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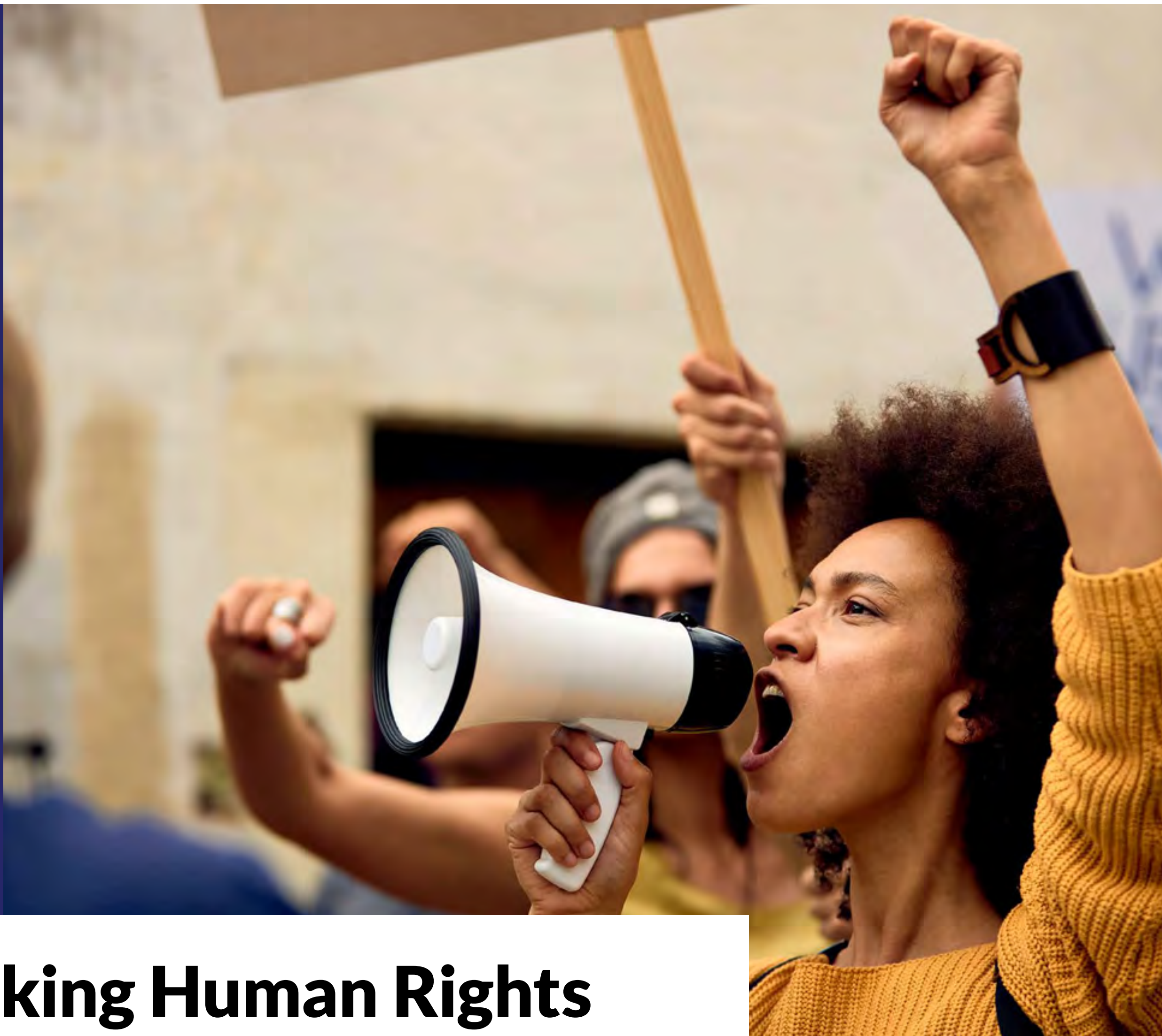


# Making Human Rights Due Diligence Mandatory

A decade ago, the United Nations published its "Guiding Principles on Business and Human Rights," calling for governments and businesses to proactively address actual and potential human rights impacts of their actions. In the ensuing years, this appeal has been amplified by a growing number of investors and consumers that expect businesses to meet environmental, social and governance (ESG) standards. 2020 appears to have accelerated the trend—with even greater emphasis on the "S"—as the world confronted societal issues aggravated by the triple threat of a global pandemic, systemic racism and income inequality. Now, 2021 looks to be the year that mandatory human rights due diligence (mHRDD) will gain real momentum too.

