

Women, Business and Human Rights:

A background paper for the UN Working Group on
Discrimination Against Women in Law and Practice

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Executive Summary

Women make significant contributions to the effectiveness, profits and talent pools available to business not to mention the overall contributions they make to economies. Furthermore, women's inclusion in governance and leadership positions within business is critical given the ways in which the private sector creates jobs, produces growth and impacts economic, social, environmental and cultural aspects of life.

There is growing awareness of the need to address women's equal access to business leadership and entrepreneurship and the need to incorporate gender into corporation responsibility and evaluation of the impacts of the ways we do business today. As a result there are a number of positive examples of change at the state, multilateral, private sector and civil society levels exist within each of these.

However, a significant amount of discrimination remains and continues to exclude women from economic governance and creates barriers for women as business leaders, decision-makers and entrepreneurs. There are several existing international mechanisms in support of non-discrimination. However, the significant gap in opportunities for women is a reminder that we must put them to better use to repeal discriminatory laws, policies and practices.

Among the greatest measures for addressing greater equality and opportunity for women in business are the introduction of quotas for women's representation in leadership and decision-making positions as well as efforts to improve access to credit and financial resources and increase opportunities through cooperatives, procurement policy, access to business networks and trade related opportunities.

While women have been excluded from the highest-ranking positions in business, current business models, often supported by international trade agreements, have also spurred a global search for cheap labour and business environments with lax regulation. This has disproportionately impacted women workers in the lower echelons and women in communities where transnational corporations operate. Within the context of corporate responsibility and a global discussion around business and human rights, a conversation is just beginning to emerge with respect to how it relates to women. This encompasses the challenges women face across a range of sectors from the garment industry to land intensive sectors such as the extractive industries. It also includes the unique experiences of women due to their reproductive roles, the feminisation of migration and women's vulnerability to sexual violence and trafficking.

Normative frameworks such as the UN Guiding Principles on Business and Human Rights, which have been widely endorsed by governments and companies around the world must now be put to practice with the inclusion of women not just as victims of rights violations but as decision-makers and agents of change. In hand with business leaders, multilateral agencies, governments and others in civil society women must be given an equal opportunity to shift the balance of the costs and benefits of business.

Overview

Sex-based discrimination against women remains a significant barrier for women in business whether as entrepreneurs, business leaders or decision-makers. In addition, women workers concentrated at the bottom of corporate value chains experience discrimination and the violation of rights in unique ways. Furthermore, women shoulder a disproportionate burden of the impacts of businesses on the communities in which they operate, particularly when impacts specific to women are not incorporated into planning stages and consultations related their business activities.

With this in mind, this paper examines remaining discriminatory legislation and other obstacles women face as business leaders and entrepreneurs. It also highlights examples of existing initiatives that provide lessons that can be built upon to contribute to continued elimination of discrimination against women in business. Furthermore, the paper examines the gender implications of the regulation of business and transnational corporations in the international human rights context and evaluates the gender responsiveness in the formulation and implementation of principles for the private sector to respect human rights. Given the breadth of these issue and the time within which the paper was developed, it provides an overview but is by no means exhaustive.

Section 1. provides context for the overlapping issues of women, business and human rights. Section 2. addresses normative guidelines and social changes. Section 3. looks at women as business leaders, entrepreneurs and decision-makers, and Section 4. examines corporate responsibility and the gender impact of corporate and international trade practices. Section 5. provides conclusions of this research.

1. Contextualising women, business and human rights

Equality for women is first and foremost a matter of human rights. However, it expands the talent pool and resources available to business and women's inclusion in economic governance and decision-making makes important economic contributions. Additionally, research shows that women's income tend to correlate with greater expenditure on family welfare and children, (up to 90%) unlike similar increases in the income of men (38%).¹

Women's inclusion in governance and leadership positions within businesses is critical given the ways in which the private sector creates jobs, produces growth and influences and impacts economic, social, environmental and cultural aspects of life.

Business around the world has been growing as has the extent of the economies businesses command and the concentration of resources in a top echelon of decision-makers from which women are often excluded. Pressure to outcompete others in a global

¹ International Trade Center. 2011. ITC Gender Mainstreaming Policy. Accessed on Nov 10, 2013. <http://tinyurl.com/ITC-Gender-Trade>

market has also led larger businesses to outsource work to other parts of the world with inexpensive unskilled labour, among which women are concentrated in global value chains, and more flexible social and environmental regulation.

The top 200 companies surpassed the combined economies of 182 countries as far back as a decade ago.² As a result many of these businesses have significant influence in political processes whether domestically or internationally, ranging from support for certain sectors of the economy to wages to environmental and social regulation and education, to name a few. In addition, research shows the growing gap between the command of resources at the top echelons of corporations and workers with implications for women given their concentration further down corporate structures and value chains. For example, in 2011 in the US, CEOs' compensation packages were worth 231 times more than the average worker.³

Despite the centrality of these issues to women, sex discrimination remains the most prevalent form of inequality in the work arena, according to the International Labour Office (ILO), hindering women from equal participation and consideration in business decision-making. While this paper shifts focus away from traditional concepts of women in employment, the ILO's recognition of the prevalence of sex discrimination is an indicator that women's human rights continue to be regularly undermined whether it is equal access to business and leadership opportunities or the extent to which the practices of businesses at various points in the value chain have an impact on female workers and women in surrounding communities.

National policies and legislative frameworks have improved, but major challenges remain both with respect to discrimination against women in law and practice. In particular, women continue to face discrimination with respect to access to decision-making and leadership positions.⁴

Furthermore, within the context of a gendered evaluation of corporate responsibility, women are particularly vulnerable to poor practice. This is exacerbated by the fact that women are concentrated in large categories of workers such as those in informal employment, domestic workers and those working in trade related export processing zones (EPZs), which continue to be excluded from legal protection or are under-regulated.⁵

² Anderson, Sarah and John Cavanagh. 2000. Top 200: The Rise of Global Corporate Power Accessed on Nov 12, 2013. <http://www.globalpolicy.org/component/content/article/221/47211.html>

³ Mishel, Lawrence and Natalie Sabadish. 2012. CEO PAY AND THE TOP 1% How executive compensation and financial-sector pay have fueled income inequality. Economic Policy Institute Briefing.

⁴ Equality at work: The continuing challenge. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. INTERNATIONAL LABOUR CONFERENCE 100th Session 2011. Report I(B)

⁵ Ibid

The financial crisis has also had a disproportionate impact on women in a number of countries, making financial resources to spur business development more scarce. Economic downturn has also made a large number of workers and communities where multinational companies operate particularly vulnerable in part due to the tendency to give lower priority to policies targeted at discrimination and the protection of workers' rights.⁶ This could threaten the achievements of several decades⁷, pointing to an increasing need to incorporate gender into business and human rights frameworks and initiatives.

