



## **Submission to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises**

### **Gender Lens to the UN Guiding Principles on Business and Human Rights**

International Women's Rights Action Watch (IWRAP) Asia Pacific welcomes the opportunity to provide input to the upcoming report on a Gender Lens to the UN Guiding Principles on Business and Human Rights.

Business-related human rights abuses have a disproportionate impact on women because of prevailing gender inequalities, structural exclusion and unequal power relations. The Working Group should locate their guidance on gender in this context to comprehensively address the lived realities of women, especially women from marginalized groups. Rural women, indigenous women, undocumented women, trans women and so many others who are disenfranchised face heightened risks of human rights abuses and have a harder time accessing justice.

We therefore urge the Working Group to systematically apply an **intersectional lens to their guidance** so that it recognises that women experience intersecting and multiple forms of discrimination based on their gender identity and expression as women, and also on other grounds such as race, nationality, caste, ethnic origin, age, migrant status, language, disability, religion, sexual orientation, pregnancy status and more.

We also urge the Working Group to explicitly root their guidance in frameworks such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action, International Covenant on Economic, Social and Cultural Rights and standards of the International Labour Organisation. This will strengthen policy coherence and help to dismantle the siloes placed around women's human rights.

We highlight a few issues below for consideration.

#### **1. Discriminatory laws, policies or norms that impede women's economic rights**

##### **Policies on labour migration**

There are discriminatory policies that impact women seeking to migrate for work. For example, some countries require women to obtain male permission to migrate, or require women to obtain male permission to obtain a passport/travel documents. There are policies that prohibit women with children who have special needs from migrating or policies that prohibit women with children below a certain age from migrating for employment. Some countries such as Sri Lanka, require a family background report specifically for women seeking to migrate for work, but this does not apply for men.

In some countries, there are policies that impose a higher minimum age requirement to be a migrant domestic worker but for any other occupation the requirement is 18 years old. This is the case in the Philippines, where you must be 23 years old to migrate for domestic work, but no other occupation has this age requirement. There are also countries that place prohibitions on women migrating to work in certain sectors such as domestic work.

These policies are rooted in a protectionist approach that reinforces paternalistic gender norms and instead of protecting women, creates additional barriers for women's labour migration. They push women to use irregular and risky channels to migrate, and they also make it challenging for women to seek assistance and support when facing human rights abuses. The effect of these policies also leads to an increase in unethical recruitment agents; bribes and corruption; and increases the risk of women's exploitation.<sup>1</sup>

### **Recommendations**

- **Call on States to eliminate discriminatory policies and practices that restrict women's migration and impede access to safe and regular migration channels.**

### **Unpaid care work**

Gender norms and stereotypes produce an unequal division of labour in the home where women and girls shoulder the brunt of unpaid care work. The International Labour Organisation reports that women undertake more than three times as much care work compared to men. This also disproportionately impacts women from marginalized groups such as rural women and perpetuates a cycle of impoverishment as it limits the time, mobility and opportunities available to women.

This is made worse by the lack of recognition, redistribution and reduction of care work by the State and exacerbated by the reduced investment in public services seen globally.<sup>2</sup> When public services are inaccessible, unavailable and inadequately funded the responsibility of care overwhelmingly falls on girls and women to fill the gap. This is also the case when public services are privatized as they are more likely to replicate inequalities as only women from higher income households can afford these services when user fees go up.

Unpaid care work is the primary barrier to women's employment as it affects their ability to join and stay in paid employment. This is why women with a high care burden are more likely to be self-employed or working in the informal economy; and why women with children under 5 years old have the lowest employment rates.<sup>3</sup>

### **Recommendations**

- **Call on States and business actors to establish flexible and family friendly work policies including compulsory paternity leave to address gender stereotypes about care work.**
- **Recommend that public services remain a public good as underlined by the UN Special Rapporteur on Extreme Poverty and Human Rights<sup>4</sup>; and in cases where public services have already been privatized call on States to robustly regulate private service providers to ensure that services such as health, water, electricity and gas are available; accessible; acceptable and of high quality.**

### **Equal Pay for Work of Equal Value**

Across different industries women's work is systematically undervalued. Women are paid less than men for the same work; and are also concentrated in work that may require identical or more effort and skills but their work is valued less and therefore remunerated less. This systemic gender wage gap is rooted in gender-based discrimination and is the reason why women make up over 60% of

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<sup>1</sup> UN Women and ILO (2017) Protected or Put in Harm's Way: Bans and Restrictions on Women's Labour Migration in ASEAN countries

<sup>2</sup> Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (July 2018) A/73/179

<sup>3</sup> ILO (2018) Care Work and Care Jobs For the Future of Decent Work

<sup>4</sup> Report of the UN Special Rapporteur on Extreme Poverty and Human Rights A/73/396 (September 2018)

the working poor. Without concerted action, it will take more than 70 years for pay equity to be realised, i.e. equal rates being paid to women for comparable work.

States and business actors have a direct role in addressing wage inequalities and ensuring that men and women receive equal pay when undertaking similar work; and also receive equal pay even when the work is different but of equal value based on objective criteria that takes into account the level of skill, effort, responsibility, and working conditions.<sup>5</sup>

## Recommendations

- **Call on States to establish objective job evaluation schemes for the application of the principle of equal pay for work of equal value in accordance with CEDAW, ICESCR and ILO Convention No. 100.**
- **Call on States and business actors to establish laws, mechanisms and other measures that enforce pay equity. The burden of proof should fall on employers to show they have complied with pay equity.**

In developing guidance on women's economic lives, we encourage the Working Group to adopt an approach that centres human rights and not simply an integration into economic activities. The goal should not be to integrate women into economic structures and systems that will entrench and/or perpetuate inequalities. Too often, women are concentrated in precarious work with no social protection and restrictions on their rights to organise and collectively bargain. Any economic activities that produce inequalities need to be challenged; and all economic activities need to imbibe the decent work agenda as per ILO standards.

