

NEXT DECADE | 10 +

**BUSINESS AND  
HUMAN RIGHTS**  
UN GUIDING PRINCIPLES



UNITED NATIONS  
**HUMAN RIGHTS**  
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

# **The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders**

A/HRC/47/39/Add.2

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises





## Summary

In the present report, submitted to the Human Rights Council pursuant to its resolutions 17/4, 26/22, 35/7 and 44/15, the Working Group on the issue of human rights and transnational corporations and other business enterprises highlights the need for addressing the adverse impact of business activities on human rights defenders. It unpacks for States and business the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.

**Human Rights Council**

Forty-seventh session

21 June–9 July 2021

Agenda item 3

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.**





# Contents

<b>I. Introduction .....</b>	<b>1</b>
<b>II. Human rights defenders and the Guiding Principles on Business and Human Rights .....</b>	<b>2</b>
<b>A. The increase in risks to human rights defenders connected to business activity .....</b>	<b>5</b>
<b>B. Why risks related to business activity are faced by human rights defenders .....</b>	<b>7</b>
<b>III. The Working Group’s Guidance – Addressing the business dimension of risks to human rights defenders .....</b>	<b>8</b>
<b>IV. Respect for the rights of human rights defenders as critical to sustainable development and responsible recovery .....</b>	<b>9</b>
<b>V. The Guiding Principles on Business and Human Rights: Guidance on ensuring respect for human rights defenders .....</b>	<b>11</b>
<b>A. Pillar I: The State duty to protect human rights .....</b>	<b>11</b>
<b>B. Pillar II: The corporate responsibility to respect human rights .....</b>	<b>19</b>
<b>C. Pillar III: Access to remedy .....</b>	<b>29</b>
<b>D. Issues in focus .....</b>	<b>36</b>
<b>VI. Conclusions .....</b>	<b>42</b>



# I. Introduction

Threats to human rights defenders and to civic freedoms are increasing concerns globally – a trend that has intensified under the guise of the COVID-19 crisis.<sup>1</sup> A large number of human rights defenders are under threat and attack because they raise concerns about adverse human rights impacts of business operations, often in the context of large development projects that affect access to land and livelihoods. At the same time, the space for civil society actors to raise concerns about human rights impacts is shrinking, and human rights defenders face reprisals including criminalisation of their engagement in public protest or civil dissent.

The increasing risks to human rights defenders cannot be seen in a vacuum or divorced from the underlying root causes of attacks. Defenders are often attacked because they shine a light on the underlying patterns of harmful business conduct and investment. As businesses, often in collaboration with the State, seek access to natural resources and land, for example, they may engage in economic activity that adversely impacts the rights of communities, including water, environmental and land rights. Historical issues relating to racism and marginalisation of vulnerable groups, and indigenous peoples, also means that certain groups may be disproportionately affected by business-related human rights abuses. The role of human rights defenders is intrinsically linked to underlying patterns of human rights abuses arising from business conduct. Thus, it is important to address and prevent such underlying abuses as part of a holistic approach to securing sustainable and rights-respecting business models.

Questions are also being raised about the role of business in helping to prevent harms to human rights defenders and to protect civic space.

The United Nations Declaration on Human Rights Defenders sets out that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.<sup>2</sup> This is the Working Group’s starting point when referring to human rights defenders. It also acknowledges the Special Rapporteur on the situation of human rights defenders’ outline of the work done by human rights defenders.<sup>3</sup>

The importance of human rights defenders in the context of business-related impacts on human rights is recognised by the Guiding Principles on Business and Human Rights, the authoritative global framework for the respective duties and responsibilities of States and business enterprises in managing adverse impacts on human rights. The Guiding Principles highlight the key role human rights defenders can have in human rights due diligence and in enabling business enterprises to understand the concerns of affected stakeholders.

In the present report, the Working Group provides guidance to States and businesses on the implications of the Guiding Principles for engaging with, and safeguarding the rights of human rights defenders. This guidance is intended to serve as a reference in particular for: (a) Governments seeking to improve protection of human rights defenders in the context of promoting responsible business conduct; (b) Business enterprises looking for further clarification of how to meet their responsibility to respect human rights<sup>4</sup> specifically when it comes to addressing risks to human rights defenders in their own activities or business relationships; and (c) civil society groups.

June 2021 marks the tenth anniversary of the Human Rights Council’s endorsement of the Guiding Principles. The Working Group is undertaking a project to take stock of achievements and chart a course for the next decade of action on business and human rights (“UNGPs 10+”).<sup>5</sup> Strengthening protection of human rights defenders is a key priority for the next decade of the business and human rights agenda, and the present guidance serves as a companion to the Working Group’s UNGPs 10+ project. During consultations for the project, stakeholders have urged the Working Group to be more vocal about attacks against human rights defenders arising from business activities.<sup>6</sup> The Working Group hopes that its guidance will contribute to the collective understanding of the vital role human rights defenders play in identifying and addressing human rights impacts of business activity as part of vital stakeholder engagement – an essential contribution to sustainable development for all.

**“**  
**There is growing concern about the role of business in causing, contributing, or being directly linked to attacks against human rights defenders, or in failing to take action against such attacks. Questions are also being raised about the role of business in helping to prevent harms to human rights defenders and to protect civic space.**  
**”**

## II. Human rights defenders and the Guiding Principles on Business and Human Rights

The Guiding Principles clarify that a business may be connected to human rights harm in three fundamental ways: it may cause or contribute to human rights abuse through its own activities, or it may be directly linked to such abuse via its operations, products or services by its business relationships. It may not be the enterprise at the “top” of the supply chain that directly harms a human rights defender. Often the harm could be caused by a business partner, supplier, local security firm, government official, or police. However, the Guiding Principles clearly establish that they apply when there is a link to such adverse impacts through business relationships.

The Guiding Principles reference human rights defenders specifically. The commentary to Guiding Principle 18 (identifying adverse human rights impacts) notes that in situations where consultation with rights holders is not possible, “business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society”.

The commentary to Guiding Principle 26 (State-based judicial mechanisms) clarifies that States should ensure that “the legitimate and peaceful activities of human rights defenders are not obstructed”. The Guiding Principles recognise the critical role of human rights defenders as part of the business and human rights “ecosystem”, including their role in human rights due diligence and enabling businesses to understand the concerns of affected stakeholders, and in facilitating access to justice and remedy.

Defenders have a key role as a voice for affected stakeholders and communities, as watchdogs, advocates and often providers of early warnings of human rights risks and adverse impacts.

Noting their importance, and the threats they face, the Working Group has emphasised that States should consider collaborating with national human rights institutions, civil society organisations and trade unions in identifying human rights defenders in need of protection, both domestically and extraterritorially.<sup>7</sup> The Guiding Principles clearly stipulate that business enterprises operating anywhere need to assess whether they are causing, contributing to or are linked to human rights abuses, and this includes risks to human rights defenders. They then need to take action to either prevent, mitigate or remediate such risks or abuses. Business enterprises need proactive engagement with human rights defenders, and should follow the preventive approach outlined in the Guiding Principles.

**“ If effective due diligence is carried out, impacts can be prevented or mitigated before escalating into serious harm or can be remediated before damage becomes irreparable. ”**

Conflict often develops because of a lack of initial constructive engagement and a failure to adopt a preventive approach to managing human rights risks. Protecting and respecting human rights defenders is not an option, but an obligation, for States and business enterprises, respectively. The most wise, forward thinking and effective business enterprises will view human rights defenders as partners. They will engage with them early, and often, in a spirit of dignity and respect, recognising that this is the right thing to do. Doing so, they will also find that it is in their own best interests, strengthening risk management overall, contributing to building trust and ultimately making a positive impact towards the rule of law and a rightsrespecting environment amid growing threats to civic space.





## A. The increase in risks to human rights defenders connected to business activity

The murder of Berta Cáceres<sup>8</sup> the Lenca leader, and an environmental and indigenous rights defender, who was shot dead in her home on 2 March 2016 having led protests about, and spoken out against, the construction of the Agua Zarca dam, has been widely reported. The dam project threatened the traditional lands and water resources of the local Lenca indigenous communities in Honduras.

Her murder remains an emblematic case that shines a light on the grim realities faced by human rights defenders in the

context of business activities.<sup>9</sup> In 2018, a Honduran court ruled that executives of the dam company DESA ordered the killing of Cáceres. Although seven men were found guilty of the murder and sentenced to 30 to 50 years, impunity for others implicated in the murder remains an issue.

Sadly, this is just one of too many such cases over the past decade, as an overwhelming body of evidence recognises.<sup>10</sup>

“

**The Business and Human Rights Resource Centre documented an increase during 2020 in attacks against human rights defenders working on business-related human rights issues, with 604 attacks in 2020, up from 572 attacks in 2019<sup>11</sup>**

”

and agribusiness and mining remained the sectors most related to attacks, with 140 cases related to mining and 137 cases related to agribusiness in 2020. It has tracked 3105 killings, threats, abusive lawsuits, and other types of attacks intended to silence or intimidate human rights defenders working on business-related activities.<sup>12</sup> The number of attacks against human rights defenders is likely to be even higher as many cases are not reported globally. The Secretary-General has also documented attacks and threats against human rights defenders who published information about abuses and disputes linked to land and business operations,<sup>13</sup>

as well as attacks against defenders who participated in the Forum on Business and Human Rights.<sup>14</sup> The Special Procedures of the Human Rights Council have long focused on the nature of the risks to human rights defenders arising from their interaction with business. Most recently, in 2021, the Special Rapporteur on the situation of human rights defenders emphasised that “many defenders are killed after protesting negative human rights impacts of business ventures. In too many cases, businesses are also shirking their responsibilities to prevent attacks on defenders or are even perpetrators of such attacks”.<sup>15</sup>

The Special Rapporteur underlined that many governments are failing in their obligations to protect human rights defenders from attacks and killings by State and non-State actors, and that protection mechanisms to prevent and respond to risks and attacks against human rights defenders that some States have established are often under resourced, or that States lack the necessary political will to properly protect human rights defenders.<sup>16</sup>

The Special Rapporteur’s 2017 report to the United Nations General Assembly raised concerns about business-related impacts on human rights defenders, and urged States, business enterprises and investors to fulfil their obligation to respect and protect human rights defenders, and to recognise and promote the shared interest of all actors in free, open and enabling environments that uphold human rights and the rule of law, and emphasised that new approaches are needed to tackle the situation and ensure that both preventive and reactive measures are adopted and implemented.<sup>17</sup> The Special Rapporteur also reported, in the context of abuses by business enterprises, on the rights of environmental human rights defenders,<sup>18</sup> and on the rights of women human rights defenders.<sup>19</sup> The Special Rapporteur conceptualised good practices in the protection of human rights defenders at the local, national, regional and international levels and offered seven principles underpinning good practices in their protection, and made recommendations on further ways to strengthen, replicate and disseminate them.<sup>20</sup>

Many other Special Procedures mandate holders have also addressed the issue, highlighting the urgent case for action in the face of repeated business-related human rights abuses against human rights defenders. For example, in 2018, the Special Rapporteur on the rights of indigenous peoples focused on attacks against and the criminalisation of indigenous human rights defenders, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging (noting that these are occurring in the context of intensified competition for and exploitation of natural resources), and reflected on available prevention and protection measures.<sup>21</sup>



The Special Rapporteur on human rights and the environment worked with the Universal Rights Group to develop a website for environmental human rights defenders,<sup>22</sup> and emphasised the risks to, and impacts of, business activity on environmental human rights defenders in the 2017 Universal Rights Group policy brief “Environmental Human Rights Defenders: A Global Crisis”.<sup>23</sup>

The issues covered by Special Procedures mandate holders highlighted that the Working Group, as the most relevant Special Procedures mandate charged with addressing business practice, needed to clarify expectations in this field, particularly for business, and thereby focus minds on the prospective and actual harm caused to life and limb by business activity.<sup>24</sup> The Working Group’s guidance should be read in conjunction with the relevant work of other Special Procedures mandates and it supplements the work of those mandates on a variety of connected issues, such as on the rights of indigenous peoples.

Developments at the regional level have also underlined the threats to human rights defenders posed by interaction with business and have attempted to address them. For example, the OSCE’s Guidelines on the Protection of Human Rights Defenders state that “Business corporations should be encouraged to pay particular attention to the impact of their operations on the situation of human rights defenders”.<sup>26</sup>

The 2019 report on “Business and Human Rights: Inter-American Standards” produced by the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights<sup>27</sup> reiterated that States must establish a clear legal framework, which provides for sanctions against companies that are involved in the criminalisation, stigmatisation or abuse of human rights defenders.<sup>28</sup>

## B. Why risks related to business activity are faced by human rights defenders

Human rights defenders often step in when they, their co-workers, their communities and their lands are under threat. The matters at stake are often a question of life or death, and/or ecological destruction.

The types of risks faced by human rights defenders when highlighting<sup>29</sup> irresponsible practices

involving business enterprises or their business partners (including actors with links to governments) include threats, or the reality, of: smears, slurs, harassment, intimidation, surveillance, strategic lawsuits against public participation (SLAPPs), criminalisation of their lawful activities, physical attacks and death.

Many human rights defenders are under threat and attack because they raise concerns in the context of large development projects that affect access to land and livelihoods, and the rights of indigenous peoples and/or local communities.<sup>30</sup>

However, risks to individuals speaking up against potential or actual impacts on human rights exist across a number of sectors. The situation is made worse by the current trends of shrinking civic space,<sup>31</sup> the criminalisation of defenders engaging in lawful public protest or civil dissent, and the increasing pursuit of strategic litigation against public participation<sup>32</sup> designed to stifle the activities of human rights defenders.<sup>33</sup>

“

**For example, civil defamation lawsuits are often used to silence the voices of defenders. This is taking place within a context of increased authoritarianism and undermining of the rules-based international order, which presents an additional layer of challenge to the work of human rights defenders.**<sup>34</sup>

”

The threats that human rights defenders face are especially pertinent given the growing risks to civic space through government responses to the COVID-19 pandemic that affect civic freedoms and human rights,<sup>35</sup> and the many ways in which the COVID-19 pandemic has heightened the risks to human rights defenders<sup>36</sup> and made their work more challenging, isolating, and dangerous.<sup>37</sup>



# III. The Working Group's Guidance – Addressing the business dimension of risks to human rights defenders

The Working Group's development of the present guidance is a response to the above outlined trends and the Working Group's own observations during its mandated work. The Working Group has focused on human rights defenders and the impact of business activities on their rights since the creation of its mandate in 2011. This has been especially so in the context of its country visits<sup>38</sup> during which the Working Group has had the privilege to engage with numerous brave and principled individuals, communities and organisations, who are taking significant risks to do the work they do, and, in some cases, to engage with the mandate. The Working Group has spoken out on this issue many times,<sup>39</sup> through end of country visit press releases, public statements, and in relation to press releases issued concerning cases where it has sent communications to a State and company.

The Working Group has also addressed issues relating to human rights defenders in its thematic reports<sup>40</sup> and during the annual Forum on Business and Human Rights (where this has been a standing item on the agenda since 2013) and regional forums on business and human rights, including at the 2020 Latin America and the Caribbean Forum<sup>41</sup> and at the 2021 South Asia Forum.<sup>42</sup> At the annual Forum on Business and Human Rights, the Working Group has underlined that the narrative relating to human rights defenders who work on business and human rights issues needs to change.<sup>43</sup>

Defenders need to be seen as key partners, who can assist businesses in identifying key human rights impacts, and should be part of a business enterprise's stakeholder engagement, and due diligence processes, instead of being seen as annoyances, troublemakers, obstacles or threats to be disposed of.<sup>44</sup>

On Human Rights Day in December 2019, the Working Group, together with the Special Rapporteur on the situation of human rights defenders and civil society organisations, highlighted a key message from the 2019 annual Forum on Business and Human Rights, that the international community must take concrete actions to prevent attacks against human rights and environmental defenders who put their lives at risk to protect those affected by business activities.<sup>45</sup>

As part of its mandate to promote the Guiding Principles, the Working Group initiated a work stream focusing on the issue of human rights defenders and civic space in 2017.<sup>46</sup>

It issued a background note setting out its approach to the topic and the key output, namely the present guidance on normative and practical implications of the corporate responsibility to respect human rights in relation to human rights defenders. It also issued a discussion paper to guide suggestions from interested parties titled "Identifying elements for guidance on human rights defenders and the role of business".<sup>47</sup>

The Working Group explained at the start of the project that it would undertake activities to complement and support efforts by others, including by identifying and supporting opportunities for collective action and by facilitating multi-stakeholder dialogue among stakeholders, so as to develop complementary efforts. It also indicated that it would continue to use the annual Forum on Business and Human Rights to, in collaboration with OHCHR, sustain attention on this critical issue.

The present guidance is the culmination of several years of engagement involving multi-stakeholder consultations with a range of stakeholders, including human rights defenders as well as civil society, business and States,<sup>49</sup> and a public call for inputs.

