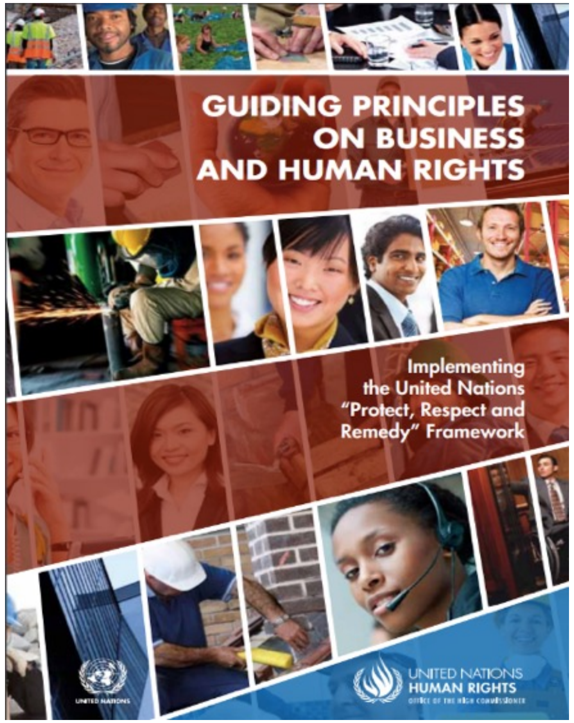
Human Rights Due Diligence: Policies, Practice, and Implementation

Developed by The Remedy Project for UNDP

18-19 September 2023

Agenda for today's webinar

The United Nations Guiding Principles on Business and Human Rights (UNGPs)



1. Background: Human Rights

2. Intro: The Japanese and Indonesian Context

3. Process: Human Rights Due Diligence in Action

Part I: An overview of human rights due diligence

Part II: Identifying and assessing human rights risks

Part III: Integrating, tracking, and communicating actions

Part IV: Right to Remedy and Grievance Mechanisms

4. Application: Exercise and Group Discussion on a Fictional Case

5. HRDD and Stakeholder Engagement

A note on the format

Throughout the presentation, there will be slides titled “Key HRDD Concept”, which will offer definitions of key terms and ideas related to human rights due diligence as we progress through each section outlined above.

Key HRDD Concept

Background on Human Rights

What is Business and Human Rights?

Definition: Business and human rights (BHR) is the study and practice of how business operations and activities impact human rights and the steps companies should take to mitigate risks and provide remedies.

Why It Matters:

- **Legal implications and compliance.**
- **Ethical responsibility towards stakeholders.**
- **Protects brand reputation and fosters trust.**

Key Concepts

Due Diligence: The process of identifying, assessing, and addressing human rights impacts in business operations.

Accountability: Companies are responsible for respecting human rights and can be held accountable for violations.

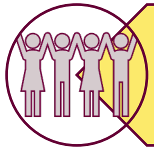
Multi-Stakeholder Involvement: Includes not just businesses but also governments, civil society, and impacted communities.

To integrate the protection and respect for human rights into the core strategy and operations of businesses.

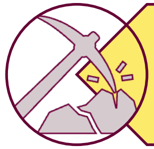
What are Human Rights?

Internationally recognized human rights are understood, at a minimum, as those expressed in the:

- **International Bill of Human Rights** (Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights); and
- The principles concerning fundamental rights set out in the **International Labour Organization's Declaration on Fundamental Principles and Rights at Work.**
    - **Key point: Human rights include labour rights, and many of the rights found in the ILO Declaration are included in the International Bill of Human Rights.**

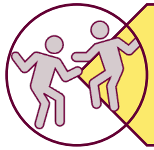


Freedom of association and the effective recognition of the right to collective bargaining



The elimination of all forms of forced or compulsory labour

The effective abolition of child labour



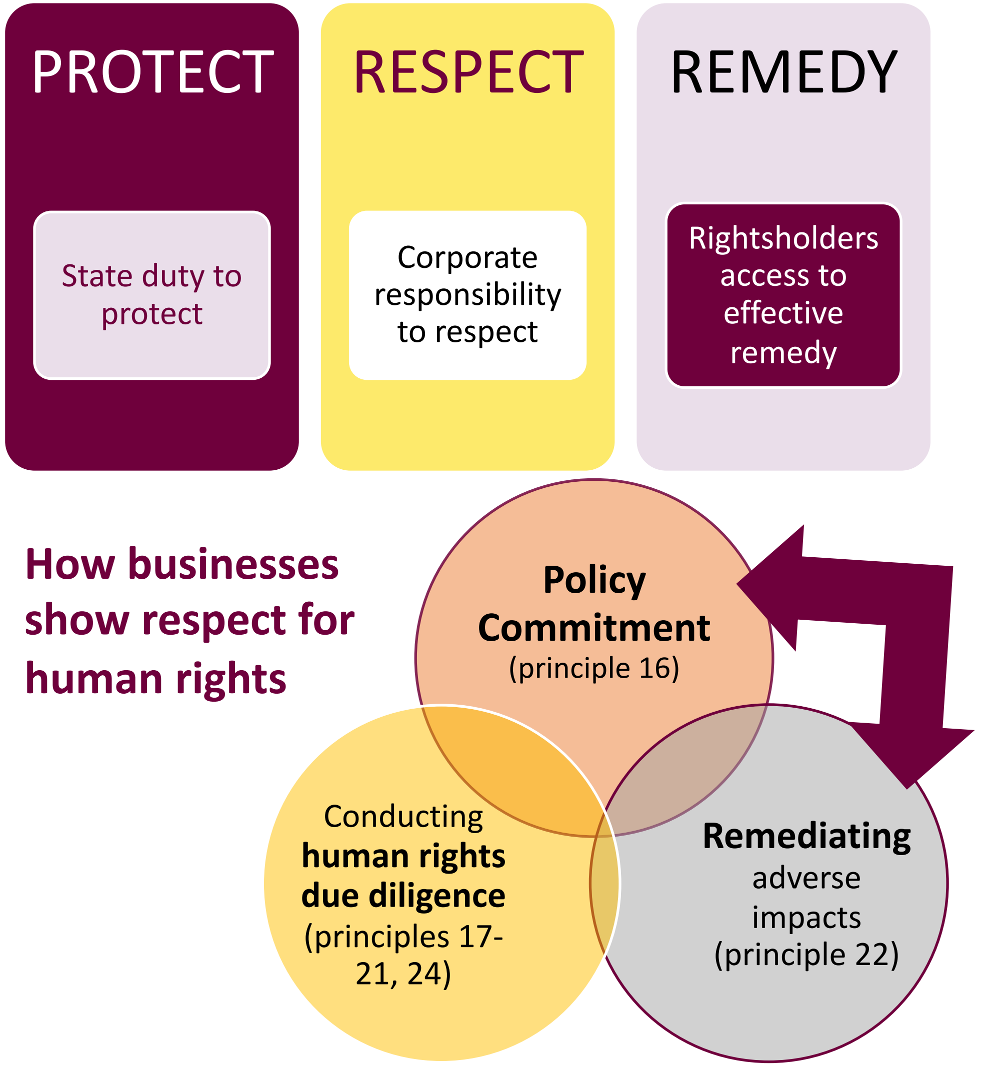
The elimination of discrimination in respect of employment and occupation

A safe and healthy working environment

Source (right): The International Bill of Rights | Australian Human Rights Commission

UN Guiding Principles on Business and Human Rights – *the Protect, Respect, Remedy Framework*

- The **UNGPs** were unanimously endorsed by the UN Human Rights Council in 2011.
- They are underpinned by **international human rights standards**.
- 31 principles together provide a roadmap for implementing the **PROTECT, RESPECT, REMEDY** framework.
- The corporate responsibility to respect: businesses should **avoid infringing on the human rights of others** and should **address adverse human rights impacts with which they are involved.** (UNGPs Principle 11).
- This responsibility **applies to all businesses**, regardless of their size, sector, location, ownership and structure. It extends throughout a company's own operations and its **value chain**.



What do the UNGPs Expect Companies to Do?

Adopt Human Rights Policy Commitments

- Provides a basis for **embedding** respect for human rights throughout the company
- Involves **consultations** with **internal and external stakeholders**
- Helps the company **identify** policy **gaps** and areas of **risk**

Implement Human Rights Due Diligence

- Enables the company to **identify, prevent, mitigate,** and **account** for how they **address adverse human rights impact.**

Establish Grievance Mechanisms

- Acts as an **early warning mechanism** enabling companies to **proactively** address issues as they arise
- Can be used by companies to **remediate** harm to rightsholders caused by adverse human rights impacts

Intro:
The Japanese and Indonesian Context

Japanese Legal Framework

Japan does not have many hard-law requirements concerning human rights for its companies and their subsidiaries operating in Southeast Asia. However, several soft-law instruments exist that provide guidance and standards for the conduct of Japanese companies operating abroad in line with international standards.

- In 2020, Japan's government adopted a **National Action Plan on Business and Human Rights**, which notes that the government expects Japanese enterprises to **respect human rights**; **introduce and conduct HRDD**; engage in **dialogue with stakeholders**, including those that are part of **supply chains;** and resolve issues through **effective grievance mechanisms**.
- The **2022 Guidelines on Respecting Human Rights in Responsible Supply Chains** note that Japanese companies should "strive in efforts to respect human rights in their business enterprise, group companies, suppliers, etc. inside and outside Japan … to the fullest extent possible."
- **Keidanren**, the Japan Business Federation, revised its **Charter of Corporate Behavior** in 2017 to add a principle that Japanese corporations should "conduct business that respects the human rights of all persons".

Source: UNDP Nepal Report

The Japanese Guidelines on Respecting Human Rights in Responsible Supply Chains

Background

- Launched the National Action Plan on Business and Human Rights (2020-2025) in 2020.
- Recognized that Japan is expected to show its leadership in disseminating and promoting corporate efforts to respect human rights while taking local situations into consideration.
- Strong demand from Japanese businesses for guidelines on how to respect human rights.

Purpose

- *"to help deepen business enterprises' understanding and promote their efforts by explaining the activities that business enterprises are requested to undertake to respect human rights, in a concrete and easy-to-understand manner, which is tailored to the actual situation of business enterprises engaging in business activities in Japan."* (Guidelines, p. 7).

The Guidelines are based on:

- **The UN Guiding Principles**
- **The OECD Guidelines for Multinational Enterprises**
- **The ILO MNE Declaration**

Benefits for Japanese companies:

- Respecting human rights reduces management risks like boycotts, downgrading, and exclusion from investments.
- Laws in Europe and the U.S. are strengthening human rights regulations, affecting even businesses not directly subject to these laws.
- Compliance enhances predictability in global business.
- Implementation improves brand image, investment ratings, partner relationships, and employee retention.
- Increases competitiveness and corporate value.

