

Responsible business conduct and the apparel and footwear industry

GUIDANCE FOR COMPANIES IN VIETNAM • 2021



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Guidance for companies in Vietnam

2021

Australian Human Rights Commission
Vietnam Chamber of Commerce and Industry



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Executive Summary

Globally, there is increasing expectation on businesses to operate responsibly and sustainably – and at the heart of this is respect for human rights. Following the unanimous endorsement of the UN Guiding Principles on Business and Human Rights in 2011 by the UN Human Rights Council, there is growing focus on responsible business conduct amongst governments, business, investors, civil society and unions. This has led to numerous legal, policy and practical developments globally and in the Southeast Asia region.

Viet Nam is becoming increasingly integrated into the global economy, supplying goods to consumers all over the world through global supply chains. While such economic growth is important for job creation, infrastructure development and poverty alleviation, it can raise challenges for the promotion, protection and realisation of human rights.

The apparel and footwear industry is one of Viet Nam's most important industries, accounting for nearly 20% of all exports and employment for approximately 2.5 million people. As Viet Nam capitalises on its promising economic growth and development, many challenges exist to the realisation of rights in the apparel and footwear industry, particularly following the impact of the COVID-19 pandemic.

The Vietnam Chamber of Commerce and Industry (VCCI) and the Australian Human Rights Commission (AHRC) have jointly launched a two-year program to advance responsible business conduct in Viet Nam. As part of this collaboration, the VCCI and the AHRC have developed this introductory guidance on responsible business conduct in the apparel and footwear industry in Viet Nam. The purpose of this guidance is to support business in understanding some of the key human rights challenges that arise in the apparel and footwear industry and how to appropriately respond.

This guidance has been developed during challenging and unprecedented times. What started as a health crisis has emerged into an economic and social crisis. The COVID-19 pandemic has significant implications on the realisation of rights globally and further emphasises the need for responsible business conduct. As such, the guidance will also consider the additional impacts of COVID-19 and potential measures to address such impacts.

Acronyms

AHRC	Australian Human Rights Commission
AICHR	ASEAN Intergovernmental Commission on Human Rights
ASEAN	Association of Southeast Asian Nations
CSR	Corporate Social Responsibility
DFAT	Department of Foreign Affairs and Trade
ETI	Ethical Trade Initiative
EVFTA	EU-Viet Nam Free Trade Agreement
FLEX	Focus on Labour Exploitation
FWF	Fair Wear Foundation
GCNZ	Global Compact Network of Viet Nam
GSO	General Statistics Office
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ITUC	International Trade Union Confederation
MOLISA	Ministry of Labour, Invalids and Social Affairs
NAP	National Action Plans
NCP	National Contact Points
NGO	Non-government Organisation
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
VCCI	Vietnam Chamber of Commerce and Industry
VGCL	Vietnam General Confederation of Labour

About the project

This guidance was developed under the 'Advancing Responsible Business Conduct' Project, a collaboration between the Viet Nam Chamber of Commerce and Industry and the Australian Human Rights Commission. This program aims to strengthen business capability and cultivate future business leaders to promote responsible business conduct and respect for human rights in Viet Nam. The program is supported by the Australian Government's Department of Foreign Affairs and Trade (DFAT).

The views expressed in this guidance are the author's alone and are not necessarily the views of the Australian or Vietnamese Government.

Vietnam Chamber of Commerce and Industry (VCCI) is the only national organization that assembles and represents the business community, employers and business associations in Viet Nam for the purpose of developing, protecting, and supporting the business community. This contributes to the country's socio-economic development, promoting economic, trade, science and technology cooperation with foreign countries on the basis of equality and mutual benefit, according to regulation of the law. The Office for Business Sustainable Development (SD4B) is an office of VCCI with the function of supporting businesses and entrepreneurs for sustainable development. Through the works of SD4B and related Departments, VCCI is actively involved in efforts and initiatives to promote responsible business conduct and corporate responsibility to respect human rights in Viet Nam.

The Australian Human Rights Commission (AHRC) is Australia's national human rights institution (NHRI), established in 1986 by legislation of the federal Parliament. The AHRC's operations are determined independently of the government through the President and Commissioners. The AHRC provides human rights analysis to the courts and parliamentary inquiries, conducts research and contributes to partnerships. The AHRC's role is to work towards an Australia in which human rights are respected, protected and promoted, finding practical solutions to issues of concern, advocating for systemic change and raising awareness across the community. The AHRC also has a complaint-handling function which requires it to investigate and, where appropriate, try to conciliate complaints made under federal anti-discrimination laws.

In addition to its public education, complaint handling and policy functions, the AHRC plays a role in advancing the protection and promotion of human rights in the Indo-Pacific region and globally by engaging and partnering with governments, other NHRIs, international non-government organisations (NGOs) and donors in regional meetings, capacity-building activities and bilateral cooperation programs. The AHRC is pleased to be partnering with the VCCI in these endeavours in Viet Nam.



Introduction

Background

Over the last 30 years, Viet Nam's economic growth has been exponential. Economic and political reforms have pushed Viet Nam from being one of the poorest countries in the world to a lower middle-income country.¹ This rapid economic growth has been driven by the success of a number of industries, including in the manufacturing and agricultural sectors.² In addition, Viet Nam has been active in signing bilateral and multilateral trade agreements with countries throughout the world. Thirteen trade agreements were signed between 2013 and 2019, with more than 50 partners across Asia, Europe and Latin America. As a result, Viet Nam is becoming increasingly integrated into the global economy, supplying goods to consumers all over the world through global supply chains. While such economic growth is important for job creation, infrastructure development and poverty alleviation, it can raise challenges for the promotion, protection and realisation of human rights.

Globally, there is increasing expectation on businesses to operate responsibly and sustainably – and at the heart of this is respect for human rights. Following the unanimous endorsement of the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) by the UN Human Rights Council in 2011 there is growing focus on responsible business conduct amongst governments, business, investors, civil society and unions. This has led to numerous legal, policy and practical developments globally and in the ASEAN region.

As a significant global supplier, the apparel and footwear industry is one of Viet Nam's most important industries. This guidance seeks to support business in understanding some of the key human rights challenges in the industry and how to respond appropriately.

Purpose of the guidance

As Viet Nam capitalises on its promising economic growth and development, many challenges exist to the realisation of rights in the context of business activities, particularly following the impact of the COVID-19 pandemic. The purpose of this introductory guidance is to highlight some of the human rights challenges and issues that arise in the apparel and footwear industry in Viet Nam and provide practical steps grounded in international frameworks and principles. Through the use of practical examples, this guidance has been designed to assist businesses operating in Viet Nam to understand and meet their responsibility to respect human rights.

This guidance has been developed during challenging and unprecedented times. What started as a health crisis has emerged into an economic and social crisis. The COVID-19 pandemic has significant implications on the realisation of rights globally and further emphasises the need for responsible business conduct. The guidance will therefore also consider the additional impacts of COVID-19 and potential measures to address such impacts.

This guidance is relevant and appropriate for local and international businesses operating in Viet Nam, including but not limited to raw material and fibre producers, material manufacturers and processors, components manufacturers, apparel and footwear manufacturers, brands, retailers and their intermediaries. This guidance is produced in Vietnamese and English.

The guidance provides general information only and is not legally binding. The guidance is not intended to constitute legal advice. Organisations or individuals should seek their own legal advice if they have concerns regarding their compliance with domestic legislation or international standards. Any case studies or examples are included for educational purposes and do not constitute an endorsement of a company or organisation.

The apparel and footwear industry in Viet Nam

The apparel and footwear industry accounts for a significant portion of Viet Nam's exports. In 2019, the apparel industry's share of the country's total exports was approximately 16% (over USD 38 billion).³ In the same year, the footwear industry accounted for approximately 8.4% of total exports (approximately USD 18.3 billion).⁴

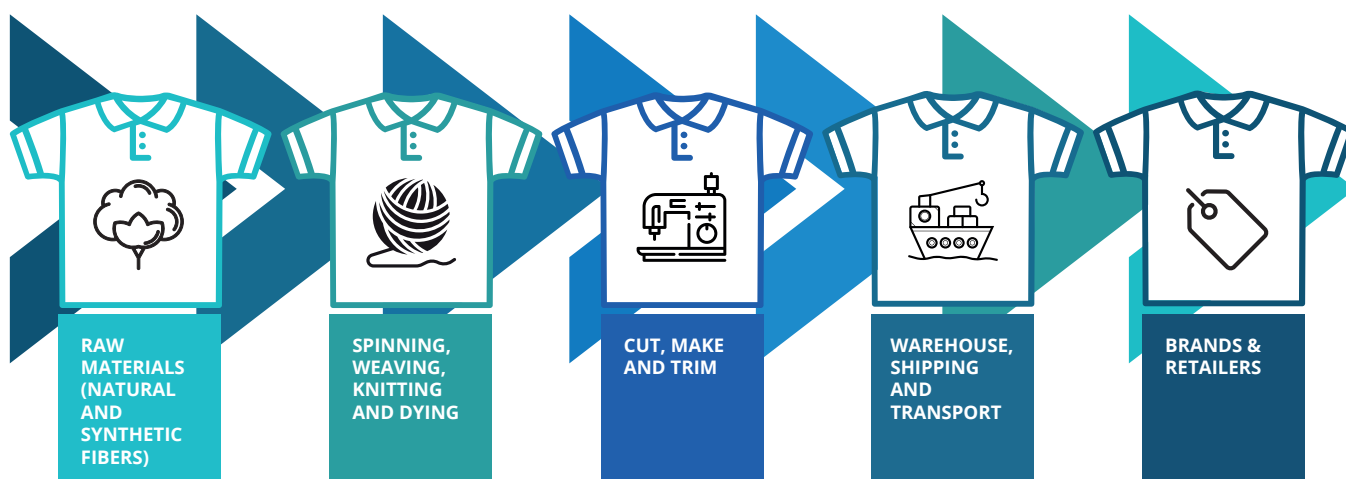
As the fourth largest garment exporter in the world,⁵ and the second largest footwear exporter in the world,⁶ the industry has played a key role in the transition from a centrally planned economy to a market economy⁷ and is an important driver of Viet Nam's integration into the global economy. Prior to the economic shocks sent by COVID-19, the apparel and footwear industry had been experiencing significant growth. As of 2018, the apparel industry in Viet Nam reached an export turnover of more than USD 30.6 billion, making it the third strongest export commodity in the country.⁸ Despite the exponential growth that has been a feature of the last decade, the industry is facing significant challenges as exports drop significantly due to COVID-19.⁹

The industry is made up of nearly 6,000 apparel¹⁰ and 3,000 footwear companies.¹¹ Of the workers employed by those companies, approximately 80% are women, many of whom have migrated from regional areas and have received no vocational training. Most of the industry (58%) is in Ho Chi Minh city and the surrounding area, with the next largest concentration (27%) in Hanoi and surrounding provinces.¹²



(a) The apparel and footwear supply chain

The following diagram provides a simplified overview of a global supply chain in the apparel and footwear industry. Sub-contractors will often be used at various stages of the supply chain.



The manufacturing sector in Viet Nam is highly dependent on global supply chains importing raw materials to produce goods sold in the global marketplace. For example, Viet Nam sources nearly 98% of its cotton from countries such as the United States, India, Brazil, Australia and Cote d'Ivoire.¹³

Who do factories and businesses in Viet Nam supply to?

Viet Nam is a key player in the global garment supply chain. Many of the world's largest multinational companies have suppliers in Viet Nam. Household brands such as Nike, adidas, Levi's, H&M, Gap, VF (The North Face, Timberland and others) and Inditex (Zara) all supply from factories in Viet Nam.¹⁴



Responsible business conduct and sustainable development in Viet Nam

What is responsible business conduct?

According to the Organisation for Economic Co-operation and Development (OECD), responsible business conduct means making 'a positive contribution to the economic, environmental and social progress of the countries in which they operate and avoid[ing] and address[ing] negative impacts of their activities, including in the supply chain.'¹⁵

Being a responsible business means avoiding and addressing the 'adverse' impacts of your activities and operations, while contributing to sustainable development of the countries in which you operate. This expectation applies to all businesses, regardless of size, sector, structure, location, ownership or legal status.

