

Submission to the Office of the High Commissioner for Human Rights in 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

Launched in 2016, the Girls Advocacy Alliance (GAA) is a joint initiative which aims at eliminating Gender-Based Violence (GBV) and Economic Exclusion (EE) of girls and young women through strategic lobby and advocacy. The goal of the programme is to ensure that governments and private sector actors make change in their agendas, policies, and practice to end GBV and EE of girls and young women. We aim to achieve this by building the capacity of civil society organizations to hold their governments and private sector actors accountable, and by mobilising key decision-makers to address social norms and values. To this end, the GAA has also an international component that conducts advocacy at the international level and provides support to local partners in the ten countries. The International Programme of GAA is implemented in Geneva and New York by Plan International, Terre des Hommes International Federation, Defence for Children International Secretariat, ECPAT International and Global March.

We welcome the initiative of the WG on the issue of human rights and transnational corporations and other business enterprises to develop gender guidance to the UN Guiding Principles on Business and Human Rights (UNGPs).

We would also recommend the WG to encourage all concerned stakeholders to:

- Address decent work in a holistic and gender-transformative way that includes transforming socio-economic constraints (e.g. security in the workplace, marital status, etc.) as well as challenging existing gender roles. A primary avenue of accomplishing this is by ensuring women and girls are engaged with, and part of the leadership of, any decision-making process.
- Include gender- and age-disaggregated data in analysis and research and adopt gender- and age-sensitive measures to address any form of discrimination and exploitation;
- Emphasize the impact of decent work on young women and women not just as an economic issue, but also a social and cultural issue and promote a human rights-based approach to decent work;
- Engage boys and men in the process of transformation of discriminatory social norms and gender stereotypes;
- Put the principle of the right to decent work at the forefront of strategies to prevent and combat gender-related issues, especially GBV.

This submission is based on the experience of the GAA and includes evidence-based information received from two of the ten countries where GAA is present: Kenya and Bangladesh. The following inputs are on a selected number of questions, given our specific expertise on some of the issues raised in the call.

1. In what ways do women experience the impact of business-related human rights abuses differently and disproportionately? Please provide concrete examples in the context of both generic and sector- or region-specific experiences of women.

The violation of human rights committed by businesses often has a disproportionate impact on young women and women, as a consequence of gender-based social, legal, and cultural norms. There is indeed a strong link between labour markets, gender roles and the conditions of women and young women around the world. In its resolutions *Women in Development*, 2007 and 2009, the UN General Assembly states:

"Noting that gender biases in labour markets and women's lack of control over their own labour and earned income are also major factors in women's vulnerability to poverty, and, together with women's disproportionate

responsibilities for domestic work, result in a lack of economic autonomy and influence in economic decision-making within households and in society at all levels.¹”

Kenya case

The rapid economic growth in Kenya has exacerbated human rights abuses especially on women and girls. The following sectors are particularly affected:

- a) Agriculture: factories and enterprises seek cheap labour which is mostly offered to women, girls and children. Exploitation happens all along the value chain;
- b) Manufacturing: women, girls and children work in dumpsites and streets to scrap mostly metal and glass, earning about \$1–\$2 per day, while often risking injury and exposing themselves to infectious diseases, such as tetanus. Evidence suggests that such boys and girls are also exposed to mercury due to e-waste recycling and gold mining;
- c) Constructions: girls and boys aged 10–17 mine or harvest sand and work in Busia, Homa Bay, Kilifi, Kitui, Machakos, and Nakuru counties, increasing their likelihood of developing aggravated asthma, lung or heart disease and cancer;
- d) Tourism: expansion of hotels, infrastructural development, promotion of programmes for foreign and domestic tourism, government incentives, ICT integration into travel and tourism produce both positive and negative effects on women and girls. On the negative side, there is increased sexual abuse and exploitation (sex tourism, pornography) by travellers and in the workplace (i.e. low wage, discrimination etc);
- e) The increase of Information and Communication Technologies (ITC) in the country represents a new channel where especially women and girls are particularly exposed to both online and offline sexual harassment, abuse and exploitation;
- f) The rapid urban growth, due also to an increasingly attractive business environment, has resulted in migration flows from rural settings to the main towns. This phenomenon has exposed women and girls to GBV and sexual exploitation. For instance, according to Professor Kennedy Mkutu²:

The impact of the extractive industry is felt particularly acutely by women. (...) There is gender bias at all stages of project activities. Limited by illiteracy, workloads, resources and position, women are even less involved than men in the initial stages of impact assessment and consultation by companies. Men are the biggest beneficiaries when it comes to salaried jobs and are usually more likely to be the ones compensated for any disturbances. Women also often lack the capacity to negotiate for better contractual deals and are sometimes subjected to sexual exploitation. In Lokichar in Turkana County, local women have been employed by the oil company as community liaison officers or traffic marshals, while others are in camp and catering services. But some of these women are staying in camps for several weeks without going home, putting a strain on families. (...) Women have turned to other sources of income. With new roads and migrant workers, the sex industry is growing.