In preparing the guidance, the Working Group acknowledged that while guidance for States on the protection of human rights defenders exists, and United Nations resolutions have called for implementation of the Guiding Principles to improve protection of human rights defenders in connection with concerns about business impact,<sup>50</sup> there was a vacuum of guidance from the United Nations human rights mechanisms on States' related duty in relation to business-related human rights abuses that impact defenders, and on business' related responsibility.

Throughout this work, the Working Group has stressed that the contributions of human rights defenders to ensuring the rule of law, fighting corruption, and making the States in which they live more conducive to a sustainable and responsible business environment cannot be overstated. Such contributions have been highlighted in communications issued by the Working Group and other Special Procedures mandates. The Working Group has recognised that the suppression of the rights of human rights defenders can lead to significant costs and negative outcomes arise for both States and businesses. These include challenges to the rule of law, legal risks including corruption, risks to free and fair elections, reputational risks to business, loss of social licence for businesses to operate, loss of partners on the ground, and loss of opportunities for information and intelligence gathering.

The guidance takes each of the three Pillars of the Guiding Principles in turn and includes examples of good practice that have been highlighted by stakeholders during the Working Group's consultations. It clarifies, Pillar by Pillar, what the Guiding Principles imply for States and business enterprises to respectively protect and respect the rights and legitimate roles of human rights defenders in the context of business activity.



# IV. Respect for the rights of human rights defenders as critical to sustainable development and responsible recovery

States have acknowledged that responsible business is a critical part of implementing the 17 Sustainable Development Goals by 2030,<sup>51</sup> and that human rights defenders have an important role in supporting States to realise the 2030 Agenda for Sustainable Development.<sup>52</sup>

Protection of civic freedoms and human rights defenders are critical elements for implementing SDG 16 (promotion of peaceful and inclusive societies), and SDG 17, which recognises the power of partnership.

Restrictions on civic space, and consequently on the activities<sup>53</sup> of human rights defenders, are often an early warning sign of further human rights abuses or a reaction to abuses that have been previously committed. Therefore, the freedom enjoyed by human rights defenders is often a barometer for the rule of law present in a country, the extent of the enjoyment of human rights overall, and how stable and attractive a place that country will be to do business in. The grave situation facing human rights defenders in their engagement with business, including in relation to threats, abuse, attacks, and killings, cannot be overstated.

The Working Group and others have emphasised this connection and argued that the most significant contribution most business enterprises can make towards sustainable development is to prevent and address adverse impacts on human rights through effective human rights due diligence.<sup>55</sup>

What is needed is a cultural shift within both States and businesses to see defenders as essential allies in protecting people and the planet and not as enemies. This shift is all the more needed in the current context of the COVID-19 pandemic.

The Working Group has previously emphasised that responses to the COVID-19 pandemic and its economic impact must not be used as a pretext by governments and business actors to circumvent international human rights and environmental commitments.<sup>56</sup> States should encourage business enterprises to understand how human rights defenders can help them to develop an understanding of local and national contexts. They should repeal any policies and legislation that have been introduced during the COVID-19 pandemic that increased restrictions on the activities of human rights defenders and civil society organisations e.g. in relation to freedom of assembly and association, or restricted access to the technologies they use in order to do their work.

States should also support the rights of trade unions to organise as many trade unionists have been attacked simply for supporting workers' rights and resisting unfair and exploitative labour practices that have been, in some places, exacerbated by unscrupulous employers during the COVID-19 pandemic. Building back better from the COVID-19 pandemic gives all actors the chance to put the protection of human rights and the environment at the centre of a new social contract.

Respect for human rights is the foundation of sustainable business growth, and businesses that engage in responsible business practices, will, in the longer term, be better prepared for managing both risks to people and the business, making them more resilient and sustainable overall. The shift that is required in the mind-set of all business enterprises is for them to think not only about risks to the business and its assets when making decisions but to think about risks and harms to people and the planet as an essential element of business operations. This includes thinking deeply about how to engage with, respect, and empower human rights defenders.

The need to achieve the SDGs by 2030 cannot be seen as giving carte blanche to States and businesses to allow all development projects to go forward at any cost. Development projects cannot be human rights compliant if they are progressed at any cost, and careful consideration of the implications for human rights defenders, and the rights they are defending, need to underpin efforts to achieve the SDGs.<sup>54</sup>

If human rights and dignity are not upheld in business activities, the positive contributions that businesses may otherwise make towards sustainable development will be undermined.

**“ Human rights defenders are not enemies; they are indispensable allies in the effort to create a better future, and planet, for all. ”**



As the Special Rapporteur on the situation of human rights defenders has noted, “changing how political leaders and the public perceive and speak about the value of the work of defenders, and emphasizing their positive contributions to society, could reduce the risk of defenders being attacked”.<sup>57</sup>

It is precisely this shift in thinking, on the part of all stakeholders, that the Working Group is highlighting. All actors need to change the way in which they think about the work that human rights defenders do, denounce and prevent baseless smears and violence that they often face, and encourage and recognise the vital contribution they make to the promotion of responsible business conduct, justice, accountability and the operation of the rule of law worldwide.

The Working Group hopes that its guidance will assist all stakeholders in moving forward in a constructive manner that will help strengthen protection of, and respect for, human rights defenders everywhere. It understands that different business enterprises will face different contexts and realities and that, in some places, the work ahead is particularly demanding and challenging. It is in those contexts that implementing the Working Group’s guidance is all the more vital.

The Working Group looks forward to continued partnership with human rights defenders, trade unions, indigenous peoples’ organisations, and civil society, as well as with States, business, national human rights institutions, and researchers to bring this guidance to life, and to highlight good practices and positive stories of how transformation is occurring in terms of business respect for the rights of human rights defenders.



# V. The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders

As part of their duty to protect human rights, States need to provide support to business enterprises that deal with risks to human rights defenders to improve responses on the ground. States must emphasise that human rights defenders should be seen, by States, business, and all stakeholders, as partners for achieving change. Such support can be grounded in State policies about how business should relate to human rights defenders, and States' related expectations of business conduct in this context. The leadership role for States in this regard cannot be overstated. The following analysis of Pillar I provides examples of how States can fulfil their duty to protect human rights defenders from human rights abuses arising from business activity, and connects such practices to the Guiding Principles.

## A. Pillar I: The State duty to protect human rights

Guiding Principles 1-10 set out the State duty to protect human rights. This includes protecting the rights of human rights defenders to do the work they do in relation to identifying, speaking up about, and seeking to prevent, mitigate or seek remedy for adverse impacts of business activity in a safe and enabling environment.



### 1. States should enact policies, legislation, regulations and enable effective adjudication to prevent, investigate, punish and redress all forms of threats and attacks against human rights defenders in a business context

In relation to Guiding Principle 1, States must take appropriate steps to ensure that all business enterprises operating within their territory and/or jurisdiction respect the rights of human rights defenders as part of comprehensive efforts to ensure business respect for human rights. States should have policies, legislation, regulations and enable effective adjudication to prevent, investigate, punish and redress all forms of threats and attacks against human rights defenders in the business context.<sup>58</sup>

43. Illustrative actions that States should take:

- Enact national and regional level policies, legislation and regulations to protect human rights defenders in their interaction with business, recognise the value of the work done by them, set out the responsibility of business enterprises in relation to respecting human rights defenders and their rights, and create robust mechanisms for the protection of human rights defenders and for redress where necessary.

This can include addressing such a topic in a national action plan on business and human rights, or amending existing policies relating to human rights defenders generally to address the role of business

- revise any existing legislation that directly or indirectly restricts the lawful activities of human rights defenders in their interaction with business, for example laws focused on strategic lawsuits against public participation (SLAPPs) or laws focused on defamation which may be used to silence defenders
- ensure the participation of human rights defenders in formulating, monitoring and evaluating legal and policy measures to implement the Guiding Principles
- promote and support the role of human rights defenders in formal relationships and interactions with organisations or associations representing the interests of business, such as chambers of commerce, trade and industry associations, certification bodies and consultancies that can influence business enterprises to conduct their business operations responsibly
- ensure that State-based judicial and non-judicial mechanisms are responsive to additional barriers and security concerns faced by human rights defenders from all different defender populations in seeking effective remedies for business-related human rights abuses.<sup>59</sup>



## Mandatory human rights due diligence

- Ensure that mandatory human rights due diligence laws, including those concerning modern slavery and transparency in supply chains, also serve as a vehicle to safeguard human rights defenders through requirements of consultation and access to information as well as through ensuring proper access to effective remedy as part of due diligence laws<sup>60</sup>
- require business enterprises to continually assess, address and mitigate risks to human rights defenders in their supply chains, including by making accessible, safe and respectful consultation with human rights defenders mandatory at all stages of due diligence processes
- fully include human rights defenders in the consultation processes to draft such mandatory human rights due diligence laws.



## National Action Plans

- Enshrine the Guiding Principles into relevant policy frameworks such as through developing, enacting and updating a national action plan on business and human rights,<sup>61</sup> drawing on the guidance issued by the Working Group in 2016<sup>62</sup>
- recognise the key role that human rights defenders can play in helping to develop and implement such national action plans at the local and national levels and engage with human rights defenders as individuals who can help facilitate access to individuals or communities whose voices need to be heard
- consider how key government institutions, including those focused on labour, trade and investment, can align key policies and incentives to ensure business respect for human rights and for the rights of defenders
- address in such national action plans the efforts of human rights defenders working on business and human rights issues,<sup>63</sup> and reflect an understanding of the links between business-related human rights abuses and impacts on human rights defenders by, for example, identifying the harms caused to defenders by business activity and the associated actions States need to take<sup>64</sup>
- demonstrate how human rights defenders have been a genuine part of the consultation process of developing national action plans<sup>65</sup>

- involve national human rights institutions, as human rights defenders themselves, in developing, revising and implementing such national action plans, especially in relation to access to remedy under Pillar III of the Guiding Principles, given the role played by such institutions in this regard.

## 2. States should set forth clear expectations for business enterprises regarding the importance of respecting the rights of human rights defenders

In accordance with Guiding Principle 2, States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction should respect human rights defenders throughout their operations, including within their supply chains.

### 44. Illustrative actions that States should take:

- Make it explicit<sup>66</sup> that they expect business enterprises domiciled or operating within their jurisdictions to comply with the Guiding Principles when doing business at home and abroad. Such expectations should be included in key policies<sup>67</sup> and guidance
- directed at the business community, which means communicating such expectations through government units focused on responsible business conduct, trade and investment, and labour rights

- extend this expectation to include the expectation that all business enterprises respect the rights of human rights defenders, and that they promptly address the particular challenges and issues that human rights defenders face as a result of their interaction with business.

## Guidance

45. In accordance with Guiding Principles 2 and 3, States should provide guidance on how all business enterprises domiciled in their territory and/or jurisdiction should respect human rights defenders throughout their operations, including within their supply chains.<sup>68</sup>

46. Illustrative actions that States should take:

- Accompany mandatory human rights due diligence legislation with practical guidance for business enterprises on the steps they need to take to meet their responsibilities concerning human rights defenders.
- involve national human rights institutions, as human rights defenders themselves, in developing, revising and implementing such national action plans, especially in relation to access to remedy under Pillar III of the Guiding Principles, given the role played by such institutions in this regard.

## Guidance for business relating to respect for human rights defenders

### What background information should the guidance include?

Information on the role of human rights defenders in promoting and protecting rights, drafted in collaboration with civil society and human rights defenders, which includes information about recent developments, and information about:

- Who human rights defenders are and the work they do.
- The risks human rights defenders face in the context of business activities (e.g. criminalisation, harassment, strategic lawsuits against public participation (SLAPPs), threats and intimidation, smear campaigns, physical attacks and killings), including risks facing specific groups of human rights defenders (e.g. women human rights defenders, indigenous human rights defenders, LGBTI human rights defenders, human rights defenders living with disabilities, and trade unionists).
- Measures in place for the protection of human rights defenders at the national level (e.g. human rights defender protection laws), regional level (e.g. the rights enshrined in regional agreements<sup>69</sup>) and international level.



## What should the guidance say to business enterprises?

- Human rights defenders should be consulted in the process of identifying and assessing the real and potential impacts of a business' proposed activities, as an essential component of human rights due diligence. The process of consultation itself can lead to risks for defenders and also cause division within communities. Businesses should work to ensure that communities select those who will represent them in processes that are inclusive and accountable and include voices of marginalised groups including women human rights defenders.
- As part of the human rights due diligence process, businesses need to be prepared to communicate about risks and impacts to defenders, and set out how they plan to address potential or actual impacts connected to their own activities or their business relationships that they identify through their due diligence. The due diligence should not be based solely on the work of external consultants and desk-based assessments, but on the assessment and findings of rights holders and communities on the ground.
- Potential intimidation and reprisals<sup>70</sup> against, or harm to, human rights defenders should be included as a potential impact to be evaluated as part of human rights due diligence and impact assessments under the Guiding Principles, and this is a risk that needs to be monitored over time

## What information should the guidance include for business enterprises?

Information on steps that business enterprises can take when they find out about risks to human rights defenders resulting directly from their activities or the activities of their subsidiaries or business relationships (e.g. joint venture partners, suppliers or subcontractors, or actions carried out by local groups who support a business enterprise's activities because, perhaps, of the jobs the business brings to the local area), including:

- *Information on possible measures to halt the harm, or mitigate the risk if harm is ongoing, or prevent its repetition/re-emergence if it has ended, including the use of leverage within business relationships and their value chain. o Information on proper procedures for the investigation of threats against human rights defenders.<sup>71</sup>*
- *Elements to consider when planning a responsible exit from an area of activity should it not be possible to mitigate or prevent the risks to human rights defenders.*
- *Information on the "do no harm" principle and the requirement to apply the concept of Free Prior and Informed Consent, set out in the United Nations Declaration on the Rights of Indigenous Peoples, paying particular attention to and following FPIC protocols created by communities where they exist.*
- *Information on accessing mechanisms for the protection of human rights defenders at the local, national, regional and international levels, including via embassies or consulates.*

### 3. States should make the protection of human rights defenders working on business-related human rights abuses a policy priority, in line with the Guiding Principles

In accordance with Guiding Principles 2 and 3, States should consider the protection of human rights defenders in the context of their interaction with business as a key element of domestic and foreign policy.

Illustrative actions that States should take:

- Ensure that an understanding of the vital role played by human rights defenders underpins key policy relating to responsible business conduct<sup>72</sup>
- support measures to protect human rights defenders in different countries<sup>73</sup> through publicly recognising human rights defenders in all relevant work undertaken to implement the Guiding Principles
- explain, in the context of State-to-State bilateral engagements, and engagements between a State and the business enterprises it engages with, regulates, or contracts with, the value of human rights defenders' work in relation to business activity, and the role that they play in advancing responsible business conduct.

### Public attention and awareness raising activities

- Maintain contact with human rights defenders, including by receiving them at embassies and consulates, and visiting their places of work (including in remote and harder to reach regions) where it is safe to do so, and allocate a specific focal point and/or diplomatic work stream to this topic
- offer (where it is wanted, and would not generate protection concerns) awareness raising of the work of human rights defenders e.g. through using websites, newsletters, visits and receptions
- share (where human rights defenders agree) information on their work, especially about human rights defenders at risk as this can generate momentum and make it harder for attacks against human rights defenders to continue
- stand up (where human rights defenders agree) for defenders when they are threatened or attacked, including by formally raising this as part of diplomatic dialogues or demarches with other States, and in encounters with business enterprises. There should be case by case consultation with the relevant defenders on how to respond to reprisals, and on whether responses should be public or private.



## Trial monitoring

- Request staff serving in embassies and consulates, and representatives of international and regional organisations, to attend, observe and monitor trials involving human rights defenders (e.g. in cases where defenders are either a party to the trial, are intervening in a case, or are acting as legal representatives on behalf of others), especially in high-profile court cases where there may be related reprisals against the human rights defenders involved. It is important for diplomatic staff to travel outside of the capital to observe trials as many of the defenders who are criminalised because of their work tend to be put on trial in rural locations, rather than in capitals
- ensure that any decisions to become involved in any way are always made in consultation, via secure means, with the human rights defender or their representative, as appropriate, and that the defender's wishes are followed.

