

HRDD Guidance for Indonesian Companies

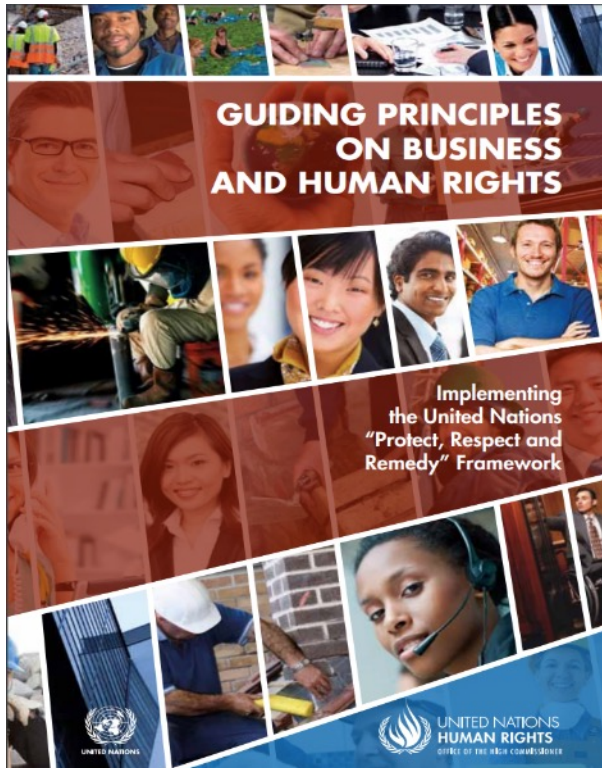
B+HR Academy: Regional HRDD Training for Companies Operating in Southeast Asia

September 21, 2023



Agenda for Today's Consultation

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

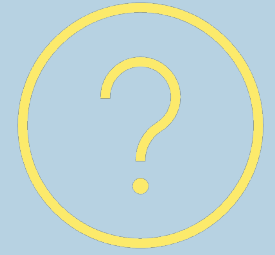


1. The Indonesian Context for HRDD

2. Tips on How to Better Implement HRDD

3. Going Forward

Poll: What is your level of understanding of the HRDD?



1. 🧢 This is Day 3 of my learning journey
2. 🧐 I have some basic knowledge
3. 🎓 I have a solid understanding
4. 🧠 I'm an expert

Poll: What do you hope to get out of this consultation (pick one or more)?

1. To improve compliance with upcoming HRDD laws and/or international standards
2. To build my knowledge of the HRDD and corporate responsibility to respect human rights
3. To learn good practices and practical tips to implement HRDD
4. Other reason

Part 1: The Indonesian Context for HRDD



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

Human Rights Due Diligence in Asia

Some countries in the Asia region have adopted legislation/action plans that contain elements of HRDD:

- Ministry of Marine Affairs and Fisheries Regulations 35/2015 and 2/2017 - **Indonesia**
- Overseas Resources Development Business Act (amendment) - **South Korea**
- **Thailand** National Action Plan on Business and Human Rights
- Guidelines on Respecting Human Rights in Responsible Supply Chains – **Japan**
- **Australian** Modern Slavery Act



Company adoption of HRDD practices:

A recent mapping of palm oil and seafood companies in Indonesia, Thailand and Vietnam found divergent human rights due diligence practices amongst the companies surveyed.

While some companies have taken steps to adopt HRDD practices aligned with the UNGPs, many companies are at the very early stages of their HRDD journey

Key trends

Supplier due diligence
and new contractual
obligations for
suppliers

Enhanced third-party
audits and penalties for
non-compliance

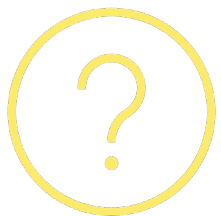
Demand for ethical trade and
sustainability certification, and
barriers to entry for those that
cannot demonstrate sustainable
practices

Sustainable purchasing and
procurement practices
become increasingly
commonplace

Use of supply
chain grievance
mechanisms

Businesses will be expected to align their practices with the UNGPs, as they are the authoritative standard on how businesses should fulfil their responsibility to respect human rights

Poll: Have you experienced any of these trends (pick one or more)?



