



CORPORATE POWER AND THE SPACE FOR WOMEN'S HUMAN RIGHTS ACTIVISM

A DISCUSSION PAPER

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International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations (registered as IWRAP).



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Foreword

The purpose of this paper is to begin a conversation about how women's rights activists and organisations can address the growing power and influence of the private sector in order to protect women's human rights. The target of this paper are women's rights activists and organisations working across the globe to advance gender equality and women's human rights.

The paper discusses the limitations of corporate social responsibility and highlights developments at the United Nations to address the responsibility of corporate actors to respect human rights. It briefly examines the various frameworks and instruments available to women's rights organisations to engage with the private sector, directly or indirectly. Some instruments, especially those that rely on voluntary compliance, are likely only to produce instrumental gains for women, while others, rooted in legal systems and reflecting state commitments, may have a wider impact on the economic and political environment in which private sector actors operate.

While the potential effectiveness of these instruments vary, and depend largely on context, they all require women's rights organisations to make new alliances, use different tools, develop new understanding, strategise differently and expand their advocacy.

It is hoped that this paper, and all the other resources in IWRAW Asia Pacific's Business and Human rights series of publications, will contribute towards women's rights activists taking up this challenge.

1. Introduction

The presence of corporate actors¹ looms significantly over the lived experiences of women around the world. On the one hand they are being invited into new spaces, as partners in development and in furthering women's human rights. On the other, their actions are denying women, especially marginalized women their human rights, for example their right to land and to decent work, their right to social services and to social protection. In many countries, from Cambodia to Guatemala, corporate actors have threatened women's lives. We can no longer ignore the private sector in our struggle for women's human rights and gender equality.

¹ This paper uses the terms "corporate actors", "business" and the "private sector" interchangeably

Historical Background

Since the last century, corporate power has been accompanied by corporate philanthropy and charitable giving. Corporate giants, like Americans John D Rockefeller and Andrew Carnegie, who made their money in the oil and steel industries respectively, set up their own philanthropic foundations. Wealthy family enterprises in India had a long tradition of giving to the poor. The corporate philanthropy of Indian big business, epitomised by the Tatas and the Birlas, took various forms - creating townships as a means to promote employee welfare, religious giving and promoting access to education for ordinary people.² In many parts of the world, service clubs such as the Lions or the Rotary emerged with business sector membership to raise money to support worthy causes.

Over the decades, the relationship between business and society, the nature of charity and philanthropy, and the approaches to eradicating poverty have all undergone many changes. The growth of civil society activism and the proliferation of human rights organisations and development NGOs have led to a wariness between civil society organisations (CSOs) and business. CSOs saw the profit motive as inherently contrary to their goals of achieving human rights or eradicating poverty. Corporate actors on the other hand have also considered civil society as problematic, because civil society advocacy disrupts the business model. These extreme positions have changed over the years.

² Temples, Townships and Schools: India's Philanthropic Legacy, Wharton University of Pennsylvania (19 May 2011) <http://knowledge.wharton.upenn.edu/article/temples-townships-and-schools-indias-philanthropic-legacy/>

In the 1980s and 1990s, the lingo of corporate management filtered into the NGO management discourse, and with the rise of corporate social responsibility, the consolidation of corporate philanthropy and the recognition of the market potential of the 'bottom billion,' the private sector began to venture into areas that had hitherto been the purview of civil society organisations and the state.

The blurring of these boundaries has taken place alongside parallel conversations on the negative impact of capitalism and the neo-liberal economic paradigm that dominates the global economic system, and of which the private sector is a key pillar. Despite mounting evidence that neo-liberalism and related concepts of privatization and structural adjustment have caused significant hardships and human rights violations for many impoverished communities, key global institutions with the mandate to safeguard international human rights standards and to work with governments to eradicate poverty, are looking to work with the private sector to deliver and/or finance development. The current rhetoric calls for 'a business case' to be made for private sector involvement in development and human rights. The most recent and comprehensive framework for inclusive development: the 2030 Agenda for Sustainable Development, sees the private sector as a key actor.

In 2005, the UN appointed Professor John Ruggie, as the UN Special Representative for Human rights with relation transnational corporations and other business enterprises, and tasked him with clarifying the roles of states, companies, and other social actors in the contentious sphere of business activity. The UN Guiding Principles on Business and Human Rights are an outcome of Ruggie's work, but have not been able to mitigate the violations against human rights and against women's human rights in particular, that have continued to occur.

Rationale for this Paper

Within this backdrop it is imperative that women's rights activists and organisations (WROs) develop a modality of dealing with the private sector's growing influence in the economic and political world. Ignoring their actions is no longer possible, and engaging with them without compromising the integrity of our commitment to human rights will require considerable strategizing. Many WROs have neither the tools nor the experience in developing such a strategy.

With this paper we expect to begin a conversation about the options available to women's rights organisations to deal with the private sector. Our target is WROs worldwide, and our aim is to encourage WROs to challenge corporate power through their advocacy in different spaces.

2. Private Sector, Civil Society Organisations and Corporate Power

The Organisation for Economic Cooperation and Development (OECD) defines the private sector as comprising private corporations, households and non-profit institutions serving households (NPISHs)³ but most other definitions limit the private sector to private corporations and enterprises not controlled by government, and operating for profit. Even within this definition, the scope of who constitutes the private sector continues to be broad. It includes large multinationals as well as micro-enterprises, domestic companies and transnational corporations, small and medium sized enterprises (SMEs) and cooperatives, and even informal economy structures. The UK International Development Committee Report on the Department for International Development (DFID) and Private Sector Development recognizes this breadth in its definition of the private sector as “all private actors engaged in economic activity, from the market stall-holder and family farmer to large domestic and foreign corporations.”⁴

Available evidence points that SMEs occupy an important and strategic place in economic growth and development in many countries constitute as high as 90% of all enterprises. They are a major source of employment and stimulate the development of entrepreneurial and business skills amongst communities. In contrast, the global

³ Private Sector, Definition, OECD (2001) <https://stats.oecd.org/glossary/detail.asp?ID=2130>

⁴ UK House of Commons, International Development Committee Report on DFID and Private Sector Development, Fourth Report (PSD and Poverty Reduction), (15 July 15 2006). <http://www.parliament.thestationery-office.com/pa/cm200506/cmselect/cmintdev/921/92102.htm>

corporations and institutions of global capitalism are largely focused on enriching a few at the expense of many. David Korten⁵ warns us not to conflate global capitalism with the market economy and democracy. He points out that “Beginning with Adam Smith, market theory has been quite explicit that market efficiency results from small, locally owned enterprises competing in local markets on the basis of price and quality for consumer favour.”⁶ He also argues that market efficiency depends on regulation and borders and that deregulation and economic globalization has actually enabled financial speculation and allowed global corporations to consolidate and concentrate their power through mergers, acquisitions, and strategic alliances beyond the reach of any state. There has also been a lot of writing on how big business can crowd out or negatively affect small enterprises.

Korten’s analysis confirms the heterogeneity of the private sector. We can infer from that analysis that the actions of these wide range of actors will have different implications for human rights and women’s human rights in particular. The violations of human rights by global corporations is becoming an important focus in the human rights discourse. Recent discussions have also raised the issue of SMEs, and whether they too ought to be scrutinised by civil society organisations.

