

SAFEGUARDING HUMAN RIGHTS DEFENDERS PRACTICAL GUIDANCE FOR INVESTORS



Photo: Energy East Pipeline Protest, Nina Grossman, 2015, Flickr

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Investor Alliance for Human Rights

The Investor Alliance for Human Rights is a collective action platform for responsible investment that is grounded in respect for people's fundamental rights. We are a membership-based, non-profit initiative focusing on the investor responsibility to respect human rights, corporate engagements that drive responsible business conduct, and standard setting activities that push for robust business and human rights public policies.

Our membership is currently comprised of nearly 170 institutional investors, including asset management firms, trade union funds, public pension funds, foundations, endowments, faith-based organizations, and family funds. Our members currently represent over US\$4 trillion in assets under management and 19 countries. The Investor Alliance for Human Rights is an initiative of the Interfaith Center on Corporate Responsibility. Visit our website [here](#).

Business and Human Rights Resource Centre (Resource Centre)

Business & Human Rights Resource Centre is an international NGO that works to advance human rights in business and eradicate abuse. The Resource Centre tracks the human rights impacts (positive & negative) of over 9,000 companies in more than 180 countries, making information available in eight languages on its website. We seek responses from companies when concerns are raised by civil society. The response rate is approximately 70% globally. Visit our website [here](#).

International Service for Human Rights (ISHR)

ISHR is an independent, non-governmental organization dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change. Visit our website [here](#).

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SUMMARY

In 2019, the Business & Human Rights Resource Centre tracked 572 attacks against human rights defenders focused on business-related activities, up from 492 in 2018. So far, the numbers in 2020 do not show any improvement and the COVID-19 pandemic and the response to it are putting defenders at greater risk at a time when their contribution to society is more vital than ever. The growing violence against human rights defenders who speak out against negative social and environmental impacts of business activities, coupled with government-imposed restrictions on the freedoms of expression, assembly, and association, pose profound risks to people and the environment. Institutional investors may be connected to these abuses through portfolio companies that are involved with such harms via their own operations or through business relationships. This publication provides investors with practical guidance on how to identify, prevent, and mitigate risks to defenders throughout their investment activities.

INTRODUCTION

Human rights defenders (hereafter defenders) are individuals who, individually or with others, act peacefully to promote or protect human rights. By identifying and sharing the ways in which business activities affect people's fundamental rights, defenders are instrumental in helping portfolio companies prevent and address human rights risks. Despite this vital role, defenders are often attacked because of their work in defense of human rights. In 2018, Global Witness found that on average more than three people were murdered every week for defending their lands and environment against large-scale development projects, with at least 1,400 having been killed since 2012.

Institutional investors can be connected to these impacts through their investments in companies that cause, contribute to or are directly linked to actions that undermine the rights of defenders. As a result, investors have a responsibility to assess whether their investment activities pose risks to the work and safety of human rights defenders, and show they are taking action to prevent and mitigate harms.

WHO ARE 'HUMAN RIGHTS DEFENDERS'?

"Human rights defenders" act to promote or protect human rights. They may include:

- Indigenous communities and their leaders;
- Trade union leaders and workers;
- Journalists and anti-corruption campaigners who document and blow the whistle on corporate and state corruption and financial mismanagement;
- Artists or activists campaigning for non-discrimination, equality, and the rule of law; and/or
- Ordinary people standing up for human rights.



Photo: Day of Action for Rivers
Indigenous Peoples in the Philippines
Protest 2019 Photo: International
Rivers (CC BY-NC-SA 2.0 Source: Flickr)

INTRODUCTION

The responsibility to safeguard the rights of defenders stems from the UN Guiding Principles on Business and Human Rights (hereafter UN Guiding Principles), which clarify that all business enterprises have a responsibility to respect human rights. Unanimously adopted by the UN Human Rights Council in 2011, and increasingly adopted by leading companies, business associations, and governments, the UN Guiding Principles framework provides business enterprises with a process-based roadmap for **knowing** and **showing** that they meet their human rights responsibilities. In 2017, the OECD further elaborated on this framework for the investment community in *Responsible Business Conduct for Institutional Investors: Key Considerations for Due Diligence Under the OECD Guidelines for Multinational Enterprises*.

The expectation that companies and investors conduct human rights due diligence to understand, manage, and account for risks to people is also an emerging regulatory requirement, particularly in the European context. For example, a new set of rules requiring European investors to disclose the steps they have taken to identify and address the impacts of their investment decisions on people and the planet came into force in December 2019.

In addition to being a normative responsibility, managing risks to defenders, including risks to the rule of law, freedom of expression, association and assembly that enable their work, is materially good for business. As highlighted in ISHR and ICAR's 2016 Guidance on National Action Plans, "features of a safe and enabling environment for defenders are strongly associated with an enabling operating environment for business, with businesses and defenders alike thriving in contexts [of] transparency, respect for the rule of law, freedom of expression and association, and non-discrimination."



Photo: Berta Cáceres protest, Honduras, Daniel Cima, 2016 (CC BY 2.0 Source: Flickr)

THE CASE OF BERTA CÁCERES

In 2018, a Honduras court found seven men guilty of the murder of Indigenous activist Berta Cáceres who advocated against a hydropower dam that infringed on the rights of Indigenous Peoples. The court ruled that the murder was carried out on the orders of executives of the Agua Zarca dam company DESA, following delays and financial losses linked to protests led by Cáceres. Banks financing the project, FinnFund and FMO, both eventually withdrew and created policies to address their impact on defenders.

INTRODUCTION

SCOPE AND TARGET AUDIENCE

To support responsible investment grounded in respect for human rights, this publication provides **practical guidance for asset owners and managers** on addressing risks to human rights defenders in connection with their investment activities.

This briefing provides **targeted guidance for minority shareholders with investments in public equities as well as limited partners (LPs) in private equities**. While not targeted at general partners (GPs) or investors with majority shares in private or public companies, GPs and majority shareholders will also benefit from referring to this guidance.

