



INVESTOR ALLIANCE
FOR HUMAN RIGHTS

Safeguarding Human Rights Defenders: Practical Guidance for Investors

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Our Speakers



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Business & Human Rights Resource Centre

World's largest information hub and an action platform on business & human rights in 8 languages. Founded in 2002 by a group of former human rights and environmental advocates, business people, and academics

www.business-humanrights.org

01

Transparency:

We track the human rights conduct of 8000 companies worldwide

02

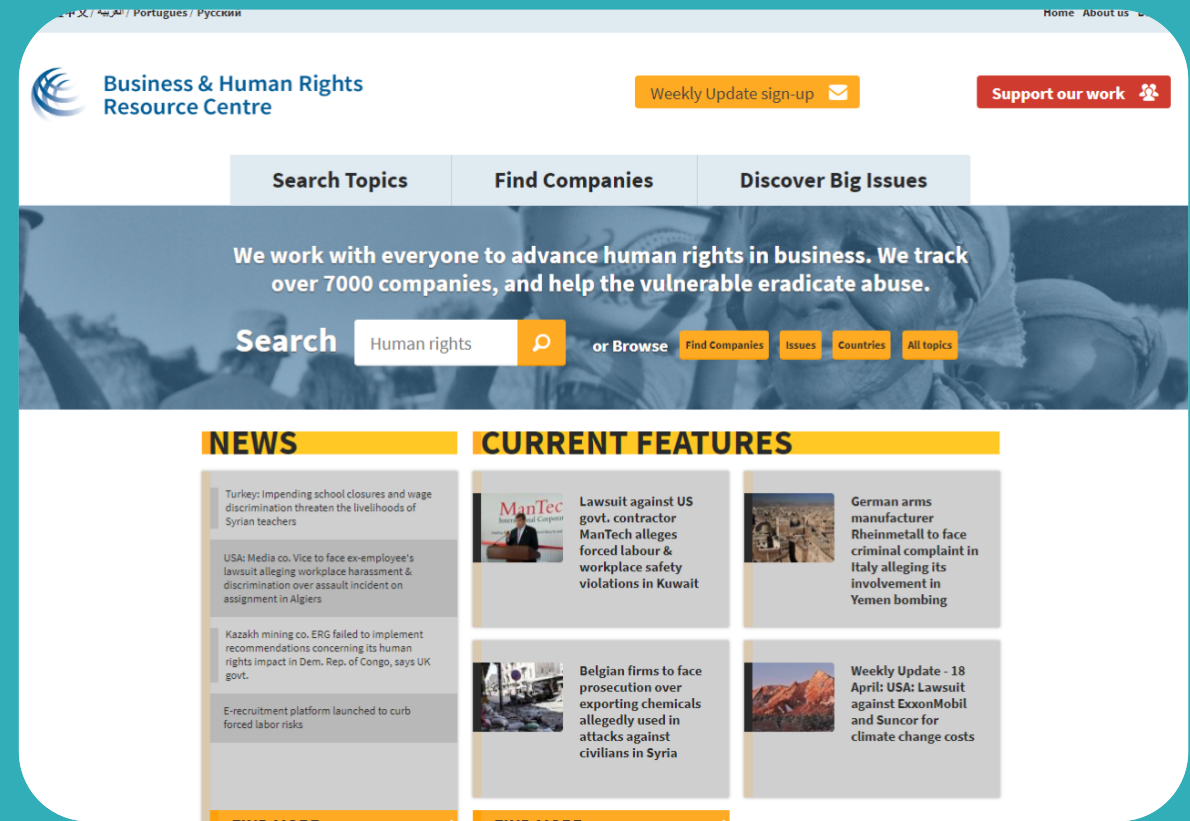
Accountability:

We invite companies to respond publicly to allegations by civil society

03

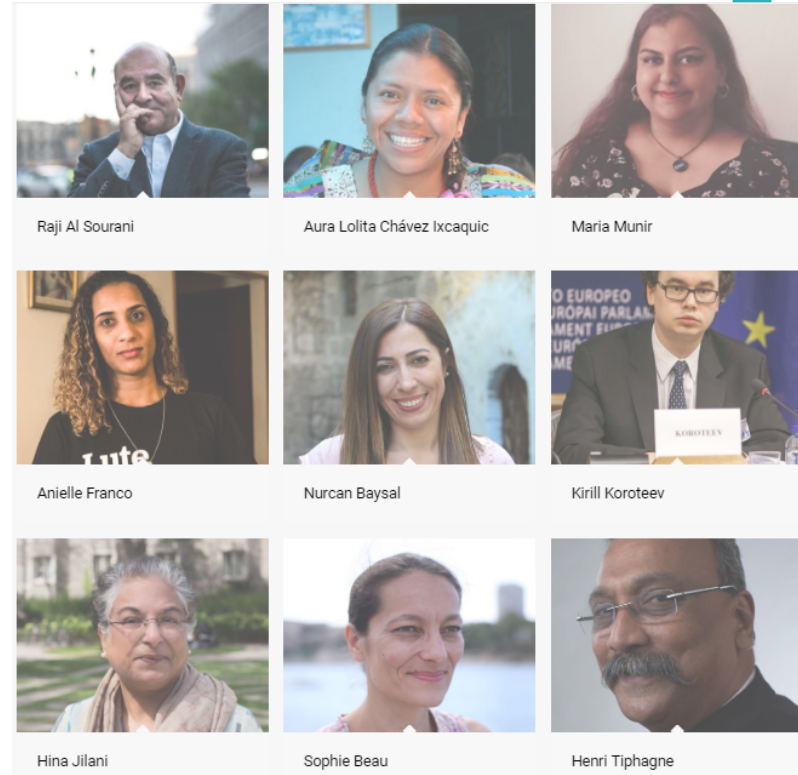
Empowerment:

We equip people in NGOs, companies, and governments with tools they need to increase leverage with businesses



Who is a human rights defender?

- Someone who, alone or with others, acts to promote or protect human rights (individuals, organizations & communities)
- Peacefully working to uphold and advance rights
- Defined by what they do, not who they are
- Land rights defenders, community leaders, human rights organizations, unionists and other labour rights defenders, lawyers, journalists, artists, etc.



State of Attacks against HRDs focused on business

- Since 2015, we have tracked **nearly 2,400 attacks** against HRDs focused on business-related activities
- Highest number of attacks occurred in Latin America
- Indigenous peoples make up 5% of the world's population and **25% of attacks** on defenders in our database
- From 2018 and 2019, there was a 16% increase in reported attacks



2019 saw an increase in attacks on HRDs from the 492 documented the year before.

Sectors with most related attacks in 2019:



Women Human Rights Defenders

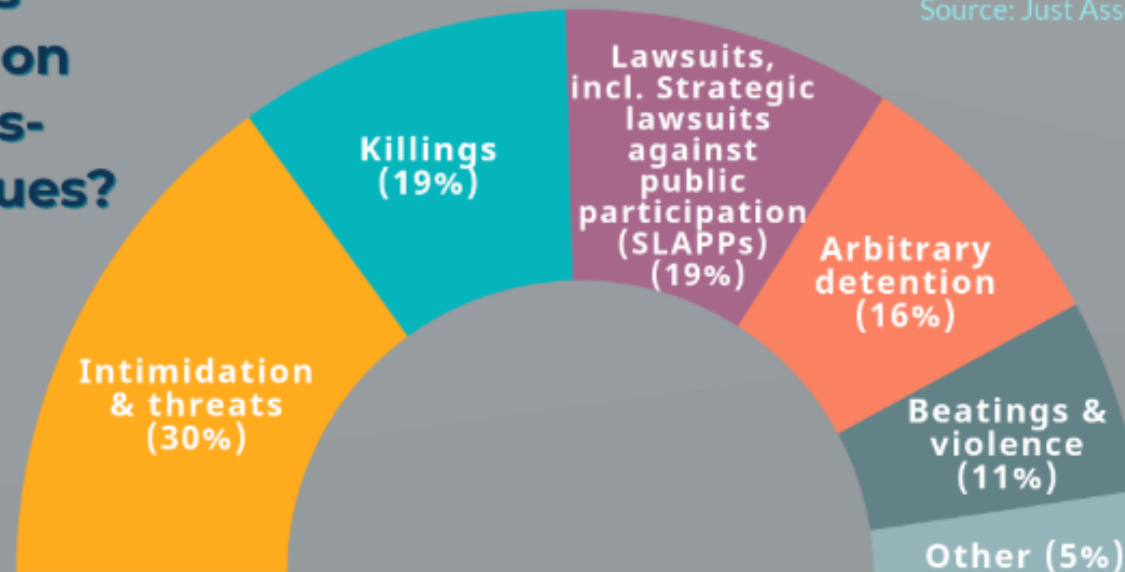
Women defenders face the same attacks as men, as well as different types of threats and violence due to their gender. This includes attacks on their honour and reputation, public shaming, sexual violence, and threats against their children and loved ones.

Source: SR on HRDs' report on WHRDs, 2019

What are the most common types of attacks on WHRDs working on business-related issues?

The triple impact of the physical and emotional burden of domestic and community care work on women, in addition to their activism, is rarely recognized.

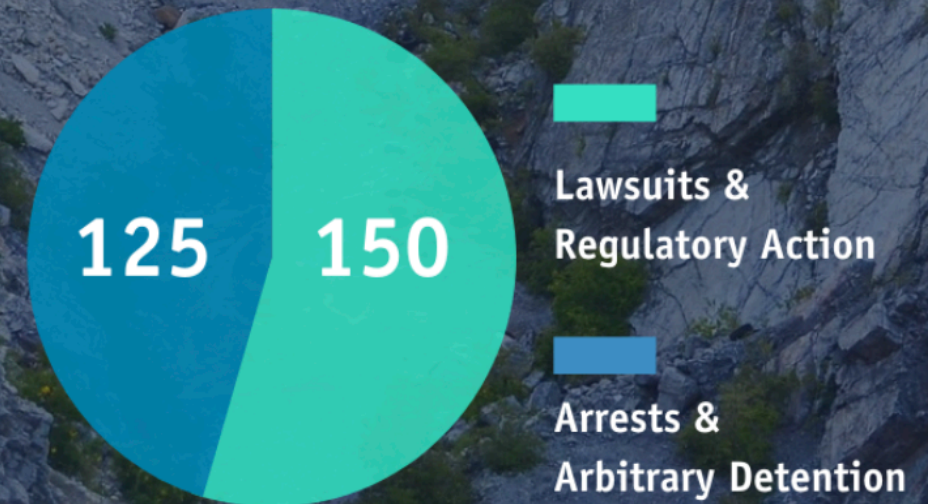
Source: Just Associates, 2019



Types of attacks include:

- Killings
- Judicial harassment: arbitrary arrests, detentions and strategic lawsuits (SLAPPs)
- Threats
- Violence

Almost half -
48.07% - of all attacks
documented in 2019
were related to judicial
harassment of human
rights defenders



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

– Maryam Al-Khawaja, Gulf Centre for Human Rights

Sutharee Wannasiri

Thai researcher and Human
Rights Defender and Advocate for
vulnerable communities in
Thailand and Southeast Asia



HUMAN RIGHTS DEFENDERS AND CORPORATE ACCOUNTABILITY

SUTHAREE WANNASIRI

THAILAND RESEARCHER AND CONSULTANT

THE SITUATION OF HUMAN RIGHTS DEFENDERS

- Human rights defenders globally are increasingly facing challenges for reporting alleged human rights abuses in the context of business operation
- Human rights defenders have been murdered, attacked, abducted, threatened and intimidated by government officials and private actors, often with impunity
- Protection International documented at least 59 human rights activists killed or disappeared in Thailand in the past 20 years
- Authorities have failed to provide adequate protection to ensure the safety and security of activists and affected communities and failed to hold perpetrators of abuses accountable

THE SITUATION OF HUMAN RIGHTS DEFENDERS

- Authorities have criminalized free speech, imposed censorship, and restrictions on press freedom
- Authorities have prosecuted against human rights defenders for carrying out peaceful activities such as organizing peaceful protest, using social media to advocate, publish an investigative report or write a news articles.
- Stigmatisation: online and offline misinformation and hate speech were used to target human rights defenders – often they are wrongly labeled as anti-development, threats to national security, foreign spies or even insurgents

HUMAN RIGHTS DEFENDERS AND THE BUSINESS

- Some companies have involved in physical attacks, death threats, and intimidations against activists particularly land and environmental defenders.
- Some companies have increasingly used civil and criminal prosecutions to silence human rights activists who exposed human rights abuses or environmental impacts.
- Usually human rights abuses and negative environmental impacts are a result of lack of meaningful consultation with affected communities and stakeholders before, during and post business operation.