⁵ Life after capitalism, David C. Korten, Feasta Review Number 1 <http://www.feasta.org/documents/feastareview/korten3.htm>

⁶ Ibid

SMEs maybe idealised as the backbone of a healthy economy, contributing significantly to job creation and poverty alleviation through labour intensive production processes and significant employment rates and nurturing local entrepreneurial talent and building up systemic productive capacities. It is assumed that they have a positive relationship with society, because they tend to be more rooted in local communities and closer to their workers. Mostly SMEs lack the power to influence governments, can be negatively affected by regressive tax regimes and state regulation, and are unable to move across national boundaries to find more conducive environments in which to operate. It has been suggested that SMEs tend to practise some kind of 'silent social responsibility' with family-owned companies in particular often exhibiting strong ethical and philanthropic approaches. However, it is also true that SMEs often get away with some of the worst labour rights abuses including the use of child labour, forced labour, sexual harassment and human trafficking.. In the domestic sphere that they operate, they are not always subject to compliance with laws and regulations, often because enforcement institutions have limited reach or capacity. Where they are linked to global value chains, SMEs that are second or third tier suppliers are often not monitored in the same way by the international standard setting agencies, by local authorities or by the national trade unions.⁷

Acknowledging the spectrum of private sector actors will encourage CSOs to take a more nuanced approach to their scrutiny and to identify which private sector actors are inimical to the realization of women's human rights and as a counterpoint, maybe even identify those who could be allies in the promotion, protection and fulfilment of women's human rights.

⁷ Dima Jamali et al (2015) SMEs and CSR in Developing Countries in *Business and Society* 1-12, 2015 Sage Publications

In as much as the private sector is diverse, so are women's rights organisations and civil society more broadly. They vary in terms of size, outreach, resources, ideology, and probably most important, constituency. These factors, in particular the nature of their constituency (migrant workers, rural women, women garment workers etc.), will largely influence what strategies they would choose to deal with the private sector's growing influence on the lived realities of women and girls and what private sector actors they will target in their advocacy.

In this paper we will use the term 'private sector' to encompass the diversity of business actors from transnational corporations to national companies with cross-border investments and outreach to small and medium enterprises, and the terms 'women's rights organisations' and 'CSOs' to include the different organisations as described above.

However, our approach to discussing the different strategic options available for CSOs and women's rights organisations to deal with the private sector will have a strong focus on 'corporate power', the power of the private sector to undermine the basic human rights of citizens, and in particular the human rights of women, and to reduce the ability of the state to protect and fulfil these rights. We take the position that the achievement of human rights is not compatible with gross power asymmetries, and look to the Universal Declaration of Human Rights and all subsequent human rights treaties and instruments that point us to a "common standard of achievement for all peoples and all nations" and that vests responsibility in "every individual and every organ of society" to strive to promote respect for human rights.⁸

⁸ United Nations Universal Declaration of Human Rights (1948)

3. Corporate Social Responsibility (CSR) and Ethical Codes of Conduct – Company Self Regulation

As we saw earlier, the idea of corporate philanthropy and charitable giving by businesses for supporting religious and other public institutions, or alleviating poverty, has been part of the private sector landscape for several generations. However, more recent trends in globalisation, deregulation, privatisation, and the resultant configurations of state and market, has prompted a move away from the paternalistic corporate philanthropy of the past, to the articulation of the rights and responsibilities of business in society and to self-regulation based on corporate social responsibility (CSR), broadly focused on ‘the social obligations and impacts of corporations in society⁹ or the development of ethical business codes of conduct.

We need to remember that self-regulation is much more of a political process than a benevolent self-realisation of how corporations should act in society. Self-regulation is a response to the public outrage against company embroilments in abuses, scandals and corporate crime, which led to growing consumer awareness, increased government and international regulations, as well as protests and activism by women’s groups, labour activists, fair trade groups and environmentalists. Leaders in the implementation of CSR – Shell, Nike, Rio Tinto – have all been the

⁹ Crane, A., Matten, D. and Moon, J. (2008) *Corporations and Citizenship*. Cambridge: Cambridge University Press. p.6.

subject of high profile campaigns for their alleged abuse of human rights and labour rights and their role in destroying the environment. Ethical business codes have also emerged as a consequence of pressure from consumers as well as religious, labour and human rights groups for companies to take responsibility for the conditions under which they operate. The initial wave of voluntary business codes were triggered by the attention paid to problems of legitimacy of business actors who were seen to provide (tacit) support to oppressive regimes, creating significant environmental damage, or outsourcing their manufacture to countries with inferior labour laws.¹⁰

Corporate Social Responsibility (CSR)

Companies are relatively free to define the scope of their CSR, so it can range from an all-encompassing view of society to a focus on particular aspects of corporate activity or on particular stakeholders. CSR practices include fair trade principles and philanthropy, good practices in labour rights and supply chain management as well as charitable deeds to help the poor. However, CSR can also be work without substance that merely pays lip service to the concept for the purpose of advertising and brand promotion.

¹⁰ Rob van Tulder and Ans Tolk (2001) Multinationality and Corporate Ethics: Codes of Conduct in the Sporting Goods Industry, JOURNAL OF INTERNATIONAL BUSINESS STUDIES, 32, 2 (SECOND QUARTER 2001): 267-283

Many companies implementing CSR processes such as public commitment to standards, community investment, stakeholder engagement and corporate reporting on social and environmental performance tend to do so to improve their brand image and protect their reputations. Others have moved beyond reputational risk reduction to considering a 'business case' for CSR looking at, for example, tangible financial gains from improvements in productivity that can be offset against the costs, or more strategically, considering CSR as a core part of a company's development strategy.

The justification for companies to adopt a special CSR programme differs according to the relationship between a company and its shareholders. Where the relationship is perceived to be shareholder wealth maximisation, social and environmental issues are merely constraints, and CSR activities are justified only if they are addressing reputation and /or political costs that affect profit maximisation. Critics of CSR who see shareholder interests as paramount, will argue that CSR is an illegitimate attempt by managers to get shareholders to pay for programmes without their consent, and that a company's investment in socially responsible but unprofitable ventures will lead, in the worst scenario, to the demise of the company or at best, to the creation of unsustainable support to communities and non-profit organisations. This perspective is refuted by presenting evidence that shows that when business practices damage the reputation and sales of companies, they create heightened CSR activity that can have positive social impacts. Such situations can also lead to corporates seeking legitimacy by collaborating with international development agencies.¹¹

¹¹ Four case studies on corporate social responsibility do conflicts affect a company's corporate social responsibility policy? Cristina A. Cedillo Torres and others, *Utrecht Law Review* Volume 8 Issue 3 (November 2012) <https://www.utrechtlawreview.org/articles/10.18352/ulr.205/galley/203/download/>

An alternative perspective argues that even though a company exists to maximise shareholder wealth, it also needs to consider the company's other stakeholders, who could be local communities, environmentalists, human rights activists, consumer advocates, governments, special-interest groups, and even competitors and the media. Profits are seen as one corporate objective among others and corporate choices are based on both social and economic calculations even though profits remain the first corporate priority and are considered an essential prerequisite for dealing with other CSR issues.

CSR is also used proactively by companies to identify new business opportunities, develop new products and services and reach new markets. For instance, a bank in Lebanon developed a unique program for the economic empowerment of women in the Middle East and in North Africa, which served the bank's economic bottom line while helping the national economy and the community. The programme clearly has a hidden agenda of creating new markets, that is, women.¹²

¹² Veena N (2017) Corporate Social Responsibility and Gender Equality. A literature review. IWRAW Asia Pacific. (unpublished)

Ethical Codes of Conduct

An ethical code of conduct is a distinct and formal document containing a set of prescriptions developed by and for a company to guide present and future behaviour and is expected to have a broader normative function and not be just an instrument that serves the interests of the company.

