



PRIME MINISTER'S DEPARTMENT
LEGAL AFFAIRS DIVISION

Zero Draft of the National Action Plan on Business and Human Rights (NAPBHR) 2025 – 2030

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Introduction

Over the years, corporate responsibility has taken many different shapes and has been embedded in nomenclature best suited for particular audiences, whether the State, industry or civil society. From *corporate social responsibility (CSR)* and *corporate sustainability*, derived from the 2030 Agenda, *Environment, Social, and Governance (ESG)* has now taken root to describe and categorise elements of social risk to business. This demonstrates familiarity with the idea of duty of care and this includes the concept of *business and human rights (BHR)*.

Are ESG and BHR two sides of the same coin?

While these terms operate in the same space, it is important to clarify key distinctions between the two:

ESG framework	BHR framework
Prescribes good practices aligned with the sustainability agenda	Reaffirms fundamental rights and accessible pathways to justice
Uses business or market-based language and approaches	Uses human rights-based language and approaches
Enhances corporate responsibility	Develops corporate accountability
Describes the risks to profit	Describes the risks to people

ESG in practice is an exercise in compliance, making it business-friendly, especially for companies with complex and extensive global supply chains. To complement this, the application of BHR principles require an active focus on particular elements, including timely and effective remedies – an increasingly vital component of accountable business practice.

BHR is also wide-ranging and crosscutting in nature, even emphasising extraterritorial responsibilities for companies with operations abroad. In the pursuit of doing no harm, BHR looks at countering potential abuses of human rights and further underscores access to justice when abuses occur.

Background

The history of BHR can be traced back as early as the 1970s, through the United Nations's efforts on the activities of transnational corporations. Four decades later, the UN Human Rights Council (UNHRC) unanimously endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011, guidance grounded in the “Protect, Respect, Remedy” framework: (i) the State's duty to protect, (ii) the corporate responsibility to respect, and (iii) access to remedy.¹

The UNGPs have been more widely embraced today due to increasing international pressure, bringing industries together on common issues to encourage better human rights performance. Yet, key challenges remain in the holistic implementation and localisation of the principles.

The Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights (AICHR), since its inception, has been instrumental in promoting regional approaches to BHR. AICHR has initiated numerous activities centring BHR, organising multistakeholder engagements to gather and share country experiences and best practices.

A notable effort is the proposed ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment currently being negotiated, which would lay the foundation for the region's recognition of environmental rights and its substantive and procedural impacts on human rights.

In Malaysia, the Federal Constitution serves as the cornerstone of human rights protection in the country, outlining fundamental liberties and ensuring that every citizen enjoys these rights under the rule of law. Enshrined in Part II of the Constitution, these fundamental liberties provide a legal framework to protect individuals' dignity, equality and freedom. Human rights provisions in the Federal Constitution related to business and human rights are:

1. Equality Before the Law

The Constitution guarantees that all persons are equal before the law and entitled to equal protection. Discrimination is prohibited on grounds of religion, race, descent, place of birth or gender, ensuring fairness and justice for all Malaysians.

2. Freedom of Speech, Assembly and Association

Citizens have the right to express their opinions, assemble peacefully and form associations. While these rights are subject to limitations in the interest of national security, public order or morality, the Constitution provides a basis for the exercise of civil liberties.

3. **Right to Life and Personal Liberty**

This safeguards an individual's right to life and liberty, stipulating that no person shall be deprived of these rights except in accordance with the law.

Malaysia's first National Action Plan on Business and Human Rights (NAPBHR) 2025 – 2030 therefore aspires to become a milestone in the Government's journey to strengthen its efforts, initiatives and practices in promoting and protecting human rights. Anchored in the UNGPs, the NAPBHR aims to fulfil the following:

1. *Protect human and environmental rights* by enforcing measures to ensure businesses adopt human rights-based approaches in their activities and throughout their supply chains, both domestically and abroad.
2. *Promote business respect for human rights* by encouraging and incentivising businesses to ambitiously adopt policies and practices that align with international human rights standards, while leaving no businesses and no one behind.
3. *Remediate human rights abuses* by ensuring that timely, transparent and effective grievance mechanisms are established and implemented addressing the harms caused by, or linked to, business activity.

Development of the NAPBHR in Malaysia

The implementation of the BHR framework in Malaysia has been a gradual, but collaborative, effort. Initiated in 2010, the Human Rights Commission of Malaysia (*Suruhanjaya Hak Asasi Manusia Malaysia* [SUHAKAM]) hosted a series of roundtable discussions to address deepening human rights issues in the logging and plantation sectors. The Commission consequently launched a strategic framework for the development of an action plan on BHR in 2015, identifying several industries where adverse business-related human rights impacts were evident. The Government had then yet to establish a governance structure and mechanism to drive the BHR agenda at the national level.

The region, too, considered BHR advocacy a crucial component of its agenda. In 2016, AICHR was actively promoting the idea of member states having national action plans on BHR. Thailand, being one of the key driving forces in the region on BHR, conducted consultations and organised meetings to develop its own action plan, some of which were mobilised by civil society. By October 2019, Thailand became the first Southeast Asian country to adopt a NAPBHR for a period of three years until 2022; the country has since published their second action plan.

Domestically, while there was no specific action plan on BHR at the time this discourse was burgeoning, Malaysia developed a National Human Rights Action Plan (NHRAP) that highlighted key economic and social issues, indirectly including elements of BHR.

After continued engagement with key stakeholders, the late YB Datuk Liew Vui Keong, then Minister in the Prime Minister’s Department (Law), announced the Government’s intention to develop the NAPBHR during a national high-level dialogue on BHR in 2019. The Legal Affairs Division of the Prime Minister’s Department (*Bahagian Hal Ehwal Undang-Undang* [BHEUU]) was mandated to operationalise the NAPBHR’s development.

The process of developing Malaysia’s first NAPBHR is aligned with the five-step process encouraged by the UN Working Group on Business and Human Rights (UNWG). A National Steering Committee on the NAPBHR chaired by the Minister in the Prime Minister’s Department (Law) was established, meeting for the first time on 6 July 2021. The Steering Committee comprises three Technical Committees led by ministry or agency representatives for each of the identified thematic focus areas, namely:

1. *Governance*: BHEUU, supported by the Malaysian Anti-Corruption Commission (*Suruhanjaya Pencegahan Rasuah Malaysia* [MACC])
2. *Labour*: Ministry of Human Resources (*Kementerian Sumber Manusia* [KESUMA])
3. *Environment*: Ministry of Natural Resources and Environmental Sustainability (*Kementerian Sumber Asli dan Kelestarian Alam* [NRES])

The Government also formed a Working Group on the development of the NAPBHR (WG) to commence its work in advancing the Government’s commitment. BHEUU organised Malaysia’s first and second national conferences on BHR in 2021 and 2023, respectively. These platforms served to inform BHR stakeholders of the progress thus far.

Between July 2022 and June 2023, a comprehensive National Baseline Assessment (NBA) was conducted to ensure that the overall scope and parameters of the envisioned action plan were well understood. The assessment consolidated data and feedback from the ministries and agencies (including state governments), regulatory bodies, industry associations and businesses, civil society organisations, human and environmental rights defenders as well as vulnerable communities on topical and critical issues of business and human rights. The assessment also mapped out the current level of implementation of the UNGPs and more importantly, highlighted key gaps to be addressed. The final report was published in August 2024 after a substantial national review.

National Baseline Assessment on Business and Human Rights (2022-2024)

The NBA encompassed the overarching themes of governance, labour, and the environment, but also included an additional “special issues” chapter to highlight key areas of particular significance. This chapter raised issues related to gender, children’s rights and digital rights as

well as matters linked to Indigenous Peoples (IPs), refugees and asylum-seekers, Strategic Litigation Against Public Participation (SLAPP) and extraterritorial obligations.

Governance, as one of the key thematic priorities, explored fundamental issues that continue to place a burden on the foundations of the rule of law and principles of democracy, namely, bribery and corruption. The assessment also identified the need to address matters such as access to information and personal data privacy and security; procurement, investment and tax; diversity, equity, and inclusion (DEI); and enforcement of business-related human rights standards in governance.

Recommended measures highlighted the need to make human rights justiciable in Malaysia through the re-examination of domestic laws, strengthening mandates and law enforcement related to corruption, implementing core commitments on tax reform and access to information and ensuring businesses raise ambitions on gender equality and human rights due diligence (HRDD).

