

We mean business: protecting women's rights in global supply chains

March 2020





The arrival of a foreign hydroelectric company in Santa Cruz de Barillas, Guatemala, has provoked abuses of indigenous people's rights. A group of Mayans, mostly women, has cut a path and installed a resistance camp to prevent the machines to enter their sacred territory and river.

PHOTO: CAMPAÑA TIERRA GUATEMALA. PEDRO ARMESTRE FOR ALIANZA POR LA SOLIDARIDAD

A shorter version of this paper appeared on the Business and Human Rights Resource Centre's mandatory due diligence blog series: <https://www.business-humanrights.org/en/due-diligence-laws-must-not-leave-women-behind>

EXECUTIVE SUMMARY

The adverse human rights impacts of corporate activities are by no means gender-neutral. Throughout ActionAid's extensive work in many communities in the Global South, we have seen time and again how corporate accountability can be harnessed to protect women's rights and further gender equality. However, many governments and corporations still have to implement, strengthen and operationalise this in practice.

In recent years many countries have started to consider binding measures to prevent and mitigate human rights abuses in corporate supply chains, and to guarantee access to justice for victims of these abuses. These legislative processes, whether at the national, regional or international level, are a major opportunity to guarantee that businesses respect women's human rights, as well

as to improve corporate contributions towards gender equality in a more coherent, rights-based approach. ActionAid calls on governments to impose gender-responsive binding obligations on corporations to prevent and mitigate human rights abuses in their operations and supply chains, and to guarantee access to justice for victims of these abuses. Governments and citizens must be able to hold companies to account for their responsibility to respect human rights and the environment. Practical recommendations for governments and corporations to contribute to gender equality through their accountability processes and policies can be found in the final chapters of this paper.



Mary is a farmer in Yala swamp, in the west of Kenya. Some years ago, a foreign company moved into the area for commercial rice production, with significant impacts on the local community which is engaging in a long struggle to regain their land rights. PHOTO: ALLAN GICHIGI/ACTIONAID

INTRODUCTION

Pollution, land grabbing, exploitation of workers, violence against human rights defenders and other misconduct – multinational companies often manage to avoid any consequences for such human rights violations and environmental impacts linked to their activities. For women this can be an even larger problem, especially for those living in poverty and marginalised communities in the Global South.

This can be seen in many ways. When water sources are polluted women have to travel farther to collect water, and when children fall ill due to polluted water, women's care and domestic work increases. Entrenched gender inequalities and patriarchal norms mean that women are over-represented in export-orientated manufacturing and the agri-food sector, both characterised by very poor working conditions in many countries around the world. Women are also more vulnerable to land grabbing, as they are often not allowed to legally own land, though they produce much of the food consumed in developing countries.¹ Women battle against inequity and abuse every day, but do not have the means to access justice.

The adverse human rights impacts of corporate activities are by no means gender neutral. Business activities can lead to gender-specific harms and discrimination, exacerbate existing inequitable gender roles and structures within a community, and create further discrimination based on intersecting identities such as race, class, age, caste, migrant status, sexual orientation, gender identity or geographical location. When seeking redress and remedy, women face additional barriers to justice due to patriarchal norms.

In recent years states have increasingly started to consider binding measures to prevent and mitigate human rights abuses in supply chains, and to guarantee access to justice for victims of such abuses. This can be seen, for example, in mandatory human rights due diligence legislation emerging in countries such as France, which builds on the recommendations of the UN Guiding Principles on Business and Human Rights. Mandatory human rights due diligence is seen as a critical way for companies to identify, prevent and mitigate adverse impacts. Legislation also needs to provide meaningful liability, with access to remedy for

rights violations throughout companies' supply chains and operations, particularly in contexts where legal frameworks and enforcement of regulations governing business activity may be weak – as is the case in many developing countries.

Identifying, addressing and holding companies to account for the adverse gendered impacts of their activities on women needs to be embedded in this emerging due diligence legislation and wider business and human rights policies and strategies, or we risk adopting measures that will leave women behind.

This paper explains why such an approach is needed, and **how states and companies can integrate gender-responsive human rights due diligence into existing and emerging efforts** in the area of business and human rights. The paper presents and builds on concrete examples from ActionAid's work in the Global South: from garment factories in Bangladesh to mining projects in Nicaragua and Zambia, to agricultural investments in Guinea Bissau, Guatemala and Malawi. It is structured as follows:

Chapter 1: The adverse human rights impacts of corporate activities are not gender neutral

- Five examples of the different and disproportionate adverse impact of business activities on women: on their economic rights, on their access to land, on their right to decent work, on their unpaid care and domestic work, and on gender-based violence.

Chapter 2: Why do we need mandatory gender due diligence?

- We explain that gender discrimination is largely invisible and does not come to light in standard human rights risk assessments; that misguided measures by companies could reinforce gender inequality; that rightsholders are not a homogenous group; and that existing standards are lacking a gender dimension.