At the heart of responsible business conduct and practice is respect for human rights.

Viet Nam has engaged in numerous reform processes to ensure greater adherence with international human rights and labour standards. The OECD has acknowledged that recent economic and social reforms, particularly in the area of human rights and labour rights, 'represent a positive step in strengthening Viet Nam's overall policy framework that enables responsible business conduct.'¹⁶

Notably, the Viet Nam Ministry of Justice in collaboration with the United Nations Development Programme (UNDP) and the Government of Sweden, released *The Preliminary Assessment of the Regulatory Framework on Responsible Business Practice in Viet Nam* (Preliminary Assessment) in October 2020.¹⁷ The Preliminary Assessment provides a stocktake on the alignment of the regulatory framework in Viet Nam with international standards on responsible business conduct. Since 2017, the Government of Viet Nam has implemented a range of initiatives, such as training and workshops for government officials, business associations and corporations, to increase the awareness of the UN Guiding Principles in Viet Nam.¹⁸

Responsible business conduct in Viet Nam is also being implemented through a number of recently ratified trade agreements. The EU-Viet Nam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) make commitments related to the environment and labour rights. In addition, the Government of Viet Nam released a National Sustainable Development Goals Action Plan (Action Plan) in May 2017.¹⁹ The Action Plan calls on the private sector to take a proactive role and mobilise resources to support the achievement of the Sustainable Development Goals (SDGs). During the voluntary national review of SDG implementation conducted in 2018, Viet Nam outlined achievements made to date under the Action Plan, in addition to challenges.²⁰

These developments signal Viet Nam's commitment to ensuring responsible and sustainable economic growth.

02 Introduction to human rights



Overview of human rights and key international frameworks

Human rights are important for everyone—all over the world.

Human rights recognise the inherent value of each person, regardless of our background, where we live, what we look like, what we think or what we believe.

Human rights are about being treated fairly, treating others fairly and having the ability to make genuine choices in our daily lives. Respect for human rights is the cornerstone of strong communities in which everyone can make a contribution and feel included.

Since the founding of the UN in 1945, governments of the world have agreed to a set of common standards for upholding human rights. They are based on principles of dignity, equality and mutual respect, which are shared across cultures, religions and philosophies.

The human rights standards agreed to by governments are outlined in three core UN documents, which together form the 'International Bill of Human Rights':

1. **The Universal Declaration of Human Rights (UDHR)**, adopted by the United Nations in 1948, recognises the basic rights and fundamental freedoms to which all human beings are entitled. It has become a foundation document that has inspired many legally binding international human rights instruments.
2. **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**, adopted by the United Nations General Assembly in 1966. The ICESCR was ratified by Viet Nam in 1982.
3. **The International Covenant on Civil and Political Rights (ICCPR)**, adopted by the United Nations General Assembly in 1966. The ICCPR was ratified by Viet Nam in 1982.

International human rights law obliges States to respect, protect and fulfil the human rights of individuals within their territory or jurisdiction.²¹ Human rights include civil and political rights—like the right to vote and the right to freedom of speech; and economic, cultural and social rights—like the right to social security and the rights to speak your language and practise your religion. The right to work is set out in the UDHR, with Articles 6 and 7 of ICESCR outlining the right to work and the just and favourable conditions of work, respectively.²²

International human rights instruments in Viet Nam

Viet Nam has ratified the following international human rights instruments:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.



Overview of labour rights

Sitting parallel to the human rights system, the International Labour Organization (ILO) brings together governments, employers and workers to set labour standards, develop policies and devise programs promoting decent work for all.²³ Viet Nam re-joined the ILO in 1992.²⁴

The ILO has developed many legal standards and instruments to protect and advance the rights of workers. A key ILO instrument is the Declaration on Fundamental Principles and Rights at Work,²⁵ which outlines that member states are obliged to respect, promote and realise the principles of four fundamental rights:

1. freedom of association and the effective recognition of the right to collective bargaining
2. elimination of forced labour or compulsory labour
3. abolition of child labour
4. elimination of discrimination in respect of employment and occupation.²⁶

These rights are further developed in the ILO's eight Fundamental Conventions and other governance and technical conventions.²⁷ As of December 2020, Viet Nam has ratified 25 ILO Conventions, which include seven of eight Fundamental Conventions, three of the four Governance Conventions and 15 of 178 technical Conventions.²⁸

RightsApp

The full text of the human rights instruments that Viet Nam is a party to are available on **RightsApp**, a smartphone application.

To download RightsApp search for 'RightsApp' in your Apple or Google Play Store.

RightsApp

WHAT IF YOU HAD ONE REFERENCE
GUIDE TO INTERNATIONAL HUMAN
RIGHTS LAW, IN YOUR POCKET?



Business and human rights: Key developments and frameworks

Overview

The business and human rights landscape has evolved significantly over recent decades. Driven by increased globalisation, liberalisation of markets, new societal demands and technological developments, the role of business in society has become more prominent. As a result, there has been increased attention on the impact of businesses in society, including their relationship to human rights. Apparel and footwear companies and their manufacturing operations have come under scrutiny. Civil society campaigns and increased media attention in the 1980s and 1990s led to increased pressure for companies to take a more ethical and social approach to their operations and practices.²⁹

In June 2011, the UN Human Rights Council unanimously adopted the UN Guiding Principles. The UN Guiding Principles provide a global standard for addressing and preventing human rights impacts associated with business activity. Nearly a decade after their adoption, the UN Guiding Principles have been implemented into law, policy and practice around the world. The widespread and rapid uptake of the UN Guiding Principles, and other key frameworks below, highlight the increasing expectation on companies to operate in a sustainable, responsible and rights-respecting manner.

Relationship between human rights and business

Almost all human rights are relevant to business. The activities of a business can have an impact—both positive and negative—on many people, including employees, customers, suppliers and their employees, and communities in which a business operates.

Globally, businesses are increasingly recognising that respecting human rights is not only the right thing to do, but also good for business. Increasingly, consumers, investors and governments are all expecting businesses to operate in a responsible and sustainable manner. There is growing evidence of social and economic value for a company that embeds human rights considerations into its core business practices, and significant costs when human rights are ignored.³⁰ Respecting human rights is not just about risk management, it can also create new business opportunities, including access to markets, capital, suppliers and consumers.

UN Guiding Principles on Business and Human Rights

While the focus of international human rights law has historically been on the nation state, rather than business, the endorsement of the UN Guiding Principles highlighted the role and responsibility of business to respect human rights.

The UN Guiding Principles are significant in that their endorsement signals the first time the global community agreed to a common understanding of the relationship between business and human rights, outlining the role and responsibility of both States and business.

The UN Guiding Principles operate on a three-pillar framework, known as the Protect, Respect, Remedy Framework, which consists of:

1. the duty of the State to protect human rights
2. corporate responsibility to respect human rights
3. access to appropriate and effective remedy for victims of business-related abuse.

The UN Guiding Principles are now a global standard for preventing and addressing adverse human rights impacts related to business.

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

**Commentary to UN Guiding Principle
Article 11**

How is this different from corporate social responsibility?

Corporate social responsibility (CSR) is often viewed as a voluntary commitment, philanthropic exercise, or a form of self-regulation. Historically, the approach to responsible business conduct in Viet Nam's apparel and footwear industry has been through the lens of CSR.

While there is no universal definition of CSR, and its practice varies widely, the emphasis of CSR tends to be focused on making a positive contribution to society by helping address well-known issues and causes. It is often seen as an 'add-on' and exists separately to core business functions and operations.

Unlike optional CSR approaches, the business responsibility to respect human rights, as enshrined in the UN Guiding Principles, requires businesses to investigate and address potential or actual human rights impacts on people. It requires embedding policies and practices into business operations and strategies.

A key component of the UN Guiding Principles is that a business cannot offset its human rights responsibilities: a business cannot negate its responsibilities in one area by doing good in another.

Other Relevant Frameworks

The UN Guiding Principles do not operate in isolation. There are a number of other relevant and complementary frameworks that need to be considered by businesses.

(a) OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are recommendations from States to multinational enterprises on responsible business conduct. The OECD Guidelines provide a global framework and articulate responsible business conduct standards across a range of issues, such as human rights, labour rights and the environment.

The OECD Guidelines were revised in 2011 to ensure alignment with the UN Guiding Principles. The OECD Guidelines apply the UN Guiding Principles' concept of due diligence (which will be discussed further in Part 5) to all aspects of corporate responsibility.³¹ The OECD has also published a range of sector-based guidance on applying due diligence, including for the garment and footwear supply chains.³² The OECD Guidelines require adhering States to develop grievance mechanisms to address complaints between companies covered by the OECD Guidelines, and individuals who feel negatively impacted by irresponsible business conduct. The grievance mechanisms established by States are called National Contact Points (NCPs) and can be accessed by anyone who considers that the standards articulated in the OECD Guidelines have been breached.

While Viet Nam is not an adhering country to the OECD Guidelines, it has participated in various forums and regional programs organised by the OECD, including a joint project on promoting responsible supply chains in Asia.³³

(b) Sustainable Development Goals

The adoption of the Sustainable Development Goals (SDGs) by the UN General Assembly in September 2015 has placed an increased spotlight on the role of business in advancing social goals and outcomes. The SDGs provide a blueprint for a sustainable and just future for all by 2030 and call for concerted action by States, business, and civil society to end poverty and ensure no one is left behind.³⁴ The SDGs specifically emphasise the role of business as a key partner, calling on 'all businesses to apply their creativity and innovation to solving sustainable development challenges.'³⁵ While acknowledging the role of business as a driver of economic development and infrastructure, the SDGs explicitly call for business to act in accordance with the UN Guiding Principles.³⁶

For many businesses, it may be tempting to approach the SDGs through a CSR lens, for example by making an ad-hoc voluntary contribution to a cause. However, the role of business in achieving the SDGs can only be fully realised if all businesses fulfil their responsibility to respect human rights as outlined by the UN Guiding Principles and the OECD Guidelines. This has been acknowledged by the UN Working Group on Business and Human Rights (UN Working Group). The UN Working Group emphasised that 'business strategies to contribute to the SDGs are no substitute for human rights due diligence. Robust human rights due diligence enables and contributes to sustainable development.'³⁷

Viet Nam adopted the National Action Plan to implement the 2030 Agenda for SDGs (SDG NAP) as per Decision 633/QĐ-TTg dated 10 May 2017 of the Prime Minister.³⁸

(c) UN Global Compact

The UN Global Compact is the world's largest corporate sustainability initiative. It is a voluntary initiative that seeks to align business operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. It was launched in 2000 by former UN Secretary-General Kofi Annan to engage the private sector in addressing development challenges.

In Viet Nam, implementation of the UN Global Compact's Ten Principles is driven by the local network, the Global Compact Network of Viet Nam (GCNV). GCNV was launched in 2007 by VCCI and the United Nations in Viet Nam. The goal of GCNV is to be a national centre of excellence for corporate responsibility. The GCNV seeks to identify challenges and solutions related to interactions between business and the community, environment, government and consumers, in order to advance corporate sustainability and contribute to the achievement of the SDGs.



The Ten Principles of the UN Global Compact

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights

Principle 2: Make sure that they are not complicit in human rights abuses

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining

Principle 4: The elimination of all forms of forced and compulsory labour

Principle 5: The effective abolition of child labour

Principle 6: The elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges

Principle 8: Undertake initiatives to promote greater environmental responsibility

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

By signing up to the UN Global Compact, a business is making a commitment to uphold and implement the UN Global Compact's Ten Principles on human rights, labour, the environment and anti-corruption. The UN Guiding Principles and the OECD Guidelines provide the practical tools and actions to make this possible.

