



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

10-2 Jalan Bangsar Utama 9
59000 Kuala Lumpur, Malaysia

Tel: (603) 2282 2255 | Fax: (603) 2283 2552
www.iwraw-ap.org | iwraw-ap@iwraw-ap.org
@IWRAW_AP | facebook.com/IWRAW.AP



Submission by IWRAW Asia Pacific¹ to the call for inputs by Working Group on Discrimination Against Women and Girls on ‘women’s human rights in the changing world of work’

International Women’s Rights Action Watch Asia Pacific (IWRAW AP) welcomes the opportunity to provide its response and contribution to the Working Group on Discrimination Against Women and Girls (hereafter “Working Group”) for its thematic report to the Human Rights Council on “women’s human rights in the changing world of work”.

We commend the Working Group for prioritising the women’s human rights in the changing world of work discourse during a very critical time given the global attention on the subject and the adaption of new ILO Convention on Violence and Harassment (C 190) and accompanying recommendations.

As an international women’s rights organisation located in the Global South and working primarily with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as a means to draw accountability for women’s human rights violations and for strengthening the realization of equality and non discrimination on the basis of sex and gender, IWRAW AP’s submission focuses on structural and systemic issues, the current dominant narrative concerning labour issues and the impact of such a narrative and approach to women workers on the ground. This submission is informed by our feminist intersectional analysis and local realities and experiences of our partners and women’s groups.

We want to draw the Working Group’s attention to our critical analysis on some key issues concerning women’s human rights in the world of work

The right to work and right at work are fundamental rights and essential for realizing other human rights and forms an inseparable and inherent part of human dignity. The current exploitation and subordination of women workers is a result of the persistence of deep-rooted discriminatory stereotypes, the failure of states and non-state actors to recognize the spectrum of what constitutes women’s work and their inability to create the conditions that will enable decent working conditions for women.

¹ This submission is endorsed by our national partner Naripokkho, Bangladesh

IWRAW Asia Pacific is an NGO in Special Consultative status with the Economic and Social Council of the United Nations. It facilitates and monitors the implementation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

It is important to acknowledge the negative impacts of development policies and actors in the realisation of women's right to work and rights at work. As labour rights are hugely impacted by the acts and omissions of business actors, particularly transnational corporations involved in global supply chains and mega infrastructure projects, stronger elaboration is needed to address the accountability deficit of transnational corporations and International Financial Institutions (IFIs) whose policies and actions are non-transparent, undemocratic, and with few opportunities for review or remedy. The Working Group's report is also an opportunity to highlight how the ability of states to deliver women's rights has been compromised with the emergence of '**captured states**'- where in many countries, state institutions are being restructured resulting in the prioritisation of corporate interests over the obligations to protect and fulfil the human rights of citizens.

Women employed in the jobs created through new economic system are often subject to discrimination and exploitative working conditions and consequently denied access to the welfare and labour rights. The gender division of labour means that women are more likely to be located in these precarious forms of employment than men. "The garment sector is great at employing women. At the bottom. While approximately 80% of the world's garment workers are women, the number of women heading the 15 largest mass-market apparel companies on the Fortune 500 list is zero."² The conceptualization of the "employer" in this context is of critical importance, while the focus of much of international policymaking may focus on transnational corporations and large scale corporations, the domestic legal and regulatory environment needs to address SMEs and their role in ensuring a working environment that is human rights compliant.

The instrumental gender approach in the development discourse, as promoted by IFIs such as the World Bank and the International Monetary Fund is a serious point of departure from the rights-based approach. Although IFIs identify gender equality as an important goal of development, the stated purpose of achieving gender equality is to promote economic growth – viewing gender equality as an instrument rather than as a goal in and of itself. 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.

States, through global policy commitments, such as the Beijing Platform for Action, as well as supranational mechanisms for economic cooperation like the OECD have long committed to what feminist economists have highlighted as recognition, reduction and redistribution of unpaid care work (the so-called 3R strategy) as a primary policy intervention towards closing the gender economic gaps. Investing in a **social care infrastructure** is an important component of the 3R strategy. Universal access to quality care services promotes gender equality in the world of work through two channels. First, it reduces the unpaid work burden

² <https://www.theguardian.com/sustainable-business/2016/mar/08/fashion-industry-protect-women-unsafe-low-wages-harassment>

through its redistribution from the domestic sphere to the public sphere. Hence constraints on women's labor supply are eased. Second, it creates new jobs, particularly for women. Hence investing in care promotes labor demand for women. Given this dual impact (supply and demand) of investing in social care, it remains one of the most promising strategies towards gender equality in work.³

We want to draw the Working Group's attention to some major trends surrounding women's human rights in the world of work

Labour flexibilisation and sub-contracting is a growing trend in the Asia Pacific region. In the context of **Cambodia** and the **Philippines** garment factories are slowly pushing formal employees into the informal sector by 'sub-contracting' them to sweatshops. Labour flexibilization in the guise of sub-contracting has a detrimental impact on women workers as they fall out from the ambit of legal and social protection systems. This also weakens their right to unionization and collective bargaining which is already challenging due to the male dominated patriarchal nature of trade unions.

