



## Committing to protections for Human Rights Defenders

Human Rights Defenders face violence, intimidation, 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 dedicated Zero Tolerance policies and procedures regarding protections for Human Rights Defenders impacted by intimidation, violence and criminalization in value chains.

This document presents an overview of the recommendations on the minimum requirements for the development of private sector policies and procedures regarding protections for Human Rights Defenders impacted by intimidation, violence, and criminalization in value chains. This document builds upon recommendations outlined in documents produced by the Zero Tolerance Initiative that are the result of contributions from Civil Society Organizations, Human Rights Defenders, and Indigenous leaders.

In terms of *process*, private sector Zero Tolerance policies and procedures regarding preventative measures and protections for Human Rights Defenders impacted by intimidation, violence and criminalization in value chains should be developed in direct consultation with Human Rights Defenders, and local, and international civil society organisations supporting them. HRDs know from direct experience which policies and actions are (in)effective. Furthermore, for Indigenous and other HRD groups, it is one of their rights to be consulted on actions affecting them and their rights. Therefore, it is critical that companies working to develop and implement policies on zero tolerance for violence, intimidation and criminalization of HRDs undertake a meaningful process to develop such policies and procedures.

In terms of *content*, Zero Tolerance Policies and their implementation guidance should contain both a Zero Tolerance Policy and implementation guidance with public, detailed, time-bound implementation plans that:

1. Publicly recognise and commit to supporting HRDs:
  - 1.1. Include the broad concept of HRDs (based on the UN Declaration on HRDs) and the need for reasonable cooperation and negotiation with them. The term HRD refers to both individuals and communities or organizations. For example, individual land and environmental defenders, as well as Indigenous, afro-descendent, traditional, and other types of local communities, can all act as HRDs.
  - 1.2. Recognise that HRDs are specifically important to the company as individuals and communities working to secure respect for human rights; and often provide early warnings of human rights risks and adverse impacts in company value chains; re-framing the work of HRDs as positive rather than an obstacle.
  - 1.3. Recognise 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.
  - 1.4. Recognise the threats HRDs face, the factors leading to them, and threats can be triggered explicitly or implicitly by different actors, both public and private.

- 1.5. Back up the policy with a statement of willingness to publicly condemn attacks against HRDs.
  - 1.6. Publicly disclose commitments and 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.
  - 1.7. 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.
  - 1.8. Cooperate with independent fact-finding missions to assess the situation of human rights and human rights defenders where they are operating.
  - 1.9. Disclose a non-compliance protocol that details the procedures to follow when addressing violations of its policies, and circumstances that will warrant the suspension, or termination, of business relationships.
  - 1.10. Assess how the company, either individually or in cooperation with others operating in the same area/value chain, can endorse and legitimise the role of HRDs. Conduct and/or take part in capacity-building activities, if necessary and possible.
2. Undertake and make public the results of robust human rights due diligence and practice across business relationships and value chains (including commodity supply chains down to the point of origin).
    - 2.1. Due diligence processes must take account of the context factors (such as restrictions on civic freedoms) that support or inhibit the ability of communities and defenders to organise 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.
    - 2.2. For each business operation at the different levels, identify who the HRDs the company is engaging or is likely to engage with are, as well as the rights they are defending.
    - 2.3. Have an “open-door policy” for human rights defenders who wish to engage 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.
    - 2.4. Seek independent and impartial information from various sources (including national and international NGOs, affected communities, HRDs, governmental and intergovernmental organisations) to determine the human rights record, policies, procedures and commitments of potential business partners.
    - 2.5. 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 undertake independent verification of human rights due

- diligence systems and the fulfilment of policies to uphold human-rights responsibilities throughout value chains.
- 2.6. 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.
  - 2.7. In contracts with business partners, clearly state 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:
    - 2.7.1. Request for an independent investigation.
    - 2.7.2. Suspension of sourcing/payments.
    - 2.7.3. Termination of the contract.
    - 2.7.4. Withdrawal from the business relationship.
    - 2.7.5. Undertake remedial actions including payment of damages to the victims.
  - 2.8. Assess and address the potential and actual impact on HRDs of business projects on at least three levels:
    - 2.8.1. Level 1: Country.
    - 2.8.2. Level 2: Specific suppliers and contractors.
    - 2.8.3. 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.
  - 2.9. Ensure frequent and meaningful stakeholder participation and engagement in impact assessments and due diligence, as well as in the development and implementation of prevention and mitigation measures.
  - 2.10. Treat these discussions as an ongoing and regular commitment throughout the life of the project or duration of a supplier relationship or investment, and not just a one-off exercise to be conducted at the beginning. This, with the aim to ensure that new impacts to HRDs, local communities or other individuals are identified and addressed, to monitor the effective implementation of prevention measures, and to know what remedies to provide in case of violations.
  - 2.11. Ensure that stakeholders invited to participate include HRDs, the freely-chosen representatives of affected communities, critical voices, other rights-holders, media, and civil society sources. Guarantees of confidentiality and security of communications should be provided whenever requested / deemed necessary.
  - 2.12. 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.

