



Mandate of the Working Group on the issue of discrimination against women in law and in practice

2014 ANNUAL FORUM ON BUSINESS AND HUMAN RIGHTS

The Expert Group on Discrimination against Women in Law and Practice greatly appreciates this opportunity to contribute to discussion of gender aspects of the guidance principles for National Action Plans and thanks the Expert Group on Business and Human Rights. Our Group will propose ways of integrating a transformative approach to equality for women in National Action Plans, this being an important measure which benefits women, families and communities, as well as benefiting the business enterprises themselves. In this respect, it is worth remarking that research shows that companies with female membership and diversity outperform others. Catalyst has found that companies with women on its boards outperformed companies with zero women board directors—by 84% return on sales, 60% return on invested capital and 46% return on equity. Research in the US has also shown that women entrepreneurs bring in 20% more revenue with 50% less investment.

1. Elimination of discrimination against women

Women's right to *de jure* and *de facto* equality under CEDAW: The first pillar of the UNGP, which incorporates IHRL obligations, requires states to ensure that business enterprises act in accordance with the CEDAW obligations to eliminate discrimination against women and to achieve equality *de jure* and *de facto*.ⁱ Accordingly, in the guidance for National Action Plans, under the second pillar, business enterprises should be required to respect, protect, and promote women's equality of treatment and opportunity; and under the third pillar to ensure that women have equal access to remedy for victims of business-related abuses. Equality for women should be both a stand-alone goal and mainstreamed into all measures to prevent, and strengthen, protection against human rights abuses by business enterprises.ⁱⁱ

2. Stand-alone measures for National Action Plans should indicate ways to empower women at all levels of employment, economic leadership and entrepreneurship.

Employment policies: Company policy should incorporate IHRL women's equality standards in key areas, such as selection and hiring, training and professional development, wage equality, family-work balance and prevention and remedies for sexual harassment. Companies should be guided as to how to apply and maintain these standards in community contexts where sex discrimination is culturally embedded and this may include collaboration with international or governmental agencies.

Good practices models include the Gender Equality Model (GEM) developed by the World Bank and applied successfully in Egypt, Mexico and Argentina. Private firms participating in GEM programs reported on an increased number of women in management, increased productivity, an improved labour environment, reduction in the wage gap and in maternity-related discrimination.ⁱⁱⁱ

Economic leadership: There is a significant gap between women and men with respect to top leadership in business and financial decision-making bodies. Out of the world's 2,000 top performing companies, just 29, or 1.5%, had female CEOs in 2009. Women account for 4% of CEOs in Fortune 500 companies and in IT & Telecom companies. In 2012, women had only 16.6% Fortune 500 Board Seats, of which only 0.6 % women of colour. Only 17 out of 177 governors of central banks were women in 2012 (less than 10%). Women are significantly under-represented in cooperative leadership and decision-making roles and in union leadership.

Existing IHRL ensures women's right to employment protections regarding maternity and to equality in choice of profession and promotion and to equal wages. However, economic leadership is often reached through appointed positions, board membership, entrepreneurial activities, trading activities and self-employment, which are not within the context of an employment relationship, and remuneration for top level corporate employees may be through options, share-holdings and bonuses, not wages. Hence, guaranteeing women's equal access and remuneration in economic leadership and entrepreneurship requires the inclusion in NAPs of positive measures.

There are examples of good practices which can be used as models for positive measures to promote women's participation in economic leadership: for example, the Women's Empowerment Principles for business elaborated by UNIFEM and the Global Compact, to which CEOs of 604 companies have committed themselves, focuses on

corporate policy for promotion of women's leadership. Sex quotas for membership of corporate boards of government companies and publicly listed companies have been adopted by legislation in 13 countries, including India, Israel, Iceland, France, Malaysia, Norway and Rwanda.

Entrepreneurship: Empowering women in entrepreneurship requires training, information, provision of export and procurement opportunities and of credit and saving facilities. There are emerging good practices, at the international and state levels. The ILO Job Creation in Small and Medium Sized Enterprises Recommendation 1998, and Women's Entrepreneurship Development and Gender Equality program recommend measures designed specifically for women entrepreneurs, in starting or developing businesses; programs to assist women exporters established by the Canadian Business Women in International Trade (BWIT) and the Malaysia External Trade Development Corporation (MATRADE) and the International Trade Center (ITC); and provision of credit and saving facilities set up by the Global Banking Alliance (GBA) for women and the Mann Deshi Mahila Sahakari Bank founded in 1997 as the first legally recognized women's cooperative bank in India.

