



# THREATS TO HUMAN RIGHTS DEFENDERS

Six ways companies should respond

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This paper details how companies should respond to the growing number of threats facing human rights defenders and offers six key recommendations. It offers a definition of human rights defenders, an introduction to the threats they face and an overview of the existing normative framework for the protection of defenders.

While this paper is not a comprehensive review of the legal and other obligations companies have toward human rights defenders, it offers a concrete pathway forward for companies that is grounded in best practice.

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For further information on the issues raised in this paper please email [advocacy@oxfaminternational.org](mailto:advocacy@oxfaminternational.org).

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Cover photo: Innocent is a human rights defender in Uganda's oil frontier. Credit: Andrew Bogrand / Oxfam

# SUMMARY

Every year, hundreds of human rights defenders (HRDs) pay for their activism with their lives as they defend their land, environment, or the rights of Indigenous peoples from business activities on their territories. Indigenous activists, along with women and LGBTQIA+ defenders, face additional risks. Climate activists also face threats and violence, corporate and police surveillance, and even false charges of ‘eco-terrorism.’

At a time of global crisis and climate chaos, businesses must take action to defend the defenders.

## Human rights defenders

According to the United Nations (UN), human rights defenders (HRDs) are ‘people who, individually or with others, act to promote or protect human rights in a peaceful manner.’<sup>1</sup> The UN definition applies to individuals, groups, and associations acting to promote and protect civil, political, economic, social, and cultural rights.

A wide range of actors can be considered HRDs, including environmental and climate activists, trade unions, individuals advocating for LGBTQIA+ rights, women’s rights defenders, whistleblowers, land activists and Indigenous peoples defending their land.

Addressing the threats facing human rights defenders is in the interest of the private sector, according to a growing body of research. Threats to freedom of assembly and expression can jeopardize the overall stability of investment environments. Taking action to protect human rights defenders can help with managing operational and reputational risks while building competitive advantage.

Consumers increasingly place value on socially conscious supply chains—including ensuring brands that they support are not complicit in attacks on human rights defenders. Actions to strengthen protections for human rights defenders can also help private sector actors to build trust with communities whose buy-in is essential for the long-term viability of investments. Failure to do so can divide communities and dissolve trust and the social license to operate, leading to costly litigation, project delays and even shutdowns. Inaction can legitimize regimes with terrible human rights records and pose reputational threats to the brand.

The international community, including leading multinational companies and international financial institutions, endorsed the UN Guiding Principles (UNGPs) on Business and Human Rights in 2011. These principles recognize the valuable role that defenders play in human rights and environmental due diligence, enabling companies to understand the concerns of affected rights holders and the risks they face as a result of their work.

Oxfam urges companies to adopt a three-pronged approach for the protection of human rights defenders:

- **Preventive:** Take all the necessary steps to prevent adverse human rights impact on HRDs, including through the adoption of a strong human rights defenders' policy.
- **Reactive:** Make sure to effectively cease and remedy adverse impact on human rights defenders. This includes ensuring that safeguards against the repetition of that initial impact are put in place and providing access to effective grievance mechanisms.
- **Proactive:** Use their leverage and/or speak out in defense of HRDs and use their influence through action with other business peers and governments.

With this three-pronged approach in mind, Oxfam has developed the following six key recommendations for how companies should respond to the threats facing human rights defenders.

| Key recommendations  |
|--|
| <ol style="list-style-type: none"> <li>1. Recognize and commit to protecting the rights and legitimacy of human rights defenders (HRDs) by adopting and disclosing a policy to protect their rights.</li> <li>2. Implement robust human rights and environmental due diligence mechanisms across the value chain to enable the identification of risks to human rights defenders.</li> <li>3. Establish an effective grievance mechanism accessible to human rights defenders.</li> <li>4. Use their leverage and speak out in defense of human rights defenders as well as against legal reforms that are aimed at restricting civil society space.</li> <li>5. Engage with communities and local civil society in inclusive and culturally and gender-sensitive ways to identify and address risks for HRDs; ensure the implementation of free, prior, and informed consent (FPIC) processes; and facilitate access to information relevant to the protection of HRDs.</li> <li>6. Do not use or support strategic lawsuits against public participation (SLAPPs) or other legal strategies that diminish established legal protections for HRDs.</li> </ol> |

