



Mandate of the Special Representative of the Secretary-General on Human Rights  
and Transnational Corporations and Other Business Enterprises

## INTEGRATING A GENDER PERSPECTIVE INTO THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK

New York – June 29, 2009

### CONSULTATION SUMMARY

#### A. INTRODUCTION

In sub-paragraph 4(d) of his 2008 mandate, the Special Representative of the Secretary-General (SRSG) on Business and Human Rights, Professor John Ruggie, is asked to “integrate a gender perspective throughout his work and give special attention to vulnerable populations, in particular children”.<sup>1</sup> In order to help him fulfil this, Realizing Rights: The Ethical Globalization Initiative convened a small group of experts, in their personal capacity, for a full day meeting in New York on 29 June 2009 (see the end of this document for a list of experts). The experts were invited to share their views on what it might mean to integrate a gender perspective into the UN framework on Business and Human Rights introduced by the SRSG and unanimously endorsed by the Human Rights Council – now known as the UN “Protect, Respect and Remedy” framework. The SRSG is grateful to Realizing Rights for their support and hard work in convening the meeting, which was held under the Chatham House Rule of non-attribution.

The SRSG began the meeting by introducing his mandate, including the differences between it and more traditional UN mandates, which focus on individual rights or specific instances of human rights abuse. The SRSG explained that his mandate is intended to identify and operationalize broad principles for dealing with business and human rights-related challenges. He expressed an interest in learning from the experts how to integrate a gender perspective into this task.

#### B. SESSION I - INTEGRATING A GENDER PERSPECTIVE INTO THE FRAMEWORK

The first session introduced core concepts and principles involved in integrating a gender perspective – or perspectives – and initial thoughts on how this could apply to the UN “Protect, Respect and Remedy” framework. Participants took note of some of the challenges.

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<sup>1</sup> Resolution available at: [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_7.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf).

For example, different states have adopted different concepts of gender equality. Experts at the meeting considered various definitions of gender equality and discussed the difference between equality of opportunity as opposed to equality of outcome. Some expressed the view that both parameters should be used in understanding and measuring gender impacts, although it was recognized that opportunity is harder to measure. Some said that in order to truly address gender discrimination and prevent negative gender impacts it may be necessary to create opportunities for empowerment.

At various points in the discussion, participants reflected on the lack of understanding of differential impacts on women and men. It was suggested that ‘reproductive work’ (in the sense of taking care of home and family), which is primarily done by women, is important to consider, as it has a fundamental impact on ‘productive work’ in corporate value chains.

Participants underlined that integrating a gender perspective is not only about considering impacts on women; it is about considering impacts on men as well. Leaving men out of the equation would be a grave error because a gender perspective is about the differential impacts of policies, regulations and decisions on men and women. Caution was expressed about viewing issues relating to gender as simply another form of discrimination, since gender is a universal issue present in all societies, whereas discrimination varies tremendously by region and country.

It was suggested that integrating a gender perspective into the SRSG’s mandate means ensuring that each recommendation is assessed according to its impacts on both men and women. Doubts were expressed regarding how this could be done at the practical level, but various approaches were proposed: (1) integrating consideration of differential impacts on men and women into topics the SRSG is already engaged in; (2) exploring issues relevant to the mandate for which there is compelling evidence that gender differences are particularly acute; and (3) considering what consequences for gender equality might flow from proposed recommendations.

One participant proposed that the SRSG could use a three-tiered approach when assessing recommendations from a gender perspective:

- The state level: does the recommendation create, encourage, reinforce or exacerbate existing gender-based inequalities at the state policy or legal level?;
- The community level: does the recommendation create, encourage, reinforce or exacerbate existing gender-based inequalities at the level of communities?;
- The individual level: does the recommendation create, encourage, reinforce or exacerbate existing gender-based inequalities at the individual level or within households or families?

The group discussed issues such as the absence of women’s and gender organisations in the business and human rights domain and the potential need for capacity building; the over-representation of women in the informal economy, particularly in marginalized and vulnerable occupations; and the impact of regulation of the formal economy on the informal sector.

