



**OXFAM SUBMISSION TO THE UN WORKING  
GROUP ON BUSINESS AND HUMAN RIGHTS  
IN THE CONTEXT OF THE "UNGPS 10+ / NEXT  
DECADE BHR" CONSULTATION**

2021

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## Executive summary

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Almost 10 years after the United Nations Guiding Principles (UNGPs) adoption, **some progress with respect to company commitments to implement Human Rights Due Diligence (HRDD)** policies across their value chain, and relevant legislation or public policies passed by States on the matter has taken place. However, Oxfam's overall assessment on the subject is that much still remains to be done, especially regarding the "voluntary" approach of the framework.

The **next 10 years will be the final sprint towards the full implementation of the Sustainable Development Goals (SDGs)**. The Business and Human Rights agenda is key in delivering the SDGs. Companies cannot just look at their positive contributions without taking a deep look into the negative impacts of their activities and address them.

Oxfam considers that the **non-binding nature of the UNGPs and the lack of liability in case of a breach in responsibilities remains the main challenge with the UNGPs**. Experience has shown that voluntary approaches might lead to company HRDD processes but its effective application in case of conflict or adverse impacts requires additional resources and political will to redress the situation and power imbalances. Meanwhile, the impacts continue to affect the lives and human rights of the most vulnerable people and such impacts are particularly acute for human rights defenders, women and indigenous peoples.

While an increasing number of countries have either adopted a **National Action Plan (NAP) or are in the process of adopting them, Oxfam is concerned that many of these processes do not meet minimum international standards**, relying on voluntary actions by companies. Therefore, National Action Plans are failing to generate effective public policies and enforceable legal liability for companies.

Despite specific criteria explained in the UNGPs, there remains **important challenges in accessing State and corporate grievance mechanisms for rights holders** facing human rights violations. To be efficient, grievance mechanisms need to be supported by a strong mandate, capacity to investigate allegations and resources and willingness to implement.

Oxfam finds that the main systemic obstacles to achieve the full realization of the UNGPs are: **corporate capture, lack of transparency and power imbalances**. This translates to lack of effective rights-holder engagement, shrinking civic space, gender and climate inequality, persecution of human rights defenders, and lack of (or inadequate) implementation of Free Prior and Informed Consent (FPIC).

The business and human rights agenda was built 10 years ago when issues such as climate and inequality were not at the forefront. Given the changes in the business and human rights landscape, it is now clear that those issues must be thoroughly integrated to obtain a full respect for human rights in the context of businesses.

Oxfam urges States to implement effective measures -either through public policy or *ad hoc* legislation- to ensure the UNGPs are implemented and corporate accountability exists for human rights abuses, such as **mandatory HRDD and the meaningful engagement of rights holders in related processes**. We call on companies to publicly commit to respecting human rights across their value chain and to put those commitments into action. Finally, we encourage the UN Working Group on Business and Human Rights (UNWG) to strengthen its role in clarifying States' obligations and companies' responsibilities in the effective implementation of the UNGPs, further engaging with rights holders and being more vocal about attacks against human rights defenders and their potential link to companies' activities.

Oxfam is an international confederation of 20 affiliates working with country teams and partners in 67 countries around the world to end the injustices of poverty, taking on issues like land rights, climate change and discrimination against women. Through this document, Oxfam contributes to an important endeavor, the "UNGPs 10+ / Next Decade BHR" consultation, conducted by the UNWG.

# Introduction

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This document is the product of a collective effort conducted internally by Oxfam through the consultation of colleagues from around the globe, and as a result of working on a wide range of issues including private sector engagement, extractive industries, investors and land rights issues.

A more effective implementation of the United Nations Guiding Principles (UNGPs) is relevant to Oxfam's mission of alleviating poverty, especially in fighting the injustice of poverty and inequality, power imbalance, gender inequality, and political capture, and the fight for climate justice. These are facets of the current economic system's failure that have become even more evident in the time of COVID-19.

Correspondingly, Oxfam keeps researching, monitoring and reporting from the field. Our [Power, Profits and the Pandemic](#) report (September 2020) on the link between the pandemic, inequality and corporate profit, found that the top 100 stock market winners have added more than \$3 trillion to their market value since the pandemic. As a result, the 25 richest billionaires have increased their wealth by staggering amounts. And 32 of the world's largest companies stand to see their profits jump by \$109 billion more in 2020, many of which are tech companies. Meanwhile, 400 million people lost their jobs. [Oxfam's Behind the Barcode/Price](#) campaign has revealed that human rights abuses are still prevalent in the supply chains while at the same time, the share of value going directly to supermarkets and their shareholders is growing. That is unacceptable.

Crisis often makes visible the existing gaps and inequalities. They reflect current conditions that have repercussions on the implementation of the UN Guiding Principles. On the following sections of this document, we elaborate on the main challenges, obstacles, good practices and opportunities regarding the UNGPs to offer Oxfam's take on the main consultation questions of the UN Working Group on Business and Human Rights (UNWG). We will illustrate our findings through different cases and offer recommendations to the UNWG, the States and businesses. Finally, we will provide Oxfam's bibliography and existing evidence to support our key findings.

# 1. UNGPs implementation progress and promising practices

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One important development has been that the UNGPs have allowed NGOs like Oxfam to strengthen its standing as a credible influencing organization in the business context. Nevertheless, when looking at the field and how the UNGPs advancements over the past decade actually impact people's lives, we consider that the Principles are still far from providing adequate human rights protection for people on the ground, especially human right defenders', migrants, women and Indigenous Peoples. In this section, we will highlight some of the progress and promising developments that can be built upon.

## Increasing commitments by companies

An increasing number of States and businesses have publicly committed to the UNGPs. Some companies and international financial institutions are improving their policies on human rights, incorporating community participation and engagement (in the continuous implementation of Human Rights Due Diligence (HRDD) processes, for instance). Civil society pressure has been an important factor in driving those changes, for example through Oxfam's Behind the Brands and Behind the Barcode campaigns (see box below). Without pressure from Oxfam and other civil society organizations, as well as investor pressure, there would be fewer company commitments made. Also, some extractive industry companies have made improvements in terms of their policy commitments around [FPIC](#) and [contract disclosure](#). However, considerable work remains to be done to ensure adequate implementation.