Procurement policies that target women are a developing tool to advance women's businesses. Government is the largest buyer of goods and services in developing countries accounting for 15-20% GDP but spend only 1% on sourcing from women-owned businesses. However, some countries have begun to tackle the issue. The US set a mandatory goal of 5% of federal contract spending for Women-Owned Small Business (WOSB) and Kenya put in place the Public Procurement and Disposal (Preference and Reservations) Regulations to ensure that enterprises owned by women, youth and persons with disabilities, are able to access government contracts.

3. Gender mainstreaming the NAP process and substance

Gender-specific harm: The gender-specific harm caused to women by corporate practices is often invisible. Some of the most noted examples of corporate abuse are in export processing zones, in home and sweatshop sectors, and in the extractive industries.

Export processing zones are feminized work enclaves in which women make up the majority of all workers, up to 100% in some cases, with particularly harsh employment

conditions, with lack of union organization, women's wages 20-50% lower than men's, working hours are as much as 25% longer than elsewhere and rights violations relating to hours, pregnancy protection, maternity leave or childcare and sexual harassment. Sweatshop sectors are a method of exploitation of cheap, informal labour, in which women make up 85-90% of workers, are frequently forced to take birth control and routine pregnancy tests to avoid supporting maternity leave or providing appropriate health benefits and work in dangerous conditions, in large part because of corporate cost-saving decisions.

Women, in particular, have borne the brunt of land dispossession for use by extractive industries, as well as increasingly for biofuel, agribusiness and real estate projects. These industries are land intensive and displace women who make up 70-80% of the world's small scale farmers. Women are the first to lose their livelihood, often do not receive compensation paid to landowners, who are predominantly male, and are the last in line for formal employment in the industries. Women, as primary carers, are deprived of shelter and the ability to feed their families. The arrival of a transient, largely male workforce and, some cases, security personnel, also increases prostitution, sexual violence and sexually-transmitted disease.

Mainstreaming gender: Gender-sensitive analysis should be mainstreamed into all five phases of the NAP process, including planning, assessment, monitoring and evaluation. This has not been done up till now, either in the guidance document nor, indeed, in the NAPs so far enacted, other than that of Italy. Language counts too: mainstreaming gender does not mean talking about women as one item in a list of vulnerable groups. Women are not a discrete vulnerable group but are a half of the duality of all groups, vulnerable and not vulnerable; the need to gender-mainstream arises as a result of structural disadvantage and discriminatory stereotypes which exclude and silence women in a unique and pervasive way. Gender mainstreaming aims at ultimately ensuring women can be agents of policy-making on equal terms with men.

The issue of discrimination against women should be explicitly included in the agenda for each phase and the participation of a critical mass of women experts and professionals, including persons with gender expertise, should be ensured.

Baseline studies should include sex-disaggregated data and also intersectional data

regarding race, minority status, sex and age, where relevant.

In particular, gender-mainstreaming is crucial in getting a sound understanding of adverse domestic and extraterritorial corporate human rights impacts and it is essential to consult women interested stakeholders to address gaps and identify priority areas.

Concluding remark

The inclusion in guidance for NAPs of the requirement that business enterprises, private as well as public, take the measures the WGDAs suggests to ensure and achieve equality in treatment and opportunity for women derive from the IHRL standards which are mandatory for the 189 states which have ratified CEDAW and are set out in full in the Report on Women's Economic and Social Life submitted to the HRC by the Expert Group on Discrimination Against Women in June 2014.

ⁱ CEDAW is the most comprehensive international tool for tackling discrimination in this area and its implementation is further enhanced by the Beijing Platform for Action, CEDAW GR 28 and the MDGs. Thus, for instance, CEDAW Article 3 requires the full development and advancement of women in social and economic life; 13 requires equal access to bank loans and credit; Article 14 addresses the right of women to participate in rural development and development planning, access to agricultural credit and marketing facilities; and Article 4 provides for temporary special measures to accelerate de facto equality. The obligation of states to implement these normative standards applies to corporate governance and international trade, as is expressly provided in Article 2(e) which requires states to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.

ⁱⁱ The Expert Group recognises that the category of gender is included in the draft guidance document, which warns against the trap of a gender-neutral approach as it "renders invisible important gender issues and marginalizes women's experience". However, the application of this caveat is not consistently applied throughout the policy articulations regarding National Action Plans. The Report to the General Assembly (A/69/263), deals with issues of gender primarily as an issue of intersectionality with all vulnerable groups and not as a stand-alone goal. Similarly, the draft guidance document uses gender-neutral language in addressing "the disproportionate impact on women or men as a result of their different social, cultural or legal roles, rights or responsibilities".

ⁱⁱⁱ <http://hrbdf.org/dilemmas/Gender/#.VGjn0TSsWS0>