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INVESTOR BRIEFING

November 2020

The role of investors in supporting human rights and environmental defenders in the Covid-19 era

Executive summary

In recent years, the increasing number of killings and attacks against defenders of human rights and the environment has brought attention to the risks faced by those who expose corporate shortcomings within human rights and the environment, and the role of businesses and investors in supporting them. Attacks against defenders constitute an attack against human rights and democracy itself, affecting society at large. If linked to an investor's assets, it can also damage investor reputation and lead to negative financial consequences. During the Covid-19 pandemic, the already alarming situation for defenders has worsened in several ways, further endangering defenders. This brief argues that thorough identification and assessment of risks related to defenders should be a priority for investors

who are committed to respecting and advancing human rights. Further, this brief outlines concrete actions that should be taken in order to ensure that investors meet human rights obligations set up by international norms, while also managing financial and reputational risks, and contribute to global sustainable development.

Background

Human rights and environmental defenders (hereafter defenders) are individuals who promote and strive for the protection and realization of human rights, including the right to a healthy environment and fundamental freedoms.¹ Defenders can be activists, journalists, whistle-blowers or community organizers, and have been found to play a key role in holding companies and states accountable for business-related human rights abuses and environmental

degradation, particularly where human rights and environmental protection are not effectively enforced by states. Because of this, defenders in many parts of the world are threatened, defamed, attacked, sued, and killed.

Defenders belonging to groups already suffering from discrimination and social and economic inequality face specific threats in addition to those common for defenders. Indigenous and women defenders within these groups often face particular risks and challenges.

The Business and Human Rights Resource Centre (BHRCC), a non-profit organisation that monitors corporate accountability globally, registered 572 business-related attacks on defenders in 2019, up from 492 in 2018.² Attacks included killings, threats, physical attacks, smear campaigns and legal actions where defenders were sued in an attempt to be silenced. According to the non-profit organization Global Witness, 2019 was the year on record with the highest number of killings of land and environmental defenders. Of the 212 killings reported, more than half took place in Colombia and in the Philippines.³ Mining, agribusiness and renewables were the sectors where most attacks occurred.⁴

Attacks on defenders happen often, although not exclusively, in contexts where states fail to protect human rights and uphold civic spaces.⁵ Offenders can be individuals affiliated with state and non-state actors such as companies, paramilitary groups and persons related to organized crime. A majority of the perpetrators are never identified or prosecuted.⁶

As governments take measures to limit the spread of Covid-19, including restrictions on civic freedoms such as freedom of movement and of assembly, risks to defenders have increased and therefore warrant additional attention by investors.⁷ Given the extent of the threat to defenders, it is paramount that financial actors, including institutional investors, development finance institutions, multilateral development banks and other lenders (hereafter: investors) take action in alignment with international human rights framework to address the escalation of killings, violence and intimidation against defenders.

International human rights frameworks

The United Nations (UN) and other intergovernmental institutions have over the years adopted a number of conventions, resolutions and declarations which together create a strong normative framework addressing the rights of defenders to carry out their work without being subject to retaliation, and identifying responsibilities for business actors to respect defenders. The relevant international frameworks include:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Universal Declaration of Human Rights;
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the 1998 Declaration on Human Rights Defenders);
- The United Nations Guiding Principles on Business and Human Rights (UNGPs);
- The Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises;
- The United Nations Sustainable Development Goals (SDGs), in particular SDG 16 Peace, justice and strong institutions and SDG 17 Partnership for the goals.

Many UN resolutions⁸ have also addressed **business responsibility regarding defenders and civic space**, whereby they:

- Underscore the responsibility of all transnational and other business enterprises to **respect human rights, including the rights of human rights defenders** to freedom of expression, peaceful assembly and association, and participation in public affairs.
- Urge businesses to identify and address any adverse human rights impacts related to their activities through **meaningful consultation** with potentially affected groups and other

relevant stakeholders, consistent with the UN Guiding Principles on Business and Human Rights.

- Highlight the importance of accountability of all transnational and other business enterprises, including their **provision of, or cooperation in, remediation**.
- Invite leaders in all sectors of society, including business, to **express public support for the important role of women human rights defenders**.
- Urge all non-state actors to respect human rights and **not to undermine civil society’s capacity to operate free from hindrance and insecurity**.

In addition, the UN Special Rapporteur on the Situation of Human Rights Defenders has on several occasions encouraged businesses and international financial institutions to meet their human rights responsibilities in regard to both harming and protecting the work of defenders.⁹ Investors such as export credit agencies, development agencies and development finance institutions are often involved in providing support and services to businesses and have, according to the UNGPs, an additional responsibility to “explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises.”¹⁰ Since states have the ultimate responsibility to uphold human rights and protect against abuses, investors that are state-owned or state-controlled face an additional expectation to conduct adequate human rights due diligence.

