The Current Situation and Insights of Human Rights Due Diligence Implementation in Chinese Multinational Enterprises: The Case Study of Zhejiang Huayou Cobalt Co., Ltd.

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Abstract. In the global cobalt supply chain, the illegal employment of child labor by multinational companies is a very common phenomenon, and child laborers are often exposed to poor working conditions, which are extremely harmful to their physical and mental health. And behind these phenomena, it indicates that the international community has not been successful in ensuring adequate implementation of human rights due diligence for multinational corporations. This paper will take the supply chain human rights crisis and response measures of Zhejiang Huayou Cobalt Co., Ltd. in China as an example, and use case study method and literature research method to explore the current situation and insights of human rights due diligence implementation in Chinese multinational enterprises. It has been discovered through research that Chinese multinational corporations face several challenges in carrying out human rights due diligence, such as the lack of an institutionalized human rights due diligence mechanism and insufficient understanding of human rights risks. Based on this, this paper proposes the following recommendations: accelerating the formulation of human rights due diligence standards and norms; bridging the gap between domestic and foreign mandatory human rights due diligence laws; raising the awareness of human rights protection within enterprises; and strengthening human rights risk management in the supply chain.

Keywords: Human rights due diligence; Chinese multinational enterprises; Human rights protection norms.

1. Introduction

The UN Guiding Principles on Business and Human Rights, which were unanimously adopted in 2011, provide a universally acknowledged framework for outlining the responsibilities of both governments and businesses in preventing and addressing human rights violations. The Guiding Principles stress that corporations hold a distinct and self-governing obligation to protect and promote human rights [1].

Human rights due diligence is a process of identifying, preventing, and mitigating human rights impacts. This includes actual impacts that occur currently and potential impacts that may happen in the future. Human rights due diligence differs from general legal due diligence and management due diligence in that it focuses not only on the legal and business risks of the business, but also on the human rights risks [2].

The four fundamental elements of the HRDD process involve identifying and evaluating any harmful human rights consequences that could be attributable to the enterprise; implementing suitable measures and integrating impact assessment results into relevant company processes; monitoring the efficacy of such measures implemented; and engaging with stakeholders to communicate how the impacts are being addressed and provide assurance that appropriate policies and procedures have been established [3].

Child labor exploitation within the global cobalt supply chain is a prevalent issue, with minors often subjected to hazardous working conditions that jeopardize their physical and emotional welfare. This points to the deficient application of human rights due diligence for multinational corporations.

Zhejiang Huayou Cobalt Co., Ltd. stands as an example of a corporation at the forefront of Chinese human rights due diligence enforcement. Huayou Cobalt has a number of mineral resource projects around the world, including the Democratic Republic of Congo (DRC) and Australia. The

paper will take the supply chain human rights crisis and its response measures of Huayou Cobalt Co., Ltd. as an example to explore the current state of human rights due diligence enforcement by Chinese multinational corporations and provide valuable insights.

2. Supply Chain Human Rights Risk Issues and Countermeasures of Huayou Cobalt

2.1. Supply Chain Human Rights Risks of Huayou Cobalt

Cobalt is a crucial element found in batteries that provide power to various electronic gadgets, including electric cars and everyday mobile devices. In 2016, the renowned international NGO Amnesty International unveiled a report titled "THIS IS WHAT WE DIE FOR" accusing twenty-six companies operating in Congo of using child labor to mine minerals, one of which was Chinese company Zhejiang Huayou Cobalt Co., Ltd [4]. As a rapidly developing private enterprise, the company knew little about corporate social responsibility and the potential human rights risks. The company has invested in a subsidiary in the DRC to buy cobalt locally, and downstream suppliers collect cobalt ore from smaller buyers, some of which comes from cobalt mine tailings picked up by local children. Because the local economy is poor, many children are unable to attend school, so they scavenge tailings to sell to supplement their families.

After the release of Amnesty International's report, Huayou's downstream customers terminated Huayou's contracts to supply them with cobalt processing products from companies that supply Apple, Samsung and other companies. Huayou's stock price also plummeted.

2.2. Huayou Cobalt's Response to Human Rights Risks in the Supply Chain

Huayou Cobalt's response to the above-mentioned problems can be broadly divided into the establishment of human rights infringement solutions based on international norms and the innovation of existing solutions.

