



# Beyond social auditing

## KEY CONSIDERATIONS FOR MANDATING EFFECTIVE DUE DILIGENCE

Global businesses often rely on social audits to manage human rights issues in their supply chains and testify to responsible behaviour, despite evidence the model and its underlying logic are not fit for the purpose of improving outcomes for people and planet. Mandatory human rights and environmental due diligence ([mHREDD](#)) provides a key opportunity for a more comprehensive, effective and transformative approach.

### **Background:** Why mHREDD now?

As the European Union's (EU) Justice Commissioner Didier Reynders has repeatedly [said](#), we 'need a new business model'. The [EU Sustainable Corporate Governance Initiative](#), including mHREDD, is designed to achieve that by insisting EU companies identify human rights and environmental risk and impact, and take action to eliminate, mitigate and remedy their (potential and actual) harm. To realise its potential, the Initiative needs to provoke best efforts to assess risks and address them, not a mechanical tick-box exercise which has characterised too many companies' approaches to their duty of care to workers and communities.

A proposal from the European Commission is expected by the close of 2021. The European Parliament voted in favour of mandating HREDD duties for EU businesses and set out recommendations in a [report](#) to the Commission in March 2021. With the debate increasingly centring on the 'how' rather than the 'if', this briefing has been designed to provide policymakers and legislators with starting points for mandating effective due diligence.

HREDD is a key framework for businesses to address their impact on human rights and the environment, introduced by the UN Guiding Principles on Business and Human Rights (UNGPs) and endorsed by the OECD Guidelines. However, adoption and implementation have so far been insufficient in addressing endemic abuse in global value chains. [Benchmarks](#) and other [analyses](#) generally show low levels of commitment, and increasingly indicate a disconnect between policy and practice even where there is initial action, meaning those affected by corporate abuse are not seeing practical improvements.

One major weakness in this context is that too many businesses interpret their responsibility to respect human rights as a [private top-down compliance](#) exercise:

- ➔ This reductive approach seeks to limit lead firms' responsibility to formally prescribing and monitoring adherence to human rights and environmental requirements in supply chains, shifting most responsibility to suppliers; and
- ➔ Often relies on compromised social audits that seek to provide plausible deniability through compliance statements if abuse is later exposed.

It is therefore critical for legislators to ensure mHREDD regulation does not incentivise a duplication of this narrow tick-box approach and an over-reliance by lead firms on 'policing' suppliers through social audits which, at best, reveal symptoms, rather than taking measures to address root causes, including those driven by their own business models and practices, and engendering and enabling behaviours that will improve outcomes for people.

## The pitfalls of social audits

The limitations of the social audit model in detecting, addressing and remediating human rights abuses have been [well-documented](#) by NGOs and academic experts in recent decades, as have the devastating consequences of their pitfalls. These include problematic incentives to provide favourable reports and [instances](#) of audit cheating. The catastrophic impact of social audit failures ranges from the Rana Plaza collapse and the Brumadinho dam burst to abuse at the rubber glove manufacturer Top Glove, which underwent 28 social audits in the two years before an independent investigation found widespread forced labour. [Governments](#), and even [auditors](#) themselves, are starting to acknowledge the shortcomings of the model.

## Social audits are not due diligence

Social audits do not equate to human rights due diligence. Whether fundamentally improved auditing can play a role in due diligence has been discussed by others including the [European Center for Constitutional and Human Rights](#); this briefing outlines key starting points for moving beyond social audits towards genuine due diligence.

**HREDD is fundamentally different to social auditing**, both conceptually as well as in its approach, scope, ambition and potential impact.

### Social audits:

- ➔ Are a snapshot in time;
- ➔ Rely on ticking lists to issue compliance statements;
- ➔ Can be symptomatic of lead firm approaches which rely on monitoring change, or expecting things to change, instead of taking shared responsibility;
- ➔ Are often [opaque](#) and compromised in their integrity, e.g. where social auditors are hired by the audited unit, or methods and results not published;
- ➔ Can be used by companies as a strategy to reduce reputational (or legal) risk to the business, not risks to people and the environment.