# INTRODUCTION

2021 saw at least 358 human rights defenders (HRDs) killed as retaliation for their work. Fifty-nine percent worked on issues relating to land, environment or Indigenous peoples' rights. Among those killed, 26% were Indigenous peoples and 18% identified as women.<sup>2</sup>

The defenders working on land, Indigenous people's rights, and environmental rights were killed while opposing business-related abuses.<sup>3</sup> Women and LGBTQIA+ HRDs face specific gender-based violence and risks because they challenge existing gender norms in their communities and societies.<sup>4</sup> Climate activists also face threats and violence, corporate and police surveillance, and even false charges of 'eco-terrorism.'<sup>5</sup>

These trends will likely grow more pronounced as the twin crises of climate change and global inequality place activists in the sightlines of corporations' and governments' resistance to necessary change. Beyond physical violence, there is a full range of tactics being used by companies to silence HRDs: criminalization, smear campaigns, intimidation and harassment to name just a few.

There is a developed and robust body of evidence indicating that protecting HRDs is in the best interest of private sector companies. Threats to freedom of assembly and expression can threaten overall stability of investment environments. Supporting action to protect HRDs can help with managing operational and reputational risks, securing the shared space and building competitive advantage.<sup>6</sup>

Consumers increasingly place value on socially conscious supply chains—including ensuring brands that they support are not complicit in attacks on human rights defenders. Actions to strengthen protections for human rights defenders can also help private sector actors to build trust with communities whose buy-in is essential for the long-term viability of investments. Failure to do so can divide communities and dissolve trust and the social license to operate, leading to costly litigation, project delays and even shutdowns. Inaction can legitimize regimes with terrible human rights records and pose reputational threats to the brand.<sup>7</sup>

## EXISTING NORMATIVE FRAMEWORK

As set out in international human rights law, states have the primary obligation to respect, protect and fulfill the human rights and fundamental freedoms of everyone on their territory and subject to their jurisdiction.<sup>8</sup> Specific obligations for the protection of HRDs have been reaffirmed in the



United Nations (UN) Declaration on Human Rights Defenders, as well as through the work of the UN Special Rapporteur on the situation of human rights defenders and in numerous UN Human Rights Council and General Assembly resolutions.<sup>9</sup>

The international community, including leading multinational companies and international financial institutions, endorsed the UN Guiding Principles (UNGPs) on Business and Human Rights in 2011.<sup>10</sup> These principles recognize the valuable role that HRDs play in human rights and environmental due diligence, enabling companies to understand the concerns of affected rights holders and the risks they face as a result of their work.

More specifically, Guiding Principle 18 urges businesses to consult HRDs as an important expert resource, highlighting their role as ‘watchdogs, advocates, and facilitators.’ The risks faced by defenders are highlighted through Guiding Principle 26, the commentary to which requires states to ensure that the legitimate activities of human rights defenders are not obstructed.

The UN Working Group (UNWG) on Business and Human Rights 2021 roadmap for the next 10 years of implementation of the UNGPs and the UNWG guidance on ensuring respect for human rights defenders make a number of recommendations to protect human rights defenders.<sup>11</sup> UN gender guidance to the UNGPs also provides a gender-responsive approach to address adverse impacts of business on female human rights defenders.<sup>12</sup>

In addition, in 2018 the International Finance Corporation (IFC) adopted a Position on Retaliation Against Civil Society and Project Stakeholders, reiterating the importance of people being able to voice opposition and raise concerns, and asserting a position of zero tolerance for actions by an IFC client that amount to retaliation.<sup>13</sup>

Finally, the Business & Human Rights Resource Centre report Shared Space Under Pressure provides specific guidance to companies on how to address the risks to human rights defenders from a civil society perspective.<sup>14</sup>

## SIX STEPS FOR COMPANIES

Oxfam urges companies to adopt a three-pronged approach for the protection of human rights defenders:

- **Preventive:** Take all the necessary steps to prevent adverse human rights impact on HRDs, including through the adoption of a strong human rights defenders’ policy.
- **Reactive:** Make sure to effectively cease and remedy adverse impact on human rights defenders. This includes ensuring that safeguards against the repetition of that initial impact are put in place and providing access to effective grievance mechanisms.

