



Call for information: Special Rapporteur on the right to development

June 2023

Oxfam is a global organization that fights inequality to end poverty and injustice in over 80 countries. Our core advocacy seeks to advance land rights, Indigenous rights, climate justice, and gender justice. For over 20 years, Oxfam has partnered with communities impacted by large-scale projects and held powerful actors accountable for their human rights abuses and environmental harm. With the development of the convention on the right to development, the international community has a unique, and thus complicated, opportunity to right the wrong and ensure that economic development truly contributes to rights realization rather than repeating mistakes of the past as large-scale investment projects are being implemented across the globe.

Oxfam appreciates the opportunity to contribute input to the UN Special Rapporteur on the Right to Development.

What are the key remaining challenges in the effective realization of the right to development at different levels?

Many challenges remain so that economic development contributes to the right realization rather than increasing suffering for the people living on the lands where projects will take place. Challenges include:

Insufficiency of voluntary approaches

The adoption of the UNGPs contributed to clarifying expectations for businesses with regards to human rights. But the non-binding nature of the UNGPs and the lack of liability and enforcement in case of breach in responsibilities remain the main challenge. Experience has shown that voluntary approaches will not enable us to truly address the power imbalance and eliminate human rights violations in global value chains and development projects. In fact, existing non-binding standards often do not align with international law and cannot be relied upon to satisfy corporate responsibilities under international norms on business and human rights.¹ Voluntary frameworks often result in uneven processes, with a handful of companies pressured to implement HRDD while most companies are not doing their part.

Power imbalance

As outlined in [Ripe for change](#) and [Power, Profits and the Pandemic](#), inequality is rampant across the global economy. At the top, big corporate giants dominating global markets, enable them to squeeze value and natural resources from vast supply chains that span the globe, while at the bottom the bargaining power of small-scale farmers, small businesses, communities and workers has been steadily eroded in many of

¹ An [EU study](#) found only 37% of companies were undertaking due diligence and only 16% doing so across their entire supply chains.

the countries from which they source. The result is widespread human suffering among the women and men around the world. Inequality of power is the root cause of labour and natural resource exploitation in many supply chains.

Limited (absence of) rights holder engagement

Many projects are going forward without the voices of the people who will be directly affected and when consulted, communities and marginalized populations often lack information to meaningfully participate and voice their concerns.

Communities are often seen as a homogenous entity, without recognizing there are various groups and sub-groups that are affected differently. Women and gender non-binary people are disproportionately affected by development projects, due to their roles and responsibilities within their communities and families, but also due to existing gender-based discrimination.

Rights-holder engagement is rarely embedded in the development of projects, therefore no time is dedicated to engaging and to revising the plans accordingly. The most common practices are companies engaging rights holders in **identification of issues**, but very rarely engaging in the **identification of solutions** and even less in implementation of mitigation measures and almost never as it relates to remedy. More often, engagement is **reactive and issues-led** (e.g. oil spill or scandal). But if the relationship and trust has not been developed before-hand, engagement can hardly be meaningful.

What laws, policies and incentives are in place (or should be introduced) to encourage businesses to contribute to the effective realization of the right to development?

To avoid creating greater and distinct risks to women, Indigenous peoples, HRDs and other marginalized groups², and ensure development projects benefit local communities, States must comply with and **enforce existing human rights obligations** and ensure the **implementation of adequate FPIC processes**. But States need to **do more to strengthen and enforce protections for land, water, and other resources** that people depend on for their livelihoods.

States must adopt legislation that will make HREDD mandatory for all companies, including state-owned enterprises.

Legislation must be cross-sectoral, covering all companies irrespective of size, including the financial sector, with proportionate obligations taking into account, amongst others, the size and the risk exposure.

States must oblige companies to:

- **Respect human rights** and the environment in their own operations, in their global value chains and within their business relationships.
- **Identify, cease, prevent, mitigate, monitor and account for potential and actual human rights and environmental adverse impacts** through an ongoing and robust due diligence process, covering the entire value chain and not be limited to a companies' business relationships.

² [‘They offered me nothing for what they had destroyed’: how the scramble for clean-energy minerals is hurting African communities - Views & Voices \(oxfam.org.uk\)](https://www.oxfam.org.uk/press-releases/they-offered-me-nothing-for-what-they-had-destroyed-how-the-scramble-for-clean-energy-minerals-is-hurting-african-communities)

- Ensure meaningful gender-responsive **rights-holder engagement** on an ongoing basis.
- **Conduct intersectional human rights impact assessments (HRIA)**, aligning their assessments with the Guidance on Gender Dimensions of the UNGP. Oxfam has also developed [a framework to assess the quality of HRIAs](#)
- **Comply with FPIC⁶** when their projects affect Indigenous peoples or customary land rights holders and demonstrate evidence of effective implementation.
- **Commit to transparency**, including project-level payment, contract and beneficial ownership disclosures.
- Have a clear statement of **policy on HRDs**.

