



Business, human rights and women in Australia

NGO Report to the Committee on the Elimination of
Discrimination Against Women

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Endorsed by



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1. Summary

Women are often disproportionately affected when business enterprises fail to respect human rights. In particular, women living in the Global South are more likely to be the victims of corporate human rights abuses, as workers at the bottom of global value chains and as community members who experience displacement, violence and loss of livelihood as a result of large scale extractive, agriculture and infrastructure projects.

The Committee on the Elimination of Discrimination Against Women has recognised the state's obligation under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to ensure that transnational companies operating abroad do not negatively impact the enjoyment of the rights enshrined in CEDAW by women and girls in other countries.¹

Despite repeated commitments to implement the UN Guiding Principles on Business and Human Rights, the Australian Government is not currently meeting its obligation to protect women from corporate human rights abuses and ensure access to effective remedy where violations occur.

2. National Action Plan on Business and Human Rights

National Action Plans on Business and Human Rights are the primary way in which implementation of the UNGPs is being managed by governments around the world. Over 30 countries have completed or are developing NAPs, including the UK, Norway, France, Germany and the USA.

In early 2016, the Government committed to progress national consultations on further implementation of the UNGPs. In 2017 the Government-appointed a Multi-Stakeholder Advisory Group on Implementation of the UN Guiding Principles on Business and Human Rights to provide expert advice to the Government.

The Advisory Group unanimously recommended that the Government commit to a National Action Plan on Business and Human Rights (NAP) that sets out concrete, coordinated steps towards domestic implementation of the UNGPs.² The Advisory Group also identified priority areas to be covered in a NAP, including Commonwealth procurement, foreign investment, mandatory human rights due diligence and corporate law reform.

In October 2017 the Advisory Group received a letter from the Government advising them that the government was “not proceeding with a [NAP] at this time.”

¹ CEDAW Committee, Concluding observations on the combined eighth and ninth periodic reports of Canada, CEDAW/C/CAN/CO/8-9 at para. 18(a) (25 November 2016).

² Advice on the prioritisation of issues and actions to implement the UN Guiding Principles on Business and Human Rights (UNGPs) (August 2017) Available at: <http://dfat.gov.au/international-relations/themes/human-rights/business/Documents/final-msag-priorities-paper.pdf>

Recommendation: The Australian Government should develop a National Action Plan on Business and Human Rights, ensuring a gender perspective, to implement Australia's obligations under the United Nations Guiding Principles on Business and Human Rights.

3. Corporate accountability and the right to a remedy

The UN Guiding Principles on Business and Human Rights require states to provide effective and appropriate judicial and non-judicial grievance mechanisms as part of a comprehensive system for the remedy of business-related human rights abuse.

In Australia, the National Contact Point (NCP), located in Treasury, is the only government-sponsored non-judicial business and human rights complaints mechanism. In practice, it is often the only avenue for redress for communities, workers and individuals outside Australia who are adversely affected by corporate human rights violations.

A recent independent review of the NCP, which found that the Australian NCP 'is falling short of fulfilling [the Australian Government's] commitments and, across a range of indicators, is ranked among the poorest performing National Contact Points (NCPs) internationally'.³

Strengthening Australia's NCP, or developing an alternative Government-sponsored non-judicial grievance mechanism that is independent, transparent, adequately resourced and able to conduct investigations and facilitate meaningful remedies for victims of human rights abuses is a critical step towards improving Australian corporate practice and compliance with international standards.

Recommendation: The Australian Government should ensure that victims of corporate human rights abuses have access to an independent, transparent, accountable and adequately resourced non-judicial body mandated to investigate and resolve complaints and facilitate effective remedies.

The Australian Government should establish an inquiry to consider how to reduce the substantive and procedural barriers to accessing judicial remedy in Australia.

4. Human rights due diligence

There is a vast body of evidence that Australian-based multinationals encounter a range of women's rights risks in their supply chains. Women and girls constitute approximately 55% of the 21 million victims of modern slavery.⁴ Poverty, gender inequality, discriminatory

³ Newton, Alex *Independent Review: Australian National Contact Point under the OECD Guidelines for Multinational Enterprises*, 2017, 4. See also Kristen Zornada, *The Australian OECD National Contact Point (2017)* available at <http://corporateaccountabilityresearch.net/report-xx-ancp>.

⁴ International Labour Organisation, ILO 2012 Global estimate of forced labour executive summary Accessed April 2017.

practices and the oppression of women leads to the overrepresentation of women and girls as victims of forced labour.⁵

There is a pressing need for the Government to take action to ensure that Australian companies respect human rights, a central element of which involves conducting human rights due diligence. According to the UNGPs human rights due diligence should “include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed”.⁶

Recent steps towards the enactment of a modern slavery law are welcome and implementation of the recommendations contained in the Joint Standing Committee on Foreign Affairs, Defence and Trade's report, *Hidden in Plain Sight*, would be a significant positive step. However, in order to effectively eliminate modern slavery and address the full range of the corporate sector's human rights impacts, the Government should require human rights due diligence in relation all the internationally recognised human rights, including but not limited to modern slavery.

Recommendation: The Australian Government should enact a Modern Slavery Act that adopts the recommendations of the Joint Standing Committee on Foreign Affairs, Defence and Trade, including mandatory reporting requirements, penalties for non-compliance and provision for independent oversight and that incorporates a gender perspective.

The Australian Government should require Australian companies to conduct gender sensitive due diligence in relation to all internationally recognised human rights in their business operations and throughout their value chains.

⁵ Masika, R. Oxfam GB. *Gender Trafficking and Slavery* (2002).

⁶ Guiding Principle 17.