



Committing to protections for human rights defenders

Human rights defenders (HRDs) often face intimidation, violence and criminalization when companies fail to respect human rights in their value chains. There is an urgent need for companies to take swift action in response to this crisis. Individual and collective action must be taken to rapidly and responsibly develop and implement zero-tolerance policies and procedures regarding protections for HRDs affected by intimidation, violence and criminalization in value chains.

This document presents recommendations on minimum requirements for the development of private sector policies and procedures regarding protections for HRDs. The document builds upon recommendations outlined in documents produced by the Zero Tolerance Initiative that are the result of contributions from HRDs, Indigenous leaders and Civil Society Organizations.

In the context of fulfilling their responsibilities to protect and support HRDs, companies should adopt dedicated zero-tolerance policies that align with international law, including human rights treaties, and emerging best practice. Zero-tolerance policies should be adequately embedded into companies' management systems and disseminated. To ensure and demonstrate compliance with zero-tolerance policies companies should undertake, act on, and make public the results of robust human rights due diligence and practice across business relationships and value chains. Finally, companies must provide remedy or participate in providing remedy where there is non-compliance that results in violations of HRD rights. Zero-tolerance policies should be accompanied by associated implementation guidance with public, detailed and time-bound implementation plans.

Private sector zero-tolerance policies should be developed through meaningful and direct consultation with HRDs as well as local and international civil society organizations supporting them. HRDs know from direct experience which policies and actions are (in)effective. In light of the right of Indigenous and Tribal Peoples (including afro-descendent peoples) and their communities to be consulted in order to obtain their free prior and informed consent (FPIC) on actions that might affect them, specific forms of consultation are required with these groups to ensure that their views are sought and are taken into account in policy formulation.

See below for an elaboration of the expectations on companies in terms of

1. The policy commitment - its content and how it is embedded in the company,
2. The process to ensure and demonstrate compliance with the commitment,
3. Mechanisms to provide, or participate in providing, remedy where there is non-compliance that results in violations of HRD rights.

1) The policy commitment - its content and how it is embedded in the company

Adopt: Businesses should adopt dedicated zero-tolerance policies that align with international law, including human rights treaties, and emerging best practice. Zero-tolerance policies should at a minimum:

- a. Include a broad concept of human rights defenders (based on the UN Declaration on HRDs) and clarify the need for reasonable cooperation and negotiation with them. The term HRD refers to both individuals and communities or organizations. For example, individuals seeking to protect the environment, land and associated human rights, as well as Indigenous, afro-descendent, traditional, and other types of peoples and communities, can all act as HRDs.
- b. Recognize that Indigenous and Tribal Peoples have collective rights to lands, territories and resources, and self-determination protected under the core international human rights treaties and instruments, including ILO Convention 169. Key is also the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which provides a contextualized elaboration of general human rights principles and rights under legally binding treaties as they relate to the specific historical, cultural and social circumstances of Indigenous Peoples, clarifying the minimum standards for their recognition, protection, and promotion. With this specific rights-framework in mind, many Indigenous Peoples and Indigenous organizations use the term *Indigenous Human Rights Defenders*.
- c. Recognize that HRDs are especially important to a company as individuals and communities working to secure respect for human rights who often provide early warnings of potential and actual human rights impacts in company value chains; re-framing the work of HRDs as an important contribution rather than an obstacle to human rights realization.
- d. Recognize that all parties, including businesses, have a role to play in protecting the right to defend human rights and ensuring an enabling environment to do so.
- e. Commit to protecting whistle-blowers and HRDs from reprisals, including by maintaining their anonymity and seeking their consent prior to taking any actions that may risk reprisal.
- f. Commit to not support or engage in Strategic Lawsuits Against Public Participation (SLAPPs).
- g. Acknowledge the threats HRDs face, including their underlying drivers, and that threats can be triggered explicitly or implicitly by different actors, both public and private.
- h. Commit to support HRDs in their efforts to ensure accountability and justice for any acts of retaliation against them, including through cooperation with law enforcement and other bodies, providing assistance (*pro bono* or financial, for example), and petitioning governments, alone or in concert with other actors, to investigate violations and provide protection or redress.
- i. Commit to cooperating with independent fact-finding missions to assess the situation of human rights and HRDs where they are operating.