Across these numerous contexts, women need to not only be free of sex-based discrimination. They need to be accommodated because of their reproductive and care giving roles as well as their exposure to violence and sexual harassment.

2. Normative guidelines and social changes

Reporting to the UN General Assembly by the International Expert on Foreign Debt highlights the breadth and extent of the measures required to ensure non-discrimination against women. This includes:

*repealing discriminatory laws, policies and practices, incorporating the principle of equality and non-discrimination in all laws and policies, prioritising the needs of women, facilitating the participation of women in decision-making on policies and issues affecting their lives, allocating equitable resources and services to ensure the realisation of women's rights and guaranteeing that the prohibition of discrimination against women is respected by private actors.*⁸

A number of normative instruments provide the foundation for women's equality at work with the most important instruments being the Convention on the Elimination of Discrimination Against Women (CEDAW) and the core conventions and relevant undertakings of the ILO. This framework is met with growing recognition of the need for change in social and business practice in a number of sectors and countries.

2.1 CEDAW

CEDAW remains the most overarching international tool for tackling all forms of discrimination against women, including the numerous legal and social norms that create barriers for women at work.

⁶ Ibid

⁷ Ibid

⁸ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

CEDAW creates clear guidelines that prohibit discrimination. This applies both to internal structures of business and corporate governance as well as actions of corporations as they discriminate against and impact women externally. Among the most important and relevant provisions for women and business are article 4 of the Convention and general recommendation 28.

Article 4 of the Convention allows for States to adopt temporary special measures to accelerate equality between men and women without being considered discrimination. Article 11 ensures equal opportunities, free choice of profession, the right to promotion and equal remuneration and equal treatment, among others. Additionally article 13 highlights equal access to bank loans and credit and equal rights in economic and social life. Article 14 specifically addresses discrimination against women in rural contexts and afford them equal access to economic opportunities through employment or self employment, including through organising self help groups and cooperatives.

General recommendation 28 on the core obligations of States parties under article 2 of the Convention highlights obligations not to cause discrimination against women through acts or omissions and to react actively to discrimination against women whether carried out by the State or private actors.

The optional protocol to CEDAW also allows the Committee to consider complaints made by individuals about the violations of rights enshrined in the Convention including those related to equality in the work sphere as well as violations of rights by non-state and private sector actors.

2.2 ILO

Minimum labour standards provide a foundation that allows for women's entry into the workforce and removes some of the most basic forms of discrimination that otherwise might create barriers and environments that might otherwise not be conducive to women's advancement. Combined with other important factors, this may provide opportunity for women's business leadership and entrepreneurship.

Convention 111 on Discrimination establishes that individuals cannot be discriminated against in employment or their occupation based on their sex, race, colour, religion. It requires States to create policy to promote and deliver upon equality of opportunity and treatment, including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Furthermore, Convention 100 establishes equal pay for equal work.

Several conventions also address women's reproductive roles and ability to participate in work life including the Workers with Family Responsibilities Convention (No. 156), Recommendation (No. 165) and Conventions Nos. 103 and 183 and Recommendation No. 191.

Finally, the Job Creation in Small and Medium-Sized Enterprises Recommendation (No. 189) provides guidance on the promotion of women's entrepreneurship as a means of quality employment and economic contribution. It encourages support for women entrepreneurs through measures designed specifically for women and by providing role models and award schemes for them.⁹

2.3 Growing awareness

There is also growing recognition that we can no longer afford to allow discrimination against women in business in terms of women's leadership and acknowledgement of the impacts of business. This is both with respect to the economic benefit and significant talent that women bring to business as well as the inherent rights to equality enshrined in international law and widely ratified human rights conventions.

For instance, ILO business case studies demonstrate growing awareness and acceptance of gender equality principles.¹⁰ Business leaders themselves are increasingly developing programmes to develop women's skills for top leadership positions and there are efforts being made widely to tap into the female talent and innovation pool.

Research has shown that in a number of companies initiatives are under way to ensure that women don't get stuck in middle management and are given opportunities to continue to advance.¹¹ Additionally, growing awareness is leading a number of companies to create or enhance existing diversity and leadership development programmes to ensure 'more sponsorship from white men for people who don't look like them.'¹²

There is also increasing public debate about women's leadership and business opportunities as well as how business impacts women and their communities. The number of articles that have cropped up in newspapers, magazines and online forums across the US, Europe and other parts of the world are evidence of this growing global conversation.

And yet, it may take time for this awareness and growing public debate to translate into the magnitude of change needed as evidenced by the slow progress in increasing the proportion of women business leaders, entrepreneurs and decision-makers.

⁹ ILO R189 - Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R189

¹⁰ ILO. 2011. Equality at work: The continuing challenge. Global Report

¹¹ Hewlett, Sylvia Ann et al. 2010. The Sponsor Effect: Breaking Through the Last Glass Ceiling. Harvard Business Review Research Report

¹² Catalyst. 2013. Anatomy of Change: How Inclusive Cultures Evolve

3. Women as business leaders, entrepreneurs and decision-makers

While the discussion about women's leadership is gaining traction globally, there remains a significant gap with respect to top leadership in business, in decision-making bodies as well as with respect to opportunities and resources for women entrepreneurs. This is true across continents and ranges from women working in financial services to those working in agricultural cooperatives.

3.1 Women's Contribution to Business

Women make important contributions to business around the world as business owners and entrepreneurs.

Research shows that companies with female membership and diversity outperform others. Catalyst has found that companies with women on its boards outperformed companies with zero women board directors—by 84% return on sales, 60% return on invested capital, and 46% return on equity.¹³

Furthermore, there is evidence that having women on boards creates more economic stability in crisis due to women's leadership and decision-making styles.¹⁴ For instance Credit Suisse noted that when the European debt crisis unfolded companies that did best had lower debt to equity and less volatility in earning cycles, among other factors, which were also associated with having some women on their boards. Research from the University of Leeds has also shown that having at least one woman on corporate boards reduces chances of bankruptcy by 20% and having at least 2 or 3 female board members reduced that risk even further.¹⁵

Additionally, female entrepreneurship is on the rise with 224 million women globally that have started businesses or are operating recently established businesses in 67 of the 188 countries recognised by the World Bank.¹⁶ Research in the US has also shown that women entrepreneurs bring in 20% more revenue with 50% less capital investment.¹⁷ Additionally, over a quarter of all businesses in the US are owned by women and they contribute \$147.8 million to the economy in sales.¹⁸

¹³ Catalyst. 2011. *The Bottom Line: Corporate Performance and Women's Representation on Boards (2004–2008)*

¹⁴ Credit Suisse. 2012. *Gender Diversity and Corporate Performance*.

¹⁵ Ibid

¹⁶ VanderBrug, Jackie. "The Global Rise of Female Entrepreneurs." *Harvard Business Review*. September 4, 2013.

¹⁷ Granger, Sarah. "A wave of angel investing organizations focus on women." *Harvard Business Review*. December 4, 2012.

