

Mandatory Human
Rights Due Diligence
Laws' Disclosure
Requirements:
Explanation, Analysis
and Recommendations



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This NomoGaia Report is longer than usual. For those who read the last page of detective novels first, you can go straight to the comparison of mHRDD laws (pages 11-14) or Recommendations (page 14).

A. Required Disclosure in mHRDD Laws: A Fundamental Challenge

Most laws are about behavior: they require you to do, or not do, some act. Pay your taxes. Don't exceed the speed limit. However, there is a category of laws which require something fundamentally different: the provision of information. These are mandatory disclosure laws. Sometimes that information is needed to protect a party to a transaction (Truth in Lending, product labeling). Others protect the public in general, for example those concerning health or the environment (E.P.A. Toxic Release Inventory, chemical safety data sheets). The goal of mandatory disclosure laws is to make one party provide information so other parties can act to reduce harm. In some cases (e.g. the environment) the government is given information so that it can act to protect the public. In those cases, the idea is that it is more efficient to require parties which already have, or can easily get, information to disclose it, rather than to expect a government agency to proactively investigate and uncover that information.

In general, mandatory Human Rights Due Diligence ("mHRDD") laws require companies to carry out the concepts contained in the UN Guiding Principles on Business and Human Rights (the "UNGPs"). These include "human rights due diligence" which is the process by which companies investigate, analyze, mitigate, prevent, cease and remedy human rights violations.¹ mHRDD laws have two parts: one requiring action, the other requiring disclosure.

mHRDD laws mandate that companies create an internal process to perform the various components of human rights due diligence. Mandating process is easy, making sure that process works is hard. This is particularly true when, as with mHRDD laws, there are a multitude of companies involved in fantastically complex worldwide supply chains. A regulatory agency tasked with verifying performance of companies' due diligence processes could receive information on human rights violations in the company's supply chain from the aggrieved rightsholders themselves, or from their spokespersons, such as (at times) NGOs, or proactively through its own investigations. For a variety of reasons, none of these methods are realistic as the basis of enforcement. So, if governments can neither monitor companies' performance

¹ Another important concept in the Guiding Principles is Access to Remedy. We only address human rights due diligence and disclosure in this Report, dealing with Access to Remedy and disclosure elsewhere, see James Harrison, Mark Wielga and Margarita Parejo, (2024) In Search of Effective Corporate Grievance Mechanisms: Can Mandatory Due Diligence Laws be a Progressive Force?, Journal of Human Rights Practice, Oxford University Press, <https://doi.org/10.1093/jhuman/huae011>



nor rely on information from third parties, they have to depend on disclosures by the companies themselves. That is why mandatory disclosure is a fundamental element of mHRDD laws. The wording, interpretation and enforcement of reporting requirements is absolutely essential to the effectiveness of those laws.

mHRDD laws are unusual in that they require companies to create a process, and so an internal institution to carry out that process. This institution has staff, values and procedures with the goal of finding human rights impacts and acting on those findings. mHRDD laws are ambitious. They not only mandate that companies act differently, they mandate that companies change themselves.

Our research has shown that mandatory disclosure provisions in mHRDD law make a difference, but that their effectiveness depends on exactly what is required to be disclosed and how that information is communicated. Both substance and form matter. This is a key element to be considered when drafting, interpreting, or enforcing mHRDD laws.

B. The Purposes of Reporting Requirements

The primary purpose of mandatory disclosure is the dissemination of facts to parties that do not know them and can use them. In a typical scenario, facts are reported to a government agency and the public, for example in an environmental air quality report. The government agency can analyze the data and determine whether there have been legal violations, or that a disturbing data trend indicates that there is a significant risk of violations in the future, or that the data reveals reasons to question the validity of the measurements reported. In addition, the public can use the results to publicly “name and shame,” the company, the regulator, or both. Sometimes, NGOs or affected communities, can bring a lawsuit or an administrative claim that the company should be penalized, the permitted parameters should be changed, or the plant shut down. In such cases, mandatory disclosures are used to enforce the environmental laws, to lead to a deeper investigation of the facts, to challenge the data itself, to question the competency (or good faith) of the reporting company, or to confront an inactive agency.

