



Human Rights and Environmental Due Diligence: Essential Elements of Effective Legislation

A guide for lawmakers

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The Global Initiative for Corporate Accountability (GICA)¹ is an international civil society collaboration that promotes law and policy reform to hold companies to account and ensure access to justice and effective remedy for those harmed by business activity.

Human rights and environmental due diligence (HREDD) legislation has emerged as a tool with significant potential to prevent and remedy the harms caused by transnational corporations. However, HREDD laws introduced in various jurisdictions still fall short of realizing this potential. HREDD legislation must include the following essential elements to become a powerful strategy to assist states to fulfil their duty to protect against human rights harms by business, create an enabling environment for businesses to meet their responsibility to respect human rights and provide pathways to seek effective remedy.

HREDD laws should be informed by expectations of key, established responsible business conduct standards: the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines).

Essential elements of HREDD laws²

1. A corporate duty to prevent human rights and environmental harm

Covers potential and actual adverse impacts on human rights and the environment, throughout an enterprise's global operations (including subsidiaries) and full value chain. Applies to all internationally recognized human rights, including the right to a clean, healthy and sustainable environment. Requires alignment with international environmental agreements and standards, including those on climate and biodiversity. Includes duty to prevent risks to good governance, such as corruption. Requires enterprises to acknowledge that the business ecosystem, like society, is shaped by certain predominant paradigms such as patriarchy, racism, casteism, capitalism and geopolitical dominance by the Global North.

2. A corporate duty to undertake effective human rights and environmental due diligence across the full value chain, in alignment with international standards

Ongoing duty to identify, assess, prevent, cease, mitigate and remedy potential and actual adverse impacts arising from a business' global operations (including subsidiaries) and full value chain (upstream and downstream) in all stages of a business' activities (this includes the financial sector and its downstream value chain). Duty includes taking steps to assess actual and potential environmental

¹ To learn more about the GICA, visit corporateaccountabilityinitiative.org.

² These elements were informed in part by a 2022 [policy brief](#) authored by former UN Special Rapporteur on human rights and the environment David R. Boyd with Stephanie Keene: *Essential elements of effective and equitable human rights and environmental due diligence legislation*.

and human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed, having effective grievance mechanisms in place and providing adequate remediation. Includes requirement to develop and communicate due diligence strategies, policies, targets, plans and management systems, to evaluate and communicate the effectiveness of the due diligence process undertaken and to improve due diligence practices. Duty creates an 'obligation of result' that is not fulfilled by merely following a specific process. Law includes director duties to ensure compliance with due diligence obligations.

3. A focus on rights-holders

Due diligence includes ongoing, meaningful, safe engagement (including consultation and communication) with affected or potentially affected rights-holders throughout the process. This includes the participation of stakeholders, including affected rights-holders, in the ongoing process to evaluate and improve a business' due diligence processes. Rights to free, prior and informed consent are respected. Special attention is paid during the due diligence process to individuals and groups who are made vulnerable to adverse impacts on the basis of their sex, gender, age, race, ethnicity, class, caste, education, sexual orientation, migration status, disability, social or economic status, or for any other reason. Intersectional risks to rights-holders are considered.

4. Protections for human rights and environmental defenders (HREDs)³

Due diligence processes mitigate risks to HREDs and include ongoing, meaningful engagement with defenders. Law prohibits retaliation (threats and attacks) against HREDs and establishes meaningful sanctions for non-compliance. Measures are included to protect the identity of at-risk complainants, litigants and whistleblowers.

5. Effective sanctions and remedies, ensuring access to justice

Includes civil, administrative and criminal measures that impose sanctions and provide remedies when companies are non-compliant. Measures are sufficiently robust to deter non-compliance.

Contains measures that address the financial,⁴ legal and other barriers that hinder rights-holders from accessing judicial and other remedies. When accused of causing harm (in its operations and/or value chain), a business must prove that it acted with due care and took all reasonable steps to prevent adverse impacts. Impacted rights-holders are involved in the determination of appropriate remedy when companies are found liable.

6. Effective state oversight and enforcement

Responsible state supervisory body is designated to monitor and enforce corporate compliance. Supervisory body is provided with a clear mandate and powers, adequate resources and competent staff, and operates free from corporate and political interference. Measures are in place to effectively manage conflicts of interest.

³ This element is informed by the work of the UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor, including her [position paper](#): *Including Human Rights Defenders in the EU Directive on mandatory human rights and environmental due diligence for companies – key points and practical examples*.

⁴ Regarding litigation, examples of such measures include waiving filing fees, exempting plaintiffs from adverse cost awards, enabling contingency fees and providing financial aid.

7. Application to all business enterprises

Applies to all types and sizes of business enterprise, in all commercial and financial sectors. Includes enterprises incorporated or domiciled in the legislating jurisdiction, those for which the jurisdiction is their principal place of business, and all foreign enterprises that sell goods or services in the jurisdiction. Includes state-owned or controlled enterprises, state entities involved in public procurement, development finance institutions and export credit agencies. Covers institutional investors. Supports due diligence by small and medium-sized enterprises through the provision of state guidance and tailored legislative measures.

8. Large company support for small and medium-sized enterprises (SMEs) and Global South suppliers

Requires businesses to provide targeted financial, capacity-building and technical supports to the SMEs in their value chains to strengthen the latter's capacity to undertake effective due diligence. Expects businesses to avoid practices (such as unfair pricing and purchasing practices) that undermine the capacity of smaller suppliers to meet their own human rights responsibilities or to undertake their own due diligence. Seeks to avoid measures that create disproportionate burdens on suppliers in the Global South.