The labour chapter identified four priority areas, that is, forced labour, child labour and other forms of labour exploitation; social protection; right of association and collective bargaining; and grievance mechanisms and remedies. Most widely reported, labour challenges are a key feature of the domestic human rights landscape and have demonstrated the effectiveness of tripartite solutions involving the Government, businesses and civil society when applied.

However, urgent reforms are to be considered to meet policy and implementation shortfalls that define Malaysia's labour profile. These include harmonising federal and state legislation in alignment with international labour standards, introducing HRDD guidance and assessments and strengthening judicial and non-judicial grievance mechanisms.

The third theme on the environment examined five areas linking environmental and human rights, namely, environmental governance and accountability; sustainable forest management and biodiversity; pollution, waste management and plastic circularity; climate change; and environmental justice. Adding this crucial environmental lens to the BHR agenda contributes to holistic solutions in dealing with the “triple planetary crisis” within the local context.

Key recommendations highlighted measures that enhance business action towards Malaysia's Net Zero and biodiversity targets and improve frameworks related to environmental justice and the rights of IPs. Two important components of environmental justice linked to BHR are effective Free, Prior and Informed Consent (FPIC) protocols and anti-SLAPP legislation.

The NAPBHR Framework

The structure of the NAPBHR observes the Guidance on National Action Plans on Business and Human Rights² provided by the UNWG. The substance of the final action plan should include the following:

i. Statement of commitment to implementing the UNGPs

Duty bearers to commit, based on the UNGPs, to protect against adverse corporate human rights impacts i.e. take active steps to avoid its occurrence and provide effective remedy when it does occur. This introductory section also clarifies the Government's expectations of businesses.

ii. Background and context

This section provides the context for the development of a NAPBHR, how it may relate to existing commitments, frameworks or strategies and demonstrates the steps taken in the process. In this section too, key findings from mapping exercises or assessments are analysed.

iii. Government response

This section represents the central element of the document, where the Government highlights its national priorities and the strategic orientation of its approach to BHR. It outlines committed actions to be taken by the Government, a result of deliberations from the assessment. Each action should be ambitious but feasible within the timeframe of the plan, attributable to relevant authorities or parties and linked to monitored indicators.

This component of the NAPBHR should embody four underlying principles to ensure it is meaningful and rights-based:

- Focus on addressing actual and potential corporate human rights impacts (based on severity and leverage in bringing about change);
- Ground recommendations in the UNGPs and use the framework to identify *how* to prevent, mitigate and redress adverse human rights impacts;
- Identify a “smart mix” of mandatory and voluntary, as well as international and national measures;
- Underscore effective protection from gender-specific impacts (differential impacts on women or men and girls or boys).

iv. Monitoring and update

This final section specifies the oversight methodology and mechanism through which BHR implementation is monitored and evaluated at the end of the defined period.

To increase transparency and effectiveness, the Government may put in place a standing multistakeholder monitoring group to which it reports. Updates for the next phase may also be provided.

The proposed outline for the final NAPBHR 2025 – 2030 is as follows:

National Action Plan on Business and Human Rights 2025 – 2030

1. Introduction
 - 1.1. Ministerial Foreword
 - 1.2. Remarks by the Director General
 - 1.3. Acknowledgments
 - 1.4. Contents
 - 1.5. Abbreviations
 - 1.6. Statement of Intent and Expectations of the Government for Businesses
2. Background and Context
 - 2.1. Key Questions – Why a NAP?
 - 2.2. General Principles
 - 2.3. Trends in Business and Human Rights
 - 2.4. State of BHR implementation in Malaysia – National Baseline Assessment
 - 2.5. Brief Timeline
 - 2.6. Methodology and Limitations
 - 2.7. List of Consultations
3. Key Strategies and Five-Year Actions
 - 3.1. Governance
 - 3.2. Labour
 - 3.3. Environment
 - 3.4. Special Issues
 - 3.5. Compilation of Actions
4. Implementation, monitoring and assessments
 - 4.1. Implementation Plan
 - 4.2. Monitoring and Evaluation Strategy
 - 4.3. Assessment Template
5. Conclusion
 - 5.1. Updates for planning the next phase
6. Annex

Thematic Priorities and Five-Year Actions (2025 – 2030)

Thematic Priority: Governance

UNGP Pillar 1 – The State Duty to Protect Human Rights

Governance plays a central role in the delivery of fundamental rights through the management of structural relationships between rights-related laws, policies, regulations, enforcement measures and norms. Good governance from a rights perspective is thus a result of meaningful, cohesive and equitable policy- and decision-making.

Malaysia derives its human rights obligations, as well as its duty to ensure that businesses are upholding rights, from international human rights conventions, treaties and standards to which Malaysia is party, and related domestic legislation. There is a general consensus that Malaysia should revisit key conventions and treaties in consideration of the accession process, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), and withdraw the remaining reservations related to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). However, these steps should consider current developments in Malaysia, especially on related domestic policy and legislation.

The Government is thus looking towards strengthening national laws to align with its human rights ambitions by conducting further extensive research, consultations and capacity building initiatives. Enhancing human rights literacy supports the process of exploring the feasibility of updating or repealing specific domestic laws that impede upon human rights protection in the context of business activity:

- Study the challenges and advantages of any revisions, updates or repeals of specific domestic laws that may compromise protections in the context of business-related human rights abuses. Research and analysis should begin with existing provisions related to the Official Secrets Act 1972 [Act 88] (OSA) in alignment with the upcoming Freedom of Information Act (FOIA).
- Conduct a study on removing reservations to the CRC and CRPD as a means to close the legal gaps present in the current versions of the Child Act 2001 [Act 611] and the Persons with Disabilities Act 2008 [Act 685]. The Ministry of Women, Family and Community Development (*Kementerian Pembangunan Wanita, Keluarga dan Masyarakat* [KPWKM]) is working towards the removal of specific reservations in line with national commitments.
- Enact an Anti-Discrimination Act to domesticate the State and private sector's obligations under CEDAW and ensure that equality in the workplace is a matter

justiciable in the courts. This further complements the existing regulatory framework to mainstream DEI measures, including by socialising challenges faced by women, persons with disabilities (PWDs) and older aged persons.

On anti-corruption, good governance and integrity, bribery and corruption remain major hindrances to a rights-based governance framework by weakening law enforcement and undermining institutions. This erodes public trust in the rule of law, signalling to rightsholders that power differences are at play, leaving them vulnerable to well-resourced public institutions, individuals and business actors.

The Government's comprehensive plans to uphold the principles of the rule of law, improve good governance and create a clean business environment is championed in the National Anti-Corruption Plan (2019-2023) (NACP) and more recently, in the NACP's successor, the National Anti-Corruption Strategy (2024-2028) (NACS). To this end, the objective of the NAPBHR is to reinforce these international and national commitments to good governance efforts:

- *Accelerate the implementation of key provisions of the United Nations Convention against Corruption (UNCAC).* This includes adopting preventative measures, strengthening criminalisation, law enforcement and asset recovery efforts, and fostering international cooperation.
- *Increase measures to improve Malaysia's ranking in the Corruption Perceptions Index (CPI) by Transparency International.* This is in line with the national target under the Mid Term Review of the 12th Malaysia Plan to rank in the top 25 countries by 2033. A special task force was established to analyse and propose strategies to improve Malaysia's ranking, chaired by the Chief Secretary to the Government and composed of the secretaries general and heads of departments of related ministries as well as various experts relevant to the surveys involved in the CPI.
- *Strengthen compliance with existing Government guidelines on conflict of interest and abuse of power.* Existing guidelines such as “*Garis Panduan Tindakan ke atas Sokongan yang diterima daripada Pemimpin Kerajaan, Individu Berpengaruh atau Mana-Mana Orang Mengenai Sesuatu Urusan Kerajaan*” (3 March 2010) and “*Garis Panduan Pengendalian Sokongan oleh Anggota Pentadbiran dalam Urusan Kerajaan*” (21 May 2024) should always serve as guidance that directs civil servants in ministries, departments and agencies on good and appropriate conduct, which includes avoiding conflicts of interest that may lead to corruption, misappropriation and abuse of power.
- *Expedite the enactment of a FOIA.* Presently, the Government has approved the enactment of the Act and has conducted state-level engagements on the proposed parameters of the law. The proposed Act may be further supported by amendments of the OSA in order for both laws to co-exist and complement one another.

