

## Working Group on Business and Human Rights

### Africa Gender Consultation on the Gender Lens to the UN Guiding Principles on Business and Human Rights

#### Summary of discussions

12 October 2018  
Golden Tulip Hotel, Nairobi

#### I. PROJECT BACKGROUND

Women<sup>1</sup> not only experience business-related human rights abuses in a different and disproportionate way, they also face multiple forms of discrimination and experience additional barriers in seeking access to effective remedies. In order to assist States and business enterprises in discharging their respective human rights duties and responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs), the UN Working Group on Business and Human Rights (Working Group) launched a new [thematic project](#) to pay greater attention to the gender lens to the UNGPs. This is in line with the Working Group mandate to “integrate a gender perspective throughout [its] work” ([A/HRC/Res/17/4](#)).

The Working Group is consulting all relevant stakeholders to achieve the project objectives, including to develop guidance about it means to protect, respect and remedy the rights of women in a business context in line with the UNGPs. As part of this process, several consultations will be organised in different parts of the world.

This regional consultation brought together more than 70 participants from 12 countries, mainly from the African region. It was convened by the Working Group in collaboration with

African Coalition for Corporate Accountability (ACCA), Center for Applied Legal Studies (CALs), Hivos, Kenya Human Rights Commission and the Office of the High Commissioner for Human Rights.

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<sup>1</sup> In this project, the term “women” is taken to include girls.



## II. Consultation Summary

### Session I: Unpacking the impact of business operation on women in different sectors and settings

#### a) The situation of women migrant workers

Women migrant workers face challenging situation in the region. For example, cases of torture and killings of Kenyan domestic workers have been reported in UAE. The participants suggest that government should strengthen their bilateral agreements to ensure the protection of women workers and harmonize regional security agreements on the exploitation of girls and women. Another suggestion is to provide free legal assistance to migrant workers. Assistance should also be provided by their diplomatic missions. In addition, employment agencies and recruitment bureaus should be properly registered and the ones which are not compliant should be banned.

#### b) Occupational safety and health

It has been observed that the exposure of women workers to harmful chemical has an adverse impact on their health and sexual reproductive rights (miscarriages, for example). It is suggested that studies should be conducted on the effects of these chemicals on women, and that measures be adopted, such as the prohibition of exposure to these chemicals for women workers.

#### c) Equal economic opportunity for men and women

In Africa, discrimination against women has hindered their access to leadership in corporations and governments. However, good practices have been highlighted to address this lack of equal economic opportunities, such as :

- Using inclusive gender language, e.g. stating that women are encouraged to apply for positions; or stating categorically that all candidates will be given equal opportunities irrespective of gender.
- Creating specific funds/legal provision to increase economic opportunities for women, e.g. in Kenya the Uwezo fund, the fund for the youth, and women development fund, regulation on procurement law that women and youth and persons with disabilities are given 30% of public procurement.

#### d) Sexual harassment and violence

Sexual harassment and violence in the business-related contexts is rampant in the region. There is a perception that sexual favors are mandatory for upward mobility in the workplace. In order to address this, in some companies, anti-sexual harassment policies have been adopted and reporting mechanisms have been created. These practices should be encouraged, however additional measures should be taken:

- a) Creating reporting mechanisms that are independent from managers and are composed by women. Training on human rights should also be provided to them
- b) Creating multiple channels of reporting
- c) Legally forcing companies to adopt anti-sexual harassment policies
- d) Sensitizing workers, including women workers, on sexual harassment (there is no clear understanding of sexual harassment including in legal definition) and the importance of eradicating it and of denouncing cases of sexual harassment.
- e) Partnering with likeminded key industry players and creating gender platform with other stakeholders
- f) Using opportunities to build capacity of the African employees on their human rights
- g) Prosecuting the reported cases
- h) Inserting gender issues into collective bargaining agreements of trade unions.

Another good practice to ensure gender mainstreaming in the private in Zambia has been to assign this responsibility to the NHRI.

In Zimbabwe, women are also impacted in the mining artisanal sector (semi-precious stones) because artisanal mining is illegal and results to sexual extortion. CSO is working towards legalizing the market in order to allow women to be part of economic discussions.

#### **e) Freedom of Association and Collective Bargaining**

In the region, there are various barriers that prevent women from forming associations to collectively agitate for their right. One of them is the limited access to educational opportunities. As a result, trade unions are predominantly male. Collective bargaining associations do not involve the voice of women at the operational level; this can be identified as a cause of the lack in inclusivity of women's rights and interests. Moreover, trade unions are not linked to human rights organizations and are only in close proximity to their tripartite partners, and do not therefore have the language to advocate for women's rights.

#### **f) Domestic workers**

The situation of domestic workers, who are predominantly women, are particularly problematic in the region. Some legislations provide for a distinctly lower minimum wage for domestic workers, that has negatively affected them. Collective bargains rarely address the situation of domestic workers. Therefore, specific laws on domestic workers need to be enacted, including on maternity protection (most of the time, women have to take unpaid leave). However, enforcing domestic workers laws in closed door is challenging. An alternative would be to train domestic workers on their rights, including those enshrined in the ILO convention N°189 on domestic workers.

### **g) Unequal burden of childcare**

Childcare is predominantly borne by women and is greatly undervalued, with little or no compensation. Definition of maternity protection within the company context is not clear. For example, women in flower farms do not have access to maternity protection, and companies subvert legal requirements that entitle women to annual leave.

### **Session 2. Integrating a gender perspective in HRRDD and impact assessment**

The participants highlighted that reference to women rights and gender by companies in the context of environmental and social impact assessment are only included when it comes to sexual harassment, but there is not specific analysis of specific gendered impacts and nor use of disaggregated data for reporting. There is also a need to advocate to businesses for the integration of a gender perspective in the human rights due diligences processes, with some studied cases and good practices to show that this fosters economic performance. The governments should make the requirement to include human rights in impact assessments and make HRDD an obligation for business, including for non-financial reporting to government.

Some suggestions were outlined by the participants:

- ✓ Ensuring meaningful participation of women in due diligence dialogues
- ✓ Creating gender mechanisms in workplaces
- ✓ Raising awareness of community's on women's rights and potential impacts of economic investments. This work should be undertaken by governments, CSOs and the companies. Moreover, civil society should earmark areas with potential investment so that they could be preventive, and raise awareness of these areas within the communities.
- ✓ Including human rights in environmental impact
- ✓ Supporting women networks and women organizations
- ✓ Training women and men in workplaces and in communities. Men are the gatekeepers of women's rights in the corporations. The burden of breaking the glass ceiling should no longer be borne solely by women. Men should be engaged to be champions for inclusion of women;
- ✓ Sharing best practices
- ✓ Global compact should play a key role to play in this field

### **Session 3: Women's experiences of accessing remedies: judicial, non-judicial and operational-level**

The participants explain that it is challenging to access remedy, including international and regional remedies, in the context of business and human rights. Access to justice is impeded due to factors such as: the lack of political will to file these petitions, limited access to courts and other grievances mechanisms, the length of judicial processes, poor administration of justice, lack of enforcement of judicial rulings, and finally some communities prefer to use traditional means. Women may also be reluctant to report on these issues, as they fear the

implications that come with doing so e.g. Social obstacualization, cost implications, impediments to upward mobility in the work place, threats to job security, and intimidation by powerful interested parties.

A solution may be to work with professional HR organizations and raise awareness regarding women's rights and channels for reporting. In addition, empowering governments, teachers, local leaders, schools, community to dichotomy formal judicial mechanism and or alternative judicial systems.

#### Session 4: Integrating a gender perspective in National Action Plans in Africa

The participants recognize the key role played by the Danish institute for Human Rights and ICAR to push forward the development of NAPs in Africa. It is highlighted the need for multi-stakeholders platforms to elaborate/follow up on the NAPs.

Some specific mention/issues should be included in these NAPs

- Focus on the existing pillars of the guiding principle.
- Specific mention of human rights due diligence, disaggregated data and gender
- Mandatory financial reporting and non-financial reporting
- Strengthening oversight mechanisms
- Allocating adequate resources
- Policy measures to improve access to remedy, such as strengthening judiciary and mechanisms for enforcing judgments

#### Session 5: Participation of women: meaningful participation consultation and economic participation: (Role of NHRIs and civil society in empowering women and women human rights defenders

##### A. Challenges:

- Disconnection between the 'boardrooms of the monitoring and evaluation' and the situation on the ground.
- Women do not know their rights and do not put forward complaint for fear of losing their jobs
- Women are poorly represented in mid/senior management
- Trade Unions are not inclusive of women's rights and interest.
- Gaps between policies in paper and in practice
- Human rights defenders are unable to adequately carry out their advocacy work due to the threat of gender based violence
- Limited access of women to resources and to justice

##### B. possible solutions:

- Trade unions should include aspects of gender in their collective bargaining initiatives
- Partnerships should be fostered between CSO and Trade Unions to push for the inclusion of women's interests in these associations
- Documentation, compilation and dissemination of good practices

- Protection of human rights advocates
- Human rights training
- Strengthening right to information, including through linking research and advocacy
- Adopting gender sensitive laws
- Adopting innovative measure of communication with communities and businesses. Dialogue on gender has to be in a language and use concepts that people are familiar with
- Reasonable consultation with the correct stakeholders, including through safe spaces

## Session 6: Impact of conflicts on women and their rights and ways to address them

*A.1. Challenges:* In conflict zone, sexual and gender based violence (SGBV) is pervasive

*A.2. potential solutions:* Create law on SGBV and raise awareness and capacity building

*A.3. Best practices:* Create care centers where victims can get psychological support, file a complaint, get medical support and socio-economic support. Create protection cluster on SGBV, to collect information from all stakeholders working on this issue about victims and risks areas.

*B.1: Challenges:* Internal displacement and migration

*B.2. potential solution:* improved coordinating between actors who are involved with supporting women migrants and refugees.

## Session 7: gendered analysis of tax evasion/avoidance, climate change and privatization of public services

### *A. tax evasion/avoidance*

There are three drivers of illicit financial flows: (i) corruption forms 5% of illicit financial flows; (ii) illegal activities (such as trafficking etc) contribute 30%; (iii) company social activities contribute to 65% of illicit financial flows.

For many women the issue of tax is considered very complex, and as a result, women fail to be at the table when tax matters are discussed. During high-level discussions, no gender analysis is provided and as such, tax matters discussed at that level are gender blind. There is a huge gap in information shared with the public and more with women on tax, tax evasion and tax avoidance.

### ***Challenges :***

- In Kenya, the majority of women doing business do small-scale business. Research has shown that these small-scale businesses pay more tax than some of the big companies. The Government only gives incentives and tax holidays to big companies

while the small-scale businesses have to pay all taxes, or are subjected to harassment. Companies when faced with legal cases quickly change their names to avoid tax or legal cases.

***Proposed solutions:***

- Gendered analysis to be undertaken in tax matters
- Policies and laws to be reviewed to ensure nondiscrimination in taxation.
- Review laws to provide tax holidays for startup companies and to prevent change of names to avoid tax and liabilities.
- Publicly register companies
- Dialogue between Countries to oversee implementation of recommendation on trade agreements.
- Raise awareness on the issue of corruption and tax evasion/avoidance through programs such as ‘stop the bleeding’

***B. climate change***

Climate change affects women due to the nature of women’s role. Therefore, distinct treatment in the context climate change/conservation of the environment should be provided for women. Public policies for environment conservation affect more women than men, since women are more likely own small businesses, while big business manage to avoid being imposed such restrictive measures. In Rwanda for example, in the ban on plastic bags, the small-scale trader/women uses polythene to package her goods. However, the big companies have managed to negotiate with the Government to be allowed to continue using plastic bottles and polythene bags to package their foods.

Forced evictions as a result of measures for environmental conservation also affect women in a disproportionate manner. Discrimination against indigenous women is aggravated when taking these conservation measures, since the governments ignore their indigenous methods of conservation.

***Proposed solutions:***

- Invest in renewable energy
- Invest in seed banks
- Invest in early warning

***C. Privatization of public services***

Women are disadvantaged when services that should be offered by the government are privatized. For example, when health services are privatized, women have to raise more funds for their families’ wellbeing. Being primary care givers, they interact more with health care institutions and as such are adversely affected.

The government has allowed education to be privatized, which has increased the cost of primary education and affected girls in a disproportionate manner.

Privatization of transport has also disproportionate impacts on women. Privatizing both rail and road transport result in the rising cost of transport. Further cases of sexual harassment have been reported in the cases where the Chinese have taken over running the rail transport system.

**Proposed solutions:** Government should not privatize essential services such as education and health.

#### ANNEX – agenda

07:30 - 8: 00	Registration
8:00 - 08:40	Welcome - Introduction to the UN Guiding Principles on Business and Human Rights, and the UN Working Group's gender project
8:40 - 10:00	Unpacking the impact of business operations on women in different sectors and settings: <ul style="list-style-type: none"> <li>○ Sexual harassment and violence</li> <li>○ Gender pay gap</li> <li>○ Women workers in supply chains, women in informal sector, women migrant workers, and domestic workers</li> <li>○ Freedom of association and collective bargaining</li> <li>○ Structural discriminations and societal barriers faced by women in Africa: the intersectional dimension of discrimination and women access to land and credits</li> </ul>
<b>Tea Break</b>	
10:15 - 11:15	Integrating a gender perspective in human rights due diligence and impact assessment
11:15 - 12.30	Women's experiences of accessing remedies: judicial, non-judicial and operational-level
<b>Lunch Break</b>	
13.30 - 14.30	Integrating a gender perspective in National Action Plans in Africa



14.30 - 16:00	Participation of women: meaningful participation consultation and economic participation  (Role of NHRIs and civil society in empowering women and women human rights defenders	Impact of conflicts on women and their rights and ways to address them	gendered analysis of tax evasion/avoidance , climate change and privatisation of public services
	Moderated by Flavianna Charles and Sheena Shwemmer  Notes by Frida Chuwa	-Florence kaswera, Centres de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO )  -Ms. Abigail Matsvai Zimbabwe Women Lawyers Association (Executive Director)	Crystal Simeoni, FEMNET  and  Maria Matui, women action towards economic development.  Note taker: Jaimee Kokonya
<b>Tea Break</b>			
16:15– 17:30	Sharing of recommendations from groups and next steps		
17:00	Closing		