



Module 3: Business & Human Rights (BHR) and Plastics

Reducing marine litter by addressing management of the plastic value chain in South-East Asia

Training Slides, September 2022



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Overcoming the Plastics Challenge: A Theory of Change

*Where does **Module 3** fit into the process for change?*

INPUT: Information Sharing on a BHR Approach to Plastic Pollution to Promote Awareness of Key Tools

OUTPUT: Businesses as Change-Agents Influenced to Implement Key Tools


IMPACT: Reduction of Plastic Pollution & Negative Human Rights Impacts

Agenda

MODULE 1: The Human Rights Dimensions of the Plastics Crisis


MODULE 2: Plastics, Human Rights & The Environment

MODULE 3: Business & Human Rights (BHR) and Plastics



Module 3: Business, Human Rights (BHR) and Plastics

1. Business & Human Rights Frameworks
 - **UN Guiding Principles on BHR**
 - UN Global Compact
 - OECD MNE Guidelines & RBC
 - ILO
2. Application of BHR to Plastics Challenges
 - Select themes and case studies with reflections
3. Summary and Q&A



1. BHR Frameworks: United Nations Guiding Principles (UNGPs)

Source: OHCHR website

OHCHR's work on business and human rights

OHCHR leads the business and human rights agenda within the UN system.

OHCHR develops guidance and training relating to the dissemination and implementation of the **UN Guiding Principles on Business and Human Rights** for States, business, civil society, and other relevant stakeholders.

This means:

- providing **advice, tools and other resources**;
- supporting capacity building on business and human rights to all stakeholders, including through OHCHR's field presences and across the United Nations system; and
- acting as secretariat for human rights mechanisms and bodies, such as **the Working Group on Business and Human Rights** and **the inter-governmental group developing a business and human rights treaty**.

Dalhousie/UNEP

UN Guiding Principles on Business and Human Rights (UNGPs)

Pillar I: State Duty to Protect Human Rights

Core of international human rights law (IHRL): to protect against HR abuse by third parties

Prevent, investigate, punish, and redress

How? Effective policies, legislation, regulations, adjudication

Scope? Expectation that businesses respect HR throughout their operations

Pillar II: Corporate Responsibility to Respect Human Rights

History (debate): Do TNCs have direct obligations under IHRL? (if so, for what?)

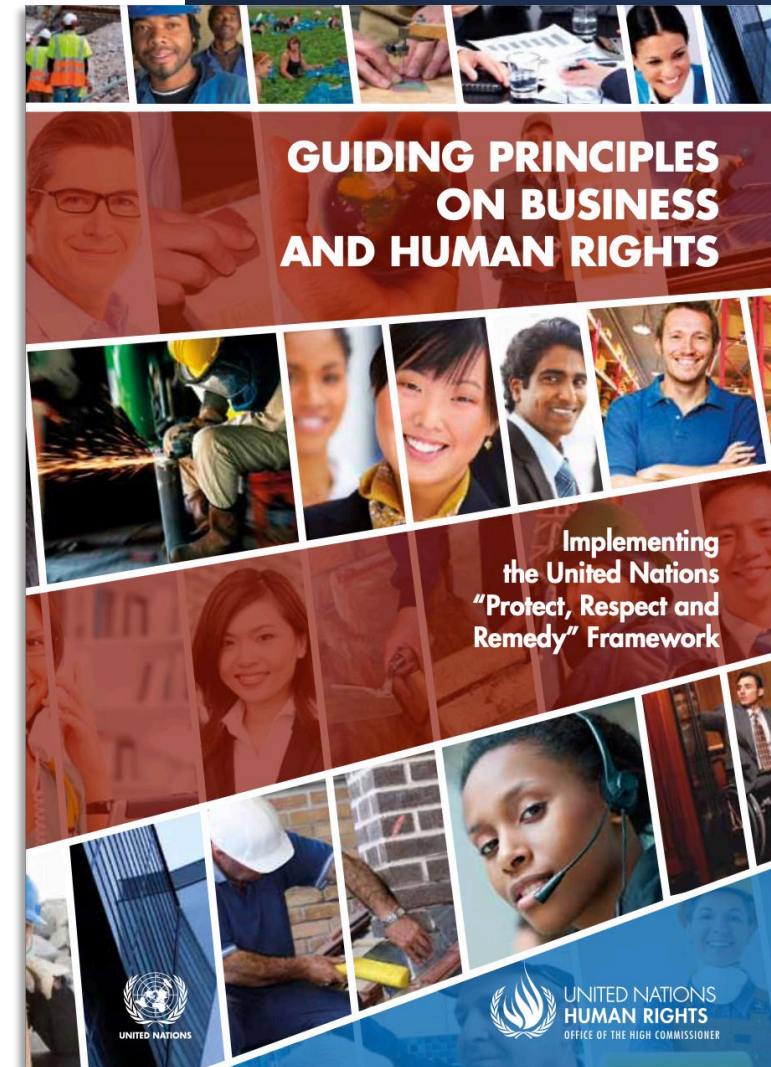
Consensus: societal expectation of business is to respect HR