- Initiate adequate capacity building and training measures for Government officials on the FOIA post hoc. BHEUU will collaborate closely with stakeholders, including the Centre for Independent Journalism (CIJ), to develop comprehensive training modules aimed at enhancing awareness and an understanding of the principles of the right to information and identify practical measures to implement the FOIA when the Act is adopted.
- Establish and operationalise a Freedom of Information (FOI) Commission. Based on a comparative analysis of practices in other countries, it is recommended that a dedicated Information Commission is established, comprising qualified commissioners, to effectively oversee and manage FOI matters. This intervention should align closely with national policies and reflect the overarching position and priorities of the Government, ensuring consistency and coherence in the implementation of FOI principles.
- Introduce data management and treatment guidelines for Government agencies to prevent data leakages. These guidelines shall be referred to as the Guidelines for the Implementation of the Government Electronic Information Leakage Protection System through Technology Solutions (commonly known as the Data Leakage Protection System [DLP]), which outline the strategic framework and technical measures aimed at safeguarding sensitive Government data from unauthorized access and leakage.
- Establish guidelines on cross-border data transfers to ensure the protection of personal data. These guidelines aim to ensure that international data exchanges adhere to established privacy standards and comprehensively protect individuals' data.

Another area to be strengthened is the governance of procurement procedures, to safeguard the use of public funds against corruption leakages, as well as to underscore human rights-based approaches across procurement stages:

- Enact a Government Procurement Act that establishes clear regulations governing public procurement activities while ensuring the protection of human rights throughout the procurement process. This legislation aims to both enhance resource utilisation and efficiency across Government and safeguard public and national interests by promoting the fair and equitable treatment of all parties involved. Crucially, it should also consider the risks related to vulnerable groups including women, children, PWDs and other affected communities.
- Enhance transparency and increase digitalisation of public procurement systems in order to minimise human discretion and improve procurement monitoring and analyses. The use of digital technologies in public administration has shown to minimise human discretion in the procurement process, thus reducing the risks of corruption and fraud and promoting ethical procurement practices. Elements of digital business processes,

including digitisation and automation, establishes a transparent, accountable and ethical framework that can safeguard human rights throughout the procurement process.

Given international public scrutiny on matters of human rights, especially in relation to multilateral Free Trade Agreements (FTAs) negotiations, Malaysia is taking this opportunity to socialise a rights approach with both the public and private sectors:

- Ensure Malaysia's position on human rights is aligned with international human rights standards when negotiating trade agreements. Human rights-based agreements foster ethical business practices, promote corporate accountability and safeguard the rights and well-being of all individuals affected by trade policies.

Further, Malaysia's commitment to address leakages and tax evasion by businesses necessitates tax reform measures that limit the exploitation of tax rules and loopholes and broaden the tax base by having a more efficient collection mechanism:

- Implement the 15% global minimum tax. This is recommended under Pillar II of the Organisation for Economic Co-operation and Development (OECD)'s Two-Pillar Solution, where Malaysia's implementation will be monitored to ensure alignment with international taxation standards, particularly in curbing activities related to tax base erosion and the transfer of profits to countries with low tax rates.
- Accelerate the implementation of the Tax Corporate Governance Framework (TCGF) to promote good tax governance practices. The TCGF is part of a co-operative compliance programme by the Inland Revenue Board of Malaysia (*Lembaga Hasil Dalam Negeri Malaysia* [LHDNM]).

While reservations remain on CEDAW, Malaysia should foundationally review policy areas where non-discrimination and equality standards fall short, to be in line with the constitutional right of equal protection under the law:

- Ensure the full application of gender-responsive budgeting among ministries and agencies. Gender budgeting, as a public financial instrument, functions to identify specific budget measures that expressly advance gender equality objectives and close gender gaps. This may include interventions supporting care work and family-friendly policies such as childcare services and maternity or paternity insurance.
- Strengthen existing mechanisms to increase women's participation at both the boardroom and workforce levels. While representation is steadily increasing for Public Listed Companies (PLCs), DEI policy gaps persist across industries. Diversity efforts should consider in tandem related legislation, including the effectiveness of the Anti-Sexual Harassment Act 2022 [Act 840].

Enforcing human rights obligations is complicated in the absence of a comprehensive and common legal definition of human rights in Malaysia. As espoused in the baseline assessment,

the current application of human rights in the judicial system relies primarily on precedence and common law, rather than clear standards governed by a well-defined statutory framework. This allows for the legal “contextualisation” of human rights in Malaysia that often runs counter to international standards from both a public and private perspective.

This definitional vacuum also contributes to a corporate law regime that is not presently designed to address human rights abuses as an urgent matter, rather, is contingent on corporate good faith and compliance to minimum requirements. In order to review levels of implementation of human rights through enforcement, the Government should therefore focus on certain key markers and actions:

- Conduct a needs assessment on business and human rights at the state-level. The assessment should consider the range of rightsholders requiring targeted support, including women, children, older aged persons, PWDs, IPs, migrant populations and other underserved communities.
- Improve coordination between ministries, federal and state agencies, and federal and state governments to resolve issues of overlapping jurisdiction and the weak enforcement of governance laws. Understanding the specific contexts of local governments should result in policies that are precise and fit-for-purpose, while still exercised in the general pursuit of national objectives.
- Initiate adequate capacity building and training measures for state-level government agencies to improve enforcement on business and human rights issues. This includes equipping officials with the necessary knowledge, skills and resources to monitor corporate compliance, investigate human rights violations and implement corrective measures, as necessary.
- Institutionalise human rights as a key requirement for banks, investment firms and other financial institutions. This should be implemented as part of comprehensive HRDD for a project or development plan, with penalties imposed for the failure to identify and assess adverse human rights impacts, or if the said project or development activity is known to cause or contribute to human rights violations.
- Develop a governmental monitoring and evaluation mechanism to track business implementation of human rights regulations and its effectiveness. Mechanisms set up to monitor business respect for human rights should reflect international best practice and available guidance, such as “Doing Business with Respect for Human Rights: A Guidance Tool for Companies.”³

UNGP Pillar 2 – The Corporate Responsibility to Respect Human Rights

Businesses need not wait for legislation to be enacted or amended before taking meaningful steps to cultivate a respect for human rights, an increasingly significant component of people-centred business risk. In this vein, it is important for businesses, especially large companies with extensive supply chains, to reflect on their material contributions towards the protection of human rights beyond public statements or codes of conduct:

- Adopt robust human rights policies aligned to international standards with transparent and effective budgets for implementation. Businesses should identify salient human rights issues and prevent, mitigate and cease adverse impacts on human rights. Further, businesses with existing human rights frameworks can strengthen policies, standard operating procedures and practices in line with stated international standards on human rights.
- Conduct regular, transparent and genuine HRDD (or human rights and environmental due diligence [HREDD]) assessments on own operations and across the supply chain to ensure that the company does not cause, or contribute to, adverse impacts on human rights. Governance-related matters such as anti-corruption, access to information, personal data privacy and security, investment, procurement and DEI are key areas to be covered, at a minimum.
- Support under-resourced companies and small- and medium-sized enterprises (SMEs) (including those within the company's value chain) by providing training, capacity building and consistent funding for them to comply with international human rights standards and good practices in governance-related human rights matters. Such support may include practical workshops, seminars and hands-on training on HRDD, ethical labour practices, environmental sustainability and corporate accountability. In addition, facilitating access to funding, grants and low-interest loans can enable small businesses to invest in compliance measures, strengthen their human rights policies and implement sustainable business practices.
- Where there are existing ESG sustainability measures in place, they should be augmented by emerging international best practices. Where there are no ESG measures, they should be urgently introduced and operationalised.
- Allocate an adequate budget for a specialised team to conduct sustainability and human rights compliance and commit to an annual plan for continuous improvement of standards. Such teams should be equipped with the necessary authority, expertise and resources to conduct regular assessments, audits and monitoring activities that ensure adherence to international human rights standards and sustainability principles.