¹⁸ Center for Women's Business Research. 2009. *The Economic Impact of Women-Owned Businesses In the United States*

Women tend to be concentrated in small and medium enterprises (SMEs), which account for a significant share of employment generation and economic growth potential. SMEs with full or partial female ownership represent 31- 38% of the formal SMEs in emerging markets.¹⁹ SMEs owned by women are a growing force to be reckoned with, and make up over 38% of registered small businesses in Uganda, 60% in Rwanda and 68% in Lao PDR.²⁰

Women also make significant business contributions to national economies through trade. For instance, in 2010, small business accounted for 86% of exports in Canada and responsible for generating \$77 billion. SMEs primarily owned by women accounted for 17% of these figures and businesses with equal female-male shared ownership accounted for an additional 9%.²¹

In the South African Development community, women account for 70% of cross border trade between membership countries, amounting to over \$US 4 billion. Women informal traders in Africa also make important contributions to GDP. For example, they account for 64% of value added in trade in Benin, 46% in Mali and 41% in Chad.²²

3.2 The women's leadership gap

Despite steps forward, women continue to be significantly underrepresented in leadership in the business sphere and global trends in businesses of all sizes show that women's advancement is stagnating. Women account for 4% of CEOs in Fortune 500 companies.²³ This has changed very little over the past decade.

Surveys of mid-sized companies also show global stagnation in the number of women reaching senior management. In 2014, women make up just 24% of senior roles. This is exactly the same proportion as 2013, 2009 and 2007. It also is only 5% higher than the number of women in senior management in 2001. Regionally, there has also been very little significant change over the past decade.²⁴

Additionally, women continue to be underrepresented on board of directors and decision-making bodies of companies around the world. In 2010, women made up just 15.7% of Fortune 500 Board Seats. In 2012, it had only grown to 16.6%. Minority Women were 3.2% of board seats and white women were 13.4%. Only 0.6% of board chairs were women of color and 2.6% were Caucasian women.²⁵

¹⁹ IFC. 2011. Strengthening Access to Finance for Women-Owned SMEs in Developing Countries.

²⁰ International Trade Center. 2011. ITC Gender Mainstreaming Policy.

²¹ Industry Canada. 2012. Key Small Business Statistics.

²² International Trade Center. 2011. ITC Gender Mainstreaming Policy.

²³ Catalyst. Women CEOs of the Fortune 1000. See <http://www.catalyst.org/knowledge/women-ceos-fortune-1000>

²⁴ Grant Thornton International. Women in Business 2014. March 7, 2014

²⁵ Alliance for Board Diversity. 2012. Missing Pieces: Women and Minorities on Fortune 500 Boards. Alliance for Board Diversity Census

Among highly professionalised fields, women are particularly under-represented as business leaders and entrepreneurs in sectors such as finance, technology and science. Women only hold 18.6% of executive leadership positions in finance and insurance and 11% of Chief Financial Officers in Fortune 500s.²⁶ Women also only account for 17 of 177 governors of central banks, which oversee commercial banking.²⁷

The figures are even more staggering for the technology sector. In 2010, 96% of CEOs in the IT & Telecom sector around the world were male. The sector has fewer women in it than other sectors overall, but it also has a gender pay gap greater than elsewhere reflecting a concentration of women in lower positions. The number of female entrepreneurs in the ICT sector is also particularly low with just 19.2% in Europe as opposed to 53.9% of entrepreneurs in non-ICT sectors.²⁸

Additionally the gender gap widens as women reach more senior positions, impacting women's professional choices and decisions made within families, often based on economic contributions. For instance a new report in the UK highlights that the pay gap is particularly large at senior levels. The average female British executive earns £423,390 less than male executives over her lifetime. This is in part due to inequitable practices with respect to pay bonuses with women directors paid an average bonus of £3,726 compared to £7,496 for men.²⁹

In many countries women's participation in cooperatives plays an important role in their ability to become successful business leaders and yet they are significantly under-represented in leadership and decision-making roles. Over 1 billion people are members of coops worldwide.³⁰ In Asian Pacific coops women represent a mere 14.5% of board members and 18% of committee members.³¹ In India, the National Cooperative Union of India has only 2 women out of 40 board of directors and the NCCF has no females out of 16 board members and no females on executive committee.³² In Ethiopia, men are five times more likely than women to hold a leadership position within coops.³³

²⁶ Catalyst. 2013. Catalyst Quick Take: Women in Financial Services.

²⁷ Jones, Claire. "Six things you need to know about women in central banks." Financial Times October 9, 2013.

²⁸ European Union. 2013. Women Active in the ICT Sector.

²⁹ Chartered Management Institute. "Women hit by £400,000 gender pay gap over course of careers" November 1, 2012.

³⁰ Goler von Ravensburg, Nicole. 2011. Economic and Other Benefits of the Entrepreneurs' Cooperative as a Specific form of Enterprise Cluster. ILO and COPAC

³¹ Lodhia, Shital. Gender Inequality in Decision Making in Cooperatives: A Cross National Study of Asia and Pacific Countries.

³² Dubhashi, Dr Medha. Vaik Unth Mehta National Institute of Cooperative Management, Pune, India. Empowering Women in Cooperatives. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

³³ Mcarthy, Lauren et al. 2012. Gender equality: it's your business. Oxfam

Additionally, trade unions around the world serve as important tools for negotiating issues like salary and discrimination in many forms in the work place. However, women continue to be both under-enrolled in unions as well as being significantly under represented in union leadership globally. For instance, in 2010, only 4 out of 42 European trade unions had female presidents and only 8 out of 39 had female Secretary Generals.³⁴ In nine of the most important unions in the US with significant female membership, women only hold 24% of top leadership positions.³⁵ In Kenya, most women leaders in trade unions were concentrated at the local as opposed to national level. Furthermore, almost all in executive positions were trustees or were deputising.³⁶ Without women in leadership positions in unions especially in bargaining teams, gender is not likely to factor high on the list of bargaining items for unions and labour movements.³⁷

3.3 Barriers to women's entrepreneurship and business opportunities

Women continue to face a number of legal and social barriers that keeps them from contributing to their full potential. One of the most significant constraints women face are unequal laws.

A World Bank survey of 143 economies shows that 90% have at least one policy that differentiates between treatment and rights of men and women. Twenty-eight economies have 10 or more legal differences for men and women in the areas covered by the World Bank report on Women, Business and the Law. Such disparities are seen in policies that include gender inequities in registering a business, traveling outside of a country, inheriting and owning land and other productive assets, and opening a bank account. For example, women are not allowed to register a business in the Democratic Republic of Congo and Pakistan. Additionally, in 15 countries women are not allowed to get a job without their husband's permission.³⁸

A number of countries still do not have laws prohibiting all the well-recognised forms of sex discrimination. In many, legislation does not prohibit sexual harassment or cover equal remuneration, which is protected under ILO Convention No. 100.³⁹

In addition to legal barriers, gender stereotypes linked to patriarchal structures that keep women in the home rather than the work world are adhered to by both men and women to

³⁴ European Trade Union Confederation. 2010. From membership to leadership. Where do we stand? Survey March 8, 2010.