# What is human rights due diligence?

**The UN's "Guiding Principles" lay out four core components of human rights due diligence.**[1]

1. **Identify and assess** actual or potential negative human rights impacts caused or contributed to by an organisation's own activities or linked to its operations, products or services by third party relationships.
2. **Integrate findings** from the risk assessment into existing processes and align actions based on the areas and levels of risk identified.
3. **Establish clear KPIs** for measuring the effectiveness of the processes used to address negative human rights impacts.
4. **Communicate** on how impacts are being addressed and show stakeholders—especially those most affected—that appropriate protections are in place based on risks across the entire value chain.

What's more, a recent research paper argues that a holistic approach to HRDD is needed because climate and environmental vulnerabilities of communities, particularly when business operations have an impact on local natural resources, are inextricably linked to human rights.[2]

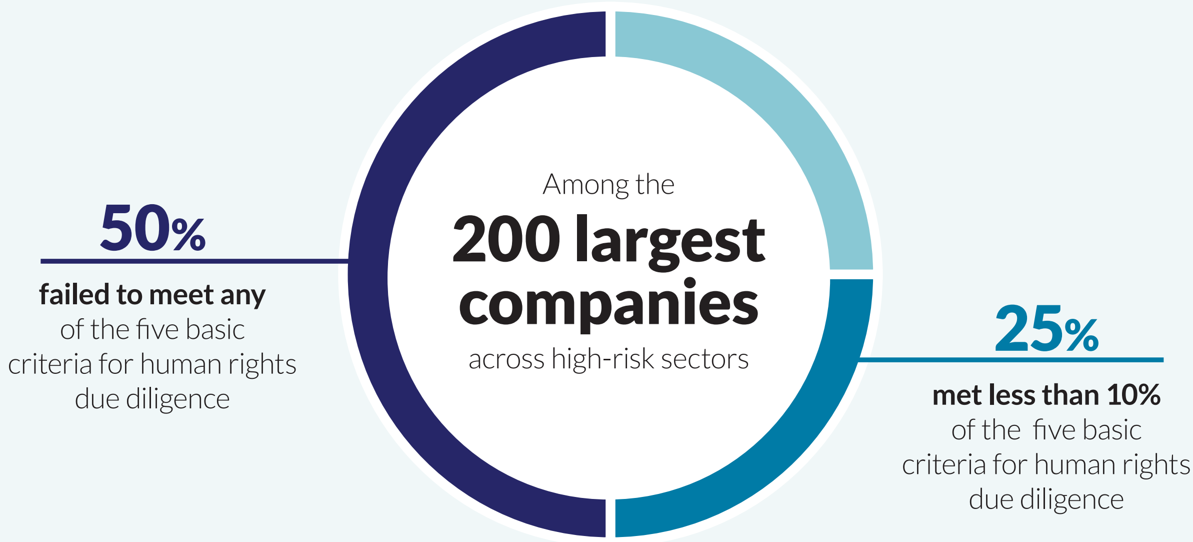
It's a theory that's being put to the test in under the French Duty of Vigilance Law, which established mandatory human rights and environmental due diligence requirements. One case, brought by 14 French cities and five NGOs (Notre Affaire à Tous, Sherpa, Eco Maires, France Nature Environnement and ZEA), contends that oil and gas company Total has failed to meet the law's standards. A pre-trial ruling in February 2021 that rejected Total's request that the trial be moved to a commercial court composed of company directors has been hailed as a "first victory in this historic lawsuit."[3]

The research paper contends, "Given the growing number of lawsuits, regulatory developments such as the upcoming EU-wide rules on human rights and environmental due diligence, as well as the increased attention of investors towards climate-related risks, corporations failing to take adequate action are exposed to legal, reputational and financial consequences."[4]

*"HRDD is a key tool in the global efforts to* ***build forward better*** *in the wake of the COVID-19 pandemic."*[5]

# Why make HRDD mandatory?

While laws like the California Transparency in Supply Chains Act (2010) and the UK Modern Slavery Act (2015) require public disclosures related to the actions companies take to eliminate human rights violations in their supply chains, they lack significant penalties that would incentivise compliance. A 2019 Corporate Human Rights Benchmark report found that among the 200 largest companies across high-risk sectors—agricultural products, apparel, extractives, tech manufacturing—50% of the companies failed "… to meet any of the five basic criteria for human rights due diligence" and another 25% scored less than 10% on the benchmark.[6]




## Think of the new push as HRDD 2.0.

The 2017 French law isn't the only one to make human rights due diligence mandatory. In February 2021, Germany announced it had reached an agreement on the pending Lieferkettengesetz—a supply chain law which will oblige companies to conduct mandatory human rights and environmental due diligence spanning their own corporate structures as well as sub-contractors, suppliers and other third parties involved in their operations. During a news conference announcing the agreement for the breakthrough law, SPD Labour Minister Hubertus Heil said, "This is the strongest law in Europe so far against worker exploitation. It's the end of companies weighing human rights against their economic interests."[7]

Concurrently, the EU is considering import bans on products that can be tied back to human rights violations.

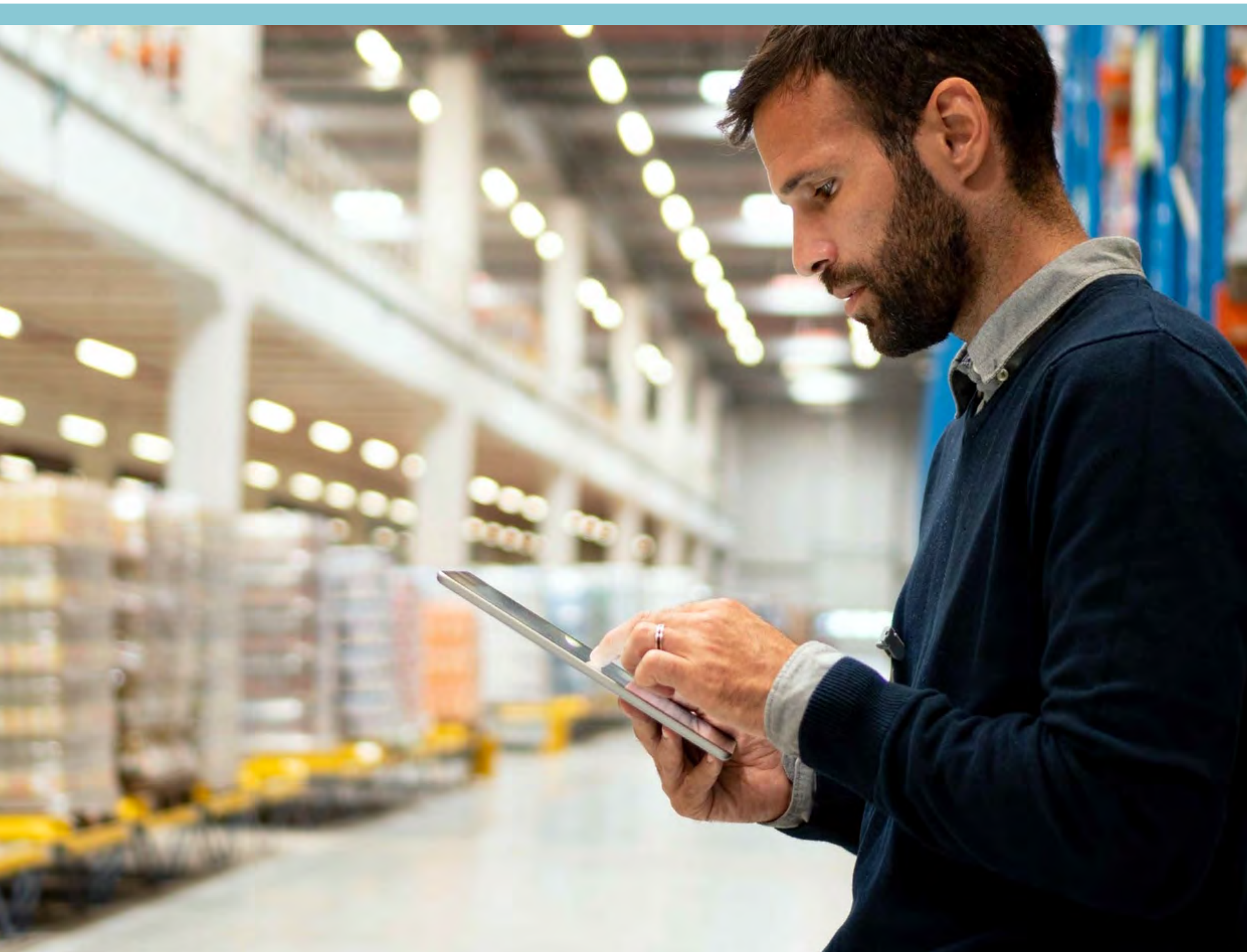
2021 is likely to see similar responses in other countries as well. The European Parliament has taken up the issue with proposed cross-sectoral legislation for mandatory due diligence. This would help unify expectations, reducing the complexity for companies operating in multiple jurisdictions. Likewise, a bill was introduced in the United States—the Slave-Free Business Certification Act. It would require covered businesses to conduct human rights due diligence. Both of these proposed laws would introduce civil and punitive damages for non-compliance.