- Whether mandatory or discretionary, report on the company's efforts to ensure corporate accountability to human rights, including the implementation of HRDD and steps taken to identify, prevent, mitigate and cease adverse impacts on human rights. The UNGPs Reporting Framework as well as the World Benchmarking Alliance's Corporate Human Rights Benchmark could be used as guidance.
- Include as part of the company's code of ethics and conduct, the duty of directors to assess and consider key human rights concerns when making decisions on the business operations of the organisation at every stage. Disclose in annual reports, including businesses not bound by Bursa Malaysia's sustainability reporting framework, how the duty has been operationalised and fulfilled, and if not, the reasons for this.
- Where industry or sectoral standards on governance-related human rights issues are unclear, work towards establishing good practice standards in cooperation with trade associations and business chambers of commerce. Where such standards are available and being promoted through well-accepted certification programmes run by respected bodies, businesses should incorporate the standards within their organisational framework and obtain the relevant certificates.
- Investors, development banks and lending institutions should demand that companies or project proponents conduct HRDD and risk assessments before they invest in, or provide financing to, these enterprises. Certain types of high-risk activities, to be clearly defined, should be avoided altogether.
- Institutionalise anti-bribery and anti-corruption policies and practices, including but not limited to, obtaining the ISO 37001:2016 ABMS certification. Continuous training, regular audits and updated enforcement measures should be in place to ensure the ongoing effectiveness of these policies, demonstrating the company's commitment to maintaining the highest ethical standards and compliance with global anti-corruption norms.
- Support the efforts and initiatives by the Government and regulators to elevate the standards of doing business in Malaysia, specifically by demonstrating that business operations are free from adverse impacts on human rights. Companies should proactively maintain transparent reporting practices and foster a culture of ethical governance that prioritises the well-being of employees, communities and other stakeholders.
- Set targets and increase training among the board of directors, management, and employees of the company on the responsibility to respect human rights and support awareness-raising programmes for consumers, contractors, suppliers and

communities. Outcomes should be shared and publicised, contributing to industry knowledge on best practices.

UNGP Pillar 3 – Access to Remedy

Good governance under business and human rights is dependent on the level of effectiveness of access to justice and remedy. Enforcement measures should have strong reparative components that include the ways in which survivors or victims are compensated, proportionate to the human rights violation. To achieve this, both the Government and businesses should prioritise several actions:

- Study the weaknesses of, and address the gaps related to, State and non-State grievance mechanisms. This should consider the invisible barriers to justice such as lack of access to information and legal representation, and long processing times for complaints to be attended to and remedies administered.
- Strengthen and socialise access to justice for vulnerable communities. The Government, together with industry, should develop a grievance-handling mechanism that specifically supports vulnerable communities (including underserved women, children and youth, migrant populations and indigenous communities) to seek effective remedies.
- Strengthen access to justice by enhancing the availability of mobile courts as an additional mechanism to oversee legal disputes for communities living in the interior. The mobile court system in Sabah and Sarawak should be used as precedence to advance innovative justice measures that limit the physical and exclusion of rural communities from legal remedy.
- Reverse the legal burden of proof from IPs to the State and business for litigation related to the use and ownership of native ancestral lands. This is in line with the constitutional right to provide protections under Native Customary Rights (NCR) by shifting the burden to parties intending to displace or harm indigenous communities.
- Establish and implement a government-funded Public Defender's (PD) Office with a mandate to provide legal representation to those who cannot afford it. The Government has conducted a comprehensive study on the laws of other countries and has established policy parameters related to the use of public defenders. This study focuses on reforming legal aid services in Malaysia to include the use of public defenders for criminal cases. Amendments to the Legal Aid Act 1971 [Act 26] is expected to be tabled in Parliament in March 2025.
- Enhance the powers of SUHAKAM by enabling binding adjudicative and mediation mandates on business-related human rights cases. This follows the recent amendments

to the SUHAKAM Act 1999 [Act 597] that aims to enhance the Commission’s function and independence in protecting and safeguarding human rights in Malaysia. In addition, reform measures should also consider the Office of the Children’s Commissioner’s (OCC) role in adjudicative and mediation matters concerning children’s rights.

- Expedite the proposed reforms to the Whistleblower Protection Act 2010 [Act 711]. Amendments to Act 711 should account for provisions that may compromise the protective functions of the legislation, for example, disclosures that may offend other laws. These amendments will be conducted in phases, starting with several substantial revisions expected to be tabled in March 2025, including the establishment of a task force to oversee the implementation of the law. In the second phase, it is expected that a full-fledged central agency is also established; this is supported by the tabling of additional amendments concerning internal reporting mechanisms for the private sector.
- Streamline case management in the Industrial Court. Implementing advanced case management systems can significantly reduce delays, ensuring timely hearings and mediation for improved and responsive resolutions. Efficient resolutions are a key component of justice and equity in the workplace for all involved parties, especially vulnerable workers.
- Introduce effective mediation and reconciliation as forms of alternative dispute resolution mechanisms through the use of experts for business-related human rights cases. A deep understanding and familiarity of international human rights standards and their application within the context of industry is essential to ensure that mediators can navigate the complexities of such disputes effectively. These mechanisms should be fast, affordable and easily accessible for survivors or victims of human rights abuses.
- Legislate a requirement on companies to establish accessible, transparent and responsive operational grievance mechanisms for employees, suppliers and workers. Businesses should be encouraged to establish more forms of non-State instruments that may be hosted by independent civil society groups, trusted certification bodies or trade or industry associations. In cases where sector-based regulations fall short in the context of human rights violations, to ensure existing practices are strengthened.
- Legislate a requirement on companies to establish accessible, transparent and responsive external grievance mechanisms for consumers, civil society organisations (CSOs), Human Rights Defenders (HRDs) and rightsholders to seek effective remedies against business-related human rights abuses. Grievance mechanisms should be independent, impartial and free from undue influence, guaranteeing that all parties involved are able to trust the system’s ability to address complaints fairly and without retaliation.

- Study the use of SLAPPs by the State and businesses and identify the methods and technicalities adopted by plaintiffs using the courts and law enforcement authorities to impede access to justice for survivors and victims of business-related human rights abuses. This serves to understand how existing legal structures may provide plaintiffs with additional tools, grounded in power asymmetries, against communities with limited social and economic status and resources.
- Enact anti-SLAPP legislation to limit the use of SLAPPs by businesses and enhance the range of defences available to defendants. This legislation should aim to prevent companies or other powerful entities from using frivolous lawsuits as a tool to suppress free speech or discourage public participation in matters of significant public interest.
- Operationalise and implement, through law or policy, the rights and responsibilities enshrined in the UN Declaration on the General Assembly Resolution 31/32 on Protecting Human Rights Defenders, whether in reference to an individual, groups or organs of society, addressing economic, social and cultural rights. This should include the provision of legal services and Government support to survivors and victims of business-related human rights abuses, as well as Environmental and Human Rights Defenders (EHRDs) in SLAPP cases.

Thematic Priority: Labour

UNGP Pillar 1 – The State Duty to Protect Human Rights

In Malaysia, fundamental rights at work are impeded by challenges of modern slavery, which include incidences of forced labour, child labour and other forms of labour exploitation. Labour issues continue to highlight the critical intersection between business activity and human rights, revealing the complexities of balancing economic growth with ethical labour practices.

As Malaysia sets its sights on high-income status by 2028, the country has attracted both domestic and foreign investment, making it a vital hub for industries such as manufacturing, agriculture and construction. However, the country's rapid economic expansion has exposed significant challenges in ensuring fair and ethical treatment of workers. These challenges are particularly pronounced in labour-intensive sectors that rely heavily on a mix of local and migrant workers, and also include sectors that employ gig and irregular workers. Coupled with inadequate intersectional social protection and underutilised trade union mechanisms, labour remains a critical and urgent area of improvement under business and human rights.

The Government has implemented various initiatives under KESUMA to address labour issues and promote fair and ethical working conditions. These efforts aim to protect both local and migrant workers while aligning with international labour standards. This is evidenced by the establishment of strategic frameworks such as the National Action Plan on Forced Labour (NAPFL) 2021-2025 that underscores Malaysia's commitment to eliminate the use of forced labour in any and all forms by 2030, aligning with international standards such as the International Labour Organization (ILO) Forced Labour Protocol, 1930 (No. 29) and the UNGPs.