Required Actions under the Guidelines

→ **Not legally binding.**
  → The Guidelines are not legally binding, but all business enterprises in Japan should strive to respect human rights to the fullest extent possible in alignment with international standards.

→ **Applicable everywhere.**
  → Efforts should be made within the business enterprise, group companies, suppliers, and other business partners both inside and outside Japan.

→ **To meet corporate responsibility, business enterprises are required to:**
  → **Formulate their human rights policy**:
    → Expression of commitment to meet the responsibility to respect human rights.

  → **Conduct human rights due diligence**, including :
    → Identification and assessment of adverse human rights impacts Prevention and mitigation of adverse human rights impacts (UN Guiding Principles 19, Section 4.2).
    → Tracking of activity effectiveness (UN Guiding Principles 20, Section 4.3).
    → Communication and information disclosure (UN Guiding Principles 21, Section 4.4).

  → **Provide remedy:**
    → Responses to adverse impacts

Implications for Companies with Ties to Japan

Increased Scrutiny

- Both domestic and international companies that operate within Japan or have links to Japanese businesses might face increased scrutiny regarding their human rights practices.

Supply Chain Impact

- Companies might need to reassess their supply chain and other partnerships to ensure compliance with the human rights standards outlined in the Guidelines. This could lead to changes in sourcing and potential increased costs.

Reputation and Brand Image

- Alignment with these Guidelines could improve a company's reputation, particularly in markets where consumers are conscious of human rights issues. Conversely, non-compliance could negatively affect a brand's image.

Legal Risks

- While the Guidelines themselves are not legally binding, they reflect a global trend towards increased regulation in human rights within the business context. Companies not adhering to these principles may find themselves at higher risk of legal challenges or non-compliance with future regulations.

Potential Market Access

- Depending on how these Guidelines are enforced or adopted by other businesses, non-compliance might limit market access or business opportunities within Japan and with Japanese-linked businesses, decreasing investment and increasing difficulty in attracting new investors.

Japanese Investment in Southeast Asia

- **Leadership in Infrastructure Investments:**
  - **Total Investment**: $330 billion (highest in terms of infrastructure)
  - **Key Examples**: Nhat Tan Bridge (Vietnam), New Bohol International Airport (Philippines), Patimban Deep Sea Port (Indonesia).
- **Types of Projects & Financial Mechanisms**
  - **Projects**: Subway systems, container terminals, economic corridors, mass rapid transit.
  - **Finance**: Long-term low-interest loans, Japan Overseas Infrastructure Investment Corporation for Transport and Urban Development.
- **Strategic and Economic Motivations:**
  - **Mutual Benefit:** Increasing regional influence is one driver, but Japan's investment is also about opening markets, boosting its own economy, and strengthening regional ties.
  - **Regional Ties:** Supports Tokyo's “Free and Open Indo-Pacific” vision, helping maintain political, diplomatic, and economic influence.
- **Decline in Presence**
  - **Trade**: Lost top spot to China in 2009, lead nearly tripled in 2021.
  - **Direct Investment**: Fell from $14.85 billion in 2012 to $8.52 billion in 2020, to sixth place.
  - **Travel**: Travel and official visits have dropped, partly due to Japan's strict COVID-19 measures. The share of Japanese visitors to ASEAN decreased from 16% to 10% from 2012 to 2020.
- **Future Focus**
  - **Soft Infrastructure**: Health services, digital economy, green finance, with $600 billion global pledge with G7.

Indonesia's Legal Framework

While Indonesia does not have a general HRDD law, it does have two regulations that require fisheries to conduct HRDD in their operations.

1. Ministry of Marine Affairs and Fisheries Regulation 35/2015

2. Ministry of Marine Affairs and Fisheries Regulation 2/2017

Compliance Requirements for Fisheries Industry:

Establishment of a Human Rights Compliance System consisting of:

1. Human Rights Policy
2. Due Diligence Mechanisms
3. Remediation Mechanism

Regulations are in effect but not operationalized according to stakeholders

Indonesia’s National Action Plan

While Indonesia does not have a law requiring private companies human rights due diligence, the country is in the process of establishing a **National Action Plan on Business and Human Rights (NAP).**

A National Focal Point on Business and Human Rights (within the Ministry of Law and Human Rights), supported by a multi-sectoral taskforce, is responsible for formulating, finalising and implementing the National Strategy to develop a NAP.

A NAP is a **framework for implementing international human rights obligations within domestic legislation that serves a variety of purposes:**

- **Legal Compliance**: NAPs provide guidance on compliance with international human rights obligations, relevant national laws, and international best practices.
- **Risk Identification and Mitigation**: By mapping out human rights risks in the context of business operations, NAPs help governments and companies identify, prevent, and mitigate potential negative impacts on human rights.
- **Promoting Transparency**: They encourage transparency by laying out the government's commitments, plans, and the measures they intend to take. This helps build trust among stakeholders.
- **Providing Guidance**: NAPs offer guidance to businesses on how to conduct human rights due diligence and align their operations with human rights standards, including in areas like labor rights, environmental protections, and anti-corruption.

Launch of Draft National Strategy on Business and Human Rights: Initiated by the Indonesian Ministry of Law and Human Rights, supported by the EU and UNDP, on 25 November 2020.
Purpose of the Strategy: To guide companies in integrating human rights standards, promoting non-discriminatory practices, equality, and workplace safety, aligning with international human rights standards.

PRISMA: A HRDD Tool for Businesses

PRISMA: Penilaian Risiko Bisnis dan HAM/Business Risk and Human Rights Assessment

Initiation:

- Launched in 2021 by the Indonesian government
- Developed by Directorate General of Human Rights in collaboration with civil society and companies

Objective

- Independent tool for assessing business-related human rights risks
- Aimed at aiding companies in risk analysis for human rights violations

Compliance:

- Preventive and educational purpose
- Non-mandatory, no regulated penalties for non-compliance

Functionality of PRISMA:

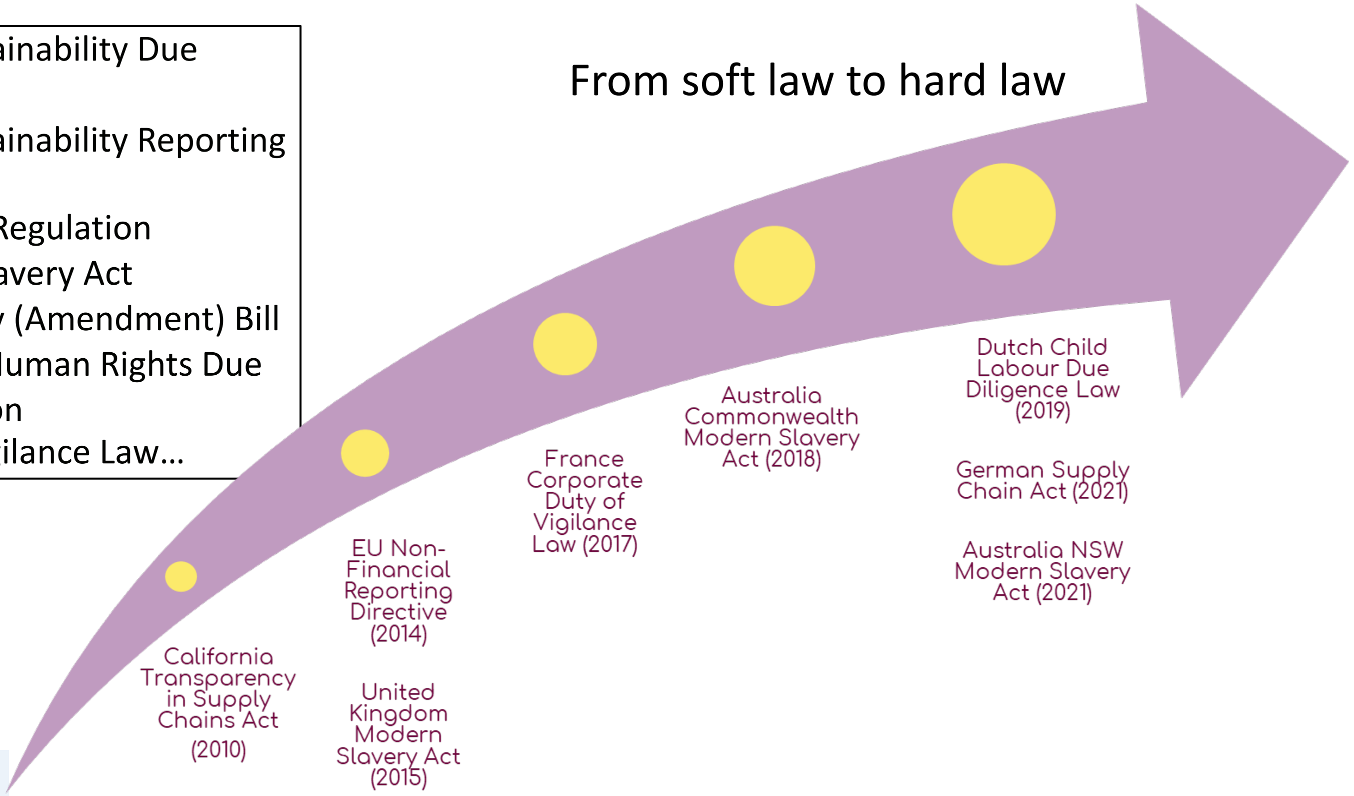
- Facilitates self-assessment for all companies across sectors
- Covers 13 key areas (e.g., working conditions, privacy, environmental concerns, indigenous peoples, CSR)
- Involves mapping impacts, planning actions, tracking implementation, and public communication

The Shifting International Landscape on Business and Human Rights

- Greater **Corporate accountability**
- **More robust disclosures** around modern slavery and sustainability,
- **Mandatory human rights due diligence**

- EU Corporate Sustainability Due Diligence Directive
- EU Corporate Sustainability Reporting Directive
- EU Forced Labour Regulation
- Canada Modern Slavery Act
- UK Modern Slavery (Amendment) Bill
- Swiss Mandatory Human Rights Due Diligence Legislation
- Belgian Duty of Vigilance Law…

- **Thailand NAP launched (2019)**
- **India zero draft NAP published (2019)**
- **Pakistan NAP launched (2021)**

