

UPDATING THE UK'S NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS

A SUBMISSION BY UNICEF UK

JULY 2015

ABOUT UNICEF

UNICEF, the United Nations Children's Fund, works in 190 countries through country programmes, regional offices and national committees. UNICEF is mandated by the UN General Assembly to advocate for the protection of children's rights, to help meet their basic needs, and to expand their opportunities to reach their full potential.

Grounded in the Convention on the Rights of the Child (CRC) and building on the UN Guiding Principles (UNGPs) on Business and Human Rights as well as the Children's Rights and Business Principles,ⁱ UNICEF supports business, governments and civil society in their efforts to prevent and address potential negative impacts of business while accelerating positive impacts on children's lives.

UNICEF has also created a range of tools to guide companies through integrating child rights into the process of human rights due diligence, including:

- How to write a policy commitment that refers to children's rights
- How to conduct a child rights impact assessment
- How to consult with child rights stakeholders
- How to report on child rights impactsⁱⁱ

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SUMMARY

UNICEF UK welcomes the opportunity to input into the formal consultation on the updating of the UK Government's National Action Plan on Business and Human Rights (NAP). The original version of the Action Plan was the first to be issued by any Government and as such was an indication of the significance with which the UK viewed its responsibilities to ensure high standards of British business operating both within its borders and overseas. Likewise, the realisation of the commitment made in the NAP to update the Plan by the end of 2015, before many Governments have produced their first iteration, is commendable.

Given this leadership, it is inevitable that the UK Government's peers will look to its example when developing their own Plans. This brings with it further responsibility in terms of ensuring that the standard set for subsequent National Action Plans on Business and Human Rights is as high as possible. In this context, it is important that we see much greater and more rapid progress from both UK businesses and Government on the implementation of the UN Guiding Principles on Business and Human Rights. Almost two years on from the NAP, few businesses are carrying out and reporting on human rights due diligence, one of the central tenets of the UNGPs and the Government's expectation of all UK businesses as articulated in the original Plan.

At a minimum, the updating of the NAP offers the Government the opportunity to use its leverage with businesses to scale up the practice of human rights due diligence. UNICEF UK strongly urges the Government to prioritise making human rights due diligence – which must include special attention to children's rights – a requirement for those companies awarded significant public sector contracts and a condition of the Government's support to UK businesses operating overseas.

Such a requirement would not represent an undue burden on business. It would ensure that the Government truly leads by example and levels the playing field for companies - rewarding those who take human rights seriously and incentivising others to do better. Not only would such action reflect the guidance in the UNGPs that governments should adopt a 'smart mix' of voluntary and mandatory measures, but also respond to rising demand from the business community for more direction from the Government. This was borne out by recent research by the Economist that indicates that nearly a third of business leaders see mandatory reporting on human rights for their companies as a good thing.ⁱⁱⁱ

Priority should also be afforded to removing the barriers which prevent people whose human rights have been violated by UK-linked companies from accessing justice in UK courts, paying special attention to the specific challenges faced by children. UNICEF UK recommends that all action points made under Pillar Three (Access to Remedy) of the updated NAP feature an explicit guarantee to consider access to remedy for vulnerable groups including children.

More widely, UNICEF UK encourages the Government to reflect in the updated NAP its full obligations regarding the impact of the business sector on children's rights as set out in General Comment 16 of the Committee on the Rights of the Child.^{iv} UNICEF has published two reports that will support the Government in its fulfilment of these responsibilities:

Obligations and Actions on Children's Rights and Business: *A practical guide for States on how to implement the UN Committee on the Child's General Comment no. 16^v*

Children's Rights and Business Explained: *A plain-language version of the UN Committee on the Rights of the Child's General Comment no. 16^{vi}*

The specific recommendations elaborated below – on public procurement, support to UK businesses operating abroad and access to justice – are three of the most essential elements for the updated National Action Plan.