### **Oxfam's Behind the Brand and Behind the Barcodes campaigns**

The Behind the Brands campaign mobilized public pressure to get the best known food brands to adopt new policies on land, gender equality and emission reductions, with substantial success with key companies. After the campaign, in 2018, Oxfam assessed seven global agribusinesses that supplied the original brands against the foundational indicators of the Behind the Brands campaign scorecard to measure the strength of companies' sustainability policies. It introduced the "[agribusiness scorecard](#)" which calls on agribusinesses to strengthen their sustainability policies and implementation plans. It makes the case that the Big 10 food brands must focus on the policies and practices of agribusinesses in order to meet their responsibilities and implement their own supply chain commitments.

In 2018, Oxfam also launched the [Behind the Barcodes campaign](#), in order to examine the policies and practices of some of the biggest supermarkets around the world including in the USA, Germany, the UK, the Netherlands, Italy, Thailand and Brazil. We have engaged these companies to use their influence to end human rights abuses and press for a fair share of value in global food value chains. After two years of campaigning, a range of companies have made commitments to strengthen their policies and practices to improve the treatment of small-scale farmers, workers and women in their supply chains. A number

of supermarkets committed to conduct and publish Human Rights Impact Assessments (HRIAs) in high-risk supply chains.

## **Due Diligence: good practices are possible despite the lack of implementing guidance**

Various actors claim that the lack of clear guidance on HRDD implementation has resulted in uneven practices among companies. This also seems to have paved the way for States and businesses to fill in the blanks by complying through the reporting requirements included in voluntary standards (such as the [UNGP Reporting Framework](#)) and even in some new legislation (see this [blog](#) by Sherpa). But without consistent guidance across all jurisdictions businesses will continue to implement in varying degrees if at all.

Nevertheless, a small number of companies are trying to live up to their HRDD responsibility. Oxfam recently conducted an HRIA with Finland's biggest supermarket to support the company in fulfilling its HRDD responsibility. Our [5 lessons learned on how to conduct a Human Rights Impact Assessment](#) demonstrates that when done adequately, HRIAs can be an important tool for complying with HRDD responsibility. They enable the identification of adverse human rights impacts and determine measures to address them through the engagement of affected rights holders. However, adequate integration of HRIA recommendations into action plans, tracking the effectiveness of measures and processes to address adverse human rights impacts and communicating on how impacts are being addressed, often remain a challenge.

More importantly, to engage in meaningful due diligence exercise, companies must assess their contributions to the human rights impacts on systemic levels including by analyzing the impact of their marketing and purchasing practices and addressing them. HRIAs have focused on the symptoms of human rights impacts, including recruitment and forced labor but rarely look at the actual power imbalances that lead to these symptoms. Companies must now engage in root cause analysis as an important step to shifting power balance. Companies must analyze and change those business practices, which [the ILO](#) has found to be structurally driving indecent work and human rights abuse. Those practices include: contracts clauses, technical specifications, order placement (and lead times), prices and market power and requests for social standards.

## **Increased transparency by companies**

The UNGPs articulate the need for businesses to 'know and show' their respect for human rights. While there is still a lack of transparency on mitigation strategies, there are indications of an increase on the 'show' component in terms of transparency and accountability by companies that have published information on their suppliers. For example, in the garment sector supply chain transparency is increasing and Oxfam is seeing some progress for increasing supply chain transparency in the food sector as well. In addition, Civil Society networks, such as Fair Finance International are working with banks to strengthen

their transparency, social, environmental and human rights standards, including the UNGPs. Nevertheless, these examples are still few and far between.

### **Strengthening the commitment of banks and other financial institutions to social, environmental and human rights standards**

[Fair Finance International](#) (FFI) is an international civil society network of 70 CSOs, initiated by [Oxfam](#) that seeks to strengthen the commitment of banks and other financial institutions to social, environmental and human rights standards. The FFI network works to bring a self-reinforcing process whereby banks are influenced to raise their adherence to those standards, ultimately resulting in more sustainable lending, investments and asset management all over the world. The FFI network uses a [rigorous methodology](#) to assess, report on, and campaign for more responsible investment policies & practices. By benchmarking the investment policies and practices of financial institutions in critical areas such as human rights and climate impacts, the FFI network enables consumers and policymakers to demand more socially responsible, fair, and sustainable investments. The UNGPs are included in the core standards of the FFI methodology. For an overview of the recent progress achieved by FFI in influencing the financial sector, please check our [Stories of Change](#).

### **Policy progress**

Human Rights Due Diligence, in line with the UNGPs, is being increasingly implemented but only by a fraction of companies around the world. The prevention of human rights abuses remains as one of the most urgent challenges for corporations. This has been confirmed by Oxfam's partner organizations and through a decade of conducting community-based human rights impact assessments (COBHRA) in multiple sectors. However, a growing number of EU Member States are now making progress in developing legally binding Human Rights and Environmental Due Diligence frameworks based on the UNGP, OECD and ILO standards. Another positive trend is that the Human Rights' Due Diligence mandatory legislative measures are not only being driven by the civil society but also by [investors](#) and [big businesses](#), who are increasingly supporting this demand, though the latter are doing so without legal liability as a core element.

### **The EU Directive on Human Rights Due Diligence**

The EU initiative on HRDD marks important progress. An EU wide legislation applicable to all business enterprises domiciled or based in the EU, or active on the EU market, will help prevent human rights abuses and environmental harms while ensuring a level playing field within the EU, a coherent legal framework, and increase leverage over third parties in the value chain. The new legislation should improve access to justice for human rights victims also outside the EU and provide them an opportunity to achieve remedy.