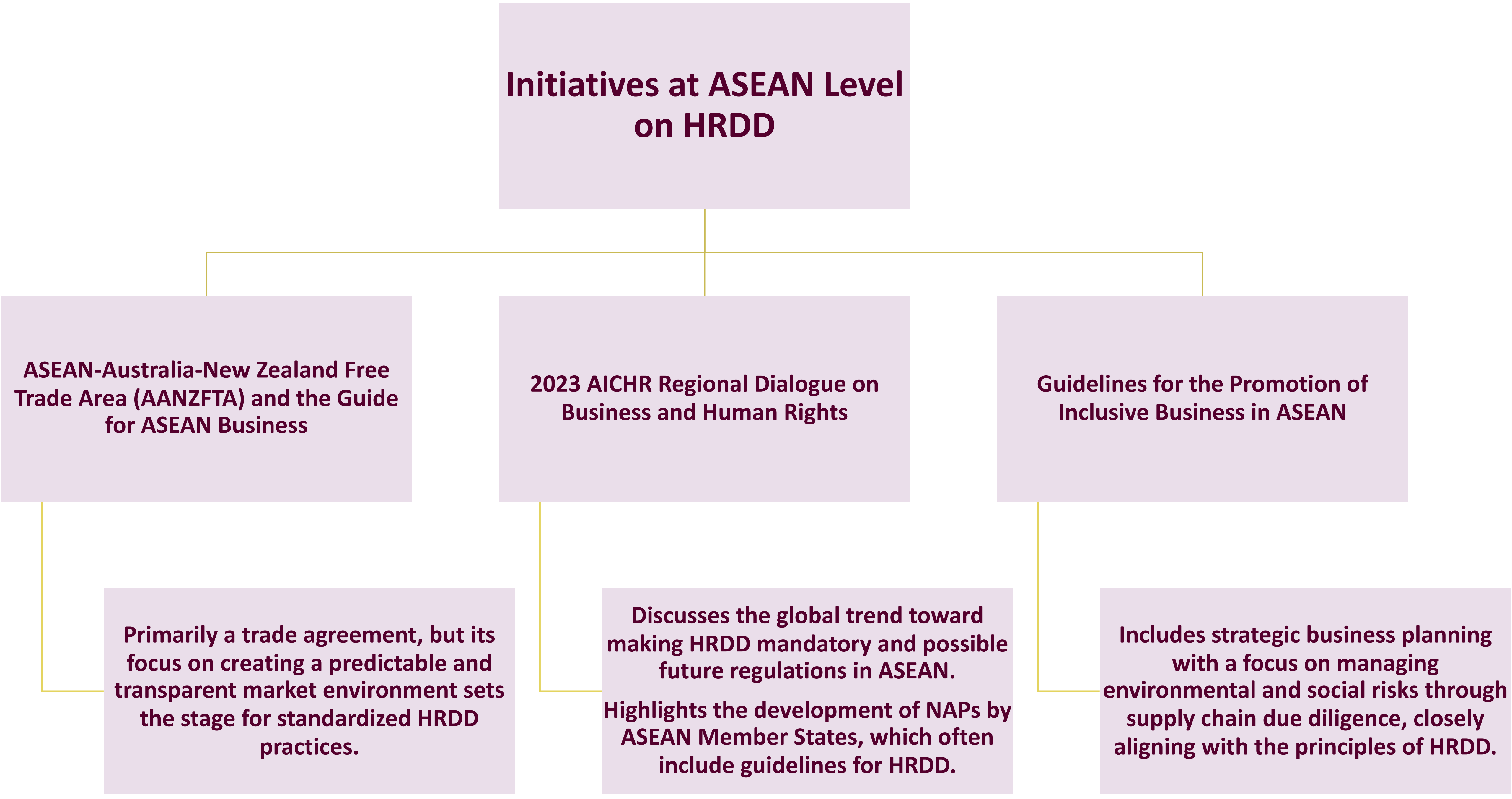


UNGPs (2011)

Buyer markets are facing increasing legal, financial, and reputational risks, where they fail to develop and implement human rights due diligence frameworks to manage their human rights impacts

These laws will have a **knock-on effect** on supply chains in Asia

These laws translate elements of the standards and principles in the UNGPs into binding legal obligations


Initiatives at ASEAN Level on HRDD
ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Guide for ASEAN Business
2023 AICHR Regional Dialogue on Business and Human Rights
Guidelines for the Promotion of Inclusive Business in ASEAN
Primarily a trade agreement, but its focus on creating a predictable and transparent market environment sets the stage for standardized HRDD practices.
Discusses the global trend toward making HRDD mandatory and possible future regulations in ASEAN.
Highlights the development of NAPs by ASEAN Member States, which often include guidelines for HRDD.
Includes strategic business planning with a focus on managing environmental and social risks through supply chain due diligence, closely aligning with the principles of HRDD.

Process: Human Rights Due Diligence in Action

Part 1: An Overview of Human Rights Due Diligence

What is Human Rights Due Diligence (HRDD)?

Definition: HRDD is a core part of the UNGPs and is a continuous process that enables both business enterprises and governments to identify, prevent, mitigate, and account for the adverse human rights impacts of their activities.

Origin: Rooted in Articles 18 to 21 of the United Nations Guiding Principles on Business and Human Rights (UNGPs), HRDD was formally endorsed by the Human Rights Council in 2011.

Importance: HRDD aligns the operations of business entities with international human rights norms and standards. It also acts as a safeguard against potential legal risks, fostering ethical conduct.

Applicability: HRDD is applicable to all business enterprises, regardless of their size, sector, operational context, ownership, and structure. It extends to the entity's own activities and business relationships, including supply chain.

Legal Obligations: Numerous jurisdictions are implementing legal frameworks that require HRDD. This reflects a growing recognition of the vital role business plays in ensuring human rights are respected.

Goals: By engaging in HRDD, organizations demonstrate their commitment to responsible business conduct, contributing to societal trust and sustainable development.

Human Rights Due Diligence: A Continuous Four-Step Process

1. **Identify** and assess human rights impacts – to gauge the types and severity of the risks

(Principle 18)

2. **Integrate** and act upon findings – to prevent and mitigate adverse impacts

(Principle 19)

3. **Track** effectiveness – to verify whether risks are being addressed

(Principle 20)

4. **Communicate** actions and outcomes – to account for how a business addresses their impacts

(Principle 21)

HRDD should be a continuous and on-going process

Source: UNDP Human Rights Due Diligence Training Facilitation Guide

Supply Chain vs. Value Chain: Understanding the Difference in HRDD

Comparison	Supply Chain	Value Chain
Definition	Primarily concerns the flow of goods and services, including all processes involved from production to final delivery.	Encompasses the full range of activities that add value to a product or service, including design, marketing, after-sales support, etc., in addition to production and delivery
HRDD Application	Identification, prevention, and mitigation of human rights risks in sourcing, manufacturing, distribution, and retail.	Broader analysis and integration of human rights principles across all value-adding activities, beyond just production and distribution.
Components	Includes suppliers, manufacturers, distributors, retailers, and end consumers.	Includes research and development, design, production, marketing, distribution, sales, after-sales services, and support functions.
Risk Perspective	May involve human rights issues such as labor rights, working conditions, child labor, and environmental impacts.	Looks at wider human rights impacts, including intellectual property rights, privacy, consumer protection, community engagement, etc.
Goal	Ensuring that all stages of production and distribution comply with human rights standards.	Embedding human rights considerations in all aspects of business, ensuring a holistic approach to responsible and sustainable value creation.
Key Differences	More focused on production and logistical aspects.	Encompasses a broader perspective, including all value-adding activities.
Application	Not used in HRDD under international standards.	Used in the UNGPs and other international frameworks.

Process: Human Rights Due Diligence in Action

Part II: Identifying and assessing human rights risks

Step 1: Identify and Assess Potential and Actual Adverse Impacts

UNGP Principle 18: In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

Two sources of information

A. **Draw** on internal and/or independent human rights experts
B. Engage in **meaningful consultation** with potentially affected groups and other relevant stakeholders

An "adverse human rights impact" occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

Source: The Corporate Responsibility to Respect Human Rights

Typically, this step involves:

I. **Assessing** the human rights context prior to a proposed business activity, where possible
II. **Identifying** who may be affected;
III. **Cataloguing** the relevant human rights standards and issues; and
IV. **Projecting** how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

Step 1: Identify and Assess Potential and Actual Adverse Impacts Cont.

Things to keep in mind

1. **Defining stakeholders**: Who are stakeholders? They include rights-holders and potentially impacted people, as well as people with an interest or concern in the business activity, including government officials, company managers, industry associations, trade unions, CSOs, lawyers and journalists.
2. **Direct consultation**: Consult with potentially affected stakeholders (or their legitimate representatives) directly in a manner that takes into account language and other potential barriers to effective engagement.
3. **Regular intervals:** Conduct assessments of human rights impacts at regular intervals, such as prior to: a new activity or relationship, major changes, or in anticipation of changes in the operating environment.

Key Concept in HRDD: Identify Salient Human Rights Risks (Principle 24)

Salient human rights risks are risks that are the **most severe** or where delayed response would make them **irremediable**.

Severity is determined by **scope** (how widespread the impact would be), **scale** (how grave the impact would be), and **irremediability** (how hard it would be to put right the resulting harm).

Likelihood is a secondary consideration.

Adapted from: The Corporate Responsibility to Respect Human Rights

Labour Rights | Civil & Political Rights | Economic & Social Rights | Cross-Category Rights

Negative impacts | No impact | Positive impacts

RIGHTS ISSUE	RIGHTS-HOLDER(S)	IMPACT	IMPACT RATING
Harvest			
Working conditions	• Harvest workers	Working hours may be excessive in the context of time-sensitive harvest operations. The industry wide use of temporary employment contracts undermines workers' stability of employment and there are reports of recruitment fees, mostly in the context of informal labour and of recruitment agencies used. There are some reports of late payment of wages and employers failing to make legally mandated social security contribution. Health and safety risks are especially high during busy harvest periods, both due to hazards inherent in the work activities and the presence of a non-permanent workforce that may lack awareness of risk and procedures.	
Freedom of association & collective bargaining	• Harvest workers	Trade union presence is limited across the export agriculture sector and collective bargaining is rare. There are general reports of anti-union practices on the part of some employers, including harassment of union officials and workers seeking to organise. The temporary nature of harvest work is a particular challenge for trade unions seeking to organise workers and it exacerbates workers' vulnerability.	
Forced labour	• Harvest workers	There are no specific reports to suggest that forced labour is a significant issue in avocado production. However, there are sporadic reports of forced labour cases in commercial agriculture in Peru and some wider risk factors, such as an increase in the proportion of potentially vulnerable foreign and internal migrant workers in the context of COVID-19.	

