

**Key points for the Consultation on the Review of the
UK Business and Human Rights Action Plan July 2015**

CAFOD welcomes this opportunity to participate in the timely review of the UK's business and human rights action plan. As the official development and humanitarian agency of the Catholic Bishops Conference of England and Wales, we work with approximately 500 partners in more than 40 countries across the world to tackle injustice, reduce poverty and bring about a safer, more sustainable and peaceful world.

From 2005 to June 2011 CAFOD and the CIDSE family of Catholic development agencies took part in the UN level process led by then Special Representative Professor John Ruggie which resulted in the Protect, Respect, Remedy Framework and the Guiding Principles on Business and Human rights.¹

The value of the UN Framework and Guiding Principles will be the extent to which they change the behaviour of states and companies

The Protect, Respect, Remedy Framework is based on three principles: 1) the state duty to protect citizens, 2) the corporate responsibility to respect human rights and 3) access for remedy for victims of corporate human rights abuses. The Framework is a helpful concept but does not have any binding status in international law. It is up to individual states to adopt appropriate national laws and policies to implement it – hence the importance of credible, effective national action plans.

CAFOD's main concern is whether the UN process is resulting in improvements for communities and groups on the ground. Will implementing the Guiding Principles lead to changes in the behaviour of states and companies? This is a question which has been raised by partner organisations in Cambodia, Colombia, Mexico and Zambia. It is an urgent issue for many of the communities with which our partner organisations work. Ten years after the start of the Special Representative's mandate at UN level, communities affected by mining in Peru, the Philippines, Honduras, the Democratic Republic of Congo and Colombia and human rights defenders who have already received death threats need to see concrete changes. The Guiding Principles are a useful starting point but much remains to be done to ensure the work to date delivers results. It is important that their actual impact is evaluated and there is scope to develop further complementary approaches if needed.

How the UK implements the Guiding Principles will influence the response of other states

The UK Government has consistently supported the UN Protect, Respect and Remedy Framework on Business and Human Rights and the Guiding Principles developed by Professor John Ruggie and adopted by the UN in June 2011.² In November 2011, the Prime

¹ See for example CIDSE Protect Respect Remedy: keys for implementation and follow up of the mandate, October 2012 <http://www.cidse.org/content/publications/business-a-human-rights/bahr-in-the-united-nations/protect-respect-remedy-framework.html>

² <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

Minister reaffirmed: *“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.”*³

The UK Government deserves credit for this public commitment to implement the UN Guiding Principles and being the first country to publish its National Action Plan on Business and Human Rights. However there were weaknesses in the first iteration of the National Action Plan which it is important that the review addresses. In addition, now that a number of other states have produced Action Plans as well, the Government can draw on broader experience and learning to inform the review of its plan.

Our CIDSE sister agencies in Germany, Belgium, Ireland and Switzerland and several partner organisations are currently engaged in their own national processes to implement the Guiding Principles. The first review of the UK Action Plan is a chance for the Government to evaluate progress since 2013 and identify practical ways to strengthen the implementation of the Guiding Principles at national level. We hope that learning from this iterative process will raise the bar for other countries developing their first National Action Plan.

As a member of the CORE coalition, we support the points raised in the CORE submission to the review. The key recommendations set out below focus on areas which we have identified as priorities for action to ensure that the UK’s approach to business and human rights is coherent and effective and leads to improvements in the lives of poor and vulnerable communities.

Recommendations

1. This year’s review of the UK Action Plan should be used to turn it into a coherent cross-departmental strategy on business and human rights

Protection of human rights should not be perceived as ‘red tape’, rather a clear UK strategy on business and human rights can in fact be an effective tool for ensuring that thinking on policies, new initiatives, guidance and regulation is much more joined up. This could help save time and resources within government. It will also help those businesses working to meet their responsibilities to respect human rights in their operations. In our experience of working with companies on issues such as conditions in their supply chains or corporate reporting, there is real demand for a clear coherent approach by government, rather than different, piecemeal voluntary initiatives.

