

Handout for Intensive Human Rights and Environmental Due Diligence Training for Trade Unions

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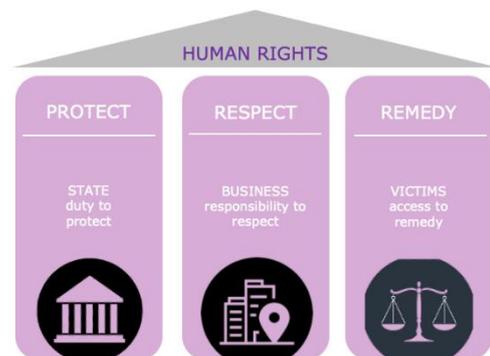
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Due Diligence

The United Nations Guiding Principles for Business and Human Rights (UNGPs) and the concept of Human Rights and Environmental Due Diligence, were developed under the leadership and guidance of prof. John Ruggie (then a professor at Harvard University in the US). In 2005, he was appointed Special Representative of the Secretary-General on Business and Human Rights by Kofi Annan. He organized more than 50 consultations worldwide with all stakeholders: local business, multi nationals, local governments, NGOs, trade unions, local community leaders, etc. These consultations resulted in a new standard for business and human rights in 2011: the United Nations Guiding Principles for Business and Human Rights (UNGPs). These principles were adopted by the UN Human Rights Council on June 16, 2011.

The UNGPs are based on a framework that consists of three pillars: protect, respect and remedy. The state has the duty to *protect* human rights. All states in all countries worldwide have an obligation to protect human rights abuse through for example policies, legislation and regulations. Companies need to *respect* human rights, address negative human rights impacts in which they are involved with and comply with all applicable laws. And victims of negative human rights impacts are entitled to effective *remedy*, which is a joint responsibility of states and companies.

UN Framework on Business and Human Rights



The UNGPs were well received. Companies, governments, NGOs, trade unions all embraced the guidelines and stressed its importance. Immediately the OECD Guidelines for Multinational Enterprises were revised to include the UNGPs, and especially the concept of human rights due diligence, which was now expanded to also include environment. The UNGPs and the OECD Guidelines are the current international normative standard for responsible business conduct

International norms and legislative framework

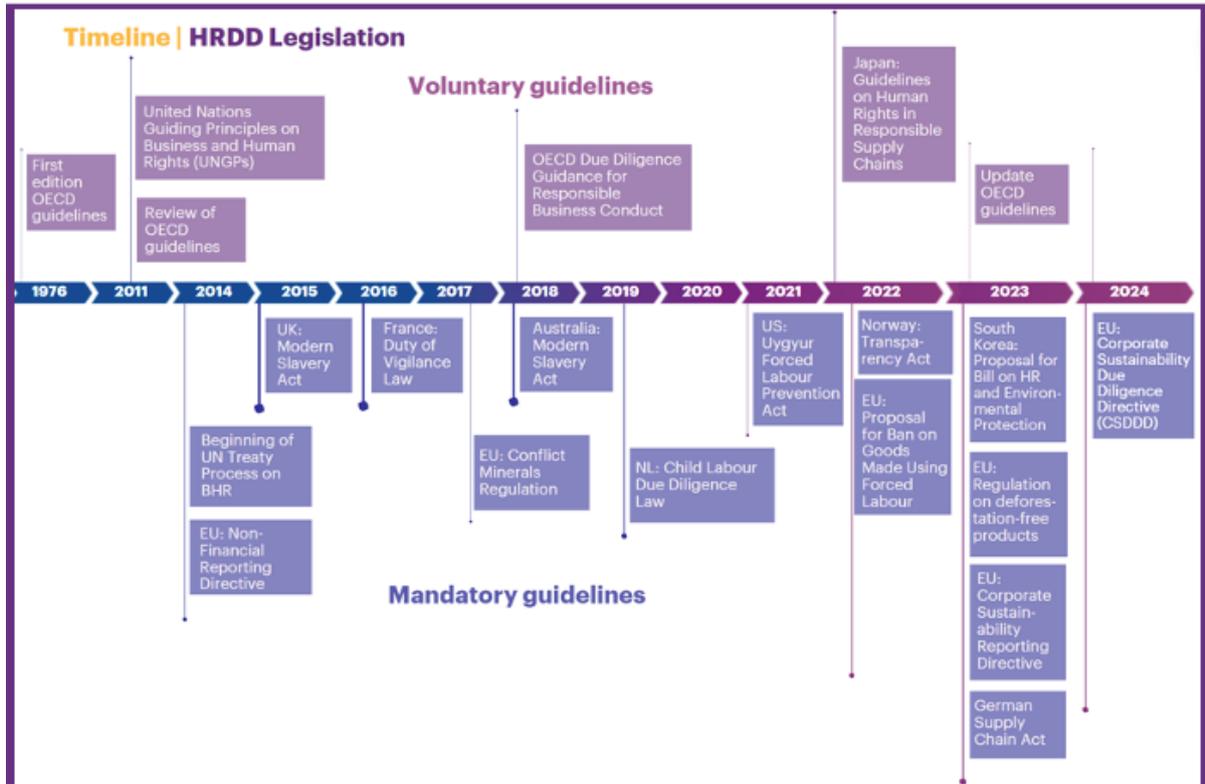
Responsibility to respect: **How to respect:**