However, mandatory disclosures can have other purposes, such as establishing a basis for further inquiry. A disclosure may open the door on a topic, but not answer all the questions. Mandatory disclosures are necessarily limited and focused: they cannot require reporting everything about everything. Follow up inquiry allows the initial disclosure to be expanded, or may be used to question, and ultimately challenge, the facts disclosed. Initial disclosure can lead to further disclosure, which can itself spawn additional disclosures. Disclosure can begin inquiry, and inquiry can take on a life of its own.

Also, to mandate the reporting of information that can only be obtained through a particular process is to mandate that process. If reporting of environmental data can only be done validly with a specific sampling protocol and a specific testing procedure, then the reporting requirement effectively mandates that protocol and that procedure. In those cases, a law requiring information actually requires behavior as well.



Yet another purpose of mandatory reporting is to make comparisons between and among the disclosing parties to see if and how they match up, as well as to compare reporting on the same topic over time. This is the creation of data which can help evaluate systems, regulatory effectiveness and behavior. This in turn can lead to systematic critique, and, perhaps, systematic improvement, including improvements to the law itself.

For required disclosures in mHRDD laws, we consider all of these purposes.

NOTE ON “RISK”

Please note that in business and human rights the word “risk” is used to mean two very different things. One is the chance that a harmful event may occur (which we will call “contingency risk”), and the other is the chance of finding out that a harmful event has occurred (“uncertainty risk”). The first is about events in the world that may or may not happen and the second is about knowledge-- finding out if some event or condition is happening or has happened. This is important for understanding human rights reporting. For example, a mine in a conflict zone with a private security force with poor human rights training and with a history of the use of excessive force poses a “risk” that it will use excessive force in the future. This is a contingency risk. There are identifiable human rights violations that may or may not happen. However, a company reporting that there is a “risk” of child labor in its cocoa supply chain is saying something quite different—that there is child labor in the cocoa supply chain (a known and established fact) but they do not know if it is part of their particular supply chain. They do not know if their cocoa was produced by child labor. It could have been, but they are not sure. This is a statement of ignorance, an “uncertainty risk.”

When reading corporate human rights disclosures, it helps to mentally categorize statements about risk. Are they describing events that might happen (“contingency risks”) or are they really statements of ignorance (“uncertainty risk”). The word “risk” is slippery and can hide more than it reveals.

C. mHRDD Disclosure Topics

The mHRDD disclosure covers six topics:

1. **Process.** *Disclosure of the processes and systems companies use to perform human rights due diligence.* This includes the internal and external resources the company employs, which departments are involved, and what they do. Genuine Human Right Due Diligence is complex and nuanced, with many reiterative stages of investigation and analysis. Just describing the process accurately and fairly can be quite difficult.
2. **Risks.** *Disclosure of human rights which are at risk of being violated (potential adverse impacts).* Disclosure of human rights risk is often a “mapping” of these risks within a matrix with the likelihood of violations on one axis and severity of impact on the other. Risk NOTE ON “RISK” Please note that in business and human rights the word “risk” is used to mean two very different things. One is the chance that a harmful event may occur (which we will call “contingency risk”), and the other is the chance of finding out that a harmful event has occurred