Here it is important that, within the context of implementing the Guiding Principles, the UK recognises the need for the ‘smart mix’ of both guidance and regulation which John Ruggie described: *“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.”*⁴

³ ‘UK and Colombia agree Joint Declaration on Human Rights’ 21 November 2011 available at <http://www.fco.gov.uk/en/news/latest-news/?view=PressS&id=695253482>

⁴ Guiding Principles on Business and Human Rights, June 2011, Commentary p. 5.

Although the first UK Action Plan recognised the importance of the relevant legal framework, in fact very few of its ‘new actions planned’ included regulation. Yet as the experience of the Modern Slavery Act has demonstrated, legal requirements can actually help businesses seeking to meet their responsibility to respect human rights.⁵ From CAFOD’s perspective it is important that the revised Action Plan better reflects this balance, including due diligence requirements and a robust transposition of the EU non-financial reporting directive which will drive up standards of company reporting on human rights.

As a first mover, the UK can provide useful evidence and experience from its implementation of the UN Guiding Principles but this will only be possible if we can monitor progress and evaluate the impact of actions taken. Here CAFOD believes that there is useful learning from the Open Government Partnership (OGP), an initiative which aims to make governments more open, accountable, and responsive to citizens and which also requires cross-governmental working to be effective. The OGP Action Plans have benefitted from clear targets and timelines which set out the lead department, as well as high level ministerial support. While there are still a number of outstanding areas (for example on the lobbying register and Freedom of Information) where CAFOD would like to see much more progress, we recognise that the OGP process has helped to deliver concrete outcomes on: a public register of beneficial ownership, a commitment to the principles of open contracting, transposition of transparency legislation for extractive company payments and a commitment to a cross governmental anti-corruption action plan.

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 implementation of the Guiding Principles effectively:

- **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.**
- **Include actions linked to appropriate requirements and effective regulation as well as softer measures such as guidance.**
- **Strengthen remit 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 role.
- **Consider the implications 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. This will support policy coherence between different Government departments and make sure that consistent messages are sent to companies. For example such a step could have identified and avoided the problems caused by the Ministry of Justice’s Legal Aid, Sentencing and Punishment of Offenders Act 2012 early on.

⁵ <http://www.ethicaltrade.org/resources/key-eti-resources/eti-brc-letter-to-pm-on-modern-slavery>

2. Access to justice should be given a central role within the review of the UK Action Plan

Access to remedy, the third pillar of the UN protect, respect, remedy framework was one of the weakest areas of the original UK Action Plan. While the Action Plan helpfully states that “The UK sees its own provision of judicial remedy options as an important element in the remedy mix” in fact the actions that it included related more or less entirely to non-judicial remedy. In our experience working with local partner organisations in developing countries, there is usually less incentive for businesses to engage seriously with non-judicial mechanisms if the company management know that citizens have no chance of legal recourse as a last resort.

Strengthening the section on access to judicial remedy would significantly improve the quality of the plan overall, demonstrating that the UK is serious about its commitment to implement the UN Guiding Principles on Business and Human Rights. This should include:

- **Adding time-bound actions and specific targets on access to judicial remedy to the revised action plan.**
- **Improving access for poor communities to legal remedy as well as developing non-judicial routes.** Here it is important that the review looks at concrete cases and proposes practical steps to address the administrative and financial challenges caused by changes to the cost regime for civil law cases under the Coalition Government.
- **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.

3. The UK Government should engage constructively in the international debate on business and human rights and support the EU to do the same

The UK Government has often played a pro-active role in shaping EU positions on business and human rights in the UN level debate. As an influential actor, it is therefore important that the UK encourages constructive engagement in international processes which are highly relevant to this issue. This includes our approach to the new UN process on developing a treaty on business and human rights.

The Guiding Principles are very explicit on the issue of investment treaties that: *“States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.”* (Guiding Principle 9)

In contrast to the lack of engagement on the business and human rights treaty process, EU – US discussions on the Transatlantic Trade and Investment Partnership (TTIP) seem to be proceeding very rapidly. Worryingly CAFOD research has been unable to identify any explicit consideration by Member State Governments or the EU Commission of the implications of

TTIP for the implementation of the Guiding Principles and for the state duty to protect in particular.

