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## **Annex: Recommendations to Implement 10 Key Elements to be Included in all Human Rights and Environmental Due Diligence Laws**

### **I. Mandate comprehensive human rights and environmental due diligence that includes the human right to a clean, healthy and sustainable environment and applies to all business activity appraisal, implementation and exit processes**

***Mandate due diligence duties of care for business enterprises to identify, assess, prevent, cease, mitigate and effectively remedy potential and actual adverse impacts to all internationally recognized human rights, including the right to a clean, healthy and sustainable environment; the environment, including the climate and biodiversity; and good governance. Such duties of care should be ongoing, and should cover business appraisal, implementation and exit processes.***

*To implement element 1, human rights and environmental due diligence (HREDD) laws should:*

1. Mandate due diligence aimed at identifying, assessing, preventing, ceasing, mitigating and effectively remedying actual and potential adverse impacts to: (a) all internationally recognized civil, political, economic, social, cultural, environmental, and labour human rights, including the right to a clean, healthy and sustainable environment; (b) the environment, including climate and biodiversity; and (c) good governance.
2. Mandate ongoing HREDD duties throughout business activity appraisal, implementation and exit processes.
3. Acknowledge that as a last resort, entities' responsibilities under HREDD law may require their *responsible* exit from business dealings where, after careful deliberation and efforts to exercise all forms of actual and reasonably attainable leverage, the entity has concluded that adverse impacts to human rights or the environment cannot be prevented, adequately mitigated or ceased.
  - a. Establish that as part of their HREDD duties in the context of "responsible exit", regulated entities must develop—in meaningful consultation with potentially and actually affected rightsholders—and implement a responsible exit plan and conduct HREDD on all

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prospective exit plans before commencing the exit process, in order to ensure that the adverse human rights and environmental outcomes prompting an actor's exit are not exacerbated as a result of their departure.

- b. Require exiting regulated entities to utilize all of their actual and reasonably attainable leverage to identify, assess and, to the extent possible, mitigate adverse HRE impacts until responsible exit plans are developed and fully implemented.
- c. Require regulated entities to include requirements for responsible exit within initial agreements underlying their investment or other business activity, including obligations to remedy human rights and environmental harms following any early exit.

## **II. Establish comprehensive duties of care, inclusive of environmental, climate and biodiversity assessments, plans and targets**

*Establish duties of care that reflect all stages and core components of the human rights and environmental due diligence process, thus requiring regulated entities to address actual and potential adverse impacts to human rights, the environment (including the climate and biodiversity) and good governance that regulated actors' activities may cause or contribute to, or that may be directly linked to their operations, products or services via their business relationships.*

*To implement element 2, HREDD laws should:*

### **Overarching recommendation**

1. Establish duties of care requiring regulated entities to:
  - a. Identify and assess actual and potential adverse impacts to human rights, the environment and good governance that regulated entities' activities may cause or contribute to, or that may be directly linked to their operations, products, or services via their business relationships;
  - b. Integrate assessment findings to develop HREDD strategies, commitments, policies, procedures, action plans, targets and risk management systems;
  - c. Implement HREDD commitments, policies and procedures by taking aligned actions to: (i) prevent, mitigate, cease and remedy actual and potential adverse impacts that regulated actors might cause or contribute to; and (ii) seek to prevent or mitigate adverse impacts

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that may be directly linked to their operations, products, or services via their business relationship;

- d. Monitor and periodically evaluate the effectiveness of these due diligence policies, procedures, processes and implemented responses; and
- e. Transparently and periodically communicate: HREDD statements, policies, procedures, action plans, targets, risk assessments and methodologies; assigned HREDD responsibilities across all levels of the regulated entity; the outcomes of implemented actions; and evaluations of HREDD outcomes and effectiveness.

***Key components of risk identification, assessment, and integration within human rights and environmental (HRE) risk management systems***

2. With appropriate exceptions for small- and medium-sized enterprises (SMEs) with comparatively limited HREDD capacity, require regulated entities to develop and business directors to approve the following materials (subsequently referred to as a regulated actor's "HREDD Portfolio") which are central to risk identification, assessment and integration, and which should prove foundational to implement actions intended to prevent, cease, and mitigate human rights and environmental harm:
  - a. *Risk Identification and Assessment Materials*: a comprehensive value chain map (and associated methodology) featuring the nature of all business activities that pose an HRE risk, the geographic location of potential impacts, any gender-differentiated or other rightsholder-differentiated impacts anticipated, and the existence of any known HRE abuses; the findings and methodology undergirding human rights and environmental (including climate and biodiversity) impact assessments and all other assessments of HRE risks, including methodologies for collecting and disaggregating data by gender and across rightsholder-groups.
  - b. *Materials integrating assessment findings throughout HREDD risk management systems*:
    - i. an overarching HREDD strategy, including a strategy to integrate gender responsiveness and to ensure all vulnerable rightsholders' equitable and meaningful participation throughout HREDD processes;
    - ii. an HRE policy statement committing the entity to respect human rights and the environment across all business operations and relationships;
    - iii. measurable, science-based, time-bound short-, medium- and long-term targets concerning environmental, climate and biodiversity harms (including greenhouse gas emissions and pollution-based harms) that are aligned with Paris Agreement and other international environmental agreements and targets;