The Commission has initiated the process for an EU-wide legislation, and it was announced in April 2020 by European Commissioner for Justice, Didier Reynders. The process is now moving quickly and the Commission plans to present a joint proposal for mandatory human rights due diligence and directors' duties by the first half of 2021.

In addition, a statement by [the Netherlands National Contact Point for the OECD Guidelines for Multinational Enterprises](#), which mentions Oxfam, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) views, clarified for the first time concrete ways in which companies' individual due diligence actions can include targets to address climate change and these served as precedent for the [Study on due diligence requirements through the supply chain](#) in which the EU HRDD legislation initiative is based.

## 2. Remaining Gaps and Challenges

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### **Limits of voluntary approaches and lack of legal liability**

The non-binding nature of the UNGPs and the lack of liability in case of breach in responsibilities remain the main challenge. Experience has shown that voluntary approaches might lead to company HRDD processes, even good ones, but when there are actual conflicts or adverse impacts, solutions lie in a rebalancing of power and economic decisions to redress the situation – which companies will naturally not voluntarily engage in. The UNGPs will not achieve their goal of ensuring that business activities do not adversely impact people's rights unless they become a legally binding policy instrument to hold states and the private sector accountable for their actions.

The limits of voluntary measures have also been proven to be vastly insufficient as recognized by the [European Commission study](#) on due diligence requirements through the supply chain. Only a third (37%) of European companies are conducting some form of process for their impact on human rights and the environment.

### **German National Action Plan fails to reach its target of voluntary implementation**

Germany adopted a NAP in 2016 that set a target for at least 50 percent of German companies with more than 500 employees to voluntarily implement human rights due diligence measures by 2020. In case this target was missed, the government would consider further action, including legislative measures, according to the commitment in the NAP. This commitment was also inserted into the coalition agreement of the government to make it one of the goals the next government would have to fulfill. The following official NAP Monitoring Process ran from 2018 to 2020. The result in 2020 was crystal-clear: Only a handful of companies are implementing human rights due diligence in

Germany. About 15 % of the participating companies in the survey were deemed to fulfill key elements of human rights due diligence, about 85 % are not doing enough. As a consequence, Germany is currently in the process of adopting mandatory HRDD with strong political debates on legal enforcement mechanisms.

## National Action Plans shortfalls

While the increasing number of countries that have either adopted a NAP or are in the process of adopting such plans seems promising, Oxfam is concerned that many of these processes do not meet minimum international standards as they rely on voluntary actions by companies, do not generate effective public policies and fail to create enforceable legal liability for companies. In many cases, governments have led processes [without ensuring a true multi-stakeholder dialogue](#), relying on bilateral meetings with each actor, with a clear bias towards private sector's demands. NAPs may be a good indicator to quantify the implementation of UNGPs around the globe but in many instances, they have failed to deliver on the promise of protecting human rights in the business context. Furthermore, NAPs have often diverted the focus from the adoption of robust and effective public policies to advance business human rights responsibilities.

### India's zero NAP draft

In early 2019, the Government of India released the Zero Draft of the NAP on Business and Human Rights. While the Zero Draft lists various national and international legal provisions and policies, it was silent on the actual challenges and failed to ensure a NAP development process in an inclusive and transparent manner. Nonetheless, publishing the Zero Draft is an expression of a move in the right direction, along with the revised National Guidelines for Responsible Business Conduct and its corresponding Business Responsibility and Sustainability Reporting framework, which incorporates several comments as well as feedback from the Human Rights and Business Network-India and Oxfam India.

### The failed attempt to create a Mexican National Action Plan on Business and Human Rights

The process for a Mexican NAP began officially in 2015, with the creation of a multi-stakeholder working group. However, in 2017, the Mexican CSOs network *Grupo Focal sobre Empresas y Derechos Humanos* (Focal Group on Business and Human Rights, GF, of which Oxfam Mexico is a part) that had participated in the initiative from a very early stage, left the dialogue. The GF denounced the process, as it was not complying with international standards (i.e., lack of adequate provisions to guarantee fair access to justice and remediation for the communities affected by business activities). The GF also stated that it had never been a real multi-stakeholder process given the power imbalance between the

business sector and civil society and the resulting incapacity of the former to influence critical government decisions on the NAP. Indigenous peoples' participation in the process was also lacking. In 2018, a bilateral memorandum of understanding between the *Consejo Coordinador Empresarial* (Coordinating Business Council, CCE), the biggest business association in Mexico, and the Mexican Government was signed. This document was officially considered to be the foundation of a NAP, which in the end, was never published.

### **Grievance mechanisms have not delivered the expected results**

Despite the existence in the UNGPs of specific criteria for effective grievance mechanisms, there remain important challenges in accessing those mechanisms for rights holders facing human rights violations. Many promising developments have not led to the expected results. One consistent experience on the ground is that businesses and states are justifying the lack of grievance mechanisms implementation because it is too expensive. To be efficient, grievance mechanisms need to be supported by a strong mandate, capacity to investigate allegations and resources to implement them.

For example, the OECD provides a grievance mechanism in certain situations that could effectuate remedy under the UNGPs, which the OECD's updated guidelines are drawn upon. But, in certain countries, National Contact Points have been unable or unwilling to use their influence to fulfill this promise. OECD Watch (in which Oxfam is a member) has been documenting these shortfalls in [Use with caution the role of the OECDs national contact points](#). Oxfam has also analyzed the [effectiveness of grievance mechanisms in extractive industries](#).

#### **The Canadian Ombudsperson for Responsible Enterprise (CORE)**

The UNGPs were integrated into the Government of Canada's Corporate Social Responsibility Strategy in 2014, but Canadian efforts to put them into practice have been spotty. The government announced the creation of a new Canadian Ombudsperson for Responsible Enterprise (CORE) in 2018, promising a remedy mechanism with independence and strong powers of investigation. However, when the Ombudsperson was hired in April 2019, she was appointed as an advisor to the Minister of International Trade and not given any powers to compel testimony or documents in her investigations. Civil society groups resigned *en masse* from the government's multi-stakeholder advisory body in protest. Export Development Canada (EDC) has also been slow in adopting human rights policies, with its first coming into effect in 2019, eight years after the launch of UNGPs. Assessing its implementation has been difficult as EDC's processes continue to be opaque and less than transparent.