CHILDREN- A VULNERABLE GROUP

The business sector has a growing impact on the realisation of children's rights. There is great potential for positive effects when business enterprises are aware of their important role in this respect. However, as children are still growing and developing, they are especially vulnerable to negative business impacts and can be severely and permanently affected by infringements of their rights. Child consumers can be more easily convinced to buy and use inappropriate or unsuitable products, and children are much more susceptible than adults to the harmful physical effects of toxic chemicals, manual labour and poor diets. Young workers can never fully make up for time spent out of education, and missed opportunities are rarely restored. Many of these impacts remain invisible, and businesses rarely involve or seek the input of children on decisions that will profoundly affect them. Children may not understand that their rights are in jeopardy, and, even when they do, often face tremendous challenges in making their voices heard. All too frequently, child victims lack the confidence, resources

and legal authority to demand accountability from those who violate their rights. For these reasons, it is imperative that governments take action to protect and promote children's rights in the context of business operations.^{vii} Moreover, companies must pay special attention to the particular needs and vulnerabilities of children, by integrating children's rights into their human rights due diligence processes. This is in line with the UNGPs, which require companies to 'pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation.'^{viii}

PUBLIC PROCUREMENT

The UK Government buys a huge amount of goods and services from business. With £45 billion worth of contracts awarded to private firms each year – around three per cent of the UK's GDP – public procurement is a major component of the UK economy.^{ix} The Government could do much more to use this purchasing power to influence corporate behaviour.

The current NAP specifies the Government's commitment 'to ensuring that in UK Government procurement human rights related matters are reflected appropriately when purchasing goods, works and services'.^x As it stands, public bodies are required to have due regard for equality-related issues in their procurement activity and bids for a contract may be excluded if evidence of grave misconduct by a company is found. Although this *might* include breaches of human rights, this falls well short of the Government's responsibility to assess and address any negative human rights impacts in its supply chain. The new EU Procurement Directive, which came into force in 2014, allows for greater consideration of social standards. **The UK Government should therefore take the opportunity of the updating of the NAP to require all businesses that are awarded large public sector contracts to undertake human rights due diligence – including particular attention to children.**

In so doing, the Government would:

- Help level the playing field. Apart from a broad requirement of all companies on human rights due diligence, procurement is the strongest lever that Government has to capture a large enough group of companies to ensure a critical mass are operating in this way.
- Lead by example: Government has stated that it wants companies to undertake human rights due diligence through their operations and supply chains, so it stands to reason that they should focus on companies in their own supply chain first.

- Directly reflect UNGP six, which demands that, ‘States should promote respect for human rights by business enterprises with which they conduct commercial transactions.’^{xi}
- Directly reflect General Comment 16 of The Committee on the Rights of the Child, which underlines that, ‘States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children’s rights.’^{xii}
- Respond to growing business support: Almost a quarter of respondents to a recent Economist survey of CEOs said that provision of incentives based on human rights performance (eg, preferential treatment in procurement process) would enable companies to better fulfil their corporate responsibility to respect human rights.^{xiii}
- Follow established precedent: The United States Government prohibits contractors and subcontractors from supporting or engaging in human trafficking. For projects of a certain size, the Government also requires that contracting businesses prepare compliance plans detailing due diligence procedures to assess, prevent, mitigate and remediate any suspected involvement.

GOVERNMENT SUPPORT TO UK COMPANIES OVERSEAS

The Government’s increasing support for businesses operating overseas must be coupled with a strong focus on ensuring that those businesses have a positive impact on children and the communities in which they live.

The current NAP includes a commitment to ‘*Review the degree to which the activities of UK State-owned, controlled or supported enterprises, and of State contracting and purchasing of goods and services, are executed with respect for human rights, and make recommendations to ensure compliance with the UNGPs.*’^{xiv} It is not clear whether this review took place and we would recommend that this is taken forward in the updated NAP and used as a starting point to build in more robust due diligence requirements on those companies working with agencies such as DFID, UKTI and the FCO abroad.

Responsible business activity is central to international development. In driving inclusive economic growth, creating decent jobs, increasing access to essential services and developing innovative products that meet social needs, the private sector can help the world’s most vulnerable children and their families thrive. This has certainly not been lost on the Department for International Development (DFID), which has escalated its work with UK business and plans to spend £1.8 billion on economic development in the next two years. However, **enhanced support for businesses operating overseas**

should hinge on their willingness to meet the Government's own stated standard for responsible business – namely human rights due diligence.