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3. **Risk Actions.** *Disclosure of the actions the company takes to mitigate risks.* Risk reduction, mitigation and prevention include any act which may reduce risk. Companies can respond to risk identification with some efforts to mitigate them, usually reducing the likelihood of impacts occurring, by reducing the severity of the impacts that could occur, or both. To “mitigate risk” means to reduce the probability of a risk or the severity of its result, but it is often used to mean an attempt to do so whether or not it works. So, disclosures here often include efforts to mitigate, whether or not they are effective.
4. **Impacts.** *Disclosure of human rights violations (actual adverse impacts).* Identifying human rights violations is the main goal of the investigative stages of human rights due diligence. The rightholders affected, rights violated, location, and cause of the violation need to be stated to properly identify those impacts.
5. **Impact Actions.** *Disclosure of the actions the company takes to cease, prevent, mitigate and remediate those adverse impacts.* Companies need to act to stop ongoing human rights violations. They must then remediate those violations. If there is a risk of future violations, the company must act to prevent them from occurring. In situations where the company’s power to cease or prevent is limited, it must mitigate the impacts to extent it is able.
6. **Monitoring.** *Disclosure of the process and results of monitoring performed to determine if the situation has changed and the actions are working.* This is a meta process of updating and reviewing, the output being potentially changes analyses of risks and impacts, as well as a judgement on what, why and how actions taken have been effective (or ineffective).

Those are the things to be disclosed. Here is how those disclosures are used and what they signify.



The Process disclosures are basically a reassurance to the regulator, and the interested public, that the company has indeed changed and that the company's human rights programs is present and accounted for. Going forward, it also contains the element, always so powerful for inherently competitive companies, of allowing themselves to be compared to their rival companies. No Coke wants to fall behind Pepsi. No brand wants to be embarrassed in front of its customers. No company wants to explain to its investors why it is below average compared it its peers.

The Risk disclosure can be used as a signal that the human rights due diligence process is working. Risk identification is an early stage in the human rights due diligence process, so demonstration of risk assessment is some evidence that a company has (at least) started down the path of human rights due diligence. Reporting on contingency risks can be a sign that real analysis is happening or could be just an unhelpful list of possibilities. Reporting on uncertainty risks can show a good start that require further inquiry to find out if there are indeed human rights violations or can be an unhelpful statement of conditions the company feels is beyond its control. How a company follows up on a risk can show how serious and effective its human rights program is. Risk assessment is always an intermediate, never a final, step in human rights due diligence.

Risk Action disclosures are fundamentally problematic. The desire to reduce risks of human rights violations is laudable. It is often sensible to take legitimate mitigation actions such as requiring valid government IDs when hiring to help ensure employees are not underage. That reduces the risk to those times when the government IDs are falsified, and the company can take further actions to reduce that risk. However, Risk Actions which may reduce the chance that something may happen is doubly uncertain and often impossible to validate. Many programs can be tagged as "risk mitigation" and remain so until they are proven ineffective, which they almost never are. Training can be so poorly done as to be a waste of time having no positive measurable outcomes. Policies can be created, but not promulgated or enforced. Of course, trainings and policies are routinely labeled as "risk mitigation" no matter their ultimate results.

Impact disclosures are the most critical element of human rights reporting. Reducing human rights violations is the fundamental basis of the entire field of business and human rights and of all mHRDD laws. The first and foremost question is always "what rights are being violated?". The ultimate goal of the investigative phases of human rights due diligence is to uncover human rights violations. Reporting on those violations is the acid test for an effective human rights due diligence program.

Impact Actions disclosure follows naturally from reports on Impacts. Once those are known, the natural questions are "What did the company do?" and "Did that work?" Reporting on impacts is painfully incomplete without reporting on the action taken in response to those impacts. Impact Actions are also a demonstration that the company is acting as it should. mHRDD laws require responses by the companies to impacts. Reporting on Impact Actions allows all parties to compare what the company is saying it is doing with what it should be doing and with what it is actually doing.

Monitoring disclosures round out the story. It presents the continuing life of the issues raised, company's actions and the results of those actions. These stories rarely end completely, and so some



sort of periodic monitoring is usually necessary. Whether the actions are successful or unsuccessful (or a mix of the two) is only demonstrated through ongoing monitoring.

Without disclosures, mHRDD laws would either require unrealistically huge enforcement efforts by regulators or be mere suggestions for how corporations should behave. Required disclosures put them in a middle position where there is the possibility of enforcement and so encouragement of better systems resulting in improved behavior.