³⁵ Queen Mary, University of London Blog. "Trade unions still fail to lure women leaders, study finds." September 14, 2012.

³⁶ Machyo, Catherine Naswa. 2003. An Analysis of Women's Trade Union Leadership in Kenya. A management research project in partial fulfillment for the degree of masters business administration. Faculty of Commerce, University of Nairobi.

³⁷ Ledwith, Sue. 2010. Gender and Trade Unions. Global Labour University Alumni.

³⁸ World Bank. Women, Business and the Law 2014. Removing Restrictions to Enhance Gender Equality. Key Findings.

³⁹ ILO. 2011. Equality at Work: The continuing challenge. Global Report

varying degrees in different parts of the world. They therefore serve as barriers to women's entry into business and may be a factor in why men outperform them even when they do become entrepreneurs.⁴⁰

Women around the world tend to be concentrated in small businesses and are more likely than men to be in the informal sector, running small enterprises that they operate from home. These businesses tend to be service oriented and far lower down the chain of value added production, limiting their income and growth.

Gender -differentiated inheritance law as well as access to land, credit and productive inputs also constrains the ability of female entrepreneurs to invest, scale up their projects, and benefit from new economic opportunities.⁴¹ (See Page 17 for further details) Women are also less connected to Chambers of Commerce to identify business and trade opportunities and become knowledgeable about requirements to qualify for these opportunities.

In addition, due to their concentration in small businesses women are specifically affected by limitations in a country's investment climate⁴² and are therefore more vulnerable to economic fluctuations and financial crisis.

The political environment also has a significant impact on women's ability to run businesses as do overarching safety concerns which can add further to gender norms that restrict women's movement and behavior in certain parts of the world. For example, conflict in Afghanistan along with unreliable government institutions and environmental hazards pose a significant threat to fragile women owned businesses and restrain their further development. Sexual harassment and intimidation have also led Afghan families to discourage women's engagement in business much less advance into leadership positions.⁴³

3.4 Legal Frameworks for Equality and Quotas

While there are a large number of inequitable laws in many countries that undermine equality for women, there have been changes in the number of inequitable laws as well as overarching legal frameworks that set the legal and social context for women broadly.

For example, Malaysia and Botswana recently included provisions to prohibit discrimination based on sex in their Constitutions. In Belgium, after passing the General Anti-Discrimination Act in 2007, legislation now contains all of the provisions of ILO Convention No. 111. Kenya has also passed a very comprehensive Employment Act that prohibits direct and indirect discrimination at all stages of employment, including gender

⁴⁰ World Bank. WDR 2012. Gender Equality and Development.

⁴¹ Ibid

⁴² IFC. 2011. Strengthening Access to Finance for Women-Owned SMEs in Developing Countries.

⁴³ Ritchie, Holly. 2013. Examining women in enterprise development in Afghanistan Barriers and solutions. Research Briefing No 6. IS Academy on Human Security in Fragile States.

discrimination, and shifts the burden of proof to the employer in cases of alleged discrimination. It also requires employers to adopt and implement sexual harassment policies.⁴⁴ In 2012, Mexico amended its labour law to protect substantive equality between men and women and prohibit discrimination related to pregnancy and other issues critical for women.⁴⁵

Laws are also being put in place in some countries to address multiple overlapping forms of discrimination. For example, In Zambia, the Citizens Economic Empowerment Commission (CEEC) promotes economic empowerment of citizens who have faced diminished opportunities based on overlapping discrimination based on age, sex, HIV status and disability.

Inheritance and land ownership laws have also begun to change in some countries to enable women more equal access to resources. For instance, in 2004 South Africa's Constitutional Court decided customary law that dictated inheritance of family land by sons was unconstitutional because of the discriminatory impact on women and children. In 2002, Nepal reformed its General Code to allow unmarried daughters under the age of 35 to inherit property. It however failed to include married daughters of any age.⁴⁶

Quotas

Quotas are becoming an important tool that governments have turned to in order to address inequality and women's access to business leadership and decision-making positions following on from successes with quotas in political arenas.

Additionally quotas are gaining support among business leaders globally. Forty five per cent of business leaders surveyed around the world in 2014 would like to see quotas introduced for women on boards of listed companies. This is up from 37% in 2013 with support growing in China, Europe and Latin America.⁴⁷

Several countries have quotas for women on boards of publicly listed companies and an increasing number are in the process of or have introduced statutory quotas.⁴⁸

In 1999, Israel was the first country to legislate gender quotas for all companies, albeit providing only that if a board is composed of only one gender, any new appointments must be of the other gender. This legislation followed on a 1992 legislative requirement of fair representation of both sexes on the boards of government companies, which was implemented after a Supreme Court decision, and the ratio of women directors rose from 7% in 1992 to 44% in 2010.⁴⁹

⁴⁴ Ibid

⁴⁵ Personal communication with Patricia Olamendi, member of the Working Group on Discrimination Against Women in Law and Practice. October 13, 2013.

⁴⁶ World Bank. Women, Business and the Law 2014.

⁴⁷ Grant Thornton International. Women in Business 2014.

⁴⁸ Ibid

⁴⁹ Paul Hastings LLP. 2013. Breaking the Glass Ceiling: Women in the Boardroom

In 2003, Norway passed a law requiring 40% female board representation for all publicly listed companies. As a result, the country now has 36% female representation on board of directors in public and private companies, one of the highest in the world.⁵⁰ However Norway has found that in order to meet those quotas there is a need to ensure that women have the training to fill the positions. Norway has therefore created the Female Future Programme, which is designed to help employers take voluntary measures to increase the skills of women for board participation.

However, the high ratio of women board members has not improved the numbers for the next generation of women progressing up the executive ladder and Norway still falls below the European average for female CEOs and senior executives.⁵¹

In 2011, France passed legislation that within three years companies that are listed or have over 500 employees and revenues over € 50 million must have 20% board membership, rising to 40% in six years. Appointments made that do not follow these guidelines will be rendered invalid by law.⁵² This has contributed to an increase in women directors, from 12.7% to 16.6% in 2012.⁵³

In March 2010, a law was passed in Iceland that requires Icelandic companies to have at least 40% of both gender represented on their boards by September 2013. However, in Iceland women only currently make up 3% of board members.⁵⁴

Denmark, which passed a quota law in 2012, has taken a slightly different approach. The country's "flexi-quota" system allows for companies to set the target themselves and publicly disclose their policies to increase women board directors, and their progress against that target.⁵⁵

In 2011, the European Union introduced the "Women on the Board" pledge, a voluntary commitment by companies to increase women's board representation to 30 % by 2015 and 40 % by 2020.⁵⁶ However, mandatory legislation has been proposed and is up for a vote given that many companies have not made progress on women's leadership.⁵⁷ There has however been resistance to mandatory quotas. The German parliament most recently rejected legally mandated quotas for women on corporate boards in April 2013. This

⁵⁰ Scott, Mark. "To Meet Norway's Quotas, a Crash Course in Board Business". New York Times. April 1, 2013

⁵¹ Sørlien, Petter. "Women on Boards" The Parliament. April 17, 2012.

