

Providing a Gender Lens to the UNGP on Business and Human Rights¹

Conceptual Framework:

Women's rights are human rights. Hence without gender lens, the UNGP on business and human rights will fail to address the persisting and pervasive interlinked forms of human rights violations, such as gender-based discrimination, gender-based violence, and gender stereotyping that specifically target half of the world's productive human resource – the women. As equality is one of the basic tenets of human rights with gender equality at its core values, gender equality should be clearly defined to mean equal rights of men and women, and across diverse sexual orientation, identity, and expression. Women experience different forms of discrimination and violence in different socio-economic contexts, with marginalized women (IP women, rural poor women, women with disability, SOGIE women, urban poor women, women in informal economy, incarcerated women, and elderly women) experiencing the most.

The approach to equality as enshrined in CEDAW follows three principles: *de jure* or *formal equality* to ensure the equal treatment of women before the law; *de facto* or *substantive equality* to ensure that women are given an 'equal start' to achieve equality of results given women's inherent (biological) and man-made (social and cultural) constructed differences from men; and most importantly, *transformative equality* or *equality that transforms* to ensure that discrimination and violence against women are addressed at the very root of the social and structural and power relations which justify and promote models of subordination-domination of sexes. The first two lays the authoritative ground to ensure the removal of formal barriers to equality and the third ensures the achievement of real equality. This is to emphasize that achieving gender equality goes beyond the legal (formal) and programmatic (substantive) framework, because for women to really enjoy equality requires challenging the well-entrenched social and cultural relations, patterns and structures promoting asymmetric, discriminatory gender relations. Thus without transformative equality there will be no real equality and without real equality human rights will always be challenged.²

In fact, despite international laws and agreements prohibiting gender-based discrimination, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and Convention on the Elimination of Discrimination against Women (CEDAW) plus the general acknowledgement on the disproportionate and different effects on women of business-related human rights abuses, gender issues remain vague, neglected, and unaddressed in the UNGP on business and human rights. This gap is prevalent in areas most essential for women to achieve real equality. Three worthiest to mention are employment and labor rights, access to and management of land and natural resources, and access to justice.

Women's Employment and Labor Rights

¹ Prepared by the Women's Legal and Human Rights Bureau, Inc. (WLB)

² Biholar, Ramona. (2014, June 24-25). Challenging the barriers to real equality: Transformative equality. *Annual Gathering of the Group of Women Parliamentarians: Moving from Formal to Substantive Equality*. Mexico City, Mexico.

Women's participation in formal labor is one of the essential indicators of gender equality. However, labor and business laws, trade and investment laws, and business culture remain androcentric in terms of women's employment and labor participation; gender pay gap; positions of women in industries/companies; women workers in the informal economy to the formalization of the informal economy; violence against women and women-related discrimination at work manifested in various forms; and women migrant workers, domestic workers included.

Women's participation in formal labor has increased. However, it remains far below the rate of men with women's participation in formal labor (49.4%) equating to 26.7% points lower than the rate for men (76.1%) globally, 30.6% points lower than the rate for men in emerging countries, 16.1% points lower than the rate for men in developed countries, and 12.3% points lower than the rate for men in developing countries, without indicators to improve by 2018. Worse, access to quality labor remains difficult for women, who are found mostly in precarious and lowest paid occupations,³ mostly in garment factories (68%), textile companies (45%), and Export Processing Zones (EPZ) (70 and 90%). EPZs are well-known for low-wage, poor working conditions, and unstable job.⁴ Also, more than half (57%) of employed women are part-time workers. The discriminating employment opportunity for women is extensively affected by long-held gender stereotyping which disproportionately imposed on women the unpaid care and domestic work roles, resultantly burdening women at least 2.5 times more than men.⁵ This causes women to face the 'motherhood wage penalty' at 5-7% per child. While motherhood adversely affects women's employment and wage due to lose time for child rearing, men's wages may even increase after having a child.⁶

Discrimination against women perseveres in employment. They are paid much lower than men, earning only 77% of what men earn which put gender pay gap at 23%.⁷ This is worse for women working in the informal economy⁸ where most of them can be found, particularly in developing countries⁹. Employed women less likely enjoy social protection (i.e. unemployment compensation, pensions, and health insurance) compared with men. Women are less covered by pensions due to lesser pay and informal work with 65% of retired women do not have regular pension,¹⁰ while 60% do not enjoy maternity leave and 65.9% do not enjoy maternity leave with pay.¹¹ Worst, sexual violence against women in the workplace persists. World Bank reports that in EU, cases of sexual

³ International Labor Organization (ILO). (2017). Trends for women 2017. *World Employment Social Outlook*. Geneva: ILO; International Labor Organization. (2016). *Women at Work: Trends 2016*. Geneva: ILO.