In most cases, minority shareholders in public companies or LPs will be directly linked to adverse human rights impacts caused or contributed to by portfolio companies. As a result, this guidance focuses on instances where investors are directly linked to impacts.¹

This guidance also aims to **support civil society organizations, governments, and other stakeholders** in their efforts to protect human rights defenders in connection with investment activities.



Photo: International Service for Human Rights

¹ Meaning those impacts connected to their operations, products or services by their business relationships, even if they have not contributed to those impacts. See [UN Guiding Principle 13](#).

THE LANDSCAPE OF ATTACKS AGAINST DEFENDERS

High-risk business sectors, countries, and regions that investors should consider when assessing and addressing risks to defenders in investment portfolios.



Photo: CIFOR on Visual Hunt / CC BY-NC-ND

Human rights defenders work to promote transparent and accountable governments, clean and safe environments, fair working conditions, and equitable societies. They play a critical role in fostering corporate transparency and respect for human rights, such as by monitoring supply chains, exposing corruption, and protecting our shared environment. As a result, defenders are a driving force for advancing the [2030 Agenda for Sustainable Development](#), which is grounded in [international human rights norms](#).

Attacks on defenders working to address the negative environmental and human rights impacts of business are mounting across the globe. Since 2015, the Business & Human Rights Resource Centre (Resource Centre) has [tracked](#) more than 2,200 killings, beatings, threats, strategic lawsuits against public participation (SLAPPs)², and other attacks intended to silence or intimidate defenders focused on business-related activities.

“If you are going to do business in any country, ask where their human rights defenders are. If you find that they are all in prison, that is going to be an economy you don’t want to be a part of.”

[Statement by Maryam Al-Khawaja](#), Bahraini human rights defender, during the 2017 UN Forum on Business and Human Rights.

² This briefing defines SLAPPs as lawsuits filed or initiated by a private party with the intention to silence or intimidate defenders who are engaged in public participation, including criticism or opposition concerning business activities.

THE LANDSCAPE OF ATTACKS AGAINST DEFENDERS

A number of factors help drive these abuses, including:

- The widespread absence of legal provisions protecting the work of human rights defenders across jurisdictions and broad impunity for attacks against them;
- Growing government restrictions on the rights and protections accorded to human rights defenders, including legal restrictions on: the right to freedom of peaceful assembly and protest; the establishment of and access to resources for NGOs; and the form or content of communications by defenders and the misuse of counter-terrorism and national security laws.
- The failure of governments to protect economic, social and cultural rights and Indigenous Peoples' rights, resulting in the absence or weak enforcement of laws that enable companies to exclude communities from decision-making processes and disregard defenders' concerns; and
- Large-scale impunity and corruption, which allows the misconduct of companies to go without repercussions, and government officials and businesses to collude in rights abuses.

According to the Resource Centre's database of attacks on defenders,³ the most dangerous countries for defenders working on business-related impacts are Colombia, Brazil, the Philippines, India, Guatemala, Mexico, and Honduras.

Most attacks documented since 2015 have been related to business activities that are linked to the mining, agribusiness, and renewable energy sectors. With regard to these sectors, specific groups of defenders are especially at risk, including Indigenous Peoples who comprise only 5% of the world's population, but have been subject to approximately 25% of the attacks in the Resource Centre's database since 2015.⁴ Frontline Defenders found that in 2018, 77% of all defenders killed globally had focused on protecting land rights, Indigenous Peoples' rights, and the right to an adequate and healthy environment.

Women and LGBTQI defenders are also at heightened risk. They face many of the same risks as their male, straight, and cisgender peers, but also face specifically gendered types of attacks in the workplace and throughout the value chain. Among these are workplace sexual harassment, violence at home and in communities, and gender-based violence online, including homophobic and transphobic harassment.

Labor rights defenders, including trade union leaders, are also under increasing pressure, most notably in Cambodia, Mexico, Bangladesh, and the Philippines, and in the agriculture, food and beverage, and apparel sectors. Labor rights defenders regularly experience physical attacks and judicial harassment as well as dismissals, restrictions on organizing, and laws that limit collective bargaining. The situation is worse for women workers who face gendered threats and violence for speaking up, especially

³ Since 2015 the database captures lethal and non-lethal attacks on human rights defenders who raised concerns about specific businesses or business sectors/projects and were allegedly attacked as a result. It does not include attacks on defenders that are not linked to business, and it only draws on publicly available information (media and NGO reports). The actual number of attacks is likely to be considerably higher. Data is disaggregated by gender, affiliation, and other characteristics, but currently there is not full visibility into some aspects of defenders' identities, which puts them at heightened risk (e.g., sexual orientation and gender identity). The full methodology is available here.

⁴ Based on September 2018 analysis: <https://www.business-humanrights.org/en/situation-of-indigenous-defenders-confronting-businesses-sept-2018>.

THE LANDSCAPE OF ATTACKS AGAINST DEFENDERS

where freedoms of expression, association and peaceful assembly are already limited. This includes export processing zones where public scrutiny and the rights to organize are deliberately curtailed by governments to prioritize investment interest.

Another increasingly high-risk sector is the information and communications technology (ICT) sector, which enables a variety of threats and attacks on defenders through its products and services. For example: (1) ICT companies have sold surveillance technologies to governments that use these technologies to surveil communications of defenders, including in [Saudi Arabia](#), [China](#), [Kazakhstan](#), [Rwanda](#) and [Mexico](#); (2) state actors have used social media platforms as vehicles for publicly sharing personal information about defenders or engaging in smear campaigns; and (3) telecommunication companies have complied with [internet shutdown](#) requests by government actors to silence public dissent. While online attacks on defenders happen everywhere, impacts are most damaging in countries where online libel and defamation is criminalized, such as in [Thailand](#).