National and regional developments

Nearly a decade after the endorsement by the UN Human Rights Council, the UN Guiding Principles are increasingly being embedded into law, policy and practice. Three years after the adoption of the UN Guiding Principles, the UN Human Rights Council called on all Member States to develop National Action Plans (NAPs) to support the implementation of the UN Guiding Principles.³⁹ As a result, countries from all over the world have been engaging in processes to develop these action plans to outline key priorities and actions to drive responsible and sustainable business conduct. As of January 2021, 25 countries have developed a NAP and an additional 17 are in the process of doing so.⁴⁰



National Action Plans on Business and Human Rights in Asia

While many of the earlier NAPs on business and human rights were developed in Europe, there is an increasing number of countries in Asia engaging in the process, signalling the drive within the region to increase the quality of foreign direct investment and ensure that economic growth is achieved in a sustainable and rights-respecting manner.

Following an extensive and wide-ranging consultation process, Thailand was the first country in Asia to publish a stand-alone NAP on business and human rights. In addition, South Korea has a chapter on business and human rights within its broader human rights national action plan. Japan published its NAP on business and human rights on 16 October 2020.

A number of other countries in the region have committed to developing a NAP, these include India, Indonesia, Malaysia, Mongolia, Pakistan and the Philippines.

In addition, business and human rights has become a priority area for the ASEAN Intergovernmental Commission on Human Rights (AICHR). Through its meetings and workshops, AICHR has provided an important platform for governments in the ASEAN region to learn from each other, particularly in relation to the development of NAPs.

Do you want to know more about NAPs on business and human rights? See the Danish Institute of Human Rights Global NAPs webpage which provides a comprehensive portal for all information related to NAPs. Available at: <https://globalnaps.org/>

In addition to the development of these policy frameworks, several countries have introduced legislation to mandate corporate transparency or human rights due diligence. The development of such legislation recognises and attempts to fill the gaps created by focusing solely on voluntary initiatives and/or self-regulation.

Soft law to hard law: Legislative developments

There is growing momentum from countries around the world to develop legislation that requires businesses to 'know and show' they respect human rights.

The content and scope of these laws varies from country to country. For example, some legislation is issue specific, focusing on areas such as modern slavery or child labour, while others cover all human rights and environmental issues. In addition, some legislation is focused on reporting (for example, Australia and the United Kingdom have modern slavery legislation), whereas others require businesses to engage in the process of human rights due diligence (such as the French Duty of Vigilance Law). Examples include:

- Australia: *Modern Slavery Act 2018* (Cth), *Modern Slavery Act 2018* (NSW)
- France: *French Corporate Duty of Vigilance Law 2017*
- United Kingdom: *Modern Slavery Act 2015* (UK)
- United States: *California Transparency in Supply Chains Act* of 2010 (SB 657)
- Netherlands: *Child Labour Due Diligence Act 2019*
- EU: *EU Directive on Non-Financial Disclosures* (Directive 2014/95/EU).

In addition to the above, there are similar developments taking place in a number of countries and regions, particularly in Europe. The European Commission has announced its commitment to introducing rules for mandatory human rights and environmental due diligence for the European Union.



Rights at risk:

Key challenges for the apparel and footwear industry in Viet Nam

Economic development and global trade have contributed positively to the realisation of rights for many, assisting them to escape a life of poverty and hardship. However, business activities and supply chains are also linked to adverse human rights impacts. A business can have an impact on a wide range of rights, including civil and political rights and economic, cultural and social rights.

Following the introduction of the UN Guiding Principles, businesses are now expected to know and show that they respect human rights in their operations, activities and relationships. This section is designed to help businesses working in and with the apparel and footwear industry in Viet Nam to understand and identify key human rights risks that may exist in their operations or business relationships.

The risks will vary from business to business, so the following list is not exhaustive and should be seen as a starting point rather than a definitive list. Given the heightened risks to workers that can arise, this section particularly focuses on labour rights and issues related to labour exploitation. However, it is also important to think about the impacts on other key groups such as consumers and surrounding communities.



At-risk and vulnerable groups

The following sections highlight that there are some groups of people that are particularly vulnerable to discrimination, exploitation and/or abuse. In the apparel and footwear industry in Viet Nam, these groups include women, children and migrant workers. The attributes of these groups and the challenges they face do not exist in isolation and may intersect, further exacerbating their position and ability to push back against power or abuse. For example, it can be the interplay of migrant status and gender that makes migrant women vulnerable to exploitative recruitment and working conditions.⁴¹ Special attention must therefore be paid to these particular vulnerabilities to ensure workers are protected and are not subjected to discrimination, exploitation or abuse.

- **Women** make up over 80% of the apparel and footwear industry in Viet Nam.⁴² Most of the women are under 30 years of age and come from rural areas.⁴³ For many women working in factories, it is their first job in the formal sector, making them particularly vulnerable to abuse and harassment. In addition, women tend to make up the majority of front-line workers, whereas management positions are generally held by men. Research commissioned by the Government of Viet Nam found that women are excluded from more technical and highly remunerated roles.⁴⁴ In addition, the ILO's Better Work Program found that women workers were less likely to be promoted and to receive training than their male counterparts, despite the fact that women, on average, had been employed at the same factory for longer periods of time.⁴⁵
- **Migrant workers** are also overrepresented in the apparel and footwear industry and are particularly vulnerable to exploitation. Approximately 80% of workers in the sector are women who have migrated from rural to urban areas in search of employment.⁴⁶ Many migrant workers in the apparel and footwear sector are living in poverty and/or supporting entire families, allowing employers to take advantage of their economic vulnerability.⁴⁷ According to Anti-Slavery International, many migrant workers view their situation in factories 'as one of survival' and 'do not feel equipped to find alternative work and so leaving is not a matter of choice for them'.⁴⁸

- **Children** can be vulnerable within the apparel and footwear industry as employers, dependants of workers and as members of the community.⁴⁹ Working children in this sector are at risk of low wages and long working hours and other abuses. Those that enter the workforce at a young age are less likely to receive formal education, further exposing them to discrimination and exploitation. The risk of child labour is more relevant than ever. According to UNICEF and the ILO, the COVID-19 pandemic is likely to cause a rise in child labour due to the loss of incomes, rising unemployment, falling living standards and closure of schools.⁵⁰ In light of the high proportion of women workers with children in this sector, many working mothers are often denied breastfeeding opportunities, maternity protection, access to affordable childcare, and have poor health and nutrition.⁵¹ Given the over-representation of migrant workers in the sector and the lack of living wage, many children do not have access to decent and family-friendly living conditions.⁵²



Forced labour

Unfortunately, forms of modern slavery—such as forced labour, debt bondage and human trafficking—are prevalent in apparel and footwear supply chains. No country is immune from these gross human rights violations. It affects all regions of the world.⁵³

Vietnamese labour law prohibits forced labour and human trafficking,⁵⁴ however the global demand for fast and cheap products has generated an environment in which regulations are not always followed or enforced, leading to labour rights violations, including forced labour.⁵⁵ Anti-Slavery International reports that although domestic legislation has improved in recent years with respect to forced and child labour, there are still considerable numbers of people at risk of labour exploitation in the apparel industry in Viet Nam.⁵⁶

Viet Nam's amended Labour Code

On 20 November 2019, the Viet Nam National Assembly passed its amended Labour Code No. 45/2019/QH14, that commenced on 1 January 2021. The new Labour Code broadens the scope of coverage of the previous Labour Code, strengthens the rights of workers in Viet Nam and is an important step towards aligning domestic laws with international standards. The revised Labour Code has been welcomed by the International Labour Organization, unions and civil society organisations.⁵⁷

The ILO Forced Labour Convention 1930 (No.29) defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.⁵⁸ Viet Nam ratified the Forced Labour Convention in 2007 and the Abolition of Forced Labour Convention (105) in 2020.⁵⁹

The OECD encourages businesses ‘to adopt a zero-tolerance policy for forced labour in their own operations and their supply chain’,⁶⁰ and in situations where any of the warning signs of forced labour are identified, the business will need to undertake a review of the work and the work-related processes to determine whether workers are freely engaged to do the work, with no threat or menace.⁶¹ The ILO has developed a set of indicators to assist businesses to recognise the ‘red flags’ of forced labour.⁶²

These indicators should provide a warning sign and include:

Abuse of vulnerability	Isolation
Deception	Physical and sexual violence
Restriction of movement	Intimidation and threats
Retention of identity documents	Withholding of wages and excessive overtime
Debt bondage	Abusive working and living conditions

Examples of forced labour

- Workers are unable to leave their employment because their passports and identity documents are retained by the employer
- Workers are unable to leave their employment as they are required by their employer or a recruiter to pay off expenses, such as travel, visa or onboarding/training costs (also known as debt bondage).
- Workers have been tricked into a job by an employer or recruiter, through the promise of compensation, and/or working and living conditions
- Workers are threatened that they will lose their job if they complain about working conditions, harassment or pay.

Additional guidance

VCCI and the ILO have produced guidance material for employers in Viet Nam on preventing forced labour in textile and garment supply chains.

See, Preventing forced labour in the textile and garment supply chains in Viet Nam: guide for employers, International Labour Organization and Viet Nam Chamber of Commerce and Industry. – Hanoi: ILO and VCCI, 2016. Available in Vietnamese and English at: https://www.ilo.org/hanoi/Whatwedo/Publications/WCMS_464452/lang--vi/index.htm.



Child labour

As well as the human rights that are laid out in the Universal Declaration of Human Rights, children and young people are entitled to additional rights which recognise that they have special needs to help them survive and develop to their full potential. Due to their vulnerability to exploitation and abuse, children also have the right to special protection.

The specific rights of children are set out in the Convention on the Rights of the Child (1989) which was ratified by Viet Nam in 1990.⁶³ According to the ILO, Viet Nam 'laid the foundation for effective and sustainable action against child labour',⁶⁴ by ratifying the Worst Forms of Child Labour Convention⁶⁵ in 2000, and the Minimum Age Convention⁶⁶ in 2003. Despite this international commitment, child labour in Viet Nam does exist, particularly in the informal sector.⁶⁷

Child labour is work that children should not be doing because they are too young, or if they are old enough to work, because it is dangerous or unsuitable for them. Whether or not work performed by children is defined as child labour depends on the child's age, the hours and type of work and the conditions in which the work is performed.⁶⁸

Child labour can be defined as work that 'deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development'.⁶⁹ The ILO explains that child labour refers to work that is:

1. mentally, physically, socially or morally dangerous and harmful to children, and/or
2. interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.⁷⁰

In Viet Nam, children under the age of 15 years are prohibited from working.⁷¹ The ILO, Ministry of Labour, Invalids and Social Affairs (MOLISA) and General Statistics Office (GSO) published the results of the second national survey in 2020. The survey found that in Viet Nam, there were 44,597 child labourers in the garment and textile industry, accounting for 5% of all child labour in Viet Nam.⁷² Of the 44,597, 19.8% were under the age of 15 years. Notably, the survey found that approximately 42,801 children working in garment production and 6,156 children working in footwear production are engaged with hazardous work.⁷³

According to UNICEF, while child labour among children under 15 years of age is rare in exporting apparel and footwear factories themselves, it is more common amongst factory suppliers,⁷⁴ many of which operate in more informal settings and do not have a direct interface with major international brands and retailers. Child labour in the informal sector is hard to regulate. Informal employment is common in the apparel and footwear industry, and formal sectors may subcontract to others who utilise child labour both in and outside of Viet Nam.⁷⁵ An example of this is in cotton harvesting, which is known to employ high rates of informal seasonal workers,⁷⁶ often children due to their small hands which employers claim minimise damage to the crop.⁷⁷ It is therefore important for businesses at all levels of the supply chain to engage with their suppliers to get a better understanding about the risks or actual incidences of child labour.

In light of the impacts of COVID-19, including the additional financial pressures on families and households, businesses should be conscious of the greater risk and likelihood of children entering the workforce.



Lack of a living wage and excessive hours

A living wage is the minimum income a worker requires to meet their basic needs. There are various ways to estimate living wage levels, but in Viet Nam, Oxfam reports that the two key benchmarks are the Asia Floor Wage and the Global Living Wage Coalition (also known as the 'Anker methodology').⁷⁸

What is a living wage?

'Remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing and other essential needs, including provision for unexpected events.'

The Global Living Wage Coalition⁷⁹

A living wage is not the same as the minimum wage even though their objectives are the same: 'to ensure full-time workers don't live in poverty'.⁸⁰ In Viet Nam, the minimum wage is set by the National Wage Council, made up of 15 members, five from the Ministry of Labour (representing the State), five from the VCCI (representing the employers) and five from the Viet Nam General Confederation of Labour (VGCL) (representing the employees). The council holds annual meetings to debate the national minimum wage for the next year.⁸¹ Following guidance from the National Wage Council, the minimum wage was raised in Viet Nam in January 2019. The Fair Wear Foundation welcomed the increase, acknowledging that this is a 'big step in the right direction', however noted that the minimum wage is still below living wage benchmarks.⁸²

Average wages in Viet Nam's apparel and footwear industry are above minimum rates, and typically range between VND 4 million to VND 6 million (US\$180–270), depending on the factory and seniority of the worker. Nevertheless, wages are often insufficient for workers to provide an adequate standard of living for their families. The cost of childcare, schooling, housing and food can easily exceed workers' monthly salaries. As such, the gap in salary is often filled by working excessive overtime.⁸³

'The regulation of working time is one of the oldest concerns of labour legislation. Already in the 19th century it was recognized that working excessive hours posed a danger to workers' health and to their families.'

International Labour Organization⁸⁴

Working hours are a key issue in global supply chains. Competitive pressures and purchasing practices often lead to excessive working hours with extensive overtime.⁸⁵ Long working hours have significant implications on a worker's health and productivity, as it prevents a worker from getting enough rest, addressing family responsibilities and participating in social activities and the community.⁸⁶

In addition to the health and societal impacts, excessive work hours can create additional costs for the employer related to accidents and injuries, lower productivity, absenteeism and high worker turnover.⁸⁷ Furthermore, a lack of a living wage and excessive overtime can create additional financial costs for an employer relating to workplace conflicts such as increased industrial and legal action.

Impacts of overtime

Research conducted by Oxfam Australia⁸⁸ with garment workers in Viet Nam found that of those interviewed:

- 65% regularly worked overtime
- 52% were not aware of the laws regarding overtime and payments
- 53% cannot afford treatment when they get sick
- 94% do not take sick leave when needed.

Discrimination and employment

Discrimination can happen at different points in the employment relationship or life cycle, including:

- when recruiting and selecting staff
- in the terms, conditions and benefits offered as part of employment
- who is considered or selected for training and the sort of training offered
- who is considered or selected for transfer or promotion/demotion
- who is considered and selected for retrenchment or dismissal.



Discrimination

Discrimination occurs when a person, or a group of people, is treated less favourably than another person or group because of their background or certain personal characteristics such as:

- race, including colour, national or ethnic origin or immigrant status
- sex, pregnancy or marital status and breastfeeding
- age
- disability, or
- sexual orientation, gender identity and intersex status.⁸⁹

The process of treating someone less favourably can include harassing or bullying a person. The right to equality and freedom from discrimination is protected by various provisions within several human rights instruments.⁹⁰ Guidance with respect to discrimination in employment can be found in the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has been ratified by Viet Nam, and the accompanying Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).

Men and women have equal rights under the Vietnamese Constitution and must be treated equally in the workplace.⁹¹ The 2019 Labour Code prohibits discrimination in employment.⁹² Under Vietnamese law, discrimination is prohibited on the grounds of sex, race, social class, marital status, belief, religion, HIV status, disability or participation in union activities at the workplace.

Discrimination on the basis of pregnancy

A review of factories in the ILO's Better Work Program in Viet Nam (331 factories between 1 January 2017 and 30 June 2018) found that some factories are using techniques to discriminate against pregnant workers.⁹³ This includes using pregnancy tests at the recruitment stage to screen out pregnant workers and denying new mothers who have recently returned from maternity leave full access to bonuses and salary increases. In addition, some factories required workers to sign non-pregnancy clauses as a condition for contract renewal.⁹⁴



Violence, harassment and bullying

The ILO defines violence and harassment in the world of work as 'a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment'.⁹⁵

Bullying is a form of harassment and is an abuse of another person's human rights. Bullying is when people repeatedly and intentionally use words or actions against someone or a group of people to cause distress and risk to their wellbeing.⁹⁶ These actions are usually done by people who have more influence or power over someone else, or who want to make someone else feel less powerful or helpless.



Examples of harassment and bullying

A one-off incident can constitute harassment. All incidents of harassment require employers or managers to respond quickly and appropriately. Harassment can include behaviour such as:

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails or text messages
- making derogatory comments or taunts about a person's disability.

Bullying behaviour can range from obvious verbal or physical assault to subtle psychological abuse. It can include:

- physical or verbal abuse
- yelling, screaming or offensive language
- excluding or isolating employees
- psychological harassment
- intimidation
- assigning meaningless tasks unrelated to the job
- deliberately changing work rosters to inconvenience particular employees.

(a) Sexual harassment

The #MeToo movement exposed the extent to which sexual harassment pervades the workplace and put a spotlight on the issue globally. This has led to a growing awareness that new strategies and approaches are needed to address sexual harassment in the workplace and drive meaningful change.

Sexual harassment is any unwelcome conduct of a sexual nature. If a reasonable person would anticipate this behaviour might make you feel offended, humiliated or intimidated, it may be sexual harassment. Like discrimination, harassment and violence, this behaviour is unacceptable under the ILO Convention on Eliminating Violence and Harassment in the World of Work.

Some examples of behaviour that may include sexual harassment are:

- sexually suggestive comments or jokes
- intrusive questions about private lives or physical appearance
- inappropriate staring or leering
- unwelcome hugging, kissing or 'cornering' or other types of inappropriate physical contact
- sexually explicit text messages, images, phone calls or emails.



ILO Convention on Violence and Harassment at Work (No. 190)

In 2019, the ILO established a new global standard aimed at ending violence and harassment in the workplace. The Violence and Harassment Convention, 2019 (No. 190) articulates the right of everyone to operate free from violence and harassment in the world of work. The text was negotiated for over two years by ILO member governments, representatives of workers and employers' organisations.

Notably, the Convention recognises that 'gender-based violence and harassment disproportionately affects women and girls' and 'that an inclusive, integrated and gender-responsive approach which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work.'

In line with the ILO convention on violence and harassment at work, Viet Nam's new Labour Code specifies that employers have an obligation to prevent sexual harassment in the workplace, requires processes for addressing sexual harassment in the workplace and sets out remedies for victims of sexual harassment.

The Labour Code 2019 and sexual harassment

The Labour Code 2019 prohibits sexual harassment in the workplace (Article 8 (3)). Sexual harassment is defined as ‘any sexual act of a person against another person in the workplace against the latter’s will’ (Article 3 (9)). This is amended in the revised Labour Code is significant as it the first-time sexual harassment has been defined under Vietnamese labour law.

Given the vulnerable situation of many women in the apparel and footwear industry, sexual harassment is a significant challenge and a detrimental issue.⁹⁷ Not only are these harms a breach of international and Vietnamese law, it comes at a significant financial cost for a factory and also the industry and economy more broadly. Research conducted by CARE International in 2015 in Cambodia, found that sexual harassment cost the country’s garment industry USD 89 million, or an equivalent of 0.52% of Cambodia’s GDP.⁹⁸ Effectively addressing sexual harassment is not only the legal and moral thing to do, but also a business imperative.



Occupational health and safety

All workers have the right to operate in a safe environment. This is enshrined in numerous ILO instruments.⁹⁹ In addition,

Article 7 of ICESCR recognises the ‘right of everyone to the enjoyment of just and favourable conditions of work’, which includes ‘safe and healthy working conditions’. Despite this global recognition, the ILO estimates that 2.78 million workers die from unsafe working conditions globally each year.¹⁰⁰

The issue of health and safety in Asia was thrown into the spotlight in 2013 when the Rana Plaza building in Bangladesh collapsed killing more than 1,130 garment workers and injuring more than 2,500.¹⁰¹ As a result, there has been an increased focus among global brands and policy makers about the risks that workers face in global supply chains.

Viet Nam’s revised Labour Code 2019 outlines a number of responsibilities for employers that relate to health and safety. These require businesses to provide safe and hygienic working conditions, provide personal protective equipment, develop plans for the prevention, elimination and control of dangerous or harmful factors and have emergency responses in place.¹⁰² Despite this, workplace health and safety remains one of the most significant risks for the apparel and footwear industry.¹⁰³

There are a number of health and safety risks that businesses should be aware of, related to:

- building safety, including fire and electrical safety
- handling of chemicals and toxins
- machinery use
- worker protection (such as ensuring workers have necessary protective equipment including boots, gloves and masks).

COVID-19 has also raised other safety and health challenges for businesses. For businesses that remain open, this means ensuring that workers have additional protective clothing and protective devices, and enough space to practise social distancing. The health risks related to COVID-19 has meant that businesses need to be flexible and creative to enable appropriate social distancing between workers, for example, extending trading hours to enable split shifts.

For businesses that are developing an understanding of the risks related to health and safety, it is important to consider the role of both prevention and remediation. Businesses need to invest in systems and infrastructure to ensure that accidents and injuries do not occur, including, for example, investing in machine maintenance and providing training to workers on a regular basis (on topics such as safe use of machinery, the handling of hazardous materials). In addition, businesses need to have plans in place to ensure the safety of workers if something does go wrong. These plans may include having alarms, emergency lights, first aid officers, evacuation plans and emergency responses.¹⁰⁴



Freedom of association and collective bargaining

In addition to safe and health working conditions, ICESCR outlines the right of everyone to form trade unions and join the trade union of his/her choice.¹⁰⁵ ICESCR also provides for unions to function freely.¹⁰⁶ This right is closely related to the right to freedom of association recognised in ICCPR Article 22. Freedom of association, including the right to form and join trade unions, is also at the core of ILO values and is enshrined in numerous instruments.¹⁰⁷ According to the ILO, 'freedom of association enables workers and employers to join together to protect better not only their own economic interests but also their civil freedoms such as the right to life, to security, to integrity, and to personal and collective freedom'.¹⁰⁸

Viet Nam's revised Labour Code allows workers to establish independent unions at a factory level and provides protection for members of trade unions. In 2020, Viet Nam ILO Convention 105 (Abolition of Forced Labour) and it will come into force on 14 July 2021.¹⁰⁹ Viet Nam has now ratified seven of the eight core ILO Fundamental Conventions.

Collective bargaining is the process of negotiation between workers and employer/s and is fundamental to the establishment of rights in the workplace. According to Article 2 of the Collective Bargaining Convention, 1981 (No. 154), collective bargaining 'extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for—

- a) determining working conditions and terms of employment; and/or
- b) regulating relations between employers and workers; and/or
- c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.'



Challenges for the industry

The nature of global supply chains has meant that brands and consumers expect cheap and fast goods, with those at the bottom of supply chains paying the price. There is a range of social, economic, structural and legal factors that expose workers to abuse and exploitation and create an environment where abuse can occur. In addition, the scale and severity of the COVID-19 pandemic has created significant challenges for businesses seeking to act responsibly and to respect human rights.

It is therefore important to understand some of the key challenges that exist in the industry because of COVID-19 and the risks they create for the realisation of rights. Responding to these challenges requires both awareness and action from individual businesses, but also collective and holistic action from actors across all tiers of the apparel and footwear supply chain.

(a) Responsible business conduct and COVID-19

COVID-19 has created unprecedented global challenges and changed the world as we know it. In addition to the widespread and devastating health impacts, the pandemic is creating major disruptions for economies, trade, investment and global supply chains, pushing millions of people into unemployment and underemployment. The World Bank has estimated that the number of people living in extreme poverty (living on less than USD 1.90 per day) globally increased by 119–124 million people in 2020, amounting to the first increase in extreme poverty since 1998.¹¹⁰ In Viet Nam, research conducted by VCCI has found that nearly 35,000 businesses withdrew from the market in the first three months of 2020 resulting in millions of workers at risk of losing their jobs.¹¹¹

The COVID-19 pandemic has highlighted the cracks in the global economy, revealing vulnerabilities and the fragility of the global economic system. For example, it has had significant and devastating impacts for those in precarious work and has exacerbated existing inequalities. As companies around the world close their doors, cancel orders and halt production, workers in supply chains have been some of the most vulnerable, particularly those in the apparel industry.¹¹² With the majority of workers in the apparel industry being women, the impacts of the pandemic are having a disproportionate impact on women, many of whom are primary caregivers. For those whose businesses have remained open, challenges remain in relation to safeguarding health and safety. The fluid and unpredictable nature of the pandemic will mean that businesses will need to closely pay attention to ongoing and new risks.

While the spread of COVID-19 has been successfully limited in Viet Nam, its impact on the apparel and footwear industry has been significant. Businesses and workers have suffered due to the delay and cancellation of orders from international buyers, including orders that were in process. Research conducted by the Research Center for Employment Relations in Viet Nam found that 52.4% of footwear companies and 30.3% of garment factories experienced in-progress order cancellations, and 40.9% of footwear factories and 21.9% of garment factories had completed orders cancelled.¹¹³ As a result, cost-cutting measures have been implemented by factories in Viet Nam which have had serious impacts on workers' employment, income, mental health and family relationships.¹¹⁴

The impacts of COVID-19 have, and will continue to have, devastating repercussions on the apparel and footwear industry, leaving many unemployed and ultimately in poverty. While many businesses may look to deprioritise their commitment to human rights, the importance of embedding respect for human rights into company operations and the global economy more broadly has never been more critical.

Additional guidance

The United Nations Development Programme (UNDP) has designed a tool, the *Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business (C19 Rapid Self-Assessment)*, to help businesses consider and manage the human rights impacts of their operations. This non-exhaustive list of potential actions allows for rapid but continuous reflection on the human rights risks and impacts common to many industries. The tool is available at: <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/human-rights-due-diligence-and-covid-19-rapid-self-assessment-for-business.html>

(b) Complex and opaque supply chains

Globalisation and the integrated economy in which we live has created a complex ecosystem of supply chains with numerous tiers that cover all corners of the world. Modern day supply chains are structured in a way that exacerbates the risks of adverse human rights impacts.

The outsourcing of production has created long and complex supply chains, an environment where human rights harms go unseen and those profiting off those harms avoid responsibility. According to the International Trade Union Confederation (ITUC), up to 94% of the global workforce of 50 major corporations is a hidden workforce because responsibility has been simply outsourced many times over.¹¹⁵ As a result, civil society, trade unions, consumers and investors have been asking for greater supply chain transparency in the apparel industry. This means letting the public know where raw materials, such as cotton, are farmed, spun, and dyed, and where materials are then cut, trimmed and put together, and ultimately shipped off to brands and retailers.

Transparency is key to becoming a successful and responsible business, it plays a critical role in gaining the trust of workers, consumers, purchasers and investors. A business 'knowing and showing' information about its operations and supply chain will send a strong message about its commitment to responsible business practices. The increase in government mandated reporting requirements (such as the modern slavery legislation in Australia and the United Kingdom) indicates that there is global momentum around the need to shine a spotlight on global supply chains and the harms that occur within them.

Company practice also reflects a growing willingness and commitment to transparent and responsible supply chains. For example, a number of international brands have signed the Apparel and Footwear Supply Chain Transparency Pledge, signalling their commitment towards greater transparency in their manufacturing supply chain.¹¹⁶ By signing the pledge, many brands have agreed to publish a list of the names, addresses, and other details related to their Tier 1 factories on their websites. In Viet Nam, Better Work, a joint programme of the ILO and the International Finance Corporation, publishes the details of apparel factories' compliance with select international labour standards and national legal requirements.¹¹⁷

The importance of transparency and the right to remedy

While many had been advocating for greater transparency in supply chains for years, the collapse of Rana Plaza in 2013 focused government and company attention on this issue. In the aftermath of the Rana Plaza collapse there was no publicly available information available to find out which brands were sourcing from the factories in the building. Victim representatives and advocates that were seeking accountability and compensation had to dig through the rubble to find information, such as brand labels, that could assist. Having access to this information would have saved significant time and trauma and assisted in the process of seeking remediation.¹¹⁸

(c) Purchasing practices

The purchasing practices of an individual business can knowingly or unknowingly contribute to adverse human rights impacts further down the supply chain. According to the Ethical Trade Initiative (ETI), common business practices—such as aggressive price negotiation, insufficient lead times, late orders and last-minute changes—place an extreme amount of pressure on suppliers, which ultimately has a direct impact on workers.¹¹⁹ Due to the lack of bargaining power of many suppliers, often they have no choice but to accept the order in fear of losing the business. Combined with unfair penalties and poor payment terms, this intensifies the likelihood of adverse human rights impacts taking place.¹²⁰

Oxfam Australia has outlined how the purchasing practices of Australian brands have had an impact on factories in both Viet Nam and Bangladesh. A factory supervisor told Oxfam Australia: 'At times, buyers offer less than the production cost, the owner takes the order to run the factory, [so] how will the owner give more to the workers?' Another factory owner supplying Australian brands said: 'We have no power to fix the price. They only think [of] their profit. If they can get more benefit from other countries, they can shift their business to those countries'.¹²¹

A survey conducted by the ILO and ETI in 2016 found that many suppliers receive conflicting messages from their buyers. On the one hand they are expected to adhere to the buyer's code of conduct or human rights policy, while on the other hand the buyer is negotiating aggressively on issues such as price and timing, undermining the supplier's ability to adhere to any code of conduct.¹²² Oxfam Australia's research found a similar disconnection. Some Vietnamese managers reported that buyers required the installation of automatic fire extinguishers in the rooms where finished clothing was stored, but did not insist that this was a requirement for the part of the factory where the workers operate.¹²³

COVID-19 has further exacerbated the risks posed by purchasing practices and the role of those at the top of the supply chain.¹²⁴ We are therefore now at a critical moment in which brands and retailers must work with their suppliers and agree to responsible purchasing practices whereby fair prices are agreed to, allowing commercial goals and respect for workers to both be realised.





(d) Illegal or unethical recruitment processes

Many workers end up in situations of exploitation, such as forced labour, as unscrupulous recruiters take advantage of a worker's vulnerability or lack of awareness of their rights. A number of industries, including those in the apparel and footwear industry, are at risk of unethical or illegal recruitment practices. As a result, a business must not only evaluate the working conditions of its own operations and suppliers, but also recognise that exploitation and abuse may be taking place during the recruitment process.

Unethical recruiters may take advantage of workers by charging workers a fee and/or tying workers into a contract which requires them to pay a percentage of their salary.¹²⁵ Given these workers are generally in low paying roles, this burden can be significant. Consequently, through the 'Employer Pays Principles', there is a growing expectation that no worker should have to pay for a job.¹²⁶

In addition, workers may be tricked into employment by the promise of certain conditions, pay or benefits, or have their identity documents confiscated during the recruitment process. A key challenge for the industry is that recruiters often operate across borders and are typically small operations, which means they may not be subject to scrutiny and oversight from governments.

The business case for responsible recruitment

According to the International Organization for Migration in Viet Nam, there are five key reasons for why it is in a business' best interest to engage in responsible and ethical recruitment practices:¹²⁷

1. Build and preserve company brand, and protect the reputation of the industry.
2. Meet expectations of customers and international buyers.
3. Avoid civil and criminal litigation, and promote trade.
4. Fight unfair competition.
5. Boost workplace productivity and facilitate better recruitment of workers.

05

How should business respond?

It is now globally recognised that businesses have a responsibility to respect human rights. The UN Guiding Principles outline that regardless of States' abilities or willingness to protect human rights, businesses must respect human rights, no matter their 'size, sector, operational context, ownership and structure'.¹²⁸ This means that businesses should not infringe on people's human rights and should address any adverse human rights impacts they are involved in.¹²⁹

The UN Guiding Principles state that the responsibility to respect requires business to:

- avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and
- seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.



The purpose of this section is to assist your business to understand and demonstrate its responsibility to respect human rights.¹³⁰ This process will vary for each company depending on the type of business and where it operates, but it should include, as a minimum, taking the following steps:

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



Policy Commitment

Develop and implement a human rights policy



Human Rights Due Diligence

Develop and implement a human rights due diligence process to identify, prevent, mitigate and account for how you will manage human rights risks and impacts



Remediation

Develop and implement grievance mechanisms to enable access to remedy. In addition, cooperate in any other remediation processes



Develop a policy commitment

Both the UN Guiding Principles and the OECD Guidelines highlight the need for a policy outlining your business' commitment to human

rights.¹³¹ A policy commitment should clearly clarify your business' position and expectations with regards to human rights to employers, business relationships and external stakeholders. By developing a policy commitment and embedding it into your company's operations, you will be indicating to all stakeholders, both internal and external, that your business takes human rights seriously.¹³²

The decision to develop a human rights policy is not only a good business decision, it is also a process that is being adopted by the leading international businesses in the apparel and footwear industry that operate in Viet Nam.¹³³ Businesses in Viet Nam that are supplying to global brands and retailers are increasingly being asked to develop and produce a policy statement outlining their commitment to human rights and labour rights.

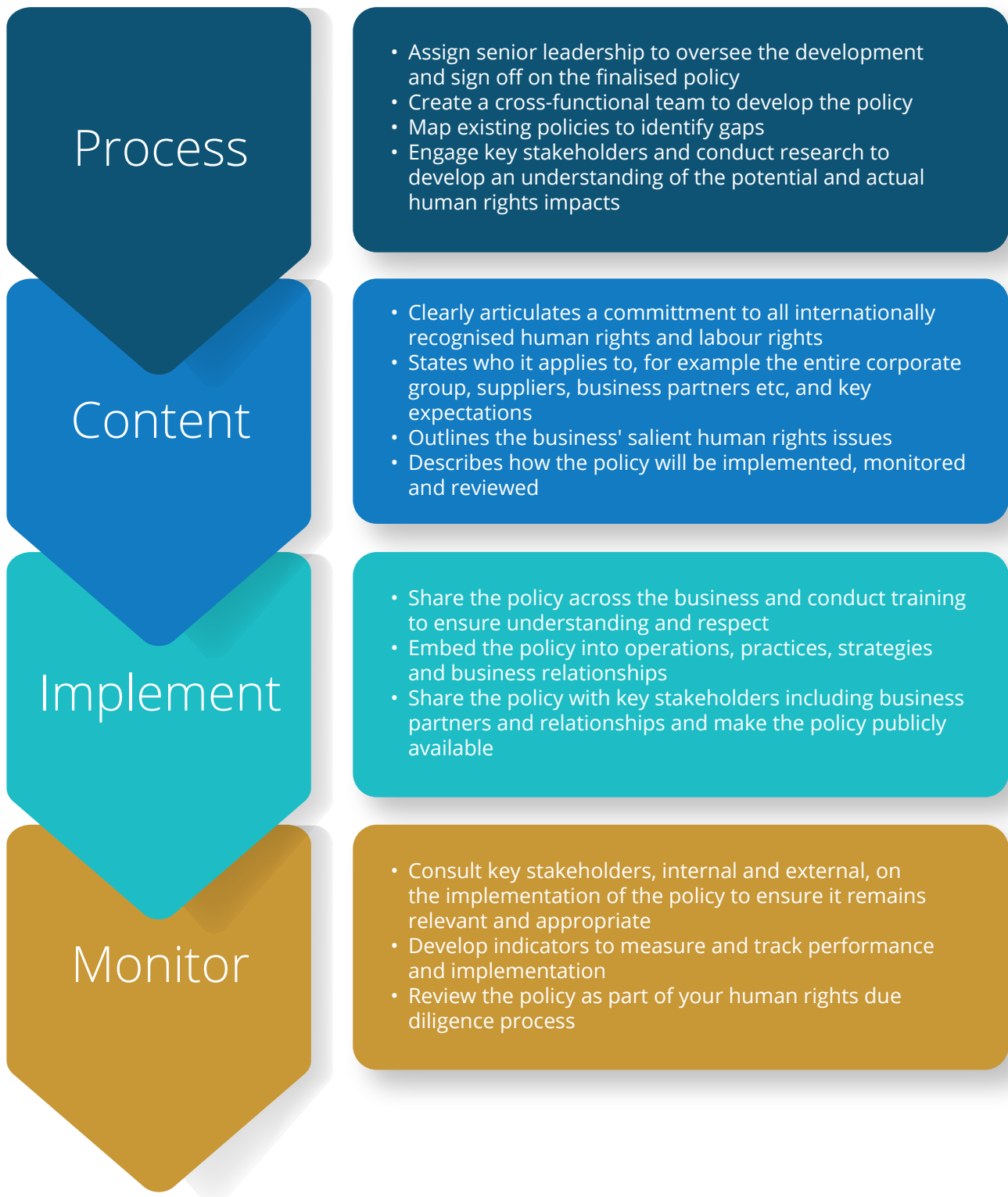
Before you start to develop your policy commitment, it is worth remembering that a human rights policy does not have a set template, it will vary in form from business to business and it should be reviewed and developed over time.¹³⁴

Businesses may choose to make their policy a stand-alone document, or they may decide to include their policy commitments in other policies or codes of conduct. Those businesses that have developed a stand-alone policy have done so because their human rights risks are so widespread and significant that it warrants a stand-alone document.¹³⁵ For others, it sends a strong signal to their workers and the broader community about the seriousness with which the business is approaching the issue and provides an entry point for dialogue and discussion.¹³⁶ Ultimately, each business will have to determine which form is most appropriate to their situation.