## Human rights and environmental due diligence:

- ➔ Requires businesses to:
  - ➔ Identify and assess risks and harms to people and planet they are implicated in on an ongoing and proactive basis.
  - ➔ Take systematic measures to prevent and address human rights and environmental harm in operations and value chains, including by enabling and supporting (or not undermining) the necessary change more proactively.
  - ➔ Track effectiveness of responses and adapt if necessary.
  - ➔ Communicate identified risks and impacts and how they are addressed.
- ➔ Should be informed by effective and safe engagement with affected stake- and rightsholders.
- ➔ Should be integrated across all relevant company functions, including core strategic [decision-making](#) in governing boards.
- ➔ Should go hand-in-hand with effective remediation for affected individuals and groups where a company has been implicated in harm, including in its value chain.

## Key topics for mandating effective due diligence

### Risk-based approach across all operations and value chain

Audit-driven approaches tend to focus on a company's upper-tier suppliers, where there is clear contractual or commercial leverage; while social audits as part of commodity certification may cover lower tiers, here too problems of reliability and systemic limitations persist. Due diligence covering the full value chain in line with the UNGPs and OECD Guidelines is not about collecting audit compliance statements for hundreds and thousands of suppliers to 'tick a box'. It is about companies gaining a dynamic understanding, across their operations and value chains, of what and where their human rights and environmental issues are, and proactively, adequately and effectively addressing those regardless of [where they occur](#). According to the UNGPs, businesses may, if necessary, first address the most [salient risks](#) to people and planet, although any prioritisation must be constantly revisited. They also stipulate the scale and complexity of measures may vary depending on factors such as company size and context, as well as severity and irreversibility of the impact.

Legislation should apply a risk-based approach and **establish proactive due diligence obligations across all operations and the entire value chain** for EU businesses of all sectors and sizes, without *a priori* limiting the tiers to be covered. [Businesses](#) including [investors](#) support such an approach, in line with international standards. Regular and ongoing identification and assessment of risks, including through broader risk mapping, detailed [human rights impact assessments](#), on-site relationship-building and, crucially, the involvement of local stake- and rightsholders, can provide starting points for appropriate responses even if individual production sites are initially not known at every stage. At the same time, [transparent supply chains](#) form crucial building blocks for companies' due diligence and enable stakeholder feedback on adverse impacts.



## Meaningful and safe stakeholder engagement

Effective engagement with (potentially) affected groups, workers, including local unions and worker-led organisations, and other relevant stakeholders (in particular marginalised groups and human rights, environmental and land defenders) should inform all stages of the due diligence process (UNGP 18) – a condition social audits and corresponding remediation plans fall short of. Workers and communities along global operations and value chains are the ones on the ground who have direct experience of corporate harm; engaging with them is the most effective way of identifying and addressing salient concerns. It is a crucial basis for making decisions on where action is most urgently needed and what should be done to effectively address harm, including underlying root causes and vulnerabilities, and tracking and verifying mitigating and remedial measures taken. No company can conduct HREDD without engaging rightsholders.

At the same time, engagement needs to be safe and rightsholders must be able to speak out against corporate harm without fearing or suffering retaliation. Therefore, due diligence must also address risks to and improve protections for defenders and marginalised groups, including women workers and Indigenous communities.

**Legislation should introduce legal safeguards against retaliation and mandate effective and safe engagement with affected stake- and rightsholders to inform all stages of ongoing due diligence and remediation.**



## Responsible purchasing practices, business and investments models and supplier engagement

Due diligence goes beyond audit-heavy control measures targeted at suppliers to include analysis of a lead company's own business or [investment](#) model, [purchasing](#) as well as [pricing](#) practices and serious adjustments to those if they are found to create risks to rightsholders. For instance, practices such as squeezing suppliers on price, issuing late payments, last-minute order changes and cancellations contribute to harm as suppliers are left unable to pay workers a decent wage, incentivising subcontracting. In turn, responsible practices, such as ringfencing labour costs in orders, can help ensure workers receive a [living wage](#), a key enabling right. **Legislation should explicitly require companies to address the knock-on impacts of their own business models and practices as potential root causes of abuse in value chains, and hold companies accountable for them.**

A focus on 'commanding and controlling' compliance in the supply chain also risks missing out on other effective measures to 'do no harm' and improve human rights outcomes. In line with the UNGPs and OECD Guidelines, this involves joint problem solving with suppliers and increasing leverage (UNGP 19), including through supplier development and long-term relationship building across supply chain tiers, positive incentives for suppliers, e.g. to ensure respect for freedom of association (another key enabling right) and support collective bargaining agreements, as well as capacity building and [seriously collaborating](#) with industry peers, NGOs and trade unions, e.g. in [Worker-driven Social Responsibility](#) models.

Crucially, the development, implementation and assessment of measures should give agency to rightsholders. Claims by lead companies that they have no effective leverage over situations in their supply chains, or they did not know about abuse where they could and should have through effective due diligence, are no excuse for shallow responses or inaction. Lack of or inadequate action further contributes to the harm. Finally, the UNGPs and OECD Guidelines stipulate that **proactive engagement with suppliers and business relationships on human rights issues** should also be prioritised over ending a relationship, which comes with human rights implications of its own, while in certain cases [responsible disengagement](#) can be a viable last resort.

### Access to remedy

The ultimate goal of due diligence is to prevent and address harm to people and the planet; this has to go hand-in-hand with remediation and reparation for individuals or groups where adverse impacts occur. Legislation should require companies to have effective grievance mechanisms in place, which can also play an important part in the identification of risk, guarantee rightsholders can file complaints without fear of reprisal, and provide for or cooperate in the provision of remedy for affected individuals and groups. Crucially, this is something social audits, certification systems and related multi-stakeholder initiatives [fail at](#). 'Remediation plans' in the audit context often do not even foresee remedy for specific individuals or groups who have already been harmed.

**Remediation requirements for companies must be backed up by a robust civil liability regime** to ensure victims of abuse also have access to legal remedy for harms, while creating a strong preventative effect. The crucial dual role of civil liability is acknowledged by [businesses](#) too. A well-designed civil liability mechanism, complemented by administrative and potentially criminal liability, can [incentivise](#) genuine and effective human rights and environmental due diligence and create a true level-playing field, beyond a mere tick-box approach.

## Recommendations to policy makers

At a minimum, it is critical that mHREDD legislation and accompanying commentaries and guidance:

- ➔ Stipulate social audits and certifications do not equate to human rights due diligence.
- ➔ Ensure EU businesses<sup>1</sup> human rights and environmental due diligence obligations cover all operations and value chains, and include taking all necessary, adequate and effective measures to prevent and address human rights and environmental abuse.
- ➔ Avoid framing ‘leverage’ over a certain business relationship as a factor determining **whether** there need to be due diligence measures; define it in line with the UNGPs and OECD Guidelines as playing a role in determining **what** constitutes appropriate mitigation action, including measures to increase leverage, and to enable and support change.
- ➔ Avoid fuelling a tick-box compliance approach to HREDD by creating narrow lists of process requirements; explicitly include adjustments to EU firms’ purchasing and pricing practices and business and investment models as key measures to prevent and mitigate harm, strengthening the [Unfair Trading Practices Directive](#) and other related EU policies.
- ➔ Introduce legal safeguards against retaliation and mandate effective and safe engagement with affected stake- and rightsholders including vulnerable groups and defenders to inform all stages of due diligence and remediation.
- ➔ Require companies to substantively improve on public supply chain transparency, including by disclosing supplier lists particularly of lower tiers, make results of due diligence conducted public and verifiable, and disclose quality data on use of grievance mechanisms.
- ➔ Introduce strong requirements for remediation and reparation, as well as, crucially, a robust civil liability regime to ensure effective access to judicial remedy for affected people before EU Member States’ courts for human rights and environmental harms EU businesses are implicated in across their global operations and value chains; introduce complementary administrative and potentially criminal liability.
- ➔ Make clear that social audits and certifications, or any other company process, policy or membership, do not constitute a [safe harbour](#) against liability claims.

## RESOURCES

### American Bar Association:

- 📄 [Model Contract Clauses for Human Rights](#)

### BHRC:

- 📄 [Hearing the human – Ensuring due diligence legislation effectively amplifies the voices of those affected by irresponsible business;](#)
- 📄 [Social audit liability – Hard law strategies to redress weak social assurances;](#)
- 📄 [Beyond Social Auditing portal](#)

### ECCHR, Brot für die Welt & MISEREOR:

- 📄 [Human rights fitness of the auditing and certification industry?](#)

### Human Rights Watch:

- 📄 [Paying for a Bus Ticket and Expecting to Fly](#)

### KnowTheChain:

- 📄 [Addressing Forced Labour Risks in Lower Tiers of Electronics Supply Chains](#)

### Shift:

- 📄 [From Audit to Innovation: Advancing Human Rights in Global Supply Chains](#)

<sup>1</sup> Businesses based in the EU or active on the EU market, of all sizes and from all sectors.



## Business & Human Rights Resource Centre

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**Business & Human Rights Resource Centre** is an international NGO that tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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