States must:

- Hold companies **liable under civil law for human rights and environmental adverse impacts** in their global value chains and within their operations and business relationships. In cases of grave and widespread human rights violations, **criminal liability of companies** and/or responsible directors should be imposed provided they acted with intent.
- Ensure **robust public law enforcement** of all of the above obligations by state authorities, providing proper resourcing, training and support for effective review and monitoring of the implementation of the measures adopted, including dissuasive sanctions in case of breach.

As further developed in [Reward work not wealth](#), living wages and decent work for the world's workers are fundamental to ending today's inequality crisis. Governments and international institutions need to recognize the impact of the current mainstream neoliberal economic model on the world's poor. Then they must work to develop more human economies that have greater equality as a primary aim. The following recommendations examine what governments, international institutions and corporations should do on designing a fair economy from the start:

- Incentivize business models that prioritize fairer returns, including cooperatives and employee participation in company governance and supply chains.
- Require all multinational corporations to conduct mandatory due diligence on their full supply chains to ensure that all workers are paid a living wage, in line with the UNGPs.
- Limit returns to shareholders and promote a pay ratio for companies' top executives that is no more than 20 times their median employees' pay³, and preferably less.
- Eliminate the gender pay gap and ensure the rights of women workers are fully realized throughout the economy. Repeal laws that discriminate against women's economic equality, and implement legislation and regulatory frameworks that support women's rights.
- Eliminate slave labour and poverty pay. Transition from minimum wage levels to 'living wages' for all workers, based on evidence of the cost of living, and with full involvement of unions and other social partners.
- Promote the organization of workers. Set legal standards protecting the rights of workers to unionize and strike, and rescind all laws that go against these rights. Allow and support collective bargaining agreements with wide coverage.
- Eliminate precarious work and ensure all new forms of employment respect workers' rights. Ensure the rights of domestic workers, migrant workers and the informally employed. Progressively formalize the informal economy to ensure that all workers are protected, involving informal workers in the decision-making process.

³ This should include all elements of remuneration, including benefits, stock options, etc.

What steps are being taken to ensure that businesses provide adequate living wages to their employees/workers throughout their operations and adopt responsible purchasing practices?

An increasing number of companies are adopting living income commitments. But to be effective, interventions must address the inequality of power and risks that workers, suppliers and other actors in their value chain experience. As further detailed in Oxfam's [Ripe for Change report](#), companies should:

Comprehensively understand and act upon human and labour rights risks in the supply chain:

- Make an explicit commitment to uphold the UNGPs and to report against them.
- Commit to strict neutrality in relation to efforts from workers to organize and commit to a zero-tolerance approach towards intimidation of or retaliation against workers for attempting to establish a union, in both the company's own operations and throughout its supply chain.
- Commit to guarantee regular, meaningful and constructive engagement with trade unions within the company and its suppliers.

Put women's economic empowerment at the heart of business operations by:

- Sign up to the UN Women's Empowerment principles; making moves to understand and act on the risks faced by women in the supply chain; and publicly advocate to challenge unequal gender norms and unpaid care responsibilities across the supply chain and its own operations.

Utilize commercial and trading practice that encourages a strong performance on human and labour rights and the sharing of value.

- Commit to eliminate commercial and trading practices that place undue levels of risk and pressure to cut costs on suppliers (including setting appropriate pricing based on sustainable production costs; long-term, predictable and transparent contracts and payment terms for suppliers).
- Exercise preferential sourcing from suppliers that guarantee a living wage or income to employees.
- Utilize a proactive trading and commercial buying policy to locate operations or source products from countries with a strong human and labour rights record.

Support a living wage and living income for women and men throughout the supply chain.

- Work collaboratively with other companies, suppliers, trade unions, civil society and other stakeholders to identify the cost-of-living needs for workers in supply chains with high risks of human and labour rights violations. This should be used as the basis to close the gap between prevailing and living wage or incomes. Companies should publish an annual statement to show progress against agreed objectives.
- Make a time-bound commitment to factor living wage and income benchmarks into a company's price negotiations and contract terms with suppliers.

Level the playing field by proactively ensuring that human and labour rights are both strong and enforced in sourcing countries.