1. Supplier due diligence and contractual assurance in purchasing/supplier contracts
2. Enhanced third-party audits and penalties for non-compliance
3. Demand for ethical trade and sustainability certification
4. Sustainable purchasing and procurement practices are becoming common
5. Supply chain grievance mechanisms

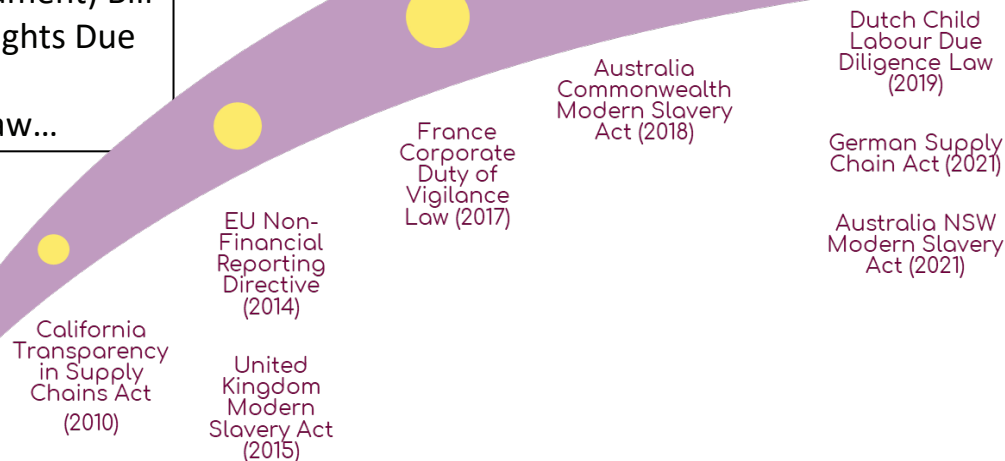
The Shifting International Landscape on Business and Human Rights

- 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)**

From soft law to hard law



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

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graph TD; A[Initiatives at ASEAN Level on HRDD] --> B[ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Guide for ASEAN Business]; A --> C[2023 AICHR Regional Dialogue on Business and Human Rights]; A --> D[Guidelines for the Promotion of Inclusive Business in ASEAN]; B --> E[Primarily a trade agreement, but its focus on creating a predictable and transparent market environment sets the stage for standardized HRDD practices.]; C --> F[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.]; D --> G[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.];
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ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Guide for ASEAN Business

Primarily a trade agreement, but its focus on creating a predictable and transparent market environment sets the stage for standardized HRDD practices.

2023 AICHR Regional Dialogue on Business and Human Rights

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.

Guidelines for the Promotion of Inclusive Business in ASEAN

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.

Part 2: Tools and Tips on How to Better Implement HRDD



From
the People of Japan



Tip #1: Implement Each Aspect of the UNGPs



1. 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



2. Implement Human Rights Due Diligence

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



3. 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

Key Principles to Note: UNGPs and HRDD

Applies to all businesses, regardless of their size, sector, location, ownership and structure

UNGPs Principle 14

Processes should be appropriate to size: e.g., a smallholder farm might take a less structured approach vs. a large mill

Processes should also be proportionate to risk: e.g., an environment where children could potentially be exposed to hazardous pesticides should require heightened attention

Responsibility to respect human rights extends throughout a company's own operations and throughout its value chain

UNGPs Principle 13

Businesses must consider both their own activities AND their business partners in the value chain

E.g., A mill should understand risks arising from sugarcane processing and crushing operations AND from its relationships with sugarcane traders and sugarcane farmers

Understand human rights impacts on individuals

UNGPs Principle 18

Conduct a mapping of both internal and external stakeholders

A smallholder farm's stakeholders may include contract workers, seasonal workers, farm owners/management, local communities, mills, sugarcane farmer's associations

Tip #2: Meaningfully Engage with Affected Stakeholders and Rightsholders

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.