## 4. States should address risks to human rights defenders in their trade policies and support for business and economic diplomacy

In accordance with Guiding Principles 4-6 which address the State-Business nexus, States should ensure that State-owned or State-controlled business enterprises and State agencies lead by example in terms of ensuring business respect for human rights defenders, and use their leverage to require their business partners to respect them. If such business partners are actually State-owned enterprises, this may require a duty to protect human rights as well.<sup>74</sup>

**“ While some States are making progress in relation to their duty to protect human rights in relation to business activities, most are not matching that progress in relation to protecting human rights defenders through their own trade policies and economic diplomacy. ”**

While states, as economic actors, should link business respect for human rights defenders through the development of policies relating to, for example, public procurement, State-owned enterprises, export credit and development banks.<sup>75</sup>

Illustrative actions that States should take:

- Where operating as an investor and/or leading an investment institution, uphold their human rights obligations by carrying out their own human rights due diligence focusing on potential adverse impacts on human rights defenders in connection with their investment activities. Require related human rights due diligence by investment entities or projects under State authority, or receiving State support
- promote a coherent policy approach by using incentives, such as export credit, and trade support to incentivise business respect for human rights defenders, e.g. linking corporate policies on human rights defenders, and good faith engagement by business enterprises with State entities dealing with the rights of human rights defenders, to the availability of export credit or other forms of financial support. States may also consider conditioning ability to obtain financial support with proper engagement with non-judicial remedy mechanisms such as OECD National Contact Points<sup>76</sup>

- deny export permits for any goods or technology subject to export controls if it is determined that there is a substantial risk that the export would result in a serious violation of either human rights or international human rights law, such as technology used to surveil, crack down or restrict human rights defenders engaged in peaceful protests <sup>77</sup>
- provide guidance to business enterprises to assist them in trying to prevent their products or services with surveillance capabilities from being misused by others to commit human rights abuses <sup>78</sup>
- reverse (as for whistle-blower protection) the burden of proof by asking business enterprises to show that they have not retaliated against human rights defenders. If there is credible information to show that there has been such retaliation, then withdraw or deny export credit and other forms of State support
- require agencies dealing with development aid, export credit, pensions and sovereign investment funds to develop policies for the protection of human rights defenders, then integrate them into their mandates, and then release an annual human rights report including a section documenting how human rights defenders have been protected, as well as any instances of reprisals against defenders
- require agencies, as well as State-owned or State-controlled business enterprises, to have policies and mechanisms to address threats against human rights defenders, including effective grievance mechanisms
- as a key element in all procurement processes, require human rights due diligence to be conducted to identify risks to human rights defenders and to uncover business engagement in activity that causes, contributes, or is linked to negative human rights impacts to human rights defenders. If such activity is discovered, then disqualify the said business enterprise from the procurement process
- consider how trade and investment agreements can include clauses that include shared commitments to respect for the rights of human rights defenders and trade union members by the private sector and by State parties to the agreements.

## 5. Policy coherence

The Guiding Principles 8-10 call for policy coherence and the Working Group has reported on this in the recent past. <sup>79</sup>

States, in line with Guiding Principle 8, should treat the protection of human rights defenders as a key issue to be integrated into the strategies, policies, programmes and actions of all governmental departments, agencies and other Statebased institutions that shape business practices.

Illustrative actions that States should take:

## Training

- Include the topic of the serious risks of business-related human rights abuses to human rights defenders in relevant training sessions on human rights and the Guiding Principles for governmental departments, agencies, State-owned enterprises, and other State-based institutions that shape business practices<sup>80</sup>
- ensure that embassies and missions abroad organise training opportunities for those involved in the protection of human rights defenders, their legal representatives, associates or family members on business and human rights issues.



## Promoting coherence when pursuing business-related policy objectives

- Undertake assessments of the impact of existing and future trade and investment agreements on human rights defenders
- ensure that existing and future trade and investment agreements include adequate safeguards to protect the environment, human rights and labour rights, including the rights of human rights defenders, and that they contain an obligation on investors to respect human rights defenders
- ensure the effective participation of human rights defenders before and during the negotiation of trade and investment agreements.

## Promoting coherence when acting as members of multilateral institutions that deal with business-related issues

- Set out clearly what the State will do, as a shareholder of a multilateral institution, to work with those institutions to develop and enact robust policies and procedures that both prevent and respond to reprisals against human rights defenders.<sup>81</sup>

## B. Pillar II: The corporate responsibility to respect human rights

Pillar II of the Guiding Principles and Principles 11-24 set out the corporate responsibility to respect human rights. Pillar II contains a clear call to action for all business enterprises, wherever they operate. There is a normative expectation that in every situation where there are adverse human rights impacts that a business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships, the corporate responsibility to respect human rights includes engaging constructively with human rights defenders who raise concerns about adverse impacts to people or the environment, and preventing, mitigating and remedying the human rights risks posed to them.

Pursuant to the Guiding Principles, business enterprises have a responsibility to avoid infringing the human rights of those who defend them.<sup>82</sup>

This entails business enterprises adapting their procedures to anticipate risks to rights holders including human rights defenders. Concretely, it means that business enterprises need to ensure, as a minimum, that their activities, actions and omissions, do not lead to retaliation, violence, death, legal harassment or any other form of silencing or stigmatisation of human rights defenders, and they need to address adverse impacts on human rights defenders with which they are involved, either through their own activities or as a result of their business relationships. Managing and addressing these risks is a policy, governance and operational issue for the Board of each business enterprise. At every level of its operations, a business enterprise needs to understand the manifold risks to human rights defenders and the ways in which they manifest in all levels of a supply chain. Effective human rights due diligence is key.

Three over-arching elements are:

(a) Understanding context-specific risks and take adequate action: Where risks to defenders are identified, effective follow-up should involve tailored responses by consulting with defenders about the risks they face when defending human rights, such as reprisals, arrest, lawsuits, and threats to physical safety, among others. Businesses should also develop stronger relationships with organisations that work with rights holders and human right defenders. They should also consult databases that collect data on attacks and risks to defenders. All of this will help businesses to better understand the contextual risks faced by defenders and how to address them. After identifying risks, business enterprises need to construct plans for how to prevent or mitigate such impacts;

**“ If the business enterprise itself is causing or contributing to human rights abuse affecting defenders, their responsibility is clear-cut: they need to end the abuse and address any harm that has occurred. In cases where the business enterprise is directly linked to such abuse, even if not the one causing or contributing to it, then it is also expected to take action, notably to exercise leverage to address harms arising to defenders via business relationships or engagement with a State actor. ”**

”

(b) Building leverage by joining responsible business initiatives in the sector or geographical area that they operate in, partnering with relevant NGOs and international organisations. Leverage should be exercised by, for example, using the information gathered to engage with States and entities with which they have business relationships to develop a safer and more enabling environment for human rights defenders. To track the effectiveness of such efforts, business enterprises should develop suitable indicators;

(c) Integrating meaningful engagement as a cross-cutting element. A fundamental component for realising this in practice is to treat human rights defenders as valued partners by engaging with them early, consulting them regularly to understand a business enterprise's impacts on the ground, and pursuing genuine attempts to remediate harm where efforts to prevent abuses against human rights defenders have failed.

Particularly on the ground in challenging contexts, the practical distinction between protecting defenders (which States have an obligation to do) and respecting their human rights (in line with the corporate responsibility to respect) may sometimes be less clear-cut than the conceptual clarity provided by the Guiding Principles. The Guiding Principles set out the minimum expectation of what business enterprises should do to prevent and address harms connected to their business. On the ground, preventing and addressing harms to human rights defenders may sometimes require protective measures – especially when the State is failing to protect defenders, or, as is often the case in many cases, when State actors are carrying out or implicated in attacks against defenders.

When there is no clear direct link to impacts on defenders, the business enterprise may still opt to do more to support defenders, out of a moral imperative to stand up for human rights in the societies they operate in, even if not expected under the minimum standard set by the Guiding Principles that requires respecting human rights.

Corporate respect for human rights, and those who defend them, is a normative standard and is a critical element of business conduct.<sup>83</sup>

“

**Enlightened businesses have also recognised that failure to respect human rights defenders reflects poor strategic thinking. This is because this failure destroys the credibility of corporate commitment to respecting human rights at large and it also undermines the rule of law and civic space.**

”

The normative standard and the shared interest of business and civil society to prevent and address harms to defenders were explored in “Shared space under pressure: business support for civic freedoms and human rights defenders<sup>84</sup>” (2018). This guidance highlighted that successful, sustainable business and investment environments require accountable governance, bound by the rule of law and maintained by the enjoyment of the rights – to freedom of expression, assembly and association – that define civic space. It elaborated on why business should be compelled to join civil society and human rights defenders in resisting restrictions on their work, including through reflecting on the business case to protect human rights defenders. It set out the business interest in managing operational and reputational risks, building competitive advantage, and securing a social licence to operate. It also provided an analytical and operational decision framework for businesses to decide whether, and if so how, to act in various situations related to human rights defenders as well as civic freedoms.

Leading businesses can also support further awareness-raising of the importance of ensuring respect for human rights defenders and practical ways of achieving it by sharing their experiences of advocating for human rights defenders at international fora. The annual Forum on Business and Human Rights<sup>85</sup> is a key global platform for multi-stakeholder dialogue on how to address business-related risks and harms faced by defenders. It will be even more important to strengthen such dialogue and awareness-raising in the context of regional fora and business-led platforms at national, regional and international levels. Peer learning platforms, such as the Business Network on Civic Freedoms and Human Rights Defenders,<sup>86</sup> provide space for business enterprises that have acknowledged their responsibility and started taking steps on managing risks to defenders as part of their human rights due diligence. Going forward, to achieve wider progress, there is a need for broadening such exchange both between business actors and between stakeholders. Business and industry associations can play a critical role in reaching a wider, mainstream business audience.

To effectively embed the policy commitment, it should be approved at the most senior level, and the Board should be responsible for overseeing its implementation, as Boards should be aware of the enterprise's salient, or most severe, human rights risks, and ensure that adequate processes are in place to manage them.<sup>89</sup>

Illustrative actions that business enterprises should take:

- Develop and publish human rights defender-specific policies, in consultation with human rights defenders, as well as national human rights institutions, and human rights organisations, through open, accessible calls for submission and/or consultations, as a key element in demonstrating their respect for them.<sup>90</sup> Alternatively, integrate such a policy into a general human rights policy of a business.<sup>91</sup>

## 1. Business enterprises should develop policies on respect for the rights of human rights defenders

Guiding Principle 15 calls on business enterprises to have a human rights policy, setting out their responsibility to respect human rights and Guiding Principle 16 elaborates further. Guidance exists on how to do this.<sup>87</sup> Business enterprises should develop, and review periodically, their policy position in relation to human rights defenders.<sup>88</sup> Business enterprises that operate in, or have business relationships in, contexts where risks to defenders are significant, should consider having an explicit commitment to prevent and address impacts on defenders in connection with their business – either as part of their overall policy commitment to respect human rights or as a stand-alone policy.



## What should the policy include?

Commitments on human rights defenders, including zero-tolerance for attacks on human rights defenders, which may occur in connection with a business enterprise's operations, or their business relationships. The zero-tolerance commitment should be backed up by a statement of willingness to:<sup>92</sup>

- Publicly condemn attacks against human rights defenders.
- Support human rights defenders in their efforts to ensure accountability and justice for any acts of retaliation against them, including through providing financial assistance to ensure access for human rights defenders to established judicial mechanisms.
- Support independent fact-finding missions to assess the situation of human rights and human rights defenders where they are operating.
- Withdraw, where appropriate, from business relationships with subsidiaries, suppliers or subcontractors involved in attacks on human rights defenders. Such decisions should be informed by the Guiding Principles, as should decisions on when and how to disengage.<sup>93</sup>

An “open-door policy” for human rights defenders who wish to engage in relation to the human rights impacts of their activities, including a guarantee of nonreprisal for any such engagement.

•Details of how the policy is internalised within management systems e.g. who is responsible for what actions in the workflow, and how the required processes relate to other existing processes.

## How have business enterprises, multi-stakeholder initiatives, industry associations, investors, and financial institutions clarified their position on human rights defenders, through individual statements or policies, or through collective action?

Some notable examples<sup>94</sup> :

- The International Council on Mining and Metals (ICMM) is an international organisation dedicated to a safe, fair and sustainable mining and metals industry. ICMM's statement sets out its respect for human rights defenders and civil society, recognising that a space for civil society, including critical voices, helps to create longterm value, inclusive economic growth and sustainable development.<sup>95</sup>
- Del Monte Pacific Limited's 2020 sustainability report contained its human rights policy. The policy stated that it would not tolerate threats, harassment or attacks against human rights and environmental defenders. It further noted that its stakeholders must be able to engage freely with the company and its business partners, whether to provide feedback or to raise concerns.

- It stated that it would act to prevent and respond to any instance of reprisals, and it expected its business partners to do the same.<sup>96</sup>
- The Adidas Group declared that it would raise the cases of targeted defenders with governments in cases where there were credible reports of a human rights defender being threatened, intimidated or detained by the police or by government officials. It also established a third-party complaint process in which breaches of human rights linked to its operations, products or services can be raised.<sup>97</sup>
- In Colombia, the NGO Centro Regional de Empresas y Emprendimientos Responsables (CREER)<sup>98</sup> facilitated protection and support for human rights defenders through multi stakeholder collaboration, and opening spaces for dialogue between companies and affected communities. Following accusations that some companies in the coal sector had been involved with serious human rights abuses, especially in relation to anti-trade union violence, in 2018, CREER facilitated a Declaration of Commitment to protect human rights defenders jointly signed by Government, business (including coal-producing companies) and civil society.<sup>99</sup>  
In 2017, CREER pioneered a social dialogue initiative in Cesar Department involving the State, companies, affected communities and civil society organisations in dialogue building, conflict resolution and the protection of human rights defenders, which is being replicated in the Department of La Guajira.

- In 2018, the Fédération Internationale de Football Association (FIFA) released a statement on human rights defenders and media representatives which requires bidders and hosts of FIFA tournaments to uphold their commitment to respect and help to protect the rights of human rights defenders and media representatives. FIFA also committed to set up a mechanism allowing human rights defenders and media representatives to complain when their rights had been unduly restricted while conducting legitimate work relating to the activities of FIFA.<sup>100</sup>

## 2. Business enterprises should take into account adverse impacts to human rights defenders as part of their human rights due diligence

Business enterprises should take a preventive approach to avoid causing or contributing to adverse impacts on human rights defenders through their own activities, and should address such impacts when they occur. They should also take adequate measures to seek to prevent or mitigate adverse human rights impacts on human rights defenders that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

In order to be able to do so effectively – to know and show that they respect human rights defenders – they need to have certain policies and processes in place.

**“ Through conducting human rights due diligence, business enterprises can know and show that they understand the corporate responsibility to respect human rights, and those who defend them, and also the issues that they need to address to implement this responsibility. ”**

Guiding Principle 17 defines the parameters for human rights due diligence and Guiding Principles 18 - 21 elaborate its essential components. This is an integral part of the corporate responsibility to respect human rights. Business enterprises should develop due diligence processes in relation to all areas in which it may cause, contribute to, or be directly linked to, human rights abuses. This includes anticipating impacts on human rights defenders.<sup>101</sup> Awareness of the issue is critical, as general human rights due diligence may overlook specific harms faced by defenders, including criminalisation of their lawful activities, reprisals, and other attempts to silence them.

61. Illustrative actions that business enterprises should take:

- Regard constructive engagement with human rights defenders as a central aspect of human rights due diligence, providing an opportunity to identify key civil society actors, gather information from the ground, understand the concerns of affected individuals and communities and determine measures to address them<sup>102</sup>

- engage early, and in good faith, with human rights defenders as “critical friends”, and enable them to raise concerns about potential and actual impacts because genuine consultation with human rights defenders is one of the best ways to identify human rights risks and prevent harm
- do not commence operations without the Free, Prior and Informed Consent of the affected community and note that consultation is not the same as consent and should never be construed as such<sup>103</sup>
- see human rights due diligence as an on-going activity that should cover both actual and potential adverse impacts on human rights defenders that a business enterprise may cause or contribute to, or that may be directly linked to its operations, products or services by its business relationships
- avoid seeing human rights impact assessments as “tick the box exercises”, and ensure meaningful engagement with stakeholders, including vulnerable or at-risk groups and the critical voices of human rights defenders<sup>104</sup>
- design human rights impact assessments and human rights due diligence programmes to identify and mitigate the particular risks to human rights defenders in different places and contexts e.g. specific elements may need to relate to the nature of a project, or the legal environment in a particular State
- consider each context on a case-by-case basis and take on board a range of input and advice, including from local and international NGOs, when planning and deciding key issues to ensure respect for human rights
- consider the risks that human rights defenders may face in raising concerns, including the risk of reprisals<sup>106</sup>, and what steps they can take to ensure the safety, security and well-being of those individuals

- part of the Guiding Principles ecosystem, rather than as opponents, adversaries or enemies
- offer human rights training to staff, and the staff of subsidiaries, suppliers and subcontractors, including in particular private security firms<sup>107</sup> hired to provide security services on site<sup>108</sup>
- train staff to engage with human rights defenders directly, in an environment of dignity and respect, including in relation to specific groups<sup>109</sup>, and ensure that training is sensitive to, for example, gender, race, ethnicity, age, disability, gender identity or sexual orientation. Such training can also focus on safe digital security protocols for communication with defenders.

### 3. Raising awareness and building capacity to strengthen effective due diligence that takes human rights defenders into account

In order to be better equipped for identifying and addressing risks and impacts facing defenders, business enterprises need to raise awareness and build capacity on the issue among staff across functions and different levels. They should also raise awareness among business relationships and clearly convey the expectation that business partners respect defenders, and engage in wider capacity-building efforts.