- Policy commitment
- Due diligence processes
- Remediation

Pillar III: Access to Remedy

Judicial & non-judicial remedy

State & non-state-based grievance mechanisms, including company level



UNGPs & Duty Bearers: States and Businesses





Pillar I: State Duty

Foundational principles (1-2)

Principle 1: *States must protect against human rights abuse within their territory and/or jurisdiction...*

Principle 2: *States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

Operational Principles (3-10)

Examples:

Principle 3: General State Regulatory and Policy Functions should enable and support business respect for human rights

Principle 4: State-owned or controlled business should take additional measures to protect human rights, such as by requiring due diligence procedures

Principle 5: States should implement oversight procedures to ensure that human rights are not impacted when contracting or legislating for business services

Principle 8: Human rights-informed policy coherence across government departments, agencies, and institutions that shape business practices is essential



Pillar II: Business Responsibility

Foundational Principles (11-15) [Operational Principles (16-24)]

Principle 11: *Business enterprises should respect human rights. ...*

Principle 12: *Applies to all internationally recognized human rights;*

Principle 13: *The responsibility to respect human rights requires that business enterprises:*

*(a) **Avoid causing or contributing** to adverse human rights impacts through their **own** activities, **and address** such impacts where they occur;*

*(b) **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.*

Principle 14: *Applies to all business regardless of their size, operational context, ownership and structure*

Principle 15: *... have policies and processes appropriate to size and circumstances:*

*(a) A **policy commitment** to meet their responsibility to respect human rights;*

*(b) A human rights **due diligence process** to identify, prevent, mitigate and account for how they address their impacts on human rights; [and]*

*(c) Processes to enable the **remediation** of any adverse human rights impacts they cause or to which they contribute.*



Pillar III: Access to Remedy

Foundational principle:

Principle 25: *States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

Commentaries: remedies may include apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, injunctions, guarantees of non-repetition

Operational Principles (26-31):

Principle 26: State-Based Judicial Mechanisms

Principle 27: State-Based Non-Judicial Grievance Mechanisms

Principle 28-30: Non-State-Based Grievance Mechanisms

* including those established by businesses

Principle 31: Effectiveness Criteria for Non-Judicial Grievance Mechanisms (State and Non-State-Based)

UNGPs & Duty Bearers: States, Businesses and Access to Remedy



Each UNGP is Supplemented by Gender-Specific Guidance and Illustrative Actions

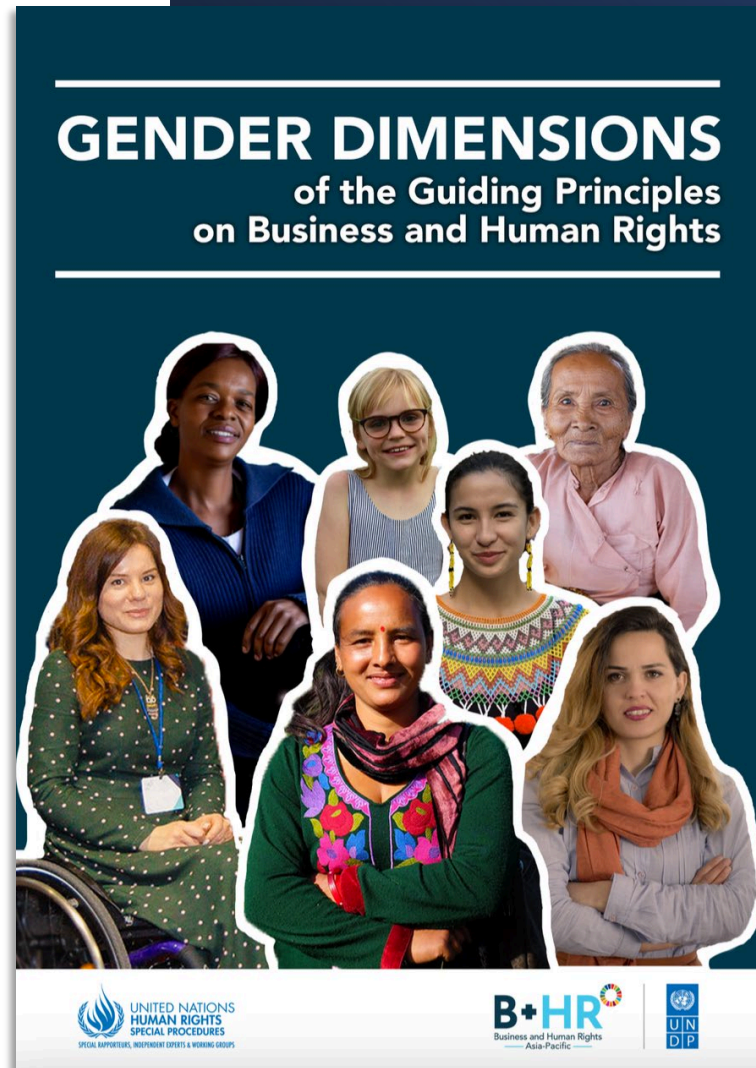
Gender Guidance particularly relevant to the plastics crisis include:

Principle 14: “All business enterprises, including micro-, small and medium-sized enterprises, should take appropriate steps in line with the Guiding Principles to respect the human rights of women, including those working in the informal economy

(c) “Business enterprises should map workers in the informal economy who are part of their supply chains, identify gender-specific issues and take appropriate steps to address these issues”

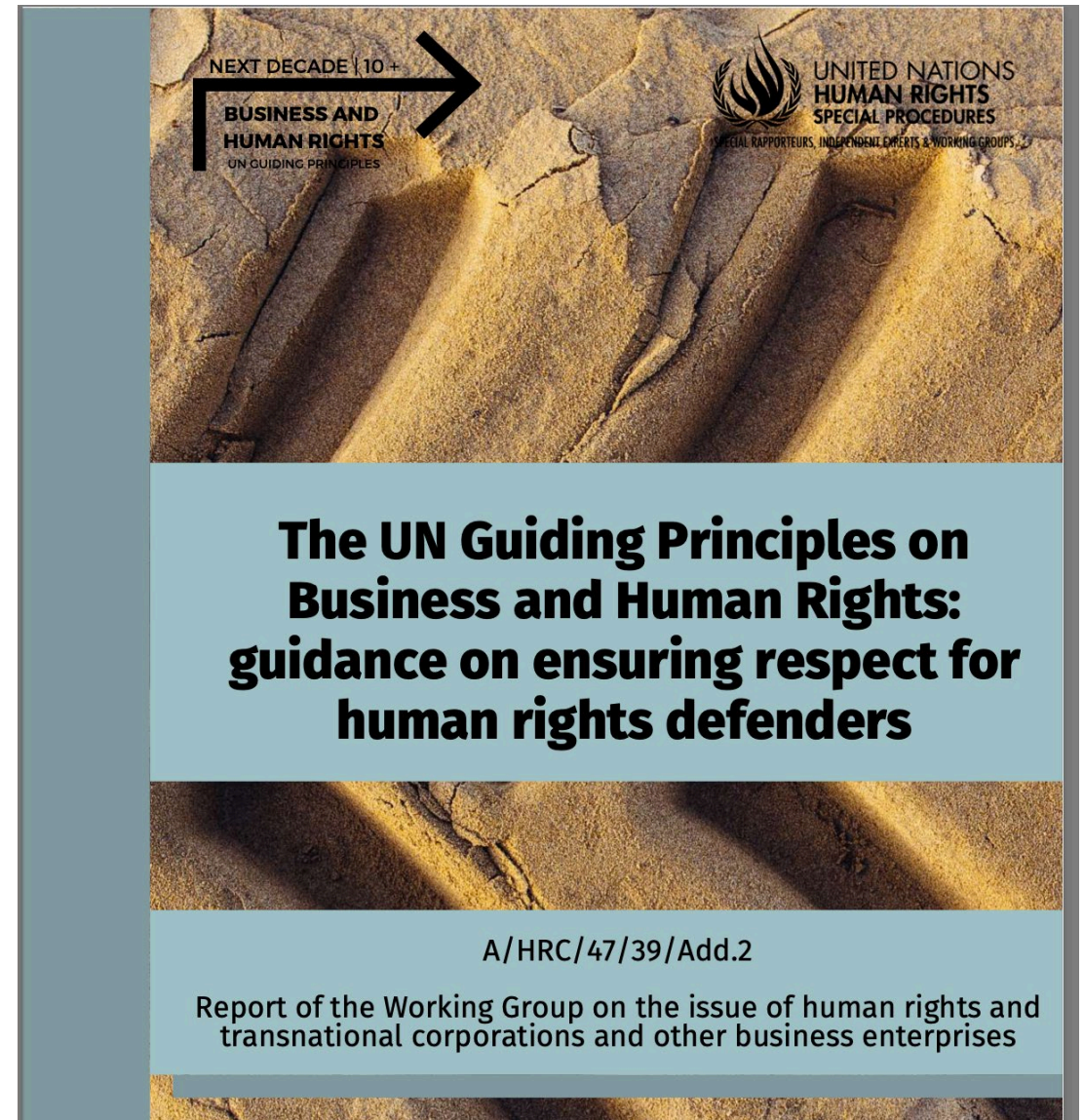
**Plastics relevance? informal waste pickers are predominantly women*

Principle 18: “...business should adopt a gender-responsive approach, draw upon gender experts, conduct meaningful consultations with potentially affected women, women’s organizations...and women human rights defenders”

