

Engendering Business and Human Rights

Applying a Gender Lens to
the UN Guiding Principles
on Business and Human
Rights and Binding Treaty
Negotiations

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Salt
BUSINESS NETWORK

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Cover: Indigenous Woman participates in the development of a CEDAW shadow report coordinated by the Bolivian Indigenous Woman's Alliance - Bolivia Climate Change Platform/Sebastián Ochoa

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List of acronyms

BIT – Bilateral investment treaty
CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women
CHRB – Corporate Human Rights Benchmarks
CSW – Commission on the Status of Women
DTA – Double taxation agreement
EPA – Economic partnership agreement
EU – European Union
GBV – Gender-based violence
HRD – Human rights defender
HRDD – Human rights due diligence
ILO – International Labour Organization
IMF – International Monetary Fund
IHRL – International human rights law
HRDD – Mandatory Human Rights Due Diligence
MNE – Multinational Enterprise
NAPs – National Action Plans on Business and Human Rights
NGO – Non-governmental organisation
OECD – Organisation for Economic Co-operation and Development
OHCHR – United Nations Office of the High Commissioner for Human Rights
PPP – Public-private partnership
SAPs – Structural Adjustment Programmes
SDGs – Sustainable Development Goals
SME – Micro, small and medium-sized enterprises
TNC – Transnational corporation
UNGPs – United Nations Guiding Principles on Business and Human Rights
UNWG – United Nations Working Group on Business and Human Rights
UN – United Nations
WEPs – Women's Empowerment Principles
WHRD – Women's human rights defender

Foreword

The current economic system has failed to deliver development for both people and planet. We find ourselves in the unwanted position where our choices to pursue economic growth have been at the expense of the Earth's finite natural resources. It has left a negative input on nature, and left millions of human beings behind.

The next 20 to 50 years have to be about creating new models and alternatives that place human and planetary wellbeing at the heart of development approaches and solutions. The biggest single social group who have borne the brunt of a failed - or at the very least limited - economic system, devastating climate impact and social exclusion have been women.

This report is a good read and provides opportunities to challenge broader issues around structural and root causes. I hope that you find it inspiring and brave.



Amanda Khozi Mukwashi

Chief Executive, Christian Aid

Executive summary

Christian Aid has a vision: a world free from poverty. To achieve this, we are committed to exposing the scandal of poverty, helping in practical ways to root it out from the world, and to challenging and changing the systems that favour the rich and powerful over the poor and marginalised. As an international development NGO, Christian Aid campaigns internationally, regionally and nationally on the root causes of global poverty. These include key issues of our time, such as climate change, economic justice, peacebuilding and gender inequalities.

The role and responsibility of the private sector, and especially the largest and most powerful transnational corporations (TNCs), is critical in achieving the Sustainable Development Goals (SDGs) as part of the 2030 Agenda. Just as crucial is the need for this private-sector role to be coherent with human rights law and the principles that underpin the SDGs - including the imperatives to 'leave no-one behind' and 'reach the furthest behind first'.

All states have their collective and specific responsibilities not only for financing human rights obligations and the SDGs, but for ensuring that SDG financing is being mobilised according to the Addis Ababa Action Agenda (AAAA). Agreed in 2015, it explicitly refers to business and human rights¹ as a way of aligning private finance with sustainability.

This report provides a thorough gender analysis of the UN Guiding Principles on Business and Human Rights (UNGPs), as well as international human rights law, and offers five overarching recommendations.

1. **All binding and voluntary rules related to business and human rights must have extra-territorial reach.**

UNGP 13(b) states that corporations have an impact on human rights through their direct and indirect operations and their supply chains – their human rights impacts are already extra-territorial in their effects. This provision goes beyond legal compliance. Rather, corporate practice and policy should seek to respect all human rights, even where this goes beyond current laws or requirements.

Principle 13(b) states that the responsibility to respect human rights requires businesses to “[s]eek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.² **We recommend taking measures to guarantee that corporations abide by all international human rights law, in particular the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), even when domestic laws allow a lower threshold.**

We recommend that the UN Working Group creates Gender Guidance to the UNGPs, demanding measures to guarantee that all business and human rights rules are applied extra-territorially.

- 2. Remedies must be made available to women and other marginalised individuals, regardless of a corporation's ability to use its influence to effect change.** Under Principle 19 of the UNGPs, companies are expected to address any adverse human rights impacts that are directly linked to their business by using leverage. 'Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm. If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it.' The concept of leverage reinforces the view that a conglomerate can be treated as a single entity under the UNGPs framework. It can be a basis for resolving abusive business practices, including abuses of women's rights, from a business and human rights perspective.

We recommend that the Gender Guidance to the UNGPs should demand measures for the effective implementation of Principle 19. This should guarantee that women and other individuals have effective access to adequate remedies, even where corporations lack leverage to influence this.

- 3. For the purposes of international human rights law, corporations must be treated as single entities.** Principle 23 provides for this, even where laws apply on a separate legal entity basis. This changes how we analyse questions of responsibility and effective decision-making levels.

UK case law shows how human rights claims can be brought against the corporate headquarters when its effective control can be reasonably demonstrated. Unlike corporate rules, human rights principles do not treat corporations as separate entities. Principle 23 states that 'all business enterprises have the same responsibility to respect human rights wherever they operate.' This responsibility extends to business relationships involving financing, supply chains and joint ventures, among others, while recognising that companies may have different degrees of leverage in such situations.

We recommend that the Gender Guidance to the UNGPs should demand measures to guarantee the effective implementation of Principle 23, reinforcing the position that corporations are single entities.

4. Tax dodging and related abuses must be regulated as direct infringements of women's human rights.

We believe that the activities of TNCs can have particularly negative impacts on women's human rights. When corporations rely on cheap labour, and pay less in tax or social security costs, they are abusing women's rights by paying lower wages and reducing the revenue available to the state.

The UNGPs extend responsibility to those who facilitate or assist in human rights abuses – which is especially relevant for a TNC's financiers, bankers, lawyers, accountants and other service providers. For example: 'The human rights impacts of those who advise and facilitate corporate tax abuse should equally be assessed and publicly reported' (UNGP 19 and 23). Additionally, Kate Donald and Rachel Moussié argue that '[c]orporations... rely on women's cheap labor within global supply chains to increase their profits, while avoiding taxes and social security benefits that could pay for public services and support unpaid care work.'³

We recommend that the Gender Guidance should require states to identify and regulate other non-state-mediated or direct impacts on women's rights, such as tax dodging and abuse.

- 5. All state and non-state actors must support the development and guarantee the ratification and implementation of the legally binding Treaty on Business and Human Rights.** Finally, we believe the UNGPs are not enough. We also need a UN Binding Treaty on Business and Human Rights to create a stronger legal framework that can help to regulate issues such as land use and rights, environmental impacts, equitable access to remedial mechanisms, and equal representation in the workforce. **We recommend that states support, adopt and provide for the proper implementation of a legally binding Treaty on Business and Human Rights. This should not lock in standards lower than those in the UNGPs, and should use definitions consistent with the UNGPs' terminology. We also recommend that the treaty takes account of the gendered dimensions of corporate practices: it should incorporate the Gender Guidance to the UNGPs and/or recognise the guidance as legally binding.**

In this policy report, we examine how business practices impact women's rights directly, including their influence on discrimination and gender-based violence. We also consider their indirect impact - for example, the consequences of tax evasion and avoidance. We suggest how the UN Business and Human Rights framework can be better applied to uphold women's rights and provide remedies for human rights violations.

In addition to the overarching recommendations above, we have used case studies to exemplify and build our recommendations as they relate to each theme. All our recommendations mention the specific UNGPs, how these might be related to the upcoming UN Gender Guidance, and how these point to the need for a legally binding treaty.

We believe that the UN Business and Human Rights Framework and its implementation mechanisms must respond better to the negative impacts of business on the rights of women and marginalised genders. Businesses, particularly transnational corporations, must bring human rights to bear and must be held to account under international human rights law.

This report is the result of a desk-based review of Christian Aid's strategic partners' work and other expert materials, performed between November 2018 and March 2019.

Introduction

Gender matters for business and human rights

Irresponsible corporate practices pose serious human rights risks. Often, they have impacts which affect people differently because of their gender, and make the inequalities that they experience even greater.

In this policy report, we explore how the United Nations Guiding Principles (UNGPs) on Business and Human Rights, and related international human rights norms, can be better leveraged to tackle these impacts.

In addition, we try to understand the gendered impacts of a possible UN Binding Treaty on Business and Human Rights.

We start from Christian Aid's own definition of gender inequality:

'Gender inequality is primarily an issue of unequal power relations – of inequitable relationships. It violates human rights, constrains choice and agency, and negatively impacts upon people's ability to participate in, contribute to and benefit from development.'

'We must create just and equitable relationships to achieve equitable, sustainable, resilient and thriving societies.'

When considering the gendered dimensions of business practices, we do not see the private sector as a monolith. Private-sector actors range from micro, small, and medium-sized enterprises (SMEs) to transnational corporations (TNCs).⁴ As we will see, the private sector *can* set strong and inspirational examples: on the economic inclusion and empowerment of women, for instance.

This report focuses on the role of multilateral bodies in enhancing corporate accountability. It also touches on the role of the private sector - in particular TNCs - the state and supranational institutions.

This is because our greatest concerns are about the impact of transnational corporations on the lives of women. The negative impact of business activities on women's human rights - and the need for a specific lens of analysis - is increasingly recognised and understood.⁵ Calls for such an analysis gathered strength after the Rana Plaza disaster in 2013, one of the largest industrial accidents in history. The disaster led to the deaths of 1,134 workers, most of whom were young women;⁶ a further 2,500 were injured. The gender components of other human rights abuses are equally striking. In 2016, at Marikana in South Africa, 34 striking workers from

the Lonmin mining company were shot dead by the police. Those deaths had a wider dimension beyond the immediate personal tragedy. Joseph Mathunjwa, the president of the Association of Mineworkers and Construction Union,⁷ states that:

'one salary in the mining sector actually represents between five and 10 livelihoods of spouses and family members dependent on said salary.'

When we confront some of the human rights abuses by transnational corporations, it can seem as if we live in times when economic growth trumps all moral justifications.

This can be seen in the low wages earned by female garment workers in Bangladesh, labouring in low-paid and unsafe conditions to maximise the profits of global clothing brands.

The profit motive continues to drive modern capitalist methods of production – but it is not an adequate moral and ethical basis for a society. The current economic system is based on limited state involvement and deregulated markets. This is the outcome of an individualist approach to policy making and implementation, controlled by an elite that is disconnected from most people's reality.⁸ Under the Washington Consensus and post-Washington Consensus, growth and macroeconomic stability are seen as goals in themselves, overriding concerns for social and economic rights. This sets those systems in direct contradiction with human rights and the ethics that underpin them.⁹

Pervasive social and economic inequalities - of race, caste, gender and class - are inevitable in our existing economic system. There may be welfare systems in place, but these rarely challenge the structures responsible for unequal power dynamics.¹⁰ Poverty is a symptom of this economic system, in which the impoverished are personally responsible for resolving their condition within a market economy. Women and non-conforming individuals¹¹ are hit hardest by the system's negative effects.¹² The structural adjustment plans that were characteristic of the 1980s and 1990s have had "significant repercussions on many aspects of daily life and these have been gendered".¹³

Christian Aid believes we must ensure that international human rights law comes before the *lex mercatoria* of regulations on tax, trade and investment. We must also ensure that implementation models and standards are not gender-blind.

In calling for views on the gender lens in the relationship between human rights and business enterprises, the UN's working group stated:¹⁴

'Women experience business-related human rights abuses in unique ways and are often affected disproportionately.'

Women also face multiple forms of discrimination and experience additional barriers in seeking access to effective remedies for business-related human rights abuses.'

The often-overlooked burden of care work, typically performed by women and girls, is one of the factors that differentiates their experience from that of men and boys. The absence of economic and social rights means that the state does not provide women with sufficient public services or social protection for them to make economic decisions, or choices about pursuing a career.

The issue of unpaid care work opens up the entire dimension of gender-differentiated economic and social rights. Here, we consider not only the social norms responsible for keeping women trapped in poverty, but also the legal frameworks that are directly or indirectly responsible for accountability and resourcing issues.

From micro to macro level, we look for solutions to the systemic causes of gender inequality, which are manifested differently at each level. This requires us to apply the full spectrum of the gender lens to business and human rights. For example, at the level of social and community relations, we examine how corporations may either contribute to or hinder initiatives to tackle negative patriarchal practices. We look at the regulatory and legislative context: the laws dealing with key business, human rights and gender-related issues. And at a macroeconomic level, we consider, for example, that without states raising revenue from business entities and wealthy individuals to pay for public services, women's unpaid care work and lack of access to public services will never be addressed. Tax, trade and investment issues are important economic dimensions of human rights.¹⁵

Spectrum of the gender lens on business and human rights

	Gender-based violence	Gender-sensitive human rights due diligence	Economic inclusion and empowerment of women	Abuses relating to tax, trade and investment	Women's experiences of accessing effective remedies and defending rights
Status in law	<p>Expressly illegal in most countries, depending on sexual violence, anti-bullying and anti-harassment laws.</p> <p>A grey area when committed by staff outside headquarters (discrepancy of access to justice) or by suppliers and contractors.</p>	<p>Discrimination is often illegal, but there are still many laws that explicitly discriminate against women, depending on practice and jurisdiction concerning equality legislation, anti-discrimination and equal pay legislation.</p>	<p>The main issue is unpaid care work. Legislation on social protection and adequate service provision should be in place, so that women can work alongside men, given their unbalanced care burden.</p> <p>Often the unpaid care burden is not recognised in programmes promoting women's economic empowerment, which may focus on loans, incentives and pay-gap transparency alone.</p>	<p>It is often illegal not to pay taxes at the source of operations. However, a large grey area exists due to differences in tax laws, harmful tax treaties, and the over-use of tax incentives.</p> <p>Investment and trade decisions should have human rights due diligence conducted from a gender perspective.</p> <p>Tax, trade and investment treaties, practices and laws are generally not gender-sensitive.</p>	<p>The legal frameworks for effective access to remedies vary from country to country. There are significant gaps in terms of access to legal aid for claimants who cannot represent themselves.</p> <p>There is considerable stigma associated with women who seek justice; they may face severe social and workplace discrimination if they seek remedies.</p>
Responsible actor	<p>Primarily the government, in prosecuting those responsible for gender-based violence.</p> <p>Corporations must also ensure they have internal due diligence processes, especially in areas where legislation or the legal system is weak.</p>	<p>Mainly a corporate responsibility to carry out human rights due diligence from a gender perspective.</p> <p>State responsibility to design laws and rules that are effective in ending gender-based discrimination and promoting the role of women and others as equals in all spheres of society.</p>	<p>States are responsible for creating an enabling environment for women's economic empowerment, and equality in economic sectors.</p> <p>Corporations have a responsibility to create opportunities for women, to ensure gender pay gaps are tackled.</p>	<p>Corporations bear responsibility primarily through their home government's corporate tax and transparency regulations. The host government is responsible for its omissions to detect and prevent harmful practices, as well as for tax treaty clauses that exclude taxation on certain transactions (eg, capital gains taxes).</p>	<p>Access to remedies is essential in all dimensions of gender issues related to business and human rights. This includes economic roles, and the coherence of tax, trade and investment systems with human rights principles and processes.</p> <p>Corporations have a responsibility to provide remedies where they have caused harm, and not to obstruct state-led remedy processes.</p>

We believe that the UN Business and Human Rights Framework, its implementation mechanisms, and the states and business entities to which it applies, must respond better to the negative impacts of business on the rights of women and marginalised genders.

Businesses, in particular TNCs, must bring human rights to bear and must be held to account under international human rights law.

In this report, we identify case studies, highlight key issues on the gendered impact of corporate practices, and explore their relationship with international human rights law and related frameworks. This is based on a literature review of articles and reports on the issues of gender, business and human rights, as well as a desk-based review of our strategic partners' work.

This policy report addresses the five themes prioritised by the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises:

- sexual harassment and sexual violence against women
- gender-sensitive human rights due diligence
- economic inclusion and empowerment of women
- impact of trade, investment and tax regimes on women
- women's experiences of accessing effective remedies and defending rights.¹⁶

We conclude by considering the gendered impacts of a possible binding UN Treaty on Business and Human Rights.

Theme I: Sexual harassment and sexual violence against women

The United Nations' 17 Sustainable Development Goals (SDGs) apply to all contexts and actors. Their achievement requires significant international collaboration. Since the agenda was adopted, some progress has been made, as highlighted by the UN Sustainable Development Goals Report 2018.¹⁷ This prioritisation is in line with the "leave no one behind" principle, a core theme of SDG discourse.¹⁸ It is based on a growing consensus that achieving the goals will depend on prioritising the most socially and economically excluded and marginalised.¹⁹ However, the UN report also emphasises that the rate of progress so far is insufficient if the goals are to be met internationally by 2030.²⁰ Stronger domestic and international commitments are required – in turn strengthening the means of implementing the SDG agenda – if development is to reach 'the most disadvantaged and marginalised'.²¹

Women face multiple forms of discrimination, exclusion and disempowerment related to their gender and identities. They are disproportionately vulnerable to violence, sexual harassment and verbal abuse. There are many areas where women face higher risks. In some cases, these arise from livelihood strategies that put women at risk of predatory sexual abusers, or when they enter sectors of the economy or formal workplaces that were previously closed to them. SDG 5 - Target 5.2 requires us to eliminate all forms of violence against all women in the public and private spheres, including trafficking and sexual and other exploitation.

A well-documented example of violence against women is the land grabbing and intimidation associated with shrimp farming in coastal areas of southern Bangladesh. These activities have permanently damaged mangrove forests that were once a source of food and other resources, and have allowed saltwater to affect farmland. This has forced many local women to walk further to gather water, firewood and food.

Local women reportedly face an increased risk of rape and sexual harassment by shrimp-farm employees from outside the community. There are concerns about a lack of access to justice, and that the authorities are more likely to side with the male-dominated elites and shrimp-farming business interests than with female victims. This reportedly creates a feeling of helplessness on the part of women, and a sense of impunity on the part of shrimp-farm employees.²²

When women do enter economic spheres that were previously closed to them, they often face moral harassment, bullying and sexual harassment from male counterparts.

Case study 1

Women miners in Zimbabwe

Women miners in Zimbabwe face many challenges. Structural inequality and stereotypes of female positions in society have perpetuated their difficulties. According to the Zimbabwean Environmental Law Association (ZELA), the preconception of mining as a men-only sector has excluded women from the decision-making process. Women are generally not considered equal and capable participants in the industry.

Women who work as miners are often single, widowed or with absentee husbands or partners. They face threats and bullying, sexual harassment and other abuse by their male counterparts, including gold dealers – all of which is linked to their perceived inferior social status.

One of the most serious constraints for women is their technical mining expertise – they may not have the geological knowledge of mineral ores to identify the presence of minerals. Moreover, they may not know the procedures and policies for formalising a mining claim.

Christian Aid and our partner ZELA are addressing some of these challenges. Structural interventions are required at policy and macro level through policy advocacy to give women a level playing field and enable them to compete in the industry.

We have heard and seen how women have gained status and personal power to deal with these issues. We applaud women for breaking through the barriers and standing out as entrepreneurs and change makers in Zimbabwe.

As the Zimbabwean case study shows, sexual harassment in the informal working sector is often linked to a position of power within society, or to the vulnerability of women in a specific situation. Similarly, in formal workplaces, harassment is often linked to abuse of a more formal position of power, which may be perpetrated by more senior staff or employees from more privileged social groups. Business practices are often inadequate to deal with these context-specific intersecting axes of inequality and power in the workplace and wider communities.

Case study 2

Gender-based violence in the workplace in India

In India, gender-based violence deeply pervades the public and private sphere. Research suggests that violence in workplaces is even holding back the rise of India's economy.²³ India has a progressive legal framework²⁴ which mandates organisations with 10 or more employees to form an internal committee to address and resolve complaints of sexual harassment and file annual reports to the government. It covers all public or private workspaces, inside office buildings, factories and homes, as well as offences in other spaces related to work. Although the number of cases registered is not high,²⁵ women can now come forward and report cases of harassment.

While top companies may have policies related to the Sexual Harassment of Women at Workplace Act,²⁶ their implementation is far from ideal. Industries which employ women from a lower socio-economic background have particular problems. Sexual harassment and violence at work commonly go unreported due to fear of losing work, social stigma or the absence of a complaint mechanism. Studies and media reports from countries such as Bangladesh, Cambodia and India – all major clothing producers supplying multinational brands – paint a sordid picture of a deep-seated culture of sexual abuse and harassment for women workers.²⁷

Christian Aid's experience of addressing gender-based violence has shown that creating a workspace which safeguards its workers' dignity tends to have a positive overall impact on the productivity and health of the organisation. Women are more confident and feel able to invest more effort in their working role; men are more aware of gender stereotypes and less aggressive. Positive changes include greater female business ownership, management control and increasing the socio-economic status of women in the long term. This, in turn, changes women's status in the household.



Whether in formal workplaces or informal economic activities, women face a higher risk of sexual harassment. This leads to exclusion from economic, social and cultural activities due to

intimidation. This is particularly the case where women feel that any allegations of mistreatment will not be taken seriously or investigated, thus protecting the perpetrators rather than establishing the facts and listening to the victims.

Key action points: preventing sexual harassment and sexual violence against women

- Independently assess the policies and practices that make up a company's safeguarding approach to prevent misconduct.
- Provide whistleblowing and anonymous reporting mechanisms for cases of sexual harassment, to resolve any conflicts of interest.
- Require governments to disclose information related to major incidents of sexual harassment.
- All large corporate entities should publish the number of cases of sexual harassment involving staff and stakeholders, and actions taken to counter them.
- Strengthen the capacity of the police and other state bodies to investigate and mitigate sexual harassment, as well as raising awareness of its social prevalence.
- Establish jurisdiction over sexual misconduct, even when such offences are committed abroad, so that victims of sexual abuse can seek justice in the jurisdiction with highest likelihood of conviction.
- Limit corporate lobbying that might prevent sexual misconduct from being investigated, and address issues such as limitations on bringing cases and criminal charges, due to the complex issues faced by abuse survivors.
- All states and corporate entities must respect the obligations set out by the Convention on All Forms of Discrimination against Women (CEDAW), especially those in Article 2, which prohibit all discriminatory practices that may be characterised as violence (and which may range from structural to psychosocial violence).

Theme II: Gender-sensitive human rights due diligence

SDG 10 – Target 10.2 sets out that, by 2030, we must empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion, or economic or other status. Target 10.3 states that we must ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices.

However, as the Danish Institute for Human Rights has observed:

*'in many contexts women's social disadvantage, including lack of formal land rights, may make it difficult for them to raise their interests in the management and proposed allocation of community land in investment contexts.'*²⁸

According to UNGP 17, all businesses must carry out human rights due diligence (HRDD) in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. This includes assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses and communicating how impacts are addressed.²⁹ The Human Rights Due Diligence Fact Sheet,³⁰ produced by Simmons & Simmons for the Peace Brigade International, explains that the second pillar of the UNGPs determines that businesses must have:

- a human rights policy statement demonstrating their commitment to respect human rights
- a human rights due diligence procedure
- processes that enable the remediation of any adverse human rights impacts that the business enterprise causes or to which it contributes.

These parameters are expanded in UNGPs 18 to 21.

The CEDAW Committee issued General Comment 28 in 2010.³¹ This states that in order to prevent discrimination against women, due diligence must be observed in relation to corporate practices in the areas of education, employment and health, as well as in any other areas where non-state actors provide services. This includes the 'due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.'³² Similarly, General Comment 34 affirms that states 'should address the negative and differential impacts of economic policies, including agricultural and general trade liberalization, privatization and

commodification of land, water and natural resources, on the lives of rural women and fulfilment of their rights.¹³³

In short:

‘Gender-sensitive due diligence is underpinned by the right to gender equality and focuses specifically on businesses’ potential and actual adverse impacts on human rights related to sex, gender, gender identity and sexual orientation, with particular emphasis on the experiences of women and girls, and the multiple intersecting forms of discrimination that influence the realization of equal rights.’¹³⁴

The push for gender-sensitive HRDD is a step in the right direction. However, most of the due diligence performed by TNCs tends towards the “marketisation” of human rights terms, or the use of economic terms as if they are equally valid in human situations and experiences. For example, some corporations point to the use of “social due diligence” for the analysis of human rights accountability. But corporations are more likely to protect their own reputations than engage in a meaningful due diligence process from the perspective of the rights holder. They are too used to using “due diligence” as a term for assessing and mitigating risk in major transactions or when assessing new clients.

Ideally, due diligence should be ever-evolving to reflect reality, but existing systems do not allow for this kind of flexibility. For example, if environmental due diligence can be quantified in immediate, balance-sheet terms, there is little scope for manoeuvre to assess wider or long-term losses to rights holders – for example, the future development of health problems in the local population as a result of ecosystem loss.¹³⁵

Case study 3

Land-grabs in Sierra Leone

Women farmers are among the hardest hit by land grabbing. Due to patriarchal culture and customs, they rarely own or have other claims to land, and are disadvantaged throughout the land lease process. They are not consulted during land acquisitions and do not benefit from fees paid for leaseholds – even though they stand to lose the land that supports their household and livelihood.

Many women's farming groups emerged in the years after Sierra Leone's civil war – a development attributed to the deaths of many male heads-of-household. More recently, the situation has been exacerbated by the Ebola epidemic. More women now depend on land for farming and are the head of their household. The number of people experiencing severe food insecurity is expected to rise to 610,000 in Sierra Leone and around 280,000 will be vulnerable as a result of Ebola.³⁶

Meanwhile, the government is proposing to expand its commercial large-scale agriculture to meet internal food demand, but is failing to consider the negative impacts of aggressive corporate practices, in particular on women.

Sierra Leone presents itself to foreign investors as a place to do business.³⁷ However, it is perceived as one of the world's most corrupt countries.³⁸ This continues to influence Sierra Leone's political and economic imperatives as well as the prospects for foreign direct investment – particularly in mining and large-scale commercial agriculture. Foreign investors, including large agri-businesses, are likely to take undue advantage of corruption and weakness in its governance and accountability regimes.

The promotion of foreign investment is in conflict with internal support for human rights processes, both in policy and practice. On 4 February 2016, six members of Malen Land Owners and Users Association were found guilty of incitement after protesting against the loss of their land to Socfin, a multinational palm oil producer. The court sentenced them to a maximum of six months or a fine equivalent to US\$40,000. More recently, four members of the Malen Chiefdom were arrested for resisting company surveyors' attempts to access their land. They were refused police bail. The four were swiftly tried with no legal representation, found guilty on four counts, and sentenced to a fine of around US\$200 or one year's imprisonment. Other cases abound.³⁹

A Christian Aid partner, the Green Scenery project, has tried to address these issues by supporting human rights defenders in Pujehun, Port Loko and

Bombali/Tokolili districts. The project intends to engender the felt needs, interests and concerns of affected stakeholders, as these will form regular discussion points within the platform. The project tries to increase women's participation to 50% in all activities related to this intervention, including capacity building.

The lack of transparency and governance in land acquisition affects numerous human rights, including the right to:

- be informed about and participate in matters relating to one's development
- associate with entities of one's choice
- own and develop property
- enjoy equal opportunities and gender equality
- enjoy development and a healthy environment.

The Geneva Academy states that, at present, international human rights law and policies do not systematically address the question of gender-responsive human rights due diligence.⁴⁰ The UNGPs do not set standards for gender analysis and gender-appropriate responses. However, if all international human rights laws, voluntary principles and policies are combined, we could truly achieve a comprehensive approach to human rights due diligence and related mechanisms:

*'Gender-responsive HRDD requires companies to take a holistic approach to their operating environments by identifying, preventing, mitigating and accounting for the ways in which their actions or omissions may differently affect men, women and gender non-conforming people.'*⁴¹

*'[d]ue diligence constitutes an essential ongoing process that enables business actors and other stakeholders, including governments, to identify and address their impacts on rights holders.'*⁴²

The use of risk assessment in setting internal corporate policy results in a bias against women. Many businesses carry out materiality assessments to identify whether a risk should be addressed. This is based on the choice of a particular audience (eg, shareholders) or goal (eg, profit) against which its importance is then judged.⁴³ Thus, even if corporations implement human rights due diligence procedures appropriately, materiality assessments may give distorted results or may fail to reflect human rights issues in social and environmental reports. Although UNGPs demand that businesses identify and address any human rights impacts across their operations and products, and throughout their

supply chains, there is no set standard for how to proceed with human rights due diligence.⁴⁴ Most businesses use a commercial risk-based approach that may be reported through environmental and social impact assessments, human rights impact assessments, a human rights audit or a human rights policy.

Most of these due diligence processes do not consider whether the human rights-based approach is consistent with the company's tax, trade and investment practices. We believe that all human rights due diligence must have a social and an environmental component. It must focus on the interconnected aspects of human rights, identifying and analysing individual rights (eg, the right to health) alongside collective rights (eg, the right to a healthy environment).

Most due diligence processes do not offer adequate access to remedies. In part, this is because the legal frameworks at all levels – local, national, regional and international – are weak. We welcome attempts to draft more comprehensive legislation detailing the thresholds and requirements related to human rights due diligence. Legislation for mandatory human rights due diligence is beginning to be discussed in a number of countries, especially in Europe and South America.⁴⁵

Key action points: adopting and enforcing mandatory human rights due diligence

- Create a legal environment for mandatory gender-sensitive human rights due diligence, and a legal requirement to assess the human rights impacts of business entities.
- Publish, review and prevent harmful human rights impacts on the basis of due diligence. Such due diligence should reflect the external impacts of the business on other entities, not merely internal reputational concerns.
- Mandate a level of disclosure of human rights due diligence in reporting on major incidents. This should show that the company recognises these impacts, and demonstrate how it seeks to mitigate them and provide remedies.
- Strengthen the capacity of judicial systems and non-judicial monitoring and reporting institutions, to combat human rights abuses in all sectors.
- Limit the use of tax, trade and investment dispute resolution and international arbitration processes, so that they do not reduce the scope and application of human rights treaties and agreements. Provide safeguards so that economic treaties do not conflict with human rights treaties and contracts, and primacy is given to human rights, particularly in relation to gender equality.

Theme III: Economic inclusion and empowerment of women

SDG number 5 states that the achievement of gender equality and the empowerment⁴⁶ of women and girls must be a priority for all state and non-state actors. However, the 2017 SDGs report found that '[w]omen are still underrepresented in managerial positions'.⁴⁷ Moreover, '[i]n the majority of the 67 countries with data from 2009 to 2015, fewer than a third of senior- and middle-management positions were held by women'.⁴⁸ Target 5.1 specifically aims to end all forms of discrimination against women and girls everywhere. A key indicator is whether legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex.

Some key norms have been created in the area of business and human rights. Unfortunately, most are voluntary principles.

Although more women are joining the formal workforce, discriminatory practices are still prevalent. The levels of vulnerability experienced by different individuals considerably affect their outcomes.⁴⁹ Historically, black and indigenous women have been more marginalised than white women.⁵⁰ In many settings, they perform the most precarious and poorest-paid jobs⁵¹ and are rarely included in meaningful consultation and remediation processes. Depending on the context, higher levels of vulnerability may be connected to other factors, such as ethnicity, caste, age, sexual orientation and geographical location.

Case study 4

Women-led businesses engaged in due diligence processes in South Africa

Christian Aid partner the Bench Marks Foundation⁵² is a non-profit, faith-based organisation. It monitors corporate performance against an international measure, the Principles for Global Corporate Responsibility. In 2018, Bench Marks investigated women-led business in and around Anglo-American Platinum's mining sites in Ditwebeleng village in South Africa. It found that women-led businesses are more inclusive and innovative, yet they are mostly overlooked when they submit proposals to the mining sector or local government.

In the Magadimane Ntweng community, which includes Ditwebeleng, some jobs are provided via a social and labour plan to provide skills and support for local entrepreneurs. However, the majority of mining tenders were being offered to male-led businesses. Government funding had an age restriction that favoured funding for individuals up to 35 years of age. This can be partly explained by the fact that, in the village, 86% of the women were not working and 42% were young adults who were not formally employed - the mine prefers to hire young men with a Grade 12 education.

The majority of women are single mothers and breadwinners who also perform domestic tasks, including housework and caring for children or for elderly, ill or disabled people.

Women-led businesses have been key to challenging stereotypical social norms. They have contributed to enhancing resilience and creating alternatives to products and practices that have adverse environmental effects. There are 20 women-led businesses around Ditwebeleng. All are small-scale enterprises that face considerable challenges: a lack of skills and a shortage of funding (even for essential tools), a lack of water or access to toilets, a lack of other facilities (eg, an office or site fencing) and of appropriate tools or protective equipment.⁵³



Unpaid care work is a major systemic constraint on women's empowerment and their engagement in paid work. Globally, women perform between two and 10 times more unpaid care work than men.⁵⁴ This includes housework and caring for children or elderly, ill or disabled people. The time required and the physical burden both increase exponentially for women living in poverty, including rural women and women living in informal settlements without basic infrastructure or public services. Unpaid care work significantly impacts women's ability to engage in paid employment, whereas they are over-represented in insecure, part-time work. It also prevents them from engaging in political decision making, including collective action to promote their rights. The gender gap in unpaid care work affects girls as well as women: a study in 16 developing countries confirms that girls tend to do more work at home than their brothers, which affects their school attendance and other opportunities.⁵⁵

The UN Global Compact, the world's largest corporate sustainability initiative, has 10 core principles on human rights, labour, environment and anti-corruption.⁵⁶ Principle 1 states: 'Businesses should support and respect the protection of internationally proclaimed human rights.'⁵⁷ In 2011, UN Women and UN Global Compact created the Women's Empowerment Principles (WEPs).⁵⁸ They 'provide guidance to help the private sector focus on key elements integral to promoting gender equality in the workplace, marketplace and community'.⁵⁹

The principles are driven forward by four cornerstones:

- building a business case to demonstrate that gender diversity helps business perform better
- intentional action and deliberate policies aimed at empowering women's skills, talents and experiences
- enhancing openness and inclusion in corporate policies
- strengthening and articulating multi-stakeholders' interests.

The WEPs' gender analysis tool creates a few business-driven standards to help companies assess gender equality performance across their workplace, marketplace and community.⁶⁰

Case study 5

Divine Chocolate and women's empowerment

Christian Aid founded the Salt Business Network in 2016 with the aim of creating a movement of business leaders. It brings them together to work as agents of change, leading best practice within their businesses and in the wider community.

One of Salt's members, Sophi Trancell, CEO of Divine Chocolate, supports female cocoa farmers in Ghana. It is co-owned by the 85,000 members of Kuapa Kokoo, the farming cooperative that supplies all its cocoa. As owners, members of the cooperative get a share of the profits, a say in the company and a voice in the global marketplace. Divine Chocolate and Christian Aid have enjoyed a successful partnership for 19 years: we have supported the Fairtrade chocolate company from its beginning. Together, we have led the way in mobilising consumer power, encouraging schoolchildren to engage creatively on issues around Fairtrade, and keeping Fairtrade on the world agenda.

'In the early days, when Divine was really just a good idea with only one bar and very little presence in the supermarkets, Christian Aid ran a Stock the Choc campaign. Their wonderful network of supporters handed in postcards to get them to stock Divine because they wanted to see a farmer-owned company succeed and the campaign was a success... It was one of the first examples of consumers really exerting their purchasing power in a positive way.'

Sophi Tranchell MBE, managing director of Divine Chocolate



Globally, most leadership positions are filled by men, either in the private sector or in the political sphere. In late 2018, only 24% of representatives in parliaments around the world were women.⁶¹ Globally, the proportion of women in senior management is even lower: an IMF report found that women hold only 2% of chief executive officer positions in financial

institutions and make up only 20% of executive board members.⁶² This is not a recent problem. In 2012, only 14% of executive positions at Fortune 500 companies were held by women.⁶³ Many companies have discussed ways to improve their meritocratic standards.⁶⁴ That is a sign of positive change. However, global rules and mechanisms also have a role in pushing for gender equality in senior management positions and promoting women's empowerment, internally and externally.

We believe it is important to challenge discriminatory legislation, negative stereotypes, the lack of mentoring for women, the lack of information available to women, underinvestment in women entrepreneurs and the gender pay gap.⁶⁵ It is crucial to learn from good corporate practices in adopting a gender perspective and staying true to human rights commitments.

Key action points: inclusive practices that enable self-empowerment

- Governments can pass legislation mandating companies to publish their gender pay gap and the action taken to mitigate it, including the unpaid care work gap.
- Greater public support for policies that promote the status of women in workplaces, and more monitoring of their effectiveness in practice, including training, funding and leadership education.
- To correct gender bias, governments and business entities must prioritise women-led businesses in their empowerment programmes and provide skills and financial support.
- Governments should seek to create policies to reduce women's unpaid care burden through social protection, especially support for childcare, maternity leave, shared paternal and exclusive paternal leave.

Theme IV: Impact of trade, investment and tax regimes on women

SDG 17 states that we must strengthen the means of implementation and revitalise the global partnership for sustainable development, bringing together national governments, the international community, civil society, the private sector and other actors. This includes understanding the impact of tax regimes on women (Target 17.1) and trade and investment-related human rights abuses (Target 17.10).

However, the impact of trade, investment and tax regimes is an under-explored area of business and human rights. We believe that trade, tax and investment need to be interwoven within mandatory human rights due diligence and impact assessments. This is a crucial step towards a comprehensive understanding of both the direct and indirect impacts on the realisation of women's human rights. Here, we focus mainly on tax issues and their impact on women, while recognising that women are differentially affected by trade and investment flows, treaties and practices.

Impact of tax regimes on women

So far, the main body of work exploring the impact of tax regimes on women has focused on corporate tax abuses in the area of corporate responsibility. Corporate tax abuse is often dealt with as an international cooperation issue, as corporations are liable to pay taxes in multiple jurisdictions. States are also responsible for establishing national tax systems that collect enough revenue domestically to finance their public services and their SDG and human rights obligations. This is a necessary step to resolving the underlying structural inequalities that impede the realisation of women's rights.

Progressive tax systems are critically important. An emphasis on direct taxes (ie, on sales of goods and services) will tend to impact women more than men due to their positions in society; a higher proportion of women's income is taken in direct taxes on consumption. For example, women tend to be more economically marginalised and to be responsible for household expenditures that incur value-added tax. In comparison, taxes on corporate and individual income are a more progressive revenue source because they are adjusted to the taxpayer's capacity to pay.

Corporate tax abuse is one of the most significant drains on public budgets. It disproportionately affects already-disadvantaged people in low and middle-income countries, which rely more heavily on corporate taxation. On average,

developing countries rely on corporate taxation for 16%⁶⁶ of public revenue mobilisation, compared to 8.9% in OECD countries.⁶⁷ States can use the proceeds of corporate taxation to support human rights, including the right to health, education and social protection. Corporate taxes also help to redistribute income between men and women: most corporate shareholders are men due to their unequal share of asset ownership, and men are disproportionately represented in the top quartile of income earners who work in the corporate sector.

Well-governed states depend on revenue to ensure a rights-based apparatus of policies, legislation and regulation, and guarantee effective access to justice. Similarly, taxes on wealth and marginal income tax rates with rising thresholds are also progressive, as they redistribute income and provide revenue for public services.

Case study 6

Colombia: the right to have a period without being taxed

Fair fiscal policies are central to the gender equality agenda. Progressive taxation includes reducing reliance on VAT and sales taxes, and ending harmful tax practices, illicit financial flows, and regressive changes to global systems that facilitate tax avoidance. However, rampant tax abuse by some TNCs undermines the potential to address other economic injustices through an effective tax system. Some governments, many in the global South, are powerless to resist; others, often in the global North, are more complicit.

In 2016, hygiene products for women were categorised as “luxury items” and subject to standard-rate VAT. This violated CEDAW as a discriminatory practice: tampons and sanitary towels are used continuously and exclusively by women.

Moreover, women in Colombia have less access to the labour market; when they are employed, their salary is, on average, 20% lower than men. A 19% surcharge on tampons and sanitary towels represented a serious threat to the economic empowerment of women and gender justice.

In December 2016, Christian Aid partners CEDETRABAJO and Tax Justice Network (TJN) launched the campaign ‘Menstruación Libre de Impuestos’ (loosely translated as “the right to have a period without being taxed”). Its aim was to generate public awareness about the unfairness of the tax system to women and to push politicians to commit to a fair and gender-sensitive tax system with ongoing reforms.

Intense social mobilisation brought two major achievements. In 2017 Congress approved a tax reform whereby hygiene products such as tampons and sanitary towels were exempt from general VAT and subject instead to a reduced rate of 5%. At the time, this reduction directly benefited 13 million women in Colombia, totalling around £80 million in annual savings on sanitary towels alone.

In 2019, in response to a petition filed by CEDETRABAJO and TJN, the Supreme Court decided that even the 5% rate infringed on constitutional and fundamental rights of equality between men and women, and removed taxes on tampons and sanitary towels.

The ruling of Colombia's Supreme Court should serve as an example to other jurisdictions.

However, as well as inequities in national tax regimes, inequality can arise from corporations' abuse of the international tax system. "Corporate tax abuse" can be defined as tax practices that are contrary to the letter or spirit of domestic or international tax laws. It includes tax practices that follow the letter of the law, but are unjustifiable in terms of their negative human rights impacts.⁶⁸ From this definition, a spectrum of abusive tax practices emerges: from outright tax fraud, to profit-shifting, to unjustified tax incentives, to harmful rate reductions. Illegal and abusive transactions tend to be concentrated overwhelmingly in the lower-income or host country of a wider corporate operation. In higher-income jurisdictions – where TNCs are typically based – and in conduit countries, the same transaction tends to be seen as legal and compliant with local tax laws that do not recognise extra-territorial obligations.

Another area of tax abuse is the mis-invoicing of trade. In 2014, 87% of illicit financial outflows reportedly stemmed from the fraudulent **mis-invoicing of trade** by companies.⁶⁹ This form of tax evasion represents a huge loss to developing countries, estimated at between \$539.4bn and \$843.9bn per year. This is considered a high-range estimate, as there could be other explanations for some mismatches in international trade data, such as different conventions in recording international trade. However, case-study evidence of trade between Finland and Russia shows how common trade mis-invoicing really is.

*'According to Finnish Customs, [in the context of] their special operations in this decade, on average 80–90% of the inspected deliveries were subject to double invoicing or commodity code falsification. In cases of double invoicing, the value declared in the counterfeit documents averaged merely one fifth of the actual value of the shipment. Russian Customs have reported that 60% of shipments coming to Russia from Finland are endowed with double invoices.'*⁷⁰

If taxed at a global average of just 15%, these illegal activities would yield between \$93bn and \$126bn per year for low and

middle-income countries – vital revenue as they seek to meet the SDGs and ensure human rights are upheld.

Alongside corporate tax evasion and avoidance, many businesses benefit from **unjustified tax incentives**, tax stabilisation or advance pricing agreements that further reduce the resources available to finance human rights. By one estimate, \$138 billion a year is lost through the tax incentives that developing-country governments offer to large businesses.⁷¹

There may be human rights justifications for giving tax incentives to the private sector, such as reducing the pay and care-provision gaps between women and men, protecting the purchasing power of the poorest households, or even investing in zero-carbon technologies. However, the vast majority of fiscal incentives in place today are not transparent and are devoid of any broader economic or social justification. Instead, they pose significant obstacles to public scrutiny and basic democratic participation.⁷²

Trade and investment-related human rights abuses

The impact of trade and investment practices on women has been highlighted as an important area of policy coherence for development. The global North is pushing for clauses for investor protection and investor-state dispute settlement clauses in economic partnership agreements and bilateral investment treaties.

Too often, these place the interests of TNCs above the human rights of people in developing countries, especially women, people from minority or marginalised groups, and people with disabilities. Christian Aid has been vocal about the need to integrate gender into tax systems. During the last negotiations of the Millennium Development Goals (MDGs), we stated that:

*'[it is] necessary to integrate gender considerations at every level of research, policy and advocacy for tax justice. Missing this aspect would mean missing the opportunity to advocate for fairer tax systems for all.'*⁷³

In 2015 the Third International Conference on Financing for Development sought to address the critical question of how the SDGs would be financed. However, it failed to address the normative and systemic reforms that would enable developing countries to mobilise their own domestic resources. Instead, international financial institutions like the IMF and the World Bank continue to set a global policy agenda that prioritises fiscal discipline and reducing the tax burden on companies looking to bridge the gap: the importance of investing in developing countries. This contributes to a macroeconomic environment which is not conducive to realising human rights.

Case study 7

Offshore transfers of assets erode tax revenue in Nepal

The sale of NCell in Nepal – from Norwegian-based TeliaSonera to Axiata, based in Malaysia – demonstrates the potentially unjust tax outcomes of international transactions. TeliaSonera, a leading European telecoms company, decided to sell its 60.4% share of NCell to Axiata for \$1.030 billion. This share was owned through holding companies in St Kitts and Nevis and the Netherlands. Another company, Visor, owned 19% of NCell through SEA Telecom Investments BV, based in the Netherlands. Axiata acquired TeliaSonera and Visor's holdings under Reynolds Holdings (a total stake of 80%) for \$1.365 billion.

The Nepalese authorities imposed a capital gains tax charge of 25% on the increase in value of TeliaSonera's share. However, TeliaSonera responded to the Large Taxpayer Office by issuing a public notice stating that it was clear of all payment obligations to the Government of Nepal. Its 2016 report stated that the divestment of NCell in Nepal was completed on 11 April 2016. However, TeliaSonera considered that the transfer of assets had not taken place in Nepal; it argued that the buyer and seller were located in the Netherlands, which does not tax transfers of this kind.

The Nepalese Public Accounts Committee contested this issue, as did the Ministry of Finance. TeliaSonera stated that 'any taxes levied on the transaction should be paid in Norway, a country which has a double taxation agreement with Nepal in which Nepal has waived its right to tax in favour of Norway'.

TeliaSonera interpreted the treaty as applying to this indirect transfer whereby the Netherlands, an intermediary jurisdiction, was used as a tax haven to transfer assets from one company to another, even though the ultimate owner of the Dutch holding company was in Norway. It is unclear whether the Norway-Nepal treaty applies in this case. Even if it does, it is deeply unfavourable to Nepal – it represents a striking example of policy

incoherence at a time when international tax co-operation and building the fiscal capacity of developing countries is high on the global agenda.

The tax charge remains contested. Some of the funds have been paid by the new owner Axiata in withheld dividend payments by the Nepalese government – although Axiata is trying to reclaim these.

Such corporate practices indirectly affect women, and the loss of revenue affects the Nepalese's government ability to deliver on women's human rights. The total tax charge on the sale of shares of the two holding companies is US\$344 million: the equivalent of Nepal's annual health budget

As the European Parliament stated in January 2019: *'trade liberalisation has a gender-differentiated impact inside and outside Europe.'*⁷⁴

All countries and supranational institutions must be committed to:

- promoting gender equality in all policies
- establishing specific mechanisms in their trade policy to enforce women's labour and human rights
- monitoring the gender impact of their trade preferences.

Key action points: enhancing remedies for corporate tax abuse

Governments need to:

- strengthen the capacity of tax administrations to detect corporate tax abuses, effectively enforce the tax code and ensure remedies where appropriate.
- improve tax transparency to allow rights holders and stakeholders to understand the impact of tax legislation, policies and corporate practices on the realisation of human rights and gender equality.
- strengthen the investigative capacity of parliamentary accounts committees to target tax abuses, and reinforce other parliamentary investigative and accountability powers.
- strengthen legal protections for tax abuse whistleblowers, and human rights protectors in the field of tax abuses, in particular women's human rights defenders.
- encourage judicial oversight of the human rights impacts of corporate tax policies, and ensure access to justice for those – particularly women – who are denied their human rights on the pretext of resource scarcity.

- ensure that extra-territorial legal redress is available to victims of tax abuse where the company's headquarters is not in the jurisdiction where the tax abuses took place. Affirmative action should be taken to ensure that women and men have equal access to redress.
- ratchet up fines for the worst repeat offenders, and ensure that such businesses are subject to sanctions that effectively punish and deter such abuses.⁷⁵
- serial tax abusers should be excluded from public procurement processes, including purchases, public investments and public-sector grants.
- cooperate proactively with regional and human rights protection mechanisms in inquiries into corporate tax-related human rights abuses.
- ensure gender-sensitive tax reforms to avoid discriminatory taxes, especially those related to products used mostly or exclusively by women and other marginalised genders.

Corporations need to:

- take steps – progressively, measurably and in dialogue with all relevant parties – to improve the human rights impact of their tax behaviour throughout their global operations, paying special attention to the gender aspects.
- cooperate fully with tax administrations, especially in low-income countries, through positive and proactive disclosure and cooperative working practices.
- improve tax transparency by reporting, on a country-by-country basis, all taxes and other financial transactions in all jurisdictions where they operate – even when not required by law to do so.
- progressively reduce their use of any tax incentives that are not publicly disclosed, have not been agreed by the legislature, or are unavailable to competitors.
- refrain from lobbying in favour of preferential or extra-statutory tax treatment (e.g. through state-investor agreements), and remove any existing company-specific restrictions on the ability of governments to apply their domestic tax laws.
- be fully transparent about, and avoid lobbying in support of, tax rules or rate changes which are contrary to the public interest and the realisation of human rights, particularly in relation to gender equality.

Theme V: Women's experiences of accessing effective remedies and defending rights

To ensure that women can access meaningful remedies, their collective agency and voice must be supported. Providing more direct funding opportunities for grassroots women's rights organisations (WROs) is the key to delivering long-term sustainable change. It is essential to empowering women and providing the resources that both inform them about effective remedies and facilitate access to them. WROs are at the forefront of positive social change; this includes pushing for progressive economic policies as well as all aspects of civil, political, economic, social and cultural rights.⁷⁶ However, they remain chronically underfunded due to funding modalities and donor compliance requirements that do not suit the long-term, complex and challenging nature of their work.⁷⁷ Moreover, WROs suffer from an assumption that promoting gender equality is solely their responsibility. All sectors of society have a responsibility to push for gender sensitivity and appropriate mechanisms.

SDG 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels by 2030. This includes targets that cannot be attained without 'ensur[ing] equal access to justice for all' (target 16.3) and 'responsive, inclusive, participatory and representative decision-making at all levels' (target 16.7).

Such an approach requires taking into account the gendered aspects of justice and related decision-making processes. CEDAW has identified that laws and practices which treat women and men differently constitute discrimination.⁷⁸ Moreover, a gendered barrier to remedial measures may exist if a framework treats women and men the same, when in fact it needs to take positive steps to ensure access for women or other marginalised groups. Therefore, we believe the focus should be on equality of outcomes for all genders, irrespective of social markers and levels of vulnerability.

Case study 8

Intersectionality and human rights in Bolivia

In 2015, the Bolivian Indigenous Women's Alliance presented their first shadow report to the CEDAW Committee.

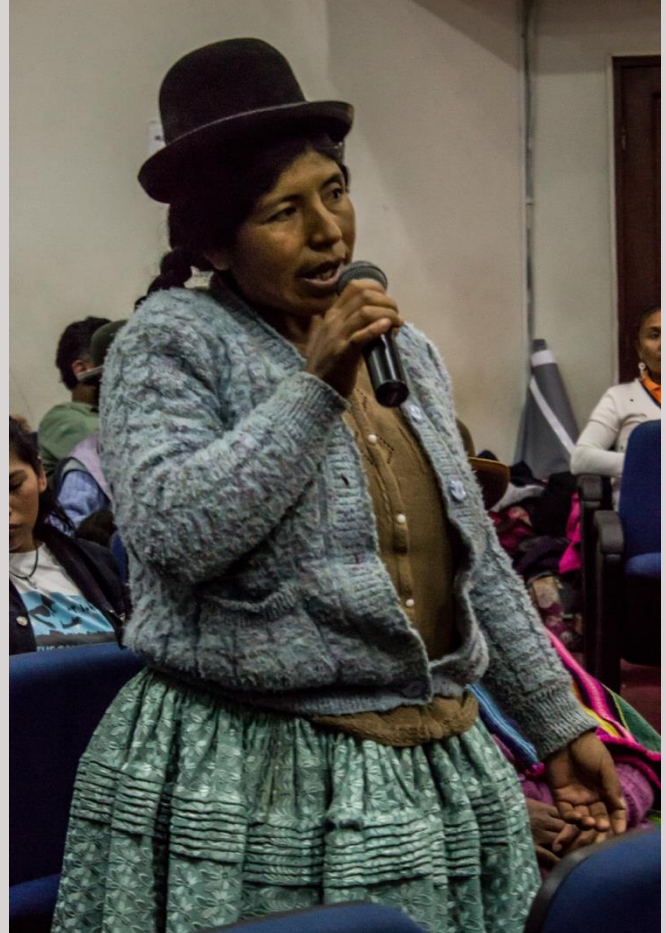
This was an unprecedented step in challenging the rhetoric of the Bolivian government around gender and equality. It highlighted the ongoing human rights abuses faced by Bolivia's indigenous women - in the home, and through their exclusion from political processes. It also addressed a lack of access to basic services, justice and land, and the increasing incidence of femicide.

Since then, the alliance has prepared a new report, based on extensive work by all its members, who met on several occasions in 2018 to prepare their document. In December 2018, more than 100 women came together, representing all the alliance's organisations, including many from communities in the Amazon region. They presented the report as part of the National Forum of Indigenous Women.

This latest report goes further than the 2015 original. It demands that the state be held accountable for human rights violations against indigenous women and other indigenous people.

The report focuses on human rights violations and other negative impacts of an 'extractive' model of development. It argues that mega-projects – mining, gas pipelines, sugar processing, road building – have not benefited indigenous peoples. Instead, local communities have experienced increased pressure on their territories, damaging their livelihoods and increasing their vulnerability.

The shadow report presents evidence of these abuses: eight case studies demonstrate serious human rights violations. A specific case relates to two proposed hydroelectric dams, Chepete and Bala, in the Madidi National Park. Christian Aid Bolivia works with several local projects to build resilient livelihoods and support organisations dedicated to the communities and their environment.



'With the Chepete Bala mega-dam, we will be displaced, we will have nowhere to live and no food for our children. We will disappear with the forest.'

Ruth Alipaz, indigenous women's rights defender

A 2018 report produced by Corporate Human Rights Benchmarks (CHRB) found that the majority of TNCs it assessed were failing to respect human rights or implement the UNGPs. Even positive reporting must be taken with a pinch of salt. For example, Vale S/A fared well in CHRB's assessment of remedies and grievance mechanisms. However, as we will see in the case studies below, victims of environmental disasters caused by Vale, BHP and their subsidiaries still struggle to access appropriate remedies. Women, in particular, have struggled to access mitigating programmes or receive reparations for their economic losses. The environmental losses and the effect on their livelihoods have not been properly quantified.

What standards and procedures must be put in place for a gendered approach to accessing effective remedies?

The Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation⁷⁹ states that all policies and measures regarding remedies and reparations must be guided by the principles of '[n]on-discrimination on the basis of sex, gender, ethnicity, race, age, political affiliation, class, marital status, sexual orientation, nationality, religion and disability'. This also entails full '[c]ompliance with international and regional standards on the right to a remedy and reparation, as well as with women's and girls' human rights'.⁸⁰ It further states: 'Ending impunity through legal proceedings for crimes against women and girls is a crucial component of reparation policies and a requirement under international law.'⁸¹

The declaration also makes clear that 'the fundamental nature of the struggle against impunity demands that all reparation programmes must address the responsibility of all actors, including state actors, foreign governments and inter-governmental bodies, nongovernmental actors, such as armed groups, multinational companies and individual prospectors and investors'.⁸²

Case study 9

Mining dam disasters in Brazil

The Mariana disaster – ‘We don’t eat gold and iron’

The Movement of People affected by Megaprojects (MAB)⁸³ is a Christian Aid partner that focuses on the effects of mining companies and the dams built and maintained by companies such as Vale S/A.

Vale is the largest mining company in the Americas. It claims to be the world’s largest producer of nickel, and was the second most traded company on the New York Stock Exchange in 2014. In 2017, it paid out BRL4.721 billion (around \$1.453 billion) in dividends to 236,000 shareholders around the world.

This assumes a new importance now that Vale has been identified as responsible for a 2015 incident involving Samarco, one of its subsidiaries.

The Mariana dam, in Minas Gerais, was used to contain mining waste. It was operated by Samarco, a joint venture between Vale and BHP Billiton. In 2015 the dam collapsed, leaving 18 people dead and one missing; it polluted the nearby river and caused massive environmental losses that have affected local livelihoods. Since then, Vale has signed an agreement with the federal public prosecutor’s office and created Fundação Renova, a non-profit organisation responsible for implementing and managing local reconstruction, reparation and restoration.

Fundação Renova claims that it aims to ‘reestablish and restore communities and the resources impacted by the collapse, and replace or compensate what cannot be restored or remedied, always in an efficient, reputable, transparent and ethical manner’.

Independent reviews suggest that the reality is very different. Some organisations have complained that Vale still has not paid damages, which were initially estimated at \$48 billion, but had been negotiated down to \$680 million by 2018. In total, 375 families who were affected by



the tragedy are still waiting to be relocated.⁸⁴ In January 2019, some media outlets reported that the authorities had reached an agreement with Vale and BHP, estimated at around \$1.8 billion.⁸⁵

Around 300 women who were directly affected by the Mariana disaster are still seeking compensation – so far, in vain.

The tragedy struck different members of the community and affected their situations in different ways. In many cases, it worsened pre-existing inequalities and the negative consequences of mining activities on their lives.

Women have been differently affected in comparison to men, who have often been more successful in seeking compensation and being recognised as victims of the tragedy. Women are disproportionately affected because their gender and their social role and position make it more difficult for them to successfully apply for compensation.⁸⁶ MAB reports that only 30% of compensation requests by women victims have been met, while men have a 50% success rate.

Women were not only hit hardest by the Mariana disaster: they have now suffered most from its ongoing environmental and economic impacts and its effect on their livelihoods.

The Brumadinho disaster – a pervasive lack of accountability

Less than four years later, another dam controlled by Vale burst in Minas Gerais.⁸⁷ It caused over 300 casualties and left 264 people homeless. It severely affected the livelihoods of 3,800 people, and affected access to safe water for nearly 200,000.

The full social, economic and environmental impacts are still unclear;⁸⁸ however, many organisations and networks, including MAB, are calling for criminal proceedings. The public prosecutors in charge of the Mariana disaster case have argued that Vale and its joint venture partner BHP Billiton knew of the potential threat and decided to do nothing about it. Similar questions have been raised after the Brumadinho disaster.

MAB has been coordinating the movement seeking appropriate remedies for the Mariana and Brumadinho disasters. It has also organised considerable resistance against the human rights abuses perpetrated by other corporations. For example, it has partnered with the Federal

University of Rio de Janeiro to create the Social-Environmental Observatory of Dams, which maps all the dams and related conflicts in Brazil.⁸⁹

In all these contexts, women are playing a key role as advocates. However, they face challenges that are specific to their gender. These include:

- lack of acknowledgement by the community
- patriarchal stereotypes that might prevent women from taking up leadership roles
- hostility, harassment and repression
- domestic violence or threats of violence as a consequence of their activism
- the unpaid care burden related to young children or other family members
- sexual assault and intimidation in public places
- non-recognition from interlocutors in negotiations, including companies and public authorities
- slander and defamation.

Key action points: towards mandatory business and human rights due diligence in the binding Treaty on Business and Human Rights

In 2013 the former UN Special Representative on business and human rights, John Ruggie, stated:

'The era of declaratory corporate social responsibility (CSR) is over. It is no longer enough for governments to act as though promoting CSR initiatives somehow absolved them of their obligations to govern in this domain, and to do so in the public interest. It is no longer enough for companies to claim they respect human rights; they must know and show that they do. And it is no longer enough for rights-holders merely to harbour the hope that governments and companies will fulfil their respective obligations; they are entitled to demand remedy for harm done.'

According to Christian Aid's Partnership for Change, women carry out 60% of the world's labour, yet receive only 10% of its total income. Inequality and discrimination against women is a root cause of gender-based violence. Its consequences include economic loss, social isolation and marginalisation, lost education and lost opportunities for social and political participation. It results in psychological and physical suffering and even death. All of this perpetuates the cycle of poverty.⁹⁰

The 2017 UN Working Group multi-stakeholder consultation on the issues of the Gender Lens to the UNGPs⁹¹ aimed to:

- raise sensitivity among all stakeholders about the need to adopt a gender lens
- develop gender guidance to assist states and business enterprises with practical recommendations for what it means to protect, respect and remedy the rights of women in a business context in line with the UNGPs
- bring together various agencies, institutions, organisations and actors working in the field to continuously explore ways to empower women who are at risk or have been adversely affected by business-related human rights abuses.

The guidance aims to integrate a gendered perspective into Guiding Principles on Business and Human Rights and related norms. The call states that:

*'in order to effectively meet their respective human rights duties and responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs), states and business enterprises need to give special attention to the unique experiences of women and the structural discrimination or barriers that they face.'*⁹²

This call was timely, and it addressed an issue that is often invisible. However, voluntary norms are not enough.

When a gender-related human rights harm has occurred, full, effective and proportionate reparation is required. In the context of harmful tax practices, effective reparation might include:

- compensation through the full payment of back taxes and regular tax administrative measures
- restitution (ie, ensuring that such funds are effectively re-invested in human rights protection)
- guarantees that companies will not commit such abuses in future
- reparations for those affected by tax abuse where direct impacts can be demonstrated.

The UN Open-Ended Intergovernmental Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights⁹³ is discussing two proposals: a draft binding treaty on business and human rights, and a draft optional protocol to the treaty.

While the draft treaty focuses only on multinational enterprises and other business enterprises with a transnational character, the draft protocol would extend the treaty's relevant provisions to all other forms of business enterprise. The draft treaty states that 'all human rights are universal, indivisible,

interdependent and inter-related’, and upholds ‘the principles of non-discrimination, participation and inclusion and self-determination’.⁹⁴

The draft treaty has the potential to link the UNGPs and binding international human rights law. This is crucial if we are serious about providing affected communities and individuals with effective remedies.⁹⁵

However, the treaty negotiations have been derailed. Leaked documents suggest that the European Union intends to withdraw from the draft binding treaty negotiations.⁹⁶ Friends of the Earth claims that the EU has been obstructing the negotiations since the beginning.⁹⁷ The United States and Australia have behaved similarly.⁹⁸ On the other hand, Ecuador and South Africa are among a number of developing countries – which bear the brunt of unequal corporate practices – that support the treaty.

The draft is straightforward in terms of the states’ duties to respect, promote, protect and fulfil human rights obligations. The real issue lies in the implications for TNCs, including the potential loss of revenue for their host countries, which are usually in the global North.

Article 2 of the draft treaty states that it aims to ‘ensure effective access to justice and remedy to victims of human rights violations’ and ‘advance international cooperation in this regard’. However, it fails to acknowledge the international legal personality of corporations, which is seen as an impediment to the full application of international human rights law.⁹⁹ Many civil society organisations have demanded the establishment of direct obligations on companies and the inclusion of criminal liability for companies and individuals. They have also requested that the treaty ensures effective protection in conflict-affected areas, including those under occupation.

Commentators have pointed to the need for provisions on the protection of human rights defenders, including women’s human rights defenders, as key actors for corporate accountability. Many have stated that the treaty needs to address gender-specific risks.

As demonstrated above, deeply ingrained power imbalances between genders have resulted in a legacy of problems such as sexual harassment, emotional or psychological harassment, a lower percentage of formal employment for women and girls, and shameful gender pay gaps, which are in turn perpetuated by economic systems that support these injustices.

We cannot remain on the sidelines, as mere observers of a system that systematically discriminates against women and targets human rights defenders.

If we do not take the opportunity to stand against this injustice, we become culprits. It is paramount that we take a stand and ask our governments and supra-national bodies to support the adoption of a binding UN Treaty on Business and Human Rights.

In doing so, we must demand that the treaty does not lock in standards which are lower than those embodied in the UNGPs. The treaty's definitions should be consistent with the terms in the UNGPs and its correlated norms, such as the Gender Guidance to the UNGPs.¹⁰⁰

Conclusion

The fallout from the 2008 financial crisis is still being felt, more than 10 years on. It has accentuated fiscal stress in countries across the world, with severe human rights consequences in some cases. Driven by the narrative of public resource scarcity, governments in every region have reduced their financial contributions to basic human rights protections, sometimes severely. Decent employment, access to justice, education, social protection, health and various other human rights have received deep and extensive cuts, with the most disadvantaged bearing the brunt of these “fiscal adjustments”.¹⁰¹

Austerity has become the new normal in various countries - an almost unquestioned state of affairs, to which some argue there is no alternative. As a result, governments increasingly see no choice but to turn to private sector investment as a way to finance the SDGs. It is becoming harder to distinguish governments' interests from the interests of TNCs and other powerful private actors. This leads to a range of human rights issues that must be properly regulated and resourced for.

In addition to in-depth gender analysis of existing corporate practices, as they relate to the UNGPs and related international human rights law, we recommend:

- 1. For the purposes of international human rights law, corporations must be treated as single entities.** UNGP 23 provides for this, even where laws apply on a separate legal entity basis. This changes how we analyse questions of responsibility and effective decision-making levels. UK case law shows how human rights claims can be brought against a corporate headquarters when its effective control can be reasonably demonstrated. Unlike corporate rules, human rights principles do not treat corporations as separate entities. UNGP 23 states that ‘all business enterprises have the same responsibility to respect human rights wherever they operate.’ This responsibility extends to business relationships involving financing, supply chains and

joint ventures, among others, while recognising that companies may have different degrees of leverage in such situations.

We recommend that the Gender Guidance to the UNGPs should demand measures to guarantee the effective implementation of UNGP 23, reinforcing the position that corporations are single entities.

2. Tax dodging and related abuses must be regulated as direct infringements of women's human rights.

We believe the activities of TNCs can have particularly negative impacts on women's human rights. When corporations rely on cheap labour, and pay less in tax or social security costs, they are abusing women's rights by reducing the available revenue and paying lower wages.

According to the UNGPs, this includes the facilitation of human rights abuses – which is especially relevant for the TNC's financiers, bankers, lawyers, accountants and other service providers. For example: 'The human rights impacts of those who advise and facilitate corporate tax abuse should equally be assessed and publicly reported' (UNGPs 19 and 23). Additionally, Kate Donald and Rachel Moussié argue that '[c]orporations... rely on women's cheap labor within global supply chains to increase their profits, while avoiding taxes and social security benefits that could pay for public services and support unpaid care work.'¹⁰²

We recommend the Gender Guidance should demand that states should identify and regulate other non-state mediated or direct impacts on women's rights, such as tax dodging and abuse.

3. All state and non-state actors must support the development and guarantee the ratification and implementation of the Legally Binding Treaty on Business and Human Rights.

We believe the UNGPs are not enough. We also need a binding UN Treaty on Business and Human Rights to create a stronger legal framework that can help to regulate issues such as land use/rights, environmental impacts, equitable access to remedial mechanisms and equal representation in the workforce.

We recommend that states support, adopt and provide for the proper implementation of a legally binding Treaty on Business and Human Rights that does not lock in standards lower than those embodied in the UNGPs, and has definitions consistent with the same terms used in the UNGPs.

We also recommend that the treaty takes into account the gendered dimensions of corporate practices by incorporating into its provision the Gender Guidance to the UNGPs and/or recognising its legally binding character.

Annex: Overview of the United Nations Guiding Principles on Business and Human Rights

This Annex provides an overview of the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UN itself defines these as voluntary norms that provide a roadmap to a future where businesses and communities live in harmony. The UNGPs are composed of three pillars and 31 rules. Those rules can be divided into foundational principles and operational principles. Below is a summary of these rules.

Pillar I – The State Duty to Protect Human Rights

- A. Foundational Principles
 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.
 2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.
- B. Operational Principles
 3. States should enforce laws that are aimed at requiring business enterprises to respect human rights, ensure amenable laws and provide effective guidance to businesses.
 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies.
 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises.
 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.
 7. States should help ensure that business enterprises operating in conflict-affected areas are not involved with such abuses.
 8. States should ensure that State-based institutions that shape business practices are aware of and observe the State's human rights obligations.
 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives.
 10. States, when acting as members of multilateral institutions that deal with business-related issues, should seek to respect human rights and their fulfillment.

Pillar II – The Corporate Responsibility to Respect Human Rights

- A. Foundational Principles
 - 11. Business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
 - 12. Business enterprises must respect internationally recognised human rights.
 - 13. Business enterprises must avoid causing or contributing to adverse human rights impacts, and seek to prevent or mitigate adverse human rights impacts.
 - 14. Business enterprises must respect human rights regardless of their size, sector, operational context, ownership and structure.
 - 15. Business enterprises should have in place policies and processes appropriate to their size and circumstances.

- B. Operational Principles
 - 16. Business enterprises should express their commitment through a statement of policy.
 - 17. Business enterprises should carry out human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts.
 - 18. Business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved.
 - 19. Business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action.
 - 20. Business enterprises should track the effectiveness of their response.
 - 21. Business enterprises should be prepared to communicate their human rights impacts externally.
 - 22. Business enterprises should provide for or cooperate in their remediation through legitimate processes.
 - 23. Business enterprises should comply with all applicable law, honour the human rights principles, and treat the risk gross human rights abuses as a legal compliance issue.
 - 24. Business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Pillar III – Access to Remedies

- A. Foundational Principles
 - 25. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that those affected have access to effective remedy.

- B. Operational Principles

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses.
27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial remedies, to remedy business-related human rights abuse.
28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.
29. Business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.
30. Industry, multi-stakeholder and other collaborative initiatives should ensure that effective grievance mechanisms are available.
31. Non-judicial grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue.

Endnotes

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- ³ K. Donald, and R. Moussié, 2016. Redistributing Unpaid Care Work – Why Tax Matters for Women’s Rights, 109 *IDS Policy Briefing*, p. 3.
- ⁴ David Weissbrodt and Muria Kruger, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 97 *Am. J. Int’l L.* 901 (2003), available at https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1247&context=faculty_articles.
- ⁵ See, for example, the policy report compiled by Trocaire entitled Making a Killing, available at <https://www.trocaire.org/news/making-killing-policy-report>.
- ⁶ See <https://www.opensocietyfoundations.org/voices/what-s-changed-and-what-hasn-t-ran-a-plaza-nightmare>
- ⁷ See http://www.miningweekly.com/article/amcu-threatens-strike-action-at-implats-over-planned-job-cuts-2018-08-07/rep_id:3650
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- ¹⁰ Molyneux, M. 2006. Mothers at the Service of the New Poverty Agenda: Progres/Oportunidades, Mexico’s Conditional Transfer Programme. *Social Policy & Administration*, 40 (4): 425-449.
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- ¹⁵ Christian Aid Ireland has produced two reports that touch upon these issues Land Matters: Dispossession and Resistance, available at <https://www.christianaid.org.uk/sites/default/files/2016-03/land-matters-dispossession-and-resistance-case-studies-nov-2015.pdf>, Engaging with the peace process in Colombia: Reflections from Christian Aid’s programme, available at https://www.christianaid.ie/sites/default/files/2018-11/engaging-with-the-peace-process-in-colombia-reflections-from-christian%20aids-programme_0.pdf. Christian Aid Ireland also submitted a response to the Working Outline of Ireland’s National Action Plan on Business and Human Rights, available at <https://www.dfa.ie/media/dfa/alldfawebsites/ourrolesandpolicies/int-priorities/humanrights/nationalplanonbizandhr/Christian-Aid-Ireland.pdf>.
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- ¹⁷ United Nations, ‘The Sustainable Development Goals Report 2018’, June 2018, accessible at <https://unstats.un.org/sdgs/files/report/2018/TheSustainableDevelopmentGoalsReport2018-EN.pdf>.
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- ²⁶ For more information, see <https://www.convercent.com/blog/indias-posh-act>.
- ²⁷ See, for example, Ending Supply-Chain Slavery: Is Asia Ready? available at <https://asiafoundation.org/2019/02/27/ending-supply-chain-slavery-is-asia-ready/> and Tainted Garments report available at https://drive.google.com/file/d/1ixp7QunDHOKOwJstndfaeBpQBHh_-Bmq/view.
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- ³¹ CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, available at <https://www2.ohchr.org/english/bodies/cedaw/docs/cedaw-c-2010-47-gc2.pdf>.
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- ³⁴ United Nations Business and Human Rights Forum, 2018, Gender-Sensitive Human Rights Due Diligence Roundtable, available at <https://www.ohchr.org/Documents/Issues/Business/Gender/GenderRoundtableDueDiligence.pdf>
- ³⁵ See Leite, M. 2019. Pluralizing Discourses: Gender and Multinationals. *Journal of International Women’s Studies*, 20 (3): 116-138.
- ³⁶ FAO (2015)
- ³⁷ Cf. for example The European Times, Sierra Leone.
- ³⁸ Transparency International (n.d.).
- ³⁹ Similar human rights abuses have been perpetrated by other TNCs in Sierra Leone which imply that the lack of appropriate accountability frameworks leads to impunity. For example, a Swedwatch report entitled ‘No Business, No Rights’ available at <https://swedwatch.org/en/regions/africa-south-of-the-sahara/swedfund-fmo-lacked-responsibility-leaving-project-without-exit-strategy/>, shows how local communities were affected by the Addax Bioenergy project. It affirms that ‘when land-related projects fail or stall, local communities are often left with little to rely on and face severe human rights risks... promises made to local communities for jobs and better lives are rarely fulfilled’. The Addax case is interesting because at the time it was considered an excellent example of a project that did a solid HRDD (ESHAIA) prior to entering. The first report on Addax produced in 2013 acknowledged that, but also saw that the gender lens was missing, with devastating results.
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- ⁴² Ibid. at 11.
- ⁴³ Simmons & Simmons, 2018. Human Rights Defenders' Fact Sheet: United Nations Principles on Business and Human Rights Human Rights Due Diligence at 3.6.
- ⁴⁴ Ibid.
- ⁴⁵ See, for instance, http://corporatejustice.org/eccj-position-paper-mhrdd-final_june2018_3.pdf.
- ⁴⁶ Although we have used SDG language and the priorities set out by the UN Working Group, we believe that instead of talking about women's empowerment, per se, we should actually talk about setting the enabling conditions for self-empowerment.
- ⁴⁷ United Nations Economic and Social Council. (2017). *Progress towards the Sustainable Development Goals: Report of the Secretary-General*, E/2017/66. New York: United Nations, p. 8.
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- ⁵² The Bench Marks Foundation often investigates human rights abuses related to corporate practices. For instance, in 2018 it contributed to a report produced by Swedwatch entitled 'Carrying the Costs' available at <https://swedwatch.org/en/regions/africa-south-of-the-sahara/atlas-copco-sandvik-address-human-rights-risks-south-africas-platinum-mines/>. The report mapped human rights abuses and risks present in platinum mining operations in South Africa. It particularly focuses on two Swedish TNEs that sell equipment to South Africa's platinum industry, Sandvik and Atlas Copco. The report is a follow-up to a previous report but this time based on 600 interviews in mining-affected areas. The gender aspect is quite prevalent. The report recommends Atlas Copco, Sandvik and other companies providing mining equipment to the South African platinum mining sector to use their leverage to encourage customers to address adverse human rights impacts. In cases where leverage needs to be increased, this can be done for example by forging partnerships with other suppliers to the mining companies or other relevant parties that may influence the situation.'
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- ⁶⁰ See <https://weeps-gapanalysis.org/>.
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- ⁶³ See <https://www.catalyst.org/knowledge/2012-catalyst-census-fortune-500-women-executive-officers-and-top-earners>.
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- ⁶⁵ Raday, 2014.
- ⁶⁶ IMF Spillovers in international corporate taxation. May 2014. p7, fig 1.
- ⁶⁷ OECD Revenue Statistics at <https://www.oecd.org/tax/tax-policy/revenue-statistics-highlights-brochure.pdf>.
- ⁶⁸ While explicitly framed in human rights terms, this definition follows closely the types of potentially abusive tax practices laid out in IMF, 2014 as well as the International Bar Association in *Tax Abuses, Poverty and Human Rights* 8 (Oct. 2013), http://www.ibanet.org/Tax_Abuses_Poverty_and_Human_Rights_Report.aspx. The concern with the 'spirit and letter of the law' is also in line with the OECD Guidelines for Multinational Enterprises. The definition also draws from the Kathmandu Declaration on Illicit Financial Flows and Human Rights, which explicitly defines Illicit Financial Flows in terms of the harm caused by IFFs, see: <https://financialtransparency.org/wp-content/uploads/2018/08/Kathmandu-Declaration.pdf>, paragraph 4.
- ⁶⁹ See <https://www.gfintegrity.org/report/illicit-financial-flows-to-and-from-developing-countries-2005-2014/>.
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- ⁷⁹ At the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, issued the Nairobi Declaration which is available at https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf.
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- ⁸³ For more information, see: <https://www.mabnacional.org.br/>.
- ⁸⁴ See <https://www.theguardian.com/world/2018/feb/28/brazil-dam-collapse-samarco-fundao-mining>.
- ⁸⁵ For more information, see: <https://www.leadersleague.com/en/news/bhp-and-vale-reach-settlement-with-brazilian-authorities-over-samarco-dam-disaster>.
- ⁸⁶ See <https://www.mabnacional.org.br/noticia/mulheres-resist-ncia-do-rio-doce>.
- ⁸⁷ For more information, see: <https://www.theguardian.com/world/2019/jan/26/hundreds-feared-dead-brazil-dam-collapse-releases-mud-tide>.
- ⁸⁸ See a similar discussion and the links to the UN draft binding treaty on business and human rights at <https://www.business-humanrights.org/en/reflections-on-the-zero-draft-of-the-proposed-legally-binding-treaty-on-business-and-human-rights#c184769>.
- ⁸⁹ See <http://www.observabarragem.ippur.ufjr.br/>.
- ⁹⁰ Ending Violence against Women and Girls Programming Essentials, UN Women, June 2013.
- ⁹¹ See <https://www.ohchr.org/Documents/Issues/Business/GenderConsultation30.11.17.pdf>.

⁹² Ibid.

⁹³ See more at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/064/48/PDF/G1406448.pdf?OpenElement>.

⁹⁴ See draft treaty at <https://www.business-humanrights.org/sites/default/files/documents/DraftLBI.pdf> and draft optional protocol at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/ZeroDraftOPLegally.PDF>.

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