Ethical codes of conduct are used extensively by the private sector and are particularly important for companies with global supply chains, which are being increasingly scrutinised by customers and other stakeholders to ensure that the products they market are appropriately sourced, manufactured and that global standards on issues such as environmental pollution, child labour and worker conditions are adhered to. Scrutiny has been particularly acute in the apparel industry where media and civil society have exposed “reputable” companies retailing garments or sports goods made by employees working under unacceptable conditions, particularly in countries of the global south.

The Ethical Trading Initiative (ETI)¹³, a leading alliance of companies, trade unions and NGOs that promotes respect for workers’ rights around the globe, or the Clean Clothes Campaign (CCC)¹⁴ the garment industry’s largest alliance of labour unions and non-governmental organisations, both promote the adoption of codes of conduct that are guided by the International Labour Organisation (ILO)’s labour conventions, and which prescribe among others, a minimum employment age, safe working

¹³ Ethical Trading Initiative <https://www.ethicaltrade.org/>

¹⁴ Clean Clothes Campaign <https://cleanclothes.org/>

requirements, set working hours and right to a living wage. Despite this, the evidence does not seem to point to an overall decrease in the vulnerability of workers or in the protection of their rights. Compliance by suppliers of these multinational chains is solicited through threat of punitive action (e.g. termination of contracts) and surveillance is usually carried out by internal monitors (i.e. someone employed by the company) or by 'independent auditors'. Such audits can, however, be compromised by biases in the auditors' approach, especially where they are contracted by the company, have a vested interest in maintaining that business relationship and will seek to nurture that relationship by producing results that are flattering to their client.¹⁵

Corporate Social Responsibility initiatives and Ethical codes of conduct, emanating as they do from the perspective of corporate actors, seek to improve the practice of business actors but avoid the issue of corporate power within society. However, as we will see in the sections to follow, engagement with CSR constitutes a significant element of the relationship between civil society organisations and women's rights organisations and the private sector.

¹⁵ For more about surveillance see Shyamain Wlckremesinghe & Rob Gray: Standards of performance in the supply chain: The (un)reliability of assurance and surveillance in the garment industry SOCIAL BUSINESS, 2015, Vol. 5, No. 4, pp.323-341 <http://dx.doi.org/10.1362/204440815X14503490815705>

4. Restraining Corporate Power - Global Standard Setting for Corporate Accountability

In this section we will critically examine the UN global standard setting for corporate responsibility and accountability for human rights.

The two predominant frameworks for dealing with the private sector¹⁶ are the UN Global Compact and the UN Guiding Principles on Business and Human Rights. We will begin by examining these two frameworks in turn, and how they have been used.

¹⁶ As reflected in the findings from IWRAW Asia Pacific survey (2017)

4.1 The UN Global Compact

The UN Global Compact is a voluntary, corporate social responsibility initiative designed to 'mainstream' into business a set of ten principles related to human rights, labour, the environment and anti-corruption that have been derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. It also promotes the Women's Empowerment Principles, a partnership initiative between the UN Global Compact and UN Women that provides an 'established road map' for business on how to empower women in the work place, market place and community.

Set up by the UN in 1999/2000 the Global Compact boasts 12,000 plus participants. Its website lists a figure of 9531 companies from 162 countries. The balance is made up of non-business actors. Joining the Global Compact requires company CEOs to make a commitment to the 10 principles, and to commit to reporting annually on progress.

The reports or Communications on Progress (COPs) are expected to include a statement by the chief executive expressing continued support for the UN Global Compact and renewing the participant's ongoing commitment to the initiative; a description of practical actions the company has taken or plans to take to implement the Ten Principles in each of the four areas (human rights, labour, environment, anti-corruption) and a measurement of outcomes.

Based on a company's self-assessment, each COP is classified at three levels: a 'learner' level communications is one that doesn't meet one or more of the minimum requirements, an 'active level' meets the minimum requirements, and an advanced COP includes a company's implementation of advanced criteria and best practices. All COPs are available to the public on the Global Compact website, and the incentive to report is presented as benefits accruing from integration of corporate sustainability into operations, improving a company's reputation, enhancing the commitment of the CEO, internal information sharing and strengthened relationships with stakeholders and investors.

The website names and shames those who have not submitted a communication on progress, and there is a list of those who have been delisted from the partnership for not submitting the communication by the deadline, in accordance with the Global Compact's Communication on Progress policy.

Apart from this 'sanction' it is not clear how the COPs are reviewed or how the actions of the corporates are monitored against ground realities. For example, the 'our value chain' section of the Rio Tinto report to the Global Compact is part of the companies presentation of best practice in terms of analysing upstream and downstream risks opportunities and impacts, communicating to suppliers and other business partners, monitoring and assurance mechanisms, and creating awareness and providing training and capacity building to suppliers and other business

partners. At the same time, the criticism from civil society organisations and journalists¹⁷ about Rio Tinto's practices in Mongolia especially where it manages the Oyu Tolgoi mine, shows how the company continues to violate several of the Global Compact's principles. The main violations relate to respect for the human rights of herders, and to the environmental consequences of intensive water use that will lead to further desertification of an area where water is already scarce. The UN Committee on Economic Social and Cultural Rights articulates similar concerns in their concluding observations for Mongolia in 2015¹⁸ about the adverse impact of mining projects on herders' economic social and cultural rights. They observed that that nomadic herders' rights to their pasture, hay land and water resources are continuously infringed by mining activities on their traditional lands, that free, prior and informed consent of herders has not been obtained when licences for mining in their traditional territory were granted, and that whatever compensation herders have received, is inadequate.

¹⁷ Rio Tinto: A record fit for the Olympics? London Mining Network (30 July 2012) https://www.banktrack.org/download/rio_tinto_a_record_fit_for_the_olympics/_lmn-rio-tinto-briefing-july-2012.pdf; Mining and communities; Mongolian herders complain against Rio Tinto over Oyu Tolgoi mines ESCR-Net (12 October 2012) <https://www.escr-net.org/node/365339>; <https://newint.org/blog/2013/04/04/mongolia-rio-tinto-oyu-tolgoi>; Rio Tinto Accused of environmental and human rights breaches, The Guardian (18 April 2013) <https://www.theguardian.com/business/2013/apr/18/rio-tinto-environmental-human-rights-breaches>

¹⁸ Committee on Economic, Social and Cultural Rights, Concluding Observations on the fourth periodic report of Mongolia (7 July 2015) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMNG%2fCO%2f4&Lang=en

The above discussion suggests that Global Compact is based on what critics would argue is an erroneous assumption that big business can make a constructive, voluntary contribution to sustainable development, and that they have the solution to the world's problems because they possess the 'skills' and the 'creativity' to 'deliver progress'. Other, stronger detractors, would argue that all it does is grant business the institutional legitimacy it desires, in exchange for non-legally binding adherence to principles. This latter view has been presented in the chapter on UN Gateways for the Business Sector, in Barbara Adams and Jens Martens book on *Fit for whose purpose? Private funding and corporate influence in the United Nations*¹⁹. They contend that "the Global Compact shows little signs of effective government over-sight" and that "while advertising itself as a corporate social responsibility vehicle, the Compact may in fact be a Trojan Horse for corporate influence at the United Nations, with its purpose inverted from influencing corporate actors towards key UN norms to bringing corporate influence and thinking into the policy-making of the UN"²⁰

The Global Compact structure includes a local multi-stakeholder networks at a country level, which, as some respondents to IWRAW Asia Pacific's survey questionnaire observed, provide an opportunity for local civil society organisations and women's rights groups to access the private sector. However, as the brief analysis of the Global Compact above suggests, this space may be very limiting in terms of challenging corporate power.