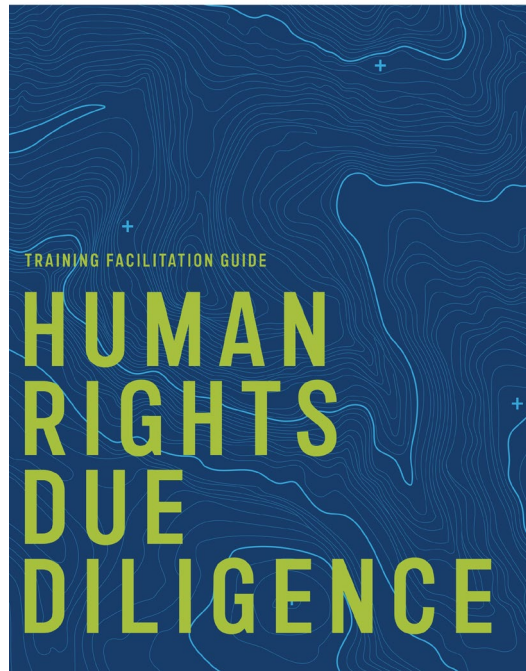


Supplementary Guidance on Respect for Human Rights Defenders

- *Respect for human rights defenders (HRDs) is essential for sustainable development*
- *A cultural shift is required so that both States and businesses understand HRDs as essential allies in protecting people and planet, rather than enemies*
- *Businesses should treat HRDs and community leaders as expert resources for HRDD processes*



BHR in Asia: UNDP trainings



Reflection:

- What would it mean for your business to implement the business responsibility to respect human rights in accordance with the **UNGPs**, including through:
 - The creation of a **policy commitment** to respect human rights, which includes a commitment to identify, prevent, mitigate and account for the human rights impacts of your business' contribution to the plastic lifecycle;
 - Undertaking **human rights due diligence** by (1) assessing the actual and potential human rights impacts created by the business' contribution to the plastics lifecycle, (2) integrating and acting upon these findings, (3) tracking the effectiveness of the response, and (4) communicating how the impacts are addressed;
 - Taking appropriate steps to ensure that rights holders have **access to remedy** for any plastics-related adverse human rights impacts caused by your business, and taking steps to **cease or prevent** potential impacts;
 - Ensuring a **gender responsive** approach to fulfilling these responsibilities, while treating **human rights defenders** and community leaders as essential allies and experts for human rights due diligence.



United Nations Global Compact

United Nations Global Compact

World's largest corporate sustainability and corporate citizenship initiative

Mission: help companies align business strategies and operations with **ten universal principles** derived from international legal instruments, while taking assisted actions to advance the UN Sustainable Development Goals (SDGs)

Implemented by **local networks** run by businesses (15 local networks in Asia)



UN Global Compact: 10 Principles

Human Rights

- Principle 1: Business should support and respect the protection of internationally proclaimed human rights; and
- 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; and
- Principle 6: The elimination of discrimination in respect to employment and occupation

Environment:

- Principle 7: Business should support a precautionary approach to environmental challenges;
- Principle 8: Undertake initiatives to promote greater environmental responsibility; and
- Principle 9: Encourage the development and diffusion of environmentally friendly technologies

Anticorruption

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

How Your Company Can Advance Each of the SDGs

Source: UNGC website

Responsible business and investment – rooted in [universal principles](#) – will be essential to achieving transformational change through the SDGs. For companies, successful implementation will strengthen the enabling environment for doing business and building markets around the world.

Below you will find links to important initiatives and resources of the UN Global Compact – and in some instances of other like-minded organizations – to guide companies and other stakeholders to action-oriented platforms and tools that support SDG implementation.



Sustainable Oceans Principles (2020)



United Nations Global Compact

for business who are “part of an ocean productivity value chain” and for business whose operation “may impact ocean health”. **Plastics challenge? = all!**

9 Principles provide guidance on how companies can integrate material ocean-related risks and opportunities into their corporate strategy, risk management and reporting procedures.

Seaweed identified as having potential as alternate packaging material = sustainable business contribution to ocean health

Principle 1: Assess the short- and long-term impact of their activities on ocean health and incorporate such impacts into their strategy and policies.

Principle 2: Consider sustainable business opportunities that promote or contribute to restoring, protecting, or maintaining health and productivity and livelihoods dependent on the ocean.

Principle 3: Take action to prevent pollution affecting the ocean, reduce greenhouse gas emissions in their operations to prevent ocean warming and acidification, and work towards a circular economy.

Principle 4: Plan and manage their use and impact on marine resources and space in a manner that ensure long-term sustainability and take **precautionary measures** where their activities may impact vulnerable marine and coastal areas and the communities that are dependent on them.

...

OECD Responsible Business Conduct (RBC)

International standards for RBC, adhered to by 50 States (OECD & non-OECD)

Expectations: *all business avoid and address negative environmental and social impacts arising from their operations, while contributing positively to sustainable development in every country that a business operates*

Risk-based due diligence approach aligned with UNGPs (Chapter IV): *focus on risk to rights holders*

National Contact Points (NCPs) promote RBC; hear specific instance complaints (non-judicial grievance)

Expectations are the same for domestic and multinational enterprises; small and medium-sized enterprises are encouraged to observe Guidelines as much as possible



OECD Guidelines for Multinational Enterprises

2011 EDITION





Select Chapters Applied to Plastics Challenge

Chapter III: Disclosure

Supports the imperative that businesses gather information on the human rights implications of plastics through all stages of the plastics cycle, and in relation to business operations as well as business relationships. This information must then be made accessible to rights holders so that those who may be at risk of environmental harm can exercise their procedural and substantive rights to prevent and remedy harms. Supports rights to access information and the right to science, as discussed in module 2.

