

**CORE**

PUTTING PEOPLE & THE PLANET  
AT THE CORE OF BUSINESS

**WOMANKIND**

WORLDWIDE EQUAL RESPECTED PROUD

LAND INTENSIVE  
CORPORATE ACTIVITY:  
**THE IMPACT ON  
WOMEN'S RIGHTS**

NOVEMBER 2017

## *Background to this briefing*

This briefing is an adapted summary of research undertaken by graduate students at the Human Rights Clinic at the University of Essex. The full report can be found [here](#). The briefing reflects the report's findings, and provides additional case studies from our partners.

## *Gendered impacts of land-intensive corporate activity*

Business activities can create a range of gender-specific human rights risks and impacts. When businesses violate human rights, women frequently bear a higher cost than men, but the gender-specific dimensions of these violations remain largely invisible. This is because many violations of women's rights are caused and exacerbated by entrenched gender discrimination which is 'normalised' in everyday life. As a consequence, there is a high risk that gender-specific human rights impacts will not be identified or remedied, unless explicitly included in government and corporate policies and human rights due diligence (HRDD) processes.

The late 1980s-90s witnessed a wave of land reforms in the Global South, encouraged by international financial institutions such as the International Monetary Fund, World Bank and other international organisations.<sup>1</sup> Following their recommendations and in a bid to boost national economic growth via overseas investment, many developing countries began liberalising the agricultural sector.<sup>2</sup> The restructuring of land ownership and greater exposure to international markets has however, contributed to greater levels of poverty and food insecurity. It has remained blind to intra-household power dynamics, where women's right to land is often trumped by male household heads and community leaders.<sup>3</sup>

Women make up 70-80% of the world's small-scale farmers and are primarily responsible for providing care, food and water for their families.<sup>4</sup> However, their work is often undervalued and unrecognised. In addition, given women's reduced access to formal land titling, they are routinely excluded from consultation and decision making processes around the use of land. As such, they bear a disproportionate share of the social, economic, and environmental risks and costs associated with land intensive industries, when they are displaced or the land they farm is polluted by land intensive activities.

Loss of livelihoods, food insecurity, increased exposure to environmental pollution, increased time spent fetching water and firewood and increased instances of domestic and other forms of violence against women are common in different contexts of large scale land investment.<sup>6</sup> Despite this, there is little guidance for stakeholders on how gendered human rights impacts can be identified, prevented and remedied.

## **Extractive and agri-business activities in Uganda**

Participatory research<sup>5</sup> led by affected communities with the National Association of Professional Environmentalists, a Womankind partner in Uganda, has highlighted a range of impacts of extractive and commercial agriculture activities on women's rights. Women's disproportionate lack of land property certificates meant they were bypassed during discussions of, and on receipt of compensation for land acquisitions.

Corporate activity also caused a deterioration in food security: the influx of workers led to overfishing in Lake Albert, raising prices to unaffordable levels for local women, some of whom had to resort to sex work to make ends meet. Women also reported facing violence and harassment from workers. For example, in the Kigyayo sub-county women reported being beaten by sugarcane plantation workers when using paths near the plantation on their way to look for food and water.

The closures of roads, markets, churches and even schools to make way for the development of oil-related infrastructure disrupted the community's social life with gendered consequences. These included parents taking their daughters out of school because of the increased distance to travel to primary school and fears of harassment and violence.

### *The right to an adequate standard of living*

The right to an adequate standard of living is found in Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights.<sup>7</sup> This right includes the availability, accessibility, acceptability and quality of adequate food, clothing, housing, medical care and necessary social services, as well as the continuous improvement of living conditions.

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) adds to this right the enjoyment of adequate sanitation, electricity and water supply, transport and communications, and refers to it as “adequate living conditions.”<sup>8</sup> Further, Article 27(1) of the Convention on the Rights of the Child (CRC) associates this right with “physical, mental, spiritual, moral and social development.”<sup>9</sup>

Corporate activities can seriously impact on women's right to an adequate standard of living. Examples include the establishment of mining projects in countries such as Cambodia, resulting in the forced evictions of indigenous communities, and women's exclusion from key discussions with companies regarding the use of land and adequate compensation.<sup>10</sup>

In Honduras massive land acquisition programmes focused on biofuel and palm oil production have also allegedly culminated in widespread abuses against women, ranging from rape, routine intimidation, alongside joblessness and the pollution of land and water. Women attempting to resist eviction have been subject to threats from armed police and private security forces.<sup>11</sup> This has impacted their ability to carry out day-to-day tasks such as collecting water for the household or going to work.