D. How Stakeholders Respond to Mandatory Disclosures

But does that really work? It depends on much more than just the company. There are other players and other forces at play. Human rights due diligence reporting is used by (just to name a few):

- 1) The government regulatory agency enforcing the law;
- 2) Potentially or actually impacted rightsholders, including workers and communities at the company's operations or those related to its direct and indirect suppliers;
- 3) Local, regional and international NGOs working for those rights holders and communities, including trade unions;
- 4) The company doing the reporting, including the different departments within that company, but also company's management, employees and contractors;
- 5) Company suppliers and buyers, both upstream and downstream the value chain;
- 6) Other companies interested in that reporting (especially competitors or companies in the same sector);
- 7) Corporate groups, Multi-Stakeholder Initiatives and Certifying Schemes which set and promote standards of behavior;
- 8) Business and human rights professionals (whether in consulting, law or accounting firms) working for, and advising, companies;
- 9) Investors, including socially responsible investors and development banks;
- 10) Consumers, and NGOs trying to influence consumers; and
- 11) Researchers, academic and otherwise.²

This web of interests converges on the human rights impacts of corporate action and are each influenced by the company's disclosures. NGOs and rightsholders, for example, may compare what the company reports with their own knowledge of what is happening on the ground. mHRDD reporting can

² Including the authors of this Report. We admit our bias: we are in favor of meaningful research.



give them comfort that human rights violations are known by the company and being remedied, or that they are unknown and should be dealt with, or even that they are being covered up and avoided. Due Diligence reporting can also partially reveal a worrisome and developing situation, which allows the interested parties, whether a regulator, an NGO or an investor, the ability to follow up by either questioning the company further or by doing its own fieldwork.

Company disclosures create investigative feedback loops which can be important and have a life of their own. The required mHRDD disclosures are almost never the end of a story but are frequently the beginning of one. It is important to note that the disclosures we are considering provoke these kinds of efforts from many different institutions and places around the world. Those efforts often get attention and spark further work which reveal further facts which may require additional efforts on the ground. mHRDD disclosures release this cascade.

E. How The Company Responds to Mandatory Disclosures

1. Reporting Requirements Shape Actions

One could reasonably assume that companies consider a law's behavioral requirements, do the mandated actions, and then report on them as mandated by the law's reporting requirements. That sensible assumption can be completely wrong. In practice, it can go the other way around: a company's behavior is determined by the reporting that is required. Because the company has such broad discretion in what mHRDD actions to take, and these actions are not subject to outside scrutiny or validation, it starts at the end: "What do we have to report? Ok, then I guess we have to do that." The specificity of a law's reporting requirements can override the generality of its action requirement. If the reporting and action requirements are both general, some companies will perform just enough so that they can be reported to be sufficient.

In practice, some companies are ahead of the laws in their human rights programs. They will report fully on what they are doing. For them, the mHRDD reporting requirements are irrelevant—they have values and culture that are fully committed to respecting human rights. For the great majority of companies, however, the law is trying to advance their human rights efforts. Many will start at the required disclosure and work backwards. These companies will determine the minimum expectation for what must be reported, and let that dictate the actions they take. If the reporting requirements are general, some companies will perform just enough so that what they report may be deemed "sufficient." Frequently, the specificity of the reporting requirements determines what companies will do.

2. Overlapping Reporting: One stone, so many birds

A number of laws, policies and rules require reporting on ESG or "social issues." New reporting requirements created by a new law will appear to overlap with the pre-existing requirements. Indeed, many human rights issues are social issues, or at least the subject matters overlap. Who can untangle climate issues from environmental issues or environmental issues from human rights? A wealth of



reporting requirements on related matters all have to be coordinated. Why not kill two (or three or many) birds with one stone? The text of a modern slavery report can be inserted into a human rights report, so can a carbon footprint analysis and an update on inclusivity training. Human rights are the ultimate pile of diverse topics and issues, and so is human rights reporting. This means that it is the bucket where writings originally intended for other purposes and audiences get dumped.

