

Learning on human rights due diligence among ISEAL Community Members

BRIEFING NOTE


DEVELOPED WITH SUPPORT FROM TWENTYFIFTY



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1. ABOUT THIS PUBLICATION

Bonsucro and Responsible Jewellery Council engaged Business & Human Rights consultancy [twentyfifty Ltd](#) to conduct a research project on learning and good practice from the experience of ISEAL Community Members in implementing **Human Rights Due Diligence (HRDD)** in line with the UN Guiding Principles on Business and Human Rights (UNGPs). This briefing note is intended to give a summary of the key findings from this. The objective is to support ISEAL Community Members and other multi-stakeholder initiatives (MSIs) and voluntary sustainability standards' (VSS) in strengthening their implementation of the UNGPs, which is increasingly a requirement of several international frameworks and national legislations.

The findings and recommendations presented in this publication are a summary based on the results of desk-based research and interviews carried out by twentyfifty Ltd between January and June 2022 with representatives of ISEAL and eight ISEAL Community Members.

ISEAL Community Members included in the analysis



Disclaimer: The views expressed in this publication are those of the author(s) and do not necessarily represent those of the ISEAL Secretariat, ISEAL members, or donor entities to the ISEAL Innovations Fund.

The document review included:

- documents outlining the membership and/or certification requirements and processes of the different systems,
- guidance material provided by ISEAL Community Members to businesses on topics such as how to become a member how to obtain or confirm certification, and how to fulfil human rights and due diligence requirements, and
- Information provided by ISEAL Community Members on their respective websites for potential/existing members and the general public.

Additionally, to ensure latest thinking on the role and best practices of multi-stakeholder initiatives (MSIs)/VSSs in advancing the implementation of the UNGPs/HRDD informed the recommendations, twentyfifty reviewed academic research as well as reports by the UN Working Group on Business and Human Rights and drew on the experience of its consultants in advising and working with companies, governments, and sustainability organisations.

HUMAN RIGHTS DUE DILIGENCE (HRDD)

1. THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPS)

Unanimously adopted by the United Nations Human Rights Council in 2011, the [UNGPs](#) define the **duty of states to protect** people from human rights violations, the **responsibility of business to respect** human rights and the roles that states and business must play in ensuring that affected people have **access to remedy** in case negative impacts occur. In describing the business responsibility to respect human rights, the UNGPs require companies to:

- Commit to respect human rights through a policy statement
- Have in place human rights due diligence (HRDD) processes,
- Establish processes to provide or enable remediation for adverse human rights impacts that they cause or contribute to.

Inspired by traditional business risk management approaches, the UNGPs introduce the concept of HRDD as a process to manage risks and impacts that may result from business activities and relationships. According to the UNGPs, HRDD involves four components:

- (1) **Identifying, assessing and prioritising** human rights risks and impacts,
- (2) **Responding** to the findings of the assessment in order to prevent and mitigate identified risks and impacts, and **remediating** where actual impacts have affected rightsholders,
- (3) **Tracking** how effective the company's actions are in preventing and mitigating risks and impacts, and
- (4) **Communicating** the company's efforts to stakeholders.¹

The UNGPs' expectation to carry out HRDD as described above, applies to all business enterprises, regardless of their size, sector, location, and structure, as well as whether they are privately, publicly or state-owned.

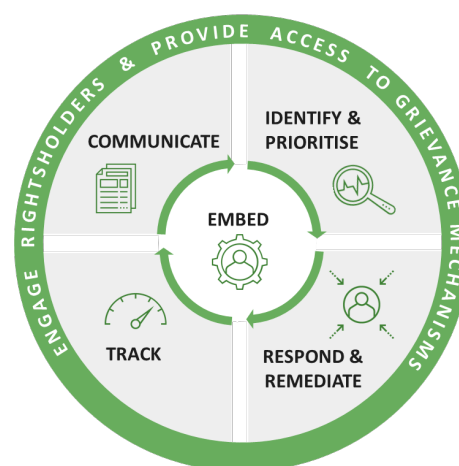


Figure 1 HRDD process, adapted from OECD Due Diligence Guidance for Responsible Business Conduct

2. HRDD IN OTHER INTERNATIONAL FRAMEWORKS AND LEGISLATION

Since their adoption, the UNGPs have been recognized internationally as the framework of reference on corporate respect for human rights. The UNGPs and their concept of HRDD have been integrated in numerous international frameworks, industry standards and national legislation.