2.2.1 Proposing solutions based on international norms

In the month following the publication of Amnesty International's report, Huayou actively proposed timely remedial measures in the form of supply chain due diligence management on its website. In accordance with the United Nations Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework Guiding Principles, Huangyou Cobalt has referred to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas" (OECD Guidance), "Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains for Responsible Mineral Supply Chains" (Chinese Guidance), as well as the Responsible Minerals Initiative (RMI) and Responsible Critical Mineral Initiative (RCI). Huayou Cobalt has established a cobalt supply chain solution based on the practices of conflict minerals. Under the guidance of the China Chamber of Commerce for Metals, Minerals and Chemicals Importers and Exporters (CCCMC), Huayou has been learning from OECD and seeking help from renowned consulting organizations to continuously improve its knowledge and management of responsible cobalt supply chain.

Under the guidance of CCCMC, Huayou has continuously improved its knowledge and management capability of responsible cobalt supply chain by learning from OECD and seeking help from famous consulting institutions.

Huayou has established a dedicated CSR department and publishes the Huayou CSR Report every year. Huayou has also set up a CSR section on its website to publish information on social responsibility, supply chain due diligence system and work trends for stakeholders' reference and discussion.

Significantly, Huayou Cobalt has consistently highlighted the safeguarding of children's rights across multiple publicly accessible documents. For example, in the Huayou Cobalt ESG Policy, it explicitly states that it does not employ or use child labor [5]. In its 2020 CSR report, it states that the

company exclusively hires individuals who meet the age requirements and strictly prohibits the use of child labor [6]. Huayou not only strengthens its own protection of child labor rights, but also imposes strict requirements on its supply chain: Suppliers can only use cobalt processed products and goods if they can provide reasonable proof that they have Suppliers can only use cobalt processed products and goods if they can provide reasonable proof that they have conducted due diligence on the source and regulatory chain of cobalt in accordance with Chinese Guidance/OECD Guidance, identified and addressed the Worst Forms of Child Labor, and met the reporting and procurement requirements stipulated in this standard [7].

In the Supplier Code of Conduct, Chapter 1, Huayou clearly states that Suppliers have an obligation to employ individuals who satisfy the minimum age requirements prescribed by the relevant local laws and regulations [8].

Huayou's achievements in cobalt supply chain due diligence management have also been praised by stakeholders. On February 22, 2018, the minister of the national ministry of mines of DRC wrote to the general manager of CDM, expressing appreciation and gratitude for CDM's efforts to improve the supply chain of hand-mined cobalt and the remarkable results achieved in cobalt supply chain due diligence management [9].

Huayou also actively participates in upstream and downstream meetings of the cobalt industry to share and report the progress of supply chain due diligence to stakeholders, and calls for all parties to act together to initiate due diligence [10].

2.2.2 From system takers to system leaders

Resisting child labor requires tackling poverty at its root, not just relying on companies to avoid risks in the due diligence management of their cobalt supply chains. Therefore, in addition to operating and managing the supply chain, attention should be paid to the development and improvement of mining communities in order to effectively alleviate and solve the child labor problem.

Huayou actively implements the above principles. Not only does it adhere to the five-step approach stipulated in the due diligence guidelines issued by OECD and CCCMC, which includes policy release, risk assessment, risk mitigation, independent audit, and public reporting, but it goes further to implement the sixth step by positively participating in local projects that benefit communities, such as building schools and repairing roads. Through constructive discussions with the OECD, it may change its industry-wide due diligence management guidelines from a five-step to a six-step approach based on success stories like Huayou's. This means that Huayou will be able to incorporate its own interpretations of labor norms and mechanisms into the global cobalt supply chain going forward. By doing so, it highlights its commitment to promote labor standards and contribute to social development.

Huayou Cobalt's innovative regulatory initiatives have influenced the global cobalt supply chain in a significant way. In recent years, Huayou's approach has been emulated by various companies within the global cobalt supply chain, both upstream and downstream, including Chinese multinationals like Luoyang Molybdenum, Nanjing Hanrui Cobalt, and Guizhou Zhenhua Electronic Chemical Company (ZEC), as well as non-Chinese multinationals like Fairphone, Signify, and BMW [11].