### *Free, Prior and Informed Consent*

Free, prior and informed consent (FPIC) is a matter of international law, defined most clearly in the UN Declaration on the Rights of Indigenous People.<sup>12</sup> It can be broadly defined as consent obtained without coercion, undue influence or any form of pressure from a third party, the State or other community members or leaders. The consent is obtained through an inclusive process in which all members of the community, women included, are able to participate meaningfully. The process of seeking consent must be unencumbered by timelines, deadlines, expectations or lack of transparency. FPIC is often used when dealing with indigenous populations,<sup>13</sup> tribal groups,<sup>14</sup> rural populations<sup>15</sup> and/or any community<sup>16</sup> in possession or ownership of the resources required for economic activity.

The UN Guiding Principles on Business and Human Rights (UNGPs), which set out the global standard on businesses' respect for human rights throughout their operations, also highlight the importance of properly obtained consent. In line with UNGP 17 and 21 the term ‘prior’ refers to consent sought in advance of any advancement, agreements or commencement of commercial activities.<sup>17</sup> This requires an understanding of how discrimination against women manifests in different contexts. Any agreement reached with male -dominated community leadership prior to engagement with the whole community may result in women being coerced to agree with unfavourable proposals and must, therefore, be avoided.

‘Prior’ also means that corporations should obtain consent at all stages of a project likely to have an impact on human rights, including: before signing investment agreements with business; before commencing the actual business activity; and at any other stage where a decision potentially averse to the interests of the community may be made. Where views are divergent between men and women, consent must be obtained in a manner not discriminatory to any group or overtly in favour of any group.<sup>18</sup>

‘Informed’ refers to the nature of engagement and type of information that should be provided prior to seeking consent. In relation to the ‘nature’ of engagement, the CEDAW Committee in General Recommendation 23 states that, “the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men’s failure to share the tasks associated with the organisation of the household and with the care and raising of children.”<sup>19</sup> As a result, specific efforts must be made to ensure FPIC is meaningful for women.

## Meaningful FPIC for women

**Location:** In male-dominated communities, women may need to be engaged separately because they may be unable or unwilling to participate in meetings with men due to cultural or religious reasons.

**Time:** Given that women are usually the caregivers and homemakers in most communities, any community meeting must take place after sufficient advance notice is given and must take into account times when women are free and able to meet. Childcare should also be available.

**Access:** In accordance with UNGP 18, language and other potential barriers such as literacy and disability must be taken into account. Information should be provided in various format such as video, audio and braille when necessary, to ensure that it is accessible to all groups of women.

## *Integrating a gender analysis in HRDD*

Corporate due diligence processes often lack a clear gender analysis that recognises the deep-rooted nature of gender inequality and the different impact of business activities on women and men. Gender discrimination is universally entrenched to the point of being invisible, and there is a high risk that such issues will not be identified during the development of corporate policies unless companies specifically commit to gender analysis.

As such, businesses need to develop gender-responsive HRDD based “on an explicit recognition of the unequal power relations between women and men, whether as workers, farmers, human rights defenders, family members and/or community members, and an understanding of the ways in which these power relations are institutionalised and normalized within social, economic, political and cultural practices and institutions.”<sup>20</sup>

Gender-responsive HRDD should identify, account for, mitigate, prevent and repair all forms of gender-based discrimination. This includes gender-specific human rights impacts and risks that corporations may cause or contribute to through their activities, or which may be directly linked to their operations, products or services.

## Gender-responsive HRDD should include:

**Conducting gender impact assessments of supply chains and wider business operations:** This includes reviewing proposed and existing activities that underpin institutionalised forms of gender inequalities, such as the gender pay gap for women workers. In the case of land investments, women should be able to access land, water and other resources without discrimination.

**Developing and implementing detailed gender-responsive policies and management and operational plans:** These plans and policies should address and mitigate the identified negative social and economic impacts of business activities on women. To be effective, these plans and policies must be embedded into all relevant business functions.

**Ensuring women's participation in business activities:** Women's participation must be ongoing, equal and meaningful throughout the proposal, planning and implementation stages of extractive and large-scale commercial agriculture activities. Particular attention should be given to the barriers which impede women's effective engagement. In the case of land-related developments, for example, this would include ensuring that women's FPIC is obtained both before business activities begin and throughout their duration.