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- iv. procedural frameworks for an operational-level grievance mechanism to address rightsholders complaints;
  - v. a whistle-blower mechanism allowing employees to confidentially and safely report information to management with respect to new human rights and environment risks;
  - vi. preventative action plans (including environmental, climate and biodiversity actions plans where associated risks of adverse impacts exist) and, if necessary, corrective action plans describing policies and procedures that the entity will implement across corporate levels to prevent, mitigate, cease and remedy each identified potential or actual impact uncovered by HREDD, including a gender-responsive approach to rightsholder identification, engagement and consultation and a plan for addressing climate-specific risks;
  - vii. HREDD procedures and processes to implement HREDD action plans, including specific measures to promote gender equitable and vulnerable rightsholder-inclusive due diligence processes, and to safeguard human rights and environment defenders, whistle-blowers, and complainants against threats and reprisals;
  - viii. an HREDD governance system with assigned due diligence responsibilities at all levels of a regulated entity; and
  - ix. an annual evaluation of HREDD implementation and outcomes, including the evaluation methodology.
3. Include measures to ensure that the above materials are rightsholder-centred and fully embedded within a rightsholder-centred risk management system (See related recommendations in Elements 5-7). To this end, HREDD laws should:
- a. Require dedicated sections of the aforementioned HREDD strategies, policies, commitments and procedures to expressly ensure that each stage of the HREDD process is gender-responsive, reflective of vulnerable rightsholders' intersectional identities, and designed to ensure the equitable and meaningful participation and consideration of particularly vulnerable rightsholders, including: women and girls, children, Indigenous Peoples, local communities, Afro-descendants, peasants, persons with disabilities, persecuted minority groups, persons, people living in poverty, internally displaced persons, migrants, refugees, lesbian, gay, bisexual, trans and gender-diverse (LGBT) persons, older persons, protected populations under occupation or in conflict-affected areas, and other vulnerable groups;
  - b. Require environmental, climate and biodiversity assessments, plans and targets to be linked to and integrated within a regulated entity's larger, rightsholder-centred risk management system;

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- c. Where applicable, encourage regulated actors to establish stand-alone policies covering matters beyond due diligence with respect to gender equality, children, Indigenous Peoples, other rightsholders, corporate social and environmental responsibility, and sustainability;
- d. Require all HREDD data on risks and impacts to be collected and published in a gender-disaggregated manner and require further data disaggregation across other rightsholder groups where applicable.

***Implemented actions in response to identified human rights and environment risks***

4. Require the implementation of all aforementioned strategies, policies, procedures, assessments and action plans in order to identify, assess, prevent, mitigate, cease and remedy each identified potential or actual impact uncovered by HREDD.
5. Require regulated enterprises to design, implement and transparently communicate a whistle-blower procedure whereby employees can anonymously and confidentially report HRE risks to managers responsible for HREDD actions without fear of reprisals and regardless of whether the reported risk directly impacts them. Such mechanisms should allow whistle-blowers to communicate concerns through multiple means other than written formats.
6. As part of the preventative measures mandated, require regulated actors to establish, co-establish, or ensure the establishment of operational-level grievance mechanisms across business activities' geographic scope that are capable of providing affected rightsholders with meaningful effective remedy and receiving anonymous and confidential complaints. (*See also* related recommendations under Element 5).

***Monitoring and evaluation***

7. Require regulated actors to track the implementation of HREDD measures and to evaluate their effectiveness at least annually. Such evaluations and associated reports should:
  - a. Collect and communicate data on HRE risks and impacts in a manner that is gender disaggregated and that disaggregates across applicable rightsholder groups;
  - b. Reflect potentially affected and affected rightsholders' feedback gleaned from inclusive and ongoing consultation processes;
  - c. Extract good practices and lessons learned; and
  - d. Describe how HREDD outcomes and learnings will influence revisions to the HREDD portfolio and implemented actions.

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### **Communication**

8. Require regulated actors to transparently publish in a stand-alone, accessible fashion on its website, and on any centralized platform supervised by a national authority (see recommendations under Element 8), the aforementioned elements of a HREDD Portfolio, and to include all referenced policies and reports in an annex.
9. Require regulated actors to make their HREDD Portfolios readily accessible to employees and to share them with business partners.
10. Require regulated actors to inform affected and potentially affected rightsholders: 1) about their HREDD process; 2) of the HREDD Portfolio's availability; and 3) that the HREDD Portfolio can be provided to them upon request. Require actors to provide this information and a copy of HREDD Portfolio materials upon rightsholder request, in a gender-responsive manner, and in a language and format that rightsholders understand.
11. Require that enterprises' HREDD Portfolio materials communicate how they plan to, are, and have addressed human rights and environmental impacts in a manner reflective of the UN Guiding Principles on Business and Human Rights (UNGPs) at Guiding Principle 21, which requires communication to be of a "form and frequency" accessible to its intended audiences, "sufficient to evaluate the adequacy of an enterprises response" to the particular impact involved, and designed to avoid posing "risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality."
12. Require subsidiaries reliant on parent company compliance with HREDD monitoring and reporting duties to transparently state this on their website, and to either publish, or provide links to, all parent company HREDD Portfolio materials. In such circumstances, HREDD laws should require parent company Portfolios to demonstrate that the parent company HRE risk assessment and response strategies reflect the feedback, context and business activities of the subsidiary.

