WOMEN'S RIGHTS BEYOND THE BUSINESS CASE

Ensuring Corporate Accountability

This briefing highlights the importance of a binding gender-just international accountability framework for Transnational Corporations (TNCs), as an agenda in its own right and an integral part of a broader effort to achieve women's economic empowerment and rights, and offers a number of key recommendations in this regard.

WHY WE MUST GO BEYOND THE BUSINESS CASE IN RECOGNISING WOMEN'S RIGHTS

Women's economic empowerment is certainly a buzzword these days for governments, donors, international financial institutions (IFIs), UN bodies and even the private sector. Yet, whilst national and international actors increasingly promote a business case for gender equality – i.e. increasing women's labour force participation as a tool for higher economic growth – structural causes of women's economic inequality and human rights violations in the unjust global economy remain unaddressed.

The pervasive power of TNCs has unprecedented and mostly adverse implications for political decision-making and governance. Increasingly, TNCs are also presented as key partners by governments and international institutions to 'invest' in so called 'women's economic empowerment'. Even if this 'investment' is real, it is nothing more than providing opportunities to individual women to integrate in the economic markets, at the cost of transforming structural conditions and the terms upon which they are 'being included'. LGBTQI+ womxn have faced a 'corporate partnership' on two fronts, where several corporations have associated their brands with LGBTQI+ rights in countries where a majority of the public are open to these messages, whilst at the same time quietly profiting in other countries where LGBTQI+ rights are even further from reality.¹

Achieving substantive gender equality means making rights real for women. States are thus obliged to prevent and address human rights violations resulting from corporate practices under international human rights law, yet the power and global reach of TNCs today has far outstripped the ability, and in many cases the willingness, of many governments to hold them accountable and act in the interests of people who have elected them.



HOW WOMEN ARE AFFECTED BY GENDER-BASED CORPORATE ABUSE

- Women face discrimination in the labour • market. If women are in paid work, they are concentrated in vulnerable, low-paid, or undervalued jobs, earn less than men for work of equal value, and work longer hours with their paid and unpaid work combined. As of 2017, 43% of women were in vulnerable employment - often as part of global supply chains of transnational corporations - with reduced or no access to social protection.² In most countries women earn on average only 60 to 75% of men's wages.
- Disproportionate number of young women are trapped into **poorly paid exploitative and insecure jobs** such as export oriented manufacturing, often of garments or electronics. Women workers represent 71% of export processing zones workers in Madagascar, 40% in Costa Rica and almost 70% in Sri Lanka.³ In Vietnam, out of approximately 2.5 million workers in export manufacturing, 80% are young women.⁴
- As of 2016, 24.9 million people were in *forced labour* working under threat or coercion including as domestic workers, in clandestine factories, on farms, or in other sectors such as the sex industry. Women and girls were disproportionately victimised above all by privately imposed forced labour when all sectors were assessed.⁵
- One in ten women globally report that **abuse**, **harassment or discrimination** constrains their ability to take part in the labour market.⁶ An ILO study of 80 countries showed that only 32 put responsibility on the employer to take steps to prevent or protect workers against sexual harassment, and in only 8 is compensation available to workers injured due to work-related violence or harassment.⁷
- Exercising the right to join the trade unions and the right to strike becomes more and more challenging globally. The number of countries in which workers are exposed to violence including threats, kidnappings and physical violence from state security forces and gangs working on behalf of companies - increased from 52 countries in 2016 to 59 countries in 2017.8
- Women human rights defenders face risks both because they are challenging corporate and state power, and for transgressing discriminating gender

roles by speaking out. Reported gender-specific threats and violence include sexual violence, harassment of their children, and discrimination in their communities.⁹