In 2011 the OECD included HRDD per the UNGPs in its update to the [OECD Guidelines for Multinational Enterprises](#). It subsequently created the [OECD Due Diligence Guidance for Responsible Business Conduct](#) whose objective is to provide practical support to businesses on implementing the

¹ See 'Key Resources' for practical guidance on implementing the UNGPs and in particular HRDD

OECD Guidelines and specifically on responding to the due diligence expectations of the UNGPs and the [ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy](#).

HRDD as defined by the UNGPs is also explicitly referenced in the [ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy](#) (MNE Declaration). As the only instrument of the International Labour Organization (ILO) providing direct guidance to businesses on decent work, it further contextualizes the UNGPs' due diligence expectations in the fields of employment, training, conditions of work and life, and industrial relations.

The UNGPs and their concept of HRDD are also increasingly informing, being explicitly referenced or building the foundation of regulation and legislation. The most prominent examples are the [German Supply Chain Due Diligence Act](#) and the proposed [EU Directive on corporate sustainability due diligence](#). However, it should be noted that these legal frameworks may also differ in some ways from the UNGPs, a topic which is under discussion in this evolving space².

3. WHAT ROLE DO MSIS PLAY IN ADVANCING THE UNGPS/HRDD?

The role of multi-stakeholder initiatives (such as ISEAL Community Members) in supporting the implementation of the UNGPs is not well defined by the UNGPs themselves, in particular with regard to HRDD. Certain provisions or commentaries indicate roles that the UNGPs foresee for such organisations, including to support businesses with expertise, to ensure operational-level grievance mechanisms or provide remediation functions. Over the years, the role of such organizations in advancing the implementation of the UNGPs and in particular HRDD has been debated by the business and human rights community, and various roles and models have evolved in practice.

Some of the functions that these organizations fulfil or are expected to fulfil to promote and advance responsible business conduct are to:

- Develop standards for responsible business conduct that can guide company practices and processes, and enable stakeholders to assess companies' performance on human rights through certification, benchmarking, etc.
- Raise awareness on the business responsibility to respect human rights,
- Provide technical assistance and build capacity of businesses on fulfilling their responsibility to respect human rights through training, guidance, tools etc.,
- Establish a platform for sharing knowledge and experiences among peers and facilitating stakeholder dialogue
- Support development of industry-wide solutions and collective action,

Alongside the above functions, ISEAL Community Members or other MSIs introducing or strengthening HRDD have the opportunity of creating value for the businesses and supply chain actors they engage with. Updating and aligning with stakeholder expectations on business respect for human rights, in particular with legislative requirements, helps participating businesses keep up to speed with latest trends and developments.

² <https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr.pdf#:~:text=The%20Office%20of%20the%20UN%20High%20Commissioner%20for,directive%20on%20Corporate%20Sustainability%20Due%20Diligence%20%E2%80%9Cproposed%20directive%E2%80%9D%29.>

4. ISEAL COMMUNITY MEMBERS – DIFFERENT MODELS AND APPROACHES

The research covered ISEAL Community Members as a subset of MSIs. The selected organisations have different sizes, membership models and sector coverage including jewellery, agriculture, mining, fisheries and forestry. Of these eight organisations, seven are also ISEAL Code Compliant. The size of the organisations included in the analysis ranged from 250 members to over 2,000, while organisations with certification models ranged from as small as 32 certified businesses to over 50,000 certified sites. The models adopted by ISEAL Community Members vary across different factors. Besides the differences related to sector or commodity, the most significant differences lay in what type of organisations they focus on in terms of application of their standards (i.e. company level, site level, product level), and if the scheme is based on a certification model, a broader membership model (e.g. roundtable), or as often is the case, a combination of both.

Not surprisingly, many differences can be identified in how ISEAL Community Members carry out HRDD on companies/sites that are either applying for membership/certification or seeking to renew their certification. In the section below we summarize the common challenges and lessons that emerged from the research.