Chapter V: Employment and Industrial Relations

Supports the imperative that businesses support both formal and informal workers in exercising their rights with the aim of reducing exposure to hazardous substances at all stages of the plastics cycle, and through global supply chains. This aligns with a human rights-based approach that identifies workers and their families as being at heightened risk of environmental harms arising from hazardous substances and wastes as explored in module 2.

Chapter VI: Environment

- Supports the imperative that businesses integrate an environmental human rights approach at all stages and through supply chain relationships. This includes procedural components of prevention, prior assessment, and precaution (with the aim of avoiding impacts through product design where possible), access to information and right to science and environmental education, and meaningful and timely public participation in environmental decisions for communities and workers.

Chapter VII: Combatting Bribery, Bribe Solicitations and Extortion

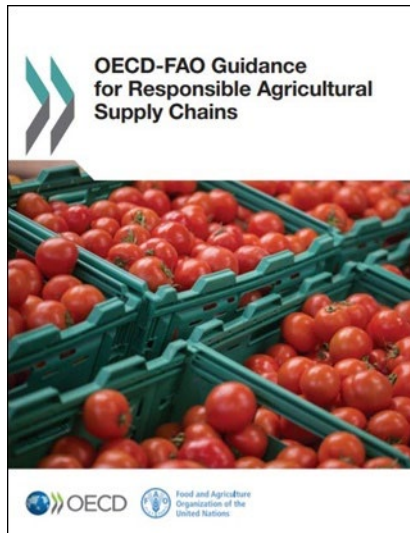
Supports the imperative that businesses confront the organized crime and corruption related challenges arising especially at the importation and incineration stages of the current plastics cycle, but more generally in relation to all environmental crime. In this way the environmental human rights risks facing poor and marginalized communities can be reduced if not avoided.

Chapter VIII: Consumer Interests

Supports the imperative that businesses ensure respect for the rights of consumers to environmentally relevant information, to education on environmental matters and right to science, as well as the importance of attention to equity and vulnerability in environmental and health standards.

Chapter IX: Science and Technology

Points to the importance of businesses developing innovative solutions to the plastics challenge in an equitable way to ensure long term sustainable solutions.



OECD Responsible Business Conduct (RBC)

*Examples of sector-specific
guidance instruments*



Source: OECD Due Diligence Guidance for RBC

OECD e-learning Academy on Responsible Business Conduct

Register now &
learn with us!



OECD RBC trainings

International Labour Organisation (ILO)

ILO Tripartite Declaration (2017)

- Establishes broad human rights-based principles in workplace environments overseen or operated by MNEs
- Directed to governments and MNEs to advance the concept of “decent work”; emphasis on ensuring that low-income groups are able to access to employment in safer, healthier and more gender-equal working conditions

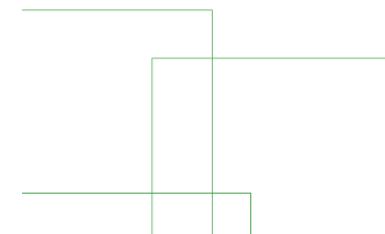
ILO Guidelines for Just Transition

- Key message: importance of social dialogue and viewing workers as agents of change in shaping policies to transition to sustainable economies

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy



Guidelines for a just transition towards environmentally sustainable economies and societies for all



ILO, “A
Circular
Economy Can
Promote
Decent Work”
(2021)



Reflection

- How could your business undertake opportunities to learn about and implement supplementary guidance on business and human rights and responsible business conduct including those developed by:
 - UNDP Asia [HRDD Training Facilitation Guide]
 - UN Global Compact & Local Networks [including the 10 Principles & Sustainable Oceans Principles]
 - OECD e-learning Academy [including the Guidelines for Multinational Enterprises, Due Diligence Guidance for Responsible Business Conduct, and sector-specific initiatives]
- [Or has your business already taken some of these steps - were they useful? Why or why not?]



2. Application of BHR to Plastics Challenges

- A. Responsibility, liability & remedy: Philippines Commission on Human Rights case study
- B. Integrate responsibility and exercise leverage in supply chains: Indonesian plastic waste case study
- C. Protect and enable formal & informal workers: Plastic Credits case study
- D. Centre equity and support environmental human rights defenders
- E. Confront illegal import and ensure safe disposal

NATIONAL INQUIRY ON CLIMATE CHANGE REPORT

COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES 2022



Credit: Chris McGrath/Getty Images

A. Plastic Production: Responsibility, Liability & Remedy?

- Plastics have a large carbon footprint and contribute significant GHG emissions especially at the production phase: 3.4% of total (OECD, 2022)
- GHG emissions increase climate risks; the Philippines is “highly vulnerable” to such risks (Kusnetz, 2022)
- Commission on Human Rights of the Philippines, 2022, first of its kind, found: **fossil fuel corporations can be held liable for human rights impacts caused by climate change, and:**

“the carbon majors must conduct due diligence, and climate change and human rights assessments in accordance with the UNGP in all stages of their operations and across all their value chains, even if not required by government regulations in the jurisdictions they operate in” (p130)

Could plastics producers also be held liable for the human rights and environmental impacts of plastic pollution and waste?