Chapter 3: What do we mean by gender-responsive human rights due diligence?

- This is about recognising a company's relationship to and impact on social norms around gender roles, complex cultural biases and power imbalances. We present our expectations of businesses with regards to gendered due diligence.

Chapter 4: How can states incorporate gender due diligence in their laws and policies?

- We present a variety of recommendations to states concerning gender-responsive human rights due diligence at national and regional level, as well as in the context of the UN Treaty on business and human rights; ensuring access to justice and a specific approach to protection for women human rights defenders.

CHAPTER 1: THE ADVERSE HUMAN RIGHTS IMPACTS OF CORPORATE ACTIVITIES ARE NOT GENDER NEUTRAL

Both women and men face human rights violations linked to corporate activities – however, in our many years of experience working with communities affected by corporate abuse, notably in the Global South, we have seen that women experience adverse impacts of business activities differently and disproportionately to men – whether regarding their rights to land, health, to

be free of violence and the threat of violence, or their right to decent work. Our work also demonstrates that women as well as women human and environmental rights defenders face gendered abuse, in particular gender-based violence. Existing gender inequalities and patriarchal norms also mean that they face specific barriers in seeking access to justice.



Five examples of the different and disproportionate adverse impacts of business activities on women

1. Impacts on women's economic rights:

In many cases, investments and operations lead to disproportionately negative impacts on women's economic rights, while the 'benefits' of those activities, such as jobs or compensation for land dispossession, only fall to men.

Investigations conducted in 2012 and 2013 in Guinea Bissau² showed that a Spanish agribusiness company grabbed community land in an area mostly dedicated to rice crops, a task primarily undertaken by small-scale women farmers to feed the family. Women in the area also generated income by selling agricultural products in small quantities. The arrival of the company displaced women from the rice paddies, producing a strong reconfiguration of household economies. Women were forced to start cultivating on different land, with much lower yields and therefore lower availability of rice in their homes; they had to buy additional rice at market. Since monetary flows became more important, women systematically lost control and management of the family money, eroding their position in the household.

In Malawi, transnational corporations have pushed poor people, especially women, further into poverty. In the central region near Dwangwa in Nkhotakota and in the southern region near Nchalo in Chikwawa, private companies have acquired land to grow sugarcane³ – resulting in smallholder farmers, especially women, losing their customary land to them, as they cannot compete with the large-scale investment and profitability such companies have at their disposal. Because of land tenure barriers and cultural norms, women smallholder

farmers' voices were also largely disregarded in the few consultations that took place between the companies and the landowners and users, resulting in their rights to economic activity and food being curtailed.

In Zambia, research⁴ has shown that the economic impact of the extractive industry has increased employment and income opportunities more for men than for women. In Kankoyo and Kalumbila areas, very few women have managed to find employment within extractive companies, owing to their inadequate technical skills and high corruption and bribery, which act as gender barriers affecting women. In addition, in Kalumbila there has been a sharp rise in the price of commodities such as groceries after the mine moved into the area, due to high demand coupled with reduced local production of food. This, along with the loss of land where women were cultivating their own food, has drastically reduced women's food sovereignty. While new job opportunities created for men in the mines tend to increase household incomes, this has the potential to decrease women's social and economic status and relative power in the household and community relative to the status of men.



Walipa, a smallholder farmer in Malawi where women are losing their customary land to transnational corporations growing sugarcane. PHOTO: ACTIONAID

2. Impacts on women's access to land:

In many contexts, women are not allowed to own, have access to or control over land. According to the FAO (2018), globally less than 15% of all landholders are women.⁵ When companies take over land that communities had been using for their own livelihoods and consumption, women smallholder farmers are most affected as they carry out most subsistence farming in developing countries, with possible adverse impacts on food security and nutrition for them and their families. We see this right now in Brazil's Amazon and Cerrado regions, where land is being cleared by agribusiness for monoculture plantations relating to beef, soy and eucalyptus exports, at the expense of women farmer cooperatives from indigenous and traditional communities.⁶ We see this also in Guatemala where Maya Q'eqchi' women are being driven off their land by the expansion of palm oil plantations for export to Mexico, the Netherlands and Germany.⁷ When displacement is forceful, it can even lead to gender-specific forms of violence. In the context of the expansion of an industrial port complex in northeast Brazil, the displacement of people from their homes has increased alcohol and drug consumption, especially among men, which has led to rising levels of domestic violence and sexual violence against women, as well as sexual exploitation of children and adolescents.⁸

Women are responsible for most of the food production consumed in developing countries, yet they are rarely able to meaningfully participate when access to land is being negotiated prior to and during extractive, agriculture or infrastructure projects, which means they lose out on compensation. We saw this for example in the context of a biofuels project in Mozambique for exportation to northern Europe,⁹ where there were no women among the administrative and traditional leaders who took part in the initial meeting with the Swedish company, and so their needs, rights and priorities were not taken into account. Or in the case of the subsidiary of a British company in Zambia, which did not meaningfully consult with women when providing land compensation to male legal landowners in the context of a mining project.¹⁰