The flowchart shows the progression from international norms to legislative frameworks. It starts with the 'UN HUMAN RIGHTS COUNCIL' and 'ILO' under 'Responsibility to respect'. It then moves to 'How to respect' with 'OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT' and 'OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT IN THE GARMENT AND FOOTWEAR SECTOR'. It also includes 'OECD AND BUSINESS GUIDANCE ON ENVIRONMENTAL DUE DILIGENCE IN AGRICULTURAL SUPPLY CHAINS'.

The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Right (together also the International Bill of Human Rights) and the ILO (International Labor Organization) Core Conventions are the basis for UNGPs, which were further developed in the OECD guidelines. Specific guides were then written for specific sectors by the OECD, such as the guides for the garment, financial and agricultural sectors.

Legislation

Although companies are supposed to be doing due diligence for human rights and the environment since 2011, many are not implementing it sufficiently yet. So, there is an increasing call for legislation, to make due diligence for human rights a legal obligation for companies. In France the first broad due diligence law was adopted in 2016; in 2017, Norway and Germany followed suit. All of these laws are based on the OECD Guidelines and the UNGPs.



After several European countries set out to develop legislation, the European Union (EU) decided it would be better to have broad due diligence legislation on a European level. So, the European Commission developed a legislative proposal, based on the OECD Guidelines. This proposal is called the Corporate Sustainability Due Diligence Directive (CSDDD), and was adopted in 2023. But before this, the EU already developed legislation which requires companies to report on sustainability and their due diligence efforts called the Corporate Sustainability Reporting Directive (CSRD). Next to that, the EU developed legislation on deforestation: when importing certain products like soy, palm oil or cocoa, companies need to prove with GPS location coordinates that these products were not grown on lands that were deforested since 2019 or 2020. And concluding, there is

- HREDD is based on internationally recognized RBC standards, recognized not only by the OECD but also by the UN, and therefore this is a universal concept, applicable to all companies with international value chains, thus also for companies in production countries.
- Main goal of HREDD is preventing negative impacts. Of course, remediation of negative impacts is an important element, but first and foremost it is about prevention.
- HREDD is a dynamic, ongoing, reactive and flexible process: adaptable to the context in which the company operates.
- HREDD is about risks: not about risks for the company, but about risks for the surroundings of the companies and for others outside of the company.
- When doing HREDD, there should be extra attention for gender and vulnerable groups. Women and girls are often impacted more by human rights violations and are often more difficult to reach. Children or people with a disability are extra vulnerable.
- HREDD is proportional in itself, meaning that what a company is supposed to do depends amongst others on the size of the company, where it is located in the value chain and the degree/extent of the negative impact (the more impactful the negative impact, the greater the responsibility).
- Stakeholder involvement is key in every step of HREDD.
- And lastly: HREDD is really about *shared responsibility*: companies are responsible for their value chain, together with all value chain partners. Partners in the value chain should support each other in respecting human rights, climate and environment.

