

# **SUBMISSION**

to

**The United Nations Working Group on the issue of human rights  
and transnational corporations and other business enterprises**

by

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## **INTRODUCTION**

1. This submission is from Ms. Mulesa Lumina, Chief Executive Officer and senior consultant at The Human Rights & Governance Consultancy (HURICON Ltd), an independent human rights consulting firm. I am also a Women Deliver Young Leader, joining the 300 youth advocates that comprise the 2018 Class of Women Deliver Young Leaders who are advancing gender equality and women's health and rights.
2. I hold a Master of Laws (LLM) in Human Rights and Democratisation from the University of Pretoria and Bachelor of Laws (LLB) from the University of Cape Town.
3. I make this submission in response to the Working Group's open call for inputs regarding your report on the gender lens to the UN Guiding Principles on Business and Human Rights in my capacity as an independent researcher on business and human rights, women's rights and as a women's rights advocate.
4. Commercial mining and other activities in the extractive industry result in a myriad of human rights abuses including compromising the health and well-being of communities living in close proximity to operations, desecrating land that is of significance to indigenous communities, destroying housing through pollution and polluting water courses used by such communities, to name a few. The brunt of such negative social, economic and environmental impacts are usually borne by women. Whether it is as a result of being displaced from farming land in rural areas used by majority-female subsistence farmers or female mine workers being subjected to physical and sexual abuse, women often feel the effects of commercial mining activities in very different ways to men.
5. This submission will focus on extractive industries, addressing in particular the issues of the disproportionate impact of business on women's rights, the situation of women's rights defenders and women's access to remedies.

## **SPECIFIC ISSUES**

**In what ways do women experience the impact of business-related human rights abuses differently and disproportionately?**

6. The role<sup>1</sup> and status of women in society accorded to them on the basis of their gender renders them particularly vulnerable to human rights violations, including those arising from or linked to business activities. A combination of patriarchal norms and gender stereotypes have relegated women to an inferior position to men in society and makes them susceptible to gender-based violence, hinders their ability to actively participate in public life and decision-making, perpetuates lower levels of education amongst women and contributes to their economic marginalisation.
7. In the extractive industry, women are affected by business operations in the following ways:
  - a. While some companies may hold consultations with local communities prior to the implementation of large-scale land-based projects, female voices remain largely unheard. Community engagements often leave women and girls out of the equation despite the fact that women have the right, under international human rights law and often under domestic law, to participate in decision-making. Women are excluded from decision-making as they are often relegated to the role of caregivers and custodians of the family. In many rural communities in Zambia, for instance, traditional leaders, most of whom are men, are at the forefront of contract negotiations, consultations with businesses and project design. In La Guajira, Colombia an indigenous woman who was elected to represent her community in consultations with a mining company in the area was deliberately ignored in favour of men within the same community.<sup>2</sup>
  - b. Many companies also lack fully-fledged internal mechanisms to adequately assess the social impacts of their operations. Where such mechanisms may exist, gender-specific impacts are rarely taken into account due to lack of expertise on gender, business and women's rights.

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<sup>1</sup> Traditionally, women have also been given the role of caregivers and custodians of the family unit, tasked with caring for infants, the aged and the ailing.

<sup>2</sup> Association for Women's Rights in Development (AWID) & Women Human Rights Defenders International Coalition *Women human rights defenders confronting extractive industries: an overview of critical risks and human rights obligations* (2017) 14 [https://www.awid.org/sites/default/files/atoms/files/whrds-confronting\\_extractive\\_industries\\_report-eng.pdf](https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf) (accessed 29 October 2018).

- c. In many rural settings, women are primarily tasked with preparing food, collecting water or carrying out farming activities.<sup>3</sup> Women's land and property rights and use of land are also compromised when land is cleared in favour of extractive projects including mining and drilling. Women who are engaged in subsistence farming may lose out on their livelihoods when displaced from arable land. Moreover, some women may have to travel longer distances to access water when water sources are contaminated by mining activities.<sup>4</sup>
- d. Extractive industries may sometimes present affected communities with many opportunities for gainful formal employment including as labourers or security personnel.<sup>5</sup> Nonetheless, women may find themselves excluded from capitalising on such opportunities due to the fact that such work is often considered too dangerous for women as well as the traditional gender roles accorded to women as caregivers and men as breadwinners. Women sometimes face stigma, discrimination and harassment when trying to access employment in the extractive industries.
- e. Women's vulnerability to gender-based violence (including sexual harassment), weak enforcement of anti-gender based violence laws and lack of stringent anti-harassment policies in some workplace settings results in the working environment being unsafe for women. For example, sexual harassment of female mine workers is a well-documented women's rights concern in South Africa.<sup>6</sup> Many women have reported being subjected to many forms of violence within the workplace. Moreover, the work environment in the extractive industry in a number of countries is not very women-friendly. Women are often prevented from advancing within their jobs on the basis of their gender and the workplace facilities are of a standard that fails to adequately accommodate women.
- f. Many women, particularly indigenous women living in close proximity to extractive projects, often become the victims of sexual violence perpetrated by company

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<sup>3</sup> B Ward & J Strongman *Gender-sensitive approaches to the extractive industry in Peru: improving impacts on women in poverty and their families* (2011) 3 &13

<http://siteresources.worldbank.org/INTOGMC/Resources/24-web-REDS.pdf> (accessed 28 October 2018).

<sup>4</sup> As above 5.

<sup>5</sup> K Heller 'Gender in extractive industries' 21 November 2017

<http://www.worldbank.org/en/topic/extractiveindustries/brief/gender-in-extractive-industries> (accessed 29 October 2018).