**Facilitating separate spaces for women:** This would include creating distinct spaces for women from marginalised groups, such as indigenous women, and providing access to information and independent technical advice.

**Carrying out transparent reporting:** This would be undertaken through gender-disaggregated data and against gender-sensitive indicators.

**Ensuring women receive adequate and equal compensation and/or other forms of restitution:** This would include compensation to women as prior users of land acquired for business activities. Compensation should be based "on the real value of assets, land, crops, trees and important resources over their productive lifespan" and be included in State and corporate compensation policies.<sup>21</sup> Other forms of restitution may include providing women with legal land tenure.

**Carrying out due diligence prior to the resettlement of communities:** Due diligence will ensure that displacement is unavoidable. If resettlement is unavoidable, it will ensure that gender considerations are cross-cutting and explicit throughout the process, with women fully and meaningfully involved at all stages. Resettlement should allow women to continue their livelihoods which are often centred in the domestic domain and frequently overlooked. Resettlement should also ensure women have access to sexual and reproductive health services and that specialist services to prevent and tackle domestic violence and other forms of violence against women.

## *Gender-responsive Right to Access to Remedies*

The right to remedy is considered to be not only a human right per se, but also a prerequisite for the enjoyment of other human rights, given that it acquires meaning when a right is infringed.<sup>22</sup> Gender analysis is necessary to ensure that women suffering rights violations because of corporate activity are able to achieve meaningful access to remedy.<sup>23</sup>

There are numerous direct and indirect barriers, stemming from patriarchal social norms, that hinder women's access to remedies. These range from de jure discrimination against women and gaps in legislation, negative gender stereotypes in courts, women's lack of awareness of their rights, lack of economic autonomy and the ability to access legal aid.<sup>24</sup>

The Third Pillar of the UNGPs is dedicated to access to remedies.<sup>25</sup> The right includes access to judicial and State-based non-judicial remedies as well as access to company grievance mechanisms.<sup>26</sup> Therefore, both States and corporations should prevent and remedy any infringement of human rights which they cause or contribute to.

While the UNGPs set out the right to remedy, a specific gender perspective is missing, meaning there is no substantive discussion of how to remedy specific violations of women's rights. It is advised that each Principle regarding remedy is assessed according to its impacts on women as workers, farmers, human rights defenders, family and community members.<sup>27</sup>

## Recommendations

Below are a series of recommendations for the European Union, States and business. These are intended to support a more nuanced perspective of gender inequality, and offer guidance on how women's rights can be upheld and better protected through access to remedy.

### To the European Union

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- **The EU should adopt mandatory Human Rights Due Diligence legislation to compel and incentivise corporations to respect and protect human rights throughout their value chains.** To support this, the EU should provide guidelines for corporations on incorporating gender-sensitive HRDD into their operations.
- **The EU should call on Member States to incorporate a gender-mainstreaming approach into all their policies, including their National Action Plans (NAPs),** and to guarantee effective compliance with international standards on women's rights.
- **The EU should provide guidance to enable a common understanding among Member States on how to proceed with cross-border cases involving allegations of corporate human rights abuses.**
- **The EU should make corporations' respect for human rights a condition for supporting their access to external markets.** The negotiation by the EU of Free Trade and Investment Agreements should be an opportunity to help improve respect for women's rights and promote dialogue between corporations and civil society on business impacts on women's rights.

### To States

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- **States should ratify and implement all existing regional and international human rights instruments, in particular ICESCR and CEDAW.** This includes removing reservations to these treaties and domesticating their provisions into national legislation. Host States should also guarantee that women's right to defend their land is safeguarded in line with the UN Declaration on Human Rights Defenders.
- **States should ensure their NAPs on business and human rights are gender-responsive, and should support existing efforts to create binding obligations focused on women's rights,** on corporations at the domestic, regional and international levels.
- **States should adopt mandatory human rights due diligence legislation and develop gender-responsive human rights-based guidelines for corporations on how to conduct their operations.** States should also encourage and assist the UN, international financial institutions, global organisations and regional human rights bodies to adopt and incorporate gender-responsive HRDD into their institutional frameworks and current operations.