KEY RESOURCES AND RECOMMENDATIONS ON THE TOPIC OF HUMAN RIGHTS DEFENDERS & BUSINESS

- [Human Rights Defenders 2018 World Summit Action Plan](#): Includes recommendations for companies and financial institutions from more than 150 human rights defenders in addition to several human rights organizations from around the world.
- The [Zero Tolerance Initiative \(ZTI\)](#) is a coalition led by Indigenous Peoples, local community representatives and NGOs which aims to address the root causes and responsibilities of global supply chains in killings and violence against environmental human rights defenders and their communities. The ZTI urges companies and investors to implement verifiable and effective zero tolerance commitments and policies against attacks on environmental human rights defenders.
- Report by the UN Special Rapporteur on the situation of human rights defenders ([A/72/170](#)).
- Research about why and how businesses should support civic freedoms & human rights defenders: [Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders](#) by the Resource Centre and ISHR, [The Business Case for Protecting Civic Rights](#) by The B Team (with V-Dem), and [The Business Case for Civil Society](#) by Rights CoLab and DLA Piper.
- [Responsible Sourcing: The Business Case For Protecting Land And Environmental Defenders And Indigenous Communities' Rights To Land And Resources](#)
- [A compilation](#) of additional up-to-date reports and resources from non-governmental organizations is available on the Resource Centre's defenders and civic freedoms webpage.



Photo: United Nations image, Jean-Marc Ferré

HUMAN RIGHTS PROTECTIONS FOR DEFENDERS

Investors should be aware of and refer to international human rights law, standards, and frameworks when engaging portfolio companies on managing risks to defenders.

As with all people, defenders are entitled to the full enjoyment of the human rights outlined in the United Nations (UN) International Bill of Human Rights, the International Labour Organization (ILO) Conventions, and other international human rights instruments. This includes the right to life and freedom from torture and cruel, inhuman or degrading treatment or punishment, enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other human rights charters and conventions.

The UN Declaration on Human Rights Defenders elaborates on the protections for defenders in the context of their work. The protection of enabling human rights, including freedom of expression, association, and peaceful assembly and the right to participate in public affairs⁵ – is crucial for the work of defenders as they serve as a vehicle for the exercise of other civil and political rights and economic, social, and cultural rights. The need to ensure the participation of rights-holders, including defenders, in decision-making about business projects and development priorities, especially in relation to their environmental impacts, has been incorporated in several international legal instruments and in national legislation.⁶

⁵ “The Right to Participate in Public Affairs: Submission on the Draft Guidelines”, The Carter Center. <https://www.ohchr.org/Documents/Issues/EqualParticipation/DraftGuidelines/CarterCenter.pdf>

⁶ The right to participate in government and in public affairs is recognized in the UN Declaration on Human Rights Defenders. Regional human rights bodies also recognize this right. States have heightened duties with respect to Indigenous Peoples. Their right extends to consultation according to the principle of free, prior, and informed consent (FPIC), elaborated by ILO Convention 169. More information is available [here](#) and [here](#).

THE LANDSCAPE OF ATTACKS AGAINST DEFENDERS

Moreover, in the case of certain groups including Indigenous Peoples, the approach involves protecting both their individual and collective rights, as recognized by international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169.

REALIZING THE SUSTAINABLE DEVELOPMENT GOALS (SDGS) DEPENDS ON DEFENDERS AND AN ENABLING ENVIRONMENT FOR CIVIL SOCIETY

Threats against defenders and restrictions on civil and political rights have a negative impact on advancing all of the SDGs, in particular:

- SDG 8 - Inclusive economic growth and decent work: When freedom of association is restricted, workers' ability to monitor and report abuses in the workplace and collectively advocate for decent working conditions is reduced.
- SDG 10 - Reduce inequality: Restricting space for civil society to operate limits defenders' vital work to document and advocate for governments to address inequality.
- SDG 13 - Take urgent action to combat climate change and its impacts: Environmental human rights defenders and Indigenous Peoples are leaders in protecting the climate and the shared environment.
- SDG 16 - Peaceful & just institutions: Attacks on civil society organizations and killings of defenders hold back development progress and impede the achievement of peace and justice.

For more information see: [Development needs civil society – The implications of civic space for the sustainable development goals](#), ACT Alliance (April 2019)

HOW COMPANIES CAN BE CONNECTED TO ATTACKS AGAINST DEFENDERS

Investors should consider how a portfolio company's actions or inactions determine the company's responsibility for impacts on defenders and the appropriate response.



Photo: Honduras Guapinol community, BHRRC

As previously mentioned, the UN Guiding Principles affirm the fundamental responsibility of businesses to respect the rights of workers, communities, consumers, and others affected by their operations and business relationships throughout the value chain. All companies, regardless of their size, sector, ownership, or structure, should take steps to avoid adverse human rights impacts, irrespective of whether governments uphold their human rights duties.

To achieve this, companies and institutional investors are expected to conduct “human rights due diligence”, an ongoing risk management process to identify, prevent, mitigate, and account for how they address adverse human rights impacts connected to their business activities.

To ensure victims of abuse have access to remedy, companies and institutional investors are expected to have in place

THE OECD'S APPROACH TO RESPONSIBLE BUSINESS CONDUCT

The roadmap for responsible business laid out in the UN Guiding Principles has been integrated into the OECD Guidelines on Multinational Enterprises. In 2018, the OECD published [Due Diligence Guidance for Responsible Business Conduct](#), which recognized reprisals against civil society and defenders as an adverse impact of business activities. In March 2020, the OECD [publicly stated](#) that it was “deeply concerned by a number of alleged incidents of undue pressure intended to silence those who submit cases to the OECD National Contact Points,” which are government-supported offices that promote the OECD Guidelines and provide a grievance mechanism to resolve cases against companies that face allegations of failing to meet the Guidelines’ standards.⁷

⁷ OECD Watch. [National Contact Points \(NCPs\)](#).

HOW COMPANIES CAN BE CONNECTED TO ATTACKS AGAINST DEFENDERS

effective operational-level grievance mechanisms to identify adverse human rights impacts to make it possible for grievances to be addressed and remediated early and directly.⁸

Importantly, the UN Guiding Principles state that businesses should not restrict, impair, or otherwise interfere with the work of defenders. They also recognize that defenders are valuable sources of information for companies when conducting due diligence to assess the human rights impacts of business activities.

