

Gender Equality and Business and Human Rights

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About the author: Penelope Simons is an Associate Professor at the Faculty of Law (Common Law Section) at the University of Ottawa. Her research focuses on business and human rights and in particular on: the human rights implications of domestic and transnational extractive sector activity; state responsibility for corporate complicity in human rights violations; the regulation of transnational corporations; gender and resource extraction; as well as the intersections between transnational corporate activity, human rights and international economic law. She is the co-author with Audrey Macklin of *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage* (Routledge 2014). She also co-author with Tony VanDuzer and Graham Mayeda of *Integrating Sustainable Development into International Investment Agreements: A Guide for Developing Countries* (Commonwealth Secretariat, 2013). Penelope is a member of the Human Rights Research and Education Centre, the Interdisciplinary Research Group on the Territories of Extractivism (GRITE) and the Center for Environmental Law and Global Sustainability, all at the University of Ottawa, as well as the SSHRC-funded Canadian Partnership on Strengthening Justice for International Crimes. In 2018, Penelope was awarded the Walter S. Tarnoplosky Award, recognizing her as “an individual who has made a significant contribution to human rights.”

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Question: Why is it important to talk about gender equality as a business and human rights issue?

My comments draw on work I have done with my colleagues Sara Seck and Melisa Handl. I will confine my remarks to women’s equality rather than gender equality more generally.

Neither business activity itself nor its impacts on society are gender-neutral. We live in a patriarchal world. Despite the apparent advancements in international and domestic law on equality issues, women continue to be the subject of significant discrimination and violence in their everyday lives, including in the context of business activity.

Consider the example of resource extraction. As with any type of business activity, women’s relationship with resource extraction is not straightforward. In other words, they are neither simply beneficiaries of such activity nor victims of harm caused by such activity. Women may be members of boards of directors of mining or oil and gas companies, they may be managers or employees, lawyers representing resource extraction corporations, clerical

workers, miners, members of a community where resource extraction takes place, human rights or environmental land defenders, or other civil society activists who oppose extractive activity or a combination of some of the above.

Resource extraction can have differentiated impacts on women than on men. These impacts have been discussed by Professor Katie Jenkins. They include an increased workload for women, caused by environmental contamination of land and water supplies, where those women have the family responsibility for sourcing food and collecting clean water; and the effect of toxic chemical contamination on the health of communities, and increased burdens on women who may have to care for sick family members. Jenkins also points to the increased risk of violence against women, whether or not working within the industry, as well as the impacts of voluntary or involuntary displacement of communities and shifts from an agrarian to a cash-based economy, both of which can destabilize gender roles.

Let me say a few words about violence against women, because sexual harassment and other violence against women is a pervasive global phenomenon and it is widespread across all business sectors. Women's experiences of violence in the context of resource extraction differ from country to country and as between women, depending on a range of intersecting factors from race to socio-economic status, among myriad others. Nonetheless, there is growing evidence that large scale mining and resource extraction can pose significant risks of violence for women.

The extractive industries continue to be male-dominated despite the fact that women are increasingly entering the workforce. Women are often employed in undervalued and underpaid jobs, such as clerical work or as cleaners, cooks, housekeepers, laundry services. Although as mentioned above, they may be employed as managers or miners or in other higher-paying positions. Nonetheless, it does not seem to matter whether they are managers or cleaners, reports suggest that women in the extractive industries face daily sexual harassment, including expectation of sex from co-workers, and are at the risk of sexual assault. This is true whether the extractive activity is taking place in the global north or global south.

Domestic violence also appears to increase in proximity to largescale extractive activity. This is the result of many factors, including the disruption of traditional property ownership that can lead to changes in gender roles, employment for men in the community giving the latter more money in their pocket which can lead to increased alcohol consumption and increased incidents of domestic violence. Additionally, large-scale resource extraction may also create a "rigger culture" where a mainly male workforce flies in and out of industrial camps to perform high stress shift work. On their way home they may consume alcohol and imbibe drugs as a way of releasing stress and then, once home, engage in domestic violence.

Additionally, women in the local communities near extractive sites are often subjected to violence by members of the male workforce or by security forces that use such violence (including rape) as an intimidation tactic against local women to prevent artisanal mining, to dissuade land or human rights defenders from opposing such activity, or to terrorize local communities in situations of armed conflict or conflict over land.

Let me conclude by saying that it is important to recognize that no matter the industry, discrimination and violence against women do not take place in a vacuum. Jacqui True points out, acts of gender-based violence in the context of business activity are "the direct results of what women face" in their communities and larger society. Such violence is linked to and perpetuates existing "structural gender inequalities that manifest themselves in the subordination of women in society". Therefore, women's inequality, and the violence that it entails, is something that all businesses and governments need to address proactively.