19 Barbara Adams and Jens Martens (2015) *Fit for whose purpose? Private funding and corporate influence in the United Nations*. Global Policy Forum

²⁰ Ibid p41

4.2 The Women's Empowerment Principles

An outcome of collaboration between UN Women and the UN Global Compact, the Women's Empowerment Principles (WEP) follow a format similar to the Global Compact. It comprises seven principles against which businesses are required to report. However, apart from different guidance notes and statements of how the principles can be used, there seems to be little evidence of companies applying these principles. The assumption is that those companies that have signed up to both the women's empowerment principles and the UN Global Compact will include reporting against the WEP in the Communications of Progress to the UN Global Compact.

There are many issues with the WEP. The separation of the WEP from the UN Global Compact is problematic because that means that there is no obligation for Communications of Progress to the UN Global Compact to consider women's issues or rights. In the Rio Tinto COP discussed above, there is almost no mention of women (Rio Tinto hasn't signed up to the WEPs). The WEPs themselves are justified, not in relation to promoting gender equality but on the building a business case for gender diversity and inclusion of women. So, while they are seen as providing a set of considerations to help the private sector focus on key elements integral to promoting gender equality in the workplace, marketplace and community, it is unclear whether they will have a transformative impact on the substantive inequalities and discrimination that women face.

4.3 The UN Guiding Principles on Business and Human Rights

The UN Guiding principles were drafted and adopted in 2011 as a response to pressure from CSOs and academics to fill the gaps in the protection of human rights that globalisation created. The gaps were visible in the lack of human rights regulation and accountability of transnational corporations (TNCs), in the absence of human rights accountability of international financial institutions (IFIs) and in the ineffectiveness of international human rights law in relation to investment and trade law, policies and disputes. Unlike the UN Global Compact which does not go beyond 'gentle persuasion', the UN Guiding Principles, though voluntary, show the beginnings of a commitment to close the governance gap regarding large corporations.²¹

These Guiding Principles are addressed to states and the private sector and are grounded in the recognition of

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

²¹ Civil Society Reflection Group (2017) Spotlight on Sustainable Development 2017: reclaiming policies for the public <https://www.2030spotlight.org/en>

They are expected to apply to all States and to all business enterprises, both transnational and others regardless of their size, sector, location, ownership and structure, without creating any new international law obligations or limiting or undermining any existing obligations of states. The principles are expected to be implemented in “a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.”

Subsequent to endorsing the UN Guiding Principles, the Human Rights Council established a Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group on Business and Human Rights), consisting of five independent experts, of balanced geographical representation, for a period of three years. Currently the Working Group on Business and Human Rights comprises four men and one woman. It's overall mandate is to ensure the implementation of the UN Guiding Principles through identifying, sharing and promoting good practices and lessons learned in implementation; supporting capacity building and the development of domestic legislation and policies relating business and human rights; conducting country visits; exploring options and making recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities; working in close cooperation and coordination with other arms of the UN, the treaty bodies and regional human rights organisations to develop a regular dialogue around possible areas

of cooperation with Governments and all relevant actors, including transnational corporations and other business enterprises, national human rights institutions, representatives of indigenous peoples, civil society organizations and other regional and sub-regional international organizations. Most importantly for our discussion is that the Working Group on Business and Human Rights is expected to integrate a gender perspective throughout its work and it has an oversight or monitoring function of State and business implementation of the UN Guiding Principles.

The multi-stakeholder dialogue takes place through the UN Forum on Business and Human Rights, and the Working Group on Business and Human Rights reports annually to the Human Rights Council and the UN General Assembly.

Countries are encouraged to develop National Action Plans (NAPS) for the implementation of the Guiding Principles. Eighteen countries have already made their national action plans, and several others have NAPs in progress.²² The Working Group on Business and Human Rights has defined NAPS as “an evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights”²³ and provides comprehensive guidance on their development.²⁴

²² National Action Plans, Business and Human Rights Resource Centre <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

²³ Guidance on National Action Plans on Business and Human Rights, UN Working Group on Business and Human Rights (December 2014) p3, http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf

²⁴ Ibid.

This Guidance includes clear calls for integrating a gender analysis into the identification of human rights violations of business, encourages governments to engage with stakeholders that represent groups most vulnerable to negative impacts of business activity, and to address the issues of “population groups that may be particularly vulnerable to business-related human rights abuse, such as children, women, indigenous peoples, ethnic minorities and persons with disabilities.” (page 6 of the guidelines). They also make reference to the treaty commitments that countries have signed up to, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Despite the UN Guiding Principles’ attention to women as a group that can be most vulnerable to the negative impacts of business activity, a recent study by the Gender and Development Network (GADN) of the UK suggests that few of the NAPs address women’s human rights in any meaningful way.²⁵ In their paper, *Why National Action Plans on Business and Human Rights must integrate and prioritise gender equality and women’s human rights*,²⁶ GADN makes some strong recommendations

²⁵ *Why National Action Plans on Business and Human Rights must integrate and prioritise gender equality and women’s human rights* Gender and Development Network (November 2015) http://www.progressio.org.uk/sites/progressio.org.uk/files/gadn_b_hr_paper_13_11_15_final.pdf ²⁶ *ibid*

²⁶ *ibid*

on how the three pillars of the UN Guiding Principles can be used to protect and respect women's human rights and to promote effective remedy where women's human rights have been violated. It calls for policy coherence, and the rooting of corporate accountability in the basic principles of Human Rights, in particular CEDAW.

In addition to the implementation of the UN Guiding Principles, there are also calls for the formulation of an international treaty providing for a legally enforceable right to remedy for business-related human rights abuses. The Asia Pacific Forum on Women Law and Development (APWLD) among others, has been advocating for some time for inclusion of a women's rights perspective into the discourse on corporate accountability and in collaboration with other civil society groups, including IRAW Asia Pacific recently submitted key suggestions on integrating a women's perspective into the Draft Elements of the international legally binding instrument on transnational corporations and other business enterprises, along with other several other feminist and women's rights and civil society organisations.²⁷ This instrument is being developed by the UN open-ended Intergovernmental Working Group on transnational corporations, which has been mandated by the UN Human Rights Council to elaborate on a legally binding instrument that would regulate activities of business actors with respect to human rights.

²⁷ <https://business-humanrights.org/sites/default/files/documents/FEMINISTS%20CONTRIBUTIONS%20TREATY.pdf>

4.4 Other International Frameworks for Business and Human Rights

The understanding that there is corporate responsibility to respect human rights is rapidly gaining currency and in addition to the frameworks outlined above, there are other global standards for making business actors accountable for respecting human rights.

The International Labour Organisation (ILO)

The International Labour Organisation (ILO) works in conjunction with the employers, trade unions and governments, and has adopted the Declaration on Fundamental Principles and Rights at Work (1998) which commits its members to respect four fundamental principles and rights at work: freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in employment and occupation; and abolition of child labour.

Each of these principles and rights at work are supported by two ILO conventions, which together make up the eight ILO core labour standards.

