

Womankind Worldwide – Submission to the Working Group on the issue of human rights and transnational corporations and other business enterprises

Womankind Worldwide is pleased to submit a written submission to the Working Group's call for input regarding the Gender Lens to the UN Guiding Principles on Business and Human Rights (UNGPs).

Womankind is an international women's rights organisation working to transform the lives of women worldwide. We work with partner organisations across five focus countries in Africa and Asia, and we carry out policy and advocacy globally, with a view to end violence against women and girls, promoting and securing women's economic rights, and increasing women's rights organisations and movements' access to and participation in political spaces.

Our unique work on women's economic rights, corporate accountability and land rights is of particular relevance to the Working Group's gender guidance to the UNGPs, specifically the following briefings, on which we have based this submission.

- *Rights and realities: a briefing on women and economy*¹
- *Land intensive corporate activity: the impact on women's rights*²
- *Digging deep: the impact of Uganda's land rush on women's rights*³
- *Women's Rights Beyond the Business Case Ensuring Corporate Accountability*⁴

Womankind welcomes the Working Groups initiative to develop a much-needed gender guidance to the UNGPs and urges this leads to a substantive discussion, including women and women's rights organisations, of how to remedy specific violations of women's rights, and addressing the specific issues and barriers to accessing justice faced by women affected by corporate activities.

Business activities can create a range of gender-specific human rights risks and impacts. When businesses violate human rights, women frequently bear a higher cost than men, but the gender-specific dimensions of these violations remain largely invisible. This is because many violations of women's rights are caused and exacerbated by entrenched gender discrimination 'normalised' in everyday life. Consequently, **there is a high risk, gender-specific human rights impacts will not be identified or remedied, unless explicitly included in government and corporate policies and human rights due diligence (HRDD) processes.** The UNGPs have played an important role by re-clarifying and reinvigorating the state duty to protect and the corporate responsibility to respect human rights. Notably, the UNGPs have led to progress on due diligence measures and National Action Plans (NAPs) on business and human rights, however these remain to a large extent gender-blind.⁵

The amount of tax revenue transnational corporations pay in the countries in which they operate and their lobbying to avail of tax incentives should be part of these discussions. Developing countries lose the most, including from the indiscriminate use of tax incentives to attract foreign businesses, for example through Special Economic Zones or export processing zones. **A critical enabler of increased investment to fund gender equality policies and programmes is progressive tax revenue.** There is an urgent need for national and global tax reform to increase the amount of revenue raised from wealthy taxpayers. **Women are most affected by all forms of tax injustice and the privatization of public services,** often driven by trade and

¹ <https://www.womankind.org.uk/docs/default-source/resources/briefings/womankind-rights-and-realities-economic-rights-briefing.pdf?sfvrsn=0>

² http://corporate-responsibility.org/wp-content/uploads/2017/11/Core_WomensRights_Final1.pdf

³ <https://www.womankind.org.uk/docs/default-source/resources/reports/digging-deep-the-impact-of-uganda's-land-rush-on-women's-rights.pdf?sfvrsn=0>

⁴ http://www.world-psi.org/sites/default/files/documents/research/fem4bt_2018_-_womens_rights_beyond_the_business_case.pdf

⁵ Note 4

investment agreements and austerity policies imposed by international financial institutions.⁶

Transnational corporations in particular, are able to escape accountability because of legal loopholes that enable impunity, undermining democracy and the rule of law. Thousands of trade and investment agreements safeguard corporate interests, without any respect for the free, prior and informed consent (FPIC), consultation of affected communities, nor any corresponding regulatory framework to protect human rights and the environment from corporate abuse. Trade and investment agreements' investor-state dispute settlement clauses grant one-sided power to corporations to nullify national laws and policies if they reduce 'investors' expected profits. **This fundamentally undermines States' legitimate regulatory space to establish public social policies, protect human rights and hold corporations accountable.**⁷

