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6-2020

Evidence Brief: Impact Assessment and Responsible Business Conduct

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Recommended Citation

Sara Seck et al, "Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector: Implications for Human Rights, Gender and Stakeholder Engagement" (Evidence Brief of Draft Final Report, June 2020).

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Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector: Implications for Human Rights, Gender and Stakeholder Engagement

About the project

Extractive companies (mining, oil & gas) play a major role in the Canadian economy, and their actions have multi-faceted effects on the communities in which they operate, whether in or outside Canada. Currently, a variety of responsible business conduct (RBC) guidance tools are promoted to extractive companies. Most of these companies must also comply with Impact Assessment (IA) laws. While the legal framework of IA and the various RBC guidance tools have some obvious overlaps, their interrelationship has been understudied.

This synthesis aims to identify RBC tools referenced in the literature as relevant and/or promoted to Canadian extractive companies. While not appraising or judging the quality of RBC tools, it considers the different actors that promote these tools and whether there is a coherent framework for the efficient and effective application of current and future tools. This synthesis focuses on RBC tools that provide guidance on respect for human rights, stakeholder engagement, the rights of Indigenous peoples, and the rights of women and girls, and also reviews the literature on the relationship between RBC and IA.

Key findings

- A plethora of RBC guidance tools are promoted to extractive sector companies by international organizations, federal, provincial and Indigenous governments, as well as by industry, non-governmental and multi-stakeholder initiatives. The literature reviewed identified close to 100 RBC guidance tools covering a wide variety of thematic areas. While all promoters of RBC tools provided guidance on the participation of Indigenous peoples, only half provided guidance on gender. There is no framework for applying these tools in a coherent manner, nor do all tools provide guidance on respecting human rights to ensure support for and respect of the rights of Indigenous peoples, women and girls, among other key rights-holders.
- Different RBC tools are promoted to companies operating in Canada and internationally, with some overlap. Coherence and clarity are needed on the application of international RBC tools to extractive operations in Canada, in particular, about expectations surrounding human rights due diligence (HRDD). While the literature has identified the need for Canadian legislation mandating HRDD, this often refers to Canadian companies operating internationally, including supply chain responsibility. Stakeholder engagement is a more common theme in RBC tools aimed at extractive operations within Canada, but a distinction is rarely made between stakeholders and rights-holders. Following best practices from other countries, federal and provincial human rights commissions could help ensure intra-Canada application of HRDD. Attention to the role of Indigenous governance and law is also crucial.

- IA and RBC could be mutually reinforcing, with RBC broadening the traditionally narrower IA regime. The best practices of typically non-binding RBC standards could also be applied to develop guidelines and/or regulations under a binding IA regime. The 2018 [OECD Due Diligence Guidance for Responsible Business Conduct](#) guideline highlights the relevance of different modes of impact assessment (environmental impact assessment, environmental and social impact assessment, and human rights impact assessment) to RBC and their respective due diligence processes. The Danish Institute for Human Rights (DIHR) has produced [guides and practical tools for conducting, commissioning, reviewing or monitoring human rights impact assessments of business projects and activities](#). More research is needed on the application of RBC tools by extractive companies operating in Canada, particularly concerning HRDD, including implications for the human rights of Indigenous peoples. Research is also needed on how federal and provincial human rights commissions could facilitate adherence to HRDD standards.

Policy Implications

- While Canadian RBC literature has overwhelmingly focused on the operations of Canadian extractive companies outside Canada, it is now clear that Canadian extractive companies also have RBC obligations within Canada. The previous understanding of RBC as being solely externally relevant informed the central promotional role played by the GAC and the EDC. Understanding that RBC is equally domestically relevant necessitates other agencies of government with more domestic remit to take on the responsibility of actively promoting and monitoring RBC within Canada.
- The internal relevance of RBC tools further makes a coherent framework for the application of the various RBC tools necessary. Such a framework would need to distinguish between externally and internally relevant tools, sectoral tools, and place-based tools (e.g. tools specifically designed by certain Indigenous communities or provinces). The framework should establish minimum RBC standards which could potentially be drawn from common requirements in endorsed shortlisted RBC tools. Such framework would also assist companies in fulfilling their RBC requirements efficiently.
- Further research is needed on how RBC, due diligence and IA intersect in the Canadian context and how the best practices of existing RBC tools— especially HRDD—could be used to improve Canadian IA regimes, including federal, provincial, territorial and Indigenous assessment processes.

Further information

Read the full report

<https://digitalcommons.schulichlaw.dal.ca/ialawrbc/>

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