In addition to the above, women and girls are disproportionately affected because of their gender, when they are mothers. For instance, in the urban settlement of Kibra, formally employed women are entitled to 3-months post-delivery maternity leave, but the implicit threat of losing their job often forces them to return to work earlier.

Bangladesh case

¹ UNGA resolution, Women in development (2007), A/RES/62/206, PP 1.; UNGA resolution, Women in development (2009), A/RES/64/217, OP 2.

² “Oil discoveries in Turkana still to fuel women's emancipation”, theeastafrican.co.ke, 13 August 2018.

Although many efforts have been done to improve working conditions after Rana Plaza disaster in 2013, when more than 1100 people died in the horrific building collapse³, and the General Economics Division of the Planning Commission has conducted a study on Gender Equality and Women’s Empowerment⁴ in order to have evidence-based information for policy designing, several deep-rooted challenges to gender equality still negatively affect workers in factories. For instance, in the Ready-Made Garments (RMGs) sector, female workers are often harassed at workplace by their supervisors and male colleagues and suffer gender-based discrimination. Edouard Beigbeder, UNICEF Bangladesh Representative, reports:

“Most of these working women in the readymade garments sector are in reproductive age and many of them are mothers who are responsible for nurturing the next generation of Bangladesh citizens. But for the fear of losing their sole source of income, many mothers return to work too early, before they have physically recovered and stop breastfeeding their infants”.

3. How to address sexual harassment and sexual or physical violence suffered by women in the business-related context, including at 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.

Kenya case

According to the law, every business with more than 15 employees requires a sexual harassment policy that employees and employers have to sign and adhere to. However, GBV survivors need to prove that the sexual advance was “unwanted”. This has discouraged women from reporting.

Moreover, it is not rare that women perform sexual favours for their supervisors with the hope of keeping their positions or being promoted. A good practice then is to require all businesses to have a training on gender-based violence, which should entail also the dynamics of power relations between employer and employee.

Awareness-raising activities on GBV can also be of great benefit to communities. Sexual violence must be clearly defined so that the community does not justify or tolerate any act of harassment or of violence.

In Kibra, mechanisms to report cases of sexual /physical violence have proven to work best when seeking medical attention has been prioritized. Survivors are far more willing to seek medical and psychosocial support than dealing with police. Creating safe spaces where survivors can report and get support encourages other women to speak out.

Bangladesh case

Recently, Change Associates, a business sector partner of GAA Bangladesh, has conducted a situation analysis at four RMG factories through focus group discussions with workers and interviews with management level staff and supervisors, and captured some good practices, as follows:

- The factory supports women workers with training to enhance their personal, professional and communication skill set, including problem-solving, decision-making, time and stress management;
- The factory encourages women’s career progression and provides women study leave to do so;
- The factory shows zero tolerance for sexual harassment, regardless of the position of the accused staff. For instance, recently, two management-level staff have been dismissed due to harassment of other female colleagues;
- The factory bears all expenses related to the day-care centre. Three attendants are engaged to look after the children of workers. The factory provides women with a separate room for breast-feeding;

³ <https://www.giz.de/en/mediacenter/65121.html>

⁴ http://www.plancomm.gov.bd/wp-content/uploads/2015/02/16_Gender-Equality-and-Womens-Empowerment.pdf

- Workers participate in training on the sexual harassment policy of the factory during the induction period;
- The maternity leave consists of 112 days and, in the first trimester, women are not assigned heavy duties;
- There is a Free Helpline Number that allows workers to communicate directly with an HR Manager.

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?

In many contexts, cultural perceptions, beliefs and practices predispose women and girls to violence and exploitation. Stereotypes about women and girls perpetuate a culture of violence against them, prescribing their place in society and their underrepresentation in decision-making positions. They also have less access to education, land and employment. Those living in rural areas spend long hours collecting water and firewood. This interferes with school attendance and leaves them with little time to earn money or engage in other productive activities.

Kenya case

Despite an overall improved legal and policy landscape in favour of women, Kenyan women and girls continue experiencing both structural and systemic discrimination.

A patriarchal culture that discriminates against women and girls heightens their exposure to trafficking, exploitation and poverty. In Kwale county, for instance, there is anecdotal evidence that girls are involved in explicit/erotic dance that happens in weddings and burial ceremonies (locally known as “disco matanga”) that consequently expose them to GBV. Among tribes such as the luo, unmarried women ‘migogo’ cannot build a home and a second wife cannot plant if the first wife has not, affecting the food security of the whole household. The patriarchal system also pushes women to be submissive and remain silent. Those women who do not want to conform to social and cultural norms are labelled as “unmarriageable”. Because of social pressure to conform and fear of ostracization and marginalization, some girls also accept to undergo harmful traditional practices such as FGM and forgo their education.