Experts discussed “gender mainstreaming”, a common label for promoting gender equality in organizations. While gender mainstreaming has had mixed success, as it is influenced by a range of institutional factors, the concept provided useful stimulus for the day’s discussion. One approach is to think about technical tools or processes for implementing existing policies, such as using gender disaggregated data and impact assessments that take account of gender differentials. A second approach is to develop ‘stakeholder voices’ that integrate the perspectives of women as well as men in existing and new business and human rights initiatives.

Some experts felt that integrating a gender perspective should incorporate both gender mainstreaming and special attention to women as a vulnerable or ‘at-risk’ group. One expert challenged the claim that women should be considered primarily as a ‘vulnerable’ group since they have valuable skills. In contrast, another suggested that seeing women a vulnerable group is necessary when considering migrant workers, because when women move their residence (particularly internationally) to work, they face greater risks than men and often have less recourse to legal protection due to social or cultural factors.

Others felt that gender mainstreaming would not be sufficient, and could potentially exclude frameworks and legal standards that are specifically directed at women’s empowerment. Participants discussed the difference between avoiding discrimination and creating positive opportunities for, and empowering, those disadvantaged on the basis of gender. Experts described the evolution of policy thinking around gender equality, which has changed from a male-centred perspective to gender *neutrality* to gender *sensitivity* (employing differentiated gender impact assessments) and has eventually arrived at gender *responsiveness* (the pro-active adopting of policies that aim for gender equality).

One expert noted that there must be further thinking about a company’s responsibilities beyond the realm of its internal policies and into its external relations – including its interactions with women. It was suggested, however, that attention should be given to the costs of integrating a gender perspective for smaller companies, and the positives and negatives of encouraging businesses to undertake collective work on these issues. It was also suggested that it would be worth tracking the development of the ISO 26000 social responsibility standard in relation to gender equality.

Experts discussed how the struggle for women’s rights is reflected in the progress of international law relevant to women. While the Universal Declaration of Human Rights emphasises equality for all, discrimination against women is often justified on the basis of ‘cultural differences’ that are not invoked in relation to other rights. This has led to the need to elaborate women’s rights in international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Beijing Declaration and Platform for Action. It was suggested that the business and human rights field should draw on these and other instruments relevant to women’s rights.

It was noted that the United Nations Development Fund for Women (UNIFEM) now refers to ‘women’s rights’ rather than ‘human rights’ because of the concern that women’s rights have often been obscured within the field of human rights. It was suggested that the UN could support governments in promoting women’s rights in the business and human rights sphere because the level of interaction between the UN and the private sector, and of thinking about these issues, has increased substantially in recent years.

### C. SESSION II – INTEGRATING A GENDER PERSPECTIVE INTO THE STATE DUTY TO PROTECT

The discussion moved from general issues involved in integrating a gender perspective to specific issues with regard to the SRSG’s work on the State Duty to Protect.

It was suggested that non-compliance with existing laws is a problem in most countries and that a focus on enforcement of existing legislation continues to be important. For example, a report from the United Kingdom’s national human rights institution was cited by one expert to the effect that 83% of employers surveyed believed that they could violate equality laws with impunity. Soft regulation also plays a major role, particularly in the form of market pressures and expectations, though here again gender equality has received less attention than other human rights issues. Integrating a gender perspective into measures such as government procurement requirements, export guarantees and tax incentives would mirror efforts that have been suggested in order to promote other human rights issues in these areas.

Experts discussed the SRSG’s attention to domestic and international policy incoherence. Procurement policies were emphasised as having a potentially dramatic impact on inequalities in gender. It was acknowledged that, in this area, it has been harder to draw the international community’s attention to gender discrimination than to child labor. It was noted that there are positive examples in procurement policy in some state and institutional contexts and experts felt that gathering best practices in this area would be useful. Participants discussed whether affirmative action is necessary or useful in promoting gender equality in the procurement context.

Referring again to the concepts of ‘reproductive’ versus ‘productive’ work, a number of experts signalled that the societal value placed on each needs to be considered, as this impacts state and company policies on maternity and paternity leave, flexible work hours, and childcare. It was also suggested that requiring company reporting on gender policies, even if done in confidence to a governmental agency, could help change workplace attitudes towards gender equality.

Some experts suggested that states might not be meeting their human rights obligations under international law if they fail to consider gender equality when they enter into trade and investment agreements. Some suggested exploring how international law could negatively impact gender equality in the context of trade law, for example

whether providing incentives to reduce gender discrimination might contravene trade rules.

