

# SHARED SPACE UNDER PRESSURE: BUSINESS SUPPORT FOR CIVIC FREEDOMS AND HUMAN RIGHTS DEFENDERS

GUIDANCE FOR COMPANIES  
SEPTEMBER 2018



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<sup>1</sup> The Business Network on Civic Freedoms and Human Rights Defenders is an informal network of companies, convened and facilitated by Business & Human Rights Resource Centre, the B Team and ISHR. Founded in 2016, it explores the role of companies in helping to protect civic freedoms and human rights defenders, enables discussion and mutual learning, and may be used flexibly to initiate individual or collective action around the world.

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# FOREWORD

The work of human rights defenders and civil society is vital to peace, justice, fairness and sustainability. It is also essential to promote transparency and combat corruption.

Nonetheless, our data analysis from around the world shows there is a concerted attack in many countries on the essential freedoms and the rule of law on which business and civil society depend. And the defenders and organizations who expose the risk of abuse by companies in their operations and supply chains are under particular attack.

The time is now for responsible business to act to defend civic freedoms and protect human rights defenders.

To paraphrase Edmund Burke: *“The only thing necessary for the triumph of bad markets is for responsible business to do nothing.”* The sustained collapse of public trust in global markets since 2008 is being exploited by unscrupulous actors to attack the rules-based trading system, to weaken regulation that protects consumers and workers from abuse, and to intimidate human rights defenders who safeguard communities and workers from irresponsible investment and corporate wrongdoing.

We need responsible business and investors to speak and act decisively for the open societies in which we all flourish. Responsible business should use their good offices to oppose the extinction of civic freedoms and rule of law. Responsible business cannot thrive in closed societies where cronyism and corruption prosper.

But why, when and how should business engage on this urgent agenda? This guidance represents a major step forward for business action. It is a clear and practical guide to realistic action by responsible companies, investors, industry associations and business leaders. It is informed by both the pragmatism of the market, and the principles of freedom and fair play. It is also the result of over 90 interviews with business leaders, investors, civil society advocates and other international experts who gladly volunteered their insights.

This guidance also reflects the experience and expertise of its principal author, Bennett Freeman, a leader and innovator in the business and human rights field for two decades as a US human rights diplomat, corporate consultant, responsible investment executive and board member of major NGOs and multi-stakeholder initiatives.

Every advocate for shared prosperity, freedom and sustainability, from business and civil society, can use this guidance to design powerful strategies. Together, we can counter the attacks on civic freedoms and human rights defenders and hold open these precious shared spaces.

The Business & Human Rights Resource Centre and the International Service for Human Rights look forward to deeper and more powerful collaboration with business and stronger alliances with civil society partners through the publication of this guidance.



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# EXECUTIVE SUMMARY

Business and civil society operate in and benefit from a “shared space” defined by common, fundamental elements. The rule of law and freedom of expression, association and assembly are essential to the realization of all human rights, to good governance and accountable institutions. These elements are also critical to stable, profitable and sustainable business environments in which companies thrive and economies prosper.

Yet this shared space is as much an ideal as it is a reality. The strength of the shared space is tested by a history and legacy of mistrust between elements of civil society and business, especially between multinational corporations in certain industries and local communities in the Global South. This mistrust reflects actions, whether intentional or inadvertent, by individual companies and even entire industries to undermine civic freedoms and to undercut human rights defenders (HRDs). It persists in episodic conflicts and confrontations in almost every region. Yet standards and practices have evolved over the last two decades to encourage or require companies to respect human rights – however incompletely and inconsistently. Moreover, company engagement and consultation with local communities and stakeholders is overcoming conflict and confrontation in places and ways that encourage further progress.

This common ground is being forged at a volatile historical moment. The recent trend towards authoritarianism – even among some longstanding democracies – is weakening the shared space by degrading civic freedoms and threatening HRDs around the world.

- Civic freedoms include freedoms of expression, association and peaceful assembly and the right to participate in public affairs. Governments use a range of repressive techniques to constrain these freedoms: authorizing the use of force against peaceful demonstrators; restricting or banning NGOs from registering if they receive or do not declare foreign funds; deploying mass surveillance and shutting down internet and telco networks. Some governments, occasionally in coordination with companies, mount campaigns to discredit and tarnish civil society organizations (CSOs) and HRDs as security threats, “foreign agents” or “economic saboteurs.” In many countries, trade unions are suppressed, and striking workers attacked.

## THE PURPOSE OF THIS GUIDANCE

This guidance encourages companies to focus on this increasingly inescapable agenda. It urges them to engage and to act – carefully but deliberately – in their own interests and in the mutual interests that they share with civil society.

This guidance advises companies as they address the challenges as well as opportunities to support civil society and HRDs. It explains the normative framework, the business case and the moral choice that should inform company engagement and action. It focuses on factors companies should consider when deciding whether, and if so how, to act in response to certain issues and situations. It identifies risks for both action and inaction – and observes that managing the risks of inaction may be greater than managing the risks of action for many companies. And it spotlights examples of how companies are acting across countries and sectors, as well as new initiatives and critical actors in the arena.

- HRDs and trade unionists as well as journalists require civic freedoms to fulfill their mission to hold public and private power accountable. Often at risk to their lives, they expose corruption, oppose environmental degradation, promote gender diversity, protect minority rights, and campaign for worker rights and workplace safety. They support equitable and sustainable development for their communities and countries. They are the “canaries in the coal mines,” the watchdogs and the whistleblowers whose efforts – even if not always appreciated by companies – secure the essential underpinnings of profitable and responsible business environments.<sup>2</sup>
- Alarming, in the last decade, HRDs have increasingly come under massive attack. Since 2015, there have been over 1,250 attacks on HRDs working human rights issues related to business, including more than 400 killings.<sup>3</sup> Workers were exposed to physical violence and threats in 65 countries in 2018 and trade unionists were murdered in nine countries in the first half of that year.<sup>4</sup> Journalists are increasingly being imprisoned and attacked – 262

<sup>2</sup> *Annual Report 2017*, International Service for Human Rights (ISHR), p. 18 (May 15, 2017).

<sup>3</sup> *Business, Civic Freedoms & Human Rights Defenders Portal*, Business & Human Rights Resource Centre

<sup>4</sup> *ITUC Global Rights Index 2018: Democratic space shrinks and unchecked corporate greed on the rise*, International Trade Union Confederation (ITUC) (June 7, 2018).

**One of the most important and urgent opportunities for responsible business is to support basic human rights and civic freedoms and those who defend them. This agenda should be compelling for companies in three distinct yet complementary contexts: first and foremost, the normative framework that makes clear the corporate responsibility to act when certain factors pertain, complemented by the business case and the moral choice in other circumstances.**

journalists were imprisoned in 2017 and 29 journalists have been killed in 2018.<sup>5</sup> Civicus data indicates that only 3% of people on the planet live in countries with truly 'open civic space'.<sup>6</sup>

These pressures and attacks undermine the legal and institutional frameworks upon which both business and civil society depend.

This trend is caused by multiple, complex factors: some related to the convergence of political circumstances unique to countries; others to the broader dislocations, inequities, and anxieties that globalization has generated or exacerbated. These domestic political and geopolitical disruptions have intensified tensions among governments, civil society actors and companies in certain regions and industries. At the same time, these disruptions have heightened the expectations for responsible business conduct.

**The normative framework is based on the corporate responsibility to respect human rights set forth by the UN Guiding Principles on Business and Human Rights (UNGPs) – the authoritative normative standard defining the corporate responsibility to respect human rights. The UNGPs make clear that this responsibility requires companies to put in place policies and due diligence processes to prevent and mitigate any adverse actual and potential human rights impacts that it may cause, contribute to or be linked to through their business operations or relationships, products or services.**

The commentary for Guiding Principle 18 notes that HRDs, among other members of civil society, are valuable sources of information when engaging in due diligence to assess actual or potential human rights impacts of business

activities. If a company causes or contributes to an adverse human rights impact, Guiding Principle 22 states that “business enterprises should provide for and cooperate in their remediation through legitimate processes.” The UNGPs clarify that effective operational grievance mechanisms are a key tool for companies not only for such remediation but also for prevention.

**There is a clear normative responsibility for companies to respect human rights as set forth in the Guiding Principles, but companies have a discretionary opportunity to go above and beyond these defined responsibilities and expectations. The UNGPs are a hard floor not a low ceiling for company action to support civic freedoms and HRDs.<sup>7</sup>**

The normative framework centered on the UNGPs is further supported by the UN Declaration on HRDs; the OECD Guidelines on Multinational Enterprises (together with the OECD Due Diligence Guidance for Responsible Business Conduct with its emphasis on stakeholder engagement); and the UN Sustainable Development Goals (the SDGs). Goal 16 of the SDGs is to “promote peaceful and inclusive societies, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”

**Beyond the normative framework centered on the UNGPs that requires action if the cause, contribute or linkage factors are present, there is a compelling business case for companies to support civic freedoms and HRDs.** This business case is based on the premise that companies and civil society alike depend on the shared space of accountable governance. Civil society organizations and HRDs play critical roles in protecting and expanding civic freedoms which benefit everyone.

**While of obvious importance to companies, the business case should be subordinated to their normative responsibility – consistent with the cause, contribute and direct linkage factors set forth by the UNGPs – to engage and act in circumstances in which one or more of these factors are apparent.**

The UNGPs require company action to respect human rights and encourage support of civic freedoms and HRDs. While it may be unrealistic to discourage companies from considering the business case even in these circumstances, they should give decisive priority to this

<sup>5</sup> See: <https://cpj.org/>.

<sup>6</sup> Civicus Monitor Global Findings 2017, CIVICUS (2017).

<sup>7</sup> Framework based on the “corporate responsibility to respect human rights” enshrined in the UNGPs, with a focus on Guiding Principles 13, 18, and 19.

normative responsibility if a reasonable analysis (along the lines proposed in the decision-making criteria section of this guidance) makes clear that one or more of those factors are apparent. Yet the business case should be the essential factor for company consideration – along with a moral choice and the determination of leverage – in other circumstances when those cause, contribute and direct linkage factors are less apparent or not present.

**The main elements of the business case for engagement and action are:**

- **Securing the Shared Space.** A successful and stable business environment depends on respect for civic freedoms and the rule of law. Companies should support these civic freedoms and the rule of law – and those who defend them – to support stable, predictable business operations and investment opportunities. To minimize the political volatility and instability that comes from repression of these freedoms and the rule of law, businesses should support and protect those that defend them.
- **Managing Operational and Reputational Risk.** HRDs, trade unionists, other civil society actors and organizations play a critical monitoring and reporting role that alerts companies to risks that have the potential to disrupt business operations and damage brand reputations. Their role benefits companies to the extent that they maintain constructive relationships with these civil society actors.
- **Building Competitive Advantage.** Supporting civic freedoms can give businesses reputational and competitive advantages, especially for two categories of companies:
  - Those whose social license to operate is most closely connected to local communities with which they intersect, and
  - Those who look to grow their numbers of socially-conscious consumers and responsible investors.
- **Overcoming Mistrust and Securing the Social License to Operate.** Supporting civic freedoms and HRDs may alleviate legacies of mistrust existing between local communities and companies by building trust with local communities upon whom companies' routine operations and long-term futures depend. The social license to operate is critical to a company's stability and profitability, both at the project level with local communities and at the national and global level with diverse stakeholders. The

social license to operate seems intangible but when lost it can have material consequences damaging to company operations, reputations and relationships.

**Beyond the normative framework and business case, a company and the individuals working for them have a moral choice to act – both to do no harm anywhere and to do good when possible.** These moral considerations are rooted in centuries of religious theology and moral philosophy which inform both commonplace ethics and contemporary jurisprudence. Companies are challenged to make moral choices at the organizational level, while individuals working within companies can contribute to ethical and accountable corporate cultures.

**The complementary normative framework, business case and moral considerations all encourage companies to support civic freedoms and HRDs under threat.**

**This guidance outlines a decision framework that is both analytical and operational to determine whether and how to act in various circumstances.**

**This framework is not designed necessarily to result in an affirmative determination to act in any or all circumstances; indeed, it identifies a range of risks related to company action as well as to inaction. But it supports the conclusion that in many circumstances, companies can and should act to protect civil society space and/or to defend HRDs or organizations against attacks and repression.**

**There are two rationales leading to company action on behalf of civic freedoms and HRDs:**

- **A normative responsibility** to act consistent with the UNGPs if the company has caused or contributed to an adverse human rights impact or is directly linked to human rights impacts through its own activities, products or services by its business relationships;
- **A discretionary opportunity to act**, even if one of these factors pertaining to the UNGPs do not apply, by drawing on the business case, making a moral choice, and weighing the potential costs of action versus inaction.

**These four steps set forth a logical progression of factors that companies can evaluate in making the determination whether to engage:**



- Establish the reality and severity of the harm threatened to the civic freedom or HRD, including the veracity of the allegations and the credibility of their source.
- Establish the degree of company involvement – cause, contribution or other direct linkage to the threat or the harm (consistent with Guiding Principle 13).
- Identify the form(s) of company action, taking into account its leverage, that maximize the potential positive impact on civic freedoms and/or HRDs.
- Identify the relative risks of action and inaction to the civil society/rights holders and to the company relative to the issue or situation.

**As companies follow these steps and these factors in deciding whether to engage, they should also be guided by pragmatic flexibility in deciding how to act. There is no one appropriate or consistent form of action that applies to all circumstances; a spectrum of actions (individual and collective, public and private) may be combined concurrently or sequentially to address an issue or situation.**

Private or public, individual or collective statements or actions may be taken on a case-by-case basis and be deployed flexibly and sequentially as the issue or situation evolves:

- Companies may be more comfortable with delivering private statements behind the scenes to home or host governments. In other circumstances they may be compelled to speak publicly as well as privately, depending on the issue or situation and intended outcome.
- Company actions may also be undertaken individually, whether publicly or privately. In other circumstances, it can be more effective to act collectively together with other companies operating in the same country or industry:
  - Industry associations and employer organizations that explicitly embrace the basic proposition that companies have a responsibility to respect human rights (per the UNGPs) are also useful, credible platforms for companies to act collectively in ways that distribute and diminish risk.

An individual or collective company voice is often most useful, but multi-stakeholder initiatives can also be credible platforms for collective action in certain countries and sectors that are most exposed to the closing of civil society space and threats to HRDs.

**A company's determination of whether – and if so how – it may engage on a particular issue or in a certain situation should compel it to assess the relative risks and costs of action versus inaction:**

- **The risks and costs of action** are most often perceived by companies in connection with the host governments of the countries where they operate. Companies may perceive commercial, legal and in turn competitive risks if they engage on politically sensitive issues.
- **The risks and costs of inaction** for companies may affect the quality and continuity of the business environment in a country or region if undermined by the erosion of civic freedoms and in turn accountable governance. Companies may also risk the security and stability of their physical presence and their social license to operate with local communities, and in turn their reputations with international civil society, responsible investors and other stakeholders.

**Responsible companies should not only evaluate the risks of action, but also assess the risks of inaction. In many cases companies may conclude that the risks – and the likely costs – of inaction may be more difficult to anticipate, mitigate and manage over the long term than the risks of action.**

There are a range of ways that companies can support civic freedoms and the rights of HRDs and local communities in their mutual interest.

As the shared civil society space becomes increasingly fragile, the social license to operate also becomes increasingly imperiled. Moreover, as pressures and expectations for responsible business intensify in an era of geopolitical and economic disruption, companies can both create opportunities and manage risks by embracing this important and urgent agenda.

**It is essential that these factors are considered – and decisions made – on a cross-functional basis involving to the extent possible corporate headquarters and in-country executives/staff plus legal counsel, human rights and corporate**

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**responsibility experts, government, public affairs and (in some circumstances) security and human resources staff.**

**CEO-level decisions are also essential when a company's core values, reputation, operations and relationships are at stake.**

This important and urgent agenda brings into sharp relief the roles and responsibilities of governments, companies and civil society. It challenges companies to be voices and forces for civic freedoms and human rights defenders in their mutual interest as the pressure on their shared space intensifies.

### **SPOTLIGHTS: COUNTRIES AND SECTORS; RECENT INITIATIVES AND CRITICAL ACTORS**

The framework set forth in this guidance is supported by four sets of "spotlights" that crystalize critical issues faced by civil society and business alike related to the shared space. The spotlights highlight actions undertaken by companies – individually and collectively as well as through multi-stakeholder initiatives and coalitions – to support civic freedoms and HRDs related to the shared space.

The spotlights focus on four countries (Cambodia, Myanmar, Guatemala and the United States), four sectors (extractives, agriculture, apparel and digital technology) plus two initiatives (related to LGBTI rights and mega-sporting events) and two critical actors (responsible investors and CEO activists). Each spotlight aims to analyze the sometimes conflicting but also converging challenges and dilemmas that civil society and companies face in connection to civic freedoms.

#### **Countries**

■ **Cambodia:** Cambodia is at the center of recent action by apparel companies in support of embattled civic freedoms and HRDs. It offers a vivid example of the shared space at stake for business and civil society in connection with workers rights and freedom of association. Violent repression of protests calling for a higher minimum wage compelled major brands to act. Their willingness to coordinate private and public statements through two closely associated multi-

stakeholder initiatives – the Fair Labor Association (FLA) and the Ethical Trading Initiative (ETI) – are a model for similar collective actions elsewhere.

- **Myanmar:** Myanmar's democratic transition opened an opportunity for multinational corporations not only to build a commercial presence in a resource-rich but infrastructure-poor country with a large and growing consumer market. The transition also appeared to present an opportunity to promote human rights standards that could contribute to a profitable and sustainable business environment that could also attract further foreign investment. Yet civil unrest, 'ethnic cleansing' and attacks on HRDs have tilted this affirmative opportunity into a defensive responsibility. Persecution of the Rohingya Muslim minority has created a humanitarian crisis and compelled several major multinationals – from extractives to Internet companies – to make public statements supporting tolerance while some responsible investors are advocating divestment.
- **Guatemala:** Guatemala has long been an arena of conflict between civil society and companies in the mining and agriculture sectors. A massive oil spill of toxic effluent from a national palm oil company in 2015 triggered civil society protests, resulting in violent attacks on the protesters that appeared to be perpetrated by individuals acting on behalf of the company. That company's major multinational partner suspended its sourcing relationship and subsequently consulted – together with an international NGO coalition and local civil society stakeholders – on ways for the national company to improve its local community engagement process. Nonetheless, this example of corporate responsibility points to the complexities and dilemmas faced by companies developing large-scale exploitation of natural resources in areas inhabited by local indigenous communities whose objective may be to regain control of their land and resources.
- **United States:** Support for civic freedoms and HRDs is not only a challenge for companies working in Southern countries and those governed by authoritarian regimes, but also for those navigating the narrowing of civic space in increasingly authoritarian semi-democracies such as Turkey and Hungary. The

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US is home to many of the world's most powerful multinationals and a vibrant democracy, but civic freedoms have come under growing threat during the Trump Administration. Major companies have spoken out on policies to impose travel bans on citizens of certain Muslim majority countries and to impose discriminatory restrictions on immigration. While American companies continue to focus most of their policy and advocacy efforts on tax, trade and regulatory objectives, their growing willingness to address issues related to civic freedoms – including LGBTI rights – may influence both the debate over American democracy and the example that the US sets abroad for responsible business.

## Sectors

- **Extractives (Oil/Gas and Mining):** The variety and severity of the threats to the shared civil society space related to the extractive industries – and at the same time the history and legacy of mistrust between companies and civil society – is approached only by the agriculture sector. Five central and overlapping areas present common challenges for companies and civil society in ways that directly affect civic freedoms and HRDs: security forces in conflict zones or in proximity to local communities; indigenous communities' rights to land and water resources; environmental issues related to the degradation and depletion of water and other resources; inadequate transparency and accountability of revenue and expenditure to curb corruption; impunity for attacks on community leaders. These challenges are also opportunities to build on the standards and initiatives that have evolved to focus more sharply on the protection of civic freedoms and HRDs. Multi-stakeholder initiatives have the potential to sharpen their focus on these issues to become more consistent and effective platforms for company engagement and action together with civil society.
- **Agriculture, Food and Beverage:** The agriculture sector encompasses a tremendous breadth and depth of human rights-related risks and impacts for business and civil society alike and, along with mining, it is the sector with the greatest frequency and intensity of attacks on HRDs. Moreover, in 2017 and 2018, agribusiness has been “the biggest driver of violence as supermarket demand for soy, palm oil, sugarcane and beef provided a financial incentive for plantations and ranches to push deeper into indigenous territory and other communal land.”<sup>8</sup> The central human rights issues at stake in agriculture are land rights and labor rights, which are starting to be addressed constructively through recently adopted company policies rejecting land seizures and by the Interlaken Group bringing together companies, CSOs, governments and international institutions to secure community land rights and in turn avoid conflict and violence.
- **Apparel and Footwear:** Multinational brands and garment manufacturers from whom they source have dealt for over two decades with an inherent conflict in this sector: some companies and governments pushing for low wages and weak worker rights for competitive reasons; others (supported by the International Labor Organization, CSOs and trade unions) pushing for higher wages and freedom of association. These conflicts have resulted in tragic consequences (above all in Bangladesh where over 1,100 workers died in the 2013 Rana Plaza factory collapse due partly to the lack of worker voice). Yet progress has been made through coalitions bringing together brands, civil society and trade unions to address worker safety in Bangladesh and multi-stakeholder initiatives such as the Fair Labor Association and the Ethical Trading Initiative (which have jointly supported freedom of association as it has come under attack in Cambodia). Plus, one major company in the sector has adopted an explicit policy committing support for HRDs where possible.
- **Digital Technology:** Digital technology has empowered civil society to organize and challenge governments – and corporations – around the world, and at the same time, many governments are now pushing back against domestic as well as external challengers by using their legal, regulatory and even *force majeure* physical power over technology companies. Demands on internet service providers to block websites and shut down networks – and on social media companies to delete content – have increased dramatically over the last several years, and digital rights groups have documented new laws that criminalize growing amounts of online speech. Technology companies may be confronted with choices that require them to balance a commitment to respect human rights with commercial decisions. The multi-stakeholder Global Network Initiative

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<sup>8</sup> [Almost four environmental defenders a week killed in 2017](#), Jonathan Watts, Guardian (Feb. 2, 2018). In 2017 and 2018, it surpassed mining as the most dangerous sector to oppose, according to Global Witness and Business & Human Rights Resource Centre's research.

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(GNI) has worked to advance corporate respect for freedom of expression and privacy in the face of government censorship and surveillance (including network shutdowns); and Access Now launched a Digital Security Helpline, funded partly by technology companies, to provide real-time support for online civil society, activists and HRDs at risk.

## Recent Initiatives

- **LGBTI Commitments:** Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) individuals around the world face widespread discrimination and threats. They often lack legal protections without which it is easy to be fired from their jobs, bullied and harassed at school, or denied basic healthcare simply because of their sexual orientation. Two high-level initiatives encourage business support for protections for LGBTI individuals in the workplace and public policy arenas: Open for Business and the UN Free and Equal Initiative (UNFE) Standards of Conduct for Business. These initiatives will encourage further support from business, building on recent examples of positive company action on LGBTI issues in countries as diverse as Australia, the US, China, India and Singapore.
- **Mega-Sporting Events:** The Beijing 2008 and the London 2012 Summer Olympics brought into sharp focus the broad range of human rights issues that may arise in connection with a major sporting event such as the Olympics or the World Cup. Companies are involved in every step of the process of staging a mega-sporting event: from providing the most basic local services to promoting the most visible global brands. Focus on major sporting events lagged the general business and human rights movement, but progress is being made through pressure from civil society and efforts by stakeholders to develop policies and procedures to protect human rights. The Mega-Sporting Events Platform for Human Rights (MSE Platform) was launched in 2017 with international and inter-governmental organizations, governments, sports governing bodies, athletes, trade unions, sponsors, broadcasters, and civil society groups for this purpose.<sup>9</sup>

## Critical Actors

- **Responsible Investors:** Social, ethical and faith-based investors have focused on human rights as shareholder advocates for over four decades, and now human rights are gaining wider attention – even traction – among the growing number of investors who are considering

risks and opportunities related to non-financial environmental, social and governance (ESG) as factors that may affect company valuations and investment performance. Apart from significant longstanding engagement on indigenous peoples and worker rights, there has been little explicit direct focus by investors on civic freedoms and HRDs, even though the shared civil society space is an anchor, of sustainable investment as well as overall business environments. In 2018, the U.S.-based Interfaith Center on Corporate Responsibility (ICCR) formally launched the Investor Alliance for Human Rights (IAHR), a new initiative aimed at building on the longstanding socially-responsible and faith-based investor in human rights and extending that interest to mainstream investors. In April 2018 IAHR issued a statement on HRDs maintaining that companies and financial institutions “have a responsibility to review their operations, supply chains and policies to identify real and potential negative impacts on HRDs, and take meaningful action to address them...”<sup>10</sup>

- **Activist CEOs:** With intensifying political conflict in many countries against a backdrop of geopolitical disruption, expectations are rising for business leaders to use their access and influence on a growing range of issues in the public policy arena – including many related to human rights and civic freedoms. In the face of populism, nationalism and racism, CEOs are becoming reluctant but effective activists by criticizing certain statements by political leaders and actions by governments. In the last several years, many have taken public stands on a variety of human rights issues such as immigration, LGBTI inclusion, climate change, racism, and gun control, especially in the US but also in Europe. CEOs will almost certainly continue to face rising expectations from employees and customers, shareholders and stakeholders, to take high-profile public stands on civic freedoms.

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<sup>9</sup> The MSE Platform was relaunched in June 2018 as a permanent and independent “Centre for Sport and Human Rights”, dedicated to supporting a world of sport that fully respects human rights. See: [www.megasportingevents.org](http://www.megasportingevents.org).

<sup>10</sup> [Investors call for urgent corporate action to address rising threats faced by human rights defenders](#), Investor Alliance for Human Rights (Apr. 24, 2018).

# INTRODUCTION

The 70<sup>th</sup> anniversary year of the Universal Declaration of Human Rights (UDHR) should be a time to commemorate the development and consolidation of human rights standards and norms, together with the instruments and institutions that have safeguarded them over the last seven decades. It should be a time to celebrate the emergence and empowerment of civil society over the last quarter century. It must also be a time to recognize and reverse a current trend that imperils this historic progress: the global closing of civil society space and the attacks on civic freedoms and human rights defenders (HRDs) that are intensifying around the world, in democracies as well as under authoritarian regimes.



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

Maryam Al-Khawaja, Special Advisor on Advocacy, Gulf Centre for Human Rights; Board member, International Service for Human Rights and Vice Chair, Board of Directors, Urgent Action Fund for Women's Human Rights

As the outgoing United Nations (UN) High Commissioner for Human Rights Zeid Ra'ad Al Hussein warned in June 2018 after four years in office: *"We are at a pivotal moment in history, now, as contempt for human rights spreads. Xenophobes and racists have emerged from the shadows. A backlash is growing against advances made in women's rights and many others. The space for civic activism is shrinking. The legitimacy of human rights principles is attacked, and the practice of human rights norms is in retreat. What we are destroying is, quite simply, the structures that ensure our safety."*<sup>11</sup>

This destruction threatens civil society and those who defend it in all its forms. Also imperiled is "every organ of society" that the UDHR calls on to "promote respect for these rights and freedoms," including business which depends on civil society and the rule of law to flourish.<sup>12</sup>

Now the time has come to crystalize attention and galvanize action from the business and human rights communities alike to defend this vital shared space upon which both companies and civil society depend.

In the face of this global crisis, common ground is emerging, and new alliances are forming. Citizen activists, trade unionists, lawyers, journalists and business people share a common civil society space that a growing number of corporate leaders have also come to understand must be defended. Companies face rising expectations to support human rights and civic freedoms from a range of stakeholders within and beyond their workplaces and operations: from conscious consumers and responsible investors to committed employees and embattled trade unionists; from excluded women and persecuted minorities to endangered indigenous communities and threatened HRDs.

This is both new and old. It has imposed itself through issues and events, tragedies and demands from all over the world over the last several years. Yet it is also the original founding problem that framed the contemporary discussion around business and human rights and the rise of a global movement over the last two decades.



***Business leaders must become human rights defenders.***

Sharan Burrow, General Secretary, International Trade Union Confederation

The execution of Ken Saro-Wiwa, the Nigerian environmental and human rights activist, along with other leaders of the Ogoni people collectively known as the Ogoni Nine, by the Abacha regime in 1995 was the watershed event. The activists' deaths not only ignited a searing debate over what Royal Dutch Shell – whose exploitation of the Ogoni lands in the Niger Delta was the focus of their activism – could and should have done to avert this tragedy. The debate also defined fundamental issues and dilemmas still faced by oil companies and those in virtually every industry. Moreover, it focused attention

<sup>11</sup> Human rights are not a luxury, Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights in The Washington Post (June 15, 2018).

<sup>12</sup> Full text of UDHR is available here: <http://www.un.org/en/universal-declaration-human-rights/>.

on the broader human rights responsibilities of business that has led to action on the part of companies and investors, civil society and trade unions, governments and international institutions for over two decades.<sup>13</sup>

Shell appealed for clemency for the Ogoni Nine, but its intervention was widely viewed as too little and too late. Shell was condemned across the global human rights community for not having done more to prevent the executions as the trial of the Ogoni Nine became a trial in the global court of public opinion both of the company and the Nigerian government. Shell was ultimately unable to continue operating in Ogoni territory, having lost its physical ability and “social license to operate” amidst community protests and security threats.

The tragedy of Ken Saro-Wiwa and the Ogoni Nine brought into sharp relief the challenges companies face in deciding whether and if so how to act when faced with issues or situations connected to human rights. While companies, governments and civil society organizations all play different roles, lines are blurring in the 21<sup>st</sup> century as multinational corporations wield tremendous global power and governments fail to protect human rights and, in many cases, actively undermine national and international norms and laws. As a result, corporate responsibility for human rights will continue to be constantly debated and tested.



***The challenge of business action to support civic freedoms and human rights begins with the question of what a responsible company is.***

Sir Mark Moody-Stuart, former Chairman, Royal Dutch Shell and former non-executive Chairman, Anglo-American PLC

These debates and dilemmas have led to two decades of commitment and effort around a still-evolving business and human rights movement that has developed along two intersecting dimensions:

The first dimension of the business and human rights movement has been normative and architectural. Initially driven by multi-stakeholder initiatives – several of which will be cited in this guidance – civil society advocates, responsible investors, government officials, and other stakeholders have worked with companies to develop

industry-wide and issue-specific corporate responsibility standards for human rights. Such initiatives have been strengthened by the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011 – endorsed by all UN member states in 2011 – which sets a floor but not a ceiling across sectors for policy commitments, due diligence processes and remedy mechanisms. The global minimum standard for companies clarified by the UNGPs is to implement the corporate responsibility to respect human rights, while states maintain the primary duty to protect human rights even as many fail to do so. Yet even as mandatory company due diligence disclosure requirements are enacted in a growing number of jurisdictions, a global debate continues around the merits of a binding global treaty among governments.



***Supporting civic freedoms and human rights defenders is an essential element in the sustainability of enterprises and society as a whole.***

John Ruggie, Berthold Beitz Professor in Human Rights and International Affairs, John F. Kennedy School of Government, Harvard University and former Special Representative of the United Nations Secretary General on Business and Human Rights

The second dimension of the business and human rights movement is less normative and architectural and more personal and visceral, political and aspirational. It focuses on the impacts of company operations on peoples' lives and livelihoods and finds its voice through social movements and advocacy campaigns. But its force comes from diverse right-holders: indigenous communities fighting for survival; supply chain workers pushing for a living wage; victims of forced labor and human trafficking reclaiming their dignity; women struggling for gender equality; minorities overcoming persecution; lesbian, gay, bisexual, transgender and intersex (LGBTI) people resisting discrimination; internet and social media users asserting their freedom of expression and right to privacy. As the end of the second decade of the 21<sup>st</sup> century approaches, civil society – both empowered and embattled – is front and center.

<sup>13</sup> [What Ken Saro-Wiwa Taught the World](#), Bennett Freeman, Institute for Human Rights and Business (Nov. 10, 2015).

All dimensions of the business and human rights agenda – both old and new, founding and emerging – cut across all the above institutions and initiatives, factors and actors. This agenda brings into sharp relief the roles and responsibilities of governments, companies and civil society. It challenges companies to be voices and forces for civic freedoms and HRDs which may or may not be directly linked to their own operations or supply chains – in the mutual interest of business and civil society as the pressure on the shared space intensifies.

But history does not offer a blank slate. Companies in virtually every industry have either inadvertently or intentionally been involved with human rights abuses or violations of civic freedoms, whether resulting from their operations, supply chains or relationships with other third parties including governments. Many local communities, HRDs and different categories of workers believe that they are vulnerable – if not powerless – alongside both companies and governments. At the same time, some companies (especially those in the extractives sector) see themselves as vulnerable to local communities with informal power over the ever-volatile social license to operate. This legacy of mistrust must be acknowledged if it is to be overcome; these asymmetries of power will persist but can be balanced by alignment around the shared space that should at least connect – if not always unite – business and civil society.



***Human Rights are the foundation of a healthy society and sustainable business. Given the increasing vulnerability of human rights defenders and shrinking space where they can operate safely, business has a role and responsibility to defend and promote fundamental rights and freedoms.***

Paul Polman, CEO Unilever

Now responsible companies have an opportunity to acknowledge and transcend these legacies and asymmetries by embracing this old but new agenda.

This agenda challenges companies to consider these sensitivities and dilemmas but also their responsibilities and opportunities to act – effectively if not necessarily explicitly – as human rights advocates on some issues and in some situations. Companies as well as civil society actors have expressed a growing interest in defining company roles and different forms of action to address these issues. It is not an easy expectation for companies to meet but a necessary one given the common interests that civil society and companies clearly share in the rule of law, transparent and accountable governance, and respect for human rights.

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# THE PURPOSE OF THIS GUIDANCE

The challenges facing business and civil society alike in this “shared space” – even if this common ground is not always recognized or acknowledged – are mounting. The complexity of the dilemmas facing companies is apparent, while the need for clarity of company engagement and action is urgent.

This guidance encourages companies to embrace this increasingly inescapable agenda. It urges them to engage and to act – carefully but deliberately – in their own interests and in the mutual interests that they share with civil society.

This guidance advises companies as they address the challenges as well as opportunities to support civil society and HRDs. It explains the normative framework, the business case and the moral choice that should inform company engagement and action. It focuses on factors companies should consider when deciding whether, and if so how, to engage and act. It proposes criteria that companies can consider and questions they can ask as they decide whether, and if so how, to act in response to certain issues and situations. It identifies risks for both action and inaction alike – and observes that managing the risks of inaction may be greater than managing the risks of action for many companies. And it spotlights examples of how companies are acting across countries and sectors, as well as new initiatives and critical actors in the arena.

The approach is comprehensive: descriptive, analytical and operational with each section combining those elements in ways intended to be complementary and mutually reinforcing. The document is structured to be easily navigable for its primary business audience and other readers from civil society, governments and international institutions as well as funders and academic experts.

The essential purpose of this guidance and the new Business Network for Civic Freedoms and Human Rights Defenders (first convened in 2016) is to encourage companies to support civil society and HRDs without illusions but with clear objectives. Those objectives – and opportunities to engage and act – should be determined through the careful assessment of the issues and dilemmas, risks and opportunities at stake in certain circumstances and situations. Practical and credible actions are identified that companies can take for mutual benefit together with civil society, HRDs and others they seek to support.

This guidance focuses mostly on large multinational corporations that are most exposed to these issues and situations through their operations and/or supply chains – and may be best positioned to engage and act. But there is a world of small and medium-sized enterprises that also depend on the same shared space with civil society and are especially at risk when the rule of law is weak, rights are compromised, and corruption is rampant. This guidance also aims to reach these companies, some of which are already on the front lines. For example, Leber Jeweler, an American family-owned jeweler business committed to ethical sourcing, engaged, with the significantly larger Tiffany & Co., in Angola on behalf of a journalist who exposed human rights abuse in the Angolan diamond industry and was put on trial by the Angolan government. It too is a model for the kind of engagement and action this guidance seeks to inform and encourage.

While this guidance is addressed to companies, its fundamental purpose is to inform and encourage support for civic freedoms and HRDs – and therefore not only engagement and action on the part of business but also by companies together with civil society and governments, where possible. Just as it is useful for companies to understand the expectations and aspirations, risks and threats faced by civil society, so too it is useful for civil society to understand the issues and dilemmas that companies face as they consider opportunities for cooperation. If business and civil society are to overcome their legacies of mistrust to defend the shared space upon which they both depend, they must understand each other’s predicaments and perspectives. Therefore, this guidance aims to reach civil society as well as business – and to align them around this important and urgent agenda.

This guidance attempts to synthesize the extraordinary experience and expertise, information and insight, derived from over 90 interviews conducted in late 2017 and the first half of 2018. Those interviewed were corporate executives and staff; leaders of industry associations and multi-stakeholder initiatives; responsible investors; HRDs, including advocates and trade unionists; as well as government and UN officials. This guidance also draws on other previously published research, frameworks and other resources referred to in Annex 2 (Key Sources) which separately and cumulatively have illuminated different aspects of these issues and actions. Finally, it seeks to complement



these documents which explore many of the same issues and situations, and in turn highlight opportunities for engagement and action on the part of companies:

- Human Rights Defenders and Business: Searching for Common Ground by Institute for Human Rights and Business, Frontline Defenders and Civil Rights Defenders (2015)<sup>14</sup>
- Beyond Integrity: Exploring the Role of Business in Preserving the Civil Society Space by Charities Aid Foundation (2016)<sup>15</sup>
- Report of the Special Rapporteur on the situation of Human Rights Defenders A/72/170 (2017)<sup>16</sup>
- Report of the Special Rapporteur on the situation of Human Rights Defenders – Environmental Human Rights Defenders A/71/281 (2016)<sup>17</sup>
- Forthcoming guidance by the UN Working Group on Business and Human Rights to elaborate on implications of the UN Guiding Principles for state and business action to protect and respect human rights defenders.<sup>18</sup>
- At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017 by Global Witness (2018)
- Business Network on Civic Freedoms and Human Rights Defenders (forthcoming) statement
- The Business Case for Civil Society by Rights CoLab and DLA Piper (2018)<sup>19</sup>

## DEFINITIONS

This guidance focuses on the roles and responsibilities of business related to civic freedoms in a human rights context, which are described at the outset of the immediately following section “Business and Civil Society: Shared Space; Common Threats.” Business can exercise those roles and responsibilities in the “**civil society space**” in relation to two main actors within civil society: **Civil Society Organizations (CSOs)** and individual **Human Rights Defenders (HRDs)**.

For purposes of clarity and consistency, these three key terms are so defined in this report:

**Civil society space** is defined as “the place civil society actors occupy within society; the environment and framework in which civil society operates, and the relationships among civil society actors, the State, private sector and the general public.”<sup>20</sup>

**Civil Society Organizations (CSOs)** are defined as “non-State, not-for-profit, voluntary self-governing entities formed by people in the social sphere that are separate from the State and the market. CSOs represent a wide range of interests and ties. They can include community-based organizations as well as **Non-Governmental Organizations (NGOs)**, which are at times referred to in this guidance with advocacy-focused CSOs in mind in the context of the UN Guiding Principles Reporting Framework. CSOs do not include business or for-profit associations.”<sup>21</sup> The Council of Europe Committee of Ministers’ Recommendation 14 (2007) does not consider political parties to be CSOs.<sup>22</sup>

**Human Rights Defenders (HRDs)** are defined by the 1998 UN Declaration on Human Rights Defenders, which was adopted by consensus by the UN General Assembly, as “people who, individually, or with others, act to promote [...] and strive for the protection and realization of human rights and fundamental freedoms” at the national and/or international level.<sup>23</sup> HRDs include activists working on civil, political, economic, social and cultural rights. They include land, environmental, and indigenous community defenders; women’s rights and LGBTI activists; trade unionists and anti-corruption advocates. It is also important to note that according to the UN High Commission for Human Rights, HRDs “are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.”

<sup>14</sup> Human Rights Defenders and Business: Searching for Common Ground, Institute for Human Rights and Business, Frontline Defenders and Civil Rights Defenders (Dec. 2015).

<sup>15</sup> Beyond Integrity: Exploring the Role of Business in Preserving the Civil Society Space, Charities Aid Foundation (Sep. 2016).

<sup>16</sup> Report of the UN Special Rapporteur on the situation of human rights defenders (A/72/170) (July 19, 2017).

<sup>17</sup> Report of the Special Rapporteur on the situation of Human Rights Defenders – Environmental Human Rights Defenders A/71/281 (2016).

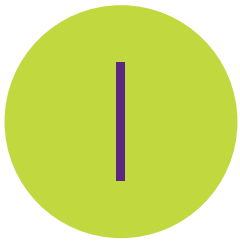
<sup>18</sup> Human rights defenders and civic space – the business and human rights dimension, OHCHR.

<sup>19</sup> The Business Case for Civil Society, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

<sup>20</sup> Definition from the Office of the United Nations High Commissioner for Human Rights (OHCHR): A practical Guide for Civil Society: Civil Society Space and the United Nations Human Rights System. See also FRA (European Union Agency for Fundamental Rights): “Challenges Facing Civil Society Organizations Working on Human Rights in the EU”.

<sup>21</sup> See the UN Guiding Principles Reporting Framework, available at: <https://www.ungpreporting.org/glossary/civil-society-organizations-csos/>

<sup>22</sup> Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L53, referenced in FRA (European Union Agency for Fundamental Rights): “Challenges Facing Civil Society Organizations Working on Human Rights in the EU”.



## **BUSINESS AND CIVIL SOCIETY: SHARED SPACE AND COMMON THREATS**

A functioning civil society space is one in which fundamental rights and the rule of law are respected and exercised by governments, private citizens, and all organizations whether for profit or non-profit.<sup>24</sup> These civic actors, including business, all depend on the integrity and durability of these common, mutually-reinforcing pillars; their strength or weakness is indivisible for the ultimate benefit of all. This shared space encompasses the institutions and rules that guarantee the rights and protections on which both civil society and business rely. The case for engagement and action is gaining urgency as pressures on civic freedoms and attacks on human rights defenders (HRDs) have intensified over the last several years.<sup>25</sup> Yet a history and legacy of mistrust between elements of civil society and business creates challenges for both to overcome as efforts are made to find common ground and act together in defense of their shared space.

## I.1. SHARED CIVIL SOCIETY SPACE AND BUSINESS



***There is a mutual interest that both civil society and business enjoy in open societies that respect fundamental freedoms.***

Gitte Dryhagen Husager, Head of Private Sector Engagement, DanChurchAid

The shared civil society space is anchored in accountable governance structures and respect for the rule of law. Civil society actors and companies both depend on the legal and institutional frameworks that define the shared space to operate; civil society cannot flourish and business cannot thrive outside these frameworks. The commercial and political benefit companies gain from a functioning civil society space generates a collective responsibility to recognize the positive role CSOs and HRDs play in protecting this space and – where reasonably possible – to support these crucial actors in the face of repression.<sup>26</sup>



***Companies need to understand that they are part of an ecosystem with civil society.***

Amol Mehra, Managing Director, Freedom Fund (formerly with the International Corporate Accountability Roundtable (ICAR))

**Successful, sustainable business and investment environments require accountable governance bound by rule of law.** Such environments can only be

maintained when the rights that define the shared civil society space – freedom of expression, assembly and association – are respected and protected. As will be explained in the section setting forth the business case for company action in support of civic freedoms and HRDs, these rights enable stable, predictable legal and regulatory environments and in turn the free flow of information and entrepreneurial innovation. They also enable efforts to

curb corruption, ensure workplace safety, protect public health, promote environmental sustainability and advance gender diversity.

Without these rights framing the civil society space, it is not possible for business to be both responsible and profitable. Weak governance and rule of law can create business risks that increase operating costs and destabilize commercial operations. Companies in such environments frequently report challenges and threats related to corruption and cronyism.<sup>27</sup> These risks include rent-seeking by officials who provide licenses and approvals; theft of intellectual property without recourse; confiscation of physical property by authorities allied with business rivals; even detention or arrest of employees without cause or due process resulting from business disputes with favored individuals or entities.



***Open, independent civil society is integral to any company's efforts to act responsibly.***

Arvind Ganesan, Director, Business and Human Rights Division, Human Rights Watch

Responsible companies often find the costs of operating under such conditions too high and may decide to operate and invest elsewhere.<sup>28</sup> Alternatively, rather than withdrawing from jurisdictions where they employ local workers and have the potential to exercise positive influence, companies can support and defend civic freedoms to strengthen and protect this shared space as the oxygen for civil society and business alike.

## I.2. PRESSURES ON CIVIC FREEDOMS

Civic freedoms depend on several fundamental human rights principles set forth in the Universal Declaration of Human Rights: freedom of expression, freedom of association, freedom of peaceful assembly, the right to participate in public affairs, and non-discrimination. A robust national legal framework, grounded in international human rights law, is necessary to create a safe and enabling

<sup>23</sup> See the Declaration on Human Rights Defenders, available at: <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

<sup>24</sup> In the report of the UN High Commissioner for Human Rights, *Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned* (Apr. 11, 2016), the High Commissioner identifies five essential elements for a strong civil society: “a robust legal framework compliant with international standards that safeguards public freedoms and effective access to justice; a political environment conducive to civil society work; access to information; avenues for participation by civil society in decision-making processes; and long-term support and resources for civil society.”

<sup>25</sup> *Protecting Human Rights Defenders: A Critical Step Towards a More Holistic Implementation of the UNGPs*, Michael Ineichen of ISHR in *Business and Human Rights Journal* (Jan. 8, 2018).

<sup>26</sup> *Report of the UN Special Rapporteur on the situation of human rights defenders* (Jul. 19, 2017).

<sup>27</sup> *Corruption Perceptions Index 2017*, Transparency International (Feb. 2018).

<sup>28</sup> *Economic Outcomes of Civil Liberties*, Siriianne Dahlum, Carl Henrik Knutsen, Staffan Lindberg, V-Dem Institute (May 2018).

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environment within which civil society can exercise these rights, shine a light on human rights violations and defend the rights of victims. These freedoms are central to all civic activity, and they should be enjoyed by everyone, individually or in association with others.<sup>29</sup> Yet they are under pressure by governments around the world, sometimes with the direct or indirect support of companies.

Governments use a variety of repressive techniques aimed at restricting civic space and freedoms<sup>30</sup>, often focusing on CSOs and advocacy NGOs as well as trade unions.

Government actions that either seriously cause or contribute to the restriction of civic space and freedoms include:

- Constraints on the ability of CSOs/NGOs to receive international funding through legislative or administrative efforts to restrict or otherwise complicate registration and compliance requirements;
- Restrictions on NGOs from registering domestically if they receive or do not declare foreign funds;
- Prevention of NGOs from organizing and mobilizing public action through limitations or outright bans on the right to freedom of assembly and association (often citing national security justifications);<sup>31</sup>
- Authorization of the use of force against peaceful demonstrators, sometimes resulting in fatalities and other casualties;
- Coordination of efforts to discredit, tarnish or marginalize CSOs and HRDs as security threats, “foreign agents” or “economic saboteurs” through media misinformation campaigns, hacks and leaks of private information, placement of false evidence in CSO offices, and derogatory public statements by government officials;<sup>32</sup>

- Exclusion of CSOs from the banking system under the guise of counterterrorism measures or other national security-related or *force majeure* justifications through which banks are able to limit CSOs’ access to financing thereby straining organizations’ operations;
- Application of sedition laws to target media and CSOs that publicly report information that is unflattering to the government;
- Deployment of mass surveillance of electronic communications as a tool of intimidation and repression;<sup>33</sup>
- Censorship of the press, online publications, and social media for content critical of authorities and other powerful economic entities.

While governments are the primary drivers of the closing of civil society space, companies have contributed to these pressures through:

- Persuasion of governments to limit the scope of CSO/ NGO advocacy;<sup>34</sup>
- Encouragement or approval of the use of force by security services to break up demonstrations or strikes;
- Fabrication of allegations or exaggeration of criticisms of local communities and/or CSOs/HRDs with which they are in conflict related to a project or other issue;<sup>35</sup>
- Harassment through legal and judicial tools such as strategic litigation against public participation (SLAPP) lawsuits<sup>36</sup>, brought against CSO and HRDs.

Some of the actions or omissions of certain companies and lobby groups have targeted or otherwise undermined CSOs and individual HRDs. These attacks contribute to the aggregate detriment of civil society.

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<sup>29</sup> [Civil Society Space and the United Nations Human Rights System](#), UN OHCHR.

<sup>30</sup> The following list is sourced from Transnational Institute, “[On Shrinking Space, a framing paper](#)”, April 2017 (Issue Brief Shrinking Space).

<sup>31</sup> See Dire situation for journalists and civil society in Turkey, CIMICUS (May 22, 2017).

<sup>32</sup> For example, SocFin in Sierra Leone: [France: Defamation suit against 2 NGOs & 3 media outlets by companies linked to the Bollore group begins](#), compiled by Business & Human Rights Resource Centre (Jan. 2018).

<sup>33</sup> See [Report of Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#) (Apr. 6, 2018).

<sup>34</sup> For example, the mining lobby in Australia has called for a 10% limit on environmental charities’ spending on advocacy. [Mining lobby calls for 10% on environmental charities’ spending on advocacy](#), Michael Slezak, Guardian (Aug. 31, 2017).

<sup>35</sup> Amnesty International reported that Vedanta Resources fabricated charges against local community opponents of the expansion of its smelter plant in the Indian state of Tamil Nadu. (See 5.2 of [Amnesty briefing](#).) See the Extractives sector spotlight for a brief explanation of the issue, culminating in fatal shootings of protestors in May 2018, and the subsequent closing of the smelter by the state government and delisting of the company from the London Stock Exchange.

<sup>36</sup> SLAPPs are generally civil lawsuits filed by a company against an individual or an NGO on a substantive issue of some political interest or social significance. SLAPPs “aim to shut down critical speech by intimidating critics into silence and draining their resources. In the process, these lawsuits distract and deflect discussions on corporate social responsibility, and – by masquerading as ordinary civil lawsuits – convert matters of public interest into technical private law disputes. SLAPPs threaten advocacy activities and therefore undermine the ability of civil society actors to effectively exercise their rights to freedom of expression, of assembly and of association.” [Info Note: SLAPPs and FoAA Rights](#), Annalisa Ciampi, OHCHR

Even where the repression of civil society has not reached the level of “complete subjugation under the law”<sup>37</sup> as in Egypt or Russia, legal, political, and regulatory restrictions on civic freedoms occur in countries with democratic and authoritarian governments alike. These restrictions are mounting in several increasingly “illiberal” democracies including Turkey, Poland and Hungary.

A dramatic example is the shrinking civic space in Hungary. In 2017, the Hungarian Parliament passed a law targeting foreign-funded organizations. This law is widely viewed as a major obstacle to the work of Hungarian CSOs and severely undermines their interactions with civil society around the world.<sup>38</sup> Following the re-election of Victor Orban as Prime Minister in April 2018, his representatives introduced in parliament a “Stop Soros” bill designed to crack down on “liberal nongovernmental organizations, think tanks and other institutions that, in the eyes of the government, have worked against its agenda and on behalf of the migrants Orban seeks to keep out.”<sup>39</sup> Passed shortly thereafter on June 20, the bill imposes a 25% tax on foreign donations to nonprofits that work with migrants and would allow the interior minister to forbid any activity he deems a national security risk.<sup>40</sup> In anticipation, the Soros-founded Open Society Foundations (OSF) office in Budapest announced that it would close and relocate to Berlin. Orban has also threatened the status of the Budapest-based Central European University, co-founded and significantly funded by George Soros.

This situation should challenge business. Hungary succeeded in attracting foreign direct investment from large, multinational corporations, such as VW/Audi (now the country’s second largest employer), Daimler and GE, after joining the European Union (EU) in 2004. As of mid-2018, these companies have not made public statements questioning the recent restrictions being placed on civic freedoms, but several have expressed their concerns privately to the government. It remains to be seen whether the EU will challenge Hungary’s EU status – including its full market access – if this illiberal divergence from EU norms intensifies.

Many of the techniques described above have detrimental implications for CSOs and for civic freedoms more generally.

For example, public and private donors may turn away from funding organizations or initiatives that appear controversial to home country governments, preferring instead to focus their resources on “safe” projects that are less likely to incur negative repercussions or even costly litigation. This kind of reaction may not only marginalize certain CSOs/NGOs, but also degrade the wider civil society space.

### 1.3. ATTACKS ON HUMAN RIGHTS DEFENDERS

The HRDs who work either individually or as members of CSOs require freedom of expression, association and assembly to fulfill their mission to hold public and private power accountable. These defenders risk their families’ livelihoods if not their own lives to campaign for accountable governance, expose corruption, oppose environmental degradation, and advocate for more sustainable and equitable development, all essential underpinnings of profitable and responsible business environments.<sup>41</sup>

The UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998, was the first explicit recognition of a right to advocate for and to defend human rights.<sup>42</sup> Techniques used to repress targeted individuals or groups of HRDs who exercise this right include:

- Criminalization and delegitimization of HRDs through intimidation, violence, judicial intimidation and legal harassment, especially against women HRDs, trade unionists and indigenous rights plus land and environmental defenders.
- Limitations on HRDs’ freedom of expression, including online, through censorship and intimidation or mass surveillance, making activism more difficult and dangerous.
- Imposition of economic and social consequences upon HRDs and their family members in areas such as employment, promotions, educational opportunities, access to housing, bank loans, tax audits, etc.

<sup>37</sup> A prerequisite for the condition of complete “shrinking of civic space” to be satisfied, according to the Transnational Institute. See Transnational Institute, “On Shrinking Space, a framing paper”, April 2017 (Issue Brief Shrinking Space).

<sup>38</sup> Hungary: Rapidly shrinking civic freedoms – what business can do, Business & Human Rights Resource Centre (June 2017).

<sup>39</sup> Viktor Orban, after soaring to reelection win in Hungary, to target George Soros and NGOs, James McAuley, Washington Post (Apr. 9, 2018).

<sup>40</sup> Hungary passes anti-immigrant ‘Stop Soros’ laws, Reuters (June 20, 2018).

<sup>41</sup> Annual Report 2017, International Service for Human Rights (ISHR), p. 18 (May 15, 2017).

<sup>42</sup> Human Rights Defenders and Business: Searching for Common Ground, Institute for Human Rights and Business, Frontline Defenders and Civil Rights Defenders (Dec. 2015).

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Over the last decade, attacks on HRDs resulting in the shrinking of civic space have spread from authoritarian regimes and corrupt governments to semi or full-fledged democracies around the world.

The numbers and trends are alarming:

- Between January 2012 and June 2014, over 50 countries have adopted measures limiting civic freedoms, using means such as laws restricting NGOs' operations and freedom of assembly while increasing police powers.<sup>43</sup>
  - The most recent Global Rights Index of the International Trade Union Confederation (ITUC), reports that of the 142 countries surveyed 87% have violated the right to strike, 81% deny some or all workers collective bargaining, 38% deny or constrain free speech and freedom of assembly, and trade unionists have been murdered in nine countries.<sup>44</sup>
  - The Committee to Protect Journalists (CPJ) report that 262 journalists were imprisoned in 2017 with 29 killed in 2018 and 59 missing globally. The number of journalists imprisoned has surged as the right to free speech (and freedom of the press) is increasingly constrained around the world.<sup>45</sup>
- Since 2015, the Business and Human Rights Resource Centre compiled over 1,250 attacks ranging from death threats, to extra-judicial and physical attacks and killings, on HRDs working on businesses-related human rights abuses. In 2016, there were 290 attacks on HRDs working on business-related human rights abuses, increasing to 388 in 2017 and with 260 recorded in 2018 so far.<sup>46</sup> Attacks on land rights defenders increased significantly in 2017 as compared to 2016. The most affected countries continue to be Colombia, Mexico, Brazil, Honduras, the Philippines, and Guatemala, while attacks in India are on the rise. Mining dominates overall, but agribusiness is the sector with the largest number of killings of HRDs in 2017,
- and the most dangerous sector overall in the first half of 2018. In 2017 lawsuits against defenders nearly doubled as compared to 2016. In the first half of 2018, criminalization (arbitrary detention & lawsuits against HRDs) was the most common type of attack (34%).<sup>47</sup>
- Since 2010, Global Witness has recorded nearly 1000 murders, with many more facing threats and violent intimidation.<sup>48</sup> The year 2017 saw 207 reports of land and environmental defenders murdered (the deadliest year on record).<sup>49</sup> Indigenous people are disproportionately affected by these attacks: they made up 40% of the victims in 2016. Fewer indigenous people were killed in 2017 – falling to 25% of the total, from 40% in 2016. However, with indigenous groups making up just 5% of the world's population, they remain massively overrepresented among HRDs killed. The most affected countries were in Latin and Central America.<sup>50</sup> In 2017, Global Witness also observed a rise in massacres – multiple killings of several land and environmental defenders at the same time – many of whom were disputing large-scale agriculture projects.<sup>51</sup> Over the last two years, almost four land and environmental defenders are killed on average per week – 50 have been killed through June 2018.<sup>52</sup>
- Women HRDs face specific and especially severe challenges. Threats of rape and violence, for example, “historically form part of the repression of women opposing extractive projects, as well as misogynistic insults such as being labelled ‘whores’ or ‘bad mothers’”. Gender discrimination is one of many fault-lines exploited to exacerbate family or community conflicts through divide-and-conquer tactics.<sup>53</sup> Moreover, economic marginalization can prevent women HRDs from seeking help in dangerous situations, making a life-saving phone call or affording transportation when threatened. When a woman HRD is killed or otherwise silenced in patriarchal societies, the tragedy

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43 Figures from the International Center for Not-for-Profit Law. See Institute for Human Rights and Business (IHRB) and Civil Rights Defenders, *Human Rights Defenders and Business: Searching for Common Ground*, Occasional Paper Series, Paper Number 4, December 2015.

44 ITUC Global Rights Index 2018: *Democratic space shrinks and unchecked corporate greed on the rise*, ITUC (June 7, 2018).

45 Committee to Protect Journalists: <https://cpj.org/>.

46 These statistics were collected by Business & Human Rights Resource Centre, available at: <http://www.business-humanrights.org/bizhrds>.

47 Key findings (Feb. 2018) from the Business and Human Rights Resource Centre's Human Rights Defenders' Database (infographic); available at: <https://www.business-humanrights.org/en/key-findings-from-the-database-of-attacks-on-human-rights-defenders-feb-2017>. See also, 'Attacks and killings': human rights activists at growing risks, study claims, Annie Kelly, *Guardian* (Mar. 9, 2018); *Stop the Killings*, Frontline Defenders (June 18, 2018) (citing that of the HRDs killed in 2017, 67% were engaged in defense of land, environmental and indigenous peoples' rights and nearly always in the context of mega projects linked to the extractive industry).

48 Ibid.

49 Ibid.

50 For discussion on the possible reasons for low number of cases from Africa, see section “Why figures on Africa might not add up” in *At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017*, Global Witness (Jul. 2018).

51 Ibid.

52 The *Guardian* newspaper and Global Witness are collaborating to track the deaths of environmental defenders and land right activists.

53 *At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017*, Global Witness (Jul. 2018).

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is compounded by “send[ing] a strong message that women should not be leaders, thus inhibiting others from getting involved”.<sup>54</sup>

Probably no single attack on a HRD – whether connected to a company or otherwise – has attracted more recent attention or outrage than the March 2016 assassination of Berta Cáceres, a Honduran indigenous rights and environmental campaigner and 2015 Goldman Environmental Prize awardee. Cáceres was outspoken in her opposition to the Agua Zarca dam hydropower project. In March 2018, the executive president of the company building the dam was arrested in connection with the murder and charged with being the “intellectual author” of her murder.<sup>55</sup>

It is vital for business to be aware of the widespread attacks HRDs are confronted with around the world, especially given that companies are sometimes complicit actors in these attacks. This complicity is especially prevalent in the extractive and agrobusiness sectors. Increasingly, investors and parent companies are coming under scrutiny for their roles in projects about which HRDs have highlighted human rights issues. For example, the Dutch development bank, FMO, has been sued in the Netherlands by Cáceres’ NGO and family for its involvement in financing the Agua Zarca dam.<sup>56</sup> The lawsuit alleges that the bank failed to observe the human rights of local communities affected by the dam and disregarded warnings of human rights violations in the area.

#### 1.4. A LEGACY OF MISTRUST TO OVERCOME

Overcoming legacies of adversarial mistrust between companies and civil society – especially HRDs and local communities where they have been in conflict – must be undertaken without illusions. At stake are human rights – and human lives – from a painful past to a poignant present

of violence and death. Yet a possible future of collaborative defense of the shared civil society space based on mutual interest remains an opportunity.

HRDs often target companies for their business practices or connections with governments states or state-owned enterprises that have violated human rights. These companies have sometimes willingly or unwittingly undermined civil society and undercut HRDs, either by staying silent in the face of evidence, or indirectly benefiting from repressive actions taken by governments to silence protest or activism.<sup>57</sup> The often-public uproar caused by egregious cases of abuse by governments can damage the reputation of companies, particularly those operating in sectors that require direct interaction with local communities such as extractives or agriculture.

Such corporate conduct has contributed to strained relations between companies and CSOs/HRDs and has sowed seeds of mistrust. No matter how far individual companies might steer from these negative practices, the actions or inactions of peer companies has damaged the reputations of entire industries and in turn exacerbated tensions and conflicts that may not serve the interests of either business or civil society.

Moreover, tensions between civil society and corporations affect businesses irrespective of their direct role in human rights abuses or attacks on civil society. Such tensions are amplified by the perception – and often the reality<sup>58</sup> – that multinational corporations whose market capitalization may be greater than the GDP of the countries in which they operate exercise undue influence on governments to the detriment of civil society.

But these legacies of mistrust can be overcome if not undone, even as memories persist of prior company attitudes and actions especially in complicity with past colonial, corporatist, or dictatorial regimes. Common ground can be found in the shared space between corporations and CSOs/HRDs if there is a willingness to engage in dialogue and to build relationships, probably more realistically and effectively if based on the premise of mutual

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<sup>54</sup> Ibid.

<sup>55</sup> [Berta Cáceres murder: ex-Honduran military intelligence officer arrested](#), Nina Lakhani, Guardian (Mar. 2, 2018).

<sup>56</sup> [Bank faces lawsuit over Honduras dam project as spirit of Berta Cáceres lives on](#), Liz Ford and Sam Jones, Guardian (May 18, 2018).

<sup>57</sup> In some cases, corporate actors have directly supported government repression, for example by providing governments with the technological tools to enable censorship and surveillance and in turn that were then to violate freedoms of expression and assembly. In Colombia, the beverage industry is alleged to have employed intimidation tactics to silence consumer advocates defending recent efforts to regulate the industry through imposing sugary drinks taxes on local and international vendors in the country. [She Took on Colombia's Soda Industry. Then She was Silenced](#). Andrew Jacobs & Matt Richtel, New York Times (Nov. 13, 2017). Large multinationals have been hiring corporate intelligence firms to monitor political groups or individual protesters who opposed or challenged their business practices. [Surveillance firms spied on campaign groups for big companies, leak shows](#), Rob Evans & Meirion Jones, Guardian (Dec. 12, 2017).

<sup>58</sup> [The Future Role of Civil Society](#), World Economic Forum (Jan. 2013).

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interest rather than mutual trust. "There is a need to build a shared understanding between the two sides: a need for ongoing processes that create social capital, develop relationships and build trust between business and civil society." Companies can start by exercising their leverage in favor of CSOs and HRDs when their rights are threatened and defending them against government crackdowns and repression.



**We need [businesses] to act because their voice is more powerful than ours and they have access to decision-makers we don't.**

Erinch Sahan, Chief Executive, World Fair Trade Federation

Overcoming these legacies of mistrust is difficult for any one company alone unless it has been dominant in a certain geography or sector (as is often the case in the extractives and agriculture sectors where a single company may dominate a community or region). In situations where many companies – whether within or across sectors – operate there are opportunities for collective initiatives aimed at responsible business and positive engagement in support of the shared civil society space.

A step forward for strengthening the shared civic space is the emergence of organizations and initiatives focused on business and human rights with companies that seek to engage in responsible business practices. As more multinational corporations seek to diminish their negative human rights impacts and to make positive contributions, they will be held to increasingly higher standards of conduct by the stakeholders they rely on for continuing commercial political support in their home and host countries alike.

Yahoo! (now part of Verizon as Oath) exemplifies how a company can work to overcome a legacy of mistrust to ultimately strengthen the shared online platforms and services upon which both companies and civil society depend in countries where it continues to operate. In 2005, Chinese journalist Shi Tao was sentenced to ten years in prison for publishing a report in a US-based Chinese language publication about the Chinese government's continued efforts to suppress information about the 1989 killings in Tiananmen Square. The Chinese government accused Shi of revealing state secrets, and the government's evidence came from information Yahoo! shared from Shi's Yahoo! email account. The company faced intense scrutiny from international human rights NGOs and was subsequently sued in US court by Shi's family, alleging that the company was complicit in his arrest and torture. The company eventually settled the lawsuit out of court, and it committed to starting a fund to

provide aid to protect dissidents who express their views online. Yahoo! started its Business and Human Rights Program in 2008 – the first in the technology industry – to strengthen the company's commitment to freedom of expression and privacy.<sup>59</sup> The company became the first in the industry to use human rights impact assessments (HRIAs) to identify circumstances where freedom of expression or privacy may be in jeopardy or where they may be advanced.<sup>60</sup> Yahoo! also worked closely beginning in 2006 with human rights NGOs, responsible investors, academic experts and other companies (Google and Microsoft) to advance the same objectives as a co-founder the Global Network Initiative (GNI).<sup>61</sup> While these steps came too late to help Shi Tao and the activists using its web services in China, the company's efforts to support human rights and civil society activists in many other countries have made a positive difference.

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<sup>59</sup> Yahoo has been renamed Oath and is now a subsidiary of Verizon.

<sup>60</sup> Letter from Yahoo Business & Human Rights Program to Professor David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Nov. 1, 2016).

<sup>61</sup> See Digital Technology Spotlight for further information on GNI.





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# SUPPORTING CIVIC FREEDOMS AND HUMAN RIGHTS DEFENDERS: THE NORMATIVE FRAMEWORK, BUSINESS CASE AND MORAL CHOICE

The call for companies to support civic freedoms and human rights defenders (HRDs) is grounded in three distinct yet complementary contexts: the normative framework; the business case; and a moral choice. This call is gaining urgency as pressures on civic freedoms and attacks on human rights defenders (HRDs) have intensified over the last several years.



**The normative framework** centers on the second pillar of the UN Guiding Principles on Business and Human Rights (UNGPs) clarifying the corporate responsibility to respect human rights. The responsibility to respect sets the clear expectation that companies should avoid causing or contributing to adverse human rights impacts connected to their business operations or relationships: exercise due diligence to identify, prevent, mitigate and account for how they address such adverse impacts; and provide for or cooperate with remediation when necessary. When a company has not caused or contributed to an adverse impact but is involved because the impact is directly linked to its operations, products, or services by its business relationships, it should seek to gain and exercise leverage to address the impact. The UNGPs are the cornerstone of the normative framework for companies to act, clarifying the implications of the global standard of expected conduct that all companies respect human rights wherever they operate. The responsibility to respect is incorporated in other frameworks, such as the OECD Guidelines for Multinational Enterprises and the UN Sustainable Development Goals. The normative foundation to act to safeguard human rights defenders is also bolstered by UN Declaration on Human Rights Defenders.

**The business case** should be subordinated to the determination of whether there is a normative responsibility to act based on the UNGPs. But if there is not such a clear responsibility, there is a compelling business case for companies to support civic freedoms and HRDs based on the premise that companies and civil society alike depend on the shared space of accountable governance; and that HRDs play critical roles in protecting and expanding civic freedoms which benefit both companies and individuals. Companies need transparency,

accountability, and predictability to enable sustainable and profitable growth and to encourage entrepreneurship and innovation. For these foundational elements of the shared space to survive and thrive, companies should support and defend civic freedoms and human rights. Moreover, such support can help companies to manage operational and reputational risk; to build competitive advantage with increasingly conscious consumers, investors and employees; to overcome legacies of mistrust; and to secure the social license to operate both locally and globally. The business case also considers the risks of inaction in contrast to the risks of action in preserving this shared space.

**The moral choice** challenges companies to act in accordance with the two corollary principles of “do no harm” anywhere and “do good” when possible. These moral considerations are rooted in centuries of religious theology and moral philosophy which inform both commonplace ethics and contemporary jurisprudence.

**The balance of this section elaborates the normative framework – along with the business case and moral choice – to inform whether companies should act in certain circumstances.**

## 2.1. THE NORMATIVE FRAMEWORK

The normative framework supporting action on behalf of civic freedoms and HRDs is centered on the UNGPs as the core standard clarifying the corporate responsibility to respect human rights. The UNGPs were the outcome of the six-year mandate of the UN Special Representative of the Secretary General for Business and Human Rights, Professor John Ruggie. This framework also includes the

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OECD Guidelines on Multinational Enterprises; the UN Sustainable Development Goals; and the UN Declaration on HRDs.

Moreover, in the years before and after the UNGPs were unanimously endorsed by the UN Human Rights Council (HRC) in June 2011, many issue and sector-specific standards also emerged that are broadly consistent with the UNGPs. The Voluntary Principles on Security and Human Rights and the GNI Principles on freedom of expression and privacy are among those with normative as well as operational relevance to company support for civil society and HRDs.<sup>62</sup> While these standards and norms collectively form a comprehensive architecture with the UNGPs as their centerpiece, debate continues over a proposed treaty to regulate obligations of multinational corporations under international human rights law.

### **The UN Guiding Principles on Business and Human Rights**

Under the UNGPs – based on States’ existing international human rights law obligations - governments have the primary duty to *protect* human rights while companies have a separate and independent responsibility to *respect* human rights.

The corporate responsibility to respect human rights does not supersede the state’s duty to protect human rights. Guiding Principle 1 provides that states “must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.” Guiding Principle 7 outlines how states should help ensure that businesses operating in conflict-affected areas are not involved in gross human rights abuses.

The importance of the government duty to protect human rights cannot be overstated in the context of the pressures and threats facing civic freedoms and HRDs. Governments must be the primary guarantors of civic freedoms and protectors of HRDs. But governments are also usually those who initiate pressures on civic freedoms and perpetrate attacks on HRDs, even as companies may be sometimes complicit or even directly responsible. Therefore, although this discussion of the normative framework explains how the responsibility to respect human rights encourages companies to support and promote human rights, the government duty to protect human rights must be emphasized. Indeed, many

of the actions that companies can take focus necessarily on governments, as set forth in the next section of this guidance and in the spotlight examples with which it concludes.

The corporate responsibility to *respect* human rights posits a parallel set of obligations that complement the state duty to *protect* human rights. The UNGPs clarify that the corporate responsibility to respect human rights must not supplement – or supplant – the state duty to protect human rights. Both the duty and the responsibility are necessary; neither alone is sufficient. Indeed, the privatization of the duty to protect human rights would have damaging consequences for the rule of law in the jurisdictions that need it most. Yet the degradation of civic freedoms in many countries – increasingly even in democracies – gives urgent impetus for the corporate responsibility to *respect* human rights as an essential complement to the state duty to *protect* human rights.

The responsibility of companies to respect human rights refers to internationally recognized human rights, “understood, at a minimum, as those expressed in the International Bill of Human Rights”<sup>63</sup> and “the principles [...] of the International Labour Organization (ILO)’s Declaration of Fundamental Principles and Rights at Work.”<sup>64</sup> The corporate responsibility to respect human rights is set forth broadly in Guiding Principle 11. This responsibility means “that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”

### **The UNGPs require company action to respect human rights and encourage support of civic freedoms and HRDs in three specific contexts:**

1. Guiding Principle 13 defines the most fundamental, critical elements of a company’s responsibility to respect human rights:

- “...avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;” and
- “...seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

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<sup>62</sup> For more information on the Voluntary Principles, please see the Extractives (Oil/Gas and Mining) Spotlight; for more information on the GNI, see the Digital Technology Spotlight.

<sup>63</sup> The International Bill of Human Rights consists of the Universal Declaration of Human Rights and its main codification instruments: (i) the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, and the ILO’s eight core conventions.

<sup>64</sup> UNGP 12.

This principle establishes the scope of corporate responsibility to respect human rights. A company may cause, contribute to, or be linked to an adverse human rights impact. The commentary to the UNGPs notes that business activities “are understood to include both actions and omissions.” The commentary clarifies that a company may be linked to an adverse impact through “relationships with business partners, entities in its value chain, and another non-State or State entity” directly linked to its operations, products or services. This linkage of a company’s business relationships to a state is an essential basis for company support for civic freedoms and HRDs.

Following are examples of cause, contribute and direct linkage, each developed (with subsequent steps taken by companies) in the Digital Technology, Apparel and Footwear and Agriculture/Food/Beverage spotlights found later in this guidance.

**Cause:** Yahoo handing over email communications by journalist Shi Tao to Chinese authorities leading to his arrest and imprisonment

**Contribute:** Global apparel brands sourcing from Bangladeshi garment manufacturers which resisted union representation and adequate safety measures, resulting in the Rana Plaza factory collapse and over 1,100 worker deaths.

**Direct Linkage:** Cargill sourcing palm oil from Guatemalan company Repsa, alleged to have been linked to the assassination of a local indigenous community leader protesting its operations.

- Guiding Principle 18 states that to “gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they might be involved either through their own activities or as a result of their business relationships.” This assessment should draw on “human rights expertise” and “meaningful consultation with potentially affected groups and other stakeholders”. The commentary to UNGP 18 urges companies to consult with HRDs as an independent expert resource.<sup>65</sup>

The UN Working Group on Business and Human Rights has endorsed the critical role of human rights defenders as part of the business and human rights ecosystem in its 2017 report to the UN General Assembly. Moreover, John

Ruggie has emphasized the value that HRDs add to civil society at large, as actors seeking to defend the rights of all citizens and groups, including business.

- The corporate responsibility to respect human rights extends to remedying the harm, the third pillar of the UNGPs. When a business has identified adverse human rights impacts it has caused or contributed to, Guiding Principle 22 states that the business should provide or cooperate in their remediation.<sup>66</sup> This remediation should be pursued through legitimate processes, which may involve judicial mechanisms. Or, they may involve operational level grievance mechanisms or other non-state-based grievance mechanisms that can be established by the business itself or with stakeholders, industry associations, or a multi-stakeholder group. In cases of more serious human rights abuse, companies should be prepared to cooperate with judicial mechanisms to provide effective remedy. In addition, the commentary to Guiding Principle 26 on effective state-based judicial mechanisms, clarifies that states should ensure that “the legitimate and peaceful activities of HRDs are not obstructed.” HRDs, of course, play a critical role in enabling access to remedy for victims, whether through judicial mechanisms or campaigns to promote accountability, as made clear by the UN Working Group report to the UN General Assembly in 2017.<sup>67</sup>

**These elements of the UNGPs clearly connect the corporate responsibility to respect human rights (and to provide remedy of harms) to support for HRDs. They apply to situations in which a company’s activities or relationships may cause or contribute to the harm to HRDs – or are linked to an adverse impact affecting defenders (as per Guiding Principle 13 above). However, a company may choose not to limit its chosen course of action to these precisely defined contexts in its efforts to respect human rights and defend and promote civic freedoms.**

<sup>65</sup> This commentary states 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.” UNWGW, referencing the UNGPs.

<sup>66</sup> UNGP 22 reads: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.”

<sup>67</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the UN General Assembly 72nd Session A/72/162.



**There is nothing in the concept of respect that wouldn't accommodate protecting individuals as a sign of respecting human rights, and indeed promote is part of respect.**

John Ruggie, Former UN Special Representative, Business and Human Rights

**There is an emerging view in the business and human rights community that the responsibility to respect human rights can extend beyond cases where companies may “cause, contribute” or are “linked to” a human rights harm in Guiding Principle 13 per above.**

Moreover, a growing number of companies are taking certain actions that demonstrate that they interpret their responsibility to respect human rights in ways that can be seen as promoting and even in some circumstances protecting human rights – especially in recent responses to threats to civic freedoms and HRDs, in accordance with the commentary to Guiding Principle 11 which states that “business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of human rights.”

For example, the luxury jeweler Tiffany & Co. worked with other companies such as Leber Jeweler to intervene on behalf of the Angolan investigative journalist, Rafael Marques, after he was arrested for reporting on widespread human right abuses in the Angolan diamond industry.<sup>68</sup> In this case, Tiffany did not have a direct linkage to Angola because it did not source from that country. Nonetheless, it acted based on its interest in safeguarding the integrity of the global diamond supply chain and by extension its brand reputation.

**Therefore, while there is a clear *normative responsibility* for companies to respect human rights as set forth in the UNGPs, companies have a *discretionary opportunity* to go above and beyond these defined responsibilities and expectations. “The UNGPs are a hard floor – but not a low ceiling – for company action to support civic freedoms and HRDs.”**

## Additional Normative Standards

Beyond the UNGPs, several other normative standards encourage – explicitly or implicitly – company action in support of the civic freedoms and HRDs:

### 1. The **UN Declaration on Human Rights**

**Defenders** recognizes 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>69</sup> Michel Forst, UN Special Rapporteur on the situation of HRDs, reminded the international community in his 2017 report, focused on HRDs working on businesses-related human rights abuses,<sup>70</sup> of the crucial role HRDs play as watchdogs, advocates and facilitators in the face of acute risks. This report makes positive and constructive recommendations for company conduct to recognize the critical importance of HRDs, the pressures and attacks they face, and the interests at stake that companies should see in supporting them. “The Special Rapporteur considers that the responsibility of companies to respect human rights not only entails a negative duty to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for HRDs in the countries in which they are operating. Discharging this responsibility requires consultation with defenders to understand the issues at stake and the shortcomings that impede their work.”<sup>71</sup>

2 Since 2011, the corporate responsibility to respect human rights enshrined in the UNGPs has become the basis for other international organizations, governments, and companies in elaborating standards of conduct and guidance for companies relevant to protecting HRDs and the closing of civic space. The UNGPs have been incorporated in the 2011 revision of the **OECD Guidelines for Multinational Enterprises**<sup>72</sup> and in the revisions to the **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy**.<sup>73</sup> Importantly, the 2018 OECD Due Diligence Guidance for Responsible Business Conduct makes specific reference to reprisal against civil society organizations and human rights defenders who document, speak out about, or otherwise raise potential and

<sup>68</sup> Tiffany & Co backs investigative reporter in Angola blood diamonds case, Jessica Elgot, Guardian (June 2, 2015).

<sup>69</sup> Full text available at: <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>70</sup> Report of the UN Special Rapporteur on the situation of human rights defenders (Jul. 19, 2017).

<sup>71</sup> Ibid.

<sup>72</sup> See the 2011 Update of the OECD Guidelines for Multinational Enterprises.

<sup>73</sup> See the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) - 5th Edition (2017).

actual human rights impacts associated with company operations. It also mentions HRDs and CSOs defenders as relevant stakeholders for engagement.<sup>74</sup>

3. The **UN Sustainable Development Goals (SDGs)** set forth 17 global social and economic development objectives and have attracted significant commitment and action on the part of both states and major companies around the world since their launch in 2015. The 2030 Sustainable Development Agenda is a “plan of action for people, planet, and prosperity.” It also recognizes that “peaceful, just and inclusive societies which are free from fear and violence” are essential for sustainable development.<sup>75</sup> SDG 16 is “dedicated to the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.”<sup>76</sup> **Protection of civic freedoms and HRDs are critical elements for meeting SDG 16.**<sup>77</sup>

The international normative framework – with the UNGPs as its centerpiece – is complemented by recent national and international guidelines, policies, and standards:

- In December 2016, Canada published guidelines setting out the range of actions its government and diplomats can take to support HRDs at risk. These guidelines allow embassies to deny trade support to companies associated with threats against HRDs – an important step given the abuses frequently reported by activists opposing Canadian mining interests. However, there is no evidence yet of their implementation.<sup>78</sup>
- In March 2018, after six years of negotiations, 24 countries from the Americas strengthened the hand of defenders by agreeing on the text of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, known as LAC PI0.296 This could be the region's first legally

binding agreement on environmental rights. It requires governments to guarantee that their citizens can meaningfully participate in the environmental decisions that affect them. It contains commitments to protect defenders, as well as to improve access to information and to justice on environmental issues. States can sign and ratify the agreement from September 2018. For the agreement to enter into force, 11 states need to ratify it.

The normative framework is also reflected in national policy frameworks on business and human rights: more than 15 countries have adopted National Action Plans on business and human rights building on the UNGPs.<sup>79</sup> Several of these plans include specific mentions of HRDs and whistle-blowers.<sup>80</sup> Governments have also enacted mandatory due diligence requirements focused on human rights issues ranging from conflict minerals (on the part of the US and the EU) and modern slavery (California, the UK and recently Australia). France passed the most comprehensive such requirements through the Duty of Vigilance Law in February 2017.<sup>81</sup> While these requirements do not focus explicitly on civic freedoms and HRDs *per se*, the due diligence that they require may encourage companies to focus on these issues and risks related to their broader efforts.

Companies should follow first and foremost this overall normative framework (anchored in the UNGPs), reinforced by these and other regional and national standards. They should also be informed by recent examples of company actions that reflect evolving expectations that the corporate responsibility to respect human rights can extend to promoting and even protecting human rights in certain circumstances.

These expectations are reflected in the Corporate Human Rights Benchmark (CHRB) which ranks companies on their respect for human rights in accordance with the UNGPs<sup>82</sup> and other related standards. One of its indicators (A.I.6) evaluates companies on whether they “publicly commit to not tolerating threats, intimidation, physical or legal attacks against HRDs, including those exercising their rights to

<sup>74</sup> The [OECD Due Diligence Guidance for Responsible Business Conduct](#) (May 30, 2018) specifically addresses the role of HRDs in this process.

<sup>75</sup> [Transforming our world: the 2030 Agenda for Sustainable Development](#), United Nations - Department of Economic and Social Affairs.

<sup>76</sup> SDG 16, Peace Justice and Strong Institutions, available at: <http://www.un.org/sustainabledevelopment/peace-justice/>

<sup>77</sup> SDG Target 16.10 is to ensure “public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.” Indicator 16.10.1 is the number of “verified cases killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.”

<sup>78</sup> [At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017](#), Global Witness (Jul. 2018).

<sup>79</sup> The National Action Plans for the United Kingdom and Italy specifically mention HRDs. For more information see [Assessments of National Action Plans \(NAPs\) on Business and Human Rights, August 2017 Update](#), ICAR, ECCJ, DeJusticia (Aug. 2017).

<sup>80</sup> National Action Plans that mention human rights defenders & whistle-blowers are: Belgium, Chile, Colombia, Czech Republic, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Spain, Sweden, Switzerland, United Kingdom and United States; details available at: <https://globalnaps.org/issue/human-rights-defenders-whistle-blowers/>.

<sup>81</sup> Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, 2017.

<sup>82</sup> [Corporate Human Rights Benchmark](#) examines a company's commitment to respect the rights of HRDs as part of its benchmarking company governance and policy commitments.

freedom of expression, association, peaceful assembly and protest against the business or its operations.”<sup>83</sup> The focus on this issue by the most comprehensive global human rights benchmark of corporate policies and practices has already encouraged adidas<sup>84</sup> to clarify its position on defenders and will likely encourage other leading companies to make such commitments.

## 2.2. THE BUSINESS CASE

### ELEMENTS OF THE BUSINESS CASE



**The business case for supporting action to protect civic freedoms and HRDs is salient – indeed essential – for companies to consider in instances when there is no clear normative responsibility to act but there is instead a discretionary opportunity.**

While of obvious importance to companies, the business case should be subordinated to their normative responsibility – consistent with the cause, contribute and direct linkage factors set forth by the UNGPs – to engage and act in circumstances in which one or more of these factors are apparent. The UNGPs make it clear that companies should avoid causing or contributing to adverse human rights impacts and address those impacts when they occur – including those related to civic freedoms

and in turn HRDs at risk. While it may be unrealistic to discourage companies from considering the business case even in these circumstances, they should give decisive priority to this normative responsibility if a reasonable analysis (along the lines proposed in the decision criteria section of this guidance) make clear that one or more of those factors are apparent. Yet the business case should be the essential factor for company consideration – along with a moral choice and the determination of leverage – in other circumstances when those cause, contribute and direct linkage factors are less apparent or not present.



***The business case is clear: companies depend on a strong civil society, rule of law and respect for human rights.***

Brent Wilton, Director, Workplace Rights,  
The Coca-Cola Company

This business case posits that companies are acting in their “enlightened self-interest”<sup>85</sup> if they choose to use their influence and varying degrees of leverage with host country governments to respond to attacks on civic freedoms, HRDs and CSOs. The business case to act is supported by the normative framework – especially by the UNGPs set forth above – and by the moral choice that companies are challenged to make in certain circumstances.

Four main complementary and mutually-reinforcing elements of the business case for engagement and action reflect such enlightened self-interest: securing the shared space; managing operational and reputational risk; building competitive advantage; and overcoming legacies of mistrust and in turn gaining the social license to operate.



***The business case is compelling and should be relatively easy for companies to accept.***

Libby Annat, Controller of Ethical Trade &  
Sustainability, Primark

<sup>83</sup> Corporate Human Rights Benchmark Methodology 2018 for the Agricultural Products, Apparel and Extractives Industries.

<sup>84</sup> See interview with William Anderson, Vice President for Social & Environmental Affairs at adidas: <https://www.business-humanrights.org/en/in-depth-with-william-anderson-of-adidas>

<sup>85</sup> The concept of “enlightened self-interest” is set out in the foreword to Sir Mark Moody Stuart, Responsible Leadership, written by Sir Robert Wilson, Executive Chairman of Rio Tinto, plc. (p. 11).

<sup>86</sup> Annual Report 2017, International Service for Human Rights (ISHR), p. 19 (May 15, 2017).

### 2.2.1. SECURING THE SHARED SPACE

A successful and stable business environment depends on respect for civic freedoms and rule of law. **“Open, enabling operating environments” where the rights to freedom of expression, association, assembly, access to information, public participation, non-discrimination and the rule of law are respected and protected are essential for “innovation, productivity, and development to thrive.”**<sup>86</sup>

Such “open, enabling operating environments” provide companies with the legal and institutional frameworks and protections necessary to start new ventures and projects; to engage new suppliers and partners; and to maintain confidence in the predictability and stability of a country’s long-term commercial environment. These frameworks and protections are also essential to reducing investment risk,<sup>87</sup> including the risk of divestment, as determined by institutional asset owners, managers and sovereign wealth funds, as well as by small and medium sized enterprises and multinational corporations themselves.

### 2.2.2. MANAGING OPERATIONAL AND REPUTATIONAL RISK

**HRDs, trade unionists and CSOs play a monitoring and reporting role that alerts companies to risks which have the potential to strain relations with local communities, workers and stakeholders at the national and international levels; to disrupt business operations and relationships; to damage brand reputations; and to risk negative media scrutiny, consumer boycotts and divestment campaigns.**

But these risks can also be offset by the opportunities that close relationships with civil society – especially with HRDs, trade unionists and CSOs– can confer on companies willing to build and maintain direct relationships with these civil society actors. As Adam Kanzer at Domini Impact Investments put it: “They are our eyes and ears on the ground, helping us understand the investment environment.”

The continuity of shared space requires protection of those who defend the civic freedoms upon which it relies: NGOs and other CSOs, HRDs, and the land, environmental and indigenous rights defenders, trade unionists, journalists and anti-corruption advocates who interact and overlap. Their reports, investigations, initiatives, and campaigns may

target companies for violating national or international laws or standards. At the same time, they provide crucial information that companies can use to evaluate risk related to existing operations and to undertake due diligence related to new investment and project opportunities. As core beneficiaries of a transparent and accountable civil society space in the countries and regions where they operate, businesses have a clear incentive to protect those key sources of information. Companies are recognizing that “the reality is, HRDs are our stakeholders”, as Jan Klawitter of AngloAmerican PLC put it, and that “engaging with HRDs makes us a better company”, according to Genevieve Taft of The Coca-Cola Company.

CSOs and HRDs are vital to a company’s ability to carry out accurate and effective human rights impact assessments (HRIAs) focused on issues and trends that might affect their overall business environment, workplaces or local communities near where they operate or source. The research and information gathered by these organizations and individuals provide vital intelligence that can serve as an early warning mechanism for issues that could, if left unchecked, lead to situations where the company becomes involved in human rights abuse. In that context, the corporate responsibility to respect applies and action is required. Failure to take such risks into account may also jeopardize a company’s operations, reputation or legal standing within a country or industry. Thus, without awareness of these risks, businesses could be faced with costly operational disruptions and equally costly reputational damage.<sup>88</sup>

A survey conducted of 50 cases of conflict between companies and local communities found that strikes or other operational delays due to community protests can cause companies with large mining projects (capital expenditure between US\$3-5 billion) to suffer losses of US\$20 million per week.<sup>89</sup>

Failure of companies to appreciate the work of CSOs/HRDs, especially in consumer-facing industries or those with high fixed costs of investment and dependence on operational licenses (as in the extractive sector), is short-sighted for those seeking sustainable environments for their current and future operations.<sup>90</sup> Research from specialized

<sup>87</sup> [Human rights investment: The value of considering human rights in ESG due diligence](#), April 2017, by the Australian Human Rights Commission and EY.

<sup>88</sup> For example, work stoppages or other operational delays due to community protests can lead a major mining project with capital expenditure of about US\$3-5 billion to lose US\$20 million weekly, according to a survey of 50 cases of company-community conflict. Davis & Franks (2014), p. 19, cited in *The Business Case for Civil Society*, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

<sup>89</sup> Davis & Franks (2014), p. 19, cited in *The Business Case for Civil Society*, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

<sup>90</sup> For further information about the applicability of these standards in the extractives industry, see *Extractives (Oil/Gas and Mining) Spotlight*.



firms shows that ESG incidents correlate with market price declines. Conversely, companies that maintain productive stakeholder relations based on trust and engagement tend to see their share price increase: investors have valued mining companies with a strong record of stakeholder engagement 46-86% higher than those with average or weak relationships.<sup>91</sup> Countries with stronger protections of civic freedoms have greater economic growth than those without.<sup>92</sup>

This view is especially compelling since “failures to prevent and respond to the human rights impacts of their work have thrust many global businesses into an unwanted spotlight. [...] Reputational damage and operational risks for a company are expensive. Since HRDs use vigorous public advocacy, companies sometimes make the mistake of seeing them as a driver of cost.”<sup>93</sup> Businesses should instead recognize their value as those who dedicate themselves – and sometimes give their lives – to maintain and exercise the rights and freedoms defining the shared civil society space.



**External monitoring is basic – we and the auditors are not there all the time – but CSOs are; they might have more information and they see the deterioration or progress as it happens. It is good to start thinking of them as partners.**

Lea Rankinen, Senior Vice President, Sustainability and Corporate Responsibility, S Group

Finally, CSOs and HRDs – including trade unions – are essential to the development and implementation of effective and appropriate grievance mechanisms for remedy as called for by the UNGPs.<sup>94</sup> Leading companies see the business case for respecting and protecting labor rights in the workplace: “Good labor and industrial relations is the best warning system and grievance mechanism... this is where it starts”, according to Nestlé’s Christian Frutiger. Working with civil society actors to ensure effective remedy is an investment by companies in positive workplaces and community relations, and in turn helps them to manage or mitigate legal, operational and reputational risk.

### 2.2.3. BUILDING COMPETITIVE ADVANTAGE

Supporting civic freedoms can give businesses reputational and competitive advantages. These advantages may pertain especially to two categories of companies: first, those whose social license to operate is most closely connected to local communities with which they intersect; and second, those who look to growing their numbers of socially-conscious consumers, employees and responsible investors.

The willingness of companies to act in defense of HRDs/CSOs protects the civil society space on which these businesses depend for stability in their operations and a sustainable return on investment. **Companies who show “leadership, leverage and solidarity” in supporting civic freedoms and HRDs as part of their core business, rather than as part of corporate philanthropy or public relations initiatives, will benefit from “long term dividends” both in financial and reputational gains.**<sup>95</sup>

Moreover, companies that support and defend the civil society space – including CSOs and HRDs – are effectively investing in critical legal and commercial frameworks and protections. By building alliances or partnerships with key stakeholders, they are investing in the sometimes intangible but essential social license to operate at the local, national and international levels.

Socially conscious consumers, employees and responsible investors exert growing influence in the business world. They have gained particular traction in recent years as younger generations factor these considerations into their consumption and investment choices: a 2017 study of consumers hailing from “Generation Z” found that 70 percent of Americans believe companies have a duty to address issues that “may not be relevant to everyday business operations.”<sup>96</sup> Furthermore, millennials are overwhelmingly more likely to accept a job with a company if they consider that company to be a good corporate citizen.<sup>97</sup> In fact, employees are increasingly putting pressure on their employers to refrain from actions viewed as conflicting with responsible corporate behavior.<sup>98</sup>

91 Henisz, Dorobantu & Nartey (2013), cited in The Business Case for Civil Society, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

92 Koob et al (2017) and Dahlum et al (2018), cited in The Business Case for Civil Society, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

93 Business can and should ally with those defending human rights, Sarah Brooks of ISHR in Open Global Rights (Feb. 1, 2017).

94 Defenders & businesses: from adversity to cooperation in providing remedy for victims, Ana Zbona of Business and Human Rights Resource Centre (Nov. 2017).

95 Business can and should ally with those defending human rights, Sarah Brooks of ISHR in Open Global Rights (Feb. 1, 2017).

96 2017 Cone Communications CSR Study, p. 9, cited in The Business Case for Civil Society, Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018)

97 It’s not just millennials who are demanding corporate social responsibility from employers, Tiffany Apczynski, Reflektive (Dec. 5, 2017).

98 Salesforce workers demand company stop working for US border agency: report, Ethan Baron, Bay Area News Group (June 25, 2018).

Another study determined that millennials are twice as likely than older generations to invest in ESG-compliant companies<sup>99</sup> and divest from those who fall short of these standards.<sup>100</sup>



**Employees are often the single most overlooked stakeholder for companies when it comes to human rights especially in the tech industry.**

Michael Samway, Former VP & Deputy General Counsel, Yahoo!

Following protests highlighting the violation of indigenous community rights, banks and investors withdrew over US\$500 million tied to the Dakota Access Pipeline project, a nominal amount but potential harbinger of much more significant divestments.<sup>101</sup>

#### 2.2.4. OVERCOMING MISTRUST; GAINING THE SOCIAL LICENSE TO OPERATE

Supporting civic freedoms and HRDs can help to overcome legacies of mistrust existing between local communities and companies. Such support can in turn build trust with local communities upon whom companies' operations and futures depend.

This social license to operate emerges locally but has global implications, especially for multi-jurisdictional projects.



**It is important for companies “to recognize and address the asymmetry of power” in their engagement with local communities and CSOs.**

Jeff Conant, Director, International Forests Program, Friends of the Earth

Companies must “secure a reputational ‘social license’ to operate, alongside their legal license of incorporation, if they are to be commercially successful and sustainable.”<sup>102</sup>

These relationships are only credible and sustainable to the extent that they are developed based on mutual benefit – in the interests of business and civil society partners alike. There can be no formal *quid pro quo*, especially against the backdrop of mistrust in certain countries and communities; but strong relationships based on good faith can give companies the benefit of the doubt when incidents and misunderstandings occur – or when problems arise between the company and a host government. The degree of trust that can create “benefit of the doubt” at times of trouble or crisis is the essence of a company’s “social license to operate.”

Campaigning NGOs and investigative journalists – together with social media – have made social license to operate a volatile factor that can make – or break – company brands and reputations with sensitive stakeholders in a matter of seconds and clicks across national borders and time zones.

The social license to operate is critical to a company’s stability and profitability, both at the project level with local communities and at the national and global levels with diverse stakeholders. The social license to operate seems intangible, but when lost it can have material consequences damaging to company operations, reputations and relationships.

There are heightened commercial and reputational risks associated with certain industries, particularly extractives. As a company’s human rights due diligence should be commensurate with the risks of involvement in adverse impacts, companies operating in these industries should exercise sufficient diligence regarding their risk profile. They should have an especially strong interest in building relations with local communities, and in supporting the work of land and environmental defenders, to maintain their social license to operate. In contexts where indigenous peoples are affected, the due diligence process (including the stakeholder engagement process) needs to be tailored to the particular rights, situation and vulnerability of indigenous peoples. A company’s social license to operate, especially in this sector, primarily depends on the acceptance of the local communities of the company’s activities.<sup>103</sup> This factor is critically important where corporate investment requires long-term, significant fixed costs.

<sup>99</sup> ESG-compliant companies are those considering environmental, social and governance issues in their business operations. For more detail, see [Millennials and why your organizations should care about ESG](#), Elena Philipova, Thomson Reuters (Feb. 8, 2018).

<sup>100</sup> [Putting the “S” in ESG: Measuring Human Rights Performance for Investors](#), O’Connor & Labowitz, NYU Stern Center for Business and Human Rights (2017), cited in [The Business Case for Civil Society](#), Edwin Rekosh & Lamin Khadar, Rights CoLab and DLA Piper (forthcoming 2018).

<sup>101</sup> This pipeline project travels through North and South Dakota and Iowa, provoking protests from Native American tribes on the basis that the pipeline would run through sacred ground and have an adverse environmental impact on their communities.

<sup>102</sup> [Finance struggles to find a social conscience](#), David Kinley of Sydney University in Open Democracy (Apr. 15, 2018).

<sup>103</sup> [The Social License to Operate: Ambiguities and the neutralization of harm in Mongolia](#), Marieke Evelien Meesters and Jelle Hendrik Behagel, Resources Policy (Vol. 53, Sep. 2017). This paper notes: “The concept of SLO is closely related to the requirement of Free, Prior, and Informed Consent (FPIC), which is established in international law and integrated in the 2007 UN Declaration on the Rights of Indigenous Peoples. Even so, the SLO differs on some key points with FPIC: 1) the SLO usually involves an ongoing process not just prior to but also during mining operations and 2) the SLO is considered a responsibility of companies, while the FPIC is considered more a responsibility of states.”

## FREE, PRIOR AND INFORMED CONSENT (FPIC)

Free, prior and informed consent (FPIC) has become a pre-requisite for seeking loans from large multilaterals such as the World Bank Group<sup>104</sup> before investing in a new extractive project.<sup>105</sup> Indeed, the process of gaining FPIC depends on the ability of CSOs, HRDs, and affected local communities' to exercise their fundamental civic freedoms – freedom of expression, assembly and association – and therefore also requires the protection of their individual and collective security.<sup>106</sup> It is important to note that while FPIC is a term of art that applies to indigenous communities mostly in the extractive industries, the concept behind the FPIC standard has broader relevance for industries across the board. Indeed, the underlying principle enshrined in the FPIC standard is the requirement for businesses to consult with communities and – at a minimum – to reach a consensus (if unanimous consent is reasonably infeasible) with them on the nature and scope of the company's conduct and operations.<sup>107</sup>

Early and meaningful engagement with potentially affected stakeholders is a key aspect of proper human rights due diligence. The business value of FPIC is also demonstrable. There are many cases where major oil and mining companies have – through their failure to fully engage with these stakeholders and to protect their interests – lost the “social license” that cost them both their actual commercial operations and future political standing to operate in the region (in addition to exposing them to significant and unnecessary legal liabilities).<sup>108</sup> The social license to operate, while hard to define and measure, should be a crucial consideration for companies both at the due diligence stage of the business development process and through the lifecycle of their operations.

On a global level, a company's the social license to operate depends on international NGOs, media organizations, socially responsible investors and other international organizations. Engaging – by listening and building trust – is equally essential with local and global stakeholders. This engagement is important for understanding the role of the various stakeholders. The global dimension of the social license to operate further solidifies the company's legitimacy and social acceptance of its business operations.

## 2.3. A MORAL CHOICE

It may be necessary for companies to make a moral choice – as well as to consider the business case – as they decide whether to act on issues and in situations where they have a discretionary opportunity rather than a normative responsibility.

**The moral choice for corporate action to support civic freedoms and HRDs is based on two corollary principles: the first posits a negative duty to “do no harm” anywhere; the second, the “good Samaritan” principle, creates a positive duty to do good when possible.**<sup>109</sup>

**As many CSOs understand: “We’re...not expecting companies to become human rights organizations.”**

Ed O'Donovan, Head of Protection,  
Front Line Defenders

<sup>104</sup> See the [World Bank's Environmental and Social Framework](#), particularly ESS7, which applies to projects involving “indigenous peoples/sub-Saharan African historically underserved traditional local Communities”.

<sup>105</sup> The standard is also a core component of the main multi-stakeholder initiatives that regulate the extractives industry. For more information on FPIC, see the [Extractives \(Oil/Gas and Mining\) Spotlight](#).

<sup>106</sup> For more information on security issues, civic freedoms and HRDs, please see the section on the [Voluntary Principles on Security and Human Rights and International Code of Conduct Association in the Extractives \(Oil/Gas and Mining\) Spotlight](#).

<sup>107</sup> For an example of company interactions with indigenous communities, see the [Guatemala Spotlight](#).

<sup>108</sup> Key examples include the infamous case of Shell, which has lost its license to operate in Ogoniland (in the Niger Delta) since the mid-1990s due to its failure to adequately handle relations with Ken Saro-Wiwa and the Ogoni 9. Other examples include the experience of the Newmont Mining Conga operation in Peru (shut since 2011/12 due to unrest with local indigenous community and fatal incident with security forces).

<sup>109</sup> The UN Special Rapporteur on the situation of human rights defenders wrote in his [2017 report](#): “The Special Rapporteur considers that the responsibility of businesses to respect human rights not only entails a negative duty to refrain from violating the rights of others, but also a positive obligation to support a safe and enabling environment for human rights defenders in the countries in which they are operating. Discharging this duty requires consultation with defenders to understand the issues at stake and the shortcomings that impede their work.”

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The “do no harm” principle implies a moral obligation to avoid perpetrating damaging actions or supporting those by others, including legal, legislative or regulatory efforts by governments that undermine civic freedoms and HRDs. The “good Samaritan” principle goes further, recognizing a duty to protect the civil society space – including specific civic freedoms and certain HRDs – against attacks. These corollary principles challenge companies to make moral choices at both the organizational and individual levels: individuals cannot act unilaterally within companies except in rare circumstances; but they can contribute to the development of ethical and accountable corporate cultures. The scope and relevance of both principles to corporate actors is discussed in further detail below.

### 2.3.1. THE “DO NO HARM” PRINCIPLE

The “do no harm” principle reflects commonplace, common-sense ethics grounded in longstanding philosophical and theological traditions; it is reinforced by jurisprudence in which omission or inaction may be equated with complicity.<sup>110</sup> Therefore, consistent with their normative responsibility to respect human rights established by the UNGPs, companies are expected to make certain moral choices to “do no harm.” Such expectations include ensuring that their business operations and public policy positions do not contribute to the erosion of the civic freedoms on which their shared space with civil society depends – or to the endangerment of individual HRDs, CSOs or local communities.

An example from Pakistan helps illuminate a situation in which companies (supported by multi-stakeholder initiatives) made decisions with a long-term, “do no harm” perspective.<sup>111</sup> In February 2012, following the release of a request for proposals by the Pakistani government to procure an internet blocking and filtering system, Pakistani civil society organizations Bolo Bhi and Bytes for All urged companies to refrain from bidding on the contract. Following a public statement from the Global Network Initiative (GNI) discouraging companies from responding to the RFP, Websense published a statement on the company blog, “Say No to Government Censorship of the Internet in Pakistan” in which it committed not to respond to the RFP and urged other companies to do the same (Websense joined GNI in December 2011). The GNI and Websense statements provided public pressure that supported the work by Bolo Bhi and the Business & Human Rights Resource Centre to secure public commitments from four additional companies not to bid on the contract.<sup>112</sup>

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<sup>110</sup> The legitimate scope of the “do no harm” principle is an issue raised consistently in both moral and legal philosophy traditions. Its applications in jurisprudence diverge between common and civil law: civil law treats the principle as a positive duty to act; the common law tradition views it as a defense against liability, if the action took place in good faith. The moral and political philosopher John Stuart Mill defends the wide scope he accords to the principle, arguing that “the failure to confer benefits constitutes harm”. See Stanford Encyclopedia of Philosophy, “Mill’s Moral and Political Philosophy”, First published Tuesday October 9, 2007; substantive revision Friday Aug 22, 2014 for details.

<sup>111</sup> For more detail on this case, see [Beyond Integrity: Exploring the role of business in preserving civil society space](#), Charities Aid Foundation (Sep. 2016), page 22 and the Digital Technology Spotlight.

<sup>112</sup> For more information on the GNI, see the Digital Technology Spotlight.

### 2.3.2. THE “GOOD SAMARITAN” PRINCIPLE

The corollary of the “do no harm” anywhere principle is “do good when possible” derived from the age-old “Good Samaritan” principle. The classic example of the “Good Samaritan” principle in jurisprudence is the duty of a passerby to save a drowning child if they have the physical ability to do so without risking their own life. The Good Samaritan principle is not categorical: companies will only be held accountable if acting would not expose them to unreasonable risk. Such a situation would arise when companies use leverage or deploy resources to assist HRDs or CSOs in the face of attack or hardship in instances where acting imposes little or no serious risk to their own personnel. However, if the adverse human rights impact in question is linked to the company through its business relationships, it has a responsibility to respect human rights under the UNGPs, and to seek to prevent or mitigate the impact.

One example of a company response to threats to civic freedoms consistent with this principle is the Mexican airline Volaris. In the wake of the Trump Administration’s policy of separating families crossing at the US southern border, Volaris announced that it would offer free seats on its planes to reunite children with their families in Mexico and Central America.<sup>113</sup> The Trump Administration’s zero tolerance policy on illegal border crossing resulted in thousands of children being separated from their parents. Volaris’ action is an example of a company doing good when possible because it is offering to help those whose civic freedoms have been affected in ways that do not pose unreasonable risk to the company. Similarly, CEOs of numerous US companies from different sectors including Johnson & Johnson, Chobani, Cisco, Uber, and Google criticized the policy and called for the immediate end of family separations.<sup>114</sup>

### 2.3.3. FROM INDIVIDUAL TO CORPORATE RESPONSIBILITY

The actions by Websense and Volaris resulted from clear decisions by company officials to act even without commercial benefit. They also reflect the determination by the leadership that any potential short-term risks of public action could be mitigated and would likely eliminate longer-term, and potentially more severe, reputational risks – and in the case of Volaris if not Websense that there could be clear reputational benefit. These examples illustrate that individuals can take the initiative to make a moral choice that can lead to company action in conjunction with other considerations, ranging from the corporate responsibility to respect human rights to a practical business case.

Decisions to act in these ways reflect the “humanity of the people”, involved in the decision-making process, as Dan Bross, former Senior Director of Corporate Citizenship at Microsoft put it. Such actions may establish and strengthen internal employee alignment with the company, as after all, as Lea Rankinen, Senior Vice President of Sustainability and Corporate Responsibility at S Group noted, “people feel good in the company when it does good things.” These actions may also serve to further the company’s external reputation, thus demonstrating alignment between the business case and a moral choice.

<sup>113</sup> Mexican airline Volaris offers free flights for separated children, Reuters (June 22, 2018). Volaris’ actions are distinct from the response of the US airlines who stated that they did not want to have any part in transporting these separated children to detention facilities in other parts of the US. These US airlines, in this case, are acting on an existing business relationship and seeking to “do no harm” rather than “do good when possible.”

<sup>114</sup> CEOs are calling the separation of children and families at the border ‘inhumane’ and ‘tragic’, Jena McGregor, Washington Post (Jun. 20, 2018). See also, USA: CEOs speak out against Trump Administration policy of separating migrant & asylum seeking families, compiled by Business & Human Rights Resource Centre (June 2018).



# 3

## WHETHER AND HOW TO ENGAGE: DILEMMAS AND DECISIONS, ACTIONS AND RISKS

When companies face issues and situations where civic freedoms or human rights defenders (HRDs) are threatened, they have either a normative responsibility or a discretionary opportunity to act in certain circumstances. The framework set forth below is intended to help guide companies in deciding whether to act; determining how to act and the forms that action can take; and assessing the relative risks of action and inaction as they make a final decision.

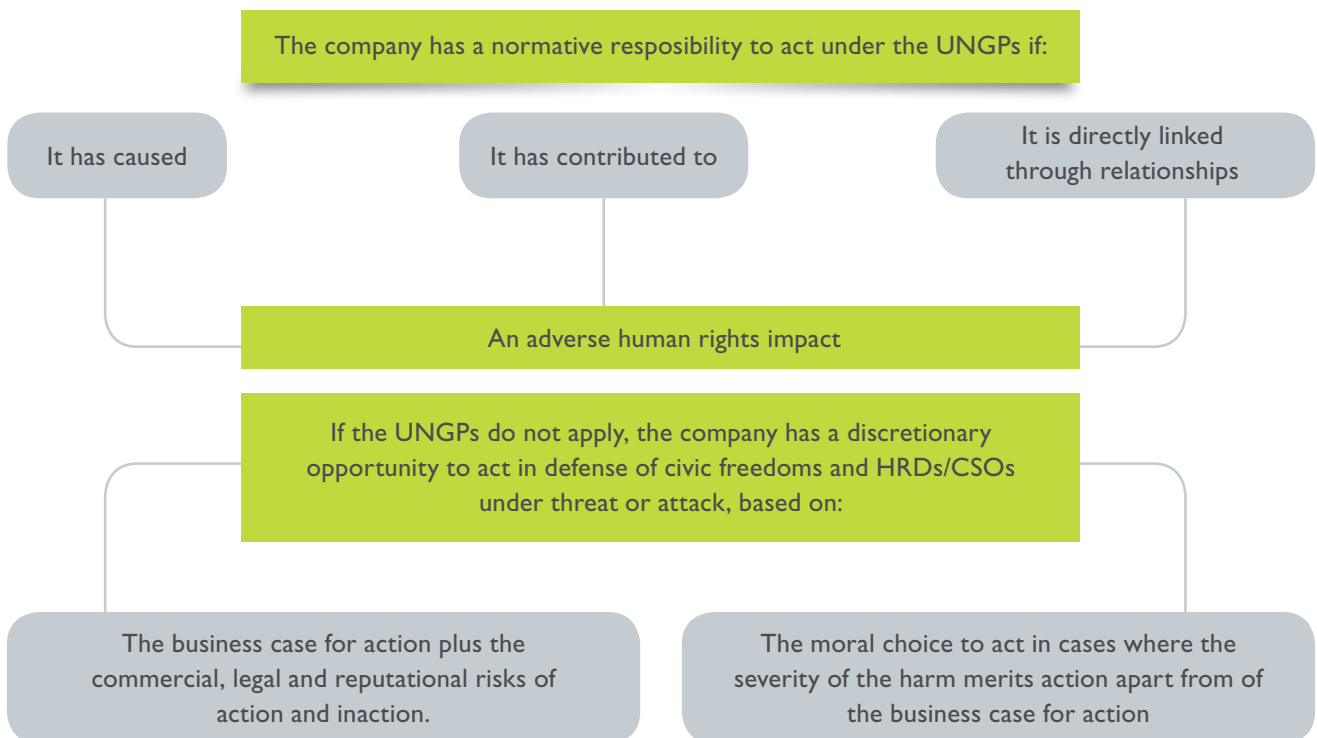


**This decision framework is both analytical and operational: analytical to assess the critical factors useful to make such determinations; operational to evaluate the spectrum of actions that companies can take in various circumstances.**

**This framework is not designed necessarily to result in an affirmative determination to act in any or all circumstances; indeed, it identifies a range of risks related to company action as well as to inaction. But it supports the conclusion that in many circumstances, companies can and should act to protect civil society space and/or to defend HRDs or organizations against government attacks and repression.**

There are two rationales leading to company action on behalf of civic freedoms and HRDs:<sup>115</sup>

- A *normative responsibility* to act consistently with the UNGPs if the company has caused or contributed to an adverse impact through its own activities, or the impact is directly linked to its operations, products or services by its business relationships;
- A *discretionary opportunity* to act, even if one of these factors pertaining to the UNGPs do not apply, by drawing on the business case, weighing the costs of action versus inaction, and making a moral choice.



<sup>115</sup> Framework based on the "corporate responsibility to respect human rights" enshrined in the UNGPs, with a particular focus on UNGPs 13, 18 and 19.

**The four steps outlined – and then elaborated – below set forth a logical progression of factors that companies can evaluate in making the determination whether to engage:**

1. Establish the reality and severity of the harm threatened to the civic freedom or human rights defender, including the veracity of the allegations and the credibility of their source.
2. Establish the degree of company involvement – cause, contribution or other direct linkage to the threat or the harm (consistent with Guiding Principle 13).
3. Identify the form(s) of company action, taking into account its leverage, that maximize the potential positive impact on civic freedoms and/or HRD.
4. Identify the relative risks of action and inaction to the civil society/rights holders and to the company relative to the issue or situation.
  - The first three steps pertain to actions compelled by the normative responsibility of companies in certain circumstances.
  - The first, third and fourth steps pertain to actions encouraged by the discretionary opportunity of companies in certain circumstances.

**3.1. STEP 1: ESTABLISH THE REALITY AND SEVERITY OF THE HARM TO A CIVIC FREEDOM/HRD, INCLUDING THE VERACITY OF THE ALLEGATIONS AND CREDIBILITY OF THE SOURCE**

As companies determine whether to act – as a normative responsibility or a discretionary opportunity – they should first focus on the facts of the issue or situation. They will often be aware of an issue or situation through the media and/or be approached by a CSO/NGO, HRD or trade union to address it. Most important and urgent is an assessment of the reality and severity of the risk, threat or allegation. The UNGPs set forth a due diligence framework that should inform company assessments of these factors.

The UNGPs emphasize the corporate responsibility to conduct human rights due diligence to determine actual and potential human rights impacts a business may cause, contribute to, or be directly linked to through its activities, operations, products, services, or by its commercial relationships. Guiding Principles 17-22 emphasize the key elements of responsible human rights due diligence:

- 1. Prioritize human rights due diligence:** “Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements...”<sup>116</sup>
- 2. Conduct meaningful stakeholder engagement:** Conducting Human Rights Impact Assessments (HRIA), the first step in the due diligence exercise, should “involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”<sup>117</sup> This step should include identifying and engaging with HRDS, CSOs and/or trade unionists where useful.
- 3. Conduct regular HRIAs:** “Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals” through the business cycle.<sup>118</sup>
- 4. Prevent or mitigate potential impacts; remedy actual impacts:** “Potential impacts should be addressed through prevention or mitigation, while actual impacts (those that have already occurred) should be a subject for remediation (Guiding Principle 22).”<sup>119</sup>

The OECD Due Diligence Guidance for Responsible Business Conduct (released in June 2018) should also inform the process<sup>120</sup>. This guidance is especially useful not only because it is consistent with the UNGPs and elaborates the characteristics and implications of due diligence, but also because it was developed through multi-stakeholder consultations and applies to companies in most industries

Companies should appreciate the flexibility as well as the utility of HRIAs as an essential due diligence tool. Community-based HRIAs should be considered an important way of engaging the communities and identifying risks, including those to HRDs and community leaders.<sup>121</sup>

<sup>116</sup> Commentary to UNGP 17.

<sup>117</sup> UNGP 18(b).

<sup>118</sup> Commentary to UNGP 18.

<sup>119</sup> Commentary to UNGP 17.

<sup>120</sup> See the [OECD Due Diligence Guidance for Responsible Business Conduct](#).

<sup>121</sup> See [Community-Based Human Rights Impact Assessment Initiative](#), Oxfam America; [Community Action Platform](#), Business & Human Rights Resource Centre.



In countries with repressive governments – and/or in situations where lives are at imminent risk – it is critical for companies to draw from a recent HRIA or to focus a new one on the immediate issue or situation. Less important, however, is whether a formal HRIA is conducted or another analytical format is adapted; more important is to establish the facts carefully yet quickly in consultation with those CSOs/NGOs, HRDs and/or trade unionists with which they have established relationships.

Companies with established relationships with local and national stakeholders – including CSOs and HRDs – are best placed to undertake such due diligence and to determine whether to act in crisis situations when quick decisions must be made. It is important for companies not only to maintain such relationships, but also to have staff with sufficient expertise and sensitivity to understand the issues at stake. Companies for which the issue or situation connects to their “in country” operations or sourcing partners may want to consult with their home country embassies as well; embassies often have political, human rights and/or labor officers who maintain close relationships with local civil society<sup>122</sup> as well as with host country governments. They may also want to consult other companies operating in the same sector in the same country, especially those with which they may be aligned in a multi-stakeholder initiative.<sup>123</sup>

While undertaking these due diligence steps, it is reasonable for companies to assess not only the veracity of threats or allegations to which they may want to respond, but also the credibility of those bringing such threats or allegations to their attention. The motivations of such actors vary with human nature. Some with personal or political agendas claim to speak for other individuals or communities without full local legitimacy.

But when companies assess such issues and sources, they should be aware of negative narratives<sup>124</sup> that may be promoted by governments and the media – and possibly their local business counterparts – to undermine the reputation and legitimacy of CSOs and NGOs with which they come into conflict. Companies should be guided by at least two rules in this regard: first, to consult local stakeholders with which they have constructive relationships and to establish such relationships where they are lacking; second, to give the benefit of the doubt to the rights-holder considering the challenges and threat they face. Companies should recognize the constraints,

obstacles and limitations in producing data and reports on attacks on HRDs and civic freedoms, and not rely on CSOs/HRDs exclusively for sensitive information. Companies should also encourage governments to end impunity by undertaking necessary investigations into attacks on HRDs.

### 3.2. STEP 2: ESTABLISH THE DEGREE OF COMPANY INVOLVEMENT – CAUSE, CONTRIBUTE OR OTHER DIRECT LINKAGE TO THE THREAT OR THE HARM

The first concern for a company when faced with an attack on civic freedoms or HRDs is establishing a normative basis for a response. Under international human rights law, as reaffirmed by the UNGPs, the primary duty to protect human rights lies with states. Yet as outlined in Section 2.1 on the normative framework, companies have the scope to act when governments fail to uphold their duty to the protect the rights of their citizens or commits human rights violations directly. Moreover, if the companies’ own actions or omissions cause or contribute to the harm or impact, or if they are directly linked via business relationships, the UNGPs establish that they have a responsibility to act.

**Therefore, if a company has caused or contributed to an adverse human rights impact, it has a responsibility to act in this straightforward situation. More complex are situations in which the company is directly linked to an adverse human rights impact on a defender or to civic freedoms through its operations, products, services by business relationships – even in which the company itself has not contributed to and cannot be held responsible for the adverse impact or its remediation. Nonetheless, if it is possible to identify a direct linkage between a company’s operations, products or services and a human rights violation or harm, then that company has a responsibility to seek to prevent or mitigate this harm to the greatest extent possible.**

<sup>122</sup> For example, according to the [EU Guidelines on HRDs](#), the establishment of dedicated liaison officers in the field to act as a first point of contact for local HRDs is one of the steps to be taken by EU delegations to support HRDs; see [EU support for human rights defenders around the world](#) (Dec 2017).

<sup>123</sup> For example, the Voluntary Principles on Security and Human Rights or the Extractive Industries Transparency Initiative in those sectors, the Ethical Trading Initiative or the Fair Labor Association in the apparel or agriculture sectors, or the Global Network Initiative in the internet/telco sectors.

<sup>124</sup> Narratives that are meant to paint civil society and defenders in a negative light includes referring to civil society as: terrorists, against economic and social development, illegitimate (not representing interests or views of victims), supporters of political opposition, anti-national progress, not conforming to traditional gender roles, working for foreign governments, etc.

Yet while this responsibility is clear according to the UNGPs, less clear is the definition of direct linkage in different contexts that companies should be prepared to assess. A range of situations and factors can cause companies to be directly linked to alleged harm: companies' operations; the products or services they produce in certain markets; the legal and commercial relationships they have created with local supply chain partners (as for textiles and manufacturing); or geographic proximity between a company's operations and affected indigenous communities (as for oil, mining and agriculture). This chart summarizes key sources of linkage:

**Sources of direct linkage between a company and an alleged harm:**

- **Company operations, products and services (for example, when a defender is attacked peacefully protesting a company operation)**
- **Company or subsidiary employees whose rights or lives are threatened (for example, when trade unionists are striking or facing attack)**
- **Supply chain relationships beyond first tier through the value chain (for example, a company that a brand is sourcing from sues a defender for defamation per an investigative report focused on them in a country where defamation is criminalized)**
- **Legal and commercial relationships with governments (for example, when a company is in a procurement relationship with a government suppressing civic freedoms)**
- **Operational and investment relationships (for example, when a company is financially invested in a project opposed by community leaders insisting that consultation was insufficient and are attacked as a result)**
- **Geographic proximity to local or indigenous communities (for example, when an indigenous leader or entire community is threatened due to opposition to a project)**

Companies should identify priority issues and threats in the context of such linkages as they decide whether to act. This identification should be informed by Guiding Principle 24 which states that when it is necessary to “prioritize

actions to address actual and potential adverse human rights impacts,” the company should “first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.” Companies should also consider what action may be required to protect their employees and immediate stakeholders; local communities in proximity to their operations; their suppliers and workers.

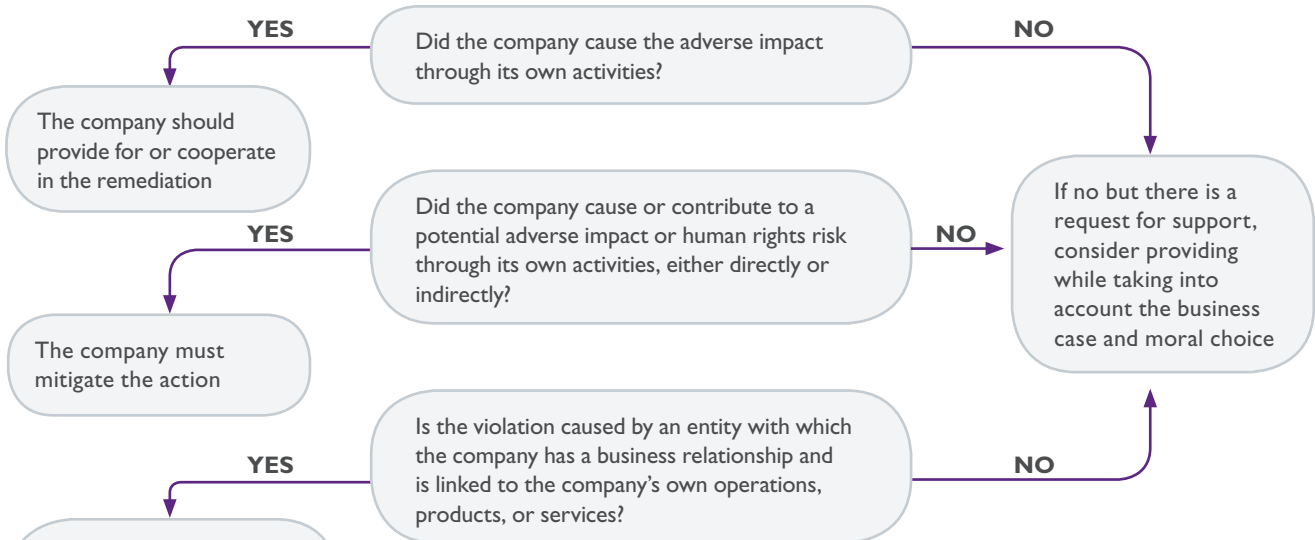
An example of direct linkage between companies and human rights harms may occur when the human rights of local staff of a multinational corporation's operations or subsidiaries are violated. Such instances include when staff belonging to a trade union, targeted ethnic or religious group, or to peaceful political parties, are subject to discriminatory laws or persecution. Other instances include when the rights of female and/or LGBTI employees, among them those that are active in defense of human rights of their communities, are violated by state or non-state entities or actors within their community. In such cases, even if not causing or contributing to the abuse conducted by others, companies have a clear responsibility to defend their employees in one of the clearest applications of the principle that “a company should act if an issue or situation is directly linked to its operations.”<sup>125</sup>

It is especially important for decision-makers to overcome a rational disinclination to support HRDs who are critical of the company and the natural inclination to take criticism personally. Indeed, however counter-intuitive in some circumstances, companies should be able to draw a distinction between support for the substance of their critics' positions and support for their human rights, including civic freedoms, “even if those rights are exercised in ways that directly or indirectly oppose company interests or objectives”, according to Edward Bickham, former EVP of External Affairs at Anglo-American.

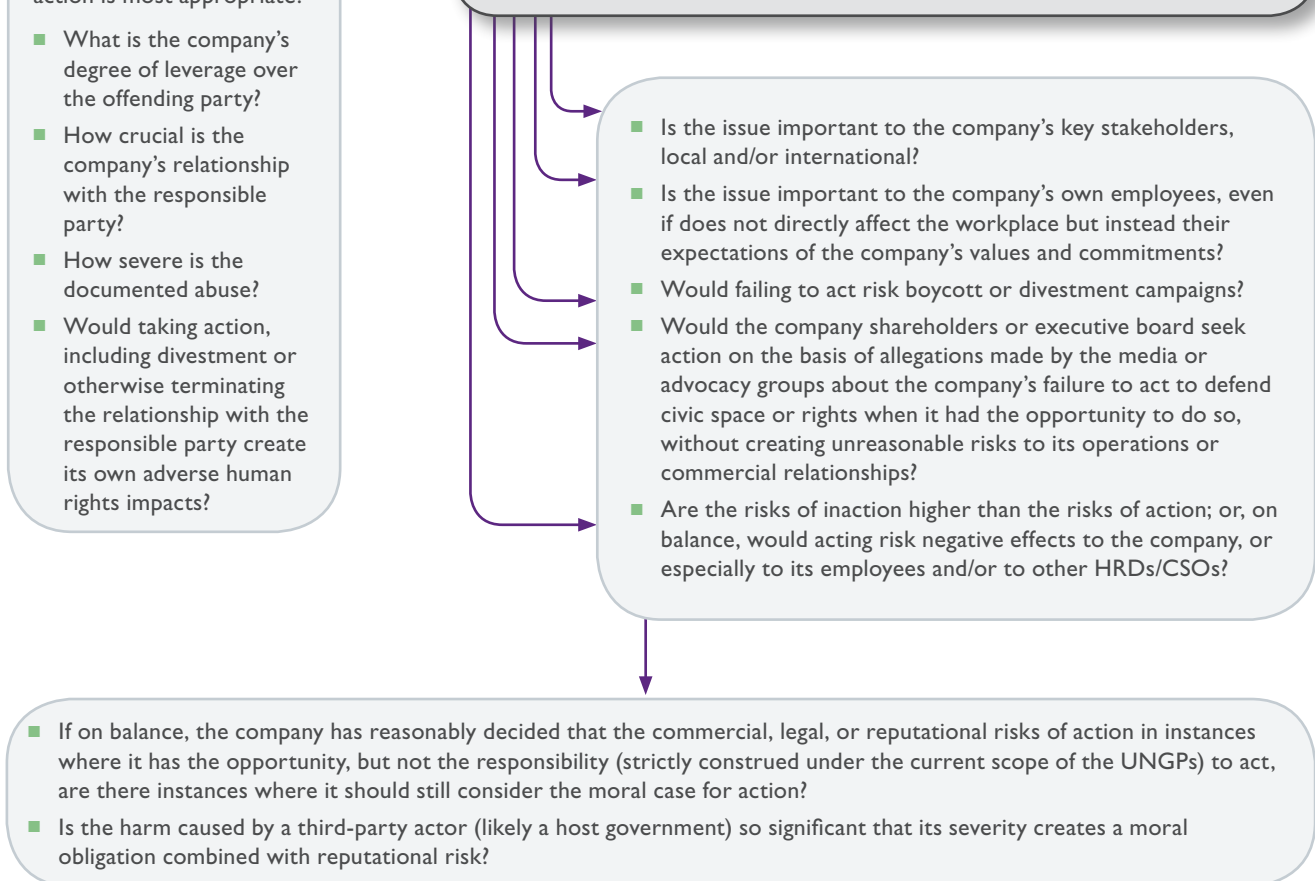
**While assessing the relationship between a company's operations and/or business relationships and an alleged violation of civic freedoms or attack on HRDs/CSOs, these material factors and questions merit consideration in determining the scope of responsibility and in turn the necessity to respond:**

<sup>125</sup> UNGP 17.

**How is the adverse human rights impact tied to the company?**



**If the company does not have a responsibility to act under UNGPs, does it have a commercial incentive or moral choice to act?**



If after conducting a comprehensive human rights impact assessment based on consultation and engagement with local civil society, a company does not reasonably determine that it has caused or contributed to the harm evidenced or is directly linked to it by its operations or relationships, it does not have a *normative responsibility* to act under the UNGPs. Nonetheless, a company has a *discretionary opportunity* to act in some way to mitigate the impact of the harm to CSOs or individual HRDs caused by state policies. Such a willingness to act may be especially the case for visible brand-name, consumer-facing companies, whose responses (or lack thereof) to state actions that are perceived as violating or threatening human rights are noticed by both private citizens and advocacy organizations. Research suggests that public statements by companies opposing specific government policies can in some countries and situations boost popularity and market share<sup>126</sup>, although in some others can expose companies and employees to nationalist threats or even attacks.

One such example can be found in the diverging responses between Lyft and Uber during the protests by New York City taxi drivers that took place against the Trump Administration's initial ban on travelers from specified Muslim-majority countries when it took office in January 2017. After Uber cancelled "surge pricing" around JFK International Airport – thereby lowering prices – in what appeared to be an effort to take commercial advantage of a strike by mostly immigrant taxi drivers showing their opposition to the ban, many customers took to social media to say they would switch to Lyft; shortly thereafter Lyft pledged \$1 million to the American Civil Liberties Union to demonstrate its opposition to the ban. This example involves clear linkage between the companies and the ban which was widely seen to discriminate against Muslims, given the large number of immigrant drivers with whom they contract. The close ties between daily operations and the potential harm to drivers gave impetus to Lyft to take this action, which in turn differentiated and enhanced its brand in some segments of the market.

Where there is no direct linkage to trigger the corporate responsibility to seek to prevent or to mitigate the impact of harms caused by government action under the UNGPs, some companies have made a moral choice to exercise their commercial or reputational leverage to act. A company's determination whether to act may be informed by a quick analysis of the relative consequences of both action and inaction (addressed in the next section of this guidance). Companies are often better placed to act in cases where the harm was caused in a sector to which they have operational or commercial ties.

Even if the company reasonably determines that, on balance, the risks of action outweigh its commercial or reputational benefits, as well as the risks of inaction, it may still be reasonable for the company to act if the severity of the harm compels it to make a moral choice to act. This moral choice to act can arise in response to situations where not acting in the face of egregious human rights violations can signal acquiescence, or even tacit support for such violations.

As explored in the Myanmar spotlight in this guidance, such considerations appeared to obtain for companies that spoke out in 2017-18 in response to ethnic persecution and cleansing of the Rohingya Muslim minority and the resulting humanitarian crisis. Several major companies – some with and others without apparent ties to the still dominant military – made moral choices to make public statements given the stark severity of the situation.

### 3.3. STEP 3: IDENTIFY THE FORM(S) OF ACTION THAT MAXIMIZE THE POSITIVE POTENTIAL IMPACT ON CIVIC FREEDOMS/HRDS

As outlined in Guiding Principle 19, if a company has caused or may cause or contribute to a negative human rights impact, it should take necessary steps to stop or

126 More details in CEO activism research: [The New CEO Activism: What leaders must know](#), Mike Toffel and Aaron Chatterji, Harvard Business Review (Apr. 2018).

prevent the impact.<sup>127</sup> Furthermore, if a company is directly linked to a negative human rights impact, the company should use its leverage to mitigate the negative impact as much as possible. In other words, “[i]f the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it.”<sup>128</sup>

A company’s leverage is an intangible but powerful asset determined by a variety of factors:

- the size and weight of its economic and commercial presence – operations and/or sourcing relationships (including employment and tax contributions) in a host country;
- the level of access and degree of potential influence with the host country government;
- the support of its home country government and in turn that government’s access to and influence with the host country government; and
- the quality of relationships with local and global stakeholders, including those who affect the social license to operate.



**Companies with relatively strong leverage are “uniquely positioned to act.”**

Bill Anderson, VP for Social & Environmental Affairs, adidas

Such companies with relatively strong leverage are “uniquely positioned to act” having determined that the potential risks associated with action are mitigated, and the potential benefits are magnified. Conversely, a company’s lack of leverage may reasonably tip the balance against action – even when it is willing to act – due to a perception that its action will make little if any difference yet expose the company to potential risk.

When company decision-makers conclude that there is a normative responsibility to seek to prevent or mitigate the impacts of an attack against civic freedoms or HRDs (due to direct linkage to the harm caused by a third party) or that there is a discretionary opportunity to act, the next step is to choose an appropriate course of action. When deciding how to act, companies need to coordinate between the corporate headquarters and field/in country management.

This section outlines a range of common actions and tactics that companies have used to engage and influence government encroachments on the civil society space.

The options for action should be viewed as a spectrum that considers not only the sources and degrees of potential leverage (identified above) but also two other essential sets of factors:

1. The credibility and utility of a certain form of company action and in turn its potential to make a positive difference on an issue or situation related to a civic freedom under pressure or a CSO/HRD or local community under threat.
  - The essential point is that there is no “one size fits all” form of action but that companies should approach the determination of how to act, depending on the specific context and circumstances of the issue or situation they intend to address. They should be guided by a pragmatic flexibility to use a form of action – or forms of action concurrently or consecutively – informed by consultations with local stakeholders and civil society stakeholders.
2. The relative risks of action versus inaction, both to the rights-holder and other affected stakeholders (including employees and local communities) and to the company making the determination as to how to engage.
  - The essential point is that companies should evaluate both the risks of action and inaction as they consider whether to engage in situations where they have a discretionary opportunity rather than a normative responsibility. In such situations, the risks of inaction may be more difficult to mitigate and manage over the long-term than the risks of action.

### 3.3.1. WHAT TO DO: THE FLEXIBLE FORMS OF ACTION

The spectrum of actions that companies can take – whether in situations of normative responsibility or discretionary opportunity – take a variety of flexible forms that can be undertaken consecutively or concurrently in different combinations as an issue or situation evolves.

<sup>127</sup> Commentary, UNGP I9.

<sup>128</sup> Commentary, UNGP I9. See also: OHCHR – *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, Q11.

### 3.3.1.1. APPROACHING GOVERNMENTS

Governments first and foremost reflect their domestic politics: if foreign companies appear to use economic leverage in a heavy-handed manner in response to government policy, nationalistic backlash could displace sympathetic officials and undermine the objective being advocated. Many companies have strong experience in discrete diplomacy and subtle advocacy for their own commercial interest which can also be deployed to protect civic freedoms and HRDs.



**Companies can be flexible and pragmatic as to tactics as long as they are committed to act.**

Arvind Ganesan, Director, Business and Human Rights Division, Human Rights Watch

As some governments are imposing greater administrative and legal burdens on CSOs than on companies, business should take the position that civil society burdens should be no greater than theirs. The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association has called on “states to give the same level of respect and create enabling environments for civil society groups just as they do for companies.”<sup>129</sup>

### 3.3.1.2. MAGNIFYING VOICE THROUGH COLLECTIVE ADVOCACY

There is often “strength in numbers”: individual companies can leverage their influence through joint advocacy on civic freedoms and HRDs. Given that some companies have reasonable concerns that acting or even raising a sensitive issue alone may risk disfavor or even retribution with commercial if not legal repercussions, they choose to join forces with peer and competitor firms operating in the same industry and/or country. This approach is common among businesses currently engaging on human rights issues. For example, in the garment industry, some companies have policies requiring that a certain number of other brands be involved before they will even consider joining any sort of public statement.

As observed below, multi-stakeholder initiatives and industry associations are credible advocacy platforms on sensitive issues and useful for diminishing risk to any one company or actor.<sup>130</sup> Industry associations, such as the International Council on Mining & Metals (ICMM),<sup>131</sup> provide a platform for collection action, for best practice and for raising policy standards.<sup>132</sup> ICMM, for example, released a statement in 2017 denouncing that HRDs continue to face harassment, and underlining that “as business, we have an ethical imperative to ensure that this is not done in our name”.<sup>133</sup> The International Organisation of Employers (IoE) is another example of a way in which business can engage in collective advocacy. The IoE, representing the global employer community, has endorsed the UNGPs, and it has used its voice to censure statements that weaken civic freedoms and threaten HRDs.<sup>134</sup>

### 3.3.1.3. STATEMENTS AND LETTERS

The most common public form of action that a company can take is signing statements or letters with other stakeholders to advocate for HRDs or civic freedoms. Public statements are a public acknowledgement of a corporation’s values and views; they put their brand on the line to take a stand. The influence of a letter may be magnified when combined with meetings with government decision-makers and/or public statements (such as op-eds).

There are two key decisions to be made per the use of letters or other statements in sensitive contexts: first, whether public statements should be private or open; second, whether they should come from a single company or group of companies (and/or other aligned stakeholders). The answers to these questions depend on the circumstances of the issue or situation; its severity and urgency; answers should reflect political judgments made in consultation with affected civil society and others such as home country embassies.

### 3.3.1.4. DIRECT ADVOCACY

It is common for companies that enjoy close relationships with governments and government officials to engage directly and personally. Senior executives can meet with senior officials behind closed doors to discuss human

<sup>129</sup> UN expert: [Promote civil society by elevating its treatment to the same level as business](#), UN OHCHR (Oct. 27, 2015); See also Maina Kiai (former Special Rapporteur on the rights to freedom of peaceful assembly and of association)’s [full report](#).

<sup>130</sup> Some key multi-stakeholder initiatives include: the Fair Labor Association, Ethical Trading Initiative, Extractive Industry Transparency Index, and Global Network Initiative.

<sup>131</sup> See: [www.icmm.com](http://www.icmm.com).

<sup>132</sup> See the Extractives (Oil/Gas and Mining) spotlight for further details on ICMM’s work. See also [Center for International Private Enterprise \(CIPE\)](#) – an organization that works to support democracy and strengthen the private sector.

<sup>133</sup> [Space for civil society is critical for business: Human Rights Defenders must be protected](#), ICMM (2017)

<sup>134</sup> See [IOE condemns outrageous statement by Jammu Chamber of Commerce and Industry](#), IOE (Apr. 25, 2017).

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rights concerns too sensitive for broader audiences. Such discretion can give a government greater flexibility to react favorably to a specific request or warning than when challenged publicly. As Ben Leather at Global Witness highlights; “there is almost always something a company can do, even if in private”.



**The key is how the issue is raised.**

Sir Mark Moody-Stuart, former Royal Dutch Shell chief executive and former Anglo-American non-executive chairman

Companies can also intervene directly on behalf of an individual HRD/CSO under threat or attack. For example, in the case of the business and human rights and migrant labor rights activist Andy Hall, several lawsuits were filed against him in Thailand for his contribution to a Finnwatch report, highlighting human rights abuses related to the Thai company Natural Fruit.<sup>135</sup> See the Agriculture/food/beverage spotlight in this guidance for a summary of efforts to support Hall by S Group, the Finnish retailer (which had sourced from Natural Fruit prior to the Finnwatch report) and other Nordic businesses.

Determining whether public or private action is appropriate also requires discreet consultation with local stakeholders, including HRDs/CSOs familiar with the issue or situation. They should be asked for advice on the proposed action and the most useful form it should take.



**The best case studies probably can't be told.**

John Morrison, CEO, Institute for Human Rights and Business (IHRB)

### 3.3.1.5. INDIRECT ADVOCACY

If host governments are not receptive to private, personal requests, companies may also influence them by leveraging the influence of their home governments, especially through their embassies and extensive high-level relationships with host country governments. Such approaches are especially useful for politically sensitive issues or situations in which companies may be compelled but want to diminish perceived risk with the host country.

Companies can also advocate in their home countries for legislation to establish legal liability requirements to continue to do business in certain host countries. For example, industry and investor support was a key factor in the success of the UK's Modern Slavery Act (MSA). Companies subject to the MSA now *must* comply with its requirements, and the pressure is on for governments in sourcing countries to implement policies that respect those benchmarks.

### 3.3.2. LONG-TERM ACTIONS AND POLICIES

Companies can and should engage in the ways identified above, following consideration of the form of action that will be most credible and useful in certain circumstances.

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<sup>135</sup> For more information on the Andy Hall case, please see the Agriculture, Food and Beverage Spotlight.

Companies can support civic freedoms and human rights defenders not only through immediate, short-term reactive steps but even more significantly through longer-term, affirmative policies and initiatives:

- Support civic freedom and HRDs consistently, from the company's leadership to the regional and country offices.
- Undertake due diligence including HRIAs – required by the UNGPs – before entering a country or starting a major new project or business relationship with a focus on tensions with local civil society, communities and HRDs that will inform companies of risks as well as opportunities to engage.
- Communicate a commitment to human rights and civic freedoms and reinforce through actions, such as signaling respect for the result of wage negotiations or scaling back operations opposed by key stakeholders such as indigenous communities.
- Commit to a clear policy of non-retaliation against HRDs or organizations that criticize the company, not to sue for defamation or to participate in strategic lawsuits against public participation (SLAPP).
- Engage in industry associations or MSIs that encompass a wide variety of other stakeholders, granting access to networks that can magnify the company's voice.
- Establish relationships with key NGOs and HRDs that can provide accountability and potentially allow access to redress mechanisms.

The importance of responsible and consistent stakeholder engagement remains essential to prevent human rights violations that may create serious financial, legal, or reputational risks for companies and lead to attacks on local communities and HRDs. Conversely, engaging with HRDs/CSOs is an opportunity for companies to understand local issues, reinforce due diligence, strengthen

relationships with local communities and build trust even if there will not always be alignment. “Such engagement is critical because “[w]ithout a real place at the table,” the shared space can deteriorate into “fake space”.<sup>136</sup>

Nevertheless, companies should be aware of the risk of bias and it remains crucial to distinguish between the “rights of right holders” and their objectives and remain prepared to defend those rights – freedom of expression/assembly/association – “even if those rights are exercised in ways that directly or indirectly oppose company interests and objectives.”

#### **3.4. STEP 4: IDENTIFY THE RELATIVE RISKS OF ACTION AND INACTION TO THE CIVIL SOCIETY/RIGHTS HOLDERS AND TO THE COMPANY RELATIVE TO THE ISSUE OR SITUATION.**

If “cause, contribute” or direct linkage between a company and the threat or harm cannot be established in relation to an issue or situation, companies still have the *discretionary opportunity* to act based on the business case and a moral choice. The last step in making such a determination of whether – and if so how – to engage is to consider the range of risks for the company itself as well as for the civil society, local community and/or HRDs for which they are considering support.

**While companies will understandably be inclined to consider the risks of action first, they should also consider just as carefully the risks of inaction.**

Both individuals and law firms providing counsel to business on human rights issues – and company decision-makers themselves – consider many of the risks cited when some argue for inaction are more perceived than material. Such perceived risk can have a chilling effect, as key decision-makers in companies tend to err on the side of caution – and overlook the corollary risks of inaction. Nonetheless, responsible companies should give careful consideration to both the risks of action and inaction.

Realistic perception of the risks is improved through consultation with various civil society stakeholders, as well as home country government embassies, to provide context for the company's actions. Building relationships with local CSOs and HRDs can lead to better information sharing between civil society and company decision-makers.

<sup>136</sup> *Tricky Business: Space for Civil Society in Natural Resource Struggles*, Carolijn Terwindt and Christian Schliemann, p. 11 (Dec. 7, 2017).



There are at least three propositions for companies to consider when assessing these risks:

- There are both perceived and real risks – and lesser and greater risks – both of action and inaction.
- Companies can influence if not control the focus and scope of actions to a greater extent than of inaction, when other actors (including civil society, governments and other stakeholders) can take control of both the narrative and outcomes.
- Managing and mitigating the risks of inaction may be more difficult for most companies in most situations than managing and mitigating the risks of action.

**Companies should examine both sides of the risk equation in situations where they have a discretionary opportunity – rather than a normative responsibility – to act with even greater emphasis on the long-term than the short-term implications of their decisions.**



***There is a critical distinction to make between “action that you can control and action you don’t control. The impact of what you can’t control can be significant over time.”***

Christian Frutiger, Global Head of Public Affairs, Nestlé

### 3.4.1. RISKS OF ACTION:

Potential risks of action include:

#### 3.4.1.1. LEGAL AND JURISDICTIONAL RISK

One challenging area companies must remain attuned to in foreign jurisdictions is the duty to respect local laws in the countries in which they have operations or subsidiaries. This stricture can be challenging where local law falls below or contradicts internationally accepted human rights standards. According to the UNGPs, corporate responsibility to respect human rights “exists over and above compliance with national laws and regulations

protecting human rights.”<sup>137</sup> For example, certain countries have strict laws on criticizing or defaming the government, and corporations are understandably wary of engaging in direct advocacy that might include, or be perceived as including, a criticism of the government of the country (or countries) in which it is headquartered or has operations.

Companies should not feel that such a risk precludes any engagement to support civic freedoms. If they remain uncomfortable about issuing a public statement voicing their concern over an attack on civil society or similar human rights abuse, they can select an alternate method of engagement that minimizes risk while maximizing the opportunity for positive results. In all cases they should take legal advice to ensure that local actions do not create risks across other jurisdictions.



***Often when businesses think that taking action to address attacks on HRDs and closing civic space they think it’s too risky but in many situations that isn’t the case and taking the right legal advice can assist to manage any perceived risk of action.***

Nicolas Patrick, Partner & Head of Responsible Business, DLA Piper

#### 3.4.1.2. COMMERCIAL AND OPERATIONAL RISK

Some perceived legal risks can also be linked to commercial risks. Home or host governments may attempt to retaliate against perceived opposition by companies to their policies or actions. Commercial pressure used by governments may include revoking a corporate license, withdrawing government-funded security forces, and delaying or denying visas or customs authorizations.

The degree of commercial exposure to risk companies may face can depend on the sector in which they operate. Infrastructure-heavy industries might be more dependent on maintaining positive relations with host governments to safeguard the local infrastructure they have expended a large amount of fixed capital to build, and to avoid falling foul of regulatory red-tape. Industries that are particularly concerned by these issues include mining and extractives, and companies in the ICT sector.<sup>138</sup> The significant fixed

<sup>137</sup> This responsibility is enshrined in the UNGPs (2011).

<sup>138</sup> The telecommunications infrastructure, local subsidiaries or franchises, and the need to obtain operating licenses from host governments can create greater constraints on ICT companies’ ability to take action, as was the case for Vodafone in Egypt in 2011, for which it received considerable criticism for its failure to protect its users’ privacy and freedom of expression during the Arab uprisings (Interview with Cynthia Wong, Human Rights Watch (2017)).

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costs associated with investing in oil and gas facilities, coupled with dependence on government-provided security forces to guard mines and oil refineries also may expose oil/gas and mining companies to some slight risk from host country governments. Yet host country governments rely on this investment for revenue.

The most effective way to diminish commercial risk related to a company taking a critical stand on a politically sensitive issue related to human rights or civic freedoms can be summed up in a phrase: *discretion in the form of action*. Private rather than public statements, at least at the initial stage of company engagement, will be wise in many circumstances.

While companies are often willing to take a position on labor rights, for some companies doing so is conditional on the action “not entering the political sphere.” In these cases, bilateral, private, discussions may be more effective:



**The best interventions are sometimes those that no one hears about.**

Jonathan Drimmer, Chief Compliance Officer & Deputy General Counsel, Barrick Gold

Operational risk is a crucial factor for businesses to consider when weighing the risks of action and inaction. Companies must consider the safety of their workforce – both expatriates and the local workforce – in the context of their operations when considering action. Host country governments might retaliate against criticisms or pressure from these companies by targeting their employees, either by revoking visas in the case of expatriates or repressing local workforce, in extreme cases even brutalizing or arresting them. It is critical for companies to weigh the risks of retribution (to its staff and to external stakeholders, including CSOs/HRDs) which may be those the company is trying to support or protect.

### 3.4.1.3. POLITICAL AND REPUTATIONAL RISK

Above all else, multinational corporations, which rely on the strength of their brand, are driven by the desire to avoid being affected by reputational risk. Reputational risk takes two main forms: external risk, the reputational damage that a company can suffer with consumers and stakeholders; and internal reputational risk, which arises when companies lose the support of their employees or shareholders.

External political risk has several ramifications, including the danger of damaging the relationship with host governments, which in turn risks making in-country company operations more difficult. Mitigating such political risk may depend on the degree of leverage the company can exercise over the host government, along the same reasoning as discussed above with respect to commercial risks.

One key aspect weighing in favor of action over inaction could be the heightened commercial risk of divestment faced by companies as their activities and actions are rendered more transparent thanks to the internet. In parallel, social media has provided consumers with the tools to monitor, evaluate, and publicly discredit firms' reputations by bringing to light corporate conduct judged unethical by international standards and modern consumer preference. Companies must weigh the reputational risks they might incur should they lose the support of other stakeholders, such as their employees, shareholders, or suppliers.

To mitigate potential international reputational damage, it is crucial for executives and sustainability officers to engage at the outset with the General Counsel/company legal team.<sup>139</sup> In addition, it is essential to interact closely with in-country management to ensure that all proposed responses are appropriately designed for the local context and to ensure that there are no reasonable risks of repercussions on local staff. However, parent companies and companies at the top of a supply chain must take advice on the extent to which this approach could be seen as exercising control and thereby creating a risk of litigation in some home country jurisdictions.

Companies wishing to take a public stand on an issue facing civil society but are concerned about being perceived as illegitimate can lessen this risk by engaging in multi-stakeholder action, especially with local actors with local legitimacy and whose connection to the disputed issue is clearer.

Moreover, companies concerned about the potential risks of making a public statement related to the closing of civil society space or attacks on HRDs/CSOs should also consider how to release it carefully. Consultation with stakeholders can diminish the risk of negative reactions to public statements in particular, including the risk of potential threats to the security of staff.

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<sup>139</sup> Indeed, nothing in this Guidance is intended to be, and should not be used as, a substitute for legal advice in any specific situation.

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### 3.4.2. RISKS OF INACTION:

Potential consequences of inaction include:

#### 3.4.2.1. REPUTATIONAL DAMAGE

Especially in situations where a company works closely with a host country government, looking the other way in the face of government-sanctioned human rights violations exposes the company to future criticism, reputational damage and long-standing public mistrust. The classic example is the reputational damage sustained by Shell both in the aftermath of the execution of Ken Saro-Wiwa and the Ogoni 9 by the Nigerian military government in 1995. The nearly universal judgment that the company did too little, too late to appeal for clemency – in a case in which many of the underlying issues were related directly to the company’s extensive operations in Ogoniland and elsewhere in the Niger Delta – is still not forgiven, much less forgotten by many in Nigeria and around the world. Over two decades later, Shell still cannot produce oil in Ogoniland, having lost both the social license to operate and the physical ability to navigate the security obstacles to a renewed presence.

The consequences of reputational damage caused by failure to act can be felt in many ways. Company inaction can be (and has been) viewed by civil society and HRDs as complicity in or at least acquiescence to human rights abuses perpetrated or enabled by governments.

For retail brands, ethical consumerism can drive down sales across the world, as citizen activists increasingly use social media platforms such as Facebook and Twitter to build movements against brands on human rights grounds. In the aftermath of the Rana Plaza disaster in Bangladesh, some retail apparel brands have been criticized by responsible investors for not joining the Accord which includes trade unions and creates binding standards for worker rights and safety.<sup>140</sup>

The reputational damage of inaction can have financial or commercial repercussions, and has affected both security firms and extractive companies, for example by banning them from lucrative procurement processes for government contracts or significantly increasing the costs of a project by delaying the project completion date for several months.

In addition to the reputational risk that arises inaction, companies can suffer reputational damage even if they act, but they have chosen to act privately. Indeed, acting bilaterally in confidence with host governments could

mean that companies are seen by NGOs and civil society organizations, and even by their own employees, as not having acted. This consideration is particularly relevant for consumer-facing industries, where the relationship between the company and end consumers is much more transparent, or extractives companies who depend significantly on a continued social license to operate from local communities.

Ultimately, the decision whether to act publicly or privately will be determined by the objective: to obtain a change in government policy and to strengthen relationships with local communities and/or consumers. Companies have an incentive to mitigate or remove these risks as they form part of wider “systemic risk.”

#### 3.4.2.2. MORE DANGEROUS CONDITIONS FOR EMPLOYEES

Employees are repeatedly cited as the most powerful but underlooked stakeholder group for today’s companies. When governments target activists and other HRDs, they weaken human rights protections for everyone. One example is the threats faced by LGBTI individuals employed by companies. In countries such as Uganda, LGBTI activists are unfairly imprisoned and advocating for laws that protect LGBTI rights is discouraged, often by force. Failure to advocate for strong rule of law in general can have specific and sometimes deadly consequences for workers in a company’s supply chain if not direct employees. For example, failure of garment brands to lobby forcefully for better labor practices, and stronger enforcement of labor and safety laws in Bangladesh led directly to the dangerous conditions in the Rana Plaza factory, whose collapse killed thousands of workers.<sup>141</sup> The Rana Plaza disaster is a prime example of reputational and material consequences when companies fail to speak up in the face of a government’s failure to fulfil its duty to protect the human rights and physical safety of its people.

#### 3.4.2.3. LOSS OF SOCIAL LICENSE TO OPERATE AND LESS EFFECTIVE COORDINATION WITH DOMESTIC CIVIL SOCIETY

The relationships among companies and civil society across the shared space are crucial to ensuring that accountability mechanisms function properly. Especially in industries such as apparel with global supply chains, domestic civil society is an important element of ensuring compliance with international labor standards and local laws. Supply

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<sup>140</sup> For more detail, please see Myanmar, Apparel/Footwear, and Responsible Investor Spotlights.

<sup>141</sup> For more information on the Rana Plaza disaster, see the Apparel and Footwear Spotlight.

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chain governance is most effective when trade unions and watchdog groups are carefully and consistently consulted by companies. Failing to act in the face of an obvious injustice can make a company seem disingenuous, and damage trust built between a company and local HRDs or CSOs.

Companies should also be aware that their actions will be judged in the context of any previous commitments they have made to uphold human rights or maintain certain standards in a country. A reputation for unreliability and dishonesty can be as damaging to a company's public image than one of implicit tolerance of abuses.

The sector in which companies operate affects their risk profiles. For instance, consumer-facing firms tend to be more sensitive to risks of inaction, especially with the rise in the use of social media as a pressure tool by millennials. Companies in the extractive industry can be disproportionately affected by commercial risks because of the high fixed cost of investment and long-term contracts they sign with host governments.

Newmont Mining's experience in Peru with a planned expansion of the Yanacocha gold mine provides a cautionary tale for the risks of inaction. A Peruvian farmer, Máxima Acuña-Atalaya de Chaupe, owns land that forms part of the planned expansion area, and she refused to sell to the company. What followed has been a lengthy legal battle as well as conflict with the local community. The failure to adequately engage with the local community in advance of this planned expansion cost the company significant time and money – the expansion has been placed on indefinite hold.<sup>142</sup> This experience has been an especially difficult one for a company that has engaged with indigenous and other local communities for two decades in Indonesia and Ghana as well as Peru – and has been seen to implement the Voluntary Principles on Security and Human Rights more or less consistently for over a dozen years.

#### **3.4.2.4. REGULATORY ACTION – NATIONAL AND INTERNATIONAL**

Inaction by companies to counter the excesses of unscrupulous actors in their sector has contributed to the global loss of public trust in global markets and large business. Recent legislation, especially around mandatory transparency and due diligence is a government response to public perception of rootless and unethical business. If companies in high-risk sectors are silent about attacks on HRDs and civic freedoms in international supply chains,

pressure for stronger regulation will likely increase. Indeed, “as norms develop and social expectations change, so too does legal risk, since the law changes in response [to the evolution of social norms].”

#### **3.5. WHO DECIDES?**

It is essential that these factors related to the risks of action and inaction alike are evaluated carefully by companies on a cross-functional basis. Decisions as to whether and if so how to act should involve in most cases:

- Corporate headquarters executives/staff and in-country field management
- Legal counsel
- Human rights and corporate responsibility experts
- Public affairs and government relations executives/staff
- Community Relations staff
- Security and/or human resources staff

It is also essential for CEO-level decisions in certain situations when an issue or situation has potential material implications for the company's core values, reputation, operations and relationships are at stake. Finally, in order to both make decisions and take actions, “these issues need champions within companies”, as Brent Wilton at The Coca-Cola Company highlights, as well as “operational touch points”, as urged by Bill Anderson at adidas.

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<sup>142</sup> For a summary of this conflict, see [A US corporation wants to raise a gold-rich mountain in Peru. Meet the woman who stands in its way](#), Deepa Fernandes, PRI (June 4, 2018). Acuña was awarded the 2016 Goldman Environmental Prize.

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# CONCLUSION

The “social license to operate” is ultimately at stake for companies in this both old and new agenda. As more companies are coming to appreciate, the civil society space is the basis of sustainable and profitable business.

Governments and leaders come and go: authoritarian regimes may become democratic; democracies may become illiberal. But communities – physical and digital – endure for the long run. People remember who does what to help or hurt them as nations and governments rise and fall.

Companies cannot expect to operate sustainably and profitably without some degree of support from civil society in the face of growing pressures and expectations for transparency and accountability, reinforced by standards and regulations. Companies must command the support of their employees and shareholders, their customers and users; they must protect their brands and reputations. All are at risk if they undermine or violate the shared civil society space.

Multinational corporations – above all – know that they are both powerful and vulnerable in the 21st century world of geopolitical as well as technological disruption. Now they need to understand that the global and local civil society space is their business environment as much as any government jurisdiction. Now they must also recognize that the shared space is under pressure, threat and even attack around the world.

The challenge for companies is not to pick fights with governments in whose countries they operate, but neither to avoid action when they have a clear responsibility or opportunity. The challenge is to take stands – carefully but deliberately – when the shared civil society space is under pressure, threat or attack. The opportunity for companies is to support and defend that shared space when it is imperiled and can no longer be taken for granted.



## **SPOTLIGHTS**

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## 4.1. COUNTRY SPOTLIGHTS

### 4.1.1. CAMBODIA



*Cambodia – A day in the life of Chhun Srey Sros, a garment factory worker in Cambodia by UN Women, licensed under (CC BY-NC-ND 2.0)*

Cambodia is at the center of recent action by companies in support of embattled human rights defenders and civic freedoms in Southeast Asia. It offers both a vivid example of the “shared space” at stake for business and civil society alike and a positive model for similar company action elsewhere, though against a backdrop of increasingly severe repression

The *de facto* military government dominated by Prime Minister Hun Sen, who has been in power for over three decades, routinely uses the state security apparatus to suppress political opposition and other perceived threats to the regime’s power. Cambodia was seen in the 1990s as a country with the potential to emerge from conflict and genocide to become a democracy supported by a vibrant civil society. But in recent years, the contraction of democracy and the closing of civil society space has been dramatic and violent.

These pressures have been increasingly visible in workplaces, as unions and other worker groups have pushed for greater protection of their rights. Garment and apparel manufacturing comprises over 80% of the Cambodian economy and serves dozens of the world’s global garment brands.<sup>143</sup> These brands are thus exposed to the local political and economic tensions with global implications for their operations and reputations.

In 2014, violent suppression of protests in the capital Phnom Penh calling for a higher minimum wage compelled

major global footwear and apparel brands to act. Multi-stakeholder networks such as the Ethical Trading Initiative together with the International Labour Organization (ILO) with its Better Factories Cambodia local partners were crucial in organizing collective action in the form of a letter sent privately to the government. This letter pressed for the release of those arrested in connection with the protests and the creation of a fair process for setting the minimum wage. The action resulted in high-level meetings between brand representatives and government officials, in which the companies involved were able to communicate their concerns about civic freedoms in the country.<sup>144</sup>

In November 2017, civil society in Cambodia suffered a further blow: the government, allegedly in preparation for 2018 parliamentary elections, announced the dissolution of the opposition Cambodian National Rescue Party (CNRP). The court-ordered move was purportedly motivated by the conviction of the party’s top leadership on what many believed were trumped-up charges.<sup>145</sup> The demise of the CNRP as the most established opposition party in Cambodia (having received over 44% of the vote in recent local elections) essentially cleared the way for a virtually uncontested electoral victory for the ruling Cambodian People’s Party (CPP) and the reelection of Hun Sen in late July 2018 elections.

Other pressures on civic freedoms have mounted. In July 2017 the government forced the closure of the Cambodia Daily, an independent newspaper that had been outspoken in its criticism of the government.<sup>146</sup> The paper was presented with a retroactive tax bill of over US\$6 million and then forced to close due to insolvency. In May 2018, the Phnom Penh Post, widely regarded as Cambodia’s only independent news site, was sold to a company allegedly tied to the Prime Minister and ruling party. Editors and staff reporters resigned from the site after the new owners tried to halt publication of a news item critical of the government.<sup>147</sup>

These actions have also undermined the struggle to improve labor rights in Cambodia: when unions and NGOs face political pressure backed by state security forces, workers are the first to suffer. For global brands, trade unions and CSOs are the most effective partners for identifying potential harms before they become serious issues; when these civic actors are weakened, brands must invest more in due diligence efforts to keep their suppliers accountable.

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<sup>143</sup> For further information on the apparel sector, please see the Apparel and Footwear Spotlight.

<sup>144</sup> Letter to Prime Minister Hun Sen, ITUC, IndustriALL, UNI Global Union (May 20, 2015).

<sup>145</sup> Cambodia’s main opposition party dissolved by Supreme Court, Prak Chan Thul and Amy Sawitta Lefevre, Reuters (Nov. 16, 2017).

<sup>146</sup> A More Taxing Time for Cambodia’s Civil Society, Luke Hunt, The Diplomat (Aug. 9, 2017).

<sup>147</sup> Cambodia’s last independent news site sold to PR firm that worked for the ruling party, Mong Palatino, Global Voices (May 9, 2018).

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A number of global brands have been compelled to take a stand in response to the government's actions against activists and unions. In response to the developments regarding the CNRP and the Cambodia Daily, companies have written letters asserting that a strong and independent civil society is in their own interests as well as the nation's.

In October 2017, the American Apparel and Footwear Association released a letter addressed to PM Hun Sen that outlined their members' commitment to key aspects of workers' rights; specifically, the AAFA included language expressing support for strong civic freedoms:

*"[W]e are concerned that the progress made towards protecting and respecting worker rights could be jeopardized by recent developments that seemed to weaken democratic institutions in Cambodia – government imposed curbs on political parties, civil society, and the press."<sup>148</sup>*

In January 2018, Walmart Executive Vice President for Global Leverage Scott Price,<sup>149</sup> wrote to Cambodian Minister of Labor and Vocational Training Ith San Hen, calling on the government to cooperate on human rights and labor rights issues.<sup>150</sup> Price provided an unequivocal commitment to a strong and independent civil society, explaining:

*"Our growth in Cambodia depends on a strong business environment. Stability, predictability, and rule of law form a cornerstone of our business engagement around the world and allow us to make long-term commitments and investments in a market."*

More recently, major brands joined together with multi-stakeholder initiatives and international NGOs after criminal charges were levied against activists Tola Moeun, Pa Nguon Teang, and But Buntenh for allegedly misappropriating funeral funds for a slain political analyst, in what was widely seen by human rights groups as a politically motivated attempt to curtail their advocacy for labor rights and press freedoms. The persecution of Tola, the Executive Director of the Center for the Alliance of Labor and Human Rights and a prominent advocate for labor rights in Cambodia, alarmed brands as well as civil society networks still active in the country.

The Business and Human Rights Resource Centre engaged with the ETI and FLA to coordinate a brand response to the crisis. A group of 35 human rights organizations joining in an open letter to the government, calling for the charges against Tola to be dropped.<sup>151</sup> These actions contributed to a positive outcome: in April 2018 the Ministry of Labor asked the court to drop all charges against the three activists in order "to ensure freedom of association."<sup>152</sup>

The civil society space will remain under pressure in Cambodia and therefore challenge business to maintain this degree of focus and action. The mobilization of brands in Cambodia may be a model for collective action on the part of companies in other countries facing similar pressure on civic freedoms and labor rights.

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<sup>148</sup> American Apparel and Footwear Association Letter to Cambodian Prime Minister Hun Sen (Oct. 17, 2017). See also Letter from Apparel Industry MSI Quick Response Group, signed by Adidas, Arena, Fair Labor Association, Fair Wear Foundation, MEC, Puma, Social Accountability International, and Under Armour (Oct. 27, 2017); Letter urging implementation of labor reforms, Fair Labor Association, Fair Wear Foundation, Amfori, Ethical Trading Initiative, Social Accountability International, and American Apparel and Footwear Association (Mar. 19, 2018).

<sup>149</sup> Walmart's letter gives hope to Cambodian products, Fresh News (Dec. 27, 2017).

<sup>150</sup> Labour Ministry downplays Walmart's concerns over working conditions, politics, Ananth Baliga, The Phnom Penh Post (Dec. 27, 2017).

<sup>151</sup> Global Unions, International Human Rights and Workers' Rights Organizations Call for End to Politically Motivated Prosecution of Tola Moeun (Feb. 19, 2018).

<sup>152</sup> Labour Ministry seeks to drop charges against activist Moeun Tola, Daphne Chen and Yon Sineat, Phnom Penh Post (Apr. 27, 2018).



## 4.1.2. MYANMAR



*Rohingya Crisis* by CAFOD Photo Library, licensed under (CC BY-NC-ND 2.0)

After four decades of military rule, Myanmar (formerly Burma) held elections in late 2010 that started the country's transition to democracy. The lifting of international sanctions unleashed a flood of foreign investment attracted by Myanmar's natural resources – minerals and gems, hydropower, natural gas, hardwoods – and its strategic location between India and China. Oil companies, tempted by the rich offshore reserves in the Bay of Bengal, rushed to gain drilling concessions. Jewelry brands expanded their sourcing from the country after years of import bans by the US and EU. Garment and other light manufacturing industries have been attracted by untapped relatively low-wage labor and new markets.

Myanmar's opening to foreign investment coincided with the 2011 release of the UN Guiding Principles that validated and elevated the fundamental corporate responsibility to respect human rights. Encouraged by human rights NGOs and the US State Department through its initial reporting requirements for American companies entering the market, Myanmar appeared to present an opportunity not only to build a commercial presence (in a resource-rich yet infrastructure-poor country with a large and growing consumer market), but also to promote human rights standards that could contribute to a profitable and sustainable business environment. Yet that opportunity appears to have slipped away. The military continues to exert decisive political power and massive economic influence through its commercial interests built up during its years of dictatorship; moreover, it continues to benefit from this capital influx, especially in the extractive sector.

These factors, combined with civil unrest and ethnic conflicts, has severely compromised Nobel Laureate and Myanmar's de facto leader Aung San Suu Kyi as a voice and force for democracy and human rights.<sup>153</sup>

The military's continuing political as well as economic control has been apparent during recent civil and ethnic unrest. Between 2015 and 2017, there were at least 16 documented attacks on HRDs in Myanmar.<sup>154</sup> In 2017, human rights violations in Myanmar attracted international attention as the consequences of a campaign of ethnic cleansing against the Muslim Rohingya minority escalated in Rakhine State. The resulting flood of over 650,000 refugees has overwhelmed the resources of neighboring Bangladesh. Myanmar is indeed now on the frontline for business and human rights but not as a potential model for democratic development supported by corporate responsibility as some had hoped. Rather, Myanmar represents a human rights and humanitarian crisis compelling companies to engage urgently to defend civic freedoms with significant regional, and international implications.

There is a widespread view in the dominant Buddhist country that the Rohingya are foreigners squatting on Burmese land.<sup>155</sup> The military has turned a blind eye (if not encouraged) to vigilante-style attacks against Muslim communities in Rakhine State while the democratic government, led unofficially by Aung San Suu Kyi, has tried to maintain a delicate but increasingly imbalanced relationship with the generals. An attempt by the government to intervene could invite a reactionary coup, which many predict would have the support of the Buddhist nationalists driving the atrocities and lead to even harsher attacks.

Foreign multinationals with investments, operations or sourcing relationships in Myanmar have found themselves in the spotlight amidst this crisis. Pressure mounted quickly on companies in 2017 to take public stands, reflecting a moral choice reinforced by elements of a business case, consistent with varying degrees of linkage to the issues as encouraged by the UNGPs. Examples of action have included:

- The small US-based Azzad Asset Management coordinated with the International Campaign for the Rohingya to urge action on the part of Chevron in October 2017. Although initially opposing the resolution, Chevron subsequently issued a statement condemning the violent persecution of the Rohingya, and engaged the Myanmar government in dialogue.<sup>156</sup>

<sup>153</sup> A previous effort in the late 1980s to open Myanmar to foreign investment resulted in a number of extractive companies investing in the country in joint ventures with the military government. In a number of cases, this activity resulted in significant human rights abuses and the Western companies involved faced lawsuits alleging complicity in these abuses. For example: a [US lawsuit against Unocal](#), and a [lawsuit against Total](#) filed in Belgian court.

<sup>154</sup> [Business, Civic Freedoms & Human Rights Defenders Portal – Incident search](#), Business & Human Rights Resource Centre.

<sup>155</sup> A 1982 Myanmar law prevents Rohingya from becoming citizens of the country.

<sup>156</sup> [Investor letter to oil companies about Rohingya](#) (Oct. 2017). See the Responsible Investor spotlight for a fuller explanation of Chevron's action.

- CEO Paul Polman of Unilever, which has over half a billion dollars already invested in Myanmar, signed an open letter with Nobel Peace Laureates and other leading figures to the UN Security Council expressing concern in January 2017,<sup>157</sup> then publicly expressed support for the Rohingya via Twitter the following month.<sup>158</sup>
- In December 2017, leading garment brands and trade associations in the EU and the US sent a statement to the President of Myanmar expressing their concerns about the Rohingya refugee crisis and calling on the government to respect ethnic minority rights.<sup>159</sup>
- Responding to an online petition signed by over 75,000 people, jeweler Cartier announced that same month that it was ending the use of Myanmar as a source for its gemstones, a significant move given that the country produces over 95% of the global ruby supply.<sup>160</sup>

Facebook was also confronted with the consequences of engaging in a market riven by ethnic violence. Due to commercial arrangements between Facebook and mobile service providers, most of Myanmar's internet users have never experienced the internet outside of Facebook's platform. The social media network's approach to sharing user information with digital marketers can also include entities and organizations seeking to target civil society activists and political opponents. Its inconsistent and opaque process for enforcing its terms of service has also resulted in the deletion of content posted by activists and journalists while hate speech and disinformation has been allowed to propagate. Activists from Sri Lanka<sup>161</sup> to Vietnam<sup>162</sup> to Myanmar<sup>163</sup> have protested the company's lack of enforcement of its own community standards. In Myanmar UN investigators cited Facebook for amplifying nationalist groups and hate speech against Rohingya people.<sup>164</sup> Increasingly violent posts led to a vicious cycle in which fear degenerated into attacks against civilians and the massive flight of the Rohingya to neighboring Bangladesh. In April 2018, Facebook founder and CEO Mark Zuckerberg apologized to the victims of this violence via email to representatives of leading domestic NGOs. The activists publicly responded with skepticism about the company's willingness to solve the problem.<sup>165</sup> Following this criticism, Facebook has taken steps to prevent its platform

from being used to stir further ethnic violence in Myanmar, including meeting with civil society groups in Myanmar and banning from its platform high profile Buddhist nationalists who have called for violence against ethnic minorities.<sup>166</sup>

Myanmar's crisis has compelled company action because it is so visible and visceral: human rights groups from around the world are coordinating responses to ethnic violence and the ensuing refugee crisis, while companies are increasingly being called upon to comment and follow up on their public statements with concrete actions. When acting, companies may fear retaliation from elements within the Myanmar government or behind the scenes in the military: extractives companies may be concerned that they risk losing their concession contracts; retail brands that they risk being denied new contracts or burdened by excessive red tape; and luxury jewelry companies that they risk losing access to high-quality gems that can easily be offered to Chinese competitors instead. But so far none of the companies that have spoken out have seen tangible indications of retaliation.

The companies which have acted have apparently decided that the risks of inaction are unacceptable in the face of such flagrant human rights abuses and severe humanitarian crisis. While these companies may not see themselves as HRDs, they have effectively demonstrated that role in recent months in Myanmar.

### 4.1.3. GUATEMALA



*Sayaxché* by Martin Haeusler, licensed under (CC BY-SA 3.0)

<sup>157</sup> [Open letter to the President of the Security Council and member countries of the Council to end the human crisis of Rohingyas in Myanmar](#), Nobel Laureates (Jan. 2017).

<sup>158</sup> [Unilever responds to rights campaign, commits to Rohingya protection](#), Coconuts Yangon (Mar. 1, 2017).

<sup>159</sup> [Leading brands and trade associations call on Myanmar to respect rights](#), Tom Phillips, Ethical Trade Initiative (Dec. 8, 2017).

<sup>160</sup> [Could buying Christmas gift jewellery be funding genocide?](#), Hannah Lownsbrough of SumofUs in, Guardian (Dec. 20, 2017).

<sup>161</sup> [Open letter to Facebook: Implement Your Own Community Standards](#), Centre for Policy Alternatives (Apr. 10, 2018).

<sup>162</sup> [Vietnamese civil society letter to Facebook](#) (Apr. 9, 2018).

<sup>163</sup> [Myanmar civil society letter to Facebook](#) (Apr. 5, 2018).

<sup>164</sup> [U.N. investigators cite Facebook role in Myanmar crisis](#), Tom Miles, Reuters (Mar. 12, 2018).

<sup>165</sup> [Zuckerberg was criticized over the use of Facebook's platform to incite violence. Here is his apology](#), Kevin Roose & Paul Mozur, New York Times (Apr. 9, 2018).

<sup>166</sup> [Violence in Myanmar poses major test for Facebook](#), Ali Breland, The Hill (July 12, 2018).

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In June 2015, a massive spill of toxic effluent from Guatemala-based Reforestadora de Palma del Petén (REPSA) was discharged into the Pasión River in Guatemala's Sayaxché municipality, killing fish and other aquatic life over a stretch of 100 miles and eliminating a key source of food and clean water for local communities. REPSA's footprint in Guatemala's palm oil industry is significant: its plantations occupy over 96 square miles in the northern region of Petén. The environmental damage caused by the spill continues to affect the livelihoods and health of around 12,000 Sayaxché residents, where three quarters of the population live in poverty and two thirds are from indigenous communities.<sup>167</sup>

In a lawsuit filed against REPSA regarding the toxic spill, a Guatemalan court found on September 17, 2015 that the severity of impact of the spill warranted the label "ecocide". The court ordered a temporary suspension of REPSA's local operations for six months to perform an in-depth investigation into the cause of the spill,<sup>168</sup> but this suspension was never enforced because REPSA succeeded in having it quickly overturned. In 2016, an appeals court upheld and reinstated the suspension, but it has yet to be enforced.

REPSA rejected calls by human rights defenders to accept responsibility for the spill. Individuals apparently acting on behalf of the company resorted to violence to silence civil society in the aftermath of the September 2015 ruling, allegedly detaining and threatening three Guatemalan protestors near a REPSA processing plant. Rigoberto Lima Choc, a twenty-eight-year-old local teacher, was murdered in broad daylight in front of the local courthouse immediately after the "ecocide" ruling.<sup>169</sup> He had repeatedly denounced the spill in the national media and had recently been elected to Sayaxché's local government<sup>170</sup>.

Since then, domestic civil society organizations have engaged in non-violent protests and pursued legal action, supported by a coalition of international advocacy groups including

Friends of the Earth US, Rainforest Action Network, ActionAid USA, Oxfam America as well as the Guatemala Human Rights Commission.<sup>171</sup> These groups have called on multinational corporations operating in the palm oil industry including Wilmar, Cargill, IOI, ADM, AAK and Bunge to publicly denounce the violence and to cancel contracts with Grupo Olmeca (REPSA's parent company, which controls at least a third of Guatemala's 130,000 hectares of oil palm plantations) for breaching their palm oil sourcing policies and for disregarding human rights.<sup>172</sup> They have also called on the members of Grupo Olmeca to take steps to address human rights risks in their supply chains.<sup>173</sup>

This sustained civil society pressure bore fruit in June 2016. Cargill, the privately-held, US-based global agricultural giant and one of the largest purchasers of palm oil from Guatemala, published a statement calling on REPSA and its parent company Grupo Olmeca to "implement a transparent action plan" including a "zero tolerance policy" for violence and intimidation; strengthened environmental and social protections; engagement of local communities and civil society groups; and adherence to national and local laws.<sup>174</sup> Cargill conditioned its willingness to source from Grupo Olmeca/REPSA on the implementation of these corrective measures. In response, REPSA published a "Policy on Non-Violence and Intimidation" that same month. In November 2017, Cargill announced that it would suspend sourcing from REPSA due to its failure to comply with Cargill's sustainable palm oil policy.<sup>175</sup> In late January 2018, several senior REPSA executives, including CEO Hugo Molina and his brother, were charged with corruption, bribery, and fraud, and a warrant was issued for their arrest.<sup>176</sup>

Following REPSA's suspension, Cargill began working on a plan to re-engage. In doing so, Cargill sought support from international NGOs including Friends of the Earth and Rainforest Action Network with whom it had established relationships. The NGOs recommended that Cargill should

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<sup>167</sup> [Guatemalan activist murdered after court suspends palm oil company operations](#), Sandra Cuffe, Mongabay (Sep. 30, 2015).

<sup>168</sup> [Global Palm Oil Traders Acknowledge the Need to Prevent Human Rights Abuses in Guatemala](#), Guatemala Human Rights Commission (June 8, 2016); [A New Court in Guatemala Tackles Ecocide](#), Alana Marsili, Frontlines from USAID (Nov./Dec. 2015).

<sup>169</sup> [Guatemalan activist murdered after court suspends palm oil company operations](#), Sandra Cuffe, Mongabay (Sep. 30, 2015).

<sup>170</sup> *Ibid.*

<sup>171</sup> The [Guatemala Human Rights Commission](#) is an independent NGO based in the United States.

<sup>172</sup> [Justice delayed is justice denied in Guatemala's palm oil-driven human rights crisis](#), Jeff Conant, Friends of the Earth (May 20, 2016).

<sup>173</sup> [Global Palm Oil Traders Acknowledge the Need to Prevent Human Rights Abuses in Guatemala](#), Guatemala Human Rights Commission (Nov. 20, 2017).

<sup>174</sup> [REPSA's and Cargill's Commitment to Sustainable Palm Oil](#), Cargill (June 3, 2016). Cargill had been engaging with REPSA since 2015, see Cargill's grievance log [here](#), for greater details.

<sup>175</sup> [Agribusiness Cargill Suspends Contract with Controversial Guatemalan Palm Oil Producer Over Environmental and Human Rights Violations](#), ActionAid (Dec. 19, 2017). Wilmar, another large company that sourced palm oil from REPSA, similarly engaged with REPSA and asked for an action plan to remediate its human rights problems as a condition to continue supplying to Wilmar. In December 2017, Wilmar announced that REPSA had not met Wilmar expectations under this action plan and suspended sourcing from REPSA. See Wilmar's grievance log [here](#).

<sup>176</sup> [Revelan la red Traficantes de influencias](#), Henry Estuardo Pocasangre and Mynor Toc, La Prensa Libre (Jan. 25, 2018).

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not consider re-engagement with REPSA until and unless it engages with local stakeholders to understand and consider their broad concerns and interests – and that Cargill should no longer look to international NGOs to be “gatekeepers” of this process. Their premise is that local stakeholders’ objectives may be distinct from those emphasized by international NGOs and that the company must therefore engage directly with them.

This situation in Guatemala demonstrates the complexities faced by industries that depend on the large-scale exploitation of natural resources in areas inhabited by local, especially indigenous, communities. Companies and local communities often have clashing perspectives and interests: for companies, the extraction of these resources is at the core of their business model. Thus, they consider it their corporate responsibility to minimize environmental and human rights impacts of their operations rather than to reconsider their fundamental business model. “This perspective clashes with many local and/or indigenous communities, whose primary concern may be less focused on “environmental and human rights issues” as narrowly defined by international actors, and more focused on visceral issues of control over land and resources, and the immediate and long-term impacts on health, dignity, livelihoods, and culture.”

For companies, this conflict presents fundamental, even irreconcilable dilemmas. At stake is their ability to secure a credible and sustainable “social license to operate” depending on free, prior, and informed consent (the international FPIC standard, protected by the UN Declaration on the Rights of Indigenous Peoples and recognized though inconsistently operationalized by the World Bank). Gaining FPIC through genuine stakeholder engagement within legitimate representatives of local communities is necessary to avoid precipitating conflicts over land and resources that can turn violent. Furthermore, even consent itself is difficult to define, let alone to obtain, in specific circumstances.<sup>177</sup> Companies should ensure that they do not conflate consultation with consent. They should recognize that for communities whose interest is preservation of territories and cultural values, FPIC sets the expectation that they should respect that ‘no means no.’

Companies facing these dilemmas can draw on a long-established normative standard. Principle 10 from the Rio Declaration on Environment and Development (1992) clarifies the steps required to responsibly engage with local communities on environmental issues:

*“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities...and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”*

As FPIC and the Rio Declaration illustrate, companies should look beyond the human rights/environmental policies and safeguards they can put in place and implement procedural mechanisms that protect fundamental rights such as access to information, public participation and justice. Such mechanisms are to be considered as “key pillars of sound [and sustainable] environmental justice”.

In the case of Guatemala, REPSA has not yet taken such steps: an impact study published by Oxfam in April 2017 showed that REPSA’s accounts on improvement made following the implementation of its new sustainability strategy diverged from those provided by local community stakeholders. According to Oxfam, one key concern with REPSA’s sustainability strategy is that it overlooked the need to build trust with local communities, causing the conflict to escalate and in turn the environmental and human rights impacts of REPSA’s palm oil activities to intensify.

Policies and commitments to protect HRDs and prevent environmental damage are important components of responsible corporate action, but they should be constructed and implemented through engagement with local stakeholders and follow established procedures set out in the UNGPs. Companies should undertake due diligence, human rights impact assessments, and stakeholder engagement at the outset of a project and provide access to remedy through grievance mechanisms when necessary. But to gain and maintain the social license to operate – however intangible yet all too palpable when lost – companies should engage local communities continuously and respectfully, even and especially when objections are raised about their very presence as well as their practices.

The first step in this process is to “recognize and address the asymmetry of power” that exists between companies and local communities and develop checks on this power to counter its weight. In extreme circumstances when local communities remain resistant to their presence, multinational

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<sup>177</sup> [Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges](#), Amy Lehr and Gare Smith, Foley Hoag (July 2010). See also [Free, Prior, and Informed Consent: An indigenous peoples’ rights and a good practice for local communities – Manual for Project Practitioners](#), Food and Agriculture Organization of the United Nations (Oct. 14, 2016).

corporations should engage stakeholders and consider cancelling contracts with local companies that fail to adhere to fundamental standards and processes consistent with maintaining social license to operate.

Finally, it is important to remember that the corporate responsibility to develop such processes by no means eclipses the state duty to protect the rights of citizens as stipulated by the UNGPs. Yet where the state is weak, companies should engage with local government. In addition, independent oversight by multilateral institutions (such as the OAS or UNOHCHR) may provide the necessary legal accountability to complement company-led commitments.

#### 4.1.4. UNITED STATES



#No DAPL – Stop Dakota Access Pipeline by Peg Hunter, licensed under (CC BY-NC 2.0)

Since its inception in the mid-1990s, much of the contemporary business and human rights movement's agenda has been focused on North American and Western European companies' direct operations and supply chains in the Global South. Significantly less attention has been paid to the conduct of these companies in their home countries in the Global North. The defense of civic freedoms and the protection of human rights defenders is not just an issue for companies working in countries governed by authoritarian regimes, but also for those facing the narrowing of civic space around the world. The United States is a

vibrant democracy, but its civic freedoms have come under increasing threat over the past two years.<sup>178</sup> A June 2018 bipartisan poll found that half of Americans think the US is in "real danger of becoming a nondemocratic, authoritarian country."<sup>179</sup> The role of business in supporting and defending civic freedoms may inform the larger debate about the durability and vitality of American democracy as well as the example the US sets abroad both positively and negatively.

The US is home to many of the world's largest corporations.<sup>180</sup> The US enjoys relatively low unemployment and a growing, socially conscious millennial workforce with rising expectations for employers to be socially responsible. This combination makes it increasingly attractive if not inescapable for many major American companies to be seen to be responsible corporate citizens, whether with respect to human rights and social diversity or to climate change and environmental sustainability.

Among major US multinational corporations there is growing support for the business and human rights agenda. The US Council for International Business (USCIB) – the US affiliate of the International Chamber of Commerce, representing major US multinationals – played a leading role in developing and supporting the ILO Declaration on Fundamental Rights and Principles at Work in 1998.<sup>181</sup> In addition, many major US-based multinationals participate in key human rights multi-stakeholder initiatives.<sup>182</sup> Furthermore, many of these companies actively engaged with John Ruggie's mandate during the development of the UNGPs – and subsequently contributed to the US Government's National Action Plan (NAP). Based on this engagement and commitment – despite inconsistencies and missed opportunities – these leading companies are beginning to speak out in response to threats to civic freedoms at home and abroad. But in at least two areas, US companies for the most part have been indifferent to certain dimensions of civic freedoms at home – labor rights and indigenous peoples rights – even as they have demonstrated varying degrees of positive and constructive action abroad.

<sup>178</sup> On May 9, 2018, President Trump tweeted a threat to ban media organizations he regarded as unfairly critical of his administration. [White House won't rule out banning press for 'negative' coverage](#), David Smith, Guardian (May 9, 2018). Following President Trump's inauguration, The Washington Post amended its masthead to read "Democracy Dies In Darkness" On July 29, 2018, [according to the The Washington Post](#), Trump reiterated his characterization of the "Fake News" media as "the enemy of the people."

<sup>179</sup> [The Democracy Project: Reversing a Crisis of Confidence](#), George W. Bush Institute, Freedom House & Penn Biden Center (June 26, 2018).

<sup>180</sup> As the business and human rights agenda has evolved over the last decade and a half, American companies have taken widely divergent approaches. On one end of the spectrum are companies like Delta Airlines, which has taken positive steps to eliminate discrimination, especially LGBTI discrimination, in the workplace. On the other end are companies such as Massey Energy, whose disregard for worker safety at its West Virginia coal mine, despite being cited multiple times for safety violations, resulted in the worst coal mining disaster in recent history. [Former coal CEO sentenced to a year in prison after 2010 West Virginia coal mine disaster](#), Mark Berman, Washington Post (Apr. 6, 2016).

<sup>181</sup> This leadership was vital for global employer support through the International Organizations of Employers (IOE) and the overall tripartite support for this foundational framework for corporate responsibility and international labor rights.

<sup>182</sup> For example: the Fair Labor Association, the Voluntary Principles on Security and Human Rights and the Global Network Initiative.

Labor rights along with civil rights issues have long been at the forefront of the domestic American human rights agenda.<sup>183</sup> Workers in the agricultural sector have organized to push for higher wages and improved working conditions,<sup>184</sup> and there is a strong movement in many US cities to raise the minimum wage so that it approaches a “living-wage” level.<sup>185</sup> The Business for a Fair Minimum Wage coalition has aligned companies of varying sizes in support of raising the minimum wage at the federal and state levels.<sup>186</sup> Some well-known supporters include Ben & Jerry’s, Stonyfield, & pizza, and Eileen Fisher. Organized labor has also increasingly come under attack. There are 28 “right to work” states where laws prevent labor unions and employers from entering into agreements where employers agree to hire only unionized workers for jobs under that agreement (the details of these laws vary from state to state). Labor unions and their advocates argue that such laws allow employees to receive the benefits that come from a union’s collective bargaining power without having to pay their share of dues and fees to the union. They also argue that right to work laws have the effect of weakening labor unions and their collective bargaining power, which will ultimately result in lower wages.

On June 27, 2018 the U.S. Supreme Court struck down state laws that allow public sector unions to charge non-union members for the costs of collective bargaining and job protections. The decision overturned longstanding precedent and is expected to weaken unions’ political power by limiting their ability to raise funds and organize new members.<sup>187</sup>

Another critical human rights issue in the US is Native American land rights. In 2017 the UN Special Rapporteur

on the Rights of Indigenous Peoples visited the US to examine the human rights situation of Native Americans and met with the Sioux Tribe at the Standing Rock reservation who were protesting the construction of the Dakota Access Pipeline. The Special Rapporteur found that tribe members were denied access to information and excluded from consultations during the planning phase of the pipeline project. Furthermore, she found that tribe members who were protesting peacefully were arrested and attacked by police dogs. The struggle of Native American land rights activists in the US is frequently overlooked in the context of discussions regarding human rights defenders and civic freedoms.<sup>188</sup>

Yet over the last several years, attitudes in Corporate America toward social activism have changed.<sup>189</sup> US companies have become more visible and vocal in taking public stands on social and political issues related to human rights, both prior to and increasingly since the election of Donald Trump in November 2016.<sup>190</sup>

For example, following the passage of Indiana’s Religious Freedom Restoration Act in 2015, some in the LGBTI community feared that this law could be used to justify discrimination against members of their community in the name of religious freedom. After this law passed, many companies spoke out including Salesforce, which said it would pay for its Indiana-based employees to relocate if they were concerned about the discriminatory impact of the law.<sup>191</sup> This law was eventually amended to prevent its use to discriminate against individuals, including members of the LGBTI community.<sup>192</sup>

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<sup>183</sup> In 2013, the UN Working Group on Business and Human Rights conducted a research mission to the United States. The [Working Group’s report](#) noted with concern that “public sector employees at the state and federal levels, agricultural workers and domestic workers are excluded from the protection offered by the National Labor Relations Act and that the protection provided by other federal and state legislation is more limited and often does not include the right to form a trade union and to bargain collectively.”

<sup>184</sup> The Coalition of Immokalee Workers has worked to improve the human rights of agricultural workers, particularly migrant laborers. The CIW created the Fair Food Program in 2011 – a worker driven model for social responsibility based on a partnership among farmworkers, growers and retail buyers. For more information, see the [Agriculture, Food and Beverage Spotlight](#).

<sup>185</sup> The [Fight for 15](#) movement pushes for raising the minimum wage to \$15 an hour – a living wage.

<sup>186</sup> <https://www.businessforafairminimumwage.org/>.

<sup>187</sup> [The Supreme Court just dealt unions a big blow in Janus, here’s what you need to know about the political fallout](#), by James Feigenbaum and Alexander Hertel-Fernandez, Washington Post, June 27 2018.

<sup>188</sup> [Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America](#), Victoria Tauli-Corpuz, presented to the UN Human Rights Council (Aug. 9, 2017).

<sup>189</sup> See also [CEO Activists spotlight](#).

<sup>190</sup> In response to the upsurge in protests since the 2016 election, state legislators in nearly 20 states proposed bills in 2017 that limit people’s right to protest, and these bills have passed in four states. For more information, see: [Anti-Protest Bills Around the Country](#), ACLU (June 23, 2017).

<sup>191</sup> [Salesforce relocating employees out of Indiana](#), Michael Anthony Adams, Indy Star (Apr. 3, 2015).

<sup>192</sup> See also [LGBTI Commitments Spotlight](#).

Starbucks was recently confronted with the issue of racial discrimination in April 2018 when two African-American men were arrested at a Philadelphia location as they waited for a friend. The store's manager had called the police because the men had not purchased anything. This news was reported nationally and sparked protests against the company, compelling its CEO to apologize for the incident and commit to close all its domestic stores a month later for racial bias training.<sup>193</sup> As described in the subsequent spotlight in this guidance focused on CEO activism, corporate leaders have felt compelled to take public stands in reaction to policies and statements associated with the Trump Administration. Immigration issues – the travel ban excluding citizens of certain Muslim countries, the status of the “Dreamer” offspring of illegal immigrants, and the detention of families and separation of children along the US – Mexico border – have triggered sharply critical reactions in 2017-18; the Charlottesville incident in August 2017 provoked unprecedented personal rebukes of a sitting US President for showing support for racism.

But even this upsurge of public advocacy in support of civic freedoms and human rights must be seen in the broader context of overall corporate priorities. Oxfam America published an April 2018 report examining the stated policies, values, and public messaging of the 70 largest corporations in the US.<sup>194</sup> It noted that many companies that had received attention for speaking out against some of the Trump Administration's more controversial policies had also put most of their lobbying budgets into corporate tax reform and regulatory relief. By contrast, Microsoft's President Brad Smith wrote in a September 2017 blog post that while Microsoft cares about reforming the tax system, “we need to put the humanitarian needs of these 800,000 [Dreamers] on the legislative calendar before a tax bill.”<sup>195</sup>

The Oxfam America report highlights the difference between corporate advocacy and corporate power, describing “the growing propensity of corporations speaking out on social, cultural and political issues as both an opportunity and a challenge. . . Big business's role in creating more equitable and just societies includes job creation, generating goods and services, and providing capital, public resources through taxes, technology, and entrepreneurial

innovation.” Aligning American corporate policy and advocacy engagement with the defense of civic freedoms currently under threat in the US and around the world would strengthen the fundamental “shared space” that should link business and civil society in their mutual interest.

## 4.2. SECTOR SPOTLIGHTS

### 4.2.1. EXTRACTIVES (OIL/GAS AND MINING)



Guatemala – Marlin Mine Goldcorp by Dave Dyet, licensed under (CC BY-NC 2.0)

The extractive industries present some of the toughest challenges for companies seeking to avoid committing – or appearing complicit in – human rights abuses. This reality is due to a nexus of factors: the geographic location of natural resources and their proximity to local communities and to conflict zones; the high and lengthy fixed costs of investment that compel companies to maintain a long-term presence, however difficult the governance environment; and their reliance on local communities and host country governments alike for the social and legal license to operate. The intersection of these factors with the establishment or expansion of company operations has created or exacerbated political, social, economic and cultural issues and in turn threatened local communities and HRDs. Indeed, the history of conflict and the legacy of mistrust between civil society – especially local communities and HRDs – is more deeply entrenched in the extractive sectors of oil, gas and mining than in any other sector, along with agriculture.

<sup>193</sup> Starbucks CEO vows to learn from ‘mistake’ in racial incident, Zlati Meyer, USA Today (Apr. 27, 2018).

<sup>194</sup> Dollars and Sense: Corporate responsibility in the era of Trump, Oxfam America (Apr. 12, 2018).

<sup>195</sup> Microsoft says protections for Dreamers more important than tax reform, Steven Overly, Politico (Sept. 5, 2017).

This history and legacy is tragically reflected and reinforced by longstanding and continuing impunity for attacks against defenders. Violent attacks unanswered by accountability and therefore deterrence is not unique but especially acute in the extractive industries along with agriculture – with deadly consequences for the lives as well as rights of local communities and human rights defenders. Community protestors and whistleblowers often become the target of intimidation and harassment or prosecution and detention by the company or state they seek to expose. Impunity for threats and attacks against defenders acts as “a green light to potential perpetrators who see that they are unlikely to face consequences for attacks on activists”.<sup>196</sup> In many countries in Latin and Central America, where high number of activists are killed for their opposition to extractive projects, impunity is one of the key drivers of continued attacks. Global Witness found that the impunity rate – the proportion of people getting away with murder – was 92% in 2017, whereas an astonishing 98% of all crimes in Mexico were never solved. As Somos Defensores, a Colombian NGO, put it: “This [impunity] is the worst message that the state can send to those who commit [these] crimes, since this incentivizes them, instead of punishing them, because they will see that there are no consequences to their actions.”<sup>197</sup>

Yet the variety and severity of the threats posed to the “shared space” should highlight the common interests shared by civil society and companies in this sector and have indeed compelled leading multinational oil/gas and mining companies to respond, however incompletely or inconsistently. Over the last two decades, the extractives have produced the widest range of multi-stakeholder initiatives and standards-setting efforts related to human rights of any sector (rivalled only by apparel/footwear). Moreover, an extractives company commissioned the first-ever human rights impact assessment, nearly a decade before HRIAs were highlighted as a critical due diligence tool in the UNGPs.<sup>198</sup> These standards and initiatives form the basis of much greater potential cooperation to support and defend that shared space even as conflict and mistrust persists. Four central and often overlapping arenas pose pressures and threats for local communities and human rights defenders and in turn create corporate dilemmas and responsibilities for companies:

- The use of security forces to protect company assets, operations and personnel in conflict zones or in proximity to local communities;

- Indigenous communities' rights to land and resources extracted by oil, gas and mining companies;
- Environmental issues relating to the degradation or depletion of natural resources, especially water; and
- Corruption and lack of transparency in dealings among companies and governments and the commercial and financial enablers of projects.

These four arenas present not only common challenges but also opportunities for civil society and companies to cooperate around the shared space of civic freedoms – if they can acknowledge without illusions the shared legacy of conflict and mistrust and embrace more positively and consistently the standards and initiatives that can bring them together. Responsible extractives companies can benefit from well-established norms, standards and tools – including several highly developed multi-stakeholder initiatives in the sector to support civic freedoms – and protect human rights defenders – in each of these arenas.

**Security forces and conflict zones:** The main risks to the physical security of local communities and HRDs is the risk of violence connected to companies' use of public or private security forces when they operate in conflict or conflict-prone areas. Extraction and mining of natural resources are often the cause of – or a contributing factor to – conflicts, including civil war, ethnic tensions, or community unrest directly connected to extractive operations. At risk for companies is not only the physical security but also the social license – and sometimes the physical ability – to operate in conflict zones. For the local communities and the HRDs caught in the cross-fire nothing less than lives and livelihoods, rights and futures are at stake.

Company complicity in human rights abuses committed by security forces ostensibly protecting their assets, operations and personnel became visible in the early 1990s. Three examples came under a harsh spotlight by NGOs and media: BP's use of right-wing paramilitaries to guard its oil installations in Colombia at the height of the civil war there in the mid-1990s; ExxonMobil's willingness to allow the Indonesian army to use its land-moving equipment to dig mass graves for separatists killed in the Aceh conflict in the late 1990s; and Chevron's approval of use of a company helicopter by the Nigerian Mobile Police in a crisis situation in the Niger Delta in 1999.<sup>199</sup>

<sup>196</sup> *At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017*, Global Witness (Jul. 2018).

<sup>197</sup> *Ibid.*

<sup>198</sup> See *Human Rights Assessment of the Tangguh LNG Project, Summary of Recommendations and Conclusion – Presented to BP Indonesia*, Gare A. Smith & Bennett Freeman (Apr. 19, 2002).

<sup>199</sup> See also, *BP lawsuit*; *Chevron lawsuit*; and *ExxonMobil lawsuit*



The Voluntary Principles on Security and Human Rights (“the VPs”) were established in 2000 as a multi-stakeholder initiative bringing together governments, companies, and NGOs to combine security arrangements with human rights safeguards. Since then, over 30 oil and mining companies have aligned publicly with the VPs and commit to review security forces for recent human rights abuses; to undertake HRIAs; and to urge host country government officials to investigate allegations of human rights violations and hold perpetrators accountable. These provisions were unprecedented at the time for corporate responsibility initiatives in the extractives (if not any other) sector. The VPs have rarely if ever been a platform for companies to call public attention to issues related to the rights of local communities and human rights defenders, but instead have given companies the basis to engage privately with host country governments and security forces. The VPs have encouraged some successful company engagement with local stakeholders in countries ranging from Indonesia to Colombia to Ghana. But they have been less credible as a basis for building trust with international NGOs due to what they perceive to be inadequate transparency and accountability at the global “plenary” level.<sup>200</sup>

The International Code of Conduct for Private Security Providers’ Association (ICoCA), a multi-stakeholder initiative created in 2013, complements the VPs with its focus on similar human rights safeguards for private security providers mostly working with extractive companies in conflict zones. ICoCA’s mandate extends beyond the VPs’ with the aim of also seeking to “prevent sexual exploitation, gender-based violence, human trafficking, slavery and forced labor, [...] to protect children’s rights and prevent discrimination.”<sup>201</sup>

The VPs and ICoCA have significant value for companies as established normative and operational standards. They enable companies to insist on human rights safeguards in security arrangements with host country governments and security forces – and provide a basis on which to press for the protection of local communities and human rights defenders, as well as accountability for possible human rights violations through complaint mechanisms. They also

offer useful platforms for stakeholder engagement and are adaptable to project contracts to provide legally binding accountability. Both the VPs and ICoCA have potential – even within their established mandates – to become more focused and consistent platforms for private if not public engagement by companies to support local communities and human rights defenders at risk in conflict zones.

### **Tensions with indigenous communities and land:**

Tense situations become inflamed where security forces clash with indigenous communities living on or in direct proximity to extractive companies’ operations. Indigenous communities in Latin America are particularly affected, with notable examples including Goldcorp’s Marlin mine in Guatemala, Occidental Petroleum oil block in Colombia, Conga mine in Peru among others.

Failure to mitigate tensions with indigenous communities by conducting HRIAs and maintaining respectful local community stakeholder relations can have drastic implications for the social license and actual legal license to operate – with significant financial consequences. Newmont Mining Corporation was forced to declare a state of emergency and stop construction at its \$5 billion Conga copper and gold mine in Peru in November 2011, citing “local opposition” as an important decision factor; after protests led by local farmer Máxima Acuña against the company’s local subsidiary Minera Yanacocha SRL began in 2010. Moreover, Peru’s Supreme Court ruled in favor of Acuña’s claim that Newmont illegally occupied her land in May 2017, after Newmont appealed the original decision in 2014.<sup>202</sup>

In India, Vedanta Resources has come under scrutiny over the Sterlite copper plant in Tamil Nadu state. In May 2018, police killed thirteen people protesting the increased pollution caused by the plant.<sup>203</sup> The controversy surrounding these killings, following Vedanta’s failure to engage with local communities, has had financial repercussions with a drop in the company’s stock price which has led the company CEO to discuss plans to delist from the London Stock Exchange.<sup>204</sup>

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200 <http://www.voluntaryprinciples.org>; Amnesty International withdrawal from Voluntary Principles on Security and Human Rights (June 3, 2013).

201 <https://www.icoca.ch/en/icoc-association>

202 Peru Supreme Court Rules Against Newmont in Dispute Over Gold Mine, Reuters (May 3, 2017).

203 India: At least 10 people dead during protests against Vedanta’s operations; co. responds, compiled by Business & Human Rights Resource Centre (June 2018); Anil Agrawal plans to delist Vedanta from London Stock Exchange, Business Today (July 3, 2018).

204 Rise of responsible investing catches up with Vedanta, Simon Mundy, The Financial Times (June 27, 2018).

The core rights associated with the land, culture and survival of indigenous and local communities are enshrined in international instruments such as the UN Declaration on Indigenous Rights and the ILO Indigenous and Tribal Peoples Convention (No 169) and are operationalized in the Free, Prior and Informed Consent (FPIC) standard.<sup>205</sup> Indigenous rights related issues are especially risky for extractive companies because tensions or clashes with indigenous communities can tarnish the reputation of the industry as a whole.<sup>206</sup> Conversely, while companies bear short-term costs associated with the implementation of consent policies, a well-developed, communicated and implemented stakeholder engagement process can help companies renew an informal but vital social license to operate with these communities. In engaging in a genuine FPIC process, companies can build good will with a local indigenous community if they are willing to embrace its spirit: a willingness to accept a community veto or provide a credible alternative decision-making process in practice.<sup>207</sup> Yet FPIC processes remain associated with certain risks, including negatively affecting inter-community relations if internal consensus fails and the FPIC process is not conducted sufficiently comprehensively and carefully.<sup>208</sup> Ultimately, companies should not rely on host country governments or local officials without appropriate due diligence but use FPIC to engage key local community actors with the objective of reaching consensus that a certain project can “demonstrate mutual benefit.”

FPIC is a particularly challenging issue for mining companies. The International Council on Mining and Metals (ICMM), an international industry initiative founded in 2001 that brings together 27 mining and metals companies and over 30 regional and commodities associations to improve sustainable development standards and performance, has developed a positive and innovative standard for FPIC. ICMM member companies commit to a set of 10 principles,<sup>209</sup> eight supporting position statements<sup>210</sup> (of which Indigenous Peoples and Mining is one) and transparent and accountable reporting practices. For ICMM members, FPIC comprises a defined process through which indigenous peoples are: (i) able to freely make decisions without coercion, intimidation or manipulation; (ii) given sufficient time to be involved in project decision making before key decisions are made and

impacts occur; and (iii) fully informed about the project and its potential impacts and benefits. The outcome of this process is that indigenous peoples can give or withhold their consent to a project, consistent with their traditional decision-making processes while respecting internationally recognized human rights.

**Corruption:** Corruption remains a central, critical issue for the extractives industries. It takes a variety of forms: from local criminals siphoning off company resources, to massive expropriation of revenues by individuals at the highest echelons of government. It has entrenched and enriched elites at the expense of sustainable, equitable development and transparent, accountable governance. It has also created or exacerbated tensions within local resource-producing communities and conflicts between regions within countries – and in turn corroded civic freedoms and endangered (and in many cases killed) human rights defenders.

Yet the struggle against corruption in the extractives industries has been the focus of two decades of immense efforts by local communities and international NGOs as well as by governments and international institutions, companies and industry associations. Progress has been made through the international civil society network Publish What You Pay (PWYP) established in 2002<sup>211</sup> and the multi-stakeholder (including civil society, governments, companies and investors) Extractive Industries Transparency Initiative (EITI) proposed that year and established in 2006.<sup>212</sup> Progress has also been made by the enactment of mandatory revenue disclosure requirements initially in the US in 2010 and subsequently in the UK, EU and Canada though its implementation remains stalled in the US due to the active opposition of major US oil companies joined by the Trump Administration and Republicans in Congress.

EITI and PWYP work on parallel but independent tracks to promote civil society as a fundamental stakeholder in improving revenue transparency and disclosure in the extractives industry by holding governments accountable. EITI requires governments seeking membership to demonstrate that legitimate and independent civil society members participate at the country level. Similarly, civil society must continue to operate independently for a

205 *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*, International Labour Organization.

206 This is what motivated Tiffany to act in Angola despite not being directly related to the abuse, on the grounds that it believed in the integrity of the global diamond value/supply chain.

207 *Implementing a Corporate Free, Prior, and Informed Consent Policy: Benefits and Challenges*, Amy Lehr and Gare Smith, Foley Hoag (July 2010).

208 *Ibid.*

209 ICMM 10 Principles: <https://www.icmm.com/en-gb/about-us/member-commitments/icmm-10-principles>.

210 ICMM Position Statements: <https://www.icmm.com/en-gb/about-us/member-commitments/position-statements>.

211 <http://www.publishwhatyoupay.org>

212 See: <https://eiti.org>.

government to be validated as compliant with EITI.<sup>213</sup> Conversely, if the closing of civic space becomes an issue or if allegations of harassment or attacks on HRDs emerge in a previously compliant country, the board can terminate that government's membership. Companies play a key role in the relationships between governments and civil society as EITI decides whether to validate governments and therefore indirectly oppose the exclusion of civil society or harassment of activists related to its work (even if they are reluctant to directly criticize host governments).

Activists associated with PWYP and/or EITI are sometimes targeted. For example, Marc Ona Essangui, member of the EITI Interest Group and PWYP Coordinator in Gabon, was detained in December 2008 for requesting an investigation into assets acquired by the Heads of State of Gabon in France.<sup>214</sup> Ali Idrissa, the coordinator of the Niger national chapter of PWYP, was jailed with 26 other members of civil society by the Niger government for what it alleges was an illegal protest in March 2018; all were released that July following coordinated international pressure.<sup>215</sup>

The EITI requires active civil society participation in its process as key to ensure that the transparency created by the EITI leads to greater accountability, and that the participation of civil society in the EITI process is assessed at two stages of EITI implementation (during countries' candidature assessment and during their validation process). But EITI's ability to act directly on behalf of civil society is sometimes limited because of its consensus-based protocol. PWYP continues to push for greater consistency in EITI's efforts to protect and expand space for civil society in the struggle to promote transparency and accountability in the extractives sectors.

Yet for all the progress made over the last two decades – through the EITI framework and mandatory disclosure requirements and above all through the struggles of local communities and civil society supported by international NGOs – corruption remains endemic in many countries; some companies remain part of the problem and others part of the solution. In a recent case, Eni and Royal Dutch Shell are facing trial in Italy over charges of payments made to a company owned by the former Nigerian minister of energy to secure an offshore exploration and production deal worth \$1.3 billion.<sup>216</sup> Financial enablers of such

corruption, ranging from major international banks to shell companies through which illicit payments or proceeds are funded, play pivotal roles that have been exposed by NGOs such as Global Witness and are now the target of beneficial ownership legislation and regulation in critical jurisdictions such as the UK and US. Widespread corruption persists in this sector globally and continues to corrode the shared space between companies and civil society even as some common ground is found.

#### 4.2.2. AGRICULTURE, FOOD AND BEVERAGE



*Cortando caña - Cutting sugar cane; Madriz, Nicaragua by Lon&Queta, licensed under (CC BY-NC-SA 2.0)*

The agricultural sector encompasses a tremendous breadth and depth of human rights-related risks and impacts for business and civil society alike. Along with mining, it is the sector with the greatest frequency, intensity and severity of attacks on human rights defenders. To satisfy increasing global consumption, destructive agricultural projects are growingly being imposed on communities without their consent.<sup>217</sup> According to Global Witness data, in 2017, the sector actually surpassed mining for the first time in terms of killings of defenders, as 46 defenders who protested against palm oil, coffee, tropical fruit and sugar cane plantations, as well as cattle ranching, were murdered in 2017. The number of people killed while protesting large-scale agriculture more than doubled compared to 2016. Likewise, according to the Business & Human Rights Resource Centre findings, agriculture was the most dangerous sector to oppose in the first half of 2018.<sup>218</sup>

<sup>213</sup> For this reason, the government of Equatorial Guinea was not validated by the EITI Board in 2008.

<sup>214</sup> [EITI Chairman expresses concern about arrests of civil society representatives in Gabon](#), Anders Kråkenes, EITI (Jan. 8, 2009).

<sup>215</sup> [Urgent: Free our colleague Ali Idrissa, jailed for doing his job](#), Elisa Peter, PWYP (May 10, 2018).

<sup>216</sup> [Eni and Shell face trial in Italy over alleged Nigeria corruption](#), Andrew Ward, The Financial Times (Dec. 20, 2017).

<sup>217</sup> [At What Cost?: Irresponsible business and the murder of land and environmental defenders in 2017](#), Global Witness (Jul. 2018).

<sup>218</sup> [Almost four environmental defenders a week killed in 2017](#), Jonathan Watts, Guardian (Feb. 2, 2018).

The central human rights issues at stake in agriculture are land rights and labor rights. The land rights related to this sector are property rights, land seizures, and indigenous community rights. The main labor rights issues are forced labor; human trafficking, unsafe work conditions, and freedom of association. Both issues also touch on gender inequities which have been intrinsic to labor-intensive agricultural production which historically has exploited women (and children).

## Land Rights

Disputes over rural property rights may undermine the rights and livelihoods of up to 2.5 billion people worldwide.<sup>219</sup> Rights-related disputes have intensified in recent years as investors and corporations, encouraged by governments and driven by increasing demand for fuel, food, raw materials as well as financial speculation, push into increasingly remote rural areas as they seek land for agribusiness.<sup>220</sup> Many HRDs also face risks when denouncing the environmental impact of agribusiness. From 2000 to 2010, industrial agriculture, together with subsistence farming, accounted for 80% of deforestation in tropical and subtropical countries. Environmental devastation related to agribusiness can have damaging effects on health and nutrition.<sup>221</sup> Resulting conflicts have disrupted indigenous and other local communities, subjecting them to violence for resisting these projects and trying to remain on their land.<sup>222</sup>

Similarly as in the extractives sector, Global Witness notes that there is a widespread failure to tackle the root causes of the violence against land and environmental HRDs in relation to agriculture sector: **impunity** for threats and attacks against defenders; **corruption**, which allows government officials and businesses to collude in grabbing land or imposing business projects on communities, as well as facilitates impunity; **the failure to secure and respect customary and collective land rights** and other land titles, the exclusion of communities from other decision-making processes and the **lack of respect for free, prior and informed consent (FPIC)** of those

communities whose land is affected by agribusiness.<sup>223</sup> HRDs who advocate and push for consultation and FPIC are subject to legal harassment and killings. In Brazil, killings of HRDs campaigning against agribusinesses are rising.<sup>224</sup> Land rights to certain Afro-Brazilian groups (referred to as Quilombos) are guaranteed by the Brazilian constitution, but recently some politicians with close links to agribusiness have sought to overturn these legal protections to gain access to this land for agribusiness projects.<sup>225</sup> In April 2018, anti-palm oil campaigner Nazildo dos Santos Brito was killed in Brazil's Amazonian state Pará.<sup>226</sup> Prior to his killing, Brito had requested judicial protection after receiving death threats over his opposition to palm oil plantations in the region.

While land rights and human rights are at stake for local communities, inadequate consultation with communities can cost companies dearly. When local elites and governments sign away local people's land for development, research shows that the work stoppages, delays, and conflicts that frequently follow can increase the cost of doing business up to 29 times.<sup>227</sup>

Companies which operate in countries with chronic corruption and weak rule of law should conduct careful due diligence before making land investments. Where they go ahead with investments, they should ensure that they respect communal and customary land rights; ensure communities can give or withhold their free, prior and informed consent or broad community support regarding the use of their land and natural resources; provide fair compensation; and offer grievance mechanisms. Multinational agricultural corporations that source from local companies, and financial investors which fund them, should conduct similar due diligence along their supply and investment chains and require the same standards from these local companies. Companies together with governments, investors and bilateral/multilateral assistance partners should support and protect defenders through specific laws, policies, practices and resources, and ensure accountability for abuses against land defenders.<sup>228</sup>

<sup>219</sup> [Securing Community Land Rights](#), Rights and Resources (Oct. 2017)

<sup>220</sup> [Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project](#), Ward Anseeuw, Liz Alden Wily, Lorenzo Cotula & Michael Taylor for IIED, CIRAD, & International Land Coalition, (Jan. 2012).

<sup>221</sup> [Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project](#), Ward Anseeuw, Liz Alden Wily, Lorenzo Cotula & Michael Taylor for IIED, CIRAD, & International Land Coalition, (Jan. 2012).

<sup>222</sup> In many cases, governments are issuing rights to companies for land which communities have relied on for generations, but to which they may have no formal title. For further information on Free, Prior and Informed Consent (FPIC), please see [Guatemala Spotlight](#).

<sup>223</sup> [Defenders of the Earth: Global killings of land and environmental defenders in 2016](#), Global Witness (Jul. 13, 2017).

<sup>224</sup> [Brazil: 2017 one of 'bloodiest years' for land conflicts](#), Sam Cowie, Al Jazeera (Apr. 20, 2018).

<sup>225</sup> [Quilombolas' community land rights under attack by Brazilian ruralists](#), Sue Branford and Mauricio Torres, Mongabay (Aug. 25, 2017).

<sup>226</sup> [Murdered land activist adds to rising death toll in Brazil's Amazon](#), Jonathan Watts, Guardian (Apr. 18, 2018).

<sup>227</sup> [The Financial Risks of Insecure Land Tenure: An Investment View](#), Prepared for Rights and Resources Initiative by The Munden Project (Dec. 2012).

<sup>228</sup> "This goes beyond the prosecution of those responsible for ordering or carrying out an attack, and extends to ensuring that those actors who failed to support and protect defenders face consequences for their inaction." See [On Dangerous Ground](#), Global Witness, p.6 (June 2015)

With the problems associated with land rights and agriculture, it is not surprising that governments, international organizations, civil society and some businesses are looking for ways in which to address these issues. Some recent efforts include:

- In Oxfam's Behind the Brands campaign, land is one of the key areas examined for the company scorecards.<sup>229</sup> In the most recent report, Oxfam noted improvements on the part of the "Big Ten" with regard to land rights issues.<sup>230</sup> For example: six out of the ten have incorporated FPIC into their supplier codes; five have committed to a "zero tolerance for land grabs" in their supply chain (ABF's subsidiary Illovo Sugar, Coca-Cola, PepsiCo, Nestlé, and Unilever). These improvements on the part of the Big Ten, especially regarding land grabs, were prompted by the Behind the Brands findings and subsequent engagement with Oxfam.
- In October 2017, the seventh Regional Conference on Human Rights and Agribusiness in South East Asia issued a resolution calling for a range of measures to secure and improve land tenure recognition and security.<sup>231</sup> This so-called "Pontianak Resolution" was adopted following meetings that included government, intergovernmental organizations, civil society organizations, indigenous representatives, and representatives from the following businesses: Golden Agri-Resources, Asia Pulp and Paper, and Sime Darby.
- The Interlaken Group is an informal network of individual leaders from influential companies, civil society organizations, governments and international institutions whose purpose is to expand and leverage private sector action to secure community land rights (and therefore avoid associated conflict and violence).<sup>232</sup> It develops, adopts and disseminates new tools and advances new "pre-competitive" mechanisms to accelerate private sector learning on responsible land rights practices. Thus far it has produced several guiding documents on implementing the Voluntary Guidelines on the

Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) and companies and investors have started to report back to the group on their efforts to identify ESG risks in their projects, implement the guidelines and share examples of best practice.

## Labor Rights

The agriculture, food and beverage sector also faces serious labor rights issues. Forced labor and human trafficking have attracted attention and generated action around the world in recent years. Numerous investigations have highlighted these labor abuses such as forced labor and human trafficking in the Southeast Asian seafood industry.<sup>233</sup> Not only have the human rights abuses been egregious, but some of those exposing and seeking accountability for labor abuses in the sector are targeted by companies and governments. For example, in the sugar cane industry in Nicaragua, rampant human rights abuses include child labor, dangerous working conditions, restrictions on freedom of association, inadequate access to remedy, and threats and intimidation.<sup>234</sup> Workers who speak out against these abuses are threatened by local police or government and company officials.

One of the most internationally visible cases of harassment has been that of the human rights activist Andy Hall for his contribution to a report by Finnwatch highlighting abuses in the Thai food production sector and alleging that the Thai company, Natural Fruit,<sup>235</sup> was engaged in abusive labor practices.<sup>236</sup> He alleged that the company confiscated workers' passports and identity papers, paid wages below the legal minimum wage, required employees to work excessive hours without adequate pay and subjected them to physical abuse. Since 2013, Hall has been fighting several lawsuits accusing him of criminal and civil defamation<sup>237</sup> which have made it impossible for him to remain in Thailand to continue his work on behalf of migrant workers. When the Thai court handed down a criminal defamation conviction against Hall in one of the cases, many in the

229 *The Journey to Sustainable Food: A three-year update on the Behind the Brands campaign*, Oxfam (Apr. 16, 2016).

230 The report defines the "Big Ten" as: ABF, Coca-Cola, Danone, General Mills, Kellogg, Mars, Mondelez, Nestlé, PepsiCo, and Unilever.

231 *Pontianak Statement on Human Rights and Agribusiness in South East Asia* (Oct. 12, 2017).

232 See: <http://www.interlakengroup.org/>

233 *Thailand: Forced Labor, Trafficking Persist in Fishing Fleets*, Human Rights Watch (Jan. 23, 2018).

234 *Sickly Sweet: Human Rights Conditions For Sugarcane Workers in Western Nicaragua*, Yvonne Hutchison, La Isla Foundation (Aug. 20, 2014).

235 Natural Fruit produces pineapple products and is part of Nat Group.

236 Worker rights regularly come under attack in Thailand. For example, a group of migrant workers from Myanmar filed a complaint with the Thai National Human Rights Commission in 2016 over abusive labor practices. These workers were then charged with criminal defamation for having spoken out regarding the human rights abuses they suffered. In July 2018, a court in Bangkok dismissed the charges. *Thai court dismisses charges against Myanmar workers in landmark case*, Rina Chandran, Thomson Reuters Foundation (July 11, 2018).

237 *Q&A: Criminal and Civil Prosecutions – Natural Fruit vs. Andy Hall*, Finnwatch (Apr. 24, 2018). For complete information (including latest updates) regarding these lawsuits, please see *Natural Fruit Company lawsuits (re defamation suits against Andy Hall, Thailand) by Business & Human Rights Resource Centre*.

international community spoke out against the verdict, including 180 Nordic companies and the global business association Amfori. In May 2018, a group of UN human rights experts criticized the use of defamation legislation to silence human rights work.<sup>238</sup>

Companies not only denounced these legal actions against Hall, but many supported him with direct assistance. For example, immediately following his detention, Hall contacted the Thai Tuna Industry Association (TTIA) and the Thai Frozen Food Association (TFFA) for assistance. Together, they committed to post his bail. In January 2016, when the first bail period expired, TTIA, Finnwatch, and the Thai Union provided the second round. S Group, the Finnish retailer who had sourced from Natural Fruit prior to Andy Hall's reporting with Finnwatch, has been an especially active supporter of Hall's. S Group sent a company lawyer and senior vice president of sustainability to the Thai court to support Hall; the company also provided financial assistance for Hall's appeal of the Thai court's decision in 2018. This conviction was overturned in May 2018.<sup>239</sup> All these actors were explicit in their support for Hall's right to freedom of expression in addition to concern over the labor abuses he highlighted.

### 4.2.3. APPAREL AND FOOTWEAR



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The last 45 years have seen a dramatic geographic shift in the production of apparel and footwear as production jobs left Europe and North America in favor of developing countries, primarily in Southeast and South Asia as well as Central America and the Caribbean. In footwear/apparel

supply chains, and especially in Southeast and South Asia, the primary threat to civic freedoms stems from an inherent conflict in this sector: Many governments and brands together with their suppliers want to maintain competitive advantage with low wages. At the same time, civil society led by trade unions are determined to defend freedom of association (and raise wages through collective bargaining) with support from some major multinational brands which have worked to improve respect for these rights over the past two decades. This conflict leads to a narrative in which unions, NGOs, or other activist organizations pushing for improved labor rights are seen to be acting against their country's best economic interests. Some governments argue that human rights improvements diminish competitive advantage, even at the expense of a race to the bottom.<sup>240</sup>

There are at least five main actors at the nexus of this conflict: first, national governments; second, the International Labor Organization (ILO) whose core labor standards<sup>241</sup> set forth basic worker rights based on decades of conventions forged on a tripartite basis by governments, employers and trade unions; third, trade unions and their supporting human rights organizations and other civil society actors; fourth, local manufacturers; and fifth, global brands which need to engage and attempt to balance these other four sets of actors and the cross-pressures they generate. Governments are usually supportive of domestic manufacturing, which in many cases leads to the abrogation of freedom of association and assembly in support of factory owners in labor disputes. When governments prioritize keeping wages low, large-scale worker protests met by violent suppression by security forces are sometimes the result.

Global brands that source from such countries have two sometimes conflicting priorities: first to be competitive in the interest of their shareholders and that of the jurisdictions where they are based and/or operate; second, to be responsible in an era of higher standards and expectations reinforced by ethical investors and consumers (plus growing numbers of employees) to respect basic labor rights and working conditions and to pay living wages. While the first of these priorities has been overriding throughout most of the world's industrial history, the second has been gaining in importance for many brands.

The lessons learned from Bangladesh's Rana Plaza factory collapse in 2013 still resonate throughout the industry, having

<sup>238</sup> Thailand: UN experts condemn use of defamation laws to silence human rights defender Andy Hall, UN Special Rapporteur on the Situation of Human Rights Defenders (May 17, 2018).

<sup>239</sup> See Thai court dismisses criminal defamation charges against British activist Andy Hall, Nicola Smith, The Telegraph (May 31, 2018).

<sup>240</sup> Soon there won't be much to hide: Transparency in the Apparel Industry, Aruna Kashyap, Human Rights Watch (Dec. 15, 2017).

<sup>241</sup> The ILO's core labor standards are freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labor, effective abolition of child labor, and elimination of discrimination in respect of employment and occupation. See the ILO's Declaration on the Fundamental Principles and Rights at Work.

sent a tragic and urgent reminder about the indivisible link between worker rights and safety that must be reinforced at the core of responsible risk and overall and supply chain management.<sup>242</sup> The Rana Plaza collapse is a textbook example of the danger of marginalizing worker voice in the name of economic progress. This disaster claimed the lives of more than 1100 people and injured 2500.<sup>243</sup> The underlying issue was a weakness in the structure of the factory building, but the real failure stemmed from even more fundamental structural failures that proved to be fatal to the lives of the workers there. Government building code and inspection regulations were routinely ignored by regulators and factory owners. When employees tried to voice concerns about the building's long-term weaknesses, there were no trade unions to force management to listen. The result was catastrophic. Although repressing unions and labor rights movements may seem profitable in the short term, disasters such as Rana Plaza can be prevented by the challenging and life-saving work of civil society organizations – in this case trade unions chosen by workers empowered by their right to freedom of association. In the aftermath of the Rana Plaza disaster, the Bangladesh Accord on Fire and Building Safety, a legally binding agreement setting forth enforceable standards for transparency and accountability with the direct participation of local and international trade unions to ensure worker voice, was established by over 220 mostly European retailers and brands.<sup>244</sup> The parallel Alliance for Bangladesh Worker Safety was established by other (including many American) companies as a voluntary agreement without direct involvement by trade unions. Both were launched with five-year commitments, but the Accord has been extended. While both have been criticized for covering only a relatively small proportion of garment workers in Bangladesh<sup>245</sup> the Accord has been successful in engaging workers, factories and brands in setting higher standards. It has diminished the risk of further such tragic accidents partly through its direct engagement of workers and unions.

When governments threaten civic freedoms or specific human rights defenders, companies in the garment sector

have a choice. They can choose to stay on the sidelines and reap the likely unsustainable benefits of lower unit labor costs and higher competitiveness. Or they can support and strengthen labor rights consistent not only with international standards but also with their own stated policy commitments aligned with the ILO core labor standards, the UN Guiding Principles and multi-stakeholder codes and initiatives such as those developed over the last two decades by the Fair Labor Association (FLA)<sup>246</sup> and the Ethical Trading Initiative (ETI).<sup>247</sup> Trade-offs will inevitably emerge as brands that support freedom association and collective bargaining may need to assume somewhat higher wage labor costs. But the pay-off for brands willing to make the commitment is significant: more stable and productive workforces with lower operational and reputational risks. That is why some major footwear and apparel brands, while weighing the cross-pressures and trade-offs, are nonetheless taking stands in public and private depending on the circumstances and options for action.

Public or private letters signed by brands are increasingly common, often framing the issue and request as a challenge and opportunity for the country and brand alike. For example, when individual workers, trade unionists or others are threatened or detained, brands call for their protection or release. When general norms or freedoms are under attack brands can recommend specific policies or official decisions. For example: when the Cambodian government killed five and detained 21 following peaceful protests for a higher minimum wage in Phnom Penh in January 2014,<sup>248</sup> half a dozen major global brands (Puma, H&M, Gap, adidas, Inditex, Levi Strauss and Columbia) wrote a letter to the Cambodian prime minister expressing concern about the government's use of deadly force against the striking workers and urging the government to refrain from such tactics.<sup>249</sup> As described in the country spotlight focused on Cambodia, the ETI and FLA have been effective multi-stakeholder platforms to mobilize collective action by companies alongside civil society in response to subsequent challenges to worker rights and civic freedoms in that country.

242 Rana Plaza five years on – safety is greater but not guaranteed, Amy Kazim, The Financial Times (Apr. 23, 2018).

243 For further background and analysis of the Rana Plaza disaster, see *Why Won't We Learn from the Survivors of the Rana Plaza Disaster?*, Dana Thomas, The New York Times (Apr. 24, 2018).

244 There are some major US brands among the mostly European signatories to the Accord. These include Fruit of the Loom, PVH, and Cherokee. For a full list of the signatory companies, see: <http://bangladeshaccord.org/signatories/>.

245 *Five Years After Rana Plaza: The Way Forward*, Paul M. Barrett, Dorothee Baumann-Pauly & April Gu, NYU Stern School of Business, Center For Business and Human Rights (April 2018).

246 Fair Labor Association: [www.fairlabor.org](http://www.fairlabor.org).

247 Ethical Trading Initiative: [www.ethicaltrade.org](http://www.ethicaltrade.org).

248 *H&M, Gap, Adidas and Puma Condemn Cambodian Police Killing of Striking Garment Workers*, Umberto Bacchi, International Business Times (Jan. 7, 2014).

249 For more details on Cambodia, see the Cambodia Spotlight.

In June 2016, adidas announced that it had published a new policy aimed at protecting human rights defenders. To date, it is the only major corporation in the world to have such an explicit policy. The policy states: “The adidas Group has a longstanding policy of non-interference with the activities of human rights defenders... We expect our business partners to follow the same policy; they should not inhibit the lawful actions of a human rights defender or restrict their freedom of expression, freedom of association, or right to peaceful assembly.” The company noted that it chose to develop this policy following years of trade unions and civil society groups approaching adidas, asking it to intervene on human rights issues.<sup>250</sup>

A significant example of collective multi-stakeholder action including companies is the Cotton Campaign’s Pledge Against Forced Labor in the Uzbek Cotton Sector. The Cotton Campaign has worked since 2007 to end massive forced labor – directly mobilized by the government of Uzbekistan in a continuation of Soviet era practices – with support from international human rights NGOs, trade unions, responsible investors and major apparel brands through the Pledge. Signatories publicly commit not to source cotton from Uzbekistan until systematic forced labor is ended. The new President of Uzbekistan, Shavkat Mirziyoyev, explicitly acknowledged and publicly condemned forced labor in the Uzbek cotton fields in 2017 and directed the government to intensify technical assistance initiatives underway with the ILO and the World Bank/International Finance Corporation (IFC). Senior government officials met with a Cotton Campaign delegation to Tashkent in May 2018 to discuss a roadmap for comprehensive reform. Several dozen brands are expected to uphold the Pledge until these commitments turn into verifiable and irreversible progress through the 2018 cotton harvest and beyond.

#### 4.2.4. DIGITAL TECHNOLOGY



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Over the past decade, social media and online tools and platforms have empowered civil society to organize and challenge governments – and corporations – around the world. Smartphones have enabled people to expose abuses of power that once were much easier to keep hidden. At the same time, many governments are now pushing back against domestic as well as external challengers, using their legal and physical power over ICT sector companies. Internet service providers (ISPs) are increasingly required to comply with mass surveillance. Government demands on ISPs around the world to block websites and shut down networks – and on social media companies to delete content – have grown dramatically over the last several years. Digital rights groups have documented new laws that criminalize growing amounts of online speech: some place greater liability on companies that serve as conduits and hosts for online speech; others outlaw or weaken strong encryption that is essential for human rights defenders and investigative journalists to escape reprisal.

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<sup>250</sup> See [In-Depth Interview with William Anderson, Vice President for Social & Environmental Affairs at adidas](#), Ana Zbona of Business & Human Rights Resource Centre (Jan. 2017).



In the developing world, governments increasingly resort to network shutdowns, enforcing provisions in ISP contracts that require companies to shut off connectivity in times of crisis. While the most famous instance was Egypt's nationwide shutdown during the Tahrir Square protests of 2011,<sup>251</sup> shutdowns at city and regional levels have proliferated in many countries. Over 60 shutdowns were documented in India in 2017 alone. Between October 2017 and March 2018, Cameroon shut down the internet in Anglophone regions for 136 days in response to political tensions. Although the motivations are often political, these shutdowns result in steep economic consequences. In 2016, the Brookings Institution estimated the cost in lost economic activity and productivity due to worldwide internet shutdowns to be over \$2.4 billion;<sup>252</sup> the same year, Deloitte and the Global Network Initiative (GNI) released a report that estimated an average loss of 1.9% of GDP for each day without internet in a country, depending on the preexisting level of connectivity.<sup>253</sup> These figures do not even begin to take into account the secondary costs such as missed commercial opportunities and damaged consumer confidence. In the case of network shutdowns, not only do civic freedoms suffer but so do companies large and small in virtually every sector.

Many governments and other political and corporate actors have become skilled at manipulating social media to disseminate propaganda and disinformation, and to organize cyber-mobs to intimidate and discredit their critics. Regime proxies and supporters organize armies of online commentators or "trolls," and deploy automated software to post threats and allegations that can drive government critics off popular platforms such as Twitter, YouTube, or Facebook. Harassment can also include abuse of social media platforms' own rules of conduct forbidding hate speech, content depicting violence or personal details of other users, as well as identity policies. Advocacy groups have documented cases in which regime supporters organize large numbers of people to "flag" the Facebook, Twitter, YouTube and other social media accounts of activists for inappropriate behavior, or for misrepresenting their identities, with the aim of getting the company to deactivate their accounts.

ICT companies may be confronted with choices that require them to balance a commitment to respect human rights with commercial decisions. For example, if a government with a track record of abusing technology to violate human rights offers a telecommunications company a contract

with generous terms, can management justify to their shareholders the decision to walk away from it on human rights grounds? In the long term, will such a principled decision have a positive impact on the human rights situation in the country in question if other companies with no commitment to respect human rights are waiting in the wings to take their place?

A case from Pakistan provides an illustrative example. In February 2012, following the release of an RFP by the Pakistani government to procure an internet blocking and filtering system, Pakistani civil society organizations Bolo Bhi and Bytes for All urged companies to refrain from bidding on the contract. On March 1, the Global Network Initiative (GNI) issued a public statement that said, "Given the Pakistani government's previous use of Internet filtering, we do not believe companies could respond to this RFP in its current form while meeting their responsibilities to respect the freedom of expression and privacy rights of users." The following day, Websense's General Counsel and Acting CFO Michael Newman published a statement on the company blog, "Say No to Government Censorship of the Internet in Pakistan" in which he committed not to respond to the RFP and urged other companies to do the same. The Websense statement cited both the company's policy on government censorship as well as the GNI Principles. Several GNI member NGOs also issued statements supporting Websense, including the Electronic Frontier Foundation and Human Rights First. The GNI and Websense statements provided additional public pressure that supported the work by Bolo Bhi and Business & Human Rights Resource Centre to secure public commitments from four additional companies not to bid on the contract.

This example from Pakistan demonstrates that when companies (supported by multi-stakeholder initiatives) approach their decision-making with a long-term perspective, the result generally supports both the company as well as human rights defenders and civic freedoms. Supporting civic freedoms is consistent with the business model for ICT companies – these companies need users to grow, and for them to have users, they need to protect civic freedoms such as freedom of expression. As emphasized by two former executives from leading companies, "It's all about trust... do you trust the platform, products and services you are using?" (Dan Bross, former Microsoft) and "Trust makes the wheels go around in the tech industry" (Michael Samway, former Yahoo!).

251 The Egyptian government ordered telecommunications companies in the region to shut down access to internet, voice and SMS. For more details, see [Five years later: the internet shutdown that rocked Egypt](#), Deji Olukotun and Peter Micek of Access Now (Jan. 21, 2016).

252 [Internet shutdowns cost countries \\$2.4 billion last year](#), Darrell M. West, Brookings (Oct. 6, 2016).

253 [The Economic Impact of Disruptions to Internet Connectivity: A Report for Facebook](#), Deloitte (Oct. 2016).

## Initiatives in Support of the Digital Space

Several initiatives bring different stakeholders together to support civil society's ability to use digital technologies for advocacy, communication, reporting, and organizing:

- The Global Network Initiative (GNI) is a multi-stakeholder initiative comprised of corporations, civil society organizations, investors, and academics who have created a collaborative approach to protecting freedom of expression and privacy in the ICT sector. Its 10 principles promote corporate respect for freedom of expression and privacy in the face of government censorship and surveillance demands. GNI, conducts assessments to verify company implementation of its principles, and spoken out against internet shutdowns and marginalization of online activists.<sup>254</sup>
- To remedy the systematic harassment of activists online, several cross-sector stakeholders joined together to create the Access Now Digital Security Help Line.<sup>255</sup> This service, funded by several tech companies, foundations, and agencies (for example SIDA, Google, and Microsoft), was founded in response to the protests following the 2009 Iranian election (the "Green Revolution"). The Help Line provides guidance on best practices for keeping out of harm's way, educating internet users who are at risk and coordinating actionable responses to those under direct attack. The service maintains networks across the world that it can tap into to support its beneficiaries.

There are also examples of commendable corporate efforts to assist civil society in the face of government attack. For example:

- In October 2010, the *New York Times* reported that human rights NGOs in Russia were being targeted for intellectual property rights enforcement for the purposes of harassment and the restriction of free expression.<sup>256</sup> Russian authorities would raid and prosecute independent NGOs and media organizations

on antipiracy grounds, with Microsoft's local agents supporting or accepting these selective enforcement actions. In December 2010, Microsoft created a one-time unilateral license for the software already on the computers of eligible NGOs and small media organizations.<sup>257</sup> Microsoft continued to engage with local groups and collaborated with Human Rights First regarding new cases of selective enforcement, helping to quickly identify and resolve new cases by providing licenses with quick turnaround.

- Google and Jigsaw (its technology incubator platform) unveiled a package of free tools in July 2017 to help guard against digital attacks during Kenya's election period.<sup>258</sup> These "Protect Your Election" tools are designed to help safeguard news organizations, human rights groups, and election monitoring sites from online threats.
- Telenor, a Norwegian telecommunications company, issued a statement in September 2017 regarding the violence in Myanmar's Rakhine State.<sup>259</sup> The company used its public platform to support the Final Report of the Advisory Committee on Rakhine State<sup>260</sup> stating: "We...support the main recommendations in the Final Report... We share the call for open dialogue, and sustained engagement between all actors to chart a positive vision for the future of Rakhine State. Telenor in Myanmar is committed to rolling out mobile network in all states across the country, including Rakhine, and providing mobile and internet access to all people, without discrimination. Telenor Group is committed to respecting human rights in all our markets; equality and non-discrimination is core to who we are as a company."<sup>261</sup>

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254 The GNI Principles are available here: <https://globalnetworkinitiative.org/gni-principles/>

255 See: <https://www.accessnow.org/help/#how-we-help>

256 *Russia uses Microsoft to suppress dissent*, Clifford J. Levy, The New York Times (Sep. 11, 2010).

257 *Human Rights First praises new Microsoft licensing policy, urges US government to stand with tech companies combating abuses*, Human Rights First (Dec. 6, 2010).

258 *Google unveils free tools to safeguard Kenya election*, Business Daily Africa (Jul. 12, 2017).

259 *Situation in Rakhine State*, Telenor Group (Sep. 12, 2017).

260 The Advisory Commission on the Rakhine State was established in September 2016, following a request from Daw Aung San Suu Kyi, the State Counsellor of Myanmar. The Kofi Annan Foundation and the Office of the State Counsellor established the commission as a "neutral and impartial body which aims to propose concrete measures for improving the welfare of all people in Rakhine state." For more information, see: <http://www.rakhinecommission.org/>.

261 For more detailed information regarding companies and Myanmar, please see the Myanmar Spotlight.

## 4.3. INITIATIVE SPOTLIGHTS

### 4.3.1. LGBTI COMMITMENTS



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Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) people around the world face widespread discrimination and threats: same-sex acts are illegal in 71 countries and only a small handful of countries allow same-sex marriage.<sup>262</sup> LGBTI people often lack legal protections without which it is easy to be fired from their jobs, bullied and harassed at school, or denied basic healthcare simply because of their sexual orientation. Then-US Secretary of State Hillary Clinton declared to the UN in 2011 that “gay rights are human rights;”<sup>263</sup> it is impossible to disconnect LGBTI freedoms from the human rights of all people.

Two key high-level initiatives seek to provide protections for LGBTI individuals through engaging with businesses: Open for Business<sup>264</sup> and the UN Free and Equal Initiative (UNFE),<sup>265</sup>

**Open for Business** is a company-led consortium of businesses that is determined to make the case for increased LGBTI inclusion within the private sector. Open for Business focuses on external engagement, emphasizing what companies can do as a proactive strategic advocacy network to change anti-LGBTI laws. First convened in 2015, it has since released two reports: one in 2016 that linked LGBTI

inclusion with better business and economic performance,<sup>266</sup> and the 2018 report that further strengthens the economic case and provides a comprehensive evidence base on LGBTI inclusion.<sup>267</sup>

The network operates on two levels: local and global. On the local level, Open for Business works with business leaders within certain countries to design inclusive business policies and to advance the business case for further integration of LGBTI employees. On the global level, the group works with leading voices in the global business community to support LGBTI employees and to promote policies that both protect and empower them within their jobs. For businesses operating in countries where LGBTI civil society groups are restricted, Open for Business suggests five areas of activity to support civil society:

- Commit publicly to global standards of best practice for LGBTI inclusion in the workplace.
- Make the economic case for LGBTI inclusion to politicians and influencers.
- Partner with local LGBTI groups by offering support (financial and administrative).
- Support legal redress to reinforce rule of law in those countries where LGBTI civil society organizations are under attack.
- Work collectively with the local business community.

**The UN Free and Equal campaign (UNFE)** was launched in July 2013 and is led by the Office of the UN High Commissioner for Human Rights. Its aim is to raise awareness of sexual, gender and bodily diversity, and promote equal rights and fair treatment of LGBTI people everywhere. In September UNFE released Standards of Conduct for Business,<sup>268</sup> building upon the Guiding Principles and the Global Compact. They outline how companies can internalize policies that promote equal rights and offer concrete guidance for how to stand up for LGBTI rights. By early 2018, over 50 companies had signed up as supporters of the Standards of Conduct. The Standards' key recommendations are:

<sup>262</sup> Open for Business – The Global Situation; see also *The Global Backlash Against Gay Rights*, Omar G. Encarnación, in *Foreign Affairs* (May 2, 2017).

<sup>263</sup> Clinton to United Nations: “Gay Rights are Human Rights”, Amnesty International (Dec. 6, 2011).

<sup>264</sup> See: <https://www.open-for-business.org/>.

<sup>265</sup> See: <https://www.unfe.org>.

<sup>266</sup> Open for Business: *The economic and business case for LGB&T inclusion*, Jon Miller & Lucy Parker of Brunswick Group for Open for Business (Sep. 2016).

<sup>267</sup> Open for Business: *Strengthening the economic case*, Jon Miller & Lucy Parker of Brunswick Group for Open for Business (Jan. 2018).

<sup>268</sup> See: <https://www.unfe.org/standards/>

- Respect human rights of LGBTI workers, customers, and community members
- Eliminate discrimination against LGBTI employees in the workplace (including taking steps to protect at-risk employees)
- Support LGBTI staff at work
- Not discriminate against LGBTI customers, suppliers, and distributors – and insist that business partners do the same
- Stand up for human rights of LGBTI people in the communities in which they do business

These two initiatives reflect and reinforce the growing role of business in advocating for LGBTI inclusion. Recent examples of companies acting include:

- Leading companies sponsor Pride parades in countries like Singapore, in which homosexuality is still criminalized but LGBTI activists are allowed to gather and organize.<sup>269</sup> In 2017, 120 local Singaporean businesses showed their support for LGBTI inclusion by supporting the Pride parade after global sponsors were banned.
- Qantas airlines has vocally supported the LGBTI community in Australia.<sup>270</sup> The company's CEO, Alan Joyce, was recognized in 2017 as the top LGBTI executive in a ranking by OUTstanding and The Financial Times.<sup>271</sup> Joyce has been outspoken in his support for same-sex marriage in Australia, and he helped garner significant business support for the country's "yes" campaign on this issue.
- In May 2017, Apple CEO Tim Cook was joined by other leaders of Fortune 500 companies in calling out proposed so-called "Bathroom Bills" in certain US states that would discriminate against transgender people.<sup>272</sup>
- In China, same-sex marriage is not legal. However, the powerful Chinese e-commerce company Alibaba sent a strong signal showing its support for LGBTI inclusion

when it ran a competition in 2015 to send ten same-sex couples to California to get married.<sup>273</sup>

- Despite India's anti-LGBTI laws, some of the country's biggest companies are taking proactive steps to improve inclusion. The senior leadership at Godrej has been vocal in their support of the Standards of Conduct.<sup>274</sup> Tata plans to have 25% of its workforce comprised of minority groups by 2020, including 5% from the LGBTI community.<sup>275</sup>
- In 2014, a Ugandan tabloid newspaper published a list of the country's "top 200 homosexuals". Publishing this list was an aggressive and dangerous act; homosexuality is illegal in Uganda and members of the LGBTI community face frequent harassment and discrimination. After being petitioned by a global LGBTI organization, the multi-national telco Orange announced that it would sever ties with the newspaper.<sup>276</sup>

Apart from participation in these initiatives, companies have been vocal in providing public support for legal advocacy to improve inclusion and equal rights, particularly in the US and Australia. In Australia, over 840 companies have signed a petition supporting same-sex marriage legislation;<sup>277</sup> over 200 companies in the US submitted an amicus brief in support of Edith Windsor, the eventual winner of the landmark US Supreme Court case on marriage equality;<sup>278</sup> and opposition to a so-called "bathroom law" in North Carolina threatened to cost the state more than \$3.76 billion,<sup>279</sup> leading to its eventual tabling.<sup>280</sup>

Protecting high-risk LGBTI employees sounds simple, but it is much more difficult to intervene in favor of a specific individual who may face persecution if their case becomes public, especially if the laws of a country explicitly criminalize the expression of their identity. Especially when dealing with employees working abroad, there are ways that companies can and should act to protect their LGBTI employees – to the point of not sending them to certain countries at all. After flights resumed to Iran, in April 2016 Air France

<sup>269</sup> [Protecting gay employees where being gay is a crime](#), Laura Colby, Bloomberg (May 17, 2016).

<sup>270</sup> [Qantas Diversity and Inclusion Statement](#).

<sup>271</sup> [Qantas boss tops LGBT leaders list for backing same-sex marriage in Australia](#), Guardian (Oct. 26, 2017).

<sup>272</sup> [Apple's Tim Cook, other executives urge Texas not to pass anti-trans 'bathroom bill'](#), Roger Fingas, Apple Insider (May 29, 2017).

<sup>273</sup> [Alibaba helps gay couples in China get married in US](#), Susanna Kim, ABC News (Jun. 10, 2015).

<sup>274</sup> [Godrej partners with initiative for LGBT employees](#), Brinda Dasgupta, The Economic Times of India (Oct. 9, 2017).

<sup>275</sup> [LGBT to get due representation at Tata Steel](#), Ritwik Mukherjee, Financial Chronicle (May 11, 2017).

<sup>276</sup> [Telecom leader Orange cuts ties with Uganda newspaper for outing LGBT people](#), Alexandra Bolles, GLAAD (Mar. 10, 2014).

<sup>277</sup> [See Australian Marriage Equality Open Letter of Support](#)

<sup>278</sup> [Corporate Call for Change in Gay Marriage Case](#), Erik Eckholm, New York Times (Feb. 27, 2013).

<sup>279</sup> ['Bathroom Bill' to cost North Carolina \\$3.76 billion](#), AP (Mar. 27, 2017).

<sup>280</sup> [Seeking end to boycott, North Carolina rescinds transgender bathroom law](#), Colleen Jenkins & Daniel Trotta, Reuters (Mar. 30, 2017).

employees initiated a petition which eventually garnered almost 30,000 signatures, urging the airline not to send its LGBTI employees on routes to the country.<sup>281</sup> Such actions should be considered to protect at-risk employees.

#### 4.3.2. MEGA-SPORTING EVENTS



BRAZIL-WORLDCUP by coolloud, licensed under (CC BY-NC-ND 2.0)

Companies are involved in every step of the process of staging a mega-sporting event from providing the most basic local services to promoting the most visible global brands. Focus on major sporting events lagged the broader business and human rights agenda, but in recent years has made great progress through multi-stakeholder initiatives and increased efforts by all the stakeholders to develop policies and procedures that protect human rights.

Mega-sporting events require an enormous investment on the part of the host city and country. These events need massive infrastructure projects, large-scale procurement (construction materials, sporting goods, apparel, merchandise), and labor to perform this work in a relatively short timeframe – all raising potential and actual human rights issues.<sup>282</sup>

In some countries, host governments have curtailed freedom of expression, assembly, and peaceful protest in advance of an event to present a “peaceful” image and sometimes, to protect sponsors – whether such protection has been explicitly requested and therefore sometimes used as pretext for crackdowns or for other reasons. For example, during the Rio 2016 Olympic Games, the Brazilian

press reported that spectators were censored or removed from venues for engaging in peaceful protest.<sup>283</sup> In addition, local communities can be displaced by the construction in preparation for such large events. Marginalized groups in the host country usually bear the brunt of such displacement; extensive displacement of residents occurred in advance of Beijing’s 2008 Olympics (estimated that 1 million residents displaced) as well as Brazil’s Rio 2016 Olympics (estimated 60,000 residents displaced) and 2014 World Cup (estimated 250,000 residents displaced).

Mega-sporting events also raise many issues related to worker rights such as migrant workers, forced labor/ human trafficking, freedom of association, and living wage. Human trafficking can occur in response to rapid demand for construction and low wage labor which contributes to unethical recruitment and employment practices.<sup>284</sup> For the Sochi 2014 Olympics, 16,000 migrant workers were brought to the city in addition to domestic workers, and many of these migrant workers were paid only partial wages or no wages at all. As discussed below, preparations for the Qatar 2022 World Cup have also been plagued with allegations of abuse of migrant workers.

Mega-sporting events’ stakeholders include host national and municipal governments, international organizations, labor organizations (international and local), civil society organizations (international and local), supplier companies, sponsor companies, and broadcasters. To encourage coordination, cooperation and communication among this diverse range of stakeholders, in June 2016 a multi-stakeholder coalition called the Mega-Sporting Events Platform for Human Rights (MSE Platform; Institute for Human Rights and Business (IHRB) serves as its secretariat) was launched with international and inter-governmental organizations, governments, sports governing bodies, athletes, unions, sponsors, broadcasters, and civil society groups. Adidas Group, BT plc, Coca-Cola and the International Organization of Employers (IOE) are members of the steering committee. The MSE Platform was relaunched in June 2018 as a permanent and independent “Centre for Sport and Human Rights”, dedicated to supporting a world of sport that fully respects human rights. Human Rights Watch stated that the Centre was well placed to focus on ensuring the protection of athletes, rights monitors, journalists and rights defenders.<sup>285</sup>

281 Les stewards gay d’Air France ne veulent pas voler vers la peine de mort en Iran.

282 The Mega – Sporting Event Lifecycle – Embedding Human Rights From Vision to Legacy, Institute for Human Rights and Business (Apr. 27, 2018).

283 Public Statement: Olympics and Democracy, Conectas (Aug. 11, 2016). For comments from Olympic sponsors, see also Brazil: Concerns around restrictions on freedom of expression during the Olympics, sponsors comment, Business & Human Rights Resource Centre (Aug. 2016).

284 It’s Not Just About Sex – Mega Sporting Events and Human Trafficking, Stephanie Hepburn, Huffington Post (Feb. 13, 2017).

285 New Global Center for Sport and Human Rights, Human Rights Watch (Jun. 26, 2018). See further: [www.sporhumanrights.org](http://www.sporhumanrights.org).

The initiative has sought to bring its members together to develop comprehensive, consistent and accountable approaches to managing social risks and adverse human rights impacts arising from mega-sporting events. All actors involved in the Centre are committed to the fulfillment of the collectively developed Sporting Chance Principles, which recognize that there is a generation of work to be done to fully align the world of sport with the fundamental principles of human dignity, human rights, and labor rights.<sup>286</sup>

The Olympics are the most iconic of all mega-sporting events but have attracted significant controversy. The 2012 London Olympics put sponsor Dow Chemical in a harsh spotlight in connection with the 1984 Bhopal gas leak tragedy due to its subsequent acquisition of Union Carbide. The 2008 Beijing Olympics was a focal point of activism against the Chinese government's support for Sudan during the Darfur genocide, in addition to criticism of China's own human rights record. In a 2017 speech, the International Olympic Committee President publicly reinforced that the IOC is committed to protection, promotion and respect for human rights.<sup>287</sup> He noted that the IOC has made changes to the host city contract to add a section specifically designed to strengthen and protect human rights, including with reference to the UN Guiding Principles.<sup>288</sup>

Following a major corruption scandal in 2015, FIFA came under pressure in recent years to make human rights a greater priority in its global operations and particularly in its World Cup tournaments. In December 2015, FIFA commissioned former UN Special Representative on Business and Human Rights John Ruggie to review and report on FIFA's operations and provide recommendations on how to embed the Guiding Principles into FIFA's policies and practices. Ruggie released his report in April 2016 with comprehensive and pragmatic human rights related recommendations for FIFA.<sup>289</sup> In May 2017, FIFA adopted a human rights policy (aligned with the Guiding Principles), and in November the organization's new Human Rights Advisory Board published its first report.<sup>290</sup> Two World Cup host nations featured prominently in this report: Russia

(2018) and Qatar (2022). The selection of both countries (both were selected in 2010) triggered allegations of human rights abuses:

- A Russian human rights defender, Semyon Simonov, was detained by Russian police in 2017 while interviewing workers at World Cup stadium construction sites. Simonov was working on behalf of Human Rights Watch to document worker abuses at construction sites in Russia. Simonov filed complaints with the Russian authorities seeking to hold the police accountable for arbitrary detention and illegal search of his possessions. At Simonov's court hearing, FIFA sent a representative to Russia to accompany Simonov as a show support. FIFA's new human rights policy explicitly states that it will protect human rights defenders and help them find remedies.<sup>291</sup>
- When FIFA awarded Qatar the 2022 World Cup, many in the human rights community expressed concern about the poor state of labor rights in Qatar, especially for migrant workers, and what impact a World Cup-scale infrastructure project would have. Following reports regarding worker abuse and the poor working conditions on World Cup construction sites, the World Cup corporate sponsors have increasingly come under pressure to respond.<sup>292</sup> Sponsors who have spoken out about Qatar have all emphasized their concern over reported worker abuses and also noting that they expect FIFA to continue its efforts to improve the working conditions in Qatar.<sup>293</sup>

There is a significant role for responsible business among the multiple actors involved in mega-sporting events. Corporate sponsors are a vital component to the financial viability of these events, and businesses generally commit to their sponsorships nearly a decade in advance of the event itself. Therefore, with this long engagement, it is critical for these global corporations (many with well-developed human rights policies), to ensure that their commitment to the sporting event is accompanied by their established commitment to human rights.<sup>294</sup>

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<sup>286</sup> [The 2018 Sporting Chance Principles](#).

<sup>287</sup> [The IOC committed to collective and proactive action on human rights protection](#), IOC (Nov. 30, 2017).

<sup>288</sup> From 2024 onward, the [IOC Host City Contract](#) will incorporate specific provisions regarding human rights.

<sup>289</sup> [Report on FIFA & Human Rights: John Ruggie makes 25 practical recommendations for FIFA](#), compiled by Business & Human Rights Resource Centre (Apr. 16, 2016).

<sup>290</sup> [First report of FIFA's Human Rights Advisory Board published](#), FIFA (Nov. 9, 2017).

<sup>291</sup> [Welcome Support for Workers' Rights Advocate in Russia](#), Jane Buchanan, Human Rights Watch (Feb. 26, 2018). See also [Human Rights Defenders and Journalists are True World Cup Heroes](#), Minky Worden of Human Rights Watch in International Service for Human Rights (June 12, 2018).

<sup>292</sup> [FIFA World Cup sponsors urged to speak out over Qatar](#), Bill Wilson, BBC News (May 18, 2015).

<sup>293</sup> [Coca-Cola, Visa, Adidas release statements on Qatar World Cup](#), Matt Wilson, PR Daily (May 22, 2015).

<sup>294</sup> For an example of company guidance, see [Sport, Sponsorship and Human Rights – Guiding Questions](#), Centre for Sport and Human Rights (June 14, 2018).

For example, in 2015 Business & Human Rights Resource Centre approached eight companies to ask them about their sponsorship of FIFA and human rights. Only two companies responded – adidas and Coca-Cola.<sup>295</sup> Both companies are long-time sponsors of FIFA as well as of the World Cup games; both companies also have well-developed human rights policies, and adidas has a policy specifically on human rights defenders (described in the spotlight in this guidance focused on the apparel/footwear sector). Both responses highlighted their dialogue with FIFA about the human rights concerns regarding the Qatar World Cup and emphasized the collective effort needed to foster greater respect for human rights in mega-sporting events.

It is noteworthy that in November 2017, Qatar and the International Labor Organization (ILO) announced that they had entered into a technical cooperation agreement in which Qatar has committed to revising its laws in line with international labor standards and the guidance of ILO experts. In May 2018, FIFA announced an initiative to support human rights defenders and journalists,<sup>296</sup> committed to a human rights policy, and released a statement on human rights defenders and media representatives ahead of the 2018 World Cup in Russia.<sup>297</sup> The effectiveness of these steps was tested in Russia and will be tested further in Qatar in 2022.

## 4.4. CRITICAL ACTORS SPOTLIGHTS:

### 4.4.1. RESPONSIBLE INVESTORS



Social, ethical and faith-based investors – especially in North America, the UK and elsewhere in Europe – have focused on human rights as shareholder advocates for over four decades. The divestment campaign aimed at then-apartheid South Africa was the initial catalyst for many (including university endowments). Over the years, many investors have added human rights to investment selection criteria; integrated human rights into shareholder advocacy and company engagement agendas; and promoted corporate responsibility standards for human rights through multi-stakeholder and public policy initiatives.

Human rights have not yet gained the degree of attention and traction among mainstream investors as climate change and environmental sustainability have in recent years. But human rights are now gaining wider attention – even traction – among the growing number of investors who view non-financial ESG factors (including human rights) as a proverbial “canary in the coal mine”. Such investors view these factors as leading indicators pointing to risks and opportunities that may affect company valuations and investment performance, and investors “should care about systemic risk” according to Adam Kanzer, Managing Director of Corporate Engagement at Domini Impact Investments. This convergence of values and valuations, conjoining human rights considerations with financial fundamentals,

<sup>295</sup> Companies asked to respond to questions on their sponsorship of FIFA and human rights: Adidas response, Business & Human Rights Resource Centre (May 27, 2015).

<sup>296</sup> FIFA launches complaints mechanism for human rights defenders and journalists, FIFA (May 29, 2018).

<sup>297</sup> Ibid; FIFA Statement on Human Rights Defenders and Media Representatives, FIFA (May 29, 2018).

is sharpening the focus on human rights as an investment factor across asset classes and among institutional asset owners and managers alike. Focus is also sharpening through frameworks such as the Principles for Responsible Investment<sup>298</sup> and benchmarking/ranking initiatives such as the Corporate Human Rights Benchmark (CHRB),<sup>299</sup> Know the Chain (KTC)<sup>300</sup> and Ranking Digital Rights (RDR)<sup>301</sup> – all of which include large mainstream investors among their target audiences.

Other encouraging signs of change are becoming more visible. In January 2018 BlackRock CEO Larry Fink published a public letter calling on companies in which the world's largest institutional asset manager invests to demonstrate societal benefit as well as shareholder value.<sup>302</sup> The letter notes "public expectations of [a] company have never been greater. Society is demanding that companies, both public and private, serve a social purpose." It also becoming increasingly clear that for millennial investors, ESG factors are key criteria in their investment decisions. An overwhelming majority (over 75%) of high-net-worth millennial investors review their assets for ESG impact compared with other age groups.<sup>303</sup>

Four sectors have been the focus of most socially responsible investors' attention: extractives (oil, gas, and mining),<sup>304</sup> footwear and apparel,<sup>305</sup> ICT<sup>306</sup> and agriculture (including food and beverage).<sup>307</sup> The extractive sector has a long history of working in conflict zones, in countries with repressive governments and in close proximity to indigenous or ethnic minority communities. Companies in this sector have come under heavy scrutiny in places such as Nigeria, Indonesia and Colombia. The footwear and apparel sector with its global supply chains that are heavily dependent on local manufacturers has dealt with allegations of labor rights and workplace safety violations, among others. The human rights issues associated with the ICT sector span a broad array of rights from labor rights similar to the garment sector to surveillance and censorship threats. In the agricultural sector, all these human rights issues congregate –

labor rights, security forces, indigenous communities, land rights.

Yet investors – even the social, ethical and faith-based among them who have long worked on human rights – have not focused their shareholder advocacy and company engagement explicitly on specific threats to civic freedoms and human rights defenders – apart from their significant support over the years for indigenous peoples' rights, freedom of association for workers as well as gender equity and more recently LGBTI equality. They have rarely acted on immediate issues related to civic freedoms in the current context of the global closing of civil society space – nor to specific situations in which human rights defenders have been under direct threat.

But recently some US-based socially responsible and faith-based investors have taken public stands on such immediate issues and situations:

- Following the 2013 Rana Plaza factory collapse in Bangladesh, a group of investors known as the Bangladesh Investor Initiative, led by the Interfaith Center on Corporate Responsibility (ICCR), called on companies to sign up to the legally-binding Accord on Fire and Building Safety. As described in greater detail in the Apparel spotlight above, the Accord was developed with investor support as well as that of trade unions, civil society organizations and mostly European-based global apparel brands. In an April 2018 statement recognizing the 5-year anniversary of the disaster,<sup>308</sup> these investors reiterated their support for strong trade unions, a living wage for all workers, and effective access to remedy for employees fallen victim to violations.
- In 2017, the small US-based Azzad Asset Management filed a shareholder resolution with Chevron asking the company to use its access to and possible influence with the government of Myanmar to express opposition to the violent persecution of the Rohingya

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298 See <https://www.unpri.org/>

299 See <https://www.corporatebenchmark.org/>

300 See <https://knowthechain.org/>

301 See <https://rankingdigitalrights.org/>

302 Larry Fink's Annual Letter to CEOs: A Sense of Purpose, Larry Fink, BlackRock (Jan. 2018).

303 See Money, Millennials and Human Rights: Sustaining 'Sustainable Investing', John Ruggie & Emily Middleton, Harvard Kennedy School (July 2018).

304 For details on the extractive sector, please see Extractives (Oil/Gas and Mining) Spotlight.

305 For details on the footwear and apparel sector, please see Apparel and Footwear Spotlight.

306 For details on the ICT sector, please see Digital Technology Spotlight.

307 For details on the agriculture sector, please see Agriculture, Food and Beverage Spotlight.

308 Investor Statement on the 5th Anniversary of the Rana Plaza Disaster – Taking Stock: What's been done? What needs to be done?, Bangladesh Investor Initiative (Apr. 24, 2018).



in Rakhine State.<sup>309</sup> The August 2017 resolution, gaining noticeable yet modest support of 6% of shareholders, was accompanied by an open letter to the head of Corporate Governance for Chevron that (1) called for the company to support the recommendations of the Annan Commission to resolve the violence, and (2) invited the firm to “explore the possibility of adopting a policy” of disengagement with governments involved in systemic human rights abuses. The letter goes on to state “...operations and investment in Myanmar and relationships with both the government and the state-owned Myanma Oil and Gas Enterprise creates a special obligation for [the company] to express its concern... and to reassess its relationship with the government in light of the Burmese government’s recent military actions against Rohingya communities.”<sup>310</sup> Chevron responded in November 2017 with a statement to the BBC committing to work for a “business environment that respects human rights... Chevron values the ongoing dialogue with the stockholders on this critical issue of violence in the Rakhine State, Myanmar.”<sup>311</sup>

- In October 2017, the US-based Interfaith Center on Corporate Responsibility (ICCR) launched the Investor Alliance for Human Rights (IAHR) – a new initiative with the stated intention of building on the longstanding socially-responsible and faith-based investor interest in human rights and extending that interest across mainstream investors. In April 2018 IAHR mobilized an explicit action on human rights defenders with a focus on events in the Philippines in response to government persecution of indigenous people’s leaders and land rights defenders as alleged terrorists. The statement, endorsed by 68 institutional investors, identified measures companies could adopt to help reduce the threats to human rights defenders and contribute to creating an environment for responsible business conduct. The signatory investors maintain that companies and financial institutions “have a responsibility to review their operations, supply chains and policies to identify real and potential negative impacts on human rights defenders, and take meaningful action to address them, including denouncing any acts by governments that restrict the legitimate work of defenders.”<sup>312</sup>

These examples may encourage other investors to focus on the value of strong civic freedoms as essential underpinnings of profitable and sustainable businesses that produce positive and attractive long-term investment environments. Many sector analysts and portfolio managers are unaware of the extent to which businesses rely on civic freedoms as the underpinnings of the rule of law and good governance, predictability and stability, and thus the extent to which investors ultimately profit from the work of human rights defenders who support and defend those fundamentals.

#### 4.4.2. CEO ACTIVISTS



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With intensifying political conflict in many countries against a backdrop of geopolitical disruption, expectations are rising for business leaders to use their access and influence on a growing range of issues in the public policy arena – including many related to human rights and civic freedoms. It is not surprising that CEOs are the focus of such expectations given the competing interests their positions require them to balance. As CEOs, they must balance the competing cross-pressures from shareholders, politicians, regulators, their own employees, their customers, global markets, government relations, and others. While these sources of pressure are not new, the inescapable, implacable choices and trade-offs facing CEOs are assuming greater intensity. In the current political climate of populism and nationalism, activist CEOs – often reluctant activists – appear to be filling gaps left by governments or are speaking up in opposition to government policies and statements by political leaders.

309 For more detail on the Rohingya crisis in Myanmar, please see Myanmar Spotlight.

310 [Investor letter on recent violence in Rakhine state, Myanmar](#), Azzad Asset Management, et al. (Aug. 31, 2017).

311 [Chevron says it will push for Myanmar human rights](#), Faarea Masud, BBC News (Nov. 16, 2017).

312 [Investors call for urgent corporate action to address rising threats faced by human rights defenders](#), Investor Alliance for Human Rights (Apr. 24, 2018).

CEO activism has been most recently apparent in the US with the leaders of large companies such as Apple, Starbucks, Salesforce and Coca-Cola taking public stands on social issues with political if not partisan dimensions.<sup>313</sup> Many examples have emerged in relation to actions of the Trump Administration, but some predate the 2016 election. For example, Apple's Tim Cook has not shied away from openly discussing human rights issues as they relate to Apple's business; for many years he has clearly stated that he believes that privacy is a "fundamental human right".<sup>314</sup> CEOs of European-based multinationals have also become more outspoken on pressing regional issues such as the refugee crisis. In the last several years, CEOs have taken public positions on issues such as LGBTI rights and racial discrimination, and they have banded together collectively to advocate on global issues such as climate change. Most of these CEOs have seen that the risk of speaking out tends to outweigh the risk of remaining silent, which can be interpreted as tacit approval.<sup>315</sup>

Every year Edelman,<sup>316</sup> the global communications firm, publishes the "Trust Barometer" focusing on public trust of government, business, NGOs and media. Its "Expectations for CEOs" make clear that the public has expectations for how a CEO should behave. The January 2018 report reveals that 84% of people expect CEOs "to inform conversations and policy debates on one or more pressing societal issues" and a major expectation of CEOs is to "fill the gap left by government to effect social change." In the survey, 64% of people said that CEOs should take the lead on change rather than waiting for the government, and 56% said that they "have no respect for CEOs who remain silent on important issues."<sup>317</sup> Given these numbers, it is not surprising that CEO activism is on the rise including in the business and human rights arena.

Over the last several years, several high-profile events related to civic freedoms and human rights in the US have compelled CEOs to react personally:

- Shortly after his inauguration, President Trump signed an executive order excluding certain nationalities, and all refugees, from entering the country arguing that this was needed for national security; this was the so-called "travel ban". Critics argued that this travel ban unfairly targeted Muslim and was discriminatory. Companies watched the highly publicized protests to this travel ban with great interest, and the incident became a "watershed" moment for CEO activism.<sup>318</sup> The CEOs of leading companies such as Starbucks, Apple, and Facebook were some of the earliest opponents of the ban; others joined within days (including Coca-Cola, Amazon, GE, Nike, and other leading US corporations).<sup>319</sup>
- In another immigration-related issue, many American CEOs have spoken out in support of immigration reform to support "Dreamers" (young adults who arrived undocumented in the country as children) under the Deferred Action for Childhood Arrivals (DACA) which allows the "Dreamers" to apply to defer deportation. After the Trump Administration announced in September 2017 that it planned to end the DACA program a coalition of 60 companies and trade associations launched a campaign to support protections for the Dreamers. Separately, in January 2018, CEOs of 100 companies sent a letter to Congress urging it to pass legislation to protect young immigrants, calling the termination of DACA "an impending crisis for workforces across the country".<sup>320</sup> As the Trump Administration's immigration policy expanded to include "zero tolerance" for illegal crossings of the southern US border, leading to family separations, an increasing number of CEOs spoke out against these family separations. After the global consulting firm McKinsey & Co. signed a contract with US Immigration and Customs Enforcement (ICE) on the same day as the policy was announced, the company's employees spoke out regarding the moral consequences of playing a role in ICE's work. This led McKinsey managing director, Kevin Sneader, to issue a letter to staff stating that the

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313 *Political Disruption and Corporate Responsibility: Navigating Cross-Pressures Amidst the Turbulence*, Christopher Skroupa interview with Bennett Freeman, *Forbes* (May 24, 2018).

314 *Apple CEO Tim Cook: 'Privacy is a Fundamental Human Right'*, NPR (Oct. 1, 2015).

315 For a comprehensive overview of CEO Activism, see "The New CEO Activists", Aaron K. Chatterji & Michael W. Toffel, *Harvard Business Review* (Jan./Feb. 2018 issue).

316 See: <https://www.edelman.com/about-us>

317 *Edelman Trust Barometer: Expectations for CEOs* (May 1, 2018).

318 *A Watershed Moment in CEO Activism*, Vanessa Fuhrmans, *Wall Street Journal* (Apr. 4, 2017).

319 *23 Huge Companies That Have Responded to President Trump's Immigration Ban*, Tory Newmyer, David Morris, Madeline Farber, Lucinda Sheen, *Fortune* (Jan. 31, 2017).

320 *CEO Letter to Congress* (Jan. 10, 2018).

company “will not, under any circumstances, engage in any work, anywhere in the world, that advances or assists policies that are at odds with our values.”<sup>321</sup>

- Following the July 2017 white nationalist march in Charlottesville, Virginia, a protestor was killed, and others injured. Following this incident, President Trump failed to condemn the actions of the white nationalists saying that the violence was caused by “both sides”. A number of CEOs publicly condemned the President’s response and many of those on the Presidential Manufacturing Advisory Council resigned in protest beginning Merck CEO Ken Frazier who wrote in a public statement: “as CEO of Merck and as a matter of personal conscience, I feel a responsibility to take a stand against intolerance and extremism.” Other business leaders including Tim Cook (Apple), Paul Polman (Unilever), Lloyd Blankfein (Goldman Sachs), and Indra Nooyi (Pepsi) released strong statements against racism and bigotry.<sup>322</sup>
- Following the deadly school shooting in Parkland, Florida in February 2018, several CEOs made statements supporting gun control and criticizing the National Rifle Association (NRA). Delta Airlines, United Airlines, Enterprise and First National Bank of Omaha, among others, stopped NRA discount programs following the shooting. Ed Bastian, the CEO of Atlanta-based Delta Airlines, faced backlash from Georgia lawmakers following the decision to stop NRA perk programs. Mr. Bastian responded that the decision “was not made for economic gain and our values are not for sale.”<sup>323</sup>
- Following a series of legislative efforts in certain states to pass “bathroom bill” which would require people to use the bathroom of their gender at birth, Target announced a policy in which the company stated that at its stores, people can use the bathrooms of the gender with which they identify. Target faced a series of protests from conservative groups following this announcement. Target CEO Brian Cornell responded that he would not reverse the company’s policy stating that the company “has a long history of embracing diversity and inclusion” and he explained that the company “took a stance” and it will “continue to embrace [its] belief of diversity and inclusion, just how important it is to [the] company.”<sup>324</sup>

Among European CEOs, Joe Kaeser of Siemens has spoken out notably against discriminatory and racist statements. In a highly unusual move for a German business leader, Kaeser took to Twitter in May 2018 rebuked a discriminatory statement against refugees made by Alice Weidel, the leader of the far-right Alternative for Germany in the Bundestag,<sup>325</sup> noting that such views are harmful to Germany’s reputation and economy alike. The day after Kaeser’s tweet, Siemens AG issued a joint statement by the Managing Board, Central Works Council and Senior Management and by (its major trade union) IG Metall stating:<sup>326</sup> “Siemens stands for understanding and openness and opposes every form of discrimination, social exclusion, hate and nationalism” and noting that “respect, tolerance and diversity” “form the foundation of our company values.” In a later interview, Kaeser said it was a “complicated matter”:



***I’m there to represent company and be accountable to the shareholders; on the other hand, if people turn away... We had that time in Germany. Nobody spoke up. Then it was too late.***

Joe Kaeser, CEO, Siemens<sup>327</sup>

CEOs will continue to face rising expectations to take such public stands; some will prefer to express their views in private and others to remain on the sidelines. But it is certain that the intensity and severity of the cross-pressures facing major multinationals and their CEOs – and the difficulty of the some of the choices and trade-offs they feel compelled to make – will only increase at a time of political polarization in so many countries. The closing of civil society space – and the pressures on specific civic freedoms that define the “shared space” with business – will likely drive more CEOs to become activists – reluctant or not.

321 McKinsey & Co. will no longer work with ICE, Lila MacLellan, Quartz (July 10, 2018).

322 Business Leaders are Not Happy With President Trump’s Charlottesville Response, Lucinda Sheen, Fortune (Aug. 14, 2017).

323 Delta just doubled down on its decision to cut ties with the NRA, Aric Jenkins, Time (Mar. 2, 2018).

324 Target CEO responds to nationwide boycott of the store over transgender bathroom policy, Travis M. Andrews, The Washington Post (May 13, 2016).

325 Full text of Kaeser’s tweet (in German) is here: <https://twitter.com/JoeKaeser/status/996700947966513152>.

326 The full statement is available here: [Joint Statement by Managing Board, Central Works Council and Senior Management of Siemens AG and IG Metall \(May 19, 2018\)](#).

327 Fears over far-right prompt Siemens chief to rebuke AfD politician, Patrick McGee & Olaf Storbeck, The Financial Times (May 20, 2018).

# ABOUT THE AUTHORS:

**Bennett Freeman** has worked at the intersection of governments and international institutions; multinational corporations and investors; NGOs and civil society to promote sustainable development and respect for human rights around the world. An innovative leader in the fields of business and human rights, natural resource governance and responsible investment, he has played key roles in developing several multi-stakeholder initiatives and global standards that have strengthened corporate responsibility in industries ranging from extractives to technology.

Freeman led the development of the Voluntary Principles on Security and Human Rights (VPSHR) on behalf of the US Department of State in 2000; served on the International Board of the Extractive Industries Transparency Initiative (EITI) representing Oxfam and Publish What You Pay from 2006-09; and has been a leader of the Global Network Initiative (GNI) as a co-founder on behalf of Calvert Investments and Board Secretary since 2010.

Freeman consults for corporations, foundations and NGOs through Bennett Freeman Associates LLC; as a Senior Advisor to BSR; a Senior Advisor to Critical Resource; and a Strategic Partner of RESOLVE. He is Chair of the Advisory Board of Global Witness; Chair of the Advisory Board of the Responsible Sourcing Network; a member of the Governing Board of the Natural Resources Governance Institute; an Advisor to the Corporate Human Rights Benchmark (CHRB) and Know the Chain (KTC); and member of the Steering Committee of the Investor Alliance for Human Rights (IAHR). He was a Director of Oxfam America from 2002-10 and a Trustee of the Institute for Human Rights and Business (IHRB) from 2008-15.

Freeman was Senior Vice President-Sustainability Research and Policy at Calvert Investments from 2006-15 where he led the ESG research, shareholder advocacy and policy initiatives of the largest socially responsible mutual fund family in the US. Before joining Calvert, he was Managing Director/Senior Counsel at Burson-Marsteller, where he led the Global Corporate Responsibility practice from 2003-06 and advised clients on policy development and stakeholder engagement. Previously as Principal of Sustainable Investment Strategies, he co-authored the first-ever human rights impact assessment (HRIA) for the BP Tangguh project in West Papua, Indonesia.

Freeman served at the US Department of State as Deputy Assistant Secretary for Democracy, Human Rights and Labor from 1999-2001; Senior Advisor to Under Secretary for

Economic and Business Affairs Stuart Eizenstat from 1997-1999; and Chief Speechwriter for Secretary of State Warren Christopher and Deputy Assistant Secretary for Public Affairs from 1993-97.

Prior to joining the State Department as a Clinton presidential appointee, he was Manager-Corporate Affairs for GE from 1985-1993 where he worked on a range of corporate responsibility, public policy and global business strategy initiatives. He began his career as a speechwriter and presidential campaign aide to former Vice President Walter Mondale from 1982-1984.

Bennett Freeman earned an AB in History at the University of California at Berkeley in 1979 and an MA in Modern History at the University of Oxford in 1981 as a Churchill Scholar at Balliol College.

**Sif Thorgeirsson** Sif Thorgeirsson is an experienced business and human rights expert as well as a US-trained lawyer based in Washington, DC. Since September 2016, she has been working as an independent consultant on business and human rights and corporate responsibility matters. Prior to that, Sif spent ten years at the Business & Human Rights Resource Centre where she launched and subsequently managed the Centre's Corporate Legal Accountability Program. Before joining the Resource Centre, she was a researcher at Yale Law School on international human rights issues (including business & human rights). She started her legal career as an associate at the Troutman Sanders law firm in Washington, DC where she practiced for five years in the areas of project development and finance in the energy sector; international law and corporate law.

Sif received her law degree from George Washington University Law School. While studying law, Sif worked as a research assistant to international law Professor Ralph Steinhardt, working on subjects including human rights and corporate accountability. She received her BA in History and Political Science from McGill University. Sif is fluent in English & Icelandic, with good Spanish & French.

**Adele Barzelay** is a public-sector consultant for the World Bank's Global Governance Practice's Middle East and North Africa (MNA) unit, where she primarily works on advisory and technical assistance projects with the governments of Saudi Arabia and Egypt. In parallel, Adele is a part-time research associate for an experienced business and human rights consultant, Bennett Freeman, working closely with him on analytical and consulting projects commissioned by

NGOs and companies active in the field. Adele graduated from Johns Hopkins School of Advanced International Studies (SAIS) in May 2017 with an academic concentration in International Economics and Middle East Studies. She earned her BA in Jurisprudence from the University of Oxford in 2013 and was admitted to the New York Bar in June 2018. She is a dual US/UK citizen of Lebanese descent and is currently based in Washington, D.C.

**Brooks Reed** currently works as the Director of Business Development for Charities Aid Foundation America. His research interests have focused on the private sector in

international development and multi-sector structures of global governance. His professional experience includes time with international NGOs and within the Executive Office of the Governor of Florida. In the past, Brooks worked closely with Charities Aid Foundation in the UK, as a contributor to the report *Beyond Integrity: Exploring the role of business in preserving civil society space* (Charities Aid Foundation, 2016). Brooks holds a MSc in Development Management from London School of Economics (2016), as well as a BA in International Affairs and a BA in Political Science from Florida State University (2015).



## **ANNEX I: INDIVIDUALS INTERVIEWED**

COMPANIES		
Individual	Affiliation(s)	Title(s)
Nicholas Allen	BP PLC	Societal Issues Manager
Bill Anderson	Adidas	VP for Social & Environmental Affairs
Libby Annat	Primark	Controller of Ethical Trade & Sustainability
Edward Bickham	Critical Resource Former Anglo-American PLC	Principal Senior Advisor Former EVP, External Affairs
Dan Bross	Article One Advisors Former Microsoft	Senior Advisor Former Senior Director, Business & Corporate Responsibility; Exec. Director, Microsoft Technology & Human Rights Center
Steve Chege	Safaricom	Director, Corporate Affairs
Nick Cotts	Newmont Mining	VP, Sustainability & External Relations
Steve Crown	Microsoft	VP & Deputy General Counsel
Daniel D'Ambrosio	DLA Piper	Associate, International Business & Human Rights
Alan Detheridge	Former Royal Dutch Shell Natural Resource Governance Institute (NRGI) and Publish What You Pay (PWYP)	Former VP, External Affairs Governing Board member, NRGI and Board member, PWYP
Margarita Diez	ISAGEN	Environmental Expert
Jonathan Drimmer	Barrick Gold	Chief Compliance Officer & Deputy General Counsel
James Ensor	BHP Billiton Foundation	Executive Officer & President
Christian Frutiger	Nestlé	Global Head of Public Affairs
Adam Kanzer	Domini Impact Investments	Managing Director of Corporate Engagement
Michael Karimian	Microsoft	Human Rights Program Manager
Nicole Karlebach	Oath/Yahoo	Global Head, Business & Human Rights

COMPANIES		
Individual	Affiliation(s)	Title(s)
Jan Klawitter	Anglo-American PLC	Head of International Policy
David MacInnis	Chevron	Senior Advisor; Global Issues & Public Policy
Marcela Manubens	Unilever	Global VP, Integrated Social Sustainability
Ariel Meyerstein	Citibank	Senior VP, Corporate Sustainability
Kelly Melia-Tevan	Chevron	Advisor; Global Issues & Public Policy
Jon Miller	Brunswick Group Open For Business	Partner; Brunswick Founder; Open for Business
Sir Mark Moody-Stuart	Former Anglo American PLC  Former Royal Dutch Shell	Former non-executive Chairman, Anglo American PLC  Former Chairman, Royal Dutch Shell
Nicolas Patrick	DLA Piper	Partner Head of Responsible Business
Lea Rankinen	S Group	Senior VP, Sustainability & Corporate Responsibility
Samara Rudolph	Tiffany & Co.	Manager; Global Sustainability & Corporate Responsibility
Michael Samway	Georgetown University School of Foreign Service  Former Yahoo!	Adjunct Professor  Former VP & Deputy General Counsel
Helen Simpson	BP PLC	Global Voluntary Principles Advisor
Genevieve Taft	Coca-Cola Company	Global Manager; Workplace Accountability
Maria Anne van Dijk	ABN AMRO	Head, Environmental, Social & Ethical Risk & Policy
Alexandra Walden	Google	Counsel
Brent Wilton	Coca-Cola Company	Director; Workplace Rights
Vanessa Zimmerman	Rio Tinto	Global Advisor Human Rights



INDUSTRY ASSOCIATIONS & BUSINESS GROUPS		
Individual	Affiliation(s)	Title(s)
Peter Nestor	BSR	Director, Human Rights
Margaret Jungk	BSR Former UN Working Group on Business & Human Rights and Danish Institute for Human Rights	Managing Director, Human Rights
Andrew Wilson	Center for International Private Enterprise (CIPE)	Executive Director
Christine Jøker Lohmann	Confederation of Danish Industry	Chief Policy Advisor
Nicky Black	International Council on Mining and Metals (ICMM)	Director, Environmental Stewardship & Social Progress
Roper Cleland	International Council on Mining and Metals (ICMM)	Manager, Environmental Stewardship & Social Progress
Peter Hall	International Organization of Employers (IOE)	Advisor, Business & Human Rights/ CSR

MULTISTAKEHOLDER INITIATIVES		
Individual	Affiliation(s)	Title(s)
Peter McAllister	Ethical Trading Initiative (ETI)	Executive Director
Jonas Moberg	Extractive Industries Transparency Initiative (EITI)	Executive Director
Heeral Coleman	Fair Labor Association (FLA)	Director of Communications & Stakeholder Services
Shelly Han	Fair Labor Association (FLA)	Director of Civil Society Engagement
David Sullivan	Global Network Initiative (GNI)	Director of Learning & Development
Jamie Williamson	International Code of Conduct Association (ICoCA)	Executive Director
Sarah Altschuller	Foley Hoag Voluntary Principles on Security and Human Rights Secretariat	Counsel, Foley Hoag
Gare Smith	Foley Hoag Voluntary Principles on Security and Human Rights Secretariat	Partner, Foley Hoag

CIVIL SOCIETY ORGANIZATIONS		
Individual	Affiliation(s)	Title(s)
Brett Solomon	Access Now	Executive Director
Seema Joshi	Amnesty International	Head of Business & Human Rights
Sunil Abraham	Center for Internet and Society (India)	Executive Director
Andrew Firmin	CIVICUS	Editor-in-Chief
Tor Hodenfield	CIVICUS	UN Advisor & Vuka! Coalition Secretariat Coordinator
Gitte Dyrhagen Husager	DanishChurchAid (DCA)	Head of Private Sector Engagement
Peter Frankental	Economic Relations Programme Director	Amnesty International UK
Amol Mehra	Freedom Fund Former International Corporate Accountability Roundtable (ICAR)	Managing Director, North America Former Executive Director, ICAR
Jeff Conant	Friends of the Earth	Director, International Forests Program
Ed O'Donovan	Front Line Defenders	Head of Protection
George Boden	Global Witness	Land Campaign Leader
Billy Kyte	Global Witness	Campaigner
Ben Leather	Global Witness	Senior Campaigner
Maryam Al-Khawaja	Gulf Centre for Human Rights	Special Advisor on Advocacy, Gulf Centre for Human Rights, ISHR board member & Vice Chair Board Of Directors, Urgent Action Fund for Women's Human Rights
Andy Hall	Human Rights Advocate	
Arvind Ganesan	Human Rights Watch	Director, Business & Human Rights Division
Cynthia Wong	Human Rights Watch	Senior Researcher, Internet & Human Rights
John Morrison	Institute for Human Rights and Business (IHRB)	CEO

CIVIL SOCIETY ORGANIZATIONS		
Individual	Affiliation(s)	Title(s)
Salil Tripathi	Institute for Human Rights and Business (IHRB)	Senior Advisor; Global Issues
Simon Billenness	International Campaign for the Rohingya	Executive Director
Tim Noonan	International Federation of Trade Union Confederation (ICTU)	Director
Uwe Gneiting	Oxfam America	Research & Policy Advisor
Erinch Sahan	World Fair Trade Federation Oxfam GB	Chief Executive Former Private Sector Policy Adviser
Barbara Oosters	Oxfam Novib	Policy Advisor
Elisa Peter	Publish What You Pay (PWYP)	Executive Director
Rebecca MacKinnon	Ranking Digital Rights	Director
Francis West	Shift	Director; Business Learning Program
Dave Archambault	Standing Rock Sioux Tribe	Former Tribal Chairman
Juan Auz	Terra Mater (Ecuador)	Legal Advisor
David Schilling	Interfaith Center for Corporate Responsibility (ICCR)	Senior Program Director; Human Rights & Resources
Erica Westenberg	Natural Resources Governance Institute (NRGI)	Governance Programs Director
Rebecca Iwerks	Natural Resources Governance Institute (NRGI)	Capacity Development Director
Suneeta Kaimal	Natural Resources Governance Institute (NRGI)	Chief Operating Officer

INTERNATIONAL ORGANIZATIONS & GOVERNMENTS		
Individual	Affiliation(s)	Title(s)
Ursula Wynhoven	Former UN Global Compact	Former Chief, Social Sustainability, Governance & Legal at UNGC
John Ruggie	Former Special Representative of the UN Secretary General on Business and Human Rights Harvard University John F. Kennedy School of Government	Berthold Beitz Professor in Human Rights and International Affairs
Peggy Hicks	UN OHCHR	Director, Thematic Engagement, Special Procedures & Right to Development Division
Michel Forst	UN Special Rapporteur on the situation of human rights defenders	
Scott Busby	US Department of State	Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor
Deborah Klepp	US Department of State	Director, Office of Environmental Quality & Transboundary Issues

ACADEMICS		
Individual	Affiliation(s)	Title(s)
Michael Posner	New York University Stern School of Business Former U.S. Assistant Secretary of State, Bureau of Democracy, Human Rights and Labor	Director, NYU Stern Center for Business & Human Rights
Josua Loots	University of Pretoria	Program Manager, Centre for Human Rights
Anita Ramasastry	University of Washington School of Law UN Working Group on Business and Human Rights	Professor, Sustainable International Development Law



## **ANNEX 2: KEY SOURCES AND RESOURCES**

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## REPORTS ON THE CLOSING CIVIL SOCIETY SPACE AND ATTACKS ON HRDS

The space for civil society to act is increasingly narrowed around the world, with 2017 marking a recent low point for pressures on civic freedoms and attacks on human rights defenders. These research reports characterize and describe this global phenomenon.

- The latest report of Michel Forst, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association was compiled and presented to the UN Human Rights Council in May 2017. [Imagining A World Without Participation: Mapping the Achievements of Civil Society](#), provides an expert overview.
- The Center for Strategic and International Studies (CSIS) and the International Center on Closing Civic Space (iCon) network published a review of strategies for activists in a 2017 report: [Civil Society at a Crossroads: Exploring Sustainable Operating Models](#). This report is one of the most comprehensive lists of organizations resisting the closing of civil society space.
- The Heinrich Böll Foundation in cooperation with the European Center for Constitutional and Human Rights published the 2017 report [Tricky Business: Space for Civil Society in Natural Resource Struggles](#) written by Carolijn Terwindt and Christian Schliemann. The report examines civil society in four countries (India, South Africa, Mexico and the Philippines) and documents the pressures faced in the context of natural resources.
- In its [2017 Global Risk Report](#), the World Economic Forum identifies and analyzes global risks and their interconnections. The 2017 Report includes a section on the closing space for civil society and discusses its risk to economic activity (specifically for businesses).
- Front Line Defenders (FLD) produces an [Annual Report on Human Rights Defenders at Risk](#), which includes statistics on numbers of human rights defenders killed in the given year. The 2017 report was published in January 2018.
- CIVICUS publishes an annual [State of Civil Society Report](#), detailing the change in circumstances for NGOs, activists, and other civil society actors. The latest report published in March 2018 covers key events and trends affecting civil society in 2017.
- Global Witness publishes a Defenders Annual Report. A special report, [“At What Cost? Irresponsible business](#)

and the murder of land and environmental defenders in 2017” was published in July 2018.

## FRAMEWORKS AND RESOURCES FOR BUSINESS ACTION TO SUPPORT CIVIC FREEDOMS AND HRDS

A growing number of institutional frameworks, reports and other resources inform business action in support of civic freedoms and human rights defenders.

- The UN Guiding Principles for Business and Human Rights, (UNGPs) ) to implement the UN “Protect, Respect, Remedy” framework developed by UN Special Representative John Ruggie, were unanimously endorsed by the UN Human Rights Council in June 2011 (resolution 17/4). The UNGPs are the primary international standard for business and human rights.
- In 2012, OHCHR published an interpretive guide – [The Corporate Responsibility to Respect Human Rights – An Interpretive Guide](#) – that provides specific guidance for companies to implement each of the Guiding Principles related to the corporate responsibility to respect, endorsed by the Human Rights Council the previous year. OHCHR also has a page with [resources for companies](#) regarding business and human rights
- In 2014, John Morrison (CEO of the Institute for Human Rights and Business) published the book [The Social License to Operate: How to Keep Your Organization Legitimate](#) (Palgrave MacMillan).
- Sir Mark Moody-Stuart, the former Chairman of Royal Dutch Shell and non-executive Chairman of Anglo-American PLC, published [Responsible Leadership: Lessons from the front line of sustainability and ethics](#) (Routledge, 2014). The chapter titled “Dining with the Devil” explores the complicated landscape for business in difficult countries.
- Harvard University’s Kennedy School, the University of Queensland, and Shift published a report by Rachel Davis and Daniel Franks in 2014, entitled [“Costs of Company-Community Conflicts in the Extractive Sector”](#) which examined the cost to companies of conflicts with communities in the extractives sector.

- In 2015 International Service for Human Rights published [A Human Rights Defender Toolkit for Promoting Business Respect for Human Rights](#), offering HRDs tools for engagement with companies and governments.
- Front Line Defenders, the Institute for Human Rights and Business (IHRB), and Civil Rights Defenders released a report in December 2015 – [Human Rights Defenders and Business: Searching for Common Ground](#). It offers case studies that outline both successful and unsuccessful efforts by companies to work with HRDs and profiles a number of individual HRDs around the world.
- The Ariadne Network, in partnership with the International Human Rights Funders Group, produced a [Practical Guide for Funders](#) in May 2016 that outlines the steps that philanthropists, policymakers, and corporate executives can take to ensure consistency with support for HRDs.
- In April 2016, John Ruggie and Shift published [recommendations](#) for FIFA to embed respect for human rights across its global operations based on the UNGPs.
- Open For Business produced a [report](#) of the same name in September 2016 that makes a business case for LGBTQI inclusion and representation in workforces across sectors and geographies.
- Deloitte published a [report](#) in October 2016 commissioned by Facebook outlining the material harms of network disruptions and government-directed shutdowns, in partnership with the Brookings Institution.
- Charities Aid Foundation (CAF) released a [report](#) in October 2016 that presented four detailed case studies of instances in which companies stood up for HRDs and civic freedoms in Angola, Pakistan, Thailand and Cambodia.
- In November 2016, Oxfam and Shift published [Doing Business with Respect for Human Rights: A Guidance Tool for Companies](#), which explains how to implement the UNGPs and related human rights frameworks.
- In November 2016, the UN Global Compact released a report, [Business for the Rule of Law Framework](#), that provides a series of concrete examples of companies actively contributing to norms such as human rights, equality, and justice protected in local laws.
- The adidas Group released a [statement](#) in 2016 that outlined its stance on Human Rights Defenders. The report refers to the 2015 report by Maina Kiai on the Freedoms of Assembly and of Association, and explicitly includes HRDs among those who can submit third-party complaints regarding supply chain abuses..
- Mark Lagon and Katherine Nasielski, of Freedom House, published an article in 2016 – [Why Corporations Should Learn to Love Civic Activists](#) – which makes a strong case for partnerships between companies and civil society organizations.
- In February 2017, Sarah Brooks of International Service for Human Rights published on the ISHR website the article [“Business can and should ally with those defending human rights”](#) making this case. The article calls HRDs: “canaries in the coal mines”, pointing to when governance failures become real financial, legal and reputational risks to business.
- Mauricio Lazala of the Business and Human Rights Resource Centre published an [article](#) for the World Economic Forum (WEF) in March 2017 that also makes a brief case for business support for civic freedoms and human rights defenders.
- Dutch Minister for Trade and Development Lilianne Ploumen gave a [speech](#) in April 2017 at the International Business and Human Rights Conference that calls on corporations to assume the role of human rights defenders in their own right.
- In 2017, Oxfam submitted a document to the UN Working Group on Business and Human Rights outlining forms of action for companies to combat threats to human rights defenders and civic freedoms around the world.
- [The July 2017 report \(A/72/170\)](#) of the UN Special Rapporteur on the situation of human rights defenders offers recommendations addressed to companies (VI.B.91) plus investors and financial institutions (VI.B.92).
- In March 2018 International Alert published guidance for the [Extractives Industry for Human Rights Due Diligence in Conflict-Affected Settings](#) compiled by Yadaira Orsini and Roper Cleland. This piece is crucial support for businesses operating in countries with weak or poor governance due to conflict.

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- In March 2018, Aaron Chatterji and Mike Toffel published an update to their 2017 article “The New CEO Activists” in the Harvard Business Review titled [Divided We Lead](#). The update acknowledges further strides and features interviews with three activist CEOs.
  - In May 2018, the OECD published [Due Diligence Guidance for Responsible Business Conduct](#), to support implementation of the OECD Guidelines for Multinational Enterprises as well as the UNGPs.
  - The Business Case for Civil Society (draft paper; forthcoming September 2018) authored by Rights CoLab (Edwin Rekosh) and DLA Piper (Lamin Khadar)..
  - Forthcoming from UN Working Group on Business and Human Rights guidance for states and business on action to [safeguard and support human rights defenders](#) in line with the UN Guiding Principles on Business and Human Rights.
  - The International Civil Society Centre has organized the [Civic Charter](#), a framework for cooperative action supporting the civil society space, including freedom of expression, assembly and association. To date, over 1000 individuals have signed on from around the world.
  - The Business and Human Rights Resource Centre maintains a comprehensive online database of news and reports related to every aspect of business and human rights. The Resource Centre’s site also hosts a portal and database of attacks on the topic of [Business, Civic Freedoms, & Human Rights Defenders](#).





## **ANNEX 3: RELATED ORGANIZATIONS**

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## UN AND OTHER MULTILATERAL INSTITUTIONS

- The [Office of the UN High Commissioner for Human Rights \(OHCHR\)](#) leads the United Nations' human rights efforts.
- The [UN Working Group on Business and Human Rights](#) is mandated by the UN Human Rights Council to promote dissemination and implementation of the UN Guiding Principles (Human Rights Council resolutions 17/4 and 35/7). The Working Group has a special page dedicated to the [business and human rights dimension of human rights defenders and civic space](#).
- The [Special Rapporteur on the Situation of Human Rights Defenders](#) mandated by the UN Human Rights Council to support implementation of the 1998 Declaration on human rights defenders. The special rapporteur's annual reports are available [here](#) and other documents are [here](#).
- The International Labour Organization (ILO) promotes its core labour standards, coordinates relationships among trade unionists, labor rights activists and other HRDs, and supports in-country initiatives and multistakeholder groups.
- The Organization for Economic Co-operation and Development (OECD) maintains a [focus area](#) on corporate governance, and emphasizes responsible business with its Guidelines on Multinational Enterprises and recent (June 2018) Due Diligence Guidance for Responsible Business.
- The Organization for Security and Co-operation in Europe (OSCE) maintains the Office for Democratic Institutions and Human Rights with a focus on [Human Rights and Fundamental Freedoms](#).
- The Organization of American States (OAS) operates the Inter-American Commission on Human Rights, addressing human rights issues in signatory countries and maintains a [Rapporteurship](#) on Human Rights Defenders.
- [Business & Human Rights Resource Centre](#) works to build corporate transparency and accountability to empower advocates of human rights in business.
- [CIVICUS](#) is an international NGO that advocates for citizen participation and civic freedoms.
- [Committee to Protect Journalists](#) defends the right of journalists to report the news without fear of reprisal and publishes the annual report [Attacks on the Press](#).
- [Freedom House](#) is an independent watchdog organization dedicated to the expansion of freedom and democracy around the world as well as to the protection of civic freedoms.
- [Front Line Defenders](#) is an advocacy and research organization that works in support of human rights defenders at risk.
- [Global Witness](#) investigates and campaigns against corruption, environmental degradation, and human rights abuses related to natural resources (oil, minerals, forestry), with a recent emphasis on violence against land and environmental defenders.
- [Human Rights First](#) is an independent advocacy and action organization that directly lobbies the US government to support policies that respect human rights.
- [Human Rights Watch](#) publishes extensive reports about the situation of human rights defenders and activists in over 90 countries around the world, supports corporate accountability for human rights through research and advocacy.
- [International Civil Society Centre](#) supports civil society organizations around the world in the interests of a free, open civic space, which it promotes through its Civic Charter.
- [International Service for Human Rights](#) supports human rights defenders, strengthens human rights policy frameworks, and leads coalitions and initiatives with partner NGOs.
- [Publish What You Pay](#) is a global coalition of civil society organizations that advocates for revenue transparency in the extractive industry to diminish corruption.

## CIVIL SOCIETY GROUPS

- [Access Now](#) engages with policy, advocacy, and technical support to fight for open and secure communications for all.
- [Amnesty International](#) coordinates advocacy in support of unfairly imprisoned individuals through chapters in multiple countries and promotes corporate accountability through research reports and policy initiatives.
- [The Center for Strategic and International Studies \(CSIS\)](#) has convened [The International Consortium on Closing Civic Space \(iCon\)](#).
- The [Human Rights Campaign](#) is a US-based organization advocating for LGBTQI rights.

- The **Institute for Human Rights and Business (IHRB)** is an international think tank that works with public and private sector partners to shape policy, advance practice, and strengthen accountability in order to make respect for human rights part of everyday business.

## TRADE UNIONS

- **IndustriALL** is a global trade union.
- The **Accord on Fire and Building Safety in Bangladesh** is a binding agreement between unions and companies operating in or sourcing from Bangladesh, created in response to the Rana Plaza disaster.
- The AFL-CIO operates **Solidarity Center** to advocate for workers' rights internationally.
- The International Trade Union Confederation (**ICTU-CSI**) promotes workers' rights around the world and leads their representation at the ILO.

## MULTI-STAKEHOLDER INITIATIVES

- The **Ethical Trading Initiative** is an alliance of companies, trade unions and NGOs that promotes respect for workers' rights around the globe.
- The **Extractive Industries Transparency Initiative (EITI)** brings together oil/gas and mining companies with governments, civil society and investors to require revenue transparency, diminish corruption and promote accountable governance with an emphasis on civil society engagement and empowerment.
- The **Fair Labor Association (FLA)** holds member companies in the apparel/footwear and agriculture sectors accountable to its global worker rights commitments, including freedom of association.
- The **Global Network Initiative (GNI)** promotes the implementation of its principles on freedom of expression and the right to privacy by internet and telco companies together with human rights NGOs, academic experts and responsible investors and also undertakes policy initiatives on issues connecting business and civil society such as network shutdowns.

- The **Voluntary Principles on Security and Human Rights** brings together executives, NGOs and governments to implement operational safeguards with over 30 oil/gas and mining companies to diminish human rights risks and violations related to their security arrangements in proximity to local communities and conflict zones.

## EMPLOYER AND OTHER INDUSTRY ASSOCIATIONS

- **Amfori** (formerly the Foreign Trade Association) is a leading business association that promotes international trade and sustainable supply chains, including improving working conditions and environmental performance.
- **Open For Business** is a global network of businesses committed to the protection of LGBTQI employees and advocates against discrimination both in workplaces and public policies.
- The **International Council on Mining and Metals** brings together 24 mining and metals companies and over 30 regional and commodities associations to strengthen environmental and social performance in the extractives sector, including human rights issues related to conflict zones, local communities and indigenous peoples.
- The International Organization of Employers (**IOE**) is the largest network of private sector enterprises in the world, maintains a **Policy Area** on Business and Human Rights, and leads employer representation at the ILO.
- The **Responsible Business Alliance** (formerly the Electronic Industry Citizenship Coalition) is the world's largest industry coalition dedicated to electronics supply chain responsibility.



# **ANNEX 4: INDEX OF COMPANY AND INVESTOR ACTIONS DIRECTLY OR INDIRECTLY SUPPORTING CIVIC FREEDOMS AND HRDS**

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This index of actions is limited to those described in this guidance, in order of appearance in the text, and therefore is not comprehensive. See the page number references for additional context and explanation.

- **Yahoo (now under Verizon as Oath), 2008 (p. 24, 28):** Yahoo started a fund to provide aid to protect dissidents who express their views online
- **Websense, 2014 (p. 36):** Websense's publicly refused to respond to Pakistani government's call to procure an internet blocking and filtering system and successfully encouraged other companies to join
- **Volaris, 2018 (p. 37):** Volaris announced that it would offer free seats on its planes to reunite children with their families in Mexico and Central America
- **Lyft, 2017 (p. 44):** Lyft pledged \$1 million to the American Civil Liberties Union to demonstrate its opposition to the travel ban proposed by Trump in 2017
- **Apparel companies (several), 2017 (p. 56, 71):** The Apparel MSI Quick Response Group coordinated a letter signed by Adidas, Arena, Fair Labor Association, Fair Wear Foundation, MEC, Puma, Social Accountability International, and Under Armour to Cambodian government to protest imprisonment of HRDs and support freedom of association and other labor rights
- **Walmart, 2018 (p. 56):** Walmart Executive Vice President for Global Leverage Scott Price wrote to the Cambodian Minister of Labor and Vocational Training in the context of shrinking civic freedoms, calling on the government to cooperate on human and labor rights issues
- **The Azzad Asset Management, 2017 (p. 57, 80):** Azzad Asset Management filed a shareholder resolution with Chevron asking the company to use its access to and possible influence with the government of Myanmar to express opposition to the persecution of Rohingya, which the company subsequently did
- **Unilever, 2017 (p. 58):** Unilever CEO Paul Polman signed an open letter with Nobel Peace Laureates and other leading figures to the UN Security Council expressing concern about Rohingya crisis in January 2017, then publicly expressed support via Twitter
- **Apparel companies (several), 2017 (p. 57-58):** In December 2017, leading garment brands and trade associations in the EU and the US sent a written statement to the President of Myanmar expressing their concerns about the Rohingya refugee crisis
- **Cartier, 2017 (p. 58):** Responding to an online petition signed by over 75,000 people, Cartier announced in December 2017 that it was stopping sourcing from Myanmar, a significant move given that Myanmar produces over 95% of the global ruby supply
- **Cargill, 2016 (p. 28, 59):** Cargill insisted REPSA issue a "zero tolerance policy" for violence and intimidation of its opponents
- **Salesforce, 2015 (p. 62):** Salesforce said it would pay for its Indiana-based employees to relocate if they were concerned about the discriminatory impact of the Indiana's Religious Freedom Restoration Act
- **Starbucks, 2018 (p. 63):** Starbucks CEO apologized for a racist incident in a Philadelphia store and committed to close all its US stores a month later for racial bias training
- **Microsoft, 2017 (p. 63):** Microsoft's President Brad Smith wrote in a blog that "we need to put the humanitarian needs of these 800,000 [Dreamers] on the legislative calendar before a tax bill" [that would be beneficial to large corporations]
- **International Council on Mining and Metals (ICMM), 2018 (p. 46):** ICMM issued a statement in support of HRDs, expressing concern over rising attacks
- **Food, beverage & retail companies (several), 2015 onwards (p. 69-70):** Nordic companies including S Group have been supporting sued migrant labor rights defender Andy Hall through advocacy and in judicial proceedings
- **adidas, 2016 (p. 71):** adidas published a new policy aimed at protecting HRDs
- **Technology companies (several), 2015 (p. 73):** Google and Microsoft funded the creation of the Access Now Digital Security Help Line by Access Now
- **Microsoft, 2010 (p. 74):** Microsoft created a one-time unilateral license for the software already on the computers of eligible NGOs and small media organizations
- **Google and Jigsaw, 2017 (p. 74):** Google and Jigsaw unveiled a package of free tools in July 2017 to help guard against digital attacks during Kenya's election
- **Telenor, 2017 (p. 74):** Telenor, a Norwegian telecommunications company, issued a statement in September 2017 regarding the violence in Myanmar's Rakhine State

- **Singaporean companies (several), 2017 (p. 75):** 120 local Singaporean companies stood up for LGBTI inclusion by supporting the Pride parade after global sponsors were banned
- **Qantas airlines, 2017 (p. 75):** Qantas airlines CEO, Alan Joyce, was recognized as the top LGBTI executive champion, for outspokenly supporting same-sex marriage in Australia
- **Apple, 2017 (p. 76, 82):** Apple CEO Tim Cook and other Fortune 500 leaders made public statements opposing the proposed “Bathroom Bills” in some US states that would discriminate against transgender people
- **Alibaba, 2015 (p. 76):** Chinese e-commerce company Alibaba sent a strong signal showing its support for LGBTI inclusion when it ran a competition in 2015 to send ten same-sex couples to California to get married
- **Godrej, 2017 (p. 76):** Despite India’s anti-LGBTI laws, senior leadership at Godrej has been vocal regarding human rights of LGBTI population in their Standard of Conduct
- **Tata, 2017 (p. 76):** Tata announced it planned to have 25% of its workforce comprised of minority groups by 2020, including 5% from the LGBTI community
- **Orange, 2014 (p. 76):** In 2014, a Ugandan tabloid newspaper published a list of the country’s “top 200 homosexuals”; after being petitioned by a global LGBTI organization, the multi-national telco Orange announced that it would sever ties with the newspaper
- **Various companies, 2016 (p. 76-78):** Adidas Group, BT plc, Coca-Cola and the International Organization of Employers (IOE) launched a multi-stakeholder coalition called the Mega-Sporting Events Platform for Human Rights (Institute for Human Rights and Business (IHRB) serves as secretariat); it was re-launched in June 2018 as the Centre for Sport Human Rights and encouraged by Human Rights Watch to focus on protecting HRDs.
- **FIFA, 2018 (p. 78):** In May 2018, FIFA announced an initiative to support HRDs and journalists; it was re-launched in June 2018 as the Centre for Sport Human Rights and encouraged by Human Rights Watch to focus on protecting HRDs
- **BlackRock, 2018 (p. 79):** BlackRock CEO Larry Fink published a public letter calling on companies in which the world’s largest institutional asset manager invests to demonstrate societal benefit as well as shareholder value
- **Bangladesh Investor Initiative, 2013 (p. 11, 28, 51, 70):** After 2013 Rana Plaza factory collapse in Bangladesh, a group of investors known as the Bangladesh Investor Initiative called on companies to sign up to the legally-binding Accord on Fire and Building Safety; in April 2018, in a statement recognizing the 5-year anniversary of the disaster, the Bangladesh Investor Initiative reiterated their support for strong trade unions in Bangladesh
- **Investors’ Alliance for Human Rights (IAHR), 2018 (p. 12, 80):** In April 2018 IAHR mobilized an explicit action on HRDs with a focus on events in the Philippines in response to government persecution of indigenous and land rights defenders as alleged terrorists; also released a statement offering broad support for HRDs
- **Various companies, 2017 (p. 10, 63, 82):** Starbucks, Apple, and Facebook were some of the earliest opponents of the proposed travel ban in the US, soon joined by many others
- **Target, 2016 (p. 82):** In August 2016, Target announced a policy in which the company stated that at its stores, people can use the bathrooms of the gender with which they identify (in response to the proposed so-called “Bathroom Bills”)
- **Siemens, 2018 (p. 83):** Joe Kaeser, CEO of Siemens, spoke out notably in May 2018, rebuking a discriminatory statement against refugees made by a German parliamentary leader.