

## Submission to the UNWG on BHR: The Gender Lens to the UN Guiding Principles

30 October 2018

### Introduction

OECD Watch thanks the UN Working Group on Business and Human Rights (UNWG) for undertaking this important initiative to study the particular human rights abuses women and girls experience as a result of global business activity. OECD Watch appreciates the opportunity to share input on the UNWG's development of gender guidance to the UN Guiding Principles (UNGPs). Our submission highlights:

- Ways women and girls experience business-related human rights abuses differently and disproportionately from men;
- Steps businesses should take to identify, prevent, mitigate, and remedy harms to women and girls that businesses cause, contribute to, or are directly linked to through their activities. Such steps should include conducting “gendered” due diligence with reference to the OECD's Due Diligence Guidance; and
- Shortcomings in and expectations for grievance mechanisms to more effectively enable access to remedy for women victims of business misconduct.

### 1. Particular and disproportionate corporate impacts on women and girls

Businesses of all types and sizes and in every economic sector cause, contribute to, or are directly linked to negative impacts on workers and community members. Women face unique risks of corporate-related human rights harms. Gender-based violence – including rape, sexual abuse, forced prostitution, and harassment – is the most prevalent harm against women from business activity, and it requires dedicated attention by companies and governments. Across all industries, company types, and geographies, women workers and community members face serious risk of sexual harassment and abuse from business activity. Women disproportionately experience gender-based discrimination in hiring and promotion, and also in representation on company boards and in senior leadership.

While many harms to women are based on their sex or gender identity, it is also important to remember that non-gender-related corporate harms – such as payment of a non-living wage – hurt women as well as men and thus are no less a “women's issue” than sexual harassment or violence in the workplace. Businesses must acknowledge and protect women's non-gender-related needs, such as for a decent wage and livelihood, good-quality worker protective gear, clean water and air, and land ownership.

Women also face a number of sector-specific harms that are regularly overlooked by company due diligence activities. The subsections below highlight examples of abuses that particularly and disproportionately impact women, either as workers or community members, in a number of sectors. This list is illustrative, rather than exhaustive, and draws extensively from work prepared by the author for another paper on gender and due diligence for financial institutions.<sup>1</sup>

#### *Agriculture*

Women make up the majority of the global agricultural workforce, and women smallholders produce over 50 percent of food in developing countries.<sup>2</sup> Women employed in agriculture face insecure employment, for the work is typically seasonal or temporary, subject to extensive overtime, poorly compensated (often with payment-per-unit rather than salaries), and lacking in benefits or protections for employees.<sup>3 4</sup> Women farmers are marginalized, receiving just 10 percent of loans and five percent of agricultural services such as trainings and vaccination programs. Women face higher risks of gender-based violence in rural, remote work settings.<sup>5</sup> Further, women may be particularly impacted by chemical fertilizers and pesticides used in agriculture, which are linked to lowering fertility and maternity outcomes.<sup>6</sup>

#### *Extractives and infrastructure*

Both the extractives and infrastructure industries cause a variety of risks particular to women. Women employees in mines are often, through perception of comparative physical weakness, given work that is less physically straining but in fact more hazardous, such as handling dangerous chemicals in processing plants and milling units.<sup>7</sup> Many risks of extractives and infrastructure companies impact women in communities near such projects. For example, many mining and infrastructure projects dislocate communities from their land, and because women's tenure rights are typically more vulnerable, they may face greater loss of land in practice.<sup>8</sup> Women typically suffer more than men in terms of safety and time loss when relocated further from water sources, agricultural fields where they work, or woods where they gather food or firewood. Women are most severely hurt by water quality impacts, and extractives and infrastructure projects often risk environmental damage such as contamination of water supplies.<sup>9</sup> Finally, large mining and infrastructure projects that attract high numbers of male workers often encourage increased prostitution, sex crimes, and violence against women in local communities.<sup>10</sup>