1. Freedom of Association and Protection of the Right to Organise Convention, 1949 (No 87)
2. Right to Organise and Collective Bargaining Convention, 1949 (No 98)

3. Forced Labour Convention, 1930 (No 29)
4. Abolition of Forced Labour Convention, 1957 (No 105)
5. Equal Remuneration Convention, 1951 (No 100)
6. Discrimination (Employment and Occupation) Convention, 1958 (No 111)
7. Minimum Age Convention, 1973 (No 138)
8. Worst Forms of Child Labour Convention, 1999 (No 182)

In addition, there is the ILO's Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration) - 5th Edition (March 2017),²⁸ which is the only ILO instrument that provides direct guidance to enterprises on social policy and inclusive, responsible and sustainable workplace practices. It was elaborated and adopted by governments, employers and workers from around the world about 40 years ago (amended in 2000 and 2006) and revised in 2017. Its principles are grounded in ILO's Fundamental Principles and Rights at Work, and by addressing Multinational Enterprises (MNEs),

²⁸ ILO revises its landmark declaration on multinational enterprises (17 March 2017) http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_547615/lang--en/index.htm

governments, and employers' and workers' organizations, it seeks to ensure that in the current context of governments encouraging foreign direct investment by multinational enterprises the fundamental tenets of decent work and workers' rights are not compromised. However, there is considerable documented evidence to show that in areas set aside as export processing zones in developing countries, governments have been reluctant or unable to enforce their national anti-discrimination laws and other labour standards on the foreign companies operating in those zones.²⁹

The tripartite nature of ILO decision-making can also comprise workers' rights, where the power of states and business override those of worker representatives. Historically this was seen in ILO's unsuccessful attempt to develop a Convention on Contract Labour that was resolutely resisted by employers. Today, in many global value chains, some of the more egregious violations of workers' rights are experienced by these contract workers.³⁰

At a broader level the ILO has been critiqued for serving the neo-liberal agenda and not challenging the inequalities and insecurities created by the creation of international markets.³¹

²⁹ IWRAW Asia Pacific Occasional Paper Series No 3: Lack of Access Lack of Care: a reference guide to women's right to health in the in the international trading system, p 33

³⁰ Guy Standing (2008) ILO: an agency for Globalisation? Development and Change 39(3): 355–384 (2008). C Institute of Social Studies 2008.

³¹ *ibid*

The 2030 Agenda for Sustainable Development

The ILO conventions are legal obligations that states have signed up to and are akin to the role that the UN human rights treaties can play (see next section) in ensuring corporate responsibility and accountability. A more problematic recent development however is the role that the private sector is being called to play in the 2030 Agenda in support of the achievement of Sustainable Development Goals (SDGs). The 2030 Agenda sees the private sector as a key actor in development, and is looking at public private partnerships to finance and deliver the goals. In the conversation surrounding the SDGs, the private sector is considered essential to fill the gap in the cost of implementing the SDGs, which is way more than governments themselves can make available. In addition to its financing role, the private sector is considered an implementer, translating profits into the three pillars of the 2030 Agenda - sustained economic growth, social inclusion and environmental protection. The Business Commission ³² for instance, in its report Better Business Better World ³³ argues that “greater sustainability can help businesses overcome global burdens to growth and deliver trillions in new market value” and identifies actions that business leaders can take “to capture their share of the prize and set the world on the path to sustainable development”.

³² a group of experts from the global private sector and civil society leaders, who investigate, articulate and amplify the business case for sustainable development,

³³ Better business, better world, The Business and Sustainable Development Commission Report. businesscommission.org/report

Given that several businesses have already overtaken the size of the economies of some important countries, with Walmart for example ranked as the 10th largest economy in the world in 2016, beating the government revenue of major global economies including Australia, South Korea and India, this scenario of growing even bigger corporations is of great concern. Walmart is not an exception. Already the Chinese businesses State Grid, China National Petroleum and the Sinopec Group are ranked as the 14th 15th and 16th largest economies and all have greater revenue than the South Korean government. Royal Dutch Shell ranked 18, is larger than the economies of Mexico and Sweden, while Exxon Mobil, Volkswagen and Toyota Motor are all bigger than India.³⁴

As capital and wealth gets increasingly concentrated, it creates a race to the bottom in labour and tax standards, and establishes a growing acceptance of 'corporate led solutions to global problems'. But, critics would argue, that in the context of financialized globalization and the limited regulation of corporates the corporate sector is likely to contribute more to the problems than to their solutions. The SDGs do not really tackle the challenge of corporate power in general or its implications for gender equality and women's empowerment. In fact, without either a standalone goal or specific targets in each of the goals

³⁴ How do the world's biggest companies compare to the biggest economies? World Economic Forum (19 October 2016) <https://www.weforum.org/agenda/2016/10/corporations-not-countries-dominate-the-list-of-the-world-s-biggest-economic-entities/>

on private sector regulation, the SDGs reinforce the assumption that there are automatic positive synergies between private sector activities and development. But as women's lived experience continues to show, there is a very real threat posed by corporate power to the realization of women's human rights. The key dimensions of this threat include: the negative impact of the drive towards competitiveness and productivity on women's working conditions and livelihoods in general, the impact of corporate lobbying and tax dodging on generating revenue for public goods and services, as well as limiting the policy space and the myths that surround corporate social responsibility and the potential of corporations to be 'gender sensitive'.³⁵

³⁵ Corinna Rodriguez Enriquez, DAWN "SDG 5: a risky threat looming over the fulfilment of women's human rights" in Spotlight on Sustainable Development 2017 by the Civil Society Reflection Group on the 2030 Agenda for Sustainable Development.

Other Frameworks

In this section we have looked at the UN Global Compact, the UN Guiding Principles, the ILO conventions and the SDGs as different frameworks that women's rights organisations have used to engage with the private sector. The impetus to recognise the private sector as a key actor in the global political economy has inspired other organisations to develop guidance for Private Sector to respect human rights in their activities. These include: **the OECD Guidelines for Multinational Enterprises** that provides national mechanisms for hearing complaints in the 46 countries that have signed up to the Guidelines relating to the actions of businesses operating within or headquartered within those states; the International Finance Corporation's ("IFC"), the private sector lending arm of the World Bank, **Sustainability Principles and Performance Standards** that recognizes the corporate responsibility to respect human rights which are considered criteria for the IFC to invest in private sector projects and have been referred to by over 80 private sector banks and other lending institutions; the International Organisation of Standardisation (that produces the ISO standards); and various state legislation. UNICEF, in collaboration with Save the Children and the UN Global Compact has created the **Children's Rights and Business principles**, and UN Women has used its Women's Empowerment Principles to develop a **Private Sector Self-Assessment Framework (PSAF)**³⁶ that has the objective of supporting UN Women's private sector

36 UN Women Private Sector Accountability Framework (2015) <http://www.unwomen.org/en/digital-library/publications/2015/9/un-women-private-sector-accountability-framework>

partners to comprehensively assess their potential and actual gender impacts to assess and benchmark their progress. The tool will be open to use by any company, operating in multiple geographical areas, not just the companies that are signatories to the Women Empowerment Principles.

International NGOs such as Oxfam are also using these frameworks as entry points to engage with the private sector. Oxfam's perspective on business and human rights³⁷ is based on the implementation of the UN Guiding Principles. It calls on the private sector to first map where vulnerable groups exist in the supply chain in order to understand how business impacts these groups and where the company needs to take action. It also recognises that robust due diligence process and transparency about risks are vital to implement the UN Guiding Principles effectively. It expects companies to exceed the standards prescribed by national legislation, where such legislation sets a low bar for compliance. Oxfam promotes the UN Guiding Principles to encourage companies to use their leverage with business partners along the value chain, including government bodies, to ensure that human rights are respected and upheld throughout their operations. A company is expected to take action not only when it is causing a human rights abuse, but also when it is contributing to negative impacts or is linked to risks through a business relationship.

³⁷ Oxfam Technical Briefing (June 2013) Business and Human Rights: An Oxfam perspective on the UN Guiding Principles.