- **Proactive:** Use their leverage and/or speak out in defense of HRDs and use their influence through action with other business peers and governments.

The following policy and practice recommendations are drawn from existing normative frameworks and from Oxfam’s own research and experiences with best practices. They have also been validated by different business and human rights experts. These recommendations build on, and should not be construed as limiting, the full scope of existing protections for HRDs under international law, as well as existing international human rights obligations and responsibilities of corporate entities. They should not be viewed as a checklist or a comprehensive accounting of all possible actions a company can take to meet its responsibilities with respect to HRDs. Relevance and implementation of suggested actions will vary across sectors and contexts.

The policy and practice recommendations are:

## **1. RECOGNIZE AND COMMIT TO PROTECTING THE RIGHTS AND LEGITIMACY OF HUMAN RIGHTS DEFENDERS BY ADOPTING AND DISCLOSING A POLICY TO PROTECT THEIR RIGHTS**

Such a policy can be stand-alone or integrated within the company’s human rights policy and should:

- Establish ‘do no harm’ as a first principle, ensuring actions and omissions by the company do not lead to retaliation, violence or stigmatization against human rights defenders;
- Commit to zero tolerance for threats, intimidation and/or attacks on human rights defenders (either as a freestanding commitment or as part of a human rights policy);
- Apply to all actors across the value chain. The company is responsible for ensuring and communicating compliance by its business relationships (including through contractual clauses, trainings and awareness raising on the importance of non-retaliation and protection of HRDs);
- Recognize and commit to addressing specific forms of harms that women HRDs face;
- Specify the grievance mechanisms available for HRDs when they face a threat;
- Include a commitment by the company to take seriously, investigate and take action on each complaint received. This requires an assessment of the risks and costs of action versus inaction to determine what commitments and actions the company will take (e.g. using its political leverage and access to policymakers to advocate for protection of HRDs under threat);<sup>15</sup>
- Include a clear recognition of the right to organize and form a union;
- Clarify the protocols and procedures the company will follow when addressing attacks to human rights defenders, including by identifying roles and responsibilities within the company;

- Adopt a continuous learning approach to prevent recurrence;
- Have the policy announced and endorsed by the highest levels of corporate leadership to send a signal to the public, consumers and employees that protection of HRDs is a priority.

## **2. IMPLEMENT ROBUST HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE MECHANISMS ACROSS THE ENTIRE VALUE CHAIN**

As part of the companies' responsibilities under the UNGPs, companies should:

- Implement due diligence that enables the identification of risks to human rights defenders across the value chain, including subsidiaries, franchisees, suppliers and security providers;
- Ensure an ongoing monitoring of compliance and adopt a preventive approach rather than solely a reactive one;
- Integrate findings into internal processes and be transparent about the results and actions taken. This could include ending business relationships with suppliers who seek to ostracize, criminalize or threaten HRDs;
- Conduct culturally sensitive and gender-responsive human rights impact assessments for new projects (and for any significant changes to a project) prior to making an investment decision;
- Engage regularly and openly with affected stakeholders, civil society organizations, HRDs and trade unions to continuously enhance human rights and environmental due diligence processes;
- Establish clear red lines beyond which the company should reconsider its presence in a country (i.e. terminate a business relationship, pause and/or fully exit its position and operations in a country) or reconsider its business relationships. To conduct this analysis, companies should seek expert advice, consult with local stakeholders and make use of credible and independent external sources of information. There are contexts in which companies should not engage in business activities if HRDs are not able to perform their job or if the company's presence can only exacerbate conflict or contribute to gross human rights abuses. In cases where the situation is less clear, companies should consider their ability to increase their leverage and must assess the human rights consequences of their withdrawal as well.

