

**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)<sup>1</sup> 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 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.

For our key recommendations, please turn to page 16.

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

### UK Government commitments on women's rights

The UK Government has made a strong commitment to promote gender equality and women's rights. The Foreign and Commonwealth Office (FCO) states: 'Women's rights are a priority for the FCO. We work in many countries around the world, and at all relevant multilateral bodies to promote and protect them'.<sup>2</sup>

Similarly, in its Strategic Vision for Girls and Women, the Department for International Development (DFID) states that it 'will work with bilateral and multilateral partners, [...], and increasingly with the private sector, to improve the international response to supporting gender equality and women's empowerment'.<sup>3</sup> It also commits to promoting a more enabling environment, including 'improved legal frameworks that protect women's and girls' rights'. This is further underlined by the 2014 International Development (Gender Equality) Act, which states that development assistance should aim to 'contribute to reducing poverty in a way which is likely to contribute to reducing inequality between persons of different gender'.<sup>4</sup> This statement is significant given how much UK aid is now being channeled through the private sector, including through loans, equity investments, and partnerships with multinational companies (discussed further below).<sup>5</sup>

### Strengthening policy coherence

As the first government to draft a NAP on implementing the UNGPs in 2013, the UK has also demonstrated a commitment to seeking to uphold the state duty to protect human rights and promoting the business responsibility to respect human rights – the first two Pillars of the Guiding Principles.

The GADN WEJ Group welcomes the UK Government's pledge in the existing NAP to 'promote new project activity on raising awareness and tackling the negative impacts of business activity, including on the human rights of groups like indigenous peoples, **women**, [...] by tasking our diplomatic missions in countries where these are concerns'.<sup>6</sup> The UK NAP also calls for business to pay particular attention to groups who may face barriers to participating freely and in an informed way when consulting people who may be affected by a project, including women and girls. Furthermore, the UK Government expects companies

to 'adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks, and commit to monitoring and evaluating implementation.'<sup>7</sup> Relatedly, the UK recently amended the Modern Slavery Bill (passed into law 26 March 2015) to require UK companies to report on the steps they have taken to ensure that their supply chains are slavery free.<sup>8</sup>

However, the current UK NAP lacks a strong gender analysis of the specific human rights risks and impacts for women<sup>9</sup> - be they workers, community members or human rights defenders - arising from UK business activities. This includes the impacts of companies operating in countries where adherence to global human rights norms and frameworks, including those relating to women's human rights, may be weak. Similarly, the particular challenges women face in accessing remedy are largely overlooked, as are the ways in which all such issues are exacerbated by other intersecting forms of identity-based discrimination. Nor does the NAP set out how the UK Government is addressing these gender-specific human rights risks and impacts, or how companies should seek to tackle them as part of the process of human rights due diligence throughout supply chains.

The review of the UK NAP on business and human rights comes at a crucial time given the growing and deliberate convergence between the UK Government's international development policies and those relating to business, trade and investment. For example, the UK is increasingly focusing on the 'beyond aid' agenda and looking towards the private sector as a key actor for delivering the forthcoming Sustainable Development Goals.<sup>10</sup> Similarly, DFID's new economic development strategic framework<sup>11</sup> places great emphasis on expanding the role of the private sector, including UK-based businesses, in order to foster 'responsible investment'<sup>12</sup> and generation of 'quality jobs' as a means to tackle poverty and promote 'inclusive growth' that benefits girls and women.<sup>13</sup>

Furthermore, in a letter to the lead negotiators of the Post-2015 Sustainable Development Agenda, the UN Working Group on Business and Human Rights stressed the importance of coupling a recognition of the increased role of business within this agenda with adequate accountability and agreed standards, in recognition of the danger that business activities can pose to human rights if not properly regulated.<sup>14</sup>

By integrating and prioritising gender equality and women's human rights within its revised NAP on business and human rights, the UK Government would significantly strengthen policy coherence, while further demonstrating the strength of its commitments to being a global leader in these areas. It would help ensure that UK companies with global supply chains, as well as the UK's wider trade and investment policies, go beyond 'do no harm' to

actively contributing towards the protection, promotion and fulfilment of women's human rights.

## **The impacts of business on women's human rights**

The UNGPs<sup>15</sup> clearly call for 'particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk...with due regard to the different risks that may be faced by women and men'.