#### *Textiles and garment*

Women have long faced terrible working conditions in the textile and garment sector based on stereotypes that their "small hands," "nimble fingers," and care and diligence suit them to such work.<sup>11</sup> Employers keep costs low in their female-dominated work force by depressing wages and hiring women as contract workers excluded from overtime protections and other benefits.<sup>12</sup> Low wages may be justified on the argument that women or girls are merely providing households supplemental income.<sup>13</sup> Global textile supply chains compete against each other to offer the cheapest manufacturing to international buyers.<sup>14</sup> Many governments offer international buyers textiles and garments produced in export processing zones with "the minimum possible regulations," providing an easy and cheap investment.<sup>15</sup> Women assume the costs that investors' save by themselves paying for benefits employers should be giving them, losing income from unpaid overtime or sub-minimum wages, suffering lower human development from ill health and decreased time with family, and experiencing low self-esteem feeling their work is unvalued.<sup>16</sup>

#### *Electronics*

As with the textile and garment sectors, stereotypes of women's nimble fingers, diligence, and docility cause them to represent a high percentage of the low-skill, high-intensity electronic assembly activities. Yet many of the chemicals and metals used in electronics are toxic, causing women to suffer reproductive hazards, including higher than average incidence of stillbirths and severe illness or disability in children.<sup>17</sup>

#### *Services*

Workers in the services sector face long hours, low wages, poor safety, and limited health protections, all of which women experience more severely due to discrimination. Women employed in the services

sector are also at higher risk of gender-based violence and trafficking for labour and sex purposes. Particular sub-sectors of concern include leisure, tourism, and facilities management.<sup>18</sup>

### *Conflict settings*

It is important to note that many of these risks to women are exacerbated and intensified where a company operates in a conflict or post-conflict setting. In such cases, legal and social structures that normally help protect women from violence and harm may be weaker or non-existent, leaving women more exposed and with less ability to seek accountability and remedy.

## **2. Pillar 2: Business responsibility to address gendered impacts**


Many businesses do not undertake human rights due diligence at all, much less with a gendered lens. When businesses do seek to address harms to women in their workforce or supply chain, they often limit themselves to developing a sexual harassment and assault policy. While creating (and implementing) a sexual abuse policy is absolutely vital, businesses must also weave gender much more comprehensively into their due diligence strategies. This means both that a company's due diligence process must identify *all* types of gender or non-gender-related disparate impacts on women that the company may cause, contribute to, or be linked to, and also that the company's *method to undertake due diligence* must be gender-sensitive and designed to draw out such disparate impacts.

### *OECD due diligence guidance on gender*

In May 2018, the OECD released new Due Diligence Guidance for Responsible Business Conduct. The Guidance provides useful language to help businesses adopt a "gender lens" to their due diligence activities. OECD Watch was closely involved in the negotiations to draft the Guidance. While the final document represents some trade-offs and compromises, OECD Watch believes the net result is positive.

The Guidance elaborates on the due diligence responsibilities of companies under the OECD Guidelines for Multinational Enterprises (OECD Guidelines). It is intended to be used in all sectors of the economy and by all companies, regardless of size, geographical location or value chain position. Its main objective is to help companies understand and implement their due diligence responsibilities. Although the Guidance is designed for use by businesses, it can also be helpful to government ministries or departments developing coherent policy to address women's issues in respect of business activity.

The Guidance explicitly refers to gender-based risks and impacts, highlighting the need for companies to identify and address these risks and impacts and providing recommendations on how they can do this.

-  The Guidance specifically recommends that due diligence address specific risks and identify how these risks may impact women differently, disproportionately or exclusively (see "Due diligence is commensurate with risk", p. 17, Section 2.2(i) and Questions 2 and 11 of the Annex). To identify specific risks against women, a company must consider impacts likely to impact women as a result of the company's *sector* (as described in examples in section 1 above), the *region* of work (for example, a region affected by conflict or in which there is a relative power-vacuum), and the *economic, social or cultural milieu* (for example, in a location where girls are at risk of being kept from school to complete household work).

Question 2 of the Annex is entirely dedicated to providing recommendations on how to integrate gender into due diligence. Particularly important provisions address the need for companies to:

- Develop gender-sensitive and gender-responsive policies and plans;
- Identify overlapping vulnerabilities;
- Support women's equal participation in consultations and negotiations;
- Assess women's equal access to compensation and other forms of reparation.

Question 11 of the Annex highlights the need to identify and remove potential barriers to effective engagement of women. To ensure full engagement of women in due diligence analysis, companies can consider consulting male and female stakeholders in separate fora to capture women's different concerns and priorities.<sup>19</sup> Companies should also ensure that not only women employees, but also impacted female community members, have a means of grievance to the company.<sup>20</sup>

Working closely with community civil society groups can help businesses deal appropriately with societal practices which are discriminatory to women.

### 3. Pillar 3: Strengthening access to remedy for women

Just as women face additional risks as workers and community members impacted by business activities, women also face increased barriers to securing remedy for the harms they incur. In many regions, women lack cultural support for, and also personal experience in, organizing themselves to seek remedy for harms. Most unions, entities experienced in seeking remedy for harms against workers, are still typically male-dominated. Many union leaders are themselves unaware of particular harms women face. Some unions are even antagonistic to adopting an issue vital to women workers on their platform, either because of social stigma or desire not to sacrifice other union priorities. NGOs may help women workers and community members seek remedy for corporate harms, but NGOs face increasing threat and shrinking civil society space around the world. Women human rights defenders face particular risks – including of serious sexual or other violence – for their efforts to seek remedy for negative corporate impacts on women.

A factor that compounds these barriers to remedy is that many grievance mechanisms and their operators are themselves not “gender-sensitive;” that is, they are not equipped and trained to proactively identify areas of gender-specific risk, enable direct consultation with women complainants, recommend gender-specific remedial options for company-defendants to implement, and monitor remedial actions to ensure they benefit women as well as men.

Grievance mechanisms should take the following steps to strengthen their sensitivity to gender risks:

- Undertake gender sensitivity training for mechanism staff to identify and begin to correct staff's own lack of awareness or bias on gender-related issues;
- Undertake gender sensitivity training for mechanism staff to teach them how to identify and address gendered risks in complaints;
- Adopt modified rules of procedure that enable gender-focused or gender-specific advising and consultation with complainants;
- Strengthen culturally-appropriate and accessible outreach and support for women community members, workers, and complainants, including through partnership with women's community groups;

- Commit in writing to addressing gender-linked power imbalances during dispute resolution processes, including through ensuring equal participation of women in mediation; and
- Monitor companies' implementation of agreements to ensure that women, as well as men, are benefitting equally from the outcomes of dispute settlements.

### Conclusion

Women face unique and disproportionate negative impacts from corporate misconduct. Women also face unique barriers to accessing remedy for corporate harms. Businesses have a responsibility to address these gendered impacts, including through undertaking due diligence with a "gender lens." Additionally, grievance mechanisms and their staff also must adopt procedures to mitigate the barriers women face in securing remedy. The 2018 OECD Due Diligence Guidance, and this OECD Watch submission, offer support to businesses and grievance mechanisms to help them undertake gendered due diligence and better enable women's access to remedy.

### About OECD Watch

OECD Watch is a global network with over 130 member organisations in more than 50 countries. Founded in 2003, OECD Watch's primary aim is to help support CSO activities related to the OECD Guidelines and the work of the OECD's Investment Committee. Membership consists of a diverse range of civil society organisations – from human rights to environmental and development organisations, from grassroots groups to large, international NGOs – bound together by their commitment to ensuring that business activity contributes to sustainable development and poverty eradication, and that corporations are held accountable for their actions around the globe. For more information, please visit [www.oecdwatch.org](http://www.oecdwatch.org).

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<sup>1</sup> Marian G. Ingrams (2017), *Banking on Gender Equality: How Financial Institutions can Advance Gender Equality*, Oxfam India Discussion Paper Series, available at <https://www.oxfamindia.org/workingpaper/2069>.

<sup>2</sup> CARE International (2015). *Adding Value to Value Chains: How to unlock the poverty-fighting potential of value chains*, pg. 6.

<sup>3</sup> Thalia Kidder et al. (2004). *'Good Job' and Hidden Costs: Women Workers Documenting the Price of Precarious Employment*. GENDER AND DEVELOPMENT, VOL. 12, NO. 2, TRADE (Jul., 2004), pgs. 12-14.

<sup>4</sup> Thalia Kidder et al. (2004). *'Good Job' and Hidden Costs: Women Workers Documenting the Price of Precarious Employment*. GENDER AND DEVELOPMENT, VOL. 12, NO. 2, TRADE (Jul., 2004), pg. 14.

<sup>5</sup> CARE International (2015). *Adding Value to Value Chains: How to unlock the poverty-fighting potential of value chains*, pg. 6.

<sup>6</sup> Ruth Pearson (2007). *Beyond Women Workers: Gender CSR*. THIRD WORLD QUARTERLY, VOL. 28, NO. 4, BEYOND CORPORATE SOCIAL RESPONSIBILITY? BUSINESS, POVERTY, AND SOCIAL JUSTICE, pgs. 737-8.

<sup>7</sup> UNEPFI Human Rights Guidance Tool for the Financial Sector (n.d.). Mining and Metals Tab, available at <http://www.unepfi.org/humanrightstoolkit/index.php>, (last accessed 6 November 2017).

<sup>8</sup> Sara Bice (2011). *On the Radar? Gendered Considerations in Australia-based Mining Companies' Sustainability Reporting, 2004–2007*, pg. 145. See also Katherine Miles et al (2009). GRI-IFC. *Embedding Gender in Sustainability Reporting: A Practitioner's Guide*, pg. 52.

<sup>9</sup> FFGI (2016). *Methodology for the assessment of responsible investment and financing policies of financial institutions*, pg. 48.

<sup>10</sup> UNEPFI Human Rights Guidance Tool for the Financial Sector (n.d.). Oil and Gas Tab, available at <http://www.unepfi.org/humanrightstoolkit/index.php>, (last accessed 6 November 2017), also IFC & GRI, *Embedding Gender in Sustainability Reporting*, pg. 52, <https://www.globalreporting.org/resourcelibrary/Embedding-Gender-In-Sustainability-Reporting.pdf>.

<sup>11</sup> Beth English (2013). *Global Women's Work: Historical Perspectives on the Textile and Garment Industries*. JOURNAL OF INTERNATIONAL AFFAIRS, VOL. 67, NO. 1, The Gender Issue: Beyond Exclusion, pg. 72.

<sup>12</sup> Beth English (2013). *Global Women's Work: Historical Perspectives on the Textile and Garment Industries*. JOURNAL OF INTERNATIONAL AFFAIRS, VOL. 67, NO. 1, The Gender Issue: Beyond Exclusion, pg. 68.

<sup>13</sup> Beth English (2013). *Global Women's Work: Historical Perspectives on the Textile and Garment Industries*. JOURNAL OF INTERNATIONAL AFFAIRS, VOL. 67, NO. 1, The Gender Issue: Beyond Exclusion, pg. 69.

<sup>14</sup> Beth English (2013). *Global Women's Work: Historical Perspectives on the Textile and Garment Industries*. JOURNAL OF INTERNATIONAL AFFAIRS, VOL. 67, NO. 1, The Gender Issue: Beyond Exclusion, pg. 72.

<sup>15</sup> Ministry of Commerce & Industry, Government of India (n.d.). "Special Economic Zones in India." Introduction, available at <http://www.sezindia.nic.in/about-introduction.asp>, (last accessed 6 November 2017).

<sup>16</sup> Thalia Kidder et al. (2004). *'Good Job' and Hidden Costs: Women Workers Documenting the Price of Precarious Employment*. GENDER AND DEVELOPMENT, VOL. 12, NO. 2, TRADE (Jul., 2004), pg. 17.

<sup>17</sup> Ruth Pearson (2007). *Beyond Women Workers: Gender CSR*. THIRD WORLD QUARTERLY, VOL. 28, NO. 4, BEYOND CORPORATE SOCIAL RESPONSIBILITY? BUSINESS, POVERTY, AND SOCIAL JUSTICE, pg. 737.

<sup>18</sup> UNEP FI Human Rights Guidance Tool for the Financial Sector, Services Tab.

<sup>19</sup> IFC (2012). *Guidance Notes: Performance Standards on Environmental and Social Sustainability*, pg. 17, 31, 34.

<sup>20</sup> Foley Hoag LLP and UNEPFI (2015). *Banks and Human Rights: A Legal Analysis*, pgs. 17-18.