

Submission to Open Call for Input regarding the Working Group's Report on the Gender Lens to the UN Guiding Principles on Business and Human Rights

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In October 2017, we co-hosted a conference and policy meeting on the subject of extractive industries and the human rights of women and girls, at the Human Rights Resource Education Centre in Ottawa (see <https://cdp-hrc.uottawa.ca/en/october-26-27-2017-conference-resource-extraction-and-human-rights-women-and-girls> and <https://cdp-hrc.uottawa.ca/en/october-28-2017-policy-meeting-resource-extraction-and-human-rights-women-and-girls>). This submission will reflect on some of the insights that emerged from the conference and policy meeting, as well as our own subsequent research. A selection of conference papers are forthcoming in a special issue of the Canadian Journal of Women and the Law. We have inserted our submissions in response to some of the specific questions raised by the Working Group.

Specific Questions/Issues

1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.

Environmental harms arising from industrial activities have a differentiated impact on the right to health of women and men, with further differentiated impacts on the right to health of children, and the girl child. This is due to physical differences between male and female bodies, and the tendency to conduct scientific testing of toxic substances using the male body as the norm. Gender-disaggregated studies of toxic substances, with attention to the rights of the child, are therefore crucial. As resource extraction companies utilize toxic substances to extract minerals and leave behind toxic tailings, these industries must incorporate gender considerations in human rights impact assessments of environmental and health harms.

Environmental harms arising from extractive industry operations have further differential impacts on the human rights of women in some country and cultural contexts. For example, some Indigenous women experience ecological destruction of their lands as violence, due to cultural and spiritual connection to the land, in addition to experiencing the impact of ecological harm on access to clean water and country food for family

subsistence. Environmental harms can therefore be understood as violating Indigenous rights in a gender-differentiated and disproportionate manner.¹

Resource extraction may also differentially impact the human rights of women and girls who, as marginalized members of their communities, are disproportionately vulnerable to sexually transmitted diseases and sexual violence, as well as mental health risks and substance abuse, all of which are associated with the arrival of large groups of (mostly) male workers from outside the community as projects are operationalized. Few resource extraction jobs flow to women in these communities, and those that do are often less well paid than those that are available for men. Women may only be able to find work in administrative jobs or other jobs ancillary to the industry including support work and the sex trade. Women are frequently excluded or marginalized in the decision-making processes that are conducted prior to resource extraction, and so their views of project impacts and benefits are rarely fully taken into account. Moreover, marginalized women and girls are disproportionately impacted if communities are forced to migrate from their lands either because they have been forced to move or due to ecological destruction. Relocation places those who are already vulnerable at increased risk of violence and subjects them to increasingly precarious livelihood choices.

When local communities engage in resistance to proposed resource extraction projects to which they have not been adequately consulted or to which they have refused consent, women land and water protectors as human and environmental rights defenders are often disproportionately impacted by violence associated with both state and private security forces. Sexual violence is often used by such forces as an intimidation tactic. These differential and disproportionate impacts arise as a consequence of the intersection of gender roles assigned to women and girls in different cultural contexts. For example, women who believe resource extraction will bring ecological destruction may lead resistance to a proposed project, while men employed in security operations may view resistance by women harshly due to preconceived notions that women should stay at home and out of the public sphere.

A final consideration arises as a consequence of fossil fuel resource extraction, due to its contribution to climate change. It is well established that many women and girls are differentially and disproportionately impacted by climate harms.

It is important to recognize that the above examples may arise in the context of both rich and poor countries as Indigenous peoples and Indigenous women and girls as well as other racialized women and girls experience colonialism and marginalization in both global north and global south. Particular impacts are of course country and region specific. Nevertheless, there are commonalities across north and south.

¹ Sarah Morales, "Digging for Rights: How Can International Human Rights Law Better Protect Indigenous Women from Extractive Industries?" (forthcoming, *Canadian Journal of Women and the Law*)

2. Please share any good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy, and conflicts.

Good practices include ensuring that women are included in decision-making processes leading to resource extraction in accordance with their own cultural traditions. It is important that neither states nor businesses denigrate cultural traditions and institutions even as they acknowledge their duty and responsibility to protect the rights of women and girls in development decisions. Cultural traditions are negotiated practices arising from within communities, and must be contested by women from within. Where women wish to be consulted as a group, good practices may necessitate providing a separate and safe forum for them to do so.

3. How to address sexual harassment and sexual or physical violence suffered by women in the business-related context, including at the workplace, in supply chains and in surrounding communities? Please share any good practices which have proved to be effective in dealing with sexual harassment and violence against women.

