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# Making sense of managing human rights issues in supply chains



## Key themes and observations

**Beyond compliance and audit – A deeply embedded governance:** Our interviews demonstrate that companies are increasingly noting the shortcomings of traditional code of conduct and audit processes and are exploring more innovative approaches.

“We know our supply chain better than anyone else.”

*Interviewee*

**Finding solutions beyond the first tier:** It is apparent that there are limited practices in place for HRDD beyond the first tier of the supply chain. Any leverage exercised tends to be through the first tier supplier or collective engagement with peers or other stakeholders.

**Overview of affected rights:** Whilst the interviewees highlighted a range of human rights which are at risk of adverse impacts in supply chains, forced labor and child labor came up most frequently across sectors.

**Small and medium-sized enterprises:** SMEs can find implementing HRDD challenging, but they can nonetheless have an impact through their own processes, and larger businesses can help by engaging in capacity building.

**The role of collective action initiatives:** Collective action, including through sectoral, cross-sectoral and multi-stakeholder initiatives, is particularly beneficial where the nature of the supply chain is more opaque, and when seeking to exercise leverage beyond the first tier.

“It is important for the whole industry to develop something that really works.”

*Interviewee*

**The supplier’s perspective:** Without effective collaboration between industry peers in carrying out HRDD, and alignment of purchasing practices with human rights expectations, suppliers may be subject to unnecessary cost and time burdens to comply with multiple audits, training and screening requirements of their customers.

**The role of States and regulation:** Interviewees were generally supportive of clear regulation, given a desire for legal certainty. There is also a broad expectation that regulations incorporating HRDD elements will evolve in terms of scope of application and rigor of requirements.

“We would like to see more regulation. It would force our tier two, three and four suppliers to improve their processes – and our competitors. We rely on the whole industry.”

*Interviewee*

**Remedy to impacted people:** In addition to the developing case law around the recognition of a legal duty of care based on principles of control, non-judicial mechanisms for financial and non-compensatory redress continue to develop. Examples include state-based procedures (e.g. OECD National Contact Points) and industry initiatives (e.g. the Bangladesh Accord on Fire and Building Safety arbitral procedure).

**The drivers for supply chain-related HRDD:** Interviewees confirmed the avoidance of legal risks and reputational risks as two of the key incentives for conducting HRDD. Other notable drivers included meeting investor expectations and the need to achieve sustainable supply chains – a commercial necessity.

**Internal challenges and opportunities:** A number of organizational challenges and opportunities were observed. In particular, interviewees reported efforts to simplify internal rules and processes, in part through the development of new and centralized tools, and the need for ever closer inter-departmental coordination between key functions such as procurement, legal, internal audit and CSR.

For the full report on managing human rights issues in supply chains, visit our microsite: [nortonrosefulbright.com/hrdd](https://nortonrosefulbright.com/hrdd)

# Making sense of managing human rights issues in supply chains

Summary of the results of the Human Rights Due Diligence in Supply Chains project run by Norton Rose Fulbright and the British Institute for International and Comparative Law in 2017-2018

## Background

The UN Guiding Principles on Business and Human Rights (UNGPs) set out globally accepted standards around the human rights impacts of business. They introduced the concept of human rights due diligence (HRDD) to “identify, prevent, mitigate and account for” actual or potential adverse human rights impacts a company may be involved in through its own activities or business relationships, including those in the supply chain.

HRDD as defined by the UNGPs is broader than simply the initial screening of human rights impacts of a supplier, as could be understood under the ordinary transactional meaning of “due diligence”.

Norton Rose Fulbright and the British Institute of International and Comparative Law (BIICL) previously conducted a study on the law and practice of HRDD. This study highlighted that HRDD is a comprehensive, context-specific, dynamic and ongoing process which should enable the company to address its actual and potential human rights impacts, even where corporate human rights obligations are not (yet) contained in regulation. It also showed that companies which use dedicated HRDD processes are more likely to identify human rights impacts than companies which do not adopt a specific human rights lens when approaching matters such as health and safety (for which companies have established existing processes).

One of the key themes which emerged during the previous study was the challenges in implementing HRDD in the supply chain. Many companies struggled with determining “how far is far enough”. Common practical challenges were highlighted such as how to engage beyond the first tier, where no contractual relationships exist, and how to undertake HRDD when information about supply-chain related human rights risks is not readily available.

Our previous study highlighted the need for further research into the management of human rights issues in the supply chain. This study was accordingly undertaken as a follow-up to our previous project, with a specific focus on supply chains.