Women's Community Therapy Groups in Pernambuco, a region in Brazil that recently underwent an accelerated and uneven development process triggered by the investment boom in the Suape Port Industrial Complex. PHOTO: ACTIONAID

3. Impacts on women's decent work:

Women are overrepresented in the lowest paid, most insecure and vulnerable jobs, and have fewer opportunities and access to resources to start and develop their own businesses than men.¹¹ The vast majority of low-paid, low-skilled workers in the global value chains of multinational companies are women, especially in export-orientated manufacturing and food production.¹² As price remains one of the main criteria for buyers, competition between suppliers to produce cheap goods has led to downward pressure on women's wages and working conditions, especially in sub-contractors and in suppliers beyond the first tier, with internal and international migrant women rendered even more powerless in relation to employers. Concerns over health and safety conditions in many global value chains have been well documented for years, particularly at subcontractor level. Six years on from the building collapse at Rana Plaza in Bangladesh, which killed 1,134 mainly female garment workers, more than half the survivors remain unemployed due to the physical injuries and psychological impact of the disaster.¹³

According to the ILO,¹⁴ more than half of people in forced labor are women and girls. In the workforce, women continue to face higher unemployment, underemployment, vulnerable employment, informal employment and working poverty than men.¹⁵ Overrepresented in vulnerable and informal employment sectors in low and lower-middle income countries,¹⁶ women systematically lack social protection including sick pay, maternity pay, parental leave or the opportunity to unionise.

In Cambodia's garment factories, women – usually young, poorly educated migrants from impoverished rural areas sent to the cities to earn money to support their families – are typically hired because they are seen as more submissive, less informed and vocal about their rights, and more willing to work for lower wages.¹⁷ Women workers' freedom of association is undermined by social norms limiting women's voices and participation in society, as well as longstanding attacks on collective bargaining, freedom of association and the right to strike by local businesses and government.



Women working in the garment industry in Savar, Bangladesh, are demonstrating for fair wages. PHOTO: NICOLA BAILEY/ACTIONAID

4. Impacts on women's unpaid care and domestic work:

Globally, women take on three times as much unpaid care and domestic work as men.¹⁸ This includes caring for children, the sick and the elderly, and taking care of household necessities such as cooking or collecting water. Deeply-embedded patriarchal norms mean women play a dual role in the economy as they undertake both reproductive work, such as the activities just mentioned, and productive work such as subsistence farming in exchange for pay in cash or kind – whereas men typically focus on a single productive role.¹⁹ Corporate activities can therefore have different impacts on women. For many years in Zambia the mining sector favoured male waged employees, viewing women not necessarily as mine workers or capable contributors to the sector – therefore largely excluding women from mining benefits. However, they remain disproportionately vulnerable to many of the risks associated with the extractive industries, including land, air and water pollution.

Numerous times, company activities lead to barriers to access to water for communities, either because the traditional water source becomes polluted, or because aquifers become monopolised or privatised. Whether in the case of a biofuel project in Mozambique,²⁰ a new bottling plant in El Salvador,²¹ an agricultural project in Guatemala²² or a mining project in Zambia,²³ we have documented how corporate activities significantly increase the distance between communities and their water sources, especially affecting women who are generally the ones responsible for carrying water, washing clothes and cooking. Travelling to water sources further away means the time women spend on unpaid care and domestic work increases even more, reducing the possibility of engaging in income generating activities or leisure time.



Maria Elena lives in the Alta Verapaz region of Guatemala, where palm plantations are polluting the river that is the source of water for drinking and washing. PHOTO: FABIO ERDOS/ACTIONAID

Air and water pollution caused by mining activities, as well as accidents caused by explosions increased health issues and the number of accidents in Zambia.²⁴ Women were affected more because they spent more time in hospital caring for those injured. This takes away their time to engage in income generating activities. Meanwhile, investigations by ActionAid Spain / Alianza Por la Solidaridad and other NGOs found a drastic increase in chronic kidney disease in the sugarcane areas of Guatemala, El Salvador and Nicaragua. The burden of caring for family members affected by chronic kidney disease is a direct burden on women physically, economically, socially and emotionally, who sacrifice their own lives to supporting recovery processes or even death.

In addition, large commercial corporations have been identified as the main source of the billions of illicit financial outflows from African countries each year, including through elaborate mechanisms that allow them to avoid paying tax.²⁵ Women and girls are most severely affected when public services are starved of much-needed funding, as inadequate social services and social protection are not effective in alleviating or redistributing their unpaid care and domestic work.