#### **Guatemala's REPSA grievance mechanism**

In 2015, an ecological disaster, or "ecocide," occurred in Guatemala on La Pasión River, violating the human rights of over 20 indigenous communities who depended on the river

for sustenance and for their livelihoods. Government efforts to investigate the incident were allegedly blocked by interests linked to the palm oil company Reforestadora de Palma de Petén SA (REPSA), the primary actor accused in the disaster due to its deficient production practices. The lack of accountability has fermented conflict in the region and amplified threats to the lives of human rights defenders. As a response to the internationally raised critiques and the consecutive pressure of some traders and brands to stop sourcing from REPSA, steps were taken to strengthen their actions. REPSA announced a policy for responsible palm oil production, which aims to ensure that its operations are deforestation and exploitation free. In addition, REPSA committed to be more proactive about managing environmental impacts and engaging stakeholders in a transparent and inclusive manner. A grievance mechanism was designed and after a year reviewed externally – Oxfam was part of the auditing committee – to strengthen it and deepen its effectiveness. While there were various challenges identified, which will not be easily addressed, REPSA has been open to implement the Committee's recommendations, one of which related to Oxfam's recommendation for a mechanism to address gender-based violence. ([Human Rights and Environmental Impacts of Palm Oil in Sayaxche, Guatemala. 2017](#)).

### 3. Key obstacles and priorities that need to be addressed

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#### Growing corporate power threatens progress on business & human rights

There is a dangerous nexus between concentrated corporate economic might and political power. Corporate power continues to grow, and democratic governance is under threat globally. Companies benefit from increasing power and influence due to their disproportionate resources, information and direct access to lawmakers and governments. This, in turn, results in insufficient oversight of companies' activities. The voice of companies plays a significant role in shaping how governments behave. For example, companies are investing money to influence tax reform to lower corporate taxes rather than lobbying to fight climate change, or diversity and inclusion, policies they publicly support. (See also [Dollars and Sense: Corporate responsibility in the era of Trump](#)). This "behind the doors" influencing increases the power inequality between rights holders and those powerful actors.

#### **Power, profits and the Pandemic**

In its [Power, Profits and the Pandemic](#) report, Oxfam has documented how the pandemic crisis has exacerbated inequality. During the COVID-19 crisis, businesses have skewed policy choices to their advantage affecting the most vulnerable. These actions include: lobbying to the benefit of corporations over all others, shifting costs and risks to suppliers and workers, avoiding taxes and leaving governments under-resourced, prioritizing excessive shareholder payouts before the crisis - and in some cases during it- have left

companies, workers and governments vulnerable to the pandemic shock, and putting workers at risk of safety and health. Ten of the largest apparel brands alone paid a total of \$21bn (an average of 74% of their profits in FY2019) to their shareholders in dividends and stock buybacks. Now, millions of apparel workers, from Bangladesh to Mexico, have lost their jobs because companies cancelled orders and refused to pay their suppliers.

We need a new economic model that puts people and the planet at the heart, with business models and incentives that go beyond dividend payouts and respect human rights as a cost of doing business.

### **Lack of effective rights-holder engagement**

The lack of a mandatory approach to meaningful rights-holder engagement results in unequal practices and tick-the-box exercises. Companies are convening affected populations without prior understanding of the issues, under conditions that are sometimes not culturally appropriate, not providing a safe environment enabling men and women to freely speak, and failing to share back the results of those consultations with the participants.

#### **Community-based monitoring to end oil contamination in the Peruvian Amazon**

Surveillance and environmental monitoring systems must have participatory mechanisms that allow the population to have the tools and information necessary to achieve a more horizontal relationship between companies and communities. FECONACO's Territorial Vigilance Programme was one of the first programs in Latin America to use community-based monitoring and reporting of oil pollution on the environment. From 2004 until 2015, they managed to identify numerous spills and incidents (e.g., pipeline spills, leakage from storage wells, dumping of waste produced water). This initiative had the objective of generating and drawing attention to evidence, thereby helping communities and indigenous organizations to dialogue with the government and companies in order to work together with affected communities to urgently restore degraded areas, recognizing that traditional ecological knowledge can make important contributions to improving ecosystem restoration. Indigenous organizations in Ecuador and Bolivia also have implemented such programs. ([Community-based monitoring to end oil contamination in the Peruvian Amazon](#))

#### **How to meaningfully engage with rights holders:**

Learning from a decade of experience supporting community-based human rights impact assessments ([COBHRA](#)), Oxfam has developed a clear understanding of how to meaningfully engage with rights holders:

- Engagement must be a two-way process, offering safe space for people to contribute freely in an open dialogue.
- The engagement should be done in a culturally appropriate manner, in the language of the participants and taking into account illiteracy and other communication barriers.
- It should be done throughout the process, and must continue throughout the life of the project.
- It must be preceded by capacity-building. Meaningful engagement builds on the prerequisite of access to information.
- Engagement must be done with organizations that are grounded in the communities and know the various sub-groups. It must include engaging with local workers, smallholder farmers, and other affected community members (e.g., family members of the workers, local indigenous communities, other vulnerable groups, etc.)
- A gender analysis must be a core part of the engagement.
- Results of the engagement must be communicated back to participants, and companies must act on those findings.

The value-added of meaningful engagement and the lessons that can be transferred to companies' processes have also been captured in Oxfam's publication [Community Voice](#).