ยืนหยัดในความยุติธรรม
ปกป้องผืนดินสุทธากาย
กฤษฎาภิไธยคณาธิปไตย ช่างกลองการสู้สู้

SOUTHERN PEASANTS' FEDERATION
OF THAILAND (SPFT)

ที่ดินแปลงนี้

เป็นกรรมสิทธิ์ของ ส.ป.ก. ซึ่ง ส.ป.ก. ได้ฟ้องบุกรุก

จับได้ บริษัท จีวักชัยพัฒนา จำกัด แล้ว

ขณะนี้คืออยู่ระหว่างการพิจารณาของศาล

ดังนั้น การจำหน่าย อ่าว โอน ทรัพย์สิน

หรือซื้อ - ขายที่ดินแปลงนี้

เป็นการกระทำฝ่าฝืนต่อกฎหมาย

นอกระบบที่ดินของชาติโดยเด็ดขาด

ผู้จัดทำแผนที่ สำนักรวบรวมที่ดิน กรมที่ดิน

กรุงเทพมหานคร ส.ป.ก. สุราษฎร์ธานี

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SOUTHERN PEASANTS' FEDERATION OF THAILAND – LAND RIGHTS DEFENDERS

- Small-scaled farmers and poor people have united and mobilized to demand more equal distribution of land and natural resources in the south of Thailand, met with conflicts with corporate palm oil plantation and local land authorities.
- 5 members of SPFT were attacked and 4 of them were killed with no one brought to accountable. Their home and farmland were destroyed and facing imminent forced eviction.
- In total 14 people from the community have been arrested on trumped-up charges. Currently 8 of them have been sentenced to 2 years 8 months imprisonment on charges of trespassing and criminal association. They have been denied bail. This is a clear tactic to weaken the community and facilitate their eviction.
- Despite this, the farmers continue to resist and demand that the government allocates land ownership to them in the form of community land title, as it is rightly theirs.



WHAT RISKS ARE WOMEN HUMAN RIGHTS DEFENDERS FACING?

- Women human rights defenders are more vulnerable to being a target of intimidation and structural violence based on gender and other sexual dimensions
- The work of women human rights defenders is perceived as challenging or threatening to conventional beliefs, existing discriminatory norms and values, and women's traditional roles in the family and society
- Women activists usually endure condemnation and rejection from the community, religious, family leaders or other members of society who view their work as detrimental to religion, honor, culture and socio, economic, and political structures that value male leaders



WHAT RISKS ARE WOMEN HUMAN RIGHTS DEFENDERS FACING?

- Women human rights defenders have been threatened, intimidated, imprisoned, prosecuted and killed, and subjected to sexual assault and violence, as well as smear campaigns
- Women human rights defenders are at higher risk of violence, abuse, social exclusion, rejection, and stigmatisation than male human rights defenders because they are carrying out their work in societies that view women as inferior to men
- These factors must be taken into account to ensure preventive and strong mechanisms and responses to protect women human rights defenders and their families



SUTHASINEE KAEWLEKLAI LABOUR RIGHTS ACTIVIST

FROM GARMENT FACTORY WORKER TO MIGRANT WORKERS RIGHTS
CHAMPION

SUTHASINEE KAEWLEKLAI LABOUR RIGHTS ACTIVIST

- Works with migrant workers to unionize factories, give workers training on labour rights, collective bargaining, and access to effective remedies
- Received threats from government officials, brokers and companies
- Facing multiple criminal lawsuits from business for supporting migrant workers to claim their rights



THAI POULTRY COMPANY AND THE USE OF JUDICIAL HARASSMENT

- Since 2016, Thai poultry company Thammakaset Co., Ltd. which supplied poultry meat to Betagro has filed a total of 39 criminal and civil cases against 23 defendants, including 8 human rights defenders, and 14 workers, for alleged defamation of the company. The complaints stemmed from the documentation, communication, and advocacy in connection with labour rights violations of migrant workers.

THAI POULTRY COMPANY AND THE USE OF JUDICIAL HARASSMENT



- The Labour Court ordered the company to pay compensation to 14 Myanmar workers after the workers reported the labour rights abuses including being paid under the minimum wages, underpaid overtime and holiday wages, and confiscation of identity documents to the authorities.

