

Gender and Development Network (GADN) Women's Economic Justice Group

Submission to the Review of the UK National Action Plan on Business and Human Rights

July 2015

Why the UK National Action Plan on Business and Human Rights must integrate and prioritise gender equality and women's human rights

Executive Summary

Violations of women's and girls' human rights caused by entrenched gender-based discrimination occur in every country in the world, cutting across economic, social, environmental, political and cultural spheres, from local to global levels. As such, business activities and operations, as well as the trade and investment policies that facilitate them, create heightened risks to women's rights and impact upon women in gender-specific ways, whether as workers, community members or human rights defenders. Women living in developing countries who are poor are particularly at risk to adverse impacts of business activities. These risks and impacts are enhanced further still when gender intersects with other forms of identity-based discrimination, such as age, ethnicity, caste, sexual orientation, and migrant and HIV and AIDS status.

The review of the UK's National Action Plan (NAP) for implementing the UN Guiding Principles on Business and Human Rights (UNGPs)¹ offers a critical opportunity for the UK Government to fully integrate and prioritise gender equality and women's rights to reflect the prevailing context of gender inequality, which is largely missing from its current NAP. The NAP should serve as a framework to significantly strengthen policy coherence between government commitments on women's rights, the business and human rights agenda, and its rapidly expanding focus on promoting the role of the private sector in development.

Vitaly, it would help ensure that the UK companies operating and sourcing from overseas, as well as the wider trade and investment environment, go beyond 'do no harm' to actively contribute towards the fulfilment of women's human rights. This requires strong regulatory frameworks, combined with gender sensitive human rights due diligence, and steps to ensure the increased barriers women face in accessing justice are addressed.

This opportunity should not be missed. Not only is urgent further action needed to end women's rights violations linked to corporate practices, but businesses are demanding

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specific, coherent and clear regulatory frameworks and guidelines from governments on their corporate responsibility to respect human rights in order to ensure a more level playing field.

This paper by the GADN's Women's Economic Justice Group (WEJ), endorsed by the CORE Coalition, details how women are particularly at risk of corporate related human rights violations and face additional barriers to accessing remedy. It offers recommendations to the UK Government for strengthening the revised NAP in order to help urgently redress these issues.

Recommendations for the revised UK National Action Plan

The UK Government has an important role to play in both protecting and promoting women's human rights in relation to the activities of UK based companies, as well as through its trade and investment deals and policies. In this regard, the GADN WEJ Group, the Latin American Mining Monitoring Programme and ABColombia call on the UK Government to consider the following recommendations:

The State Duty to Protect

In upholding its duty to protect human rights, the UK Government should:

- **Cite CEDAW or the Beijing Declaration and Platform for Action as key human rights frameworks in the NAP's introductory section**, in order to ground the revised NAP in an explicit recognition of the heightened, gender-specific risks and impacts for women's human rights from business activities, whether as workers, community members or human rights defenders. This should include recognition of how these risks intersect with other forms of identity-based discrimination.
- **Use the opportunity afforded by the transposition of the EU Non-Financial Reporting Directive to guide and encourage all large and listed companies to undertake gender-sensitive human rights due diligence on global supply chains** and to take steps to identify, prevent and mitigate rights violations affecting women, including how access to remedy has been ensured.
- **Company reports should be available in the public domain, with accessibility ensured for affected women workers and/or community members. In cases of resettlement and land loss, this should include reporting on the development outcomes of meaningful participation of women at all stages and fair, gender equitable compensation.** Reports should include gender disaggregated data and steps companies are taking to mitigate and redress rights infringements.
- **Require that businesses in receipt of public funds**, including financing and investment facilities supported by DFID and export credit agencies, banks and pension

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funds, or involved in government procurement, **undertake mandatory gender sensitive human rights due diligence. Such companies should also be required to demonstrate how they will positively contribute to the fulfilment of women's human rights**, including the creation of decent jobs for women, and, where relevant, and restitution of their livelihoods/income where they are lost as a result of company activities in land intensive sectors, as a condition of funding.ⁱⁱ

- **Work with host governments and companies to include mandatory provisions for gender-sensitive benefit-sharingⁱⁱⁱ** with affected communities in national mining legislation and Business and Human Rights Action Plans.
- **Work with host governments and companies to invest the revenues from oil, gas and minerals in closing the gender gap which these sectors have contributed to creating in the first place**, particularly in relation to employment, livelihoods, and women's political leadership
- Ensure **effective implementation of the Modern Day Slavery Act** ensuring that companies are aware of women's increased risk of slavery, forced or endentured labour, and disaggregate their reporting by gender.
- **Take a gendered approach to the implementation of the G7 commitments on global supply chains**, which reaffirms the important role for G7 countries' in promoting labour rights and decent work, including by increasing transparency and identification and prevention of human rights risks, and strengthening redress mechanisms, in line with the UNGPs.^{iv}
- **Ensure issues around gender and women's rights are foregrounded in sensitisation activities for diplomatic missions.** Make this a priority area to address within the partnerships being developed by the UK Government with other countries on implementing the UNGPs, particularly in post-conflict or fragile contexts.
- **Reinstitute funding to the ILO and provide technical and financial support to labour ministries and institutions in developing countries** to support their enforcement of labour laws and standards, with an emphasis on promoting women's right to decent work and eradicating all forms of gender-based discrimination. Support the proposed ILO Convention on gender-based violence in the workplace.
- **Ensure all FCO-funded programming to support the implementation of UNGPs takes a gendered approach and addresses women's rights.** This should include applying and reporting against the OECD Gender Equality Policy Marker^v and forthcoming OECD DAC (Development Assistance Committee) Violence against Women and Girls (VAWG) code.^{vi}
- **Ensure that agreements facilitating overseas investment by UK companies incorporate the business responsibility to respect human rights, including gender-sensitive human rights due diligence**, and do not undermine the host country's ability to meet its international human rights obligations by, for instance, weakening environmental and social regulations imposed on foreign investors.

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- **Introduce a mandatory minimum quota of 30% of for women on boards** of FTSE 350 companies and as executive directors.
- **Constructively engage with** the ongoing work of the open-ended intergovernmental working group to **work towards developing a Binding Treaty on Business and Human Rights, which should guarantee and ensure that women’s human rights are fulfilled.**
- Design a **gender-sensitive, time-bound monitoring framework for the implementation of the NAP.** Progress towards set outcomes should be regularly assessed by the cross departmental steering group (FCO, DFID, the Department for Business & Skills, and the Ministry of Justice), ensuring gender issues are addressed.

The Corporate Responsibility to Protect

In promoting the corporate responsibility to respect human rights, the UK Government should:

- **Increase sensitisation for companies** on the particular risks to women workers, farmers, community members and human rights defenders, particularly women from marginalised groups and in contexts of conflict and fragility, partially **by updating its Business and Human Rights Toolkit.**^{vii}
- **Work with companies, trade unions and civil society to develop sector-specific guidance on human rights risks and impacts for women, and on undertaking gender-sensitive human rights due diligence** (see text box above).
- **Support sector-wide initiatives on the payment of living wages in global supply chains,** along with upholding respect for collective bargaining rights, as a means to maximise collective corporate leverage in mitigating and redressing rights infringements in this area, including the revision of purchasing models to reduce pressure on wages and reverse the trend towards informalisation of supply chains.^{viii}
- **Companies should demonstrate gender-sensitive human rights due diligence as a condition for any state investment or support, including for export activities and overseas development.** A key component of this should be an analysis of their impact on women’s rights which should be included in social and environmental impact studies and reported on under the human rights section of the Companies Act.

Access to Remedy

In promoting access to effective remedy for women impacted by the activities of UK business in developing countries, the UK Government should:

- **Explicitly recognise the barriers women face in accessing remedy in the revised NAP.**

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- Urgently **review and redress the barriers to accessing justice in UK courts. Provide adequate legal, technical and financial resources to ensure women's access to effective judicial and non-judicial mechanisms**; carry out civil and criminal investigations of companies where human rights allegations have been made, sanctioning them where appropriate.
 - **Strengthen mechanisms to support and protect women human rights defenders, based on the EU Guidelines on human rights defenders**; ensure UK companies respect and promote the rights of women workers' to organise and engage in collective bargaining; promote the protection of civil society space for all.
 - **Ensure that state-based judicial and non-judicial mechanisms – notably the UK's National Contact Point (NCP) for the OECD Guidelines on Multinational Corporations - disaggregate and highlight cases that concern violations of women's rights.** As many impacts on women will not be reported, the NCP and other State based remedial mechanisms should aim to make gendered impacts a cross-cutting issue when investigating and dealing with cases.
 - **Encourage and guide UK companies to review their existing grievance procedures to ensure they are gender-sensitive**, fair, transparent, understandable, well-publicised and accessible by all.
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This submission was written by Malou Schueller (Progressio) and Rachel Noble (Action Aid, UK) on behalf of the GADN Women's Economic Justice Group.

About the WEJ working group

The Women's Economic Justice group [<http://gadnetwork.org/economic-justice/>] is part of the UK Gender and Development Network. The group's mandate is to develop and promote policy recommendations towards the achievement of women's economic rights and justice. Member organisations of the group which have contributed to this submission are Progressio, ActionAid UK and Christian Aid. The views expressed in this paper do not necessarily represent the views of all the members of the group.

This submission is also endorsed by the CORE Coalition. CORE members which have contributed are: ABColombia. Other organizations which have contributed are the Latin American Mining Monitoring Programme (LAMMP).

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ⁱ HM Government (2013) 'Good Business: Implementing the Guiding Principles on Business and Human Rights' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf

ⁱⁱ This would be in line with the principle of 'additionality.' One of the requirements for using public resources to support the private sector is that they should contribute to development outcomes. This is also supported by the UN Guiding Principles on Business and Human Rights, which require states to take additional steps to protect against human rights abuses by business enterprises that [...] receive substantial support and services from state agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

ⁱⁱⁱ Companies could, for example, dedicate a certain percentage of shares to community development and women's economic empowerment, with an emphasis on sustainable livelihoods and enterprise development and support, in cases where access to land/livelihoods is lost.

^{iv} Leaders Declaration G7 Summit, Germany (7–8 June 2015) see: https://www.bundesregierung.de/Content/EN/_Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?_blob=publicationFile&v=3

^v The OECD DAC Gender Equality Marker (GEM) is intended to measure the extent to which program budgets contribute to advance gender equality and women's empowerment or reduce discrimination and inequalities based on sex. In order to receive a "principal" or "significant" rating, gender equality must be explicitly promoted in activity documentation through specific measures which:

a) Reduce social, economic or political power inequalities between women and men, girls and boys, ensure that women benefit equally with men from the activity, or compensate for past discrimination; or b) Develop or strengthen gender equality or anti-discrimination policies, legislation or institutions, see <http://www.oecd.org/investment/stats/37461060.pdf> for more information.

^{vi} See Creditor Reporting System (CRS) Code 15180, pages 1 & 9, stating that a new VAWG code will be introduced from 2016.

<http://www.oecd.org/dac/stats/documentupload/Creditor%20Reporting%20System%20CRS%20Aid%20Activities%20database%202017%20reporting%20on%202016%20flows.pdf>

^{vii} See: <https://www.gov.uk/government/publications/business-and-human-rights-toolkit>

^{viii} For example, see Living Wages in Global Supply Chains – A New Agenda for Business