It is unrealistic to expect anyone or everyone within your business become a human rights expert overnight. As such, you may want to consider engaging input from external experts. It is important to note that input from experts should not come at the cost of engaging key stakeholders such as workers in your operation and supply chain. Rather it should assist you by providing technical input on the process and potential issues that may arise.



Key actions for developing a human rights policy



Human rights policy: Marks and Spencer

Viet Nam is one of the top suppliers to Marks and Spencer (M&S) for clothing and home products.¹³⁷ M&S released its Human Rights Policy in 2016.¹³⁸ It was approved by the Executive Committee and signed by the Chief Executive Officer. The Human Right Policy outlines the company's:

- commitment to respecting internationally recognised human right standards in line with the UN Guiding Principles. M&S also notes that the Policy was informed by key instruments and standards such as the International Bill of Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Children's Rights and Business Principles, the UN Women's Empowerment Principles and the UN Global Compact
- intolerance for threats, intimidation, physical or legal attacks against human rights defenders
- expectations of suppliers and where to find additional information
- commitment to collaborate with suppliers, civil society, governments and other companies to advance positive change and address systemic issues, and
- efforts to increase awareness of human rights amongst suppliers and employees and provide avenues for grievances to be made.

In addition to the Human Rights Policy, M&S has a number of other relevant policies including:

- Code of Ethics & Behaviours
- Confidential Reporting Procedures
- Grievance Procedure for Clothing, Home and Food supply chains
- Global Sourcing Principles.¹³⁹

According to the company, M&S continuously reviews its policies and guidance in consultation with practitioners across the company, suppliers and external stakeholders.¹⁴⁰



Human rights policies in ASEAN: Current state of play

A 2019 analysis of the top 50 publicly listed companies in each of the stock exchanges of Indonesia, Malaysia, the Philippines, Singapore and Thailand found that those companies that had a human rights policy performed better in meeting the standards outlined in the UN Guiding Principles.¹⁴¹ However, only 12.9% of all 250 companies examined had a human rights policy. The report noted that 'without a policy, companies are left with vague commitments to human rights without a clear path to operationalization, which may lead to a 'pick and match' scenario where companies commit to rights that they embrace and ignore others'.¹⁴²



Conduct human rights due diligence

A business' responsibility to respect human rights is applied in practice through a process called human rights due diligence.

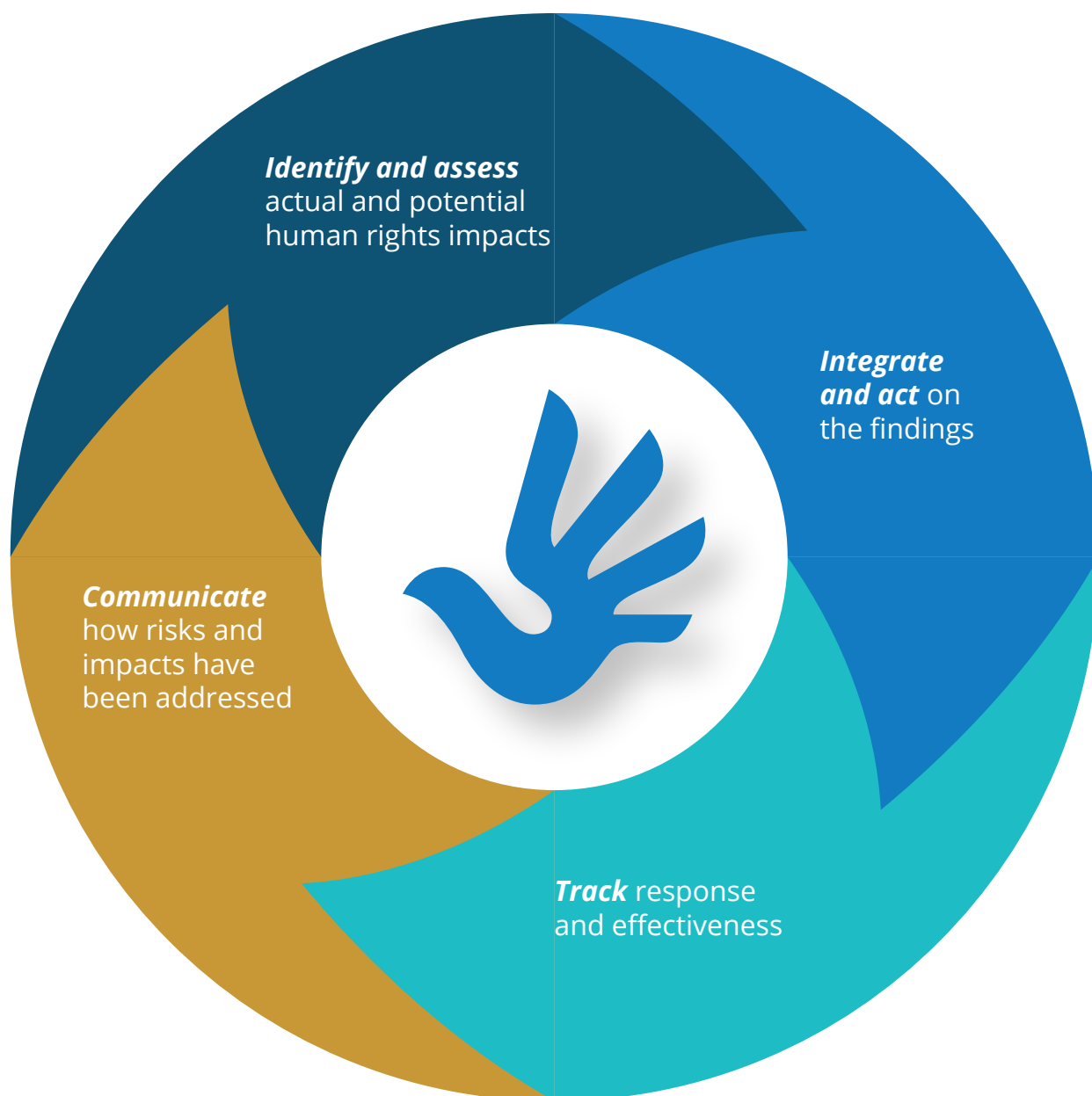
Human rights due diligence is a process through which your business can 'know and show' that it respects human rights.¹⁴³ The purpose of human rights due diligence is to 'identify, prevent, mitigate and account' for any adverse human rights impacts your business might have on people.¹⁴⁴ Your human rights due diligence will be guided by your human rights policy.¹⁴⁵

Human rights due diligence should not be confused with business due diligence as these are separate concepts. Human rights due diligence focuses on impacts the business has or may have on people—while business due diligence focuses on the risks to the business. Human rights due diligence asks businesses to prioritise addressing potential human rights risks, regardless of whether there is a 'business case' for addressing these risks, or whether the risks are the easiest to address or getting the most attention.¹⁴⁶

There are many types of business enterprises that operate in the apparel and footwear industry in Viet Nam. Although they all have a responsibility to respect human rights, how this will be applied in practice will vary depending on the business. The scale and complexity of human rights due diligence will vary between businesses, depending on factors like the size of the business, the type of business, its location/s, its sourcing models and its potential to cause adverse impacts on human rights.¹⁴⁷ For example, a manufacturing company with a staff of 100 and one location, will have a different approach compared to a large multinational company with operations and supply chains in multiple countries.

In some business operations, some human rights may be more at risk than others, and therefore require greater attention in the due diligence process.¹⁴⁸ Examples of some of the common types of human rights issues in the apparel and footwear industry have been discussed above in Part 3 of this Guide, and these issues will likely need to be considered by your business in developing your human rights policy and human rights due diligence process.

Where adverse human rights impacts are identified through a human rights due diligence process, they should be remediated (see Part 6). The process of human rights due diligence involves a number of key steps:



(a) Identifying and assessing human rights impacts

Human rights due diligence begins with identifying and understanding the human rights harms your business may be involved with, which are often not clear until a proper due diligence is conducted. This involves assessing the actual and potential adverse human rights impacts that your business may be involved with through its activities, operations and relationships.¹⁴⁹

To effectively identify potential risks and impacts, it is important to develop an understanding of your business' structure and operations, including with your supply chains. Understanding the structure of your business and your business relationships, will assist you to develop an understanding of where the risks exist. For example, if you are a cut-make-trim factory in Ho Chi Minh City, do you know where the cotton weaving and dying takes places? Or even further, where it is farmed?

Once you have a clear overview of the business and its relationships, begin the process of identifying what specific actual or potential adverse impacts of your business may be causing. This process can take various forms; however, it is often useful to conduct desk-based research and engage with internal and external stakeholders about potential risks and impacts.

Engaging with rights-holders themselves, such as employees, workers in your supply chain and communities or customers who may be affected by your business, is also critical to getting a better understanding of the situation.

For the apparel and footwear industry, it is recommended that you start by looking at your business operations and supply chains with regard to the human rights issues outlined above in Part 3 to understand where there may be either *risks* of human rights impacts occurring, or *actual* instances of human rights impacts occurring.

Some businesses may be able to address all their human rights risks at once. However, many businesses have complex structures, multifaceted projects and investments, and global supply chains with numerous tiers. Recognising these complexities, the human rights due diligence process does not ask companies to address every human rights risk immediately, but rather to prioritise addressing their most severe human rights risks first.¹⁵⁰ What the business' most severe potential human rights risks are is based on their scale, scope and whether they can be remedied.¹⁵¹



Human rights risk identification: adidas

In 2020, adidas had 75 suppliers in Viet Nam (both tier 1 and subcontractors).¹⁵² The company ranks highly on the Corporate Human Rights Benchmark which assesses company performance across a number of industries.¹⁵³

adidas identifies and manages human rights risks through a 'layered process' which includes:

- Operational Reviews of potential adverse impacts on rights-holders
- Country Risk Assessments
- supply chain compliance monitoring (of both direct and indirect supply chain)
- independent assurance by partner organisations (e.g., the Fair Labor Association)
- focused reviews or engagements, that reflect stakeholder concerns or new market entry situations.¹⁵⁴

The Operational Reviews examine the company's day-to-day operations in addition to impacts that may arise through its supply chains. Where human rights issues are identified, engagement with the responsible department(s) and stakeholders will take place to get a better understanding of the key issues and to identify next steps.¹⁵⁵

Country Risk Assessments are conducted annually and include a review of the salient human rights issues at a national level. These risk assessments include local stakeholder feedback and reference public information from government and non-government organisations. The information obtained through the risk assessments inform adidas' work priorities and prevention and mitigation strategies.¹⁵⁶

In addition to severity, the UN Guiding Principles also ask business to look at the likelihood of an impact occurring when considering a risk. It is important to note that a low probability of a severe human rights risk occurring does not necessarily mean the risk should be downgraded, especially where the harm to the person affected cannot be remedied.¹⁵⁷

Scale	The gravity of the impact on the human right(s)
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Scope	The number of individuals that are or could be affected
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Irremediability	The ease or otherwise with which those impacted could be restored to their prior enjoyment of the right(s) ¹⁵⁸
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The UN Guiding Principles outline that human rights due diligence is an iterative and ongoing process that takes into account the evolving nature of both businesses, and of human rights risks.¹⁵⁹ As such, once your business has addressed its most severe human rights impacts, the human rights due diligence process expects businesses to progressively take action to address other human rights impacts. As with other business risks, human rights risks should be assessed before key decisions are made such as commencing a new project or entry into a new market, launching a new product, or entering a new business relationship (for example with a supplier).¹⁶⁰

Identifying and assessing risks: A snapshot

1. Develop a clear understanding of your business' structure and operations including supply chains.
2. Research key human rights issues for the sector drawing information from media reports, international organisations, civil society organisations, industry associations, unions and academics. Also draw on internal information, for example, from any existing grievance mechanisms.
3. Engage in meaningful consultation with potentially impacted groups and stakeholders to develop a deeper understanding of potential risks and impacts.
4. Once you have mapped out the potential human rights issues, assess the risks based on severity and likelihood.