Reflections on Responsibility, Liability & Remedy

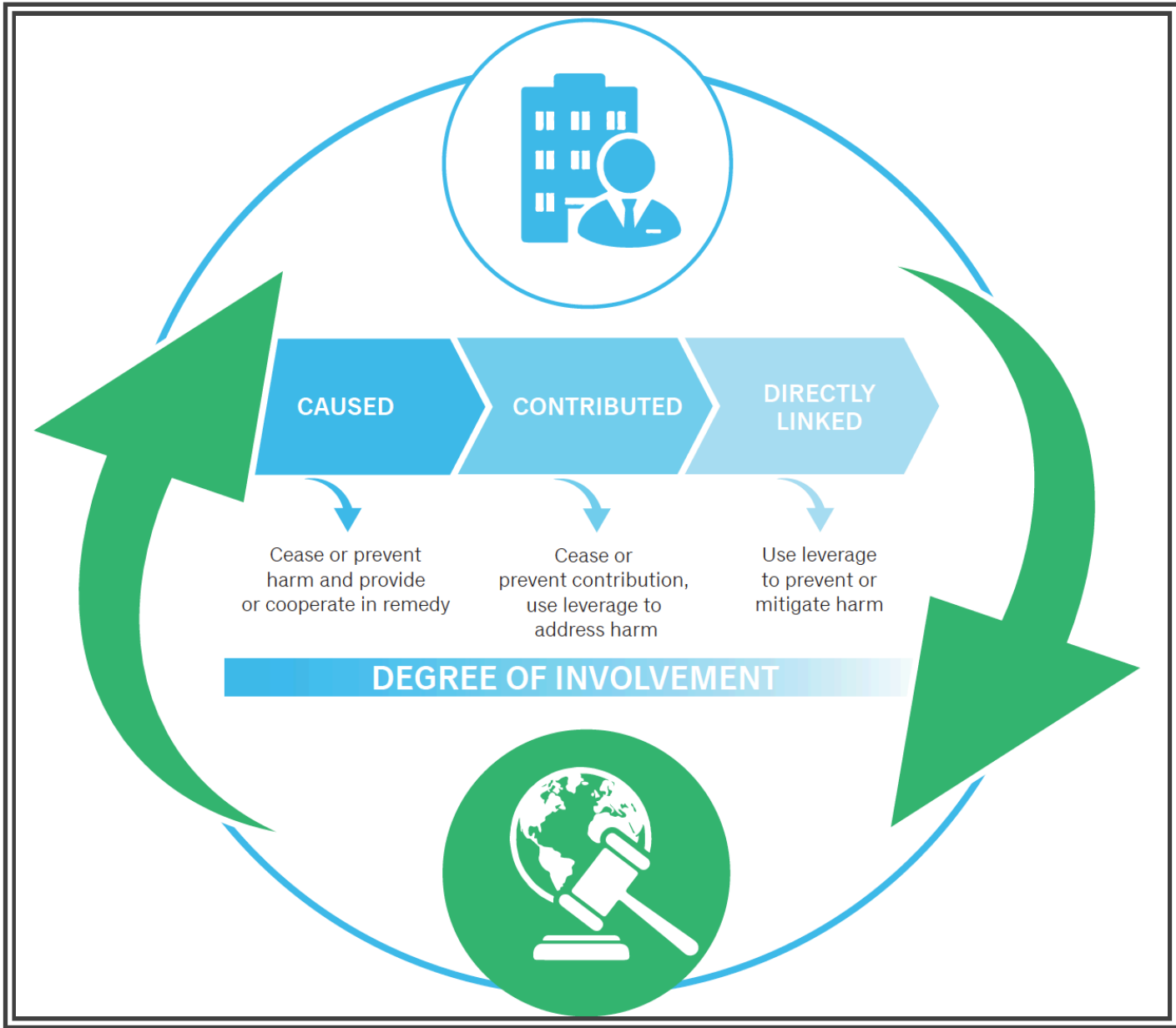
Case Study

Module 2: *What do the SRs have to say about remedy?*

- Access to justice & remedy includes for human rights violations arising from environmental harms (Framework Principles, Principle 10)
- But in the plastics context, remedy has historically been elusive due to misinformation and false promises about the potential of recycling, placing responsibility instead on consumers, with the plastics industry failing to remedy the risks and harms posed by plastics and escaping accountability (SR Toxics)

Module 3: *What do the UNGPs say about the responsibility of business enterprises to respect human rights, and remedy?*

- To meet the responsibility to respect human rights, businesses need to have “processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute” (Principle 15(c))
- *Did business cause or contribute to adverse impact? Or is impact directly linked to its operations, products or services by a business relationship? How much leverage does the business have to address adverse impact?*