Training staff on the corporate responsibility to respect human rights, and on the important role played by human rights defenders, is a key element in preventing human rights abuses from occurring.

Illustrative actions that business enterprises should take:

- Offer human rights training incorporating the latest developments in good practice and guidance for business relating to human rights defenders. Ensure that such training emphasises the valuable role of defenders as key stakeholders and partners as part of the Guiding Principles ecosystem, rather than as opponents, adversaries or enemies
- offer human rights training to staff, and the staff of subsidiaries, suppliers and subcontractors, including in particular private security firms hired to provide security services on site
- train staff to engage with human rights defenders directly, in an environment of dignity and respect, including in relation to specific groups<sup>109</sup>, and ensure that training is sensitive to, for example, gender, race, ethnicity, age, disability, gender identity or sexual orientation. Such training can also focus on safe digital security protocols for communication with defenders.

## 4. Building and exercising leverage to address impacts on human rights defenders

The concept of leverage<sup>110</sup> plays a key role for business in meeting the corporate responsibility to respect human rights, and is also critical for effective action when potential or actual impacts on defenders connected to the business are identified. The Commentary to Guiding Principle 19 states that leverage is considered to exist where the business enterprise has an ability to effect change in the wrongful practices of an entity that causes harm. Gaining and seeking to exercise leverage becomes fundamental to human rights due diligence when a business enterprise identifies adverse human rights impacts which are linked to its operations, products or services and caused by an entity with which it has a business relationship (such as subsidiaries, suppliers, buyers, distributors, States or joint-venture partners). However, building and exercising leverage in business relationships to end and mitigate human rights abuse presents practical dilemmas.<sup>111</sup>

**“ Business enterprises should use their leverage to convey an expectation that harmful impacts, including risks to defenders, will be prevented and addressed through human rights due diligence wherever relevant across business relationships. ”**

This may include requiring or setting incentives for business partners to carry out human rights due diligence focusing on defenders, and to cascade it through their own supply chains as potential or actual impacts may exist beyond “tier-one” of the value chain.

Leverage can be exercised in different ways, through traditional commercial levers by integrating respect for human rights as a “business critical” issue by including this in negotiations and decision making. In addition, leverage can be implemented in concert with business partners. Leverage can also be exercised through multi-stakeholder collaborations.<sup>112</sup> Business enterprises should use their position to safeguard, and mitigate negative serious outcomes for human rights defenders by speaking out to raise awareness about cases, for example concerning those that are relevant to their industry, or the States in which they operate/have relationships with. If business enterprises discover harms to defenders arising in their global supply chains, for example, they should consider appropriate strategies for how to address and mitigate such harms. Moreover, fostering a culture where a group of business enterprises speak out about cases, even those concerning contexts where they do not operate, is the goal. Public attention can serve to dampen, if not eradicate, human rights abuses and reprisals. Business enterprises have an important role in focusing attention on cases where human rights defenders are being targeted.<sup>113</sup>

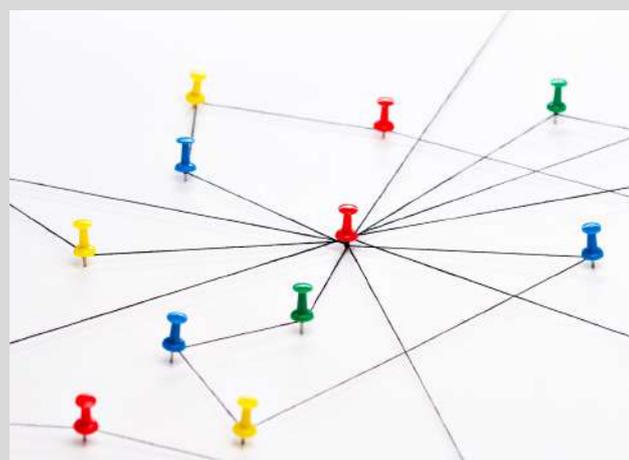
Joint action between business and civil society can play a powerful role in supporting the work of human rights defenders in contexts where respect for human rights cannot be taken for granted, and in highlighting that business enterprises need human rights defenders in order to know what is happening in their supply chains.

Action should only be taken where this would not put human rights defenders at greater risk, and decisions to intervene should always be made in discussion with the human rights defender themselves, or their representatives and relevant human rights organisations that work with defenders on a regular basis. Illustrative actions that business enterprises should take when defenders are at risk and there is a link to the enterprise’s own activities or business relationships (it may also choose to take such actions even if there is no clear connection, but this is not required under the Guiding Principles):



## ADVOCACY

- Before commencing a new project, make clear to local actors its support for human rights defenders and all rights holders and wish for them to be able to speak freely regarding the project
- stand up against abusive government actions, restrictions and regulations, making reference to the Guiding Principles e.g. where human rights defenders are targets of judicial or legislative processes
- write or sign open letters to States where human rights defenders are being attacked, or put on trial for their legitimate human rights work as this can be an effective way for a concerned business to respond to issues occurring within its own sector and make its voice heard while setting standards for its peers<sup>114</sup>
- include in such letters that human rights defenders are protected under the United Nations Declaration on Human Rights Defenders, and that business enterprises rely on human rights defenders to be able to speak freely, and without fear of reprisal, in order to learn about challenges in supply chains, encourage due diligence and provide remedy when harm occurs<sup>115</sup>
- get involved, when human rights defenders want this, in cases directly e.g. by submitting amicus curiae briefs to a court, or by intervening in a court case to assist the court in better understanding a particular business and human rights aspect of a case
- intervene when threats are made against human rights defenders, even before legal processes are launched against human rights defenders, in order to prevent them from escalating, and in order to set out the situations that a business enterprise finds unacceptable. It may be easier to engage in relation to a case concerning a human rights defender early on, before a court process commences and the associated momentum sets in
- understand that the type of advocacy that will be most effective needs to be seen on a spectrum of possibilities – from quiet diplomacy to public advocacy. There are a range of actions and practices that can be used in complex and difficult spaces and others that are more appropriate to use in a much safer space because a business can have real leverage and can act freely. Much of this depends on the sophistication of the partnerships that a business creates on the ground
- consider whether acting under the radar and without publicity may be the most effective means by which to generate results, especially in contexts where robust public and media scrutiny is unwelcome
- operate, where appropriate, or more effective, through a third party, or a local civil society network, as there may be cases where that is a more diplomatically sensitive, or culturally appropriate, method of operating



## 5. Business enterprises need to show support for trade unions as key partners and human rights defenders



**Trade unionists are human rights defenders and there have been calls for this to be more explicitly recognised.**



Trade union representatives work in full view of employers and other entities, so they face the added challenge of public scrutiny when doing work that is demanding and often dangerous. This puts an onus on business enterprises to take steps to prevent and mitigate the human rights risks associated with trade union activities when addressing business-related human rights abuses.<sup>117</sup>

Illustrative actions that business enterprises should take:

- Always respect social dialogue and trade union rights and prioritise trust-building and capacity building on labour rights<sup>118</sup>
- appear on panels with trade unionists and, where appropriate, bring them to meetings with government and other interlocutors
- work together with peer businesses, local suppliers and stakeholders to jointly apply leverage in addressing challenging local contexts for trade union rights, or asking States to improve relations with trade unions in specific contexts<sup>119</sup>
- where national laws restrict trade union activities, take the opportunity to lead cultural change to entrench a norm of respecting trade unions and the important work they do.

## 6. In conflict-affected situations, business enterprises need to also address heightened risks to human rights defenders as part of heightened human rights due diligence

Operating in challenging contexts, including places undergoing abrupt political transition and conflict areas calls for more leadership<sup>120</sup> from business, which may present difficulties for business enterprises of all sizes. Heightened due diligence will need to be conducted by business in conflict and post-conflict contexts.<sup>121</sup>

The worst forms of business-related human rights abuse tend to happen in conflict-affected contexts and a better understanding of the practical measures that all actors should take is needed.<sup>122</sup> As such, in these contexts business enterprises need to be especially wary of their impacts on human rights defenders, and of the impact of their relationship with States and de-facto authorities on them.

Illustrative actions that business enterprises should take:

Be especially alert in contexts where State or de facto authorities take steps to dampen or restrict dissent, and interfere with the legitimate activities of human rights defenders e.g. by applying reprisals, coercion, intimidation, use of force or criminal proceedings against human rights defenders:

- exhibit extra care not to inadvertently involve themselves in human rights abuses by listening carefully to early warnings from human rights defenders and engaging in meaningful consultation with all relevant stakeholders, particularly human rights defenders
- consider each context on a case-by-case basis and take on board a range of input and advice, including from local and international NGOs, when planning and deciding key issues to ensure respect for human rights

## 7. Businesses should support human rights defenders, publicly and privately

In addition to the above outlined steps, there are specific actions that a business enterprise can take to support human rights defenders and civic freedoms. Even if not specifically required under the Guiding Principles unless the business enterprise is causing, contributing to or directly linked to impacts on defenders, such action can nevertheless help to reinforce both the prevention of business-related human rights abuses, and the role of defenders as partners in human rights due diligence. It also strengthens an enabling environment for the respect of human rights.

### Affirm the work of human rights defenders

Publicly welcoming the work that human rights defenders do is an important way of respecting them. Businesses can show support, for example, by providing financial support to independent organisations that support defenders and their communities.

Illustrative actions that business enterprises should take:

- Support the awards given by others. The funding that comes with such awards could be used to support the organisations that award winning human rights defenders work with
- provide direct financial support to resource civil society organisations and human rights defenders that lack resources and funding as well as in-kind assistance, including for law firms pro-bono legal advice and representation

- support the formal human rights education of human rights defenders by endowing an educational scholarship, fellowship or internship.

### When appropriate, engage in quiet diplomacy as part of an exercise in leverage

The shift in thinking in relation to human rights defenders that the Guiding Principles call on business enterprises to undertake will take time to embed and much may be done, in some situations, privately but effectively. To that extent, while business action is not negotiable when the business is connected to potential or actual adverse impacts on defenders, the context in which the need to speak up for the rights of defenders is very context specific. A policy of quiet diplomacy within a business, and between a business and a State, may be one component of a legitimate strategy to follow in showing respect for human rights defenders, and in developing support and recognition for human rights defenders and their work.<sup>123</sup> Part of determining if this is appropriate is general and proactive engagement with defenders and organisations working with defenders, who themselves can help businesses to craft appropriate strategies.

Illustrative actions that business enterprises should take:

- Demonstrate, however quietly, respect for human rights defenders as this can fuel private conversations
- with State interlocutors as part of a quiet diplomacy strategy that can generate change over the long-term
- understand that some cultural contexts privilege a quiet and a respectful dialogue and having informal conversations in a non-threatening way can often be a more effective method of operating and generating long-term results

- find a way to bring the issue to C-Suite executives to secure essential leadership buyin and expectation setting. In some contexts, the place to start will be an access to remedy policy, calling for no retaliation against human rights defenders, rather than developing a policy specifically on human rights defenders
- convey the message that respecting human rights defenders is not about being political or seeking to interfere with internal political systems but about respecting human rights, and about being responsible corporate citizens, responsive to the environments, however challenging, in which they operate
- develop a collective “leading by example approach” with peer industry business enterprises operating in each State or region.



## C. Pillar III: Access to Remedy

Pillar III, Guiding Principles 25-31 deal with access to remedy. Both States and business enterprises need to provide access to remedy, including to human rights defenders. This has been explored by OHCHR in its Accountability and Remedy Project.<sup>124</sup>



**The business-related human rights abuses faced by human rights defenders can be the most serious of all, leading to death and serious personal injury. While no remedy can make this better, justice requires, and the Guiding Principles, recognise that there must be access to effective accountability and remedy for human rights defenders.**



Genuine and prompt access to remedy is one way to ensure that human rights defenders are respected, at least retrospectively, in circumstances where their human rights have been adversely impacted by business operations. Remedy can also serve as a tool of prevention as potential culprits will know that their actions will be met with due process, and possible sanction, and thereby they may be deterred from becoming involved in abuses against human rights defenders. Likewise, impunity and a lack of accountability encourages abuses to continue unchecked and possibly increase.



## 1. States should ensure that human rights defenders have access to judicial, administrative, legislative or other means to access remedy

In accordance with Guiding Principle 25, States must ensure that all necessary judicial, administrative, legislative or other means that they take to provide affected persons with access to effective remedies for business-related human rights abuses are suitable for the needs of human rights defenders.

Illustrative actions that States should take:

- Ensure the participation of human rights defenders in carrying out legislative, administrative or judicial reform to improve access to effective remedy for business-related human rights abuses
- ensure that human rights defenders have access to properly resourced, unrestricted and competent judicial and non-judicial remedy mechanisms, as appropriate
- ensure that the specific needs of women human rights defenders and indigenous defenders are addressed.<sup>125</sup>

### States should take steps such that strategic lawsuits against public participation (SLAPPs) are not used to silence the voices of human rights defenders

The filing of SLAPPs is aimed at silencing human rights defenders' critical voices, restricting their access to remedy, dampening the appetite of others to speak out, and restricting the freedoms of expression and of assembly and association. It is an attack on human rights defenders and is on the rise. SLAPPs serve to defame and harass human rights defenders e.g. for protecting labour rights or criticising business activities.

They have, in some cases, provoked self-censorship, prevented individuals from seeking to access remedy, and further limited civic space in many contexts.<sup>126</sup>

Illustrative actions that States should take:

- Introduce law reforms to prevent cases of criminal libel being pursued against human rights defenders, and prevent business enterprises from demanding huge sums for alleged damage to their reputation through alleged criminal libel<sup>127</sup>
- sanction business enterprises for engaging in SLAPPs as they are an abuse of process, and are not a legitimate tool for a business to use to advance its own ends
- cease collusion between States and businesses in which businesses call the police to ask for action to be taken against human rights defenders who then they find themselves arrested in connection with an alleged criminal offence, which is really aimed at silencing their protests about corporate activity
- introduce stronger laws and institutions to protect whistle-blowers, and to prevent SLAPPs through strong anti-SLAPP laws
- ensure that judges and prosecutors are trained to recognise SLAPPs, identify frivolous complaints against human rights defenders, and put procedures in place to handle and respond to this occurrence
- give a court powers to dismiss or decline to accept a case if the court considers that the intention of the claim/prosecution is to distort facts concerning the work of a human rights defender, or harass or take advantage of the defendant. In such cases, the plaintiff/claimant could be prohibited from filing the same case again.

## States should ensure *lèse-majesté* laws, or other laws dealing with public expression and criticism, are not used as a tool to suppress the voices of human rights defenders

Some States use *lèse-majesté* laws, or laws having a similar effect albeit referred to differently, to restrict and prevent criticism of the monarchy or leaders, or of government policies, which has a chilling effect on freedom of expression and restricts civic space and the enjoyment of fundamental freedoms.<sup>128</sup>

Under international human rights law, public figures, including those exercising the highest political authority, such as heads of State, are legitimately subject to criticism. If a form of expression is considered to be offensive, or shocking to a public figure, then this is insufficient to justify the imposition of severe penalties. This is particularly relevant in States where State-owned enterprises are widespread, and the leader of the State is a monarch and may also be a leader of, or closely connected to, a business enterprise that a human rights defender is criticising.

Illustrative actions that States should take:

- Revise and repeal *lèse-majesté* laws, or laws having a similar effect
- drop such charges against all human rights defenders currently facing criminal prosecution
- release those who have been imprisoned under such laws for the exercise of their rights to freedom of expression and of peaceful assembly.

## 2. States should ensure that human rights defenders have effective access to State-based judicial mechanisms for addressing claims they have relating to human rights abuses arising from business activity, as well as for claims they are raising on behalf of the rights holders they represent

Guiding Principle 26 calls on States to consider ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy in the case of State-based judicial mechanisms. Accordingly, States should consider steps that would specifically benefit human rights defenders.

### Removing legal barriers

Illustrative actions that States should take:

- Undertake effective steps to investigate, punish and redress business-related adverse impacts on human rights defenders, including harassment and violence, that occur in their territory and/or jurisdiction<sup>129</sup>
- create mechanisms and processes to redress extraterritorial adverse impacts on human rights defenders caused, or contributed to, by business enterprises domiciled in their territory and/or jurisdiction, and enhance cross-border cooperation in cases with a transnational dimension

- address barriers for individuals and communities affected by the overseas operations of businesses to seek effective remedies in appropriate cases<sup>130</sup> e.g. facilitating means by which human rights defenders could raise concerns about human rights abuses perpetrated by business enterprises based in their jurisdiction but operating abroad. This would be key in circumstances where victims are unlikely to be able to access remedy in the country where the alleged abuses took place
- ensure that all potential claimants have the same level of legal protection of their human rights, free from discrimination.

## Removing barriers in the legal system

Illustrative actions that States should take:

- Build the capacity of judges, prosecutors, police officers and other relevant actors to ensure that they operate with sensitivity to the experiences of human rights defenders when dealing with complaints about adverse human rights impacts on them
- train members of the judiciary to understand how criminalisation may be used to deter human rights defenders from advocating for human rights
- do not make the legal system inaccessible human rights defenders, meaning that there should not be reprisals, or the use of legal tools as a means of silencing human rights defenders, such as criminalisation for doing legitimate human rights work<sup>131</sup>
- ensure that new protocols and measures are put in place to offer human rights defenders protection from vexatious and frivolous lawsuits designed only to victimise them, retaliate against them and both hamper and undermine their work.

## Removing practical barriers to a human rights defender's access to remedy

Illustrative actions that States should take:

- Ensure that any needs that human rights defenders might have, for example in relation to language, accessibility and safety are met by the judicial system
- consider how legal aid schemes may adopt a differential financial threshold to provide support to human rights defenders seeking remedy for business-related human rights abuses.<sup>132</sup>

## 3. States should also ensure that State-based non-judicial grievance mechanisms are also accessible to human rights defenders.

In accordance with Guiding Principle 27, States should confer an explicit mandate on State-based non-judicial grievance mechanisms,<sup>133</sup> and provide them with adequate powers and resources, to deal with business-related human rights abuses facing human rights defenders.

## A strengthened role for OECD National Contact Points

The OECD Guidelines for Multinational Enterprises are supported by an implementation mechanism of National Contact Points (NCPs). These are established by the adhering States to promote and implement the Guidelines and assist companies and stakeholders in furthering the implementation of the Guidelines. All countries adhering to the OECD Guidelines for Multi-national Enterprises are obliged to establish NCPs. In addition to promoting, and training business on, the Guiding Principles, NCPs handle complaints on alleged failures to comply with the OECD Guidelines. Complainants can be human rights defenders, NGOs, or other interested parties. This is a low-threshold complaint mechanism and NCPs offer mediation between parties on issues related to business and human rights.

Illustrative actions for States to take:

- Ensure that NCPs are well enough resourced to be able to handle sensitively the various complaints made by human rights defenders
- encourage NCPs to genuinely welcome, and listen to, the perspectives articulated by human rights defenders when attempting to facilitate access to remedy in cases concerning them
- recognise that defenders' engagement with NCPs may lead to reprisals and have protocols in place to address this.

## An enhanced role for National Human Rights Institutions

Those individuals who work within or for National Human Rights Institutions (NHRIs) are themselves human rights defenders who are tasked with providing support other human rights defenders. They, and the NHRI as an institution, can act as important bridge-builders between rights-holders and the State, civil society and businesses, including through supporting human rights defenders and by improving access to effective remedy for business-related human rights abuses. They can play a key role in facilitating remedy for human rights defenders in circumstances where access to judicial remedy is more challenging, or restricted.<sup>134</sup> NHRIs can facilitate access to remedy indirectly, by raising awareness,<sup>135</sup> building capacity,<sup>136</sup> assisting rights holders<sup>137</sup> and recommending legal reforms, and directly, by handling complaints concerning business-related human rights abuses.

Illustrative actions for States to take:

- Properly resource NHRIs and enable them to do their work free from interference
- set an expectation that business enterprises need to engage with NHRIs fulsomely and with respect
- give NHRIs an explicit mandate, broad jurisdiction and necessary powers to pursue business and human rights issues, including a role in facilitating access to remedy for business-related human rights abuses for human rights defenders
- confer on NHRIs power to act on their own to conduct inquiries or investigations, or to intervene in judicial proceedings in the public interest and to protect the interests of human rights defenders in cases of business-related human rights abuses.

Illustrative actions for States to take:

- Properly resource NHRIs and enable them to do their work free from interference
- set an expectation that business enterprises need to engage with NHRIs fulsomely and with respect
- give NHRIs an explicit mandate, broad jurisdiction and necessary powers to pursue business and human rights issues, including a role in facilitating access to remedy for business-related human rights abuses for human rights defenders
- confer on NHRIs power to act on their own to conduct inquiries or investigations, or to intervene in judicial proceedings in the public interest and to protect the interests of human rights defenders in cases of business-related human rights abuses.

Illustrative actions for NHRIs to take:

- In interacting with human rights defenders, be responsive to different experiences and needs of individuals or groups who may be at heightened risk of vulnerability or marginalisation in a given society
- in interacting with States, advocate for legal and policy reforms that States should initiate to remove barriers to access to effective judicial and non-judicial remedies facing human rights defenders
- engage with the Global Alliance of National Human Rights Institutions' Working Group on Business and Human Rights, which builds capacity on business and human rights for NHRIs and regional networks, strengthens NHRI advocacy in international and regional events on business and human rights and enhances NHRI visibility on business and human rights issues<sup>138</sup>
- global and regional associations of NHRIs should build the capacity of their members to handle sensitively complaints brought by human rights defenders.

## 4. States should encourage businesses to provide effective non-State-based grievance mechanisms for human rights defenders whose rights are impacted by business operations

In accordance with Guiding Principle 28, States should find ways of ensuring that human rights defenders can access non-State-based grievance mechanisms (such as those administered by business enterprises, industry associations, multi-stakeholder bodies or development financial institutions) to deal with concerns regarding business-related human rights abuses.

Illustrative actions that States should take:

- Provide guidance to business enterprises establishing operational-level grievance mechanisms and exercise oversight over the process to seek to prevent retaliation against human rights defenders when they try to use these mechanisms
- underscore that grievance mechanisms should take special care when engaging with human rights defenders so as to adopt a responsive approach in all stages of the complaint process and so as not to make conditions worse on the ground
- be on the alert for behaviour that would constitute a reprisal against human rights defenders for engaging with the United Nations and other international bodies in relation to business-related human rights abuses, and report suspicions in this regard to the United Nations. When human rights defenders engage with the international human rights system as a means of accessing remedy, or documenting attempts to access remedy, they should never face reprisals for this, nor be constrained in conducting their legitimate activities.

## 5. Businesses need to design effective and accessible operational-level grievance mechanisms that are properly equipped to handle the specific and often serious harm caused to human rights defenders

Guiding Principle 29 sets out that business enterprises should establish or participate in effective and accessible operational-level grievance mechanisms. Guiding Principle 30 states that industry and multi-stakeholder and other collaborative initiatives should ensure that grievance mechanisms are available. Such mechanisms should be in conformity with the effectiveness criteria stipulated in Guiding Principle 31,<sup>139</sup> and in accordance with the recommendations of the Working Group.<sup>140</sup>

“

**Operational-level grievance mechanisms need to reflect the fact that the sensitivity and confidentiality risks to human rights defenders are different to other persons who may make use of them.**

”

They need to be well resourced, effective, impartial and free from corruption, and any form of political or undue influence.

Illustrative actions for developers and operators of non-State based grievance mechanisms to take:

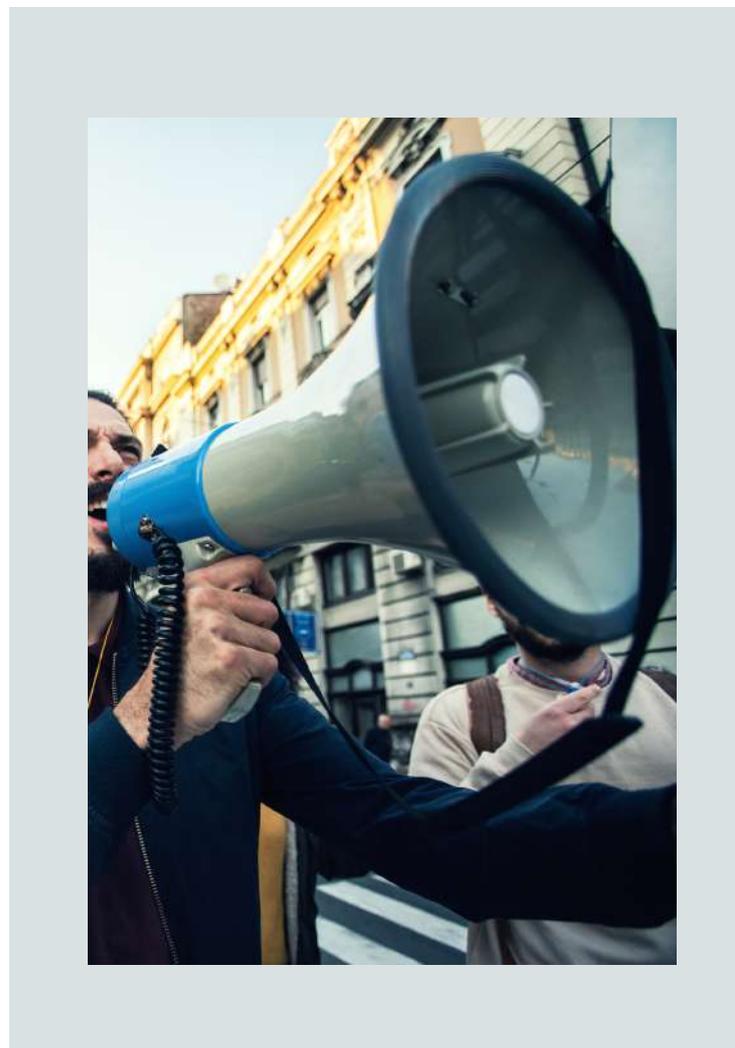
- Design their operational-level grievance mechanism in consultation with human rights defenders, ensure that it permits retaliation as a ground for complaint,<sup>141</sup> and make sure that human rights defenders have information about how to access and use the grievance mechanism

- ensure that any staff working in the operation of the grievance mechanism have the necessary sensitivity and training to work with rights holders and communities
- tailor<sup>142</sup> their operational-level grievance mechanism to ensure the safety and security of human rights defenders e.g. by providing anonymous reporting channels and other safeguards to protect the identity of persons raising grievances, as necessary<sup>143</sup>
- monitor cases submitted through grievance mechanisms, identify patterns of abuse against human rights defenders that may emerge (including threats against those using the grievance mechanism), and record the lessons learned to help prevent repeat occurrences in the future
- investigate all use of force, intimidation and harassment and, where circumstances permit and the person bringing the grievance agrees, give details to law enforcement so that they can pursue criminal charges as appropriate
- take care to ensure that no-one faces retaliation or reprisals for raising a grievance, as using a grievance mechanism should never place a human rights defender at greater risk of harm
- implement protection measures as agreed with those bringing the grievance
- report, with the consent of the person(s) concerned, on the grievances received that relate to human rights defenders, including claims of reprisals, steps taken to resolve the grievance, and lessons learned for the future. Make as much information as public as possible, in consultation with those bringing the grievance and always respect the need for confidentiality
- do not report that a matter has been resolved unless defenders also agree that a grievance or complaint has been resolved

- report, with the consent of the person(s) concerned, on the grievances received that relate to human rights defenders, including claims of reprisals, steps taken to resolve the grievance, and lessons learned for the future. Make as much information as public as possible, in consultation with those bringing the grievance and always respect the need for confidentiality
- do not report that a matter has been resolved unless defenders also agree that a grievance or complaint has been resolved
- raise awareness of other avenues that human rights defenders can take e.g. the grievance mechanisms of relevant international and development finance institutions, or multi-stakeholder initiatives that they are a part of, because there may be circumstances where a business enterprise has been strongly linked to a reprisal so its own operational-level grievance mechanism may appear too dangerous for a defender to approach.

Illustrative actions for business associations to take in the context of non-State based grievance mechanisms:

- Lead the way in setting out how business enterprises in specific sectors can handle and effectively resolve local community grievances, and specifically grievances from human rights defenders<sup>144</sup>
- facilitate peer learning within industries to help improve the development, and operation, of grievance mechanisms.



## D. Issues in focus

### 1. Development Finance Institutions including International Financial Institutions

Development Finance Institutions (DFIs), including International Financial Institutions (IFIs) are State-run institutions, some are public-private initiatives, and some have more of a private sector quality. IFIs often fall within the “State-business nexus” under Pillar I.<sup>145</sup> In this section, the focus is on development finance institutions (multilateral, regional and national) that conduct investment of public and private funds.

Development projects, and the ways in which the entities running those projects engage with human rights defenders, often pose particular challenges for human rights defenders, particularly because they often entail contest over land, displacement, environmental rights, and rights of indigenous peoples. Development projects may exacerbate already tense situations, for example around land tenure, by bringing rapid development and investment to an area, often without robust consultation and engagement with communities and impacted rights holders in advance of the decision to initiate a project. Risks to defenders connected to development projects may arise and in areas with weak governance, where the rule of law is lacking or absent, the injection of significant sums can render corruption inevitable. In such situations, defenders who raise human rights implications of development projects, may be characterised as hostile to development and anti-investment, rather than as critical voices who are well-placed to identify underlying harms that may give rise to conflict.

States, business enterprises, and development finance institutions investing in and/or implementing development projects, may find themselves linked to, or complicit in human rights abuses targeting defenders due to engaging in, or reacting to, conflicts that target human rights defenders. For example, in order to facilitate business access to an area, or the advancement of a project. In other contexts, they may be involved in shutting down protests, conducting surveillance on defenders, or restricting trade union activity.

The extent of the threats and attacks against human rights defenders in relation to development projects is widespread and global. In some cases, DFIs exacerbate, or fail to prevent or mitigate, risks, fail to remediate harm, or lack capacity to implement policies. Many IFIs now have statements<sup>146</sup> addressing reprisals<sup>147</sup> against human rights defenders, and there has been some recent guidance to inform private sector efforts in addressing the risks of retaliation against project-impacted stakeholders. Likewise, the 2019 Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit has been endorsed by all the members of the Independent Accountability Mechanisms Network.<sup>148</sup> However, internal guidance and protocols about who is responsible for handling reprisals and following up on cases is often lacking, as is information about what support can be offered to human rights defenders under threat, the commitment of senior management to the issue overall, and how DFIs and IFIs will work to prevent (as well as respond to) reprisals against human rights defenders.

Furthermore, there is limited understanding of contextual factors that increase risks of reprisals at country, project, and community level, and safeguard specialists rarely conduct field visits. This results in reliance on client reporting, and a missed opportunity to understand the risks of retaliation against human rights defenders that are associated with business relationships. Where risks are identified, safeguard specialists often have limited leverage over project design and implementation. Importantly, reprisals risks may be associated with State actors and such States may well serve on IFI Boards making decisions to approve, and progress, projects. This represents a risk that political pressure at Board level will result in reprisals risks not being addressed.

In accordance with Guiding Principle 10, States should encourage IFIs, as multilateral institutions, in discharging their respective mandates, to shift their thinking to see human rights defenders as experts on the ground who can identify and give voice to the human rights impacts and concerns of local stakeholders about projects. This allows for a bottom up approach to identifying human rights (or so-called social) impacts as opposed to a top down assessment by external experts who are not attuned to the needs on the ground.

Illustrative actions that DFIs and IFIs should take:

### **Make prevention of human rights abuses key to project planning and implementation**

- Engage with human rights defenders and understanding community dynamics through human rights due diligence, in the form of contextual risk assessments, early on in project planning. Add a “retaliation against human rights defenders risk lens” to the contextual risk assessment, assess human rights risks by sector, and discover if potential clients have a record of retaliation against human rights defenders. For example, as part of an IFI’s existing Know Your Customer evaluations, they should also evaluate any credible reports of a potential client having engaged in retaliation (or having not addressed retaliation associated with direct business relationships)
- ask data providers<sup>149</sup> to track risks to human rights defenders as part of their data collection. In many cases, environmental and social data providers evaluate projects and the contextual risk factors associated with an IFI’s client or the project area/area of influence, which should include negative human rights impacts as part of such data. These data providers largely do not capture data relating to the safety of, and risks to, local human rights defenders. IFIs should ask for this kind of data to be provided to ensure that it receives attention

- agree at the start of the project, in situations where multiple funders are co-investing in a project, how reprisals risks will be addressed over the course of the project, which actor will take the lead on this, how information will be shared (e.g. agree on an information sharing protocol; this is particularly important in relation to sensitive data that can expose people to additional risks if intercepted)
- analyse human rights risks throughout the life of a project and exercise a high level of scrutiny in relation to the risks faced by human rights defenders
- develop and implement, in consultation with human rights defenders, a plan to mitigate and prevent risks to human rights defenders
- align risk management frameworks with the Guiding Principles, and Free Prior and Informed Consent requirements
- integrate within environmental and social frameworks requirements on assessing reprisals risks, and preventing and responding to reprisals against people affected by projects<sup>150</sup>
- publish, in general terms, the procedures followed on the above listed issues, without sharing information on project-particular steps to prevent or mitigate risks if this would increase the risks that the persons who have been attacked, or may have been attacked, are subject to further risks. If publishing detail is relevant and necessary, then only do so with the consent of those at risk.

### **Policies and commitments**

- Set out public commitments to human rights defenders showing that they understand that they need to respond to reprisals against human rights defenders. Include within this clear guidance as to how a human rights defender may report a reprisal to the management of the DFI or IFI, and how the report will be handled

- ensure that strong reprisals commitments are embedded in legally binding requirements for both DFIs/IFIs and clients. At a minimum, reprisals risks should be reflected in environmental and social action plans annexed to a funding agreement. The client should be required to outline how they will ensure safe stakeholder engagement, and to report any incidents to the IFI within a specified timeframe (with rapid reporting if serious incidents, including those concerning human rights defenders, materialise over the course of the project)
- develop and implement policies for training staff on the important role of human rights defenders
- develop and implement policies for responding to reprisals and retaliation against human rights defenders, including rapid response mechanisms, and have named individuals at senior levels responsible for this.

## Reporting channels and grievance mechanisms

- Establish reporting channels for human rights defenders to report any security concerns they have. These could either be run by the DFI or IFI (e.g. by a department set up to manage whistle-blower complaints, or another department with expertise in working with individuals at risk), or be implemented by an independent third-party (e.g. an entity with specific expertise in sensitive reporting or monitoring)<sup>151</sup>
- establish strong and properly-resourced independent accountability mechanisms to receive grievances from human rights defenders. IFIs need to make sure that project stakeholders have access to IFI independent accountability mechanisms, that complaints can be filed on the grounds of reprisals, and that such mechanisms can handle situations in which clients are carrying out reprisals against human rights defenders
- evaluate clients' grievance mechanisms and assess how fit-for-purpose they are, based on reprisals risks to human rights defenders, and on how they address security concerns of those who report to, and collaborate with, the mechanism.

## Consequences for failing to respect human rights

- Ensure that there are consequences for business entities whose operations fail to respect the rights of human rights defenders. For example, by placing them on sanctions and debarment lists, resulting in them being excluded from further funding eligibility and participation in relevant projects.<sup>152</sup>

## Using leverage

- Identify where they have leverage in their relationships (including with their clients, business partners and the States involved), how it can be used, and how it can be increased. Use that leverage to prompt better behaviour e.g. on contract renewal, disqualify any contractors involved in threats or attacks against human rights defenders, or who have failed to cooperate in good faith when facing reprisal allegations.

## Speaking out and publishing information

- Where human rights defenders indicate that this would be welcome and safe, promptly speak out in relation to cases where human rights defenders have been harmed, and, where human rights defenders are being put on trial in obviously politicised cases, monitor the trials and voice concerns
- collect and publish disaggregated data on reprisals in connection with DFI/IFI-supported projects, including the nature of the attack and the impact of responses taken. Ensure that informed consent is obtained prior to publishing data that could lead to the identification of affected individuals, as this can expose them to further risks.

## Divestment

- When deciding whether to divest in a project, take into account that the divesting IFI will effectively lose leverage to address a particular situation, which can have implications for the safety of those concerned. When making a divestment decision, whenever possible, consult with those at risk, and collaborate with other actors that might be able to assist the human rights defender(s) in question, such as the United Nations, NGOs, diplomatic missions, or IFIs that have decided to stay, in order to address on-going security concerns
- where divestment in a project is determined to be the only viable option, declare this so that stakeholders are aware of what has happened, and the reasons for the divestment e.g. a client's failure to follow the IFI's social and environmental standards. When IFIs divest without saying anything, they leave their branding and mark of approval, despite the fact that the client and project might be problematic for human rights defenders
- after divesting, continue to monitor the project and provide channels for human rights defenders to report concerns and, wherever possible, facilitate a means by which to address those concerns.

## 2. Technology and social media companies

Technology can be a powerful enabler for the work of human rights defenders e.g. in relation to facilitating communication, organisation, information sharing, mobilisation and participation.<sup>153</sup> In accordance with Guiding Principle 14, the severity of a business enterprise's adverse human rights impacts needs to be considered when designing means by which to implement the corporate responsibility to respect human rights. Technology companies, including social media companies,<sup>154</sup> merit special focus as:

- they play a vital role in enabling the right to information (which is integral to the rights to freedom of expression, and to association and peaceful assembly); and
- the severity of the impact on a human rights defender of a technology company's activity, or the way in which their products can be used, can be life threatening.

### Technology companies

“

**The use of products developed by technology companies, including in surveillance by business enterprises and by States, can severely restrict the rights of human rights defenders and endanger, and harm defenders themselves.**

”

All technology companies should resist any demands to restrict, or collude in restricting, human rights, especially the right to privacy, and the freedoms of expression, and of assembly and association. Human rights defenders ought not to be tracked or be put under surveillance when using the technology they rely on to do their work. They need to be supported in taking measures to protect themselves<sup>155</sup> and business enterprises that understand and respect the work that human rights defenders do can play a vital role in sharing knowledge about the technology they have created.

Illustrative actions that technology companies should take:

**As feasible, technology companies should avoid Internet shutdowns and geo-blocking**

- Resist geo-blocking which may be used to restrict access to the Internet based on a person's location, and thereby target the access of a particular human rights defender to the Internet
- speak out against Internet shutdowns or access restrictions of any sort, including blanket and time limited shutdowns, and geo-blocking, including in public fora and through op-eds in newspapers and blogs. Internet shutdowns<sup>156</sup> pose particular challenges to the exercise of human rights and the capacity of human rights defenders to operate and do their work<sup>157</sup>, especially if they are targeted at specific time periods e.g. during a protest, or a period of conflict or political unrest
- resist, wherever possible, orders from States to shut down the Internet because shutdowns are not conducive to respecting human rights and those who defend them, many of whom depend on the Internet to do their work
- challenge a State if it requests an Internet shutdown or access restrictions through available legal procedures e.g. by asking if a court order has been sought and obtained, and requesting to see it before taking action to comply with a request
- keep customers informed of any requests to shut down or restrict access to the Internet including social media, or to implement geo-blocking, and of any disruption orders implemented.<sup>158</sup>

### **Commit to the confidentiality of digital communications, including encryption and anonymity**

- Resist restrictions to technical solutions to secure and to protect the confidentiality of digital communications, including measures for encryption and anonymity, as these are often key tools in enabling human rights defenders to organise and protect themselves online
- actively develop and enable technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity used by human rights defenders<sup>159</sup>

- refuse to facilitate indiscriminate surveillance of those exercising their right to defend human rights. Remind States that seek to use business enterprises to surveil individuals that this may only be conducted on a targeted basis, and only when there is reasonable suspicion that someone is engaging, or planning to engage, in serious criminal offences, based on principles of necessity and proportionality, and with judicial supervision
- pay particular attention to the specific threats faced online by human rights defenders who are, or identify as, women and girls.

### **Develop and disseminate tools to help human rights defenders protect themselves online**

- Recognise that online safety is a real issue for human rights defenders with serious consequences for their physical safety, as well as their psychological well-being<sup>160</sup>
- develop technological tools specifically designed to help human rights defenders protect their information online and to prevent attacks against human rights defenders online<sup>161</sup>
- share what they know about the ways in which technology can be used in order to help human rights defenders protect themselves from the dangers posed to them and their work by technology and those who would use it to do them ill<sup>162</sup>
- appreciate that partnering with civil society to help human rights defenders operate safely online helps a business to learn about the local contexts in which human rights defenders operate, and build stronger relationships that are crucial to the success of early warning systems flagging grievances and potential human rights abuses, about which any business should want to be aware, and either prevent or remediate
- understand that in some contexts human rights defenders may not feel safe using certain technology e.g. encryption as this will generate the suspicions of, or retaliation by, State authorities.

## Social media companies

As a specific type of technology company, social media companies need to recognise that they have a particular responsibility when it comes to respecting the rights of human rights defenders. Many of the threats against them start online on social media platforms, and the severity of the impact on a human rights defender can be immense.

Illustrative actions that social media companies should take:

- In consultation with human rights defenders, develop expertise on the issues facing human rights defenders, train staff to recognise key issues, and set up and make public easily accessible rapid response mechanisms to remove threatening content posted and hosted on social media platforms. This includes nominating contact persons for defenders to contact when they have requests to remove content, and promptly responding to requests to remove online threats. It also includes dealing with politically motivated and clearly organised complaints against individual
- defenders and monitoring trends to enable prompt action. In-house expertise on the issues facing defenders will assist with this, as will strong relationships with civil society
- in consultation with human rights defenders, close, or take appropriate actions against, the social media accounts of those making threats against them
- provide all necessary data to assist legal investigations into online threats and attacks against defenders
- develop specific plans within their broader policies on content moderation concerning protection of the right of human rights defenders to both freedom of expression and protection from hate speech, including speech that constitutes incitement to violence or discrimination. These plans should be made public, be developed in consultation with human rights defenders and civil society, and include country and language specific plans to address specific contexts where human rights defenders have been frequently targeted on social media platforms

- conduct periodic reviews of the impact of their products on the rights of human rights defenders. These periodic reviews should be open to submissions from human rights defenders and civil society organisations, and the results should be made public.



# VI. Conclusion: key steps for States and business in implementing the guidance

## States

- Recognise the vital role that human rights defenders play in promoting human rights and sustainable development, and that attacks on defenders undermine a sustainable future for all. In practical terms, they should enable human rights defenders to play an active role in processes to develop and implement national action on business and human rights, and ensure that such plans address the issues facing defenders.
- Ensure policy coherence by integrating into the strategies, policies, programmes and actions of all governmental departments, agencies and other State-based institutions that shape business practices the need for: (i) the State to protect human rights defenders, and (ii) business enterprises to respect them.
- Educate the business community about the positive role of human rights defenders as valuable partners in understanding local contexts and human rights risks on the ground.
- Consult with human rights defenders, including trade unions, in the development of legislation focused on business and human rights, including laws and regulations focused on mandatory human rights due diligence.
- Deploy appropriate incentives to ensure business enterprises respect the rights of human rights defenders, including use of trade-based incentives, export credit and public procurement to secure commitments from businesses.
- Consider appropriate sanctions or consequences if a business is found to have caused or contributed to harm to a defender, or failed to actively take steps to prevent harm to a defender once such a risk is known to the business.
- Update existing policies, protocols and programs on human rights defenders to consider the role of business in addressing human rights risks to defenders and how business can be a constructive partner in preventing harm.
- Take steps such that strategic lawsuits against public participation (SLAPPs) are not used to silence the voices of human rights defenders, and develop methods or protocols so that courts can address situations where civil lawsuits and claims are not made in good faith.
- Prevent the legal system from being used to criminalise the legitimate activities of human rights defenders.
- Empower national human rights institutions, and State-based non-judicial grievance mechanisms, such as OECD National Contact Points, to have a strong role in addressing risks to human rights defenders arising from business activity.

## Businesses

- Recognise that meeting the responsibility to respect human rights in relation to risks to human rights defenders implies – at a very minimum – that their activities, actions and omissions do not lead to retaliation, violence or stigmatisation against human rights defenders.
- Know and show a commitment to the rights of human rights defenders through policies and procedures relating to human rights due diligence, and impact assessments.
- Do not expose human rights defenders to undue risks, for example by initiating frivolous legal proceedings, including SLAPPs, or reporting them to authorities as a means of intimidating them. Recognise that SLAPPs are not only misguided as far as operating on a principled basis is concerned, as they are incompatible with responsible business, but also that engaging in them reflects poor strategic sense, as they destroy any credibility of corporate commitment to respect human rights at large.
- Use leverage in business relationships to ensure respect for human rights defenders is developed and maintained.
- Acknowledge that human rights due diligence provides a tool for achieving greater coherence. Conduct human rights due diligence in which community leaders and human rights defenders are an important expert resource as part of human rights due diligence processes, enabling business enterprises to understand the concerns of affected individuals and communities on the ground.
- Continuously enhance human rights due diligence policies and processes by engaging regularly and openly with affected stakeholders, civil society organisations, human rights defenders and trade unions, and be transparent about the management of potential and actual impacts.
- Adopt a preventive approach by actively monitoring risks against human rights defenders, taking an open and inclusive approach to stakeholder and worker engagement, especially with those who are at higher risk.
- Be as transparent as possible in responding to concerns raised by defenders, as well as about human rights risks and reprisals faced by defenders and how they were addressed by the business. Such reporting should occur in a way that respects the wishes of human rights defenders and also protects them from retaliation.
- Design and implement an operational-level grievance mechanism that addresses the heightened risks to defenders, which can protect confidentiality, provide for anonymity, and that is accessible through multiple channels.
- Have clear protocols in place to address attacks against human rights defenders. This includes appointing individuals with responsibility for receiving, investigating, and responding to allegations concerning threats against human rights defenders, and learning the lessons to prevent reoccurrence of the same behaviour.

# Endnotes

- 1 <https://www.business-humanrights.org/en/from-us/briefings/just-recovery-in-peril-human-rightsdefenders-face-increasing-risk-during-covid-19/>.
- 2 A/RES/53/144, Article 1 and see: <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>.
- 3 See: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.
- 4 A/HRC/17/31, Annex.
- 5 See: A/HRC/47/39 and <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx>.
- 6 See: <https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/oxfam.pdf>; and [https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/iwgia\\_final.pdf](https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/iwgia_final.pdf).
- 7 [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf), page 31.
- 8 <https://www.goldmanprize.org/recipient/berta-caceres/>.
- 9 <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23994&LangID=E>.
- 10 See, for example: <https://www.hrw.org/news/2017/09/08/human-rights-watch-submission-re-human-rights-defenders-and-civic-space-context>; <https://www.ihrb.org/pdf/2015-12-Human-RightsDefenders-and-Business.pdf>; and [https://www.civicus.org/documents/reports\\_andpublications/SOCS/2017/essays/human-rights-defenders-under-attack-the-role-of-business-inprotecting-their-space.pdf](https://www.civicus.org/documents/reports_andpublications/SOCS/2017/essays/human-rights-defenders-under-attack-the-role-of-business-inprotecting-their-space.pdf).
- 11 <https://www.business-humanrights.org/en/from-us/briefings/line-fire-increased-legal-protectionneeded-attacks-against-business-human-rights-defenders-mount-2020/>.
- 12 <https://www.business-humanrights.org/en/from-us/human-rights-defenders-database/>.
- 13 A/HRC/45/36, paragraph 21.
- 14 A/HRC/45/36, paragraph 36.
- 15 A/HRC/46/35, paragraph 10.
- 16 A/HRC/46/35, paragraph 9.
- 17 A/72/170.
- 18 A/71/281.
- 19 A/HRC/40/60, especially paragraphs 33, 47, 108c, and 110.
- 20 A/HRC/31/55, paragraph 111.
- 21 A/HRC/39/17.
- 22 [www.environment-rights.org](http://www.environment-rights.org).
- 23 <https://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrds-risking-today-tomorrow/>.
- 24 Other Special Procedures mandates have also addressed the adverse business-related human rights impacts experienced by human rights defenders. For example, the Special Rapporteur on human rights and hazardous substances and wastes addressed the impact of business activity on defenders (see: A/HRC/39/48, paras. 99-102, and A/HRC/42/41, paras. 69-72). The Special Rapporteur on the human rights of internally displaced persons has acknowledged the impact of development-induced displacement on communities and the need for human rights defenders to address such displacement (see: A/HRC/32/35/Add.3).
- 25 <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true>.
- 26 Paragraph 31.
- 27 [https://www.oas.org/en/iachr/media\\_center/PReleases/2020/014.asp](https://www.oas.org/en/iachr/media_center/PReleases/2020/014.asp).
- 28 [http://www.oas.org/en/iachr/reports/pdfs/Business\\_Human\\_Rights\\_Inte\\_American\\_Standards.pdf](http://www.oas.org/en/iachr/reports/pdfs/Business_Human_Rights_Inte_American_Standards.pdf), page 171.
- 29 Including trade unionists, labour leaders, land and environmental defenders, affected community members, anti-corruption activists, and journalists.
- 30 [https://www.frontlinedefenders.org/sites/default/files/fld\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf).
- 31 <https://carnegieendowment.org/2019/10/22/defending-civic-space-is-international-community-stuckpub-80110>.
- 32 See: A/HRC/47/39, paragraphs 71-73.
- 33 Between January 2015 and May 2021, the Business & Human Rights Resource Centre identified 355 cases that bear the hallmarks of SLAPPs, brought or initiated by business actors since 2015 against individuals and groups related to their defence of human rights and/or the environment, see: [https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defendinghuman-rights-in-the-face-of-legalrisks/?utm\\_source=direct\\_email&utm\\_medium=email&utm\\_campaign=SLAPPs\\_Report&utm\\_content=email](https://www.business-humanrights.org/en/from-us/briefings/slapped-but-not-silenced-defendinghuman-rights-in-the-face-of-legalrisks/?utm_source=direct_email&utm_medium=email&utm_campaign=SLAPPs_Report&utm_content=email).
- 34 <https://theglobal.blog/2019/11/27/resurgent-authoritarianism-and-the-international-rule-of-law/>.

35 <https://www.icnl.org/covid19tracker/>. 36 <https://www.forestpeoples.org/en/rolling-back-safeguards>; and [https://dq4n3btxmr8c9.cloudfront.net/files/AuYjXv/Report\\_Liberties\\_EU2020.pdf](https://dq4n3btxmr8c9.cloudfront.net/files/AuYjXv/Report_Liberties_EU2020.pdf).