- Gender-based violence including sexual violence against communities affected by extractive industries projects are repeatedly reported, but prevention is often non-existent and access to justice is rare. More than 100 women living around the Porgera gold mine in Papua New Guinea were targeted for vicious sexual assaults by employees. After much external pressure, in 2012 the Canadianowned company designed a remedy mechanism, where survivors were required to waive their legal rights to sue the company to potentially receive a remedy package, which many felt failed to reflect the severity of the harms suffered.¹⁰
- In many rural communities, women are responsible for agricultural production, but have limited decision-making power and rights over land-related decisions. Women therefore often have little say over the **expropriation of land** by extractive industries, but then suffer the consequences when their unpaid labour increases as a result of depletion of natural resources and when they can no longer grow food to feed their families and generate income.¹¹
- Women are disproportionately affected both by fossil fuel extraction and by the impacts of **climate change** that are fueled in large part by the fossil fuel industry. Extreme weather events such as drought, cyclones, and flooding are becoming both more frequent and severe due to climate change, leading to increased humanitarian emergencies. These emergencies disproportionately impact on women and girls, who are much more likely than men to be killed during disasters, take on caring roles for the vulnerable, and also face an increased risk of genderbased violence.¹²
- Large commercial corporations have been identified as the biggest culprits of the \$50 billion **illicit financial outflows** from African countries each year.¹³ Women and girls are most severely affected when public services are starved of much-needed funding that also impact their gender responsiveness capacity, including through lack of access to education, lack of reproductive health services and increased unpaid care and domestic work.¹⁴

Disappointingly, no binding international human rights legal framework for TNCs exists. And the voluntary accountability approach favoured by corporations has failed to prevent abuse, or deliver access to remedy and justice for violations committed by TNCs. This must change.

CURRENT INTERNATIONAL LAWS TO PROTECT WOMEN'S RIGHTS WITH RELATION TO BUSINESS ACTIVITIES

Under various international law frameworks, States Parties have the obligation to respect, protect and fulfill women's economic and social rights. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and key ILO conventions are particularly relevant to the achievement of women's economic and social rights and obligate States that have ratified them to prevent and address the negative human rights impacts of corporate practices.

For example, **CEDAW** establishes comprehensive obligations of States to eliminate discrimination in all its forms and encourages the use of temporary special measures to accelerate the achievement of substantive equality for women in a range of areas, including in employment and with regard to economic and social benefits. **ICESCR** articulates a range of rights, including the right to enjoy without discrimination the right to work, to just and favourable conditions of work, to social security, to an adequate standard of living, to education and the right to form trade unions. Under these frameworks, States Parties have a due diligence obligation to protect women from human rights abuses committed by corporate actors under their jurisdiction, including by those operating in other countries (a so-called extraterritorial obligation) and to ensure access to remedy for such violations.

The obligations of States parties requiring them to establish (...) the effective protection of women against any act of discrimination and to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, also extend to acts of national corporations operating extraterritorially."

- CEDAW General Recommendation no. 28 ¹⁵

The eight ILO fundamental Conventions are universal human rights that apply to all people in all States - regardless of the level of economic development. They provide more detailed principles and rights with regards to freedom of association (including the right to collective bargaining), the elimination of forced labour, the abolition of child labour and the elimination of employment and occupation discrimination (Convention 111), including recognition of the right to equal remuneration for men and women workers for work of equal value (Convention 100). Latter Conventions include State duties to protect workers with family responsibilities (Convention 156), maternity protection (Convention 183) and protection against any form of violence, abuse or harassment against domestic workers (Convention 189).¹⁶

CROSS-BORDER BUSINESS ACTIVITIES: A GAP IN THE PROTECTION OF WOMEN'S RIGHTS

However, violations of women's human rights by TNCs continue to be far from adequately prevented and remedied. Where access to remedy and justice cannot be achieved in the State where a violation occurred, survivors have repeatedly turned to TNCs' home States, only to face often insurmountable legal, procedural and financial barriers to justice.¹⁷

Currently the National Contact Points (NCP) in countries that have adhered to **the OECD Guidelines for Multinational Enterprises** are the only existing international mechanism to hold corporations to account for their human rights record overseas. Complaints can be heard when people are harmed by companies' actions, provided that these actions where in noncompliance with the Guidelines. However, OECD Guidelines are non-binding and very few complaints have led to some form of remedy for survivors.¹⁸

The UN Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council Resolution 17/4 on 16 June 2011, have played an important role by re-clarifying and reinvigorating the state duty to protect and the corporate responsibility to respect human rights. Notably, the Guiding Principles have led to progress on due diligence measures and National Action Plans on business and human rights. However, this soft law initiative has not been effective in ensuring access to remedy and justice for survivors, nor are there any internationally agreed sanctions for companies that fail to meet their duties to respect human rights.¹⁹ Lastly, the specific issues and barriers to accessing justice faced by women are not adequately addressed by the Guiding Principles, nor in States' National Action Plans, which to a large extent remain gender-blind.

