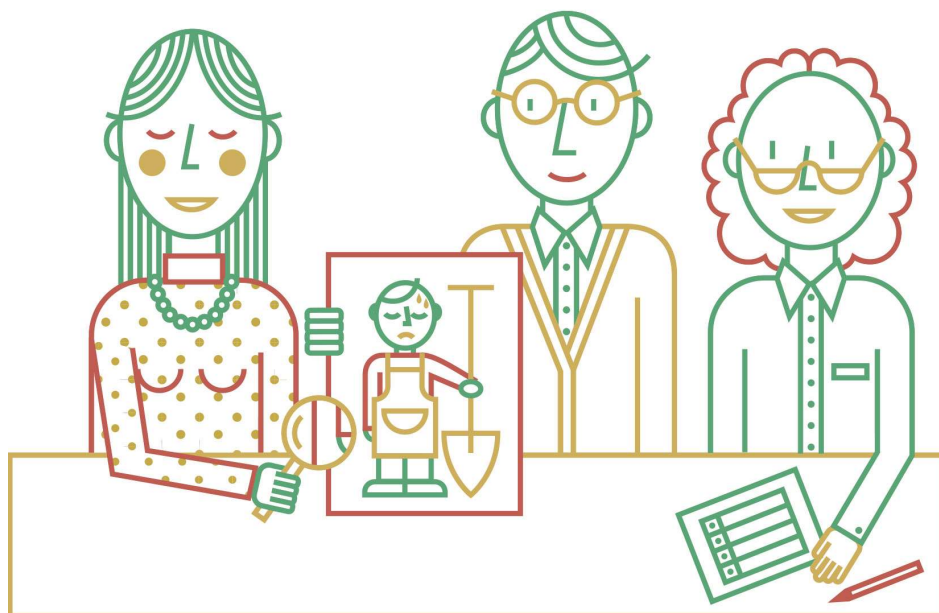


# HUMAN RIGHTS DUE DILIGENCE FOR NON-GOVERNMENTAL ORGANISATIONS



Why it is Needed and How it is Done

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### About us

focusright ltd. works with organisations from various of sectors to **strengthen their management systems** to identify and address their human rights risks — both in their operations and in their extended supply chains. focusright ltd. advises on embedding relevant policies, designing **human rights due diligence processes**, managing supply chain risks and structuring remedy in line with the UN Guiding Principles on Business and Human Rights (UNGPs). focusright ltd. provides guidance on implementing human rights-related regulations such as the UK Modern Slavery Act, recommends actions to take to tackle systemic human rights issues, and conducts **human rights impact assessments** in higher-risk environments.

Depending on the organizational structure of its client, focusright ltd. works with senior management, corporate responsibility or human resources functions. As the soft law contained in the UNGPs becomes increasingly binding, focusright ltd. works increasingly with in-house lawyers, to equip them with the tools necessary to advise their companies.

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## A INTRODUCTION

Over the last decade, public awareness for businesses' human rights responsibilities has risen. But not only companies have been affected by controversies around the human rights impacts of their activities. Non-profit and non-governmental organisations (NGOs) as well have found themselves amid public criticism for unwanted negative consequences on people related to their projects, offices or staff. For the purpose of this paper, NGOs will be broadly defined as charitable organizations, formed independently of governments by private or civil society actors, whose primary purpose is to create a positive social or environmental impact.

In the following, we will address the relevance of human rights issues for NGOs, and the role of human rights due diligence<sup>1</sup> (HRDD) in addressing their risks and impacts.

### Objectives of the working paper

As human rights due diligence is typically discussed in a for-profit context, the purpose of this working paper is to extend the debate on responsible business conduct to the responsibilities of NGOs. In particular, we intend to:

1. Raise NGOs' awareness for the possible human rights risks and impacts linked to their activities in both donor and project countries, and for their exposure to human rights risks.
2. Discuss the applicability of international standards and national laws on business and human rights to an NGO context, as well as the main drivers for NGOs implementing human rights due diligence.
3. Apply the six steps of human rights due diligence to the current practice of NGOs to identify common challenges, gaps, lessons learned and best practices.
4. Offer practical recommendations for NGOs looking to introduce or strengthen their human rights management processes.

This working paper was written on focusright's own initiative and funding. It is based on our conviction that **ensuring respect for human rights is every organisation's business** – no matter if it is public, private, for-profit, non-profit, governmental, or non-governmental. From our work with companies, we know that HRDD can be a powerful tool for organisations to systematically integrate respect for human rights in their own operations, relationships, and value chain, and thereby effectively address their human rights risks and impacts.

For the qualitative analysis of NGOs' current HRDD practice in chapter C of this paper, we conducted interviews with six Swiss NGO representatives. **We thank our interview partners for their time, trust, openness, and valuable insights** on their human rights management processes, and hope our paper will raise awareness and contribute to strengthening NGOs' due diligence. The interviews were conducted confidentially, and we have excluded all information that could be traced back to a specific person or organisation. Due to the limited number of interviews, the findings are not representative for the whole sector.

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<sup>1</sup> Human Rights Due Diligence (HRDD) is a management system that allows organisations to proactively assess their human rights risks and impacts and take appropriate measures to address them. The goal of HRDD is to prevent, mitigate and cease negative impacts on human rights related to the organisation's own activities and business relationships.

## **B THE IMPORTANCE OF HRDD FOR NGOS**

### **1. Adverse human rights impacts of NGO activities**

As organisations with an explicitly social or environmental purpose, NGOs are often not considered relevant actors in the field of responsible business conduct<sup>2</sup>. The examples below show, however, that NGOs just like companies can potentially be connected to human rights violations. While all the organizations mentioned below have taken measures in response to the allegations, it would go beyond the scope of this paper to provide an overview or evaluation of their corrective actions.

#### **1.1 Examples of human rights violations connected to NGOs**

##### **Oxfam: allegations of covering up sexual abuse of minors by staff in Haiti**

In 2018, Oxfam was accused of covering up allegations of sexual exploitation of victims of the 2010 earthquake by their staff in Haiti, including allegations of sexual abuse of children aged 12 and 13.<sup>3</sup> Following an internal investigation in 2011, Oxfam dismissed several members of staff for gross misconduct, including for use of prostitutes in Oxfam property, for failing one's duty to protect staff, as well as for bullying and intimidation of staff.<sup>4</sup> However, according to reports, Oxfam failed to report and adequately investigate allegations of sexual abuse of children by a senior staff member and treated some senior staff more lenient than junior staff after the incident.

- Alleged perpetrators: Oxfam staff in Haiti
- Alleged victims: local communities, including children, Oxfam staff
- Examples of human rights possibly impacted: right to health, right to freedom from cruel, inhuman, or degrading treatment, right to just and favourable conditions of work

##### **WWF: allegations of financing, arming, and training violent anti-poaching units in African and Asian national parks**

In 2019, the environmental NGO World Wide Fund for Nature (WWF) was accused of financially supporting and collaborating with rangers and law enforcement agents in national parks in various African and Asian countries that were involved in serious human rights violations. According to reports, rangers and other law enforcement agents allegedly attacked, harassed, beat, tortured, sexually assaulted and murdered local villagers and indigenous peoples living in or near the parks whom they had accused of poaching. The alleged perpetrators were acting under the authority of governments in anti-poaching activities and were collaborating with national WWF offices.<sup>5</sup>

- Alleged perpetrators: Rangers and other law enforcement agents in national parks (funded, equipped, and trained by WWF)
- Alleged victims: local villagers and indigenous peoples, including children
- Examples of human rights possibly impacted: right to life, right to health, right to freedom from torture and cruel, inhuman, or degrading treatment

<sup>2</sup> According to the OECD Guidelines for Multinational Enterprises, the term Responsible Business Conduct (RBC) refers to making a positive contribution "to economic, environmental, and social progress with a view to achieving sustainable development, and to [...] identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries." (p.69). Retrieved from: [www.oecd.org/corporate/mne/48004323.pdf](http://www.oecd.org/corporate/mne/48004323.pdf)