Defenders and the impacts of Covid-19

In a number of countries, **governments have used Covid-19 to arbitrarily restrict basic freedoms and to crack down on civil society**.¹¹ Even when measures to respond to the pandemic have been necessary to protect public health and were not taken with the intent to curb civic freedoms, they have in some contexts been adopted as emergency legislation and without a thorough assessment of potential adverse human rights impacts. This has often resulted in

impacts on civic space and defenders, particularly affecting women, indigenous peoples and other groups already suffering from discrimination and social and economic inequality.¹²

These concerns have led the UN High Commissioner for Human Rights (OHCHR) to state that restrictions on freedom of movement and assembly enacted because of Covid-19 should not target or unnecessarily hinder defenders, and should allow civil society to be able to retain its capacity of advocacy for and support to affected communities.¹³ In a separate document, the UN has also called for governments to ensure that “emergency powers are not used as a basis to quash dissent, silence human rights defenders or journalists.”¹⁴

Another cause for concern is the additional fragility caused by the economic recession ensuing from Covid-19. In contexts already afflicted by poverty, conflict and weak democratic institutions,¹⁵ civil society’s opposition to corporate projects may become more objectionable in the eyes of public opinion, thus placing defenders in a yet more vulnerable situation, especially when defenders are branded by local elites and state actors as “anti-development” or as agents acting on behalf of foreign interests.¹⁶

Since the outbreak of Covid-19, the risk landscape facing defenders has worsened, as reported by NGOs,¹⁷ the UN OHCHR,¹⁸ several UN Special Rapporteurs¹⁹ and by the International Finance Corporation,²⁰ who have highlighted the following:

- Governments have misused Covid-19 restrictions to silence critics, including violent crackdowns against protesters and public gatherings, and there have been concerns that Covid-19 tracking tools have been misused by governments to track defenders.²¹
- Curfews and lockdowns have made defenders easier to target and attack by perpetrators from both state and non-state actors.²²
- The risk of retaliations against labour right defenders has increased during the pandemic, including against workers raising concerns about labour standards or health and safety conditions at work.²³

- The ability to organize communities and reporting on impacts has been hampered by the lack of access to digital tools or internet, lack of funding and lack of media attention.²⁴
- The risk of surveillance technology being used in a way which threatens human rights and defenders has increased.²⁵
- Women defenders, already disproportionately subjected to threats and violence, have seen their situation worsen, and lockdowns and quarantines have made it difficult for women defenders to report threats.²⁶
- In some countries, lengthy legal procedures against defenders aimed at silencing them have been further delayed, and lawsuits and criminalization against defenders have increased in many countries during the pandemic.²⁷

The positive role of defenders

There is broad agreement from public policy, research and the human rights community on the importance of defenders and a strong civil society for sustainable development.²⁸ Civil society's criticism of corporate conduct is often mischaracterized as anti-development or anti-corporate. It is also increasingly seen as a necessary component to reduce corruption, manage conflicts between businesses and communities and ensure that businesses respect human rights and can effectively implement human rights due diligence. In short, civil society and **defenders are increasingly being acknowledged as a force contributing to a stable business and investment environment.**

Defenders are also recognized to provide media, civil society and ultimately investors with information about human rights and environmental impacts taking place on the ground. When defenders are attacked and silenced, the possibilities to hold companies and other actors to account for human rights abuses decreases, and the possibility for investors to identify, prevent and address risks of severe human rights and environmental impacts is weakened. Silencing defenders – who often act

as a link between affected communities and project operators – causes social conflict related to problematic projects to be exacerbated. This can lead to projects being delayed or halted, and to businesses losing their “license to operate” in a community. All of these issues, when left unaddressed, can potentially turn into material financial risks and hurt investments.²⁹

Following Covid-19, the action of civil society, NGOs, authorities and auditors has been limited due to lockdown measures, travel bans and companies suspending travel for their employees.³⁰ For many investors, it has become more difficult, if not impossible, to monitor investees' project sites and workplaces through site visits and audits. This situation has created risks for investors relying on audits, media and ESG service providers to monitor human rights impacts caused by or linked to businesses, thus requiring a more proactive outreach towards defenders and affected communities.

What should investors do?