All of the frameworks discussed above, with the exception of the ILO Conventions, are voluntary frameworks, and are dependent on the degree of pressure on the private sector exerted by implementing institutions and the companies' willingness to respond to this pressure. They are not enforceable by international law. However, they form entry points for women's rights organisations to engage with the private sector, to point out where human rights abuses occur and to call for remedies, but with different potentials for challenging corporate power. Engagement with the Human Rights treaty body system, provides a different albeit indirect route. It does not provide for engaging with the private sector directly, but is more compelling when aiming to force the hand of states to regulate corporate actors.

5. Human Rights Frameworks – UN Treaty Body System

Human rights are basic standards aimed at securing dignity and equality for all. International human rights laws constitute the most universally accepted standards for such treatment, and have been enshrined in the 1948 Universal Declaration of Human Rights (UDHR). The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), codify human rights into international law, and together with the UDHR they form what is known as 'the International Bill of Rights'. These covenants impose obligations on States to respect, protect and fulfil human rights. They require States to protect individuals against human rights abuses by third parties, including by corporations. This is usually done through domestic laws. Thus, while most international human rights standards are not directly legally binding on companies, businesses can infringe human rights by breaching the domestic laws in place to protect those rights.

In the current global economic and political context, where corporations exert considerable power over states, where national legislation is weak or where national laws are compromised in the interest of foreign direct investment, and where trade agreements take precedence over human rights obligations, States can and do fail to protect citizens from violations of human rights by the corporate sector. The UN Guiding Principles were formulated to put pressure on corporations to respect human rights, and to provide remedy for human rights violation. There is also, as we have mentioned above, a move to develop an international treaty that will provide for a legally enforceable right to remedy for business-related human rights abuses. At the same time, the treaty bodies themselves are expanding the interpretations of their mandate to interrogate States on their obligations to protect citizens from human rights abuses of the corporate sector.

ICESCR – International Covenant on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights has sought to deal with the situations where as a result of states' failure to ensure compliance with internationally recognised human rights under their jurisdiction, corporate activities have negatively affected economic, social and cultural rights, by issuing a General Comment (No 24) on State obligations under ICESCR in the context of business activities.³⁸ This General Comment seeks to clarify the duties of States parties to the Covenant in the above situations, with a view to preventing and addressing the adverse impacts of business activities on human rights. It is aimed at assisting corporations discharge their Human Rights obligations as well as to provide guidance to workers' organisations and employers in the context of collective bargaining. The General Comment addresses State obligation on non-discrimination, and on respecting, protecting and fulfilling human rights, in relation to business activities both within national territory and extraterritorially.

Some key elements of the General Comment include non-discrimination in relation to marginalised groups, with particular mention of women and girls and the need to incorporate a gender perspective into all regulatory measures, as well as the provision for temporary special measures to increase access of women to the labour market and to the higher echelons of business enterprises. It also points out that States fail in their obligation to respect economic, social and cultural rights when they prioritise business interests over Covenant rights or when

³⁸ UN Committee on Economic, Social and Cultural Rights General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (10 August 2017) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en

they pursue policies that negatively affect such rights, and cite forced evictions in the context of investment projects as an example. It calls for States to respect the principle of free, prior and informed consent of indigenous people “in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired” (General Comment para 12). It also talks about trade agreements, and requires States to refrain from entering into treaties where there will be a conflict with Covenant obligations, recognising that States “cannot derogate from the obligations under the Covenant in trade and investment treaties that they may conclude.” The General Comment encourages States to include provisions explicitly referring to human rights obligations in all future treaties and to ensure that the settlement of investor-State disputes take human rights into account. It does not permit the State to exempt any sectors, projects or geographical areas from the laws that protect citizens’ economic, social and cultural rights, and is clear that States would be seen to violate their duty to protect if they failed to prevent or to counter conduct by businesses that led to such rights being abused, such as granting exploration and exploitation permits for natural resources without giving due consideration to their potential adverse impacts on the individual and on communities’ enjoyment of Covenant rights. Also important is the fact that the General Comment reiterates the CESCR Committee’s observations since 2011 that State obligations do not stop at their territorial borders, and that state parties are required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction.

CEDAW - Convention on Elimination of all Forms of Discrimination Against Women

Many of the issues raised in the above General Comment by the CESCR Committee have been raised by the CEDAW Committee and provide important precedents for women's rights organisations preparing shadow reports on the impact of the private sector on women's human rights.

A bulk of the CEDAW Committee's Concluding Observations and recommendations to state parties have related to the elimination of discrimination in the labour market and matters relating to equal pay for equal work. The Committee has also been concerned about the underrepresentation of women in leadership positions in the private sector, about issues of occupational segregation that sees women overrepresented in the lower paid agricultural and informal sectors and about issues of harassment in the workplace. It has urged state parties to address these issues through legislation and regulation of the private sector. The Committee's focus on the national private sector and national labour market, has almost always covered the informal sector and recognised women's work as domestic workers or in family enterprises.

The CEDAW Committee has also made recommendations on a state's extraterritorial obligations. In the most recent reviews of Switzerland for example, the CEDAW Committee noted the negative effects on women of Swiss corporations' weapons exports to conflict zones and the State's failure to adequately monitor these corporations with respect to the use of exported weapons in violence against women. In response to a shadow report of NGOs working in tax justice and highlighting how tax evasion and abuse compromises the ability of governments to fulfil their human rights obligations to women, the CEDAW Committee expressed concern about the potential negative impact of Swiss financial secrecy, corporate reporting and tax laws on the ability of other State parties, especially those with limited means, to mobilize resources necessary to fulfil women's human rights. The CEDAW Committee recommended that the State party conduct "independent, participatory and periodic impact assessments" of these policies to determine their effect on women's rights and substantive equality in jurisdictions outside of Switzerland.

Early in 2017, the CEDAW Committee's recommendations to Germany included concern about the negative impacts of the activities of "transnational companies" on women's human rights, particularly textile and large-scale agricultural corporations registered in Germany but operating abroad. The Concluding Observations highlighted the inadequacy of the State party's laws in holding these companies accountable when they violated women's human rights in their activities abroad. The Committee recommended that Germany strengthen

legislation addressing the activities of corporations operating abroad, and that it requires those corporations to conduct human rights and gender impact assessments before investing. The Committee also called for the establishment of mechanisms responsible for investigating complaints and for adopting measures to ensure victim's rights to adequate remedies, accountability for gender in judicial and administrative procedures account for gender, recognition that human rights obligations take precedence over investor interests in trade and investment agreements, and that investor-State dispute resolution procedures do not prevent the State's full compliance with CEDAW.

The CEDAW Committee has also raised concerns about bilateral cross-border investments in infrastructure. For instance, in its review of India in 2014, the CEDAW expressed concern about the Government of India's failure to ensure a gender perspective and to consult with women on a post-conflict housing project in Sri Lanka and also about the impact of a dam project on women, particularly in Nepal that threatened their livelihood, housing and food security.

6. Ways of Dealing with the Private Sector- The Response from a Survey of Women's Rights and Civil Society Organisations

The preceding sections indicated that there are different ways in which the negative impact of the private sector on society can be curbed: they described some ways in which the sector itself attempts to regulate itself, as well the global standards for business operations and the avenues for using state obligations to human rights as a means for controlling business actors and the power that they exert.

In the lead up to writing this paper, IWRAW Asia Pacific used its various networks to gather information about how women's rights organisations are dealing with the role that the private sector is playing in society. This section summarises the 39 responses received, recognising that we cannot generalise from this limited feedback from self-selected organisations. We need to especially recognise that even though only 11 organisations said that they do not engage with the private sector, there are likely to be many others out there who do not engage and who therefore did not think it important to respond to an online questionnaire on the issue. So we will focus on the responses of the 28 organisations that admitted to engaging with the private sector so that we can begin to have an insight into what these engagements look like, and the rationale for engaging.