## Shrinking civic space for human rights defenders questioning business operations

Threats and attacks against human rights defenders in the context of development activities are widespread – involving a broad range of countries, types of defenders, sectors, types of investments, and development financiers. Though they take many different forms, threats and attacks often start with the labeling of communities, groups, and individuals as “anti-development.” Increasingly governments and businesses are utilizing the law to harass and criminalize defenders in an effort to silence them. Stigmatization and criminalization may quickly escalate into more violent attacks.

Effectively addressing the shrinking space for participation in development processes and the growing threats to defenders will require not only a change in policy and practice, but a fundamental shift to place human rights and local communities at the center of how development is conceived and implemented

This topic is discussed in depth in the report: [Uncalculated Risks](#), published in 2019 by the Coalition for Human Rights in Development, of which Oxfam is a part. Oxfam has also documented the lack of companies' policies to protect human rights defenders in the report [Pathways to deforestation-free food](#).

### **The killing of Bertha Cáceres**

In 2016, Agua Zarca activist Bertha Cáceres was murdered. Oxfam and 300 other groups [condemned the murder](#) and have launched an international “Land Rights Now” campaign demanding the respect and legal recognition of indigenous land rights, which are under attack around the world. Berta Cáceres, an indigenous Lenca, cofounded the National Council of Popular and Indigenous Organizations of Honduras (COPINH) in 1993, an ally of many international organizations including Oxfam. She was awarded the 2015 Goldman Foundation Environmental Prize for her campaign against the Agua Zarca dam project. The companies’ justification for continuing the project is not based upon local realities or international law. Local people have not freely consented to the project nor consulted prior to its approval in 2010. They alone have been the targets of violence. Some of their farmlands have been destroyed. The companies’ due diligence has been lacking from the start.

In November 2018, a Honduran court convicted seven people for the murder of indigenous leader and human rights defender Berta Cáceres. 38 months after the unfortunate event, her family and members of the Council of Popular and Indigenous Organizations of Honduras (COPINH, for its acronym in Spanish), still demand that the Honduran authorities also investigate, prosecute and convict the perpetrators of this crime.

### **Women remain invisible on the business and human rights agenda**

The UNWG report on gender and the UNGPs, published in June 2019, is welcomed as it provides a useful framework for integrating gender into the business and human rights agenda. While it illustrates the need to address gender inequality, it's unclear whether the framework has had much uptake. Women remain disproportionately vulnerable in the context of business and human rights.

### **Failure to protect women’s rights in East Africa: COBHRA in Uganda and Tanzania**

In [Empty Promises Down the Line?](#) Oxfam and its partners identify and document the actual and potential human rights implications of the East African Crude Oil Pipeline (EACOP) and make recommendations to the governments and the companies to mitigate the adverse impacts. Starting from the perspectives of the men and women who live down the line, Oxfam and its partners engaged more than 1200 people in Uganda and Tanzania. The report reveals that despite existing legislation to strengthen women’s protection in both countries, gender remains a key factor in who benefits and loses out from projects such as the EACOP. The research illustrates the increased vulnerabilities women are facing in the context of land acquisition where even if they are part of the discussions, they remain excluded from decision-making processes and are at risk of failing to see any benefit from the project. Women and girls from both countries are suffering the consequences of weak implementation of existing gender protections.

When looking at companies' engagement towards gender equality, we find that some companies are taking initial steps to foster gender equality and women's economic inclusion; these include having codes of conduct, overall long-term strategies with measurable indicators, parental leave practices, supplier codes, and social investment programs that address the empowerment of women, girls or entrepreneurs. However, the interventions that require significant effort or investment are often limited to headquarters or to some subsidiaries, and do not necessarily extend to all parts of the company, country offices and through the supply chain (to factory workers, suppliers, farmers, etc.), where gender inequalities may be more pronounced.

In many supply chains, women remain largely invisible, are concentrated in low-skill jobs upstream, and have limited access to decision-making. In the context of large-scale business expansion in rural areas, where women have less access and control over land, they face greater disadvantages, including when compensation is provided. Also, there are fewer opportunities for women to access jobs and training, and gender-responsive human resources policies (i.e., daycare, maternity leave, corporate infrastructure) are needed. In the extractive industries sector, for example, [women face systemic discrimination](#) across the value chain, bearing a disproportionate share of the burden of its impacts, while at the same time receiving less of its benefits. Indigenous women are disproportionately affected by adverse business-related human rights impacts, as can be seen in their limited participation in free, prior, informed consent processes and as a result of the violence targeted against them, both their bodies and their territories.

### **Threats to women human rights defenders in La Guajira, Colombia**

Indigenous women's organizations in La Guajira, an [Oxfam partner in Colombia](#), have received threats warning that "anti-business rats will be exterminated" and have been listed as targets in threatening pamphlets -- a preferred form of intimidation. The Colombian indigenous women's organization Fuerza de Mujeres Wayuu, an Oxfam partner in the country, whose members are affected by the Cerrejon coal mine, is one of those under ongoing threat, having already denounced the situation of human rights defenders in Colombia at a UN hearing. They are in dire need of food at present, as mining has already destroyed livelihoods and food security.

In September 2020, a dozen [UN Special Rapporteurs and experts called on Colombian authorities and the El Cerrejon mine to protect the indigenous peoples' rights to life, health, water, sanitation and a safe, clean, healthy and sustainable environment by halting unsafe mining.](#)

### **Lack of implementation of FPIC in business land deals**

The UNGPs call on companies to recognize the specific challenges that may be faced by indigenous peoples, and specify that companies may need to consider additional standards to ensure the human rights of individuals belonging to specific groups or populations are

respected. For projects that affect indigenous peoples, Free Prior and Informed Consent (and not merely consultation) is a right under international law, which derives from their right to self-determination. In Africa, [new regional policies and jurisprudence](#) are trending towards an even broader application of FPIC, such as in contexts where communities hold [customary land rights](#).

Unfortunately, experience shows that FPIC is not being implemented properly by governments or companies. In the few cases where FPIC is obtained, the consent often comes too late and a decision has already been made. In other instances, the State does not provide enough information for indigenous peoples to engage meaningfully.