5. CHALLENGES FOR EFFECTIVE HRDD INTEGRATION AND IMPLEMENTATION

There are a number of factors that tend to create challenges for ISEAL Community Members (and likely other similar organisations as well) when establishing or carrying out due diligence on companies/sites that apply for membership/certification or those that already hold certification and aim to renew it, or when more generally engaging with companies on HRDD requirements. The factors are clustered in the following themes, that were recurrently identified during the research and engagement with the participating ISEAL Community Members:

I. Capacity

Capacity issues appear on various levels, including the capacity of the initiative itself to create and implement due diligence systems and processes, and the capacity of businesses/sites to fulfil the requirements set by the initiative or more generally set by the UNGPs.

Several ISEAL Community Members reported that assessing large numbers of companies/sites against HRDD requirements can be in and of itself a **resource-intensive** process. Logically, as over time an ISEAL Community Member grows in the number of members/certificate holders, the more resources are necessary, both in terms of human resources to carry out due diligence and time to cover all companies/sites in question. On the other hand, the **capacity of members/sites** relates to the resources they are able or willing to allocate to HRDD, ranging from own staff involved in the process, to time and capital invested internally or towards external service providers. Here, capacity also relates to the knowledge and expertise available within the company/site, impacting awareness and understanding of HRDD as well as capability to respond to and fulfil membership/ certification requirements.

Capacity

Challenge: Capacity of MSIs/VSS to create and implement HRDD systems and processes, and the capacity of companies/sites to fulfil the requirements set by the ISEAL Community Member or by the UNGPs.

Learning:

- Risk-based prioritisation
- Targeted support & guidance
- Proportionality of requirements
- Set appropriate regularity of

During the research, several of the interviewed members have expressed an interest in continued sharing of learning and challenges with other peers in the ISEAL Community, both on content in relation to due diligence, the UNGPs and legislative frameworks, as well as to how to address capacity issues and share experiences of putting HRDD into practice effectively and in a way that is commensurate to the resources and capacity available. Where organisations face resource scarcity, it is useful to focus capacity development efforts on those members/sites that can be expected to benefit most, either given their limited resources, or due to their high-risk profile.

II. Complexity

Complexity is a factor inherent to all types of MSIs, and as with capacity, it manifests itself in different ways and creates a number of different challenges. On the one hand, ISEAL Community Members bring together a broad variety of stakeholders, while at the same time most, if not all of them, cover a wide range of business entities within an industry or along a certain value chain. Within a single ISEAL Community Member, business entities can be headquartered or operating in different countries and different locations within the same countries (e.g. rural, urban); they can be widely different types of businesses (e.g. producers, processors, traders, brands, retailers, investors); or they can be of different size, capacity and capability to fulfil HRDD requirements (ranging from smallholder farmers or artisanal miners to SMEs to multinational corporations). Additionally, these business entities find themselves at different maturity and capability levels in relation to HRDD.

All of the above creates an extremely complex setting in which to create an HRDD standard that can be effectively applied to all entities. This diversity requires initiatives to develop a portfolio of different engagement approaches that respond to the different needs of members/certificate holders.

A key element to addressing these complexities is to ensure meaningful engagement of all stakeholders, from civil society and NGOs to business, from sites to corporates. This means understanding the interests and needs of all parties engaging through its consultative processes, governance, and membership/certification processes. While reaching an agreement that meets all stakeholders' needs and expectations can be a lengthy process, this builds the basis for ensuring that different needs are taken into consideration and governance, services, and solutions are designed accordingly. In relation to HRDD, this can be put into practice through an approach that keeps HRDD expectations appropriate and proportional to the size and capacity of different organisations, as also outlined in the UNGPs.

Complexity

Challenge: MSIs/VSS bring together a broad variety of stakeholders, and most, if not all of them, cover a wide range of business entities within an industry or along a certain value chain with different maturity and capability levels of HRDD.