Gender Responsive Due Diligence

Gender Responsive Due Diligence (GRDD) means integrating a gender perspective in every step of due diligence to prevent adverse impacts on women and to promote gender equality. GRDD is applying a gender lens, not adding gender as a separate theme. It means recognizing the specific needs of the different genders and the existing gender inequality. When women suffer violence and harassment at the workplace, this results in lower productivity levels and retention rates due to women not feeling safe or respected at work. When women face barriers to professional advancement, companies limit opportunities for product and process innovation. When women do not have access to family planning, lack adequate pre- and postnatal care (as well as general healthcare), or suffer from domestic or workplace violence, it is not surprising that some degree of productivity is lost and that high rates of absenteeism or turnover are observed. Both women themselves and business suffer from these impacts.

Risks to women are not routinely highlighted in HREDD, due to existing gender inequity. Therefore, companies should make extra efforts to find out these risks. For example, by cooperating with local women's rights organizations. In assessments or research, men are typically used as the default which means that the consequences for women are overlooked. E.g., that there is always a line in front of the women's restroom because the fact that women go to the restroom longer/more often is not taken into account. Or the fact that it was only recently learned that the symptoms for a heart attack in women are different from men. This is why it is very important to include female stakeholders or stakeholders from vulnerable groups explicitly when doing due diligence.

GRDD - Addressing Root Causes



A company found a certain team manager behaving indecently towards women employees (sexual harassment). Actions the company takes, **not applying a gender lens**:

- Investigation to confirm the findings
- Dismissal of the manager

The company then focusses on other risks that were found

(Building bridges/ Women Win)

GRDD - Addressing Root Causes



A company found a certain team manager behaves indecently towards women employees (sexual harassment). Actions the company takes, **while applying a gender lens**:

- Investigation to confirm the findings
- Dismissal of the manager
- Investigation on why these cases were not brought up through grievance mechanism
- External investigation on company culture and manager's knowledge and attitude towards sexual harassment
- Widespread internal campaign on sexual harassment and training on gender-based violence for all managers
- Improve the grievance mechanism

(Building bridges/ Women Win)

An often-overlooked fact is that companies (in this case, suppliers to international buyers) can also benefit from HREDD legislation, especially when it comes to recognising the roles of unions. Involving trade unions in their HREDD process offers companies the opportunity to enhance the quality of their HREDD policies, making sure it is impactful. This can lead to the company becoming a preferred supplier for international buyers. Everyone profits in such relationships, so it is important for trade unions to be able to explain this win-win aspect to the company management they work with.

HREDD offers trade unions the opportunity to intensify their work in securing workers' rights, although this might require some changes in mindset and activities.

1. Trade unions should cooperate more with other stakeholders, like civil society organisations or local communities.
2. They need to strengthen their national and international connections in order to work effectively with different actors in the value chains. Trade unions at the factory level, for example, could intervene with factory management, while the national (con)federation might start interacting with the trader, and their international allies with international buyers. Trade unions in production countries and trade unions in the countries where the product is consumed play different, but very complementary roles. If they worked together, they would have more impact in securing labour rights.
3. At the same time, the core work of the trade unions should remain the same, as social dialogue always remains the key instrument for trade unions.

As trade unions you are a special stakeholder in the HREDD process. In each of the 6 steps there is a specific role for the trade unions/workers/ worker representatives. There is a push to engage more stakeholders in the HREDD process and it is important to be prepared for this role.

Companies are not only required to engage stakeholders, and thus trade unions, in every step of due diligence, but they should do so in a meaningful way. "Meaningful" in this context means that companies do not wait to reach out to trade unions when their constituencies are affected by business activities. Companies should provide them with transparent and accessible information, and parties should exhibit a genuine desire to understand each other (i.e., there is open, two-way communication). Meaningful engagement starts with trust, which may take time to build. Trade unions are well-positioned to develop such trustworthy relationships as they have done so with various actors throughout international supply chains. Further, unions are organized at each level, from local to international, and are experienced in engaging with management, for example, through social dialogue.