## **2. Access to Justice for Women in the context of Business Activities**

We encourage the Working Group to make explicit and strengthen linkages between the UN Guiding Principles on Business and Human Rights and obligations under CEDAW. The CEDAW Committee has developed robust guidance on women's access to justice in the form of General Recommendation 33 that elucidates how mechanisms, processes and outcomes can be more gender sensitive.

We draw attention to six interrelated and essential components outlined by the CEDAW Committee<sup>6</sup> that should be applied to ensure remedial systems that will enforce women's right to an effective remedy are responsive to women's lived realities:

- ***Justiciability*** requires the unhindered access by women to justice. They need to have the ability and power to claim their rights;
- ***Availability*** requires the establishment of courts and other quasi-judicial or other bodies across the State in both urban, rural and remote areas, as well as their maintenance and funding;
- ***Accessibility*** requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination;
- ***Good quality of justice systems*** requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to

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<sup>5</sup>Sandra Fredman, Background Paper for the Working Group on Discrimination against Women in Law and Practice (the Working Group): Economic and Social Life The Right to Equal Pay for work of Equal Value

<sup>6</sup> See CEDAW Committee General Recommendation on Women's Access to Justice (2015)

*sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women;*

- **Provision of remedies** requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer; and
- **Accountability of justice systems** is ensured through monitoring their functioning so that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law.

General recommendation 33 also calls on States to remove physical, financial, linguistic, social barriers that impede women's right to access justice. We recall our submission to the UN Working Group that emphasized how these standards should be applied to increase women's access to justice.<sup>7</sup>

Given the vast power imbalances between States, corporations and communities affected by business-related human rights abuses, we emphasize guarantees of non-repetition as part of the bouquet of remedies that should be available to women.

To strengthen women's right to an effective remedy and access to justice in the face of business-related human rights abuses, the Working Group also needs to unpack the role of States and business actors in the context of extra-territorial obligations. Extraterritorial human rights obligations affirm the universality of human rights and can be used to counter the structural barriers and unequal power relations between States, corporations and affected communities by triggering corporations' home State duties and by giving rights-holders recourse to spaces outside their territory to pursue their right to an effective remedy.

### **Recommendations**

- **Call on States to remove physical, financial, linguistic, social and other barriers that impede women's access to justice particularly in transboundary cases.**
- **Call on States and business actors to design and monitor remedial mechanisms in close partnership with women as rights-holders, particularly for operational level grievance mechanisms to meet the criteria under the UN Guiding Principles on Business and Human Rights.**

### **Women human rights defenders**

Women human rights defenders (WHRDs) face barriers to justice because they are challenging traditional gender roles and power relations. They face smear campaigns, harassment and other threats and acts of violence; in addition to their work being stigmatized and criminalized.

Obtaining access to justice is particularly difficult for WHRDs because of collusion between the State and corporations; and corporate capture of State institutions including the judiciary. Judicial systems are also sites of harassment for WHRDs as the UN Special Rapporteur on Human Rights Defenders noted in his report: "Judicial harassment and criminalization are among the most common forms of attacks to silence opposition to business-related projects."<sup>8</sup>The ability of WHRDs to obtain an effective remedy for corporate abuses must thus be seen in light of this and the broader ability of defenders to organise, mobilize and express themselves without reprisals.

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<sup>7</sup> IWRAW Asia Pacific, Landesa et al Joint Submission to the UN Working Group on Business and Human Rights on Access to Remedy (15 June 2017)

<sup>8</sup> Report of the Special Rapporteur on the situation of human rights defenders (July 2017) A/72/170

## Recommendations

- **We call on the Working Group to expressly refer to the recommendations contained in the report of the UN Special Rapporteur on Human Rights Defenders (July 2017).**
- **We call on the Working Group to also recommend that States publicly recognize the importance and legitimacy of the work of women human rights defenders, and reaffirm that no interference, intimidation, abuse, threat, violence or reprisal against them and their families will be tolerated; and conduct prompt, thorough and impartial investigations into any interference, intimidation, abuse, threat, violence or reprisal against women human rights defenders and ensure accountability for perpetrators.**
- **Call on States and business enterprises to ensure an enabling environment for women human rights defenders to work free of reprisals and eliminate any restrictions that criminalize, penalize or obstruct their work.**

### **3. Domestic work and the regulation of recruitment agencies**

There are an estimated 67 million domestic workers and 83% are women who face systemic discrimination and exclusion because their work straddles gender inequalities, unequal power and class relations. Domestic workers are often excluded from labour laws as most legal frameworks do not recognise domestic work as work and as a result their rights to collectively organise, mobilize and bargain are denied. Migrant domestic workers are particularly vulnerable and face abuses by recruitment agencies that include contract substitution, deception about work and working conditions, high recruitment fees and sexual harassment.

Access to justice is particularly challenging given the isolation of domestic workers; exclusion from labour law protections; lack of publicly funded legal aid schemes and other barriers; but also the multiple and intersecting forms of discrimination based not only on their gender, and the nature of work, but also on their race, ethnicity, migrant status, religion and other factors.

The Working Group needs to emphasize that **domestic work is work**, in line with human rights and labour law standards, such as the ILO Convention C189. This will also challenge the stereotypes rooted in harmful gender norms that fail to recognise domestic work as work. In addition, there needs to be guidance on the **regulation of recruitment agencies** that handle migrant and local domestic workers.

## Recommendations

- **The Working Group should examine the rights of domestic workers and the regulation of recruitment agencies as business enterprises under the UN Guiding Principles on Business and Human Rights.**