Even in businesses that acknowledge their responsibility to prevent and remedy sexual and physical harassment and violence against women in the workplace, it is common practice to see the business responsibility as extending only to situations where the harmful actions can be attributed to workers or managers within the company. Best practice in addressing harassment and violence against women includes an understanding that women are also subject to such behaviours outside the workplace, and that the lines between work and home are not always clear. Best practice would be prepared to address situations in which the abuser, who may be a spouse or relative of the female worker or manager, enters the workplace. Similarly, best practice would contemplate how to address the problem of workers or managers leaving the workplace and engaging in abusive acts at home. This suggests that broad-based education for all workers and managers on prevention and remedy of sexual and physical harassment and violence against women is required, and should extend to workplaces in the informal sector. Best practice also requires that businesses screen their contractors and acknowledge responsibility for any violence committed by their contractors such as security forces, provide redress and do not require survivors of sexual and gender-based violence that may receive some sort of redress from the business to waive their right to bring a civil claim in domestic or foreign courts.

Serious business attention to the prevention of violence against women would also take seriously the violence inflicted on the children of workers, and the communities in which they live, by many industrial activities including extractive sector operations that cause unmitigated environmental harms. Moreover, women and children of the global south are among the most climate vulnerable. Taking seriously the need to prevent violence against women must include taking seriously the need to address the human rights impacts of climate change on the human rights of women and girls, as well as their families, communities, and the environment.

4. Which State laws and policies or social, cultural and religious norms continue to impede women's integration into economic activities and public life generally?

To the extent that any state laws continue the protective tradition of preventing women from choosing to work in underground mining, for example, or choosing to work at night, these laws should be repealed.²

5. Are there any good practices of integrating a gender perspective into States' economic sphere (e.g., state-owned enterprises, public procurement agencies, trade missions, export credit agencies, privatisation of public services, public-private partnerships, and trade and investment agreements)?

There are several Canadian examples of good practices to empower women in the economic sphere, including initiatives by federal Crown corporations that are financial institutions, as well as initiatives relating to board diversity. For example, Business Development Bank of Canada (BDC) has launched initiatives to support women-led technology firms and increase available financing for women entrepreneurs within Canada. Export Development Canada (EDC) is participating in a three-year Private Sector Gender Equality Leadership Project focused on developing, testing, and implementing a set of tools that will lead to a blueprint for gender equality in the private sector, and a certification methodology. The Government of Canada commissioned the Global Compact Network Canada (GCNC) to lead the project and engage corporate partners to help eliminate barriers facing women in the workplace. FinDev Canada, housed within EDC, will focus on poverty reduction in developing countries through job creation, women's economic empowerment, and climate change action. However, it is important that women's economic empowerment initiatives not distract from the need to ensure that human rights due diligence, including a gender impact assessment, is undertaken with regard to all projects that are financed or otherwise supported by these institutions. In this regard, EDC's human rights policy has been criticized for failing to robustly protect human rights, and for ignoring gender impacts. (EDC is currently undergoing a review process).

Amendments to the Canadian Business Corporations Act (CBCA) will require public companies to provide information relating to diversity policies at every annual meeting. These disclosure requirements will apply to the broader "members of designated groups", which includes women, Aboriginal peoples, persons with disabilities and visible minorities. Companies that fail to adopt written policies regarding representation of members of designated groups on their boards will be required to explain to shareholders why they chose not to adopt such policies. It is unclear whether disclosure mechanisms will lead to meaningful change, or whether mandatory targets would be more effective. It is also arguable that these requirements should apply equally to private companies. Notably, Venture Capital Catalyst Initiative, an initiative of BDC, requires applicants for funding to disclose, among other things, their proposed strategies to address gender balance among Canadian VC fund managers and companies. However,

² Kuntala Lahiri-Dutt, "Do Women have a Right to Mine?" (forthcoming, *Canadian Journal of Women and the Law*)

while laudable, these initiatives are not a substitute for legislative reform that would mandate businesses, whether Crown corporations, financial institutions, or private sector businesses, to undertake human rights impact assessments including gender impact assessments, in order to prevent and remedy broader harms.

6. How could policy coherence be improved between different government ministries or departments dealing with women issues and business-related matters?

A gender lens should be integrated into the work of every government ministry and department as a matter of routine policy. Consideration of the differential impacts on women and girls of policy decisions must not be viewed as exceptional. Every policy and every law has a potential impact and so consideration of gender must be mainstreamed, while also accounting for cultural complexities. States should also ensure coherence between such policies. For example, Canada's Feminist International Assistance Policy is an important step forward, however, it does not address the potential impacts on women and women's rights of Canadian businesses operating in the countries to which it provides development assistance or the impacts of Canada's international investment or trade agreements with such countries on women's human rights.

7. What is the extent to which businesses currently apply a gender lens in conducting human rights due diligence, including social or environmental impact assessment?

Few (if any) large extractive companies reference women's human rights instruments in their corporate codes of conduct or human rights policies and references to gender or women are mainly in relation to non-discrimination in the workplace or diversity in employment. The impact of a resource extraction project on women's human rights is therefore unlikely to be taken into account in human rights due diligence processes except where an extractive company has previously been implicated in issues, such as sexual violence perpetrated by security forces and, even then, not in a systematic way. For example, Barrick Gold Corporation mentions the risk of gender-based violence in its 2018 Human Rights Report and notes that as a past step it has continued to "work with the White Ribbon Campaign to address gender-based violence" at its mines. Barrick's human rights due diligence process is undertaken by a third party which uses "an assessment tool that covers all potentially relevant human rights and hundreds of individual indicators." However, women are not specifically named in the "seven categories where extractive companies commonly face the prospect of causing, contributing to or being linked to negative human rights impacts." ³

As few (if any) domestic environmental impact assessment laws include consideration of gender impacts, the differential impacts on women and girls whether arising from physical or cultural considerations are rarely identified by proponents. All environmental and social impact assessments, as well as human rights impact assessments, and associated laws and guidance tools, must apply a gender lens. In Canada, the new federal Impact Assessment Act will integrate gender-based assessment into

³ Barrick Gold Corporation, "Advancing Together: 2018 Human Rights Report" at 53.

environmental and social impact assessment, if passed in its current form. This would motivate businesses to apply a gender lens when conducting assessments.

8. Are there any good practices of business enterprises adopting a gender perspective in making human rights policy commitments, addressing the gender wage gap and under-representation of women in boards and senior positions, or involving affected women in meaningful consultations and remediation processes?

For extractive sector businesses to begin to grapple with the disproportionately negative impacts of their operations on the rights of women and girls, they must get their own internal houses in order. Currently, most extractive sector companies are themselves disproportionately male, whether in terms of the number of male workers or those in leadership positions within the firm. As a start, all extractive companies should ensure that there are a sufficiently robust number of women on the board and in leadership positions in order to better enable the firm to identify, mitigate, and remedy gender-based harms. All who hold leadership positions, whether men or women, should be required to undergo unconscious bias training, and serious attention should be given to ensuring that women workers within the company are not subjected to gender-based discrimination or sexual or other harassment. Once this has been accomplished internally, the company would have greater capacity to identify and contribute to meaningful consultations and remediation processes to prevent and remedy harms to women in communities impacted by their operations. However, such a process should not be used as an excuse not to move forward in developing policies and processes including consultation to identify, prevent and/or mitigate potential adverse impacts on the human rights of women and girls and to develop processes for meaningful reparations where violations do occur.

9. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?

Businesses have a responsibility to respect human rights, including the rights of women and girls. To the extent that a business cannot operate in a country context without contributing to the violation of rights of women and girls, the business should withdraw. Before reaching this decision, the business should first attempt to use its leverage with the government to effect meaningful change for women within the country. Women's rights are human rights.

10. How could media and advertising industries fight against gender stereotyping and disempowerment of women?

11. What additional or specific barriers do women (women human rights defenders) face in accessing effective remedies for business-related human rights abuses?

Concrete and accountable commitments are required to recognize, protect and support increasingly persecuted women human rights and environmental defenders around the

world. For example, according to Oxfam, commitments should include: a safe and enabling environment for women human rights defenders and women's movements, supported by legislation, social programs, public institutions, and accountability mechanisms at all levels and support funding for women's movements to defend their right to engage in public life and discourse without fear of punishment, reprisal, or intimidation.

Disciplining dissent can take the form of de-legitimizing of the work of community organizations and their leaders, control and oppression through intimate partnerships (for example the control of women by their male spouses), the use of local proxies to securitize mining sites so that they become inaccessible to those who might challenge their operation, as well as intimidation through sexual and physical violence. The disciplining of dissent may be completed by the state and its attendant agencies, including the judiciary and the military and the national elites. Addressing violence in extractive industries demands a reconceptualization of what constitutes development.⁴

12. How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive?

One possible mechanism in use in Canada is the adoption of a Gender-Based Analysis Plus (GBA+) within the context of the policy, program, initiative or service.⁵ Gender-based analysis (GBA) is an analytical tool for assessing the gender-specific impacts of policies, legislation, and programs on women and men. The plus refers to the explicit incorporation of intersectional dimensions of identity. When integrated into the policy development process, gender-based analysis allows decision makers to consider gender differences.

13. How to overcome power imbalances and discriminatory practices that might undermine the effectiveness of remedies obtained by women?

The grievances expressed by women — including those with a human rights dimension — identify particular areas of concern that need to be addressed in the planning and implementation of mining projects. These grievances may be able to be mitigated through gender sensitive and responsible mining practices but power imbalances often prevent mitigation from occurring. Attention to gender analysis and planning will contribute to sustainable development and gender justice. The power imbalances should be corrected from the initial planning stages, which could be achieved by obtaining free prior and informed consent from women within the community.

14. Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group's forthcoming report on the gender lens to the UNGPs.

⁴ Kalowatie Deonandan & Colleen Bell, "Discipline and Punish: Gendered Dimensions of Violence in Extractive Development" (forthcoming, *Canadian Journal of Women and the Law*) at 8

⁵ See for example: <https://www.swc-cfc.gc.ca/gba-acis/index-en.html>