Women make up 70-80% of the world's small-scale farmers and are primarily responsible for providing care, food and water for their families.⁸ Women's work is often undervalued and unrecognised. Given women's reduced access to formal land titling, **women are routinely excluded from consultation and decision-making processes around the use of land.** As such, women bear a disproportionate share of the social, economic, and environmental risks and costs associated with land intensive industries, when they are displaced or the land they farm is polluted by land intensive activities. **Loss of livelihoods, food insecurity, increased exposure to environmental pollution, increased time spent fetching water and firewood and increased instances of domestic and other forms of violence against women are common in different contexts of large scale land investment.**⁹

Corporate due diligence processes often lack a clear gender analysis that recognises the deep-rooted nature of gender inequality and the different impact of business activities on women and men. As such, **businesses need to develop gender-responsive HRDD** based "on an explicit recognition of the unequal power relations between women and men, whether as workers, farmers, human rights defenders, family members and/or community members, and an understanding of the ways in which these power relations are institutionalised and normalized within social, economic, political and cultural practices and institutions."¹⁰ **Gender-responsive HRDD should identify, account for, mitigate, prevent and repair all forms of gender-based discrimination.** This includes gender-specific human rights impacts and risks that corporations may cause or contribute to through their activities, or which may be directly linked to their operations, products or services.

Gender-responsive HRDD should include¹¹:

- **Conducting gender impact assessments of supply chains and wider business operations:** This includes reviewing proposed and existing activities that underpin institutionalised forms of gender inequalities, such as the gender pay gap for women workers. Regarding land investments, women should be able to access land, water and other resources without discrimination.
- **Developing and implementing detailed gender-responsive policies and management and operational plans:** These plans and policies should address and mitigate the identified negative social and economic impacts of business activities on women and to be effective must be embedded into all relevant business functions.

⁶ https://docs.google.com/spreadsheets/u/1/d/e/2PACX-1vRQb2-aqnbX-f4EGmjZ_hdoc7YfCTNDR1P7j_qRHC_gepHnqnblxA-sddQvPzOLsOc-d4o56Ana7dUj/pubhtml?gid=375681534&single=true

⁷ Ibid.

⁸ Note 2

⁹ Susie Jacobs, Gender and Agrarian Reforms, pp. 13-25, (2010)

¹⁰ Malou Schueller and Rachel Noble, Why National Action Plans on Business and Human Rights must integrate and prioritise gender equality and women's human rights, (2015). https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/55be70bae4b0cdd71a69c29a/1438544058662/GADN+WEJ+Submission+to+UK+NAP+Review+on++Business+and+Human+Rights+31_07_15.pdf

¹¹ Note 2

- **Ensuring women’s participation in business activities:** Women’s participation must be ongoing, equal and meaningful throughout the proposal, planning and implementation stages of extractive and large-scale commercial agriculture activities. Particular attention should be given to the barriers which impede women’s effective engagement. Regarding land-related developments, for example, including **ensuring that women’s FPIC is obtained both before business activities begin and throughout their duration.**
- **Facilitating separate spaces for women:** including creating distinct spaces for women from marginalised groups, such as indigenous women, and providing access to information and independent technical advice.
- **Carrying out transparent reporting:** This would be undertaken through gender-disaggregated data and against gender-sensitive indicators.
- **Ensuring women receive adequate and equal compensation and/or other forms of restitution:** Including compensation to women as prior users of land acquired for business activities. Compensation should be based “on the real value of assets, land, crops, trees and important resources over their productive lifespan” and be included in State and corporate compensation policies.¹² Other forms of restitution may include providing women with legal land tenure.
- **Carrying out due diligence prior to the resettlement of communities:** Due diligence will ensure that displacement is unavoidable. If resettlement is unavoidable, it will ensure that gender considerations are crosscutting and explicit throughout the process, with women fully and meaningfully involved at all stages. Resettlement should allow women to continue their livelihoods, which are often centred in the domestic domain, and frequently overlooked. Resettlement should ensure women have access to sexual and reproductive health services and that specialist services to prevent and tackle domestic violence and other forms of violence against women.

The UNGPs highlight the importance of properly obtained consent. FPIC is a matter of international law, defined most clearly in the UN Declaration on the Rights of Indigenous People. It can be broadly defined as consent obtained without coercion, undue influence or any form of pressure from a third party, the State or other community members or leaders. **The consent is obtained through an inclusive process in which all members of the community, women included, are able to participate meaningfully.** The process of seeking consent must be unencumbered by timelines, deadlines, expectations or lack of transparency. FPIC is often used when dealing with indigenous populations, tribal groups, rural populations and/or any community in possession or ownership of the resources required for economic activity.¹³

In line with UNGP 17 and 21 the term ‘prior’ refers to consent sought in advance of any advancement, agreements or commencement of commercial activities. **This requires an understanding of how discrimination against women manifests in different contexts.** Any agreement reached with male - dominated community leadership prior to engagement with the whole community may result in women being coerced to agree with unfavourable proposals and must, therefore, be avoided. Where views are divergent between men and women, consent must be obtained in a manner not discriminatory to any group or overtly in favour of any group.¹⁴

‘Informed’ refers to the nature of engagement and type of information that should be provided prior to seeking consent. In relation to the ‘nature’ of engagement, the CEDAW Committee in General Recommendation 23 states that, “the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men’s failure to share the tasks associated with the organisation of the household and with the care and raising of children.”¹⁵ As a result, **specific efforts must be made to ensure FPIC is meaningful for women, including:**

¹² Note 10

¹³ Note 2

¹⁴ UN-REDD Programme (FAO, UNDP, UNEP), Guidelines on Free, Prior and Informed Consent, (2013). <https://www.unclearn.org/sites/default/files/inventory/un-redd05.pdf>

¹⁵ CEDAW Committee, General Recommendation No. 23: Political and Public Life, (1997) A/52/38, para 10.

- **Location:** In male-dominated communities, women may need to be engaged separately because they may be unable or unwilling to participate in meetings with men due to cultural or religious reasons.
- **Time:** Given that women are usually the caregivers and homemakers in most communities, any community meeting must take place with sufficient advance notice and must take into account times when women are free and able to meet with childcare available.
- **Access:** In accordance with UNGP 18, language and other potential barriers such as literacy and disability must be taken into account. Information should be provided in various format such as video, audio and braille when necessary, to ensure that it is accessible to all groups of women.

In order to respect women’s human rights, in addition for corporations to develop gender-responsive HRDD, corporations should;

- **formalise their commitment to human rights** as mandated by the UN Guiding Principles on Business and Human Rights through operational policies and practices with mechanisms for reporting, investigating and prosecuting all forms of violence against women and girls, offline and online.
- **complete an initial environmental and social impact assessment with a gender analysis** before an agreement is concluded with a Host State and/or lenders. As part of this, businesses should consider how their activities may result in forced evictions and displacements.
- **where land sale is proposed, ensure full and timely compensation is given before activities start**, recognising the new value of the land, making sure women are involved in every stage of decision making on land;
- **if displacement has taken place, ensure all those displaced through evictions to be resettled with access to appropriate livelihood options** in accordance with their new location and environment and be fully financially compensated using a fair, transparent and documented process of calculating compensation rates.
- **support women’s meaningful participation to obtain FPIC** throughout the proposal, planning and implementation stages of its impact assessment and operations.
- **integrate staff training in gender equality and human rights** issues into corporate structures.
- **engage women’s rights experts to assist in designing and implementing gender-responsive HRDD mechanisms.**
- when monitoring their operations, **develop, collect and analyse gender-sensitive human rights indicators**, and collect and analyse corresponding data to allow for gendered reporting and evaluation.
- **ensure there is no sexual harassment and put in place reporting and response mechanisms, including working with the justice system to bring perpetrators to account.** Suspension of operations must be established whenever there are credible reports of violence against women and their communities, until effective measures are in place to prevent further risk.
- **pay fair and adequate compensation and establish meaningful grievance mechanisms** rooted in a firm understanding of gender equality and human rights. Women must directly receive an equal share of the compensation available and the details must be recorded. Grievance mechanisms should be binding with provisions to receive external information and complaints. They should protect victims disclosing information and include an appeal option that ensures a fair hearing of the case.

The UNGPs third pillar includes access to judicial and State-based non-judicial remedies and access to company grievance mechanisms. Both States and corporations should prevent and remedy any infringement of human rights, which they cause or contribute to. **Gender analysis is necessary to ensure that women suffering rights violations because of corporate activity are able to achieve meaningful access to remedy.** There are numerous direct and indirect barriers, stemming from patriarchal social norms that hinder women’s access to remedies. These range from de jure discrimination against women and gaps in legislation, negative gender stereotypes in courts, women’s lack of awareness of their rights, lack of economic autonomy, a lack of legal literacy and (a lack of funds inhibiting) the ability to access legal aid. Gender discrimination that denigrates women’s voice and leadership combined with lack of time due to unpaid care responsibility hinder women from participating in remedial processes. Threat of violence

perpetrated by companies and state actors is a powerful deterrent to women's access to remedy. Such challenges are magnified for women belonging to marginalised groups – for example indigenous women often only speak their native language and live in remote areas.¹⁶

In order to protect women against human rights abuses by third parties States should¹⁷;

- **ratify and implement all existing regional and international human rights instruments**, in particular ICESCR and CEDAW. This includes removing reservations to these treaties and domesticating their provisions into national legislation. Host States should guarantee that women's right to defend their land is safeguarded in line with the UN Declaration on Human Rights Defenders.
- **implement the recommendations of the UN Special Rapporteur on violence against women, its causes and consequences** on online violence against women and girls.¹⁸
- **ensure their NAPs on business and human rights are gender-responsive**, and support existing efforts to create binding obligations focused on women's rights, on corporations at the domestic, regional and international levels.
- **adopt mandatory human rights due diligence legislation** and develop gender-responsive human rights-based guidelines for corporations on how to conduct their operations.
- **encourage and assist the UN, international financial institutions, global organisations and regional human rights bodies to adopt and incorporate gender-responsive HRDD into their institutional frameworks and current operations.**
- **enable survivors of corporate harms to bring claims against companies domiciled in their jurisdiction.** This would ensure companies are held responsible in cases where they have not conducted a proper risk assessment of their overseas operations, including the oversight of suppliers and subsidiaries.
- **develop independent accountability mechanisms to monitor foreign direct investment.** These bodies should have the authority to prevent the conclusion of investment agreements that lack explicit gender impact assessments. Host States should ensure that agreements made with corporations and/or investors include the creation and implementation of accessible, adequate, effective and tailor-made gender-responsive human rights based grievance mechanisms.
- **domesticate existing frameworks for corporate accountability on human rights into national legislation.** This includes legislation, regulations and voluntary mechanisms such as the Equator Principles, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.
- **provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women.** In doing so, States should assess the adequacy of existing legislation and address any gaps that prevent it from being applicable in cases of violations of women's rights. Adequate legal, technical and financial resources to ensure women's access to remedies should be provided (e.g. by creating women specific funds), and States should ensure that the existing mechanisms are effective by paying attention to cases that concern violations of women's rights. **Women's participation should be guaranteed at every stage of the reparation process.**
- **support the legally-binding instrument on transnational corporations and human rights** to hold transnational corporations accountable for human rights violations and the proposed ILO convention on gender-based violence in the world of work.
- **promote and enforce labour regulations**, including freedom of association (the right to be in trade unions) and collective bargaining and living wages.

¹⁶ Note 2

¹⁷ Note 1-4

¹⁸ Human Rights Council (2018) *38th session of the Human Rights Council, Statement by Ms. Dubravka Šimonović, Special Rapporteur on Violence against Women, its causes and consequences.*

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Documents/A_HRC_38_47_EN.docx

- **generate decent work for women** by investing in care and health services.
- **ensure that a just transition towards low carbon economies generates decent work for women** plus redistributing their burden of unpaid care and domestic work.
- **adopt progressive and gender-responsive tax regimes** at national and global level to redistribute wealth and curb inequality.
- **adopt universal systems of social protection** that do not discriminate against women based on their employment patterns.
- **adopt gender-responsive budgeting** to ensure adequate resources are invested to implement gender equality laws and plans by involving women's rights organisations and feminist economists in the process.
- **measure unpaid care and domestic work** and include it in national accounts and measurements of GDP.
- **commit to assess the impact proposed economic policies have on gender equality and human rights** and seek remedy in case of negative impacts.
- **review and improve funding mechanisms for women's movements.**
- **actively engage and consult women's rights organisations and movements** working on economic rights, including land rights, and violence against women and girls.

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