### **III. Address all business actors**

***Adopt a legislative scope reflective of and proportionate to all business actors' ongoing responsibility to respect human rights, the environment and good governance throughout their value chains and include measures to support compliance across regulated actors, with a focus on high-risk sectors, special support for small and medium enterprises, and particular duties articulated for business directors.***

*To implement element 3, HREDD laws should:*

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1. Regulate all business enterprises irrespective of sector, geography, value chain position, business model, or size, requiring regulated actors to conduct HREDD on an ongoing basis to: 1) identify, assess, prevent, mitigate, cease and remedy actual and potential adverse impacts to human rights, the environment or good governance that regulated actors' activities may cause or contribute to; and 2) seek to prevent or mitigate adverse human rights, environmental or good governance impacts that are directly linked to its operations, products or services by their business relationships. Where capacity constraints prevent an entity from fully assessing all HRE risks, allow such entities to prioritize risks based on severity of potential HRE impacts.
2. Explicitly regulate the business activities of for-profit and not-for-profit entities of all sizes; states acting in their economic capacity (including state-owned or controlled enterprises) or otherwise engaged in the "state-business nexus" (including public procurement processes, the negotiation of bilateral and multilateral trade and investment agreements, the provision of export credit and official investment insurance); business directors; institutional investors, banks and other financial institutions; and any other legal or natural person providing goods or services on a regulated market.
3. Establish regulated actors' duty of care by implementing the UNGPs' proportionality principle, whereby regulated actors must carry out their HREDD responsibilities through means proportionate to the severity of HRE risks and context-specific factors such as the enterprises' size, sector, operational context, business model, and structure.
4. Include specific measures to support SMEs' capacity to comply with HREDD laws and to support regulated entities operating in specific high-risk sectors. Specifically, HREDD legislation should:
  - a. Explicitly acknowledge the relationships between supply chain power imbalances, unfair purchasing practices, the absence of living wages and living incomes, and poor human rights, environmental and governance outcomes.
  - b. Include measures that regulate purchasing practices at factory and producer levels to reduce unequal power relations in supply chains and buyer-imposed asymmetric terms that unfairly reduce the financial ability of SME suppliers, farmers and factories to simultaneously respect human rights, protect the environment, secure living wages and living incomes, and remain economically viable. For example, HREDD measures might establish minimum commodity prices.
  - c. Mandate large enterprises engaged in business relationships with SMEs to take reasonable means, including through financial support, training, capacity-building and

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knowledge sharing, to support those SMEs' compliance with HREDD laws, regardless of the length of the business relationship. In the context of such business relationships, HREDD laws should seek to prevent SMEs from bearing disproportionate HREDD compliance costs, while retaining incentives for both large and SME parties to do business.

- d. Include transitional provisions whereby HREDD laws first apply to larger entities, followed by SMEs in high-risk sectors, and then other SMEs after guidance on the regulation of SMEs is established by a specified time.
  - e. Take into account the specific business realities, challenges and strengths of SMEs. For example, definitions of key terms such as "leverage" (i.e., the capacity to address harms) should extend beyond traditional notions of commercial, contractual and legal control, which SMEs are less likely to have than larger enterprises.
  - f. As appropriate, defer, lessen or eliminate reporting and value chain mapping requirements for some or all SMEs.
5. Establish specific duties of care for business directors to: (a) establish and oversee all phases of the ongoing HREDD process; (b) approve HREDD strategies, policies, plans and targets within the HREDD Portfolio (inclusive of those related to the environment, climate and biodiversity); (c) ensure that their duties to act in the regulated entity's best interest are exercised in a manner that reflects long-term interests and is aligned with positive sustainability, human rights, environmental, and good governance outcomes; and (d) report to their entity's board of directors in regards to their execution of the aforementioned responsibilities.

#### IV. Require dynamic, responsive and continually improved due diligence practices

***Require regulated enterprises to dynamically respond to fluctuating human rights, environmental and good governance risks to the full extent of their proportionate means; incentivize enterprises to continually improve the effectiveness of their HREDD processes; and safeguard HREDD, environmental and human rights laws from legislative rollbacks and other developments that may derail progress with respect to businesses' respect for human rights.***

*To implement element 4, HREDD laws should:*

1. Require HREDD risk identification, assessment, integration and responsive actions to be executed on an ongoing basis, prior to the commencement of a new project, activity, business relationship or decision, upon exit, and whenever there is reasonable cause to believe that



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risks to human rights, the environment (including the climate and biodiversity), or good governance related to an enterprises' operations or business relationships may have grown, materially changed, or been previously overlooked.

2. Require HRE risk identification, assessment, integration and responsive actions to be focused on adverse and potentially adverse impacts to people and the environment—not risks to the regulated entity—and require responsive actions to address acute human rights and environmental harm, the systemic root causes of such impacts, and legacy issues that an entity inherits responsibility for through its business agreements and investment activities.
3. Refrain from defining the scope of required actions to identify, assess, prevent, cease, mitigate, and remedy environmental and human rights harms based on rigidly defined notions of leverage, influence, proximity, control or the duration of a business relationship. Instead, establish HREDD measures such that a regulated actor's proportionate duties extend until, given the severity of HRE risks and other specific circumstances at play, the regulated actor: a) has taken reasonable measures to proactively increase its leverage wherever possible; b) has exercised all existing and reasonably attainable leverage; and c) cannot reasonably be expected to take additional actions to identify, assess, prevent, cease, mitigate or remedy adverse HRE impacts.
4. Permit the exercise of leverage referenced above to be done individually or in collaboration with other business and non-business actors.
5. Acknowledge states' obligation to refrain from retrogressive measures and provide mechanisms for rightsholders to appeal retrogressive government actions related to HREDD law.
6. Require states to protect their HREDD, environmental and human rights laws from commercial and other vested interests in accordance with national law.
7. Require regulated actors to refrain from actions that undermine states' abilities to meet their human right obligations.
8. Require business actors' lobbying activities related to HREDD, environmental, and human rights laws to be conducted with full transparency, integrity, and fairness.
9. Render business directors' receipt of variable remuneration contingent on their companies' achievement of mandatory, pre-established and progressive sustainability, human rights and environmental (inclusive of climate and biodiversity) targets in line with all HREDD assessments, action plans and targets discussed in Element 2.

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10. Include incentives for companies to continually improve their HREDD processes in a manner that exceeds duties of care required by HREDD laws, but that does not render HREDD compliance entities immune from liability connected to human rights and environmental harm or otherwise harm human rights victims' ability to seek remedy.

## V. Be rightsholder-centred

***HREDD laws should be rightsholder-centred such that they: a) are gender-responsive and inclusive of the most vulnerable rightsholders; and b) clarify that rightsholder identification, consultation and engagement as fundamental to each stage of the HREDD process.***

*To implement Element 5, HREDD laws should:*

### ***Inclusion and gender responsiveness***

1. Define “rightsholders” to be a sub-set of stakeholders whose human rights are potentially or actually affected by the activities of a regulated entity.
2. Define “vulnerable rightsholders” to include the following persons and groups: women and girls, children, Indigenous Peoples, local communities, Afro-descendants, peasants, persons with disabilities, persecuted minority groups, disabled persons, people living in poverty, internally displaced persons, migrants, refugees, LGBT persons, older persons, protected populations under occupation or in conflict-affected areas, and other vulnerable groups.

### ***Rightsholder identification, consultation and access to information***

3. Specify the rightsholder identification process as a mandatory, distinct, early and vital sub-stage of regulated entities' mandatory HREDD processes, which should be comprehensive, conducted in good faith, based on robust consultation with potentially impacted groups, and informed by research and consultation with experts, as necessary. Relatedly, forbid business actors from relying on a single, non-rightsholder source of information—including a government entity—in identifying potentially and actually affected rightsholders.
4. Mandate that throughout each stage of regulated actors' HREDD process—and in regards to all business-related decisions that may impact rightsholders and negotiations between rightsholders and regulated actors—regulated actors engage in effective, meaningful, ongoing, good-faith, gender-responsive and culturally-appropriate consultation and engagement with all rightsholders whose human rights are potentially or actually impacted by business activities, and with all human rights and environment defenders.
5. In response to the outcomes of engagement with affected and potentially affected rightsholders, HREDD laws should require regulated entities to take reasonable efforts to

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ensure that their HREDD actions to identify, assess, prevent, cease, mitigate and remedy HRE harm respond to these rightsholders' specific needs, priorities, customary and formal rights, perspectives, cultures, and practices in a gender-responsive manner.

6. Specifically require regulated actors to respect Indigenous Peoples' rights of free, prior and informed consent (FPIC) and any FPIC rights belonging to other rural groups, including by ceasing or refraining from a proposed or actual activity where FPIC rightsholders' consent is not provided.
7. Require entities to conduct human rights and environmental impact assessments (including climate change contributions and impacts to biodiversity) that include affected and potentially affected rightsholders' perspectives in a culturally appropriate and gender-responsive manner as determined by rightsholders, and that contribute to the comprehensive identification of all affected or potentially affected rightsholders.
8. Require all rightsholder and stakeholder consultation, negotiations and decision-making processes referenced above to be inclusive of vulnerable rightsholders as defined in Recommendation 5(2), and require regulated entities to take reasonable efforts to: a) decrease unequal power dynamics between business actors and rightsholders; b) provide timely and sufficient information concerning HRE risks, responses, and processes to affected and potentially affected rightsholders, with all information and documents being provided in a language and format that makes this information accessible to all rightsholders, taking into account constraints related to literacy and access to education, gender differentiated responsibilities or capacities, transportation, and technology; c) eliminate potential barriers to rightsholder engagement, including those related to literacy, language, gender, transportation, and technology; and d) tailor the structure, setting, and timing of rightsholder consultations to the needs, livelihood and domestic care responsibilities, cultures, customary rights, and legally recognized rights of rightsholders.
9. Encourage, and where necessary to effectuate Element 5 recommendations, mandate regulated actors' consideration of guidance from human rights and environmental experts, as well as civil society with knowledge that is relevant to the regulated actor's HRE performance.
10. Where not prevented by capacity limitations, require mandatory rightsholder consultation and engagement to cover all HRE risks to the rightsholder posed by a regulated undertaking; in all cases, severe HRE risks should be addressed.

## **VI. Effective remedies for rightsholders**

***Empower rightsholders' access to justice and effective judicial and non-judicial remedies.***

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*To implement Element 6, HREDD laws should:*

1. Affirm in accordance with international law, all human rights victims' rights to fair, effective, prompt, non-discriminatory, culturally appropriate and gender-responsive access to justice and an effective remedy, including prompt access to information presented in a language and format that is understandable, and affordable access to competent legal assistance needed to pursue such justice and effective remedies.
2. Include a wide variety of effective, proportionate and dissuasive civil, administrative and criminal penalties for violations of HREDD law, including but not limited to: injunctive relief, restitution orders, administrative orders that suspend companies' operating licenses or that compel compliance with HREDD obligations subject to a daily accruing fine, orders compelling enterprises to meaningfully consult with rightsholders and to conduct proper HREDD, civil and criminal compensation payments, reparations, environmental rehabilitation orders, guarantees of non-repetition and other forms of culturally appropriate remedies.
3. Include provisions to ensure that all penalties for HREDD violations either directly or indirectly benefit affected and potentially affected rightsholders' access to judicial forums and an effective judicial remedy.
4. To ensure that all penalties are deterrent, require that administrative penalties are significant and based on a proportion of a regulated entities' gross revenue.
5. Permit individual, joint and several liability.
6. Refrain from allowing an entity's general compliance with HREDD processes or the general soundness of an HREDD Portfolio to render the regulated actor immune from liability. Relatedly, HREDD laws should prohibit newly established causes of action from precluding any existing causes of action, including any strict or absolute liability regime.
7. Require judicial forums to, wherever possible, consider the needs, culture and priorities of rightsholders in determining an effective remedy.
8. Require any remediation plans imposed by a judicial or administrative body to be subject to any applicable FPIC rights.
9. Require judicial forums issuing monetary damages to ensure these are distributed across affected members of rights-holding groups in an equitable, transparent and non-discriminatory manner that considers gendered and cultural dynamics and the differentiated needs of vulnerable persons.

***Eliminating obstacles to judicial mechanisms***

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10. Specify the original jurisdiction of one or more competent, non-commercial courts to hear administrative and civil claims brought under HREDD law.
11. Exclude legal actions brought under the HREDD law from the doctrine of *forum non conveniens* (a legal doctrine allowing a court with jurisdiction over a case the discretion to dismiss the case where it deems that another court may more conveniently hear the matter).
12. Include broad, clearly articulated choice of law and choice of forum provisions that allow victims to choose jurisdictions and legal frameworks based on:
  - a. The domicile of the defendant enterprise;
  - b. The jurisdiction in which the defendant enterprise operates in or has substantial business interests;
  - c. The domicile of the plaintiff rightsholder;
  - d. The jurisdiction in which the human rights or environmental damage occurred and/or produced effects;
  - e. The jurisdiction in which the act or omissions contributing or causing the human rights or environmental abuse occurred; or
  - f. Where adjudicative jurisdiction and applicable law cannot be obtained in the above jurisdictions, a forum state should have jurisdiction over a claim from a foreign complainant against legal or natural persons not domiciled in that forum State if no other effective forum guarantees a fair judicial process and the plaintiff rightsholder or assets of the defendant enterprise are within the forum State.
13. Recognize the standing of all individuals, entities, classes and other collectives with a public interest in a matter to bring individual or collective claims under the HREDD law.
14. Place the burden of proof on defendant enterprises to establish that they could not have reasonably done more to attain and use leverage in the prevention, cessation or mitigation of an adverse impact, or that their activities did not cause or contribute to the established harm, or that they are not sufficiently linked to an alleged harm via their business relationships.
15. Where a defendant enterprise is accused of an HREDD violation in relation to an HRE harm perpetrated by a third party, establish a rebuttable presumption that the defendant enterprise had sufficient leverage over the third party such that the defendant enterprise possesses a duty of care to prevent, mitigate and respond to the alleged harm.