Practically, such a requirement could take a number of forms. One route might be for DFID and other agencies to develop criteria for supporting private sector actors similar to that established by the European Commission, which includes items on adherence to social, environmental and fiscal standards.^{xv} Alternatively, DFID's Statement of Priorities and Expectations for Suppliers could be extended beyond suppliers to all partner companies and adapted to move from an expectation that suppliers will demonstrate a 'clear, active commitment to Corporate Social Responsibility', to one where they will carry out human rights impact assessments.^{xvi}

Regardless of the form of such a requirement, its application would amplify development impact through increasing the business partner's focus on social outcomes. If a company integrates the voices of the most vulnerable into its human rights impact assessments, it will be better placed to determine where to focus its efforts to positively support the delivery of the development outcomes. This is very clear from the experience of the telecoms company Millicom. After conducting a child rights impact assessment across its supply chain with UNICEF, Millicom supported the creation of a new SMS service in Tanzania that allows parents to register new births as well as those of children under five on any mobile phone, straight to a centrally-run database. Birth registration – a critical development indicator – rose from 9% to 40% in the pilot region of Mbeya in six months.^{xvii}

At the same time, through the introduction of a requirement for development partners to carry out human rights due diligence, Government would also:

- Reduce the reputational risk of the UK Government offering support and collaborating through its trade missions with a company that has not been addressing negative human rights impacts in its supply chain. UNGP Four points to this as an area of potential concern for public bodies.^{xviii}
- Directly reflect General Comment 16 by the Committee on the Rights of the Child: 'States should lead by example requiring all State-owned enterprises to undertake child rights due diligence and to publicly communicate their reports on their impact on children's rights, including regular reporting. States should make public support and services, such as those provided by an export credit agency, development finance, and investment insurance conditional on business' carrying out child rights due diligence.'^{xix}

- Directly reflect UNGP Four: ‘States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.’^{xx}
- Follow precedent: The Ministry of Economic Cooperation and Development in Germany requires that human rights risks and impacts be evaluated as a condition of programme approval, and that children’s rights be considered in development financing decisions, using the Children’s Rights and Business Principles as a framework for analysis.^{xxi}
- Extend DFID’s reputation as a leader in aid transparency.

ACCESS TO REMEDY

The Committee on the Rights of the Child is clear that for ‘rights to have meaning, effective remedies must be available to redress violations.’^{xxii} States have an obligation to ensure that children and their representatives have full access to justice for infringements of their rights. This applies equally to all rights whether civil, political, economic, social or cultural, and extends to abuses stemming from business activities, operations and relationships.^{xxiii}

It is often the most vulnerable groups – such as children, the elderly, the disabled, indigenous peoples or migrants – whose rights are infringed by corporate behaviour. When this happens they should be able to access justice in their own countries but often this is not possible due to various legal and practical barriers. Children for example often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation.

Despite the statement in the existing NAP that the ‘UK sees its own provision of judicial remedy options as an important element in the remedy mix’,^{xxiv} significant social, economic and juridical barriers remain to children having practical access to effective judicial remedy where their rights have been infringed by businesses. In the updated NAP, the UK Government should therefore reflect the call of the Committee on the Rights of the Child:

Governments ‘should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned.’

A reasonable link exists when a business has its 'centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned.'^{xxv}

In practice, this would imply the following action on the part of Government:

- Grant courts jurisdiction over claims concerning overseas infringements of children's rights involving businesses based in or operating within the country. Recognise universal jurisdiction for serious human rights abuses, and allow child victims to bring cases in national courts where other available forums do not offer effective remedies.
- Clarify under the law when the actions or omissions of one business entity can be considered complicit with rights abuses committed by another entity, and determine the corresponding liabilities of all entities involved.
- Define the legal conditions under which liability for business related infringements of children's rights can be extended to parent companies of subsidiaries that operate abroad. To prevent infringements, consider imposing legal obligations on businesses to exercise due diligence in overseeing the actions of their subsidiaries.^{xxvi}

At a minimum, in order to ensure that children's particular vulnerabilities and rights are incorporated into the NAP, UNICEF UK recommends that all action points made under Pillar Three (Access to Remedy) of the updated NAP feature an explicit guarantee to consider access to remedy for vulnerable groups including children.