⁵² European Commission's Network to Promote Women in Decision-making in Politics and the Economy. 2011. The Quota-instrument: different approaches across Europe. Working Paper.

⁵³ Grant Thornton report

⁵⁴ Sigmundsdóttir, Alda. "Iceland isn't really a paragon of gender equality: Boardroom quota laws and high proportion of female postgraduates may point to our problems, not our successes" Comment is Free, The Guardian. July 19, 2013.

⁵⁵ Deloitte. 2013. Women in the Boardroom: A global perspective

⁵⁶ European Commission. 2012. Women in economic decision-making in the EU: Progress report

⁵⁷ de Pommereau, Isabelle "More women in the boardroom? Europe considers forcing the issue" Christian Science Monitor. July 15, 2013

follows pushback from the UK, the Netherlands, Sweden, and Denmark against a proposal by Viviane Reding, the EU senior justice official, introducing legislation that requires that women occupy 40% of corporate board seats.⁵⁸

The UK set an unofficial quota in 2011 to have 25% of the 100 top corporate boards be women by 2015. The British government is now considering making that mandatory if more progress is not made.⁵⁹

Many of the quotas that are being passed are in Europe but discussions are taking place more broadly. For example, Rwanda's constitution also sets a minimum of 30% for women and men on boards of publicly listed companies.⁶⁰ In Malaysia in 2011, the Malaysian Cabinet approved a policy requiring that public and limited companies ensure at least 30% of board and senior management positions are held by women to promote gender equality. A year after this decision, women's board representation has risen from 6% to 10%.⁶¹

In addition, in 2012, the lower house of the Parliament of India passed the Companies Bill that public companies must have at least one female board member and a minimum of three board members overall.⁶²

Governments have also passed legislation to put in place quotas at the local level to encourage women's representation in decision-making in important business entities such as cooperatives. For instance, the Government of Maharashtra was one of the first states in India to incorporate gender quotas in legislation governing cooperatives, creating a quota of 30% female representation on their boards of directors.⁶³

The private sector itself has also increasingly been involved in looking at quotas for women's representation in business leadership. For example, the 30% Coalition is a US network of investors, corporate leaders, and other advocates that have done ongoing outreach to increase the proportion of female directors to 30% by 2015. As a priority this has included outreach from institutional investors representing over \$1.2 trillion in assets as well as women's groups to top American companies that don't have any women on their boards.⁶⁴ In the UK, similarly a 30% Club has been formed.

⁵⁸ Zimmerman, Allyson. "Take 5: Questioning Quotas". Catalyst Blog. May 1, 2013.

⁵⁹ UK Government. Women on Boards. April 2013.

⁶⁰ World Bank. Women, Business and the Law 2014.

⁶¹ Deloitte. 2013. Women in the Boardroom: A global perspective

⁶² Ibid

⁶³ Dubhashi, Dr Medha. Vaik Unth Mehta National Institute of Cooperative Management, Pune, India. Empowering Women in Cooperatives. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

⁶⁴ See <http://www.30percentcoalition.org>

That said, the use of quotas as a means to address inequality have been debated. On one hand, case studies from the ILO's Bureau for Employers' Activities come out strongly against quotas and highlight a danger of resulting in the same discrimination that they aim to tackle.⁶⁵ Employers in Norway, where there are quotas, have stated that there is a need to increase the standard and competence of boards and expand the recruitment base rather than merely getting women on boards.⁶⁶

And yet, slow progress has led some to have a change of heart. For instance Christine Lagarde, managing director of the IMF, originally objected to quotas for women. She now sees them as a necessary, albeit temporary tool to help women reach the top given slow progress thus far.⁶⁷

Business leaders at Deloitte have however pointed out that much of the change has been a result of government efforts and regulation as opposed to being driven by companies' shareholders. The hope is that the trend will shift over time particularly given that diversity on boards delivers better results for companies and shareholders.⁶⁸

3.5 Access to credit, financial services, training and opportunities

Among the greatest constraints for women is access to credit, financial services and productive resources such as land. This is not to mention the extent to which women have less access to markets and opportunity through social and business connections.

Research shows that women-led businesses only receive 5% of venture capital each year worldwide.⁶⁹ Surprisingly even in the US with larger pools of venture capital available, the figure is roughly the same for women's access to financial resources.⁷⁰ Contributing factors included gender stereotypes, less consistent credit and income history resulting in lower credit scores, lack of financial education, and a lack of social networks that bring access to higher levels of mentoring and capital. An additional factor for women accessing venture funds is the low number of women at the table as investors, accounting for just 10-15% of the sector. Venture funds with women invest in women entrepreneurs 70% of the time and therefore support the expansion of female owned businesses.⁷¹

Underinvestment in women entrepreneurs is a phenomenon worldwide. In Africa, female owned companies in the formal sector in urban areas have 2.5 times less start-up capital

⁶⁵ ILO. 2005. Employers' Organizations Taking the Lead on Gender Equality: Case studies from 10 countries. ACT/EMP N°43

⁶⁶ Ibid

⁶⁷ de Pommereau, Isabelle "More women in the boardroom? Europe considers forcing the issue" Christian Science Monitor. July 15, 2013

⁶⁸ Deloitte. 2013. Women in the boardroom: A global perspective

⁶⁹ IFC. 2011. Strengthening Access to Finance for Women-Owned SMEs in Developing Countries.

⁷⁰ Ernst and Young. 2009. Scaling up: Why women-owned businesses can recharge the global economy

⁷¹ Granger, Sarah. "A wave of angel investing organizations focus on women." Harvard Business Review. December 4, 2012.

than male owned equivalents. However, they have 5 times more start-up capital than the average female- owned business in the informal sector.⁷²

A significant contributing factor is women's lack of property ownership, which does not give them assets for accessing credit and financial services for their businesses.⁷³ A lack of collateral discourages many women from approaching banks and is one of the leading reasons they are turned away for loans when they do approach them.⁷⁴ For example, in Tanzania in 2006, only 5% of women report having the collateral to access to bank finance, giving them limited resources to invest in their businesses.⁷⁵

Unequal land ownership and inheritance laws in a number of countries around the world, as well as social norms that keep women from owning land and other productive resources therefore pose a significant barrier to their entrepreneurship and livelihoods.

