HUMAN RIGHTS DUE DILIGENCE: AN OVERVIEW

In 2011, the international community unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs), which clarify what is expected from companies and governments when it comes to human rights.

The UNGPs establish that companies have a duty to respect human rights, and must have in place processes that enable them to identify the impacts their operations have (or could have) on human rights of a wide range of people (including people working for the company, product end-users, and communities located near corporate activities).

Once they know the impacts, companies must show that they know, and take actions to prevent, mitigate, and account for how they address those impacts. Companies must also address any adverse human rights impacts with which they are involved, including impacts attributed to their suppliers, subcontractors, and other business partners.

WHY SHOULD A COMPANY DO HRDD?

- Transparency and early detection of impacts reduce risk, and increase a company’s capacity to prevent human rights violations.
- The costs of integrating HRDD and ensuring deep engagement with different stakeholders are low compared to the significant costs that companies bear when their operations violate human rights; these include operational, reputational, and legal risks.
- Implementing HRDD processes helps decrease the risks of conflicts.
- It helps to identify potential hotspots that might not have been on their radar previously.
- Implementing HRDD measures reduces long-term risk to companies and shareholders.
- Operations that respect human rights increase brand value and enhance company image.
- Engaging rightsholders in an HRDD process can identify efficiencies.

WHAT ARE A COMPANY’S RESPONSIBILITIES?

Specific responsibilities are described in UNGPs #17 to #20 and include the following elements:

- IDENTIFY actual or potential human rights impacts, drawing upon internal and external expertise, including potentially affected groups and at-risk and marginalized groups.
- PREVENT impacts by integrating the findings into functions, processes, and decision making, and MITIGATE by taking action. The appropriate action varies according to whether a company causes, contributes, or is directly linked to the impact, as well as extent of leverage in addressing the impact.
- TRACK responses and efficiency of measures through qualitative and quantitative indicators, as well as drawing upon feedback from stakeholders.
- COMMUNICATE to various stakeholders the actions undertaken to address the risks and impact identified and the efficiency of the proposed measures.

CAN HRDD INCREASE RISKS OF LEGAL LIABILITY?

On the contrary.

- HRDD can insulate companies from legal liability, rather than expose companies to legal liability (as long as the companies also disclose how they plan to mitigate any human rights risks identified).
- Companies can safeguard against “greenwashing” lawsuits, and fraudulent business practice litigation, through HRDD disclosures.
- Thus far, we know of no lawsuits ignited by HRDD disclosures.
- Investors have a legal right to be aware of material risks.
How should a company implement HRDD in practice?

• Commit to respecting human rights through the adoption of an integrated or stand-alone human rights policy, and integration of the UNGPs into existing policies and suppliers’ standards.

• Develop a thorough and coherent HRDD approach which should:
  • Demonstrate how the company will identify its most salient human rights risks, what action they will take, when, how and with whom.
  • Cover its entire value chain, from operations at a domestic level and abroad, to the suppliers of different tiers.
  • Be ongoing and recurring, as the human rights risks may change over time.
  • Take into consideration the size of the company, the risk of severe human rights impacts, and the nature and context of the operations.

• Integrate robust HRDD activities, such as human rights impact assessments (HRIAs) enabling companies to identify human rights risks, moving away from audits which do not provide a comprehensive analysis of the entire supply chain nor ensure meaningful engagement.

• Ensure meaningful rightsholder engagement:
  • Start early and conduct regularly, in order to influence the decision-making process.
  • Ensure informed participation, by providing access to information, including about the purpose of participation and the broader context of the company operations. Best practice is to co-create a process in which rightsholders understand when, how and to what extent their input will be incorporated.
  • Allow sufficient time to hear the concerns of rightsholders and to build capacity.
  • Create a safe space to discuss sensitive issues and address the main barriers to participation. Consider collaborating with a local external party that would improve the balance in power dynamic and respect cultural/social context.
  • Be inclusive and engage with all people directly and indirectly affected by the company’s activities, including people with divergent views. Engagement must be gender sensitive and include groups most at risk of abuse (such as gender non-conforming, disabled, young or old in age, undocumented migrants).
  • Communicate how impacts are addressed (through sustainability reports, webinars, in-person meetings):
    • The human rights impacts of the company’s business activities, including company-owned operations and supply chain, and plans to mitigate adverse impacts;
    • The types and extent of stakeholder consultation; and
    • The company’s plans to track effectiveness of measures and the results.
  • Establish project-level grievance mechanisms to ensure affected people can voice their concerns and have access to remedy, in a trusted process without retribution.

What do we mean by salient human rights risks?

Salient human rights risks are those that are most likely to generate the most severe and widespread (number of people affected) impact on human rights. Salience uses the lens of risk to people, not the business.

These key elements determine the saliency of impact:

**SCALE:** The severity of the impact on rights holders, which is determined by level of harm to individuals or the gravity.

**SCOPE:** The number of rights holders affected by an actual or potential impact.

**REMEDIABILITY:** Ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the impact occurred.

**LIKELIHOOD OF IMPACT:** Probability that an impact will occur is a primary factor. However, a low probability of a severe human rights impact alone cannot justify reducing the priority of efforts to mitigate the risk.
WHAT RIGHTS SHOULD BE CONSIDERED?
The UNGPs clarify that companies must respect all the rights covered in the International Bill of Human Rights, and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. These include:

- **Labor rights**, including freedom from forced labor and child labor, freedom of association, the elimination of discrimination in employment and occupation; and a safe and healthy working environment;
- **Economic and social rights**, including the right to an adequate standard of living, self-determination, freedom from forced evictions, and the right to a healthy environment;
- **Civil and political rights**, including rights to privacy, to peaceful assembly, to free expression, to vote, to freedom of religion, and rights for human rights defenders.

A human rights lens also means that gender equality, non-discrimination, participation, and access to information must be respected.

HUMAN RIGHTS IMPACT ASSESSMENT (HRIA) AS A TOOL FOR HRDD

Although the term HRIA does not appear in the UNGPs, it has emerged as a best practice. Companies across several sectors (extractives, food and agriculture, apparel, and information technology) conduct HRIAs.

What does an HRIA do?

- Measures the gap between the human rights in principle (as adopted by the governments) and human rights in practice (as experienced by rights holders).
- Identifies the main impacts associated with corporate activities, and helps determine who should be held accountable for those impacts (duty bearers).
- Requires an ongoing, gender-sensitive, and meaningful engagement of rightsholders, including most at risk populations, to identify the impacts and determine the best approaches to prevent or mitigate them.
- Includes recommendations to prevent and/or mitigate the impacts identified.
- Is followed by a publicly-available, time-bound action plan to demonstrate how the impacts will be addressed.

HRIAs can also be conducted by communities (see Oxfam’s COBHRA methodology). Community-based processes put rightsholders in the driver’s seat and help identify long-lasting solutions, and they can uncover systemic and structural issues that are not easy to measure.

FIGHTING INEQUALITY TO BUILD A BETTER WORLD

Oxfam believes that poverty is a policy choice, and that the ultrawealthy and giant corporations have hijacked our systems to benefit a select few. We are working to redress the balance of power, putting it back in the hands of working families in the US and around the world.