Source: ALDI Peru Avocadoes

Example Saliency Assessment Matrix

Saliency Matrix		Severity				
		Insignificant	Minor	Moderate	Major	Severe
Likelihood	Almost Certain	Medium	High	Very High	Very High	Very High
	Likely	Medium	High	High	Very High	Very High
	Possible	Low	Medium	High	High	Very High
	Unlikelyh	Low	Low	Medium	Medium	High
	Rare	Low	Low	Low	Low	Medium

Step 2: Integrate Findings and Take Appropriate Actions

Two steps from Principle 19

1. Integrate the findings from the human rights impact assessments across relevant internal functions and processes. This will require that:

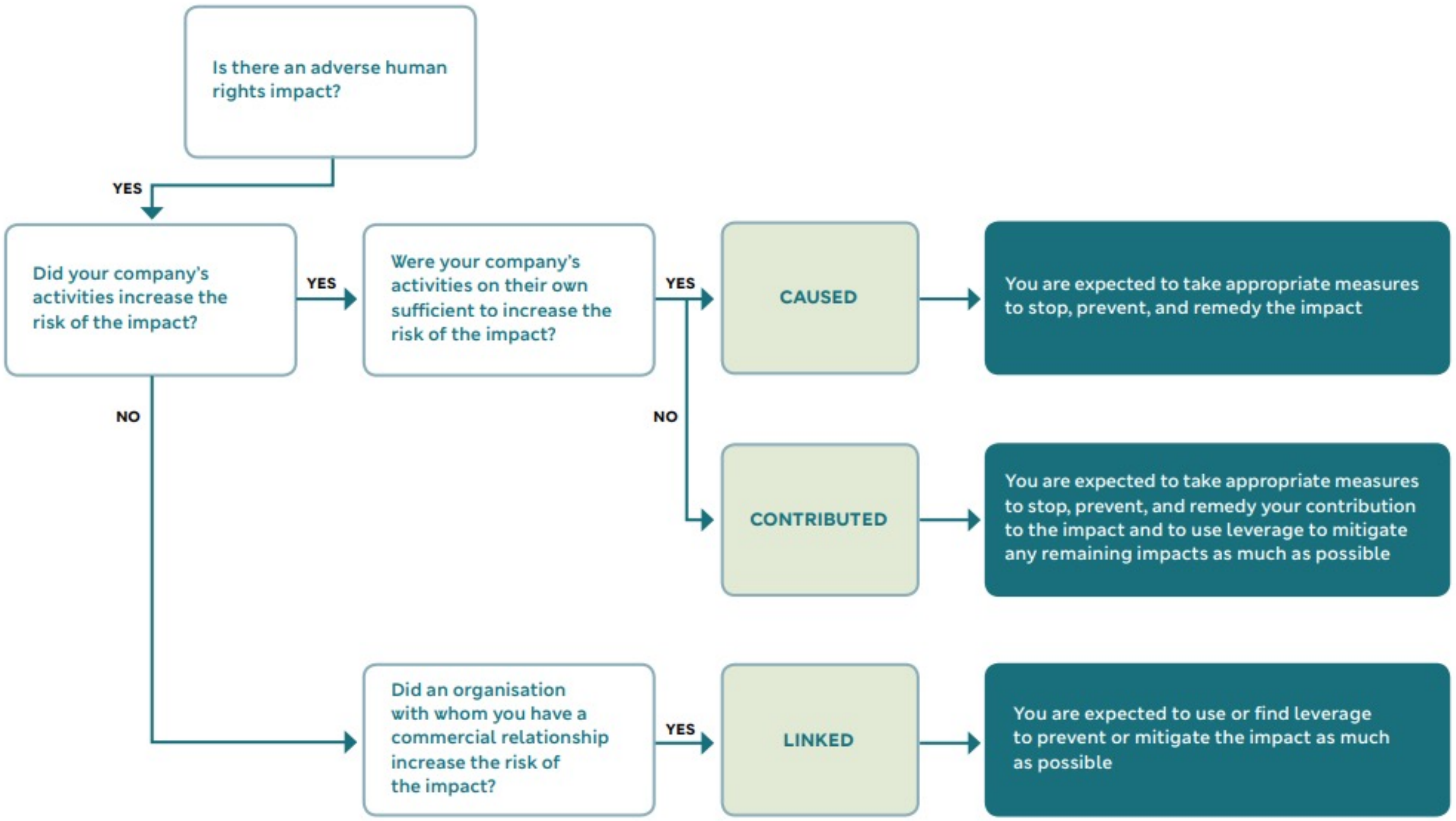
- Responsibility for addressing such impacts is assigned to the appropriate level and function within the business;
- Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

2. Take appropriate action. This will vary according to:

- Whether the business causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
- The extent of its leverage in addressing the adverse impact.

Determining Responsibility

- The actions taken by a business to prevent or mitigate human rights risks will vary depending on the **risks** that have been identified and the extent to which they are **responsible** for the risks identified.



Source: Marks and Spencer's Food Human Rights Standards Human Rights Due Diligence and Remedy Guidance

"Appropriate Actions": Preventing and Mitigating Adverse Human Rights Impacts (Principle 13)

Mitigation: The mitigation of adverse human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring.

Prevention: The prevention of adverse human rights impact refers to actions taken to ensure such impact does not occur.

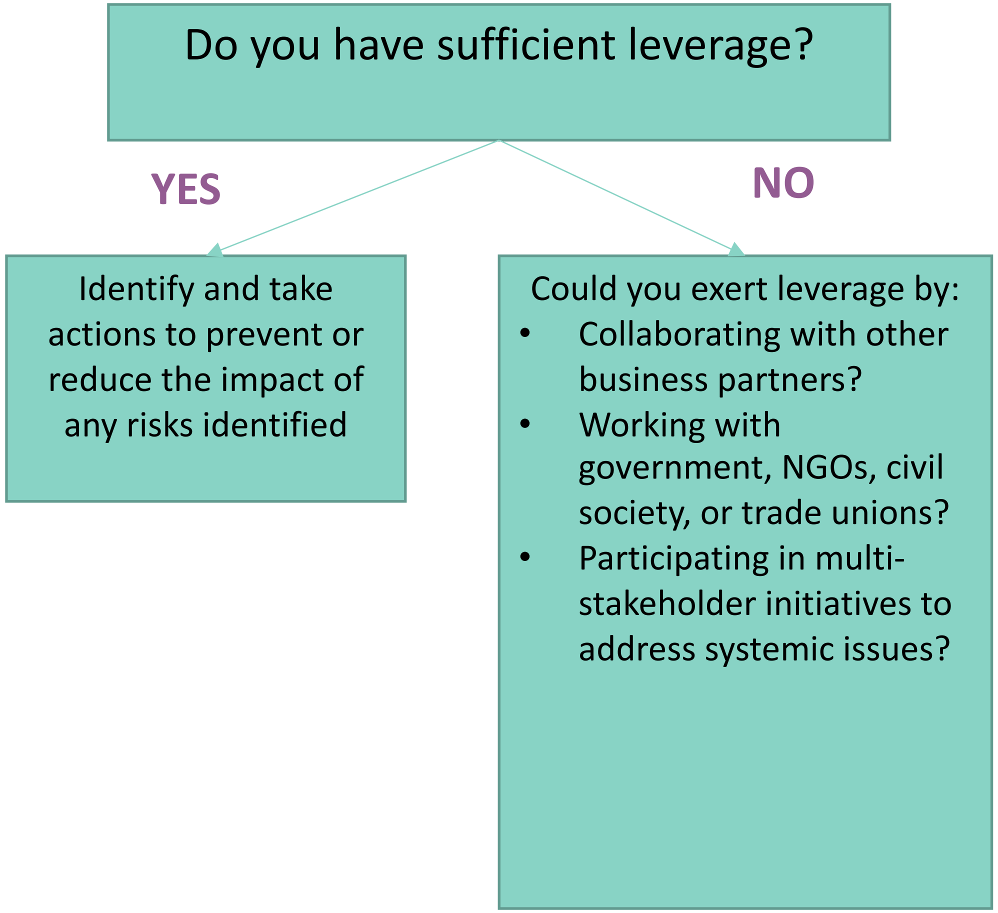
“Appropriate Actions”: Using Leverage (Principle 19)

“Leverage” refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

Source: The Corporate Responsibility to Respect Human Rights

- The extent of the business’ leverage determines the **appropriate actions** it should take to mitigate adverse impacts.

- Leverage may stem from **commercial influence** (e.g., use of contractual terms or audits to set standards) or **business influence** (e.g., capacity building, preferential purchasing)



Process: Human Rights Due Diligence in Action

Part III: Integrating, tracking, and communicating actions

Step 3: Track the effectiveness of responses (Principle 20)

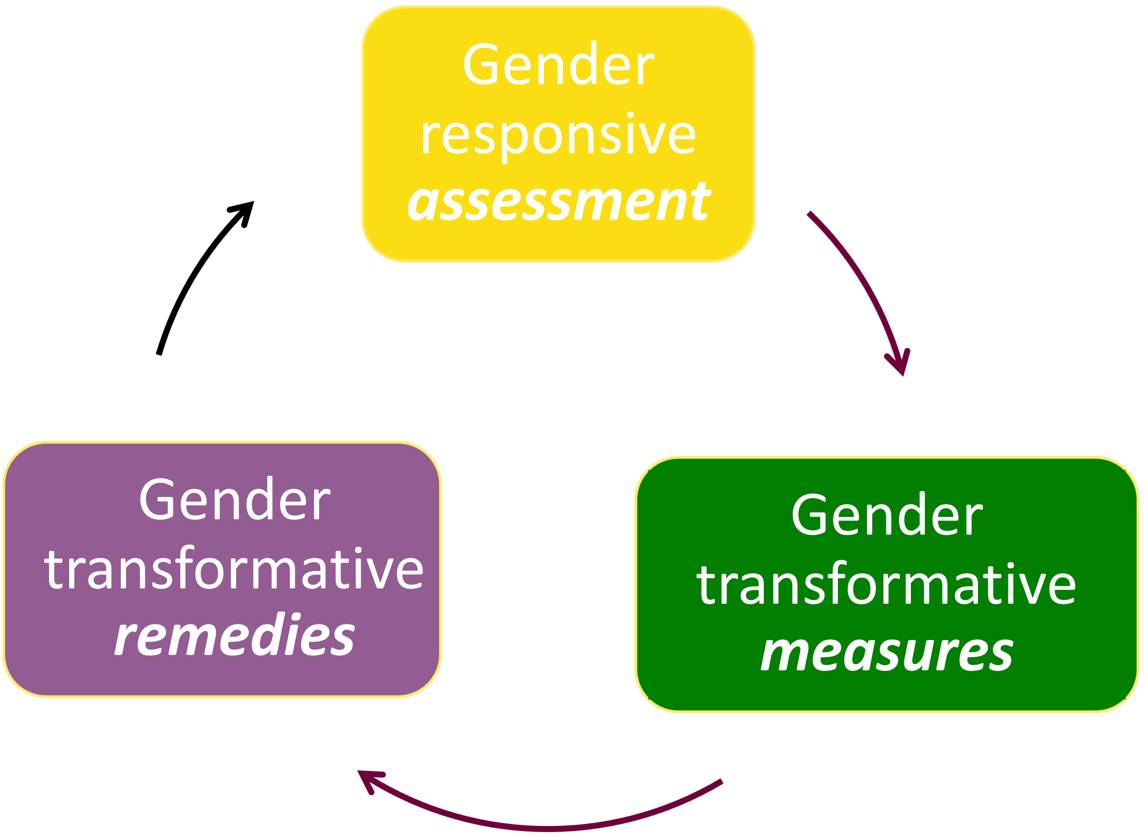
To verify whether adverse human rights impacts are being addressed, companies should **track the effectiveness of their responses**. Such tracking should:

a) Be based on **appropriate qualitative and quantitative indicators**;
b) Draw on feedback from both **internal and external sources**, including **affected stakeholders**.