Consultation processes must be carried out by the State before land use decisions are made, not by third parties such as companies after permits and concessions have already been awarded. Companies have the responsibility not to interfere with such processes and to make sure they are conducted fairly. Turning a blind eye on a fraudulent consultation process would amount to a *non-legal complicity*, a situation - that is - where a business enterprise is seen to benefit from abuses committed by others, in this case the State (see commentary to Principle 17 of the UNGPs). When governments fail to implement effective consultation and FPIC processes required under national and/or international law, companies nevertheless have the responsibility to ensure that communities are effectively engaged and have the opportunity to give or withhold their consent for the project and any significant changes made to its design throughout the life of the project.

In a context of increasing competition for natural resources and a global climate imperative for a just energy transition away from fossil fuels and coal, social conflicts will likely increase. It is imperative that government and companies take the necessary steps to seek the Free, Prior and Informed Consent of indigenous communities before decisions are made.

### **Bolivian Government Consultation with the Guaraní Indigenous Peoples of Charagua Norte and Isoso**

The Ministry of Hydrocarbons and Energy in Bolivia (Plurinational State of), in 2010, had coordinated a consultation process on a proposed hydrocarbon exploration project in the Guaraní indigenous territory of Charagua Norte and Isoso, located in Chaco region Santa Cruz. The process resulted in a signed agreement between the Government and the Guaraní Peoples Assembly of Charagua Norte and Isoso documenting community consent prior to the initiation of exploration activities by the company Pluspetrol of Argentina. The [consultation process](#) reached a positive outcome largely thanks to the willingness of the Ministry of Hydrocarbons and Energy to respect the use of the traditional Guaraní organization's decision-making body (the assembly) and systems. Importantly, the process began from the proposals of the indigenous communities themselves and guaranteed free, prior and informed consent for affected communities.

### **Las Bambas in Peru**

Since 2012, [Oxfam has accompanied the communities affected by Las Bambas mine](#) located in Cotabambas in the Apurimac region of southern Peru. This case provides a clear example where dialogue and FPIC have proven insufficient tools for human right defenders, workers and citizens, in the context of corporate capture.

MMG operates the mine and began commercial production in July, five years after approval of the project's environmental impact assessment (EIA). Unfortunately, since the initial approval of the EIA for the project in 2011, the company has made five EIA modifications without consulting local indigenous communities and seeking their consent. Oxfam publicly denounced this situation caused by the absence of consultation that unfortunately led to the death of four human rights defenders and over a hundred injured people. Later, a new consultation took place but failed to address the EIA modifications and was not satisfying for the community. Oxfam also tried to advocate with MMG corporate leaders. However, after the Cotabambas protests, MMG sued over 60 local leaders who underwent prosecutorial and judicial processes. This year, with Oxfam's support the majority of them were freed but, for more than 50 peasant communities, the lack of participation and consultation remains an unresolved issue.

Effective consultation with local communities around proposed project changes early on might have prevented the escalation of local frustrations which ultimately led to protest and violence.

## **4. Systemic or structural challenges that need to be tackled**

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In this section, Oxfam offers some recommendations to tackle the challenges identified in the previous sections in order to ensure greater respect for human rights in the context of business operations.

### **Introduce mandatory HRDD regulation**

Given the limits of voluntary measures, Oxfam recommends the adoption of mandatory HRDD legislation to ensure business respect for human rights as well as effective provisions regarding liability and access to remedy. To avoid weaknesses of some existing legislation, the following elements must be present in any future legislative efforts.

### Core elements of mandatory HRDD legislation:

- **Scope to cover:** Any HRDD processes should abide by the highest human rights standards included in the International Bill of Human Rights and other relevant conventions such as CEDAW as well as the ILO Core Labor Standards.
- **Reach of obligations:** The whole value chain should be covered, including "business relationships" rather than just "contractual relationships";
- **Universal coverage of all business enterprises:** Broadly cover all business entities across all sectors. The size of a company will influence the approaches to take to meet that responsibility. The severity of human rights risk being a main factor to consider.
- **Transparency in supply chain:** Companies need to publish their list of suppliers/subcontractors.
- **Meaningful engagement of rights holders:** Engagement must be done throughout the HRDD process, not a one-stop thing must continue throughout the life of the project.
- **Gender analysis:** Any HRDD should address the disproportionate corporate impacts on women's rights, and this has to be done at the start of the HRDD process.
- **Thorough identification of human rights risks, ongoing monitoring and implementation of remedial measures:** The identification of risks must be done in a comprehensive way. Companies should constantly reassess the situation and the efficiency of the implemented measures.
- **Quality of reporting:** Importance to have clear guidance on what is required in the report to ensure companies cover the important issues.
- **Transparency:** There should be an obligation to **disclose sufficient information** to fulfil the corporate responsibility to respect human rights.
- **Monitoring of enforcement by the government:** Government, through a dedicated agency, must ensure companies' compliance with existing laws. Governments must provide for effective sanctions in case of failure to comply. Governments should implement robust legislation to monitor human rights due diligence providing also for effective sanctions in case of failure.
- **Liability:** Any mandatory HRDD legislation must provide for adequate sanctions and mechanisms for enforcement. We must be able to hold companies accountable through some form of liability and victims must have access to justice and be able to obtain compensation.
- **Access to remedy:** The new legislation should improve access to justice for human rights victims also in third countries and provide them an opportunity to claim compensation.