- **States should enable victims of corporate harms to bring claims against companies domiciled in their jurisdiction.** This would ensure companies are held responsible in cases where they have not conducted a proper risk assessment of their overseas operations, including the oversight of suppliers and subsidiaries.
- **States should develop independent accountability mechanisms to monitor foreign direct investment.** These bodies should have the authority to prevent the conclusion of investment agreements that lack explicit gender impact assessments. Host states should ensure that agreements made with corporations and/or investors include the creation and implementation of accessible, adequate, effective and tailor-made gender-responsive human rights based grievance mechanisms.
- **States should domesticate existing frameworks for corporate accountability on human rights into national legislation.** This includes legislation and regulations as well as voluntary mechanisms such as the Equator Principles, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.
- **States should provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women.** In doing so, States should assess the adequacy of existing legislation and address any gaps that prevent it from being applicable in cases of violations of women's rights. Adequate legal, technical and financial resources to ensure women's access to remedies should be provided (e.g. by creating women specific funds), and States should ensure that the existing mechanisms are effective by paying attention to cases that concern violations of women's rights. Women's participation should be guaranteed at every stage of the reparation process.

## Corporations

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- **Corporations should complete an initial environmental and social impact assessment with a gender analysis before an agreement is concluded with a Host State and/or lenders.** As part of this, businesses should consider how their activities may result in forced evictions and displacements.
- **Corporations must support women's meaningful participation to obtain FPIC throughout the proposal, planning and implementation stages of its impact assessment and operations.** When corporations engage in dialogue with communities, women should be adequately represented amongst the community members as well as in the corporate delegation.
- **Staff training in gender equality and human rights issues must be integrated into corporate structures.** Where necessary the corporation should engage women's rights experts to assist in designing and implementing gender responsive human rights due diligence mechanisms.
- **When monitoring their operations, corporations should develop, collect and analyse gender-sensitive human rights indicators, and collect and analyse corresponding data to allow for gendered reporting and evaluation.** Suspension of operations must be established whenever there are credible reports of violence against women and their communities, until effective measures are in place to prevent further risk.
- **Corporations should establish meaningful grievance mechanisms rooted in a firm understanding of gender equality and human rights.** Grievance mechanisms should be binding and provisions should be made to receive external information and complaints. They should also protect victims disclosing information and include an appeal option which ensures a fair hearing of the case.

1. Susie Jacobs, *Gender and Agrarian Reforms*, pp. 13-25, (2010)
2. K. Izumi, 'Liberalisation, gender, and the land question in sub-Saharan Africa', *Gender Development*, 7:3, (1999). Available at: <https://www.ncbi.nlm.nih.gov/pubmed/12349482>
3. Shahra Razavi, 'Liberalisation and the debates on women's access to land', *Third World Quarterly*, 28:8, (2007). Available at: <http://www.tandfonline.com/doi/full/10.1080/01436590701637342?scroll=top&needAccess=true>
4. University of Essex Human Rights Centre, *Business and Human Rights: 'Engendering' Human Rights Due Diligence – A Legal Analysis*, (2016). Available at: <https://www1.essex.ac.uk/hrc/careers/clinic/documents/Engendering%20Human%20Rights%20Due%20Diligence.pdf>
5. NAPE, *Women-led action orientated research on the negative impacts of oil on women's rights, land and food sovereignty in Uganda's oil region*, (2016). Available at: <http://www.nape.or.ug/publications/gender/51-women-led-action-oriented-booklet/file>
6. Progressio, note 1
7. Universal Declaration of Human Rights. Available at: <http://www.un.org/en/universal-declaration-human-rights/>; International Covenant on Economic, Social and Cultural Rights, UNTS 993 (1966). Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20993/v993.pdf>
8. While CEDAW provides this in relation to the rights of rural women, these elements should be extrapolated to the right to an adequate standard of living for all women.
9. Convention on the Rights of the Child, UNTS 1577 (20 November 1989) [CRC].
10. Amnesty International, *Cambodia: eviction and resistance in Cambodia: five women tell their stories*, (2011). Available at: <https://www.amnesty.org/en/documents/ASA23/007/2011/en/>
11. Global Witness, *Honduras: The Deadliest Country in the World for Environmental Activism*, (2017). Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>
12. *United Nations Declaration on the Rights of Indigenous People*, (2008). Available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
13. FPIC is a basic right for indigenous groups in terms of the United Nations Declaration on the Rights of Indigenous Persons adopted in 2007. The Inter-American Court of Human Rights has also developed jurisprudence on FPIC in relation to indigenous groups e.g. in cases such as *Awas Tingni Mayagna (Sumo) Indigenous Community v Nicaragua* (2001) and *Saramaka People v Suriname* (2007).
14. The International Labor Organization's Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries requires States to ensure FPIC in relation to tribal peoples.
15. African Charter on Human People's Rights Resolution on "Human Rights based Approach to Natural Resource Governance" (2012)
16. The Convention on Bio-diversity (1992) applies FPIC to communities more broadly as it makes reference to FPIC in the context of genetic resources, subjecting any access to such resources to the FPIC of the community concerned. Principles 18 of the United Nations Guiding Principles on Business and Human Rights makes reference to 'potentially affected groups.' This means FPIC within the context of the UNGP relates to any community affected to be affected by a business's activities.
17. *UN Guiding Principles on Business and Human Rights* (UNGPR), (2011). Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)
18. UN-REDD Programme (FAO, UNDP, UNEP), *Guidelines on Free, Prior and Informed Consent*, (2013). Available at: <https://www.uncclearn.org/sites/default/files/inventory/un-redd05.pdf>
19. CEDAW Committee, *General Recommendation No. 23: Political and Public Life*, (1997) A/52/38, para 10.
20. Malou Schueller and Rachel Noble, *Why National Action Plans on Business and Human Rights must integrate and prioritise gender equality and women's human rights*, (2015). [https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/55be70bae4b0cdd71a69c29a/1438544058662/GADN+WEJ+Submission+to+UK+NAP+Review+on++Business+and+Human+Rights+31\\_07\\_15.pdf](https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/55be70bae4b0cdd71a69c29a/1438544058662/GADN+WEJ+Submission+to+UK+NAP+Review+on++Business+and+Human+Rights+31_07_15.pdf)
21. *Ibid.*