What Do We Mean by Engagement?

It must be noted here, that one of the shortcomings of the questionnaire that was sent out was the lack of a clear definition of what is meant by ‘engagement with the private sector’. This paper has taken the position that ‘engagement’, would imply ‘working with’ the private sector with some goal in mind. It could mean working with the private sector to demand accountability and to challenge corporate power. For instance, through the Company Response Mechanism,³⁹ the Business and Human Rights Resource Centre has approached company headquarters over 2800 times seeking a public response to allegations of human rights violations raised by communities, civil society and the media. More often though, ‘engagement’ means working with the private sector to achieve more instrumental goals such as improving worker conditions in a particular industry or encouraging investment in girls’ education.

CSOs could also monitor corporate violations of human rights without necessarily ‘engaging’ with the violators and advocate for change through campaigns and disseminating information. Or CSOs could advocate for greater regulation of the private sector by the state, in accordance with state obligations to protect and fulfil human rights according to international commitments and national laws, using the human rights frameworks outline above.

It must be noted that the questionnaire also did not ask for the type of business CSOs were engaging with – so responses could be based on engagement with a whole spectrum of private sector actors, from local business, SMEs to transnational corporations.

³⁹ Help us enhance our company response mechanism, Business and Human Rights Resource Centre <https://business-humanrights.org/en/help-us-enhance-our-company-response-mechanism-0>

The survey responses

The Nature of CSO 'Engagement'

There was a range of modalities of 'engagement' described in the responses. From organisations that recorded very minimal engagement, to others who had no clear criteria for partnerships and were indiscriminate about who they worked with, and yet others who engaged because they were part of global alliances like the UN Global Compact, or because they represented particular communities or particular groups within the private sector i.e. SMEs.

The larger number of responses fell into three categories:

1. Engagement based on (perceived) shared objectives,
2. Engaging for stimulating change and building capacity within the private sector, and
3. Engaging as a means of raising funds.

Several responses indicated that CSOs would engage with the private sector in areas where they both had an interest, such as bio-diversity, climate change and women in global value chains, particularly in the textile industry. CSOs also engaged with the private sector when they

saw opportunities for that engagement to improve the lives of women they were working with: so for accessing markets for women's products or when representing workers through collective bargaining and other negotiations. Some also worked together with business actors on CSR projects. Direct engagement was seen as a balanced approach to dealing with the private sector with potential to leverage international pressure. A respondent also mentioned that it was important to vet the different private sector actors before engaging.

Some CSOs were engaged with the private sector because they felt that such an engagement would help transform the private sector's core business and build capacity within private sector companies to recognise and understand social issues. They used campaigns, talks, sensitisation activities, technical support and training. Many saw getting involved with a company's Corporate Social Responsibility Projects as an entry point for change, but others were more concerned about monitoring corporate human rights violations and benchmarking initiatives.

For some CSOs engagement with the private sector was a means of diversifying their funding sources. This was either by explicitly targeting the private sector as a new source of funding in their fundraising strategies, or by going into partnerships for research (in higher education and legal institutions) or implementing the corporate sector's CSR projects as a means of raising money and channelling that money to women.

Frameworks for engaging with the private sector

While many CSOs had no particular framework for working with the private sector, the UN Global Compact was the most frequently cited framework for engagement. Several CSOs also used the UN Guiding Principles and local laws to frame how they approached the private sector. Other frameworks mentioned included the SDGs, ILO conventions, UN Human Rights principles, OECD Guidelines, the Istanbul Framework, the Sendai Framework (on Disaster risk Reduction), and CSR frameworks. CSOs also mentioned UN Women and the UN Office on Drugs and Crime.

Challenges to Engagement

The survey responses pointed to a number of contextual challenges for engaging with the private sector. They included: lack of information and resources, lack of binding agreements on how corporates should act, weak national legal systems, the lack of enforcement of laws and corruption. Respondents also felt that the nature of the private sector, the nature of women's rights activists and the nature of the relationship between corporates and activists were all barriers to engagement.

CSOs found it difficult to deal with the private sector's lack of a genuine interest in applying human rights principles or in actually helping women and disadvantaged people. The superficiality of their approach and their patriarchal attitudes towards the most vulnerable, were off-putting. CSOs felt that the companies, whether they are small and medium

enterprises or large business and corporations, should recognise that as a major employer they have a role to respect human rights standards. CSOs also had a problem accessing private companies whose preference was to engage with government than with CSOs, and who were under no pressure to work with CSOs outside the UN Global Compact. Several companies have set up their own foundations and CSR activities which they implement directly instead of working with or through existing organisations.

CSOs and activists also face a major constraint to engage with corporates because of their own reluctance to engage in any activity or partner any organisation that contradicts their values and mission. Many organisations believe that global capitalism is detrimental to their local struggles, and if they are trying to build strong post-colonial development models, engagement with the private sector has to be done in a very thoughtful way. There is also the fear of co-option and the concern that delivering CSR for example, could prevent them from challenging the private sector's bad practices.

The lack of resources was cited as a constraint to private sector engagement by several organisations, combined with fatigue, lack of time, patriarchal resistance, misogyny, and the ongoing terror and societal silencing suffered by the women. Some CSOs did call for a more political approach – the need to create a platform for business partnership with the UN involving civil society organizations of women and youth, so that “the business world can participate in the search for solutions to solve the problems posed by globalization, in partnership with other social actors”.

CSO's suspicion of the private sector relates to the imbalance of power between corporates and activists. There are well funded corporate sector lobby groups that undermine the human rights obligations of states and this fuels the worry that CSOs have about compromising their values and mission. For its part, the private sector sees development and rights organisations as working only for the benefit of the worker and lacking consideration of the business and its sustainability.

Dealing with Corporate Power

Most of the CSO responses indicate a conciliatory and/or instrumental approach to dealing with corporate power. There is an underlying premise of the possibility of the ability to have shared objectives and the use of the soft law instruments and frameworks such as the Global Compact and the UN Guiding Principles, and the engagement with CSR programmes are seen as a means of working with the corporate sector and influencing the orientation of their business models. CSOs also use partnership with the private sector as a means to broaden opportunities for women, or to increase their funding base. This latter mode of engagement is not dissimilar to that of UN agencies that are looking at partnerships with the private sector to boost their vision, for instance, of achieving gender equality (UN Women) or the SDGs (UNDESA). It is these partnerships that require vigilance against co-optation and corporate capture.

7. Which Way Forward for Women's Rights Organisations?

The preceding overview suggests that there is a growing recognition that private sector accountability (or lack of it) for human rights, and women's human rights in particular, is of increasing importance and must be dealt with.

It also highlights a number of key concerns: concerns about the legal/regulatory frameworks and the different systems of accountability, transparency and reporting, and their impact; a question about what responsible investment and a human rights based approach to corporate responsibility could look like; what are the duties of the private sector as an employer and a job creator? And how public private partnerships in delivering development (e.g. the SDGs) can work.

For women's rights organisations, the choice of the way forward will depend largely on the context and their capacity to expand the scope of their current work, forge new links and engage with new information, data, and partners. All the aforementioned frameworks have their limitations, some of which have been outlined in the discussion above. And all of them need to be located in the specific political economy context of the different women's rights organisations. The fear of co-option as articulated by respondents to IWRAW Asia Pacific's survey, or the nature of their constituency, may also make women's rights organisations wary of engaging with the private sector. A more general challenge is posed

by those critics who see all of the UN institutions as liberal organisations that bolster the interest of capital over labour and human rights. Taking such a position would make it untenable for women's rights organisations to engage with the private sector in any way.