Integrating an Intersectional Perspective into HRDD

Not all rights-holders are the same. For example, **children, women, migrant workers, indigenous peoples or LGBTI+** people may be impacted by business operations differently.

In particular, companies should be sensitive to differentiated impacts to **women** and apply a **gender framework to HRDD**.



UNDP HRDD Presentation

Step 4: Communicate Externally How Impacts are Being Addressed (Principle 21)

- It is important for businesses to communicate to the public how they are addressing their human rights impacts. This is especially true for businesses operating in contexts that “**pose risks of severe human rights impacts”.**
- Communications should:
  a) Be of a form and frequency that reflect a business’ human rights impacts and that are **accessible to its intended audiences**;
  b) Provide information that is sufficient to **evaluate the adequacy** of an enterprise’s response to the particular human rights impact involved;
  c) In turn not pose **risks to affected stakeholders**, personnel or to legitimate requirements of commercial confidentiality.

Apple’s public communication on how they address their human rights impacts

Key Considerations When Implementing HRDD

- Companies need to ensure their HRDD process is **specific to their context** and considers their **unique and individual circumstances**.
- As noted earlier, both **actual and potential** impacts should be considered.
- The HRDD process is **ongoing**, rather than one off.
- As companies differ from each other, the nature and extent of HRDD will vary as per the size, **sector and operating context** of the business.
- If **prioritisation** becomes necessary, more **severe risks** should be addressed first.
    - In such cases, companies should look at severity of the risk (**scale, scope and irremediability**) + **likelihood** of its occurring.

Defining Typologies

Businesses must tailor their response to potential and actual adverse impacts based on their relationship to the impact, known as the the risk typology**: cause, contribute to or directly linked**. The responsibility to respect human rights requires that businesses:

a) Avoid **causing or contributing** to adverse human rights impacts **through their own activities**, and address such impacts when they occur;

b) Seek to **prevent or mitigate** adverse human rights impacts that are **directly linked** to their **operations, products or services by their business relationships** even if they have not contributed to those impacts.

Part 4

Remedying Adverse Impacts: The Right to Remedy, Grievance Mechanisms, and Human Rights Due Diligence

What is a grievance?

Under the UN Guiding Principles on Business and Human Rights, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities

What is an operational-level grievance mechanism?

A non-judicial process where stakeholders can raise raise grievances. They:

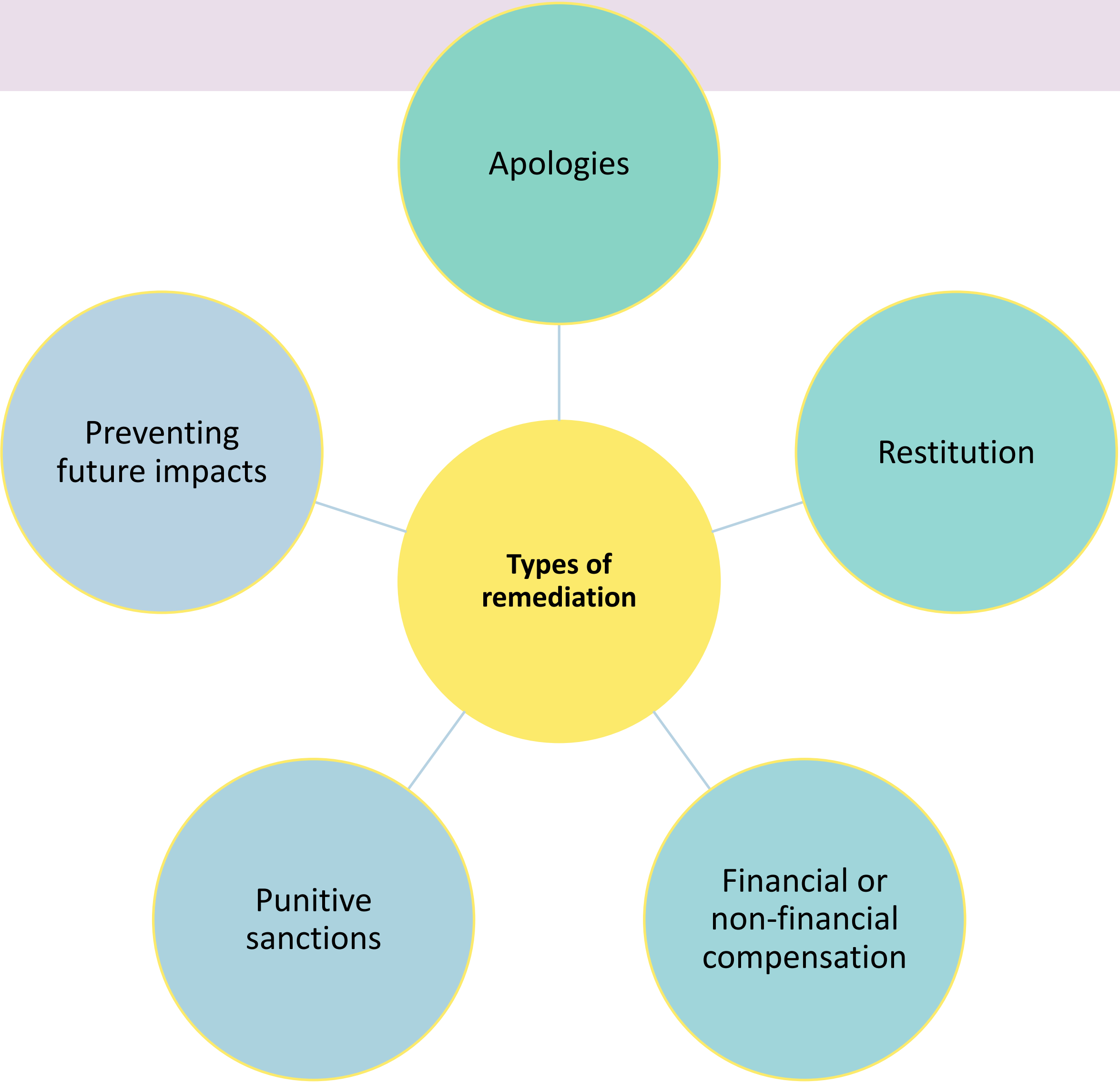
- **support companies' human rights due diligence by helping them identify adverse human rights impacts, and**
- **make it possible for identified grievances to be addressed and remediated by the company**

Remediation or Grievance Resolution

Remediation and remedy refer to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact.

Source: The Corporate Responsibility to Respect Human Rights

- A **rights-based approach**: affected stakeholders should be consulted on their desired remedial outcomes. The remediation plan should consider their perspective, needs and concerns.
- Consider both the **remedial actions** (i.e., fixing or reversing the adverse impact) and **systematic actions** that could be taken to prevent same or similar impacts from re-occurring.
- Remediation and human rights due diligence are separate, but closely connected processes.

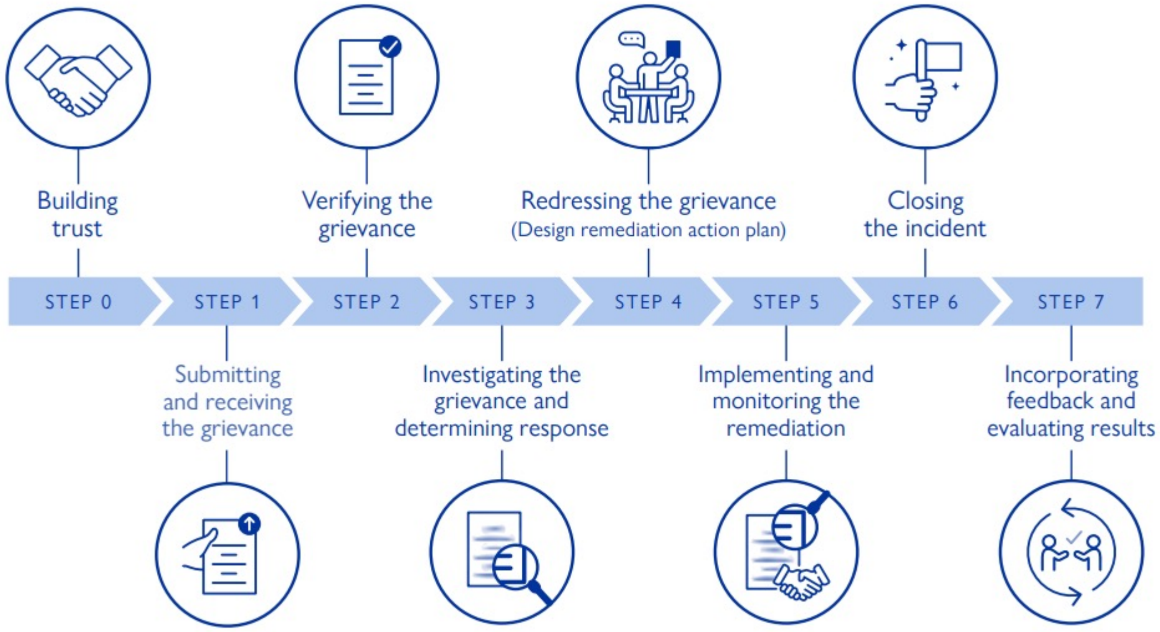


Grievance Mechanisms

"Grievance mechanisms" are any routinised process through which grievances concerning business-related negative impacts to human rights or the environment can be raised, and remedy can be sought.

Effective grievance mechanisms provide a platform for businesses to:

- Identify and monitor human rights risks early;
- Remedy adverse impacts as they occur;
- Prevent future, similar harms from arising;
- Improve communication on management of human rights impacts.



Source: Operational Guidelines for Businesses on Remediation of Migrant-Worker Grievances, IOM and The Remedy Project

Relevant Bonsucro principles and standard

- **Code of Conduct:** Cooperate in remediation of adverse human rights impacts through legitimate processes in line with the UNGP.
- **Production Standard**: 1.4.2 The operator ensures that there is a mechanism to raise grievances.

What is an Effective Grievance Mechanism?

Under the UNGPs, an effective grievance mechanism is:

- **Legitimate**
- **Accessible**
- **Predictable**
- **Equitable**
- **Transparent**
- **Rights-compatible**
- **A source of continuous learning**
- **Based on engagement and dialogue**

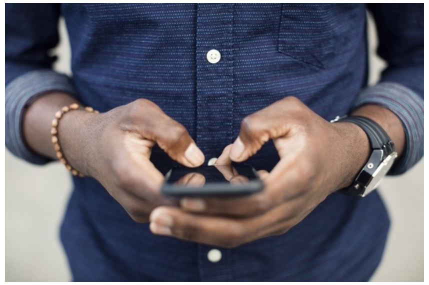
Under the UNGPs, remedy may include:

Apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

What is an Effective Grievance Mechanism?

Legitimate

A grievance mechanism is **legitimate** when it is **trusted** by the stakeholder groups who are intended to use it



Accessible

Stakeholder groups who are intended to use the grievance mechanism **know** about it

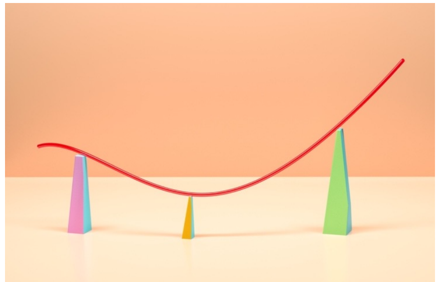
Adequate assistance is provided to those who may face particular **barriers to access** – e.g. translation services

Predictable

There is a **clear** and **known** procedure with indicative **time frames**

There is **clarity** on the **processes** and **outcomes** available and **means of monitoring implementation**

What is an Effective Grievance Mechanism?



Equitable

Attempts are made to address power imbalances so that parties can access information, advice and expertise to engage on fair, informed and respectful terms

Transparent

Parties to a grievance are regularly **informed** about its **progress**
Information about the **mechanism's performance** is **publicly shared** (subject to confidentiality requirements)

Rights-compatible

Outcomes are in line with **internationally recognised human rights**

What is an Effective Grievance Mechanism?

A source of continuous learning

Based on engagement and dialogue

Grievance mechanisms can be early-warning systems for companies

By **regularly** analysing the **frequency, patterns** and **causes** of grievances, companies can **identify** and **amend policies**, **procedures** or **practices** to prevent future harm

Companies should **engage with affected stakeholders** on the **design** and **performance** of grievance mechanisms to help ensure that it **meets their needs**, that they will **use** it in practice, and that there is a **shared interest** in ensuring its success.

How does HRDD Help the Remediation Process?

Effective human rights due diligence permits companies to:

Identify the people who have been impacted by business activities

- This allows businesses to provide compensation to those who have been harmed.

Understand the root causes of the negative impacts

- This information can be used to develop effective strategies to prevent future negative impacts.

Build relationships with stakeholders

- Engaging in meaningful consultation with stakeholders will build strong relationships, facilitating communication and getting buy-in from those who have been affected in the remediation process.

Avoid adverse human rights impacts

- By identifying and assessing the risks of human rights impacts, businesses can take steps to mitigate those risks and prevent impacts from occurring. This can help businesses to protect their reputations, avoid legal liability, and build more sustainable and responsible business models.

Grievance Mechanisms – Tips

Do

- ✓ Partner with 3rd parties that are trusted by workers
- ✓ Socialise the grievance mechanism
- ✓ Have a worker welfare committee that truly represents the workers
- ✓ Take retaliation threats to parties seriously
- ✓ Protect the confidentiality/anonymity of parties
- ✓ Ensure that your grievance mechanism incorporates the principles of GEDSI gender equality, disability and social inclusion

Don't

- x Treat a complaints/suggestions box as a grievance mechanism
- x Create a structure that is hard to navigate
- x Assume that the grievance mechanism is publicised merely because it is available

THE REMEDY PROJECT

Respect.
Protect.
Remedy.

Part 3: Application
Case Study Exercise: Navigating Human Rights Due Diligence in Southeast Asia

B+HR ACADEMY

From the People of Japan

B+HR BUSINESS AND HUMAN RIGHTS

UNDP

Case Study: Relevant Facts

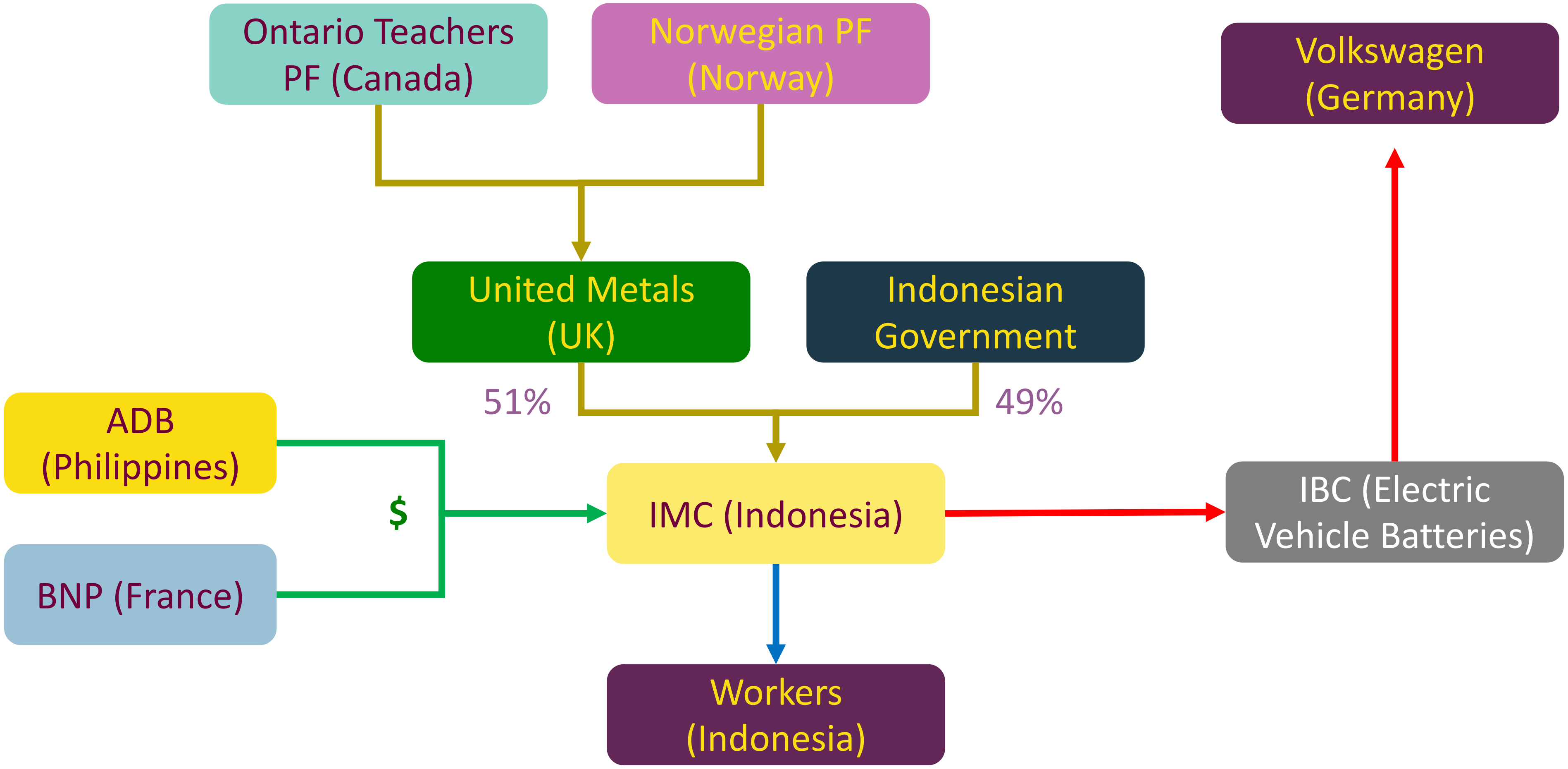
- The Sulawesi Mine is a cobalt mine in Indonesia. The mine is operated by Indonesia Mining Corporation, a company incorporated in Indonesia.
- Indonesia Mining Corporation is a joint-venture company. It is 51% owned by United Metals, a British mining company. 49% of its shares are owned by the Indonesian Government.
- United Metals is a publicly listed company, whose shares are traded on the London Stock Exchange. United Metals' major shareholders include the Norwegian Pension Fund and the Ontario Teachers' Pension Fund.
- The mine project is financed by a joint loan from the Asian Development Bank and BNP Paribas, a French bank.
- Indonesia Battery Incorporated (IBC) manufactures electric vehicular batteries using the cobalt from the mine.
- BNP Paribas and United Metals have described the mine project as a 'sustainable development' project in their annual reports, and marketing materials.
- However, since 2022, NGOs have reported issues of labour exploitation at the mine, including conditions amounting to forced labour and the presence child labour at the mine.
- In 2025, the German car company Volkswagen announced its intention to build a line of all-electric vehicles using IBC's electric batteries thanks to the mine's reputation.
- Manufacturing of the electric Volkswagen's with IBC batteries will begin in 2026.
- In 2024, the European Union's Directive on Corporate Sustainability Due Diligence came into effect.

Case Study

Stakeholder mapping:

1. Who are the different actors involved?
2. What jurisdictions are they located in?
3. What are the relationships between these actors?
4. Are there any other actors *not* mentioned in the case study that *might* be involved?
5. What are the key legal frameworks implicated?

Case Study


Ontario Teachers PF (Canada)
Norwegian PF (Norway)
Volkswagen (Germany)
United Metals (UK)
Indonesian Government
51%
49%
ADB (Philippines)
$
IMC (Indonesia)
IBC (Electric Vehicle Batteries)
BNP (France)
Workers (Indonesia)

Case Study

Divide into groups representing the following stakeholders:

1. Volkswagen
2. IBC
3. IMC
4. United Metals
5. Indonesian Government
6. Norwegian PF
7. BNP Paribas

Breakout Session 1: Human Rights Due Diligence

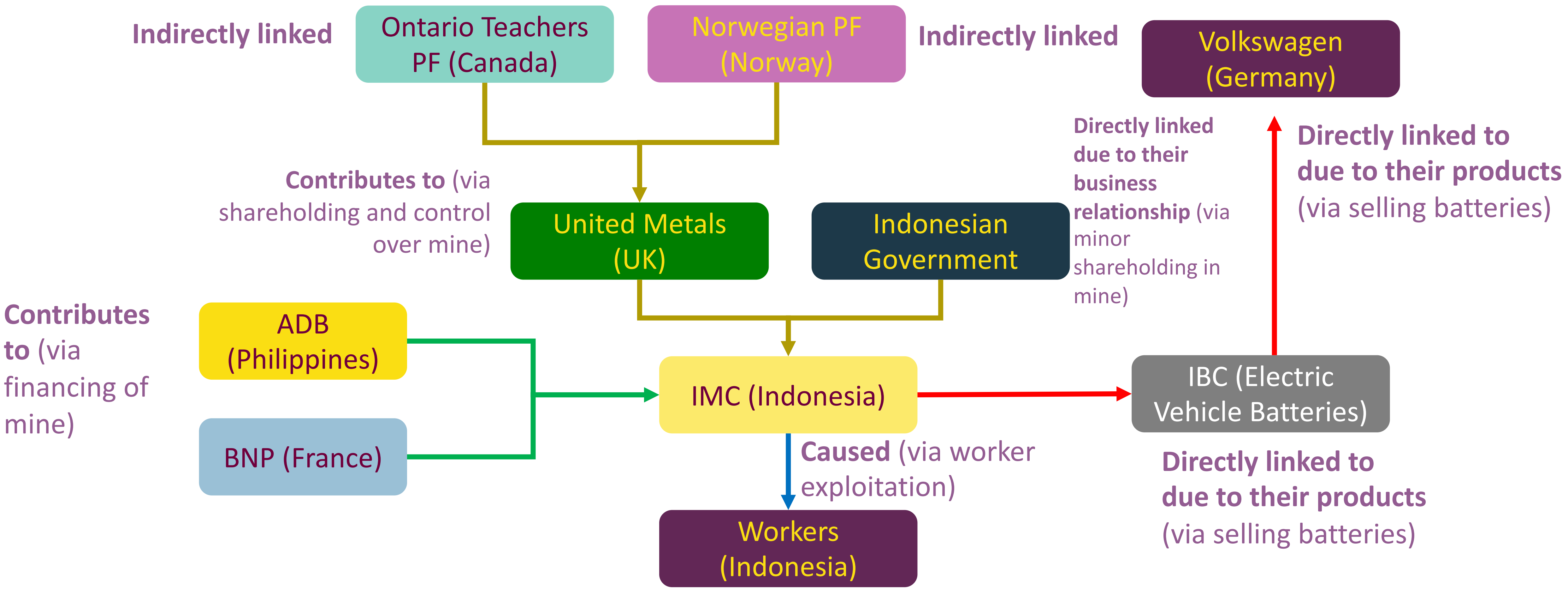
As your stakeholder, you need to answer the following questions:

1. **What are the responsibilities and interests of your stakeholder in this scenario?**
2. **What are the key human rights risks and impacts identified in the case?**
3. **How would you conduct due diligence for the identified risks?**
4. **What resources and expertise would be needed for this assessment?**

Keep in mind the UNGP language for describing responsibility for causing an adverse impact:

1. **Caused**
2. **Contributed to**
3. **Directly linked to their operations, products or services by their business relationship.**

Case Study


Indirectly linked
Ontario Teachers PF (Canada)
Norwegian PF (Norway)
Indirectly linked
Volkswagen (Germany)
Contributes to (via shareholding and control over mine)
United Metals (UK)
Indonesian Government
Directly linked due to their business relationship (via minor shareholding in mine)
Directly linked to due to their products (via selling batteries)
Contributes to (via financing of mine)
ADB (Philippines)
BNP (France)
IMC (Indonesia)
IBC (Electric Vehicle Batteries)
Caused (via worker exploitation)
Workers (Indonesia)
Directly linked to due to their products (via selling batteries)

Breakout Session 2: Right to Remedy and HRDD

With the information we have now, we need to determine what steps each actor should take to remedy the harms caused and how to communicate this information to regulatory bodies.

Right to Remedy

1. As your stakeholder, explain what role you have in causing the harm (caused, contributed to, linked).
2. What obligations does your stakeholder have as a result of your connection to the harm? (Prevent, mitigate, use leverage, separate, etc).
3. If your stakeholder caused the harm, please design a grievance mechanism to provide remedy to the individuals harmed.

HRDD

1. How do HRDD laws (such as the Japanese Guidelines or the EU Directive) apply to the involved companies, and your stakeholder, in particular?
2. Given your stakeholders' involvement in the adverse impacts, what are the key steps you should take to ensure compliance with these regulations?

Case Study

Group discussion:

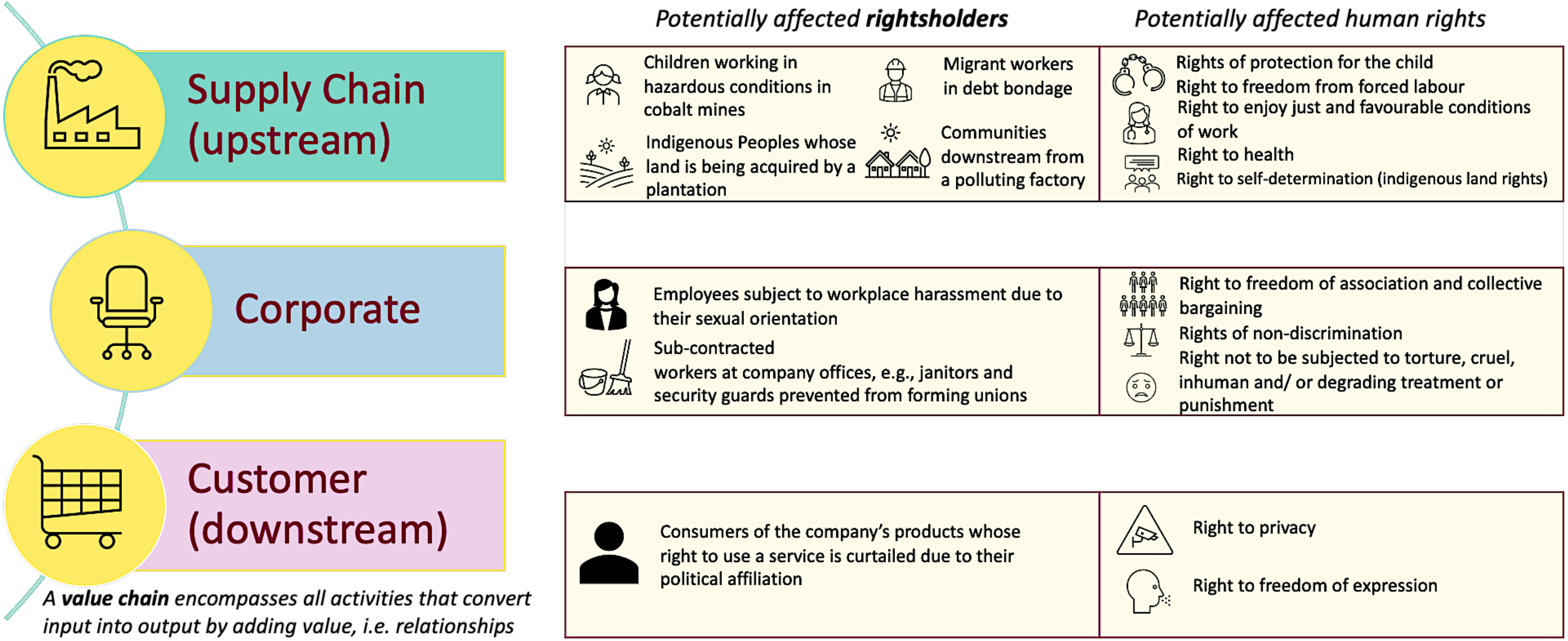
1. Please share your findings from the previous questions.
2. What were the main challenges faced in conducting HRDD for this case?
3. How can the lessons learned be applied in the participants' respective companies?

HRDD and Stakeholder Engagement

Stakeholder Engagement Defined

- **Meaningful and on-going** engagement with your stakeholders is critical in the implementation of the UNGPs:
  - This ensures that the **perspectives, needs and concerns of stakeholders** are reflected in the development and implementation of policies
  - This can also result in **improved effectiveness** as policies are tailored to the realities of stakeholders and the situation on-the-ground
  - Involving external stakeholders in **monitoring and evaluation also helps create accountability**
- Grievance mechanisms are a platform for stakeholder engagement and **social dialogue**
- Partnering with third parties can help improve the effectiveness of grievance mechanisms

Stakeholders in the Value Chain



*A **value chain** encompasses all activities that convert input into output by adding value, i.e. relationships with upstream suppliers and downstream end-users, and the company's own operations*

***Stakeholders** are individuals or group who may affect or be affected by an organization's activities, e.g., civil society, trade unions. **Rightsholders** are individuals or groups that have particular entitlements in relation to duty-bearers such as the State or the company.*

Conduct Due Diligence Along the Entire Value Chain

Understanding the Value Chain & Conducting Comprehensive Assessments

- **Scope and Complexity**: Identify all stages of the value chain, from sourcing to production, distribution, and consumption. Understand the complexities involved in various stages.
- **Mapping Risks:** Identify potential human rights risks and impacts across the entire chain. Recognize the interdependence of various stages.
- **Risk Analysis**: Carry out a detailed analysis of potential human rights risks, considering legal, social, environmental, and ethical aspects.
- **Impact Assessment:** Evaluate the potential impacts on stakeholders and rightsholders at each stage of the value chain.

Integration into Business Practices

- **Strategic Alignment & Policy Development:** Embed human rights considerations into business strategies, create clear policies that cover the entire value chain.
- **Feedback mechanisms**: Ensure systems are built to facilitate continuous feedback so that findings from due diligence are incorporated into corporate conduct.

Ongoing Monitoring, Improvement and Reporting

- **Regular Reviews, Engagement with Stakeholders & Utilize Technology:** Continuously monitor and review practices, maintain communication with stakeholders, consider tools like PRISMA.
- **Clear Communication & Alignment with International Standards:** Clearly articulate processes, findings, actions taken, and ensure alignment with international standards.

How to Conduct Meaningful Engagement with Stakeholders

Identify Stakeholders + Rightsholders

- Recognize the parties whose rights may be directly or indirectly impacted and ensure their prioritized consideration.
- This can mean physically going to remote communities to ensure their identification.

Engagement Strategies

- Facilitate platforms for honest and transparent communication, respecting cultural and social norms.
- Ensure the active participation of affected parties in decision-making processes, respecting their autonomy and opinions.
- Continual dialogue and consultation to maintain trust and build relationships.

Respecting Cultural Sensitivities

- Acknowledge and embrace the local cultural context, including language, traditions, and customs.
- Utilize international standards such as the UN Guiding Principles on Business and Human Rights to guide meaningful engagement.

Measuring and Reporting Impact

- Impact Assessment: Regular evaluation of engagement effectiveness through feedback and monitoring.
- Transparent Reporting: Provide regular updates to all stakeholders, including public reporting where relevant, on the process and outcomes of engagement.