As the process is continuous, the companies should have regular meetings. Having a bi- or tripartite Collective Bargaining Agreement (CBA) is an indicator dialogue took place. The revision of a CBA is an indicator of monitoring the process.

CNV Internationaal believes that systemic change can only be reached when we work together upstream and downstream in the value chain. This means the work of trade unions at the production sides should be in line with the advocacy done towards European companies more downstream. At the same time there is political lobby needed in EU/US and production countries. Only in this way we can reach a holistic change.

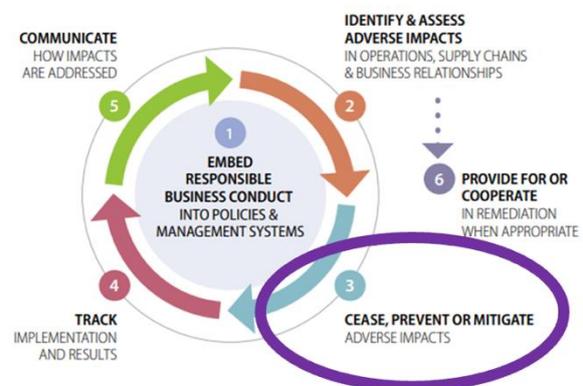
Some examples of the international trade union work:

- Member of the Social Economic Council (SEC): In the Netherlands, CNV is a member of the Social Economic Council. Here we have a continuous dialogue on Responsible Business Conduct with employers' organizations, trade unions and experts. Main goal is to give advice to the government on several subjects related to RBC.

Step 3: Cease, Prevent or Mitigate

After companies map their value chain and identify possible adverse impacts, companies should actually cease, prevent or mitigate these adverse impacts found. This is step 3 of due diligence.

To be able to prevent, cease and/or mitigate the adverse impacts found, a company should draw up an action plan. This action plan should be SMART (Specific, Measurable, Actionable/ Achievable, Realistic and Timebound) and the action plan should include who is responsible within the company for which actions and what budget is assigned to the action. The actions plan can be drawn up in any format that the company already uses for other action plans in other areas.



To understand the obligation a company has with regard to preventing or ceasing an adverse impact, it is necessary for it to determine the relationship it has with the adverse impact. This relationship can be defined in three different ways. A company can:

- Cause an adverse impact. A company causes an adverse impact if it happens in its own factory or on its own plantation. For example, if an enterprise discriminates against women or racial minorities in its own hiring practices or if an enterprise pays a bribe itself to a foreign public official.
- Contribute to an adverse impact. A company contributes to an adverse impact if “its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivize another entity to cause an adverse impact. The mere existence of a business relationship or activities which create the general conditions in which it is possible for adverse impacts to occur does not necessarily represent a relationship of contribution. The activity in question should substantially increase the risk of adverse impact.” For example: a brand changes its order at the very last minute without extending the deadline or paying a higher price, forcing the supplier to demand overtime without pay from its workers in the factory, or a brand paying such a low price, that paying a living wage by the supplier is not possible.
- Be directly linked to an adverse impact. Directly linked means that the adverse impacts happen somewhere in the value chain through another entity without own activities that contribute to the impact. For example: if a company sources shirts from a factory in Cambodia, it pays a decent price, the delivery times are sufficient, but still child labor is found in this specific factory.

The graph below shows the actions a company is required to take, when causing, contributing to or when it is linked to an adverse impact:

Role of trade unions in step 3

When companies encounter possible or actual adverse impacts, they should take immediate steps to cease, prevent, or mitigate them. Moreover, they should consult with trade unions to determine what course(s) of action to take. As a trade union you can:

- Act as a formal representative of the workforce. When trying to solve labor rights issues, like low salaries or unsafe working conditions, trade unions can negotiate on behalf of their members. These negotiations ideally lead to Collective Bargaining Agreements (CBAs). CBAs are useful, not only because they ensure and safeguard workers' rights, but a CBA also shows (international) buyers that a potential supplier takes its duty to uphold labour rights seriously. CBAs indicate that factory management and workers engage in social dialogue, a venue where workers' rights are discussed and risks of infringing these rights are mitigated. Not having a CBA is a red flag for (international) buyers, since this could mean workers' rights are not protected.
- Act as an informal representative of the workforce. You as unions also represent workers (your members) regarding issues/situations other than CBAs. You represent the people who know the inside workings of the companies, the realities of the work environment. Therefore, you can provide valuable assistance and information. For instance, when searching for solutions on how to prevent or mitigate negative impacts on the work floor, the workers you represent can provide some of the best solutions since they know exactly how their company operates. You also have access to consult with your members regarding employer concerns or major company changes, like large scale redundancies.
- Train workers. As trade unions, you are trusted by your members, and are therefore in an excellent position to support changes in the company by educating and training staff where necessary. For example, you can train workers on how to use protective equipment to prevent unsafe or unhealthy working conditions or on how to engage in dialogue with employers.
- Train local unions. You can provide consultations, guidance, and training for company level trade unions (including wage negotiations).
- Co-develop projects, programmes, and initiatives with employers to promote creativity, innovation, and technical improvements at the workplace. These programmes would improve employees' skills, thus leading to fewer workplace accidents or other infringements of workers' rights, which in turn, would increase job satisfaction

As a trade union, you are not only well-connected with the work floor, but also with your confederation, branches, and communities. Therefore, you can:

- Connect companies to other affected stakeholders represented, for example, by civil society organisations, to ensure that all stakeholders are included in the development of action plans.
- Link companies to other buyers in the same sector or area, so they can create more joint leverage. This is often necessary in order to cease, mitigate, or prevent negative impacts on human rights. This can best be done in conjunction with trade unions from the foreign buyer's country of origin, so they can use their network and presence in arenas like multi-stakeholder forums (e.g. covenants).
- Work with policy makers, like governments and employers, to advocate and lobby for social values and norms related to working conditions. Governmental cooperations are especially important as they are able to create prerequisites for inclusive social dialogue and ensure ratification, implementation, and compliance with ILO conventions.

Role of trade unions in step 6

When negative impacts are identified, companies need to provide or cooperate in establishing remedial measures (if applicable). If workers are harmed by the activities of a business, their employers should contact them and the trade unions that represent them, to discuss what measures can be taken. Therefore, as a trade union you can:

- Support the company in setting up the obligatory grievance mechanisms. You can do this by providing information on how companies can make sure workers trust the mechanism, make sure the procedures are fair and understood by the workers, and that the workers know where they can file grievances. You can also assist members in filing complaints and monitoring the follow-up of the complaint.
- When there are individual grievances, talk with employers to find feasible solutions and provide legal assistance and advice to individual members.
- Hold companies accountable for negative impacts on workers. This can be accomplished by publishing research, filing complaints on behalf of workers, or as a last resort, by taking companies to court.

Suggested evidence in filling grievances for:

Severance cases

- How many workers are organized? (a list of workers is a part of the case)
- Who precisely is the claim for severance being made on behalf of? Is it a group of workers, all organized workers, all workers in the workplace?
- As much as possible: details about the amount of severance (and other benefits) owed, the names of workers, for what period OR details for a smaller group of workers for which the wider claim can be made.

FoA cases

- List of workers with violated rights, their position in the trade union, and if relevant number of men/ women
- Registration of trade union, if any
- Details of other trade unions in the workplace
- Evidence of the violation: e.g. worker testimonies, black lists, chronology
- Pictures of meetings, demonstrations etc.
- Communication with f.e. labor departments, employers
- Minutes of meetings

Dismissal cases

- List of workers dismissed and when
- Job contract letter, employment card, any kind of evidence to prove the worker was employed by the factory
- Charge sheet, if given by employer.
- Reply to charge sheet, if replied by worker
- Which local law is violated?