WHY WE NEED A GENDER-JUST UN HUMAN RIGHTS TREATY ON TRANSNATIONAL CORPORATIONS

A gender-just international accountability framework, including a clear commitment to enforcing a duty of vigilance and access to justice and remedies in TNCs' home States, is crucial for realising rights for all. Existing international human rights law does not prescribe how corporations will be held accountable for violations related to their cross-border activities, and existing guidelines and principles do not deliver access to remedy and justice. Encouragingly, on 26 June 2014 the UN Human Rights Council adopted Resolution 26/09 which mandates a working group to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. This has started negotiations towards a binding UN instrument to ensure protection of human rights from the activities of transnational corporations and other business enterprises. Annual negotiations have since 2015 taken place in Geneva, Switzerland, which all interested UN and Observer Member States, as well as NGOs with ECOSOC status, can attend. The process is likely to be ongoing for years to come. A first draft will be discussed in 2018's negotiations, from 15-19 October.20

RECOMMENDATIONS

Many governments have now committed to prioritise gender equality and advancing women's position in the economy, however these ambitions will fall short as long as violations of women's rights by TNCs remain unaddressed. To pursue meaningful and structural change, we need concerted action to ensure accountability and effectively regulate the human rights impact of TNCs through a binding instrument.

In alliance with hundreds of other civil society organisations, the Feminists for a Binding Treaty Coalition members urge all States to support the process and constructively participate in advancing the content of the Treaty in the fourth round of negotiations towards a binding UN instrument 15-19 October 2018.²¹ Attention is required to ensure that these negotiations deliver for women, rooted in a recognition of businesses' different, disproportionate and unanticipated impacts on women and men, as a result of their gender-based social, legal, cultural identities, roles and rights.²²

RECOMMENDATIONS ON PROCESS

It is a matter of urgency that:

- 1. All governments support and constructively engage in the process of drafting a legally instrument to regulate binding in international human rights law the activities of transnational corporations, as currently developed in the Human Rights Council mandated Open-Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights.
- 2. The new process must comprehensively integrate an intersectional feminist perspective that addresses the specific impact of corporate abuse on women and historically marginalised communities and result in a treaty that ensures rights protections and access to justice and effective remedy for *all* rights holders.
- 3. Full and meaningful participation of civil society, including women's rights organisations, feminist collectives, trade unions and other social movements, women human rights defenders and gender experts, particularly those representing the most marginalised groups, is fundamental and should be supported, by all States and by the Chair of the negotiation process.

RECOMMENDATIONS ON CONTENT

To ensure that the treaty delivers for all rightholders, the Feminists for a Binding Treaty Coalition urges negotiators to propose and support amendments to the draft treaty text to explicitly ensure:

1. Mandatory gender impact assessments

The treaty should require that any preventive measures such as due diligence procedures, should be completed by a human rights-based gender impact assessment. Impact assessments should be conducted with the meaningful participation of women from affected communities, including in the design and definition of the scope of impact assessments, and should be made public and accessible. Explicitly state that gender impact assessments shall be conducted by an independent entity chosen by, or agreed upon, the communities and the women from whom information will be gathered, in a process of free, prior and informed consent (FPIC).

2. Gender-sensitive justice and remedy mechanisms

Put rights holders at the centre of any agreed remedy mechanisms by specifying that women and men, particularly women from marginalised groups, should be consulted meaningfully in creating, designing, reforming and operating remedial mechanisms. States should commit to take positive measures to ensure effective access to remedies, without discrimination, to women. In order to remove obstacles to access to justice and effective remedies, including by women, the treaty must also clearly define the extraterritorial dimension of states' obligations to ensure access to justice and remedy for survivors of violations committed by businesses that occur outside their territories.

3. Respect, protection and an enabling environment for Women Human Rights Defenders

Include strong and clear language on the protection of all rights holders adversely affected by business activities or those challenging corporate abuses, including human rights defenders and whistleblowers. Such measures should take into account the gender-specific and other identity-based risks and impacts to women human rights defenders, such as indigenous, LGBTQI+, and migrant and refugee women.

FURTHER RESOURCES

• Integrating a gender perspective into the legally binding instrument on transnational corporations and other business enterprises

The Feminists for a Binding Treaty Coalition October 2017 *briefing, which provides further details on the Coalition's recommendations on treaty content.*²³

• Challenging corporate power: Struggles for women's rights, economic and gender justice

AWID and the Solidarity Center joint report from 2016 which outlines the ways in which large national and transnational corporations are impacting the lives of women and oppressed people and offers insight into their strategies of resistance.²⁴

• Women human rights defenders confronting extractive industries: An overview of critical risks and human rights obligations

AWID policy report from 2017 with a gender perspective, which analyses forms of violations and types of perpetrators, quotes relevant human rights obligations and includes policy recommendations to states, corporations, civil society and donors.²⁵

• Weaving resistance through action: Strategies of women human rights defenders confronting extractive industries

AWID practical guide from 2017 outlining creative and deliberate forms of action, successful tactics and inspiring stories of resistance.²⁶

• Defending people and planet: Women confronting extractive industries

AWID video from 2017 which places a spotlight on courageous WHRDs from Africa, Asia, and Latin America. They share their struggles for land and life, and speak to the risks and challenges they face in their activism.²⁷

• Illicit financial flows: Why we should claim these resources for gender, economic and social justice

AWID report from 2017 which focuses on the disproportional gender impact of IFFs, in relation to the drain in developing countries of critical resources, which can be claimed for the advancement of women's human rights.²⁸

• Mapping study on women's rights related to land, housing and natural resources

ESCR-Net's Women and ESCR Working Group's 2016 mapping report on actions to advance the enjoyment of women's economic, social and cultural rights related to housing, land and natural resources and the genderspecific ways in which violations often entrench resource allocation.²⁹

• Towards a Strong Treaty to Regulate Corporate Activity: Corporate Accountability Informed by the Leadership and Lived Experiences of Women ESCR-Net recommendations to states ahead of the 2017 negotiations, highlighting the importance of the recognising the leadership and lived experiences of women as an integral and equal component in the creation of the treaty.³⁰

• Member submissions advocate for strong UN Committee guidance on ESCR and business activities

15 ESCR-Net members' comments to the UN CESCR reflecting a range of overlapping priorities for the ICESCR General Comment on State obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) with respect to business activities.³¹

• Land intensive corporate activity: The impact on women's rights

CORE and WomanKind report from 2017 summarising the research 'Business and Human Rights: Engendering Human Rights Due Diligence' report by the Human Rights Clinic at the University of Essex.³²

• El tratado internacional que podría poner fin a los abusos de las empresas transnacionales

Fernanda Hopenhaym, Co-ED of PODER and Eugenia López of PODER report on the 3rd Session of the Open Ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises respect to Human Rights (in Spanish). October 2017.³³

• Women, business and human rights: working towards a Binding Treaty with a gender perspective

Fernanda Hopenhaym, Executive Director at PODER explores, from a feminist perspective, the importance of a UN Binding Treaty with a gender perspective and why it should be implemented.³⁴

• Illicit Financial Flows Undermining Gender Justice

This DAWN paper from 2016 explores some of the links between tax justice and gender justice at the global level. It highlights two channels in which illicit financial flows and gender justice are connected.³⁵

• Corporate power: a looming threat to the fulfilment of women's human rights

*This DAWN article from 2017 addresses ways in which corporations capture public policy space, impacting negatively on women's human rights.*³⁶