<sup>6</sup> M Kandare 'Promoting gender equality in the mining industry' 4 October 2017

<http://genderlinks.org.za/news/promoting-gender-equality-in-the-mining-industry/> (accessed 28 October 2018).

employees including security personnel. The rapes and sexual assaults of indigenous women residing in close proximity to the Porgera Joint Venture (Barrick Gold and Chinese Zijin Mining Group) mine operations in Papua New Guinea and assaults on women in the USA Bakken oil fields outside Bismarck, North Dakota are two cases in point.<sup>7</sup>

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

8. While accessing effective remedies presents a myriad of challenges for human rights defenders in the business and human rights field in general, women human rights defenders (WHRDs) often face more formidable challenges.
9. Firstly, many WHRDs find themselves in social and political environments that are hostile towards women. In carrying out their work, WHRDs are sometimes viewed as a threat to the cultural and religious norms that reinforce patriarchy, gender stereotypes and ideas of masculinity.<sup>8</sup> Thus, they are often subjected to gendered stigma, defamation, harassment, as well as threats and acts of violence and intimidation on the basis of both their gender and the particular rights they are defending. Such acts of violence are perpetrated by both companies (through their private security) and state actors themselves.
10. Secondly, impunity for acts of violence against WHRDs further exacerbates the challenges they face in accessing remedies.<sup>9</sup> Politicians sometimes demonstrate disdain for feminist ideals and feminist activists which results in a lethargic and half-hearted response on the part of governments to the violence faced by WHRDs. Lack of political will to create an enabling environment for WHRDs is particularly prominent where the extractive industry is concerned as political actors and government officials may sometimes be complicit in

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<sup>7</sup> Human Rights Clinic (Columbia Law School) & International Human Rights Clinic (Harvard Law School) *Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea: Key Concerns and Lessons Learned* (2015); S Cohen 'An ex-stripper is taking on sex traffickers in the oil fields of North Dakota'

8 March 2015 <https://www.businessinsider.com/sex-traffickers-in-the-oil-patch-2015-3?IR=T> (accessed 28 October 2018).

<sup>8</sup> AWID (n 3 above)

<sup>9</sup> International Human Rights Law Clinic (University of California, Berkeley, School of Law) & Urgent Action Fund *Rights eroded: a briefing on the effects of closing space on women human rights defenders* (2017) 19 [https://www.law.berkeley.edu/wp-content/uploads/2017/12/UAF\\_UCB\\_REPORT.WEB-FINAL.pdf](https://www.law.berkeley.edu/wp-content/uploads/2017/12/UAF_UCB_REPORT.WEB-FINAL.pdf) (accessed 28 October 2018).

the abuses perpetrated by companies operating in the sector. This often results in many WHRDs engaging in self-censorship by either taking their operations “underground” or shying away from advocating against human rights abuses in this industry for fear of reprisals.<sup>10</sup>

11. Lastly, the dearth of strong mechanisms (including legal, policy and judicial mechanisms) specifically aimed at protecting WHRDs, especially in the context of business and human rights are a further barrier. Moreover, where such mechanisms exist they may fail to recognise and cater to the specific challenges faced by WHRDs.

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

12. Remedial mechanisms, processes and outcomes can be made more gender-sensitive and gender-responsive through thorough research, including stakeholder analysis, to inform grievance mechanism design and implementation. Mechanisms can cater for gender-specific interests and needs of women where they are based on a clear picture of the particular social and legal context,<sup>11</sup> the status of women in that context and the specific interests and concerns of women in affected communities. Where possible, women’s rights and gender experts can also be consulted or a member of staff can be designated to deal specifically with gender issues. Women should be involved in every stage of the remedial process from design to actual implementation of the remedial mechanism through consultations with an elected female representative of the affected community. Extractive companies should also consider working with WHRDs as opposed to seeing them as the enemy.
13. Remedial mechanisms can also be made more gender sensitive by continually engaging affected women directly. Consultations in the design, implementation and operation of remedial mechanisms can also be made with women who have been elected to represent women in affected communities
14. Ahafo Gold mine in Ghana, for instance, has established amongst other things, a women consultative committee within a stakeholder forum comprising community representatives.<sup>12</sup>

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<sup>10</sup> As above.

<sup>11</sup> International Finance Corporation *Addressing grievances from project-affected communities: guidance for projects and companies on designing grievance mechanisms* (2009) 2.

<sup>12</sup> As above 9 & 31.

They regularly have meetings where issues affecting women including employment are taken into account.

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

15. Power imbalances and discriminatory practices that undermine the effectiveness of remedies obtained by women can be curtailed in a variety of ways. Firstly, women representatives can assist in taking complaints laid by women. In patriarchal societies, there is no culture of laying complaints amongst women because they are impeded from speaking out. In order for women to feel comfortable about engaging such mechanisms, female members of staff can be employed to man remedial mechanisms or staff can be trained on how to handle considerations of gender. Furthermore, staff members who understand the context (including the cultural norms that affect women's ability to access an effective remedy), can speak local languages and can make regular physical contact specifically with women in affected communities should be designated.
16. When the existence of remedial mechanisms are made known to the public, special effort should be made to encourage women in particular to engage them. Women could have their complaints handled in a different location or manner to men to guard against potential intimidation or harassment and create a safe space for them to make complaints.
17. Considering the fact that many rural women who are affected by extractive activities may also have lower levels of literacy and education compared to men, the process of laying complaints and remedies afforded to women must be accessible to them in that they are simple, straightforward and easy for them to understand.
18. Should you require further information concerning this submission, please feel free to contact me via email [mulesa.lumina@huricon.net](mailto:mulesa.lumina@huricon.net) or phone +27 (0)43 748 3065.

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