Learning:

- Proportionality of requirements and expectations
- Minimum requirements & Continuous Improvement
- Capacity building & toolkits

III. Expectations

Different expectations towards an MSI's role in relation to HRDD constitute the third factor that has been reported as creating some challenges. Two prominent examples of issues of diverging expectations that ISEAL Community Members have experienced relate to:

- transparently communicating and disclosing business performance on human rights issues and HRDD: while there are stakeholder expectations for ISEAL Community Members on transparency of reporting about HRDD findings, some business entities might be concerned about public disclosure of sensitive business information;
- the type of services an initiative is expected to or allowed to offer to members or participating companies/sites: companies/sites often expect the relevant MSI to provide detailed advice and technical support on implementing HRDD, complying with the standards' requirements or even with HRDD regulation. This expectation can in turn conflict with the mandate of the MSI and the risk of legal liability that can arise. This is set to become more relevant as mandatory HRDD legislation is adopted across a growing number of countries.

Expectations

Challenge: There is general agreement on the role that MSIs/VSS can play in advancing the UNGPs/HRDD, but less so on the 'how'; what services MSIs/VSS are expected or allowed to offer; and transparency requirements of communication on HRDD findings.

Learning

- Clarity of what MSIs/VSS can offer and what they can't and why
- Manage legal risk
- Work with network of partners to offer support & guidance

Engaging with stakeholders to define in detail the mandate and role of the MSI, including which types of activities are within the initiative's scope and capacity, and discussing how the scope can be expanded or where third-party actors can support the initiative's mandate is key to managing conflicting stakeholder expectations.

6. LESSONS AND AREAS FOR IMPROVEMENT

As described earlier, ISEAL Community Members have different models and what they require from companies to be members or to be certified varies. Additionally, ISEAL Community Members vary significantly in size, resources and, importantly, in the stage of development of their HRDD procedures at the time of this project. This summary takes into consideration these factors, while trying to provide general lessons to support initiatives in strengthening the implementation of the UNGPs.

- i. **Align standards and membership requirements with the UNGPs.** Most ISEAL Community Members included in this analysis have requirements on respect for human rights, some referring explicitly to the UNGPs or the OECD Guidelines, others to 'respecting human rights' more generally³. We recommend **transitioning from general human rights requirements to requirements explicitly linked to the UNGPs and/or the OECD Guidelines**, in addition to having specific criteria on prioritized human rights issues (eg. forced labour, FPIC, etc). The UNGPs apply to any business, regardless of size, sector, location, ownership or structure,

³ The UNGPs explicitly refer to human rights "at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration of Fundamental Principles and Rights at Work". (UNGP 12).

while they recognize that the scale and complexity of HRDD efforts vary according to these factors. The adaptability of HRDD to the circumstances of a specific business make HRDD expectations applicable and reasonable to be applied to the wide range of businesses covered by ISEAL Community Members. The UNGPs provide a common, internationally recognized standard on business respect for human rights, therefore by implementing HRDD per the UNGPs, companies will be preparing themselves to respond to expectations from stakeholders, in particular investors and legislators.

- ii. **Where organisations require alignment with or the implementation of the UNGPs**, it is important to outline in more detail what is expected for membership/certification. Instead of a single requirement (e.g., ‘respect human rights and implement the UNGPs’), requirements should list the cornerstones of the UNGPs’ expectations (e.g. a policy commitment, human rights due diligence and remediation). An expectation to ‘have a human rights due diligence policy in place’ can be further strengthened by defining key components of HRDD (i.e., identify and assess, integrate and act, track, communicate) and/or its ultimate objective (i.e., ‘to identify, prevent and mitigate adverse impacts on individuals and communities affected by your business activities and relationships’). Further levels of detail can be part of the membership/certification requirements or supporting guidance. Including them directly in requirements indicates a stronger alignment with the HRDD expectations of the UNGPs. At the same time, as most ISEAL Community Members do engage businesses of widely different sizes and resources, it’s appropriate to include in the requirements, that efforts should be appropriate to the size and circumstances of the business, as set out by the UNGPs.

For ISEAL Community Members based on a model of certifying individual sites (e.g., farms, fisheries, factories) requiring these sites to implement the UNGPs ‘by the letter’ (i.e. by having a human rights policy, carrying out HRDD and providing remedy) may overwhelm small organisations that have extremely limited capacity beyond fulfilling their operational tasks. In these cases, requirements could be adapted. For example, a requirement could be for the much smaller organisations to align with the ‘**spirit**’ of the UNGPs and its HRDD concept, namely to promote standards and practices that effectively prevent and mitigate human rights risks and impacts for individuals and communities affected by business activities. This could also be achieved by focusing requirements on the most salient human rights risks and impacts. This approach follows the UNGPs’ expectation to prioritize salient human rights issues and can provide an effective solution to support small business entities in implementing the UNGPs.