# Recommendations

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## Recommendations to the UNWG

- **Issue policy guidance** for governments and companies on their respective roles to further clarify the **relation between the obligation of States to protect and the responsibility of companies to respect**;
- **Develop and share guidance on Free Prior Informed Consent (FPIC) and community consultation** for governments and companies, emphasizing requirements under international law, and play a more active role in promoting best practice on these issues, facilitating dialogue among the parties on how to improve FPIC implementation;
- **Clarify the need for full supply chain transparency**: in all six steps of the human rights due diligence process supply chain transparency plays a supporting role, including the identification and mitigation of impacts and the tracking of results, in the communication around it, and most importantly in ensuring access to effective grievance mechanisms;
- **Fully include indigenous peoples as stakeholders** (rights-holders) in high level dialogues and events (such as in the UN Business and Human Rights Forum);
- **Document and explore the impact tax incentives have on enjoyment on human rights**. It is well documented that corporate tax avoidance leads to governments disposing of reduced revenues to meet their basic obligations of guaranteeing health and education, but also the protection of citizens against human rights abuse, including by companies. (See: [Getting to Good](#) report);
- **Encourage companies to develop a no-tolerance policy prohibiting threats or attacks against defenders**, complainants, and those who oppose projects, and take a vocal and active role in defense of environmental and human rights defenders under threat as a result of their opposition to projects;
- **Conduct study/consultation on what adequate grievance** mechanisms should look like, clarifying the link with UNGPs;
- **Follow-up on UNWG Gender Framework for the UNGPs** (2019) - Convening a group of States, women's rights organizations and other equity-seeking groups in putting the UNWG's three-part Gender Framework into practice through policy reforms, pilot projects and learning circles;
- **Consider establishing clearing portal for human rights due diligence approaches of companies**, including specific reports and action plans. NGOs could encourage companies to be present in the clearing portal in support of greater transparency, and the UN WG could envisage, in the longer term, to 'rate' these commitments and action

plans against key criteria, or spotlight good examples on key issues (For example, on gender, land, or participation). A relatively similar function is uptaken on the Climate Initiatives by UNEP, see [here](#)).

## Recommendations to States

1. **Meaningful engagement of rights holders should be ensured when implementing UNGPs at national levels** (including NAP and mandatory HRDD processes etc.). Such engagement should have a **gender-transformative approach** as well as **respect specific rights of indigenous peoples**, such as the right to **Free Prior Informed Consent (FPIC)**. Human rights defenders have a crucial role, especially in fragile and conflict-affected contexts, characterized by high levels of insecurity. States should guarantee unrestricted civic space that allows civil society to engage and influence freely;
2. States must play an effective role in creating a thriving society by **limiting companies' political influence and protecting the rights of communities in a balanced approach**. They must ensure that the legal framework as well as the public policies they implement do not grant privileges to an elite, further increasing existing inequalities. This is particularly relevant when regulating the **access to natural resources and natural common goods and implementing taxation**;
3. **States must ensure the enforcement of existing legislation and existing human rights treaties' obligations** when implementing the UNGPs. In particular, a free and fair access to justice should be assured to all people whose human rights have been violated as a direct or indirect consequence of companies' activities; this includes the right to effective remedy and reparation;
4. **Adopt and widely communicate a no-tolerance policy prohibiting threats or attacks against defenders, complainants, and those who express their opinion** on the project, client or government, and outlining measures for the assessment, prevention, mitigation and remedy of any reprisals.
5. **Support the adoption of the UN Treaty on Business and Human Rights**, in addition to ensuring the UNGPs are being implemented nationally. This UN treaty should set **binding standards on states**, including a recognition that corporations have legal responsibilities in respect to human rights and ensure that these are observed in practice; with provisions for sanctions and access to grievance and remedy for affected parties;

## Recommendations to companies

1. **Companies should publicly commit to implementing the UNGPs**, respecting human rights **across their value chain** and putting those commitments into concrete actions;

2. **Speak up for mandatory HRDD legislation** - which will even the playing field - and promote an open dialogue with rights holders, recognizing the fundamental role played by civil society organizations as well as human rights defenders;
3. **Avoid activities likely to produce significant human rights impacts** or exacerbate risks for defenders by requiring assessment of the full range of human rights and reprisal-related impacts, including differentiated impacts on defenders and other marginalized or vulnerable groups, and by making human rights impact a determinant factor in investment decisions;
4. **Align your government advocacy** - including through lobbying and trade associations - to your responsibilities under the UNGPs and your ambitions for Sustainable Development Goals;
5. **Move beyond social auditing approach** to engage in meaningful human rights due diligence, and ensure human rights impacts are measured, managed, and reported on - through a meaningful engagement of rights holders and stakeholders. This requires a deep engagement and knowledge of the supply chain and all impacts the company can contribute to, through its activities and its business relationships;
6. **Be active in Multi Stakeholder Initiatives in favor of HRDD** and leave regressive trade associations;
7. Use new technologies (*blockchain*) to **develop deeper and better understanding of HR risk in supply chains** and support action where risks appear;
8. **Increase transparency** by publishing your HRIAs, action plans and progress regularly, and call on peers to do the same;
9. Map the real cost and benefit of ensuring respect for human rights in the context of your business operations and use this to bring others on board.
10. Actively work towards **analyzing and changing those business practices**, which the ILO has found to be structurally driving indecent work and human rights abuse: Contracts clauses, technical specifications, order placement (and lead times), prices and market power and requests for social standards.

*With this document, Oxfam intends to contribute constructively to the “UNGP 10+ / Next Decade BHR” consultation, conducted by the UNWG, and to the broader debate on how to ensure greater respect for human rights in the context of business operations by making the legal framework more accessible, effective and just for all.*

# Relevant Oxfam publications

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## Oxfam relevant publications and statements on business and human rights related issues