Frameworks for Accountability

The current frameworks that address the private sector directly, look to voluntary compliance of businesses to the proposed normative standards for respecting human rights. This is true of the Global Compact and the UN Guiding Principles on Business and Human Rights. It is important then for women's rights organisations to consider how this voluntary compliance of businesses can be brought about. Who or what will force businesses to comply with the standards set in the Global Compact or in UN Guiding Principles? In the absence of binding and enforceable mechanisms, compliance can be facilitated only through sanctions of businesses' key stakeholders – shareholders, customers, financiers and workers' organisations or trade unions. These stakeholders collectively and separately work on campaigning for compliance with the principles of the Global Compact and UN Guiding Principles as well as using their presence within a sector to strengthen the duties of corporate employers to respect worker rights. Women's rights organisations can join these stakeholders, and ensure that respect for women's human rights is integrated into their work; or they can work through the mechanisms set up at the national level to implement the UN Global Compact and UN Guiding Principles.

Entry Points for Engagement on Women's Human Rights

1. Coalitions for Workers' Rights

The Asia Floor Wage Campaign⁴⁰ and the Clean Clothes Campaign⁴¹, advocate primarily for workers' rights in the Ready Made Garment Sector. Both are alliances of trade unions and civil society organisations. The Fairwear Foundation⁴² works with brands, factories, trade unions, NGOs and sometimes governments to verify and improve workplace conditions in 11 production countries in Asia, Europe and Africa. The International Trade Union Confederation (ITUC)⁴³ has a global campaign for Decent Work for women that aims to promote gender equality at work, but also recognises that there needs to be greater representation of women in trade union structures, policies and activities. Sri Lanka formulated a National Workers' Charter in 1994, and there are similar industrial charters that have been formulated by different worker groups (e.g. infrastructure workers) in other countries.

⁴⁰ Asia Floor Wage <http://asia.floorwage.org/>

⁴¹ Clean Clothes Campaign <https://cleanclothes.org/about>

⁴² Fair Wear Foundation <https://www.fairwear.org/about/>

⁴³ International Trade Union Confederation <https://www.ituc-csi.org/about-us>

⁴⁴ Oxfam <https://policy-practice.oxfamamerica.org/work/resource-rights/>

In addition there are many civil society initiatives that engage with corporate accountability. Oxfam America's work in the extractive industries⁴⁴ for instance, highlights the importance of free prior and informed consent of communities and seeks to drive policy change in 13 countries through research, technical assistance, advocacy, and campaigning strategies; FIDH (International Federation for Human Rights)⁴⁵, Earth Rights International⁴⁶, ESCR Net⁴⁷ and the Third World Network⁴⁸, include corporate accountability and human rights in their work, using litigation as well as popular and media campaigns to advocate against business violations of human rights, land grabs and violation of indigenous peoples rights, lack of corporate accountability and the negative impacts of global, regional and bilateral trade agreements on citizens and their rights. They are particularly strong on addressing issues of more responsible investment. Women's rights organisations could partner with these initiatives to push for corporate accountability for women's human rights.

⁴⁵ International Federation of Human Rights <https://www.fidh.org/en/about-us/What-is-FIDH/>

⁴⁶ EarthRights International <https://www.earthrights.org/about/about-earthrights-international>

⁴⁷ ESCR-Net <https://www.escr-net.org/about/who-we-are>

⁴⁸ Third World Network <http://www.twn.my/>

2. National Action Plans on Business and Human Rights

Women's rights organisations could also choose to engage with the development of the National Action Plans for corporate accountability under the UN Guiding Principles. National Action Plans are typically developed by a team drawn from National Human Rights Institutions, academia, the private sector, government and civil society. This varies from country to country. In Thailand, the development of the National Action Plan is led by the Ministry of Justice, and in the Philippines the lead has moved from the Commission on Human Rights to the Presidential Committee on Human Rights, which is under the Office of the President. These different lead agencies may or may not be institutions that the women's rights organisations are familiar with.

3. Reporting to the Treaty Bodies

Another, more familiar route for women's rights organisations, is to bring the issues of corporate accountability to the treaty body reviews of the state parties and to call for State obligations to protect women's human rights under CEDAW or under CESC. Even though this has been a more conventional path of women's human rights advocacy, addressing corporate accountability would require women's rights organisations to present evidence of a very different nature than what they are accustomed to – on the impact of tax and trade regimes, on the outcomes of foreign direct investments on labour rights and working conditions, as well as on broader issues such as violations of access to natural resources etc. Here, forging links with labour movements, trade union movements, movements that advocate against corporate capture and unfair trade practices, land rights movements and movements of indigenous people will help women's rights organisations collect the information to make their case, but also enable them to integrate a gender equality perspective into the thinking of these movements, strengthening cross movement advocacy. There is also a particular space for women's rights organisations to forge global links so that cross-border advocacy can call to account the extra territorial obligations of states.

4. Using National Laws

Women's rights organisations can use national laws to challenge violations of women's human rights by the private sector. These can include anti-discriminatory laws and constitutional provisions, labour laws that concern employees' rights at work and determine the relationship between workers, trade unions and the state, and company laws that govern firms that are incorporated or registered under the corporate or company law of the country. Different jurisdictions will have different legal frameworks, and the implementation of the laws will depend on the context, on the nature of the private sector (are we challenging the SME sector, or the global corporations?) and, as has been implied in the preceding discussion, on the degree to which labour market flexibility and competition to attract foreign direct investment to countries in the global south has undermined the enforcement of some of these national laws.

However, human rights activists from the global south have also succeeded in mounting legal challenges to transnational corporations under the laws of the transnational corporation's home country. In a landmark case in early 2017, seven Guatemalan men won an appeal against Tahoe Resources Inc in a Canadian court, which ruled that their lawsuit accusing the miner's private security guards to have shot them can proceed in British Columbia. The court recognised that "there is some measurable risk that the appellants will encounter difficulty in receiving a fair trial against a powerful international company whose mining interests in Guatemala align with the political interests of the Guatemalan state," and created a precedence to open Canadian courts to victims of abuses linked to Canadian companies operating abroad.⁴⁹

⁴⁹ Guatemala Environmentalists win case against Canada mining firm, Telesur(26 January 2017) <https://www.telesurtv.net/english/news/Guatemalan-Environmentalists-Win-Case-Against-Canadian-Mining-Firm-20170126-0013.html>

The Need to Work Differently

This purpose of this paper was to begin a conversation about how women's rights organisations can deal with the growing power of the private sector in order to protect women's human rights. It has looked at the various instruments available to women's rights organisations to engage with the private sector, directly or indirectly. While the potential effectiveness of these instruments vary, and depend largely on context, they all require women's rights organisations to make new alliances, use different tools, develop new understanding, strategise differently and expand their advocacy. Some instruments, especially those that rely on voluntary compliance, are likely only to produce instrumental gains for women, while others, rooted in legal systems and reflecting state commitments, may have a wider impact on the economic and political environment in which private sector actors operate. However, capitalism and neo-liberalism seem to be "the only game in town", so it is unlikely that the instruments currently available to women's rights organisations will be sufficient to challenge the pervasiveness of corporate power or provide an alternative to the neo-liberal economic paradigm on which this power feeds. That will require a great deal more scholarship and stronger alliances at all levels.

International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special Consultative Status with the Economic and Social Council of the United Nations. IWRAP Asia Pacific has gained expertise, experience and credibility from 20 years work of mobilizing and organizing women's groups and NGOs to support the work of the State in fulfilling its obligations to Respect, Protect and Fulfill women's human rights under CEDAW, through capacity building, advocacy and knowledge creation initiatives aimed toward development of effective national women's rights advocacy strategies.



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