<sup>3</sup> BBC News, "Oxfam criticised over Haiti sex claims", June 11<sup>th</sup> 2019. Retrieved from: [www.bbc.com/news/uk-48593401](http://www.bbc.com/news/uk-48593401)

<sup>4</sup> Oxfam, "Haiti Investigation Report". Retrieved from: [www.oxfam.org.uk/about-us/tackling-abuse-information-and-updates/haiti-investigation-report/](http://www.oxfam.org.uk/about-us/tackling-abuse-information-and-updates/haiti-investigation-report/)

<sup>5</sup> Tom Warren & Katie J.M. Baker, "WWF Funds Guards Who Have Tortured And Killed People", BuzzFeed News, March 4<sup>th</sup>, 2019. Retrieved from: [www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death](http://www.buzzfeednews.com/article/tomwarren/wwf-world-wide-fund-nature-parks-torture-death)

## Save the Children: allegations of sexual harassment of staff and mishandling of complaints in the UK

In 2018, allegations of sexual harassment against two senior leaders of Save the Children UK became public. Female staff members reported numerous inappropriate text messages, comments, and unwanted sexual advances from their superiors, including on business trips. Moreover, internal reports revealed that the complaints had not been adequately dealt with.<sup>6</sup> As a consequence, the British Charity Commission launched an investigation into Save the Children's handling of complaints of inappropriate behaviour in previous years and concluded that there were "serious weaknesses in the charity's workplace culture, and serious failures in the way the charity dealt with complaints about behaviour at its head office."<sup>7</sup>

- Alleged perpetrators: senior Save The Children staff
- Alleged victims: female Save The Children staff in the UK
- Examples of human rights possibly impacted: right to health, right to freedom from cruel, inhuman or degrading treatment, right to non-discrimination and right to just and favourable conditions of work

### 1.2 Relation to adverse impacts

The examples above show that NGOs – just like companies – can be related to adverse human rights impacts in different ways. The UN Guiding Principles on Business and Human Rights (UNGPs) outline three different ways an organisation can be related to an adverse impact:

Relation to adverse impact	Examples
<b>Cause</b> an impact directly through own activities	Staff misconduct in head or program offices; negative consequences of own project activities on human rights of individuals or groups
<b>Contribute to</b> an impact together with other actors	Misconduct of project partners' staff in joint programs or negative consequences of joint programs on human rights of individuals or groups
<b>Be linked to</b> an impact through business relationships	A company that is financing an NGO project is involved in human rights violations on its operating site

In conclusion, even if an organisation pursues an intrinsically charitable goal, its activities can still have risks and unintended negative consequences for human rights. The UNGPs emphasise that activities to support or protect human rights can never offset an organisation's failure to respect human rights throughout its operations. Thus, while NGOs' positive contribution to social or environmental objectives is of great value for people and the planet, they still need to ensure respect for human rights in all their activities and relationships that contribute to the achievement of these goals. Just as for any for-profit organisation, it is essential for NGOs to assess the potential and actual human rights impacts related to their offices, procurement, staff, projects, programs, funding and partners and all types of "business" relationships and take systematic measures to address adverse impacts.

<sup>6</sup> Manveen Rana & Laura Lea, "Save the Children 'failed' to deal with women's complaints", BBC News, March 7<sup>th</sup>, 2018. Retrieved from: [www.bbc.com/news/uk-43287838?piano-modal](http://www.bbc.com/news/uk-43287838?piano-modal)

<sup>7</sup> Charity Commission for England and Wales, "Statement of the Results of an Inquiry: The Save the Children Fund" (p.31), March 5<sup>th</sup>, 2020. Retrieved from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/870390/The\\_Save\\_the\\_Children\\_Fund\\_Save\\_the\\_Children\\_UK\\_Inquiry\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/870390/The_Save_the_Children_Fund_Save_the_Children_UK_Inquiry_report.pdf)

## **2. NGOs' exposure to human rights risks**

Due to their mandate, the nature and context of their activities, NGOs can have an increased exposure to human rights risks compared to other types of organisations. This means that there are some factors - as outlined below - that are particularly relevant in an NGO context, and that may increase the probability of causing a negative human rights impact. As NGOs engage in a variety of different activities and geographic contexts, the exposure to human rights risks of *specific* organisations and projects of course differs from case to case.

### **2.1 Implementing projects in fragile and conflict-affected contexts**

As a natural consequence of their charitable purpose, NGOs often implement their projects or programs in geographical contexts that are characterised by weak state capacity, crisis, or conflict. The UNGPs explicitly stress that the risks of gross human rights abuses are greater in such areas (UNGP No. 7), including in conflict-affected areas (UNGP No. 23), and that an organisation's risk of becoming complicit in human rights abuses committed by other actors (such as security forces) increases. To ensure respect for human rights even in fragile and conflict-affected contexts, international standards require organisations to apply additional standards and conduct heightened due diligence. As the British Charity Commission points out in its 2019 Oxfam Inquiry Report, engaging internationally, in different cultural contexts, jurisdictions or in the midst of a humanitarian crisis is a profoundly challenging undertaking, but "failure to take reasonable steps to protect people cannot be excused by the difficult context a charity is working in."<sup>8</sup>

### **2.2 Engaging with people in vulnerable situations**

Another direct consequence of NGOs' social purpose is that they often work very closely with people in vulnerable situations. Typically, vulnerable, marginalized, and disadvantaged population groups are more at risk of becoming victims of human rights violations. The Icelandic Human Rights Centre has listed thirteen groups that are especially vulnerable to human rights abuses, including women and girls, refugees, or indigenous peoples. They require particular protection, as they are structurally discriminated against and often have difficulties defending themselves.<sup>9</sup> Among other factors, poverty has been identified as an important source of vulnerability and human rights violations.<sup>10</sup> One of the challenges of organisations working with vulnerable and marginalized groups is that the organisations and their staff are not immune to the dynamics that increase their target groups' likelihood of becoming victims of human rights violations in the first place. For example, this becomes evident in cases of sexual abuse committed by NGO staff.

### **2.3 Unequal power relations**

NGOs often work within a context of unequal power relations between their staff and the target groups, between different categories of staff within their offices or between their own staff and partner organisations' staff, which facilitates abuse of power. Abuse of power has been described as an inherent risk and common consequence of the unequal relations between "powerful" aid providers and vulnerable populations depending on them.<sup>11</sup>

<sup>8</sup> Charity Commission for England and Wales, "Inquiry Report: Summary Findings and Conclusions - Oxfam" (p.33), June 11<sup>th</sup> 2019. Retrieved from: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807943/Inquiry\\_Report\\_summary\\_findings\\_and\\_conclusions\\_Oxfam.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807943/Inquiry_Report_summary_findings_and_conclusions_Oxfam.pdf)

<sup>9</sup> The groups include: 1) women and girls; 2) children; 3) refugees; 4) internally displaced persons; 5) stateless persons; 6) national minorities; 7) indigenous peoples 8) migrant workers; 9) disabled persons; 10) elderly persons; 11) HIV positive persons and AIDS victims; 12) Roma/Gypsies/Sinti; and 13) lesbian, gay and transgender people.

Icelandic Human Rights Centre, "The Human Rights Protection Of Vulnerable Groups". Retrieved from: [www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups](http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/the-human-rights-protection-of-vulnerable-groups)

<sup>10</sup> Chapman, A., & Carbonetti, B. (2011). Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights. *Human Rights Quarterly*, 33(3), 682-732. Retrieved from: [www.jstor.org/stable/23015998](http://www.jstor.org/stable/23015998)

<sup>11</sup> Hilhorst, D. (2018, February 22). Aid agencies can't police themselves. It's time for a change. *The New Humanitarian*. Retrieved from: [www.the-newhumanitarian.org/opinion/2018/02/22/aid-agencies-can-t-police-themselves-it-s-time-change](http://www.the-newhumanitarian.org/opinion/2018/02/22/aid-agencies-can-t-police-themselves-it-s-time-change)

## **2.4 Fulfilment of state-like functions**

In some project countries, NGOs' presence is due to an insufficient capacity of State actors to fulfil their function and provide essential goods and services such as education, health, work, or housing to the population. When NGOs arrive to complement what is lacking or to support Governments in fulfilling their function, NGOs can take over State-like roles. This can be the case when NGOs fund or run schools, deliver medical services, offer housing, or provide entrepreneurship and vocational training. According to international law, States are the duty-bearers who have the obligation to protect and enforce human rights. For this reason, they often have institutional arrangements such as Public Prosecutors, Ombudsman's Offices, Anti-Corruption Institutions or Disciplinary Processes in place to ensure that State actors fulfil their duties in a rights-compatible way. When NGOs are taking over state-like functions, the risks of types of misconduct that is typically associated with State actors, such as abuse of power, corruption, or discrimination, become even more relevant for NGOs, too.