Women's unequal access to land, credit, and productive resources also affect women's ability to access markets and take advantage of new opportunities. For example, in Guatemala, women's independent ownership of land was found to be a significant indicator of women's participation in agricultural export production.⁷⁶

There are also a number of other factors that can contribute to women's ability to access credit. Building credit history can be a particular challenge for women in particular. If credit bureaus only record loans of a certain size and don't consider micro-credit as part of credit history this might exclude the credit history of female entrepreneurs.⁷⁷

Women entrepreneurs can also find themselves falling between credit provided by micro-finance and that provided by banks. SMEs where women's businesses are concentrated often require larger loans than most microfinance lenders are able to provide. They are also more costly to invest in than large enterprises making more traditional investors less interested. This can add to the strikes against SMEs for larger financial institutions such as the lack of credit history and a lack of audited financial statements.⁷⁸

Finally, it is important to note that vulnerable groups such as women with disabilities face multiple forms of discrimination and have far fewer opportunities for accessing credit and starting their own businesses. Women with disabilities are far less likely to have collateral to secure loans. Additionally, people with disabilities are wrongly

⁷² World Bank. WDR 2012. Gender Equality and Development.

⁷³ IFC. 2011. Strengthening Access to Finance for Women-Owned SMEs in Developing Countries.

⁷⁴ World Bank. WDR 2012.

⁷⁵ IFC. 2007. Voices of Women Entrepreneurs in Tanzania.

⁷⁶ World Bank. WDR 2012.

⁷⁷ World Bank. 2013. Women, Business and the Law 2014 Removing Restrictions to Enhance Gender Equality

⁷⁸ Sally King et al. "Beyond participation: making enterprise development really work for women." Gender & Development Volume 20 Issue 1 Business and Enterprise. March 23, 2012

perceived as high risk by potential lenders. Given that women already struggle with accessing credit, disabled women face additional barriers.⁷⁹

Initiatives for change

There are a number of initiatives taking place at the State, multi-lateral, private sector and civil society levels that together comprise a growing body of work around the world to create greater equality for women as business leaders, decision-makers and entrepreneurs.

Some governments have begun to recognise the importance of fostering women's entrepreneurship. For instance, the EU has launched a women's entrepreneur's initiative. To raise the number of women entrepreneurs in Europe the programme will pair successful businesswomen to work with female entrepreneurs to them establish their new businesses, provide coaching and help them develop skills. The programme covers 17 European countries.⁸⁰

Governments have also begun to incorporate women into their business associations to provide greater opportunity, decision-making and training to women entrepreneurs. In Yemen, the Chambers of Commerce and Industry have established a women's committee to coordinate business women in the country, provide links to other business women in the region, train them and provide opportunities to increase the participation of Yemeni businesswomen in decision-making.⁸¹

In Chile, the Association of Women Leaders-Chile provided members with access to international networks, which helped them with businesses and raised the profile of women entrepreneurs in Chile. This included meeting with the country's first female President Michelle Bachelet as well as participating in SME business development workshops with APEC and others.⁸²

Several other countries have also now begun to create women's committees in their Chambers of Commerce and many of the state level chambers of commerce in the US have women's committees to provide training and increased business opportunities.

One of the more well-known multi-lateral initiatives to support women's entrepreneurship is the ILO's Women's Entrepreneurship Development and Gender Equality programme (WEDGE), which is part of the Small Enterprise Development Programme (EMP/SEED). WEDGE supports women in starting, formalising and growing businesses as well as mainstreaming gender equality issues into the ILO's work on business development.

⁷⁹ World Bank and World Health Organisation. 2011. World Report on Disability

⁸⁰ European Commission. Female mentors to help woman entrepreneurs to get started. Press Release. November 15, 2011. European Commission - IP/11/1350 15/11/2011

⁸¹ ILO. 2005. Employers' Organizations taking the lead on Gender Equality. Case studies from 10 countries. Geneva. ACT/EMP N°43

⁸² Higgins, Kate. 2012. Gender and Free Trade Agreements: Best Practices and Policy Guidance. The North-South Institute

Although there are few examples of the CEDAW committee tackling the issue of women's leadership and equality in the business sphere, there are examples that may set precedents for others. For instance, in 2009 in its review of Denmark the Committee asked Denmark to ensure the effectiveness of its strategy on women in management positions in the labour market, in corporate monitoring and accountability mechanisms, including sanctions for non-compliance with voluntary commitments by employers and other relevant groups. It also asked the State to review its position on the use of temporary special measures to accelerate gender equality more generally.⁸³

Financial institutions around the world have also begun to focus greater attention to extend banking services to women. The Global Banking Alliance (GBA) for women has created a consortium of financial institutions that have committed to serve women. Members range from the Royal Bank of Scotland (RBS) to developing country banks to the European Bank for Reconstruction and Development. Members provide women's businesses with access to capital, markets, training and education. The GBA also works with its members and reaches out to others to build and strengthen programmes aimed at serving women.⁸⁴

Civil society efforts have also made important contributions to help women access finance, particularly in the developing world. For instance, the Organisation for Women in Self Employment (WISE) in Ethiopia is an urban cooperative facilitating access to markets and finance. WISE collaborates with savings and credit cooperative organisations to provide finance for and train self employed women in home production to turn micro-enterprises into small-scale businesses. WISE reports disbursing over \$3million in loans to these small women's enterprises over the past four years and mobilising approximately \$950,000 in savings.⁸⁵

Additionally, targeted private sector initiatives and partnerships appear to have had a significant impact in facilitating women as business leaders. In 2008, Goldman Sach's launched its 10,000 Women Initiative aimed at educating and supporting women who run SMEs in emerging economies by providing them with management and business training. The initiative has trained 5,500 women who have so far been trained and reports that 80% have increased revenue, 60% have increased the number of jobs. The vast majority of the women are also now mentoring other women. The initiative brings together 75 partners including a number of business schools and not-for-profits.⁸⁶

⁸³ Committee on the Elimination of Discrimination against Women. Concluding observations of the Committee on the Elimination of Discrimination against Women. Forty-fourth session 20 July-7 August 2009. CEDAW/C/DEN/CO/7

⁸⁴ See <http://www.gbaforwomen.org>

⁸⁵ Waweru, Maureen. "Women's Collectives and Cooperatives: An analysis." ActionAid. May 2013

⁸⁶ Clarke, Charlotte. "Entrepreneurs are taught the lessons of management." Financial Times. March 4, 2012.

3.6 Cooperatives

A co-operative is an association of people united by common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. Cooperatives are active worldwide in agriculture, consumer, banking and insurance, among other areas. Together they employ and generate income that is 20% more than the world's transnational corporations.⁸⁷ While they tend to be fairly male worldwide, greater structuring of cooperatives to include women as well as the formation of female cooperatives can make a significant contribution to women's ability to be entrepreneurs and business leaders.