5. Impacts on gender-based and sexual violence:

Gender-based violence is widespread in the global supply chains of multinationals, as patriarchal power relations are reproduced on the factory floor. A 2019 survey of 200 garment factory workers,²⁶ including 181 women, in Bangladesh's capital Dhaka, found that 80% said they had experienced or witnessed sexual harassment or abuse at work. Ten per cent said they were currently being subjected to sexual harassment, molestation or assault in the workplace. In Cambodia, more than half of women garment workers interviewed by ActionAid in 2014 had experienced or witnessed harassment at work, including bullying from peers and managers and sexual harassment.²⁷ Supervisors – who are mostly male – issue verbal threats in order to force women to work overtime.²⁸ Such behaviour is used as a means to subjugate and control women workers, that is, it is structural, not just interpersonal. The normalisation of violence against women within the garment sector leads to widespread under-reporting, which is further compounded by the limited formal mechanisms available for seeking redress. Outside the factory gates, women face a continued threat of violence on the city streets – ActionAid found over 90% of women in Cambodia's capital Phnom Penh felt at risk of rape, verbal abuse and harassment by men who loiter around the factory gates, especially after dark.²⁹

In Guangdong Province in China, women working in a toy factory directly owned by an US corporation are subject to gender-based and sexual violence, as well as low wages and health hazards.³⁰ An investigation carried out by ActionAid France in partnership with China Labor Watch in 2019 revealed that four out of 10 women³¹ interviewed experienced sexual harassment at the factory. Several workers told the investigator that they were often victims of verbal abuse and humiliation. Another worker was followed after work by male colleagues taking pictures, making her feel in danger. A hotline number is on workers' cards but it is not used as workers either do not know what it is for, fear that their anonymity will not be respected, or believe that calling will not resolve anything.

Gender-based violence is not limited to export-orientated manufacturing such as the garment or toy sectors. It is well documented that mining projects also often lead to increased levels of sexual violence against women. In Zambia for example, domestic and gender-based violence increased because of an increase in alcohol and

drug abuse by men who got jobs in the mines.³² In the mines around Kalumbila and Kankoyo, women were also more vulnerable to sexual violence and exploitation by tanker drivers employed by the mines. The barriers to access to water, meaning that women and girls are forced to walk longer to find alternative water sources, also puts them at increased safety risks. The renewables sector is also not free of similar claims. Indirect testimonies of cases of rape and violence against indigenous women at the hands of employees have been collected in the context of a hydroelectric project in Guatemala, though these were not officially reported.³³

When women organise to stand up and struggle against corporate abuses, they experience gender-specific threats and violence. Women human rights defenders face gendered threats, criminalisation, repression, gender-based violence and even killings. In Guatemala and El Salvador, while male defenders tend to be attacked in relation to their jobs, women defenders are intimidated with threats and attacks to their personal and family life, with daughters particularly vulnerable to attacks.³⁴



Rahima (pseudonym), operator in garment factory in Dhaka, Bangladesh, working under unsafe labor conditions.
PHOTO: FABEHA MONIR/ACTIONAID

CHAPTER 2: WHY DO WE NEED MANDATORY GENDER DUE DILIGENCE?

1. Gender discrimination is rendered largely invisible: it does not come to light in standard human rights risk assessments

Unless gender issues are explicitly investigated in due diligence processes, they are unlikely to be identified by companies. For example, women in many contexts are excluded from decision-making processes, so their voice does not come forward during consultations about corporate projects or investments unless specifically arranged for. Potential impacts on violence against women are also not given careful thought to, as they are usually regarded as sensitive or taboo issues.

When companies conducting due diligence fail to integrate these gender considerations into their efforts, it allows for considerable gaps in the implementation of their responsibility to respect women's human rights. Risk identification processes that do not take into account prevailing gender inequalities and the fact that women face specific risks and barriers lead to preventative and mitigating measures that are ineffective for women, whether they are workers or in the affected communities.

2. Misguided measures could reinforce gender inequality

Preventative measures undertaken by companies based on gender-blind risk assessments can be misguided to the point of reinforcing gender inequalities. For example, large buyers in the garment sector may (correctly) identify freedom of association as one of the salient risks in their supply chains, and respond by collaborating directly with factories to establish workers' committees to strengthen workers' voices. Yet if these committees do not meaningfully include women – who are concentrated in the lower positions in garment factories – and in particular migrant women, they may fail to recognise women's needs when representing workers and may exacerbate gender inequality within the factory. Or in cases where companies attempt to follow the process of free, prior and informed consent in relation to displacement of communities from their homes and land, by seeking to provide adequate compensation to

land owners. A lack of a gender-responsive assessment or approach means this will not only not benefit the women of the communities in question, but might also further negatively impact on them as sometimes, due to unequal power dynamics in the household, they have no control over what happens with the compensation.

3. Gender-responsive obligations on corporations are lacking

At the moment there are no obligations on companies to conduct gender due diligence within international human rights laws and policies. Some countries have introduced mandatory requirements on human rights due diligence, while many others – including the European Union as a whole – are considering introducing legislation in this area;³⁵ yet none of these require a gendered approach.