The plural legal system in Kenya and the application of the Marriage Act in the field of personal status deprives women in Islamic marriages of their right to equal treatment in marriage and family. Nubian women in Kibra, who are predominantly Muslim, can only participate economically and in public life at the discretion of their family (often their fathers/husbands).

Two factors in particular hinder participation of women in the political sphere: on the one hand, state regulations that require high education qualifications and expensive fees to be registered as political candidates; and on the other hand, the fact that most women do not own land and hence cannot use title deeds as collateral to get loans for campaigns or the registration for Presidency or governorship.

Bangladesh case

The principle of equality and non-discrimination along with human dignity and social justice have been recognized under the Constitution of Bangladesh⁵. However, young women continue to experience unequal access to education and skills development and face barriers to securing decent employment and opportunities to thrive as entrepreneurs. Access to and control over resources, including land, is restricted by discriminatory

⁵ In Article 27, The Constitution guarantees 'equality before law' and 'equal protection of law'; the article 28 prohibits any differential treatment only on the grounds of race, caste, religion, sex or place of birth.

family law. Young women continue to shoulder an unequal share of unpaid care work, due to the persistence of traditional gender roles.

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

Kenya case

Proper coordination and increased complementarity among the different agencies are two necessary preconditions to ensure coherence across all levels of government and improve performance at the sub-national/county level.

Additionally, the development of policy prototypes can help policy-makers to sketch, in low-risk and low-resource ways, how a new policy work before investing conspicuous financial resources. This will also facilitate the understanding of each policy at the different county levels. Taking practical steps to ensure protection of human rights by businesses that are owned or controlled by the government might help scale up best practices.

As it stands, gender-related governmental agencies or departments deal exclusively with women’s issues. However, policies across agencies and ministries – especially the ones dealing with business-related matters - should integrate a gender and age-perspective in order to recognise the importance of promoting equality and non-discrimination of women and young girls when designing public policies and rules for business. In addition, a multi-sectoral approach should also be applied so that the responsibility of facing gender issues and business-related matters does not lie only on one government ministry.

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

Kenya case

The labour market can exhibit discriminatory policies and practices, structural barriers and other prejudices that inhibit many young women from entering and staying in the job market. In the work of the GAA, we observe that some enterprises also value male over female employees especially in high ranking positions and for duties that require physical energy. On top of that, women and girls receive unequal pay for their work.

Businesses must scale up their efforts to address social issues such as GBV through their corporate social responsibility work and should invest more in the decent work agenda for young women. Businesses should also be supported to understand the economic value and business case for actively promoting opportunities for young women.

Duty bearers from the formal government system and the customary/traditional systems must also be held accountable for non-compliance with legislation. The prevailing patriarchal culture encourages their behaviour instead of forcing them to change, especially in the rural areas.

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

Kenya case

The GAA in Kenya has observed the following additional barriers:

- a. Lack of will of business-owners: it is perceived as being more profitable in the short-run for businesses not to hire or keep young women who may place an ‘economic burden’ on the company by taking maternity leave. Eliminating discrimination against women in the workplace, for example by creating a separate room for breastfeeding, requires financial investment;

- b. Community perceptions: cultural and social patriarchal norms are highly influential in shaping individual behaviour and very difficult to challenge;
- c. Shrinking space for civil society: since 2013, authorities in the Kenyan government have made several attempts to amend legislation to regulate civil society organisations, by proposing restrictive provisions that would greatly reduce their ability to operate independently. There have been many other policies to frustrate the operations and work of citizen bloggers, professional journalists, LGBT activists, human rights defenders, politicians within the opposition, the independent state institutions and ordinary citizens among others. Civil Society Organisations have still continued to utilise the space available by mainly working with approaches geared towards cooperation with government ministries and departments to lobby.

Bangladesh case

The GAA in Bangladesh has observed the following additional barriers:

- a. Sexual harassments by co-worker, supervisor and sometimes by management level staff;
- b. Workplace entry barriers due to social and cultural gender discriminatory norms ⁶;
- c. Stereotype thinking of male co-worker and management affirming that women are biologically not adequate for leadership position;
- d. Lack of confidence of woman workers and fear to take upper position because of prolonged male oppression;
- e. Lack of inclusive policies and practices.

⁶ In 2016, the labor force participation of women and girls above 15 years in Bangladesh is only 33%.
<http://datatopics.worldbank.org/gender/country/bangladesh>