• Mujeres defendiendo la vida y los bienes naturales: casos de América Central

CESTA – Amigos de la Tierra El Salvador's 2018 report documenting cases of women defending life and natural resources in Central America, with detailed analyses of struggles in El Salvador, Honduras, Costa Rica and Guatemala (in Spanish).³⁷

ENDNOTES

- Several intersecting groups that face discrimination, whether it's based on gender, race, age, class, socioeconomic status, physical or mental ability, migration or refugee status, gender or sexual identity, religion, or ethnicity, have specific and unique experiences of corporate power.
- 2. Although the rate for female and male vulnerable employment are similar, there are significant gender differences in its subcategories. For example, globally, 14.9% of employed women are contributing family workers, compared with 5.5% of employed men. In terms of own-account work, the share of male employment is greater than that of female employment in all country income groups. ILO (2017), World Employment Social Outlook Trends for Women 2017, http:// www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/ documents/publication/wcms_557245.pdf
- ILO (2008), Report of the InFocus Initiative on export processing zones (EPZs), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--relconf/documents/meetingdocument/wcms_090223.pdf
- 4. ActionAid & Aid for social protection program Foundation Vietnam (2017), Stitching a Better Future: is Vietnam's boom in garment manufacturing good for women? http://www.actionaid.org/sites/files/ actionaid/en_stitching_a_better_future_final_2.pdf
- 5. More precisely, women and girls represent 99 percent of those that experience forced labour in the commercial sex industry and 58 per cent in other sectors, 40 percent of those that experience forced labour imposed by state authorities, and 84 percent of those that experience forced marriages. ILO / Walk Free Foundation (2017), *Global Estimates* of Modern Slavery, http://www.ilo.org/wcmsp5/groups/public/ @dgreports/@dcomm/documents/publication/wcms_575479.pdf
- ILO (2017), World Employment and Social Outlook Trends for Women 2017, https://www.ilo.org/wcmsp5/groups/public/---dgreports/--inst/documents/publication/wcms_557245.pdf
- ILO (2018), Ending violence and harassment against women and men in the world of work, http://www.ilo.org/wcmsp5/groups/public/--ed_norm/---relconf/documents/meetingdocument/ wcms_553577.pdf
- ITUC (2017) Global Rights Index 2017: Violence and repression of workers on the rise, https://www.ituc-csi.org/ituc-global-rights-index-2017? lang=fr
- 9. UN OHCHR (2018), Women human rights defenders, https:// www.ohchr.org/EN/Issues/Women/WRGS/Pages/ HRDefenders.aspx & Global Witness (2017), Defenders of the Earth, https://www.globalwitness.org/en/campaigns/environmentalactivists/defenders-earth/
- Columbia Law School Human Rights Clinic & Harvard Law School International Human Rights Clinic (2015), Righting Wrongs? Barrick Gold's Remedy Mechanism for Sexual Violence in Papua New Guinea, https://static1.squarespace.com/static/562e6123e4b016122951595f/ t/565a12cde4b0060cdb69c6c6/1448743629669/Righting+Wrongs.pdf
- 11. See for example ActionAid South Africa (2017) Living next to the mine: Women's struggles in mining affected communities, http:// www.actionaid.org/sites/files/actionaid/ living_next_to_the_mine_womens_struggles.pdf
- 12. ActionAid International (2016), On the frontline: Catalysing women's leadership in humanitarian action, http://www.actionaid.org/sites/ files/actionaid/ on_the_frontline_catalysing_womens_leadership_in_humanitarian_a ction.pdf
- 13. ECA High Level Panel on Illicit Financial Flows (2015), Report of the High Level Panel on Illicit Financial Flows from Africa, https:// www.uneca.org/sites/default/files/PublicationFiles/ iff_main_report_26feb_en.pdf
- 14. GATJ (2017), Tax Justice for Women's Rights Factsheet, https:// www.globaltaxjustice.org/sites/default/files/

TaxJustice%20for%20Women%27s%20Rights%20FACTSHEET.pdf & Femnet (2018), *Fight Corruption, Finance Gender Equality*, http:// femnet.org/2018/06/21/policy-brief-fight-corruption-financegender-equality/