Corporate accountability standards such as the OECD Due Diligence Guidance for Responsible Business Conduct, which provides practical guidance on implementing the OECD Guidelines for Multinational Enterprises, recommend applying a gender perspective to human rights due diligence.

Similarly, the recently published report by the UN Working Group on Business and Human Rights, 'Gender Dimensions of the Guiding Principles on Business and Human Rights', states that "*since women's human rights are an inalienable, integral and indivisible part of universal human rights, both states and business enterprises should take concrete steps to identify, prevent and remedy gender-based discrimination and inequalities in all areas of life,*"³⁶ pointing to the importance of taking differences amongst rightsholders into account when implementing the UN Guiding Principles on Business and Human Rights.

Despite the updated standards there are still no binding requirements on companies to take into account the disproportionate and differentiated impacts of their activities on women. States should take the necessary measures to adopt strong legislation requiring mandatory gender-responsive due diligence.



Irresponsible mining activity, combined with extreme poverty in Chinandega, Nicaragua, causes women to wait for hours without sleep in the hopes of getting from the miners a sack of brushwood that can be sold for money. This precarious situation often leads to abuse and sexual exploitation..
PHOTO: CAMPAÑA TIERRA NICARAGUA. PEDRO ARMESTRE FOR ALIANZA POR LA SOLIDARIDAD

CHAPTER 3: WHAT DO WE MEAN BY GENDER-RESPONSIVE HUMAN RIGHTS DUE DILIGENCE?

Gender-responsive human rights due diligence means that businesses, in their efforts to assess and address the adverse impacts of their activities, operations and value chains on human rights, take into account that different rightsholders, particularly women, are affected in different ways. According to the OECD, businesses ought to recognise the *"different risks that may be faced by women and men"*³⁷ and *"be aware of gender issues and women's human rights in situations where women may be disproportionately impacted."*³⁸ In practice this means that businesses should explicitly integrate a gender-responsive approach in carrying out all steps of human rights due diligence as per the OECD Guidelines and the UN Guiding Principles.

The UN Working Group on Business and Human Rights (2019) explicitly states that *"the ongoing human rights due diligence should cover both actual and potential impacts on women's rights that a business enterprise may cause or contribute to, or that may be directly linked to its operations, products or services by its business relationships."*³⁹ This also means that

businesses should use their influence in specific situations to support the protection and fulfilment of women's human rights where possible.

Gender-responsive due diligence goes further than simply putting a gender lens on human rights due diligence: it is about recognising a company's relationship to and impact on gender norms, complex cultural biases and power imbalances. A gender perspective is not about treating women as 'victims', a 'vulnerable group' or a 'tickbox' exercise. It is not only about women and girls. Integrating a gender lens into due diligence means analysing how business activities may have different or disproportionate impacts on women and men, as a result of prevailing economic, social, political or cultural gender-based inequalities.

Integrating a gender lens to due diligence means putting the concerns of rightsholders at the centre, recognising that they are not a homogenous group. Because of intersecting and multiple forms of discrimination, different women may be affected differently by

business activities depending on their age, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, geographical location or migration, indigenous or minority status, and other forms of identity.

Thus, to effectively ensure the prevention, mitigation and remediation of adverse human rights impacts connected to business activities for all, we expect businesses to:

1. Conduct **gender-sensitive risk and impact assessments, through meaningful consultations** with potentially affected women, women's organisations and women human rights defenders to identify and address any actual or potential adverse human rights impacts, including how corporate activities may inadvertently be exploiting and reinforcing existing gender inequalities for different groups of women. This also includes putting in place gender-sensitive alert mechanisms.
2. The findings from this impact assessment should be integrated in all relevant processes, and businesses should take a range of **gender-responsive measures to prevent and mitigate these impacts**. For example, modifying an ongoing project to prevent or minimise adverse impacts on women, or providing effective remedy when the adverse impacts have already occurred.
3. In line with the ILO Convention No. 190 on Violence and Harassment, businesses should **assess the risk of sexual harassment and gender-based violence in their supply chains**, take appropriate steps commensurate with their degree of control to prevent it, clearly state to all business partners that harassment and violence at work are not allowed, and ensure their business partners develop a reporting and handling procedure and make it known to all workers.
4. Businesses should **communicate adequate and easily accessible information** to possible affected rightsholders, taking account of language and literacy levels. This should include information on gender discrimination and possible differentiated impacts for women.
5. Businesses should track the effectiveness of their responses by using **sex-disaggregated data** in consultation with affected women, women's organisations and gender experts, and communicate adequate and easily accessible information to affected stakeholders regularly. Ideally this data should also be disaggregated by other factors such as age, ethnicity, disability or migrant status to ensure an intersectional understanding – these categories could be context-specific to some extent, informed by the experts and organisations consulted.
6. **Remedies should be effective, timely and gender-transformative**, and consider the specific barriers women experience in accessing justice. Corporate grievance mechanisms must be accessible, efficient, safe and fair to women. For example, businesses should make sure these mechanisms are accessible to women, taking account of barriers they are more likely to face with respect to language, literacy levels, access to information and digital technology, mobility and time poverty due to unpaid care responsibilities.
7. As part of wider due diligence processes, businesses should also **assess the risks posed to women's human rights through their tax strategies and structures**, as corporate tax avoidance deprives governments of much-needed resources to fund gender-responsive public services. Businesses must better align their tax practices with responsible tax behaviour, including by reporting publicly about their tax payments, and aligning them with economic activities so that taxes are paid where the activity takes place.
8. Businesses should, either through commercial terms or alternative means such as direct payments or investments, **ensure that suppliers have the financial capacity** to comply with human rights and gender equality standards.
9. Lastly, businesses should **go beyond a 'do no harm' approach**, that is preventing and mitigating, to actively advance the rights of women with **gender-transformative measures** – that is, measures that transform underlying power structures and relations, in the form of affirmative action to advance gender equality and women's rights. This includes creating an enabling environment for women to have access to all opportunities on an equitable basis with men, including supporting women getting to leadership positions within the company. When it comes to supply chains for example, businesses should consider costing in the unpaid care and domestic work undertaken by women in the pricing of products they purchase.