- Collaborate with other companies, suppliers, trade unions, women's rights groups and CSOs to demand that relevant government bodies in sourcing countries guarantee human and labour rights standards.
- Commit to withdraw from or refrain from joining trade associations or Chambers of Commerce that advocate or lobby against human and labour rights protections in sourcing countries.

Radically improve transparency in sourcing practices

- Improve transparency by making the names and locations (to site level) of all suppliers publicly available, highlighting when work is subcontracted, the number of women and men, and whether freedom of association is ensured and collective bargaining is undertaken.

How do businesses ensure that development projects do not result in environmental pollution and/or forced displacement of communities, including indigenous peoples?

To ensure they truly contribute to development, businesses must:

- Commit to respecting human rights through the **adoption of an integrated or stand-alone human rights policy**, recognizing and addressing gender inequality and risks faced by women, girls and gender non-binary people. They must **integrate the UNGPs into their existing policies** and suppliers' standards, including flow-down requirements for subcontractors.
- Develop a **thorough and coherent gender responsive HREDD approach**.
- Integrate **robust intersectional HRDD processes**, such as intersectional HRIAs, aligned with Guidance on Gender Dimensions of the UNGP¹² and complying with Oxfam's [framework to assess the quality of HRIAs](#).
- Ensure **meaningful rights holder engagement** that is early, informed, facilitated, secure, inclusive and gender sensitive. (See box below)
- **Adopt an explicit policy commitment to FPIC** and ensure implementation is adequately resourced. When FPIC processes are implemented by the State, commit to working collaboratively and ensure process is transparent and participatory and refrain from any direct or indirect interference that could be considered coercion or manipulation.
- **Disclose results of due diligence processes and communicate how impacts are addressed**, including the plans to mitigate impacts and to track effectiveness of measures and results.
- Establish gender-sensitive **project-level grievance mechanisms** aligned with UNGP efficiency criteria to ensure affected people can voice their concerns and have access to remedy, in a trusted process without retribution.
- **Provide for and cooperate in the remediation of adverse impacts** in their global value chains and within their operations and business relationships.
- Commit to **protecting and upholding the rights of human rights defenders**.

How to engage meaningfully?

To be meaningful, rights holder engagement must include the following elements:

1. Start early and be continuous.

- a. Engagement should start as early as possible and from the moment the company starts thinking about its due diligence process. Rights holders must contribute from the identification of risks and impacts to the identification and monitoring of solutions. **The commitment must occur early enough to allow the decision-making process to be influenced.** For indigenous peoples, their prior consent must be obtained, which means before starting any business activities.
- b. Engagement must occur at **various times in the life of corporate activities**. Companies must have a commitment to monitor the effectiveness of the measures proposed to respond to risks and impacts on human rights.
- c. **Share and validate company information and results** with rights holders.

2. Informed participation

- a. **Participants must be informed about the purpose of their participation**, as well as the broader context of the supply chain or planned investment. Engagement is not about extracting data, it is about sharing information about plans and the project, listening to what people have to say, and clarifying how the information will be used. For indigenous peoples, their informed consent must be obtained, that means, they must have all the relevant information for decision-making.
- b. **Sufficient time** should be allocated to interact with rights holders and listen to concerns. Information about the consultation and the project should be shared as far in advance as possible to allow time to read and understand, in an accessible format.

3. Commitment facilitated

- a. **Create a safe space**: People need to feel safe to discuss sensitive topics and they need to be able to interact with people they trust. It is useful to work with local people and partner organizations who know the community well and can advise on how to organize consultations. For indigenous peoples, their free consent must be given voluntarily, without coercion, intimidation or manipulation.
- b. **Address the main barriers to participation**. Companies should be prepared to invest additional resources around interview processes, such as compensating communities for their time and expenses (for example, childcare), going to rights holders, or taking them to a city to interview them. Consider the moment of the commitment (take into account the reality of the rights holders).

4. Inclusive engagement

- a. Companies need to reach a wide range of stakeholders, including people with divergent viewpoints. The company must **engage with the people directly affected by the company's activities**. Ensure the participation of the most vulnerable groups, including indigenous peoples.
- b. **Consideration of gender in data collection and participation**: Companies must make special efforts to engage with women and gender non-binary people separately in order to capture the differentiated impact they face, and develop measures and solutions that work for their situation.