Currently legal barriers to women's participation in cooperatives exist in many countries. Most of these barriers are indirect and form part of cooperative bylaws. This includes rules that only one member per family can participate which in conjunction with cultural norms often means that members selected for households are male. Additionally, many agricultural coops require ownership of land as a prerequisite. Again this disadvantages women given unequal land ownership and inheritance laws and practices, obstructing their membership in coops.⁸⁸

However, the cooperative movement has however made efforts to address women's participation. In 1995, the International Cooperative Alliance (ICA) passed a resolution called "Gender Equality in Cooperatives" and highlighted the issue as a priority for cooperative. In 2002, the ILO released Recommendation No. 193 on the Promotion of Cooperatives Recommendation, which states that special consideration should be given to women in cooperatives at all levels, particularly in senior management and leadership.⁸⁹

In many cases cooperatives provide a forum for women to come together to acquire better bargaining power as well as gaining access to markets, credit and important training and services.

Coops that are exclusively comprised of women account for a small percent, as seen by the 1.7% in India, though there is a need for global figures to be compiled. Regardless, women are active in most types of cooperatives such as banks, credit societies, market access coops agricultural producer societies and industrial cooperatives.⁹⁰ Women are

⁸⁷ Hertig, Maria Elena Chavez. 100 Million Jobs: The contribution of cooperatives to employment creation. ILO Coop. Accessed on Nov 1, 2013. <http://tinyurl.com/ILOCoop>

⁸⁸ Nippierd, Anne-Brit. 2002. "Gender issues in cooperatives." Geneva, Switzerland: International Labour Organization, ILO, Legal Constraints to Women's Participation in Cooperatives, ILO Cooperative Branch, Geneva, 2002.

⁸⁹ ILO-ICA. Brief Overview of Gender Issues in Cooperatives. Accessed on November 10, 2013 <http://www.uwcc.wisc.edu/icic/issues/gender/ilo-ica/overview.html>

⁹⁰ Dubhashi, Dr Medha. Vaik Unth Mehta National Institute of Cooperative Management, Pune, India. Empowering Women in Cooperatives. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

also frequently the preferred borrowers and members of credit cooperatives whether or not they are requesting the loan for themselves, because they are more reliable with respect to repayment.⁹¹

Women can also gain important business experience in entrepreneurs' cooperatives, which are formed by groups of entrepreneurs, independently owned businesses, professionals, or other public bodies. They can also provide services not provided otherwise because of major overhead costs or withdrawal by the state. These types of coops have been very successful in the US and Europe, but organisations like the ILO project that they could become increasingly important in developing countries as well in time.⁹² While there are indicators that these can be beneficial for women, further research is needed into their gender implications.

Yuri Enga Enterprise is a Ghanaian example of an entrepreneurs' coop, which represents rural women's groups who undertake shea butter processing and basket weaving, assisting them to reach international markets. The coop claims to pay fair prices for products purchased from member groups who are now co-owners of Yuri-Enga. They also offer trade consultation and procurement for the international community.⁹³

Cooperatives have also been a particularly critical vehicle for providing services and opportunities to women across the developing world with India as one of the countries at the forefront. Credit and banking cooperatives in particular have been critical in providing financial resources and services that enable women to start business in both the formal and informal sectors.

For example, the Mann Deshi Mahila Sahakari Bank was founded in 1997 as the first legally recognised cooperative bank in India. It is run by and for women. Mann Deshi has 140,360 clients, half of whom are poor rural women who run businesses in the informal sector or are wage labourers. They provide loans, savings, pension and insurance services to their female clients. The Mann Deshi Mahila Bachat Gat Federation is also a non profit self-help federation affiliated with the bank that aims at helping rural women entrepreneurs. It currently has more than 2,462 SHGs.⁹⁴

India is also at the forefront of creating a union for women's informal small business owners and workers. SEWA has mobilised and organised women workers into a union and has helped their members form a number of worker-owned and run cooperatives. In 1992, SEWA established the Gujarat State Women's SEWA Cooperative Federation, a State-level organisation of 98 women co-operatives. The Federation provides trainings,

⁹¹ Goler von Ravensburg, Nicole. 2011. ILO and COPAC

⁹² Ibid

⁹³ See http://www.yuri-enga.com/abt_us.htm

⁹⁴ See <http://www.manndeshi.org>

cooperative education and management, marketing and design services. These coops range from dairy to artisan to service coops.⁹⁵

Organising women in informal employment has also been one of the most common ways that trade unions have engaged with cooperatives. For example, the ILO has pointed out the efforts of SYNTRACIB, the cement workers union in Benin that collaborates with a women's association to organise women in 33 villages into coops and provide training related to income generation and market access.⁹⁶

3.7 Procurement and expanding opportunities

Government is a buyer of many goods and services in developing countries accounting for 15-20% GDP. Yet when asked what it spends on sourcing from women owned businesses, developing country governments estimate only 1%. This is a particularly important missed opportunity for women. More precise data is needed as well as research into the causes.⁹⁷

However, some countries have already begun to tackle the issue. For example, in 2011 Kenya put in place the Public Procurement and Disposal (Preference and Reservations) Regulations, a set of affirmative action measures to ensure that enterprises owned by women, youth and persons with disabilities, including micro and small business are able to access government contracts. In 2013, the President passed a directive that 30% of government procurement would be allocated for women and youth.⁹⁸

Additionally, the government of Uganda is working with the International Trade Centre (ITC, a joint agency of the UN and WTO) and the Commonwealth Business Council (CBC) to improve women's access to information for meeting criteria for government and private sector procurement as well as building the skills of women entrepreneurs. The project is particularly important given that studies have shown that for every 50 bids for a large government contract in Uganda women submit less than five tenders.⁹⁹

The US Women-Owned Small Business (WOSB) Federal Contract Programme has also been created in recognition that women owned businesses are among the fastest growing sectors in the US. The Programme sets aside specific contracts for certified WOSBs and will help federal agencies achieve mandatory goals of 5% of federal contract spending

⁹⁵ SEWA. Women's Collective Businesses. Accessed on October 14, 2013. See <http://tinyurl.com/SEWA-coops>

⁹⁶ Goler von Ravensburg, Nicole. 2011. ILO and COPAC

⁹⁷ Jones, Meg. The Economic Empowerment of Women Through Trade. ITC Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

⁹⁸ Gathira, Wanjiru "What Should be Done to Support Women Enterprises to Participate in and Benefit from the Lucrative Public procurement Market" Social Impact Institute. June 2013.