Some examples of good practice:

Using gender disaggregated data to inform due diligence plans

In early 2018, German clothing manufacturer Esprit analysed their workforce to better understand the gender distribution of employees and management in factories in India, Bangladesh, and Ukraine. The company found that women were underrepresented at all levels of factory management in all the factories they surveyed. The study revealed that factories in India have six percent female line supervisors, whereas the total female workforce is 31 percent. The company set a goal to help their suppliers achieve a percentage of female line supervisors that aligns with its overall percentage of female workers. Factories in India aim to increase the percentage of female line supervisors to 21 percent by July 2021.

Source: https://www.bsr.org/reports/BSR-Gender-Data-Impact-Framework-Report_.pdf

Collaboration to address sexual harassment and abuse in factories

In 2019, following complaints of sexual harassment in factories in Lesotho, US clothing company Levi Strauss & Co entered into an agreement with a Lesotho-based supplier and two other brands sourcing from it, as well as five Lesotho-based trade unions and women's rights advocacy organisations, to develop a two-year pilot programme establishing an independent investigative organisation to receive complaints of sexual harassment and abuse from workers, carry out investigations and assessments, identify violations of a jointly developed code of conduct, and direct and enforce remedies in accordance with Lesotho law. The programme is primarily funded by the brands.

Levi Strauss & Co. has also launched a cross-functional Gender Equity Taskforce made up of representatives from their sourcing, sustainability and global policy teams, and from the Levi Strauss Foundation. The taskforce works with industry experts to ensure that issues tied to gender equity are considered in all monitoring and audits, all workers have access to appropriate reporting channels, and all workers have effective representation with management.

Source: <https://www.levistrauss.com/2019/08/15/responding-to-reports-of-harassment-in-lesotho-factories/>

Factoring in women's unpaid work into the pricing of products

In Nicaragua, an initiative supported by The Body Shop included women's unpaid contribution to sesame production in the costing of sesame oil it purchased from them, as proposed by the sesame oil cooperative Juan Francisco Paz Silva. In collaboration with an academic, in 2006 the cooperative identified three types of work undertaken by women:

- i. direct support - which contributes directly to cash crop production (e.g. winnowing)
- ii. indirect support - which contributes indirectly to cash crop production (e.g. supplying food to farmers in field), and
- iii. home - which includes caring for children and elderly, and household activities (such as milking the cows, fetching water and fuel).

On the basis of a time-use study, women's 'support labour costs' were calculated at equivalent to 12 days per manzana (0.7 hectares) and valued at US\$50 per annum (2006 figure). The buyer ultimately accepted to factor the unpaid labour into the cost price. This calculation has so far continued to form the basis for compensating women's unpaid labour in the pricing of sesame oil. The Body Shop is now looking at women's unpaid contributions in its supply chains on a wider scale, including by considering women's contribution to indirect work and home care in the context of a female producer group of hemp mitts from Bangladesh.

Source: https://www.ethicaltrade.org/sites/default/files/shared_resources/Base%20code%20guidance%2C%20gender%20equality%2C%20Part%20B.pdf

Gender-specific impacts and harms should be taken into account in any sector and context, but businesses should pay additional attention to women in sectors and global supply chains in which large numbers of women are employed (such as textiles and clothing,

electronics, agriculture, fresh cut flowers); industries that deeply affect the local economy, environment and access to land and natural resources (mining and extractive companies, infrastructure, agriculture or real estate); and in conflict-affected or fragile states.



