



UNITED NATIONS HUMAN RIGHTS COUNCIL
Working Group on Business and Human Rights
Report on the Gender Lens to the UN Guiding Principles on
Business and Human Rights

THE INTERNATIONAL WOMEN'S INITIATIVE'S RESPONSE
TO OPEN CALL FOR SUBMISSIONS

SUBMITTED OCTOBER 2018



The International Women's Initiative (IWI) is grateful for the opportunity to provide input to the United Nations Working Group Report on the Gender Lens to the U.N. Guiding Principles on Business and Human Rights. The IWI serves to raise awareness of the threats to the human rights of women across the globe and to promote and assist in the achievement of gender equality. Toward that end, we provide research on and analysis of issues affecting women's human rights, which includes our online journal, *Global Legal Review*, our special reports focused on human rights issues unique to women, as well as our Safe Birthing Programme, which provides vital reproductive health services to women in Uganda and Somalia. This work informs our input to the Working Group Report.

Women's rights are the fundamental human rights enshrined in the Universal Declaration of Human Rights nearly 70 years ago.[1] These rights include the right to live free from violence, slavery, and discrimination; to be educated; to own property; to vote; and to earn a fair and equal wage. The majority of women and girls globally, however, do not have full realisation of these rights. Human rights abuses against women and girls often stem from deep-seated cultural beliefs that relegate them to inferior status, with huge implications in terms of employment opportunities, protection from coercion and violence, legal status, and participation in public life. In the context of business operations in particular, states are failing in their responsibility to protect women's human rights, whether because of lack of capacity, dependence on the company as an investor or outright corruption.[2]

The U.N. Guiding Principles on Business and Human Rights are a positive development in that they clarify that businesses have the responsibility to address the adverse impacts on human rights that occur through their own activities or as a result of their business relationships with other parties, including in their supply chains. They also have a major weakness, however, in that they do not create enforceable international legal obligations for business enterprises. They are not accompanied by a grievance or complaints mechanism that victims of business-related human rights abuses can access for remedy. Furthermore, the Guiding Principles are weak with regard to developing duties for individual states to regulate the human rights impacts of business enterprises beyond national borders (i.e. extraterritorial obligations), even though this principle is internationally recognised in other areas, such as sex trafficking.[3] Finally, the Guiding Principles do not include an explicit reference to the full body of human rights laws and standards that is relevant to the assessment of the corporate responsibility to respect human rights.[4]

In addition to these general observations, we write to address the following questions posed by the Working Group:

- Which state laws, policies and social, cultural and religious norms continue to impede women's integration into economic activities and public life?
- How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive?

These are of particular interest to IWI because our advocacy work examines how systemic barriers prevent women from achieving equality and gender justice. We are also sensitive to the tension between the need to recognise human rights abuses that are often specific to women--without encouraging paternalistic, protective responses that perpetuate beliefs that women's rights are secondary to or different from universal human rights.[5]

[1] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

[2] Emeka Duruigbo, "Corporate accountability and liability for international human rights abuses: Recent changes and recurring challenges", *Northwestern University Journal of International Human Rights*, vol. 6 (2007) p. 222.

[3] Sheila Jeffreys, "Globalizing sexual exploitation: Sex tourism and the traffic in women", *Leisure Studies* vol. 18 no. 3 (1999) p. 179, 196.

[4] Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics, Morals: Text and Materials* 3rd ed. (New York, New York, Oxford University Press 2007).

[5] Emmanuel Nartey, "The misconception of women's rights and the failed international legal system", *Global Legal Review* (Sept. 12, 2018), available at: <https://globallegalreview.org/2018/09/the-misconception-of-womens-rights/>.

STATE LAW, POLICIES AND NORMS THAT IMPEDE WOMEN'S INTEGRATION

We seek to call attention to the following barriers that significantly affect a woman's ability to integrate into economic activities and public life: the lack of access to reproductive health resources, intimate partner violence, and the prevalence of women in informal work sectors.

Reproductive Health Services

Lack of access to reproductive health resources is one of the many barriers that hinder a woman's ability to fully participate in employment. Research has demonstrated that improvements in reproductive health lead to improvements in women's economic empowerment.[6] Specifically, longer intervals between giving birth and having fewer children increase labour market participation, while higher maternal age at first birth increases the likelihood of education completion, as well as participation in the formal labour market.[7]

Despite the positive outcomes that access to reproductive health services has for women and their families, it is estimated that more than 225 million women worldwide have an unmet need for family planning.[8] More than 48 percent of women between the ages of 15 and 49 who are married or in a civil partnership do not make their own decisions about the use of contraceptives and health services.[9] Approximately 25 percent of the world's population lives where laws restrict or prohibit a woman's access to contraceptives, family planning and abortion.[10] Unsafe abortions are most prevalent in countries with the most restrictive laws, and over 95 percent of these are developing countries.[11] The work of IWI has highlighted the need for access to reproductive health services as a vital issue for women globally, including women who have been displaced by natural disasters and conflict.[12]

Intimate Partner Violence

In many parts of the world, states are failing in their duty to protect women from intimate partner violence. Globally, one in three women will experience physical/sexual violence from a partner, or sexual violence from a non-partner, in her lifetime.[13] Violence against women and girls, which is both a manifestation of, and a tool to maintain gender inequality, carries severe physical, psychological, social and economic consequences to individuals, families and communities. Even in parts of the world where states fulfil their obligation to prosecute intimate partner violence, women who have suffered from such violence tend to have a more disrupted work history, have had to change jobs more often, and are employed at higher levels in casual and part time work than women with no experience of violence.[14]

[6] Marlene A. Lee & Jocelyn Finlay, "The effect of reproductive health improvements on women's economic empowerment", *Population Reference Bureau* (Sept. 6, 2017), available at: <https://www.prb.org/womens-economic-empowerment/>.

[7] *Id.*

[8] Leah Joan Kenny, "Taking action: reproductive and sexual health in conflict", *International Women's Initiative* (Feb. 15 2018), available at: https://static1.squarespace.com/static/552fe729e4b0c33e91169c8e/t/5a889ca6f9619a07522ac641/1518902454372/Taking+Action_+Reproductive+%26+Sexual+Health+in+Conflict.pdf

[9] Francis Akali Oloo, "Women's sexual and reproductive rights: Kenya", *Global Legal Review* (July 16, 2018), available at: <https://globallegalreview.org/2018/07/womens-sexual-and-reproductive-rights-kenya/>

[10] See Kenny, *supra*, note 8.

[11] *Id.*

[12] *Id.*; Brittany Hernández, "Mi cuerpo, mis derechos! A closer look at El Salvador's discrimination Laws: Women's sexual and reproductive rights", *Global Legal Review* (April 30, 2018), available at: <https://globallegalreview.org/wp-content/uploads/2018/06/GLR-SFR-El-Salvador-Brittany-Hernandez-final-May-16.docx-4.pdf>.

[13] See Kenny, *supra*, note 8.

[14] C. Nadine Wathen, et al., "The impact of domestic violence in the workplace: Results from a pan-Canadian survey", *Journal of Occupational and Environmental Medicine*, vol. 57 no. 7 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4676385/>; A.E. Adams et al., "The impact of intimate partner violence on low-income women's economic well-being", *Violence Against Women*, vol. 18 no. 12 (2013), available at: <https://doi.org/10.1177/1077801212474294>.

Intimate partner violence remains prevalent for many reasons, including lack of prosecution and embedded beliefs that male dominance must remain the natural order. For example, in Myanmar, where marital rape is not a crime, according to small-scale studies, women are socialised to accept or tolerate domestic violence, with 51 percent of women expressing a belief that a husband is justified in hitting or beating his wife under certain circumstances, such as if she argues with him. [15] Estimates in South and East Asia show the lifetime prevalence of physical and/or sexual intimate partner violence among women to be 37.7 percent.[16] In Afghanistan, more than 80 percent of women experience domestic violence or another form of violence in their lifetime and 62 percent experience multiple incidents of violence.[17] Various reports suggest that 40 to 50 percent of women in South Africa have been physically or sexually abused.[18]

Women's Prevalence in the Informal Economy

Existing data suggest that 85 percent of economically active women in developing countries are engaged in the informal sector.[19] The informal sector refers to production and employment that takes place in unincorporated small or unregistered enterprises such as home-based subcontract work, or unpaid workers within family businesses.[20] In a majority of countries, women in the informal economy tend to live in poverty stricken households.

Despite working from their homes, many home-based workers are a part of “global assembly lines,” in which lead firms, which may be large transnational corporations, place orders or outsource to suppliers who engage sub-contractors that operate small production units or, in turn, put out production to homeworkers.[21] This lack of transparency in supply chains leaves female home-based workers invisible to consumers and labour watchdogs, and thus vulnerable to abuse and exploitation.

GENDER-SENSITIVE REMEDIAL MECHANISMS

The lack of practical legal remedies for victims of human rights violations is a conspicuous and longstanding gap in international law and international human rights law. The IWI recently published an independent study of the effectiveness of remedial mechanisms for corporate human rights abuses through interviews with over 950 victims of such abuses in Ghana and the Ivory Coast.[22] The research examined how victims of corporate human rights abuses perceived attempts at addressing such abuses, and included questions about protections for particularly vulnerable groups, including women.

[15] Chiara Andrea Rossi, “On the margins: Women and minors in lawless spaces, country profile: Myanmar”, *Global Legal Review* (Oct. 5, 2018), available at: https://globallegalreview.org/wp-content/uploads/2018/10/Myanmar-Report_part-1-Chiara-Rossi.pdf.

[16] Jasmin Tarakei, “The women’s rights movement and the resistance against GBV in India”, *Global Legal Review* (June 11, 2018), available at: <https://globallegalreview.org/wp-content/uploads/2018/06/SFR-India-GBV-Jasmin-pdf.pdf>.

[17] Rosalind Fennell, “Safe havens at risk in Afghanistan: Women’s shelters under threat again”, *Global Legal Review* (June 4, 2018) available at: <https://globallegalreview.org/2018/06/safe-havens-at-risk-in-afghanistan-womens-shelters-under-threat-again/>.

[18] Sikhathele Nkala, “Policy limitations affecting muslim women in South Africa and their experiences of sexual and gender-based violence”, *Global Legal Review* (June 4, 2018) available at: <https://globallegalreview.org/2018/06/policy-limitations-affecting-muslim-women-in-south-africa/>.

[19] Martha Alter Chen, “Women in the informal sector: A global picture, the global movement”, *SAIS Review*, vol. 21, no. 1 (Jan. 2001) available at: <http://www.cpahq.org/cpahq/cpadocs/module6mc.pdf>.

[20] Elizabeth Stuart et. al, “Informal is the new normal: Improving the lives of workers at risk of being left behind”, Working Paper No. 530 (London, Overseas Development Institute, 2018), available at: <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11993.pdf>.

[21] ILO, “Empowering Women Working in the Informal Economy,” Issue Brief No. 4 (Prepared for the Second Meeting of the Global Commission on the Future of Work, Feb. 2018), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_618166.pdf.

[22] Emmanuel Nartey, “It is Tort Law Mechanism, Rather than The UN Treaty on Transnational Corporations and Their Supply Chains”, *Global Legal Review* (Aug. 1, 2018) available at: <https://globallegalreview.org/2018/08/it-is-tort-law-mechanism/>. The analysis in this section is based on the evidence presented in this document.

The study participants, as a whole, were very negative about how they were treated throughout the remedial process. They felt that help and information about exercising their rights were hidden from them, that there was a lack of judicial support, as well as a lack of an effective mechanism to access the remedy awarded. For example, some reported that they were offered an opportunity to take part in the judicial process but were unable to do so due to lack of funds and the support needed to take part in court proceedings. Additionally, most of the study participants reported that they did not have bank accounts, which made it very difficult for them to access the financial compensation allocated to victims.

The lack of meaningful victim support to participate in the process led some of them to perceive the whole process as a fraud and a “tick in the box” exercise. As a result of these failures, many study participants speculated that the government bodies responsible for the remediation were acting in concert with the corporations that committed the violations. As a whole, the victims felt let down and their confidence in the system was damaged as was their willingness to participate in reporting abuses or taking part in remedial mechanisms in the future.

The research demonstrates that poverty, lack of education and longstanding cultural attitudes are some of the most important challenges affecting victims’ access to justice. Most victims are ignorant of their rights, and those who know their rights have little or no means to pursue them.

Some victims blamed an act of God, for example, rather than corporate pollution for environmental impacts in their communities. Additionally, some cultures do not allow women to verbally express themselves without the consent of their husbands. This means that when a woman is willing to testify about what has happened to her, she may be confronted with the anger of her husband or kinsmen who object to such an open discussion.

The combination of women’s exposure to various forms of violence and inequality, as outlined above, impedes their participation in decision making. Thus, remedial mechanisms, processes and outcomes, must take into account the multiple socioeconomic barriers that women face. Women are unlikely to benefit from remedial efforts that fail to include culturally sensitive approaches to educate women about their rights, fail to identify the particular harms unique to women who have suffered as a result of corporate abuse, and fail to include the testimony and perspective of women.

Thank you for considering this submission. The IWI looks forward to supporting your efforts to ensure that the U.N. Guiding Principles on Business and Human Rights succeed in responding to the challenges that women face in seeking justice for corporate human rights abuses.

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