22. International Organization of Employers, *Making Access to Remedy a Reality for All: Recommendations for Governments and UN Institutions* (2014) [http://www.csrgermany.de/www/csr\\_cms\\_relaunch.nsf/id/D0D4A5F-23DA06072C1257D78002578FB/\\$file/2014-09-22\\_Making\\_access\\_to\\_remedy\\_a\\_reality\\_for\\_all\\_final\\_.pdf?open](http://www.csrgermany.de/www/csr_cms_relaunch.nsf/id/D0D4A5F-23DA06072C1257D78002578FB/$file/2014-09-22_Making_access_to_remedy_a_reality_for_all_final_.pdf?open)

23. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law have described victims as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”. See, UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, (2006) A/RES/60/147. The UNGP have been interpreted in a number of cases in relation to the mentioned Basic Principles, in order to stress that remedy is an obligation and not an act of discretion of the wrongdoer. See, J. Martin & E.K. Bravo, *The Business and Human Rights Landscape: Moving Forward, Looking Back*, (2016), p. 321. It is interesting to note that Principle 26 of the UNGP is the only one (apart from Principle 1), that has been formulated in mandatory terms.

24. Council of Europe, *Guaranteeing Equal Access of Women to Justice*, available at: <https://rm.coe.int/CoERM-PublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066db99>. In some cases, it can be difficult for women to find viable legal remedies, since there are countries lack legal frameworks that protect women against violations commonly found in the business context. See, L. Hoctor, *ICJ Presentation at the Workshop on Business and Gender*, (2013). This was held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva.

25. UNGP, note 33, Principles 25-31.

26. *Ibid*, Principles 26-28.

27. On 29 June 2009 a small group of experts met in New York in order to help the Special Representative of the Secretary-General on Business and Human Rights, Professor John Ruggie, to “integrate a gender perspective throughout his work and give special attention to vulnerable populations”. This was part of his mandate. See Human Rights Council, Resolution 8/7 (12 June 2008) [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_7.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf).

## CORE Coalition

CORE is the UK civil society coalition on corporate accountability. The coalition works with partner organisations [1] to advance the protection of human rights and the environment with regard to the global operations of UK companies, by promoting a stronger regulatory framework, compliance with the law, and improved access to remedy for those harmed by UK corporate activities.

## Womankind Worldwide

Womankind Worldwide is a global women’s rights organisation working with women’s movements to transform the lives of women. Our vision is a world where the rights of all women are respected, valued and realised.

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