(b) Integrating the findings and addressing adverse human rights impacts

Once your business has identified and assessed its human rights impacts, the findings will need to be integrated into the business' practices and processes, and appropriate action taken to ensure potential impacts are addressed and actual adverse human rights impacts cease or are prevented.¹⁶¹ In cases where actual adverse human rights have occurred, a business will need to be involved in remediation processes¹⁶² (discussed below).

This phase within the human rights due diligence process requires businesses to examine internal procedures and processes to ensure that risks are addressed and where impacts do occur, they can be addressed appropriately. Integration relates to the process of 'taking the findings about a potential impact, identifying who in the enterprise needs to be involved in addressing it and securing effective action'.¹⁶³ What constitutes an appropriate response depends on the relationship to the harm. Your business may cause or contribute to adverse human rights impacts through your businesses' own activities. Your business may also be 'directly linked' to human rights risks or impacts through business relationships, such as your business' supply chains.¹⁶⁴



Understanding 'cause', 'contribute' and 'directly linked'

A business may **cause** an adverse human rights impact through its own operations. For example, underpaying its workers, hiring child labourers or exploiting women in exchange for a promotion. In these situations, the business should take the necessary steps to prevent and cease the impact, and provide remediation.

A business may **contribute** to an adverse human rights impact through its acts or omissions. For example, agreeing to a purchasing order with a supplier whose timeframe makes it impossible to complete the order without cutting corners and breaching human rights standards. In these situations, the business should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any impact. It should also take action to ensure remediation is provided.

Situations where a business is **directly linked** to an adverse impact become more complex. These involve situations where a business has not contributed to an adverse impact, but that impact is linked to the business' operations, products, services through its business relationships. For example, a supplier subcontracts work, without your knowledge, to a contractor that uses child labour. In this scenario, if this business has leverage it should use it to prevent or mitigate the harm. If leverage does not exist, the business should look for ways to build it. In cases where a business is directly linked to an adverse impact, there is no direct responsibility under the UN Guiding Principles to provide remediation, however the business may take a role in doing so.

While the UN Guiding Principles outline these categories to assist in identifying a business' relationship to a harm and an appropriate response, the nature of business operations means that, in practice, there is a continuum between these categories depending on the acts or omissions of the business. As such, your business' risks may not always fit neatly into one of these categories.

Understanding leverage

Leverage is all about a business' ability to influence others. The UN Guiding Principles states 'leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices that causes harm'.¹⁶⁵

Integrating and addressing: A snapshot

1. Review and revise policies, procedures and practices to ensure risks are appropriately addressed.
2. Ensure internal leadership, responsibility and accountability for addressing risks and impacts.
3. Allocate an appropriate budget to implement measures.
4. Train relevant staff on human rights, with a particular focus on your business' most salient human rights risks.
5. Decide on actions to mitigate and manage risks and adverse human rights impacts where they are found.
6. Collaborate with stakeholders, peers, suppliers and/or purchasers on specific risks to your business and systemic issues.

(c) Tracking the effectiveness of your response

Monitoring and tracking is essential to helping your business understand whether the measures your business is taking to manage its human rights risks are effective.¹⁶⁶ There are a variety of ways your business can track its response and the approach will often be context specific depending on the existing reporting processes and data available. To track performance, it is important to develop indicators that draw on both qualitative and quantitative data. Each type of data tells a different part of the story. For example, a worker hotline may only have had two complaints in the last month.

On face value, one may conclude that is because there are no issues, and the business is fully compliant with all human rights and labour standards. However, it is important to interrogate the lack of complaints to understand whether this reflects the reality on the ground or whether there are barriers which are preventing individuals from making a complaint. This scenario highlights the importance of having qualitative data to tell the story behind the numbers and figures.

Potential data sources to assist with tracking include staff surveys and feedback to human resources, internal audits, supplier audits, grievance mechanisms and stakeholder feedback. When assessing effectiveness, it is important to engage with potentially affected stakeholders to get an understanding if their situation is improving and if impacts have been appropriately addressed.

Stakeholder engagement and feedback: H&M

H&M notes that it works with a variety of 'people and organisations to find solutions, gain expertise, address challenges collectively and raise industry standards'.¹⁶⁷ H&M engages with a broad range of stakeholder groups including policy makers, academics, non-government organisations, investors, trade unions, industry peers, and multi-stakeholder initiatives such as the Ethical Trading Initiative and the Sustainable Apparel Coalition.

H&M conducts an annual stakeholder survey to obtain feedback on the company's direction and performance. In 2019, nearly 350 key stakeholders provided feedback.¹⁶⁸ In addition, the company conducts an annual survey with its suppliers to obtain information on supplier and H&M performance.¹⁶⁹

UNDERSTANDING THE LIMITATION OF AUDITS

Social auditing is a common tool utilised in the apparel and footwear industry to monitor compliance with human rights and labour standards. These audits are commonly conducted by auditing firms, in which the form and practice varies significantly. This focus and reliance on social auditing has created a multi-million dollar industry, creating competition between the various compliance initiatives and a push towards quick and cheap auditing.¹⁷⁰ While there is a role for auditing, evidence suggests that audits alone are not effective in identifying and addressing human rights impacts. For example, the Rana Plaza building in Bangladesh was audited only a few months before its collapse, with the auditors failing to detect safety defects, in addition to the existence of child labour.¹⁷¹

'Auditing just won't do it. Our auditing system is the best: we speak to at least half of the workers or all of them if it's a small group (less than 100) and we have a right to look at the growers' records etc. But all that means is we have a really good camera; it takes a good picture, but it doesn't tell us what happens right after or right before.'

Interview conducted by Focus on Labour Exploitation (FLEX), Worker-Driven Social Responsibility: Exploring a New Model for Tackling Labour Abuse in Supply Chains, March 2020.¹⁷²

To date, several weaknesses of the social auditing process have been exposed. The auditing process reflects a snapshot or static moment in time. In many instances, audits are pre-announced, allowing for any issues to be hidden and for workers to be intimidated before the interviews.¹⁷³ It is difficult to address complex or hidden issues such as sexual harassment.¹⁷⁴ Research conducted by Human Rights Watch in the apparel industry has found that the social auditing process has not been designed to provide a safe environment to enable victims of sexual harassment to disclose.¹⁷⁵ For example, Human Rights Watch found that there were no avenues for victims to confidentially disclose instances of sexual harassment or abuse as interviews were commonly conducted on-site and in group settings, which included both men and women.

Tracking effectiveness: A snapshot

1. Develop systems and indicators to track what mitigation and remediation actions are taking place and whether they are effective.
2. Draw on a range of qualitative and quantitative data sources including the perspective of potentially impacted stakeholders.
3. Learn from monitoring and tracking and integrate learnings into policies, processes and practices.

(d) Communicating how your company is addressing human rights impacts

The business responsibility to respect human rights also includes having processes and procedures in place that allows the business to 'show' their respect for human rights by communicating their efforts to assess and address their human rights impacts to stakeholders.¹⁷⁶ Communicating openly about your business' efforts help demonstrate transparency and accountability to affected individuals or groups (i.e., rights-holders) as well as to stakeholders, such as civil society and investors.¹⁷⁷

The forms of these communications can vary and may include in person and online meetings, reports and other documentation available on the business' website or in hard copy.¹⁷⁸ Depending on who your stakeholders are, you may want to consider making this information available in different languages. For example, if your workers are primarily made up of migrant workers from another country, you should make the information available in that language. Or, if your workforce is primarily from remote areas with poor literacy levels, it is important to think about other ways to effectively communicate.

There is a growing trend for enhanced transparency from the private sector. As discussed in Part 3, increasingly governments around the world are mandating companies be more transparent about their human rights risks and impacts through publicly available reports. As a result, the public is receiving more information about how companies are identifying and addressing their human rights risks and impacts. However, analysis of the reports made available under various reporting regimes indicates that there is significant room for improvement as many reports only contain high-level information and fail to provide detailed information about specific risks and mitigation strategies.¹⁷⁹

Communicating how risks and impacts have been addressed: A snapshot

1. Publicly report information related to your policies, strategies, processes and outcomes. Ensure this information is accessible and fit for purpose.
2. Engage with potentially impacted stakeholders on your business' human rights risks, impacts and mitigation strategies in an appropriate manner taking into account language, culture and literacy.

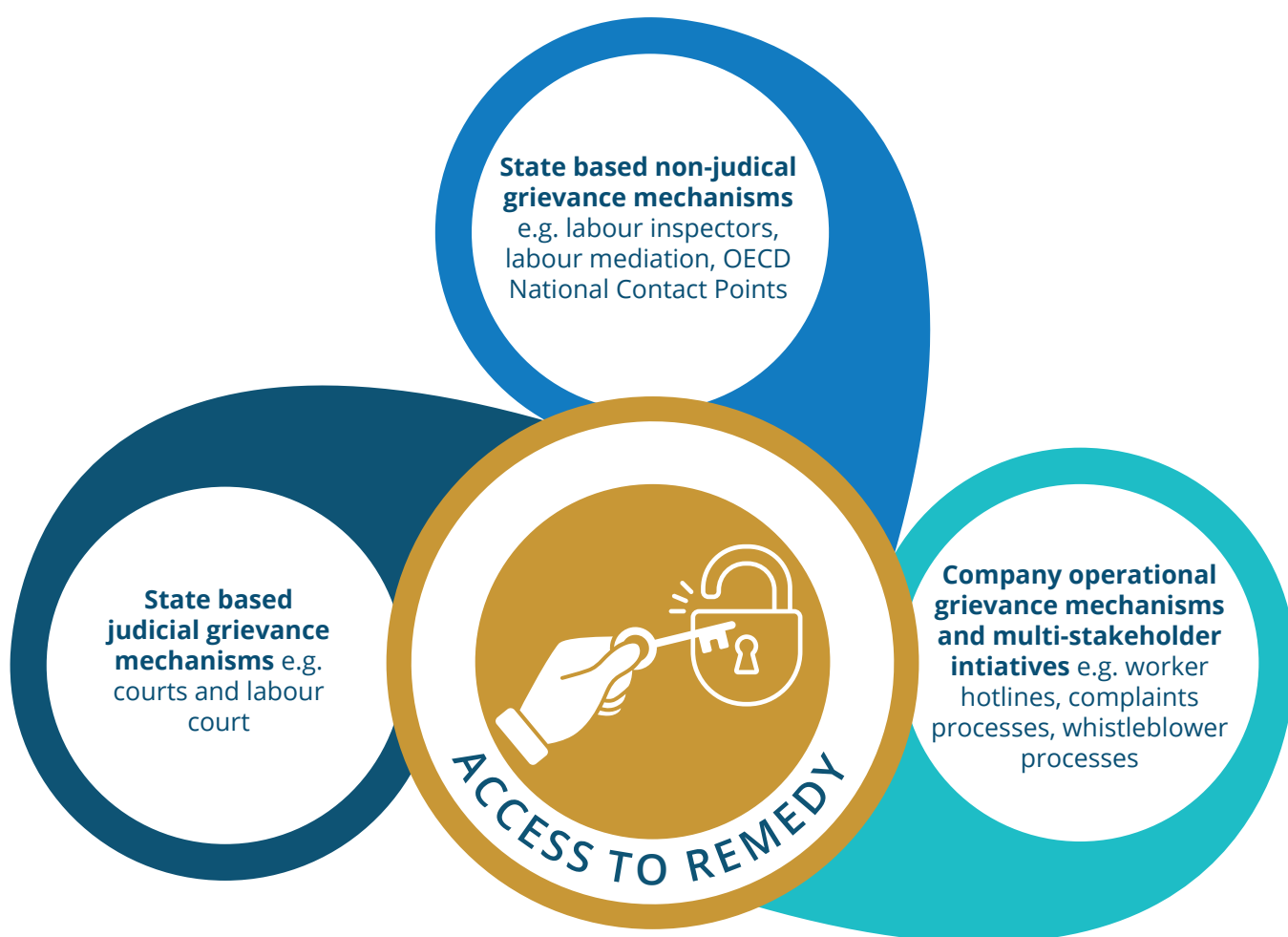
Additional guidance

UN Guiding Principles Reporting Framework, developed by Shift and Mazars, is a comprehensive guidance to assist companies to report on human rights issues in line with their responsibility to respect human rights: www.UNGReporting.org



Ensuring access to an effective remedy

Under international law, victims of human rights abuses have the right to access an effective remedy. This has been recognised by various UN bodies and has since been affirmed by the UN Guiding Principles. Without access to remedy, there is no realisation of human rights.



Access to effective remedy is a core component of the UN Guiding Principles. Where business-related human rights harms occur, the UN Guiding Principles articulate three types of mechanisms to provide access to effective remedy: state-based judicial mechanisms, state-based non-judicial grievance mechanisms, and non-state-based grievance mechanisms. While effective judicial mechanisms are at the core of ensuring access to remedy,¹⁸⁰ this guidance is focusing on the role of business and operational grievance mechanisms.

Remedy for an adverse human rights impact should include the process of providing the remedy; and the offer of something to counteract, or make good, the adverse impact.¹⁸¹

Remediation can be achieved through a number of avenues including restitution, compensation, satisfaction, rehabilitation, and guarantees of non-repetition.¹⁸² It is critical to listen to the impacted individual or community to ensure that their needs are met, and the harm has been restored.

The primary aim of human rights due diligence is on prevention and mitigation, whereas remediation is a response to something that has already happened. Despite the most comprehensive due diligence process, a business may still cause or contribute to an adverse human rights impact. When this happens, that business must provide remediation for the breach of human rights.¹⁸³

To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

UN Guiding Principle, 29

Under the UN Guiding Principles, a business should establish accessible and appropriate systems to address grievances to ensure the remediation of negative impacts your company may have caused or contributed to. Having an effective grievance mechanism provides a direct line between an impacted individual or community and the business. This can enable a business to address a harm early before it escalates further. Going through the courts can also be a timely and expensive exercise. Examples of operational grievance mechanisms may include a confidential hotline, complaints box and an internal alternative dispute resolution process.

Company operational grievance mechanism: Hansae

Hansae Viet Nam Co. Ltd (Hansae), a company that specialises in knitted and woven garments, has developed an internal grievance process. Through much trial and error over the last ten years, a key turning point for Hansae came when they established a dedicated Grievance Handling Unit with dedicated full-time staff.¹⁸⁴ Employees have multiple ways they can make a complaint including through suggestion boxes, a hotline number, a feedback and suggestion room and via an online application that can be downloaded on their mobile phones.¹⁸⁵ Management and staff have reported that they value the current processes that prioritise confidentiality, conflict prevention through training and education, speedy resolutions, and effective communication with staff regarding management decision and grievance handling options.¹⁸⁶ Hansae's grievance handling system was developed in collaboration with the ILO's Better Work Program.

Company operational grievance mechanism: adidas

adidas established a third-party complaint handling mechanism in 2014. The complaints mechanism provides a channel for individuals and organisations to raise instances of non-compliance with the company's Workplace Standards or concerns related to any potential, or actual, violations of an international human rights norms that are linked to the company's operations, products or services.¹⁸⁷ In a procedural document, adidas has outlined a number of key steps and issues including:

- the grounds for a complaint and the types of complaints that can be made
- who can complain, how a complaint can be made and what a complainant should expect
- monitoring and implementation of agreed outcomes
- how to appeal an outcome
- the complainant's legal rights and how privacy and confidentiality concerns will be handled.¹⁸⁸

adidas has translated a summary and more detailed information on its complaint mechanism in a range of languages, including Vietnamese.¹⁸⁹

The role of multi-stakeholder initiatives in providing access to remedy

The UN Guiding Principles acknowledge that remedy may also be provided through a multi-stakeholder initiative. Benefits of such an approach include the speed of access and remediation, the reduced costs, transnational reach and also the ability to address systemic or industry wide problems. There are a number of multi-stakeholder initiatives that operate within the apparel and footwear industry.

The Fair Wear Foundation (FWF) is a not-for-profit organisation that aims to create a more ethical garment industry. Its tripartite board consists of representatives from business, trade unions and civil society. When a brand becomes a member, they agree to abide by the complaints handling process the FWF manages. Member brands also commit to ensuring their supply chain operates in accordance with the standards set by the FWF. The FWF prioritises the use of internal and existing complaints mechanisms wherever possible. However, should a factory or business not have a suitable or sufficient process, the FWF is able to receive, investigate and seek to resolve complaints made directly by employees and other stakeholders.

Examples of issues managed by the FWF in Viet Nam include working with:

- complainants and businesses to ensure that employees are able to resign legally, at a time that suits them and receive the full payments owed to them and the social insurance book in a timely manner¹⁹⁰
- a complainant and business to ensure that drinking water was available and safe for consumption¹⁹¹
- a complainant and business to ensure wages and/or maternity leave payments have been paid¹⁹²
- a complainant and business to ensure overtime hours were being registered.¹⁹³

(a) Ensuring the effectiveness of operational grievance mechanisms

Article 31 of the UN Guiding Principles outlines a number of key criteria to consider when designing and implementing an operational grievance mechanism. To be effective, the grievance mechanism must be:

- a. **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes.
- b. **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access.
- c. **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
- d. **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.
- e. **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.

- f. **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights.
- g. **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- h. **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

While all components of the above criteria are important in ensuring the effectiveness of a grievance mechanism, being seen as a legitimate grievance mechanism and having the trust of its potential users is essential. Without such trust, the grievance mechanism will not be utilised and will be deemed useless. One way to build such trust is to involve potential users in the design of the mechanism. This will ensure it is fit for purpose for those whom it is intended will use it.

Remediation is often seen as separate from human rights due diligence, but it is an integral component of the human rights due diligence process. Having an effective grievance mechanism enables a business to identify issues early before they escalate or become more severe. For example, in cases of harassment and bullying, being able to respond early will limit the harm to the complainant and limit the potential number of victims. In addition, by analysing the trends in complaints, a business can identify systemic issues and respond accordingly.¹⁹⁴

06 Putting principles into practice

Starting the process of identifying and addressing human rights risks and impacts can be challenging. The following section provides some key tips for businesses that are looking to get started in embedding responsible business practices or strengthening existing approaches and strategies.



Focus on risks to people

Taking a human rights-based approach to responding to human rights risks, means embracing a different understanding of risk, which centres on 'risks to people' rather than 'risks to business'. People that could be potentially impacted by your business' operations, activities and relationship include employees, workers in your supply chain, consumers or those in the community more broadly.

For many businesses, this will require a shift in both mindset and practical approaches to risk. As previously highlighted, in many situations there will be alignment between the risk to business and risk to people, however, effective human rights due diligence puts people at the heart of decision making.

Taking a people-centred approach is especially important for businesses during the COVID-19 response and recovery. As your business navigates these challenging times and is placed under increased financial pressure, it may be tempting to cut corners which will ultimately increase the likelihood of human rights harms. To avoid exacerbating adverse human rights impacts, it is important to see decisions and actions through the lens of those that might be negatively impacted, particularly those most vulnerable.¹⁹⁵



Taking a people-centred approach requires your business to ask: who will be impacted by our decisions, operations, relationships and strategies and what do we need to do to address these risks and impacts?



Embed human rights into operations, strategies and culture

To ensure a people-centred approach, human rights should not be seen as an 'add-on' but as central to business strategy, operations and culture. A rights-respecting culture seeks to embed respect and responsibility for the realisation of human rights through all levels of an organisation and across society more broadly. Increasing awareness and knowledge of human rights across your business, including its potential impacts, is a critical first step to building a rights-respecting culture.

In addition to human rights awareness, it is important to build human rights actions into your business' policies, reporting processes and strategies including ensuring appropriate responsibility and accountability. This process will also require looking at systems and processes that disincentivise respect for human rights, for example, through purchasing practices or other business key performance indicators, and exploring how to incentivise staff to embed the business responsibility to respect into the workplace and business decisions.

Advancing gender equality by investing in women workers

A responsible business goes beyond looking at potential risks and impacts and identifies opportunities to further advance human rights. Given the number of female workers in the apparel and footwear industry in Viet Nam, the industry has the significant potential to advance gender empowerment and equality.

A Vietnamese garment factory, Nalt Enterprise, has taken several steps to improve its working conditions and family-friendly workplace practices for women, who make up 85% of its workforce.¹⁹⁶ Key actions taken include:

- the development of a free kindergarten for children of their workers next door to the factory and a health clinic for workers and their families, and
- covering the costs of school fees for children, including and up to university.

Following these actions, Nalt Enterprise has experienced lower turnover rates, absenteeism and strengthened relation with workers.¹⁹⁷



Engage and listen to rights-holders and other stakeholders

Engaging with key stakeholders, such as rights-holders, is critical to effective human rights due diligence. Meaningful engagement and consultation will enable your business to get a holistic picture of its human rights risks and impacts. Such engagement goes beyond a tick-box approach and should be a two-way ongoing dialogue. Due to the existence of power imbalances and other vulnerabilities, engaging with rights-holders may require the support of an intermediary, such as a union, worker organisations or civil society organisation. Such organisations can assist in amplifying the voices of rights-holders.

The COVID-19 pandemic has raised significant challenges for organisations from all sectors and sizes. Businesses must reimagine how they operate, deliver products and services, and connect with their employees, clients and stakeholders. In addition to risk identification and mitigation, stakeholder engagement will assist your business to navigate this crisis and the recovery period. Stakeholder engagement, including with workers, will be an important tool to identify solutions to address financial pressures and assist in developing contingency planning.¹⁹⁸ According to Shift, a non-profit focused on the implementation of the UN Guiding Principles, the companies that are developing the most practical and informed responses to the challenges presented by COVID-19 are those that have relationships with organisations that provide a direct link to affected people and communities (such as unions), and involve these organisations in decision making processes.¹⁹⁹

Businesses that embrace meaningful engagement, see rights-holders as their eyes and ears on the ground, enabling a deeper understanding of actual and potential impacts and early risk identification and mitigation.



Build relationships for collective action

Many of the challenges that arise in the apparel and footwear industry are systemic and cannot be solved by one business alone; they require sector-wide collaboration. To generate transformational change and real social impact, genuine commitment to collaborative action and endeavours is required. By working with a broad range of stakeholders, including with governments, civil society organisations, unions, international organisations, new ideas and solutions will be generated to address the complex problems facing the industry. Multi-stakeholder collaboration also enables a problem to be tackled from different entry points.

It is also important to engage and invest in relationships with other business such as with peers, suppliers and purchasers. In the apparel and footwear industry, major brands and retailers are increasingly willing to work with their suppliers and support them to integrate due diligence processes.

Be open and honest with your business partners about the challenges that exist and the risks that your business faces. The nature of global supply chains is that adverse human rights impacts will arise, in fact, if you do not find any issues of concern, it is probably because you are not looking hard enough. Your business partners, such as those further up the supply chain, would rather work with you on potential issues and mitigate any harm, than be surprised further down the track once the problem has escalated.

Engaging in multi-stakeholder dialogue and collaboration can take time, it may also take your business out of its comfort zone, however this is necessary to shift the industry and generate change.

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