

## **Gender-Sensitive Human Rights Due Diligence**

*7<sup>th</sup> UN Forum on Business and Human Rights<sup>1</sup>*

The UN Guiding Principles on Business and Human Rights (UNGPs) acknowledge that while the State is obligated to respect, protect and fulfill human rights and fundamental freedoms of all peoples, business enterprises are required to respect human rights and comply with applicable laws. Due diligence in the context of business and human rights involves identifying, preventing, mitigating, accounting and remediating for how a businesses' operations, products or services, which include their business relationships, affect rights holders.

*Gender-sensitive due diligence* is underpinned by the right to gender equality and focuses specifically on businesses' potential and actual adverse impacts on human rights related to sex, gender, gender identity and sexual orientation, with particular emphasis on the experiences of women and girls, and the multiple intersecting forms of discrimination that influence the realization of equal rights.

The Women's Empowerment Principles promulgated by UN Women and UN Global compact provide an overview of some of the main areas of concern for the private sector's role in promoting gender equality. These topics are often seen as part of a company's Corporate Social Responsibility practices, and not as a core part of enterprise risk management and sustainability functions. In other cases, gender-responsiveness is viewed through the narrower lens of labour rights and international labour standards, which are fundamental, but may not encompass the broader context within which business operations may have an impact upon the human rights of men, women and gender non-conforming persons.

Some specific areas in which particular attention should be paid to gender-responsive due diligence are:

- *Rights to Health and safety*, especially sexual and reproductive health, sexual harassment, and gender-based violence in the workplace;
- *Rights to work and at work*, specifically in supply chains, which are often characterized by occupational segregation and segmentation, which is a major labour issue;
- *Rights to Land and natural environment*, where livelihoods can be disrupted by business activities; and
- *Right to freedom of association*: Trade unions and community groups that may be negatively affected by business.

The purpose of gender-sensitive due diligence is to foster accountability in the private sector to its independent responsibility to respect the universal human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Economic, Social and Cultural Rights, and expose gender-specific risks of abuse that might otherwise go undetected. Without taking gender equality into consideration business can exacerbate existing gender inequalities and have an adverse impact on individuals and communities.

Business due diligence does not reduce States' obligations to protect human rights by enacting effective laws and policies. This brief provides an overview of gender-sensitive due diligence challenges, potential solutions and good practices for companies.

## **I. CHALLENGES**

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**Recognizing Gender-Specific Impacts:** Without a gender perspective, a business's adverse impact on human rights can go unnoticed or be underestimated. Furthermore, companies' own business models, purchasing practices and political activity may exacerbate existing gender inequalities. The following examples are illustrative:

- Recruitment and employment: Because women are often employed through informal and short-term and or indirect contracts, a company's policies to respect labour rights and meet international labour standards might not reach them. For example, due diligence processes on respect for equal remuneration may only account for full-time salaried workers. Likewise, due diligence processes may not include adverse impacts on second- and third tier suppliers.
- Health policy: Though it may cover basic occupational safety hazards, it often neglects rights pertaining to workers' overall rights to accessible, affordable and available quality health information and services, including sexual and reproductive health, and protection against sexual harassment and violence.

**Understanding Sectoral Impacts:** Gender responsive due diligence requires that attention be paid to specificity and context because rights holders, such as women, are not a homogenous group. Multiple factors contribute to gendered inequalities, including discriminatory norms, structural inequality, and discriminatory laws. As such, many factors influence potential impact on human rights, including sector, operating environment and size. These cases are examples:

- In rural areas, women are more likely to rely on subsistence farming compared to men for their livelihoods and are uniquely impacted by land access and resettlement issues that could diminish their access to collective resources such as water, pastures, fisheries and forests.
- Women usually bear the brunt of responsibility for unpaid care and domestic work. This impinges on the time they have for paid work, education and leisure. In general, they have less time and opportunity to participate in workers' organizations, professional development opportunities, training or extension programs.
- Women and girls living in local communities can be vulnerable to sexual abuse and exploitation when there is a large influx of male workers.

**Lack of Standardized Data and Reporting:** If States, as duty-bearers with the responsibility to enact legislation and regulation, have weak enforcement mechanisms, then companies will have little to no incentive to carry out due diligence. Furthermore, the lack of mandatory reporting requirements on a range of gender equality issues means that companies can often be deemed compliant for simply having a policy in place even if it is not actually applied and operationalized. Some problematic examples include:

- Indicators relating to one single aspect of gender equality such as representation in senior management might be used as a proxy to evaluate gender-equality more broadly, even though, while linked, it does not explicitly cover issues like sexual harassment in the workplace, for example.
- Many reporting requirements are disaggregated by sex alone or race/ethnicity/other category separately, but not at the same time. Women who face multiple and overlapping forms of discrimination are overlooked because the risks to them are not measured or identified.
- Lack of transparency and reporting on the part of most companies makes it difficult for other stakeholders to support them to develop more complex, effective and comprehensive policies toward achieving gender equality and women's economic empowerment.

