

# **Submission to the UN Working Group on Business and Human Rights**

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

Insights from gender and corporate social responsibility researchers

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## **ABOUT THIS SUBMISSION**

There is a significant disconnect between gender and CSR research and the gender, business and human rights (GBHR) agenda. While this gap is likely to be addressed in future, rather than waiting for the relevant literature to emerge, this submission utilizes interviews with some of the key scholars in gender and CSR to draw out the links between their work and the gender lens to the UNGPs. As these researchers work on corporate responsibility, their comments relate in particular to the UNGP pillar two, the corporate responsibility to respect. However, interviewees also furnish comments pertaining to pillars one and three.

Space does not allow me to report here all the rich insights that my interviewees shared during the course of our conversations. Rather this submission focuses on key points and recommendations that emerged from these conversations as they relate to the current gender lens project of the UN Working Group (UNWG).

I am grateful to the following researchers for agreeing to be interviewed about their work for this submission: Dr Fahreen Alamgir (Monash University); Associate Professor Charlotte Karam (American University of Beirut); Dr Lauren McCarthy (Royal Holloway, London); Professor Stephanie Barrientos (University of Manchester); Dr Lara Bianchi (University of Manchester); Associate Professor Banu Ozkazanc-Pan (University of Massachusetts, Boston). Final responsibility for all content lies with me as the submission author.

## RECOMMENDATIONS

1. Due diligence means understanding your business impacts in context and assessing these before you start work. Due diligence needs to be applied before and during operations such that it takes into account mixed impacts, including negative ones, of well-meaning gender and CSR programs. It is crucial to understand different countries and contexts with respect to gendered business impacts.
2. Development of stronger accounting systems will be necessary, including better measurement mechanisms to track impacts on women, in the workplace and beyond.
3. Compliance mechanisms cannot be effectively implemented without state, industry and community involvement, and especially the voices of directly impacted women.
4. Women's representation and voice in governance systems across the board is critical to implementing a gender lens to the UN Guiding Principles on business and human rights (UNGPs). Solutions need to be women led. This applies to all three pillars of the UNGPs.
  - Women workers at local level need to be involved in designing and monitoring due diligence processes.
  - Women's leadership in unions and labour organisations will be particularly important. Unions led by and for women could pave the way to rights-focused language on company behaviour.
  - Women's non-governmental organizations (NGOs), including local NGOs, need to be involved in implementing the gender lens to the UNGPs. Adequate funding for such organisations will contribute to women's human rights in business.
  - Representation of women, as well as women's unions and NGOs, in multi-stakeholder initiatives at global and local levels, is important.
  - We need women in state policy making, on trade and economic policy for example.
5. Responsibility lies with states as well as business to ensure that the burden of unpaid work, which is essential to sustaining business and society, does not prevent women from equal access to their economic, social, and political rights, including to education, leisure, paid work, and political representation. In particular:
  - States need to ensure that businesses pay tax to cover costs of care and related facilities. Business actors need to ensure this also.
  - Protection during pregnancy and provision of related leave is essential, by states as well as businesses.
  - Affordable, quality childcare is integral to women's human rights.
6. The UNGPs gender lens must be applied beyond the enterprise itself to workers in global supply chains. With respect to corporate due diligence in supply chains:
  - Evidence reveals workplace/social audits to be very limited when it comes to assessing gender impacts. Companies are advised not to rely on these in due diligence processes. It is important to use other impact assessment, monitoring and evaluation tools as well. Businesses need to develop management systems across the supply chain that are gender sensitive, including proper gender, non-discrimination, and

remediation policies, and systems put in place for remedy for both directly and indirectly employed staff.

- Knowledge from the field of 'development', regarding how to measure wider gender impacts on society can be used more effectively by states and businesses to address GBHRs.
7. Women's economic empowerment programs are insufficient as a way of addressing their human rights. There is a need to ensure women's political and social rights as well.
  8. Business actors need to talk about male respect. Men's duty and men's respect is not yet addressed adequately in GBHRs.
  9. It will be important to identify concrete steps that can be taken by different actors to increase accountability for women's human rights at all levels, including by providing guidelines to corporations relating to business strategy, policy, practice, culture, and political presence. State policy needs to support such guidelines.

## KEY THEMES

### The role of the state

States are not always able or willing to support the human rights of women, particularly in the context of the global neoliberal economy. For example, in the Global South structural adjustment programs have involved industrial restructuring aimed at privatization. One interviewee described how in the process of privatizing the jute mills in Bangladesh, recruitment changed so that permanent jobs were no longer available to women workers, and their general working conditions deteriorated.

Interviewees commented that to some extent the UNGPs assume a context in which the state aims to uphold human rights, or is at least neutral. However, in many countries this is not the case. There are numerous regional contexts where states are ineffective, inefficient, and corrupt (according to various measures of corruption), and where they perpetrate human rights violations, including against human rights activists. What do we do when particular actors representing, or working on behalf of, the state, become complicit in some of the problematic behaviours that corporations are engaged in, and when local elites, business, and the state collude in ways that impact negatively on women? In such contexts, who guarantees human rights for women? Who is agentic here? Who speaks for women, and about them?

In searching for solutions to such problems, researchers highlighted an approach that focuses on increasing women's representation and voice, particularly the voices of affected women. This includes supporting their increased role in leadership and decision-making at the level of unions/workers organizations, state policy making, and business leadership. This is something that can make a difference when it comes to identifying, articulating, and addressing women's human rights. For example, recognition of all the work women do in the informal economy is particularly important in some contexts.

The question also arises as to what businesses, and especially responsible businesses, can do in contexts where the state does not support or uphold human rights. What should corporate due diligence look like here? In particular, what can business do to mobilize/partner/engage with the other major actor in such contexts, which is civil society and grass roots organizations. How can these actors work together to help create safer workplaces, reducing sexual harassment and gender-based violence in the workplace, and to address discrimination in hiring, retention, promotion etc? For example, there is no legislation on sexual harassment in Lebanon, only law against rape. Partnering between the UN Global Compact and business associations has brought business people together to think about how to incorporate sexual harassment within business codes of conduct in a way that could stand up in a court of law, in legal contexts where there is no law against such behaviour. A few businesses have begun to experiment with this, sometimes in collaboration with NGOs.

In contexts such as these where businesses have engaged with the UN Global Compact and Sustainable Development Goals in their work on gender equality, it will be important to explain how the UNGPs intersect with these other initiatives. Otherwise business people will not engage with the gender lens work in depth. There is a need to develop a common discourse to lobby business to move forward on equal rights for women.

Several interviewees pointed out that while some may consider that a counterproductive state is relevant in particular geographical contexts only, such as in parts of the Global South, others locate the problem within an agenda for economic development that relies on neoliberalism which, it can be argued, encourages human rights violations in pursuit of profit. To what extent does neoliberal economics act as a barrier to women's human rights, in the Global North and South? The case study of Walmart was raised here, as a company that employs large numbers of women and minorities who are paid so little that they are dependent on the state, for example, for food stamps. In this case, the company effectively uses state resources to subsidise their employees at the cost of the tax payer, such that both the state and the company are complicit in violating women's rights to a fair wage. In other contexts, the role of state-owned business needs to be better addressed with reference to women's human rights.

Several interviewees pointed to the fact that a lot more needs to be done around UNGP pillar three, Access to Remedy, and that this is the hardest to address when the state is not contributing positively. Examples of good practice in this respect include:

- Significant civil society initiatives involving hotlines, safe houses, and networks with healthcare providers to deliver services (free of charge, anonymously and confidentially) to women who have experienced sexual harassment and gender-based violence in the Middle East.
- Opening dialogue with business human resource managers, company managers, feminist jurisprudence experts and local activist lawyers to develop a training module for HR managers. This helped managers create Codes of Conduct to include specific rules regarding sexual harassment and violence in the workplace that will hold up in a court of law based on the contract between the employees and the business.

## **Global supply chains**

Researchers emphasized the need for the UNWG to focus beyond the enterprise itself to the value chain, as this is the biggest issue in terms of addressing women's rights. Despite clarification of business responsibility within the UNGPs, long supply chains, where contracted businesses are not the main employer of many workers, remain a big challenge. Recent research shows that gender discrimination in these contexts is still not being addressed well.

Improvements in supply chain working conditions are documented in some locations, and this is encouraging. However, mostly these occur in companies where the suppliers are upgraded, as for example in the case of the Kenyan cut flower industry. When the focus moved in this sector from selling stems to selling bouquets there was a business case for improving working conditions to retain skilled staff. While campaigns were also important, this upgrade was significant in driving change. Meanwhile, conditions for women in the 'downgraded' supply chain model remain very poor because there is no a business case for improvement. Regarding the latter, in many cases the bidding/offering price for procuring has been declining. Researchers note evidence from the ILO and others that 52% of suppliers in apparel and related industries say that the procurement price has a declining trend. How can a

commitment to address human rights be upheld if this is the trend? If MNCs are serious about their commitments to human rights this issue can no longer be sidelined as it is critical to substantive progress, in particular for women.

Moreover, the entire process of compliance with human rights laws and due diligence is gendered in global supply chains, and indeed elsewhere. The safety and security issues raised in Rana Plaza, for example, have mostly been addressed with respect to the physical condition of buildings, focusing on safety measures and security doors etc. Now global institutions argue that genuine governance has been established there, in the form of the Accord and the Alliance. However, these two agreements do not cover the key problems that have been faced by women supply chain workers for the last 40 years, such as maternity leave, low wages, long hours and other poor working conditions. At Rana Plaza, while workers from other workplaces left the building in time, women garment workers had to go in to work due to an urgent shipment requirement. We cannot ensure security, safety and human rights just by securing the building structure and exit doors, when the core business model involves such pressures. Moreover, working conditions often do not comply with related provisions under local labour law, but who is going to monitor these rights?

One interviewee argued that the main problem is that women workers are not recognised and are misrepresented in compliance mechanisms adopted by global brands. Researchers ask why there is no proper representation of these workers in the Accord or the Alliance. One of the issues is that trade union leaders representing the workers are all male. These leaders have been working with the women workers over a 30-year period, so why didn't they ensure that women workers were represented in new governance mechanisms? On this point researchers recommend that within global regulatory frameworks workers need to be classified. There should be no generalization of workers as workers, because this leads to a situation where there are missing categories of workers, who are not represented, such as women workers who are excluded from processes where solutions to human rights violations are being sought.

Another significant issue is that while 15-year old girls, among others, cannot work in the formal sector, these girls are still employed and often need the work. If they have to be employed then their rights need to be looked after. Currently this is not the case.

Moreover, in the past, laws against child labour have led to girls in particular going into street prostitution. In the currently climate, where factories sometimes close due to non-compliance with supply chain codes, we find an increasing trend in women being trafficked to middle-eastern countries as domestic workers, where they are often subject to sexual harassment and gender-based violence. The potential link between these issues illustrates the importance of including local research to understand the implications of state policy, and business practice, on the most affected categories of workers.

Finally, within MNCs, compliance codes are often managed by the Sustainability Manager and the CSR desk. This is a problem because this work can then become an instrument of corporate image, and rights are not categorically identified.

## **Corporate measurement and reporting**

Researchers emphasize the need to have strong accounting systems, including better measurement mechanisms to track impacts on women, in the workplace and beyond.

We must learn from development studies research and practice which, for example, shows the importance of using visual methods (drawings/pictures) to understand women's perspectives in communities where people are illiterate. This can be especially helpful in contexts when gender and equality concepts do not easily translate across cultures.

It is noteworthy that the Global Reporting Initiative (GRI) gender working group, which drafted the gender indicators therein, finalized its work prior to the publication of the GRI human rights reporting criteria. Given the focus in the UNGPs on tracking and communicating how human rights impacts are addressed through corporate due diligence processes, it will be advisable to revisit the GRI reporting criteria and to provide clearer guidance to companies in future about how they should report on gender and human rights.

## **Women's empowerment and human rights**

Women's empowerment programs are a common corporate approach to gender equality, especially in the Global South. How does this relate to women's human rights? Researchers argue that to be empowered you need to be able to access all your rights, and all of these need to be upheld. Thus, a focus on economic empowerment is much too narrow to address women's human rights effectively. This is arguably the main problem with corporate women's empowerment initiatives. There is a need to address women's social and political rights as well.

Even with respect to women's economic rights, evidence suggests that while women's empowerment programs do sometimes lead to increased income, economic autonomy and financial literacy, these are often short-term gains. What happens when the programs end? What are the long-term impacts on women's rights? Further evaluation is needed. Moreover, such programs, even when designed in collaboration with NGOs, often aim to advance women's rights in stereotypical ways, requiring them to pool income rather than having the right to decide what to do with their own earnings for example. Often little account is taken of the other paid work women do, as well as the unpaid labour they are required to perform. This means such programs can exacerbate women's oppression and disadvantage, by requiring more work, often with little economic gain, rather than advance their human rights.

Scholars argue therefore that it is best to focus on women's political rights and representation. An example was given of the Ghanaian cooperative Kuapa Kookoo where quotas are used to ensure adequate representation of women farmers within the governance structure. Training women for these roles speaks not just to economic but also to social and political empowerment, and rights for women.

## **Additional key points**



- Diversity and diversity management language is not always helpful, as it is not grounded in human rights for all women and minorities. The UNGPs take us beyond the business case.
- The UNWG gender lens project should give considerable attention to SMEs and family-run businesses, where the vast majority of women work.