From 2016 to 2018, Huayou Cobalt was invited to deliver a speech at the annual conference of OECD on responsible mining supply chain management practices, where it shared its experience on managing due diligence aimed at promoting responsibility in the cobalt supply chain. The six-step framework used by Huayou Cobalt was officially adopted by the OECD and will be incorporated into their future due diligence management guidelines.

3. Current Practice of Human Rights Due Diligence in Chinese Multinational Enterprises and Insights

While Huayou Cobalt serves as an exemplary model of human rights due diligence for Chinese enterprises, it does not necessarily reflect the state of human rights due diligence among all Chinese multinational corporations. Therefore, this section aims to provide further insights into the current status and practices of human rights due diligence among other multinational corporations based in China.

3.1. Current Practice and Dilemmas of Human Rights Due Diligence of Chinese Multinational Enterprises

3.1.1 State-level regulations

A variety of policy documents, national standards, and guidance recommendations have been put in place by the Chinese government to encourage and steer responsible business practices for Chinese enterprises. Among these is the National Human Rights Action Plan (2021-2025), which encourages businesses to abide by the UNGPs, implement human rights due diligence. Additionally, the Social Responsibility Guidelines GB/T36000-2015 established in 2015 stresses the importance of due diligence for companies so they can evaluate social impact, including areas concerning human rights, labor, and the environment.

Despite not being an OECD member, China has established a fruitful relationship with the organization through its cooperation with the CCCMC that led to the publishing of the Chinese Guidance in 2015. This first-of-its-kind standard for China is in line with the normative directives established by the OECD, and its objectives are aligned with the OECD guidelines on due diligence [12]. This standard has been highly recognized and valued by the Chinese authorities and OECD, and is included in the China and OECD 20th Anniversary of Cooperation Chronology [13].

3.1.2 Insufficient awareness of human rights risks among Chinese multinational enterprises

Chinese multinational enterprises are lagging behind in human rights awareness, and have insufficient knowledge about the unique characteristics of human rights responsibilities that differ from traditional CSR. As a consequence, many Chinese enterprises struggle to accurately identify human rights issues and risks they may be involved in. Some enterprises lack understanding or consideration for international human rights standards, which results in a lack of understanding of their corporate human rights responsibilities and knowledge of supply chain due diligence methods [14]. Additionally, social and political factors make some human rights issues complex, exacerbating the difficulty in maintaining a balance of interests while dealing with them. Some Chinese companies view human rights respect as not their responsibility, failing to integrate it into their management strategies and codes of conduct. Even though responsible behavior can help reduce disputes, some enterprises are still slowly learning and adopting international standards in the foreign investment process but face difficulties in implementing these standards. For a long time, corporate social responsibility for the Chinese government and enterprises has been mainly defined as law-abiding operations, honesty and trustworthiness, sustainable profitability improvement, quality of products and services enhancement, and social welfare participation. Consequently, Chinese enterprises remain focused on fulfilling traditional CSR abroad and fail to adequately address human rights risks in their supply chains [15].

3.1.3 Lack of institutionalized human rights due diligence mechanisms

In China's legislative and regulatory framework, there is a lack of specific guidelines and standards to guide enterprises in the practice of human rights due diligence. Although some NGOs and business associations are promoting the practice of human rights due diligence, such behavior has not yet been incorporated into China's official regulatory system. Due to the lack of clear guidelines and standards to guide companies' human rights due diligence, some companies may face problems such as information opacity, resource scarcity, and weak supervision during the implementation of human

rights due diligence measures. This can result in difficulties in ensuring the depth, breadth, and rigor of due diligence, making it difficult to evaluate the practical results and effectiveness of each company's human rights responsibilities.

3.2. Insights from Human Rights Due Diligence of Chinese Multinational Enterprises

China can draw inspiration from the current challenges of human rights due diligence to accelerate the formulation of standards and norms for human rights due diligence, bridge the gap between domestic and foreign mandatory human rights due diligence laws, raise awareness of human rights protection within enterprises, and strengthen supply chain human rights risk management.