PROCESS, FORMAT AND ADDITIONAL RECOMMENDATIONS

The updated NAP should:

- Ensure that planned actions are specific, with criteria for success, measurable targets and timetables for completion.
- Assign responsibility within Government for delivery of the planned actions, indicating where this responsibility lies outside of FCO and the Department for Business, for instance with the Ministry of Justice, the Home Office, the Department for International Development, UK Trade & Investment, UK Export Finance, the Home Office or the Cabinet Office.
- Set out the composition of the cross-departmental working group responsible for the delivery of the NAP.

- Use the transposition of the EU Directive on Non-Financial Reporting to extend the narrative reporting requirements on social, environmental and human rights issues to large non-listed companies, in recognition of the potential serious risks and impacts that these companies and their operations can pose to human rights, child rights and labour rights.

BUSINESS BENEFITS

The first version of the NAP clearly states that there is ‘a business case for respect for human rights and that this brings business benefit in various ways.’^{xxvii} An explicit focus on children’s rights can also bring business benefits and adds further reason to the UK ensuring that the updated Action Plan is as robust as possible.

By integrating respect and support for children’s rights into the core strategies and operations, companies can strengthen their existing corporate sustainability initiatives while ensuring benefits for their business. Such efforts can build reputation, improve risk management and secure their ‘social license to operate’. A commitment to children can also help recruit and maintain a motivated workforce. Supporting employees in their roles as parents and caregivers, and promoting youth employment and talent generation are just some of the concrete steps that business can take. Considering how products and services can better meet children’s needs can also be a source of innovation and create new markets. Finally, working for children helps build strong, well-educated communities that are vital to a stable, inclusive and sustainable business environment.

It is not just civil society organisations that highlight the importance of human rights to sustainable business models. At the UN Forum on Business and Human Rights in November 2014, Unilever’s CEO Paul Polman was explicit that respect for human rights and commercial success go hand in hand:

‘A system that fails to respect human rights and personal dignity is not, in my view, viable. It is broken. And that is bad for the individual, bad for society, bad for business. Business can only flourish in societies and economies where human rights are respected and upheld.’^{xxviii}

APPENDIX

THE CONVENTION ON THE RIGHTS OF THE CHILD AND BUSINESS

All children have rights, everywhere and at all times. All children's rights are equally important and interrelated. The UN Convention on the rights of the child (CRC)^{xxix} came into force in 1990 and articulates the basic, non-negotiable human rights that all children have. It is the most widely ratified human rights instrument in the world and is a core human rights treaty within the international human rights system. It recognises children as all those under 18 and represents a strong consensus and a shared agenda internationally on children's rights. Different States of course have different cultures, and legal, political and regulatory systems and States are given broad scope in terms of how they go about implementing the CRC domestically. However, the provisions of the CRC have been accepted by nearly all States, not just as aspirations, but as legally binding commitments for which they are held accountable.

Business policy and action can have a very significant impact - both positive and negative - on children's rights whether they are acting alone, through business partners or in concert with government agencies. This impact can be for example, through:

- the use of child labour whether directly or within supply chains;
- making sure that the rights of working children are respected;
- ensuring parents have good working conditions and benefits so they can properly care for their children;
- respecting the rights of children, particularly indigenous children, who are being compelled to relocate following a land acquisition for business purposes;
- the use of aggressive marketing which exploits children's vulnerability; enduring products are safe for children to use;
- ensuring essential services such as water are provided safely and fairly to children;
- and taking the specific needs of children into account when planning and implementing environmental and resource strategies.

The CRC can serve as a valuable resource for companies seeking for information beyond the Children's Rights and Business Principles. Notably, the CRC:

- Is universally supported.
- Provides a common framework for navigating diverse cultures and legal systems.
- Fits into the established framework of corporate responsibility to respect all human rights.
- Offers a vision of the world fit for children that business can support.