- j. Explain actions to be taken when impacts and risks to HRDs are detected in its operations via its due diligence systems or grievances raised by affected HRDs or third parties.
- k. Explain what procedures to follow when addressing violations of company human rights policies by suppliers or investees. Details about such procedures could be included directly in the zero-tolerance policy or via reference to a separate-standing non-compliance protocol, which sets out what actions by suppliers, investees, and joint venture partners would trigger exclusion/termination of contracts (e.g. excluding specific suppliers from supply chains, or removing companies entirely from financial investment); suspension of companies/suppliers, subject to the fulfilment of corrective action plans agreed with HRDs; placing suppliers or investees on a watchlist subject to independent investigations into reported violations of their zero-tolerance policies; or other disclosure expectations expressed by HRDs during consultation processes.
- l. Apply to all suppliers throughout a company's supply chain, including direct and intermediary suppliers, and upstream companies that are producing raw materials.
- m. Align with international human rights law, standards and good practice, including:
 - International Bill of Human Rights,
 - UN Convention on the Elimination of All Forms of Racial Discrimination
 - UN Convention on the Elimination of All Forms of Discrimination against Women,
 - UN Guiding Principles on Business and Human Rights,
 - UN Declaration on the Rights of Indigenous Peoples,
 - ILO Convention 169 on Indigenous and Tribal Peoples,
 - UN Declaration on the Rights of Peasants,
 - UN Declaration on Human Rights Defenders,
 - UN Resolutions on Human Rights Defenders
 - OECD Due Diligence Guidance for Responsible Business Conduct,
 - Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders.

Embed: Each company should ensure that its zero-tolerance commitment is adequately embedded into its management systems to facilitate successful implementation, via:

- n. Approving the zero-tolerance policy at the most senior level and having Board oversight of its implementation, ensuring Board awareness of the salient, or most severe, risks to human rights, and that adequate processes are in place to address these in accordance with international human rights standards.
- o. Embedding the dedicated zero-tolerance policy into its management systems, so that it is implemented as part of the company's regular business operations. This should include having human rights-trained staff with clear oversight and responsibility for due diligence at the senior management level.

- p. Publicizing details of how the policy is internalized within management systems (e.g. who is responsible for what actions in the workflow, and how the required processes relate to other existing processes).
- q. Backing up the policy with a statement of willingness to publicly condemn attacks against HRDs.
- r. Ensuring the policy is disseminated to affected communities in languages and formats that are accessible to them.
- s. Periodically reviewing the policy and adapting it as new information and standards appear.

2) The process to ensure and demonstrate compliance with the commitment

Businesses must undertake, act on, and make public the results of robust human rights due diligence and practice across business relationships and value chains (including in commodity supply chains up to the point of origin). As part of their human rights due diligence processes, companies should identify, assess and address (prevent and mitigate) potential and actual impacts on HRDs.

Identify and assess:

- a. Identify and assess the potential and actual impact on HRDs of business conduct on at least three levels:
 - Level 1: Country.
 - Level 2: Specific suppliers and contractors.
 - Level 3: Project. Assessment at this level (based on key parameters set out in Principles 18-21 of the UN Guiding Principles) should determine whether investment goes ahead at all.
- b. At each of these levels, businesses need to identify the HRDs with whom they must engage, based on the rights their operations may impact.
- c. Ensure on-going meaningful rightsholder participation and engagement in impact assessments and due diligence, as well as in the development and implementation of prevention and mitigation measures.
- d. Take account of the context factors (such as restrictions on civic freedoms) that support or inhibit the ability of communities and defenders to organize and speak out. Due diligence should be an ongoing process taking into account changes in business operations or operational environment that could exacerbate risks to HRDs.
- e. Guarantees of confidentiality and security of communications should be provided whenever requested / deemed necessary.
- f. If Indigenous and Tribal Peoples may be impacted, their FPIC should be obtained to conduct any project level impact assessment for a proposed activity, and subsequently before the activity can proceed, in line with their rights under international law.
- g. Since obtaining FPIC is an ongoing process, ensure continued engagement with these rightsholders throughout a project or duration of a supplier relationship or investment, and not merely as a one-off exercise conducted at the beginning. This, with the aim to ensure that new impacts on their rights are identified and addressed, to monitor the

effective implementation of prevention measures, and to know what remedies to provide in case of violations.

