

Beyond Compliance: Conflict-Sensitive Stakeholder Engagement in Human Rights Due Diligence for Critical Mineral Extraction in the Green Transition

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Abstract

The acceleration of the green transition has intensified the global demand for critical minerals such as lithium and cobalt. While these resources are indispensable for renewable energy technologies, electric vehicles and battery storage, their extraction frequently generates social and human rights harms for communities living in proximity to mining sites. Land dispossession, water depletion, labour exploitation and the marginalisation of Indigenous and rural populations reveal a structural paradox at the heart of decarbonisation efforts: the transition to sustainability risks reproducing extractive violence under a green label. In response, human rights due diligence (HRDD) has emerged as the dominant governance mechanism to ensure that businesses identify, prevent, mitigate and remediate adverse impacts. Yet despite its normative promise, HRDD often operates as a compliance-oriented risk management tool rather than as a transformative instrument of justice. This paper asks: how can HRDD in the context of critical mineral extraction move beyond procedural compliance to ensure substantively just outcomes in the green transition? It argues that the missing link lies in a fundamental reconceptualisation of stakeholder engagement as a conflict-sensitive, negotiation-informed practice capable of addressing the deeper dynamics of contestation that HRDD currently leaves untouched.

Although the UN Guiding Principles on Business and Human Rights and emerging regulatory frameworks such as the EU Corporate Sustainability Due Diligence Directive have strengthened expectations of corporate responsibility, their operational logic remains predominantly procedural and compliance-driven. HRDD is largely structured around risk identification, documentation and mitigation, often measured through reporting obligations and audit mechanisms. While such processes are indispensable, they tend to frame human rights harms as managerial risks to be controlled or mitigated. When adverse impacts do materialise,

calls for remedies frequently shift to ex post grievance mechanisms or litigation. These avenues, however, are marked by structural asymmetries. Affected communities must often bear financial and emotional costs in pursuing redress, navigating complex evidentiary burdens and facing prolonged legal uncertainty. Moreover, litigation transfers decision-making authority to third-party adjudicators, removing resolution from the hands of those directly involved in the conflict. Even non-judicial grievance mechanisms may prioritise procedural closure over substantive recognition. As a result, HRDD risks institutionalising a model of accountability that is reactive and adversarial, one that proceduralises compliance while leaving affected communities with limited influence over how conflicts are addressed and resolved.

Stakeholder engagement has been advanced as the participatory corrective to these limitations. Within the UNGP framework, particularly under Principle 18(b), and in due diligence legislation, meaningful consultation with potentially affected stakeholders is presented as a central component of effective human rights due diligence. Engagement is intended to inform impact assessment and mitigation measures. In extractive industries in particular, models, such as the Social License to Operate and participatory consultation processes, have sought to institutionalise dialogue between companies and communities. Yet despite this normative emphasis, the operationalisation of HRDD has frequently translated consultation into a managerial instrument embedded within compliance logics. Engagement is often structured to identify, measure and mitigate risk rather than to navigate disagreement. It may be framed around predefined project parameters or oriented toward securing acceptance rather than addressing contestation. As a result, stakeholder engagement diffuses resistance without transforming the distributive and recognition-based tensions that frequently characterise critical mineral extraction. The promise of *meaningful* consultation thus remains constrained by institutional formats that privilege risk management over conflict engagement.

To move beyond these limitations, stakeholder engagement must be reconceptualised as a conflict-sensitive practice embedded within HRDD rather than as a supplementary consultation exercise. Critical mineral extraction is rarely characterised by simple information deficits that can be resolved through disclosure or technical mitigation. It frequently involves competing claims over land, livelihoods, cultural identity and future development pathways. A conflict-sensitive approach recognises that disagreement is not a failure of process but an inherent feature of extractive governance in the green transition. Drawing on insights from negotiation theory, stakeholder engagement can be reframed as a structured process for addressing

contested interests, power asymmetries and identity-based claims. Such an approach does not presume consensus but creates institutional space for articulating and negotiating competing interests and identities. In doing so, it enables a more integrated conception of just outcomes, advancing procedural justice through meaningful participation, distributive justice through explicit engagement with benefit and burden allocation and recognition justice through acknowledgement of community identities and lived experiences.

Reframed in this manner, conflict-sensitive stakeholder engagement becomes a central governance instrument of HRDD rather than a peripheral consultation requirement. Proactively, it enables companies and communities to surface grievances, contestations and distributive concerns at early stages of project development, before harms escalate into entrenched disputes. By institutionalising structured negotiation within due diligence processes, businesses become better equipped to understand how impacts are experienced, to adjust project design and to co-develop mitigation strategies in ways that reflect local priorities. Reactively, conflict-sensitive engagement offers an alternative or complement to adversarial litigation when harms have already occurred. Unlike court proceedings, which impose significant financial and emotional burdens and transfer decision-making authority to third parties, negotiated processes preserve the agency of those directly involved. They create space for relational repair, acknowledgement and forward-looking solutions that may extend beyond distributive justice or compensation. In this sense, conflict-sensitive stakeholder engagement strengthens both prevention and remedy measures under HRDD. It reduces reliance on protracted legal struggle while enhancing the legitimacy and responsiveness of corporate accountability mechanisms in contexts marked by deep social contestation. In doing so, conflict-sensitive stakeholder engagement clarifies how HRDD can function not merely as a compliance mechanism but as a governance framework capable of engaging conflict and advancing just outcomes in the green transition.