37 <https://www.frontlinedefenders.org/en/campaign/covid-19-attacks-hrds-time-pandemic>; <https://www.business-humanrights.org/en/big-issues/covid-19-coronavirus-outbreak/covid-19-humanrights-defenders-and-civic-freedoms/>.

38 <https://www.ohchr.org/EN/Issues/Business/Pages/WGCountryVisits.aspx>.

39 See, for example: “The deadly price of fighting for human and environmental rights” (2018) <https://news.trust.org/item/20180831122805-wjivf/>.

40 <https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>, see, for example: A/71/291, A/HRC/41/43, A/75/212, and A/73/163.

41 [https://youtu.be/bu9QVUeOE\\_c](https://youtu.be/bu9QVUeOE_c).

42 <https://2021southasiaforumbhr.sched.com/event/i8ox/defending-defenders-and-safeguarding-civicspace>.

43 <https://www.business-humanrights.org/en/protecting-and-respecting-those-who-speak-up-againstbusiness-impacts-on-human-rights-takeaways-from-the-un-forum-and-the-way-forward>.

44 See: <https://2020unforumbhr.sched.com/event/fD2E/time-for-action-the-role-of-human-rightsdefenders-in-defending-rights-during-crisis-and-when-building-back-better?linkback=grid>, which was organised by the Working Group, in collaboration with Asian Forum for Human Rights and Development, BHRRC, ISHR, FIDH, Swedwatch, OECD Watch, The B Team, Frontline Defenders and Publish What You Pay.

45 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25416&LangID=E>.

46 See: <https://www.ohchr.org/EN/Issues/Business/Pages/HRDefendersCivicSpace.aspx>.

47 [https://www.ohchr.org/Documents/Issues/Business/ForumSession6/UNWG\\_ProjectHRDsBackgroundNote12052017.pdf](https://www.ohchr.org/Documents/Issues/Business/ForumSession6/UNWG_ProjectHRDsBackgroundNote12052017.pdf).

48 [https://www.ohchr.org/\\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Business/HRD\\_Guidance\\_UNGPS.pdf&action=default](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Business/HRD_Guidance_UNGPS.pdf&action=default).

49 See: <https://www.ohchr.org/Documents/Issues/Business/Session18/WorkshopSummaryConsultationHRDefenders.pdf>; and [https://www.ohchr.org/Documents/Issues/Business/ScalingUpInitiativesProtectHRDefenders\\_30Nov2017.pdf](https://www.ohchr.org/Documents/Issues/Business/ScalingUpInitiativesProtectHRDefenders_30Nov2017.pdf).

50 See, for example: A/RES/74/146; A/HRC/RES/40/11; and A/HRC/RES/44/15.

51 SDG 12.

52 A/RES/74/146, paragraph 2.

53 For a further discussion of the role of human rights defenders and other SDGs, see: [https://media.business-humanrights.org/media/documents/files/Safeguarding\\_Human\\_Rights\\_Defenders\\_Practical\\_Guidance\\_for\\_Investors\\_FINAL.pdf](https://media.business-humanrights.org/media/documents/files/Safeguarding_Human_Rights_Defenders_Practical_Guidance_for_Investors_FINAL.pdf).

54 See: <https://rightsindevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-reportcpr-h.pdf>.

55 See: <https://www.ohchr.org/EN/Issues/Business/Pages/SustainableDevelopmentGoals.aspx>; <https://www.business-humanrights.org/en/civil-society-urges-businesses-govts-to-put-humanrights-atcore-of-implementation-of-un-sustainable-development-goals#c162595>; and <https://www.shiftproject.org/resources/viewpoints/sustainable-development-goals-corporaterespecthumanrights/>.

56 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25837&LangID=E>.

57 A/HRC/46/35, paragraph 11.

58 Reflecting this, A/RES/74/146, paragraph 23 urged States to adopt relevant policies and laws in relation to the conduct of human rights due diligence by, the accountability of, and the provision of adequate remedies by, transnational corporations and other business enterprises, and to hold all companies to account for involvement in threats or attacks against human rights defenders.

59 For example, in Guatemala, the Office of the Prosecutor adopted an internal protocol to detect investigations/ complaints that sought to harass human rights defenders and thereby impede their work (General Instruction 5-2018). The Guatemalan national human rights institution produced a report reviewing compliance with this protocol, see:

<https://www.pdh.org.gt/documentos/seccion-deinformes/supervision-y-monitoreo/defensoria-de-las-personas-defensora-de-derechos-humanos-y-periodistas/4770-informe-de-supervision-a-ministerio-publico-sobre-el-nivel-de-avance-en-laimplementacion-de-la-instruccion-general-5-2018-investigacion-y-persecucion-penal-en-casos-deataques-contrapersonas-defensoras-de-ddhh/file.html>.

60 See: <https://www.ohchr.org/EN/Issues/Business/Pages/MandatoryHRDD.aspx>; <https://www.amisdelaterre.org/wp-content/uploads/2021/02/statement-duty-of-vigilancehrdefenders.pdf>; and <https://www.amfori.org/event/webinar-addressing-risks-human-rights-andenvironmental-defenders-implications-eu-mhrdd>.

61 The Human Rights Council has called on all States to develop a national action plan or other such framework. See, for example: A/HRC/RES/40/11, paragraph 21.

62 <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>; and [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

63 Such as Thailand in its 2019-2022 National Action Plan on Business and Human Rights; Finland's National Action Plan on Business and Human Rights (2014) highlights that human rights defenders play an important role in assessing the impact of business activities on human rights, and underlines the State's cooperation with human rights defenders in exposing corruption.

64 In Italy's National Action Plan on Business and Human Rights (2016), reference was made to the government's commitment to strengthening mutual cooperation and support provided to human rights defenders, and in its revised edition (2018), Italy committed to ensuring a safe and enabling environment for human rights defenders.

65 See: [https://www.ishr.ch/sites/default/files/documents/ishr\\_icar\\_hrds\\_in\\_naps\\_guidance\\_eng.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf).

66 As some States have done, such as Norway which presented its position at the 2019 Forum on Business and Human Rights, see: <https://2019unforumbhr.sched.com/event/U9EK/prevention-is-better-thancure-exploring-best-strategies-by-states-to-prevent-attacks-on-human-rights-defenders>.

67 See, for example, the UK's 2019 policy paper which outlined the important role played by human rights defenders in "ensuring responsible action by the private sector on human rights" and how this "is good for business and communities", and highlighted the risk that human rights defenders working on business and human rights run of being targeted "by both employers and governments seeking to prevent abuses from being exposed".

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf), pages 3 and 5.

68 See, for example: Canada's CSR Snapshot #7 – Private Sector Support for Human Rights Defenders: A Primer for Canadian Businesses (<https://www.international.gc.ca/trade-agreements-accordscommerciaux/topics-domaines/other-autre/csr-snapshot-7.aspx?lang=eng>).

69 Such as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement.

70 This is an umbrella term for a number of actions targeting someone for seeking to express critical views about a business-related human rights impact (perceived or real). Most commonly, "retaliation" and "reprisals" are used interchangeably.

71 See, for example, the Esperanza Protocol which sets out steps for the investigation of threats against human rights defenders, available at: <https://hope4defenders.org/about-the-ple/>. This was launched by the Center for Justice and International Law following the killing of Berta Cáceres and is named after her hometown.

57 A/HRC/46/35, paragraph 11.

58 Reflecting this, A/RES/74/146, paragraph 23 urged States to adopt relevant policies and laws in relation to the conduct of human rights due diligence by, the accountability of, and the provision of adequate remedies by, transnational corporations and other business enterprises, and to hold all companies to account for involvement in threats or attacks against human rights defenders.

59 For example, in Guatemala, the Office of the Prosecutor adopted an internal protocol to detect investigations/ complaints that sought to harass human rights defenders and thereby impede their work (General Instruction 5-2018). The Guatemalan national human rights institution produced a report reviewing compliance with this protocol, see:

<https://www.pdh.org.gt/documentos/seccion-deinformes/supervision-y-monitoreo/defensoria-de-las-personas-defensora-de-derechos-humanos-y-periodistas/4770-informe-de-supervision-a-ministerio-publico-sobre-el-nivel-de-avance-en-laimplementacion-de-la-instruccion-general-5-2018-investigacion-y-persecucion-penal-en-casos-deataques-contrapersonas-defensoras-de-ddhh/file.html>.

60 See: <https://www.ohchr.org/EN/Issues/Business/Pages/MandatoryHRDD.aspx>; <https://www.amisdelaterre.org/wp-content/uploads/2021/02/statement-duty-of-vigilancehrdefenders.pdf>; and <https://www.amfori.org/event/webinar-addressing-risks-human-rights-andenvironmental-defenders-implications-eu-mhrdd>.

61 The Human Rights Council has called on all States to develop a national action plan or other such framework. See, for example: A/HRC/RES/40/11, paragraph 21.

62 <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>; and [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

63 Such as Thailand in its 2019-2022 National Action Plan on Business and Human Rights; Finland's National Action Plan on Business and Human Rights (2014) highlights that human rights defenders play an important role in assessing the impact of business activities on human rights, and underlines the State's cooperation with human rights defenders in exposing corruption.

64 In Italy's National Action Plan on Business and Human Rights (2016), reference was made to the government's commitment to strengthening mutual cooperation and support provided to human rights defenders, and in its revised edition (2018), Italy committed to ensuring a safe and enabling environment for human rights defenders.

65 See: [https://www.ishr.ch/sites/default/files/documents/ishr\\_icar\\_hrds\\_in\\_naps\\_guidance\\_eng.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf).

66 As some States have done, such as Norway which presented its position at the 2019 Forum on Business and Human Rights, see: <https://2019unforumbhr.sched.com/event/U9EK/prevention-is-better-thancure-exploring-best-strategies-by-states-to-prevent-attacks-on-human-rights-defenders>.

67 See, for example, the UK's 2019 policy paper which outlined the important role played by human rights defenders in "ensuring responsible action by the private sector on human rights" and how this "is good for business and communities", and highlighted the risk that human rights defenders working on business and human rights run of being targeted "by both employers and governments seeking to prevent abuses from being exposed".

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf), pages 3 and 5.

68 See, for example: Canada's CSR Snapshot #7 – Private Sector Support for Human Rights Defenders: A Primer for Canadian Businesses (<https://www.international.gc.ca/trade-agreements-accordscommerciaux/topics-domaines/other-autre/csr-snapshot-7.aspx?lang=eng>).

69 Such as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement.

70 This is an umbrella term for a number of actions targeting someone for seeking to express critical views about a business-related human rights impact (perceived or real). Most commonly, "retaliation" and "reprisals" are used interchangeably.

71 See, for example, the Esperanza Protocol which sets out steps for the investigation of threats against human rights defenders, available at: <https://hope4defenders.org/about-the-ple/>. This was launched by the Center for Justice and International Law following the killing of Berta Cáceres and is named after her hometown.



57 A/HRC/46/35, paragraph 11.

58 Reflecting this, A/RES/74/146, paragraph 23 urged States to adopt relevant policies and laws in relation to the conduct of human rights due diligence by, the accountability of, and the provision of adequate remedies by, transnational corporations and other business enterprises, and to hold all companies to account for involvement in threats or attacks against human rights defenders.

59 For example, in Guatemala, the Office of the Prosecutor adopted an internal protocol to detect investigations/ complaints that sought to harass human rights defenders and thereby impede their work (General Instruction 5-2018). The Guatemalan national human rights institution produced a report reviewing compliance with this protocol, see:

<https://www.pdh.org.gt/documentos/seccion-deinformes/supervision-y-monitoreo/defensoria-de-las-personas-defensora-de-derechos-humanos-y-periodistas/4770-informe-de-supervision-a-ministerio-publico-sobre-el-nivel-de-avance-en-laimplementacion-de-la-instruccion-general-5-2018-investigacion-y-persecucion-penal-en-casos-deataques-contrapersonas-defensoras-de-ddhh/file.html>.

60 See: <https://www.ohchr.org/EN/Issues/Business/Pages/MandatoryHRDD.aspx>; <https://www.amisdelaterre.org/wp-content/uploads/2021/02/statement-duty-of-vigilancehrdefenders.pdf>; and <https://www.amfori.org/event/webinar-addressing-risks-human-rights-andenvironmental-defenders-implications-eu-mhrdd>.

61 The Human Rights Council has called on all States to develop a national action plan or other such framework. See, for example: A/HRC/RES/40/11, paragraph 21.

62 <https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>; and

[https://www.ohchr.org/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf).

63 Such as Thailand in its 2019-2022 National Action Plan on Business and Human Rights; Finland's National Action Plan on Business and Human Rights (2014) highlights that human rights defenders play an important role in assessing the impact of business activities on human rights, and underlines the State's cooperation with human rights defenders in exposing corruption.

64 In Italy's National Action Plan on Business and Human Rights (2016), reference was made to the government's commitment to strengthening mutual cooperation and support provided to human rights defenders, and in its revised edition (2018), Italy committed to ensuring a safe and enabling environment for human rights defenders.

65 See: [https://www.ishr.ch/sites/default/files/documents/ishr\\_icar\\_hrds\\_in\\_naps\\_guidance\\_eng.pdf](https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf).

66 As some States have done, such as Norway which presented its position at the 2019 Forum on Business and Human Rights, see: <https://2019unforumbhr.sched.com/event/U9EK/prevention-is-better-thancure-exploring-best-strategies-by-states-to-prevent-attacks-on-human-rights-defenders>.

67 See, for example, the UK's 2019 policy paper which outlined the important role played by human rights defenders in "ensuring responsible action by the private sector on human rights" and how this "is good for business and communities", and highlighted the risk that human rights defenders working on business and human rights run of being targeted "by both employers and governments seeking to prevent abuses from being exposed".

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819299/UK-Support-for-Human-Rights-Defenders.pdf), pages 3 and 5.

68 See, for example: Canada's CSR Snapshot #7 – Private Sector Support for Human Rights Defenders: A Primer for Canadian Businesses (<https://www.international.gc.ca/trade-agreements-accordscommerciaux/topics-domaines/other-autre/csr-snapshot-7.aspx?lang=eng>).

69 Such as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement.

70 This is an umbrella term for a number of actions targeting someone for seeking to express critical views about a business-related human rights impact (perceived or real). Most commonly, "retaliation" and "reprisals" are used interchangeably.

71 See, for example, the Esperanza Protocol which sets out steps for the investigation of threats against human rights defenders, available at: <https://hope4defenders.org/about-the-ple/>. This was launched by the Center for Justice and International Law following the killing of Berta Cáceres and is named after her hometown.

72 See, for example, Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders [https://www.international.gc.ca/world-monde/issues\\_development-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng). 73 See, for example: Norway's climate and forest initiative (<https://www.norad.no/en/front/thematicareas/climate-change-and-environment/norways-international-climate-and-forest-initiative-nicfi/>) which supports measures to protect environmental human rights defenders in multiple countries.

74 See: A/HRC/32/45 Report of the Working Group on "Leading by example - The State, State-owned enterprises, and Human Rights".

75 See: A/HRC/38/48 Report of the Working Group on "economic diplomacy" as a tool for States to promote corporate respect for human rights.

76 For example, in Canada, businesses that do not collaborate in good faith with Canada's National Contact Point for Responsible Business Conduct (established pursuant to the OECD Guidelines for Multinational Enterprises) and the Canadian Ombudsperson for Responsible Enterprises may be denied official trade advocacy support and future support from Export Development Canada (the country's export credit agency).

77 See, for example: Canada's Export and Import Permits Act, sections 7.3 (1) and 7.4.

78 See, for example: "U.S. Department of State Guidance on Implementing the "UN Guiding Principles" for Transactions Linked to Foreign Government End-Users for Products or Services with Surveillance Capabilities" <https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/duediligence-guidance/>.

79 A/74/198.

80 A/RES/74/146, paragraph 15 called upon States and encouraged non-State actors to ensure that those involved in the protection of human rights defenders, their legal representatives, associates or family members are trained in human rights and the protection-related needs of human rights defenders at risk.

81 See also V. D. 1. "Issues in Focus", paragraphs 102-107.

82 A/RES/74/146, paragraph 23 urged non-State actors, including transnational corporations and other business enterprises, to assume their responsibility to respect the human rights and fundamental freedoms of all persons, including human rights defenders.

83 As Guiding Principle 12 makes clear, the corporate responsibility to respect human rights refers to internationally recognised human rights.

84 [https://www.ishr.ch/sites/default/files/article/files/executive\\_summary\\_-\\_shared\\_space\\_under\\_pressure\\_-\\_business\\_support\\_for\\_civic\\_freedoms\\_and\\_human\\_rights\\_defenders\\_0.pdf](https://www.ishr.ch/sites/default/files/article/files/executive_summary_-_shared_space_under_pressure_-_business_support_for_civic_freedoms_and_human_rights_defenders_0.pdf).

