

# **Social Justice in Mining. EU Policies on responsible mineral trade**

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## **How to promote strong business regulations and corporate accountability in the supply chains of minerals?**

First of all, I have to admit I am not an expert on corporate accountability. However, over the years I have had some experience in that field participating in different networks and through the collaboration we have with different civil society organizations.

Second, a word of caution. If we are talking about a Mining Company that has been involved in human right abuses or large-scale environmental impacts the most effective way --and perhaps the only way-- to hold them accountable is to take them to court. To sit them in front of a Judge. However, this is not by any means easy.

The victims of these kinds of corporate crimes face many barriers in the access to justice: they have to prove the responsibility of the company, find a good team of lawyers, search for a jurisdiction that can accept the case, and start a legal battle with very little chance of winning. As my colleagues at CIDSE use to say, it is David against Goliath and they know it well as they published a report in 2017 titled *Removing Barriers to Justice* ([CIDSE 2017](#)), where they illustrated this with several case studies.

However, if we are talking about corporate accountability on supply chains of minerals, I would say that there are four ways to promote strong regulations and corporate accountability. Each of them has certain limitations:

1. First, **legislative measures**: Governments can pass and enforce laws that hold companies accountable for the practices of their suppliers and partners throughout the supply chain. This can include regulations on conflict minerals, labor standards, and environmental impact assessments.
  - Limitation: **For every law there is a loophole** (“hecha la ley, hecha la trampa”)

2. **Second, consumer advocacy:** Consumer pressure on companies involved in the mineral supply chain can open a public debate on their responsibility towards the upstream links in the chain. Eventually, they can contribute to these companies taking voluntary measures to manage and respond to risks in their supply chains.
  - Limitation: **the effectiveness of consumer advocacy depends on the reputation of the companies targeted.** The more important reputation is to the company, the easier it is to succeed. Conversely, companies that do not have a public reputation and direct contact with the end consumer are less vulnerable to consumer activism.
  
3. **Industrial Schemes and Certifications:** For the last 15 years or so, industrial schemes on responsible sourcing of minerals have been mushrooming. There are many: the International Tin Supply Chain Initiative (ITSCI), Conflict-Free Sourcing Initiative (CFSI), the Responsible Minerals Initiative (RMI), the Responsible Jewellery Council (RJC) and the Electronic Industry Citizenship Coalition (EICC). There are also certifications such as: FairMined or the Initiative for Responsible Mining Assurance (IRMA).
  - Limitation: In 2017, the OECD published an *Alignment Assessment of industry programmes with the OECD minerals guidance* ([OECD 2017](#)) and it found **significant gaps between the industry programmes and the recommendations of the OECD Guidance.**
  
4. **Corporate Responsibility Programmes:** In addition to participating in these industry schemes or obtaining these certifications, downstream companies may also carry out responsible sourcing programmes or projects in collaboration with mining cooperatives or other local actors to ensure stakeholder participation, proper working conditions and compliance with certain environmental standards. See for instance the initiatives funded by the European Partnership for Responsible Minerals (ERPM) as part of the complementary measures of the EU Regulation on conflict minerals.
  - Limitation: **participation in this kind of programmes and projects is completely voluntary**, so there is nothing that ensures proper accountability towards local communities and miners if something goes wrong.

These four actions combined should bring some change towards a more responsible supply of minerals. However, there are no miracles or magic wands that can make supply chain risks disappear overnight.

### **How does this debate on HHRR and Environmental due diligence contribute to this?**

- The *OECD Guidelines on responsible sourcing of conflict minerals* has become a global standard, identifying a 5-step framework to implement due diligence policies and this framework has gained influence over some mandatory legislations. Something which I think is good. **We need global standards to assess particular risks, otherwise there is no comparative measure to discern what is just and what is not. .**
- However, these global due diligence standards (whether the OECD guidelines or the UN Guiding Principles), insofar as they are voluntary, will not in themselves change the management of supply chains, nor the behavior of the companies.
- We need strong corporate regulations that include mandatory due diligence obligations and provisions to ensure the meaningful participation of the stakeholders in the process, and the access to justice for victims of corporate crimes.
- Good news is **we are witnessing the emergence of political willingness to shift away from soft-law initiatives in favour of binding standards**, providing unprecedented opportunities to fill gaps in the current regulatory framework governing corporate accountability and access to justice.
  - the negotiations of the UN Legally Binding Instrument on Transnational Businesses and HHRR are already underway; the EU conflict minerals regulation is currently going through ex-post assessment by the Commission; many Member States have passed national due diligence laws, and the EU Directive on Corporate Sustainability and Due Diligence is being discussed in the EP.
- Will these legislations solve the problem of responsible mineral supply? No. Because (again) **for each law there is a loophole**. But if due diligence is a process we have to see it as a learning process not only for corporations, but for the people affected by them --or the stakeholders as the economists call them--.
- Finally, before making strong judgments on due diligence laws (are they effective or not?) We need to be aware that all these different instruments (EU Regulations, Directives, UN LBI, National laws) will have very different natures, objectives, and scopes, and will operate at different levels. So they have to be assessed carefully.

### **What are the possible future perspectives for moving the agenda forward?**

- The political willingness in favour of binding standards is not going away. Those companies that are more reluctant to include due diligence policies will find it increasingly difficult to continue operating in international markets.
- One unintended consequence of this, is that there will be (there is already) a “golden age” for the consultancy industry dedicated to helping mining companies to meet their HHRR & Environmental due diligence requirements.
- Most of these due diligence initiatives will fail in the long run IF:
  - the companies involved approach their obligations as a tick-box exercise, externalizing their responsibilities to industrial schemes or third party audits.
  - they don't include the meaningful participation of stakeholders, especially the workers and the people affected by the corporate behavior in each tier of the supply chain. If they don't do that, they will lack legitimacy.
- From the civil society perspective, the trend (perhaps more my wish than a reality) I believe will be towards working in transnational coalitions to monitor supply chains in risk sectors. Such coalitions should bring together organizations, trade unions and grassroots organizations to monitor the behavior of large companies and raise red flags where there are significant risks.
  - There are already some examples of that. For example, [Electronic Watch](#) is an organization / network whose aim is to help public sector organizations work together, and collaborate with civil society monitors in production regions, to protect the rights of workers in their electronics supply chains.
- This is not the only way to do this, but I think creating these kinds of coalitions of diverse agents may be a good starting point to ensure proper corporate accountability.

If someone ask me...

- Regarding the [EU conflict minerals regulation](#), the coalition of NGOs which advocate for that law already warned that its scope fell short in many respects:
  - it leaves the “downstream companies” without any binding obligations
  - it establishes ridiculously high thresholds for certain minerals (e.g., gold)
  - it doesn't include environmental due diligence measures
  - it is limited to four minerals
  - Worse still, Member States have the competence to set their own sanctions regime and transparency policies, which is leading to divergences in the application of the law ([EurAc & Pax 4 Peace, 2021](#)).