3.2.1 Accelerating the formulation of standards and norms for human rights due diligence

The successful implementation of the Chinese Guidance proves that implementing due diligence is feasible in China's mineral industry. As a result, it is crucial for the Chinese government to guide other industries and enterprises that may have human rights violations to actively develop their own standards and regulations on due diligence, thus promoting fulfilment corporate social responsibility and human rights protection. By doing so, businesses can better identify and avoid risks of human rights abuses and improve their competitiveness. Furthermore, this can help Chinese enterprises to build a responsible image globally, contributing to its soft power and enhancing the reputation and public relations capabilities of Chinese enterprises operating overseas [14]. This will promote Chinese enterprises' "go global" strategies and create greater profit and economic value contributions.

Additionally, it provides a more solid and reliable foundation for their participation in and integration into the global governance system. Moreover, a positive image of China and its businesses contributes to telling the China story positively, thereby facilitating communication of positive information about China to the world. Ultimately, this may also contribute to the goal of building China as a socialist culture power. This could ultimately also help to achieve the goal of establishing China as a socialist cultural power.

3.2.2 Bridging the gap between domestic and foreign mandatory human rights due diligence laws

France, the UK, Switzerland, and other countries, as well as the European Union, have passed legislation focusing on the human rights responsibilities of major domestic enterprises with regard to overseas investments and supply chains. According to these laws, companies must reveal information that goes beyond finances, such as risks related to human rights they encounter and the measures they have undertaken to mitigate them.

China could learn from these legislative examples. However, deciding whether to introduce human rights due diligence laws is a complicated issue that requires comprehensive consideration of various interests and practical situations.

Nevertheless, at present, it is important for the Chinese government, multinational corporations, and suppliers to be aware of the global trend toward mandatory legislation for human rights responsibilities and the growing importance of and human rights issues.

While participating in the international business and human rights agenda, the Chinese government can also consider integrating and improving the domestic policy system, implementing human rights due diligence, advocating for the protection and respect of human rights. Furthermore, China can collaborate with developing countries to promote the establishment of a framework convention with mandatory human rights due diligence as the primary content to enhance their voice in creating corporate social responsibility governance standards in the new round.

3.2.3 Raising awareness of human rights protection within enterprises

Improving awareness of human rights protection within the company is of significant importance for Chinese multinational corporations to identify human rights risks in a timely manner. Enterprises can conduct specialized training activities to explain the company's human rights norms to employees and teach them how to follow these policies and standards in their work. Companies can establish a

smooth communication channel that allows reporting of human rights issues and respond promptly to such issues. Enterprises should conduct regular investigations and audits of their existing management systems to identify human rights risks and problems. As multinational corporations' supply chains involve many countries and regions, with varying human rights regulations and requirements, companies need to monitor and assess these chains through multiple channels to ensure that every link in the chain complies with human rights standards.

Companies can encourage active participation in human rights protection among employees by offering various forms of incentives, rewards, and recognition to promote full staff participation in human rights protection and enhance the company's social image.

3.2.4 strengthening supply chain human rights risk management

Chinese multinational corporations should identify key risk points and establish monitoring and evaluation mechanisms for their supply chains. They should establish communication mechanisms with suppliers, ensuring compliance with human rights regulations and ethical standards, and include these as necessary terms in supply contracts. Companies should also review the human rights compliance of their suppliers and implement investigations, inspections, and audits as needed. Additionally, companies should establish a sound complaint and appeal mechanism to respond promptly to problems that may arise in the supply chain.

In short, to strengthen human rights risk management in the supply chain, it is essential for companies to shift away from a unilateral focus on maximizing profit and instead prioritize cooperation and coordination to ensure full respect for human rights. By doing so, they can promote the development of human rights protection and create a more sustainable and responsible business environment.

4. Conclusion

By taking the human rights crisis in the supply chain of Zhejiang Huayou Cobalt Co., Ltd. in China and its response measures as an example, this paper discusses the current dilemmas and insights of human rights due diligence implementation in Chinese multinational enterprises. Although there are many problems in human rights due diligence in Chinese multinational enterprises, such as the lack of institutionalized human rights due diligence mechanism and insufficient awareness of human rights risks, this paper argues that these problems can be solved by accelerating the development of human rights due diligence standards and norms, bridging the gap between domestic and foreign mandatory human rights due diligence laws, raising the awareness of the issue within enterprises, and strengthening human rights risk management in the supply chain. It is expected that these measures can promote Chinese multinational corporations to fulfill their human rights responsibilities, while also enhancing international recognition of Chinese corporate social responsibility and increasing China's discourse power in creating international standards for corporate responsibility governance.

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