

Submission to the UN Working Group on Human Rights and Transnational Corporations and other Business Enterprises
by
The Gender, Business and Human Rights Reference Group

Introduction

In response to the call for submissions from the new United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises ('the UN Working Group'), we would like to take this opportunity to congratulate the members on their appointment. The creation of the UN Working Group represents a significant milestone in the field of business and human rights.

In recognition of the fact that equal rights for men and women, and the elimination of all forms of discrimination against women are key human rights issues, this submission lays out a few key concepts regarding the integration of gender perspectives into the work of the UN Working Group. It also flags two examples illustrative of issues which merit your attention.

The Gender, Business and Human Rights Reference Group ('the Gender Reference Group')

The Gender Reference Group is an international, multi-sector, ad-hoc reference group made up of individuals with an interest and expertise in gender equality, business and human rights. We support, and contribute to, ongoing discussion and debate about what it means to integrate a gender perspective into the business and human rights agenda.

We formed initially in late 2010 to prepare a joint submission, which focused on bringing a gender perspective to the UN Guiding Principles for the implementation of the Protect, Respect and Remedy framework (see attached). Several of the specific recommendations that we put forward were taken into account in the finalization of the Guiding Principles.

We are very encouraged that the mandate of the UN Working Group explicitly requires the integration of a gender perspective into its work. In this regard, we encourage each member of the UN Working Group to gather the information and expertise that they need in order to fulfill this requirement when carrying out their collective work to implement the Guiding Principles.

Key Concepts Relating to Gender, Business and Human Rights

We would like to draw the UN Working Group's attention to the following key concepts regarding the analysis of business and human rights from a gender perspective:

1. Adopting a gender perspective

Gender is a concept that refers to the socially constructed roles, functions and responsibilities of women and men. Gender roles vary depending on the cultural context and over time. Gender is therefore a socially constructed phenomenon, as opposed to sex, which is generally accepted as a biological given. Gender equality is an important human rights issue because gender differences can be the basis upon which people are discriminated against, i.e. not granted the same rights or ability to enjoy rights.

Gender mainstreaming is a specific focus of the United Nations, as overwhelming evidence reveals that a gender-neutral approach to policy-making renders invisible important gender issues and marginalizes women's experiences.

A gender perspective is not only about women. Adopting a 'gender perspective' or 'integrating gender' into work on business and human rights means that any analysis looks at the way in

which a business entity may have a differential, disproportionate or unforeseen impact on women or men, boys or girls, as a result of their different social, cultural or legal roles, rights and responsibilities.

2. Approaches to help identify gender differentiated impacts

The consideration of gender is not a standalone, separate consideration. It is a lens through which all human rights considerations should be examined.

In particular, in order to identify, assess and address human rights impacts relating to all rights-holders, the collection and analysis of sex-disaggregated data is essential, as are meaningful consultations with women as well as men about potential and actual impacts (positive and negative) of business operations. Lastly, policies and procedures need to be considered in terms of whether they provide non-discriminatory access, processes and outcomes for men and women.

3. Special issues meriting attention

During the mandate of the Working Group we hope to flag important gender-related issues for your attention. At present we would like to propose two examples which are illustrative of issues that we believe should be addressed as you determine your working agenda: the inadvertent creation or exacerbation of gender inequality by business, and the over-representation of women in the informal employment sector and associated obstacles to their participation in formal employment.

Firstly, business activities may create or exacerbate gender inequality. If a community is resettled for the purposes of a large-scale infrastructure project, for example, the corporate entity should consider the impact such resettlement may have on women and men. Women and men often have differentiated familial responsibilities, economic opportunities and child care responsibilities. If in relocating a community, a compensation scheme envisages cash compensation to heads of households for familial held-plots of land, this could have different consequences for women and men. For instance, a gender-neutral approach to compensation can exacerbate existing gender inequalities by paying compensation solely to the male head of the household and not to female-headed households, single or widowed women. As such, inequality may arise or existing inequalities may be exacerbated. Attention must also be paid to compensation for loss of livelihood or provision of alternative livelihoods with recognition that women will often be more vulnerable to inequity in this regard. We propose that the UN Working Group pay special attention to ensuring that such unintended consequences of business operations are identified and addressed.

Secondly, world-wide women work disproportionately in the informal employment sector, where they have less secure jobs, worse working conditions and poorer pay. This in turn contributes to women's disproportionate impoverishment globally (the so-called feminization of poverty)--a serious issue of gender inequality in the business and human rights context. We believe there is a role for States to play pursuant to their Duty to Protect regarding the informal employment sector and eliminating gender-based obstacles to formal work. Additionally, where corporate supply chains rely on workers in the informal sector, this will have implications for how they pursue their Responsibility to Respect. We propose that the informal employment sector and the associated obstacles to formal employment should receive specific attention by the UN Working Group.

Future Engagement

We look forward to engaging with the UN Working Group over time in order to provide support,

THE GENDER, BUSINESS AND HUMAN RIGHTS REFERENCE GROUP

expertise and advice relating to gender issues. It is our intention to continue to work, both academically and in practice, towards gender equality in the business and human rights context. We would be delighted to lend support to your work in this regard.

Current members of the Gender Reference Group:

Kathryn Dovey, Research Fellow (Gender) Institute for Human Rights and Business; **Jane Gronow**, Principal Adviser Community Relations, Rio Tinto; **Kate Grosser**, Visiting Fellow, International Centre for Corporate Social Responsibility, Nottingham University Business School; **Christine Jesseman**, Director for Pro Bono and Human Rights, DLA Cliffe Dekker Hofmeyr; **Deanna Kemp**, Principal Research Fellow, Centre for Social Responsibility in Mining, part of the Sustainable Minerals Institute, The University of Queensland; **Bonita Meyersfeld**, Associate Professor, School of Law, University of the Witwatersrand, Johannesburg and Managing Editor of the South African Journal on Human Rights; **Andrea Shemberg**, Legal Adviser on Business and Human Rights; **Vanessa Zimmerman**, Business and Human Rights Specialist.

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