When pre-selecting human rights issues and translating them into membership/certification requirements though, MSIs should be aware that this may result in other human rights risks being disregarded by the businesses seeking certification. To counteract this risk, we recommend that MSIs **regularly update their industry-wide HRIAs (Human Rights Impact Assessments)**, and to **strengthen respect for human rights requirements both from a content** (requiring e.g. to ‘respect all internationally recognized human rights’) **as well as process perspective** (requiring human rights due diligence as appropriate to the size and context of the company/site seeking membership/certification).

- iii. **Support the implementation of HRDD, including substantive mitigation and remediation.** One of the functions of MSIs is to provide guidance to businesses and build their capacities to effectively fulfil their responsibility to respect human rights. Some of the most challenging steps relate to effective mitigation of emerging human rights risks and the remediation of actual violations. Unpacking what best practice looks like and supporting this through knowledge building is an important role for MSIs. This can cover training in the form of e-learning modules, videos, workshops and peer-learning opportunities; publishing guidance

documents and toolkits assisting companies/sites throughout the process of carrying out HRDD, or templates that companies/sites can use in the process. Importantly, ISEAL Community Members could further catalyze and incentivize HRDD by building a network of third-party organizations (including investors and other supporting actors) that can support their members in the implementation of HRDD requirements.

In summary, by continuously strengthening their alignment with the UNGPs, ISEAL Community Members strengthen their standards, raising the bar on responsible business conduct and can ultimately increase positive impacts on people and communities affected by business activities.

Given that ISEAL Community Members bring together businesses and other stakeholders within industries and along a whole value chain, they are well placed to provide a space to explore and develop **systemic solutions** to address the salient human rights impacts of the targeted value chain, establish industry-wide grievance mechanisms and accompany joint remediation processes.

ANNEX - KEY RESOURCES

THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

UN Human Rights (2011): [Guiding Principles on Business and Human Rights](#), also available [here](#) in other languages

UN Human Rights (2011): [Frequently asked questions about the UNGPs](#)

UN Human Rights (2011): [The corporate responsibility to respect human rights – An interpretive guide](#)

PRACTICAL GUIDANCE ON IMPLEMENTING THE UNGPS

OECD (2018): [OECD due diligence guidance for responsible business conduct](#) (also available in numerous languages and targeted to specific sectors [here](#))

Shift (2016): [Doing business with respect for human rights – A guidance tool for companies](#)

UN Global Compact (2015): [How to develop a Human Rights Policy](#) (also available in [Spanish](#))

The Danish Institute for Human Rights (2016): [Human rights impact assessment guidance and toolbox](#)

UN Global Compact Germany/twentyfifty (2014): [Stakeholder engagement in human rights due diligence](#)

UN Global Compact Germany/twentyfifty (2019): [Worth Listening – Understanding and implementing human rights grievance management](#)

Shift (2014): [Remediation, grievance mechanisms and the corporate responsibility to respect human rights](#)

ADDITIONAL SOURCES OF INFORMATION

[Business & Human Rights Resource Centre](#)

[The Danish Institute for Human Rights - Resources](#)

[The Global Business Initiative on Human Rights – Business Practice Portal](#)

[UN Global Compact – Issue library: Human Rights, Labour and Social Sustainability](#)

[WBCSD – Business & Human Rights Gateway: Tools & Resources](#)

ON THE ROLE OF MSIS IN ADVANCING BUSINESS RESPECT FOR HUMAN RIGHTS

MSI Integrity and the Duke Human Rights Center at the Kenan Institute for Ethics (2017): [The New Regulators? Assessing the Landscape of Multi-Stakeholder Initiatives](#)

MSI Integrity (2020): [Not Fit-for-Purpose The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance](#)

Geneva Centre for Business and Human Rights and NYU Stern Centre for Business and Human Rights
(2021): [Seeking a 'Smart Mix': Multi-Stakeholder Initiatives and Mandatory Human Rights Due Diligence](#)