## **2.5 Dependence on external partners for the funding and implementation of activities**

Most companies rely on their own funding and operations to conduct their business and can therefore execute their projects in a self-determined and independent manner. For many NGOs, however, this does not apply in the same way. As their activities do not generate profits, they depend on external funding from public or private donors to be able to work. Furthermore, NGO projects are typically executed in collaboration with external local partners. This dependence on external partners for both funding and implementation of activities represents a challenge for responsible business conduct. On the one hand, NGOs' (financial) dependence on their donors can impede an open and transparent communication about the risks and challenges of an activity. On the other hand, when NGOs cannot unilaterally determine the rules and processes that direct their activities, nor fully control the actors that implement them, it becomes more challenging to develop effective governance structures and ensure respect for human rights as well. In particular, executing projects in collaboration with Governments that do not fully protect human rights can increase the risk of becoming complicit in human rights violations. In this way, the decreased control that comes with NGOs' dependence on external partners increases their risks of negative human rights impacts.

## **2.6 Complex organisational, financial and accountability structures**

Some international NGOs are organized in a complex network of an international head office, national offices in donor countries, regional offices and country or program offices in implementing countries. When national organisations are legally independent, international boards or secretariats do not necessarily have the authority to instruct and monitor them. Implementing offices may be far away from the more structured headquarters, not just geographically but also in terms of compliance with applicable processes and rules. Projects are often developed and implemented in cooperation with governmental actors or other organisations and financed by a variety of different donors. In WWF's case, for example, an independent investigation found that "the complex inter-relationships between WWF International, WWF donor National Organisations, the Programme Offices, and the government entities with which they dealt created difficulties and confusion when it came to accountability for monitoring implementation of social policies and commitments."<sup>12</sup> While not all NGOs have equally complex organisational structures, a lack of clear hierarchies (as they are typically found in companies) can impede NGOs' ability to manage their human rights risks and therefore increase the risk of negative impacts.

<sup>12</sup> Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, "Embedding Human Rights In Nature Conservation: From Intent To Action" (p.11), November 17<sup>th</sup> 2020. Retrieved from: [https://wwfint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_\\_\\_final\\_report\\_24\\_nov\\_2020.pdf](https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts___final_report_24_nov_2020.pdf)

### 3. Applicability of standards and laws on responsible business conduct to NGOs

Activities of NGOs can have negative impacts on human rights just as business activities do, and similar questions of NGO accountability have been raised<sup>13</sup>. While businesses' human rights responsibilities are increasingly regulated by international standards and national laws, most of these norms make little explicit reference to NGOs. In the following, we discuss the applicability of international standards and national laws on business and human rights to NGOs.

#### 3.1 UN Guiding Principles on Business and Human Rights

The UNGPs give no clear definition of the type of business enterprises that are included in their scope. They state, however, that the responsibility to respect human rights "applies to all enterprises regardless of their size, sector, operational context, ownership and structure."<sup>14</sup> UNGP No. 30 explicitly addresses multi-stakeholder and other collaborative initiatives and requires them to ensure that an effective grievance mechanism is available. Furthermore, it is clear that to pursue their mission, NGOs "engage in typical business activities, such as having employees, renting offices, purchasing products for internal operations at their headquarters or setting up investment strategies for the grants and donations they receive and distribute."<sup>15</sup> In executing these activities, they can have similar issues in implementing respect for human rights as companies do<sup>16</sup>. In the UNGP framework, businesses' social license to operate gives rise to their responsibility to respect human rights. It has been argued that other types of organisations such as NGOs, who depend on similar social licences to operate, must therefore have similar responsibilities to respect human rights.<sup>17</sup>

Recognized human rights experts have previously applied the UNGP framework to investigate NPO (Non-Profit Organizations) or NGO controversies and make recommendations for incorporating respect for human rights in their activities. For example, the independent panel of experts that investigated WWF's human rights allegations in 2019 and 2020 stated that "the expectation of respect for human rights cannot be lower for multinational conservation organisations than it is for multinational business enterprises"<sup>18</sup>, confirming that the UNGPs are applicable to WWF and other international conservation organisations. John G. Ruggie, the author of the UNGPs, has also applied the principles to FIFA, an international non-profit sports organisation.<sup>19</sup>

In conclusion, it can be inferred from both the wording and the underlying logic of the UNGP framework that organisations like NGOs are not excluded from its scope of applicability. Similarities in NGOs' and businesses' organisational structure, potential human rights consequences and societal expectations are compelling reasons to apply the UNGPs to NGOs, too.

<sup>13</sup> Noam Schimmel, "Why Human Rights Law Should Apply To Non-Governmental Organizations Along With States And Corporations", March 2018. Retrieved from: [https://scholars.org/sites/scholars/files/ssn-key-findings-shimmel-on-ngos-and-international-human-rights-law\\_3\\_1.pdf](https://scholars.org/sites/scholars/files/ssn-key-findings-shimmel-on-ngos-and-international-human-rights-law_3_1.pdf)

<sup>14</sup> UN Guiding Principle No. 14, Retrieved from: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

<sup>15</sup> Julie Wynne & Tomás Navarro Blakemore, "The UN guiding principles on business and human rights and their role for non-profit organisations", *Philanthropy Impact Magazine*: 15 – SPRING 2017. Retrieved from: [www.philanthropy-impact.org/sites/default/files/user-uploads/pi\\_magazine\\_15\\_final\\_wynn\\_blakemore.pdf](http://www.philanthropy-impact.org/sites/default/files/user-uploads/pi_magazine_15_final_wynn_blakemore.pdf)

<sup>16</sup> Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, "Embedding Human Rights In Nature Conservation: From Intent To Action" (p.34), November 17<sup>th</sup> 2020. Retrieved from: [https://wwfint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_\\_\\_final\\_report\\_24\\_nov\\_2020.pdf](https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts___final_report_24_nov_2020.pdf)

<sup>17</sup> Jael E Makagon, Harry Jonas & Dilys Roe, "Upholding human rights in conservation: who is responsible?", IIED Briefing, Natural Justice, September 2014. Retrieved from: <https://pubs.iied.org/sites/default/files/pdfs/migrate/17254IIED.pdf>

<sup>18</sup> Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, "Embedding Human Rights In Nature Conservation: From Intent To Action" (p.34), November 17<sup>th</sup> 2020. Retrieved from: [https://wwfint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_\\_\\_final\\_report\\_24\\_nov\\_2020.pdf](https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts___final_report_24_nov_2020.pdf)

<sup>19</sup> Ruggie, John G. 2016. "FOR THE GAME. FOR THE WORLD." *FIFA and Human Rights*. Corporate Responsibility Initiative Report No. 68. Cambridge, MA: Harvard Kennedy School. Retrieved from: [www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/Ruggie\\_humanrightsFIFA\\_reportApril2016.pdf](http://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/crri/files/Ruggie_humanrightsFIFA_reportApril2016.pdf)



### 3.2 OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises are governments' non-binding recommendations to multinational enterprises on how to conduct business responsibly in a global context.<sup>20</sup> While the Guidelines make no explicit mention to NPOs or NGOs, they also refrain from giving a precise definition of the term multinational enterprises. They state, however, that these enterprises operate in all sectors of the economy, usually comprise entities established in several countries that are linked to coordinate their activities, and that ownership may be private, State or mixed.<sup>21</sup> According to the OECD Secretariat, "the Guidelines recommend a flexible interpretation of the notion of enterprise, which allows NCPs [National Contact Points] to address impacts from actors that might not be considered 'multinational' or 'enterprise' in the strict sense of the terms."<sup>22</sup>