While labour reforms are actively underway, more needs to be done in strengthening policy and importantly, enforcing the legal system:

- Strengthen all other existing national labour legislations and regulations to ensure alignment with international labour standards such as work hours, right of association involving migrant workers and employment of children and young persons in high-risk economic sectors. Particular to international labour standards, Malaysia has ratified seven out of 10 ILO Fundamental Conventions, namely the Forced Labour Convention, 1930 (No. 29); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Minimum Age Convention, 1973 (No. 138); Occupational Safety and Health Convention, 1981 (No. 155) that will enter into force on 11 June 2025; Worst Forms of Child Labour Convention, 1999 (No. 182); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

- Align the working relationship between federal and state agencies and local authorities to effectively implement national laws. This includes matters falling under the Employees' Minimum Standards of Housing, Accommodation and Amenities Act 1990 [Act 446], with state or local authority regulations governing public housing and migrant workers' accommodations.
- Align the Employment Act 1955 [Act 265], the Sabah Labour Ordinance [Cap 67] and the Labour Ordinance Sarawak [Cap 76] on the issue of forced labour, consistent with the ILO Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29). This would involve revising national and state labour laws to ensure they provide comprehensive protections against forced labour practices, aligning with the Protocol's recommendations to strengthen related legal frameworks, enhance victim protection and improve enforcement mechanisms.
- Enhance enforcement of all relevant provisions on forced labour, child labour and other forms of labour exploitation in line with forced labour indicators. This relates to the overall number of labour law inspectors, competencies in navigating critical labour standards and the observance of international standards in labour inspection systems, methodologies and protocols.
- Conduct a feasibility study on the adoption of HRDD by businesses (by sector and size). This would lead towards a requirement for businesses to perform regular, credible and transparent due diligence on human and labour rights that are in line with current domestic laws and international developments.
- Review the existing employer-tied permit system with a view to provide opportunities for migrant workers to change employers or pursue employment of their choosing, without jeopardising their legal and employment status. The Government may further study the positive aggregate effects of the phenomena of migrant worker irregularity by understanding their motivations and response to flexible incentives in the form of innovative work models. This also follows from a related study being developed by ILO and the International Organization for Migration (IOM) to explore its workability.
- Strengthen the management of migrant worker applications and labour law enforcement by empowering labour governance at the state-level, especially in Sabah and Sarawak. The establishment and design of state mechanisms, supported by the federal authority, with the mandate to deliberate and make strategic decisions concerning the local labour market and welfare and protection matters may enable the distribution of responsibilities and lift administrative pressures.
- Standardise new bilateral agreements and review existing ones with countries of origin – Bangladesh, Indonesia and Nepal – to include enhanced provisions related to the rights, benefits and welfare of migrant workers. Agreements should enhance

cooperation between countries of origin and destination and underscore effective access to remedy for migrant workers who want to formally report cases of rights abuse.

- Provide inclusive and transparent implementation of labour reform initiatives, including the implementation of various existing NAPs on forced labour and trafficking in persons. This includes complementary measures in the next iteration of the NAPFL.
- Strengthen social security initiatives for all workers by making self-employment insurance schemes mandatory through automatic subscriptions in the informal sector. Given the rapidly expanding informal sector, mandatory social protection measures employing targeted distribution strategies are critical to enhance social and economic resilience among Malaysians and regular migrant workers.
- Strengthen measures and mechanisms to promote access to employment in line with domestic laws and policies. This could take a sectoral approach, promoting jobs that consider the context of specific vulnerable groups to ensure safe and dignified access.
- Provide funds for the professionalisation of trade unions to represent their members more effectively. Measures should focus on capacity building and training to enhance trade unions' skillsets and competencies, such as employer negotiation and mediation as well as external communications to improve promotional and outreach activities.
- Enhance non-union representation of workers who are unable to afford counsel in the Industrial Court. Enhancements in legal aid provisions and increased dissemination of information on available resources aim to improve access to justice for workers who are not members of unions.

UNGP Pillar 2 – The Corporate Responsibility to Respect Human Rights

International advances catalysing the corporate sustainability and responsibility agenda are progressively requiring businesses to ensure that a rights-based framework is an active component of their decision-making. Businesses are now compelled to disclose their human and environmental rights due diligence processes, with regulations introduced in a phased approach to ease the pressures of this market shift across global supply chains.

Overcoming implementation challenges would enable businesses to reap the inherent long-term benefits by remaining competitive and profitable. To achieve this, businesses should proactively work towards putting these systems in place:

- Establish clear, transparent, binding and justiciable policies and internal operating procedures centred on human rights. This is the first step in operationalising an enhanced human rights framework, based on the principles of prohibiting, preventing

and remedying any form of labour rights violations and exploitative labour practices, whether directly or indirectly.

- Conduct regular, genuine, effective and transparent HRDD assessments to identify, prevent and mitigate the negative impacts of exploitative labour practices on business operations and supply chains. Businesses should ensure that a comprehensive management approach is developed to mainstream the practice of HRDD (or HREDD) and human rights-based risk assessments within the company.
- Ensure that suppliers and business partners adhere to international human rights standards. Businesses should establish contractual obligations with suppliers and business partners on human rights matters, and if they are found to have violated such standards, remedial or punitive actions should be taken. There must be a hierarchy of responses from the least to harshest actions, depending on the severity of the violations and facts of each case. Only as a last resort should businesses cut ties and contractual relationships with suppliers or business partners, in order to limit isolating small businesses that lack sufficient resources to operationalise these frameworks in the first place.
- “Know and show” human rights due diligence processes through regular reporting and communications. Not only should companies gather and disclose information for the benefit of their boards, investors and consumers, but they should also ensure that company reports reflect actual practices on the ground. This may be done by assurance, audit and verification exercises conducted by trusted social auditors, assurance service providers and human rights organisations.
- Adopt good labour practices expected by the global marketplace including standards set by the ILO, the IOM and the United Nations Children's Fund (UNICEF). Companies are encouraged to join industry- or sector-specific collectives or associations that proactively subscribe to international human rights standards and provide certification or support services to their members to achieve those standards.
- Cooperate with private sector-led sustainability compliance initiatives and mechanisms on labour standards and allow regular and independent audits to be conducted by certified auditors or non-governmental organisations (NGOs). Findings should then be made public as a form of ensuring transparency and promoting good governance.
- Take proactive steps to prohibit and prevent child labour, particularly for companies operating in high-risk industries. This includes establishing clear policies and procedures to urgently remedy such cases of abuse if they occur.
- Ensure the implementation of the minimum (or living) wage and other employment benefits (including annual and medical leave, health coverage and employment injury

insurance) among the company's suppliers and business partners. The implementation of minimum or living wage and other benefits should be regularly monitored as part of the company's due diligence processes.

- *Enhance the protection of workers from unfair labour practices especially in the gig economy.* This involves securing basic worker rights in the form of social security benefits such as health insurance and retirement plans, work injury compensation, the right to unionise and collectively bargain and anti-discrimination protections.
- *Increase the participation of workers, trade union members and civil society representatives at every level of a company's social audit and sustainability compliance initiatives.* Their selection must be transparent and fair to ensure credible and effective participation. Businesses must also ensure there are no reprisals towards the workers, trade union members and civil society representatives for their active participation.
- *Encourage the active participation of workers and trade union representatives in business-led dialogues and multistakeholder engagement activities.* Workers should be able to access these spaces free of intimidation, to ensure that their voices and concerns are adequately represented in decision-making processes that affect their rights, working conditions and overall well-being.
- *Ensure that no restrictions, penalties, sanctions or any other forms of retaliation or reprisal are imposed on or taken against workers for joining and participating in a trade union of their choice.* This means genuinely safeguarding workers' fundamental right to freely associate and organise without fear of discrimination, harassment or unfair treatment by employers.
- *Business must develop fair, transparent, legitimate, and impartial grievance and remediation policies and mechanisms to receive and act on labour-related complaints and grievances.* These policies and mechanisms should be accessible to external parties, including individuals, business partners, governmental institutions and CSOs. There should be complete and regular disclosures of the grievances raised with specific updates on actions taken.