THREE CATEGORIES OF INVOLVEMENT WITH IMPACTS ON DEFENDERS

Investors should be aware that the UN Guiding Principles outline three ways in which a business can be involved with actual or potential adverse human rights impacts and what the appropriate response is in each case:

I. A company may cause an adverse impact on defenders through its own actions or failure to act.

For example, a company that fires employees who seek to organize workers and form a labor union to advocate for labor rights is responsible for causing an adverse impact. In these cases, companies should take steps to cease or prevent the action causing the harm and remediate the harm.

II. A company may contribute to an adverse impact (including unintended consequences and cumulative impacts) either *in parallel* with external public or private entities, such as government security forces, or *through* external entities, such as suppliers, users, or customers.

For example, a technology company contributes to abuse if it sells surveillance technology to a government it knows to have a history of systematic repression of defenders, and the government uses it to identify and detain political activists and defenders. In such cases, companies should: (1) cease or prevent the action contributing to the harm, (2) use leverage to mitigate the risk that any remaining impact continues or recurs, and (3) contribute to remediation of the harm.

III: A company's products, services, or operations may be *directly linked* to an adverse impact on defenders through a business relationship.

For example, a bank providing loans to a project that breaches agreed upon due diligence standards when it uses security guards to threaten and silence concerns raised by communities over environmental pollution. In cases of linkage, companies should: (1) use leverage to mitigate the risk of the impact continuing or recurring and (2) consider playing a role in enabling remediation of the harm. A range of

⁸ UN Guiding Principle 29. For more detailed guidance about each step of the human rights due diligence process in relation to defenders, see "Do No Harm: The Case for Corporate Due Diligence to Help Protect Land and Environmental Defenders," the companion report by Global Witness.

HOW COMPANIES CAN BE CONNECTED TO ATTACKS AGAINST DEFENDERS

factors help determine appropriate action in these situations, including the enterprise's "leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences."⁹

PROACTIVELY USING LEVERAGE TO MITIGATE HARM AGAINST DEFENDERS

Businesses are also increasingly expected to proactively use their leverage to promote respect for human rights defenders and civic freedoms, even when they are not causing, contributing to, or linked to the impacts at hand. For example:

- In 2017, the UN Special Rapporteur on Human Rights Defenders said "the responsibility of businesses to respect human rights [entails] also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating."
- In 2018, the UN Working Group on Business and Human Rights stated that "beyond steps to respect and defend

HRDs when there is a direct link to business operations, business can also address situations where laws are being introduced and used to restrict HRDs and civic space."

- In 2018, major businesses pledged to "work to find effective ways business can positively contribute to situations where civic freedoms and human rights defenders are under threat."
- In 2015, a group of 40+ leading civil society organizations said that "speaking out publicly in support of HRDs who are at risk [constitute] good business practice" and that business can "advocate... against laws and policies that restrict [HRDs]".

⁹ Ruggie, John. Comments on Thun Group of Banks Discussion Paper on the Implications of UN Guiding Principles 13 & 17 In a Corporate and Investment Banking Context. 21 February 2017.

THE COSTS OF NOT SAFEGUARDING DEFENDERS

Investors that do not take steps to identify, assess, and address risks to defenders in investment portfolios may be exposed to material risks resulting from potential legal, reputational, operational, and financial risks affecting portfolio companies.



Photo: Energy East Pipeline Protest, Nina Grossman, 2015, Flickr

“They are our eyes and ears on the ground, helping us understand the investment environment.”

Adam Kanzer, Domini Impact Investments, 2018.

There is a strong case for investors to prioritize assessing how portfolio companies manage salient human rights issues such as risks to human rights defenders.

A company’s salient human rights issues are those human rights that are at risk of the **most severe negative impact** resulting from a company’s activities or business relationships. Saliency uses the lens of **risk to people**, while recognizing that where risks to people’s rights are greatest, there is significant overlap with risk to the business. If a company does not conduct human rights due diligence, risks of severe impacts on human rights increase, as do risks to the business, such as reputational damage, costly litigation, supply chain disruptions, project delays, withdrawn finance, talent retention, and divestment.

THE BUSINESS CASE

- In 2018, ISHR & the Resource Centre published *Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders*, which explains the moral, business and normative cases for safeguarding defenders. In 2019, it was endorsed unanimously by the American Bar Association.
- In 2018, the B-Team published *The Business Case for Protecting Civic Rights*, which explores how a better business environment is linked to civic rights and freedoms.

THE COSTS OF NOT SAFEGUARDING DEFENDERS

In this context, defenders play a pivotal role in helping businesses manage risks to people and businesses by alerting companies and their investors to emerging salient issues and grievances before these escalate to the point of the above-mentioned material risks. In turn, when companies fail to engage with, or undermine the work of defenders, material risks arise.

MATERIAL COSTS OF FAILING TO CONSTRUCTIVELY ENGAGE WITH DEFENDERS

First Peoples Worldwide documented that the cost of the Dakota Access Pipeline (DAPL) nearly doubled from an original estimate of US\$3.8 billion to at least US\$7.5 billion due to a lack of meaningful consultation by Energy Transfer Partners and the U.S. Army Corps of Engineers with the Standing Rock Sioux Tribe and the ensuing protests by Indigenous communities to protect their water and cultural rights. During these protests, Indigenous demonstrators were subjected to pepper spray, water guns, rubber bullets and attacks by guard dogs, resulting in hundreds of injuries. During this period, ETP's stock price significantly underperformed relative to market expectations, which persisted after the project was completed. From August 2016 to September 2018, ETP's stock declined in value by almost 20% while the S&P 500 increased by nearly 35%.

On April 22, 2020, Resolute Forest Products was ordered to reimburse defendants more than US\$800,000 to cover attorney's fees and

costs associated with two lawsuits it had filed against Greenpeace in relation to the NGO's criticism of the impact of the company's logging practices on the environment. Greenpeace asserted that these lawsuits were meritless and meant to silence their work to protect Canada's boreal forest.

Companies in other sectors are also vulnerable to material risks. For example, Google faced strong backlash over "Project Dragonfly," a surveillance-enabling search app it developed for the Chinese market that would undermine civic freedoms and the work of defenders. Over 1,400 Google employees protested publicly through an open letter. The controversy also prompted at least five Google employees to quit, suggesting that a company's activities that undermine civic freedoms can lead to issues with talent retention. In June 2019, for the first time, Google employees coordinated with activists and investors to file a shareholder proposal on the censored search engine.