We would like to see the UK Government:

- **Engage constructively with the discussions in the UN Working Group on the Treaty on Business and Human Rights and encourage the EU to do the same.**
- **As a matter of urgency, examine the UK's policy positions in relation to other international agreements, including for example TTIPP, to ensure that they are consistent with the Guiding Principles and in particular the state duty to protect**

4. The FCO should support active participation by civil society groups as part of its advice to national governments on implementing the UN Guiding Principles

We know from our partners and programmes in countries such Peru and Colombia, that individuals and communities working to defend human rights currently live in danger of violence and even death. There are a number of helpful statements regarding protection of human rights defenders in the 2013 Action Plan but given the gravity and the urgency of this issue these statements need to be expanded and linked to a more comprehensive set of actions in the revised version.

The UK Government has also provided support to a number of governments considering how they implement the UN Guiding Principles on Business and Human rights in their own countries. This is a helpful role, however, it is important that UK representatives ensure that civil society is able to engage actively in these policy processes. In particular, it is very important that the communities whose rights are most affected by business operations are able to make their voices heard. Often these are precisely the groups who are most remote from policy debates or government consultations. In order for the UN Guiding Principles to be seen as credible, it is important that embassy staff and officials give extra consideration to how they balance briefings for business representatives and 'insider' conversations with government officials with meaningful support to civil society as well.

CAFOD is very concerned about a trend of criminalisation of human rights defenders in some countries. Recently we have also noticed an increase in media attacks on NGOs, which are portrayed as being 'anti-development' for raising concerns about the impacts of business activities in their country. For example between 7th April 2015 and 19th May 2015 we catalogued 21 media articles against national and international NGOs working on human rights and the environment in Peru. As part of the UK's commitment to business and human rights is essential that Minister and UK embassy staff challenge such attacks and make it clear that these issues are an important area of legitimate public debate.

We would like to see:

- **Embassy representatives challenging criminalisation of human rights defenders by modelling support for civil society groups looking at the impacts of business.**
- **FCO staff working with local and indigenous communities to develop protection strategies, drawing on their own views of what measures would be effective.**

- **Where the UK Government provides advice and support to other governments on implementing the Guiding Principles, this should include actively developing a strategy to ensure meaningful participation by a wide range of civil society actors and affected communities.**

5. DFID partnerships and ways of working should support the UK's commitments business and human rights more consistently

Secretary of State Justine Greening has put the private sector at the heart of the Government's approach to development. As the Independent Commission for Aid Impact (ICAI) identifies, DFID engages with businesses in a very wide range of ways "from exploratory talks, through a range of networks, alliances and partnerships to the provision of finance through challenge funds and through loans, equity investments and guarantees."⁶

By 2015/16, DFID plans to target £1.8 billion of its budget on economic development, more than doubling the amount spent in 2012/13.⁷ Given the central role that businesses will play here, it is important that there is greater awareness and understanding of the business and human rights agenda and concepts such as human rights due diligence across DFID. For example the DFID strategic framework already recognises the need for closer cross departmental working on economic development. There is real scope to ensure that UK Aid money maximizes its positive impacts by better linking between government departments specifically on the implementation of the UN Guiding Principles as well. For example while countries such as Peru and Colombia are major targets for investment by companies based in the UK or listed here, there are also well-documented instances of conflict linked directly to business activities. We would like to see:

- **Experiences and concerns of local communities better reflected in DFID's analysis of the potential development impacts of large scale projects to inform its approach to implementing the economic strategic framework.**
- **Human rights due diligence requirements for companies built into all DFID partnership agreements and an explicit condition for any kind of export credit support.**

We are very happy to share further information and case study examples relating to these recommendations. For further information, please contact:

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⁶ Business in Development (ICAI), Report 43, May 2015

⁷ DFID, Economic development for shared prosperity and poverty reduction: a strategic framework, 2015