In line with an extensive interpretation of the Guidelines, the Swiss National Contact Point (NCP) for the OECD Guidelines<sup>23</sup> has applied the Guidelines to various NPOs and NGOs, including FIFA, WWF International, and the Roundtable for Sustainable Palmoil, a multi-stakeholder initiative. In the case against WWF International, the NCP stated in its Initial Assessment that the key question for the Guidelines' applicability to an organisation is "whether an entity is involved in commercial activities, independently of its legal form, its sector of activity or its purpose (profit or non-profit)."<sup>24</sup> First, the NCP analysed whether the contested organisation is an international organisation with a multinational scope. This was affirmed for WWF International, due to its network of offices in over 80 countries that are guided by WWF International's policies and procedures. Second, it evaluated whether the contested activities can be considered of commercial nature. As WWF International's activities are not per se of commercial nature, this question was evaluated on a case-by-case basis based on the concrete circumstances. The NCP considered WWF's approach to conservation "to a certain extent market based" (p.8), as it is involved in commercial activities such as income from royalties and other trading activities. In particular, the NCP found that WWF's sale of merchandising articles would not be possible without conservation projects like the one in Cameroon. Consequently, WWF's conservation activities in southeast Cameroon were considered of commercial nature, to which the OECD Guidelines apply.

As decisions are made on a case-by-case basis, there are no clear *ex ante* criteria for when international NGOs' activities are considered "of commercial nature" and thus subject to the OECD Guidelines. Relevant considerations may include whether the commercial activities earn the organisation an income, whether the disputed project or activity would have been possible without the commercial activities, and in what way the disputed activity is linked to the organisation's commercial activities. In 2016, the Swiss NCP has rejected a case against FIFA where the dispute was found to be a question of governance that is unrelated to its commercial activities.<sup>25</sup> A previous case against FIFA was found to be related to commercial activities and therefore accepted by the NCP.<sup>26</sup> In principle, NPOs can engage in commercial activities in different ways to advance the organisation's purpose. For example, they can use commercial activities to directly carry out their charitable purpose, use a commercial surplus for a charitable purpose, or carry out non-profit

<sup>20</sup> OECD Guidelines for Multinational Enterprises (2011). Retrieved from: <http://mneguidelines.oecd.org/MNEguidelines/>

<sup>21</sup> OECD Guidelines for Multinational Enterprises, (2011), Chapter I, Paragraph 4.

<sup>22</sup> OECD National Contact Points for Responsible Business Conduct, "Providing access to remedy: 20 years and the road ahead", 2020. Retrieved from: <http://mneguidelines.oecd.org/NCPs-for-RBC-providing-access-to-remedy-20-years-and-the-road-ahead.pdf> (p.17)

<sup>23</sup> "National Contact Points for Responsible Business Conduct (NCPs for RBC) are agencies established by governments. Their mandate is two-fold: to promote the OECD Guidelines for Multinational Enterprises, and related due diligence guidance, and to handle cases (referred to as "specific instances") as a non-judicial grievance mechanism." Retrieved from: <https://mneguidelines.oecd.org/ncps/>

<sup>24</sup> OECD National Contact Point of Switzerland (2016): «Initial Assessment - Specific Instance regarding the World Wide Fund for Nature International (WWF) submitted by Survival International Charitable Trust» (p.7.). Retrieved from: [www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements\\_konkrete\\_F%C3%A4lle/WWF\\_2016/WWF\\_Initial\\_Assessment.pdf.download.pdf/Initial%20Assessment%20WWF%20International.pdf](http://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements_konkrete_F%C3%A4lle/WWF_2016/WWF_Initial_Assessment.pdf.download.pdf/Initial%20Assessment%20WWF%20International.pdf)

<sup>25</sup> Swiss National Contact Point, "Initial Assessment FIFA vs. ADHRB" (2016). Retrieved from: [www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik\\_Wirtschaftliche\\_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements\\_zu\\_konkreten\\_Faellen.html](http://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/NKP/Statements_zu_konkreten_Faellen.html)

<sup>26</sup> OECD: Fédération Internationale de Football Association (FIFA) and Building and Wood Workers' International (BWI). Retrieved from: <https://mneguidelines.oecd.org/database/instances/ch0013.htm>

activities in a commercial way.<sup>27</sup> It can therefore be expected that the OECD Guidelines apply to a wide range of NGO activities.

In conclusion, an international NGO that is involved in some sort of commercial activities should be aware that the OECD Guidelines potentially apply to its organisation. This is the case particularly in Switzerland, where the NCP has repeatedly confirmed that commercial activities are a criterion for the applicability of the Guidelines independently of the type of organisation. In case of a dispute, a complaint may be filed against the NGO before the NCP, which will decide the applicability of the OECD Guidelines based on the specific circumstances of the case. In this sense, the OECD Guidelines offer a mechanism for mediation and NGO accountability through the NCPs.

### 3.3 NGO accountability initiatives and other international standards

In addition to the standards addressed above, NGOs have founded various voluntary initiatives on NGO accountability and responsibility and participate in cross-sectoral sustainability initiatives. Some examples include:

<p><b>Membership Platform "Accountable Now"</b></p> <p>Founded in 2008 by leading international civil society organisations, the platform works with NGOs on "improving accountability practices through a comprehensive reporting process."<sup>28</sup> In addition to reporting, the platform offers knowledge sharing and peer-learning activities to support its members to embed accountability in their organisational culture and decision-making processes. The 12 accountability commitments of the platform include provisions on including respect for human rights and the environment.<sup>29</sup></p>	<p><b>Conservation Initiative on Human Rights<sup>30</sup></b></p> <p>Founded in 2009, the initiative is a consortium of seven international conservation NGOs whose mission it is to promote the integration of human rights in conservation policy and practice. The initiative's key principles are (1) respect human rights; (2) promote human rights within conservation programs; (3) protect the vulnerable and (4) encourage good governance. To support its members in the implementation of these principles, the initiative publishes papers, case studies and briefings on topics related to human rights and conservation.</p>
<p><b>IFC's Environmental and Social Performance Standards<sup>31</sup></b></p> <p>A set of internationally recognized standards initially developed by IFC to ensure responsible business conduct among its clients, and that have also been used as a reference by NGOs to develop their own social and environmental safeguarding processes.</p>	<p><b>UN Global Compact</b></p> <p>As non-business signatories of the UN Global Compact, NGOs participate in the initiative and have committed to advancing its 10 principles which center on human rights, labour, environment, and anti-corruption.<sup>32</sup></p>

<sup>27</sup> Carolei, D. (2018). Survival International v World Wide Fund for Nature: Using the OECD Guidelines for Multinational Enterprises as a Means of Ensuring NGO Accountability. *Human Rights Law Review*, 18 (2), pp. 371-384. Retrieved from: <https://academic.oup.com/hrlr/article-abstract/18/2/371/4994247?redirectedFrom=fulltext>

<sup>28</sup> Accountable Now. Retrieved from: <https://accountablenow.org/about-us/our-strategy/>

<sup>29</sup> Accountable Now: 12 Accountability Commitments. Retrieved from: [https://accountablenow.org/wp-content/uploads/2020/03/12Comm\\_Booklet\\_SCREEN.pdf](https://accountablenow.org/wp-content/uploads/2020/03/12Comm_Booklet_SCREEN.pdf)

<sup>30</sup> The Conservation Initiative on Human Rights. Retrieved from: [www.thecihr.org](http://www.thecihr.org)

<sup>31</sup> IFC Performance Standards. Retrieved from: [www.ifc.org/wps/wcm/connect/Topics\\_Ext\\_Content/IFC\\_External\\_Corporate\\_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards](http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards)

<sup>32</sup> UN Global Compact, Non-Business Participation. Retrieved from: [www.unglobalcompact.org/participation/join/who-should-join/non-business](http://www.unglobalcompact.org/participation/join/who-should-join/non-business)

### 3.4 Mandatory human rights due diligence legislation

In Switzerland, new legal requirements on responsible business conduct have been adopted in 2021 based on the counter-proposal to the Swiss Responsible Business Initiative (RBI). While the new provisions on non-financial reporting are not applicable to NGOs, the due diligence obligations for conflict minerals and child labour (in principle) are<sup>33</sup>. The explanatory report to the ordinance specifies that the new due diligence obligations apply to enterprises headquartered in Switzerland irrespective of their legal status, including to foundations (Stiftungen) and associations (Vereine).<sup>34</sup> However, organisations are only covered by the law if they engage in commercial activities as defined in the Swiss Commercial Register Ordinance (Handelsregisterverordnung)<sup>35</sup>.

Before the RBI vote in November 2020, WWF Switzerland publicly stated that the proposed rules of the RBI initiative would apply to their organisation, if the RBI were approved. This statement was based on the expectation that the new mandatory HRDD would most likely apply to organization that have an auditing obligation in line with Art. 727 OR, which includes WWF Switzerland. After the rejection of the initiative, WWF now might be covered by some provisions of its parliamentary counter-proposal.

Similarly, the German Supply Chain Due Diligence Act adopted in 2021 is applicable to enterprises of a certain size independently of their legal form.<sup>36</sup> The Government's explanatory report to the draft law explicitly states that the existence of human rights or environmental risks does not depend on the legal form of an enterprise, and therefore the law does not restrict its scope of application in this regard.<sup>37</sup>

The Swiss and German examples demonstrate that NGOs are not categorically excluded from the scope of new mandatory human rights due diligence legislation, which may cover organisations with commercial activities independently of their purpose or legal form. Consequently, rising legal requirements on responsible business or HRDD conduct might increase pressure on NGOs to implement systematic due diligence processes, just as it does with companies.

<sup>33</sup> The ordinance states in Art. 1 lit. a that the provisions apply to «natürliche und juristische Personen sowie Personengesellschaften, deren Sitz, Wohnsitz, Hauptverwaltung oder Hauptniederlassung sich in der Schweiz befindet und die ein Gewerbe betreiben.»

<sup>34</sup> Erläuternder Bericht zur Verordnung über Sorgfaltspflichten und Transparenz in den Bereichen Mineralien und Metalle aus Konfliktgebieten sowie Kinderarbeit (VSoTr), Ziff. 2.1, Art. 2 lit. a *Unternehmen*, p.9.

<sup>35</sup> Erläuternder Bericht zur Verordnung über Sorgfaltspflichten und Transparenz in den Bereichen Mineralien und Metalle aus Konfliktgebieten sowie Kinderarbeit (VSoTr), Ziff. 2.1, Art. 2 lit. a *Unternehmen*: «Die erwähnten Rechtssubjekte müssen zwingend ein Gewerbe betreiben. Bei einem Gewerbe handelt es sich in Anlehnung an Artikel 2 Buchstabe a der Handelsregisterverordnung (HRegV) um eine selbständige, auf dauernden Erwerb gerichtete wirtschaftliche Tätigkeit. Unter "wirtschaftlicher Tätigkeit" versteht man eine organisierte, dauernde Tätigkeit, die auf die Erzielung eines Entgelts für die Betätigung gerichtet ist (Erwerbstätigkeit), wobei eine Erwerbsabsicht genügt.» (p.10)

<sup>36</sup> Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten vom 16. Juli 2021. Retrieved from: [www.bgbl.de/xa-ver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl121s2959.pdf#\\_bgbl\\_\\_%2F%2F%5B%40attr\\_id%3D%27bgbl121s2959.pdf%27%5D\\_\\_1639745191871](http://www.bgbl.de/xa-ver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2959.pdf#_bgbl__%2F%2F%5B%40attr_id%3D%27bgbl121s2959.pdf%27%5D__1639745191871)

<sup>37</sup> Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes über die unternehmerischen Sorgfaltspflichten in Lieferketten (p.13) [www.bmas.de/SharedDocs/Downloads/DE/Gesetze/Regierungsentwuerfe/reg-sorgfaltspflichtengesetz.pdf?\\_\\_blob=publicationFile&v=1](http://www.bmas.de/SharedDocs/Downloads/DE/Gesetze/Regierungsentwuerfe/reg-sorgfaltspflichtengesetz.pdf?__blob=publicationFile&v=1)

#### 4. Drivers for implementing HRDD

Pressure on NGOs to implement HRDD processes arise not only from legislations but from a variety of factors. Engaging in a responsible way is a necessary condition for NGOs to fulfil their mission. Often, NGOs depend on their capacity to raise external funds to implement their activities. This increases the importance of avoiding negative impacts on human rights, as controversies can have serious consequences for NGOs' credibility, legitimacy, and reputation, and therefore their ability to raise funds. In addition to protecting their reputation, NGOs that implement HRDD are more likely to perform well in NGO rankings, get certifications or quality seals by external bodies. These are important signals for stakeholders that NGOs live up to their stated objectives. Furthermore, NGOs with a positive human rights record are more likely to win public tenders or get access to projects and attract and retain qualified employees.

*Table 2 Social organisations' drivers to implement human rights due diligence*

Drivers	Explanation
Ethics and organisational mission	The desire to contribute to a positive outcome for people and the environment is wired into NGOs' DNA. Causing a negative human rights impact through their engagement and/or partners contradicts the core of NGO's organisational ethics and mission. Implementing a HRDD helps NGOs to execute projects in a way that is consistent with their core values and to achieve their mission sustainably.
Credibility and reputation	Building a good reputation is key to protect NGOs' credibility and legitimacy. In the past, controversies around negative impacts of NGO activities have received a lot of media attention, with serious consequences for their reputation, legitimacy, and finances. Conducting HRDD can be a way for NGOs to protect their credibility, and prevent the reputational damage of adverse human rights impacts, and therefore avoid far-reaching consequences for the legitimacy and credibility of the organisation both in donor and implementing countries.
External funding	Research suggests that NGOs' reputation is a key piece of information for donors deciding to fund their activities. <sup>38</sup> Oxfam, for example, was cut off from UK government funding in 2018 after the scandal in Haiti <sup>39</sup> , with serious financial consequences for the organisation. Ensuring responsible business conduct through HRDD can thus help NGOs to attract new donors or maintain relationships with existing donors. With public donors in some countries (Germany, USA), this is increasingly becoming a formal condition for funding.
Public tenders and access to projects	Robust governance structures, operational risk management processes and a good human rights record can be important elements for NGOs looking to win public tenders for projects. Furthermore, NGOs need access to countries and beneficiaries to execute their mission. A negative human rights record can make it difficult for NGOs to get or maintain

<sup>38</sup> Gent, S., Crescenzi, M., Menninga, E., & Reid, L. (2015). The reputation trap of NGO accountability. *International Theory*, 7(3), 426-463. Retrieved from: [www.cambridge.org/core/journals/international-theory/article/abs/reputation-trap-of-ngo-accountability/8A89C2AA63EA3393946B6B0ED87B1B4A](http://www.cambridge.org/core/journals/international-theory/article/abs/reputation-trap-of-ngo-accountability/8A89C2AA63EA3393946B6B0ED87B1B4A)

<sup>39</sup> Nicola Slawson, "Oxfam government funding cut off after Haiti scandal", *The Guardian*, 16<sup>th</sup> February 2018. Retrieved from: [www.theguardian.com/world/2018/feb/16/oxfam-government-funding-cut-off-after-haiti-scandal](http://www.theguardian.com/world/2018/feb/16/oxfam-government-funding-cut-off-after-haiti-scandal)

access to their target group. For example, after the scandal in Haiti, Oxfam was banned from operating in the country.<sup>40</sup>

Certifications and quality seals	Certifications or quality seals are important ways for NGOs to build trust and signal professionalism to their donors. For example, the Swiss Zewo Certification provides a quality seal for NPOs. According to a 2020 survey, 62% of donors pay attention to the Zewo certificate when choosing to donate. <sup>41</sup> Implementing HRDD helps NGOs to comply with the requirements of certification or quality seals, and thereby contributes to their attractiveness for donors. Zewo standard 2, for example, requires organisations to act ethically and with integrity, which includes respecting the law and acting respectfully and mindful of human dignity. Zewo standard 7 requires organisations to have appropriate internal controls and a suitable risk management system. <sup>42</sup>
NGO rankings	Public rankings are helpful tools for organisations to get positive publicity and build credibility. The online platform NGO Advisor, for example, publishes a list of the 200 World's Best Social Goods Organisations every year. The organisations' governance is one of the three evaluation pillars. Governance criteria aim to evaluate "how an organisation applies its good-doing mission to its employees, directors, and stakeholders." <sup>43</sup>
Purpose-driven employees	Many people working in the NGO sector are intrinsically motivated by their employer's charitable purpose, more than by material incentives. Consequently, they have high expectations for the organisation's responsible behaviour. Thus, to recruit and retain the best talents, it is important for NGOs to cause no harm and respect human rights in all their activities.