Ensuring respect for the rights of defenders and an environment that enables their work has demonstrable positive outcomes for companies and investors. As outlined in Shared Space Under Pressure, the features of a safe and enabling environment for defenders, including the rights to freedom of expression, association, and assembly and the rule of law, are strongly associated with a stable operating environment for business.

HOW COMPANIES SHOULD RESPECT DEFENDERS



Photo: Investigation of the assassination of Marielle Presente, Brazil, Luiza Erundina, Flickr

This guidance provides investors with an overview of key human rights expectations of companies in the context of ensuring the safety of defenders. It draws from the UN Guiding Principles on Business and Human Rights, as well as [recommendations for business](#) from human rights defenders, national and international non-governmental organizations, think-tanks, UN bodies and other experts.

Further guidance for business specific to land and environmental defenders is available in the Global Witness report [Responsible Sourcing: The business case for protecting land and environmental defenders and indigenous communities' rights to land and resources](#), which is a companion report to this briefing.

In recent years, a small but growing number of companies have identified ensuring the safety of human rights defenders as a key aspect of doing business responsibly. For example, some companies have issued stand-alone policies on defenders (e.g., [adidas](#)), [mentioned defenders explicitly](#) in other policies, and some have joined forces to publish statements [calling on governments](#) to stop their attacks and respect defenders' work.

GUIDANCE ON POLICY DEVELOPMENT

- Guidance for developing a [human rights policy commitment](#).
- [Examples](#) of corporate policies and statements addressing human rights defenders.
- Joint company [statement in support of human rights defenders](#).

HOW COMPANIES SHOULD RESPECT DEFENDERS

Nearly 30 multinational companies have recognized that the work of defenders and respect for the freedoms of expression, association and assembly are essential to establishing stable, profitable and sustainable business environments in which companies thrive and economies prosper. They meet regularly to discuss possible actions with the objective of fostering that idea and some of them have expressed this commitment publicly. While consistent company and investor action in support of human rights defenders is still emerging, there are leading examples upon which to build. The following section outlines what is expected of companies with respect to defenders and what investors should ask of portfolio companies.

1. Portfolio companies should have human rights policies that are aligned with the UN Guiding Principles and applicable to the company's own operations with expectations communicated across the full value chain. Company policies should address potential threats to defenders by:

- Developing the policy with input from human rights defenders.
- Explicitly referring to defenders as defined by the broad UN definition.
- Identifying the types of defenders the company may impact and explain how they are connected to the company's salient human rights issues, e.g., land, freedom of expression, trade union rights, or security.
- Recognizing the nature of the threats that defenders face, and the specific threats faced by women human rights defenders.
- Setting out the company's expectations of its business relationships with regard to respecting the rights of defenders.
- Explaining the company's processes for preventing, mitigating, and providing or enabling remedy to defenders.
- Committing to regular consultation with local civil society groups and defenders where they can safely express concerns about the company's practices.

2. Portfolio companies should identify, prevent, mitigate, and account for how they address adverse human rights impacts on defenders by carrying out human rights due diligence. Risks for defenders will vary based on the sector, patterns of threats and attacks, and the country, including the respect for rule of law and the degree of impunity and corruption among government and non-state actors in that country, among other factors. Companies should:

- Identify and assess actual and potential adverse human rights impacts on defenders resulting from the company's operations and business relationships. Human rights impact assessments should involve meaningful participation of defenders throughout the impact assessment process.
- Participatory data collection (such as Community-Based Monitoring and Information Systems) and ground truthing can contribute to risk identification, prevention and management.

HOW COMPANIES SHOULD RESPECT DEFENDERS

- Integrate and act on findings from assessments. Where there is clear evidence that a company's business relationship has impacted the rights of defenders, companies should use leverage to stop, prevent, or mitigate the harm. Depending on the severity of the impact and the type of relationship, actions may include petitioning host and home governments to undertake protective measures or investigate allegations of human rights abuses, supporting independent investigations and credible mediation efforts, cooperating with law enforcement and international bodies, and providing or collaborating in the provision of remedy. Where the use of leverage has failed to mitigate the harm, or where the severity of the human rights harm warrants it, companies may end the business relationship, for example by suspending sourcing, terminating contracts, or banning users, so long as severe potential impacts of such termination are managed.
- Disclose steps taken to identify, prevent, mitigate, and remedy abuses of the rights of defenders, including any attacks they have faced, in such a manner that ensures the safety and security of defenders and their communities and organizations.

RISKS TO HUMAN RIGHTS DEFENDERS IN HUMAN RIGHTS IMPACT ASSESSMENT PROCESSES

Conducting human rights impact assessments (HRIAs) may lead to additional and unintended risks for defenders if not done responsibly. The Danish Institute for Human Rights (DIHR) notes in their '[Stakeholder Engagement Practitioner Supplement](#)', 'retaliation can stem from businesses, state actors, non-state armed groups or other community members against the individuals taking part in the interviews.' To lower the risks, DIHR's guidance outlines the steps HRIA teams should take prior to meeting with defenders and other stakeholders, and during the interviews. In addition, companies and HRIA teams should:

- Conduct background research on the local security situation, including an analysis of NGO laws, statistics on attacks on defenders, and restrictions on civil and political rights during in-country risk

assessments, in order to identify potential risks for defenders participating in HRIAs.

- Ensure that HRIAs pay specific attention to the gendered nature of attacks and any disproportionate impact on women and LGBTQI defenders and other at-risk groups.
- Consider creating security protocols with and for defenders (looking at threats, vulnerabilities and capacities) participating in HRIAs, monitor those risks after the interviews, and address any risks that may arise.
- Use good practice and guidance in protecting defenders from retaliation and reprisals, including MICI's toolkit developed for accountability mechanisms of development banks and the [DIHR guidance](#) on stakeholder engagement in HRIA.

HOW COMPANIES SHOULD RESPECT DEFENDERS

3. Portfolio companies should ensure that human rights defenders have access to remedy:

- To ensure defenders are able to submit grievances and access remedy, businesses should have in place effective operational-level grievance mechanisms in line with UN Guiding Principle 31. Similarly, companies should adopt measures to ensure whistleblowers who expose and/or report abuses are protected.
- If businesses cause or contribute to abuses of rights of defenders they should take appropriate actions. This could include reversal of an employment decision (e.g., the inappropriate dismissal of a trade union leader over organizing activities), “apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.”¹⁰
- Where relevant and appropriate, businesses should cooperate in remediation with state-based judicial and non-judicial grievance mechanisms.

¹⁰ As per the 2017 report to the UN General Assembly (A/72/162) in which the UN Working Group on BHR unpacks the concept of access to effective remedies under the UN Guiding Principles <https://undocs.org/A/72/162>

INVESTOR GUIDANCE ON HUMAN RIGHTS DEFENDERS

Institutional investors should take steps to identify, assess, and address risks to human rights defenders prior to investing, when making investment decisions, and as part of their stewardship activities.

ACTIVITIES PRIOR TO INVESTMENT DECISION-MAKING

Like all companies, asset owners and managers are expected to adopt policy commitments to respect all internationally recognized human rights in their operations and throughout their business relationships. This commitment should be in line with and point to the UN Guiding Principles as the basis for investments, highlight human rights defenders as an at-risk group, and include a specific commitment to safeguard their rights.

To operationalize this institutional-level human rights policy commitment, investors should have in place robust governance mechanisms, by mandating board-level oversight of human rights risks, building capacity and allocating responsibility and accountability for its implementation to specific functions, and embedding this commitment into other institutional policies and governance systems, including those related to ESG risk management.

The process of embedding also entails formally communicating the institution's human rights expectations to financial markets, real and potential investee companies and between asset owners and managers. For example, **asset owners** should incorporate their human rights expectations in investment policy statements to guide **asset managers** in investment decision-making. In turn, asset managers should share the human rights expectations they put forth to portfolio companies with asset owners.



INVESTOR GUIDANCE ON HUMAN RIGHTS DEFENDERS

ACTION	EXAMPLES
<p>Adopt a commitment to respect human rights and defenders</p>	<ul style="list-style-type: none"> → Through its Human Rights Policy Statement, AP2—one of five funds within the Swedish pension system—commits to implementing the UN Guiding Principles, including through processes that “identify and manage any negative impacts on human rights of the Fund’s activities.” The policy also details how AP2 governs its human rights policy, from the Board and senior management levels downwards. → In December 2018, Domini Impact Investments and the Investor Alliance for Human Rights signed on to a first-of-its-kind statement acknowledging that defenders are important partners in identifying risks and committed to supporting the work of human rights defenders through its investment activities.
<p>Communicate human rights expectations to business relationships</p>	<ul style="list-style-type: none"> → Norway’s Government Pension Fund Global, managed by Norges Bank Investment Management, sets out Human Rights Expectations Towards Companies in line with the UN Guiding Principles and other internationally recognized standards. → As a fund manager, the Unitarian Universalist Association (UUA) integrated a commitment to invest in companies that respect human rights in line with the UN Guiding Principles in its “Investment Information Memorandum”, which provides asset owners with key information to consider prior to investing in the UUA’s Endowment Fund.

INVESTMENT DECISION-MAKING

Investors should consider human rights standards when deciding to invest.

For asset owners, this will involve assessing whether a potential asset manager has expressed a commitment to respecting human rights, including the rights of defenders, and embedded this commitment into its investment decisions, including in actively and passively managed mutual funds and across asset classes.

When deciding to invest in individual companies, asset managers should assess whether potential investee companies have in place appropriate human rights policy commitments, due diligence processes, and grievance mechanisms, and whether they specifically reference the situation of human rights defenders. This involves reviewing publicly available data, including company reports, to determine whether companies have in place policies and processes that align with the expectations

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of the UN Guiding Principles. In addition to identifying whether companies have policies and processes, investment decision-makers should also consider the effectiveness of these processes for achieving outcomes for people, including human rights defenders.

In practice, accessing this type of information for potential investees at scale remains a challenge for the investment community, especially with regard to defenders. For the most part, [ESG data providers](#) fall short of effectively and comprehensively integrating human rights standards and performance into measurement metrics. Thus, commercially available ESG data very often misses key human rights information, especially with regard to impacts on defenders. However, a growing number of initiatives and tools seek to provide investors with such information. For example, investment analysts should:

- Refer to the questions contained in the [UN Guiding Principles Reporting Framework](#) to help guide research;
- Use the [Corporate Human Rights Benchmark](#), which includes an indicator on human rights defenders, to assess corporate human rights performance;
- Review the UN [independent human rights experts'](#) communication to individual companies, and their [country assessments](#) and reports; and
- Use [Business and Human Rights Resource Centre's](#) tools and databases to research companies, sectors, regions, and issues. This includes the Resource Centre's free [Weekly Update](#) which alerts investors and other stakeholders to the latest developments regarding business and human rights, drawing attention to allegations of misconduct by individual companies and attacks against human rights defenders.

While not always specific to human rights defenders, these tools provide key information to help investors understand the seriousness of a company's approach to human rights risk management, an important indicator for assessing risks to defenders.

ACTION	EXAMPLES
<p>Assess companies for human rights policies, processes, and outcomes</p>	<ul style="list-style-type: none"> → APG Asset Management joined forces with social organizations to establish the Corporate Human Rights Benchmark to help APG and other investors make informed investment decisions based on access to "solid, company-specific research that measures performance in terms of key aspects, such as dealing responsibly with people and the environment." → In March 2020, a coalition of 176 investors, including asset managers, public pension funds, and faith-based institutions representing US\$4.5 trillion, sent a letter to 95 major multi-national companies calling for improved performance and disclosure on human rights due diligence.

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RESPONSIBLE INVESTMENT STEWARDSHIP

Once investors have invested in a company, an actively managed mutual fund, or a passively managed index fund, they should take proactive steps to prevent, mitigate, and, where appropriate, address adverse impacts on human rights defenders.

