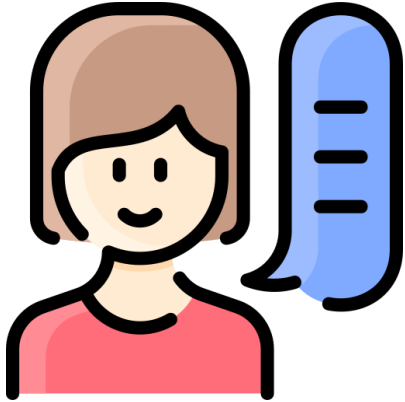


2 **power dynamics between critical actors** who are charged with undertaking vital aspects of HRDD;



3 **the nature of the competition** which takes place between HRDD practitioners.

Methodological Uncertainty



“Where do you start? ... We visit a thousand destinations. We have staff from 120 different countries. We have port operations that we either partially own or operate in hundreds of destinations. We're feeding ships that are the size of small cities. How do you assess food and beverage?... It's really a complex industry. So it's enormously challenging.”

“There were some procedural challenges - companies that didn't really register their actions... They didn't have any sort of evidence that tell you that they actually did something. ... Very, very commonly, we found that for the company the impact had been managed. ...They said OK we did all the management measures we're closing this. ... But they didn't ask the rights holders if they were satisfied.”



Power Dynamics

Companies and Consultants

"[The company said] we will look at workers' rights, but not at land."

"Senior management is not really comfortable with this topic."



Corporate HQ and Local Sites

"We tend to be forced onto sites to do these assessments because corporate head office [send us]...We are never invited by sites. So in terms of how seriously people take it, it comes down to the relationship that they have with that corporate head office."



Companies and Suppliers

"Many companies just don't listen to their suppliers or they don't engage with them. So they can tell them you have to do this and that. But then have they paid them enough actually for them to offer good conditions? So sometimes that's part of the problem that leads to the human rights issues happening."



Competition



“Lots of companies are essentially, I think, doing the human rights due diligence by plugging in the country and sector to RepRisk and seeing what comes out.”

“There are so many companies and there aren’t that many practitioners, it’s a small community of people who are really dedicated and committed to this work.”



METHODOLOGICAL CHANGES

POWER DYNAMICS

COMMERCIAL COMPETITION



KNOWLEDGE PROBLEM

Complexity of assessing human rights impacts and uncertainty about appropriate methods undermines reliability of knowledge obtained.

Limits placed on the scope of assessment and refusals to co-operate during the assessment process threaten capacity to discover human rights abuses.

Dangers of race to the bottom in terms of assessment methods risks widespread failure to understand risks and impacts 'on the ground'.



ACTION PROBLEM

Corporate management systems misaligned with HRDD processes. Vital procedural safeguards not in place to ensure actions properly recorded and acted upon.

Hostility to findings of assessment, resistance to implementation of findings and efforts to shift responsibility onto other actors undermines efforts to address impacts.

Reluctance by consultants to push for action on most difficult and resource-intensive issues risks those issues being marginalised. If widespread this will also cause a race to bottom.

Recommendations for Strengthening HRDD laws and their implementation



1

Detailed Sector-Specific Guidance



2

Meaningful Disclosure of Companies' HRDD



3

Sufficient Staffing of Supervisory Agencies



4

Effective Complaints' Mechanisms



5

Adequate Powers of Supervisory Authorities



6

Significant Criminal and Civil Liability



For more information, please contact:



James Harrison

Professor

University of Warwick
J.Harrison.3@warwick.ac.uk



Mark Wielga

Director

Nomogaia
wielga@nomogaia.org

Thank you!