



INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC [378811 X]

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International Women's Rights Action Watch Asia Pacific (IWRAW AP) welcomes the opportunity to provide our critical response and contribution to the open call for input to the new global project, **Business and human rights: towards a decade of global implementation** launched by the UN Working Group on Business and Human Rights (hereafter "Working Group").

We commend the Working Group for creating opportunity to consolidate the feedback and critical reflection from a wide range of actors, including Civil Society Organisations (CSOs), for the practical translation and implementation of UNGPs during this critical juncture of the COVID-19 pandemic and worrying increases in corporate capture of human life and state policies. This is a welcome opportunity to strengthen normative coherence around the framework on business and human rights and connect the BHR movement to social justice movements to transform the power dynamics by establishing the primacy of human rights over corporate power.

In response to the key guiding questions, we want to draw the Working Group's attention to our critical analysis of the dominant narrative of the business and human rights discourse and our recommendations for determining the priorities for a roadmap for the next decade.

The UNGPs deserve some credit for establishing businesses and corporations as critical actors in the human rights discourse. The human rights violations committed by businesses remained ignored because of a lack of understanding by States of their role in regulating the private sector as a part of their human rights obligation. One visible gap we witnessed as CSOs in the UN System in relation to corporate accountability is insufficient effort and the lack of harmonization and cross pollination of frameworks and mandates between the UN human rights Treaty Bodies and the Special Procedures.

The instrumental approach in the BHR discourse, which gives legitimacy to a 'business-case', 'win-win' situation and promotes incentivizing businesses for ethical operation, is a serious point of departure from the human-rights-based approach. Respecting and

protecting human rights should be the central practice of States. The idea of a business case for States, as supported by some groups in the BHR movement, not only fails to uphold the spirit of human rights but inherently contradicts the role of the State as primary 'duty bearer' with legal and political obligation to respect, protect, promote and fulfill human rights.

One of the major drawbacks of the BHR discourse is the exclusion of leadership and participation of affected communities and organic movements such as labour unions, fishers/farmers, women's movement, indigenous people, and human rights defenders. The BHR movement failed to support and build on the valuable work done by these social justice movements, and created its own bubble of top-down, technocratic 'movement'.

The Working Group has made some effort to highlight the disproportionate impact on women of business related human rights violations in its report to the UNGA and in its guidance note on the gender dimensions of the guiding principles. However these efforts have not gone far enough in taking an intersectional perspective and recognising the compounded violations that women face because of disability, ethnicity, sexual orientation and gender identity, rural/urban location, migration. In practice, the negative impacts of business actors particularly transnational corporations involved in global supply chains and mega infrastructure on women continue to be invisible and not redressed. These violations remain both unremedied and unrecognized because of the accountability deficit of transnational corporations and the opaqueness of their policies and actions.

We also see that despite the WG highlighting the issue of gender, the prevalent rhetoric surrounding women's 'participation' in economic activities, such as promoting female labour force participation, fails to understand the underlying root causes of gender inequality in the world of work and doesn't pay enough attention to women's agency. Such approaches can lead to women being trapped in inherently exploitative structures and in survival livelihoods which do not enable them to escape the poverty trap. Being included in the current patriarchal capitalist systems without any form of protection, or mechanisms for accelerating their equality and status in society, is counterintuitive to achieving women's human rights.

Therefore, we urge the Working Group to consider the following recommendations in any present/future discourse, frameworks and action concerning business and human rights:

- Leverage already existing human rights mechanisms by synthesising the elements of the UNGPs into the existing frameworks, and clarify the implementation of legal

obligations through the treaty body processes, as the delivery of human rights outcomes requires structural and institutional coherence and prioritisation.

- Reinforce and establish primacy of human rights in BHR discourse and encourage mandatory human rights due diligence systems through legal and administrative measures that guarantee and protect access to justice.
- Call for a stronger binding framework to demand greater accountability of private sector actors, including corporations and employers, for human rights violations both nationally and extraterritorially.
- Strengthen strategic collaboration with affected communities and gender justice networks, such as Feminists for a Binding Treaty (F4BT), in relation to ongoing negotiations for a legally binding treaty on business and human rights.
- In line with the spirit of SDGs 'leaving no one behind', apply a strong intersectional lens and pay considerable attention to the disproportionate needs and rights of different communities and people(s) – including, but not limited to, small farmers, fisher communities, labour unions, public interest groups, consumer associations, and indigenous groups – and enhance their leadership and ensure their voice in BHR discourse.
- Adopt targeted strategies and outreach to women's rights organisations, women human rights defenders, and feminist economists in determining a roadmap for the next decade.
- Make concerted effort to translate the values of the Working Group's guidance note in practice to inform and transform the BHR discourse and deliberations at the national level with intersectional gender lens.
- Ensure that the prevalent rhetoric surrounding women's empowerment and female labour force participation complies with a human-rights-based approach. Put women first, as people, as human beings with rights, not just as factors of production that can be mobilized to enhance economic growth.
- Provide critical comments on the negative impacts of policies, actions and mechanisms of International Financial Institutions on human rights and encourage policy coherence of economic policies with human rights frameworks.
- Provide critical analysis to establish the primacy of human rights in trade and investment negotiations and agreements, including challenging the Investor-State Dispute Settlement System (ISDS) which facilitates corporate capture of domestic regulation, undermines the public policy space available to governments for protecting human rights, and lacks transparency in proceedings and consistency in arbitral decision-making.
- The 21st century digital gig economy has created more informal workers and blurred relations of 'new' work as short-term job contracts with no benefits of full-time work.

The policies and mechanisms to regulate the current models based on a formal work force require drastic change and consideration to respond to the emerging concerns surrounding the new form of informal and gig economy. Therefore, we urge the Working Group to recognise and prioritize potential, emerging and high-risk groups and areas of business-related human rights violations such as digital and gig economy, migrant workers and global supply chains, where the lines of accountability are disjointed by borders and perpetrators are invisible.

- The Working Group and the BHR movement, without limiting itself into UNGPs, should adopt a more comprehensive approach in engaging with States to provide holistic and human-rights-compliant guidance on broader issues related to public policy, such as economic and trade policies, tax and budget, development programme and other state policy measures pertaining to business activities.
- This is a critical opportunity to highlight how the ability of States to deliver human rights has been compromised with the emergence of 'captured states', wherein many countries and state institutions are being restructured, resulting in the prioritization of corporate interests over the obligations to protect and fulfil the human rights of citizens.

An obstacle to the realization of sustainable development is the dominant perspective and paradigm of 'development itself', which is premised on neoliberal economic systems of production and consumption. The problem is so deeply entrenched in the global economic and political system that it is becoming next to impossible to break this cycle of exploitation of environment and labour. Therefore, the current and problematic notion of development – focused on market economies and infrastructural development in lieu of human and social development and environmental justice – must shift.

Links to some of our existing work that are relevant to the topic of this submission:

- [How the 'Business Case' for Gender Equality Sidelines Human Rights](#)
- [Corporate power and the space for women's human rights activism](#)
- [Women's Human Rights and Natural Resources](#)
- [Corporate Accountability for Women's Human Rights](#)