GENERAL COMMENT 16 OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

General Comments are published by the Committee on the Rights of the Child. The Committee is the highest authority for interpreting what the CRC means, and General Comments either explain individual provisions of the Convention in more detail or talk about issues that are especially relevant for children's rights. The Committee has, for instance, written General Comments about the right to be heard, the right to play, juvenile justice, and children with disabilities. No matter what topic they cover, General Comments make the Convention stronger. General Comments explain to governments what they should do, and address concerns that come up regularly during the Reporting Process. General Comments also point out other human rights conventions, standards and guidelines that relate to children's rights. Because of all this, General Comments are valuable contributions to international law.

In February 2013, the Committee on the Rights of the Child adopted General Comment 16 on State obligations regarding the impact of the business sector on children's rights, to which countries will be held accountable for ensuring that children's rights are protected in business activities.

General Comment No. 16 gives governments advice on how to deal with businesses so that children's rights are respected, protected and fulfilled. Specifically, it explains how governments can make certain that companies think about children's rights, what they should do when companies violate children's rights, and how they can encourage businesses to make positive contributions to children's lives. The General Comment also talks about what other people and organisations can do to help, like raising awareness of children's rights, keeping an eye on what businesses are doing, and supporting children whose rights are not being respected.^{xxx}

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- ⁱ UNICEF, UN Global Compact, Save the Children, [The Children's Rights and Business Principles](#) (2012)
- ⁱⁱ UNICEF, [Child Rights and Business Tools](#)
- ⁱⁱⁱ The Economist Intelligence Unit, [The Road from Principles to Practice: Today's Challenges for Business in Respecting Human Rights](#), (2015)
- ^{iv} Committee on the Rights of the Child, [General comment No. 16](#), *On State obligations regarding the impact of the business sector on children's rights*, (2013)
- ^v UNICEF and International Commission of Jurists, *Obligations and Actions on Children's Rights and Business: A practical guide for States on how to implement the UN Committee on the Child's General Comment no. 16*, (June 2015)
- ^{vi} UNICEF and Save the Children, Children's Rights and Business Explained: [A plain-language version of the UN Committee on the Rights of the Child's General Comment no. 16](#) (June, 2015)
- ^{vii} UNICEF and International Commission of Jurists, *Obligations and Actions on Children's Rights and Business: A practical guide for States on how to implement the UN Committee on the Child's General Comment no. 16*, (June 2015)
- ^{viii} UN Office of the High Commissioner of Human Rights, [Guiding Principles on Business and Human Rights](#), (2011)
- ^{ix} Civil Service, Crown Commercial Service Website <http://www.civilservice.gov.uk/networks/gps> This figure is just for Central Government
- ^x UK Government, [Good Business Implementing the UN Guiding Principles on Business and Human Rights](#), (September 2013)
- ^{xi} UN Office of the High Commissioner of Human Rights, [Guiding Principles on Business and Human Rights](#), (2011)
- ^{xii} Committee on the Rights of the Child, [General comment No. 16](#), *On State obligations regarding the impact of the business sector on children's rights*, (2013)
- ^{xiii} The Economist Intelligence Unit, [The Road from Principles to Practice: Today's Challenges for Business in Respecting Human Rights](#), (2015)
- ^{xiv} UK Government, Good Business
- ^{xv} European Commission, [A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries](#), 2014
- ^{xvi} DFID, [Statement of Priorities and Expectations for Suppliers](#)
- ^{xvii} Millicom, [Birth Registration in Tanzania](#)
- ^{xviii} UN Office of the High Commissioner of Human Rights, UNGPs
- ^{xix} Committee on the Rights of the Child, GC 16
- ^{xx} UN Office of the High Commissioner of Human Rights, UNGPs
- ^{xxi} UNICEF et al, Obligations and Actions
- ^{xxii} UNICEF et al, Obligations and Actions
- ^{xxiii} UNICEF et al, Obligations and Actions
- ^{xxiv} UK Government, Good Business
- ^{xxv} Committee on the Rights of the Child, GC 16
- ^{xxvi} UNICEF et al, Obligations and Actions
- ^{xxvii} UK Government, Good Business
- ^{xxviii} Paul Polman, [Speech at UN Forum on Business and Human Rights](#), November 2014
- ^{xxix} [UN Convention on the rights of the child](#)
- ^{xxx} UNICEF and Save the Children, Children's Rights and Business Explained: [A plain-language version of the UN Committee on the Rights of the Child's General Comment no. 16](#) (June, 2015)