When the human rights reporting requirements are ambiguous, it will be reasonable and efficient to interpret the reporting requirements to include other, pre-existing reports in related areas. If there is a requirement to describe human rights due diligence, it is an invitation to include all that other arguably related work the company, department or author already does. The attitude often is “the more that is included, the more it looks like the company does. The longer the report, the better.” If there is real ambiguity in the law, the quickest, fastest and easiest response from the company is “we already do that” and resubmit a set of reports already prepared for other purposes.

3. The Inter-Departmental Struggle

What does external communication mean to a business? For consumer-facing companies, their brand is their most important asset. The power of the brand enables the company to flourish and survive and is its most protected and cultivated attribute. Brand consists of customer perception, and perception is created by customer experience and company communication. The multinational brand is a master of communication. It has teams of deeply knowledgeable and experienced professionals devoted to this art and science. They are the guardians of brand. While they have multiple functions, from marketing to crisis communications, they are deeply involved in any disclosure, particularly any involving topics like human rights and the environment. They will craft the answers to any required disclosure to promote the corporate brand, accentuating the positive and minimizing, sometimes carefully concealing, the negative.

Along with communications, the company has another department which also scrutinizes every public communication: Legal. The Legal Department, which includes the outside counsel working for the company, reviews and revises, often with excruciatingly detailed care, public communications. Their primary goal is to reduce the risk of legal liability. For the lawyers, it is usually far better for the company to say nothing than to say something. Just as the Communications Department spruces up external statements, making them more colorful, emotional and fun. The Legal Department waters them down, making them shorter, vaguer, and duller. This inter-departmental tug of war is perpetual.

For legally mandated disclosures, the Legal Department has another role: it is in charge. Law is its area, and the responses are normally written by lawyers. Their job is to satisfy legal requirements, disclosing what is required and adding as little as possible. Following the law exactly reduces liability risk and disclosing anything additional increases liability risk. The lawyers permit disclosure only of what is specifically, clearly, and unambiguously required.

Along with Communications and Legal, many other corporate departments are involved in mHRDD reporting. The German Law (see below) has a required disclosure on this (Question A3) and it not



unusual for companies to list, at least, the following departments: Legal, Communications, Human Resources, Environmental, Occupational Health and Safety, Procurement, Sustainability, Supply Chain Management, Corporate Social Responsibility, Compliance, and Human Rights. Each of these departments has its own training, goals, values and procedures. When a question is presented to multiple departments, each fights for its own goals. Mandatory human rights disclosure sets off an inter-departmental battle royal among all of them. Finalizing a mHRDD disclosure report for a major corporation requires serious small group politics and multi-disciplinary management.

4. A Company's Natural Tendency to Report on mHRDD Topics

Here is a thought experiment to simplify the often-complex interactions among the multiple departments within a company. Imagine a team of three people drafting the mHRDD reports. One is the business and human rights officer ("BHR"), knowledgeable about human rights due diligence. The second is the communications officer ("Comms"). The third is a person from the law department ("Legal"). There are often many more than three departments and people involved, but for the sake of simplicity, these three will do for the current analysis. They are tasked with reporting on the six topics for mHRDD disclosures discussed in **Section III**, above.

For Process, BHR can go on and on about all the fine and hard work the company has done. Comms puts a positive spin on it and Legal makes sure it is accurate, not aspirational. All three want this section to be long and detailed. BHR wants to promote her work, Comms wants to brag about all the company has been doing, and Legal wants the regulator to be confident that all the systems mandated by the mHRDD law are up, running and robust. The Process section will be long, detailed, and enthusiastic.

