



MEANINGFUL RIGHTS HOLDER ENGAGEMENT: AN INTRODUCTION



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When the international community adopted the United Nations Guiding Principles (UNGPs) in 2011, it became urgent for companies to face responsibility for their impacts on human rights; this means that they must have in place relevant processes to identify, prevent, mitigate, and account for how they will proceed. **Importantly, the human rights due diligence (HRDD) process must involve meaningful consultation with potentially affected groups and other relevant stakeholders.**

- *For more information about human rights due diligence, please consult [this issue brief](#).*

But it turns out that *how* to do this, and what precisely “meaningful” involves, is not that clear. With new regulations being discussed at the European level (and already in force in countries such as France and Germany), HRDD will increasingly become mandatory—and companies will have to step up their game. **It is therefore important to identify and further develop best practices in the application of due diligence, especially on meaningful rights holder engagement.**

Unfortunately, many companies are still ticking boxes when engaging the people affected by their activities (if engaging at all); they conduct top-down processes, managed by the companies and focused largely on corporate risk. However, an increasing number of companies are working to make this process more meaningful. Several companies have shown interest in learning how, when, and with whom to engage, so their involvement makes sense and brings them greater impact.

At the same time, though, as these companies invite more organizations and communities to participate in the HRDD process, they need to ensure that all participants have the necessary information and preparation to make their participation significant.

After more than a decade of engaging rights holders, and working with affected communities so they can have a voice in processes and projects that affect their lives, Oxfam has developed a clear understanding of what engagement should look like. This document presents the key principles that companies should integrate into their thinking and practices.

WHY SHOULD COMPANIES ENGAGE WITH RIGHTS HOLDERS?

- When engagement happens early enough, it can help detect important risks and increase a company’s capacity to prevent human rights violations from occurring.
- It can help identify potential hotspots that might not have been on the company’s radar.
- Engaging early, and in an ongoing basis, helps reduce the risks of conflict between the companies and rights holders.
- The cost of ensuring meaningful engagement with different groups is low compared to the potentially enormous costs that companies can incur when their operations are violating human rights.

- The process can lead to highly creative solutions that can result in benefits to the company, rights holders, and communities.
- It can create an atmosphere of collaboration and partnership -- rather than conflict and competition--if engagement is done at the outset and with opportunity to influence design of a project.
- In the case of indigenous communities, there is an international obligation to obtain free, prior, and informed consent (FPIC)

WHO ARE WE TALKING ABOUT HERE? WHAT IS THE DIFFERENCE BETWEEN RIGHTS HOLDERS AND STAKEHOLDERS?

Stakeholders are the various actors (individuals or groups) who have an interest in the investment project or the corporate activities, or who are affected by the activities. This impact can be positive, for example: investors gaining from their investment in the corporate activities, a government agency collecting more in taxes and fees, workers earning a living wage with the company. Or, it can be negative, for example: communities in surrounding areas suffering from poor water quality or polluted air as a result of the investment project, small-scale farmers not earning a living income due to major power imbalance across the value chain.

Rights holders are one type of stakeholders, but stakeholders are not necessarily rights holders (see below for more information on rights holders).

To give a few examples, stakeholders include:

- Company representatives (from various departments)
- Government representatives (including home and host governments for foreign investments), and local and regional authorities
- Those with business relationships, such as suppliers, subsidiaries, franchisees, and security providers
- Indigenous communities and traditional leaders
- Workers, unions, or workers' associations
- Small-scale farmers
- Customers
- Communities in the areas surrounding the company's operations
- Local non-governmental organizations and international non-government organizations
- Academic and industry experts and associations

WHO ARE RIGHTS HOLDERS?

Rights holders are individuals or groups who have specific rights in relation to a specific duty-bearer. In the context of corporate activities, this involves the various groups and sub-groups whose human rights could be (or are) affected by the corporate activities--among them: indigenous peoples, ethnic minorities, migrants, men, women, and gender-diverse people.

To give a few examples, rights holders include:

- Farmers in focus value chain, small-holder farmers, or farmer cooperatives (including various supply chain tiers and not focusing only on tier one)
- Workers (including migrant workers), workers' families, workers from various stages of the supply chain
- Workers, unions, or workers' associations
- Affected communities, including minority and vulnerable groups
- Civil society organizations, women's rights organizations, indigenous groups, religious leaders and/or relevant religious organizations

HOW TO IDENTIFY RIGHTS HOLDERS AND STAKEHOLDERS?

To determine with whom to engage, it's useful to use a mapping process to identify the various stakeholders and rights holders. This exercise also helps to explore the relationship between the stakeholders and their interests in relation to corporate activities. When doing stakeholder mapping, it is crucial to consider the power imbalance between the different actors, and determine where the power lies.

Identifying the rights holders affected by corporate activities requires a good understanding of the local context. It is very important to take the time to consult with as many of the local communities as possible in order to identify which ones are affected and to what degree. The obvious groups may not be the only ones to feel an impact. Partnering with local organizations rooted in communities has proven to be a good strategy to help map the various rights holders.

A word of advice: it's easy to see "the community" as a homogenous unit, without considering the differences in roles, power dynamics, rights realization, and asset ownership that fall between men, women, gender diverse peoples, and other vulnerable groups. When engaging, it's important to seek out and understand the perspectives of a variety of people (such as young women and old women, women with a disability, women from minority ethnic groups, as well as young men and old men, men with a disability, men from minority ethnic groups, and so on). Look at potential overlapping forms of discrimination that may mean that some people are more likely to suffer the negative impacts of an investment project than others. (To learn more about integrating an intersectional lens, refer to Oxfam's [Community-based Human Rights Impact Assessment tool](#).)

HOW TO MAKE RIGHTS HOLDER ENGAGEMENT MEANINGFUL?

Four key ingredients must be present to ensure that engagement is meaningful.

1. START EARLY AND ENGAGE CONTINUOUSLY

- a. Engagement should start as early as possible in the life of the investment project or corporate activities, 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 enable influence on the decision-making process.** For indigenous

peoples, their prior consent must be obtained, which means before starting any business activities. Engagement must occur at **various times in the life of corporate activities**. Engagement is not a one-time discussion.

- b. **Share and validate the results** with rights holders. Meaningful engagement must include a commitment to monitor the effectiveness of the measures proposed to respond to risks and impacts on human rights. This includes communicating with the rights holders the results of the engagement exercise (such as the key human rights risks and impacts identified), but also the effectiveness of the measures implemented to respond to the issues identified.

KEY QUESTIONS TO ASSESS THE ROBUSTNESS OF THE PROCESS

- At what point did the consultation with the affected communities begin?
- Was it done early enough to allow rights holders to influence the project and for their voices to be taken into account?
- Did the company carry out consultations at various key moments in the life of the project or corporate activities (e.g., in a period of crisis or major change in the production stages)?
- According to the affected rights holders, were there sufficient opportunities to participate and share concerns?
- If there are indigenous peoples affected by business activities, has the business obtained prior consent from the community?
- Was there a willingness on the part of the company to measure and monitor the effectiveness of the measures proposed to respond to risks in terms of human rights?
- Is there a record of the measures suggested by the communities and their follow-up/implementation?
- Is this record accessible to communities?
- Has the company returned to the communities with the results of the consultations and the measures implemented?

2. ENSURE INFORMED PARTICIPATION

- a. Access to information is a prerequisite for participation. It is important to ensure that **participants are informed about the purpose of their participation**, as well as the broader context of the supply chain or planned investment in question. People must understand the process they are engaging in and be aware of what is at stake, including the length of the engagement, the purpose, the extent of their participation, how the information provided will be used, and the extent to which their participation can influence decisions.
- b. Engagement is not about extracting data or information, 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. The information provided must be accessible to the rights holders and adapted to their level of understanding. Engagement must include capacity building to be truly empowering. For indigenous peoples, their informed consent must be obtained; that means they must have all the relevant information for decision-making.
- c. **Sufficient time should be allocated to interact with rights holders and other stakeholders** and listen to their testimonials and 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.

KEY QUESTIONS

- Have communities received enough information, in a format that allows them to understand the project/corporate activities and the context of the consultation?
- Was there a clear understanding of how the information collected would be used and for what purpose?
- Was there an effort to build the capacities of the communities prior to the consultations?
- If there are indigenous peoples affected by the company's activities, has the company obtained the informed consent of the community?
- Was the information sent well in advance of the consultation to give participants time to understand it?
- Has enough time been allocated to the consultations to give communities time to participate meaningfully?

3. FACILITATE THE COMMITMENT APPROPRIATELY

- 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, without fear of retaliation. It's 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 obtained; that means given voluntarily, without coercion, intimidation, or manipulation.
- b. **Address barriers to participation.** When thinking about the logistics of engagement, consider the most appropriate locations that will enable the participation of a significant number of people. Conducting consultation only in the capital city creates challenges for rights holders in rural or distant areas.

Consider the moment of the engagement (take into account the reality of the rights holders). Companies should be prepared to invest additional resources around interview processes; for example, compensating communities for their time and expenses such as childcare), going to rights holders where they are, or providing transportation to the location of the interview.

Make sure that people can participate in their own language. This may require that the information be translated, or that a freelance translator is used.

Another key barrier to consider is the lack of trust between rights holders and local civil society organizations and companies. This can be addressed by finding a credible and neutral actor to support the engagement, but also, by providing an increased level of information to the rights holders and addressing the power imbalance that prevails.

SAMPLE QUESTIONS

- Did the communities have safe spaces to participate, with the accompaniment of trusted people and advisors?
- Were steps taken to ensure that everyone could participate?
- Was the consultation culturally appropriate and/or in the local language?
- Where did the consultation take place? Was the choice of location made in light of the rights holder mapping and where they are based?
- Were the limitations and obstacles to the participation of the most vulnerable people considered?
- If there are indigenous peoples affected by business activities, has the company obtained the free consent of the community?

4. ENGAGE INCLUSIVELY

- 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**. This includes involving local workers (represented by unions or other worker organizations), small farmers or farmer cooperatives, and other affected community members (e.g., family members of workers, local indigenous communities, etc.) Ensure the participation of the most vulnerable groups, including indigenous peoples and other key stakeholders, to help ensure that the perspectives of affected people are appropriately collected, in spaces where they feel comfortable and where they can speak openly and by interviewers they can trust (i.e., interviewers from outside the company).
- b. **Consider gender in data collection and participation:** Participation must be inclusive and sensitive to gender. Companies must make special efforts to engage with women separately in order to capture the specific and differentiated impact they face, and develop measures and solutions that work for their situation.

SAMPLE QUESTIONS

- Was there participation from a wide range of stakeholders including rights holders who oppose the project and more vulnerable groups?
- Was there significant participation of the people directly affected by the company?
- What were the criteria used to select the participants, and who selected them?
- In case communities do not want to participate in company-led processes, has the company considered community-led processes (if they exist)?
- Was there significant participation of women in the consultation processes?
- Was there an intention to understand the specific impacts on women?
- Has data about participation been compiled and disaggregated by gender and other intersecting factors (age, disabilities, ethnic group, etc.) to ensure balanced participation of the various groups and sub-groups?

WHAT'S NEXT?

We understand that rights holder engagement is not an easy task. It's challenging to know when to engage, with whom, and on what. But keep in mind the following advice:

- **Engaging takes time!** Companies and international organizations may move at a different pace than individuals and communities. Companies are operating on timeframes that are dictated by financial and commercial pressure, while communities have different imperatives (they have their own activities and responsibilities), and may need more time to be ready to participate actively. It's important to take the time to prepare adequately and to engage so that the participation is meaningful and integrates the criteria mentioned above.
 - Take time to prepare a clear engagement plan which specifies the purposes, the timing, the opportunities; this must be shared with rights holders.
 - Take time to identify all affected people to ensure inclusive participation.
 - Take time to train participants and transfer the information so that it is an informed participation.
- **It requires good faith and commitment!** In order to ensure it's not a "check-box" exercise, it's important to have an intention to integrate the results into a company's processes.
 - The engagement process will uncover important issues that must be addressed. Actions must be implemented to respond to the problems identified in the queries so that it is not a data extraction process without results.
- **It requires an open mind!** Keep in mind that it's impossible to know everything ahead of time. It's imperative to learn from experiences.
 - Connect with organizations or people who have this information or knowledge about the communities, their functioning, the various groups, and so on.
 - Always try to improve so that consultations are facilitated, which allow a real exchange, the identification of problems but also the construction of solutions.
 - Very innovative solutions that respond to real problems can come out of consultations if people listen carefully and with the intention of understanding.

And now... get started with the right intention!

CREDITS

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COVER: Many pineapple workers spend long hours in fields treated with hazardous chemicals. *Photo: Oxfam*



OXFAM

HEADQUARTERS

77 NORTH WASHINGTON STREET, SUITE 500
BOSTON, MA 02114
(800) 776-9326

POLICY & ADVOCACY

1101 17TH STREET NW, SUITE 1300
WASHINGTON, DC 20036-4710
(202) 496-1180
info@oxfamamerica.org
oxfamamerica.org

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