



Working Group on Business and Human Rights

Asia regional Consultation on the Gender Lens to the UN Guiding Principles on Business and Human Rights

Summary of discussions

20-21 February 2018
Asoka University, Sonipat, India

I. PROJECT BACKGROUND

Women¹ 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 first regional consultation brought together more than 150 participants from 32 countries, mainly in the Asian region. It was convened by the Working Group and hosted by Ashoka University’s Genpact Centre for Women’s Leadership (GCWL) in collaboration with the United Nations Development Programme (UNDP) Asia-Pacific and UN Women.

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

I. CONSULTATION SUMMARY

A) Introduction

Business-related discrimination against women in Asia is directly related to the deeply entrenched patriarchal system that has led to gender power dynamics and discriminatory structure of the society. Gender is stereotyped and women are objectified. This has an impact at the business level. Businesses do not operate in isolation of the societal structures and practices; in fact gender norms continue to define experiences of women at workplace.

There is a tendency to place issues related to gender/women and rights in an isolated box that needs to be ticked off, whether this in businesses or states. Women will continue to be quantifiable items until they become a part of the architecture and defining principles of public policy. The conversations have to move from numbers and quotas to equality and dignity of women, the core principles of human rights.

Combatting discrimination at the business level encompasses first a change of attitude, which can be triggered by education and creating awareness regarding women's rights. Speakers/participants felt a strong need for creating awareness about their rights among women, as well as their employers. Capacity building workshops at a young age and the creation of women networks were found to be crucial to creating awareness among women about their rights. Secondly, the businesses require greater knowledge on legislation already addressing discrimination against women and bolstering gender equality would increase their implementation.

Unpaid household and childcare work is also poorly recognized in Asia. Therefore, greater expenditure on social infrastructure would also help women empowerment as the burden of childcare chores are better distributed.

Participants also noted that sometimes companies have to deal with some legislations and public policies that are discriminatory against women. In this situation, a balance should be struck to avoid illegality and uphold their responsibility to respect human rights.

Salient gendered human rights issues in relation to business

- = Discrimination against women in the work place and sexual harassment: During the consultation, concerns were raised regarding the working conditions of women in Asia and the rights abuses and violations they suffer in the work place, including sexual harassment. Participants highlighted the differences in the kinds and roles of work women are employed in, and associated human rights abuses and violations. While women in formal sector are discriminated against at various stages including at recruitment, promotions, maternity etc, and suffered sexual harassment; those in informal sector were quoted as most vulnerable workforce. Across Asia, majority (90%) of women are employed in informal workforces, often in precarious conditions, at the bottom of supply chains where most legal safeguards and protections are neither

respected nor granted. The working conditions are even more worrisome in special economic zones, where labour laws are often relaxed.

The fast progress of new technologies and the use of Artificial Intelligence will directly impact the workforce. Recent studies highlighted the substantive impact that automation will have on women in low-skilled jobs.

In order to tackle this lack of women's rights observance in the work place, attention should be paid to increase women's overall participation in the workforce, but more specifically to increase women's representation in leadership roles. The participants emphasized importance of women supervisors in creating an enabling environment for women to continue working. Participants also recommended building capacity among every staff- level of the companies. First, the awareness of the senior staff on gender equality, discrimination against women and sexual harassment is key to ensure the buy –in of top managers. It is also critical to increase knowledge on these issues for mid and low-level staff where most of women's rights abuses occur. Building capacity among men would help to strive forward a change in male attitude. The accountability of the global supply chain would also help to address this situation, such as in exporting companies in main exporting countries.

Sexual harassment at workplace is reported to be rampant, irrespective of the position, role or sector women are employed in. Cases were quoted from workers being exploited by their supervisors to senior women leaders in corporates. While companies have taken note of this, the practice continues to be reported in many ways. In order to avoid sexual harassment and other related impacts on women, companies should assess the risks for women, both at the workplace and outside work when they go to and from their workplace, analysing public safety and infrastructures. For example, working late or not providing transportation to workers can generate some additional risks for women who have to walk long distances in the dark. In addition, gender sensitization and awareness workshops for employees could go a long way in making workplaces safe and secure for women.