Business Responsibility and Degree of Involvement

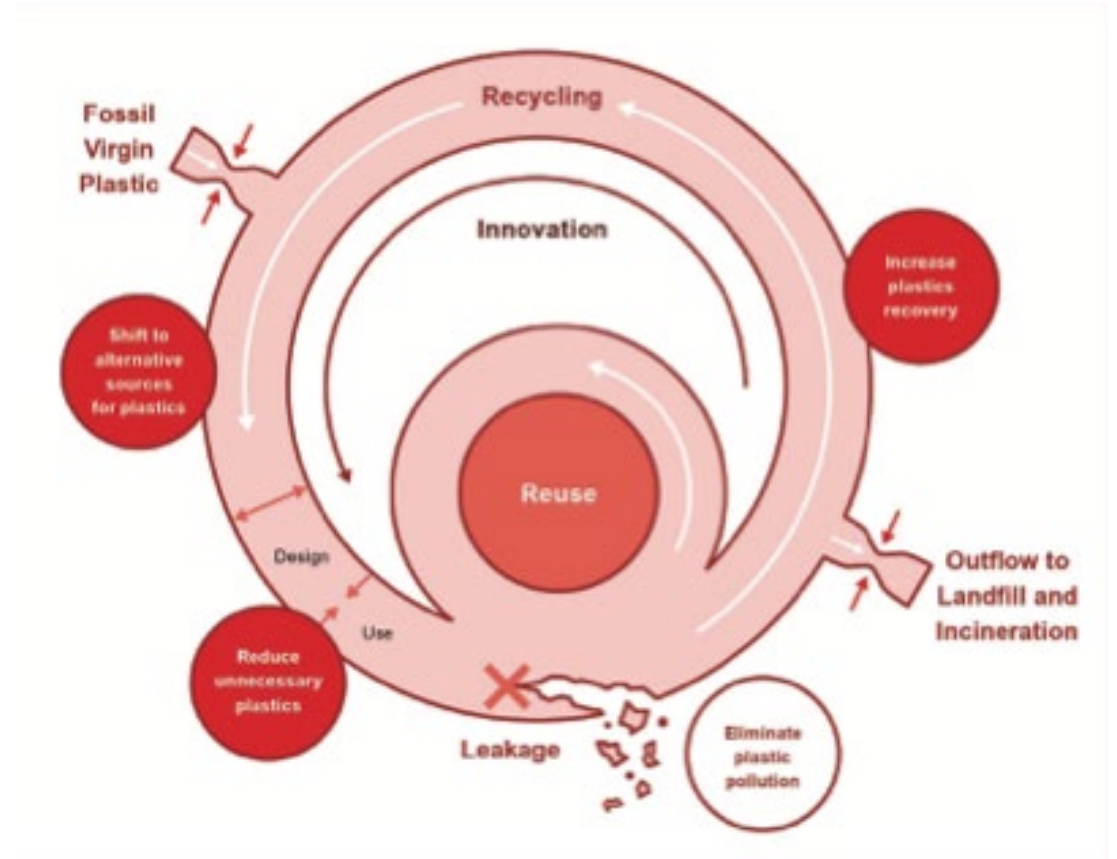
Recall UNGPs; and
Commentary to Principle 12,
Framework Principles, Module 2.

B. Integrate Responsibility and Exercise Leverage

[Image from WWF PACT (Plastic ACTION), reproduced in WWF Indonesia & Indonesian BCSD, *Sustainable Sourcing Guideline*]

1. Reduce the use of plastics
2. Prevent plastic waste
3. Plastic product substitution

How can human rights/risk based due diligence align with and supplement sustainable sourcing guidance?



Case Study: Plastic Waste Contaminates Indonesia

Issue

China's 2017 plastic waste import ban re-routed plastic waste imports into Indonesia, doubling volume, and making plastic a cheap fuel source

Example: local tofu factories

Plastic = Rp 200.000/day; Firewood = Rp 350.000/day

Human Rights Impacts

Burning plastic causes dark smoke, which is absorbed into the food chain, including grass used for farm animal feed

Example: free range eggs in East Java contained toxic and banned chemicals; 70x European Food Safety daily limit

Dioxin = cardiovascular disease, cancer, diabetes and endometriosis;

PFOS = reproductive and immune system effects

Solutions

Media awareness prompted people to supply free firewood to tofu factories for 3 months in replacement of plastic

Awareness of health impacts of burning plastic amongst factories has prompted factories to stop using plastic as a fuel source

In some cases, plastic as fuel was used for years



Source: KOMPAS.COM/GHINAN SALMAN



Source: KOMPAS.COM/GHINAN SALMAN




Reflections on the plastic waste case study:

Drawing upon module 2: how does the burning of plastic waste impact the right to a clean, healthy and sustainable environment?

- Substantive elements:
 - clean air, safe food, health...
- Procedural elements:
 - To information, science, education, freedom of expression (media)
- Non-discrimination?

Drawing upon module 3, how can businesses take responsible action to prevent and remedy the human rights impacts identified? [**Which businesses? How does this relate to sustainable sourcing?**]

- (identify, prevent, mitigate, account for impact)
- Might the solution being implemented raise other human rights concerns? If so, how could these be overcome?