⁴ Wick, Ingeborg. (2010). *Women Working in Shadows: The Informal Economy and Export Processing Zones*. SÜDWIND Institut für Ökonomie und Ökumene: Siegburg.

⁵ ILO. (2016). *Women at Work: Trends 2016*. Geneva: ILO.

⁶ Budig, Michelle J. and England, Paula. (2001). The wage penalty for motherhood. *American Sociological Review*, 66 (2): 204-225.

https://web.stanford.edu/group/scspi/_media/pdf/Reference%20Media/Budig_2001_Lifecourse.pdf

⁷ ILO. (2016)

⁸ VERITÉ. (2017). *Women at Work in Global Supply Chains*. <https://www.verite.org/women-work-global-supply-chains/>

⁹ ILO. (2017)

¹⁰ ILO. (2016)

¹¹ ILO. (2017).

harassment at work have been experienced by 40 to 50 per cent of women and that there are no laws against sexual harassment in 41/173 economies studied in EU.¹²

Discrimination against women in employment and in the workplace extends to women migrant workers, who constitute approximately half of the world's migrant workers and who are employed mostly in domestic work and in garment factories, where they frequently do not have labor protection, suffer from discriminatory residence regulations, and are at higher risk of various forms of human rights violations and abuses, especially sexual abuse, violence, and forced labor.¹³ Working in private households behind closed doors usually without clear contracts of employment (45% have no weekly day off and paid annual leave), and without labor laws to protect them (29.9% are excluded from national labor legislation), migrant domestic workers which account to 53 million (80% women)¹⁴ are often victims of sexual abuse without access to justice.¹⁵

Despite women's increasing labor participation, the ugly truth remains; women are still at greater risk of facing unemployment. Comparable data of global unemployment rate show that unemployment rate for men stood at 5.2% (2007) and 5.5% in 2015, while unemployment rate for women was constantly at a higher rate of 5.9% (2007) and 6.2% (2015).¹⁶ For two decades now, the unemployment gender gap between men and women has been pegged at 0.8% points.¹⁷ This is worse for younger women (15-24 years old) globally, making it harder for women to develop a successful career, which crucial stage is school-to-work transition.¹⁸

The national government sees aggressive neoliberal strategies as key to countering the raging side effects of poverty; however, positive effects are barely seen to prove that these strategies could bring genuine and sustainable pathways to development. In fact, neoliberalism has instead garnered more negative impacts; among these are exploitation and degradation of natural and human resources.

Neoliberalism, in essence, has promoted and strengthened liberalization, privatization, and deregulation in government and private institutions.¹⁹ This, in turn, has allowed businesses and even government agencies to establish more precarious employment arrangements which include promotion of cheap labor, contractualization, subcontracting, and abusive use of probationary

¹² World Bank Group. (2015). *Women, Business and the Law 2016: Getting to Equal*. Washington, DC: International Bank for Reconstruction and Development.

<http://wbl.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf?la=en>

¹³ UN Women. (2015). *Progress of the World's Women Report 2015-2016: Transforming Economies, Realizing Rights*. US: UN Women. http://progress.unwomen.org/en/2015/pdf/UNW_progressreport.pdf

¹⁴ ILO. (2013) More than 52 million domestic workers worldwide. *News*. https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_200937/lang--en/index.htm; ILO. *Domestic Workers*: <http://www.ilo.org/asia/areas/domestic-workers/lang--en/index.htm>

¹⁵ Begum, Rothna. (2017). #MeToo, say domestic workers in the Middle East. *Human Rights Watch*. <https://www.hrw.org/news/2017/12/08/metoo-say-domestic-workers-middle-east>

¹⁶ ILO. (2016).

¹⁷ ILO. (2017).

¹⁸ ILO. (2016).