Exclusion of workers from legal frameworks: The trend of exclusion of domestic workers in the national legal framework is a regression on universal standards of women's human rights and labour rights. Examples include **Trinidad and Tobago** that has created a legal exclusion for women concentrated domestic work by keeping it out of the ambit of Industrial Relation Act⁴ ; the Employment Act 1955*⁵ in **Malaysia** which has a section concerning 'domestic servants' (section 11) and the benefits extended to other workers such as mandatory day off, access to social security benefits are not applicable to domestic workers; and the Sexual Harassment of Women at Workplace Act 2013 in **India** which doesn't recognise domestic workers as having legal rights.

Maximum production target with minimum wage: In May 2018, the legal minimum wage in **Myanmar** was raised from US\$2.30 a day to US\$3. This sounds like a progressive move that is entirely in the interest of workers. However, the reality shows unintentional consequences that did not benefit workers at all.⁶ The challenges concerning minimum wage are that it does not correspond to the cost of living, which is increasing every year; the factories tend to increase or triple the production targets coupled with a cutback of the production bonus; and reduce the number of workers. Because of the long production target, there are long working hours for women in these factories. Similar trend can be seen in other garment factories in Southeast Asia including Cambodia.

One in three women working in the textile and shoes industry in **Albania** or inward processing companies so called "façons" did not receive the legal minimum wage – even with overtime and bonuses. Due to the prevalence of overtime, one can safely conclude that at least 50% of the workforce in the sector does not receive the legal minimum wage during regular working

³ Contribution from **Ipek Ilkkaracan** - professor of economics at Istanbul Technical University (ITU), Faculty of Management, and associate director of the ITU Women's Studies Center; Advisory Member- IWRAP Asia Pacific

⁴ CEDAW Concluding Observations, Trinidad and Tobago, 2016 (paragraph- 30 and 31); CEDAW/C/TTO/CO/4-7

⁵ [Note: The Human Resource Ministry is seeking to make changes to the existing labour regulations and laws and also to also looking to legislate a standalone law to further strengthen the protection of domestic workers. (<https://www.nst.com.my/news/nation/2019/04/482422/human-resources-ministry-amend-update-labour-law>)]

⁶ <https://www.somo.nl/higher-minimum-wage-in-myanmar-bad-news-for-workers/>

hours. There is no explanation of how the wage is calculated particularly for overtime. Work on Saturdays is the rule rather than an exception for Albanian women working in textile and shoes industry.⁷

Access to Justice and freedom of association for migrant workers: Workers in most countries in Asia are denied freedom of association and the right to organize and bargain collectively, or are severely restricted in their exercise of these rights. Migrant workers in **Malaysia** are routinely denied the right to join a trade union. Grievance policies, if they exist, are often in a language the workers don't speak. Employers routinely require workers to pay huge sums to secure a job, leading to immediate debt bondage, and are known to confiscate workers' passports. Workers endure long hours and low pay in conditions which are unsafe and where they are denied even the most basic human rights.⁸ Undocumented women are often excluded from the general systems for accessing basic social rights, including health care services, housing support and they face particularly disadvantageous terms when seeking access to justice equality before the law. Lack of access to information and access to the justice system is a key problem concerning migrant workers. Most of the women migrant workers have no identity cards or find it very difficult to obtain them and this limits access to health, travel etc.

Technology and gig economy: Increased automation has displaced people into an enhanced form of employment precarity. In 2016, ILO reported that 56% of human labour in Southeast Asia will be replaced with industrial automation. The promise of technology and artificial intelligence and the increasing trend of gig economy are threatening the already precarious nature of work that women do. There is also the persistence of gender wage gap partly due to the fact that a relatively high number of women work part-time or due to horizontal job segregation. Similarly, gig economy is not a new phenomenon. It is an expansion of the kind of informal systems in which women piece workers, or informal sector workers have always worked, but without using any 'app' or digital technology. These women forfeited their rights to a living wage, to social protection – and their 'jobs' were far from 'decent'. The 21st century digital gig economy has created more informal workers, blurred relation 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.

Working conditions and risk of toxic chemicals– Women dominate the bottom of global supply chains including in garment, food and agriculture industries where exploitation are unacknowledged and unreported and the perpetrators are unaccountable. In an unprecedented study on the experiences of women working at two Samsung factories in **Vietnam**, a report documented health and workplace violations by the electronics industry giant. The workers' experiences of fainting or dizziness, miscarriages, standing for eight-to-twelve hours, and alternating day/night shift work are documented in a report released by

⁷ Excerpt from the oral presentation delivered by Gender Alliance for Development Center, Albania during the 64th CEDAW Session, 2016

⁸ <https://www.ethicaltrade.org/blog/giving-voice-to-migrant-workers-malaysia>

the Hanoi-based Research Center for Gender, Family and Environment in Development (CGFED) and IPEN.⁹

Similarly, in 2018 over 80 workers at Dutch owned Royal Van Zanten, a flower firm in Wakiso District, **Uganda** were reported to suffer from headaches, vomiting, dizziness and eye irritation after being ordered to cut flowers from greenhouses that had been fumigated with toxic chemicals less 24 hours earlier. Many of the women were hospitalized and some said their jobs were threatened if they did not return to work or sought treatment at clinics not authorized by Royal Van Zanten.