THAI POULTRY COMPANY AND THE USE OF JUDICIAL HARASSMENT

- These lawsuits filed involved criminal defamation charges which carried a maximum sentence up to two years imprisonment and/or a fine up to 200,000 Thai Baht (approximately 6,000 Euros).
- On 24 December 2019, The Lopburi Court delivered a guilty verdict of defamation and libel against Suchanee Cloitre, a Thai journalist who reported about the labour rights abuses by the company via her twitter. The Court sentenced her to two years in prison. She is currently released on a 75,000 Baht (approximately 2,250 Euros) bail.



- **The lack of protection of whistleblowers and human rights defenders from retaliation** when they exercise their rights to report their concerns to the grievances mechanism provided by the authorities. The migrant workers in this case have used the grievances mechanism and faced continuous retaliation. The migrant workers have struggled to get legal representation and financial resources to defend the case. The judicial harassment has drained out the time and other resources not only for the workers but for local civil society groups like Migrant Workers Rights Network which have been supporting the workers and were also caught up in the legal battle.

WHAT ARE THE IMPACTS OF JUDICIAL HARASSMENT?

- **A chilling effect on freedom of expression particularly on reporting human rights abuses and violations.** Facing serious retaliations, workers are reluctant to bring new complaints to the authorities while activists and journalists are avoiding to report or document corporate abuses because of the fear of being the next target of the lawsuit.

WHAT ARE
THE IMPACTS
OF JUDICIAL
HARASSMENT?

- **This is a tactic to shift the focus from human rights abuses at structural and industry level and divert the attention to the lawsuits.** Human resources, time, and money have been diverted to defend the lawsuits instead of addressing the gaps between domestic practices and internationally accepted labour rights and human rights standards.

WHAT ARE THE IMPACTS OF JUDICIAL HARASSMENT?

RECOMMENDATIONS TO THE GOVERNMENT

- Investigate all reported killings, attacks, threats, and other crimes committed against human rights defenders with a view towards holding all perpetrators to account
- Repeal or amend laws and orders that are incompatible with the rights to freedom of expression and peaceful assembly
- Provide remedies and ensure access to justice for victims of human rights abuses and their families
- End all legal proceedings against individuals facing investigation, charges, or prosecution for engaging in legitimate activities protected by international human rights law

RECOMMENDATIONS TO THE BUSINESS

- End all legal proceedings against individuals facing investigation, charges, or prosecution for engaging in legitimate activities protected by international human rights laws.
- Urge business entities to facilitate an independent and comprehensive human rights due diligence assessment, before, during and after their business activities.
- Provide adequate and effective remedies for abuses related to their business activities.
- Publish comprehensive information related to their business operations including supply chains, shareholders, employment policy and conditions, internal and external complaint mechanism to ensure transparency.

RECOMMENDATIONS TO THE BUSINESS

- Develop business policy and practice to be a more inclusive, more stakeholders participatory in decision-making process on development projects and business operations which have direct effects on communities
- Ensure enabling environment for community leaders, rights defenders, and journalists to carry out their legitimate activities, monitoring and reporting on the human rights situation.
- Emphasize special measures to protect women rights defenders, and members of marginalized communities such as migrant workers, refugees, asylum seekers, indigenous peoples and LGBTi



Sarah Brooks

Brussels Liaison and Asia
Advocate at the International
Service for Human Rights



SAFEGUARDING HUMAN RIGHTS DEFENDERS PRACTICAL GUIDANCE FOR INVESTORS



Photo: Energy East Pipeline Protest, Nina Grossman, 2015, Flickr

THE COSTS OF NOT SAFEGUARDING DEFENDERS

In this context, defenders play a pivotal role in helping businesses manage risks to people and businesses by alerting companies and their investors to emerging salient issues and grievances before these escalate to the point of the above-mentioned material risks. In turn, when companies fail to engage with, or undermine the work of defenders, material risks arise.

MATERIAL COSTS OF FAILING TO CONSTRUCTIVELY ENGAGE WITH DEFENDERS

First Peoples Worldwide documented that the cost of the Dakota Access Pipeline (DAPL) nearly doubled from an original estimate of US\$3.8 billion to at least US\$7.5 billion due to a lack of meaningful consultation by Energy Transfer Partners and the U.S. Army Corps of Engineers with the Standing Rock Sioux Tribe and the ensuing protests by Indigenous communities to protect their water and cultural rights. During these protests, Indigenous demonstrators were subjected to pepper spray, water guns, rubber bullets and attacks by guard dogs, resulting in hundreds of injuries. During this period, ETP's stock price significantly underperformed relative to market expectations, which persisted after the project was completed. From August 2016 to September 2018, ETP's stock declined in value by almost 20% while the S&P 500 increased by nearly 35%.

On April 22, 2020, Resolute Forest Products was ordered to reimburse defendants more than US\$800,000 to cover attorney's fees and

costs associated with two lawsuits it had filed against Greenpeace in relation to the NGO's criticism of the impact of the company's logging practices on the environment. Greenpeace asserted that these lawsuits were meritless and meant to silence their work to protect Canada's boreal forest.

Companies in other sectors are also vulnerable to material risks. For example, Google faced strong backlash over "Project Dragonfly," a surveillance-enabling search app it developed for the Chinese market that would undermine civic freedoms and the work of defenders. Over 1,400 Google employees protested publicly through an open letter. The controversy also prompted at least five Google employees to quit, suggesting that a company's activities that undermine civic freedoms can lead to issues with talent retention. In June 2019, for the first time, Google employees coordinated with activists and investors to file a shareholder proposal on the censored search engine.

Ensuring respect for the rights of defenders and an environment that enables their work has demonstrable positive outcomes for companies and investors. As outlined in Shared Space Under Pressure, the features of a safe and enabling environment for defenders, including the rights to freedom of expression, association, and assembly and the rule of law, are strongly associated with a stable operating environment for business.

Investor Responsibility for Harm to Human Rights Defenders



Challenges:

- COVID-19 has laid bare the urgent need to build just, equitable and human rights-centered systems, institutions and behaviors by all stakeholders, including companies, investors and governments
- Human Rights Defenders are increasingly under attack at a time when their indispensable, courageous work is needed now more than ever
- More institutional investors should understand and embed their responsibility to respect human rights as defined by the UNGPs in their policies, investment decisions and on-going stewardship



Investor Guidance on Human Rights Defenders



Prior to investment decision-making:

- Adopt policy commitment based on UNGPs with explicit reference to safeguard human rights defenders
- Embed commitment in governance mechanisms across the entire institution to avoid 'human rights' silo
- Communicate human rights expectations to actual and potential investee companies; between asset owners and asset managers and more broadly to financial markets



Investment Decision-Making



- Asset owners assess the human rights commitment of a potential asset manager and if the commitment is embedded into its investment decision-making
- Asset managers assess the robustness of investee companies human rights policy, its due diligence process, grievance mechanisms, channels for stakeholder input and explicit statement protecting human rights defenders
- Note that ESG providers often lack substantive human rights performance analysis and measurement. Investors can turn to a range of additional resources for information, including the Business & Human Rights Resource Center, Corporate Human Rights Benchmark, UN Guiding Principles Reporting Framework and the reports of UN independent human rights experts.

Responsible Investment Stewardship



- Identify actual and potential adverse impacts within the investment portfolio
- Engage portfolio companies to improve human rights risk management through engagement, shareholder resolutions where relevant and participation in collective action with multi-stakeholder and/or industry initiatives to build leverage to protect and support human rights defenders
- Join with other investors to issue public statements calling on companies to make a commitment to protect human rights defenders as in the case of the Investor Alliance, along with the UN Special Rapporteur on Human Rights Defenders' release in April 2018 focused on attacks of Indigenous rights defenders in the Philippines.





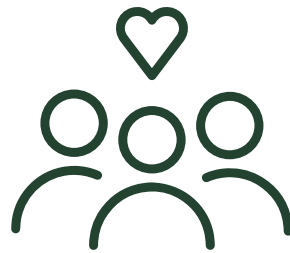
Corey Klemmer

Director of Engagement at
Domini Impact Investments





Standards



Community
Investing



Engagement

INVESTORS ARE DIRECTLY LINKED...

To Companies that...	Those companies should...
Cause adverse impact	<ol style="list-style-type: none">1) take steps to cease or prevent the action causing the harm and2) remediate the harm
Contribute to adverse impact, with or through external parties/partners	<ol style="list-style-type: none">1) cease or prevent the action contributing to the harm,2) use leverage to mitigate the risk that any remaining impact continues or recurs, and3) contribute to remediation of the harm
Are directly linked via products, services or operations, to adverse impact	<ol style="list-style-type: none">1) use <u>leverage to mitigate</u> the risk of the impact continuing or recurring and2) consider playing a role in <u>enabling remediation</u> of the harm.

INVESTORS SHOULD...

- 1) use leverage to mitigate the risk of the impact continuing or recurring and
- 2) consider playing a role in enabling remediation of the harm.

RESEARCH

- Exclude many high-risk companies/industries
- KPIs to address industry-specific risks
- Screen for controversies related to human rights,

PROXY VOTING GUIDELINES

- *Vote for shareholder proposals that seek publication of a **"Code of Conduct"** to the company's foreign suppliers and licensees, requiring they satisfy all applicable standards and laws protecting employees' wages, benefits, working conditions, freedom of association, and other rights*
- *Vote for shareholder proposals that call for the adoption of principles or codes of conduct relating to company **investments in countries with patterns of human rights abuses** (e.g. Northern Ireland, Burma, former Soviet Union, and China).*
- *Vote for shareholder proposals to prepare reports on a company's **environmental and health impact on communities**. (Community Impact Assessment / Indigenous Peoples' Rights)*

From Domini's Proxy Voting Guidelines



ENGAGEMENT

- **Directly engage on specific controversies**
- **Engage broadly on geographic risk and best practices**
- **Proactively communicate expectations around human rights defenders**



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Q & A



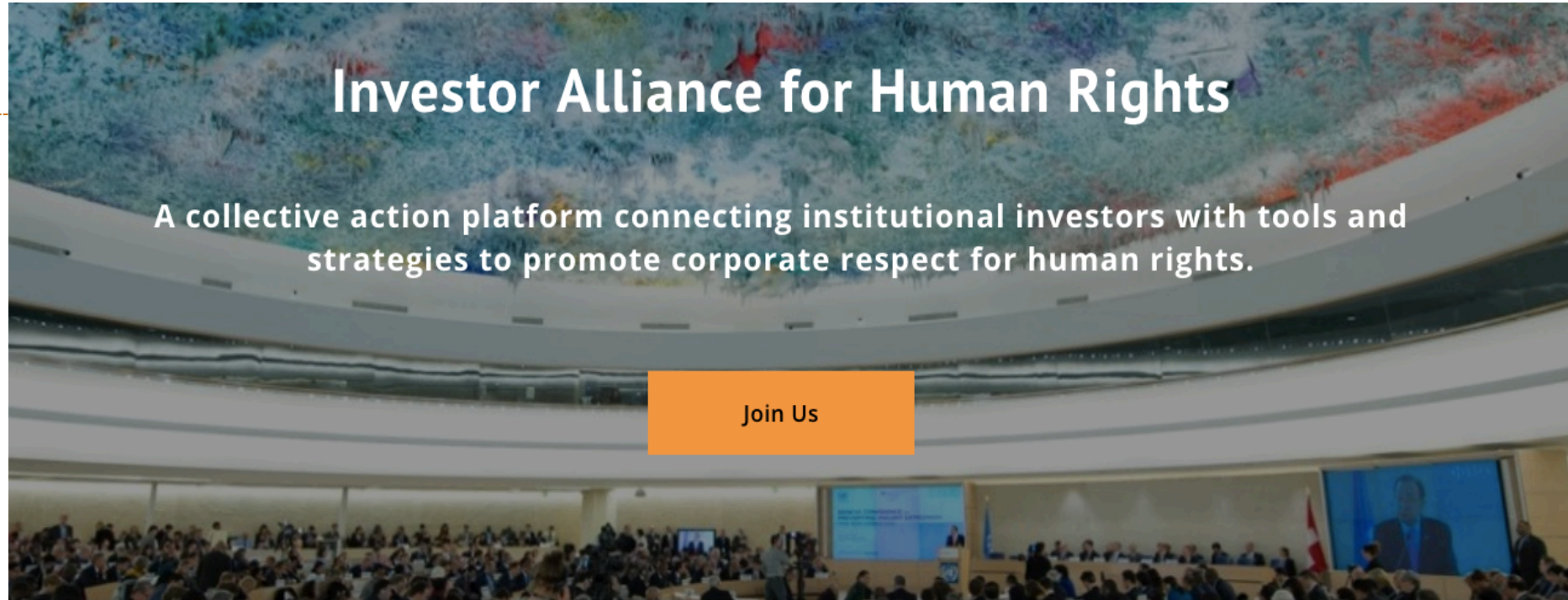
Closing

What are the next steps as the investor community?



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Thank You



Sign up to become a member: <https://bit.ly/2IOYDA9>

For more information, contact: adorett@iccr.org