## **II: POTENTIAL SOLUTIONS**

According to the UNGPs, companies' due diligence processes should include actions to identify, prevent, mitigate, account for and remediate human rights risks. The following are examples of gender-sensitive actions companies can take:

**Identify:** Companies must assess the extent to which they have truly internalized and operationalized commitment to gender equality at all levels of operations. Companies can:

- Conduct human rights-based gender impact analyses before the implementation of a new project as well as on an ongoing basis to examine the risk factors that concern gender-equality. These processes should be participatory in nature and include diverse groups of right holders, holding women-only consultations where necessary.
- Seek to uncover sexual harassment and gender discrimination, which includes public health rights to quality care, confidentiality, and privacy and (public and private) monitoring and determine whether workers can exercise their onsite and offsite health and other benefits.
- Collect and analyze sex and relevant age, race, ethnicity disability etc. data in their due diligence processes to identify areas of differential impact as the basis for determining gender-related human rights risks or violations.

**Prevent:** Companies need to take all possible measures to prevent human rights abuses before they happen and actively promote good practices that secure rights. Some possible actions include:

- Incorporate training of workplace management and human resource and compliance staff. Support the role of trade unions and facilitate women's participation in them as well as in all other aspects of company operations, including in the creation and development of gender and diversity policies and grievance procedures.
- Facilitate women's equal and meaningful participation in consultations and negotiations. Develop gender sensitive warning systems and protection for whistleblowers. For example on health, this could go beyond Occupational Safety and Health (OSH) and help establish management systems that create a culture of respect for women rights of women and men and their health and safety in an enterprise workforce and prevent violations, promote well-being, and advance social and business performance.

**Mitigate:** Companies can mitigate adverse impacts on human rights through practicing supply chain policies that empower women. For example:

- Practice gender-responsive corporate procurement, which refers to the integration of women-owned or gender-responsive enterprises into value chains by promoting gender equality and women's empowerment through purchasing policies and practices.
- Establish a Corporate Code of Conduct to hold suppliers accountable to gender equality standards.

**Account for:** Companies can advocate for voluntary fair trade, CSR and environmental standards to include stronger requirements that address gender equality concerns, women workers' needs at all levels, and a broader understanding of rights to work and at work in relation to health, social security/protection, and livelihoods.

- Gender-responsive budgeting can take into account the resource requirements to respond to differential needs of women and men and disadvantaged groups

- Mandatory reporting requirements pertaining to gender equality are increasing so it is important for companies to keep track of both mandatory and voluntary disclosures that include a more comprehensive range of measures of gender equality.
- Third-party certification can support accounting of what companies have done to prevent and mitigate gender-based risks and how adverse impact is remediated.

**Remedy:** Companies must put in place procedures for effective, gender-responsive remediation for human rights abuses. Internal grievance mechanisms do not replace judicial mechanisms or other State instituted complaint procedures, including those established by National Human Rights Institutions or labour arbitration tribunals.

- Establish internal mechanisms to provide safe and confidential treatment, services, and redress and justice to survivors of sexual harassment and sexual violence, however, these mechanisms do not replace appropriate judicial mechanisms.
- Provide information concerning available judicial and other remedies and ensure that all right holders may freely access these. Specific measures should be adopted by companies to remove any gender-based barriers to accessing compensation schemes and other reparations that they administer. Pay financial penalties instituted by governments for violating regulations pertaining to women's human rights, which can intersect with aspects such as the environment and corruption.

### **III. GOOD PRACTICES**

Companies can more effectively practice gender-sensitive due diligence by becoming familiar with current gender-responsive business principles and codes of conduct and related tools and resources that can serve as frameworks for the development of gender-responsive human rights due diligence. In addition to CEDAW, these include:

- **The Women's Empowerment Principles (WEPs)**, developed by UN Women and UN Global Compact; to provide guidance to companies to promote gender equality and women's empowerment in the workplace, marketplace and community developed. These come with the **WEPs Gender Gap Analysis Tool** for internal benchmarking and self-assessment comprising 18 multiple choice questions that draw from good practices from around the world. The UNDP **Gender Equality Seal certification** involves standards to promote a more egalitarian work environment, bridging persistent gender gaps and promoting women's empowerment in the workplace, promoting simultaneously productivity and competitiveness with social justice.
- **The Gender Equality in Codes of Conduct (2017) and Gender Equality in Social Auditing (2018)** guidance documents produced by Business for Social Responsibility with various partners. Also, publicly available are the **Workplace Health Facility Guidelines and Management Benchmarks** (BSR/Meridian Group International, Inc.), a self-assessment tool to address health rights at the workplace.
- Good corporate practices on women's health and relevant actions can also be found in the UN Foundation publication (2017) **Private Sector Action for Women's Health and Empowerment**.
- **The Voluntary Guidelines on the Responsible Governance of Tenure**, developed by multiple stakeholders within the FAO World Committee on Food Security, contain principles on gender equality and the steps companies need to take to ensure that they respect equal rights over land and natural resources as part of their due diligence.