Question: Is the current regulatory framework, when it comes to human rights due diligence, adequate to tackle issues of gender equality and intersectionality?

The short answer is, unfortunately, no. If we look at the United Nations Guiding Principles on Business and Human Rights, for example, and even the draft treaty on business and human rights which is currently being negotiated at the United Nations, we see that the drafters of both of these important instruments have taken the “add and stir” approach to including consideration of women’s human rights and women’s interests. In other words, these instruments have been conceptualized and developed from a particular perspective and references to women and provisions that deal with women’s interests and aimed at protecting women’s human rights have been added as an afterthought.

The UNGPs are particularly problematic. They marginalize women’s rights and interests in a number of ways. Melisa Handl and I examine this issue in depth in our feminist critique of the UNGPs. But one salient example of this is the fact that Guiding Principle 12, which is one of several principles that elaborate the business responsibility to respect human rights, appears to create a hierarchy of rights relevant to the business responsibility to respect human rights. Businesses are directed to respect the human rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights, and the rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work. The rights in these instruments are referred to as an “authoritative list” of human rights that are applicable to business activity in all circumstances. Women’s human rights, Indigenous peoples’ rights, the rights persons with disabilities and the rights of children, among others, are mentioned only in the commentary and are referred to as “additional standards” that corporations *may* need to consider in particular circumstances. This sends the erroneous message to businesses that this second category of human rights may not be relevant to their everyday operations or to meeting their responsibility to respect human rights, including by undertaking human rights due diligence (HRDD). This bifurcation of rights is incompatible with the doctrine of the indivisibility, interrelatedness, and interdependence of all human rights, set out in the 1993 Vienna Declaration and Programme of Action.

The current version draft treaty is a little better. Feminist advocacy groups have been able to convince the drafters to include more provisions that deal women’s interests and women’s human rights. For example, the preamble of the second revised zero draft recognizes the “distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, [1]ndigenous peoples, persons with disabilities, migrants, refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders”. It also emphasizes “the need for States and business enterprises to integrate a gender perspective in all their measures consistent with the *Convention on the Elimination of All Forms of Discrimination against Women*, the Beijing Declaration and Platform for Action and other relevant international standards”. Regarding HRDD, the current version of the draft text would impose an obligation on states to require businesses to undertake HRDD and integrate a gender perspective throughout that process “in consultation with potentially impacted women and women s organizations [in order to] to identify and address the differentiated risks and impacts experience by women and girls”. There are other provisions relating to women and women’s human rights. But again, the text was conceptualized from a particular perspective. Rather than taking a holistic approach, women’s rights and interests have been added to the text here and there.

Given the deficiencies of the normative framework, it is important for states to look beyond these texts in determining their human rights obligations and in developing HRDD and other laws, and for businesses to look beyond these texts in determining their human rights responsibilities.

Question: What type of concrete realistic and intersectional policies can governments and corporations adopt?

We are still at the very early stages of grappling with the issue of gender equality in the context of business activity but there are some good documents providing guidance for states and businesses in developing their policies and practices. A good place for governments and corporations to start is the United Nations Working Group on Business and Human Rights' report on the Gender Dimensions of the UNGPs. In this document, the Working Group sets out a gender framework for states and businesses to help them understand their obligations and responsibilities under the UNGPs. The Working Group also provides a set of concrete recommendations with illustrative actions for each Guiding Principle. Joanna Bourke-Martignoni and Elizabeth Ulmas have produced a really helpful report on gender-responsive human rights due diligence in which they provide examples of what such due diligence would entail in the context of global supply chains, land-based agricultural investments, and conflict-affected zones. There are also a variety of other tools that may be useful such as the Women Win's Gender Responsive Due Diligence Platform developed in partnership with other actors.

In developing laws, policies, and practices that are gender responsive and gender transformative, it is crucial for states and businesses to engage with women and women's organizations and to seek and implement the latter's ideas. These laws, policies, and practices should also recognize that women are not a homogenous group and may experience multiple and intersecting forms of discrimination. Women's rights and interests and those of marginalized groups must be mainstreamed and states and businesses must also introduce specific provisions and/or practices that address the inequality that women and other groups face, whether in states' National Action Plans for implementing the UNGPs, the development of mandatory human rights due diligence laws or the development by businesses of business and human rights policies, procedures, and practices, including with respect to HRDD.

Beyond the business and human rights sphere, we need to imagine the world differently and states and businesses need to take concrete steps to address women's inequality more generally. This means that states and businesses need to challenge, disrupt, and dismantle the structures that oppress and marginalize women and others in society and not simply tinker with the causes of gender and other inequality, changing a few things here and there.

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