UNGP Pillar 3 – Access to Remedy

Recommendations on access to remedy in the baseline assessment encourages businesses to form the first layer of effective remediation for their workers. In the case where employer-operated grievance mechanisms fail to provide adequate protection and reparations, sector-led mechanisms should be triggered. The final layer of complaint and corrective measures should be operationalised by the Government, and must be easily available and accessed:

- Clarify the law to ensure that State-led non-judicial and judicial complaint and grievance mechanisms can act on grievances from all workers, irrespective of nationality or legal status. Irregular or undocumented migrant workers seeking redress through the Department of Labour or the Department of Industrial Relations should be allowed to remain in Malaysia and work until their cases are satisfactorily resolved.
- Impose a requirement that all worker contracts must contain enforceable clauses for grievance mechanisms to be established by the employer and easily accessible by complainants in their languages of origin. Grievance mechanisms should be accessible in terms of both physical location and related procedure, ensuring that workers can easily file complaints in a confidential, timely and transparent manner.
- Enhance the capacity of State grievance-handlers to effectively mediate and address grievances received from workers and other grievance-raisers. This requires a coordinated effort by both federal and state governments as well as industry-based coalitions and companies to ensure a holistic approach to the remedy process.
- Ensure labour rights grievances received by State-led judicial and non-judicial mechanisms are made publicly available regularly and that the information is disaggregated by key labour factors such as gender, age, nationality and employment status. Aggregate data pertaining to grievances are critical for effective and urgent improvements to existing remedial mechanisms.
- Produce national guidelines containing a common standard to be met for the remediation of worker grievances concerning the types of labour rights violations. National guidelines should be disseminated among businesses and made easily available to the public. Based on best practices, such guidance should be applied to businesses progressively in a phased approach, from largest to smallest or from highest to lowest risk.

Complementary efforts by businesses further enhance the effectiveness of access to remedy by providing clarity on operationalising human rights mechanisms and addressing industry “pain points” specific to the challenges of their workforce:

- Internalise and operationalise a credible grievance mechanism and continuously monitor and evaluate the same against the UNGPs’ criteria for effectiveness. Business-operated mechanisms must be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue with key stakeholders, especially workers and unions.
- Ensure that mechanisms are firmly established centring gender and diversity in the formation of grievance committees or departments and related remediation processes, with adequate training on gender sensitivity and anti-discrimination. To further support

this, it is essential that companies provide adequate and up-to-date anti-discrimination and gender sensitivity trainings for all personnel, especially those handling grievances and remediation processes.

- Submit to regular audits and certification exercises to assess the effectiveness of in-house and company-led grievance mechanisms. Regularly publish the findings and recommendations from said assessments in the pursuit of continuous learning.
- Demonstrate collaboration with industry, multistakeholder or other joint initiatives that are based on conformity to human rights standards. This eases monitoring and oversight and supports the internalisation of improvements to grievance mechanisms that strive for the highest possible standards.
- Ensure that grievance mechanisms and remediation policies (including whistleblowing protection measures) are included in all relevant internal and external company documents such as codes of conduct, performance standards, operating procedures and agreements with suppliers and business partners. Businesses should demonstrate seriousness in creating a remedy-focused corporate culture by institutionalising remediation policies and communicating them effectively and proactively.
- Establish nationwide socialisation and engagement programmes that aim at building worker confidence and trust and encourage the use of non-State and non-judicial grievance mechanisms. Such programmes should consider specific invisible barriers faced by women, migrant workers, PWDs and other vulnerable communities including language, norms, cultural traditions and social or gender-linked power imbalances.
- Increase social support and interventions for vulnerable migrant and refugee workers experiencing domestic violence and labour exploitation. Such support must be comprehensive, gender-sensitive and made immediately available, while being integrated with other social and welfare support, including access to shelters and State protection.
- Develop a comprehensive management approach to implement and mainstream the practice of raising grievances within the company. This should be demonstrated across all levels of management, including with the Board of Directors and senior management, to ensure that a lack of awareness is not used to justify the lack of urgent action.

Thematic Priority: Environment

UNGP Pillar 1 – The State Duty to Protect Human Rights

Recognised as one of the world’s 17 megadiverse countries, Malaysia’s biological diversity spans terrestrial and marine and coastal habitats, including one the largest tropical continental shelf areas.⁴ The country’s natural ecosystem provides ecological and cultural services that remain essential today, prompting the Government to strengthen its commitment to the national biodiversity conservation agenda.

Challenging this effort is Malaysia’s growth trajectory, requiring a careful balance between economic progress and its trade-offs – accelerated ecological degradation and deepened social inequity. Malaysia’s reliance on land- and water-intensive industries reflect unsustainable economic practices that complicate ecological interventions. With Malaysia’s environment at risk of deforestation, air and water pollution and land degradation, it continues to bear the heavy costs of climate change. Specifically, these climate impacts reinforce vulnerabilities faced by indigenous and local communities, women, children, and other marginalised groups.

The existing business paradigm that continues to provide products and services based on models of extraction and ecological supply chains have fundamental and long-term effects on both substantial and procedural rights by externalizing the social, health and environmental impacts onto society.⁵

These deep linkages between environmental health and production and trade are thus further emphasised with the introduction of the Right to a Clean, Healthy and Sustainable Environment (R2HE), adopted by the UN General Assembly in 2022. The R2HE resolution, alongside normative frameworks such as the UNGPs, 2030 Global Biodiversity Framework, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the legally binding Paris Agreement, serve to guide actions by States and businesses, but must be accompanied by legal codifications at the national level to be fully and meaningfully realised. A foundational approach is critical to acknowledge the increased protections needed to meet these targets:

- *Review the existing legal framework, address normative gaps and update or amend related environmental laws, especially where communities are concerned, in line with international standards.* This would follow the gazetted amendment to the Environmental Quality Act 1974 [Act 127] (EQA), where fines of up to a maximum of RM10 million can be imposed for offences including, among others, water or oil pollution and the illegal disposal of scheduled waste and waste discharge. The second phase of the amendment of the EQA is a substantive amendment addressing emerging issues in environmental governance. This amendment is currently being refined by the Department of Environment (DOE) and is expected to be finalised by 2025.

The first priority concerns environmental rights governance and accountability, stressing that environmental rights are not presently justiciable under Malaysian law. However, the Government is of the view that any specific provisions towards a constitutional and legal right to R2HE contravenes existing protections under the EQA, referred to as the main legislation related to the prevention, abatement, control of pollution and the enhancement of the environment in Malaysia. Other prescriptive measures are proposed:

- Introduce provisions for legal reforms to enhance transparency in meeting Net Zero 2050 ambitions. The Government shall define net zero pathways, identify the categories of the measures it requires and determine the scope of carbon dioxide emissions that can be avoided with each measure.
- Apply the “polluter pays principle” as an effective deterrent for business misconduct and introduce the precautionary principle. As part of the aforementioned effort related to the amendment of the EQA (Phase 2), a key next step would be to operationalise these principles, taking into account a holistic view of the latest developments in environmental regulation.
- Develop and socialise a national guideline that clearly exemplifies the precautionary principle. This aims to ensure a more consistent and holistic application of precautionary approaches across key sectors, that is, exercising a duty of care when faced with the potential for ecological risks and harms as well as impacts on public health despite scientific uncertainty. The use of incentives, technology and innovation is encouraged to enable public participation, especially of vulnerable communities.
- Conduct a study and organise awareness activities related to anti-greenwashing legislation that introduces corporate penalties. This may include references to regional best practices related to PLCs that are found to make generic or unsubstantiated claims about their environmental practices.
- Set clear targets and create robust incentives that encourage long-term behavioural shifts as a means to support businesses in the green transition. The Government may further explore the extension of incentives to non-listed companies, based on the appropriate revenue thresholds, complementing existing regulatory developments.

National efforts to protect biological diversity and forest ecosystem services require continuous support and political commitment from a wide range of stakeholders, particularly at the state level, to enhance sustainable forest management. Under the second priority area, this is illustrated by strengthening forest management frameworks:

- Reinforce the pledge to maintain at least 50 per cent of Malaysia’s forest and tree cover target. It is essential that any gaps in monitoring and assessing state-level targets are addressed, especially related to the conservation of primary forests and key biodiversity

areas. The Government may also explore compensation mechanisms for states that exceed targets.

Developments related to pollution, waste management and plastic circularity – components of the third priority area – also help to ground complementary actions by federal and state governments:

- *Develop and socialise standards of conduct related to the full life cycle of plastics and its impact on environmental and social rights.* The development of these standards should be based on scientific research, best practice and international agreements on sustainability, aiming to minimise environmental harm, reduce pollution and protect and remedy communities affected by plastic waste and pollution.

To guide Malaysia's climate change governance, the Government established the National Steering Committee on Climate Change and the Malaysia Climate Change Action Council. These institutions also function to operationalise the National Policy on Climate Change (NPCC), the principal framework addressing climate change matters.