Land, climate change and development

As presented in [Doing Businesses on Uneven Ground](#) as well as in [Moving the Middle](#), land is at the core of most challenging issues, such as climate change, human rights, and livelihoods - and it is a key element in most development projects. As part of their responsibilities, companies should:

Recognize the extent of the company's land footprint and promote more local control of land:

- Land footprints comprise the total amount of land used within a company's value chain. This includes land used directly and indirectly for commodity production; planned expansions and mergers and acquisitions; the amount of land a company relies—or plans to rely—on for carbon removal; and investments;
- Promote more local control of land across operations and value chains;
- Commit to refrain from expanding the company's overall land footprint;
- Ensure full supplier transparency and traceability;
- Disclose and commit to reduce emissions across all scopes.

Know where harmful land acquisitions and land-use changes are at high risk of occurring; take step to prevent them:

- Ensure company land commitments are up to par;
- Integrate land use and land rights into human rights due diligence and assessment processes;
- Not include the use of offsets as part of the company's efforts to meet science-based targets; where companies want to scale up climate ambitions beyond reducing their own emissions, ensure offsets are of high quality;
- Ensure respect for communities' free, prior, and informed consent (FPIC) decisions.

Ensure remediation for harms and effective grievance mechanisms, in accordance with the UNGPs:

- Adopt policies related to remediation and grievance mechanisms that adhere to the UNGPs and cover the company's full land footprint;
- Develop a plan for hastening remediation efforts when the company has caused or contributed to a grievance;
- Develop a plan for using and increasing leverage when the company is linked to a grievance across value chains;
- Engage with community-based monitoring mechanisms;
- Create or participate in effective operational-level grievance mechanisms;
- Engage in mediation processes where they are initiated as a result of grievances filed

Support business and climate mitigation models that reduce land inequality and secure communities' land rights:

- Avoid harmful—and most are harmful—large-scale land acquisitions;
- Instead, prioritize business models that help reverse land inequality;
- Establish long-term partnerships with women-led small and medium enterprises and recognize women in commercial relationships;
- Apply robust safeguards and promote equitable and inclusive approaches where strategies for land-based climate solutions are used.

Invest in landscape management approaches:

- Invest in landscape management approaches that adhere to freedom of choice, accountability, improvement, and respect for rights (FAIR) principles;
- Engage directly with the relevant associations of small-scale farmers, IPLCs, and/or women's networks as key parties in the design and implementation of these initiatives;
- Support women's equal participation in decision-making processes related to land;
- Engage in equitable and participatory land-use planning;
- Draw on community-based monitoring as a tool, jointly agreed, to underpin the agreement.

Work in partnership to help secure women's and communities' land rights:

- Publicly recognize the importance of securing IPLC land rights (for people and the planet);
- Establish an ambitious goal for supporting small-scale farmers and IPLCs to strengthen enjoyment of their land rights;
- Recognize the link between women's land rights and women's economic empowerment and apply a gender lens when supporting initiatives intended to secure land rights;
- Partner with local women's groups, civil society, and other local stakeholders to meet this goal.

Protect human rights and environmental defenders (see: [“Threats to human rights defenders: Six ways companies should respond”](#))

- Recognize and commit to protect the rights and legitimacy of human rights defenders (HRDs);
- Ensure due diligence mechanisms identify risks to HRDs, and grievance mechanisms are accessible to HRDs;
- Use leverage and speak out in defense of HRDs as well as against legal reforms that are aimed at restricting civil society space;
- Engage with communities and local civil society in an inclusive, culturally and gender-sensitive way to identify and address risks to HRDs;
- Do not use or support strategic lawsuits against public participation (SLAPP) or other legal strategies that diminish established legal protections for HRDs.
- Establish grievance mechanism accessible to HRDs, aligned with UNGP efficiency criteria.

Support strong government and sector-level action on land inequality

- Make government and sector-level engagement and advocacy on land inequality part of the company’s sustainability strategy;
- Use political voice and economic weight to promote (and not hinder) strong government and sector-level action on land inequality;
- Ensure that business practices do not hinder but complement and facilitate strong government and sector-level action on land inequality.

Address the climate crisis and its impacts

- Adopt zero net deforestation policies, with a 2025 deadline, that incorporate the UNGPs.
- Recognize the need to support small-scale producers to build resiliency and create a measurable, time-bound commitment to do so.
- Set clear GHG reduction targets in line with a 1.5°C pathway that include Scope 1, 2 and 3 emissions, approved by SBTi and incorporating SBTi FLAG guidance, reporting on progress.
- Support low carbon and regenerative agriculture approaches, including agroecology and agroforestry, that put small-scale producers first.
- Ensure public relations, lobbying activities, and trade group membership align with stated climate and sustainability goals.