¹⁹ IBON Foundation: Migration and Development: A Matter of Seeking Justice

employment.²⁰ In the Philippines, these arrangements are very common in service-oriented and manufacturing-related jobs which perpetuate depressed wages, lack of workers' rights, union-busting, and rise in capitalist profits. Although the rise of precarious work in the Philippines affects everyone, women are overrepresented in hazardous and vulnerable jobs. In fact, women are concentrated in sectors of the economy where skills and competencies are undervalued and unrecognized, such as domestic or care work, textile industry, manufacturing work, and entertainment or hospitality industries.²¹

More than half of the establishments in the country – particularly those found in export processing zones – do not follow labor standards, including payment of minimum wage. Seventy percent of workers in special zones are women.

Given the lack, if not absence, of sustainable jobs for women in the Philippines, many are forced to leave the country and work abroad, despite the countless reports on women migrants being subjected to unregulated labor conditions such as long working hours, low or unpaid wages and lack of social protection, as well as domestic and sexual violence.²² For many decades, the Philippine government has indiscriminately and deliberately continued to promote labor exportation of women into unrecognized and lower-paid care work as part of its development strategy. Continued labor exportation of women, without the appropriate accompanying legal and social protection mechanisms by the State, perpetuates economic violence as the women are brought into low-paying jobs where they may also be susceptible to experiencing sexual abuse. Insufficient legal support and non-sanctioning of government officials for violence against women further serve to deny women their human rights.

While gender equality at work is recognized as part of achieving real equality, women's equal right to work should be tackled with precaution as economic arguments see the usefulness of this simply based on the measureable economic contributions of women's paid labor to the market, thus commodifying women and their labor and reinforcing inequalities, as data above shows. It should be made clear that gender equality at work and women's rights at work should be seen as an integral part of their personhood and dignity and that it should be realized to address women's discrimination.²³

²⁰ Precarious work refers to non-standard employment that is insecure, uncertain and poorly paid. Its impacts go beyond the world of work as it breeds inequality and poverty and can be considered as a form of economic violence perpetrated by the State.

²¹ Many women who work as salesclerks in the big malls and fast food chains are employed under the so-called 5-5-5 scheme or endo (end-of contract) where a worker is hired and fired every five months so that employers will not be obligated to make them permanent employees

²² Lack of work opportunities in the country have driven many Filipinos to work abroad. About 60% of the almost 6,000 Filipinos who daily leave the country for overseas employment are women. And even outside the country, they work as domestic helpers or entertainers, jobs that expose them to violence and abuse. Sexual and/or physical abuse has become the lot of many overseas Filipino women workers.

²³ Awori, Sanyu. (2017). *How the 'Business Case' for Gender Equality Sidelines Human Rights*. <https://www.opendemocracy.net/5050/sanyu-awori/gender-equality-neoliberal-business-case>

Women's Rights to Land and Other Productive Resources

Social and economic empowerment requires security and ownership of land,²⁴ as land is a crucial cultural resource and capital asset.²⁵ Hence, access to and management of land and other productive resources matter to women because these are integral to women's quest for right to equality and to adequate livelihood and standard of living²⁶ towards achieving economic independence and personal empowerment. Without realizing women's rights to land and other productive resources, real gender equality will remain a rhetoric and an elusive dream.

Men may be the main bread winners of their families, but it is the women who primarily manage their home and thus carry the burden of ensuring that their family is fed, in good health, and educated, which they, particularly rural women, fulfill relying primarily on land to produce food and earn a living.²⁷ Other than being the basic means for subsistence and market production, "land offers a secure base on which to shelter and nurture families and develop livelihood strategies. Even in countries where rural income become less dependent on agriculture, land continues to be an essential resources for rural populations."²⁸ And therefore, land becomes more essential to single-parent women.

It is precisely the essentiality of land and other productive resources to economic and social empowerment that women are discriminated on access, use, and control over land and other productive resources in various ways. While women comprise 43% of the agricultural workers, only less than 20% of the world's agricultural land are owned by women²⁹ as they are restricted legally and culturally to own land. In fact available laws cannot even ensure women's land rights due to patriarchal tradition and ancient social beliefs.³⁰

On top of these, development aggression through corporate capture of lands and other productive resources which has become a central feature of modern capital accumulation and political contestations has further dispossessed women of their nil land ownership, effectively using patriarchal structures and belief systems in violating women's human rights. Worst affected are

²⁴ Villa, Monique. (2017). Women own less than 20% of the world's land. It's time to give them equal property rights. World Economic Forum. <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/>

²⁵ George T, Olokoyo, F. Osabuohien, E, Efobi U and Beecroft, I. (2015). Women's Access to Land and Economic Empowerment in Selected Nigerian Communities. In N. Andrews, E.N. Khalema, & N. T. Assie-Lumumba (Eds.) *Millennium Development Goals (MDGs) in Retrospect - Africa's Development Beyond 2015* (pp.45-61), Geneva: Springer International Publishing.

²⁶ UN Women. (2013). *Realizing Women's Rights to Land and Other Productive Resources*. New York and Geneva: HR/PUB/13/04

²⁷ The Global Initiative for Economic, Social and Cultural Rights. (2014) *Using CEDAW to Secure Women's Land and Property Rights: A Practical Guide*. <http://globalinitiative-escr.org/wp-content/uploads/2014/03/CEDAWGuide.pdf>

²⁸ Food and Agriculture Organization (FAO). (2010). Gender and land rights: Understanding complexities; adjusting policies. *Economic and Social Perspectives, Policy Brief 8*. <http://www.fao.org/docrep/012/al059e/al059e00.pdf>

²⁹ Ibid

³⁰ Villa, Monique. (2017). Women own less than 20% of the world's land. It's time to give them equal property rights. World Economic Forum.

indigenous women who are not only denied of their productive resource but are also rooted out of their cultural identity.

The following human rights principles and standards: universality and inalienability, indivisibility, interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law; transparency; empowerment, sustainability, international cooperation and due diligence remain relevant to women's right to access to, use of and control over land and other productive resources³¹ but sadly, these are violated. Thus to realize women's rights to land and other productive resources presupposes the observance of the women's human rights principles and standards cited.

Need to adopt a Women's Access to justice framing to implement the principle of access to remedy³²

Women victims of violence experience various difficulties and barriers in accessing justice. Studies have attributed the existence of these barriers to law and to society's construction of women and of women's issues. There is a need to look beyond legal measures and into the interplay of politics, economics, and culture in women's access to justice in cases of violence. Looking alone at the existence of laws protecting women, the availability of legal aid and counsel and at the process of adjudication and enforcement as a frame for access to justice for women victims of violence would be limiting. It would fail to address the subordinated and subjugated identities of women in law and in society. It would fail to account the structural inequalities between men and women, the systemic and historic disadvantaged position of women, the culture of impunity in cases of VAW, and the prevailing gender bias and system of patriarchy that continue to persist in the judicial system and in society.

By the laws' and the legal processes' constant exclusion of women's varied experiences, and by the society's continued failure to recognize the serious nature of violence against women, thereby promoting a culture of impunity, the experiences of women continue to be undermined and rendered invisible. The responses to violence against women remain confined to elements of the crime and to laws of procedure and evidence, refusing to delve into the realm of women's real concern vis-à-vis the political, economic, and cultural aspects of access. Vis-a-vis furthermore, to woman's development as a whole.

Adopting a feminist frame, and viewing violence against women as a product of a hierarchal system of oppression, the access to justice framework herein developed views access to justice as beyond mere access to legal resources and multi-disciplinary support services, it goes beyond court victories such that even when a case is decided in favor of the woman, the question as to how such success effectively improves and empowers the woman (economically, politically, culturally) can and will be posed as part of the process. It also aims to look into the development of women as

³¹ UN Women. (2013)

³² An excerpt from *Understanding Women's Access to Justice: A Briefer on Women's Access to Justice* by the Women's Legal and Human Rights Bureau (WLB) submitted to the OHCHR. WLB is a member of Philwomen on ASEAN, a network of women's rights advocates and organizations in the Philippines that critically engage and promote women's rights in ASEAN.

whole, not only as seen in the country's development agenda and economic laws for women, but also in actual and effective adopted programs and policies. In this sense, it aims to go beyond the question of sufficiency of laws and the legal system to social change and reconstruction.

Existence of legal remedies and mechanisms alone cannot be made to measure women's access to justice when the circumstances of access remains to be affected by factors not only inside the legal system, but outside it. With the aim of attempting a more responsive framework on access to justice by women victims of violence, the women's access to justice framework was developed. The inception of this framework began in a regional consultation in Bangkok conducted by the Women's Legal Bureau. The framework is divided into two parts: a) elements of access to justice, and b) the enabling environment necessary for access to justice.

The elements of access to justice and the enabling environment for access to justice must both be present for access to justice for women to exist. Justice looks into women's substantial and critical participation in the process, women's empowerment and non-oppression, the eventual elimination of patriarchy and structural inequalities between men and women in the political, economic, social and cultural domains which are the root causes of VAW [and all forms of discrimination against women].

Below is an excerpt of WLB's elements of access to justice:

Adequate Remedies: making remedies work and respond to women's needs

Adequacy is the appropriateness and sufficiency of a given remedy to address the right violated. For a remedy to be considered adequate, three factors need to coexist: a) the de jure and de facto existence of remedies; b) the availability of such remedies, and c) their affordability.

De jure and de facto existence of remedies pertain to, first and foremost, the existence of laws or guidelines and protocols which protect women against violence, these guidelines, must be capable of addressing the various types of violence that may be directed against women. Secondly, this presupposes the existence of mechanisms and institutions that enable women to seek redress in the event of the violation of their rights. This includes existence of well funded formal legal system (such as the police, the prosecution service, the courts), informal systems (such as the Barangay Justice System or traditional councils), and the existence of multi-disciplinary support services (such as counseling, psycho-social, shelters, and medical support etc).

Availability, as a factor of adequacy, pertains to the questions of information, non-discrimination, geography, and language. For a remedy to be considered available to the woman seeking the same, information on her rights, on the remedies available, and the institutions and procedures involved must be made accessible to her by institutions and duty bearers. Such remedies must be available to women without discrimination/exclusion on the basis of race, gender, class etc.

Affordability takes into account the economic factor of accessing justice. A remedy cannot be adequate and in fact could prove to be ineffective when the same is too costly and expensive. It covers the cost of litigation from filing and docket fees, to attorney's fees, to the cost of transportation, of gathering of evidence, as well as indirect costs of litigation. Another aspect of affordability would be the opportunity cost of litigation, which looks into the costs which may not be measured monetarily but are nevertheless part of the consequences of litigation e.g. effects to a woman-survivor's employment and productivity, or even the fact that woman's employment, or the idea of women working remains in part to be culturally unacceptable.

Acting for and her behalf: Women's Critical engagement and participation

Foremost in Feminist Discourse is women's substantive participation and critical engagement in processes and experiences affecting her. In a Criminal Justice System where the State prosecutes in behalf of the People of the Philippines, the offended party, the woman, is undermined ---rendered invisible and caught in the web of the legal system, with the State prosecutor acting in her behalf and the judge adjudicating her case as if she was a mere subject of the law and the legal system.

In women's access to justice framework, the woman's participation in the decision making with respect to her case is one of the foremost considerations. It includes her critical visibility in the overall process through meaningful substantive participation. Her decision to (or not to) resort to alternative dispute settlements or informal systems, her decision to avail of a specific remedy over the other, must be given consideration by lawyers, and other duty bearers of the legal system. The process, with women's active participation becomes empowering, with the woman able to act for and on her behalf in the claiming of her rights.

Three levels of inquiry are looked upon to measure women's participation: first, whether she is aware of her rights, second, whether the remedy provided, give active, meaningful, and visible participation on the women in the pursuit of her case, and third, whether, the process, as a whole provides empowerment to a woman in having engaged with the system.

Addressing Impunity: An effective and accountable legal system

Competent, impartial, independent and gender-sensitive legal system and duty bearers and women's active participation in the process are parts and parcels of effectiveness. It pertains to the effective, speedy and immediate enforcement of the fruits of the processes, and the delivery of the same to the woman-survivor. It also includes the existence of immediate protective measures and the existence of monitoring oversight on the part of state and non- state actors to further facilitate and improve women's access to justice. It serves the purpose of addressing impunity and attaining the purpose of the law in deterring and preventing violence against women.

Women's Issues and Concerns at the Center of UNGP on BHR

For UNGP on BHR to truly promote human rights in the business sector, it should address business laws, structures, and practices that may cause gender-based discrimination, gender-based violence, and gender-based stereotyping. ##

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