

Business and Human Rights: ‘Engendering’ Human Rights Due Diligence – A Legal Analysis

Project Partner: Progressio and EBHR

Project Overview:

Business activities impact a range of human rights, all of which have gender-specific 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 by, or ‘overlooked’ by, entrenched gender discrimination and are ‘normalised’ in everyday life. As a consequence, there is a high risk that gender-specific human rights impacts will not be identified or addressed, unless explicitly included in government and corporate policies and corporate human rights due diligence (HRDD) processes. According to the UNGPs¹ (Principles 17-21) HRDD should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. There is, however, little specific guidance on what HRDD could mean or would look like in relation to women’s human rights, or how States could ensure that companies respect women’s human rights and exercise gender-sensitive HRDD.

While there is a wide catalogue of rights with gender-specific risks and impacts in the context of business activity in all sectors, the particular focus of this project will be on gender-specific risks in industries that affect women’s rights to an adequate standard of living, such as the extractives sector or large-scale commercial agriculture. Women make up 70-80% of the world’s small scale farmers and are primarily responsible for providing food and water for their families. As such, they bear a disproportionate share of the social, economic, and environmental risks and costs when they are displaced or the land they farm is polluted by land intensive industries. Water contamination and air pollution can also lead to a heightened risk of cancer. Sick family members are typically cared for by women with increases their unpaid care work load in rural areas where health services are already inadequate. Forced displacement as a result of mining or large-scale land investments also disproportionately impacts women, as men frequently leave to find jobs elsewhere, leaving women to fend for themselves and their children with little means of survival. Where jobs are available, women typically end up in the poorest paid jobs. They are excluded from [community consultations](#) on what should happen to their land and rarely get adequate compensation for land and assets lost.² At the same time, women miners and women living in communities affected by mining can experience sexual abuse and rape from mine workers or mine security personnel and have little protection.

¹ Human Rights Council (21 March 2011) ‘Guiding Principles on Business and Human Rights: Implementing the United Nations’ ‘Protect, Respect and Remedy’ Framework,’ A/HRC/17/31, Principles 17-21

² If compensation is paid, it tends to be paid to men as they are considered ‘heads of households.’

Progressio is advocating for the integration of a women's rights perspective in business and human rights policy and practice, with particular reference to land intensive investments in Africa. As HRDD is the cornerstone of the 'business responsibility to respect human rights,' a detailed analysis of how this can be translated into practice with respect to women's rights is of great benefit to Progressio's policy influencing, particularly if it is based on a legal perspective. Current guidelines on HRDD are very general and vague, and there is a need for deeper analysis to inform our policy and advocacy work.

Project Output:

The Human Rights Centre Clinic will research and produce a report that analyses gender-specific impacts of business activity in the extractives and agri-business sectors, with a particular focus on the right to an adequate standard of living as guaranteed under the UN Covenant on Economic, Social and Cultural Rights and Article 14.2 g) and h) CEDAW. The Clinic team will explore two key questions: (1) How can states and companies operating in these sectors incorporate gender specific impacts on the right to an adequate standard of living in their HRDD processes and address these in their HRDD frameworks, including the right to consent? (2) Is there a basis for civil liability of companies for adverse impacts on women's right to an adequate standard of living? A cross-cutting issue for both questions will be the extent to which the right to a fair, adequate, gender-equitable compensation in the case of land dispossession and gender-sensitive free, prior and informed consent could become part of HRDD requirements. For general background information on the existing HRDD practice, the Clinic students will benefit from a report prepared by Skadden for Progressio that maps existing mandatory due diligence mechanisms as well as voluntary guidelines in the business context, and to what extent these are currently gender sensitive.

Progressio is planning to launch the report (in collaboration with the Women's Economic Justice Group of the Gender and Development Network and the CORE coalition) at the UN Forum on Business and Human Rights as well as a high-level event targeting companies and policy makers in the UK in 2017. It will be published on the Business and Human Rights Resource Centre website and circulated in their weekly newsletter. The report will inform the work of the London Mining Network and CIDSE, the network of Catholic Development Agencies, who are advocating for a Binding Treaty on Business and Human Rights with a focus on mandatory HRDD. It will also be shared through global online platforms on gender and extractives. There is a general interest amongst all of these networks in advancing gender and women's rights but a lack of clarity on how to achieve this so far, particularly in legal terms. There may also be an opportunity to share the report during the Commission on the Status of Women (CSW) in New York in March 2018.

Progressio will use the research to influence EU member states to put in place gender-sensitive due diligence laws and ensure gender-specific concerns are at the core of DFID increasing engagement with the private sector.

Project Outline:

The team will have weekly meetings to discuss progress and work plan during both phases.

- Phase 1: (November 2016 –December 2016)
 - Building on the background research conducted by last year’s LLM students and the report prepared by Skadden, the students will conduct further research (NGO work and academic literature) and gain a broader understanding of the issues raised by the project.
 - Attend two intense sessions on introduction to business and human rights
 - Improve team-work skills
 - Update the skeleton report outline prepared by last year’s LLMs.
 - Prepare a work plan for the 2nd phase
 - A visit to Progressio (or a visit by Progressio to Essex) to discuss the work plan
- Phase 2: (January-June)
 - Conduct targeted and in depth research into the areas that were identified in the work plan.
 - Develop writing skills through regular supervisory and peer review exercises
 - Begin drafting the report and send the first draft to Progressio by the end of April 2017.
 - May-June – incorporate the feedback from Progressio and finalize the report by the end of June.

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