85 <https://2020unforumbhr.sched.com/event/fD2E/time-for-action-the-role-of-human-rights-defenders-in-defending-rights-during-crisis-and-when-building-back-better?linkback=grid>.

86 [https://media.business-humanrights.org/media/documents/files/Statement\\_Public\\_v2.pdf](https://media.business-humanrights.org/media/documents/files/Statement_Public_v2.pdf).

87 [https://www.ohchr.org/Documents/Publications/DevelopHumanRightsPolicy\\_en.pdf](https://www.ohchr.org/Documents/Publications/DevelopHumanRightsPolicy_en.pdf).

88 30 business enterprises are known to have policies that refer to human rights defenders. See: <https://www.business-humanrights.org/en/big-issues/human-rights-defenders-civic-freedoms/how-companies-investors-can-support-hrds/>.

89 The UK Equality and Human Rights Commission has developed a five-step guide for company boards on how their company can implement the Guiding Principles, see: [https://www.equalityhumanrights.com/sites/default/files/business\\_and\\_human\\_rights\\_web.pdf](https://www.equalityhumanrights.com/sites/default/files/business_and_human_rights_web.pdf).

90 For example, Adidas was one of the first companies to do so and has been forthright in expressing its commitment to understanding the challenges that human rights defenders confront. See: <https://www.business-humanrights.org/en/blog/in-depth-interview-with-william-anderson-of-adidas-it-is-important-for-brands-to-have-clarity-over-when-and-how-they-will-act-with-respect-to-hrds/>.

91 For example, BP's new Business and Human Rights Policy states that it: "will not tolerate or contribute to attacks, or physical or legal threats, against those safely and lawfully exercising their human right to freedom of expression, peaceful protest or assembly, including where they are acting as human rights defenders, or against workers seeking to exercise their right to freedom of association". See: <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/groupreports/bp-human-rights-policy.pdf>.

- 92 <https://www.zero-toleranceinitiative.org>.
- 93 The Working Group's report "Corporate human rights due diligence: emerging practices, challenges and ways forward" has further guidance on responsible disengagement, see: A/73/163, paragraph 54.
- 94 For other examples, see: <https://www.business-humanrights.org/en/big-issues/human-rightsdefenders-civic-freedoms/how-companies-investors-can-support-hrds/>.
- 95 <http://www.icmm.com/en-gb/social-performance/human-rights/respecting-human-rights-defenders>.
- 96 Del Monte Pacific Limited, Sustaining Our Future (2020)  
<https://www.delmontepacific.com/hubfs/pdf/00,%20Del%20Monte%20FY2020%20Sustainability%20Report.pdf>.
- 97 Adidas Group, "The Adidas Group and human rights defenders" (2016)  
[https://www.adidasgroup.com/media/filer\\_public/f0/c5/f0c582a9-506d-4b12-85cf-bd4584f68574/adidas\\_group\\_and\\_human\\_rights\\_defenders\\_2016.pdf](https://www.adidasgroup.com/media/filer_public/f0/c5/f0c582a9-506d-4b12-85cf-bd4584f68574/adidas_group_and_human_rights_defenders_2016.pdf);
- 98 <https://www.ihrb.org/focus-areas/colombia>; <https://www.creer-ihrb.org/lideresydefensores>.
- 99 [https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42\\_98d624801f014ee39aa23daf500660ce.pdf](https://f5355d0a-667b-4461-bfa1-e12600732440.filesusr.com/ugd/134a42_98d624801f014ee39aa23daf500660ce.pdf).
- 100 <http://resources.fifa.com/image/upload/ejf1ecdku14lm2v9zc03.pdf>.
- 101 OECD guidance emphasises the need to engage with human rights defenders as stakeholders impacted by a business enterprise's activities. See: <http://www.oecd.org/investment/due-diligenceguidance-for-responsible-business-conduct.htm>.
- 102 See: <https://views-voices.oxfam.org.uk/2019/04/5-lessons-learned-on-how-to-conduct-a-humanrights-impact-assessment/>.
- 103 See A/71/291, paragraphs 67-74.
- 104 A/73/163, paragraph 25 (c).
- 105 A/73/163, paragraph 45 (a).
- 106 See, for example, the improvements made by FMO, a Dutch development bank (following its investment in the Agua Zarca dam, Honduras, known for the 2016 assassination of the Lenca indigenous leader Berta Cáceres) "Human Rights: An Integral Part of Our Investment Approach" (2018) <https://www.fmo.nl/l/library/download/urn:uuid:3cd20162-8ce3-4d33-ab8c249811d357ac/fmo+human+rights+progress+report.pdf>.
- 107 These firms should, in any case, be acting in accordance with the Voluntary Principles on Security and Human Rights, the International Code of Conduct for Private Security Providers, and ISO 18788.
- 108 Plenty of tools and resources exist for those seeking to learn more about implementing human rights norms and standards in relation to their engagement with human rights defenders.  
See: <https://www.ohchr.org/EN/Issues/Business/Pages/Resources.aspx>.
- 109 See, for example "Tackling Discrimination against lesbian, gay, bisexual, transgender and intersex people: Standards of Conduct for Business" <https://www.unfe.org/wp-content/uploads/2017/09/UNStandards-of-Conduct.pdf>.
- 110 <https://www.ungpreporting.org/glossary/leverage/>.
- 111 <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>.
- 112 See: <https://shiftproject.org/resource/using-leverage-in-business-relationships-to-reduce-humanrights-risks/>; and <https://gbihr.org/business-practice-portal/using-leverage>.
- 113 [https://media.business-humanrights.org/media/documents/files/Statement\\_Public\\_v2.pdf](https://media.business-humanrights.org/media/documents/files/Statement_Public_v2.pdf).
- 114 For example, in 2015, Tiffany & Co. signed an open letter to the President of Angola in support of Rafael Marques de Morais, an investigative journalist and 2015 Index on Censorship award-winner, who investigated and published a book documenting widespread human rights abuses in the diamond industry and then faced prosecution.  
See: <https://www.business-humanrights.org/en/latestnews/angola-tiffany-co-leber-other-diamond-firms-sign-open-letter-to-president-jos%C3%A9-eduardo-dos-santos-asking-to-ensure-respect-for-intl-law-standards-in-rafael-marques-trial/>.
- 115 For example, Greenfood (along with other companies) supported Ecuadorian human rights defender and trade union leader Jorge Acosta, coordinator of the banana workers' union ASTAC (Asociación Sindical de Trabajadores Agrícolas y Campesinos) by writing to the Government of Ecuador to highlight Mr Acosta's legitimate work as a human rights defender and express concern about the legal action taken against him in the context of his human rights work.  
See: [https://media.businesshumanrights.org/media/documents/files/documents/Joint\\_company\\_letter\\_Acosta\\_final\\_March\\_5\\_00\\_2.pdf](https://media.businesshumanrights.org/media/documents/files/documents/Joint_company_letter_Acosta_final_March_5_00_2.pdf).
- 116 [https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/bwi\\_itf\\_ituc\\_tuac\\_uni\\_annex2.pdf](https://www.ohchr.org/Documents/Issues/Business/UNGPsBHRnext10/inputs/bwi_itf_ituc_tuac_uni_annex2.pdf).

117 See, for example, guidance in: <https://shiftproject.org/resource/respecting-human-rights-through-global-supply-chains/respecting-trade-union-rights-in-global-value-chains-practical-approaches-for-business/>

118 <https://shiftproject.org/realizing-trade-union-rights/>.

119 See, for example, how in Indonesia apparel and footwear companies, together with local suppliers and stakeholders, developed the Freedom of Association protocol to address the challenging local context for trade union rights: <https://corporateaccountabilityresearch.net/njm-report-xvix-protocol>.

120 For example, in relation to Myanmar, NGOs have asked business to protect shared civic space. See: <https://www.ishr.ch/news/myanmar-multinational-companies-asked-protect-civic-freedoms-and-defenders>.

121 A/75/212, paragraph 47 considered practical steps to prevent and address business-related human rights abuses in conflict and post-conflict contexts, including heightened human rights due diligence with business paying particular attention to human rights defenders and not exposing them to undue risks e.g. by initiating frivolous legal proceedings or reporting them to authorities.

122 <https://developmentdialogues.org/event/business-human-rights-and-conflict-affected-region-towards-heightened-action-2/>.

123 This has been the case in recent years in relation to the collective action taken concerning anticorruption efforts.

124 <https://www.ohchr.org/EN/Issues/Business/Pages/OHCHRaccountabilityandremedyproject.aspx>.

125 <https://www.ohchr.org/EN/NewsEvents/Pages/JusticeForIndigenousPeoples.aspx>.

126 Note concerns regarding this sort of pressure e.g. by the Working Group, see: [https://www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance.pdf](https://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf); and the OECD Working Party on Responsible Business Conduct, see: <https://mneguidelines.oecd.org/ncps/workingparty-on-rbc-statement-march-2020.htm>.

127 See: A/HRC/44/32/Add.1, paragraph 18.

128 <https://www.wfd.org/wp-content/uploads/2021/01/Civic-space-v1-1.pdf>, pages 9-10.

129 A/RES/74/146, paragraph 11 urged States to investigate, in a prompt, effective, independent and accountable manner, complaints and allegations regarding threats or human rights violations and abuses perpetrated by State and non-State actors, including against human rights defenders, their legal representatives, associates or family members, and to initiate, when appropriate, proceedings against the perpetrators so as to ensure that impunity for such acts is eliminated.

130 Including by implementing the policy recommendations of OHCHR and the Working Group, see: A/72/162; A/HRC/32/19; and A/HRC/35/33.

131 A recurrent theme during many country visits undertaken by the Working Group has been that legitimate criticism of business activity by human rights defenders is being silenced through criminalisation of defenders.

132 See A/HRC/32/19/Add.1, paragraphs 57-61.

133 There are many different types of such mechanisms, as outlined in A/HRC/38/20, paragraphs 4-12.

134 Building on its previous work (see: A/72/162 and A/HRC/35/33) the Working Group initiated a project in this area. See: [www.ohchr.org/EN/Issues/Business/Pages/ProjectOnRoleNHRIS.aspx](http://www.ohchr.org/EN/Issues/Business/Pages/ProjectOnRoleNHRIS.aspx) and A/HRC/47/39/Add.3.

135 See, for example: in Colombia, the NHRI established an early warning mechanism to track violence facing defenders, including those working on business-related human rights abuses: <https://www.defensoria.gov.co/es/public/atencionciudadanoa/1469/Sistema-de-alertas-tempranas---SAT.htm>; and, in Peru, the NHRI issued guidelines “Administrative Resolution 029-2020/DP-PAD” for the collection of data about, and responses to, attacks against human rights defenders, and for collaboration with national protection mechanisms: [https://cdn.www.gob.pe/uploads/document/file/1182934/Resolución-Administrativa-N\\_-029-2020-DP-PAD.pdf](https://cdn.www.gob.pe/uploads/document/file/1182934/Resolución-Administrativa-N_-029-2020-DP-PAD.pdf).

136 In The Philippines, the NHRI launched “National Guidance Document on Business and Human Rights” to address the gap in private sector understanding of its role in respecting human rights, and drew attention to the Adidas Group’s policy on human rights defenders: <https://ganhri.org/wpcontent/uploads/2021/03/National-Guidance-Document-on-BHR.pdf>.

137 For example, in Guatemala, the NHRI has submitted requests to the Inter-American Commission on human rights in support of requests for the granting of precautionary measures in favour of human rights defenders working on business-related human rights abuses.

138 <https://ganhri.org/working-group-business-and-human-rights/>.

139 OHCHR's Accountability and Remedy Project has produced guidance on how such mechanisms can meet the effectiveness criteria in practice, see: A/HRC/44/32, Annex, Policy Objectives 6-14; A/HRC/44/32/Add.1, paragraphs 30-74; and <https://www.ohchr.org/Documents/Issues/Business/ARPIII-retaliation.pdf>.

140 See: A/72/162.

141 See: "The Accord on Fire and Building Safety in Bangladesh" and <https://www.businesshumanrights.org/en/latest-news/bangladesh-report-finds-accords-independent-complaint-mechanism-protects-workers-allows-for-access-to-remedy/>.

142 See: <https://www.idbinvest.org/en/news-media/new-guidance-private-sector-addressing-risks-retaliation-against-project-stakeholders> for examples of action to take.

143 A/HRC/44/32/Add.1 underlined that human rights defenders will require additional legal protection due to the nature of their work and this was highlighted during the 2020 annual Forum on Business and Human Rights in a session which discussed how non-State-based grievance mechanisms can better ensure safe access to remedy. See: <https://2020unforumbhr.sched.com/event/fD26/preventing-retaliation-through-non-state-based-grievance-mechanisms?linkback=grid>.

144 See, for example, the work of ICMM in relation to metals and mining companies in this regard: <https://www.icmm.com/en-gb/news/2020/drawing-on-ungp-to-give-local-communities-a-voice>; and <https://www.icmm.com/en-gb/guidance/social-performance/grievance-mechanism>.

145 A/HRC/47/39/Add.1, which takes stock of investor implementation of the Guiding Principles, provides important guidance.

146 See, for example, the International Finance Corporation, the private sector lending arm of the World Bank Group's statement stressing the principle of zero tolerance on reprisals (October 2018): [https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34ef73e5ad6a5c8/EN\\_IFC\\_Reprisals\\_Statement\\_201810.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/ade6a8c3-12a7-43c7-b34ef73e5ad6a5c8/EN_IFC_Reprisals_Statement_201810.pdf?MOD=AJPERES); and the EBRD's Retaliation against Civil Society and Project Stakeholders Communication (February 2019): <https://www.ebrd.com/documents/strategy-and-policy-coordination/ebrd-statement-on-retaliation.pdf?blobnocache=true>.

147 See: International Finance Corporation with the Inter-American Investment Corporation (IDB Invest) [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/sustainability-at-ifc/publications/publications\\_gpn\\_reprisal\\_risks](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_reprisal_risks); and European Investment Bank [https://www.eib.org/attachments/guidance\\_note\\_on\\_stakeholder\\_engagement\\_in\\_eib\\_operations\\_en.pdf](https://www.eib.org/attachments/guidance_note_on_stakeholder_engagement_in_eib_operations_en.pdf).

148 <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-504386272-588>.

149 Such as RepRisk.

150 See, for example: [https://www.ohchr.org/Documents/Issues/Development/DFI/AIIB\\_ESF\\_OHCHR\\_6Nov2020.pdf](https://www.ohchr.org/Documents/Issues/Development/DFI/AIIB_ESF_OHCHR_6Nov2020.pdf)

151 EBRD and IFC have similar channels for reporting by trade unions of project-specific concerns concerning non-respect for trade union rights and this could be a model for reporting channels handling reprisals concerns.

152 A similar approach is already followed by many IFIs in relation to instances of corruption.

153 OHCHR's B-Tech Project provides guidance and resources for implementing the Guiding Principles in the technology space <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>.

154 The term technology company also encompasses Information Communications Technology (ICT) companies. According to the OECD the "ICT sector combines manufacturing and services industries whose products primarily fulfil or enable the function of information processing and communication by electronic means, including transmission and display". See: [https://www.oecd-ilibrary.org/scienceand-technology/information-and-communication-technology-ict/indicator-group/english\\_04df17c2-en](https://www.oecd-ilibrary.org/scienceand-technology/information-and-communication-technology-ict/indicator-group/english_04df17c2-en).

155 See A/HRC/44/24 in which the High Commissioner for Human Rights explored this point in her report on the impact of new technologies on the promotion and protection of human rights in the context of assemblies.

156 See A/HRC/44/24, paragraph 23 in which the High Commissioner for Human Rights observed that private companies have a responsibility to avoid Internet shutdowns.

157 See A/HRC/44/24, paragraph 22 which illustrates how Special Procedures have voiced significant concerns about Internet shutdowns.

158 See, for example: <https://www.telenor.com/directive-to-block-social-media-service/>.

159 A/HRC/RES/34/7, paragraph 9 encouraged business enterprises to work towards enabling technical solutions to secure and protect the confidentiality of digital communications, including measures for encryption and anonymity.

160 The Microsoft Threat Intelligence Center has tracked what it calls five separate nation-state activity groups that have attempted nearly nine hundred times to target or compromise hundreds of accounts belonging to employees of nine prominent human rights organisations around the world. See: <https://blogs.microsoft.com/on-the-issues/2020/04/14/accountguard-cyberattacks-healthcare-covid19/>.

161 For example, Microsoft launched “AccountGuard for Human Rights Organizations” in recognition of the cyber-attacks that States and cyber criminals may use against human rights defenders and their organisations. See: <https://www.microsoftaccountguard.com/humanrights/>.

162 For example, Ericsson has provided technical expertise and infrastructure to local civil society organisations showing how technology can be misused, and exploring how such misuse can be prevented.

See: <https://www.chathamhouse.org/sites/default/files/2021-01/2021-01-29-private-sectorprotecting-civic-space-freeman-et-al.pdf>







UNITED NATIONS  
**HUMAN RIGHTS**  
**SPECIAL PROCEDURES**

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS