

RESPONSIBLE SOURCING

The business case for protecting land and environmental defenders and indigenous communities' rights to land and resources

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More than three people lost their lives each week in 2018 for peacefully defending their land and environment in the face of large-scale resource extraction projects. For companies with agricultural, timber and mineral supply chains, and their investors, there is a strategic and moral imperative to act to protect the human rights of all people defending communities' rights to land and resources.

This briefing sets out the cost of inaction, and provides practical guidance on how businesses can leverage their influence to create a positive impact, converting these risks into opportunities, and improving supply chain resilience.

EXECUTIVE SUMMARY

Violence, intimidation and harassment towards land and environmental defenders (LEDs) can occur when companies undertaking large-scale resource extraction projects neglect to undertake adequate due diligence, respect land rights, or involve communities in discussions and decision-making. Resulting degradation of natural resources and loss of livelihoods can lead to disputes within local communities, while LEDs are often stigmatised, dehumanised or criminalised. More than three people lost their lives each week in 2018 for peacefully defending their land and natural resources in the face of large-scale development projects, primarily mining and agribusiness. Around a quarter of them were indigenous people¹. With many killings occurring in countries where freedom of expression is restricted and perpetrators rarely brought to justice, the real figure is likely to be far higher.

For companies with agricultural, mineral and timber supply chains, and their investors, there is a strategic and moral imperative to

protect the human rights of all people defending communities' rights to land and resources. Neglecting to act can result in significant financial losses due to delays caused by land tenure disputes, as well as legal costs.² The average global operating costs of a three-year investment of around USD\$10 million could be up to 29 times higher if the project were forced to stop its activities due to local opposition.³ By leveraging their influence to create a positive impact, businesses can convert risks into opportunities, improve supply chain resilience and capitalise on market demand for sustainable products.

Due diligence sits at the heart of identifying, preventing and mitigating environmental, social and governance risks and impacts in agricultural, mineral and timber supply chains. The following is an overview of the due diligence process that businesses should undertake to address defender-related risks in their value chain:

1. Embed responsible business conduct into policies and management systems –

Companies should develop, publish and implement a policy position on LEDs that includes a zero-tolerance stance on threats and violence against LEDs as well as on illegal land acquisition, and also requires free prior and informed consent of local communities.

2. Identify and assess adverse impacts in operations, value chains and business relationships

– Conduct regular assessments of risks to affected communities and LEDs, for example as part of wider environmental, social and human rights impact assessments. Risk assessments should be conducted at three levels in key sourcing countries: at the national level, at supplier level, and at project level.

3. Cease, prevent or mitigate adverse impacts

– Where adverse impacts are identified, work with LEDs, communities and experts to identify effective mitigation measures. Identify and use the company's commercial and political leverage to maximise mitigation efforts, and be prepared to stop operations/sourcing where necessary.

4. Track implementation and results

– Regularly monitor the effectiveness of LED-related due diligence processes through consultation with LEDs' representatives and independent experts, and as part of regular human rights impact assessments.

5. Communicate how impacts are addressed

– Publicly disclose risks faced by LEDs and the due diligence measures used to identify and address these risks, for example

through annual, sustainability or corporate responsibility reports.

6. Provide for or cooperate in remediation when appropriate

– Ensure the business's existing grievance mechanisms are accessible to local communities and LEDs, and that they address LED, land and environmental risks. Assess whether these existing grievance mechanisms are rapid enough and provide sufficient levels of protection to deal with LED grievances, and if not, set up specific LED grievance mechanisms that provide rapid response and high levels of security and protection for users. Co-operate where required with other legitimate grievance mechanisms such as state judicial processes.

Finally, businesses should champion LED issues with governments to achieve positive outcomes for LEDs. Businesses can use their commercial and political leverage to press for greater respect for LEDs' rights, make public statements on the importance of LEDs in promoting human rights and sustainable development, and push governments to ensure that those responsible for attacks and threats against LEDs are brought to justice.

ABOUT THIS BRIEFING

This Global Witness briefing has been written for global businesses with agricultural, timber and mineral supply chains, with two key aims in mind. First, it aims to present a strong business case for these companies to take action on protecting and promoting the rights of land and environmental defenders (LEDs). Second, it aims to set out clear and practical steps businesses can take to protect and promote LED rights. This is supported through the inclusion of 'Business Case Studies' which, whilst not an endorsement of best practice, aim to provide

examples of such practical steps that businesses can take.

The guidance draws on Global Witness's strong track record of investigating and campaigning on LED issues, as well as on the underlying land rights and environmental issues that LEDs fight for; it also draws on the experience of individual staff who collectively bring decades of experience working with frontline land and environmental defenders in Latin America, Asia and Africa. This briefing presents this experience within the framework of well recognised international business and human rights standards, in particular the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises.

Nevertheless, the guidance contained in this briefing should be considered as *initial* guidance that will be refined following both further consultation with defenders organisations and field testing with companies themselves.

THE GLOBAL PICTURE

Despite the growing awareness of the role of land and environmental defenders in sustainable development, these people and their communities face increasing risks to their safety. Between 2002 and 2012, Global Witness found that 711 activists, journalists and community members were killed while defending their rights to land, forests and rivers.⁴ By 2018, this number had risen to over 1,400.⁵ This equates to an average of more than three such people losing their lives every week in 2018, with acts of violence perpetrated by groups supplying industries such as mining, logging and

agribusiness. The real figure is likely to be far higher: reliable evidence is hard to find or verify, and many deaths go unreported, particularly in rural areas or countries where citizens' freedom of expression is restricted.

WHO ARE LAND AND ENVIRONMENTAL DEFENDERS?

Land and environmental defenders (LEDs) are people who take peaceful action to prevent or oppose the unjust, discriminatory, corrupt or damaging exploitation of natural resources that severely impacts individuals' or communities' quality of life or cultural identity, or that seriously harms the environment. LEDs often live in communities whose land, health and livelihoods are threatened by the operations of mining, logging or agribusiness companies, or they may seek to protect biodiversity. Others support such efforts indirectly through their work – as human rights or environmental lawyers, politicians, journalists, or members of campaigns or civil society organisations, for instance.

LEDs are a particular type of Human Rights Defender (HRD); therefore any protections or rights afforded to HRDs under international or national laws and standards are also relevant and should apply to LEDs.

The highest number of LED killings occurs in Central and Latin America, with Brazil, Colombia, Honduras and Peru also consistently ranking high, according to Global Witness data. In 2018, the Philippines replaced Brazil as the country with the highest number of LED killings.⁶

Conflicts over land and resources required for mining and agribusiness represent the primary causes of killings, with mining emerging as the greatest driver, as it has

done consistently over the years. Hydroelectric dams and logging are also key drivers of violence. Overall, Global Witness documented 164 killings globally in 2018.

Widespread impunity makes it challenging to identify perpetrators, but state security forces play a prominent role, as do private actors such as hitmen, criminal gangs and landowners.⁷

The risks faced by LEDs are likely to grow, particularly in view of restrictions in many countries limiting citizens' rights to organise, debate and act.⁸ In 2016, the NGO Freedom House, which monitors political and civil liberties, noted the tenth consecutive year of 'decline in global freedom', despite previous advances.⁹ Citizens' collective efforts seem to be regarded with increasing suspicion and may even be suppressed. Anti-NGO laws, harassment and criminalisation all strike at the heart of people's freedom to defend their rights, putting LEDs' lives at risk and creating social and political instability as civic discontent around governance systems that are not participatory and accountable manifests as protests¹⁰.

“ They say we are terrorists, delinquents, assassins and that we have armed groups here, but really they're just killing us.”

- Joel Raymundo, member of the Peaceful Resistance of Ixquisis movement, an indigenous organisation campaigning against human rights violations driven by mining and hydroelectric mega-projects in Ixquisis, Guatemala.¹¹

INDIGENOUS PEOPLE MOST AFFECTED

Global Witness has consistently documented how indigenous people are hardest hit by the violence experienced by LEDs: around a

quarter of the murder victims that Global Witness recorded in 2018 were indigenous people.¹²

Some of the most high profile campaigns targeting the financial sector in recent years have involved state violations against indigenous LEDs. This includes the Agua Zarca hydroelectricity case in Honduras (linked to the assassination of Berta Caceres and Tomas Garcia), the Dakota Access Pipeline in the USA (concerning surveillance and criminalisation of LEDs) and the Adani mine case in Australia (with LEDs bankrupted by company lawsuits).¹³

EMPOWERING WOMEN LEDs

Women LEDs are more at risk of facing certain forms of violence and other violations, prejudice, exclusion and repudiation than male LEDs. Understanding the specific challenges faced by women LEDs is vital to strengthening protection mechanisms and other responses such as laws and action policies.¹⁴ The threats used against women – particularly around rape and sexual assault - in this context can carry distinct social stigma. In developing strategies to protect and empower women LEDs in their supply chains businesses should draw from, and build on, the experience of women's organisations – particularly where sexual assault may be used to try to silence LEDs.

“ Of course, my life is at risk. I receive death threats 24 hours a day because I'm not going to shut my mouth in the face of this atrocity.”

- Maria do Socorro Costa da Silva who campaigns with communities against hydro aluminium factories, which are allegedly responsible for water poisoning in Barcarena, Brazil.¹⁵

THE ROLE OF BUSINESS

Here, we explore the key global trends and data related to LEDs as well as the legal imperative and business case to protect LEDs and indigenous people in communities that supply or are impacted by business operations. We cover the core aspects of due diligence integral to ensuring social compliance in agricultural, timber and mineral supply chains, and best practice in identifying, preventing and mitigating environmental, social and governance risks and impacts.

Importantly, Global Witness recommends that such due diligence practices should apply across all sectors, supply chains and investment chains.

SCOPE OF DEFINITION OF TERMS

Business • Encompasses both companies and investors as per the definitions below.

Companies • All multinational and domestic enterprises, regardless of their ownership structure, in all sectors and of all sizes including multinational, small and medium-sized enterprises; parent and local entities, including subsidiaries.

Investors • Institutional investment managers (investment funds, insurance companies and pension funds), banks, asset owners and International Finance Institutions.

HOW COMPANIES AND INVESTORS CAN IMPACT LAND & ENVIRONMENTAL DEFENDERS

Companies with supply chains reliant on natural resources are often indirectly

responsible for the conversion of sensitive natural habitats, which can result in biodiversity loss and disputes within local communities. Global Witness has identified the following factors as principal root causes of threats to LEDs:¹⁶

➤ When companies such as retailers, manufacturers and traders involved in large-scale resource extraction projects neglect to undertake adequate due diligence in countries with high levels of corruption, poor and non-transparent governance processes, poorly enforced laws and weak land rights, heightening the risk of threats to vulnerable groups.¹⁷

➤ When companies neglect to identify, secure and respect customary and collective land rights and other land titles, which can put communities at risk of illegal land appropriation and create land conflicts, prompting social unrest.

➤ When companies neglect to respect the process of free, prior and informed consent of communities regarding the use of their land and natural resources, or invite them to participate in the decision-making process.

➤ When companies exclude communities from other decision-making processes, including environmental, social and human rights impact assessments.

Beyond the risk of losing their life, LEDs face numerous threats and violations committed by both State and non-State actors, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests. The Business & Human Rights Resource Centre has documented over 2,000 death threats, judicial and physical attacks and killings related to human rights defenders, some of

which may be connected to global supply chains.¹⁸ They form part of an overall trend towards stigmatising, dehumanising and delegitimising human rights defenders, including LEDs.¹⁹

Criminalisation is one of the key violations faced by HRDs including LEDs, and it takes many different forms. In this context, it derives from 'the intent to discredit, sabotage or impede the work of human rights defenders through the misuse of the legal system and through a targeted manipulation of the public discourse within a country.'²⁰

➤ Legal threats are used by businesses and governments to intimidate HRDs, harm their reputations and oblige them to engage in costly court battles that impede their work.

➤ Strategic lawsuits against public participation (SLAPPs) - lawsuits filed by a private party with an intent to silence or intimidate another private party engaging in public participation - are a particularly damaging tool used by some companies to retaliate against critics.²¹

➤ New laws can be created to restrict or criminalise protest and freedom of expression. And existing legislation designed to stop terrorists or protect national security can be misused against HRDs.²²

“When I got there, the place was covered in empty bullet shells, and it made me think: all these indigenous people ever wanted was to be able to reclaim their ancestral lands and live in peace.”

- **Filipino defender Rene Pamplona on the massacre of eight indigenous Taboli-manubo in the Silvicultural Industries coffee plantation**²³

BUSINESS CASE STUDY: Coca-Cola's Commitment To Zero Land-Grabbing

In 2013, Coca-Cola developed an action plan to address land rights in its supply chain, including zero tolerance for 'land grabs'. Its work on land rights has focused on building internal capacity, establishing requisite policies and stakeholder engagement.

Coca-Cola committed to undertaking 28 third-party country studies, many with the partnership of NGO Landesa, which focused in part on land rights in the sugar supply chain, recognising sugar as a commodity posing a particular risk globally in relation to land rights issues. Stakeholder questionnaires were tailored towards land use, rights and tenure security and developed in conjunction with experts.

Once complete, country-level studies were published on the Coca-Cola Company website. The aim of the studies was to mitigate potential future violations in collaboration with key stakeholders and serve as an example of good practice in identifying and mitigating potential human rights abuses and land use violations.

The company stated that 'while the studies may uncover existing practices that need remediation or even show the need for entirely new measures, the studies also provide information on good practices that can better inform replication and implementation.'²⁴

THE CASE FOR COMPANIES AND INVESTORS TO ACT

Protecting LEDs is vital to promoting supply chain transparency and preventing corruption. By supporting (or at least

accepting) their work, companies contribute to advancing their human rights performance, improving supply chain resilience and managing operational legal and reputational risks, while promoting peace, justice, and sustainability.

INTERNATIONAL NORMS

Under the UN Guiding Principles on Business and Human Rights (UNGPs), governments have the primary duty to protect human rights while businesses have a separate and independent responsibility to respect human rights.²⁵

Under this guidance, the business responsibility to respect includes refraining from harming HRDs, restricting their rights or interfering with their activities. The UNGPs also require companies to engage with HRDs to identify, mitigate and remedy any adverse human rights that may arise from their operations.²⁶ In these cases, companies should exert leverage through their business and supplier relationships to address the impact. Additionally, private security firms or contractors acting for or on behalf of financed businesses should not be involved in attacks on HRDs.²⁷

An increasing number of businesses are making efforts to promote human rights in their supply chains and in communities impacted by their operations, particularly in response to threats to civic freedoms and human rights defenders.²⁸ For example, in 2015, three jewellery companies (understood not to have direct links to Angola), including Tiffany and Co., released statements calling on Angola to drop charges against Rafael Marques, a journalist on trial for defamation after exposing supply chain abuses in the diamond industry.²⁹

“The UNGPs are a hard floor – but not a low ceiling – for company action to support civic freedoms and HRDs.”

- John Ruggie, former UN Special Representative for Business and Human Rights

The UNGPs state that ‘Because business enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights, their responsibility to respect applies to all such rights.’ This includes respecting land and environmental defenders’ rights, as laid out in the UN Declaration on Human Rights Defenders (UNDHRD).³⁰ The UNDHRD bolsters the UNGPs alongside the Organization for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises and the UN Sustainable Development Goals.³¹

Beyond these corporate responsibility guidelines, national and international standards also exist to protect defenders’ rights. In 2016, Canada published guidelines for its government and diplomats on supporting defenders at risk.³² These guidelines allow embassies to deny trade support to companies associated with threats against defenders – an important step given the abuses frequently reported by activists opposing Canadian mining interests.³³

France recently passed the most comprehensive human rights focused due diligence requirements through the Duty of Vigilance Law in February 2017.³⁴ The law requires companies, including banks and investors, to identify and act on their most serious exposure to human rights abuses, which may include threats to and killings of defenders.

European investors such as banks, pension funds and insurers are also now bound by due diligence legislation. An agreement made between the European Parliament and Council in 2019 means that investors must disclose the steps they have taken to address any adverse social and environmental impacts of their investment decisions.³⁵

THE BUSINESS CASE

“ 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 Company³⁶

The financial risks to business of large-scale land investments

There are distinct business risks linked to investing in land where tenure rights are unclear. A 2012 report by development consultancy The Munden Project analysed the financial costs associated with neglecting the issue of tenure in land investments.³⁷

The multiple financial risks observed include unexpected cash flow loss due to suspensions and seizure of assets following the loss of insurance coverage.³⁸ **The escalation of risk can be rapid and irreversible.** Overall, the average global operating costs of a three-year investment of around USD\$10 million could be up to 29 times higher if the project were forced to stop its activities due to local opposition.³⁹

Disputes with local communities over tenure **expose investors to delays that can last years or even decades.** Investors that **cannot earn a social licence to operate can**

struggle to access and use land they have leased or acquired regardless of their legal standing. The resulting delays or abandonments cause severe financial losses of up to 2.5 times the original Net Present Value, or over \$100 million - reaching \$52 million in the case of an East African greenfield sugar investment.⁴⁰

Defenders' safety goes hand in hand with business stability -

As documented extensively by the Business and Human Rights Resource Centre and International Service for Human Rights, there is a strong business case for companies and investors to prioritise human rights defenders in their human rights and sustainability policies.⁴¹ Importantly, promoting the safety of defenders is strongly associated with a stable business operating environment. Companies and defenders alike thrive in contexts of transparency, rule of law, non-discrimination, and freedom of association.⁴²

Defenders can add value to businesses -

Defenders can assist businesses in understanding the local context, navigating human rights laws, establishing risk management procedures, and setting a strong foundation for an operation's long-term security and effectiveness.

By engaging defenders, companies and investors are better prepared to prevent any adverse negative human rights impacts and build relationships with local stakeholders. From a social compliance perspective, companies are also better able to design effective grievance policies, mitigation strategies and remediation mechanisms. This in turn lowers the risk of community conflict and social upheaval, which helps to reduce costs, protect corporate reputations and promote operational efficiency.

Sustainability performance is increasingly linked to commercial success – As stakeholders push for radical transparency and consumers become more concerned by how and where products were made, markets may reward businesses taking a progressive approach to sustainability, and with a positive reputation in relation to rights and ethics.⁴³

Neglecting to protect defenders can incur costly legal fees - Attacks against defenders associated with a business project can pose costly legal risks for companies and investors. In 2019, it was reported that the Dutch development bank, FMO, was facing an estimated cost of between €4.1 and €6.2 million in legal fees. This was following a lawsuit filed by victims of a hydroelectric power plant project in Honduras over the FMO's involvement in the construction of the controversial dam project. The FMO had been one of the main financiers behind the Agua Zarca dam project, but suspended its loans after the murder of environmental activist Berta Cáceres. The FMO has reportedly spent €2.6 million on legal fees to date.⁴⁴

DAKOTA ACCESS PIPELINE: Calculating the financial cost of neglecting to consult indigenous communities

The controversy surrounding the Dakota Access Pipeline (DAPL) highlighted the potential consequences of not accounting for the total impacts of development on and near indigenous lands, and neglecting to respect human rights. The Standing Rock Sioux Tribe communicated its opposition to DAPL for three years and yet were not included in any form of meaningful

consultation by Energy Transfer Partners (ETP), DAPL's parent company or the U.S. Army Corps of Engineers (USACE).

By not engaging with the indigenous community, ETP, USACE and other investors missed the opportunity to identify and counter the risk of heightened social unrest. Intense social conflict subsequently erupted and ultimately resulted in material loss,⁴⁵ with ETP's stock declining in value by almost 20% from August 2016 to September 2018 compared to the S&P 500 Index, which increased in value by nearly 35%. 'Poor social risk management' was considered a key factor.⁴⁶

Overall, related costs incurred by ETP and other firms with an ownership stake in DAPL for the entire project are estimated at a minimum of \$7.5 billion USD. The banks that financed DAPL incurred an additional \$4.4 billion in costs in the form of account closures, not including costs related to reputational damage. Further, at least \$38 million was also incurred by taxpayers and other local stakeholders.

The study behind these figures - the University of Colorado's 'First Peoples Worldwide' programme found that 'given the magnitude of media attention generated by the controversy as well as the quantity of financial losses reported by ETP, social pressure is a likely contributor to the losses.'⁴⁷

A GENERIC DUE DILIGENCE FRAMEWORK: OECD GUIDANCE FOR BUSINESS

The OECD Guidance for Responsible Business Conduct states that the purpose of due diligence is 'first and foremost to avoid causing or contributing to adverse impacts

on people, the environment and society, and to seek to prevent adverse impacts directly linked to operations, products or services through business relationships.⁴⁸ It includes a comprehensive set of principles and standards for responsible business conduct, and features a recommended approach to risk-based due diligence and responsible supply chain management.

In particular, the Guidance details a practical six-step process to help businesses identify, assess, mitigate and remediate any adverse impacts of their activities, supported by practical examples, including on due diligence related to environment and human rights.⁴⁹ This framework and accompanying due diligence methodology is now integrated within legislation for different commodities in the U.S., EU, central African countries as well as UN Security Council resolutions.⁵⁰

Similar implementing guidance has been created by the OECD for sector-specific due diligence, including guidance for agricultural supply chains and institutional investors.⁵¹

BUSINESS CASE STUDY: Rio Tinto Exploration, Democratic Republic of the Congo

In 2010 Rio Tinto formed a joint venture to explore iron ore in the Democratic Republic of the Congo (DRC) but had no previous experience of working in the country. In order to understand the environmental and human rights risks involved, the company implemented a 'New Country Entry' process, and worked with The Danish Institute for Human Rights (DIHR) to undertake a human rights risk assessment for DRC operations. In this way, it identified the legacy of human rights abuse in the region as a major risk. Other human rights issues were also identified, including security arrangements, the need for a complaints mechanism, and

engagement with indigenous peoples. Rio Tinto integrated DIHR recommendations into its management plans, including proactive mitigation strategies.⁵²

DEVELOPING A DUE DILIGENCE PROCESS THAT ENSURES THE RESPECT AND PROTECTION OF LEDs' RIGHTS

“ 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, Former CEO of Unilever⁵³

Multiple risks and impacts can arise in relation to LEDs throughout a project and/or value chain. Here, we explore how the respect and protection of LED rights can be integrated within the OECD six-step due diligence guidance, with a view to continuous improvement of performance through monitoring and evaluation.

Businesses should take both **preventative mitigation measures** (steps 1 to 5) as well as **reactive protection measures**, in the event of a reported incident post-investment (step 6). The actions under step 3 should also be used as a reactive measure to a reported incident.

1. EMBED RESPONSIBLE BUSINESS CONDUCT INTO POLICIES AND MANAGEMENT SYSTEMS

1.1 What do businesses need to do?

All businesses should adopt and publish a policy position on LEDs, and ensure this is embedded in the company's management systems and policies. The policy position could be incorporated into existing relevant policies, for example corporate human rights, sustainability, ethical sourcing and/or community engagement policies. If there is a high risk to LEDs (or HRDs more broadly) associated with the company's operations or industry, a stand-alone policy on HRDs should be considered, which should have specific reference to LEDs and their particular needs and priorities. The policy should be based on Principles 15 and 16 of the UN Guiding Principles on Business and Human Rights⁵⁴, stating its approach to opposition and prospective measures to prevent escalating tensions or attacks on HRDs including LEDs.

The policy position on LEDs needs to include two sets of principles: those that protect and promote the rights of LEDs, recognising them as a type of HRDs; and those that address the underlying land and environmental risks faced by impacted communities that LEDs represent. This guidance does not prescribe where these two sets of policy principle should sit. It is recognised that the two sets of principles may sit in different corporate policies: for example, as mentioned the first set of principles may be incorporated into a broader HRD policy, whereas the second set of principles may sit within ethical sourcing and/or environmental policies. It is also recognised that how and where these policy principles are incorporated will vary depending on the nature of each business and how it currently manages environmental, social and governance (ESG) issues.

The following guidance refers to both sets of principles. Businesses are encouraged to decide for themselves how best to incorporate these principles into existing ESG policies and management systems.

1.2 Key steps in developing the policy position

To develop the policy position on LEDs, businesses should consult with LEDs and with representatives of impacted communities in key sourcing countries to ensure that policy commitments address key concerns and priorities of LEDs and their communities, including security concerns faced by LEDs. Businesses should take specific steps to consult with women LEDs' groups and local or national women's rights organisations that represent the interests of women in impacted communities.

Businesses should also build a comprehensive understanding of laws, regulations and legal procedures related to the acquisition of land in key sourcing countries. Additionally, companies should conduct a comprehensive assessment of customary tenure and user rights related to land and natural resources in these countries, including any additional legal protections afforded to indigenous peoples.

Finally, businesses should also develop a comprehensive understanding of environmental laws and regulations relevant to their business operations. This research on land and environmental laws and policies should inform the commitments contained in the company's policy position on LEDs

1.3 What should the policy position contain?

The LED policy position should include the following key components, reflecting key

principles to ensure protection of LEDs and well as key principles to address underlying causes of threats to LEDs (i.e. land rights and environmental risks). (For investor-specific policies, see **Box 1** below):

➤ **Zero-tolerance on threats or violence towards LEDs** – The policy position should include a strong commitment to address any acts of violence, threats or intimidation committed against LEDs in light of their opposition to or views on a company’s projects. This commitment should apply regardless of who is the alleged perpetrator of the act of violence, and its application should in particular include where the alleged perpetrator is a company employee, private security company, contractor, or law enforcement force acting to protect business interests.

•As a first step, companies and investors can sign up to the Zero Tolerance Initiative, confirming their commitment to taking concrete steps towards eliminating violence linked to their supply chains.⁵⁵

➤ **Commitment to ‘zero tolerance’ on illegal land acquisition** and commitment to respect and protect all statutory, collective and customary land rights across their supply chain operations.

➤ **Commitment to free, prior and informed consent (FPIC)**. Businesses must respect the principle of free, prior and informed consent of affected communities, in particular in the case of indigenous people who are subject to additional protections under international law. This is stipulated in the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169 and the UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests⁵⁶. Specifically, companies should:

➤ conduct meaningful consultations and meetings with LEDs and local communities, disclosing all relevant information about business projects at

the outset, including potential impacts on human rights, in languages that are clearly understood by LEDs

➤ such consultations should be carried out before each significant study, change or phase of a project

➤ create and implement security protocols for LEDs and community members engaging with company employees, in order to address any risks to their safety.

➤ publicly report on how input from consultation with affected communities is acted upon.

1.4 Embedding the policy position in management systems and practices

To ensure that the LED policy position is effectively and consistently implemented, companies should:

➤ **Ensure senior level buy-in to the policy position**

➤ **Clarify the objectives of the LED policy position to employees, business partners and customers.** This should include providing clear guidance on the obligations of each stakeholder in relation to the LED policy position

➤ **Provide tailored training on the LED policy position to key employees involved in implementing relevant due diligence policies and procedures.** If relevant skills and experience do not exist in-house, consider recruiting specific expertise. It is vital that key employees involved in assessing and addressing adverse impacts on LEDs and the communities they represent have sufficient expertise and sensitivity to understand the issues at stake.

➤ **Incentivise key employees (eg, buyers/sourcing teams) and suppliers** to follow the policy position, eg, through

including relevant criteria in staff performance reviews and supplier contracts.

➤ **Build and maintain relationships with key LED organisations at international, national and local level.** Companies with well established relationships with key stakeholders will be able to move more swiftly and decisively in the event of crisis situations.

Specific guidance for investors and financial institutions

Investors and other financial institutions should:

- **Screen portfolios for human rights defenders-related risks, including specific risks to LEDs,** and establish early warning systems to detect and prevent potential conflicts.
- **Include contractual provisions in all project contracts** requiring compliance with, and reporting on, the company's HRD policy and outlining reprisal prevention measures.
- **Call for transparent disclosure by companies** - Where investors or financial institutions have financing relationships with companies, they should write a disclosure provision into their contracts to ensure project transparency. Violation of the terms should result in an immediate investigation and potential termination of the contract.
- **Independently verify that projects have secured and maintained FPIC** of indigenous people and affected communities. They should also independently verify that consultation processes are meaningful and free of intimidation and coercion.

2. IDENTIFY AND ASSESS ADVERSE IMPACTS IN OPERATIONS, VALUE CHAINS AND BUSINESS RELATIONSHIPS

2.1 What companies need to do

To assess LED-specific risks, companies need to consider risks at three levels: at the country level, at the level of specific suppliers and contractors, and at project level. The key parameters set out in **Principles 18-21 of the UN Guiding Principles on Business and Human Rights**⁵⁷ provide a relevant framework for this work.

Crucially, risk assessments of LED issues should be considered as an on-going commitment, and not just a one-off exercise to be conducted at the beginning of a project or business relationship. Businesses must commit resources to conduct risk assessments on a regular basis throughout the life of a project, both to ensure that new risks are identified and addressed, and also to check that mitigation measures are being implemented effectively (see Section 3 below).

2.2 Who should conduct risk assessments?

Businesses will need to obtain the support of their senior leadership to conduct such assessments, supported by dedicated funds and resources. This includes ensuring assessments are conducted by employees (potentially with support from third parties) who have expertise in human rights and the language skills necessary to consult local sources of information.

2.3 Assess national-level risks – the legal and policy context

Businesses should carry out periodic national-level risk assessments in key sourcing countries/countries of operation, and in any prospective new operating countries. This should include assessing:

➤ **The situation of civic freedoms and human rights defenders in the country**, identifying any gaps between international standards and national laws, and between laws and actual practice. This should include reviewing reports from relevant international and local institutions, watchdogs and civil society organisations that show how different countries compare on civic freedoms and repression of HRDs/

➤ **Statutory and customary land rights**, including how customary rights are upheld by statutory law, and in particular how women's land rights are protected under both systems

➤ **Legal procedures for the acquisition of land**, including those pertaining to foreign direct investors where relevant. Particular attention should be given to requirements for FPIC and approvals needed from relevant customary as well as statutory authorities.

➤ **Relevant environmental laws and policies.**

If a national-level risk assessment reveals a very high risk or prevalence of attacks and threats against HRDs, and/or very weak laws governing land acquisition by investors (or widespread corruption in how land acquisition laws are implemented in practice), businesses should seriously consider the risks associated with doing business in the country in question. At the least, businesses should consider engaging with the national government to encourage positive change. In the worst cases, businesses should consider ceasing/not initiating operations in the country at all.

In some countries, businesses may also need to conduct regional or district level risk assessments, for example in large countries with diverse environmental and social characteristics and/or in countries with highly decentralised government structures.

2.4 Screening/assessment of suppliers and contractors

When establishing new operations or engaging new business partners, companies should risk-assess the policies and practices of suppliers and contractors in relation to LED issues, as well as assess their production and processing sites. Companies should support suppliers in strengthening their policy positions and actions relating to LEDs, where necessary.

Businesses should establish processes to ensure that key suppliers and their main production and processing sites are risk-assessed regularly throughout the life of the business relationship.

2.5 Risk assessment at project level (ESIAs)

LED-specific questions should be included in the company's broader risk assessment procedures for new projects (eg, Environmental and Social Impact Assessments, ESIAs; Human Rights Impact Assessments, HSIAs; or Contextual Risk Assessments). The LED-specific components of the risk assessments should:

➤ **Be informed by the national level risk assessment** – there should be country-specific questions based on this knowledge

➤ **Assess presence and risks faced by LEDs** – assess if communities/LEDs are already operating, facing attacks, threats etc. This should include a rigorous system for assessing and classifying the severity of any reprisals reported, and the classification should give weight to non-physical as well as physical forms of attacks (eg, criminalisation). On-going prevalence of severe reprisals should be seen as a “red flag” against initiating the project.

➤ **Assess community rights to land and other natural resources in the particular context** - including customary and collective

land and resource rights, who would be impacted by the project, and what would be an appropriate level and type of compensation.

Initial assessments conducted before projects commence should be used as a basis for deciding whether to proceed with the investment and/or develop harm-mitigation strategies. The results of these initial assessments should identify specific mitigation measures for any reprisals identified, and these measures should be implemented before clearance is given for a project.

It is equally important that project-level assessments of LED-related risks are conducted on a regular basis throughout the lifetime of the project, both to ensure that any new risks are identified and managed, and to monitor implementation of any mitigation measures adopted. If standard risk assessment processes (eg, ESIA, HRIA) are not conducted on a regular basis, then regular LED-specific risk assessments should be considered. The results of project-level risk assessments should be disclosed publicly.

For further information on risk assessments, see the Defenders in Development coalition report, *Uncalculated Risks: Threats and attacks against human rights defenders and the role of development financiers*⁵⁸

3. CEASE, PREVENT OR MITIGATE ADVERSE IMPACTS

If the risk assessments identify existing or potential adverse impacts for LEDs and/or their communities, businesses should identify and put in place appropriate prevention and mitigation measures. Note that as per **Principle 19 of the UN Guiding Principles on Business and Human Rights**, a business has a responsibility to act not only if it has caused human rights abuses, but also if it has contributed to or is some way

linked to such abuses, whether through direct operations or relationships.⁵⁹

Businesses should tailor their responses to the circumstances of each case and the needs and wishes of the LED(s) in question, to ensure that solutions are appropriate and effective. To help the swift identification of possible prevention or mitigation measures, businesses should consider establishing a “toolkit” of potential measures that could be adapted on a case-by-case basis and updated frequently according to best practice, lessons learnt and peer-to-peer learning. Nevertheless, the following are five generic steps that businesses should take to identify case-specific measures: these steps are predominantly based on recommendations from the Business and Human Rights Resource Centre and the International Service for Human Rights⁶⁰.

➤ **Verify the reality and severity of the risk to LEDs and/or their communities, and identify potential prevention or mitigation measures** – Cross-check the findings from your risk assessment through further consultation with LEDs, their communities and/or representatives and other relevant stakeholders. Crucially, make sure protection measures are put in place to ensure that LEDs and local communities are not put at greater risk due to participating in such consultation processes. Verify the severity of the risks involved, identify communities’ and LEDs’ desired prevention or mitigation measures, and seek input from experts on these measures.

➤ **To address risks of threats or attacks against LEDs**, possible mitigation measures include: improving channels of communication with the LED(s) at risk (e.g. establishing independent mediation between the company and affected stakeholders); supporting the LED at risk (for example through a public statement of support); and/or removing or reducing the

threat faced by the LED (for example by changing private security company or by advocating with the government).

➤ **To address underlying social and environmental risks faced by affected communities**, possible mitigation measures may include: supporting a supplier to switch to more environmentally friendly production practices (e.g. installation of water treatment equipment, use of more efficient irrigation techniques); providing greater flexibility for local communities to continue pre-existing income earning activities wherever possible (e.g. allowing women to collect wild forest products from land being used by the business for commercial production); and/or negotiating improved compensation packages for communities.

➤ **Verify the degree of business involvement** – Where the nature or degree of business involvement is unclear from the risk assessment and available business/supply chain intelligence, gain clarity through consultation with relevant business stakeholders and the LEDs/communities in question. If LEDs or their representatives disagree with the business’s assessment of its involvement with the adverse impacts in question, that business should cooperate in good faith with legitimate mechanisms designed to help resolve the disagreements and provide remediation. Further guidance can be found in the OECD Guidance.⁶¹

➤ **Identify the risks/costs of action vs. inaction to your business and to LEDs/their communities.** Review the range of prevention or mitigation measures put forward by LEDs, communities and experts, and assess the relative costs/risks and benefits of different mitigation options against each other and against taking no action. Bear in mind that although the business costs of managing and mitigating adverse impacts against LEDs may appear

high, the costs of inaction may be even higher (see “Business case” section above).

➤ **Identify how the business can best use its leverage to support LEDs** – Considering the main mitigation/prevention measures on the table, identify how the company can maximise its leverage to encourage adoption of these measures. As well as being able to leverage its sourcing relationships on direct suppliers and sub-contractors, businesses can also exert influence indirectly through joining forces with other businesses operating in the area, leveraging relationships with other local and international stakeholders, and engaging directly with the relevant government bodies (see section “Championing LED issues with governments” below).

➤ **Where ceasing production is necessary, create a clear roadmap towards this aim.** Where all other options have been explored and considered unviable, a business may need to consider ceasing production/sourcing in the locality. A clear roadmap to achieve this is particularly important in the case of complex initiatives or projects that may be difficult to halt due to operational, contractual or legal issues. Developing a roadmap should involve in-house legal counsel as well as impacted LEDs, representatives from their communities, and organisations supporting these LEDs. The roadmap should identify priority issues and threats seeking first “to prevent and mitigate those that are most severe or where delayed response would make them irremediable.”

Specific guidance for investors and financial institutions

Investors and other financial institutions should adopt and disclose a **protocol for responding to threats and attacks** against defenders associated with companies in

their portfolios. This protocol should include the following steps:

- Consultation with the defender(s) at risk and any supporting organisations to assess the ongoing risks they face and agreeing a response plan
- Requiring implicated company/ies to take measures to prevent and mitigate further harm and protect defenders.
- Deploying appropriate compliance measures and sanctions, and where needed, suspension of funding/lending until a safe environment for defenders is guaranteed.
- Using the investor/lender's influence with other financial institutions to apply collective pressure on the implicated company/ies.

4. TRACK IMPLEMENTATION AND RESULTS

In accordance with **Principle 20 of the UN Guiding Principles on Business and Human Rights**, a business should regularly monitor the effectiveness of its due diligence processes in relation to HRDs including LEDs. They should monitor if the measures in place to assess risk and address adverse impacts are effective, and if not, adjust them or develop stronger mechanisms.⁶² Monitoring should be conducted in consultation with representatives of LEDs and their communities, as well as with independent experts.

Monitoring can be incorporated into wider processes. For example, human rights impact assessments – which should be incorporated through the business cycle – can include questions that assess the effectiveness of any LED-related mitigation measures that have been undertaken since the last impact assessments was conducted.

Grievance or complaints mechanisms (see section 6 below) can also be used to collect information on the effectiveness of previous mitigation measures.

5. COMMUNICATE HOW IMPACTS ARE ADDRESSED

As outlined in **Principle 21 of the UN Guiding Principles on Business and Human Rights**⁶³ and elaborated further in the OECD Guidelines, businesses should disclose their exposure to defender risks, and steps they have taken to address these risks, through their annual, sustainability or corporate responsibility reports or other appropriate forms of disclosure. This should include publishing information on:

- their overall management approach, including relevant policies and processes designed to help protect and promote LEDs' rights;
- risks identified by the business, and actions taken to prevent or mitigate those risks;
- any measures taken to prevent or remediate any issues identified; and
- measures taken to monitor and evaluate performance and promote continuous improvement.

6. PROVIDE FOR OR COOPERATE IN REMEDIATION WHEN APPROPRIATE

No risk assessment system is fool-proof. Companies should therefore ensure that they have effective operational-level grievance mechanisms or protocols in place that both cover and are equipped to cope with, the specific nature of LED grievances. Business should in any case have broader human rights grievance mechanisms in place, in accordance with the **OECD Guidance (Principle 6.1)** and the **UN Guiding Principles on Business and Human Rights (Principle 29)**⁶⁴. These should be accessible to LEDs and impacted communities, and should be scoped to

respond to land and environment-related grievances as well as to broader human rights abuses.

However, given the typical urgency and seriousness of threats associated with LED-related grievances, businesses should assess whether their existing grievance processes can respond rapidly enough to prevent escalation of threats to LEDs who raise a grievance, and whether the mechanisms provide sufficient protection to users/complainants from the grave security threats often faced by LEDs. If in any doubt, businesses should establish separate, rapid response grievance mechanisms that deal specifically with complaints from HRDs, including LEDs. High level security procedures should be integral to these HRD-specific mechanisms, to protect users against reprisals.

In terms of the processes followed to address grievances raised, both HRD-specific and broader human rights grievance mechanisms should follow the broad principles and steps set out in Step 3 (“Cease, Prevent or Mitigate Adverse Impacts”) above. In addition, the grievance procedures should also include the following steps:

- **Regularly monitoring the management of the grievance, in consultation with LEDs.** Continue monitoring the situation until the threat is mitigated and remedy delivered.
- **Tracking and publicly reporting outcomes of the grievance, and sharing lessons learnt** across the business and with peers. Feedback and learning mechanisms should identify how any LED-related risks emerged and how they could/should have been prevented. Lessons learnt should be fed back to the highest level of the business and fully addressed throughout the organisation, in order to prevent similar future risks.

Finally, as well as operating their own grievance mechanisms, businesses should also fully cooperate with legitimate external grievance processes when requested. Businesses should take seriously any LED-related complaints raised against them through any legitimate state or international grievance mechanisms, for example judicial processes or complaints raised with National Contact Points to the OECD Guidelines for Multi-national Enterprises.

Specific guidance for investors and financial institutions

Investors should ensure that LEDs and communities associated with companies in their portfolios have access, without fear of reprisal, to project-level grievance mechanisms as well as to independent accountability mechanisms within financing institutions that meet the UNGPs’ effectiveness criteria for non-judicial grievance mechanisms.

CHAMPION LED ISSUES WITH GOVERNMENTS

The OECD Guidance is focused on business responsibility to avoid adverse impacts to HRDs linked to their own operations. However, in addition to the six-step due diligence process outlined above, businesses can take a further, critical role to protect LEDs by encouraging states to take appropriate action.

As well as fully co-operating with any state-led investigations of attacks, threats or intimidation against LEDs, businesses should also apply their experience of diplomacy and advocacy to protect LEDs. Should any harmful incidents occur, businesses should press state authorities to take effective action to investigate and protect LEDs. Businesses can exert leverage on governments through the size of their

economic and commercial presence in the sourcing country, formal and informal access to key government figures, and links to their own home country governments and their diplomatic missions in the sourcing country.

Businesses should also make public statements on the important role of LEDs, publicly condemn attacks, threats and intimidation against them and refrain from making statements or expressing views that discredit, discriminate against or stigmatise them. This can be done as an individual corporate statement or through a joint statement with other businesses. In addition, to help drive systemic, industry-wide change, businesses can consider supporting credible efforts of multi-stakeholder initiatives and industry associations to protect and support

LEDs. When done in consultation with affected groups, these bodies can provide effective advocacy platforms on sensitive issues and can take action on behalf of whole sectors to reduce business risks and improve lives and livelihoods in affected communities.⁶⁵

Finally, with attacks on and threats to LEDs currently rarely acknowledged by governments, or investigated or punished, business should push governments to ensuring accountability for violence, intimidation and legal attacks against LEDs. In particular, they should advocate for those responsible for any threat or attack against a LED to be brought to justice.

www.globalwitness.org

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⁵⁶ UN Declaration on the Rights of Indigenous Peoples <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>; C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169), International Labour Organisation https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169; UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of Food Security, p.23 <http://www.fao.org/3/i2801e/i2801e.pdf>

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⁶⁰ Business and Human Rights Resource Centre, International Service for Human Rights, 'Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders', 2018, p.40-52 https://www.business-humanrights.org/sites/default/files/documents/Shared%20Space%20Under%20Pressure%20-%20Business%20Support%20for%20Civic%20Freedoms%20and%20Human%20Rights%20Defenders_0.pdf

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⁶³ UN Guiding Principles on Business and Human Rights, p.23 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶⁴ OECD, 'OECD Due Diligence Guidance for Responsible Business Conduct', p.34 <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>; UN Guiding Principles on Business and Human Rights, p.31 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁶⁵ Business and Human Rights Resource Centre, International Service for Human Rights, 'Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders', 2018, p.46 https://www.business-humanrights.org/sites/default/files/documents/Shared%20Space%20Under%20Pressure%20-%20Business%20Support%20for%20Civic%20Freedoms%20and%20Human%20Rights%20Defenders_0.pdf