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

Tip #3: 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.

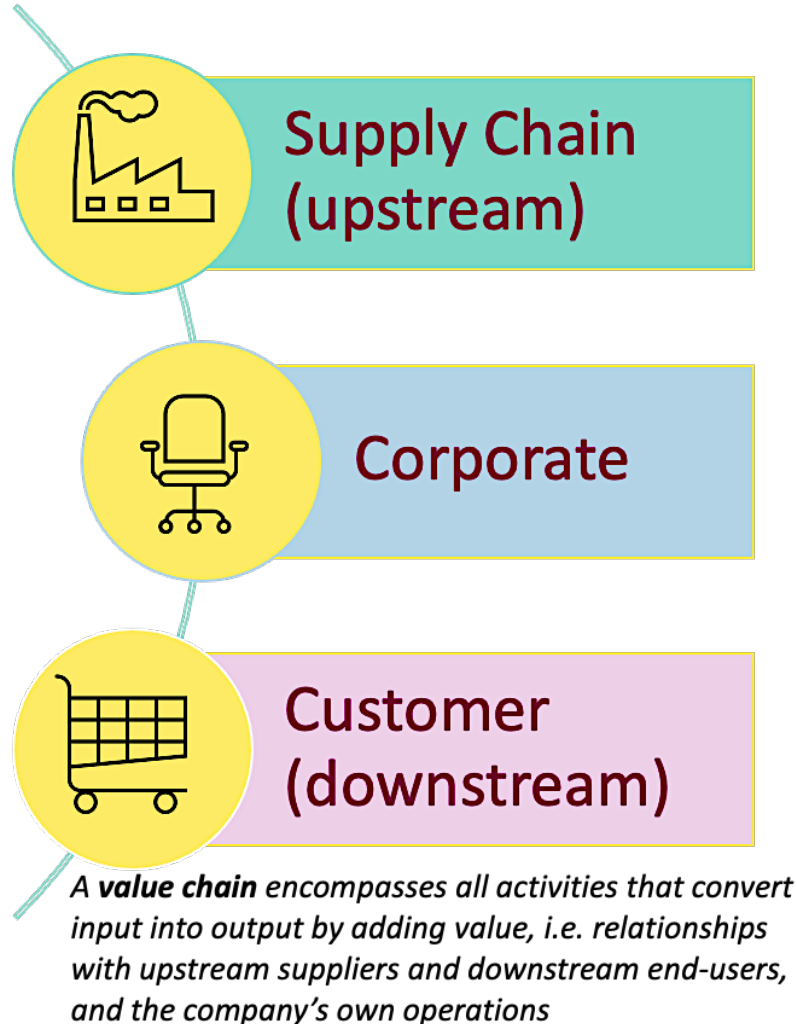
Integration into Business Practices

- **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.

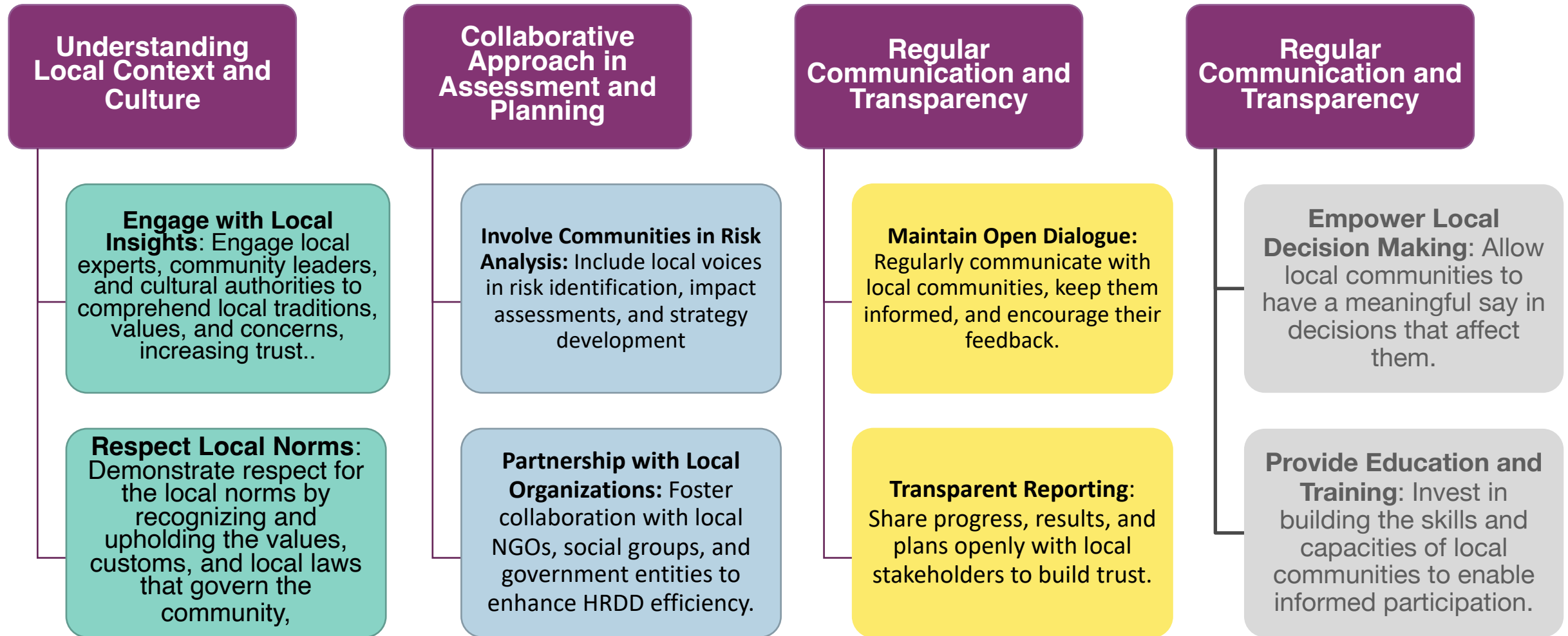
A Refresher: Human Rights in the Value Chain



Potentially affected rightsholders		Potentially affected human rights
	Children working in hazardous conditions in cobalt mines	 Rights of protection for the child  Right to freedom from forced labour  Right to enjoy just and favourable conditions of work  Right to health  Right to self-determination (indigenous land rights)
	Indigenous Peoples whose land is being acquired by a plantation	
	Migrant workers in debt bondage	
	Communities downstream from a polluting factory	 Right to freedom of association and collective bargaining  Rights of non-discrimination  Right not to be subjected to torture, cruel, inhuman and/ or degrading treatment or punishment
	Employees subject to workplace harassment due to their sexual orientation	
	Sub-contracted workers at company offices, e.g., janitors and security guards prevented from forming unions	
	Consumers of the company's products whose right to use a service is curtailed due to their political affiliation	 Right to privacy  Right to freedom of expression

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.

Tip #4: Work with Local Communities and Groups



Community-Based Human Rights Impact Assessments

About the Tool

- Initially created by Rights & Democracy (Canada)
- Dynamic, participatory approach to analyze human rights impacts of investments

Core Objectives

- Educate communities about their rights
- Translate needs into human rights language
- Identify impacts and propose responses

Features

- Local communities as experts and advocates
- Facilitates engagement with government and corporate actors

Impact

- Empowers communities with a powerful tool for advocacy and action



Source: Oxfam's HRIA Tool

Part 3: Going Forward



From
the People of Japan





How Will You Implement What You Have Learned?

Q&A



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Thank you

Contact us:



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<https://www.remedyproject.co/>