On the issue of conflict zones, some experts expressed the view that while it is important to address violence against women and the demobilization, disarmament and reintegration of soldiers (who are mostly though not exclusively male), attention should also be paid to expanding opportunities for women and girls in post-conflict situations, including at the peace-building table. For example, UN Security Council Resolution 1325 calls on states to adopt national plans of action in post-conflict situations that increase women's participation in peace processes, increase protection of women and girls, and prevent conflict and human rights abuses of women and girls. This is relevant to business and human rights because Resolution 1325 calls for gender to be used as an analytical tool for rethinking key policy initiatives, ideals, goals and actions, including in relation to economic development and the private sector. As one example of enforcement across national boundaries, a private contractor hired by a government in the conflict in Bosnia, which was accused of sexual exploitation of women, had to compensate employee 'whistleblowers' who had been dismissed. It was suggested that assessing existing national plans would be helpful.

#### D. SESSION III – INTEGRATING A GENDER PERSPECTIVE INTO THE CORPORATE RESPONSIBILITY TO RESPECT

The experts next offered thoughts and guidance regarding the Corporate Responsibility to Respect.

It was suggested that corporations integrate gender analysis into assessments of their core impacts. For example, each aspect of the human rights due diligence process proposed by the SRSG needs to be operationalized keeping in mind the need to eliminate gender discrimination and inequality. Specific steps to consider include: including indicators related to gender in evaluating corporate culture; considering gender issues in corporate governance (such as female representation on company boards); emphasizing gender in stakeholder relations; and engaging gender experts in tracking and reporting performance. One expert described a 2006 study of the different policies adopted by 700 companies to improve representation of women in the workforce, which showed that gender awareness training had minimal impact, policies aimed at minimizing isolation and increasing mentoring for women had some impact, but that policies encouraging the active participation of women in corporate governance roles were most effective.

Some participants contended that even if a company is 'gender sensitive', if it is not 'gender responsive' it will not empower women or correct embedded discrimination. Noting that many countries still have gender-biased laws on their statute books, participants highlighted this as one area where companies may need to develop processes and policies that respect the spirit of gender equality, while not contravening local or national laws. This has been done in relation to issues such as child labor,

freedom of association, and apartheid, and most recently freedom of expression and privacy in the internet and communication technology sectors.

It was suggested that companies should consider unintended consequences of their policies or activities. For example, one participant suggested that empowerment of women in the workplace might not be well-received in the local community and might even raise the risk of increased domestic violence. In order to understand these impacts, it is important for companies to consult with both men and women and to integrate gender data and gender impact assessments into their analyses.

#### E. SESSION IV – INTEGRATING A GENDER PERSPECTIVE INTO ACCESS TO REMEDY

The major themes and issues in Access to Remedy and the projects underpinning this pillar were introduced. Experts discussed evidence demonstrating that access to effective remedy – both judicial and non-judicial – is usually more difficult than it is for men due to practical barriers (such as cost or lack of education), procedural or other rules (providing for example that only the male head of a household can file certain claims), or vulnerabilities stemming from social or cultural factors. Participants also discussed the fact that ensuring a range of remedial mechanisms is important, given the potentially differing preferences, needs and choices of men and women.

Various measures that might improve access to remedy for women were suggested, such as capacity building for women's NGOs; creating a 'gender ombudsman' inside companies; employing female auditors participatory auditing processes; and encouraging reporting of gender discrimination cases and their outcomes, as well as of best practices.

Some ongoing projects were mentioned from which specific lessons or trends could be drawn. These included the work of the Self Employed Women's Association (SEWA) of India, a membership organization of self-employed women workers in the informal sector, and of UNIFEM's global access to justice project. Individual cases were also discussed, such as the female waste collectors who have been recognized by the Colombian Constitutional Court as 'entrepreneurs', thus legalizing their previously informal profession and enabling them to bid for a government awarded waste contract.

#### F. CONCLUDING COMMENTS

The SRSG was grateful for the full and frank discussion on the day. Key questions and ideas were raised that will be helpful conceptually and practically as the mandate proceeds with integrating a gender perspective. He looks forward to continued dialogue in this area and encourages reactions to the discussion from experts as well as other interested parties.

## PARTICIPANTS LIST

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