Under this fourth priority area outlined in the baseline assessment, and with the proposed Climate Change Bill expected to be tabled in 2025, actions will focus on next steps in the following five years:

- *Swiftly implement and operationalise the Climate Change Act.* Implementation should be holistic in nature, covering components already identified by the Government and encompassing end-to-end strategies from national target setting, establishing the governance structure through the formation of a new regulatory entity and platform integration to financial provisioning, reporting and monitoring and enforcement.

Regulatory developments should consistently and comprehensively centre communities in order to reflect human rights-based approaches. The fifth priority area focuses on embedding environmental justice within institutional frameworks, namely through reaffirming Malaysia's commitment to international standards:

- *Implement the UNDRIP within Malaysia's current legislative and policy context and legally recognise Malaysia's Indigenous Peoples' position as rightsholders.* While the Government recognises that the UN adopted the Declaration as a legally non-binding resolution, it remains a key instrument detailing the minimum standards for the recognition, protection and promotion of individual and collective rights of IPs in international law and policy. The special contexts of Sabah and Sarawak should also be acknowledged.
- *Conduct a study to explore the ratification of the Tribal Peoples Convention, 1989 (No. 169) of the ILO.* The study should assess the benefits and challenges related to the

ratification of this convention, consider the legal, social and economic implications for Malaysia's indigenous communities and align with the country's existing framework and policies on the same.

- Develop a national guideline on Free, Prior and Informed Consent (FPIC) and enact legislation to standardise FPIC at the national level. The Government can start with designing a robust FPIC framework, developed in collaboration with communities and state authorities, to be piloted at the state level.
- Develop a voluntary Community Protocol or a Native Engagement Plan on FPIC based on international best practice within Malaysia's current legislative and policy context. This serves as a community safeguard, empowering and building the capacity of communities to take action on their rights and balancing power differences between rightsholders and duty bearers.
- Provision of enhanced human rights-based training of public legal practitioners and mediators. This should underscore key concepts of indigenous customary rights and reconciliatory approaches in the context of the overextension of legal and non-legal industry mechanisms against communities.

UNGP Pillar 2 – The Corporate Responsibility to Respect Human Rights

Business action on environmental rights begins with ESG sustainability, which encompasses, among others, the adoption of global market-driven frameworks related to biodiversity and climate change. However, leading approaches promoting nature and climate-related financial disclosure instruments and carbon trading mechanisms have been criticised by CSOs, EHRDs and rightsholders as exercises in corporate greenwashing based on how these measures have been applied.

Many existing environmental and human rights concerns remain unaddressed, including voluntary reporting structures that rely on companies' own narratives of environmental and human rights harms that have taken place within their operations, widespread tokenism in the participation of IPs and local communities, and funding pathways that compromise the ability of duty bearers to ensure companies are materially liable and accountable for these abuses.

As such, within the business and human rights ecosystem, it is crucial that corporate accountability measures are grounded in fundamental human rights-driven strategies, underscoring the risks to people:

- Expressly define and incorporate environmental and human rights within company operations. Businesses should adopt an environmental and human rights charter that is aligned with international standards and best practices (including the UNGPs),

approved and acknowledged by their highest management and guided by the most up-to-date expert advice and analyses. The charter should also set clear expectations for all employees, business partners and other parties relevant to the business.

- Adopt holistic policies that commit businesses towards mitigating greenhouse gas emissions (GHG) and addressing climate-related human rights risks and impacts. Such policies should be drafted with the input of all stakeholders, centred around affected communities, and be made publicly available.

Of particular risk is the management of regulatory compliance that often falls short of expectations, whether from a national view or by international standards:

- Refine procurement policies to emphasise climate and environmental dimensions and the need for effective due diligence. Business' procurement practices should be aligned with recognised international benchmarks to ensure consistency and credibility. Periodic policy revisions are equally crucial and must be conducted to ensure procurement practices stay relevant and contribute positively to equity and sustainability objectives.
- Strengthen and improve voluntary carbon emissions disclosure mechanisms as part of the transition to a mandatory framework. Carbon emissions disclosures will only be effective if there is a standardised and uniform framework for measuring emissions which can be independently audited and verified. Studies on the market response to disclosures and voluntary or mandatory measures would be highly beneficial to improve such market mechanisms.
- Publicly disclose carbon emissions information in full to enable a meaningful examination of compliance to national regulations and targets. Disclosures should reflect the realities on the ground as far as possible, complete with key operational challenges, linkages to potential and actual harms to communities and outcomes on corporate responses.
- Review and update environmental standards on the worst polluting industries in line with the latest guidelines by the World Health Organization (WHO) and other expert bodies. These standards should be made legally binding, time-bound and enforceable, with a clear definition of worst polluting industries. Further, a review should prompt improvements to the First Schedule and Second Schedule of the EQA.

A meaningful business and human rights framework is one that is grounded in the explicit recognition and respect for the rights of EHRDs and IPs. This translates to understanding how business activities (and the impacts of those activities) socially, economically and culturally affect these communities and what should be done to respect these environmental and human rights boundaries:

- Publicly commit to recognising and respecting the human rights of EHRDs and IPs, whether Malaysian law provides for those rights or otherwise, and act consistently with these corporate commitments. Due diligence including environmental, social, cultural, and other human rights impact assessments should be regularly conducted and integrated internally at all working levels. FPIC principles should also be met fully by exceeding the minimum requirements to ensure that any deficits in the process do not create further harm to communities directly or by creating an incomplete picture of potential harms.
- Investors should require the companies they invest in to conduct and act on due diligence assessments. Where this is not the case, engage with their clients to adopt and implement due diligence and obligate that impacted communities be kept informed on any progress or developments in all phases and over the entire cycle from start to end.
- Meaningfully include indigenous communities in the FPIC process by consulting and partnering with them on the due diligence process. Companies should actively seek their comments and verify results from due diligence and impact assessments, incorporate community-level information pathways, work in partnership with indigenous CSOs and independent information sources and provide communities a platform and the authority to influence corporate decisions. Special attention should be given to indigenous women, youth and children.
- Increase staff capacity and improve human rights-related competencies in implementing participatory decision-making, especially related to Environmental Impact Assessment (EIAs) and compensation mechanisms. When engaging with communities, companies should identify and select local intermediaries who understand local customs, norms and languages. Where necessary, companies should also consider community protocols and the local management system employed by communities.

As emphasised in the NBA, the rise of greenwashing risks, and in time, related regulations and legislation, should compel businesses to proactively take steps to prevent the misrepresentation of environmental efforts in their corporate communications, reporting and disclosures:

- Strengthen supply chain management processes to achieve genuine sustainability. An integral component of sustainability interventions is understanding and acknowledging the breadth of human rights risks linked to climate change and environmental impacts across the entire supply chain. Businesses must have clear methods for data collection and evaluation to enhance transparency and accuracy. This also involves disclosing their direct and indirect emissions i.e., Scope 1, 2, and 3.

- Ensure effective communications by regularly sharing both company achievements and areas where improvements are urgent and necessary with their stakeholders, especially rightsholders. This approach aims to centre and empower communities, foster mutual trust and pave the way for meaningful and constructive feedback that introduces reciprocal benefits by limiting risk factors.
- Apply third-party verification and assurance measures for company disclosures including engaging with NGOs or CSOs. Collaborative engagements with sustainability initiatives and trade associations, such as the Science Based Targets Initiative (SBTi), Carbon Disclosure Project (CDP), Business Council for Sustainable Development (BCSD) and Malaysia Platform for Business and Biodiversity (MPBB) are encouraged. This supports businesses to diversify ways to achieve improved environmental and human rights governance based on industry experience and learnings of effective (and ineffective) measures, enhancing cost efficiency.

UNGP Pillar 3 – Access to Remedy

The provision of remedies at the intersection of environmental and human rights abuses remain elusive given that rightsholders are often sidelined in the corporate agenda. Receiving proportional compensation or reparations for business-related violations are an exception as communities are forced to navigate a host of financial, legal and social barriers.

