

# Leader or laggard?

Is the UK meeting its commitments  
on business and human rights?



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**Cover photo:** The United Nations building, Geneva (CAFOD).

**Page 1 photo:** Police and protestors in Cusco, Peru (Miguel Gutierrez).



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## Executive summary

“Business is a noble vocation, directed to producing wealth and improving our world.”

Pope Francis, Encyclical Letter *Laudato Si'* of the Holy Father Francis on Care for our Common Home, section 129.

**The way in which we do business is changing our lives and our planet to an unprecedented extent. To ensure that business models are just and sustainable in the long term, governments need to understand how the rights of their citizens are being affected. The UK government has consistently presented itself as a leader in supporting and promoting international standards on business and human rights. There is some merit to this claim. Yet as the Prime Minister gets to grips with a new Brexit Britain, she needs to demonstrate that the UK's commitment to ensuring businesses respect human rights is being translated into meaningful action.**

The European referendum result on 23rd June 2016, instructing the government to leave the EU, means that the UK will be required to renegotiate trade agreements and carve out a new role within the international community. During the same period, we will need to deliver progress on our contribution to the Sustainable Development Goals and our existing commitments on climate change under the 2015 Paris Agreement. We need an effective plan to achieve this, which will guarantee that businesses of all kinds play a sustainable, responsible role within our societies. It is imperative that in delivering the trade deals the country will need, the UK does not focus on the promotion of business interests to the detriment of the world's poorest people.

CAFOD sees this as a crucial opportunity to invoke a new path towards sustainable and responsible business practices that benefit all people whether rich or poor, living in urban or rural contexts, in developed or developing countries. The Prime Minister has already indicated she is prepared to “get tough on irresponsible behaviour in big business”. Her first calling point ought to be revisiting the UN Guiding Principles on Business and Human Rights (the ‘Guiding Principles’) which were first adopted five years ago. These are existing global norms which the UK has already committed to implement.

Many of the human rights violations in developing countries which the Guiding Principles were designed to address have been occurring for decades. For the thousands of women and men whose lives have been harmed or endangered as a result of irresponsible business operations, the situation is now urgent.

CAFOD has been engaged since the very beginning in the development of the UK's National Action Plan on Business and Human Rights. We believe there is potential to use this to bring positive change through a far more strategic approach across government departments. However, we also know from our work with partner organisations on the ground that National Action Plans on Business and Human Rights promoting a watered-down version of the Guiding Principles will simply not deliver the scale of change needed to stop corporate abuses.

The UK government has pushed ahead with negotiating binding international agreements which give businesses greater powers to protect their rights, but has opposed attempts to create an international treaty to help protect the rights of citizens affected by business operations. It is clear that existing National Action Plans will not be sufficient to provide this kind of protection. Therefore, CAFOD is calling on the UK government to engage positively with the international debate on a treaty on business and human rights. It should also ensure that any new international trade and investment agreements are compatible with the state's duty to protect human rights. Without this the UK cannot be seen as a credible advocate for business and human rights on the world stage.



The potential for impact is great; a cross-government strategy to embed business and human rights in all that Whitehall seeks to achieve will be good for business, good for workers and good for an internationalist UK which stands up for all people, whatever their circumstances.

## Recommendations

1. **Develop a cross-departmental UK strategy on Business and Human Rights.** This new version should draw on the example of the Open Government Partnership National Action Plan by including a genuine ‘smart mix’ of actions including legislative changes as well as softer measures such as good practice initiatives. The strategy should include links to in-depth guidance for businesses.
2. **The government must urgently address the current barriers that prevent communities harmed by the actions of UK-based businesses from seeking redress in the UK.** The new UK strategy should have time-bound actions and specific targets on improving access for communities to the judicial route. This should include developing carefully targeted legislation which would allow criminal prosecution of those companies which have committed serious human rights abuses.
3. a) **The UK government should engage constructively in the international debate on a treaty on business and human rights and not boycott the UN Intergovernmental Working Group.**  
 b) **The UK has committed to implementing the UN Guiding Principles and must ensure these are applied to any new trade negotiation processes, whether bilateral or multilateral.** The UK government should publish its current analysis of the full proposed text of the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA) in the light of the UN Guiding Principles on Business and Human Rights so that national parliaments have this information before any future UK trade agreements are negotiated.
4. **The FCO should support active participation by civil society groups and affected communities as part of its ongoing advice to national governments on implementing the UN Guiding Principles.**
5. **DFID should ensure that its strategic priorities and ways of working support the UK’s commitments on business and human rights more consistently.**
  - **Increase the profile of DFID’s work on business and human rights and use the RATE programme to raise awareness of the UK’s existing commitments across departments and programmes.**
  - **Ensure that experiences and concerns of local communities are better reflected in DFID’s analysis of the potential development impacts of large scale projects to inform its approach to implementing the UK Aid Strategy and the Economic Development Strategic Framework.**
  - **Ensure that new approaches to financing for development and climate finance are designed to be consistent with the UN Guiding Principles.**

# Introduction

“We were leaders on human rights in 1215, as the Magna Carta was sealed, and we remain leaders now in 2015.”

Philip Hammond, Chancellor of the Exchequer (from speech made while Foreign Secretary, 10 December 2015)

**The UK has shown international leadership in relation to the UN Guiding Principles on Business and Human Rights. The UK was one of the governments which funded and supported the work of Professor John Ruggie, the UN Special Representative on Business and Human rights, from 2005-11. Prime Minister David Cameron was one of the first premiers to commit to implementing the UN Guiding Principles and in September 2013 Foreign Minister William Hague and Secretary of State for Business and Skills Vince Cable jointly launched the first National Action Plan on business and human rights. This was a welcome lead from a country where a large number of global businesses are headquartered or listed.**

CAFOD’s partner organisations in the developing world have long known that different kinds of business operations can affect a wide range of rights, including the right to just and favourable working conditions, freedom from inhuman and degrading treatment, right to safe and clean drinking water, the right to health and even the right to life. These impacts can be both positive and negative. We anticipate that for citizens in the developing and the developed world, the impacts of businesses on our lives will become even more important in future years. The development and adoption of the Sustainable Development Goals and the Paris Agreement on climate change highlighted the important role that private sector actors will play in their delivery.

Clearly the government’s approach to business and human rights is relevant to a huge range of policy areas, for example UK environmental protection, consumer rights, labour law, privacy and legal aid. This report is not an exhaustive study of all of the issues, rather it reflects the areas where CAFOD as an international development agency has particular expertise. We have also concentrated on the aspects of the Guiding Principles which are priorities for our partner organisations, based on their experience of the impact of business activities.

This report analyses a limited number of specific policies and activities of key government departments and also highlights areas for future action, if the UK is to be a leader in this important field. The themes covered are:

- Understanding the UK’s approach to business and human rights
- Ensuring access to justice for communities harmed by business activities
- Taking a leadership role in the international debate on business and human rights including trade and investment
- Ensuring that affected communities have a voice in deciding national policies on business and human rights
- Making the UK’s development policy consistent with its commitments on business and human rights.

Exploring some examples in depth, including areas which are regarded as UK successes, reveals something of a Jekyll and Hyde approach to business and human rights. Our conclusion is that the UK manages to be both a leader and a laggard. Without doubt the government deserves credit for the political leadership that it has shown and a number of clear actions taken since 2011. But in some of the most important policy areas, such as access to justice and international development policies, government action to date has been uncoordinated, weak and in a few cases, even contrary to the Guiding Principles. The updated version of the National Action Plan does not currently provide an adequate plan for future actions or a good enough model for other countries to follow.

In a time of great political uncertainty at international and national level, following the outcome of the EU referendum, the UK government needs to signal that while it places the private sector at the heart of its economic and development strategies, it still expects that businesses will act responsibly and has put an effective policy framework in place to achieve this goal.

Other countries are looking to see what happens next with the UK's approach to business and human rights. Given our influential role, future policy decisions here could help or hinder the credibility of the National Action Plan model and even the Guiding Principles themselves as a mechanism for driving positive and sustainable changes to how we do business in the 21st-century.

The government has the opportunity to build on the positive start it has made, and address the blind spots, by adopting a coherent business and human rights strategy which will deliver results for citizens, the environment and for business women and men who want their companies to be sustainable. We hope that this report will be a helpful contribution to broader research and thinking by politicians, civil society organisations, civil servants and people working in the private sector in support of that goal.



Local woman looking at mine site in Cusco region, Peru.

# 1. Understanding the UK's approach to business and human rights

“...as British business expands overseas, so too does our responsibility to ensure that our commercial success does not come at a cost to the human rights of others. We strongly believe that the promotion of business, and respect for human rights, go hand in hand.”

William Hague, Former Foreign Secretary, 5 September 2013

**The UK government has been supportive of John Ruggie, the UN Special Representative on Business and Human Rights approach, and has been a leader in committing to the UN Guiding Principles, adopting a National Action Plan and encouraging other countries to do the same. Over the last three years there have been examples of light-touch actions to support respect for human rights and human rights due diligence. But because there was no overall coherent strategy and ministers were afraid of imposing 'red tape' on business, these measures have not had the full impact that they could have done. Now the government has produced an updated Action Plan which does not include time-bound, measurable actions. This risks undermining progress and confusing companies.**

The impact of businesses on human rights is not a new issue. Many of the church groups, local non-governmental organisations (NGOs) and indigenous communities with which we work in Africa, Asia and Latin America have been looking at the ways that citizens' lives are affected by business activities, and then trying to change specific harmful practices, for decades.<sup>1</sup> Some of the specific human rights identified by CAFOD partner organisations in Mexico, Zambia, Zimbabwe, Cambodia and Colombia, which can be affected by business activity include:

- Right to life
- Right to freedom of association and collective bargaining
- Right to freedom of association and expression
- Freedom from cruel, inhuman and degrading treatment
- Right to health
- Right to just and favourable working conditions
- Right to privacy
- Right to safe and clean drinking water and sanitation.<sup>2</sup>

1 See for example CAFOD 'Clean Up Your Computer', 2004, CAFOD 'Counting the Cost of Gold', 2005, CAFOD 'Kept in the Dark', 2008.

2 CAFOD workshops on the UN Guiding Principles on Business and Human Rights with local partner organisations held in Bogota, Quibdó, Lusaka and Phnom Penh 2012-2014.



Like other Catholic development agencies within the CIDSE network, CAFOD invested time in the six year UN process on business and human rights because voluntary Corporate Social Responsibility (CSR) approaches had failed to deliver significant improvements in corporate behaviour, particularly in relation to the poorest and most marginalised groups. The final outcomes of John Ruggie's United Nations mandate – the Protect, Respect, Remedy Framework and the UN Guiding Principles – also had their limitations but they offered opportunities for progress as well, depending on the subsequent actions of governments and companies.

### Box 1: What are the UN Guiding Principles on Business and Human Rights?

The Protect, Respect, Remedy Framework and the UN Guiding Principles on Business and Human Rights were developed by the UN Special Representative John Ruggie and his team as a result of a five-year process. This normative framework recognises that those people affected by corporate abuses have rights and references the UN Declaration and key treaties as standards, instead of defining the issue in terms of Corporate Social Responsibility where a company can pick and choose what it does. The Guiding Principles were welcomed and adopted by the UN Human Rights Council in June 2011.

### Strengths of the UN Guiding Principles

The state duty to protect human rights is confirmed at the core of international law.

John Ruggie states that governments need to use a 'smart mix' of measures to meet their duty to protect and address corporate abuses of human rights; this explicitly includes regulation as well as voluntary approaches such as guidance.

The Guiding Principles emphasise the need for states to ensure policy coherence, for example so that terms of investment agreements or free-trade agreements do not restrain governments' abilities to meet their duty to protect human rights. They set out important elements for human rights due diligence by companies to avoid infringing on the rights of others and to address any adverse impacts. They recognise companies have responsibilities for human rights impacts in relation to their supply chains and business relationships.

The Guiding Principles confirm that companies can have an impact on virtually all human rights. They explicitly reference vulnerable groups and recognise the imbalance of power between companies and victims. Meeting the Guiding Principles is seen as a minimum standard of conduct for companies.

### Weaknesses of the Guiding Principles

The language of the Guiding Principles is very general – this leaves a lot of room for interpretation. They represent guidance to states and companies, not a new international legal obligation – for instance there are no enforcement mechanisms yet which are sufficient to close the acknowledged governance gaps. Some of these gaps are very significant; what happens in situations where the state is unwilling or unable to protect human rights and a company does not respect human rights?

The guidance to states on how to address obstacles to justice for victims, including through legal routes, is not strong enough. Important issues which are insufficiently addressed in the Guiding Principles include:

- Guidance on situations of low intensity conflict
- The trend of increasing criminalisation of human rights defenders
- The specific rights of indigenous peoples
- How to ensure effective participation and consultation of affected groups?

How effective will the Guiding Principles be in preventing human rights abuses?	
Opportunities	Risks/Threats
Increased recognition by governments and society of the impacts of businesses on human rights and the need to address gaps.	Not a new international legal obligation: <ul style="list-style-type: none"> <li>• lack of political will</li> <li>• lack of enforcement mechanisms.</li> </ul>
Some governments committed to implementing the Guiding Principles at national level, e.g. through cross-government action plans.	Governments may focus only on guidance and voluntary policies instead of adopting changes to the law where this is needed.
Wide range of rights identified – relevant to activities by companies in all sectors and countries.	If there is no requirement for due diligence by companies, they might choose to concentrate only on one or two preferred issues.
UN Working Group on Business and Human Rights can receive submissions from anyone.	Northern focus of debate so far. Transnational companies much more aware of UN process than affected communities.
Civil society can help to define how companies should carry out their corporate due diligence.	Will Guiding Principles actually change company practices?
Evaluation of impact will show very clearly any shortcomings in implementation by states and companies.	Current focus is very much on dissemination and good practice examples.
Can develop into a universally accepted minimum standard.	Potential for different and conflicting interpretations of what Guiding Principles require from companies and states.

Source: CIDSE (2013) ‘The UN Protect, Respect, Remedy Framework and the Guiding Principles: Driving Change?’ pp.5-6.

June 2016 marked the five-year anniversary of the UN Guiding Principles. It is sensible to revisit this analysis and consider to what extent these opportunities and threats have actually been realised. As one of the states which first committed to implementing the Guiding Principles, the UK provides a test bed for the effectiveness of this approach.

### UK government support for John Ruggie’s work at UN level

The UK government consistently supported the mandate of the UN Special Representative on Business and Human Rights, Professor John Ruggie, from its beginning in 2005. This included through active engagement in policy discussions, financial support to the Special Representative and convening meetings at critical stages during the development of the Guiding Principles.<sup>3</sup>

After the UN Human Rights Council adopted the Guiding Principles in June 2011, Prime Minister David Cameron was one of the first premiers to commit publicly to implementing the UN Guiding Principles in November 2011 at a press conference with the then President of Colombia.<sup>4</sup>

3 Including for example the conference on the UN Framework on Business and Human Rights at Wilton Park in January 2011 as well as a follow up event there in June 2012.

4 UK and Colombia agree Joint Declaration on Human Rights 21 November 2011 available at: <http://www.fco.gov.uk/en/news/latest-news/?view=Press&id=695253482>

## Developing the first National Action Plan on Business and Human Rights

The UK process began in 2012 and involved consultations with broader civil society, including a range of NGO and trade union representatives, as well as separate consultation meetings with business groups representing small and medium-sized enterprises and another with larger, transnational companies.

FCO officials deserve credit for getting things started, although with hindsight there are ways that the process for developing the National Action Plan on Business and Human Rights could have been improved. The International Corporate Accountability Roundtable (ICAR) and the European Coalition for Corporate Justice (ECCJ)'s research report identified a number of omissions benchmarked against the ICAR and Danish Institute for Human Rights good practice methodology, such as the absence of a national baseline study in order to inform what was needed in the action plan.<sup>5</sup> The CORE Coalition on Corporate Responsibility, whose members include Amnesty International, CAFOD and Traidcraft, published its own analysis in December 2013.<sup>6</sup>

## Achieving a 'smart mix' of guidance, support and regulation

*"States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights."*

Guiding Principles on Business and Human Rights, June 2011, Commentary p. 5.

A central element of the UN Guiding Principles was that John Ruggie recognised the need for 'a smart mix' of policy measures to implement his framework and specifically that this should include appropriate regulation. However, in terms of the future actions planned, the 2013 UK National Action Plan did not propose any specific changes to UK law. Instead, most of the actions focussed on guidance or encouraging companies to follow good practice. We recognise that guidance is very important. Many enterprises are only just beginning to think about the impact of their business activities on the whole range of human rights. Nevertheless the absence of binding measures within the action plan is a serious flaw, especially since other countries have subsequently followed the UK's lead in this respect. We deal with this point in more detail below.

## Improving the UK's performance on policy coherence

The 2013 Action Plan stated that: "Companies have told us that they need from the government policy coherence and clear and consistent messaging." We agree with this analysis. In our conversations with businesswomen and men, they have often identified a plethora of different initiatives as unhelpful and confusing.<sup>7</sup> Those concrete actions that were included in the first UK Action Plan were primarily actions for the FCO (although the department responsible for delivering each action was not spelt out.) In fact many of the key policy decisions influencing effective implementation of the Protect, Respect, Remedy framework are led by other government departments. This is why CAFOD believes it would be best to develop the next iteration of the Action Plan into a clear cross-government strategy on business and human rights. With the FCO and the Department for Business, Energy and Industrial Strategy (BEIS) experiencing significant budget cuts following the last Comprehensive Spending Review it becomes even more important that the UK government has a more joined-up approach to deliver its objectives on business and human rights.

5 ICAR and ECCJ, Assessments of Existing Action Plans on Business and Human Rights, November 2015 update available at <http://icar.ngo/analysis/icar-eccj-release-2015-update-of-national-action-plans-assessments/>

6 CORE, Good Business? Analysis of the UK Action Plan on Business and Human Rights, December 2013.

7 This view was also reflected by NGOs and business representatives in the conversation with BIS Minister Jenny Willets on supply chain initiatives in April 2014.

While 'policy coherence' is a central concept to the UN Guiding Principles, the term can seem like jargon or a platitude unless we look at actual examples of how it can work in practice. The case studies below examine two areas which are recognised as concrete actions by the government on the issue of business and human rights but where in each case the lead government department was not the FCO. Key questions are (i) the extent to which these areas of progress demonstrate a coherent approach by the UK government on business and human rights and (ii) whether these actions are likely to be effective in delivering greater corporate respect for human rights in line with the Guiding Principles. It is clear that the UK has led on some aspects of requiring businesses to report on how their operations affect human rights. However, these positive steps may not deliver the full benefits envisaged because of lack of follow up on monitoring and enforcement and a piecemeal approach to which companies have to report.

## Case study 1

### Amendments to the Companies Act 2006 and the EU Non-financial reporting directive 2014

The 2013 UK Action Plan included one reference to corporate reporting in order to support action by businesses to respect human rights. This was a reference to the clarification in the Companies Act which "means that company directors will include human rights issues, in their annual reports."<sup>8</sup> There was no mention in the first UK Action Plan of the ongoing EU process to reform Non-financial reporting, although the Commission's proposals had been published several months before in April 2013 and included specific language on human rights. The Non-financial Reporting Directive aims at ensuring that businesses across all Member States provide clear information on potential risks and the steps that they are taking on social and environmental matters, respect for human rights and anticorruption and bribery issues. Arguably this was one of the key political opportunities to shape business practice on reporting on human rights risks and impacts by thousands of EU-based companies.

In practice, the UK government, led by the then department for Business, Innovation and Skills (BIS), made significant inputs into the final shape of the EU non-financial reporting reforms. CAFOD raised the implementation of the UN Guiding Principles with the officials leading the negotiations on behalf of the UK.<sup>9</sup> The reform of EU corporate reporting requirements represented an opportunity to shape reporting requirements across the whole of the European Union. Companies such as IKEA and Unilever publicly supported the Commission's proposals and requested that due diligence in supply chains should be specifically mentioned in the directive.<sup>10</sup> However the position of the UK government was to try to ensure that the reforms reflected the status quo in terms of UK reporting, rather than to use this opportunity to embed the Guiding Principles into corporate reporting. For example, BIS opposed the proposal to extend reporting requirements to the very largest non-listed companies, even though the former UN Special Representative John Ruggie, author of the Guiding Principles, wrote to then Secretary of State Vince Cable on this point, asking the UK to support human rights reporting for large non-listed companies.<sup>11</sup>

As a result of the EU legislative process, significant changes to corporate reporting by large listed companies were adopted in November 2014. However the number of companies covered was significantly reduced compared to the original proposal, because only companies with more than 1000 employees are required to report. Member States do have quite a lot of flexibility for how the reporting requirements are transposed into national law and which companies are covered. The process to transpose the directive must be completed by December 2016. It is likely that the UK will apply it to only the very largest, listed companies. ●

8 HM Government Good Business: Implementing the UN Guiding Principles on Business and Human Rights, September 2013.

9 Series of meetings between CORE coalition members and BIS over the course of 2013 and 2014.

10 <https://www.foe.co.uk/sites/default/files/downloads/ikea-unilever-letter-22059.pdf>

11 "The EU Directive should embrace all large companies, not just listed ones. Large non-listed companies are currently able to operate to lower standards of transparency and conduct, which sets a split level playing field on an issue that is relevant not just to listed companies and their shareholders, but to all businesses and the societies in which they operate." Letter from Professor John Ruggie, Chair of SHIFT, to Rt Dr. Vince Cable MP, dated 22 January 2014.



## Case study 2

### Amendment to the Modern Slavery Bill 2015

The UK government has taken a leadership role in relation to business and human rights in the area of addressing modern slavery. In October 2014 the Home Office introduced an amendment to the Modern Slavery Bill which created a direct reporting requirement for businesses. This requirement had received considerable support from MPs across all parties, as well as NGOs and businesses who felt that it would support responsible practice.<sup>12</sup>

This reporting requirement came into force in October 2015. It applies to every organisation carrying out a business in the UK with a global turnover of £36 million or more. This includes both listed and non-listed companies and requires them to consider the risk that slavery and forced labour could be present in their operations and their supply chains.

As then Home Secretary Theresa May stated, the focus is on identifying and addressing human rights risks and abuses, not just reporting whether this is material to the business:

*“I want to support, motivate and incentivise organisations to understand the complex issue of modern slavery and how they can tackle it. Organisations with significant resources and purchasing power are in a unique and very strong position to influence global supply chains.*

*It is simply not acceptable for any organisation to say, in the twenty-first century, that they did not know. It is not acceptable for organisations to ignore the issue because it is difficult or complex. And, it is certainly not acceptable for organisations to put profit above the welfare and wellbeing of its employees and those working on its behalf.”<sup>13</sup>* ●

In CAFOD's view, the reforms to the Non-Financial Reporting regime and the Modern Slavery Act are concrete examples of government actions since 2013 which will support respect for human rights by businesses. However these two examples also illustrate that a more coherent, strategic approach to business and human rights would help officials and provide a clearer steer for businesses. For example, as the government prepares to transpose the EU Non-Financial Reporting directive into UK law by December 2016, it is important that it considers the impacts that the largest unlisted companies can have on human rights. Including such businesses within the new reporting requirements would deliver an approach consistent with the Modern Slavery Act.<sup>14</sup>

BEIS and the Home Office also need to develop a credible approach to monitoring corporate reporting on human rights and a more effective enforcement regime. This is currently an area of weakness in relation to both Non-Financial Reporting and the Modern Slavery Act. Effective monitoring and enforcement mechanisms should exist in relation to all laws and minimum standards. Otherwise measures designed to increase corporate respect for human rights will not deliver the intended results.

### Opportunities for learning from the Open Government Partnership (OGP)

There is a real contrast here between the updated business and human rights National Action Plan and the UK Open Government National Action Plan 2016-18 which was released on the same day and which covers ways that government and businesses can tackle corruption and become more transparent and accountable to citizens. The Open Government NAP contains a breakdown of the collaborative process with civil society and other actors for updating the plan, 13 clear commitments, each of which has an objective, an assessment of the status quo, a lead implementing organisation, other government departments and actors involved, a timeline and verifiable and measurable milestones to fulfil the commitment.<sup>15</sup>

<sup>12</sup> See for example the letter from ETI members and the BRC to the Prime Minister, 29 August 2014 <http://www.ethicaltrade.org/sites/default/files/resources/ETI%20BRC%20letter%20to%20PM.pdf>

<sup>13</sup> Home Office 'Transparency in Supply Chains etc. A Practical Guide.' October 2015.

<sup>14</sup> See CAFOD response to the BIS Non-Financial Reporting consultation, April 2016.

<sup>15</sup> HMG UK Open Government National Action Plan 2016-18, May 2016.

In comparison the updated version of the Business and Human Rights NAP can be regarded as a progress update but the commitments it makes for the future are not sufficiently ambitious. There is still a need for a genuine, forward-looking document which will provide an over-arching strategy for government departments in relation to business and human rights and a single consistent message to businesses, as well as setting out a 'smart mix' of legislative and non-legislative time-bound actions.

## Recommendation 1

**The Government should turn the UK Action Plan into a coherent cross-departmental strategy on business and human rights.** Instead of protection of human rights being perceived as 'red tape', a clear UK strategy on business and human rights can be a tool for ensuring that thinking on policies, new initiatives, guidance and regulation is much more joined up. This is particularly important at a time when different departments will be involved in negotiating external agreements and trade deals. This could help save time and resources within government. A consistent approach will also help those businesses working to meet their responsibilities to respect human rights in their operations.

CAFOD has identified a number of concrete measures that the government can now take to make sure that all the different departments that deal with businesses support the implementation of the Framework effectively:

### Practical ideas for achieving policy coherence

- **Upgrade the Action Plan to a cross-departmental UK Strategy on Business and Human Rights. This new version should include a genuine 'smart mix' of actions including legislative changes as well as softer measures such as good practice initiatives. The strategy should include links to in-depth guidance for businesses.**
- **Ensure that the government's policy commitments and expectations are linked to specific actions, with a timeline and clear information as to who will be delivering them.**
- **Strengthen the remit of the Cross-departmental Working Group on Business and Human Rights and ensure that it has high level support. Regular public reporting against the stated actions will also help to raise the profile of this group's work.**
- **Consider the implications for the UK's commitments on business and human rights when making new policy and legislation. It is important to ensure that that other laws and policies do not inadvertently make it harder for enterprises to respect human rights. For example, by including a stage within the impact assessment of legislative proposals, the government can ensure that new laws support and do not undermine the UK's implementation of the Guiding Principles.<sup>16</sup> This will support policy coherence between different government departments and make sure that consistent messages are sent to companies.**

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<sup>16</sup> For example such a step could have identified and avoided the problems for access to remedy caused by the MOJ's Legal Aid, Sentencing and Punishment of Offenders Act 2012 early on. This case study is set out in more detail in Chapter 2.

## 2. Ensuring access to justice for communities harmed by business activities

“In the present condition of global society, where injustices abound and growing numbers of people are deprived of basic human rights and considered expendable, the principle of the common good immediately becomes, logically and inevitably, a summons to solidarity and a preferential option for the poorest of our brothers and sisters.”

Pope Francis, Encyclical Letter *Laudato Si'* of the Holy Father Francis on Care for our Common Home, section 158.

**Communities in the developing world often struggle to get access to remedy on key human rights issues at local and national level. Their chances for accessing remedy in other jurisdictions are already very limited and in some respects decreasing. This is a violation of the state's duty to protect and to provide access to remedy, and affects the poorest and most vulnerable communities most. The UK government needs to demonstrate that it is taking action to fulfil this duty. Mechanisms for monitoring and stopping abuses need to catch up with the global nature of business operations.**

### Why does access to justice matter for poor communities?

For many communities in the developing world affected by large-scale private sector projects, a key concern is how to get redress if they or their environment are harmed. Clearly it is in everyone's interest to prevent problems from occurring in the first place. All too often this has not been achieved. In CAFOD's experience, although not impossible, it is often very difficult for marginalised communities to raise serious environmental and human rights problems caused by business operations and to get them resolved successfully. The complexity and slow nature of these kind of legal cases means that even if they do actually manage to reach the courts they are almost always settled before adjudication.

### Justice for poor people in Catholic Social Teaching

In his 2015 encyclical *Laudato Si'*, Pope Francis emphasised the very close links between environmental exploitation and degradation and the harm this causes to the lives of local communities, including their cultural identity as well as economic livelihoods.<sup>17</sup> Justice was also a prominent theme in the speech that the Pope gave to the United Nations in New York on 25 September 2015, when he reminded states: “*we are dealing with real men and women who live, struggle and suffer, and are often forced to live in great poverty, deprived of all rights.*”<sup>18</sup>

While the concepts of access to remedy and access to justice are integral to our societies, these terms can seem very theoretical and remote from daily life. The case study below, drawing on the experience of CAFOD partner organisations in Peru, provides a concrete example of situations in which local communities seek redress, and the reality for ordinary citizens and local groups trying to use the courts to bring a successful legal case against a multinational company. It also raises the issue of the role that the UK can play, as the home state to many influential global companies.

<sup>17</sup> Encyclical Letter *Laudato Si'* of the Holy Father Francis on Care for our Common Home, section 148.

<sup>18</sup> Pope Francis, Speech to the United Nations, 25 September 2015.

## Case study 3

### BHP Billiton, Xstrata, Glencore and the Tintaya and Antapaccay mines in Espinar, Peru



Funeral of Walter Sencia who was shot in 2012 during the violence in Espinar, Peru (photo: Miguel Gutierrez).

The case study of the Tintaya and Antapaccay mines in the region of Cusco in Southern Peru illustrates some of the challenges faced by rural communities trying to raise their concerns about the social, human rights and environmental impacts of a particular mine with a global company, headquartered in another country. It also demonstrates the reality of how national justice systems can work for the different actors. It was written in conjunction with the Peru Support Group.<sup>19</sup>

### Background

Mining is a key sector within the Peruvian economy. Revenues from minerals represented approximately 55% of the country's exports in 2013.<sup>20</sup> However, despite the long history of mining in Peru, government institutions regulating the industry are often weak. Between 2000 and 2014, 869 people died in mining related accidents.<sup>21</sup> Technical expertise to carry out effective evaluation and monitoring of mining activities is often insufficient at the local and national level. Furthermore, in 2014, the Peruvian government introduced several packages of laws which weakened environmental regulation in an effort to boost mining.<sup>22</sup>

19 The Peru Support Group is an independent NGO that works with Peruvian groups and an international network to defend human rights, promote social inclusion and strengthen democracy [www.perusupportgroup.org.uk/](http://www.perusupportgroup.org.uk/)

20 EY – Peru's mining & metals investment guide 2014/15.

21 [http://www.minem.gob.pe/\\_estadistica.php?idSector=1&idEstadistica=7588](http://www.minem.gob.pe/_estadistica.php?idSector=1&idEstadistica=7588)

22 Law 30230 passed in July 2014.



Water is scarce in a large portion of Peru's territory and the land is arid. This situation is being exacerbated by the effects of climate change. Peru has a large indigenous population which to a great extent is not recognised within the political system and has been largely excluded from the benefits of development. Therefore, in CAFOD's view it is not surprising that extractive industry operations are often highly controversial and linked to community conflicts. Of the 205 'hotspots' of conflict and actual or potential violence in Peru in August 2014, over half – 110 – were related to mining or hydrocarbons.<sup>23</sup>

### Foreign ownership structures

All three of the foreign mining companies which have ultimately owned the remote Tintaya site in Peru have had strong UK links, through listing on the London Stock Exchange main market and, in the case of BHP Billiton and Xstrata, registered offices in London.

The Tintaya mine was privatised and sold to BHP Billiton in 1996. There were already tensions with the local community since land had been taken by the state with inadequate compensation.<sup>24</sup> As a result BHP Billiton negotiated to create two development funds, one to be administered by the six communities most adversely affected, and one by the municipality. This settlement was embodied in the 2003 Framework agreement which also established the Fundacion Tintaya as the vehicle for company money.

Xstrata plc bought the mine in 2006 and agreed to continue the Framework agreement. The mine was run by its wholly-owned subsidiary company, Xstrata Tintaya S.A. Then in 2011 another global mining company, Glencore, began the acquisition of Xstrata. At the time the Tintaya project was being extended by developing a new mine nearby called Antapaccay. Tintaya is planned to cease operations in 2018, but will remain as the tailings pit where waste from Antapaccay can be moved.<sup>25</sup> Compania Minera Antapaccay S.A. is listed as one of Glencore's principal subsidiaries, country of incorporation Peru, with the company holding a 100% interest.<sup>26</sup>

### Community concerns about environmental impact

For years, community concerns in and around Espinar have focussed on the environmental impact of the mine, perceptions that it has affected local people's health and livelihoods, and concerns about the lack of development benefits.

Local groups have raised two key aspects – pollution and contamination with their effects on human and animal health and livelihoods, and the consequences of mining activity in terms of its need for water. Water use is of extreme concern for the long term in Espinar. The new mine has put much more pressure on water availability because of the increased scale of its operations. The Antapaccay mine has placed an increase in demand on the Salado and Canipia Rivers.<sup>27</sup> The province of Espinar is particularly vulnerable because its main urban water supply is already threatened by a dispute between the regions of Cusco and Arequipa over the use of the water from the next stage of the Majes-Siguas II irrigation project.

Contamination of what water is available has been a major concern for local communities since 2003. There is not an adequate water treatment system in the area so communities have insufficient access to potable water. A huge challenge here has been the lack of clear evidence as to the presence of contamination and its cause.<sup>28</sup>

23 Defensoria del Pueblo, Peru <http://www.defensoria.gob.pe/blog/se-registraron-205-conflictos-sociales-en-agosto/>

24 Munoz et al, (2007).

25 Glencore completed the process of acquisition of Xstrata in May 2013. Xstrata was incorporated in the UK and Switzerland. It was listed on the UK Stock Exchange (in 2011 it was the 16th largest company). Glencore plc (formerly Glencore Xstrata plc) is a public company limited by shares, incorporated in Jersey and domiciled in Baar, Switzerland. Its shares are listed on the London, Johannesburg and Hong Kong Stock Exchanges.

26 See Glencore Annual Report 2014, p.186.

27 CAFOD interviews, Espinar, August 2014.

28 Jarvis and Amezaga, 2013.

In response to demonstrations and violence at the Tintaya mine in May 2012, the government finally made a serious effort to explore contamination concerns. A Roundtable (Mesa de Dialogo) was set up after the conflict, which created three working groups, focused on 1) Environment 2) Social responsibility and 3) Development and production. The working groups were made up of local, regional and national actors (government, company and civil society). However, the discussions in the working groups were held behind closed doors and there was not sufficient communication to the population and media about the outcomes of meetings.

The aim of the Environment Working group was to “develop an integral health and environmental intervention plan for the Espinar province”. They produced a short, medium and long term plan which the Monitoring Committee of Environmental Management should be monitoring. As part of the plan, it was agreed that water monitoring would be implemented until 2015.

Various agencies conducted studies<sup>29</sup> and the results were summarised in the Participatory Health and Environment Monitoring Report (PHEM), presented in April 2013. Two reports were produced by outside experts.<sup>30</sup>

Evidence of contamination of water and examples of adverse health effects were documented by government agencies. But since the level of naturally occurring sources of contamination – e.g. heavy metals in the geology itself – is high, none of the reports could make a direct causal link to the mining company’s operations.

At the time of writing, October 2016, Peruvian civil society was still calling on the government to take follow up actions to identify the causes of the contamination, take remedial action and address the health problems of people living in the area of Espinar who have heavy metal poisoning.

### **Calls for renegotiation of the Framework Agreement between the company and the community**

In 2013, 64.7% of the population of Espinar were living in poverty.<sup>31</sup> As well as their ongoing concerns about water and contamination, in 2012 local people were worried that the Tintaya development foundation projects were not being well managed and that mining had not resulted in the anticipated benefits for the broader community.<sup>32</sup> As a result, some community leaders were calling for the 2003 Framework Agreement to be renegotiated and for the company to make a higher level of contribution. A community delegation from Espinar visited the UK in April 2012 to raise these concerns with Xstrata plc, which was then the ultimate owner of the mine, because of the lack of progress they had made in talking to Xstrata Tintaya S.A. in Peru. CAFOD staff accompanied the Peruvian partner organisation and representatives of the local community to put their concerns, about the situation in Espinar and the actions of the Xstrata subsidiary, directly to the parent company at its office in London.<sup>33</sup>

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29 The National Water Authority (ANA), the Environmental Oversight and Evaluation Agency (OEFA), the general Environmental health Bureau (DIGESA), the Mining and Metallurgical Institute (INGEMMET), the National Centre of Occupational Health and Environmental Protection for health (Censopas-INS), and the National Agricultural health Service.

30 The first was produced in February 2013 by the Newcastle Institute for Research on Sustainability. The authors were two hydrogeologists, Dr Adam Jarvis and Dr Jaime Amezaga. The second was produced in July 2013 by the Center for Science in Public Participation, authored by Dr Stuart Levit and entitled *Glencore Xstrata’s Espinar province Mines: Cumulative Impacts on Human Health and the Environment*.

31 Poverty and Inequality: Human Development Index Report 2013, UNDP.

32 A report by the Technical Secretary in 2011 reviewed the compliance of project reporting procedures over the six years of company contributions 2004-2010 and found them seriously deficient.

33 This meeting took place on 26th April 2012 with Claire Divver, General Manager of Group Corporate Affairs of Xstrata plc and Jose Marun, Executive Vice President, South America Operations Division, Xstrata Copper.

### Violent conflict at Tintaya leads to two deaths and numerous detentions

The local community organised a series of public protests from 21 to 28 May 2012. Violence erupted at Tintaya following a public protest and severe repression of crowds by a large number of police using tear gas, weapons and live ammunition. Two people were shot and died in the violence and another died days later.

Many people were injured including community members and the police. Community leaders, including the Mayor himself, were charged with criminal offences. Those who were detained included two members of staff who were working at the time at CAFOD's Catholic partner organisation the Vicaria de Solidaridad de la Prelatura de Sicunai in Espinar: Jaime Cesar Borda Pari, a human rights worker at the Vicaria<sup>34</sup> who had visited the mine on 28 May 2012 to check on the wellbeing of the people, was detained and wounded, and Romualdo Tito Pinto, the driver working for the Vicaria.

Jaime's testimony describes what happened next:

"About 20 or 30 minutes had passed when two vans drew up rapidly and parked in front of us stopping our vehicle from leaving. Policemen pointed their firearms at us and shouting insults made us get down from the van. Without having given us any explanation, some of them began to strike us violently using the guns they were carrying, before putting us into one of the vans which took us into the mining camp.

They insulted us and kept hitting us.

Subsequently they moved us to the police station which is within the area of the mining camp, putting us with various people who had already been detained.

Then they made the driver of our van [Romualdo Tito Pinto] go with them to make the inspection and seizure of the Vicaria of Sicunai's vehicle. Suddenly the driver was told that they had found bullets and sprays, they demanded that the driver sign the notice of confiscation. Obviously he refused to sign because those materials weren't ours, actually we suspected that during the time when the van was empty the police had hidden them. We denied that these things had been there because the use of violence is against our work, our mission is to promote peace and not violence."

Jaime was left very disillusioned about the state and the role of the security forces in relation to this harrowing experience: "There are no protections for human rights defenders, even we are accused of being violent instigators of the demonstrations."<sup>35</sup>

### Legal cases brought against human rights defenders

The example of Espinar shows how, far from people such as Jaime being able to use national courts to access meaningful judicial remedy, in fact they are at risk of facing criminal charges themselves. This is part of a worrying trend of criminalisation of human rights defenders which Catholic development agencies have noted across a number of countries.<sup>36</sup> This kind of situation demonstrates some of the inherent limitations of the UN Guiding Principles on Business and Human Rights. For the people who were violently abused and forcibly detained at the police station on the Tintaya site, it would appear that concepts such as the state duty to protect, the corporate responsibility to respect human rights and access to remedy remain abstract ideas, incredibly remote from their actual experience.

34 An English translation is the Vicariate of Solidarity of the Prelature of Sicunai. Jaime Borda now works as Director of NGO Derechos Humanos sin Fronteras (Human Rights Without Borders).

35 Testimonio: sobre los hechos sucedidos en Espinar, Cusco – Peru. Jaime Cesar Borda Pari/Vicaria de Solidaridad de la Prelatura de Sicunai.

36 CIDSE et al (June 2012) The criminalisation of human rights defenders in Latin America: An assessment from international organisations and European network.

Jaime has presented a case against the police for kidnapping in Peru but the Prosecutor initially decided not to take this further and provisionally archived the case. After the lawyers of Derechos Humanos Sin Fronteras appealed this decision, the Senior Prosecutor ordered the investigation to be re-opened. Jaime's case would be investigated after a 4 year delay. In light of the significant challenges of looking to the Peruvian courts for remedy, Jaime is one of 22 claimants bringing a civil case in the English courts against Xstrata Limited (formerly Xstrata plc) and Xstrata Tintaya S.A for unlawful detention and personal injury. The case is moving very slowly and the company denies that it had any involvement in the unlawful detention and injury to the claimants.<sup>37</sup>

Meanwhile, more than four years later the criminal charges in Peru against those who were detained by the police have not been fully dismissed. For example, although Jaime has not been formally charged the Prosecutor's Office still wanted to investigate him for charges of terrorism. Currently the case has been archived. The former mayor Oscar Mollohuanca, and two community members Herbert Huaman and Sergio Huamani are still facing possible prison sentences of 25 years.

### How was Xstrata involved in the violence at Tintaya?

An important feature of the ongoing English court case is examining the relationship between Xstrata, its wholly-owned subsidiary and the police, and whether the company shared any responsibility for violent human rights abuses carried out by the police on its property.

The claimants argue that because Xstrata had identified Peru as a moderate or high-risk country for human rights abuses, it knew or should have known of the risks of human rights abuses by public and/or private security forces in Peru and should have taken such steps as were required to prevent such abuses.<sup>38</sup> Indeed CAFOD and the Peru Support Group have already followed another case of community protestors being forcibly detained by the police and physically abused at the site of a Peruvian mine owned by a different company back in 2005, which led to a claim against UK parent company Montericco Metals plc finally being settled in 2011.<sup>39</sup>

In the Espinar case, local representatives had written to the parent company in the UK, following their visit to London in April 2012, to highlight dissatisfaction within the community and the risk of further conflict and unrest, before the demonstrations took place. On 14 May 2012, Baroness Coussins, Chair of the Peru Support Group, had also written to Xstrata plc Chairman, Sir John Bond, outlining the issues of concern to the community, including "the apparent close relationship between the company and the police, which they believe may be working to the detriment of local people involved in protests...Currently they believe that there is an unacceptable level of collusion between the company's private security services and the Peruvian police. Your reassurance on this point would be most welcome."<sup>40</sup>

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37 Particulars of claim, No. HQ13X02561, accessed by CAFOD March 2015.

38 Claim No. HQ13X02561 Between Daniel Alfredo Condori Vilca and Others and Xstrata Limited, Xstrata Tintaya S.A. (Trading as Xstrata Copper Peru) Particulars of Claim, p.11

39 In August 2005 27 men and two women were detained by police and then held for three days at the Rio Blanco mine in a remote area of northern Peru. According to their witness statements, the protestors were held against their will and subject to physical and psychological torture, including beatings and in some cases sexual abuse. For more details see the CAFOD and Peru Support Group submission to the Joint Parliamentary Committee on Human Rights Enquiry on Business and Human Rights, May 2009.

40 Letter from Baroness Coussins to Sir John Bond, 14 May 2012.



According to Xstrata, there were approximately 40-50 private security contractors and 1,300 police officers in the area in May 2012<sup>41</sup>. Xstrata Tintaya paid a fee of over US\$500,000 in respect of the extra services provided by the Peruvian police at the time of the disturbances. But Xstrata viewed this as “normal practice in Peru for companies responding to crisis situations to make such payments to the police, in protection of private assets.”<sup>42</sup> Xstrata Tintaya already had an existing contract with the Peruvian Police from May 2011. The parent company rejects “any liability for the actions of the Peruvian police and/or private security forces.”<sup>43</sup> Xstrata strongly denies that they provided any assistance or encouragement to the police. Their position is that they had no control over the conduct of the police and that in any event the police acted in defence of people and property. In contrast civil society groups argue that the contract and payments to the police meant that the company had a responsibility for their actions.<sup>44</sup>

Espinar remains in a situation of tension and uncertainty. Local NGO workers have reported being watched and followed, and that they have received anonymous phone calls.<sup>45</sup> They have also faced sustained public attacks in the media.<sup>46</sup> For instance, between 7 April 2015 and 19 May 2015 CAFOD catalogued 21 media articles attacking national and international NGOs working on human rights and the environment in Peru. Contracting of national police by the company which owns the mine is still a real concern for local communities.<sup>47</sup> ●

### The UK government’s record on Access to Remedy

The UK government has taken a number of actions with significant implications for access to remedy since it committed to implementing the Guiding Principles in 2011. However the most significant actions in relation to legal redress have been ones which have made it harder for those affected by irresponsible corporate behaviour to bring cases in the courts.

The Legal Aid, Sentencing and Punishment of Offenders Act was passed by the government in 2012. This law removed the civil costs arrangements which John Ruggie had specifically highlighted in the Guiding Principles as good practice in enabling victims of corporate abuses to bring legal cases against transnational companies.

In February 2012 the UK and Dutch governments wrote an amicus brief to the US Supreme Court supporting a restrictive interpretation of international law in the Kiobel case brought against Royal Dutch Petroleum and Shell for its impacts in Nigeria under the Alien Tort Claims Act. The final ruling in this case in April 2013 made it very difficult to use the Alien Tort Claims Act to bring extraterritorial cases against multinational companies. Documents obtained by CORE under a Freedom of Information request show that UK civil servants recognised that this would make access to legal remedy much harder. Foreign Office officials stated that if the government’s actions to influence the decision of the US Supreme Court are successful, this “would remove one of the few remedies for individuals seeking redress against foreign companies for their actions in foreign states”.<sup>48</sup>

The 2013 UK Action Plan stated clearly: “The UK sees its own judicial remedy options as an important element in the remedy mix.” Civil society groups, including CAFOD, highlighted the need to strengthen this area of the plan during consultations on the review of the National Action Plan in 2015. BIS commissioned an expert study of the current state of play on judicial remedy. However the final updated plan does not include any new actions relating to legal access to remedy. The only specific future actions in this area relate to non-judicial remedy. This is a significant omission and must be addressed as a matter of urgency for the UK’s NAP to be seen as credible. It is particularly important if other states use our National Action Plan as good practice.

41 Claim No. HQ13X02561 Between Daniel Alfredo Condori Vilca and Others and Xstrata Limited, Xstrata Tintaya S.A. (Trading as Xstrata Copper Peru), Amended Defence of the First Defendant, dated 21 January 2015.

42 Ibid, p. 5.

43 Ibid, p. 29.

44 CAFOD interview with Jaime Borda, July 2015.

45 CAFOD research visit, August 2014.

46 See Compromiso de las Organizaciones Católicas Internacionales por la Justicia Social y la Defensa de los Derechos Humanos, 29 April 2015.

47 For example on 21 April 2015, DHSF presented a Habeas Data in order to Access contracts between the National Police and company.

48 [http://www.amnesty.org.uk/sites/default/files/fs50487115\\_croser\\_kiobel\\_-\\_full\\_documents\\_following\\_ico\\_decision.pdf](http://www.amnesty.org.uk/sites/default/files/fs50487115_croser_kiobel_-_full_documents_following_ico_decision.pdf)

## Recommendation 2

**The government must address the current weakness on access to remedy as an urgent priority.** Access to remedy, the third pillar of the UN protect, respect, remedy framework was one of the weakest areas of the original Action Plan. Strengthening this area will show that the UK is serious about its commitment to implement the Guiding Principles.

### Practical ideas for delivering improved access to justice

- **Improving access for poor communities to legal remedy as well as developing non-judicial routes.** Here it is important to look at concrete cases and propose practical steps to address the administrative and financial barriers created by the changes to the cost regime for civil law cases under the Coalition government. Such actions should be in addition to ensuring that Brexit does not make it harder for communities overseas to bring legal cases in the English courts.
- **Developing carefully targeted legislation which would allow criminal prosecution of companies which have committed serious human rights abuses.** This would act as a deterrent to 'laggard' companies. This should include looking at new forms of criminal corporate liability suited to large multinational businesses.
- **Adding time-bound actions and specific targets on access to judicial remedy to the revised action plan.** This will mean it is possible to measure progress in this priority area.

### 3. Taking a leadership role in the international debate on business and human rights

“With this action plan, the UK becomes the first country to launch a national implementation plan for the UN Guiding Principles. It is our commitment to the value of human rights in pursuit of a prosperous Britain. We shall push for the international community to follow our lead and for UK businesses to work with us in taking this proactive action to protect human rights and improve the lives of millions.”

William Hague, former Foreign Secretary, 5 September 2013

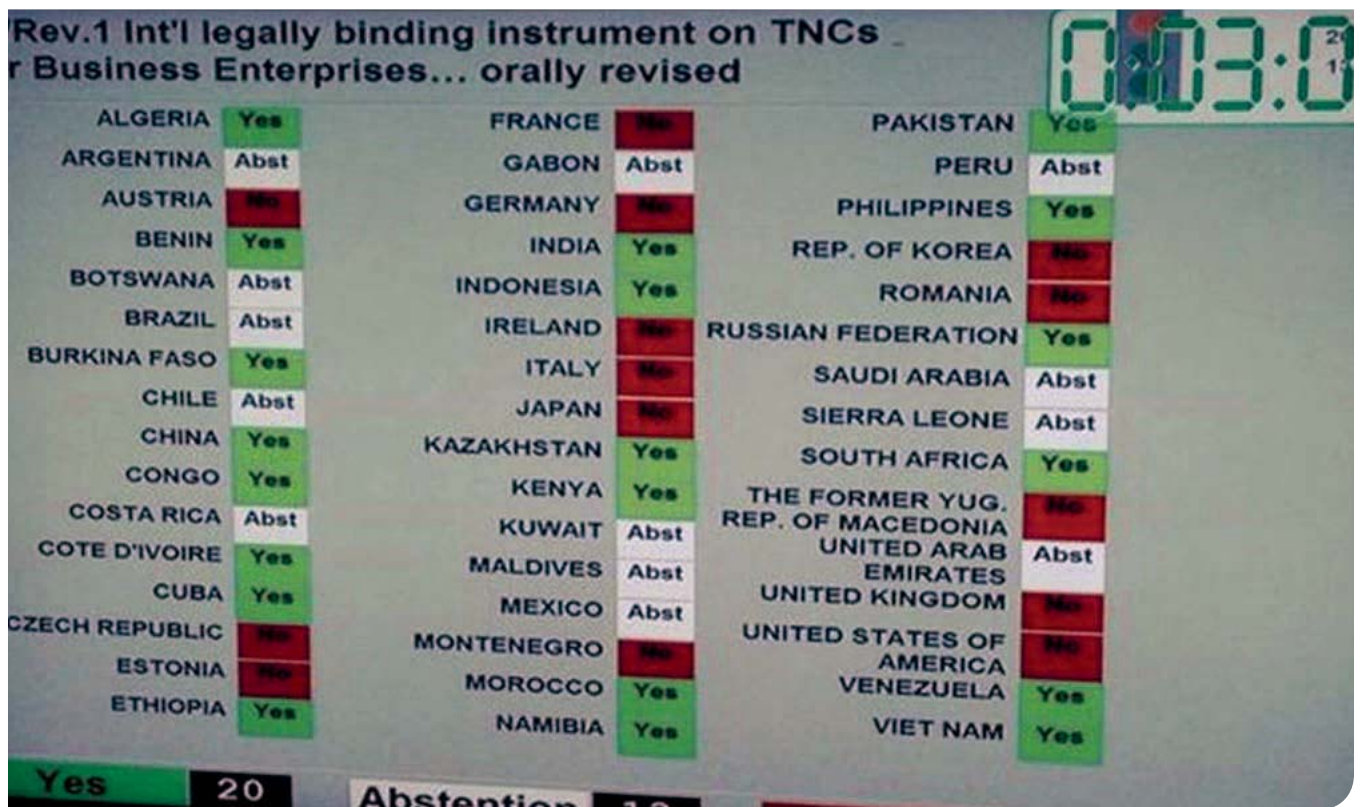
**The UK government is pushing ahead with binding international agreements which give businesses greater powers to protect their rights, but opposing ongoing attempts at UN level to create an international treaty to help protect the rights of citizens.**

In today’s world the private sector is incredibly diverse. There are millions of small enterprises that are vital to the livelihoods of women and men living in poverty. At the same time the number of companies operating transnationally has risen dramatically over the last 20 years. In 2014 the 100 largest non-financial multinational enterprises had assets of US \$13.8 trillion. More than half of their employees were based in their foreign subsidiaries. Recognising the reality of today’s complex corporate ownership structures, as highlighted in the previous case study, CAFOD strongly supports developing binding international standards of conduct and corporate accountability. As UN Special Representative John Ruggie recognised, international human rights law has not yet caught up with transnational business models and structures, leaving us with considerable “governance gaps.” The call for a treaty on business and human rights aims to address some of these gaps through an internationally binding legal instrument.<sup>49</sup>

While governments have created a number of binding international instruments to address illicit financial flows, corruption and money laundering, very little progress has been made in relation to binding international obligations to prevent human rights abuses by businesses. As outlined above, the normative framework of the UN Guiding Principles means that governments decide whether they wish to use mandatory approaches to ensure that companies respect human rights and there is adequate access to remedy. So far National Action Plans have not delivered many legislative requirements in relation to human rights which could be replicated at international level. The few exceptions relate to light touch transparency requirements. The absence of binding measures by governments represents a serious problem, identified by Pavel J. Selvanathan, one of the original members of the UN Working Group on Business and Human Rights who subsequently resigned.<sup>50</sup>

49 International Commission of Jurists (2014) Needs and Options for a New International Instrument in the Field of Business and Human Rights.

50 See Pavel J. Selvanathan’s resignation letter from the UN Working Group on Business and Human Rights which is available at: <https://business-humanrights.org/sites/default/files/documents/Letter%20to%20the%20President%20HRC.pdf>



The outcome of the vote at the Human Rights Council 2014. Photo: CORE Coalition.

In terms of human rights and business, discussions around the creation of a binding instrument remain extremely controversial. There is strong support for the idea of a treaty from many civil society organisations, especially NGOs. Business associations have forcefully opposed the idea, although some individual business leaders do see a role for a binding treaty. 20 per cent of senior corporate executives surveyed by the Economist Intelligence Unit in 2014 thought that an international treaty would enable companies to better fulfil their corporate responsibility to respect human rights.<sup>51</sup> Governments are divided over the issue. In July 2014 the UN Human Rights Council passed a resolution by 20 votes to 14 “to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights.” The US, UK and other EU member states opposed the resolution, stating that developing a treaty would take too long and it would distract from the implementation of the UN Guiding Principles.

### Governments must explore how a treaty on Business and Human Rights could protect citizens’ rights

Civil society has invested time and effort in considering how the UN Guiding Principles could be applied effectively through National Action Plans. CAFOD participated in the processes to develop and review the UK Action plan, providing comments and feedback. Trócaire has played a similar role in Ireland. In Germany, our sister agency, Misereor, is one of the civil society representatives on the German National Action plan working group. But we recognise the limitations of the UN Guiding Principles, especially in contexts where companies do not respect human rights and the state is unwilling or unable to exercise its duty to protect. Rather than a polarising debate of treaty versus Guiding Principles, we want governments to develop an international instrument which will complement measures in National Action Plans.

51 The Economist Intelligence Unit Ltd. (2015) ‘The Road from Principles to Practice – today’s challenges for business in respecting human rights’.





States discuss the development of a binding treaty at the Intergovernmental Working Group in Geneva, October 2016.

Areas where it would be useful for the UN Intergovernmental Working Group to develop thinking and test out different models include:

- Should a binding instrument apply only to companies with transnational operations or to all enterprises?
- How could a treaty be linked with enforcement mechanisms?
- What should be the relationship between an international grievance mechanism for affected citizens and the national judicial route?

Addressing these important questions effectively requires financial resources and input in terms of time and expertise from states themselves. Currently the UK government remains opposed to the Treaty on Business and Human Rights but momentum is growing around the process. In 2015, for instance, of the EU member states only the French government representative attended the meeting of the UN working group as an observer. The UK, also one of the members of the UN Human Rights Council, did not attend. However this year, in a very welcome development, the EU decided to participate in the Intergovernmental Working Group in Geneva from 24 to 28 October, with EU member states, including the UK, attending the sessions on the treaty.

As yet, thinking on the scope, format and content of a treaty is still developing. The first draft proposals are due to be presented in 2017. Given the leadership role that the UK aspires to internationally on business and human rights issues, it should contribute views to the UN discussion in a practical and constructive way. It is unrealistic to rely on National Action plans alone to protect the rights of citizens.



## Businesses are already using international investment agreements to defend their rights

In marked contrast to the lack of political will from the US, Canada and EU member states to pursue an international treaty on business and human rights, binding International Investment Agreements (IIAs) have proliferated during the same period. UNCTAD reports that by 2014 there were 3,271 such treaties, although its analysis also highlights “growing unease with the current functioning of the IIA regime.”<sup>52</sup>

One of the challenges of this investment regime is that if a national government introduces higher environmental or human rights protection, investors can use private Investor-State Dispute Settlement (ISDS) mechanisms to try to bring cases against states for lost profits.

*“This is like David and Goliath. But we will fight because it is our right and duty as a government to protect our citizens’ health.”*

Silvana Echarte Acevedo, Legal Adviser to Uruguayan Public Ministry of Health, quoted in the Independent newspaper, 22 October 2014.

Global tobacco company Philip Morris sued Uruguay for introducing larger health warnings on cigarette packets as well as Australia, which introduced plain packaging against the wishes of the smoking industry in 2011.<sup>53</sup> Another emblematic example is the case of El Salvador, which was taken to an arbitration tribunal by Pacific Rim, a Canadian mining company, which sought more than US\$ 300 million compensation after the government decided in 2008 not to grant further permits for mining in the country.<sup>54</sup>

In the information that it provides for EU citizens, the European Commission has argued that ISDS mechanisms do not limit the state’s right to regulate because:

*“A country cannot be compelled to repeal a measure: it always has the option of paying compensation instead.”<sup>55</sup>* However while it might be technically correct, this argument is disingenuous. In practice the scale of potential compensation may be prohibitive for many governments. 2014 brought the highest known award ever, with joint compensation of approximately US\$ 50 billion being awarded to investors for three closely related cases.<sup>56</sup>

## Corporate use of ISDS mechanisms is growing

Because of the private nature of arbitration, information about the claims made against states under investment treaties is often incomplete or unavailable.<sup>57</sup> UNCTAD records that the number of *known* treaty-based claims reached 608 by 2014.<sup>58</sup> Most of these disputes represent claims by companies based in the developed world against governments in the global South, although the number of cases being brought against other states is rising. Of cases that are known, 129 were brought by claimants from the United States, 67 Netherlands and 51 from the UK. The 2015 World Investment report sets out an agenda for reform so that international investment agreements support sustainable development and governments safeguard their own right to regulate in the public interest.

52 UNCTAD, World Investment Report 2015, p. xi.

53 <https://www.ag.gov.au/tobaccoplainpackaging>

54 <http://www.ciel.org/facing-goliath-ciel-lends-david-a-legal-hand/>

55 [http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc\\_151791.pdf](http://trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151791.pdf)

56 WIR 2015.

57 Traidcraft briefing note ‘Investors running wild on land: the threats posed by international investment agreements’, January 2013.

58 Ibid.

*“There is a pressing need for systematic reform of the global IIA regime. As is evident from the heated public debate and parliamentary hearing processes in many countries and regions, a shared view is emerging on the need for reform of the IIA regime to ensure that it works for all stakeholders. The question is not about whether or not to reform, but about the what, how and extent of such reform.”* (WIR 2015, p. xi)

This view needs to inform the ongoing negotiation of the Transatlantic Trade and Investment Partnership (TTIP) agreement between the European Union and the US.

## Case study 4

### Is it still possible to address the inherent imbalance within TTIP?

Many legal experts and academics have questioned the need to include an ISDS mechanism within TTIP and whether the checks and balances that the European Commission has proposed will be sufficient.<sup>59</sup> The Opinion of the Legal Affairs Committee of the European Parliament recommended that because EU member states and the US already have judicial systems that function effectively and could handle investor disputes, there is no need for an additional ISDS mechanism to be included in the agreement.<sup>60</sup> In the negotiation round in October 2015, the European Commission proposed to step back from including the controversial ISDS and introduce a more transparent Investment Court System instead. As Misereor, our sister agency in Germany, has highlighted in their evidence to the German Parliament, investors already have multiple fora for bringing legal cases to defend their commercial rights.<sup>61</sup> This contrasts with the lack of progress in providing meaningful access to the courts for victims of human rights abuses.

### Due consideration has not been given to the implications of TTIP for the State duty to protect human rights

One of the potential strengths of the UN Guiding Principles was that they emphasised that governments should ensure that the terms of investment agreements or free trade agreements should not restrict their ability to meet the duty to protect human rights. This was specifically mentioned in the 2013 UK National Action Plan. However, research commissioned by CAFOD in March 2015 found that, despite negotiations being relatively advanced by then, human rights considerations were not well embedded into the TTIP proposals and it was difficult to find instances where the UN Guiding Principles had had any obvious influence of the development of policy positions or text.<sup>62</sup>

In fact, feedback from officials suggests that DG Trade, the lead division of the European Commission, had drawn more on existing bilateral treaties and tried and tested language rather than reflecting on the EU’s own commitments to embed human rights concerns properly in trade and investment policy. While there was reference to some specific human rights, for example child labour and forced labour, this language seemed quite old-fashioned, and at odds with the approach of the Guiding Principles which addresses all internationally recognised human rights. Within the draft documents available, key concepts such as public interest were not well-defined. The texts did not make clear that measures taken by governments to protect against adverse human rights impacts and to raise the human rights performance of companies will come within the scope of “legitimate public policy objectives” for the purpose of TTIP.

59 See for example the July 2014 Statement of Concern by 120 academic experts at [https://www.kent.ac.uk/law/isds\\_treaty\\_consultation.html](https://www.kent.ac.uk/law/isds_treaty_consultation.html)

60 Opinion of the EP Committee of Legal Affairs on recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI) 04.05.15

61 Ausschuss für Menschenrechte und humanitäre Hilfe des Bundestags: Öffentliche Anhörung „Menschenrechte und Handelspolitik“ 30.9.2015: Schriftliche Stellungnahme von Armin Paasch, Referent für Wirtschaft und Menschenrechte, Bischöfliches Hilfswerk MISEREOR e.V.

62 Internal research paper written by Jennifer Zerk for CAFOD, 2015.

The EU published its proposals for a chapter on trade and sustainable development for the October negotiations on 6 November 2015.<sup>63</sup> They were presented as “the most ambitious provisions ever put forward on these issues to any trading partner.”<sup>64</sup> This time there is a reference to the UN Guiding Principles on Business and Human Rights in the documents. What is noticeable is that the language in relation to companies’ responsibilities to respect for human rights is very much optional, with much talk of encouraging and promoting. Worryingly, the issue of respect for human rights is placed in the context of promotion of Corporate Social Responsibility (CSR) and responsible business conduct which the document defines as being ‘by their nature voluntary’.<sup>65</sup>

The idea that “sharing experiences and best practices on the development and implementation of National Action Plans” in any way provides a counterbalance to the new rights for businesses which the rest of the agreement will create is simply unrealistic and could have serious consequences for citizens.

The focus on “voluntary sustainability assurance schemes”<sup>66</sup> again reflects an understanding of the value and effectiveness of codes of conduct which is now outdated. This is the EU negotiating text and the idea that it represents the high-water mark of corporate accountability for risk and impacts on the environment and human rights is extremely concerning.

Compared to the hard law of enforceable rights for businesses which the agreement would create, this chapter is wholly inadequate. EU governments must look again at why this complex and far-reaching legal agreement to protect the rights of investors is viewed as an urgent priority, and yet at the same time member states consider it too difficult to try to develop an international instrument to ensure that companies respect the rights of citizens.

Given that the UK will need to begin its own negotiations of trade agreements following the referendum, it is essential that existing commitments to implement the UN Guiding Principles are fully reflected in the development of such agreements and appropriate corporate accountability mechanisms are included from the very beginning. In this way citizens will know that the UK is meeting its duty to protect citizens by ensuring that businesses are accountable for risks and impacts on the environment and human rights. ●

### Recommendation 3

**The UK government should engage constructively in the international debate on a business and human rights treaty and support the EU to do the same while it is still a member.** This includes changing its approach to the UN process of developing a treaty on business and human rights and ensuring that the UK’s policy positions in relation to other international agreements, for example the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic Trade Agreement between the European Union and Canada (CETA), are consistent with its commitment to the UN Guiding Principles.

### Practical ways to achieve this

- **Participate constructively in the discussions on the possible scope and content of the treaty scheduled by the UN Working Group in 2016-17 to bring the UK’s ideas and experience to the debate.**
- **Support a similar policy position for the EU representative to the Human Rights Council.**
- **It is important that the UK applies its commitment to implement the UN Guiding Principles to any new trade agreement processes it undertakes, whether bilateral or multi-lateral. The UK government should publish its analysis of the full proposed text of the TTIP and CETA in the light of the UN Guiding Principles on Business and Human Rights so that national parliaments have this information before any future UK trade agreements are negotiated.**

63 [http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc\\_153923.pdf](http://trade.ec.europa.eu/doclib/docs/2015/november/tradoc_153923.pdf)

64 See DG Trade Press Release ‘EU to pursue the most ambitious sustainable development, labour and environment provisions in TTIP’ 6 November 2015.

65 This is in fact a weakening of the current EU definition of Corporate Social Responsibility.

66 Ibid, p. 17.

## 4. Ensuring that communities who are affected have a voice in national policies on business and human rights

“As we deepen commercial links between the UK and Colombia we acknowledge the importance of working with the private sector on human rights issues. We are committed to implementing the UN Guiding Principles on Business and Human Rights. Our countries are at the forefront of this debate globally. The UK is supporting a project in Colombia which will set out how the principles could be implemented in the Colombian context.”

Declaration by Prime Minister David Cameron and President Juan Manuel Santos, 21 November 2011<sup>67</sup>

**The UK government is helping other governments to develop their approaches to business and human rights. This is welcome but an advisory role brings with it considerable responsibility. The UK cannot provide a good example for other states unless it adopts a strong UK National Action Plan which contains appropriate regulation and effective access to remedy. When providing advice to governments, the FCO must also ensure that the citizens most directly affected by business operations are included in national policy processes. The UK must also recognise potential conflicts of interest in UK trade and investment policy and address them.**

As part of its commitment to implement the UN Guiding Principles on Business and Human Rights, the UK government has undertaken work in certain priority countries including Angola, Brazil, Colombia, Indonesia, Kenya and Malaysia. In 2013 and 2014 the FCO supported 10 projects on business and human rights, representing 8.2% of its total spend on human rights and democracy projects.<sup>68</sup>

Colombia provides a particularly helpful example for learning because it is probably the country which has had most direct support from the FCO in relation to its public policy on the UN Guiding Principles and is already being highlighted as an example of good practice.<sup>69</sup>

There are real positives in the focussed work that the FCO and the British embassy have supported in Colombia. However there are also risks and challenges linked to the UK's approach. It is essential that learning from this experience to date recognises weaknesses, as well as strengths. This will make it possible to improve the approach and mean that UK support is more likely to help to prevent future human rights abuses.

This case study draws on research by CAFOD and its partner organisations in Colombia, in particular Tierra Digna, CINEP and the Secretariado Nacional de Pastoral Social (SNPS), as well as the ABColombia coalition of which CAFOD is a member.

<sup>67</sup> <https://www.gov.uk/government/news/uk-and-colombia-agree-joint-declaration-on-human-rights>

<sup>68</sup> FCO The Human Rights and Democracy Programme, 2014.

<sup>69</sup> See for example FCO Human Rights and Democracy Report 2014-5.

## Case study 5

### Will the UN Guiding Principles on Business and Human Rights work in Colombia?

CAFOD strongly welcomes the decision to designate Colombia one of the UK’s priority countries in relation to business and human rights. Colombia has suffered from protracted violent conflict for more than 50 years which has had a terrible cost for the civilian population, especially in rural areas remote from the capital. CINEP, which maintains a database on victims of the conflict, calculates for example that in the period from 1998 to 2012 alone, 17,559 small-holder farmers were victims of human rights violations.<sup>70</sup>

As figures 1 and 2 demonstrate, the people of Colombia have suffered violence at the hands of numerous different actors – armed revolutionary guerrillas such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), paramilitaries and the state’s own armed forces. It is clear that the violence and displacement have strong links with commercial interests. Given the ingrained nature of the links between natural resources and conflict and severity of the violence, there are real questions as to whether the UN Guiding Principles represent a strong enough approach to deliver change in Colombia.

Figure 1: Homicides, death in combat and political assassinations (1990-2014)

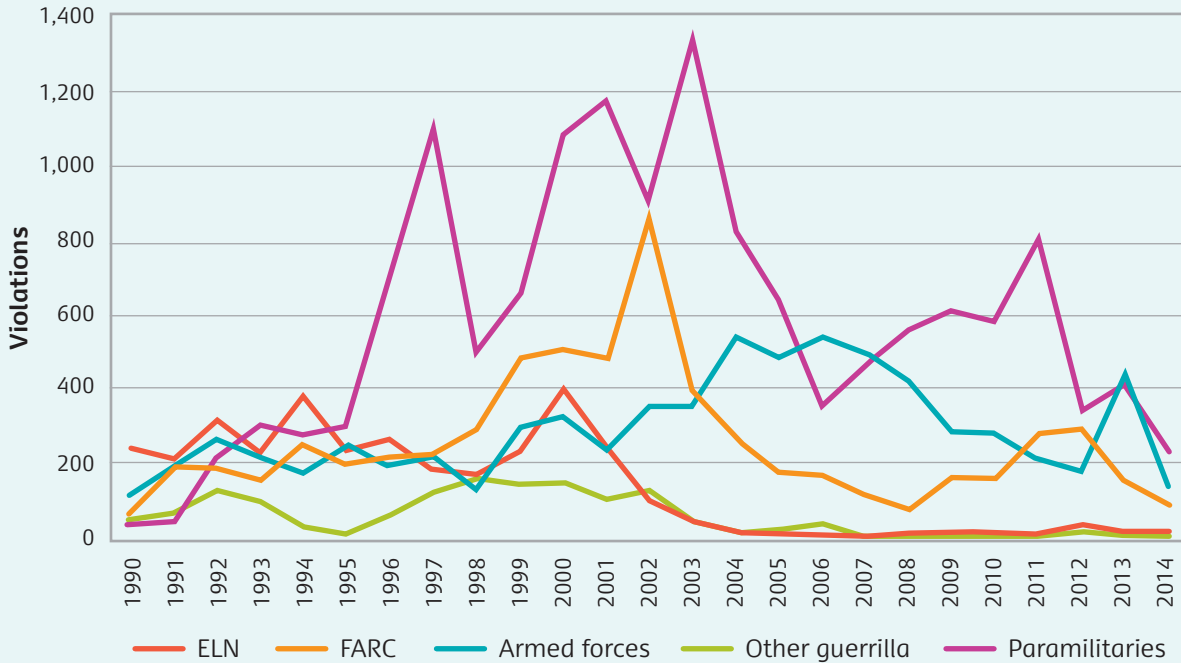


Source: Presentation by Luis Guillermo Guerrero Guevara, Director General CINEP, 2015.

70 CINEP/PPP Campesinado y reparación colectiva en Colombia, documento de debate, 2015.



Figure 2: Violations of International Humanitarian Law (IHL) by actor (1990-2014)



Source: Presentation by Luis Guillermo Guerrero Guevara, Director General CINEP, 2015.

Progress to address human rights violations linked to business activities has to be made in the context of much broader societal changes. Colombia has edged closer to a real chance of peace after a fifty year conflict. The approval of the Victims and Land Restitution Law in June 2011 was a significant step forward. The peace process in Havana which began in 2012 reached a negotiated settlement between the government and the FARC, although the outcome has been thrown into confusion by the No vote in the October 2016 referendum. But even taken within this broader context, the process for implementing the UN Guiding Principles to date in Colombia raises concerns as to whether they will have any effect in changing corporate practices and reducing human rights abuses linked to business activities. ●

### The UK government has provided significant support to Colombia on the implementation of the UN Guiding Principles

The UK’s public commitment to implement the UN Guiding Principles was made by David Cameron at a joint press conference during the visit by Colombian President Juan Manuel Santos in November 2011.

UK support to the Colombian government has taken the form of both provision of in-house expertise and financing specific events and pieces of work to contribute to the development of a National Action Plan on Business and Human Rights. For example, the FCO funded a project in 2013-14 by Fundación Ideas para la Paz, an NGO which has wide experience of engaging with businesses, to work with the government to develop a draft chapter on business and human rights within Colombia’s Integrated Public Strategy on Human Rights and International Humanitarian Law. This led to the creation of the document ‘*Lineamientos para la política pública de empresas y derechos humanos*’ [Guidelines for Developing a Public Policy on Business and Human Rights] which was launched in Bogotá in July 2014. The Colombian National Action Plan was finalised in 2015.<sup>71</sup>

71 Available in Spanish only at: <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

Fundación Ideas para la Paz also partnered with the Procuraduría General (Office of the Procurator General) to develop an administrative directive that tasked all public officials to implement the Guiding Principles, together with sanctions for non-compliance.

UK embassy staff have stressed the importance of building up high level commitment and capacity across key departments within the government.<sup>72</sup> Clearly this step is crucial for the successful development of a coherent policy, as set out in earlier chapters of this report. However it is also essential for the effectiveness and credibility of the UN Guiding Principles in Colombia that they do not become simply a top-down initiative.

### **Greater participation and representation of communities affected by corporate activities is needed in developing the National Action Plan**

A real challenge in Colombia is the gulf between the policies set out on paper (for example as set out in documents such as the Guidelines for Developing a Public Policy on Business and Human Rights and the National Action Plan itself) and the reality for communities and activists who risk their lives on a day to day basis. The UN Guiding Principles appear impossibly remote from many people whose lives are being dramatically affected by business activities.

The policy support from the UK government has not always taken this challenge into account. For example, in 2013 the UK government part-funded a conference on the Voluntary Principles on Security and Human Rights and the UN Guiding Principles on Business and Human Rights with John Ruggie as the keynote speaker.<sup>73</sup> It took place in the coastal resort of Cartagena and cost participants 500 000 Colombian pesos. As CAFOD and ABColombia raised with the FCO, this effectively prevented grassroots organisations from participating<sup>74</sup> as well as re-enforcing perceptions of these international initiatives as being for members of an elite club. Since then embassy officials have recognised that there needs to be more engagement with broader civil society on business and human rights issues and have developed a strategy to achieve this. For example in May 2015, a UK embassy representative attended an event hosted by the Zenú community in Cordoba Sur and spoke on the UK's approach, stressing that business and human rights was a priority theme for Colombia.

Fundación Ideas para la Paz conducted six consultations in different departments as part of their work programme.<sup>75</sup> Research by CAFOD partner organisation Tierra Digna has highlighted that communities from some of the areas most affected by extractive activities – the departments of Chocó, Cesar and Tolima – were not involved in the development of the public policy. While the 2015 NAP cites the involvement of civil society in the process, CAFOD found that a number of leading national NGOs working on the impact of different industries on human rights, who had actually taken part in the broader government consultation on a national policy on human rights, were unaware that a public policy was being specifically developed on business and human rights.<sup>76</sup> The value of the in-depth knowledge and expertise within Colombian civil society should not be overlooked. Many activists have worked on the impacts of specific large-scale projects with immense courage and tenacity in the face of considerable personal danger. Consultation with civil society should not be seen just as a means of gathering information: it is also an opportunity to draw on their own analysis and recommendations for change. It is hard to see how lasting solutions could be found without this valuable national expertise.

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72 CAFOD meetings with embassy staff, Bogota, June 2014 and June 2015.

73 Other funders included USAID and the Dutch government.

74 See also CORE coalition letter to Hugo Swire, 1 May 2013.

75 Fundación Ideas para la Paz 'Lineamientos para la política pública de empresas y derechos humanos' 2014.

76 Discussion at workshop hosted by Christian Aid in Bogota, June 2014.



Members of the local communities' indigenous guard in Cordoba Sur carry staffs not guns.

### The role of the state is key: both host state and home state

The context in Colombia highlights some of the fundamental limitations of the UN Guiding Principles per se, highlighted in the first chapter of this report. Even John Ruggie, the UN Special Representative on Business and Human Rights, recognised the limitations of the Principles that he developed in certain contexts:

*"In conflict-affected areas, the "host" State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their "home" States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support."<sup>77</sup>*

He further recommended the development of a targeted multilateral approach to address the situation where the state was unable or unwilling to protect the human rights of its citizens and businesses were not meeting their responsibility to respect.

This is precisely the challenge for areas where human rights abuses linked to business activities are most prevalent in Colombia.

Community participants in Chocó at a workshop discussing the UN Guiding Principles in 2012 commented that they already felt as if the state had "abandoned" them.<sup>78</sup> In this context the concept of the state duty to protect human rights had very little meaning. In addition to the absence of effective state protection, the actual involvement of state actors in crimes against the local population is well-documented.

77 UN Guiding Principles on Business and Human Rights, 2011, p.11.

78 CAFOD civil society workshop introducing the UN Guiding Principles on Business and Human rights, Quibdó, October 2012.



For example, CAFOD partner CINEP has long campaigned to highlight the plight of the “false positives”, the civilians killed by the Colombian army who are then dressed in combat clothes and presented as “guerrillas who died in combat.”<sup>79</sup> CINEP have provided compelling evidence that throughout 2014 this practice was still continuing in different areas of Colombia.<sup>80</sup>

### Over-riding economic policy priorities currently mean that rights are forgotten

In the context of its national development plan, the Colombian government has designated extractive industries as one of the ‘engines of development’ in a number of key territories. One of these is Chocó – the poorest department of Colombia. Despite an overall trend of falling poverty for the country as a whole, in 2014 65.9% of the population of Chocó lived in poverty and 39.1% lived in extreme poverty.<sup>81</sup> In terms of natural resources, this region is incredibly rich with significant reserves of gold, platinum and other minerals. This contrast between wealth and poverty means that it is not a coincidence that Chocó has experienced some of the worst human rights violations during the ongoing conflict.

As well as the presence of natural resources, the remote terrain of the Pacific Coast region has also contributed to re-occurring violence by armed actors including FARC, the ELN, paramilitary groups and the army. This has led to the local population suffering years of systematic human rights violations – including killings, disappearances, sexual violence, kidnappings and forced displacements.<sup>82</sup> In the case of the Afro-Colombian communities represented by the Afro-Colombian Community Council Cocomopoca, the population has fallen from 30,000 to 12,000 inhabitants today as a result of the armed conflict and territorial disputes.



The river is the easiest way to reach some remote communities in the mineral rich region of Chocó, Colombia.

79 CINEP, The case of false positives, Mauricio García SJ at <http://www.sjweb.info/documents/sjs/pjnewarticles/3-3GarciaENG.pdf>

80 CINEP, Noche y Niebla Julio – Diciembre 2014, No. 50, March 2015.

81 [https://www.dane.gov.co/files/investigaciones/condiciones\\_vida/pobreza/Choco\\_Pobreza\\_2014.pdf](https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/Choco_Pobreza_2014.pdf)

82 See for example Diócesis de Quibdó, Fundación Universitaria Claretiana (FUCLA), Human Rights Everywhere (HREV) ‘Los muertos no hablan’, Quibdó, 2011

Tierra Digna has set out persuasive evidence that the displacements of the local communities were closely linked to the granting of mining concessions, noting that the fall in population coincided with the period that the mining contracts were granted in the rural area of the Cocomopoca community.<sup>83</sup>

Under Colombian law, indigenous and Afro-Colombian communities have the right to prior consultation before the awarding of land concessions on their territory, the so-called “*consulta previa*.” It is clear in a number of cases in Chocó alone, concessions have been granted to private companies without this legal requirement being met. Of the 73, 317 hectares which the state has recognised as land title of the Cocomopoca community council, official records show that 21 mining concessions have already been granted to companies and individuals with an area of 17,303.25 hectares. In addition 27 new applications have been made for future concessions which would cover a further 34,379.95 hectares of the community’s territory.

### Contracts with the public security forces are a major cause for concern

Tierra Digna carried out a legal analysis of the contracts agreed between the army and private companies for the provision of security services which they were able to access thanks to the Contraloría General de la República (Comptroller General), following a Congressional debate in July 2013. Tierra Digna examined *convenios de cooperación* (security contracts) for the period 2010-2013.

A real challenge here is the role of the state vis-à-vis the citizen if a private company has contracted the national armed forces to protect its investment. These security contracts are not published and include explicit confidentiality clauses on the grounds that this is needed for reasons of national security. Tierra Digna have pointed out to the FCO that this lack of transparency in fact contravenes the Voluntary Principles on Security and Human Rights.<sup>84</sup> It also makes it extremely difficult to monitor the content of these contracts and their concrete impacts in relation to protecting, respecting and guaranteeing the rights of Colombian citizens and in particular people who live close to extractive projects. This is not an abstract concern. Many of the army battalions with whom transnational companies have signed agreements have been explicitly linked to past human rights atrocities. So far this crucial issue seems to be entirely missing from the Colombian National Action Plan on Business and Human Rights.

### The UK’s own trade and investment policy must address potential conflicts of interest

The UK is one of the most significant investors in Colombia after the United States. UK Trade and Investment reports recorded investments of US\$ 15.6 billion between 2000 and 2013.<sup>85</sup> At the same meeting in which David Cameron and the Colombian President issued a joint declaration on human rights, they signed a deal committing both countries to double their bilateral trade by 2015. President Santos announced that British businesses would invest over US\$3.5 billion in Colombia over the next three years. This target was in fact achieved ahead of the deadline. Obviously the strength of commercial links was one of the reasons why the partnership on business and human rights was first mooted. This then offers an opportunity for the UK to use its influence to drive up standards.

The bilateral investment agreement between Colombia and the UK was ratified on 14 July 2014. Civil society has already highlighted a lack of consistency with the UK National Action plan and the UK-Colombian Bilateral Investment Treaty (BIT).<sup>86</sup> Despite explicit requirements in the Guiding Principles themselves and a commitment in the 2013 UK National Action Plan, this BIT does nothing to integrate the responsibility of businesses to respect human rights and, while it mentions environmental issues, is silent on protecting the Colombian government’s ability to legislate to protect the rights of its citizens.

83 ‘Seguridad y Derechos Humanos ¿Para Quien?’, Tierra Digna, 2015.

84 Meeting between Tierra Digna, CAFOD and the FCO, June 2015.

85 <https://www.gov.uk/government/publications/exporting-to-colombia/doing-business-in-colombia-colombia-trade-and-export-guide>

86 Traidcraft and ABColombia, Analysis of the UK-Colombia Bilateral Investment Treaty, July 2014.



Tensions for the UK in particular relate to potential conflicts of interest on foreign direct investment in the mining and security sectors. FCO reporting on the financial support to Fundación Ideas para la Paz states: “These projects support the long-term goal of improved operation and working conditions for thousands in the extractive industries in Colombia.”<sup>87</sup> This is a worryingly reductionist view of the scope of the public policy on business and human rights. It does not seem to reflect the strategic importance of the oil and mining industries for Colombia and the systematic links between these operations and human rights abuses experienced by the broader population.

### Box 2: The principal problems faced by local communities linked to projects associated with the extraction of natural resources in Chocó, Cesar and Tolima

- Limitations in access to information about mining concessions and the ownership structures of companies that hold them
- Lack of corporate transparency
- Restrictions in the rights of citizens to participate in decision-making processes and the *consulta previa*
- Structural weaknesses in the evaluation and control of the environmental impacts of extractive operations
- Forced displacement for a variety of reasons of the communities situated in the zones surrounding the projects
- Militarisation of the territories.

Source: Tierra Digna research for CAFOD, 2015.

## The UK must set a stronger example with its own National Action Plan on business and human rights

This context shows that voluntary measures and guidance will be wholly inadequate for changing the established patterns of violence and preventing the massacres which have been a tragic feature of the resource-rich regions of Colombia. The UK has a clear responsibility to consider this in the policy recommendations it is supporting and in its advice to the Colombian government. But the UK National Action plan itself – weak on regulation, heavy on guidance, no effective access to remedy measures – does not demonstrate a sufficiently “smart mix” to be effective. Former FCO minister Baroness Warsi herself commented in her evidence to the Foreign Affairs Select Committee that the National Action Plan on Business and Human Rights “is based on [the UN] guiding principles but, fundamentally, focuses on the voluntary aspect”.<sup>88</sup>

This sends a clear message to other governments implementing the Guiding Principles. Attempts by the UK government to encourage other states to adopt stronger measures within their own National Action Plans could easily be interpreted as ‘do as I say, not as I do.’ The UK needs to be doing much more itself in relation to its role as a host state for many transnational companies operating in high risk sectors within Colombia.

Civil society groups are already concerned that the UN Guiding Principles are just one more in a line of voluntary initiatives used as a way of legitimising extractive company activities in Colombia which are linked to wide-scale environmental and human rights abuses.<sup>89</sup> Here for example, Tierra Digna highlights the experience of the Voluntary Principles on Security and Human Rights in Colombia as a tool for legitimising the links between companies and public security forces. This reality makes the role that the UN Guiding Principles can play in the country much more complex.<sup>90</sup>

It is essential that, in addition to the support that it offers to the Colombian government, the UK’s own approach to business and human rights is robust and credible.

87 FCO Human Rights and Democracy Report 2014-5.

88 The FCO’s human rights work in 2013, p.49.

89 ‘Seguridad y Derechos Humanos ¿Para Quien?’, Tierra Digna, 2015.

90 Ibid, p.16.

### **Practical recommendations for the UK government regarding its advisory role in Colombia**

- The UK needs to learn from the strengths and weakness of its own first National Action Plan and bring a constructive but critical approach to Colombian process.
- To be credible and effective there needs to be genuine involvement of civil society groups, including communities affected by company operations, especially in the regions where implementation is going to be most challenging.
- The issue of memoranda of understanding with state security forces must be recognised and raised in the advice offered on the Colombian National Action Plan. Relying on the Voluntary Principles on Security and Human Rights to deal with this concern will not be sufficient.
- Strengthen links between broader FCO actions to protect human rights defenders and the business and human rights agenda.

### **Recommendations in relation to the UK's own Business and Human Rights National Action Plan**

- Include specific regulatory mechanisms which will address the type of human rights abuses that are caused by extractive industries.
- Draw on the experience in Colombia to strengthen the commitment to protect human right defenders in the current UK plan with practical actions. For example the UK embassy in Colombia can draw on lessons and ideas from communities at risk, including indigenous groups, on how they themselves think they could be better protected.

In addition, we would like to highlight the detailed and mutually re-enforcing recommendations that Tierra Digna have developed in relation to the Colombian government and companies operating in Colombia, which are set out in full in their report 'Seguridad y Derechos Humanos ¿Para Quien?'

## 5. Making the UK's international development policy consistent with its commitments on business and human rights

“Around the world women are held back, hidden away and discriminated against. It's a tragic waste of human potential. That's why a global Britain is driving real change by working with the private sector to ensure there are better job opportunities and improved working conditions for the world's poorest and most marginalised women.”

Priti Patel, Secretary of State for Development, September 2016

**The Department for International Development (DFID) has a world-class reputation and is a source of learning and good practice for other donors. DFID programmes are already funding considerable work which is highly relevant to understanding how business activities affect the rights of people living in poverty, especially women.**

In light of this, the low profile of the UK's commitments on business and human rights within DFID's strategic approach and its lack of high-level input into the UK Business and Human Rights Action plan is noticeable. The more so because DFID is so proactively championing a much more central role for businesses – both British and domestic enterprises in developing countries – in delivering development outcomes and addressing climate change. The new UK aid strategy aims to tackle the causes of instability, conflict and corruption, promote global prosperity and help the most vulnerable.<sup>91</sup> However it does not make any links at all to existing commitments to ensure businesses respect human rights.

In this context, CAFOD believes that there is a real opportunity to join up work within the different Directorates of DFID and positively shape strategic thinking on business and human rights, drawing on programme experience and evidence. Addressing this lacuna will not only make the UK's development policy consistent with its commitments on business and human rights, it will also considerably strengthen the British government's implementation of the UN Guiding Principles.

### DFID recognises the importance of policy coherence for development

*“The UK's approach to DFID's policy priorities, the post-2015 development framework and Financing for Development, the G7 agenda on tax, trade and transparency, and the Global Partnership for Effective Development Cooperation all demonstrate how the UK is shifting focus and working with other government departments to deliver coherent policy and action on the ground.”*

DFID Annual Report and Accounts 2014-15, p.14.

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<sup>91</sup> HM Treasury and DFID 'UK Aid: tackling global challenges in the national interest', November 2015.

DFID has worked very successfully with other UK government departments on cross-cutting global issues such as tackling corruption and the development of the Sustainable Development Goals. Clearly ministers recognise that this is the signature of an effective approach.<sup>92</sup>

In contrast DFID's involvement in the UK National Action Plan on Business and Human Rights has been relatively low profile. Although the FCO was the original lead department on the UN process on business and human rights, DFID has been a member of the cross-departmental Working Group on the UN Guiding Principles since its inception. Other government departments, most noticeably BIS, have played a proactive role in the development of the first action plan. This included public support at ministerial level and helping to lead thinking for its subsequent review.<sup>93</sup> It is now five years since the UK committed to implement the UN Guiding Principles. Yet business and human rights is not even mentioned in DFID's 2014-15 annual report as an area of collaboration with other departments or as a thematic priority.

This is surprising because DFID country programmes have a record of funding work looking at the impacts of business activities on the rights on women and men in the developing world. The table below highlights examples of this for just some of the current programmes relating to one country, Bangladesh. This is a missed opportunity for the UK's policy on business and human rights. For example, DFID has access to broader expertise on gender, supply chains, land rights and access to justice which could greatly enrich the government's overall approach. These were all areas where the first UK Business and Human Rights Action plan was noticeably weak. DFID must be much more proactive in developing and delivering the UK's commitments on business and human rights.

### **Greater consistency with the UK's business and human rights commitments would strengthen DFID's own approach**

Making greater use of the UN Guiding Principles will also benefit DFID's own work across a range of its priority areas.

The Secretary of State for International Development has consistently stressed the importance of the private sector in achieving poverty reduction and sustainable development.<sup>94</sup> This is reflected in the growing role for companies in both future development programmes and in mechanisms for how UK aid is spent. The UK Independent Commission for Aid Impact (ICAI) estimates that DFID has total commitments of at least £494 million to support engagement with business from 2012-15.

There is more scope for evaluating and learning how best DFID can work with and through businesses to achieve its development objectives. ICAI gave an overall rating of amber-red to DFID's engagement with British and overseas businesses which are contributing as partners in development. This reflects ICAI's assessment that significant improvements should be made.<sup>95</sup> ICAI highlighted that it was not always clear that DFID support added to what companies would have done anyway. In addition, it found there was scope for better cross-departmental oversight and learning between central and country programmes.

92 As the UK Aid Strategy states: "Before 2010, the Department for International Development (DFID) was an outlier in government. Now, cross-government working is the norm, whether to tackle Ebola, reform trade policy, or address climate change and corruption."

93 For example the joint BIS-FCO workshops on thematic issues 27-31st July 2015.

94 See for example speeches by the Secretary of State on 13th February 2015 and 11th March 2015.

95 Independent Commission for Aid Impact (ICAI) Business in Development, Report 43, May 2015.

## ICAI recommendations

**Recommendation 1:** DFID should translate its high level strategies for business engagement into detailed operational plans which provide specific guidance on business engagement with a focus on the poor.

**Recommendation 2:** DFID should ensure better linkages between centrally managed programmes and country offices for business in development, including loans, equity investments and guarantees.

**Recommendation 3:** DFID should pull together, synthesise and disseminate management information across all departments, including for loans, equity investments and guarantees, to improve management and ensure learning is captured and used to improve performance.

**Recommendation 4:** DFID should add suitably experienced members to the Investment Committee to enable sufficient strategic oversight of all components of its LEG portfolio.

**Recommendation 5:** DFID should reassess how it appraises, monitors and evaluates its engagements with business to ensure fitness for purpose and a sharper focus on the poor.

Source: Independent Commission for Aid Impact (ICAI) Business in Development, Report 43, May 2015, p.35-36..

The UK's existing commitments to implementing the UN Guiding Principles could provide a helpful framework here. This will be even more important when we examine future areas of work where the Secretary of State for International Development has indicated that the private sector will play a central role.

### 1. Financing for development and climate public private partnerships

The UK government is currently testing out how these financing mechanisms can work in practice. For example, the UK government is the lead investor in the Climate Public-Private Partnership (CP3). Over 12-15 years, DFID and DECC will channel a total of £130.5 million in UK aid into the CP3 programme.<sup>96</sup> The scale of private sector investment being discussed is huge. It is essential that these investments support and do not undermine respect for human rights.

### 2. Business and human rights and the implementation of the Sustainable Development Goals

The private sector is recognised as an important actor if the Sustainable Development Goals are to be met. It is hard to think of a single goal which is not linked directly or indirectly to how we do business. Meeting many of the indicators, for example on jobs and decent work or slavery and forced labour, will require significant changes to existing business models to achieve inclusive growth and sustainable development.

### 3. Delivering DFID's objectives on economic development and promoting prosperity

Economic development is an increased focus for the department, as reflected in the UK aid strategy. DFID's Economic Development Strategic Framework outlined how DFID plans to work with governments, multilateral institutions, civil society and the private sector to achieve global prosperity and eliminate extreme poverty by 2030.

The framework does mention the UK Action Plan but concepts of human rights due diligence, the role of the state to protect human rights and the requirement for businesses to respect human rights are missing. Businesses are given a key role but there is a reluctance to acknowledge that private sector activities, when not properly managed, can undermine livelihoods and harm poor people and the environment.

96 CAFOD (2015) 'Investing in our future? Making the UK's Climate Public-Private Partnership fit for purpose'.



Consistency between the UK's approach to business and human rights and the framework matters because DFID will be spending a lot of aid money on economic development. This was planned to be £1.8 billion in 2014-15.<sup>97</sup> The amount FCO and BIS have spent to support UK initiatives on business and human rights is a fraction in comparison.

### **DFID's Responsible, Accountable and Transparency Enterprise (RATE) programme**

The RATE programme, approved by Justine Greening in July 2014, is designed as a composite programme to “provide for engagement across a spectrum of responsible business interventions, enabling DFID to exercise its leadership and leverage at international, national and sectoral levels. The programme is designed to support responsible business programmes across the organisation, including Country Offices.”<sup>98</sup>

The RATE programme demonstrates that DFID recognises the need to make more of the opportunities offered by the UK's commitments on business and human rights.

This should be strengthened through ministerial support for a more robust approach to business and human rights. There is real potential to link programme experience with the input to the National Action Plan cross-departmental working group, drawing conclusions and developing policy recommendations. It would be interesting to know, for instance, if DFID officials actively supported the introduction of the supply chain transparency clause to the Modern Slavery Act. We are not aware of DFID having fed into the development of guidance for businesses on this reporting requirement. The recent creation of a dedicated unit looking at modern slavery within DFID suggests that this will be a priority area with fresh opportunities for cross-departmental work.

### **Drawing on programme learning to develop innovative policy recommendations**

DFID has provided significant support in relation to addressing the 2014 Rana Plaza disaster in Bangladesh. However it is worrying that the loss of life was entirely predictable. As a leading development government agency, we look to DFID to anticipate and build measures to prevent business-related harm into its policy towards the private sector. Here the UN Guiding Principles, which were developed in conjunction with governments and businesses, include relevant points on the concept of human rights due diligence.

With the Business Innovation Facility in Burma, the specific risk that DFID could become associated with companies that employ child labour, “led to the development of a child labour policy to guide selection of factories/partners and standard procedures in the event of discovery.”<sup>99</sup> This is obviously a very welcome step. CAFOD would hope that the policy would be extended to cover other human rights issues as well as child labour. Moreover in the light of this learning, there is a case for such a policy to be developed and used not only as a risk management tool for the programme but more strategically as a driver of DFID's ultimate development goals.

97 House of Commons Written Statement HCWS122. Written Statement made by: The Secretary of State for International Development (Justine Greening) on 16 Jul 2015.

98 DFID Business Case and Intervention Summary 'Responsible, Accountable and Transparent Enterprise (RATE), July 2014, p. 2.

99 Business Innovation Facility – Phase 2 (BIF2)/Business Innovation Facility in Burma.

**Some examples of current DFID Programmes with direct application for UK government policy on business and human rights**

<b>Programme/project</b>	<b>Budget</b>	<b>Funding time frame</b>	
<b>Work in Freedom – Asian Regional Human Trafficking Programme with the ILO and the London School of Hygiene and Tropical Medicine</b>	£9.75 million	2012/13 to 2016/17	
<b>Trade in Global Value Chains Initiative</b>	£4.8 million	September 2013 to December 2016	
<b>Skills and Employment Programme in Bangladesh</b>	Approximately £18 million	August 2014 to 2019	
<b>Supporting the National Action Plan for Ready-made Garment Sector in Bangladesh (SNAP-B)</b>	Up to £4.8 million	October 2013 to December 2016	

Source: Development Tracker, accessed November 2016.

100 Business Case and Intervention Summary: Skills and Employment Programme of Bangladesh (SEP-B).

Objectives	Reference to UN Guiding Principles on Business and Human rights and/or UK Business and Human Rights Action Plan in programme documents?
<p>This programme will help deliver DFID's Strategic Vision for Girls and Women in two priority areas – Preventing Violence against Women and Girls; and increasing Direct Assets for Girls and Women through better wages, working conditions and remittances from safe labour migration.</p>	<p>Yes.</p> <p>Also specific link made to the potential business supply chain amendment of the Modern Slavery Bill.</p>
<p>The programme initiated 10 projects in Kenya, Bangladesh and South Africa on a co-financing basis. These projects are working to deliver positive social and economic outcomes for workers and smallholder farmers working in the garment and horticulture sectors of target countries. The objective is to strengthen supply bases of these sectors to ensure that these countries continue to benefit from trading in these global value chains.</p>	<p>No specific links made to business and human rights or UN Guiding Principles but the subject matter is clearly relevant, for example some of the learning from the initiative on the barriers to driving improvements in supply chains.</p>
<p>Better Jobs for the Poor through Private Sector Skills Development and Employment Linkages. Business case states:</p> <p>“Education and training are a human right and serve as a means of accessing other human rights, such as the right to work, explicitly stated in the 1948 Universal Declaration of Human Rights (Article 26).”</p>	<p>No explicit reference made to Guiding Principles and business and human rights, although DFID does state that it brings “a strong poverty reduction and rights focus to the work in skills and private sector development.”<sup>101</sup></p>
<p>The UK will provide aid to help the government of Bangladesh and local ready-made garment (RMG) manufacturers, in the short term, to prevent deaths and injury in factory fires and building collapse (particularly on the devastating scale of the recent tragedies), and in the medium term, to demonstrate that they are capable of establishing and enforcing a credible building and fire safety system. Specific support provided to:</p> <ul style="list-style-type: none"> <li>• Assess Building and Fire Safety of the 1,500 factories that are not covered by the initiatives set up by international brands;</li> <li>• Strengthen Labour, Fire and Building Inspection for the RMG sector;</li> <li>• Build awareness, capacity and systems for gender-sensitive Occupational Safety &amp; Health measures among workers, supervisors and managers in the RMG sector;</li> <li>• Provide rehabilitation and skills training for survivors of recent accidents;</li> <li>• Implement the IFC/ILO Better Work programme in Bangladesh.</li> </ul>	<p>Strong focus on workers' rights and awareness of their rights.</p> <p>No specific links made to business and human rights, the UK Action Plan or UN Guiding Principles but clear relevance to these areas.</p>

DFID already has due diligence checks in place in relation to fraud prevention:

“Before finalising any cost sharing agreement, the Contractor will conduct a due diligence exercise of the private sector partner. DFID’s due diligence framework will be applied before partnering with any private business and disbursement of DFID funding will be linked to private sectors’ investment, agreed activity plan, and results achieved.”<sup>101</sup> We recommend that specific *human rights* due diligence requirements are incorporated into this broader framework.

## Recommendation 5

**DFID should ensure that its strategic priorities and ways of working support the UK’s commitments on business and human rights more consistently.**

CAFOD recognises that within DFID there is already considerable work going on which is closely related to the impact of businesses on human rights. There is real scope to ensure that UK aid money maximises its positive impacts by better linking with the implementation of the Guiding Principles. This will help to deliver value for money and a whole of government approach. It will also underpin successful action by the UK in line with our international commitments to deliver the Sustainable Development Goals and to make progress on tackling climate change.

### Practical ways to achieve this

- **Increase the profile of DFID’s work on business and human rights and use the RATE programme to raise awareness of the UK’s existing commitments across departments and programmes.**
- **Ensure that the experiences and concerns of local communities are better reflected in DFID’s analysis of the potential development impacts of large scale projects, to inform its approach to implementing the UK Aid Strategy and the Economic Development Strategic framework.**
- **Ensure that our approaches to financing for development and climate finance are consistent with the UN Guiding Principles.**
- **Build human rights due diligence requirements for companies into all DFID partnership agreements and make them an explicit condition for any kind of export credit support.**

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<sup>101</sup> DFID Bangladesh, 'Business Case and Intervention Summary: Better Jobs for the Poor through Private Sector Skills Development and Employment Linkages', p.49.

## Conclusion

Businesses enrich our lives in countless ways. This should not blind us to the need to identify and stop harmful practices which can sometimes evolve at a local level and on a complex, global scale.

Ensuring that states meet their duty to protect human rights and that enterprises respect human rights in their day to day operations will be an indispensable part of comprehensive action to tackle climate change and deliver the Sustainable Development Goals to address poverty in an effective and lasting way. However, five years after the UN endorsed the Guiding Principles, the National Action Plans that have been produced to date have not yet delivered that 'smart mix' envisaged by John Ruggie or the policy coherence required.

The UK government has a responsibility as a first mover to promote an integrated, comprehensive approach to business and human rights, which will meet its duty as a state to protect human rights and will ensure that all companies respect people and the environment.

In this context, the approach that our new government takes both to implementing the UN Guiding Principles at national level and the debate on the evolving treaty on Business and Human Rights will be key. Many different departments, including the FCO, BEIS, DFID, the Ministry of Justice, and the Department for International Trade, have an important role to play in meeting our commitments. At this critical time, the UK government can choose to provide leadership by ensuring that businesses respect human rights, or it can seriously weaken the momentum for change.



## Bibliography


- Ausschuss für Menschenrechte und humanitäre Hilfe des Bundestags: Öffentliche Anhörung „Menschenrechte und Handelspolitik“ am 30.9.2015: Schriftliche Stellungnahme von Armin Paasch, Referent für Wirtschaft und Menschenrechte, Bischöfliches Hilfswerk MISEREOR e.V.
- CIDSE (2013) ‘The UN Protect, Respect, Remedy Framework and the Guiding Principles: Driving Change?’
- CINEP, The case of false positives, Mauricio García SJ.
- CINEP, Noche y Niebla Julio – Diciembre 2014, No. 50, March 2015.
- CORE, Good Business? Analysis of the UK Action Plan on Business and Human Rights, December 2013.
- Diócesis de Quibdó, Fundación Universitaria Claretiana (FUCLA), Human Rights Everywhere (HREV) ‘Los muertos no hablan’, Quibdó, 2011.
- DFID and the Partnering Initiative, ‘Working Document: Unleashing the power of business: a practical Roadmap to systematically engage business as a partner in development’, April 2014.
- The Economist Intelligence Unit Ltd. (2015) ‘The Road from Principles to Practice – today’s challenges for business in respecting human rights’.
- Encyclical Letter *Laudato Si’* of the Holy Father Francis on Care for our Common Home.
- EU Textual Proposal Trade and Sustainable Development, published 6 November 2015.
- Fundación Ideas para la Paz (2014) ‘Lineamientos para la política pública de empresas y derechos humanos’.
- HM Government Good Business: Implementing the UN Guiding Principles on Business and Human Rights, September 2013.
- HMG UK Open Government National Action Plan 2016-18, May 2016.
- HM Treasury and DFID ‘UK Aid: tackling global challenges in the national interest’, November 2015.
- Home Office ‘Transparency in Supply Chains etc. A practical guide. Guidance issued under section 54(9) of the Modern Slavery Act 2015.’ Issued 29 October 2015.
- ICAR and ECCJ, Assessments of Existing Action Plans on Business and Human Rights, November 2015 update.
- Independent Commission for Aid Impact (ICAI) Business in Development, Report 43, May 2015.
- International Commission of Jurists (2014) Needs and Options for a New International Instrument in the Field of Business and Human Rights.
- McCarthy, D & Morling, P (2015) *Using regulation as a last resort? Assessing the performance of voluntary approaches*, RSPB.
- Stevens, C, Irfan, I, Massa, I and Kennan, J (2015) *The Impact of Free Trade Agreements between Developed and Developing Countries on Economic Development in Developing Countries: A Rapid Evidence Assessment*. London: Overseas Development Institute.
- Tierra Digna ‘Seguridad y Derechos Humanos ¿Para Quien?’, 2015.
- Traidcraft briefing note ‘*Investors running wild on land: the threats posed by international investment agreements*’, January 2013.
- UNCTAD (2015) ‘World Investment Report 2015 – Reforming International Investment Governance’.

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