Complying with International Standards

- Engaging with stakeholders—in particular rightsholders—is not a "nice to have" but a requirement under international standards.
- Governments are increasingly requiring evidence of engagement to satisfy HRDD obligations.

Tips for Working with Stakeholders

Understanding Local Context and Culture

Engage with Local Insights: Engage local experts, community leaders, and cultural authorities to comprehend local traditions, values, and concerns, increasing trust..

Respect Local Norms: Demonstrate respect for the local norms by recognizing and upholding the values, customs, and local laws that govern the community,

Collaborative Approach in Assessment and Planning

Involve Communities in Risk Analysis: Include local voices in risk identification, impact assessments, and strategy development

Partnership with Local Organizations: Foster collaboration with local NGOs, social groups, and government entities to enhance HRDD efficiency.

Regular Communication and Transparency

Maintain Open Dialogue: Regularly communicate with local communities, keep them informed, and encourage their feedback.

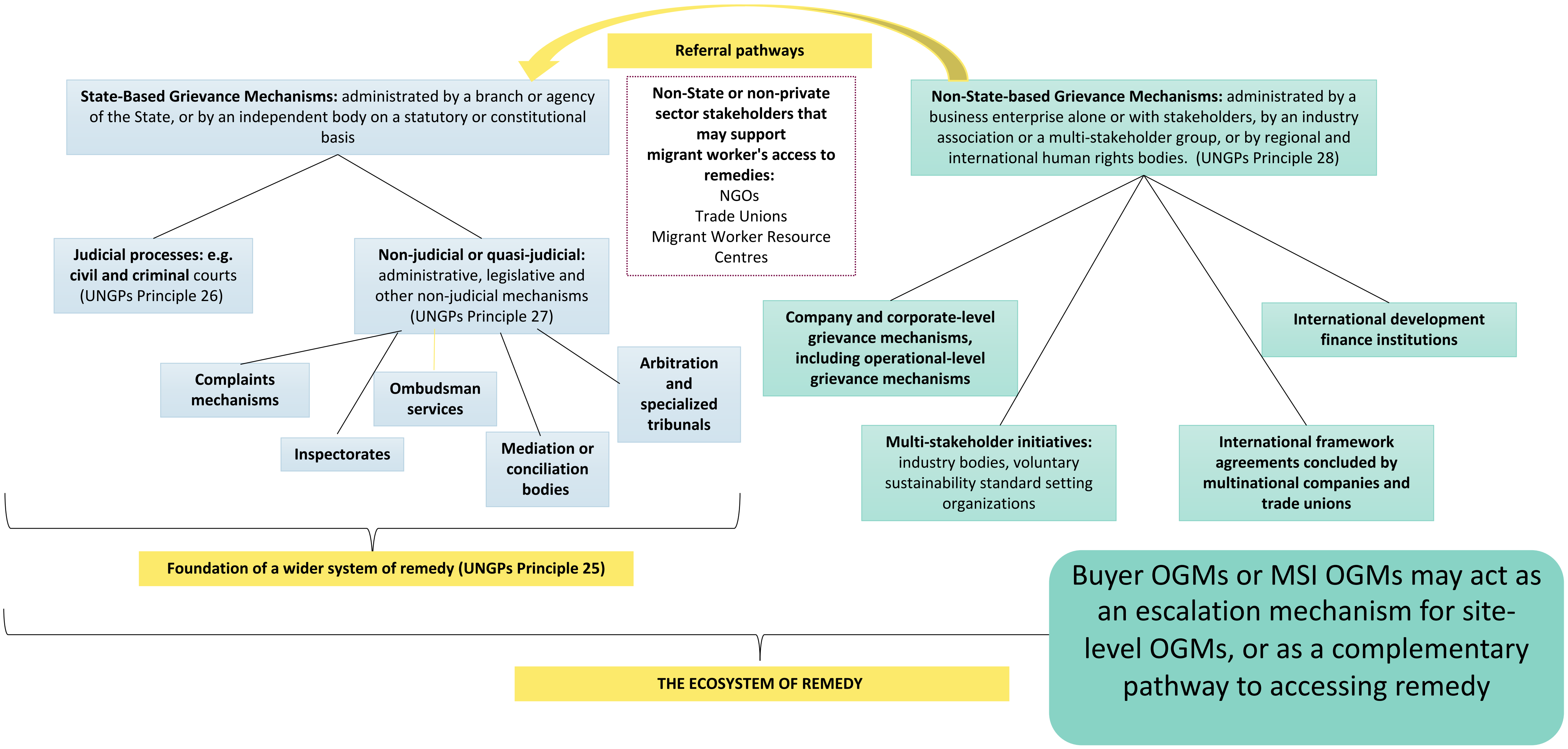
Transparent Reporting: Share progress, results, and plans openly with local stakeholders to build trust.

Regular Communication and Transparency

Empower Local Decision Making: Allow local communities to have a meaningful say in decisions that affect them.

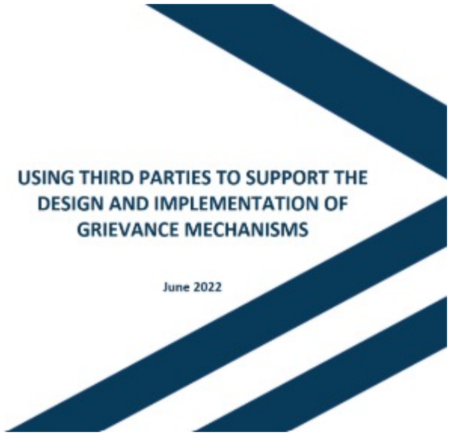
Provide Education and Training: Invest in building the skills and capacities of local communities to enable informed participation.

The Relationship Between Operational-Grievance Mechanisms (OGMs), the Right to Remedy, and Stakeholders



The Role of Stakeholders in Strengthening OGMs

Civil society organization, grassroots organizations, trade unions, business and human rights experts, and other third parties can support throughout the grievance resolution process, e.g.:



Using Third Parties to Support the Design and Implementation of Grievance Mechanisms

Stage 0: Building Trust

Enable participation of affected rightsholders in the design of the mechanism

Stage 1: Submitting and receiving the grievance

Acting as focal points to support affected rightsholders raise grievances

Stage 2: Verifying the grievance

Conducting training programs for personnel on rights-based approaches to handling grievances

Stage 3: Investigating the grievance and determining the response

Providing legal, technical, financial and other assistance to affected rightsholders to navigate the grievance resolution process

Stage 4: Redressing the grievance

Conducting meaningful engagement with affected stakeholders in determining the appropriate remedy

Stage 5: Implementing and monitoring the remediation and closing the incident

Monitor and ensure non-retaliation policies are complied with

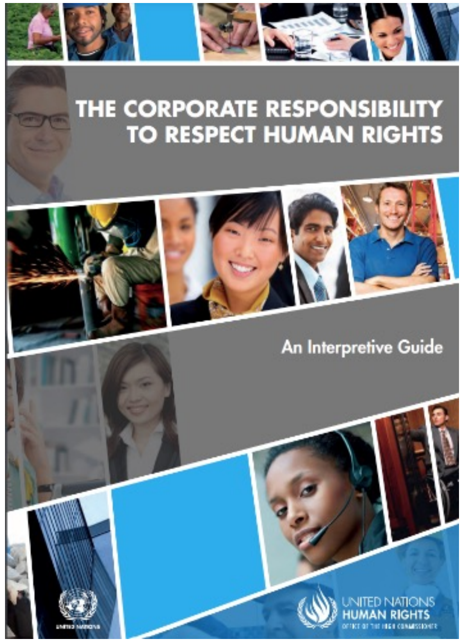
Stage 6: Incorporating feedback and evaluating results

Providing expertise to improve the company's or industry group's human rights compliance and ESG efforts

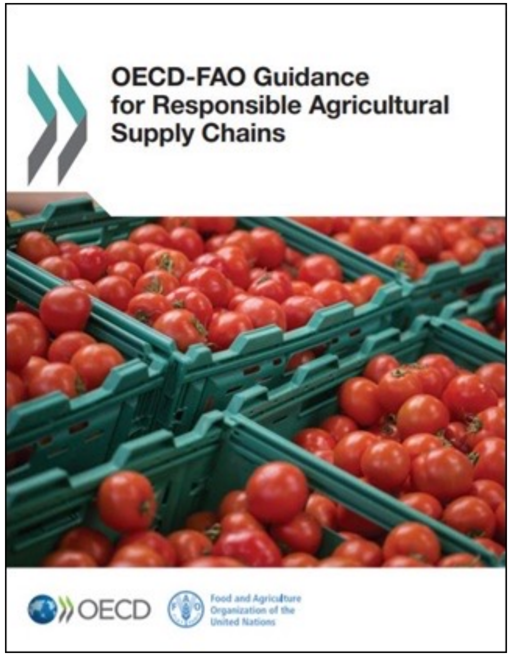
Questions?

Helpful Resources

See also: Bonsucro's Code of Conduct Resources Page



The Corporate Responsibility to Respect Human Rights (Interpretive Guide)



OECD-FAO Guidance for Responsible Agricultural Supply Chains

Marks and Spencer's Food Human Rights Standards Human Rights Due Diligence and Remedy Guidance

Operational Guidelines for Businesses on Remediation of Migrant-Worker Grievances, IOM and The Remedy Project

Other key resources are also linked in the slide notes

About The Remedy Project: Vision and Mission

WHO WE ARE

We are a **social enterprise** that works to improve access to justice and remedy for migrant workers in global supply chains

WHAT WE DO

We aim to **revolutionise** how workers access remedy within global supply chains. We help companies to identify, prevent, and remedy human rights issues in their supply chains. Our goal is to raise standards, meet business objectives, and support better work environments.

HOW WE DO IT

We **facilitate** the co-creation by businesses and workers of non-judicial **remediation mechanisms** that allow migrant workers to exercise their rights to remedies .

We **support businesses** to develop and implement more robust corporate governance strategies, which ultimately lead to an improved and more accountable work ecosystem.

We **bring together** migrant workers, NGOs, trade unions, industry bodies and businesses together to participate in remediation frameworks to improve work environments.

About The Remedy Project: Our Work

Our work is built around three practice areas

Business and Human Rights

We work with businesses and industry groups to improve social sustainability and human rights standards and practices across their supply chains. We also conduct research and produce policy guidance in the area of business and human rights and the protection of migrant workers.

Remediation

We help businesses and workers to improve ecosystems to remedy rights violations in supply chains through our proprietary alternative dispute resolution mechanism or existing grievance and remediation systems.

Modern Slavery

We work with Governments, UN Agencies, Civil Society, and other partners to build capacity and networks to counter modern slavery in Asia and seek accountability and access to justice for survivors.

Thank you

Contact us:

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