A change of narrative is also needed, to perceive women, not as a victim, but as agents and an economic driven force. The empowerment of women should be “sold” as economically sustainable, as women are the driving force in the control and provision of water, fossil energy and everyday food/living supplies, amongst many other key responsibilities. This could enhance companies' perception of the necessity of women in meeting their economic needs and reinforce the importance of having women in their workforce to understand these economic needs.

The importance of union and collective bargaining is key to empower women and combat discrimination in the work place. Women workers organizations have also proven to be a positive tool since they can promote women workers' rights within the company and supply chains, as well as advocating for female leadership within the companies. Participants noted a preponderance of men in trade unions and associations; and therefore a lack of women's perspectives. Women participation at Unions is also impacted by their safety related to public transportation – is often that many Union meetings happen outside working hours, which discourages women to attend. ILO illustrated the need not just to give women seats at the table, but also to build their

capacity to have a voice and the confidence to speak at this table. In addition, participants felt the need to organize workers from different walks, including domestic workers and migrants. However, some companies expressed the difficulty of promoting unions and collective bargaining.

- = Women and land rights: In Asia, men own majority of the land. Consequently in terms of access to work, livelihood, compensation and resettlement, women are constrained. It is therefore pertinent to assess the gendered impacts of such projects during social and environmental impact assessments, and to agree upon the ways to address them. Environmental Impact Assessments should be performed while implementing the gender lens to consider how women could potentially be harmed by a business project. Panelists highlighted the involvement of women in various movements, particularly related to land rights. However, they cautioned that women are often politicised and placed at the front of movements to gain strategic advantages, and while the impact of having women at the forefront has been huge, it also exposes them to danger and exploitation. Considering women's association with land and natural resources, impacts must be assessed to ensure women do not become the victims of development. Therefore, government should adopt measures to make sure that lands are also registered in the names of the women. Additionally, recommendations were made to ensure meaningful engagement of women in consultation processes right from the beginning until the agreements are finalized, in order to ensure they do not suffer due to prevalent gender norms or government regulations. Panelists suggested conducting women-only group consultations to gain their perspective.

- Women human Rights defenders: Cases of attacks, intimidations, threats, killings, arbitrary detention against women defenders, including women farmers and indigenous women leaders, in Cambodia, Myanmar and Philippines were taken as examples regarding the growing situation of risks women human rights defenders are exposed to due to their work protecting women's rights to access lands, livelihood and to live in a healthy environment. Participants mentioned the associated sexual harassment, stigma and gender stereotypes that impact women human rights defenders, very differently to their male counterparts. States must put in provisions to ensure the safety and security of women human rights defenders, and businesses must ensure continuous human rights due diligence to assess its impact on WHRDs. The use of military by businesses should be avoided since this practice aggravates the security situation of women human rights defenders and women living in the surroundings of the companies, since military is perceived as protecting the companies over the civilians and some abuses have been reported. Participants also brought attention to state-business nexus, particularly in the context of land acquisition, where security forces tend to be on businesses' side.

2) Duty to protect against gendered impacts by business activities

The participants highlighted that in the region, some progressive legislations and public policies have been adopted to fight for gender equality and combat sexual harassment at the workplace. However, respective implementation is lagging. Participants stressed the need to

put in systems to implement policies, and to monitor and evaluate on an ongoing basis to ensure legislations and policies are implemented.

The lack of opportunities for women businesses in public procurements was also highlighted as being problematic in Asia.

National Actions Plans on Business and Human Rights

Most of the existing national actions plans on business and human rights (NAP) around the world have made a mention of gender equality. Some others also tackle issues faced by LGBTI and migrants. However, the gender reference in the NAP should be reinforced, for example, when it comes to access to justice and remedy and the engagement with women and the impact on women in the human rights impacts assessments. Policy coherence is crucial to balance a mainstreamed approach to issues related to women's empowerment.

The recommendations of UN Special Procedure and treaty bodies shall also be consulted and taken into account for the development of NAP. The reference to responsible ministries for the activities enclosed in the NAP, as well as the allocation of adequate budget are key to secure the effective implementation of the NAP.

The National Human Rights Institutions (NHRI) play an important role in the development of a NAP and the adequate incorporation of human rights and the gender lens. For example, in Malaysia, the advocacy of the NHRI (SUHAKAM) with the Government has supported the decision of the government to launch a NAP in the coming years. To ensure that a gender lens would be integrated in this NAP, SUHAKAM is ensuring a mainstreamed approach and is committed to push for the adoption of elements of non-discrimination at the outset of the development of this tool. SUHAKAM will also ensure the representation of women groups in the steering technical committee of the NAP and include a gender perspective into the baseline study and into due diligence processes and in reporting request, as well as advocate that in the NAP there is a specific mention of a channel for women's grievances.

Investment agreements

The incorporation of a gender dimension in investments agreements should be secured, including the adoption of various management policies such as wage equality, safety measures and capacity building. These agreements should enclose policies that promote women entrepreneurs and provide access to credits for women. States should also promote investments that address women rights and promote industries that employ women.

Privatisation of services

Privatisation has had disproportionate impacts on women; the participants noted that some rights should not be privatized as it affects the universality, adequacy and quality of basic services.

3) Responsibility for business to respect human rights: Gender Perspective in Human Rights due diligence

Integrating a gender assessment into human rights impact assessments is another means that should be promoted to foster the protection of women in business-related contexts. Conflict

sensitivity and impacts of conflicts on women should also be taken into account when assessing women's needs and impacts on their rights.

Some businesses shared their experience during the consultation on how to integrate a gender perspective in their human rights policies and human rights due diligence processes. The US-based apparel company, Esprit, has developed some actions to address sexual harassment at the workplace and to support women empowerment throughout their companies and supply chains: adoption of internal policies on women empowerment; establishment of committees against sexual violence throughout the supply chain and the assessment of the efficacy of these measures. The company has also worked to increase women representation at every level of the workplace. In order to assess the current situation and identify the gaps, [Esprit surveyed supplier factories](#) in Bangladesh and India to analyze the gender distribution of the workforce by recording the percentages of women employed at various levels of the factories. In Bangladesh, women workers account for 44% of the all employees but only 6% of managerial and supervisory employees. In India, women account for 31% of all employees and account for 8% of managerial and supervisory employees.

Bangladesh-based DBL group, which has integrated textile and apparel manufacturing facilities, has also set some policies to foster women empowerment in the companies since the majority of the workers are women. Through the provision of education, the company is working to create female leadership among the company. It has been mentioned by DBL how empowering women has increased the efficiency and productivity in the factories.

The experience of the oil company, BP, was also highlighted. The company has installed the Tanguh Independent Advisory Panel to assess the impact of its Indonesia project on human rights. Thanks to a deep engagement at the local level with many actors, especially women, BP has been able to deliver sound human rights assessment with a gender perspective and consequently build effective resettlement programme for affected populations, including women.

In turn, some compensation programmes developed by mining companies in India have not assessed the specific impacts of their activities on women, as companies did not engage with women to get their consents and views. As a result, the programmes run by the companies to redress the adverse impacts on local population, including women, have not met women's needs. For example, in order to address the contamination of drinking water caused by companies, extractive companies installed an alternative supply of drinking water, but the supply was too long a distance for women to travel to.

In order to avoid setting additional barriers for women to access justice, companies need to be conflict sensitive and pay attention to the impact of conflicts on women. This includes, for example, not hiring security guards who used to form part of the security forces and may have been involved in previous attacks against the local population and women.

The study case of the dam development in the Mekong River Basin and other transboundary rivers between Thailand, Laos and Myanmar has evidenced that the lack of human rights assessment with a specific focus on gender in the development of these energy projects has created conflicts and hampered economic sustainability of the project. These dams have adverse impacts on fish migration, local cultivation and connectivity between rivers. These impacts affect women in different ways, in terms of food security, livelihood and housing. However, these impacts were not assessed during the decision making process as women were

not included in consultation spaces and no specific data on women were collected. In this context, affected women in the community created solid networks to access remedies and challenged these projects. They filed complaints before the Thai NHRI, the courts, the Austrian and Finnish NCP, and the UN Special Procedures. Some positive outcomes came out, such as the NHRI investigating the case and based on extraterritorial obligations of Thailand, requiring the observance of the UNGP in this context. Through OECD NCP, a mediation was set up with the Finnish and Austrian companies, which resulted in the adoption and implementation of human rights policies.

4) Access to remedy for women

Access to remedy for business-related women's rights abuses has been hampered for different reasons, and by the obstacles women have faced in seeking justice.

First, harassment and violence are normalized at the societal and labour level, thus sometimes women do not even know that they suffer harassment.

Second, there is a lack of knowledge by women about their rights and the mechanisms that allow them to access justice. Therefore, investing in programmes to raise awareness and providing legal aid would be critical moves to facilitate access to justice for women. Strengthening /institutionalizing CSOs could also ensure that women know about their rights and grievance mechanisms.

Third, women have suffered discrimination and stigmatization when filing complaints. When women file complaints through mechanisms at the operational level or in courts, they are stereotyped and accused of being responsible for the harassment ; they are also exposed to reprisals when they submit complaints.

Informal women workers have a very poor access to justice since they are not recognized as workers within the company. Women migrant workers also face additional barriers, as they are often more exposed to sexual harassment and are at risk of their passports being taken away – something which is often the case for domestic workers in the region, especially from given “sending” countries, such as the Philippines and Myanmar. Formalization of women workers and women migrant workers and their unionization play an important role in addressing this specific issue of protection of migrant workers and their access to effective remedies. Migrant workers should be able to file complaints before receiving countries. The issue of stateless women workers should also be properly tackled by the states to ensure they can access remedies.

A) State based judicial mechanisms

In Bangladesh, the Supreme Court issued guidelines to prevent sexual harassment at the workplace and in public places, however, despite the good nature of this initiative, these guidelines have not been implemented well and few cases have been filed for sexual harassment. Participants highlighted that building capacity among judges, the attorney general staff and investigators is critical to ensure access to effective remedies for women. Free legal aid should also be promoted. Participants expressed the need to reverse the burden of proof, to avoid the plaintiffs need to prove how their human rights have been violated in business-related contexts.

B) State –Based non-judicial grievance mechanisms

NHRI: It is crucial that the NHRI comply with Paris Convention principles to make sure it is equipped with complaints and mediation jurisdictions. A network between NHRI and [Southeast Asia National Human Rights Institution Forum \(SEANF\)](#) at the regional level where affected people could bring their grievances is positive initiative. NHRIs are in constant communication and collaborate on specific business-related human rights cases, for example those of migrants, indigenous peoples, and the impacts of palm oil.

The importance of collaboration between CSOs and NHRI was outlined as being crucial to sharing information from remote areas, affected communities and local populations. In Thailand, the NHRI has created a mediation centre to receive complaints on corporate human rights abuses. This practice has been positive.

- National Contact Points (NCPs): When OECD home countries-based company is involved, the NCP mechanism have shown some positive results. However, since the mediation process creates voluntary commitments for the parties, they are not always implemented and sometimes the measures for remediation ordered in this process do not have a gender perspective. The use of the gender lens while using the OECD Multinational Enterprises Guidelines is always appropriate.

c) Grievances mechanisms at the operational level:

In 2013, India adopted the Sexual Harassment of Women at Workplace Act, 2013 which penalizes sexual harassment against women in the workplace. The law provides for the different ways in which someone can be sexually harassed and how they can complain against this kind of behaviour. As a result, women workers committees have been created within numerous companies in India and have had positive impacts on access to remedy for women. However, these measures need to be combined with capacity building of workers on internal complaint mechanisms/policies against sexual harassment, tutorials on how to file complaints, and training for the committees' members and the management.

The clothing company, C&A, explained that women workers avoid complaining due to the impacts on their professional and personal lives. Therefore, there is a need to create an enabling environment where filing complaints is possible without any negative consequences on the victims. Moreover, if the complaint is submitted and the “worker” is held responsible, in 60/70% of the cases, the workers leave the companies. This has shown that filing complaints at the operational levels can have a negative impact on the productivity of the company.

Measures for prevention and creating a conducive environment for filing complaints should also be prioritized, such as the installation of supports mechanisms to avoid any reprisals against women victims. There is a need to make the companies accountable for sexual harassment occurring in its supply chain and to assess how this situation is addressed .

d) International grievances mechanisms

- World Bank CAO has had a positive [investigation](#) of IFC- funded tea plantations in Assam, India. The investigation incorporated a gender dimension and disclosed that in

these plantations, there were no specific toilet facilities for women; low wages; a lack of pesticide safety equipment for workers; and inadequate housing. However, despite this good investigation and findings, the commitments of the company to tackle the CAO recommendations have not been implemented, along with the World Bank, which has reportedly done little to fulfil its commitment.

- ILO has also demonstrated to be an effective complaint procedure on State hiring practices.

10:00 – 10:15	Welcome address <i>Pratap Bhanu Mehta, rector of Ashoka University</i> Gautam Bhattacharyya, Deputy Head of Mission
10:15 - 10:30	Introduction to the gender project and Asia consultation <i>Professor Surya Deva</i>
10:30 – 12:00	Opening Plenary : The Gender lens to Business and Human Rights: Experiences of women across sectors, settings and regions <ul style="list-style-type: none"> ➤ <i>Harpreet Kaur, Director of Genpact of the Ashoka University (Moderator)</i> ➤ <i>Nazma Akterm, Awaz foundation</i> ➤ <i>Latitha Kumaramanglam, former Chairperson of the National Commission for Women, India</i> ➤ <i>Debbie stothard, the Alternative ASEAN Network on Burma (ALTSEAN-Burma)</i> ➤ <i>Bhavana Samel, Vice President of Total in India.</i>
12:00 – 13:00	Session 1: Intersectionality of discrimination against women: Role of States, business and civil society <ul style="list-style-type: none"> ➤ <i>Salil Tripathi, Senior Advisor, Global Issues, IHRB</i>
14:00 – 15:30	Session 2: Corporate responsibility to respect women’s human rights: integrating gender perspective in human rights due diligence <ul style="list-style-type: none"> ➤ <i>The moderator, Anisha Rajapakse, strategy adviser, social sustainability, global strategic corporate sustainability pvt;</i> ➤ <i>Ashok Yadav, social and environment sustainability management, Esprit;</i> ➤ <i>Anna Lee Tuvera, ITUC</i> ➤ <i>Mohamed Zahidullah, DBL Group</i>
16:00 – 17:30	Session 3: From discrimination and exclusion to empowerment and inclusion: Integrating a gender perspective in National Action Plans and the role of states <ul style="list-style-type: none"> ➤ <i>Livio Sarandrea, UNDP</i> ➤ <i>Subhalakshmi Nandi, UN women</i> ➤ <i>Xxx, National Human Rights Institution, Malyasia</i>
Day 2: 21st February, 2018	
10:00- 13:00	Women’s Experiences in accessing remedies and defending rights
14:00- 15:30	Parallel session <ul style="list-style-type: none"> -gender lens to international investment and finance sector -Tipping the scale against sexual harassment: how businesses can respond to Me too Movement -Creating visibility and an enabling environment for rights of women workers in global supply chains -Courage under fire: defending rights against the biggest odds

16:00	Closing Plenary : Embedding Gender in Business and Human Rights in Asia: The Way Forward
–	
17:30	