As a result of the quakes caused by the underground mining operations in Mopana, Zambia, Angelina's house collapsed in 2014. Fortunately, no one was home when it happened. PHOTO: KADIR VAN LOHUIZEN / NOOR FOR ACTIONAID

CHAPTER 4: HOW CAN STATES INCORPORATE GENDER DUE DILIGENCE IN THEIR LAWS AND POLICIES?

States have made strong commitments to uphold women's rights, as seen above, and responsible business conduct standards are increasingly incorporating a gender perspective. However, these commitments are not yet being translated into states' business and human rights agendas. The gender-neutral nature of current modern slavery transparency legislation and newly-adopted due diligence laws illustrate this.

States must ensure that measures to eliminate potential women's human rights violations are robustly integrated in all policies, strategies and practices concerning business and human rights, responsible business conduct or corporate social responsibility. This includes:

- **Ensuring a gender analysis and including a gender chapter in the National Action Plans on Business and Human Rights** that are being revised

or drafted by governments to comply with their responsibilities under the UN Guiding Principles on Business and Human Rights.

- **Integrating a gender perspective in the drafting of and negotiations for the UN binding treaty on business and human rights.⁴⁰** While the first and revised drafts make some reference to the differentiated impact of corporate activities on women and other groups, they do not suggest any means of addressing this. States must ensure that women's rights organisations, feminist collectives, trade unions and other social movements and gender experts are meaningfully consulted and included in the process. The treaty must include mandatory gender-sensitive impact assessments, gender-responsive justice and remedy mechanisms, and an enabling environment for women human rights defenders. In short, states should follow recommendations made by

the coalition of Feminists for a Binding Treaty⁴¹ to guarantee a strong gender perspective is reflected in this historic international standard-setting process.

- In all national and international instruments of promotion of the private sector, such as export credit agencies or other forms of subsidies to operate abroad, **include strong human rights safeguards and a requirement for gender-responsive impact assessments**, so that measures are put in place to ensure that women's rights are not harmed.
- **Ratifying ILO Convention No. 190 on Violence and Harassment** and eliminating gender-based violence in the world of work.

Further recommendations relating to due diligence laws, access to justice and protection of women human rights defenders are expanded on below.

1. Emerging due diligence laws

States must require companies to conduct gender-responsive due diligence throughout their entire operations and value chains. As the call for mandatory human rights due diligence legislation grows louder in many countries, gender considerations need to be reflected in emerging due diligence legislation, or we risk adopting laws that leave women behind. Namely if women's rights and needs are not considered in the development of these laws to begin with, it may take years before the gaps are corrected.

Legislative processes for due diligence, whether at the national, regional or international level, are an important step towards addressing businesses' harmful impacts on women's rights – through improving transparency in supply chains, and a better understanding of how business models and practices, including purchasing practices, can contribute to gender equality.

To ensure corporations respect women's rights and fulfill their obligations under the UNGP and OECD Guidelines, states should integrate a gender perspective in existing mandatory due diligence laws and those being drafted, including those concerning modern slavery and transparency in supply chains. Consultations during the drafting of the legislation must include women workers, gender experts, women's rights organisations and feminist movements.

Legislation should require companies to conduct due diligence that is gender-responsive, paying attention to multiple or aggravated forms of discrimination and identifying overlapping vulnerabilities; and should be accompanied by specific guidance on the issue for companies.

Due diligence laws must be carefully designed to avoid gender equality and women's rights becoming just a tick-box exercise within the due diligence processes and practices of companies, but rather lead to transformative change for women.

Last but not least, there is a risk that due diligence legislation might put downward pressure on the bottom of the chain, leaving to the suppliers to bear the costs of monitoring and compliance. As purchasing practices and prices are a key element to ensure fairness,⁴² **states should frame due diligence laws so that companies are compelled to change their own practices and business models**, besides drafting Codes of Conducts for suppliers and covering the costs of complying with those.

2. Access to justice

The recognition of a corporate obligation to exercise gender-responsive human rights due diligence per se implies that businesses that do not comply with this obligation shall be held accountable. It should nevertheless also be made clear that compliance with this obligation alone does not automatically shield businesses from liability for human rights violations and abuses. States must guarantee liability attached to companies' duty to respect human rights and the environment, leaving it to the specific company to prove that it took all reasonable actions, should harm have occurred.

Besides ensuring that emerging legislation includes a liability element, states must ensure that women will benefit equitably from any remedies that may be provided under the law in corporate-related human rights abuses. That means ensuring that new laws take into account the specific barriers that women face when trying to access justice and remedy, such as language and literacy barriers, limits on freedom of movement, time poverty due to unpaid care work and other factors.

The fact that women are much less likely to have access to economic resources must also be considered when awarding compensation or remedy.

A Call for Justice

In 2015, 1,826 residents in Chingola, Zambia, took UK-based Vedanta Resources Ltd. to court in London for the devastation caused by its subsidiary, Konkola Copper Mines (KCM).

