



Human Rights Defenders and the role of business

The United Nations Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders

Executive Summary and Key recommendations for States and Businesses

A/HRC/47/39/Add.2

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

Across the world, human rights defenders are subject to attack and retaliation for their efforts to raise awareness of the adverse human rights impacts of business operations and underlying patterns of harmful business conduct and investment; this is especially prevalent in the context of large development projects that affect access to land and livelihoods.

When corporate actors engage in irresponsible business practices, sometimes in collaboration with the State, they often adversely impact the rights of communities. For example, where corporations act irresponsibly in seeking access to natural resources and land, they may infringe on the water, environmental and land rights of communities and individuals. Unfortunately, human rights defenders increasingly face reprisals for their efforts to draw attention to such negative business-related human rights impacts

Concern is growing around the world about the role of business in causing, contributing, or being directly linked to such attacks against human rights defenders, or in failing to take action against such attacks; these trends are intensified by the ongoing COVID-19 crisis. Human rights defenders face multiple forms of reprisals, including physical assault resulting in death or injury; online and offline harassment; and criminalisation of their activities and of engagement in public protest or civil dissent.

Recognizing this grave situation, in 2017 the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (“the Working Group”) began a process of multi-stakeholder consultation on the role of business in ensuring respect for human rights defenders. These consultations informed the development of guidance on how the United Nations Guiding Principles on Business and Human Rights (“the Guiding Principles”) should be utilized to ensure respect for and protection of human rights defenders.¹

The full report, titled “The Guiding Principles of Business and Human Rights: Guidance on ensuring respect for human rights defenders” and presented to the United Nations Human Rights Council in 2021, highlights the urgent need to address the adverse impacts of business activities on human rights defenders. It unpacks, for States and businesses, the normative and practical implications of the Guiding Principles in relation to protecting and respecting the vital work of human rights defenders.

The guidance delves into the implications of the Guiding Principles for States and businesses in engaging with, and safeguarding the rights of, human rights defenders. The Guiding Principles highlight, for example, the key role played by human rights defenders in human rights due diligence processes and in enabling business enterprises to understand the concerns of affected stakeholders.

Taking each Pillar of the Guiding Principles in turn, the guidance sets out key steps that States and businesses should take to prevent, mitigate and remedy business-related human rights abuses that target or impact human rights defenders. It also highlights good practices advanced by States, businesses and various national human rights institutions (NHRIs). Further, the guidance includes an “issues in focus” section, looking at the issues facing development finance institutions and international financial institutions, and the technology sector including social media companies.

This guidance is a vital reference for: governments seeking to improve protection of human rights defenders in the context of promoting responsible business conduct; business enterprises looking for clarification on how to meet their responsibility to respect human rights when it comes to addressing risks to human rights defenders in their own activities or business relationships; and civil society groups working with human rights defenders who raise concerns about business impacts. Importantly, it also serves as a resource for human rights defenders themselves as they raise their concerns and advocate for the respect and protection of human rights.

1. See A/HRC/47/39/Add.2. Full report available at <https://undocs.org/A/HRC/47/39/Add.2>

Recommendations for States:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. Prevent the legal system from being used to criminalise the legitimate activities of human rights defenders.
10. 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.

Recommendations for Businesses:

1. 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.
2. 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.
3. 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.
4. Use leverage in business relationships to ensure respect for human rights defenders is developed and maintained.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