For Risks, BHR identifies specific contingency risks. She feels like these are important things she knows well and shows that the systems are working. There are risks that children are working in that plantation or that those three factories may have excessive forced overtime when the big orders are due. Comms does not like this at all and wants to downplay it and water it down. None of this helps her messaging. It is hard to put a pro-company spin on specific human rights risks. Legal is concerned. She wants to include as few risks as possible. It seems to be an admission of failure. Plus, reporting on them may provoke follow-up questions from an NGO or investor. Legal likes the idea of including at least one risk, just to show the regulator that they are doing something and that their human rights due diligence is effective, but best to keep the description general and vague with the assurance that it is being worked on. General uncertainty risks are perfect for her. No liability can arise from the statement of a mere possibility. Legal will demand and get a shift from contingency risks to uncertainty risks. Comms will be delighted.

For Risk Actions, BHR loves talking about all they are doing to mitigate risks. Comms sees this as an endless opportunity to just keep saying positive things. So many actions can be labeled as risk mitigation: policies, procedures, training, communications, meetings, etc. There is only upside there, because only uncertainty risks have been included, no harms are identified, and the company is being proactive. It shows its real commitment. No one can say these mitigation efforts are not working, so why



not include them? Legal agrees that it looks good to the regulator and so general uncertainty risk prevention and mitigation is highlighted and dwelt on at length.

For Impacts, stuff gets serious. This is an admission that the company is connected to human rights violations. BHR cares about this and can honestly tell the others what their human rights due diligence has found. It is the core of her work. She wants people to know about it. Also, it is not some secret controlled by the company. The rightsholders themselves know how they are impacted. Comms hates this topic and would prefer not to mention it at all. If something has to be said, it should be as cryptic as possible. She does not want any specific people or stories to come out of this. Legal fights back with all the power she has. Admissions of guilt, even the guilt of contractors or suppliers, much less admissions of liability, must never be made publicly. It must be cut. If BHR fights back, Legal is calling in her boss, knowing her department will win out in a power struggle. Unless impact reporting is clearly and specifically required by law, Impacts must not appear.

For BHR Impact Actions may be the most important topic. She wants the company to act to cease human rights violations. She wants to explain in detail what has worked and what they are trying to achieve. Comms loves to promote the company as active and successful. But, as impacts were radically downplayed in their reporting, it is far better to explain that the actual adverse impacts have ceased or are not the company's fault. Firing a supplier, rather than fixing its performance, works well here. Comms want this section to be short, positive and reassuring. Legal hates this section because it validates impacts that she does not want to admit. She will only permit discussion of action for the extremely few and minor impacts that were admitted. She wants it to be very focused, very short and very carefully worded so as to admit no liability for the company.

For Monitoring, all the above apply depending on what is being monitored. BHR wants to report on the work being done and the real-world complexity she has to deal with. Comms wants to tell success stories where monitoring is showing former problems solved by the company's clear commitment to making peoples' lives better. Legal wants to make sure that the monitoring reporting does not admit any of the damaging facts that she so carefully redacted from the previous sections.

Of course, in real companies it is much more complicated than this simple thought experiment, but it captures some of the core dynamics. It does predict that required mHRDD disclosure will be long on Process, of moderate length on Risk and Risk actions, short on Impacts and Impact Action, and variable on Monitoring.

How does this compare to the actual mHRDD reports submitted so far?



F. What Mandatory Human Rights Due Diligence Disclosures Show

Three mHRDD laws³ are now in effect and reports have been submitted under them.

1. French Duty of Vigilance Act⁴ (French Law).

In force since 2017 and so several years of reports have been produced. It is extremely short (two pages) and general. It requires the creation and publication of a Vigilance Plan, which includes:

- a. A “mapping that identifies, analyses and ranks risks.”
- b. “Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractor or suppliers.”
- c. “Appropriate action to mitigate risks or prevent serious violations.”
- d. “A monitoring scheme to follow up on the measures implemented and assess their efficiency.”

This law focuses on risk with no explicit requirement to describe or address impacts. The law requires the creation of a Plan. The mandatory reporting requirements include publishing the Plan and a report on its implementation. The contents of the reporting are extremely vague and undefined, leaving companies with extremely broad discretion in what and how to report. The only clear content to be reported is a “mapping” that “identifies, analyses and ranks risks.”

2. Norwegian Transparency Act⁵ (Norwegian Law).

In force since 2022. It is six pages long and generally refers to the UN Guiding Principles and OECD Guidelines for Multinational Corporations. Among other things, it requires that the subject companies “identify and assess actual and potential adverse impacts on human rights” and “implement suitable measures to cease, prevent, or mitigate [them]” and “provide for or co-operate in mediation and compensations where this is required.” With respect to reporting the Norwegian Law (Section 5) requires the publication of “an account of due diligence” which includes:

- a. “a general description the enterprise’s . . . procedures for handling actual and potential [human rights] impacts”;
- b. “information regarding actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence”,; and

³ These laws address different lists of human rights and related issues such as the environment. We address only their human rights aspects without distinguishing which law includes which human rights.

⁴ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. French Commercial Code Article L. 225-102-4 and Article L. 225-102-5.

⁵ "Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)" LOV-2021-06-18-99.



- c. “information regarding measures the enterprise has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impacts and the results or expected results of these measures.”

3. German Supply Chain Act⁶ (German Law).

In force since 2024. It is more detailed (22 pages long) requiring companies, among other things, to “establish a risk management system,” and “prevent, end or minimize the extent of [human rights violations].” It requires annual reports, but the deadline for publishing them has been repeatedly delayed. Nonetheless many companies have produced reports that are publicly available. The disclosures are made with a program interface created by the regulating agency, with a long set of specific questions and, in some cases, follow-up questions depending on the answers given. The program then generates a report repeating the answers and questions. For the German Law, the actions required to be taken are more specific than in the other two laws. The company reporting however, is markedly different. Companies have much less discretion on what and how to report. There is only a limited amount of self-promotion available to them and long lists of specific questions on actual human rights impacts.

Table 1 compares the disclosures required and produced by these laws.⁷

Table 1: Comparison of Corporate Disclosures

Response Detail and Length: No Request, Low, Medium, High

	French	Norwegian	German
Process	High	High	High
Uncertainty Risk	Medium	Medium	High
Contingency Risk	No Request	No Request	High
Risk Action	Medium	Medium	High
Impact	No Request	Low	Medium
Impact Actions	No Request	Low	Medium
Monitoring	Low	Low	Low
Specificity of Reporting	Low	Low	High
Report Length Range	Extremely Variable	Extremely Variable	Fairly Consistent

The colored categorizations reflect our judgment of the detail and length in the actual disclosures. The French Law describes the information to be disclosed by providing extremely brief descriptions of extremely general categories. The Norwegian law simply asks for “information regarding” those same

⁶ “Act on Corporate Due Diligence Obligations in Supply Chains” Lieferkettensorgfaltspflichtengesetz (LkSG) of July 16, 2021, Federal Law Gazette I p. 2959.

⁷ While we systematically analyzed the thirty largest companies reporting for each law as shown on the NomoGaia spreadsheets, we have reviewed over two hundred company reports under all three laws and this experience as a whole was used in the categorizations and descriptions in Table 1.



general categories. These two laws do not even attempt to meaningfully limit the company's discretion in drafting their reports—it leaves it up to the company as to form, length, and, for most purposes, content. The companies use these open-ended requests to say what they wish. The detail and direction, the feeling and sense, and, as a whole, the “spin” is controlled by the company. There are no requirements of completeness, restriction or detail. The reporting is allowed to be generalized, favorably spun, and vague. Neither do these laws have any meaningful restraint on what a company wants to add, touting their achievements or pushing their communications agenda. Going back to our thought experiment, Comms is delighted to say everything she wants, and Legal is thrilled to leave out everything that concerns her. This is exactly the type of disclosure requirement the companies want to respond to. It yields self-promoting reporting of limited value to any of the other interested stakeholders.