# Positive performance should incentivise more corporate buy-in

If mHRDD laws are the stick, then investors and consumers are the carrots that will encourage more organisations to build HRDD into their risk management processes. BlackRock CEO Larry Fink pointed out the benefits of principled performance in his 2021 letter to CEOs. He wrote,

> ***"Over the course of 2020, we have seen how purposeful companies, with better environmental, social, and governance (ESG) profiles, have outperformed their peers."***

Fink goes on to note that "During 2020, 81% of a globally-representative selection of sustainable indexes outperformed their parent benchmarks."[8]



# How to integrate HRDD into your risk management workflow

The current patchwork of voluntary and mandatory human rights due diligence regulations means that many organisations are not required to meet more stringent standards yet. But taking a proactive stance and adapting existing due diligence and monitoring processes makes sense. The writing is, as they say, on the wall, and reducing risk exposure while addressing the ethical expectations of stakeholders can deliver clear reputational and financial advantages.

## What steps can organisations take?

The United Nations Working Group on Business and Human Rights offers these suggestions:[9]

- **Map operations**—internally and across the organisation's extended networks of subsidiaries, suppliers and other third parties—to understand potential areas of elevated risk due to geographic, sector, or activities.
- **Consult with external stakeholders** including potentially affected workers and communities, trade unions or NGOs, and consumers.
- **Review expert best practices**, particularly when human rights risks are higher.
- **Put people first**—Focus on risks the organisation's operations post to people, as well as those that pose a business risk.
- **Establish requirements and incentives** for Tier 1 business partners and suppliers to conduct impact and risk assessments and HRDD along their own third-party networks.
- **Conduct due diligence** that is aligned to the mapped areas of potential adverse human rights impact and maintain a comprehensive audit trail.
- **Implement ongoing risk monitoring** to stay alert to emerging issues that require additional due diligence.
- **Establish KPIs to track performance**, both of the immediate organisation's human rights commitments and those of suppliers and other third-party relationships.
- **Create a communications process** that keeps stakeholders aware of ESG expectations, best practices, current performance, and areas of concern to drive engagement across the entire enterprise.

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2 Macchi, C.,"The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence.'' Business and Human Rights Journal. December 21, 2020. Accessed at: http://bit.ly/3pmKXAb
3 "Climate change litigation against Total: a first victory for the NGOs and local authorities," *Sherpa. February 11, 2021. Accessed at: https://bit.ly/37gc5dQ
4 Macchi, C.,"The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of 'Climate Due Diligence.'' Business and Human Rights Journal. December 21, 2020. Accessed at: http://bit.ly/3pmKXAb
5 "Mandatory human rights due diligence (mHRDD)." United Nations Human Rights Office of the High Commissioner. Accessed on 2/10/2021 at http://bit.ly/3dtla7h
6 "Towards a mandatory EU system of due diligence for supply chains." European Parliament Briefing. Accessed on 2/10/21 at: https://bit.ly/3jTrwOc
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8 Fink, Larry. "Larry Fink's 2021 letter to CEOs," BlackRock.com. January 2021. Accessed at: http://bit.ly/3b2DZv2
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