Clean
Clothes
Campaign

Trade union instrument: Grievance Mechanisms

Filing a complaint is known to most of the trade unions: at the company level, at government level or even directed to an international company. CNV Internationaal did an analysis in the apparel sector and have some recommendations on how to make this process agile instead of the often not transparent, long and costly process. These are as follows:

- Focus on strengthening local mechanisms as they are fast, close by, often used and easy to monitor by local stakeholders.
- Track complaints submitted by unions in production countries: these complaints can give companies a good idea what needs to be improved from both the company and the union perspective. It gives guidance to what has to be discussed and improved. If possible, use a database.
- Demand and help create fast routes to early remedy. Costs for both parties are higher when it takes more time. A fast route can help to make remedy feasible and useful for the complainant. Long time will complicate the process and the complainant can already be moved, work somewhere else or even worse.
- Promote alternative ways of structuring complaints mechanisms. There are many initiatives and pilots on new forms of complaint mechanisms. Be aware as a trade union what are the mechanisms proposed by the international company and which other routes are possible.
- Take the issue of retaliation into account.

- [Canada](http://https://www.apparesearch.com/terms/c/ca_number.html): http://https://www.apparesearch.com/terms/c/ca_number.html

Role of trade unions in step 5

Companies need to communicate about their due diligence process in ways that are relevant and understandable to different stakeholder groups. As a trade union you can:

- Provide valuable input for general reporting requirements of the company or good practices that local and international companies can use in their communication.
- Facilitate meetings to enable companies to communicate with their employees whenever important decisions are taken or input is needed. You can also support companies in making sure this communication is meaningful, that employees are communicated with in a language they understand, they receive necessary information, and are able to understand what is communicated to them.
- Keep members, employers, and (international) buyers informed about CBAs, internal regulations, or due diligence process results, directly via meetings or conferences, or indirectly through papers, internet, and multimedia channels.
- Coordinate the organisation of periodic conferences for employees by conducting social dialogue in accordance with legal regulations; share and summarise lessons learned.

Trade union instrument: Lobby & Advocacy

As trade unions, you will understand the value of lobby. Work with policymakers, like governments and employers, to advocate and lobby for social values and norms related to working conditions. In the case of HREDD, lobby towards governments is especially important. All governments are required to develop an action plan for business and human rights under the UNGPs. Not many have done so. Urging your national government to start with a baseline study, and develop a National Action Plan (NAP) based on this baseline is an important first step. Besides that, governments play a key part in for example facilitating and mandating social dialogue, creating space for trade unions, ratifying ILO core conventions and international human rights treaties and enforcing compliance with policies and legislation.

In the Netherlands, CNV Internationaal has been involved in lobby and advocacy towards decision makers in the Netherlands and Europe in many different ways. For example, in the past years, CNV Internationaal has been instrumental in organizing and showing the support of consumers and companies in the Netherlands towards HREDD legislation.



NOTES

- Doing Business in a Responsible way (Oxfam/ Shift): <https://www.businessrespecthumanrights.org/>
- Responsible Business Hub Cambodia (GIZ/ Eurocham Cambodia 2023): <https://rbh-eurochamcambodia.com/>

Sources on specific instruments

- CNV Internationaal's resources on Social Dialogue: <https://www.cnvinternationaal.nl/en/topics/field-of-work/social-dialogue>
- How trade unions use grievance mechanisms in the garment sector (cnvinternationaal.nl): https://www.cnvinternationaal.nl/_Resources/Persistent/2/8/f/b/28fb930f80c35fd3e65e2de2de9a5ba11b9124c0/2022-11-02 - How trade unions use grievance mechanisms in the garment sector.pdf
- How trade unions can engage in Human Rights Due Diligence to safeguard worker's rights: <https://www.cnvinternationaal.nl/en/topical/news/new-publication-about-the-rol-of-trade-unions-in-hrdd>

Sources for step 5

- Open Supply Hub: <https://opensupplyhub.org/>
- Transparency Pledge: <https://transparencypledge.org/>
- RN/CA Numbers
 - U.S. brands: <https://rn.ftc.gov/Account/BasicSearch>
 - Canada: http://: https://www.apparesearch.com/terms/c/ca_number.html