- 2.13. 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.
  - 2.14. 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.
  - 2.15. Ensure impact assessments and human rights due diligence involve obtaining Free, Prior and Informed Consent (FPIC) from the affected Indigenous Peoples in line with their rights under the UNDRIP.
3. 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 robust follow-up to address and provide redress for grievances.
- 3.1. Publicly inform on actions undertaken and the results of remediation. Implement mandatory requirements for suppliers, investees and/or joint venture partners to do the same.
  - 3.2. In high-risk areas (such as conflict zones), 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.
  - 3.3. Adopt explicit non-interference, non-retaliation, and cooperation policies with judicial and non-judicial, national and international, grievance and complaint mechanisms accessed by HRDs. Demand business partners do the same.
  - 3.4. Where allegations of any kind of attacks or reprisals against HRDs are identified as taking place in connection to a business operation, take swift, definitive, and monitored action with business partners to:
    - 3.4.1. Address the allegations in good faith.
    - 3.4.2. Prevent repetition, for example by carrying out an internal investigation or requesting support from local authorities.
    - 3.4.3. Mitigate the impact.
    - 3.4.4. Responsibly cancel or suspend/shift operations where concerns are proven, persistent or chronic.
    - 3.4.5. Undertake remedial action, enabling the victims to be the ones determining what accountability looks like.
  - 3.5. Company actions should be context specific and determined on a case-by-case basis.
  - 3.6. Non-compliance approaches must allow for directly impacted communities and HRDs to be the ones determining what accountability looks like on a case-by-case basis.
  - 3.7. Grievance mechanism processes must be in place that are directly accountable to impacted communities, HRDs and land and environmental defenders. When

Indigenous communities are impacted, grievance mechanisms must be culturally appropriate with respect to their customs, traditions, laws, and juridical systems, in accordance with international human rights standards.

- 3.8. Additionally, accountability, investigation, and any potential remedy should be responsive to impacted communities, HRDs and land and environmental defenders. (and not exclusively civil society representatives). Independent accountability bodies should be established, which include strong representation of HRDs, including Indigenous Peoples and forest dependent communities, land and environmental defenders, and civil society experts, to guide implementation of their engagement with companies.
  - 3.9. Non-compliance approaches should include the publication of protocols used to determine a company's response to specific cases of non-compliance. The protocols published must detail what actions by suppliers, investees, and joint venture partners would trigger exclusion/termination of contracts (excluding specific suppliers from supply chains, or removing companies entirely from financial investment) or placing companies/suppliers on a suspension, subject to the fulfilment of corrective action plans agreed with HRDs and land and environmental defenders and/or being placed on a watchlist or being subject to independent investigations into reported violations of their Zero Tolerance/HRD policy and other disclosure expectations expressed by HRDs during the consultation process.
4. Recognize and take necessary action to address all forms of harms that Indigenous and afro descendent communities face.
    - 4.1. Integrate and adopt best practices to ensure respect for the individual and collective rights of Indigenous, afro descendent and tribal peoples affected by business projects, including the right to Free, Prior and Informed Consent (FPIC). This will apply both to projects carried out directly by the company or suppliers /business partners.
    - 4.2. Recognise that Indigenous Peoples have rights over territory, land, resources, and self-determination as laid out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Furthermore, Indigenous Peoples' rights are, by definition, collective rights. For these reasons many Indigenous Peoples and Indigenous organisations use the term *Indigenous Human Rights Defenders*. The UNDRIP is the most comprehensive instrument detailing the rights of Indigenous Peoples in international law and policy, containing minimum standards for the recognition, protection, and promotion of these rights.
  5. Integrating, adopting and disseminating these commitments:
    - 5.1. The policy commitment should be approved at the most senior level. 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.
- 5.2. Embed dedicated human rights policies into management systems, so that they are 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.
  - 5.3. Publicise details of how these policies are 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).
  - 5.4. Ensure policies are disseminated to affected communities in languages and formats that are accessible to them.
  - 5.5. Periodically review these policy positions and adapt them as new information and standards appear.
  - 5.6. Zero Tolerance policies and implementation guidance must align with international human rights law, standards and best practices, including:
    - International Bill of Human Rights,
    - 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, the Geneva Declaration,
    - OECD Due Diligence Guidance for Responsible Business Conduct,
    - Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders.