

MANDATE OF THE WORKING GROUP ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

## **Response to the Open Call for Input regarding the Working Group's Report on the Gender Lens to the UN Guiding Principles on Business and Human Rights**

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December 2018

## **ABOUT THIS SUBMISSION**

This submission highlights responses recorded during a workshop addressing the open call, held in Melbourne, Australia, on the 9<sup>th</sup> of November 2018, hosted by the Centre for People, Organisation and Work (CPOW) at RMIT University.

The workshop brought together academics and activists, working across Australia, with specialisations in women's human rights, gender-based violence, and trafficking for sexual exploitation. The key aim of the workshop was to analyse the potential and the limitations of existing UN frameworks relating to business and human rights (particularly the Guiding Principles) for addressing issues of violence against women, especially sexual violence, violence and exploitation in the sex industry, and trafficking for sexual exploitation. These are issues of grave human rights abuses, but they are frequently left out of discussions about gender, business and human rights.

The Australian context is also very important in international discussions of human rights and the sex trade as many Australian states and territories have a long history of either legalised or decriminalised systems of prostitution, but these have failed to increase women's safety or protect women's human rights.

We offer the following overarching points and recommendations before responding, more specificity, to the questions (as relevant) set out in the Open Call.

This submission was prepared by Dr Meagan Tyler (RMIT University), Dr Kate Grosser (RMIT University) and Lara Owen (Monash University), with contributions from: Dr Kate Farhall (Coalition Against Trafficking in Women Australia), Tegan Larin (RMIT University), Dr Sara Meger (University of Melbourne), Dr Helen Pringle (University of New South Wales and NMIN), Rachel Reilly (Project Respect) and Simone Watson (NorMAC).

We gratefully acknowledge the contributions of the workshop participants listed above. This should not be taken to mean that all contributors endorse every statement in this submission, but we wish to fairly acknowledge their input.

## RECOMMENDATIONS

1. The **benchmarks** in the Guiding Principles must – at a minimum – include reference to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**.

The benchmarks should also include other sex-based rights detailed in UN frameworks and conventions (e.g. Beijing Declaration and Platform for Action). All of the Guiding Principles need to be read *through* these pre-existing frameworks and conventions, not added as an afterthought. In particular, we wish to call attention to existing UN structures that specifically mention issues of gender, sexual exploitation and trafficking:

- Article 6 of CEDAW;
  - Article 9.5 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Palermo Protocol');
  - The 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others ('1949 Convention').
2. That a gender lens for understanding business and human rights must address the ways in which **sexual violence and sexual exploitation are both a cause and consequence of women's inequality**.
  3. Clause 7 on human rights in conflict should be expanded. It is currently the only section to mention 'sexual violence' in the Guiding Principles. **Sexual violence in peace-time must also be addressed**, including the way in which businesses are implicated in sexual violence outside of conflict scenarios. This is particularly relevant to businesses where there are issues of sexual exploitation and trafficking for sexual exploitation.
  4. We must account for the racialized sexism and colonialism of the sex industry and acknowledge the significant **over-representation of marginalised and minority women in the global sex trade**, as well as in Australia's sex trade.
  5. Any application of the Guiding Principles needs to take a clear stand on sexual and gendered violence within the sex industry. This also requires a gender lens on **slavery and trafficking** as forms of gender-based violence that are integral to the profits made by sex industry businesses (in both legal and illegal contexts).
  6. Current business practices around **occupational health and safety (OHS), gender equality, and sexual harassment** are in direct contradiction with the norms of the sex industry. The sex industry would not be able to function if all standard work regulations around gender equality and OHS were enforced.

7. Recognition of **women as stakeholders**. Clause 18 instructs business enterprises to 'identify and assess any actual or potential human rights impacts with which they may be involved either through their own activities or as a result of their business relationships' and to 'involve meaningful consultation with potentially affected groups and other relevant stakeholders.' The commodification of sexual access to women through the sex industry affects the status of all women and should therefore be considered through a broader stakeholder approach to women's human rights, as well as addressing the more direct harms to women working in the sex industry.
  
8. Best practice, in order to address the harms of the sex industry for women in systems of prostitution and to address the wider harms to women as stakeholders, is the **Equality Model** (also known as the Nordic Model) which recognises gender inequality as a foundation of the sex industry and directly addresses demand for sexual exploitation while supporting prostituted persons to leave the industry.

## RESPONSES TO OPEN CALL QUESTIONS

### **1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately?**

Sexual violence and sexual harassment are perpetrated against women across a range of sectors, and are often over-represented in high-risk occupations (Chappell & Di Martino 2006). Thus, women and girls experience these specific harms disproportionately, compared to men. In particular, we would like to draw the attention of the Working Group to the violence against women and girls perpetrated in the sex industry, and the associated issues of trafficking for sexual exploitation. Prostitution is highly gendered with 'the vast majority of prostituted persons being women and under-age females, and almost all buyers being men' (European Parliament, 2014).

In the Australian context, a number of states and territories have established systems of legalised brothel and escort prostitution, and one state (New South Wales) has a completely decriminalised system of prostitution (the only jurisdiction outside New Zealand to use this approach). That is, prostitution is treated – primarily – like a business, and prostituted persons are seen as workers. However, there is also a booming illegal sex trade. In the Australian state of Victoria, for example, police estimate that illegal brothels outnumber licensed brothels by approximately 5:1 (Sodsai, 2017). Australia has also been identified as a destination country for women trafficked into the sex industry, particularly women from South East and East Asia (Larsen & Renshaw, 2012; Tyler et al. 2017).

In addition, international studies show that women in prostitution experience extremely high rates of physical and sexual violence, as well as severe psychological trauma (e.g. (e.g. Farley et al., 2003; Parriott, 1994; Nixon et al., 2002; Raphael, 2012; Vanwesenbeeck, 1994). In a nine-country study of experiences of prostitution, more than two-thirds of the sample met the criteria for post-traumatic stress disorder; roughly the same rate as that seen among combat veterans (Farley et al., 2003: 37). We therefore need to understand the sex industry as a sector where serious human rights abuses occur and that these disproportionately affect women.

Furthermore, it is important to understand women as stakeholders in the wider harms of the sex industry, including the sexual objectification of women and the normalisation of purchasing sexual access to women. That is, the normalisation of prostitution businesses affects the status of all women.

### **2. Please share any good practices on how to deal with increased marginalisation or vulnerabilities faced by women due to intersectionality, feminisation of work, informal economy, and conflicts.**

Marginalised and minority women are substantially over-represented in the sex industry – both in Australia, and internationally (Tyler, Coy & Pringle, 2016). The sex industry is also highly feminised, informal, and intensified in conflict areas.

In terms of best practice, we recommend the **Equality Model**, also known as the Nordic Model, to address the harms to women evident in this sector. The Equality Model is a progressive and holistic approach to the sex industry, now in place – in varying forms – in Sweden, Norway, Iceland, Canada, Northern Ireland, the Republic of Ireland and France (Tyler et al., 2017). The legislative aspect of the model is asymmetric decriminalisation, where all criminal sanction is removed from prostituted persons, but pimping and sex buying remain offences. Overall, the Model approaches the issue of the sex industry as one of gender inequality and violence against women, and involves public education campaigns targeting the demand for sexual services as well as exit programs to support prostituted persons leaving the industry (these can be seen as similar to ‘just transitions’ models favoured by trade unions in areas where a sector is losing its social license to function – see Tyler, 2016). The Equality Model is the only model consistent with a human rights approach to understanding the state’s relationship to sex industry businesses (Tyler et al., 2017).

In terms of the feminisation of work, we must recognise that the sex industry is inherently and irremediably gendered. The sex trade is based, almost exclusively, on male demand for sexual access to women. It cannot be de-gendered in the same way that other industries can be. This makes it distinct as an industry.

Regarding the specific mention of conflict and gender-based and sexual violence in the Guiding Principles, we must also consider gender-based and sexual violence in peace-time scenarios, and the complicity of states and businesses in this, particularly as it relates to the sex industry and trafficking for sexual exploitation.

**3. How to address sexual harassment and sexual or physical violence suffered by women in the business-related context, including in the workplace, in supply chains and in surrounding communities? Please share any good practices which have proved to be effective in dealing with sexual harassment and violence against women.**

Sexual harassment, physical and sexual violence are endemic to the sex trade. They are not additional harms but, rather, are fundamental to the profit-making of the sex industry.

Within a business and human rights framework, trafficking in women for sexual exploitation can be viewed as a supply chain. Demand increases when sex trade (including pimping and sex buying) in the host country is legalised or decriminalised, and trafficking inflows rise to meet this demand (Cho et al., 2013). It is common for sex industry businesses and lobbyists to claim that the legal sex trade is a separate sphere from

trafficking, even when trafficked women are found to be working in legal, state-sanctioned brothels (as in the Australian context, see McKenzie et al., 2011). Sex industry businesses should be made responsible for their supply chains, as is demanded in other areas of business and human rights approaches.

There are two main ways this could be addressed: 1) the Equality Model, which understands the centrality of gender inequality and violence against women to the sex trade, and 2) to apply, rigorously, existing OHS and sexual harassment laws and regulations to sex industry businesses. It is unclear how these businesses could continue to function if women were afforded the same protections as in other sectors.

#### **4. Which State laws and policies or social, cultural and religious norms continue to impede women's integration into economic activities and public life generally?**

The normalisation of the sex industry, especially through the state-sanctioning of sex buying and pimping in systems of total decriminalisation or legalisation, reduces women's status as a class and affects women's participation and potential in all areas of economic and public life generally.

The sex industry is also sometimes characterised as a de-facto welfare system to prevent women falling into poverty. This distracts from the need for a comprehensive welfare state that means no woman is pushed into sexual exploitation as a result of financial hardship. An effective state safety net and welfare system is vital for the wellbeing and participation of women in public and economic life.

#### **5. How could policy coherence be improved between different government ministries or departments dealing with women issues and business-related matters?**

Regarding the Australian context, the difference between regulating the sex industry as a business (state level), and addressing trafficking for sexual exploitation (federal level), is a constant problem in addressing the needs of women and girls in this sector.

#### **6. Are there any good practices of integrating a gender perspective into States' economic sphere (e.g., state-owned enterprises, public procurement agencies, trade missions, export credit agencies, privatisation of public services, public-private partnerships, and trade and investment agreements)?**

Limiting the extent and normalisation of the sex industry is important. Other, non-sex industry businesses (both state and privately owned) can develop policies and practices that require workers not to engage in sex industry 'services' for the purposes of business activities. For example, in Australia, there are ongoing issues of traditionally male

dominated sectors – such as law and finance – using strip clubs and other forms of prostitution as networking tools (Tyler et al, 2010).

In comparison, in Sweden – which pioneered the Equality Model – not only is sex buying already illegal, it is also illegal for Swedish citizens to engage with sex industry businesses when travelling internationally for work purposes (Bjorklund et al. 2014).

**7. What is the role of businesses in dealing with domestic laws, policies and societal practices which are discriminatory to women?**

It is important to confront how a distinct industry – like the sex industry – is fundamentally discriminatory to women in its structure and day-to-day functioning. This must be taken into account in understanding the limitations of working ‘with business’ to address the human rights abuses of women in certain sectors.

**8. What is the extent to which businesses currently apply a gender lens in conducting human rights due diligence, including social or environmental impact assessment?**

The sex industry is frequently left out of these discussions and it is important to adopt – as we have established above – a gendered lens in understanding the harms of the global sex trade, and the way it manifests in places where it is normalised, such as Australia.

That is, the sex industry is complicit not only in human rights abuses of women in the industry, including through human trafficking, but it is also complicit in diminishing women’s status as a class through the normalisation of sexual objectification and subordination, which is linked to violence against women more broadly.

**9. What additional or specific barriers do women (women human rights defenders) face in accessing effective remedies for business-related human rights abuses?**

This is especially relevant to women trafficked to Australia for sexual exploitation. Women trafficked for sexual exploitation need supportive access to legal remedy regarding the human rights abuses they have suffered in the destination country.

This would require a shift from the border protection / immigration focus of the Australian government’s current approach, to understanding survivors of trafficking for sexual exploitation as victims of crime, and that the state is complicit for providing a context conducive to trafficking for sexual exploitation, through the normalisation of the sex industry.



The lack of a gendered lens in understanding the harms of particular forms of trafficking (and that trafficking for sexual exploitation is multi-traumatic as well as a human rights abuse) also contributes to this problem.

**10. How could all types of remedial mechanisms, processes and outcomes be made more gender-sensitive?**

Recognising trafficking, and the associated concept of 'Modern Slavery' as highly gendered phenomena is a start. Again, the Equality Model – in recognising gender inequality at its foundation – is much more effective in offering justice to women abused through systems of sexual exploitation (whether they are trafficked or not).

**11. How to overcome power imbalances and discriminatory practices that might undermine the effectiveness of remedies obtained by women?**

The Equality Model offers the best opportunity for victim / survivors of sexual exploitation to seek justice. As the actions of sex buying and pimping are already criminalised in this system, it is much easier for women to seek redress when they have been harmed. In the legalised and decriminalised models in operation in Australia, however, women in prostitution have extreme difficulty in pursuing rape convictions, because rape can be reframed as 'theft of service' rather than sexual assault (McGowan & Knaus, 2018).

Exit programs, as discussed above, should be state-funded and must be offered to all women wanting to leave systems of prostitution. This is important to survivors being able to access justice, which is particularly difficult while they are still within the sex industry.

**12. Please provide any additional comments, suggestions or information which you think may be relevant for the Working Group's forthcoming report on the gender lens to the UNGPs.**

The **foundational principles** should include the overarching point that the sex industry is incompatible with human rights. Profit from violence against women is embedded in the business model of the industry. The Guiding Principles confirm state duty here: 'States must protect against human rights abuse within their territory, including business enterprises'. Thus, failure of the state to prevent abuse is in contravention of the GPs.

Sex industry legalisation and total decriminalisation and legalised settings have failed to prevent or minimise harm as intended, or to prevent violence against women (e.g. Sullivan, 2017, 2012).

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