Criminal defamation lawsuits against labour activists by companies: Use of criminal defamation lawsuits is a trend corporations are now using to silence women human rights defenders and labour activists from raising cases of violation and abuse in their companies and supply chains. In response to the above mentioned research about working conditions in Samsung factories in **Vietnam**, the company embarked on a suppression campaign. They not only denied the allegations made in the report, but also threatened to fire the workers and file legal retaliation against the NGOs for releasing the report.¹⁰ In another case, Thammakaset company initiated criminal defamation charge against migrant workers for publicizing the abuse they suffered in the company in **Thailand**.¹¹ The cases were also filed against human rights defenders involved in exposing labour rights violations committed by the company.¹² Similar lawsuit was filed by an attacker against a woman employee in South Korea in sexual harassment case under criminal defamation law.¹³

Jobs prohibited to women: Number of countries including Belarus¹⁴ and Vietnam¹⁵ have a list of significant number of professions prohibited to women, allegedly to protect their health, in particular their reproductive health. Similarly, in Vietnam, the retirement age for women is lower than men.

Unpaid care work: When care work is left to private markets/solutions, the only women who have the option of pursuing a career are from the higher-income households that can afford market substitutes for care. This is not simply an issue of gender, but of class, too. The international migration of domestic workers is the epitome of multi-layered inequalities when the care economy is left to private markets/solutions. The care crisis of upper-income groups in richer countries is resolved at the expense of an emerging care crisis of lower-income groups in poorer countries. It is a tragedy that a mother leaves her own child to the care of relatives in order to go to another country to care for some other family's child. Exploited care labour is never a perfect solution for the receivers either – all kinds of problems and conflicts

⁹ <https://ipen.org/news/samsung-workers-line%2%A0unique-report-reveals-lives-vietnamese-women-workers-making-samsung-smart>

¹⁰ <https://www.business-humanrights.org/en/vietnam-study-finds-that-miscarriages-extreme-fatigue-fainting-dizziness-are-common-among-women-workers-in-samsung-factories-company-denies-allegations>

¹¹ <https://www.business-humanrights.org/en/lawsuits-by-companies-seek-to-silence-accountability-advocates>

¹² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24298>

¹³ <https://www.tnp.sg/news/world/sex-abuse-victims-sued-attackers-korea-where-truth-can-be-crime>

¹⁴ CEDAW Concluding Observations, Belarus, 2016 (para 32 &33), CEDAW/C/BLR/CO/8

¹⁵ CEDAW Concluding Observations, Vietnam, 2015 (para 28 &29), CEDAW/C/VNM/CO/7-8

emerge when the very task-intensive work of care is left to an untrained person in very poor work conditions.¹⁶

Therefore, we urge the Working Group to consider following recommendations to inform your next report to the Human Rights Council on the issues concerning women's human rights in the world of work

- Adopt a broader **definition** of what constitutes work to include but not limited to works that are not recognised and/or criminalised by national legal frameworks such as domestic work, sex work.
- Apply strong **intersectional lens** and pay considerable attention to the marginalised women workers whose lived realities are not reflected in the political demands and/or ideological frameworks concerning labour rights and women's rights and who often haven't had a voice in policy spaces including identities that face multiple discrimination, injustice and exclusion such as women with disability, LBT people, indigenous women, migrant workers.
- Recommend State Parties to **repeal discriminatory labour** law, employment law, social security law, bilateral agreements and any other related laws and policies to promote women's human rights in the world of work.
- Establish the labour right as a claimable constitutional right with **legal remedies**. Redefine **access to remedy** taking into account the unequal power relations that govern the context of corporate abuses and influence, particularly as women often face stigma, reprisals and job insecurity for reporting business-related abuses or speaking up against employer.
- Call for stronger binding framework to demand greater **accountability of the private sector** actors including corporations and employers for business violation of women's rights nationally and extra-territorially.
- The prevalent rhetoric surrounding gender in development must comply 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 growth.
- Provide critical comments to the negative impacts of policies, actions and mechanisms of **International Financial Institutions** on women's rights and encourage policy coherence of economic policies with human rights frameworks.
- Recommend States to ensure effective **consultation with the public** before designing and implementing any financial, economic and trade policies or development programmes.
- Continue highlighting the role of **technology** in reducing the burden of care work with the innovation of labour saving devices. The technology should advance and its application must reduce the drudgery, monotony and health and safety risk of work and not replace people.
- Encourage investing in a **social care infrastructure** to provide universal access to quality care services and promote equal parental responsibilities to share care burden to advance gender equality and women's human rights.

¹⁶ <https://www.iwraw-ap.org/wp-content/uploads/2018/10/Four-Things-to-Know-about-the-Purple-Economy.pdf>