Address (prevent and mitigate) potential and actual impacts:

- h. Where allegations of any kind of attacks or reprisals against HRDs are identified in connection to a business operation, take swift, definitive, and monitored action with business partners to:
 - Address the allegations in good faith;
 - Prevent repetition, for example by carrying out an internal investigation or requesting support from local authorities;
 - Mitigate the impact;
 - Responsibly cancel or suspend/shift operations where concerns are proven, persistent or chronic (after consultation with affected rights-holders);
 - Undertake remedial action and ensure the victims determine what accountability looks like (see subsection 3).
- i. In high-risk areas, projects and sectors (including pulp and paper, palm oil, and extractives), develop and apply conflict prevention tools, early warning systems and additional and specific preventive measures to detect, prevent and avoid killings, violence, intimidation, criminalization, and repression of HRDs.
- j. Have an “open-door policy” for HRDs who wish to engage companies in relation to the human rights impacts of their activities, or those of their suppliers or business partners, including a guarantee of non-reprisal for any such engagement.
- k. Integrate and adopt human rights compliant practices to ensure respect for the individual and collective rights of Indigenous and Tribal Peoples (e.g. afro-descendent peoples) affected by business operations, including the right to FPIC. This will apply both to projects carried out directly by the company or suppliers /business partners.
- l. Seek independent and impartial information from various sources (including national and international NGOs, affected communities, HRDs, governmental and intergovernmental organizations) to determine the human rights record, policies, procedures and commitments of potential business partners.
- m. Include this information in the screening of all suppliers and business partners (including direct and intermediary suppliers, as well as upstream companies) at a corporate group level and to support (financially) third-party verification of suppliers’ HRDD systems and implementation of policies to uphold human-rights responsibilities throughout value chains.
- n. Prioritize working with or only work with businesses and suppliers that have company-wide policy commitments that credibly reflect the principle of zero-tolerance for killings, violence, intimidation, criminalization, repression or any other kind of reprisals against HRDs.
- o. Disclose their non-compliance protocols (see 1 (k) above).
- p. Integrate the expectations of the non-compliance protocols into contracts with business partners, clearly stating that any act of violence, reprisals, harassment or any other kind

of negligent or intentional affectation to the rights of HRDs will carry immediate consequences. These must be informed by the UNGPs (including on when and how to disengage) and can include one or more of the following:

- Request for an independent investigation;
 - Suspension of sourcing/payments;
 - Termination of the contract;
 - Withdrawal from the business relationship.
 - Undertake remedial actions including payment of damages to the victims.
- q. Develop a plan to prevent and mitigate risks to HRDs identified in the human rights impact assessment (HRIA) in consultation with HRDs and affected communities, including considering how they can build leverage with suppliers as per UNGP 19.
- r. Promote transparency across operations and require business partners to do the same. This requires providing comprehensive and accessible (in both language and terminology) information to affected communities.
- s. Publicly report on the fulfilment of the zero-tolerance policy throughout business operations, with claims underpinned by credible, independent verification mechanisms that involve the meaningful participation of affected peoples and HRDs. Certification systems cannot be solely relied upon.

3) Mechanisms to provide, or participate in providing, remedy where there is non-compliance that results in violations of HRD rights

Businesses must provide for or cooperate in remediation where they have caused or contributed to adverse impacts on HRDs.¹ To this effect companies should:

- a. Establish safe, effective, and accessible UNGP-aligned grievance and accountability mechanisms that include protections for HRDs and whistle-blowers, that handle third party complaints and provide redress for grievances. These mechanisms must be culturally appropriate with respect for Indigenous Peoples' customs, traditions, laws, and juridical systems, in accordance with international human rights standards.
- b. Publicly report on actions undertaken and the results of remediation. Implement mandatory requirements for suppliers, investees and/or joint venture partners to do the same.
- c. Adopt explicit non-interference, non-retaliation, and cooperation policies (and demand business partners do the same) and support HRDs to access judicial and non-judicial, national and international, grievance and complaint mechanisms.
- d. Design their remedy processes such that they allow for directly impacted communities and HRDs to be the ones determining what accountability looks like on a case-by-case basis.

¹ Where a downstream company knows or should know about a violation linked to its value chains, and they do not take effective steps to address that violation within a reasonable time, this omission may amount to a contribution by the company to the violation, and consequently give rise to an obligation to remedy.