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16. Include a reasonable statute of limitations designed with the situation of the most vulnerable human rights victims in mind. No statute of limitations should exist for crimes against humanity, war crimes, ecocide, genocide or crimes of aggression.
17. Require all courts hearing claims under HREDD laws to reduce or waive court fees and other costs that may pose an unreasonable or unfair burden on rightsholders' ability to pursue justice and effective remedy.
18. Require states to take efforts to simplify and expedite adjudicatory procedures associated with cases brought under HREDD laws.
19. Specify that defendants are responsible for paying the legal fees of plaintiff rightsholders who bring successful claims under HREDD laws and prohibit the reverse scenario—in which a defendant's legal fees would be paid by a rightsholder whose HREDD claim did not prevail unless the court rules that the claim was frivolous and vexatious.
20. Require states to take efforts to provide diverse sources of litigation funding for HREDD cases, including pro bono legal services and private funding arrangements such as litigation insurance.
21. Require that the findings and decisions of administrative or other supervisory bodies tasked with enforcing HREDD laws be considered admissible evidence in civil and criminal courts hearing claims under HREDD laws.

***Non-state-based operational-level grievance mechanisms***

22. Require that regulated enterprises take reasonable efforts to ensure that non-judicial remedies are effective and equitable from the perspective of rightsholders, and that these remedies include restitution, the provision of various development benefits and other measures in addition to financial compensation.
23. Require regulated enterprises to establish or (in collaboration with other entities where capacity constraints require) co-establish operational-level grievance mechanisms that embed rightsholders within the dispute resolution and remedy process, including in determining the content of an effective remedy.
24. Require operational-level grievance mechanisms (OLGMs) to provide remedies and dispute resolution services in a timely, unbiased, gender-responsive, and culturally appropriate manner, and to take reasonable efforts to ensure that these mechanisms reflect the effectiveness criteria for non-judicial grievance mechanisms established by UNGP 31. To satisfy these requirements, OLGMs should be:

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- a. Designed, revised, and operated in a manner reflective of **continuous rightsholder engagement**;
  - b. **Deemed legitimate and trustworthy** by rightsholders, with those operating the OLGGM being accountable for the fair conduct of the grievance process, and with independent third-party adjudication being provided where an agreed solution cannot be achieved through dialogue;
  - c. **Accessible**, providing adequate assistance for those who may face barriers to utilizing the mechanism, including linguistic, literacy, gendered, financial, transportation-related, and reprisal-based obstacles;
  - d. **Predictable**, operating under pre-established timeframes and procedures;
  - e. **Equitable**, such that all aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in the grievance process on fair, informed and respectful terms;
  - f. **Transparent**, such that enterprises regularly communicate the progress of grievances to complainants, as well as information concerning the mechanism's effectiveness;
  - g. **Human-rights compatible**, with outcomes and remedies being devised according with **internationally recognized human rights law**;
  - h. **A source of continuous learning** for improving the mechanism and preventing future grievances and associated harms.
25. Require that changes made by regulated enterprises to an operational-level grievance mechanism and their efforts to evaluate its effectiveness respond to the perspectives of affected or potentially affected rightsholders.
  26. Explicitly require the design and implementation of operational-level grievance mechanisms to avoid undermining reliance on, or access to, judicial or other non-judicial mechanisms and include measures to protect individuals against threats and reprisals connected to the complaint.
  27. Forbid operational-level grievance mechanisms established by regulated actors to be used as a substitute for consistent and robust engagement and consultation with affected and potentially affected rightsholders.

## VII. Protect rightsholders from threats, intimidation and reprisals

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***Provide affected and potentially affected rightsholders, environment and human rights defenders, whistle-blowers, witnesses and their families with protection from threats, intimidation and reprisals connected to human rights and environmental grievances.***

*To implement element 7, HREDD laws should:*

1. Establish that part of regulated actors' responsibility to identify, assess, prevent, cease, mitigate and remedy adverse human rights and environmental impacts is a responsibility to:
  - a. Impose a zero-tolerance policy applicable to staff, contractors and sub-contractors for any form of intimidation, threat, reprisal or unlawful interference with privacy connected to HRE grievances, and any other direct or indirect effort to obstruct any person's or group's defense of human rights or the environment. Such a policy should prohibit these actions towards victims (and alleged victims) of human rights abuses, environment and human rights defenders, whistle-blowers, those who testify in grievance mechanisms connected to HRE complaints, and their families. Violations of this policy should result in immediate dismissal, possible civil action by the regulated entity against the offender, and the reporting of any criminal activity to law enforcement authorities;
  - b. Utilize their existing and reasonably attainable leverage across their business relationships and spheres of influence to protect victims (and alleged victims) of human rights and environmental abuses, environment and human rights defenders, whistle-blowers, those who testify in grievance mechanisms connected to HRE complaints, and their families from threats, intimidation, and reprisals *perpetuated by those who are associated with a regulated actors' business activities but not directly or indirectly employed by the entity.* This should include contractually requiring *and actively supporting* (through financial means and capacity building) grantees, business venture partners, and downstream suppliers to impose and enforce similar prohibitions across their own workforce;
  - c. Provide extensive human rights training and policies for security forces—including eco-guards—hired or contracted by regulated entities. Where a regulated actors' downstream business partner is engaged in hiring or contracting security forces pursuant to a collaborative business venture or partnership, require regulated actors to either provide or finance extensive human rights training to these security forces, and to verify that provided training is of a high standard commensurate with HREDD law's objectives.
2. Acknowledge and reiterate states' duties to:
  - a. Provide a safe and enabling environment for all individuals and entities that defend human rights and the environment;



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- b. Provide protection from threats, intimidation, reprisals, and unlawful violations of privacy against rightsholders, human rights and environmental defenders, whistle-blowers, those who testify in grievance mechanisms connected to HRE complaints, and their families, both before, during and after proceedings related to human rights and environmental abuses;
- c. Promptly and thoroughly investigate any reprisals, threats or intimidation against rightsholders, human rights and environment defenders, witnesses, whistle-blowers, or their families, and promptly prosecute or punish all perpetrators;
- d. Establish severe penalties for violations of HREDD duties of care where the regulated actor is found to have engaged in threats, intimidation and reprisals, or where the regulated actor fails to take sufficient actions given its existing and reasonably attainable leverage to prevent threats, intimidation and reprisals.

***International and regional HREDD laws:***

3. Should establish a fund for victims and human rights and environment defenders, as described in element 6 of this policy brief.

***In relation to recommendation 3, above, domestic HREDD laws should:***

4. Commit States to participate in the aforementioned fund through the contribution of administrative fines and criminal penalties collected under the law.

## **VIII- Address monitoring and enforcement**

***Require states to enforce HREDD laws by monitoring and investigating compliance across regulated actors.***

To implement element 8, HREDD laws should:

1. Require states to establish or designate at least one national administrative or other supervisory authority (hereinafter, “supervisory authority”) to oversee, monitor, track, investigate (via random spot checks and solicited investigations) and enforce compliance with HREDD laws, compel the disclosure of information to facilitate these purposes, and impose administrative sanctions and other penalties on regulated entities who violate duties of care or other legal obligations. A separate division within the same entity or a different authority should be mandated to collect and circulate good practices with respect to HREDD, provide educational and advisory services to regulated actors, and contribute to the process by which future guidance (including SME and sector specific guidance) is developed.

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2. Ensure that supervisory authorities may investigate regulated entities and issue administrative penalties in circumstances where a regulated actor has violated an HREDD duty but where no harm or potential harm to a rightsholder or the environment has materialized.
3. Require supervisory authorities to maintain a registry of regulated entities' HREDD Portfolio materials, records of the authorities' investigative findings, records of complaints submitted to the authority, and records of all remedies issued via the authorities' powers.
4. Require that supervisory authorities' monitoring, and investigative approach be risk-based, with the majority of the authorities' monitoring and investigation resources devoted to high-risk sectors, commodity chains and companies and, as a secondary consideration, situations involving egregious compliance failures.
5. In exercising the above mandates, require supervisory authorities to be well-resourced (in terms of budget and personnel with the requisite human rights, environmental, and business knowledge, expertise and training), independent, transparent in their operations and free from political interference.
6. Require that supervisory authorities be guided by a clear, publicly available policy establishing high ethical standards, procedures for preventing conflicts of interest, a clear articulation of the circumstances in which the authority may use its discretion to pursue an investigation or to exercise its penalty powers, and a clear process by which complaints and requests for investigations may be filed.
7. Require that states create a means by which civil society, rightsholders, and business actors may appeal authorities' decisions, and ensure that administrative processes do not prevent or delay rightsholders from bringing parallel claims in civil or criminal courts.
8. Require authorities tasked with implementing HREDD laws to develop policies referenced above only after engaging in meaningful and effective consultation with rightsholders and require that authorities continuously seek out the perspectives of domestic and, where relevant, extraterritorial rightsholders in evaluating HREDD policies and the performance of regulated entities.
9. Require that the processes by which rightsholders and civil society provide information to supervisory authorities or request an HREDD investigation are accessible to vulnerable and extraterritorial rightsholders, gender-responsive and free from unnecessary obstacles.
10. Require that procedures for requesting a supervisory authority's investigation allow for confidential and anonymous investigation requests, and that policies governing supervisory authorities' operations include safeguards against threats, intimidation and reprisals against

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rightsholders, environment and human rights defenders, whistle-blowers, witnesses and their families.

11. Require supervisory authorities to communicate, coordinate and where appropriate, collaborate with judicial bodies, national human rights institutions and other domestic government bodies engaged in investigating and regulating business enterprises.
12. Where appropriate, encourage supervisory authorities to share information and/or otherwise collaborate with OECD National Contact Points and any other representatives of international non-judicial grievance mechanisms tasked with hearing business and human rights complaints.

## IX. Foster harmonization

***Within each jurisdiction, ensure harmonization between HREDD law, bilateral and multilateral agreements, and other legislation impacting the realization of human rights and environmental protection.***

To implement element 9, HREDD laws should:

1. Be developed through a process grounded in a comprehensive survey of a country's existing legislation and policies regulating business actors' human rights and environmental performance (including laws regulating due diligence obligations specific to particular human rights or forms of environmental protection, investment practices, business lobbying practices, taxation, competition, corporate governance and liability, public procurement processes, international development cooperation and finance, labour rights, anti-corruption due diligence and non-financial disclosure) and all existing international agreements that may have implications for enterprises' HREDD compliance.
2. Be structured to promote harmonization with existing laws, insofar as such efforts do not endanger or undermine the objectives of HREDD legislation.
3. Require that existing laws and policies (including national action plans on business and human rights) that contradict or undermine the HREDD law or its objectives be reformed, that states take efforts to reform bilateral and multilateral agreements that contradict or undermine the HREDD law or its objectives, and that all existing legislation and agreements be interpreted and enforced in a manner that facilitates their alignment with HREDD provisions and objectives.
4. Require states to ensure that their future international trade agreements, international investment agreements, and other agreements with HRE implications:

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- a. Are negotiated, developed and finalized based upon the findings of human rights and environmental impact assessments and other components of HREDD conducted in advance of the agreement's substantive negotiation and design, such that the findings of these assessments are reflected in the content of each agreement;
  - b. Explicitly reference the state's HREDD law, include substantive and proportionate HRE compliance provisions binding all parties, and are explicitly aligned and compatible with the state's HREDD law and generally reflective of principles for responsible contracts;
  - c. Explicitly establish that where the state's duty under its HREDD law and associated international human rights law and international environmental law conflicts with its obligations under the investment or trade agreement, the state's obligations under the HREDD law, international human rights law and international environmental law take precedent;
  - d. Include provisions requiring any disputes under the agreement to be resolved by persons with human rights law and environmental law expertise, and for dispute settlement body decisions to take into account human rights law, environmental law, and related considerations concerning the situation of rightsholders and ecosystems potentially impacted by their decisions.
5. Require states to devise future international investment agreements that make investors' ability to claim benefits under the agreement contingent upon their full compliance with HREDD laws.
  6. Require states to impose import and export bans on products related to severe human rights abuses.
  7. Encourage states to support sector-specific and multi-stakeholder platforms aimed at developing harmonized HREDD laws and due diligence processes.

## **X. Facilitate international cooperation**

***Mandate international cooperation in the enforcement of HREDD laws.***

***Given the primacy of regional and global HREDD laws with respect to international cooperation and enforcement, the following recommendations are primarily geared towards non-domestic HREDD legislation. However, Recommendations 10(4) - 10(7) are also applicable to domestic HREDD laws.***

To implement element 10, regional and global HREDD laws should:

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1. Establish a regional or global body to:
  - a. Facilitate cooperation across national authorities (responsible for enforcing HREDD laws), regulated actors and rightsholders;
  - b. Facilitate harmonization of State Parties' data collection, information sharing, monitoring, investigative and enforcement processes under HREDD laws;
  - c. Coordinate institutions' regional and global efforts to develop guidance on implementing HREDD laws;
  - d. Facilitate and/or conduct regional or global evaluations of HREDD laws' performance that are grounded in meaningful rightsholder consultation;
  - e. Facilitate State Parties' contributions to an International Fund for Victims and Human Rights Defenders, if such a fund is established, as suggested under Element 6 of the policy brief.
2. Require the relevant coordinating body referenced above to address any unique challenges related to transnational cases that arise under HREDD laws.
3. Establish an expert committee elected by the State Parties and inclusive of persons representing vulnerable rightsholders to advise State Parties and the coordinating body referenced above in improving the implementation of HREDD laws.

***In addition, all domestic, regional and global HREDD laws should:***

4. Require states to provide to the fullest extent possible mutual judicial, administrative and investigative assistance and cooperation related to the enactment, improvement, implementation and enforcement of regional and global HREDD laws. This should include collaborating on transnational investigations where appropriate, promptly responding to country requests for information related to a case or HREDD investigation, promptly providing investigative or judicial assistance where requested, sharing good practices and challenges across national supervisory authorities responsible for enforcing HREDD law, and providing financial, technical and capacity-building assistance from high-income countries to low- and middle-income countries (LMICs) and between LMICs in order to develop the capacity of judicial and administrative actors to handle HREDD cases where capacity may be limited.
5. Prohibit states from requiring any other state to provide payment in exchange for the provision of support as described in Recommendation 10(4).



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6. Require the forms of international cooperation described above to include a wide range of government actors, including national supervisory authorities tasked with overseeing HREDD laws, lawmakers, judges, law enforcement officers, environmental ministries, administrative bodies, and national human rights institutions.
7. Require states to make all necessary preparations and investments to enable their law enforcement, administrative, and judicial actors to engage in the collaborative efforts described above.

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