<sup>40</sup> BBC News, "Oxfam GB banned from Haiti after sex scandal", 13<sup>th</sup> June 2018. Retrieved from: [www.bbc.com/news/uk-44474211#:~:text=Oxfam%20GB%20has%20been%20banned,the%20principle%20of%20human%20dignity%22](https://www.bbc.com/news/uk-44474211#:~:text=Oxfam%20GB%20has%20been%20banned,the%20principle%20of%20human%20dignity%22)

<sup>41</sup> ZEW, «So gut kennen Spenderinnen und Spender das Zewo-Gütesiegel», Retrieved from: <https://zewo.ch/de/news-so-bekannt-ist-das-zewo-guetesiegel/>

<sup>42</sup> ZEW, «The 21 Zewo Standards». Retrieved from: <https://zewo.ch/en/the-21-zewo-standards/>

<sup>43</sup> NGO Advisor, "Meet the World's 200 Best Social Good Organizations for 2021". Retrieved from: [www.ngoadvisor.net/top-200-ngos-world](https://www.ngoadvisor.net/top-200-ngos-world)

## C IMPLEMENTING HRDD: CURRENT PRACTICE AND MAIN GAPS

### 1. (How) Do NGOs implement HRDD?

For the following qualitative analysis of NGOs' current HRDD practice, we conducted interviews with representatives of six Swiss NGOs that work in various sectors such as development, environment, or advocacy. While our findings are not representative for the whole NGO sector, they serve as an illustration for the different approaches and practices NGOs currently have and allow to draw some preliminary conclusions about the main gaps and best practices in HRDD. In the following, the main insights from our interviews with NGO experts are summarized.

#### 1.1 Policy commitment

##### Requirements according to the UNGPs

The policy commitment (UNGP No. 16) lays out the basis of an organisation's human rights management. It can be a standalone human rights policy or be integrated into other policies and Codes of Conduct. The commitment needs to be adopted at the organisation's most senior management level, be publicly available and effectively communicated internally and externally to all relevant stakeholders. It should cover the whole value chain, upstream and downstream, as well as the organisation itself. The commitment should specify the organisation's human rights expectations of staff, business partners and other relevant stakeholders. It should refer to relevant international human rights standards and commit to paying specific attention to and consult particularly vulnerable groups of people. The commitment assigns clear responsibilities and commits to establishing a HRDD framework. It should be reflected in all relevant operational policies and procedures throughout the organisation.

**Summary of findings:** most of the consulted NGOs are generally aware of their responsibility to respect human rights, but not all consider that the UNGPs or OECD Guidelines apply to their organisation. NGOs with a dedicated human rights policy or standalone human rights commitment seem to be the exception. The NGOs that have such a commitment in place refer to the relevant international standards, such as the UNGPs and OECD Guidelines, and outline their expectations of stakeholders and business / project partners. Some organisations, in addition to a general commitment to respect human rights, have issue-specific policies to respect the rights of particularly vulnerable groups (e.g. gender policy, indigenous peoples policy etc.). Most NGOs, however, make no explicit commitment to respect human rights. They have various organisational policies in place that contain some human rights content, such as e.g. a Partnership Policy, Code of Conduct (CoC) / Ethics, Social Inclusion Policy, or Policy for the Prevention of Sexual Exploitation, Abuse and Harassment. The policies mostly take a "do no harm" or "safeguarding" approach without using human rights language. Most of these policies are internal documents that are not publicly available or communicated, but only shared with the targeted internal and external stakeholders.

##### Main gaps

- Perception that UNGPs / OECD Guidelines do not apply to own organisation / NGOs
- No explicit commitment to respect human rights, no use of human rights language
- Policies not publicly available or communicated to relevant stakeholders

##### Recommendations & best practices

- Adopt a human rights policy commitment in line with the UNGPs / OECD Guidelines
- Make commitment publicly available and communicate it actively to relevant internal and external stakeholders
- Clarify expectations of (financing and implementing) partners in the policy

- Scope: human rights policies do not necessarily cover financing or implementing partners
- Policy is not embedded in programs or project-based activities

## 1.2 Human rights risk and impact assessment

### Requirements according to the UNGPs

Organisations need to “identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships” (UNGP No. 18). The risk and impact assessments need to identify and prioritize those areas where the risk for an adverse human rights impact is greatest (salient issues). To identify salient issues, the lens of risk to people, not the organisation, must be used. The risk and impact assessments need to cover all internationally recognized human rights along the whole value chain, consider all possibly affected people and draw on relevant internal and external human rights expertise.

**Summary of findings:** among the consulted NGOs, the current practice of analysing human rights risks and impacts is very heterogeneous and includes the following approaches:

- Conducting a broad and systematic human rights risk mapping which covers own activities, standards, processes, and programs as well as the risks related to business and project partners. In a second step, the organisation plans to conduct more in-depth risk assessments in the field.
- Conducting a systematic and ongoing “do no harm” analysis of core activities to evaluate the risk to people that are involved in activities on the ground.
- Applying different risk analysis methodologies depending on the operating environment (e.g. use of external experts in high-risk contexts)
- Conducting general risk assessments at country or project level, in which a limited number of human rights aspects are included (e.g. the risk of staff misconduct or unlawful behaviour).
- Focusing due diligence and risk assessments on (potential) private sector partners, applying a screening methodology with exclusion criteria for certain high-risk sectors and activities. In case of a negative decision, the consulted NGOs do not provide detailed feedback about the reasons for declining a partnership, nor make recommendations for improvement or engage with the corporate actors.
- For partnership due diligence, strong reliance on publicly available information about past ESG issues and little or no review of the partners’ internal ESG governance, policies, and processes
- Some of the consulted organisations have assessed their *actual* human rights impacts in project countries or consulted rights-holders and vulnerable groups on their perceptions of the organisation’s impact. One organization stressed how challenging it is to discuss risks and potential negative impacts with the target group.

### Main gaps

- No systematic analysis of human rights risks and impacts of own activities and implementing partners
- Focus on (reputational, legal and other) risks to the organisation, not risks to people

### Recommendations & best practices

- Conduct comprehensive and systematic human rights risk assessments, including of own activities
- Rely on internal know-how and human rights expertise to strengthen risk analysis

- Risk analysis limited to external or corporate partners (e.g. private sector due diligence) or not linked to action
- Partnership due diligence often limited to reputational risks (past ESG issues based on publicly available information)
- Lack of evaluation of prioritisation of human rights risks according to severity
- Lack of resources, capacity, and know-how in implementing countries to conduct risks assessments
- To strengthen partnership due diligence, review whether the partner has internal processes and policies in place to manage human rights issues
- In case of rejecting private sector partners, use leverage to engage with corporate actors and make recommendations for improvement
- Conduct heightened HRDD in high-risk areas, including impact assessments and stakeholder consultations

### 1.3 Cease, prevent and mitigate risks and impacts

#### Key requirements according to the UNGPs

Once the adverse human rights risks and impacts have been identified, organisations need to allocate responsibility and the necessary resources for implementing the measures to the appropriate level and function of the organisation. Risks and potential adverse impacts need to be prevented and mitigated; actual impacts that have already happened need to be remediated (UNGP No. 19). The appropriate action to address an adverse impact depends on how closely the organisation's operations are related to the impact, as well as on how much leverage the organisation has in addressing it. If needed, actions should be prioritised according to the severity of the identified human rights impact (UNGP No. 24).