Preventative approaches may include engaging with portfolio companies, index fund providers, and other investment service providers to improve their human rights risk management. Investors should also consider addressing systemic challenges facing defenders, including by participating in industry or multi-stakeholder initiatives that advance respect for human rights defenders and broader civil and political rights that enable their work.

Where real or potential negative impacts on human rights defenders have been identified, investors should take steps to mitigate and prevent them. While the scope of investor responsibility in direct linkage does not extend to the **provision** of remedy, investors may still play a role in **enabling** remedy. For example, the [Dutch Pension Funds Agreement states](#) that an investor should, “Use and, where necessary and possible, increase leverage by imposing time-limited demands in which it encourages listed investee companies that cause or contribute to an adverse impact to prevent and/or mitigate that adverse impact and/or to provide access to remedy.”

Addressing impacts that have occurred can take many forms, including expressing concerns through letters, engaging in dialogues, attending annual general meetings (AGMs), lending proxies so that human rights defenders negatively affected by companies may attend AGMs, filing shareholder resolutions, exercising voting rights in support of defenders, collaborating with other investors, engaging with policymakers and legislators, and collaborating with relevant stakeholders, including individual human rights defenders, NGOs, and trade unions.

The UN Guiding Principles clarify that when an enterprise lacks the leverage to prevent or mitigate adverse impacts and is also unable to increase its leverage, it should consider ending the relationship. The [OECD elaborates](#) on this point for investors by stating that, while divestment should in most cases be a last resort or reserved only for the most severe adverse impacts, divestment from a company may be an appropriate response after failed attempts at mitigating the harm, where mitigation is unfeasible, or because of the severity of the adverse impact warrants it.

ACTION	EXAMPLES
Directly engage companies	→ In December 2019, shareholders filed a resolution calling on Alphabet, Google’s parent company, to improve the company’s whistleblower policies and practices over concerns about insufficient protection for employees voicing human rights concerns and the firing of workers active in organizing.

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ACTION	EXAMPLES
	<p>→ Citing concerns about violence against human rights defenders and threats against whistleblowers and employees who speak to investigators, shareholders filed a <u>proposal</u> in the 2020 season calling on Lear Corporation to assess actual and potential human rights impacts of high-risk business activities in its operations and value chain.</p>
Engage peer investors	<p>→ In response to calls made by the UN Special Rapporteur on Human Rights Defenders, the Investor Alliance for Human Rights released a first-of-its-kind <u>statement</u> endorsed by 68 institutional investors in April 2018, calling on companies to make commitments to protect defenders and take immediate action to ensure the protection and physical safety of Indigenous rights defenders at risk in the Philippines.</p>
Multi-stakeholder engagement	<p>→ The <u>Dutch Pension Funds Agreement on Responsible Investment</u> aims to “prevent, mitigate and/or remedy negative consequences on society and the environment” resulting from pension fund investments. Participating pension funds commit to engaging with trade unions in their efforts to prevent and address labor rights abuses. In turn, participating NGOs are expected to play an independent, critical and constructive role in the implementation of the Agreement, and contribute to the “protection of human rights activists”.</p> <p>→ The <u>Business Network on Civic Freedoms and Human Rights Defenders</u> is an informal network of companies and investors, convened and facilitated by the Resource Centre, The B Team, and the ISHR. Started in 2016, it explores the role of companies and investors in helping to protect civic freedoms and human rights defenders globally and serves as a space for discussion and exchange of information, advice, and strategies. It enables mutual learning and may be used flexibly to initiate individual or collective action.</p>
Engage policy-makers	<p>→ In 2019, in response to the Bangladeshi government’s efforts to prevent the Accord on Fire and Building Safety in Bangladesh from operating, putting workers’ safety at risk, a <u>coalition of 250 institutional investors, with over US\$4 trillion in assets under management organized by ICCR</u>, wrote to the Prime Minister to signal strong support for allowing the Accord to continue its work to make factories safe for workers in the garment sector, citing that a transition plan for a worker complaint mechanism needed much more time.</p>

CONCLUSION



Rarely has the critical importance of defenders in society been as evident as it is in this historic moment.¹¹ In the words of [Amnesty International](#), “human rights defenders, especially those working in the fields of research, health and social care, journalism and other areas, have been key in informing the public about the challenges posed by COVID-19 at all stages of the crisis” and have been “helping the public understand the impact and implications of COVID-19 in their communities and how it affects different sectors of society.”

Yet as this guidance details, human rights defenders across the globe continue to face severe risks because of this work. Institutional investors should be aware that they are connected to abuses through their investments in companies that cause, contribute or are directly linked to actions that undermine the rights of defenders. As a result, and in line with the UN Guiding Principles, investors have a responsibility to assess whether their investment value chains pose risks to the work and safety of human rights defenders, and show they are taking action to prevent and mitigate harms.

By proactively activating their leverage to promote respect for human rights defenders and civic freedom, investors and their portfolio companies can play a transformational role in safeguarding defenders and creating enabling environments for responsible business conduct. In doing so, investors will also address material risks to business, as the features of a safe and enabling environment for defenders overlap strongly with those of a stable operating environment for business.

Forward-looking institutional investors will therefore embrace their responsibility to assess and address any risks to human rights defenders their activities may pose - recognizing that our collective fate and that of our planet depends on defenders being able to safely continue their work.

¹¹ [Protecting human rights during COVID-19](#), ISHR, 2020.

TOOL ANNEX: QUESTIONS FOR COMPANY ENGAGEMENT

The following questions support investors in engaging and evaluating portfolio companies' efforts to manage risks to human rights defenders in their operations and value chains.

Human rights commitment and governance

- Does the company have a public commitment to respect internationally recognized human rights including a commitment to respect defenders, or does it have a stand-alone defenders policy?
- Does the board of directors seek to embed respect for human rights in the company's policies and practices and review the company's efforts to manage salient risks, including risks to defenders?

Assessing real and potential human rights impacts

- Does the company analyze the overall operating environment and context for defenders and identify and assess real and potential adverse impacts on defenders associated with its activities and business relationships?
- Has the company's or any of its subsidiaries' operations, products, or services, caused, contributed to, or been directly linked to violence against and/or abuses of defenders?
- Does the company engage with defenders throughout the human rights impact assessment (HRIA) process? Are security risks to defenders during the HRIA process monitored and mitigated?