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“All companies are on a journey and some are further along than others. We are at the start of the process.”

*Interviewee*

## Methodology

Our methodology consisted of a combination of desk-based legal, policy and literature research – including a consideration of legal and other developments at international and domestic level – and empirical insights gained through semi-structured interviews with representatives of ten companies, as well as a roundtable. Interviewees were made up of senior executives and decision makers within their businesses and were selected based on their experience with supply chain HRDD globally and in various sectors, such as electronics, finance, agriculture, extractives, manufacturing, and retail including food, consumer goods and fashion. Following the interviews, we held a closed roundtable in February 2018 which was attended by company representatives from various sectors.

# Effective supply chain management

Supply chain HRDD is best understood as an ongoing, dynamic and context-specific process, as depicted in the diagram below. This summarizes the key stages in a typical supply chain HRDD management program.



# Recommendations

“Start somewhere” ... “It is important to keep on improving.”

*Interviewees*

HRDD in supply chains is a new and developing area, and companies are at different stages in terms of the maturity of their program. None of the interviewees indicated that they have accomplished everything they would like to do.

An analysis of those organizations which are perceived as having the most advanced HRDD processes reveals that not all started in the same place. Some companies with established programs, for example, began by first addressing specific risk areas such as occupational health and safety, before adapting those processes to other human rights issues. By contrast, an organization which is just beginning its journey may be best advised to follow a strategy which reflects the methodology in the UNGPs, beginning with an assessment of actual or potential human rights impacts in the supply chain. In all cases, it is important to have a coherent strategy which informs a credible, defensible methodology implemented by individuals with appropriate expertise and resources.

In light of our research, the following recommendations are made

- HRDD has to be a **robust, substantive and ongoing process**. It should take into account all human rights which the company may possibly impact, and not just those covered by limited regulatory reporting requirements, or human rights risks which are frequently associated with a specific sector.
- Companies should use a **unified and cross-functional internal approach**. For example, a company which spends extensive resources on addressing human rights impacts through HRDD in one business area should ensure these efforts are not contradicted by its buying practices in another (where the occurrence of human rights issues may be less well understood).
- Comprehensive HRDD requires governance **commitments at the most senior level of the company, including board and CEO engagement**. These commitments ought to be underpinned by coherent governance structures which ensure decisions that engage human rights issues are taken by personnel and committees with appropriate authority, experience and appreciation of the issues and associated risks.
- Internal translation of the importance of HRDD is more likely to be successful if supply chain HRDD is understood as a **key component of the company’s commercial goals** which include ensuring a quality, stable and sustainable supply chain.
- All companies engaged in the movement of materials and products should ensure that their supply chain HRDD includes **transportation and distribution suppliers**. This appears to be an area which has received limited attention from companies to date, whereas the potential for human rights issues associated with the shipping sector (for example) has been well documented by NGOs.
- Those charged with designing and carrying out auditing processes to test adherence to existing human rights standards and policies by suppliers should have appropriate **human rights-related experience**, working with external experts as appropriate.
- Companies should proactively involve **local stakeholders**, including rights-holders and local civil society organizations, in information-gathering and decision-making processes.
- Companies should partake in **industry and other multi-stakeholder initiatives** in the form of **collective action**, including those which facilitate the vetting and training of suppliers, in part to assist suppliers in managing the resource demands of participating in customer HRDD exercises.
- The **use of technology** should be explored to reinforce traceability, identification of human rights impacts, stakeholder engagements, grievance mechanisms and certification. Technology used for HRDD should be developed in consultation with human rights experts to be effective and to ensure that the technology does not inadvertently infringe human rights.
- Companies should explore ways of ensuring **effective HRDD beyond the first tier**, including through industry collective action, partnerships with local civil society organizations and human rights experts, operational-level grievance mechanisms for those affected by supply chains, and by encouraging open and honest dialogue with first tier suppliers to increase supply chain transparency.
- Companies should participate in **consultative processes for regulatory reforms**, in order to ensure that enacted laws are realistic and effective. This could be done individually or through industry bodies or other representatives.
- Recognizing that supply chain HRDD is a new and developing area, those companies with less-advanced processes, particularly SMEs, should not to be daunted (e.g. when engaging with “leading” companies). It is important to **“start somewhere”**. As one interviewee commented: “Let’s just start asking the questions. These are the kind of questions that we started asking in health and safety years ago.”

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