Holding businesses accountable requires legislation that is better equipped at administering access to effective remedy, which includes the provision of a range of material and symbolic redress:

- Enact anti-SLAPP legislation. The purpose of anti-SLAPP laws is to allow individuals or communities to have a lawsuit against them dismissed at an early stage if the lawsuit qualifies as a measure to silence or intimidate defendants.⁶ Anti-SLAPP laws also aim to increase the state of equality between plaintiffs and defendants in cases of human and environmental rights abuses where often only one party is able to draw from the financial and legal resources available to them, making this a critical intervention to support communities' access to remedy.
- Expedite the proposed reforms to the Whistleblower Protection Act 2010 [Act 711] to include environment-related clauses. Further amendments to Act 711 should also include provisions that expressly provide immunity to whistleblowers, especially EHRDs and community members who disclose genuine information on improper conduct or detrimental action by private actors.
- Establish a specialised body such as a tribunal tasked with adjudicating environment-based litigation that can effectively deliver time-sensitive decisions. This can promote

rightsholders' ability to hold duty bearers accountable through an institutional mechanism with the required mandate, functions, expertise and experience to oversee such cases, while alleviating pressures on existing mechanisms. This should also include specialised responses for women, youth and children.

- Introduce provisions for legal aid and special arrangements for counsel for communities wanting to utilise strategic litigation and targeted advocacy to seek redress through the courts. Increasing the availability of legal aid directly addresses barriers to justice by providing much-needed financial and legal support.
- Establish and mandate a robust and standardised grievance mechanism that is supervised by trusted human rights bodies or coalitions and normalises third-party verifications. The grievance mechanism should be formed for inclusion at the project design stage for all proposed development projects across sectors and based on international best practice. There should be clarity in how the grievance mechanism can be freely accessed and used, with information socialised prior to any stage of project implementation.
- A proposed guideline on FPIC must clearly and expressly stipulate access to grievance mechanisms and remediation, as well as financial aid to communities who seek judicial redress. It should be supported by anti-SLAPP requirements which, if breached, signals a clear violation of FPIC principles.

While not a substitute for legal action or accountability, effective grievance mechanisms are a crucial pathway to justice for communities seeking environmental redress from adverse corporate activity. Comprehensive redress systems signal to rightsholders, consumers and other stakeholders that a business is serious about corporate responsibility and finding genuine ways to centre community stakeholders:

- Establish or enhance business-led non-judicial and routinised grievance mechanisms, with a specific focus on addressing environmental human rights matters. These mechanisms must be:
 - i. **Accessible:** Ensure all stakeholders, especially EHRDs and Indigenous Peoples, can easily find, access and use the mechanism, at no cost.
 - ii. **Accountable:** There must be proper follow-through on grievances to ensure proportionate resolutions are implemented swiftly and effectively.
 - iii. **Transparent:** Information about grievances, and their processing, monitoring, review, and resolutions must be available at all stages and open to scrutiny by any interested party.

- iv. **Adaptive:** Ensure that grievance mechanisms are agile, allowing for corrective measures based on feedback and continuous engagements.

- v. **Proactive:** Encourage proactivity in identifying and addressing adverse environmental and human rights issues. Information on these issues and the progress of actions taken to address them should be shared both internally and externally with stakeholders, rightsholders and affected communities.

Additional BHR Issues to Consider

The ubiquitousness of BHR adds to the complexity of forming coherent and effective measures to counter wide-ranging corporate harms, truly requiring all stakeholders to play a leading role in implementing the UNGPs. In the first phase of the NAPBHR consultation process, concerns were raised related to issues that need a special focus, given its urgency and importance:

i. Children's rights

Children's rights should be comprehensively included in the BHR agenda, grounded in the CRC. While child labour and the exploitation of young workers remain a persistent issue, other interlinked issues exist that have profound impacts on children, who are family members of employees, residents of communities that host business operations and consumers of product and services. The costs to society of failing to address the lack of children's rights is significant and creates a dangerous precedence. Often, interconnected issues are obscured in policy and practice and the views of children and young people denied consideration. These issues include:

- Lack of access to education, child protection and healthcare contributing to involvement in child labour;
- Lack of support for working parents contributing to deficiencies in early childhood education;
- Child exploitation and abuse online;
- Availability of products and services and marketing and advertisements that undermine children's health;
- Lack of child's access to a clean and healthy environment.

ii. Fisheries and marine resources

Given Malaysia's marine biodiversity, and the importance of fisheries and marine resources at the state-level, including Sabah and the east coast of peninsular Malaysia, it is crucial that the NAPBHR considers environmental and human rights protections in this sector. Interventions should be grounded in the right to a healthy and pollution-free environment, right to land and resources for coastal communities, safe working conditions for workers and the right to food security.

A deeper exploration of marine-related environmental and human rights violations by businesses should not be overlooked in the overall adoption and implementation of the UNGPs in Malaysia.

iii. *Digital rights*

This pertains to the right to privacy as businesses rely on the collection and processing of personal data to influence the online and offline behaviours of individuals. While the Personal Data Protection Act (PDPA) regulates the use of personal data in commercial transactions, legislation should be reviewed to ensure it remains at pace with advancing technologies and its uses.

iv. *Rights of refugees and asylum-seekers*

An exploration of the granting refugees and asylum-seekers in Malaysia the right to work will unearth their untapped contributions, both financial and social. Despite having no formal access to incomes and jobs, and being excluded from social security schemes, many are forced to undertake off or informal jobs at great risk of exploitation in order to survive.

v. *Consumer protections*

In a consumer-oriented society, consumer protections can be seen as a way to safeguard buyers from exploitation by multinational corporations and monopolies. Consumer rights is based on the recognition that consumers should be well-informed participants in the market and able to make educated choices while navigating the complexities of business and commerce.

The Consumer Protection Act 1999 (CPA) is the legal framework governing consumer rights in Malaysia, guaranteeing the right to safe goods, accessibility to product or service information and the right to seek redress in unfair commercial practices. However, given the rapidly developing commercial space, legislation should be reviewed to ensure it remains relevant and up to date.

vi. *Urban development and use of public purpose lands*

Malaysia continues to experience rapid development including in urban areas. The shrinking of available public spaces caused by the widespread conversion of public purpose lands for commercial development is exacerbated by limited engagements with communities and stakeholders. Industry practice related to urban development, as a whole, needs to be reviewed to ensure that rights-based approaches are included as part of due process.

Way Forward

Countless environmental and human rights issues fall under the scope of business and human rights. With some of these issues, and others not mentioned, yet to be included as thematic priorities, the aim of the Government is to ensure that the most critical BHR matters, demonstrating widespread and systemic harms, are fundamentally addressed over the next five years in this first iteration of Malaysia's NAPBHR.

The development process of the NAPBHR in Malaysia continues to promote active collaboration among related ministries, agencies and state governments in consultation with trade and business associations, companies, CSOs, impacted communities and environmental and human rights defenders. BHEUU strives for community participation and partnership, both in the current phase and more importantly, during the implementation of the action plan. Issues that may not be expressed in the NAPBHR may be advocated for directly, given the many human rights interlinkages that exist.

With this zero draft, a culmination of several years' effort by the WG and related stakeholders, the public is highly encouraged to provide their comments and views to the proposed actions, as identified in the baseline assessment and through the review and negotiation process. Crowdsourcing feedback and ideas will help the Government craft policies that are community-based, relevant and effective. This approach continues to serve as a foundation for the BHR agenda, underscoring Malaysia's commitment to upholding human rights in the context of corporate accountability and centring rightsholders in the pursuit of genuine sustainability.

References

¹ Office of the United Nations High Commissioner for Human Rights (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Retrieved from https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

² UN Working Group on Business and Human Rights (2016). *Guidance on National Action Plans on Business and Human Rights*. Retrieved from https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf

³ Shift, Oxfam and Global Compact Network Netherlands (2016). *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*.

⁴ Ministry of Natural Resources and Environmental Sustainability (2023). *National Policy on Biological Diversity 2022-2030*. Retrieved from <https://www.mybis.gov.my/pb/5710>

⁵ Special Rapporteur on the human right to a clean, healthy and sustainable environment (2024). *Policy Brief No. 6: Prioritizing Profits over People and Planet: The Devastating Impacts of Large Businesses on the Right to a Clean, Healthy and Sustainable Environment*. Retrieved from <https://www.ohchr.org/en/documents/policy-briefs/policy-brief-no-6-prioritizing-profits-over-people-and-planet-devastating>

⁶ Centre for Free Expression (2024). *Anti-SLAPP Legislation: A Backgrounder*. Retrieved from <https://cfe.torontomu.ca/guidesadvice/anti-slapp-legislation-backgrounder>