State guidance to business enterprises on respecting human rights should 'indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples [and] women', amongst others.<sup>16</sup>

In relation to conflict-affected areas, the UNGPs also expect states to provide 'adequate assistance to business enterprises to assess and address the heightened risk of abuses, paying special attention to both gender-based and sexual violence'.<sup>17</sup> Companies should also use gender-disaggregated data to track the effectiveness of their response to adverse human rights impacts.<sup>18</sup>

### **Pillars 1 and 2: Protect and Respect**

The UNGPs set out the obligations of states under existing international human rights laws and frameworks to protect against human rights violations by non-state actors, including companies (Pillar 1). This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation and adjudication. However, many countries have laws and policies that discriminate against women, or fail to implement regulations due to lack of political will. For example, out of 143 economies, 90% have at least one law restricting economic equality for women,<sup>19</sup> while women remain vastly under-represented in government, corporate and societal decision-making, often rendering their specific issues, concerns and perspectives invisible. This then shapes the context in which business practices are structured.<sup>20</sup>

The responsibility of business to respect human rights (Pillar 2) is partly fulfilled by companies adhering to existing, relevant national laws. It also rests on the expectations society has of business, whereby a company operating with respect for human rights may derive a "social license to operate". The business responsibility has two aspects to it:

companies should avoid causing or contributing to human rights infringements; and they should exercise “due diligence” in order to anticipate, avoid or mitigate the adverse human rights impacts of their activities, including throughout company supply chains and business relationships overseas.

However, **because gender discrimination is so universally entrenched - rendering it largely invisible - there is a high risk that such issues will not be identified unless explicitly addressed within government and corporate policies, including corporate due diligence processes, meaning women’s rights will continue to be violated.**

Business activities impact a range of human rights, all of which have gender-specific risks and impacts. This includes the right to decent work<sup>21</sup> and non-discrimination, safety and security of person, the right to food and an adequate standard of living, health and life, the right to development, a clean environment, as well as civil and political rights - especially for women human rights defenders. Again, these gendered risks and impacts can be further exacerbated where women face additional forms of discrimination based on other aspects of their identity.

Gender considerations should take particular priority in

- sectors and global supply chains in which large numbers of women are employed, such as apparel, electronics, tourism, health and social care, agriculture and fresh cut flowers;
- industries that deeply affect the local economy, environment and access to land and livelihoods, such as mining and extractive companies;
- conflict affected or fragile states, where women’s rights are at increased risk.

Drawing on the first two of these contexts, we explore some of these issues in more detail below. In all of these cases, as well as ‘doing no harm’, business can play a powerful role in promoting women’s economic empowerment within the labour market, protecting and promoting their voice, agency and participation in decision-making, and explicitly challenging gender discrimination.

## Global supply chains and women's right to decent work

While the expansion of global trade has created opportunities for women in developing countries in export-orientated supply chains, these women are particularly exposed to infringements of their human rights. Discriminatory social norms ascribing what is deemed appropriate work for women and the lesser value placed on this work, means they are over-represented in these typically low paid, precarious jobs in which they frequently endure poor working conditions, limited social protection and exposure to violence, with little access to redress. International trade and investment agreements that promote the deregulation of labour markets, particularly in export processing zones, coupled with limited political will and resources for enforcing labour standards, are leading to an erosion of labour rights in many contexts, with women particularly at risk.

- **Women make up approximately 80% of the world's garment workers<sup>22</sup>** and account for most of the work force in export processing zones.<sup>23</sup> The young, poorly educated and migrant status of many of these women intersect with their gender to place them at even greater risk of exploitation.
- Despite 171 countries having ratified the ILO Equal Remuneration Convention of 1951, **women still are paid 10%-30% less than men for work of equal value,<sup>24</sup>** while the global gender gaps in wages and labour market participation are worth some US\$17 trillion every year.<sup>25</sup>
- Long hours, cramped working conditions, exposure to toxic chemicals, poor building safety, denial of leave to attend ante-natal appointments, and low wages that inhibit women's ability to pay for medical treatment and sufficient nutritious food, **impact upon their right to physical and mental health, including sexual and reproductive health.** For example, mass faintings have been documented among garment workers in Cambodia,<sup>26</sup> along with high levels of miscarriage. Short term contracts leave pregnant women at risk of being dismissed, which means demand for abortions is reportedly high.<sup>27</sup> Women working in export factories in Central America and the Caribbean have been subjected to forced pregnancy tests,<sup>28</sup> and even forced sterilization and contraception.<sup>29</sup>
- Demand for cheap and flexible labour along with rapidly fluctuating demand and 'just in time' production models are leading to a proliferation of **outsourcing to smaller**

**informal factories and homeworkers**,<sup>30</sup> where rights and conditions, as well as access to remedy, may be even more negligible.<sup>31</sup>