Addressing human rights risks and impacts

- Do the company's policies and processes guarantee all workers' fundamental labor rights, including freedom of association and collective bargaining?

- Does the company conduct human rights due diligence of suppliers to prevent sourcing from companies involved in abuses against defenders?
- What steps does the company take to ensure that personnel, contracted private security companies, and/or government forces providing security to its operations respect the rights of workers and communities, including defenders who may raise concerns about its activities?
- What safeguards does the company have in place to prevent the misuse of its products and services to threaten or undermine the legitimate activities of defenders?
- Does the company engage with industry peers to drive business and government respect and protection of the rights of defenders?

Ensuring access to remedy

- Does the company have grievance mechanisms that are accessible to human rights defenders, including workers, community representatives, and others who may be negatively impacted by the company? How does the company know its grievance mechanisms are effective?
- How does the company protect against potential retaliation against defenders expressing grievances? Does the company have whistleblower protections in place?
- What are the company's processes for addressing complaints from affected individuals?
- Has the company provided or enabled remedy for any actual impacts on defenders? If so, what are typical or significant examples?

GLOSSARY

Active investing: Investors have two main investment strategies for generating returns on their investments: active portfolio management and passive portfolio management. Active investing focuses on outperforming the market in comparison to a specific benchmark such as Standard & Poor's S&P 500 Index. Actively managed funds have portfolio managers making investment decisions and analysts conducting in-depth research on factors that affect companies.

Asset: An asset is a resource with economic value that may be owned or controlled by an individual or a company with the expectation that it will provide a future benefit.

Asset class: A grouping of investments with similar characteristics, often subject to the same legal and regulatory requirements. Types of asset classes include equities (stocks), fixed income (bonds), cash and cash equivalents, real estate, commodities, futures, and other financial derivatives.

Asset manager: Managers act as investment agents on behalf of asset owners. They determine what investments to make or avoid in order to grow a client's portfolio over time. To do this, they conduct extensive research utilizing both macro and micro analytical tools. Managers include investment funds, insurance companies, and pension funds.

Asset owner: Owners have the legal ownership of assets. They include pension funds, insurance funds, sovereign wealth funds, churches, foundations, and family offices.

Enabling environment for human rights defenders: The operating environment for human rights defenders has a direct impact on the level of risk and threats they encounter. A positive

environment is defined by various elements, including a conducive legal, institutional and administrative framework, access to justice and an end to impunity, a strong and independent national human rights institution, specific attention to women defenders, protection mechanisms and high-level political support, non-state actors that respect and support the work of defenders, safe access to international human rights bodies and a strong, dynamic and diverse community of defenders.

Human rights: Human rights are rights inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, color, religion, sexual orientation, language, or any other status. They are outlined in the United Nations (UN) International Bill of Human Rights (which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights), the International Labour Organization (ILO) Conventions, and other international human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. They are also outlined in regional human rights instruments, such as the African Charter on Human and Peoples' Rights, the American Declaration of the Rights and Duties of Man, the ASEAN Human Rights Declaration, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Human rights defender: "Human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights. They are identified above all

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by what they do and it is through a description of their actions and of some of the contexts in which they work, that the term can best be explained. The actions taken by human rights defenders must be peaceful in order to comply with the UN Declaration on human rights defenders.

Human rights due diligence: An ongoing risk management process that companies need to follow in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. It includes four steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.

Index fund: A type of mutual fund designed to passively match or track a segment of the market, such as the Dow Jones, S&P 500 or Nasdaq Composite. Index funds are passively managed by portfolio managers who are responsible for replicating the index.

Institutional investor: Institutional investors pool funds to buy, sell, and manage stocks, bonds, and other securities on behalf of clients, customers, members, or shareholders. They include endowment funds, commercial banks, mutual funds, hedge funds, pension funds, and insurance companies.

Mutual fund: A type of investment vehicle consisting of a portfolio of stocks, bonds, or other securities. They are divided into categories that reflect the types of securities they invest in, investment objectives and the type of returns they seek. Mutual funds provide small or individual investors access to professionally managed portfolios at a low price. The majority of money in employer-sponsored retirement plans goes into mutual funds.

Minority shareholdings: A minority shareholder owns less than 50 percent of the total shares of a company, does not have the voting control of the corporation, and cannot single-handedly elect the directors of the company.

Passive investment: An investment strategy to maximize returns by minimizing buying and selling. Index investing is one common passive investing strategy whereby investors purchase a representative benchmark, such as the S&P 500 index, and hold it over a long time horizon.

Public equity: Shares of ownership issued by publicly traded companies and traded on stock exchanges. Investors may profit from public equities either through a rise in the share price or by receiving dividends. Unlike private companies, public companies have gone through more rigorous approval processes in order to participate in the public market, making it easier for investors to buy and sell company shares at any time. Public companies are required to regularly publish detailed financial results.

Stakeholder: Stakeholders are those individuals or organizations that can affect, or be affected by, a company's actions and decisions. Potentially affected stakeholders include, for example, employees, contract workers, supply chain workers, communities, consumers and end users of products. Stakeholders also include civil society groups and experts who engage on human rights issues related to a company's operations or value chain, as well as shareholders who engage actively on human rights issues or whose financial returns can be affected by a company's failure to manage human rights risks effectively.

OECD Guidelines for Multinational Enterprises: Recommendations from governments to multinational enterprises on responsible business conduct. The OECD Guidelines set standards for

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responsible business conduct across a range of issues, including human rights.

Ownership investment: Ownership investment in a company entails investors owning a share of the company, which is expected to increase in value over time, whereas company or project lending involves loan repayments and consequences for non-repayment.

UN Guiding Principles on Business and Human Rights: The UN Guiding Principles set out the duties of states and the responsibilities of companies to ensure that businesses operate with respect for human rights. They were unanimously endorsed by the UN Human Rights Council in June 2011, supported by governments from all regions of the world, making them the authoritative global standard with regard to business and human rights.