The German Law could not be more different from the other two. It demands answers to a long list of questions. Some are intentionally open-ended, allowing the company to go on at length if it wishes. These are mostly questions about resources, process and management. Others are focused, with specific follow-up in further questions. The German Law reporting program does ask about risks, but, if they are admitted to have been detected, it asks for specifics: What rights? Where? And literally asks for “details.” Even more critically, the German Law has pointed questions about actual adverse human rights impacts. This is the ultimate question for all work in business and human rights, the key topic from which all others follow. Only the German Law requires, and gets, reporting on human rights impacts.

The French and Norwegian Laws make no distinction between contingency risk and uncertainty risk. The reporting under the French Law is consistent: all companies report on uncertainty risk and none report on contingency risk. The reports under the Norwegian Law are similar, with some exceptions. A few companies are willing to report on contingency risks, and those are usually the same large, companies with sophisticated human rights programs and which also report on actual adverse impacts. The German Law reports are completely different. Here they ask specific pointed questions on risks with automatic follow-up questions which end up eliciting accounts of both uncertainty and contingent risks.

The length of the reports is telling. The French Law reports are long and very positive. They clearly are a dumping ground for other reports already prepared on other topics. It is exactly what Comms loves to write about and what Legal is not afraid of: Process (long), Risks (vague), Risk Mitigation (everything). The Norway reports differ widely in their length, from one page to a lengthy, detailed report. The largest companies with the best reports are those which clearly have human rights processes and standards superior to the requirements in the law. They are ahead of the law. Larger companies with more sophisticated communications functions tend to make the reports much longer, smaller companies usually file extremely short reports, often devoid of content. The law allows both tactics to succeed. The German Law reports have far less filler and fluff—they are content rich. Where there is a difference in length it is between companies with more complex business and human rights impacts and those with simpler ones, so such a difference makes sense. Some companies in some sectors and with differing size truly do have less to report.



The French Act is a warning on how not to write disclosure laws. It leaves far too much discretion to companies and makes no meaningful effort to limit it. The Norwegian Law fails in its vagueness in the detail and breadth of information that must be reported, asking just for “information regarding.” That gives companies free reign to report virtually whatever they want. Almost anything can be “information regarding.” It requires nothing and excludes nothing, allowing anything embarrassing to be left out and everything complimentary to be put in. A recipe making both Comms and Legal as happy as can be.

The German Law is completely different. It takes reporting control out of the hands of the company and requires answers to focused questions. While the company provides all the answers and content, it does not control the form of their own Report, the German Agency’s program does. Companies surely hate this. A few could not resist adding an attractive, colorful, positive picture to the front page, because their sustainability reporting is always full of such pictures.

VII. Recommendations for mHRDD Disclosure Laws

While there are many issues raised above, a few conclusions stand out clearly:

1. **Companies must be constrained in their disclosures.** Open-ended questions are just an invitation to companies to gear up their PR machine and generate the positive spin at which they are so expert.
2. **Human Rights Risk is too slippery to focus on.** Risk only becomes meaningful when it is part of a broader account of impacts. Risk without impact is speculation, and companies will manage speculation to their own financial benefit.
3. **Human Rights Risk Mitigation and Prevention is inherently open ended.** It is far too easy for companies to claim mitigation and this reporting turns into virtue signaling without substance.
4. **Human Rights Impacts must be specifically reported.** This is the most important information, and it cannot be left out. It is also the hardest topic for companies to report on, but it is the one they absolutely need to face.
5. **Remedy for Adverse Actual Human Rights Impacts must be specifically reported.** Effective remedy for disclosed impacts is the pinnacle of business and human rights. Reporting on it is an absolute must.
6. **Promote and allow for disclosure feedback loops.** Force companies to explain and expand on what they disclose. Open up information pathways beyond formal reporting. This allows the web of stakeholders to get involved.
7. **Companies’ reporting must be compared to each other.** A system of public comparison allows for companies to be objectively judged. This will improve disclosure and drive action within the company.



8. **Creation of a public Disclosure Report Repository.** An infrastructure element which is extremely useful for analysis and can be used by all stakeholders.