- *Business and Human Rights, An Oxfam perspective on the UN Guiding Principles*, 2013: <https://www.oxfam.org/en/research/business-and-human-rights>
- *Community Voice in Human Rights Impact Assessments*, 2015: [https://s3.amazonaws.com/oxfam-us/www/static/media/files/COHBRA\\_formatted\\_07-15\\_Final.pdf](https://s3.amazonaws.com/oxfam-us/www/static/media/files/COHBRA_formatted_07-15_Final.pdf)
- *Getting to Good –towards Responsible Corporate tax Behaviour*, 2015: [https://www-cdn.oxfam.org/s3fs-public/file\\_attachments/dp-getting-to-good-corporate-tax-171115-en.pdf](https://www-cdn.oxfam.org/s3fs-public/file_attachments/dp-getting-to-good-corporate-tax-171115-en.pdf)
- *Extractives Industries and Political Capture, Effects on Institutions, Equality, and the Environment*, 2016: [https://cng-cdn.oxfam.org/peru.oxfam.org/s3fs-public/file\\_attachments/EXTRACTIVE%20INDUSTRIES%20AND%20POLITICAL%20CAPTURE.pdf](https://cng-cdn.oxfam.org/peru.oxfam.org/s3fs-public/file_attachments/EXTRACTIVE%20INDUSTRIES%20AND%20POLITICAL%20CAPTURE.pdf)
- *Doing Business with Respect for Human Rights*, 2016 (collaboration between the Global Compact Network Netherlands, Oxfam and Shift, funded by the Dutch Ministry of Foreign Affairs): <https://shiftproject.org/resource/doing-business-with-respect-for-human-rights>
- *Captured Democracy: Government for the Few*, 2018: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620600/rr-captured-democracies-161118-summ-en.pdf>
- *Ripe for Change: Ending human suffering in supermarket supply chains*, 2018: [https://www.ohchr.org/Documents/Issues/Business/2019Survey/ActionAid\\_Christian\\_Aid\\_Oxfam.pdf](https://www.ohchr.org/Documents/Issues/Business/2019Survey/ActionAid_Christian_Aid_Oxfam.pdf)
- *The people behind the prices, A focused Human Rights Impact Assessment of SOK Corporation's Italian processed tomato supply chains*, 2019: <https://www.oxfam.org/en/research/people-behind-prices>
- *ActionAid, Christian Aid and Oxfam inputs to UNWG GA74 report on "Policy coherence in government action to protect against business-related human rights abuses"*, 2019: [https://www.ohchr.org/Documents/Issues/Business/2019Survey/ActionAid\\_Christian\\_Aid\\_Oxfam.pdf](https://www.ohchr.org/Documents/Issues/Business/2019Survey/ActionAid_Christian_Aid_Oxfam.pdf)
- *Uncalculated Risk, Threats and attacks against human rights defenders and the role of development financiers*, 2019 (published by Coalition for Human Rights with case studies and contributions from Oxfam et al.): [https://oi-files-cng-prod.s3.amazonaws.com/peru.oxfam.org/s3fs-public/file\\_attachments/Recaudaci%C3%B3n%20fiscal%20y%20beneficios%20tributarios%20en%20el%20sector%20minero%20a%20la%20luz%20de%20los%20casos%20Las%20Bambas%20y%20Cerro%20Verde\\_1.pdf](https://oi-files-cng-prod.s3.amazonaws.com/peru.oxfam.org/s3fs-public/file_attachments/Recaudaci%C3%B3n%20fiscal%20y%20beneficios%20tributarios%20en%20el%20sector%20minero%20a%20la%20luz%20de%20los%20casos%20Las%20Bambas%20y%20Cerro%20Verde_1.pdf)
- *Advocating for inclusive security in restricted civic spaces in Africa, Lessons learned from Burundi, Central African Republic, Ethiopia, Niger, Somalia/Somaliland, and South Sudan*, 2020, <https://www.oxfam.org/en/research/advocating-inclusive-security-restricted-civic-spaces-africa>

- *Tax collection and tax benefits in the mining sector in light of the Las Bambas and Cerro Verde cases.* 2017: [https://oi-files-cng-prod.s3.amazonaws.com/peru.oxfam.org/s3fs-public/file\\_attachments/Recaudaci%C3%B3n%20fiscal%20y%20beneficios%20tributarios%20en%20el%20sector%20minero%20a%20la%20luz%20de%20los%20casos%20Las%20Bambas%20y%20Cerro%20Verde\\_1.pdf](https://oi-files-cng-prod.s3.amazonaws.com/peru.oxfam.org/s3fs-public/file_attachments/Recaudaci%C3%B3n%20fiscal%20y%20beneficios%20tributarios%20en%20el%20sector%20minero%20a%20la%20luz%20de%20los%20casos%20Las%20Bambas%20y%20Cerro%20Verde_1.pdf)

**Oxfam has supported several community-based organizations in documenting the human rights impacts from a community perspective**

- [Empty Promises Down the Line: A Human Rights Impact Assessment of the East African Crude Oil Pipeline](#)
- [Starving to death little by little every day](#) - Impacts on human rights caused by the Usina Trapiche Company to a Fishing Community in the municipality of Sirinhaém/State of Pernambuco, Brazil
- [Canadian Mining Projects in the Territory of the Diaguitas Huasco Altinos Agricultural Community in Chile](#)
- [Total E&P Bolivia y sus impactos sobre los derechos humanos del pueblo Guaraní de la Capitanía de Muyupampa](#): El caso del Proyecto de Prospección Sísmica del Bloque Ipati-Aquio

**Oxfam has documented several examples of failure by both governments and companies to ensure adequate consultation and consent processes around extractive industry projects on the ground.**

- [Free, Prior and Informed Consent in the Extractive Industries in Southern Africa](#): An analysis of legislation and their implementation in Malawi, Mozambique, South Africa, Zimbabwe, Zambia
- [Testing Community Consent: Tullow Oil project in Kenya](#)
- [Community Consent Index 2015](#)
- [FPIC in Africa: An emerging standard for extractive industry projects](#)
- [FPIC in the Philippines: Regulations and Realities](#)
- [From Controversy to Consensus?](#) Lessons learned from government and company consultations with indigenous organizations in Peru and Bolivia
- [The Right to Free, Prior and Informed Consent in Latin America](#), 2015 (English summary of Due Process of Law Foundation report funded by Oxfam)
- [Implementation of free and informed prior consultation and consent: Comparative experiences in Latin America and discussions on a consultation law in Mexico](#), 2018 (Due Process of Law Foundation report funded by Oxfam)