The examples above show how the Covid-19 pandemic creates new threats to defenders and fundamentally changes the risk landscape for investors when faced with the responsibility to respect and support human rights and defenders. **Investors must work proactively to identify and manage these new risks, most importantly to meet human rights obligations set up by international norms, while also managing financial and reputational risks, and contribute to global sustainable development.**

The UN Guiding Principles on Business and Human Rights (UNGPs) outline expectations for business actors, including investors, on how to respect human rights, clarifying that businesses must:

- Avoid *causing* adverse human rights impacts;
- Avoid *contributing* to adverse human rights impacts; and
- Seek to prevent or mitigate adverse human rights impacts that are directly *linked* to their operations, products or services through their business relationships, even if they have not contributed to those impacts.³¹

Causing, contributing and having a direct link to an adverse human rights impact

While investors can cause adverse human rights impacts through their operations (e.g. discriminating against their own employees), or contribute to adverse human rights impacts (e.g. through investments which on their own are sufficient to enable adverse human rights impacts, or when an investor's action, or omission to act, incentivizes or facilitates adverse human rights impacts) – it is in practice more common for investors to be linked to human rights impacts. The linkage typically occurs in the quality as owner or lender, and through business relations linking the investor's operations to human rights harm.³²

It is however important to keep in mind that a business' involvement with an impact may shift over time, depending

on its own actions and omissions.

As pointed out by the OHCHR, there is a continuum between categories of involvement, where involvement can change over time following actions and omissions by a business actor.³³ For example, if a business is made aware of an ongoing human rights issue that is directly linked to its product or service, yet over time fails to take reasonable steps to seek to prevent or mitigate the impact, the business could eventually be seen to be facilitating the continuance of the situation and thus be in a situation of contributing.³⁴

When there is a link between an investor's product or service and adverse human rights impacts, the UNGPs call for the use of "leverage"³⁵ with

the parties involved to seek to prevent or mitigate impacts. While the degree of leverage may vary according to the type of investment and the level of control over investee companies, investors can use leverage typically through company engagement, voting, replacing management, but also through further investigating and addressing specific issues, and engaging in dialogue with rights holders, state-actors involved in business projects and policy makers. Where leverage to prevent or mitigate adverse impacts is lacking, and it is impossible to increase it, ending the business relationship should be considered. This should be done while assessing the potential adverse human rights impacts of doing so.

Several expert actors, including the UN Special Rapporteur on the Situation of Human Rights Defenders,³⁶ the UN Principles for Responsible Investment (PRI),³⁷ the Business and Human Rights Resource Centre and the Investor Alliance for Human Rights,³⁸ and the Coalition for Human Rights in Development,³⁹ have issued guidance and recommendations targeted to investors and lenders on how to operationalize the UNGPs to meet their obligations to respect human rights defenders.

The appropriate course of action which investors should take to support defenders will vary according to their size, portfolio, the nature of their financial services and products, and the leverage they can exercise through their business relationships.⁴⁰

Acknowledging these factors, **Swedwatch calls on all investors to, at a minimum:**

- Adopt and implement a zero-tolerance policy and approach against attacks on defenders in business relationships, agreements, and investment decision-making.
- Policies should be gender-sensitive and pay specific attention to defenders belonging to groups already experiencing discrimination or social and economic inequality, such as indigenous and Afro-descendent peoples, children and migrant workers;
- Existing policies should be reviewed in light of the Covid-19 pandemic and the increased risks on defenders.

- Communicate human rights expectations in their business relationships, including that portfolio companies must engage in human rights due diligence. Due diligence processes should be conducted with a gender perspective.
- Engage in dialogue with companies calling on them to:
 - Improve their human rights due diligence processes, paying particularly attention to the risks faced by defenders;
 - Publicly report on how risks to civil society and defenders are managed, particularly in the context of Covid-19 mitigation measures.
- Consider withdrawing investment when leverage or engagement fail to address adverse human rights impacts on defenders, taking into account the consequences of a divestment on defenders and other stakeholders.
- Express public support for defenders, both by making public statements against any form of retaliation and reprisal against defenders and by expressing support for specific defenders facing threats.
- Public support can be expressed through investor initiatives or alliances.

Development finance institutions (DFIs) are active in directly financing investments and play an important role in the development of private sector in developing countries. Given their role, and the importance of respecting defenders' human rights while supporting economic growth, **Swedwatch calls on DFIs to systematically engage in human rights due diligence, including:**

- Carrying out gender sensitive risk assessments for each single investment to identify:
 - Countries and areas where civic space is constrained, taking into account further restrictions to civic space and the state of civic freedoms during the handling of the Covid-19 pandemic;
 - Sectors and projects where there is a high risk of conflict between project operators and local communities, and where such risks could escalate due to Covid-19, for example

when denouncing working conditions which fall short of preventing the transmission of infectious diseases;

- The human rights track record of investments and clients. These assessments should include speaking with defenders and affected community members rely upon early signals of disputes between companies and communities, as well as attacks against defenders. Conflicts which are not addressed will most likely escalate and worsen.
- Preventing, mitigating and addressing risks to defenders, and, where appropriate, remediate, impacts on defenders using leverage in cooperation with other stakeholders.
- Engaging in meaningful dialogue with defenders (taking into account whether such consultations could put defenders at risk), as well as with key stakeholders, including affected community members and relevant state-actors. Dialogues should be conducted in a way that ensures that the perspectives of both women and men are included.

Additional resources

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