- 15. Extract from Para 36, CEDAW/C/2010/47/GC.2 http:// www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf Regarding ICESCR see Para 30, E/C.12/GC/24, http:// tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx? symbolno=E/C.12/GC/24&Lang=en
- 16. At this time the international community, as well is looking forward to a new ILO Convention on Violence and Harassment in the World of Work, as an important framework that could address gender based violence.
- Blackburn, D. (2017) Removing Barriers to Justice: How a treaty on business and human rights could improve access to remedy for victims, ICTUR http://www.actionaid.org/sites/files/actionaid/ removing_barriers_web.pdf
- Daniel, C. et al (2015) Remedy Remains Rare, OECD Watch https:// www.oecdwatch.org/publications-en/Publication_4201
- 19. An in depth assessment of eleven National Action Plans (NAPs) in 2017 found that the the vast majority of these fail to seek to address domestic barriers to access judicial remedy for business-related human rights abuses which occur at home or abroad. See ICAR *et al.* (2017) Assessment of existing National Action Plans (NAPs) on business and human rights - August 2017 update, https://www.icar.ngo/ publications/2017/8/23/assessments-of-existing-national-actionplans-naps-on-business-and-human-rights-august-2017 For a general critique of the lack of extraterritorial remedies resulting from the Guiding Principles see Thabane, T. (2014). Weak extraterritorial remedies: The Achilles heel of Ruggie's' Protect, Respect and Remedy' Framework and Guiding Principles. African Human Rights Law Journal, 14(1), 43-60, http://www.scielo.org.za/scielo.php? script=sci_arttext&pid=S1996-20962014000100004
- 20. For a feminist analysis of the zero draft, see Felogene Anumo and Inna Michaeli, AWID, member of Feminists for a Binding Treaty (2018) Justice not "special attention": Feminist Visions for the Binding Treaty, https://www.business-humanrights.org/en/justice-not-%E2%80%9Cspecial-attention%E2%80%9D-feminist-visions-for-thebinding-treaty
- For more information about the Treaty Alliance, see http:// www.treatymovement.com/
- 22. For further details see Feminists for a Binding Treaty Coalition (2017) Integrating a gender perspective into the legally binding instrument on transnational corporations and other business enterprises, https:// wilpf.org/wp-content/uploads/2017/10/Jt-statement-gender-intothe-treaty-October-2017.pdf
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- 24. Available in English https://www.awid.org/publications/ challenging-corporate-power-struggles-womens-rights-economicand-gender-justice, French https://www.awid.org/fr/publications/ contester-le-pouvoir-corporatif-les-luttes-pour-les-droits-des-femmesla-justice and Spanish https://www.awid.org/es/publicaciones/ desafiar-al-poder-corporativo-las-luchas-por-los-derechos-de-lasmujeres-la-justicia
- 25. https://www.awid.org/publications/women-human-rightsdefenders-confronting-extractive-industries
- 26. https://www.awid.org/resources/weaving-resistance-throughaction-strategies-whrds-confronting-extractivism-and-corporate
- 27. https://www.awid.org/resources/defending-people-and-planetwhrds-confronting-extractive-industries
- 28. https://www.awid.org/publications/illicit-financial-flows-why-we-

- 29. https://www.escr-net.org/resources/mapping-study-womensrights-related-land-housing-and-natural-resources
- https://www.escr-net.org/sites/default/files/ igwg_advocacy_material_-gender.pdf
- https://www.escr-net.org/news/2017/member-submissionsadvocate-strong-un-committee-guidance-escr-and-business-activities
- Both reports are available here: http://corporate-responsibility.org/ land-intensive-corporate-activity-impact-womens-rights/
- 33. https://www.projectpoder.org/es/2017/11/tratado-internacionaltransnacionales/
- 34. https://www.business-humanrights.org/en/women-business-andhuman-rights-working-towards-a-binding-treaty-with-a-genderperspective
- 35. http://www.dawnnet.org/sites/default/files/articles/ illicit_financial_flows_undermining_gender_justice.pdf
- 36. https://protect-eu.mimecast.com/s/pdnSC98Jwckj0KMIE0RtZ? domain=dawnnet.org
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