

Tainted Food:
Moving Beyond ‘the Consumer is the King’ Narrative

Brussels
20 June 2017

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Outline

- 1) Tainted food: Protecting non-consumers**
- 2) Regulating tainted food: Looking beyond consumers**
- 3) Human rights due diligence (HRDD)**
- 4) What more is needed to free supply chains from chains of bondage and exploitation?**

1. Tainted Food: Protecting Non-consumers

- Food safety has been a key issue for a long time

Tainted food Continued ...

- The issue of food safety has become more complex because of:

Changes in lifestyles

Growth-enhancing technologies

Involvement of multiple players

Transnational dimension

Tainted food Continued ...

- However, the **primary focus** has been (and still is) on protecting the *rights of consumers* – extensive consumer safety laws
- See, for example, the nutrition labels

Tainted food Continued ...

- Let us also consider the famous case of *Donoghue v. Stevenson* (1932)

➤ The court laid down the following principle:

“The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer’s question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected...”

Tainted food Continued ...

- Should this neighbour principle extend beyond the consumers of goods?
- I will argue that it should, as the human rights on non-consumers are equally important
- **Food is tainted also if** its production, processing or distribution resulted in human rights abuses *but with no direct consequences to consumers*

Tainted food Continued ...

➤ Numerous examples of human rights abuses:

- Child/forced labour
- Low wages
- Unhealthy working conditions
- No collective bargaining
- Discrimination against women
- Land grabbing
- Environmental pollution
- Animal cruelty



Tainted food Continued ...

- Since despite these serious human rights abuses, products do not get recalled, so consumer is the king!

2. Regulating Tainted Food: Looking Beyond Consumers

- The “consumer is the king” narrative is also seen in another area – consumers as regulators of business behaviour

Regulating tainted food Continued ...

- In recent decades, there has been a rise of “safety&price+” consumers
- And states have started to rely on this power of consumers



Transparency laws
&
Fair trade labels

Regulating tainted food Continued ...


- Utilising consumers' leverage is fine
- However, states should not **abdicate to *market forces***
their duty to protect human rights

Regulating tainted food Continued ...

- Free markets should **not be over-relied** to protect human rights

3. Human Rights Due Diligence under the UNGPs

- The UN Guiding Principles on Business and Human Rights take the focus beyond consumers' safety – **the impact on all human rights should be considered**
- Both states and businesses have a role to play
- There should be access to **effective remedies**

- Business responsibility to respect means:
 - ✓ **Avoid infringing** on the human rights
 - 
 - ✓ **Address adverse human rights impacts**

HRDD under the UNGPs Continued ...

- Corporations may create human rights impacts in different ways
- They may **cause**, **contribute** to or be **directly linked** to such impacts

HRDD under the UNGPs Continued ...

- Corporate response to adverse HRs impact varies as per the nature of their involvement with such harm:

Caused

- Cease the action
- Provide for/cooperate in remediation

Contributed to

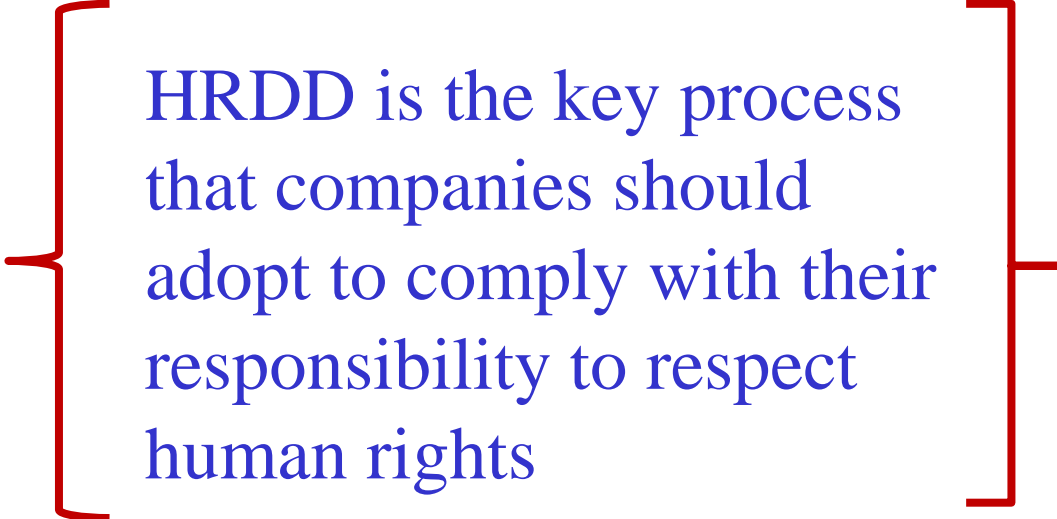
- Cease the action & use leverage
- Provide for/cooperate in remediation

Directly linked to

- Use/build leverage to mitigate the risk

- Pillar Two expects corporations to adopt the following *policies and processes* to discharge their responsibility to respect HRs:
 - 1) Declare a **policy commitment** to respect human rights
 - 2) Conduct **human rights due diligence**
 - 3) Put in place processes to enable **remediation** of any adverse human rights impacts

HRDD under the UNGPs Continued ...

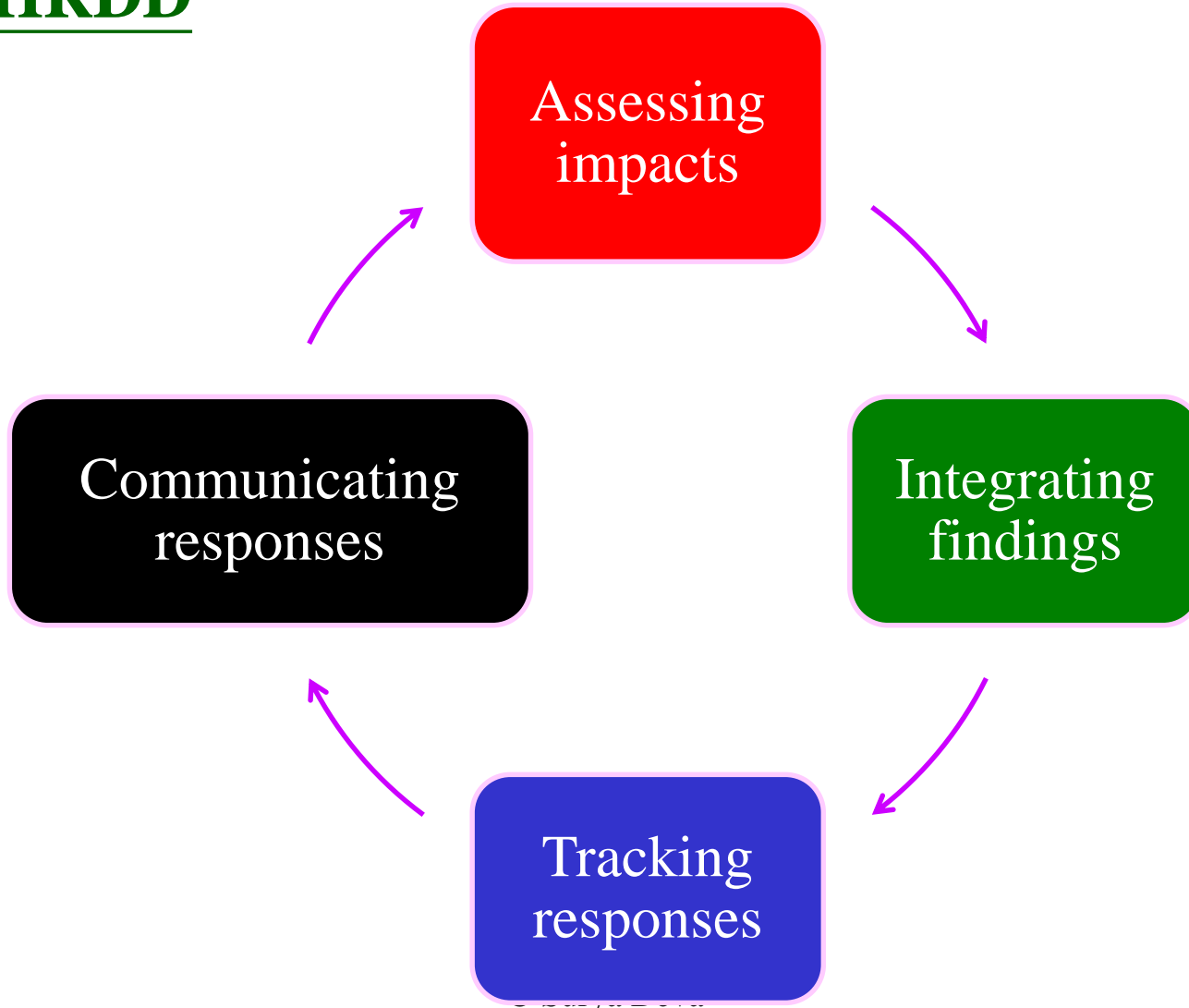
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HRDD is the key process
that companies should
adopt to comply with their
responsibility to respect
human rights

Nature of HRDD

- The target of HRDD should be **risks to rights holders**
- Impacts caused or contributed by **own activities** + directly linked to **business relationships**
- HRDD is an **ongoing** process
- Both **actual & potential** impacts should be considered
- The nature and extent of HRDD will vary as per the **size, sector and operating context** of corporations

Four HRDD
Steps



1. Identifying and assessing adverse impacts

- Draw on internal and/or independent human rights **experts**
- Meaningful **consultation** with affected groups

2. Integrating findings and taking appropriate actions

- **Responsibility** for addressing impacts is assigned
- **Internal processes, budget and oversight** enable effective responses
- **Actions will vary** as per the cause/contribute/linked typology as well as the leverage

3. Tracking effectiveness of responses

- Based on qualitative and quantitative **indicators**
- Draw on **feedback** from both internal and external sources

4. Communicating externally how impacts are addressed

- **Accessible** and in an appropriate form as well as frequency
- **Sufficient information** is provided

4. What More is Needed to Free Supply Chains from Chains of Bondages and Exploitation?

- ✓ The goal should be to free supply chains from *chains of bondage and exploitation*
- ✓ Much more needs to be done to ensure that supply chains do not enable **unjust enrichment**

Deepening of HRDD

- ✓ Enhancing **awareness** about HRDD
- ✓ No limit on tiers or territory
- ✓ Developing **specific** guidelines
- ✓ Risk to rights holders should be the focus
- ✓ Building **capacity** of SMEs as well as business watchdogs

Calculating and sharing HRDD cost

- ✓ Conducting effective HRDD is a **costly business**
- ✓ Businesses should *internalise* this cost and also *share* it with consumers

States' proactive role

- ✓ Laying down **clear expectations** for business
- ✓ Employing (dis)incentives
- ✓ Taking **collective actions** and enhancing **collaboration**

Providing effective remedy

- ✓ Affected rights holders should have access to **effective remedies**
- ✓ Role for states, business enterprises and CSOs