

Revision of the UK National Action Plan on Business and Human Rights

Peace Brigades International briefing

Protecting Civil Society Space and Human Rights Defenders

“(xi) Instruct our embassies and high commissions to support **human rights defenders** working on issues related to business and human rights in line with EU Guidelines on human rights defenders.”

Protection of human rights defenders is already a theme of the existing NAP, and through its embassies the UK has done significant work to implement this commitment. The approach reflects a growing UK foreign policy stance that safeguarding the work of civil society activists is the most effective long term approach to realising societies that respect and uphold human rights. The Annual FCO Human Rights Report adopted a chapter on civil society space, voicing concerns regarding a number of restrictive practices adopted by governments unwilling to be held to account. The reduction of civil society space is keenly felt in the area of business and human rights including:

- Criminalisation of social protest.
- Disproportionate use of law enforcement
- Malicious legal charges against HRDs
- Smear campaigns targeting influential community leaders.
- Lack of guarantees for free and meaningful dialogue around development projects.

In his recent report, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association expressed concern that authorities are increasingly seeking to stifle and vilify criticism towards exploitation of natural resources, by “cracking down, often with unnecessary force, on peaceful protests; arresting, prosecuting and imprisoning activists; raiding protest camps; harassing and intimidating human rights defenders; enacting restrictive legislation on associations; and interfering with the operations of civil society organizations.” He warns that the “pervasive disregard” by States and corporations towards the input of communities and associations is “counterproductive and divisive, and is likely contributing to an erosion of confidence in the world’s prevailing economic system.”

It is critical that the UK uses its diplomatic voice to champion international standards guaranteeing the right of civil society to participate and be recognised as key actors in the debate around natural resource extraction. As the Special Rapporteur adds, “The rights to freedom of peaceful assembly and of association are instrumental in achieving sustainable and mutually beneficial exploitation of natural resources. “They help foster increased transparency and accountability in the exploitation of resources and inclusive engagement throughout the decision-making chain.” In the current NAP the UK commits to:

“(viii) **Lobby foreign states**, including through ministerial contact and our embassies and high commissions, to support widespread international implementation of the UNGPs and other relevant international instruments including the ILO’s Fundamental Principles and Rights at Work and the eight core Conventions which embody them, and the OECD Guidelines for Multinational Enterprises.”

To this list should be added key international standards around participation and consultation, including fundamental freedoms as articulated in the ICCPR, and the right to Free, Prior, and Informed consent as articulated in the ILO Convention 169, and the UN Declaration on the Rights of Indigenous Peoples.

Currently, in the Latin American countries where PBI works, land and environmental defenders are the group most consistently targeted and at-risk. The EU has recently recognised their added vulnerability and has instructed Member States in the new 2015-19 Human Rights and Democracy strategy to:

“Step up efforts to protect Human Rights Defenders including social partners, who are working to uphold Economic, Social and Cultural Rights, with a particular focus on issues related to land rights, labour rights, including those of indigenous peoples, in the context of *inter alia* 'land grabbing' and climate change.”

The revised UK plan should also look to incorporate this commitment. Also, in order to address the pressing issue of repression against HRDs, it is important that the current set of directives in the UK NAP is developed into a more comprehensive and systematic strategy. To do this effectively requires a commitment to developing specific local level strategies that set out clear objectives to achieve a positive impact on the security of HRDs within a time-bound and measurable framework. These should be drawn up in consultation with HRDs themselves, seek to include progressive international policies on HRD protection, and set out how the UK will work collaboratively with all relevant stakeholders.

One way is to embed this approach to HRD protection within a wider strategy to create an enabling environment for civil society organisations working on business and human rights. As well as protection mechanisms, this also means advocating for increased access to consultative and decision making processes, greater respect for freedom of expression, assembly, and association, and for more robust judicial investigations into attacks against HRDs.

Promoting Alternative Models of Economic Development

It has been notable that the UK is actively looking for best practice case studies whereby companies and states have impacted positively on human rights, in order to share with the wider stakeholder community. While it is important to highlight processes that genuinely contribute to greater respect for human rights, it is also important that endorsement isn't reserved exclusively for the operations of traditional business enterprises. PBI has observed a number of community-led business and development initiatives that promote a genuine commitment towards ethical and sustainable values, yet at the same time such communities face human rights violations which can impact negatively on their economic activities. It is important that the UK seeks to highlight cases like these in order to promote the right to plurality in economic development. The inclusion of case studies would send a clear message of positive affirmation regarding respect for the economic rights of marginalised communities.

Addressing human rights risks and impact by companies

The current NAP contains various commitments to improving the way government communicates human rights guidance and to promote ways by which business can increase respect for human rights.

“(v) instructed our embassies and high commissions to work with host governments, local and UK business, trade unions, NGOs, human rights defenders, academics, lawyers and other local experts so we can help inform companies of the **human rights risks they face**,”

While with regard to some countries there has been an improvement in the coherency and transparency of the UK’s human rights guidance as expressed through UKTI’s Overseas Business Risk (OBR) Service, in other cases there remains a broad lack of transparency. Currently, OBR studies only exist for countries where UKTI has a presence; this leaves a gap for countries such as Honduras and Guatemala where the UK is actively pursuing trade and investment yet where there is no comparative published Government guidance on human rights. Clearly, a new mechanism needs to be introduced to provide public human rights guidance for countries that fall through this gap.

In terms of advising business on respecting human rights, the current NAP simply reproduces what is in the UNGPs, without promoting specific mechanisms with which to achieve recommended practice.

“The UNGPs guide the approach UK companies should take to respect human rights wherever they operate. The key principles of this approach are to:
- adopt appropriate due diligence policies to **identify, prevent and mitigate human rights risks**, and commit to monitoring and evaluating implementation; - **consult people who may potentially be affected** at all stages of project design and implementation, in a manner that ensures free and informed participation and takes into account language and other potential barriers to effective engagement, paying particular attention to indigenous peoples and other groups, including women and girls; - be **transparent** about policies, activities and impacts, and report on human rights issues and risks as appropriate as part of their annual reports.”

In order to ensure companies adopt due diligence policies that genuinely address risks, it is important that the government advocates more strongly for the uptake of independent, transparent and publically available Human Rights Impact Assessments. HRIAs need to be common practice, especially in high risk areas including investment in land in conflict-affected environments. HRIAs, when done correctly, can be a useful tool helping companies understand how to mitigate human rights impact and building trust with local communities. UNGP 18 provides a caveat for company disclosure citing “legitimate requirements of commercial confidentiality” but the UK NAP should go further – there is clearly a case for this information to be public.

Access to Justice

In the current NAP, the UK has several important commitments to addressing impunity and obstacles to judicial independence in host countries, including:

(iv) **support projects** through the FCO Human Rights and Democracy Programme Fund relating to work on remedy procedures in other countries, including:
- help to States wishing to develop their human rights protection mechanisms and reduce barriers to remedy within their jurisdiction;

- support to civil society and trade union efforts to access effective remedy and promote protection of human rights defenders who are actively engaged on issues relating to business and human rights;
- support to business efforts to provide, adopt or participate in effective grievance mechanisms.

This is based upon the theory that building stronger justice and rule of law practices in third countries is critical in terms of long term access to remedy for victims of business-related violations. However, in order to promote real and lasting change, there is a need for the UK to develop these directives into a more workable strategic approach. It is important that the revised NAP commits to setting clear in-country plans and targets for improving human rights protection mechanisms and reducing impunity surrounding attacks against HRDs.

Recommendations

1. Draw up a more strategic approach to supporting HRDs

- Introduce local embassy-level strategies to support HRDs working on BHR issues that draw on relevant international protection measures and promote closer collaboration with key stakeholders.
- Ensure protection strategies for HRDs are designed with time-bound commitments, measurable objectives and that clear monitoring and reporting systems are put in place.
- Build understanding of HRD protection issues with other departments working on BHR (BIS, DFID, UKTI).

2. Create a more enabling environment for civil society organisations

- Promote stronger, more meaningful participation of HRDs in all areas of decision making processes on BHR; including full implantation of relevant international standards include the ILO 169 Convention.
- Advocate for the protection of fundamental freedoms including freedom of expression, association and assembly for HRDs and communities campaigning on BHR issues.
- Advocate for stronger application of the rule of law, particularly regarding effective investigations and prosecutions of attacks against HRDs, and adherence to international standards in cases where HRDs are criminalized.

3. Stronger expectations and clearer guidance to companies on HRDs

- Promote the uptake of Human Rights Impact Assessments which are available to the public and involve meaningful consultation with all relevant stakeholders including HRDs.
- Ensure that there is full and transparent guidance for all countries of human rights concern available on the UKTI website.

4. Promoting alternative models of development and business

- Include good practices of local level initiatives that promote ethical and sustainable alternative development and business models.
- Create space for HRDs to communicate and develop their own economic, cultural, and social models and proposals.