HRDD & leverage & plastics life cycle

1. Adopt a human rights policy commitment
2. Implement human rights due diligence to 'identify, prevent, mitigate and account for how the business enterprise will address its impacts on human rights'
3. Integrate human rights impact assessment findings across appropriate levels and functions within the enterprise, assign responsibility accordingly with decision-making, budget allocations and oversight process to enable effective responses
4. Did business cause or contribute to adverse impact? Or is impact directly linked to its operations, products or services by a business relationship? How much leverage does the business have to address adverse impact?

Cease, prevent, mitigate, capacity-build, collaborate, consult stakeholders, communicate risks to rights holders ...



C. Protect and Enable Both Formal and Informal Workers

Elements of due diligence relevant to workers: [Source: BHRRC *Closing the Gap Report*]

- 1) Supply chain transparency and traceability throughout all tiers of global supply chains, with attention to unauthorized subcontracting
- 2) Risk assessment processes led by workers collective including local stakeholders
- 3) Responsible purchasing practices that support freedom of association
- 4) Worker-oriented grievance processes to ensure trusted access to remedy

How can businesses enable workers, whether formal or informal, to protect their rights to health and to live in a clean, healthy, and sustainable environment, and to be agents for change in supporting the transition from harmful plastics to sustainability?

Case Study: Circularity and Plastic Credits in the Philippines

Concept: A business can purchase plastic credits from a plastic crediting business to offset plastic pollution generated by the business (its “plastic footprint”)

How it Works: Any business that purchases credits funds the collection of plastic pollution, which ultimately diverts pollution. In exchange, a business can publicly make a claim that they have “offset” their plastic footprint

- Opportunities to partner with informal waste pickers to collect plastic, many of whom are women, which may support livelihoods

WWF Position Paper (January 2021): “if developed appropriately, plastic crediting has the potential to drive investment towards circular systems.” (at 1). However, caution is needed:

- Credibility of plastic crediting business must be assessed, and a “transformational change” commitment is needed (at 1)
- Emphasizes the need for “strong social and environmental safeguards” (at 1)
- Does not support the branding claims “plastic neutral” or “plastic neutrality” (at 1)



Reflections on Circularity and Plastic Credits

What are the implications of the plastic credit system for human rights at each stage of the plastics cycle? (support, undermine, neutral?)

- Extraction
- Production
- Transportation
- Use (Consumption & Waste Generation)
- Waste Management
- Disposal

What are the implications of the plastic credit system for the right to a clean, healthy and sustainable environment? (support, undermine, neutral?)

- Substance, procedure, equity

How does the plastic credit system contribute to or undermine responsible business plastics action?

- at each stage of the plastics cycle?
- for different rights holders, rights?
 - *Including informal waste pickers*

D. Centre Equity and Support Environmental Human Rights Defenders

Vulnerable individuals and groups experience disproportionate human rights impacts at each stage of the plastics cycle. These may be substantive (rights to clean air, clean water, non-toxic places, safe climate, sustainable food, healthy biodiversity) or procedural (rights to information, assessment, participation, justice) or a combination of both: to protect substantive rights, often requires the exercise of procedural rights.

How can businesses centre the rights of vulnerable individuals and groups at each stage of the plastics cycle?

How can businesses support the creation of a safe space for environmental human rights defenders at each stage of the plastics cycle?

How can businesses support local communities at each stage of the plastics cycle, including in implementation of extended producer responsibility (EPR) schemes?

E. Confront Illegal Import and Secure Safe Disposal

Transboundary movements of hazardous wastes including plastic waste continue to be a problem despite the existence of international treaties specifically designed to stop these practices. Illegal importation and disposal is not the only example of environmental crime, however, which can undermine government enforcement of environmental laws. While not illegal, businesses are sometimes implicated in pressuring governments to roll back environmental protections, rather than complying with the law and internalizing the costs of compliance into prices.

How can a human rights-based approach, and risk-based due diligence, help businesses confront the challenges arising from the illegal import of plastic waste, and help to ensure safe disposal of legal plastic waste?

Can a human rights-based approach to each of the stages of the plastics cycle help businesses integrate concern for people and planet into business practices?

3. Summary

Responsible business guidance tools are being developed to help businesses embed both human rights and circularity into their policies and management systems. As the plastics crisis receives increasing attention, and as the right to a clean, healthy and sustainable environment is better understood, there will be increasing expectations that businesses will adopt and implement human rights responsible plastics action.

The next slides are designed to visually illustrate what this means for product design, and waste management/disposal.



HRBA and product design





HRBA, waste management and disposal





Questions? Discussion

How could human rights due diligence and risk-based due diligence be applied to different stages of the plastics life cycle in your business?

What challenges might arise?

What opportunities might present?



These training slides were developed for educational purposes as part of the SEA circular project – Reducing marine litter by addressing the management of the plastic value chain in South-East Asia, which is implemented by UNEP and COBSEA with funding support from the Government of Sweden.

The slides were prepared by Dr Sara Seck with the assistance of researchers at the Marine & Environmental Law Institute (MELAW) and Schulich School of Law, Dalhousie University.

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