**Summary of findings:** one of the main challenges mentioned with regards to addressing human rights risks and impacts, is NGOs' dependence on their financing and implementing partners. When NGOs depend on their partners' priorities and attitudes to take measures, they cannot act unilaterally, but need to find common ground to solve problems. When working with Governmental partners, it can be challenging to have the Governmental actors commit to higher standards than the applicable national laws. This may also be the case in implementing countries, where some international standards might be perceived as "European". In some situations, NGOs can be reluctant to draw the line, because when expectations of partners are too high, it might become difficult to implement the projects at all. Furthermore, when projects are implemented with governmental partners in countries where human rights are not fully recognized, there can be political sensitivities around the term "human rights", and it may be necessary to adapt the language. Another challenge relates to complex governance structures within NGOs: when different bodies, committees or levels are involved in decision-making, the negotiations to define measures can become challenging – including the question of who bears the costs. Some organisations finance measures to address human rights risks and impacts centrally from their head office and hire staff in project countries to implement them. To ensure the necessary budget for implementing their social and environmental due diligence processes, one organisation sets aside a fixed percentage of each project's budget to due diligence and future mitigation measures, with the percentage depending on whether the specific project is considered low, medium or high risk.

#### Main gaps

- Difficulty to get project partners' approval and support for addressing human rights risks and impacts
- Complex internal governance structures can hinder decision-making

#### Recommendations & best practices

- Address salient issues preventively through action plans, define clear responsibilities, KPIs and allocate sufficient resources



- Lack of necessary funding to implement measures
- Missing link between systematic risk assessment, definition of salient issues and targeted measures
- Clarify expectations of project partners regarding possible mitigation measures before entering an agreement, if leverage in negotiations is higher then
- Provide internal support to solve dilemmas related to managing partners and implementing projects
- Allocate a fixed percentage of project budget for the implementation of HRDD measures

## 1.4 Embed human rights

### Key requirements according to the UNGPs

To ensure coherence between the organisation's responsibility to respect human rights and the different policies that direct its operations, existing policies and processes need to be reviewed and human rights considerations need to be fully integrated (UNGP No. 16). To embed human rights successfully into an organisation, a governance system and the buy-in of relevant functions is needed.

**Summary of findings:** although often not systematically, NGOs embed human rights into their operations in a variety of ways. For example:

- **Governance:** some organisations have appointed an expert staff member to drive HRDD processes, while others have no such roles and responsibilities in place.
- **Internal know-how / capacities:** some organisations are implementing targeted measures (such as webinars) to raise internal awareness for HRDD and increase capacity to ensure staff in donor and project countries can implement the applicable standards. Often, international HRDD guidance documents are still too complex for an effective implementation on the ground. Depending on the thematic focus of the NGO, human rights knowledge may already be available within the organisation and could be used to strengthen its HRDD processes. In some organisations, however, there is still a lack of awareness among staff of the relevance of human rights for the organisation's activities and goals.
- **Trainings and Codes of Conduct:** some organisations implement mandatory staff trainings about the Code of Conduct (CoC; e.g. repeated on a yearly basis), creating a space for important discussions and reflections about the issues covered in the CoC. Some also offer e-learning programs that cover topics such as sexual harassment. Some organisations have compliance staff in implementing offices that monitor breaches of the CoC.
- **Partnerships:** some organisations require that their CoCs are signed by external partners, which thereby commit to adhere to the same standards as the organisation's own staff. Some organisations conduct regular audits of project partners to review how projects are implemented.
- **Risk management:** often, there is currently no systematic incorporation of human rights risks in project/program or country risk assessments, even if some human rights related topics are covered (risk of staff misconduct, breaking the law as an organisation, risks related to partners).
- **Budgeting:** some organisations budget for HRDD, e.g. by allocating a fixed percentage of (project) budgets to HRDD measures.

## Main gaps

- No systematic incorporation of human rights in NGOs' management systems (risk management, budgeting, training etc.)
- Lack of internal awareness of the importance of human rights issues for the organisation and buy-in from senior management
- Lack of capacity or resources to embed HRDD in the organisation
- External partners not always included in HRDD efforts

## Recommendations & best practices

- Assign responsibility to an internal senior expert to drive and embed HRDD processes in-house
- Ensure necessary resources (budget, expertise, time) are available to embed HRDD within the organisation
- Incorporate a human rights lens in existing management processes (e.g. risk / project management)
- Conduct systematic internal awareness raising, training and capacity building for HRDD

## 1.5 Track and communicate progress

### Key requirements according to the UNGPs

Organisations need to track the effectiveness of measures taken to make sure the adverse human rights impacts are being effectively addressed by them. **Regular monitoring** based on the appropriate qualitative and quantitative indicators as well as feedback by internal and external stakeholders, including the people affected by the adverse impact, helps to track progress and ensure the effectiveness of the actions taken (UNGP 20). Organisations also need to **communicate externally** about the findings and actions taken to increase transparency and ensure accountability for their human rights management processes (UNGP 21). The communication should take place in a form and frequency that reflects the identified impacts and is appropriate for the different audiences. The information provided should be sufficient to evaluate whether the measures taken adequately address the identified impacts.

### Summary of findings:

- **Transparency and communication:** many organisations currently do not have a process in place to create transparency and publicly communicate about their HRDD processes in line with the UNGPs.
- **Tracking effectiveness and progress:** one organisation uses a management tool to regularly monitor the impacts of its interventions in various dimensions – including social - and identify unintended (and undesired) side-effects to make the necessary adjustments. While the tool was not created for human rights management, it includes human rights related indicators and could be used and adapted for HRDD. In most organisations, human rights indicators are currently not part of the KPIs used for project evaluation, and there are no systematic processes in place to measure the effectiveness of measures related to human rights risks and impacts.

## Main gaps

- No processes in place to monitor effectiveness of measures to address human rights risks and impacts
- Lack of transparency about HRDD, policies not publicly available and no communication on human rights risks and impacts

## Recommendations & best practices

- Define qualitative and quantitative indicators to monitor human rights-related measures
- Increase communication and transparency about HRDD processes and findings

## 1.6 Grievance and remedy

### Key requirements according to the UNGPs

Where an adverse impact has been identified, the organisation should provide for or cooperate in their remediation through legitimate processes (UNGP No. 22). This means that it should provide remedy to individuals or communities who have been harmed. Types of remedies include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions as well as the prevention of harm through e.g. guarantees of non-repetition. Operational-level grievance mechanisms (UNGP No. 29) are communication channels offered or facilitated by the organisation, which allow stakeholders to raise concerns or provide feedback about adverse human rights impacts caused by its activities. They can be an effective way for organisations to directly receive complaints from affected stakeholders and facilitate remediation and should be designed according to the effectiveness criteria outlined in UNGP No. 31.

**Summary of findings:** various NGOs have a web-based whistleblowing mechanism that is available in several languages and operated by an external service provider. The mechanism can be found on the website but is usually not promoted among partners and other possible external users (including to avoid unjustified complaints). One NGO receives complaints through the website and directs them internally to the head office to a specialized team that handles complaints. It also has an independent ombudsperson that reports to the international management board and is responsible for dealing with severe human rights concerns. At project or program level, local grievance mechanisms in implementing countries are often lacking, and external stakeholders and project beneficiaries are not proactively informed about the existence of the international whistleblower / complaints hotline. One organisation leaves it to the (implementing) offices to decide which channels and mechanisms are needed locally to handle complaints. Some opt for country-level solutions and handle complaints internally, some collaborate with independent human rights organisations that receive and forward grievances, and others build community focal points, which are based on traditional community structures and are a possible way for community members to express and channel grievances related to projects. Internal stakeholders such as employees are often more proactively informed about the various possibilities they have to raise complaints, such as an external counselling organisation, internal contact persons, or the employees' association. One organisation is currently reviewing their allegations mechanism at international level to ensure implementation of the UNGP effectiveness criteria.