The complainants claimed that they suffered not only disruption to their livelihoods, but also property damage and continuous pollution. They argued that women and children were the most seriously affected as they were forced to look for an alternative water source, given that the rivers KCM is alleged to have contaminated were the main source of water for day-to-day household chores.

In 2006, following pollution of the Kafue River with effluent from KCM, residents filed a lawsuit that resulted in a landmark award of \$2 million in 2011 in the Zambian High Court. However, KCM appealed the case at the Zambian Supreme Court, which found Vedanta guilty of gross pollution, but removed all compensation payments. As a result, the victims took their case to the UK High Court, which in 2016 rejected Vedanta's argument that the farmers should not be permitted to bring their case in London. The company appealed, and in April 2019, the UK Supreme Court issued a landmark ruling granting the villagers the right to pursue justice against Vedanta in the British courts.

The community is still seeking compensation for damages, remediation and cessation of the alleged continual pollution that they say is gravely impacting their lives. Compensation was provided to owners of gardens in one of the communities, but women to date complain that they were not fairly involved in the negotiations.

Source: ActionAid Zambia, originally published in SDG Watch Europe (2019) 'Who is Paying the Bill?'⁴³

What do we expect governments to do to improve access to justice for women?

- Governments should make sure their legal systems make remedies accessible, efficient, safe and fair to women and all affected communities. For example, by revising the high costs associated with court procedures, reversing the burden of proof or providing legal aid, as women are more likely to be financially dependent.
- Governments should ensure that public, private and international grievance mechanisms are accessible, efficient, safe and fair to women. They should take into account existing gender inequality, for example by making sure to have female interviewers, accustomed with local power dynamics, cultures and languages. When the OECD Guidelines are revised, it will be important to strengthen their gender perspective, so that complaints relating to gendered corporate impacts can be better raised with National Contact Points. Alternatively, pending a revision of the Guidelines, we suggest as a minimum developing standalone gender guidance based on the OECD Guidelines and general due diligence guidance.

3. Protection of women human rights defenders and whistleblowers

The following quotes accompanied the presentation by the UN Special Rapporteur of his 2019 annual report on the situation of human rights defenders:⁴⁴

"In the current political climate, in which there is a backlash against human rights, women who defend and promote rights are often the first to come under attack."

"In many countries, women who dare to speak out for human rights are stigmatised and called bad mothers, terrorists or witches, silenced and marginalised from decision-making and can even be killed. It is particularly worrying that the hostility they face comes not only from state authorities, but also the media, social movements, their own communities and even their family."

"Public shaming, attacks on women's honour and their reputation, doxing or publishing their personal details on the internet, sexual violence and attacks against their children and loved ones, are used to silence women human rights defenders."

The report shows how women, girls and gender non-conforming people standing up for human rights have been facing increased repression and violence across the globe. Similar research by the Association for Women's Rights in Development (AWID) and the international coalition of women human rights defenders shows that women human rights defenders particularly confronting corporate power in pursuit of defending their lands, communities and the environment face critical risks and gender-specific challenges.

Therefore, governments should ensure human rights defenders and whistleblowers are adequately protected.

For example, by establishing early warning systems and protection mechanisms, by preventing defamation and slander campaigns and publicly condemning them, and by terminating criminal investigations into human rights defenders – directing these instead at those perpetrating violence against them, including corporate actors and public authorities. Women human rights defenders face stigma, threats and violence, including sexual violence specifically targeting them for their gender, especially in contexts where speaking out as a woman is not generally accepted. In programmes for the protection of human rights defenders, governments should include measures specifically targeted at supporting women defenders.

Sources and further reading

Despite the growing interest in gender due diligence from states, civil society and academics, there is not a lot of material available on its practical implementation. The Geneva Academy (2018) wrote an academic briefing on *Gender-responsive Due Diligence for Business Actors: Human Rights-based Approaches*,⁴⁵ which is quoted throughout this paper. The Gender Development Network and CORE (2016) wrote a briefing paper on *Why National Action Plans on Business and Human Rights Must Integrate and Prioritise Gender Equality and Women's Human Rights*,⁴⁶ which was also instrumental in formulating this paper.

This paper also makes use of the various position papers developed by the Feminists for a Binding Treaty Coalition, most notably *Women's Rights Beyond the Business Case*⁴⁷ and *Integrating a Feminist Perspective Into the Binding Treaty on Transnational Corporations and other Business Enterprises*.⁴⁸ The guidance developed by the OECD,⁴⁹ specifically the chapter on gender and the recently published report on gender by the UN Working Group on Business and Human Rights⁵⁰ were used to identify the specific gendered due diligence steps.

Lastly, this paper makes use of the extensive array of ActionAid reports on the corporate abuse communities face in the global south and its specific gendered impacts, referenced throughout the paper.

For further resources, we highly recommend:

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March 2020