- According to the ILO, **more than half of the people in forced labour are women and girls** - primarily in commercial sexual exploitation and domestic work<sup>32</sup> but also in textiles and garment supply chains.<sup>33</sup>
- **Women are exposed to high levels of violence, including physical, sexual and psychological abuse.** This may be perpetrated by supervisors, colleagues or private security, as well as while journeying to and from work, in staff accommodation or in slum areas in which women are forced to live because of low pay. According to the ITUC, up to half of women experience unwanted sexual advances or harassment at work,<sup>34</sup> while a study in Mexico found that 46% of women in the formal economy suffer sexual harassment. Around a quarter of these women were dismissed and 40% were forced to leave their jobs.<sup>35</sup>
- **Women's disproportionate unpaid care responsibilities and gaps in social protection**, such as paid parental leave and childcare, create major barriers to women's right to decent work. Investment incentives offered to companies, along with corporate tax avoidance, erode developing countries' domestic tax base of funding for public services and social protection that could promote women's access to decent work.<sup>36</sup>
- **Women workers' freedom to collectively organise to defend their rights** is also undermined by social norms denigrating women's voice and limiting their societal participation, including unpaid care responsibilities, as well as the threat of violence. Trade and investment agreements, including in EPZs, also place limits on union rights.<sup>37</sup>

### **Land-intensive investments**

The commodification of land for private investment and the increased focus on the extractive sector for economic growth in many developing countries also has profound impacts on women's human rights. The expansion of extractive industries and large-scale commercial agriculture frequently result in physical and economic displacement of rural and indigenous communities from their farm land, undermining women's rights to food, health, development and a clean environment, amongst others.



A study of 73,000 concessions in eight tropical forested countries, for example, shows that more than 93% of land handed over by governments to the private sector for mining, logging, oil and gas drilling or large-scale agriculture were found to include land inhabited by indigenous peoples and local communities.<sup>38</sup> The impacts of these operations are not gender neutral. Women make up 70-80% of the world's small scale farmers;<sup>39</sup> most African economies, for example, are agriculture-based and women smallholder farmers produce about 70% of food crops in developing countries.<sup>40</sup> Land and the crops grown on this land are critical to their survival. As a result of women's gender roles and the denial of their formal land titles in many contexts, **women bear a disproportionate share of the social, economic, and environmental risks and costs when land is lost.**

There is also a significant negative correlation between countries that are dependent on extractives and gender inequality, particularly in terms of women's employment and leadership positions. This is likely to result from the extractive sector being susceptible to high capital intensity, male domination, rent seeking and a declining share of manufacturing in national income.<sup>41</sup>

Gendered impacts include:

- **Women are most affected when land or water is polluted or their access to it is lost**, as they are mostly responsible for subsistence activities and providing and caring for their families and communities. This **impacts negatively on women's food security, health and income.**<sup>42</sup>
- **Women rarely participate when access to land, compensation, or benefits are being negotiated** prior to and during extractive and other infrastructure projects, meaning **their priorities are rarely addressed**. In many contexts, women will not speak publicly in the presence of men, and **compensation and other payments are directed to men** on behalf of their families.
- **Access to information is essential for participation** in dialogue, but information is rarely translated into tribal languages, often crucial to indigenous women's participation.
- **Many of the benefits of extractive dependent economies seem to accrue to men.** For example, in *extractive dependent countries*, the average unemployment rate for women is 15% and 8% for men, while the ratio between unemployed female to male

with tertiary education is 4 to 1. In *low extractive dependent countries*, the unemployment rates are 8% for women and 7% for men, and the ratio between unemployed female to male with tertiary education is 1.3 to 1.<sup>43</sup> Generally it is mainly men who benefit from formal employment in the extractive sector.

- **Mining in Africa has a non-reversible, negative effect on women's labour market participation**, as many women shift from agriculture into the service sector but the jobs created are not equal in number to those lost (90,000 as compared to 280,000).<sup>44</sup>
- Men who previously worked the land can be left with no choice but to seek work elsewhere, eroding community and livelihood structures and leaving women in a more vulnerable position. This can include **increased levels of sexual violence against women associated with the militarisation that sometimes accompanies extractives projects**, as well as the influx of male migrant workers. It can also include the rape of women mine workers, along with forced prostitution.<sup>45</sup>
- **In agricultural supply chains, women tend to be in the worst paid and most insecure jobs**, if they get work in the first place. For example, a recent analysis of 24 **large-scale agricultural investments**, which is the **model being promoted by the G8 New Alliance for Food Security and Nutrition**<sup>46</sup>, found a **gender bias in employment in all investments studied**: women constituted only 1.5% of outgrowers and a mere third of agricultural employees.<sup>47</sup>

The points above are confirmed by a World Bank study, which finds that the oil and gas industry exacerbates existing gender inequalities, as women bear the brunt of the risks while men largely capture any local benefits.<sup>48</sup> A major grievance expressed by women was barriers to economic opportunities. The research concludes that many of the perceived gender inequalities of opportunities and risk would be less profound if they were counteracted by efforts to promote women's economic empowerment. But this will only happen with careful, gender-sensitive policies and planning by governments and business.

The human rights risks posed to women by business activities and operations are magnified in situations of crisis or fragility, particularly the extractive industries. Such contexts can disproportionately impact on women's safety and wellbeing due to the displacement of communities, a breakdown in the rule of law, or the presence of authoritarian, highly militarised governments.

### **Pillar III: Access to Remedy**

The UN Guiding Principles set out the responsibility of States and business to provide access to effective remedy (Pillar Three). According to the Principles: 'states should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms';<sup>49</sup> 'provide effective and appropriate non-judicial grievance mechanisms';<sup>50</sup> and finally, 'should consider ways to facilitate access to effective non-State grievance mechanisms for business related human rights abuses.'<sup>51</sup>

The UK's Solicitor General, Robert Buckland QC MP, stated that: 'Redress for the victims of human rights abuses, and the prevention of any future abuse, are the measure by which the effectiveness of the business and human rights agenda will be judged'.<sup>52</sup>

Buckland argues that access to remedy and respect for human rights produces fertile conditions for economic and democratic growth.<sup>53</sup> Access to remedy and respect for human rights encourages effective rule of law, democratic freedoms, good governance and promotion of civil society participation, and land and property rights. The absence of access to remedy has the opposite effect - it leaves workers more susceptible to abuse, drives political instability, creates conflict and, as such, can result in the reduction of investment.

Redress can range from an apology and guarantees that the abuse will not happen again, through to financial compensation and commitments to carry out environmental clean-ups.<sup>54</sup> Although ideally affected workers and communities would be able to access remedy within their home countries, all too often, this is not the case and barriers to accessing justice remain substantial. This highlights the huge power imbalances between global corporations and workers and communities, and women in particular.<sup>55</sup> For example, in the UK, changes to the 2012 Legal Aid, Sentencing and Punishment of Offenders Act have made it much more difficult for affected workers or communities to seek redress in UK courts for rights violations linked to UK-based businesses overseas. Meanwhile, the OECD Guidelines for Multinational Enterprises, the main non-judicial mechanism used by the UK and other OECD countries, has been heavily criticised for failing to provide effective access to remedy.<sup>56</sup>

### **Challenges for women in accessing justice**

The marginalisation of women stemming from deeply entrenched gender-based power asymmetries means that their barriers to accessing justice are further augmented. This is particularly the case for women living in the global South, whether workers, members of affected communities, or human rights defenders.

Gender specific barriers faced by women seeking remedy include:

- **Gender norms denigrating women's leadership and agency, along with their disproportionate unpaid care responsibilities, undermine women's voice, time and freedom of movement to participate in remedial processes.** Women's exclusion from such processes can also give rise to a lack of trust, leading to additional barriers and further social conflict.
- **Women have lower levels of literacy and awareness of rights, laws and mechanisms for redress,** whether judicial or non-judicial, **including how to access them.** Similarly, women are more likely to lack access to expert knowledge or adequate information.
- A lack of gender sensitivity within judicial, non-judicial and corporate based grievance mechanisms, and among the state or corporate actors overseeing them, mean that **women's specific immediate and longer-term concerns and claims are often overlooked.**<sup>57</sup>
- **Financial and livelihood costs of participating in consultations or grievance processes,** and lack of legal aid, **can be particularly prohibitive for women** given their economic marginalisation and care roles.
- **Women within marginalised groups can encounter additional legal** and structural **barriers** in accessing judicial mechanisms, such as migrant women, displaced or indigenous women. For instance, indigenous women frequently only speak their native language.
- **Non-existent or insecure work contracts** can mean that women who pursue redress put their jobs and livelihoods at risk.
- **Threats of gender-based violence perpetrated by business or state actors,** as well as the shame, stigma and a tendency of victim-blaming associated with sexual violence, **can deter women from seeking redress.**
- **Remedy packages arrived at through company-based grievance mechanisms sometimes contain an agreement that a claimant will not pursue or participate in any legal action against the company.**<sup>58</sup> Such waivers bring to question the criteria

of equitability and predictability,<sup>59</sup> 'by rendering the victim's right to redress in the form of a civil judicial action something which a more powerful party can negotiate away.'<sup>60</sup> **This power imbalance is particularly noticeable in cases of gender-based violence.**

### **Women human rights defenders**

Women can face violence, harassment and detention at the hands of state and corporate actors when they stand up to, and seek accountability and remediation for, human rights violations linked to corporate activities or state-supported expansion of land-intensive industries. Women human rights defenders are targeted both because they are women and because they are standing up to powerful actors.<sup>61</sup> The ways in which they are targeted are often gendered in both their nature and in their impacts. For instance the use of sexual violence has repercussions for women's immediate, short and long term physical, sexual and psychological health and well-being.<sup>62</sup> It is vital that governments, including the UK, support and implement coordinated protection mechanisms, in line with the UN Resolution on Women Human Rights Defenders and the EU Guidelines on Human Rights Defenders,<sup>63</sup> to ensure women facing such threats are safeguarded and supported to access redress.

## Conclusion: Going beyond the corporate responsibility to respect

The revision of the NAP presents the UK government with an important opportunity to show global leadership in fully integrating and prioritising women's rights and gender equality within the business and human rights agenda – particularly as the first country to launch a national action plan in this area. Greater policy coherence across these two areas is critical given the increasing emphasis that is being placed on the private sector in delivering development outcomes, including for women, through trade, investment, job creation, and the financing of public private partnerships and multi-lateral funding mechanisms.

Women are half the world's population and should therefore be central to the revised UK NAP, rather than included as part of a long list of marginalised groups. As well as the moral and legal imperative, fulfilling women's human rights is in the interests of both governments and business, in that it is necessary to achieve inclusive growth and sustainable development.<sup>64</sup>

If gender inequality is to be overcome, businesses should be mandated to go beyond mere 'do no harm' approaches, to proactively fulfill women's human rights. A recent initiative undertaken by the UK Government is the introduction of a voluntary 25% target for women on FTSE 100 company boards.<sup>65</sup> Such measures could be further encouraged by offering **preferential treatment to companies that positively discriminate in favour of women**. Such positive discrimination would be in line with General Recommendation No. 28 on the core obligations of States Parties under Article 2 of the Convention on the Elimination of Discrimination against Women (CEDAW). This highlights obligations not to cause discrimination against women through acts or omissions, and to react actively to discrimination against women, whether carried out by the State or private actors.

However, the shortcomings of such voluntary approaches can be seen in the fact that, despite a significant increase in the numbers of women on FTSE 100 boards, just 8.6% of these are executive directors that are part of the executive management team. Ultimately, **any voluntary approach needs to be underpinned by regulatory frameworks that are aligned with the UK government's international legal obligations to protect women's human rights, including from the harmful activities of corporations**.

### ***Gender-sensitive human rights due diligence – what would it look like?***

Gender sensitive human rights due diligence would be based upon an explicit recognition of the unequal power relations between women and men, whether as workers, community members or human rights defenders, and an understanding of the ways in which these are institutionalised and normalised within social, economic, political and cultural practices and institutions. Gender sensitive due diligence should identify, mitigate and address all forms of gender-based discrimination along with other gender specific human risks and impacts.

This would include:

- Conducting **human rights and gender impact assessments** of existing and planned operations and/or supply chains, taking account of institutionalised forms of gender inequalities (such as the gender pay gap for women workers) and, in the case of land investments, ensuring access to land and water resources for women without discrimination.<sup>66</sup>
- **Developing and implementing detailed gender-sensitive policies, and management and operational plans** in order to mitigate and address the negative social and economic impacts identified.
- **Ensuring women’s ongoing full, equal and meaningful participation** - including local women’s organisations so that their specific concerns and priorities are taken into account, and - in the case of land-related developments - that their **free, prior and informed consent** is obtained before operations begin.<sup>67</sup>
- **Facilitating separate spaces for women, including distinct spaces for women from marginalised groups**, and providing access to information and independent technical advice, especially where there is a legal duty to do so.<sup>68</sup>
- **Transparent reporting undertaken against gender sensitive indicators.**
- **Ensuring women benefit equitably in compensation payments or other forms of restitution**, including fair, adequate compensation to women as prior users of acquired land.<sup>69</sup>
- **Carrying out due diligence prior to resettlement of communities** to ensure that displacement is unavoidable. If it is unavoidable, ensuring that gender considerations are cross-cutting and explicit throughout the process, with women fully and meaningfully involved at all stages. Resettlement should allow women to continue their livelihoods which are often centred in the domestic domain and frequently overlooked.

## 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 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.<sup>70</sup>

- **Work with host governments and companies to include mandatory provisions for gender-sensitive benefit-sharing<sup>71</sup>** 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.<sup>72</sup>
- **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<sup>73</sup> and forthcoming OECD DAC (Development Assistance Committee) Violence against Women and Girls (VAWG) code.<sup>74</sup>

- **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.
- **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**.<sup>75</sup>
- **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.<sup>76</sup>

- **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.**
- **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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- <sup>1</sup> 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf)
- <sup>2</sup> FCO (2015) Human rights and democracy report. Available at: <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014#chapter-vi-equality-and-non-discrimination>
- <sup>3</sup> Department for International Development (2011) 'A new strategic vision for girls and women: stopping poverty before it starts'
- <sup>4</sup> International Development (Gender Equality) Act (2014) <http://www.legislation.gov.uk/ukpga/2014/9/section/1/enacted>
- <sup>5</sup> According to ICAI, DFID spent at least £494m on engagement with alliances, financing and partnerships with UK and foreign businesses during the period 2012-13 to 2014. See: <http://icai.independent.gov.uk/wp-content/uploads/2015/05/ICAI-Business-in-Development-FINAL.pdf>, p.7
- <sup>6</sup> HM Government (2013) 'Good Business: Implementing the Guiding Principles on Business and Human Rights', Chapter 2, Actions planned, paragraph (vi)
- <sup>7</sup> *Ibid.*, chapter 3, Government expectations of business
- <sup>8</sup> See: <https://www.gov.uk/government/news/big-business-to-be-held-to-account-to-keep-supply-chains-slavery-free>
- <sup>9</sup> We acknowledge that men also face specific gender-related issues. However, since the overall statistics for women in all the areas highlighted in this paper are worse than for men, we will focus exclusively on women here.
- <sup>10</sup> Speech by Secretary Justine Greening, 2 July 2015 <https://www.gov.uk/government/speeches/changing-world-changing-aid-where-international-development-needs-to-go-next>
- <sup>11</sup> DFID: Economic Development for Shared Prosperity and Poverty Reduction: A Strategic Framework for International Development. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/276859/Econ-development-strategic-framework\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276859/Econ-development-strategic-framework_.pdf)
- <sup>12</sup> Whether DFID's increased private sector engagement currently furthers development objectives is, however, questionable: A recent report by the Independent Commission for Aid Impact criticised DFID for a lack of strategic oversight of its business engagement activities, '*making the development objectives behind its private sector partnerships unclear.*' As it is women who constitute the majority of the poor, there is therefore an even greater need to place gender equality and women's human rights at the heart of the UK's development policies, including business and human rights policies, so that DFID's strategic purpose, which is to alleviate poverty, can be achieved
- <sup>13</sup> For instance, see also 'UKTI at a glance 2013/2014'. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294367/UKTI\\_at\\_a\\_glance\\_2013\\_14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294367/UKTI_at_a_glance_2013_14.pdf)
- <sup>14</sup> See: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16231&LangID=E>
- <sup>15</sup> Human Rights Council (21 March 2011) 'Guiding Principles on Business and Human Rights: Implementing the United Nations' "Protect, Respect and Remedy" Framework,' A/HRC/17/31 ,General Principles
- <sup>16</sup> *Ibid.*, Principle 3 Commentary
- <sup>17</sup> *Ibid.*, Principle 7 (b)
- <sup>18</sup> *Ibid.*, Principle 20 Commentary
- <sup>19</sup> The World Bank (2013) Women, Business and the Law 2014: Removing Restrictions to enhance Gender Equality [http://wbl.worldbank.org/~/\\_media/FPdKM/WBI/documents/Reports/2014/Women-Business-and-the-law-2014-Key-Findings.pdf](http://wbl.worldbank.org/~/_media/FPdKM/WBI/documents/Reports/2014/Women-Business-and-the-law-2014-Key-Findings.pdf)
- <sup>20</sup> Anna Marston (2014) *Women, business and human rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice*
- <sup>21</sup> For the purpose of this briefing, we draw upon the ILO definition of decent work which covers promoting job creation and sustainable livelihoods; guaranteeing rights at work; extending social protection; and promoting social dialogue. See: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>
- <sup>22</sup> Nanda, P. et al. (2013) Advancing women, changing lives: An evaluation of Gap inc.'s P.A.c.e. program, Washington dc, international centre for Research on Women [http://www.icrw.org/files/publications/Pace\\_Report\\_PRINT\\_singles\\_lo.pdf](http://www.icrw.org/files/publications/Pace_Report_PRINT_singles_lo.pdf)
- <sup>23</sup> Marston (2014) Women, Business and Human Rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice
- <sup>24</sup> The World Bank Group (2014) Gender at Work: A companion to the World development Report on Jobs [http://www.worldbank.org/content/dam/Worldbank/event/Gender/GenderAtWork\\_web2.pdf](http://www.worldbank.org/content/dam/Worldbank/event/Gender/GenderAtWork_web2.pdf) , p.2
- <sup>25</sup> ActionAid (2015) Close the gap! The cost of inequality in women's work [http://www.actionaid.org.uk/sites/default/files/publications/womens\\_rights\\_on-line\\_version\\_2.1.pdf](http://www.actionaid.org.uk/sites/default/files/publications/womens_rights_on-line_version_2.1.pdf)
- <sup>26</sup> Labour Behind The Label - 'New Research shows clothing factory workers seriously malnourished' <http://www.labourbehindthelabel.org/news/item/1179-new-research-shows-clothing-factory-workers-seriously-malnourished>
- <sup>27</sup> ActionAid (2015) Fearless: Standing with women and girls to end violence [http://www.actionaid.org.uk/sites/default/files/publications/fearless-standing-with-women-and-girls-to-end-violence\\_actionaiduk.pdf](http://www.actionaid.org.uk/sites/default/files/publications/fearless-standing-with-women-and-girls-to-end-violence_actionaiduk.pdf) p. 20
- <sup>28</sup> See: <http://www.eiris.org/files/research%20publications/CoreLabourStandardsReportDec09.pdf>
- <sup>29</sup> Marston (2014) Women, Business and Human Rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice
- <sup>30</sup> *Ibid.*
- <sup>31</sup> Rachel Noble, ActionAidUK (2014) In-country research, Cambodia (unpublished)
- <sup>32</sup> See: [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm)
- <sup>33</sup> See: <http://www.somo.nl/news-en/flawed-fabric-the-abuse-of-girls-and-women-workers-in-the-south-indian-textiles-industry>
- <sup>34</sup> ITUC (2014) *Stop gender based violence at work! Support an ILO convention!* Available at: [http://www.ituc-csi.org/IMG/pdf/stop\\_gender\\_based\\_violence\\_at\\_work\\_en\\_final.pdf](http://www.ituc-csi.org/IMG/pdf/stop_gender_based_violence_at_work_en_final.pdf)
- <sup>35</sup> EIRIS (2009) <http://www.eiris.org/files/research%20publications/CoreLabourStandardsReportDec09.pdf>
- <sup>36</sup> Christian Aid (July 2014) *Taxing Men and Women: Why gender is crucial for a fair tax system.* See <http://www.taxjustice.net/2014/07/31/taxing-men-women-new-report-gender-tax-justice/>
- <sup>37</sup> Anna Marston (2014) *Women, business and human rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice*
- <sup>38</sup> Communities and Counterparties: Preliminary Review of Concessions and conflict in Emerging and Frontier Markets, available at <http://www.rightsandresources.org/publication/communities-as-counterparties-preliminary-review-of-concessions-and-conflict-in-emerging-and-frontier-market-concessions/>
- <sup>39</sup> Human Rights Council (2012) 'Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 'A/67/304

<sup>40</sup> FAO, Focus on Women and Food Security. FAO, <http://www.fao.org/focus/e/women/sustin-e.htm>

<sup>41</sup> See: <http://www.undp.org/content/undp/en/home/blog/2015/7/28/The-gender-gap-in-extractive-dependent-countries/>

<sup>42</sup> Zimbabwe Environmental Law Association (2011) Extractive Industries Policy and Legal Handbook. Analysis of the Key Issues in Zimbabwe's Mining Sector. Case Study of the Plight of the Marange and Mutoko Communities. Zimbabwe Environmental Law Association (2012). Mining within Zimbabwe's Great Dyke: Extent, Impacts and Opportunities

<sup>43</sup> See: <http://www.undp.org/content/undp/en/home/blog/2015/7/28/The-gender-gap-in-extractive-dependent-countries/>

<sup>44</sup> Kotsadam, A. and Tolonen, A. (2013) African Mining, Gender and Local Employment

<sup>45</sup> Additional impacts are discussed under the Access to Justice Section below

<sup>46</sup> Despite the fact that women comprise the majority of farmers in Africa, they feature little in New Alliance documents.

<sup>47</sup> In some cases, the remuneration they received was so low that it was difficult to say that their employment had a positive impact on their lives.<sup>47</sup> Women are also predominantly employed in very poor working conditions in agribusiness sectors such as the flower industry in Colombia.<sup>47</sup>

<sup>48</sup> World Bank (2013) Extracting Lessons on Gender in the Oil and Gas Sector, see <https://openknowledge.worldbank.org/handle/10986/16299>

<sup>49</sup> Human Rights Council (21 March 2011) 'Guiding Principles on Business and Human Rights: Implementing the United Nations' "Protect, Respect and Remedy" Framework,' A/HRC/17/31, Principle 26

<sup>50</sup> *Ibid.*, Principle 27

<sup>51</sup> *Ibid.*, Principle 28

<sup>52</sup> On Human Rights day Solicitor General Robert Buckland QC MP delivered a speech on business and human rights at the Law Society Conference

<sup>53</sup> *Ibid.*

<sup>54</sup> See: <http://corporate-responsibility.org/issues/access-to-justice/>

<sup>55</sup> See for example [http://corporate-responsibility.org/wp-content/uploads/2013/09/thirdpillar\\_exec-summary.pdf](http://corporate-responsibility.org/wp-content/uploads/2013/09/thirdpillar_exec-summary.pdf)

<sup>56</sup> OECD Watch (2014) *Assessment of NCP Performance in the 2013-2014 Implementation Cycle*. [http://webcache.googleusercontent.com/search?q=cache:fd-3535O7H0J:oeodwatch.org/publications-en/Publication\\_4090/at\\_download/fullfile+&cd=1&hl=en&ct=clnk&gl=uk](http://webcache.googleusercontent.com/search?q=cache:fd-3535O7H0J:oeodwatch.org/publications-en/Publication_4090/at_download/fullfile+&cd=1&hl=en&ct=clnk&gl=uk)

<sup>57</sup> Sieder, R.; Sierra, MT (2010) *Indigenous Women's Access to Justice in Latin America*, CHR Michelsen Institute

<sup>58</sup> Mining Watch Canada & RAID UK : see case of Porgera mine, Barrick Gold

<sup>59</sup> Human Rights Council (21 March 2011) 'Guiding Principles on Business and Human Rights: Implementing the United Nations' "Protect, Respect and Remedy" Framework,' A/HRC/17/31, Principles 31 (c) and (d) Effectiveness criteria of non-judicial grievance mechanisms

<sup>60</sup> Doyle, CM (2015) *Business and Human Rights: Indigenous Peoples' Experience with Access to Remedy. Case Studies from Africa, Asia and Latin America* Asia Indigenous Peoples Pact (AIPP), ALMÁCIGA and IWGIA, p. 62

<sup>61</sup> Women Human Rights Defenders International Coalition (2012) WHRDIC Global Report Available at: [http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/WHRD\\_IC\\_Global-Report\\_2012.pdf](http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/WHRD_IC_Global-Report_2012.pdf)

<sup>62</sup> *Ibid.*

<sup>63</sup> <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf>

<sup>64</sup> Studies show that development impacts are more sustainable where women have been consulted; women's economic empowerment can be good for community development and their families: women who have access to employment, or have control over household finances, are more likely to invest in education, health, and nutrition for their families than men. Women also have a better track record of starting successful business and repaying micro-credit loans.

<sup>65</sup> Women on Boards (2015) Davis Review Annual Report. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415454/bis-15-134-women-on-boards-2015-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415454/bis-15-134-women-on-boards-2015-report.pdf)

<sup>66</sup> CEDAW Committee, quoted in Dovey, Kathryn (2009) Putting gender on the business and human rights agenda, p. 14

<sup>67</sup> Making this a mandatory requirement would go a step further than the statement in the current NAP that the UK government expects UK companies to 'consult people who may potentially be affected at all states of project design and implementation, in a manner that ensures free and informed participation, and takes into account barriers to effective engagement, paying particular attention to indigenous peoples and other groups, including women and girls.'

<sup>68</sup> For example, ILO Convention 169 requires that indigenous and tribal peoples engage in free, prior and informed participation in policy and development processes that affect them.

<sup>69</sup> To be based on the real value of assets, land, crops, trees and important resources over their productive lifespan and included in company compensation frameworks and national policies

<sup>70</sup> 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.

<sup>71</sup> 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.

<sup>72</sup> 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](https://www.bundesregierung.de/Content/EN/Anlagen/G7/2015-06-08-g7-abschluss-eng_en.pdf?__blob=publicationFile&v=3)

<sup>73</sup> 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.

<sup>74</sup> 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>

<sup>75</sup> See: <https://www.gov.uk/government/publications/business-and-human-rights-toolkit>

<sup>76</sup> For example, see Living Wages in Global Supply Chains – A New Agenda for Business