Main gaps	Recommendations & best practices
<ul style="list-style-type: none"> <li>Current focus on online whistleblowing mechanisms with possibly high access barriers for local stakeholders in project countries</li> <li>Lack of availability of local mechanisms at project level</li> <li>No or little promotion and awareness raising about grievance mechanisms among potential users</li> </ul>	<ul style="list-style-type: none"> <li>Establish several types of grievance mechanisms, at different levels and with different entry points that ensure accessibility for different types of stakeholders</li> <li>Develop and evaluate grievance mechanisms for interested stakeholders based on the effectiveness criteria outlined in UNGP No. 31</li> <li>To receive and investigate complaints at program level, make use of a local mechanism operated by independent civil society organisations, and ensure sustainable funding to guarantee their functioning<sup>44</sup></li> </ul>

<sup>44</sup> See WWF Investigation report, p.13.

Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, "Embedding Human Rights In Nature Conservation: From Intent To Action", November 17th 2020. Retrieved from: [https://wwfint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_\\_\\_final\\_report\\_24\\_nov\\_2020.pdf](https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts___final_report_24_nov_2020.pdf)

- Limited transparency around the process, functioning and possible outcomes of the mechanisms
- Little or no internal monitoring or knowledge about the use and effectiveness of the current mechanisms
- Lack of funding for grievance mechanisms and remedial action
- Proactively inform external and internal stakeholders, especially project beneficiaries and vulnerable groups, about the existence and functioning of the mechanisms
- Ensure prioritised stakeholder and vulnerable groups (identified through the risk analysis) have access to the grievance mechanism

## 2. Key challenges and lessons learned

When implementing HRDD, NGOs have some challenges in common and lessons learned that have helped them to drive HRDD in their organisation.

### 2.1 What challenges and obstacles do NGOs face when conducting HRDD?

#### Attitudes and (mis-)perceptions of key stakeholders:

- Some financing partners and donors – including governmental – are unsupportive of HRDD, reluctant to discuss human rights issues and are unwilling to allocate resources, time, or budget to HRDD.
- Implementing partners – including governmental – or contexts that are unsupportive of human rights-based approaches, causing risks of reprisals for NGOs conducting HRDD or designating “human rights” staff
- Lack of human rights lens among NGO staff, lack of internal awareness and understanding of the risks of unintended negative side-effects of NGOs’ projects or programs. Staff sometimes has the misperception that an intervention with a positive social or environmental goal is inherently respectful of human rights.
- Senior management lacks buy-in and understanding and has unrealistic expectations of HRDD and the reality on the ground or underestimates the complexity of addressing human rights risks and impacts.
- Fear of negative consequences of analysing and communicating about human rights risks and impacts, as public opinion might be unforgiving about inherent human rights risks of certain activities. Reluctance to share or escalate information about negative human rights impacts due to the fear of “scaring off” donors or partners.

#### Organisational barriers:

- Unclear lines of responsibility and accountability within complex organisational networks and different actors involved in the financing, planning and execution of projects.
- Costs of HRDD and lack of resources to develop and implement HRDD processes within the organisation (staff, time, etc.) or execute HRDD at project level, especially when each donor expects the NGO to use their tools and standards for HRDD.
- Lack of examples and guidance to inform development and implementation of HRDD and to resolve conflicting goals in specific cases.
- Focus on policies instead of implementation, “checklist”-mentality which is not focused on effective impacts and results. Focus on risk management (risks to business), and not on human rights (risks to people).
- Concentration of capacity and expertise in the “north” (in donor / head offices) and lack of capacity, staff, expertise, and resources in program or implementing offices where HRDD measures should be implemented.

## **2.2 Lessons learned: what measures have NGOs identified as important for conducting HRDD?**

- As a basis for HRDD, conduct a broad and systematic human rights risk mapping of all activities and relationships of the organisation in line with UNGPs, as not all issues are necessarily on the radar, even if the organisation feels they already know their main risks and impacts.
- Involve senior management early on to raise awareness and get support for implementing HRDD.
- Prioritize internal awareness raising and sensitizing of staff and management about the human rights risks and impacts of the NGOs' activities and of the relevance and benefits of HRDD.
- Find the right terminology for human rights that works within the organisation and with the relevant external stakeholders. It may be necessary to translate human rights language to a language that is accepted by staff (development or environment professionals) or governmental actors.
- Develop own tools and processes that are designed to work within the specific organisation. HRDD cannot be outsourced, as the questions and reflections around human rights need to be integrated in the organisation.
- Keep HRDD processes simple to make sure they can really be implemented with the available know-how and resources (financial and time) on the ground. Develop and improve the processes in close collaboration with staff in project offices.
- Develop the HRDD standards and processes together with implementing offices or staff in the field, to ensure they reflect the realities on the ground and can be implemented given the local capacities.
- Rely on continuous learning and allow HRDD processes to develop and improve over time.
- Refer to internationally recognized standards like the OECD Guidelines or the UNGPs to communicate and sensitize key stakeholders (especially external partners) for the need of HRDD.
- Rely on top management to discuss sensitive issues with external partners (especially governmental), while paying attention to cultural sensitivities in implementing countries.

## D CONCLUSIONS AND RECOMMENDATIONS TO GET STARTED

NGOs, like every other type of organisation, can cause or contribute to negative human rights impacts. As NGOs typically operate in high-risk contexts, come in close contact with vulnerable or marginalized population groups and often depend on external partners to fund and implement activities, their exposure to human rights risks can be high. For this reason, it is important that NGOs conduct HRDD to address their human rights risks in a proactive and systematic manner. International standards on responsible business conduct, such as the OECD Guidelines or UNGPs, provide guidance on HRDD and can be applied to NGOs as well. Just like companies, some types of NGOs are already subject to mandatory HRDD legislation or participate in voluntary initiatives on accountability and organisational responsibility. Even more than legislative developments, drivers such as reputational concerns, pressure from donors, staff attitudes, organisational mission or rankings also motivate NGOs to conduct HRDD.

When it comes to implementing HRDD, the picture of current NGO practice is very heterogeneous. While some organisations already have a very high level of awareness and expertise and are developing or implementing extensive processes to address adverse impacts of their activities and relationships, others have a more limited understanding of the subject or the relevance of human rights for their activities. Overall, NGOs need to overcome many of the same challenges as companies when striving to implement effective HRDD: a lack of internal awareness, know how, resources, funding, and lack of support from management or other staff. As with companies, the desire to strengthen and protect reputational capital – a key success factor for NGOs – can be both a driver and an obstacle for HRDD. One important difference and key challenge for conducting HRDD in the NGO sector is the organisations' reliance on external funding and implementing partners to execute projects and programs, as NGOs often depend on partners' goodwill and support to implement HRDD.

### Recommendations to get HRDD started:<sup>45</sup>

- **Conduct a gap analysis** to evaluate to what extent the current processes and policies already fulfil the requirements of relevant standards, such as the OECD Guidelines or the UNGPs, and identify what needs to be improved.
- **Conduct a high-level risk analysis** to identify your organisation's salient human rights issues.
- **Build internal capacities** on all levels of the organisation, including through the appointment of staff with the relevant human rights expertise, including as members of Boards and Senior Management Teams.
- **Establish clear responsibilities** for the design, implementation and monitoring of human rights policies and processes, especially among the different actors involved in the funding, planning and execution of activities.
- **Ensure sustainable funding** of HRDD, including through mainstreaming the costs of effective human rights compliance into fundraising activities and project budgets.
- **Clarify expectations of financing and implementing partners** related to HRDD from the start and incorporate the necessary measures at all stages of the planning, execution, and monitoring of the project.

<sup>45</sup> Taking into account the recommendations in the WWF Investigation report, e.g. p.19: Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, "Embedding Human Rights In Nature Conservation: From Intent To Action", November 17th 2020. Retrieved from: [https://www.fint.awsassets.panda.org/downloads/independent\\_review\\_\\_\\_independent\\_panel\\_of\\_experts\\_final\\_report\\_24\\_nov\\_2020.pdf](https://www.fint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts_final_report_24_nov_2020.pdf)