## **3. ESTABLISH AN EFFECTIVE GRIEVANCE MECHANISM ACCESSIBLE TO HRDS TO REPORT INSTANCES OF REPRESSION AND ENSURE PROPER INVESTIGATION AND RESPONSE TO THE GRIEVANCE**

- Operational-level grievance mechanisms must be legitimate, accessible (especially by Indigenous people, women and other marginalized groups), predictable, equitable, transparent, rights compatible, and based on



engagement and dialogue. They must be a source of continuous learning.<sup>16</sup>

- Grievance mechanisms require a level of board oversight (i.e. the board should receive a periodical overview of the grievances submitted) and must ensure effective follow-up with adequate resources. These mechanisms should form part of a larger engagement with HRDs.
- Companies should give all subcontractors access to their grievance mechanisms and ensure that they are incorporated into their operations. Safeguarding measures should be adopted to deal with sensitive cases, including ensuring confidentiality and providing for anonymity. Specific measures must be provided to protect whistleblowers. Working with local experts and organizations can help to ensure proper support and accompaniment to victims.
- Companies should have an open-door dialogue approach to try to resolve conflicts or disagreements with HRDs before those conflicts escalate into serious abuses. In doing so, companies must be aware that an open-door approach can sometimes perpetuate status quo power dynamics. Therefore, creating safe spaces for women will be highly important to transforming inequalities and addressing abuses that may be linked to such inequalities (e.g. sexual violence, human trafficking, modern slavery, etc.).<sup>17</sup> Where community rights have been violated, companies must use all the tools at their disposal to support accountability and redress.
- Companies must be transparent and disclose the complaints received as well as how procedures were handled (except if specifically asked not to do so). The mechanism must specify the process for escalating the grievances, as the mechanism itself is not the appropriate avenue to deal with criminal abuses. In such situations, the case should be investigated by an independent body, and company-level grievance mechanisms should not substitute or interfere with access to legal remedy and the due process of law.

#### Good practice in action

The International Council on Mining and Metals' guidance to companies on handling local-level grievances includes a section on HRDs, which recommends that:

'... companies design grievance mechanisms that have appropriate safeguards against reprisals or retaliation and which accept that affected stakeholders may legitimately make use of other judicial or non-judicial processes to raise issues.'<sup>18</sup>

## 4. USE THEIR LEVERAGE AND/OR SPEAK OUT IN DEFENSE OF HUMAN RIGHTS DEFENDERS

Companies and investors should use their leverage to influence government behavior or public sentiment when HRDs are being threatened, attacked or facing persecution due to their work around a company's operation or supply chain. Doing so can include using their leverage privately and/or speaking out publicly against legal reforms that are aimed at restricting civil

society space or reducing protections against HRDs.

- Before using their leverage, companies should identify the risks that their action or inaction could have on human rights defenders.
- In statements defending human rights defenders, it is helpful to make the business case for why targeting defenders is harmful. Companies should also speak in favor of positive policies, including mandatory human rights and environmental due diligence.
- Companies should publicly recognize the right to organize and form a union, including encouraging governments to recognize this right. Making a formal commitment to respect the right to freedom of association and supporting the efforts of workers to unionize are important steps to decrease the risk of retaliation.
- There is no one-size-fits-all approach, but rather a wide range of ways that a company can use its leverage. These include:
  - Issuing public statements;
  - Engaging the government;
  - Engaging with peers;
  - Echoing authoritative human rights sources (i.e. the Office of the UN High Commissioner for Human Rights (OHCHR)).
- The choice of action must be evaluated based on the context. If the selected strategy is to use behind-the-door influencing, the company still needs to find a way to communicate to stakeholders what steps should be taken to address the issues.

#### Good practice in action

In 2015, jewellery companies released statements calling on the Angolan government to drop charges against Rafael Marques, a journalist on trial for defamation after exposing abuses in the diamond industry.<sup>19</sup>

In 2013, in Peru, six US textile firms urged the Peruvian government to repeal a law that condoned labor rights violations. The law made it difficult for the firms to implement their own sourcing codes of conduct.<sup>20</sup>

In 2018 and 2019, sportswear companies publicly and privately called on the Cambodian government to respect freedom of association, following prior violence against striking garment workers.<sup>21</sup>

## 5. ENGAGE WITH COMMUNITIES AND LOCAL CIVIL SOCIETY IN INCLUSIVE AND CULTURALLY AND GENDER-SENSITIVE WAYS

This allows them to identify and address risks for human rights defenders, ensure the implementation of meaningful free, prior and informed consent (FPIC) processes, and facilitate access to information relevant to the protection of HRDs.

- Such engagement must be done in an inclusive and culturally sensitive and gender-sensitive way.

- Engagement must start early and be ongoing. In contexts where civic space is limited, companies must specify how they will undertake meaningful engagement with rights holders.
- Adopting an explicit policy commitment to FPIC and ensuring implementation is adequately resourced can significantly decrease the risk of conflict. For Indigenous peoples, FPIC is a right under international law, reflecting their status as self-determining peoples with collective rights. However, FPIC is emerging more broadly as a principle of best practice for sustainable development that is used to reduce conflict and increase the legitimacy of the project in the eyes of all stakeholders.
- Where FPIC processes are implemented by the state, commit to working collaboratively with states to ensure FPIC processes are implemented in a transparent and participatory manner, with adequate time and resources allotted to the process, and refrain from any direct or indirect interference that could be considered coercion or manipulation. Do not attempt to force communities who refuse to engage.
- Human rights defenders can point to risks long before they occur. Companies should take this expertise and integrate it into their planning in order to prevent human rights abuses from occurring.
- HRDs directly experiencing, or located in an environment of, threats and adverse impacts should be provided with an adequate level of information from relevant companies to more effectively prevent and respond to threats. This could include information on a company's relationships with state and non-state actors that may be committing violations in relation to corporate activity.

## **6. DO NOT USE OR SUPPORT STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION OR OTHER LEGAL STRATEGIES THAT DIMINISH ESTABLISHED LEGAL PROTECTIONS FOR HRDS**

Strategic lawsuits against public participation (SLAPPs) are harmful criminal or civil actions taken to silence, intimidate, and drain the financial resources of those who speak out in the public interest.

Their objective is to infringe on the right to free speech, and they often target civil society advocates, journalists, community leaders, whistleblowers, and others who speak out against corporate practices, with negative impacts on local communities and the environment.

However, SLAPPs are not the only legal tactic by which companies diminish established legal protections for HRDs. Companies can also use legal tactics to seek to contract and limit protections that already exist under international and national laws for HRDs and victims of gross violations of human rights.

It's a SLAPP when...

*.... human rights defenders are afraid to question reports about wrongdoing and deficits they observe ... Strategic lawsuits against public participation (SLAPPs) have exactly that effect: they can impose sometimes significant fines and criminal sanctions and thus intimidate human rights defenders*

*and stop them from shedding light on critical issues. It is our shared responsibility to prevent SLAPPs from undermining everyone's right to know.*

Michelle Bachelet, UN High Commissioner for Human Rights

#### **Good practice in action**

In 2022, the Investor Alliance for Human Rights released a statement endorsed by 44 global institutional investors representing \$270 billion in assets under management. This called on companies to protect human rights defenders, including ensuring that 'they do not use or support strategic lawsuits against public participation, or SLAPPs, filed against individuals, organizations, or communities who peacefully promote or protect human rights and the environment.'<sup>22</sup>

## **CONCLUSION**

Businesses should respond to the various threats facing human rights defenders by adopting these key recommendations in their planning and operations. Businesses have a responsibility and an interest in protecting human rights and defending civic freedoms. This includes taking preventative steps against abuse, reactive steps when violations do occur and proactive steps forward that leverage the influence and power of the private sector to keep civic space open.

Critically, businesses must not increase the pressure on defenders through SLAPPs, legal action or other efforts that undermine the space shared by the private sector, civil society, and activists. The cost of inaction is too high, both for human rights defenders and for the bottom line.

# NOTES

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