⁹⁹ ITC. "Empowering Ugandan women through government and corporate procurement. ITC Communications". June 3, 2013.

being awarded to WOSBs. In order to qualify, businesses have to have a minimum of 51% female ownership and be primarily managed by one or more women.¹⁰⁰

European Union procurement policy does not currently include strong provisions for access to procurement by women owned business. However, civil society organisations such as the European Women's Lobby are advocating for stronger inclusion of social policy in procurement, including provisions for women owned business. Additionally there are some good practices to build upon within Europe. For instance in 2007 Spain changed its procurement law to allow provisions that advantage some who bid for contracts if those providers have taken gender equality actions. This is not however mandatory.¹⁰¹

Additionally there are provisions within the procurement laws and policies of European member countries. For instance, Belgium requires those who receive government contracts to ensure equal pay between men and women. Through application of the UK's Sex Discrimination Act British civil servants are also expected to promote gender equality through the spending of public money, ensuring contractors incorporate gender equality and incorporating gender into procurement processes.¹⁰²

There is also a greater need for the private sector, and particularly some of the most successful companies to look at the extent to which they include women owned businesses in the companies from which they themselves contract goods and services. IBM is one company that has created a procurement diversity programme to expand purchasing opportunities for businesses owned and operated by minorities and women. As part of this in 2003, IBM created a commercial mentoring programme to help selected companies develop plans for growth of their business. To date IBM has directly assisted over 500 women business owners through this programme.¹⁰³

3.8 Expanded trade opportunities

Trade policies have redistributive effects across economic sectors and among individuals. They can therefore create opportunities or burdens for women depending on how they are structured.¹⁰⁴

Thus far the result of many multilateral and bilateral trade agreements have had particularly negative impacts for women. The UN Independent Expert on Foreign Debt has pointed out that an influx of subsidised goods linked to trade liberalisation can make

¹⁰⁰ Small Business Association. SBA Announces Contracting Program For Women-Owned Small Businesses. Press Release February 1, 2011.

¹⁰¹ European Women's Lobby. "European Women's Lobby contribution to the EC consultation on the modernisation of EU public procurement policy – Towards a more efficient European procurement market" April 18, 2011.

¹⁰² Ibid

¹⁰³ IBM. 2011. Building a Community of Diverse Suppliers.

¹⁰⁴ Marston, Ama and Barrett, Kara Nichols. 2007. Women in the Economy. USAID

it impossible for local industries and farmers to compete with particularly negative impacts for women farmers. The destruction of domestic-oriented industries and farms results in widespread loss of livelihoods and employment in traditional industries, and has an adverse impact on female workers and farmers.¹⁰⁵

When women smallholders access export opportunities it often shifts their production towards cash crops, jeopardising their ability production of subsistence crops and posing threats to their food security.¹⁰⁶

Women business owners, who often have less access to finance and credit than their male counterparts and have less access to market information, also are often placed at a disadvantage with respect to complying with changing trade rules and standards, thus losing out on opportunities.¹⁰⁷ Female business owners tend to be less prepared to be able to negotiate complicated customs procedures, undermining their ability to engage in trade. For instance, in Chile research shows that women found regulatory burdens to be the most significant barrier to opening trade-oriented businesses. This was particularly true of sanitary regulations.¹⁰⁸

Additionally, women's businesses do not often receive the benefits of trade promotion and technical assistance, which determines allocation of project funding.¹⁰⁹

One of the keys to ensuring that women benefit from trade is attracting foreign direct investment to sectors that directly benefit women, such as light manufacturing in textiles and garments or labour intensive services such as those provided by call centres.¹¹⁰

Increased trade and investment opportunities have already increased the number of job opportunities for women around the world, both in the formal and informal economies.¹¹¹ It should however be taken into account that some of the increased opportunities for women under trade agreements are often temporary and seasonal and can expose women

¹⁰⁵ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹⁰⁶ Williams, Mariama. Gender and Trade: Impacts and Implications for Financial Resources for Gender Equality Commonwealth. Background Paper. Commonwealth Secretariat. May 2007. W AMM(07)10

¹⁰⁷ Williams, Mariama. Gender and Trade: Impacts and Implications for Financial Resources for Gender Equality Commonwealth. Background Paper. Commonwealth Secretariat. May 2007. W AMM(07)10

¹⁰⁸ Higgins, Kate. 2012. Gender and Free Trade Agreements: Best Practices and Policy Guidance. The North-South Institute

¹⁰⁹ Williams, Mariama. Gender and Trade: Impacts and Implications for Financial Resources for Gender Equality Commonwealth. Background Paper. Commonwealth Secretariat. May 2007. W AMM(07)10

¹¹⁰ Casabianca, Elizabeth. UNCTAD. Trade, Gender and Development Section . "Mainstreaming Gender in Trade Policy". Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹¹¹ Marston, Ama and Barrett, Kara Nichols. 2007. Women in the Economy: A recent review of literature. USAID

to hazards and poor working conditions.¹¹² (*See further detail on impacts on women workers on page 29 under business and human rights*)

However, initiatives that are now under way may begin to shift the balance to ensure that women increasingly join the beneficiaries. The ITC points out that trade is linked to development by putting money into the hands of women who reinvest in families and communities. For this to take place, agreements must set goals with positive outcomes for women.¹¹³

In a handful of cases, the ITC has worked with developing countries to incorporate their social goals such as gender sensitivity and poverty alleviation into their national export and trade strategies. For example, the Ugandan government set out to enhance national prosperity through women's inclusion with the stated goal of "a dynamic and competitive export sector with more participation of women". With the help of the ITC, they identified four sectors where women are concentrated-- coffee, commercial crafts, tourism and dairy—to focus on as part of the export strategy. They also addressed supply side constraints – inadequate infrastructure, low productivity, and lack of information about markets - for women in these sectors to devise a gender sensitive national export strategy.¹¹⁴

The ITC has also worked with Cambodia to develop an export strategy targeted at reducing poverty. This led them to expanding the focus beyond sectors with high export value to include a focus on sectors where the poor, and particularly women, are engaged and how they could increase poor women's ability to export. As a result, the strategy included development of the silk sector as one with export potential.¹¹⁵

Canada has also made significant efforts to help women take advantage of trade opportunities given that 4 out of 5 businesses in the country are started by women. The Canadian Trade Commissioner Service hosts Business Women in International Trade (BWIT), which supports women entrepreneurs by representing and advocating for their interests in exports.¹¹⁶

¹¹² Williams, Mariama. Gender and Trade: Impacts and Implications for Financial Resources for Gender Equality Commonwealth. Background Paper. Commonwealth Secretariat. May 2007. W AMM(07)10

¹¹³ Jones, Meg. The Economic Empowerment of Women Through Trade. ITC Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹¹⁴ International Trade Forum. “ ‘Engendering’ Uganda's National Export Strategy” International Trade Forum Magazine - Issue 3-4/2008

¹¹⁵ Jones, Meg. The Economic Empowerment of Women Through Trade. ITC Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹¹⁶ Higgins, Kate. 2012. Gender and Free Trade Agreements: Best Practices and Policy Guidance. The North-South Institute

Special efforts have also been made in Malaysia where the Malaysia External Trade Development Corporation (MATRADE) created a special programme to assist women exporters. The programme helps women entrepreneurs network with buyers and partners through its offices in 42 countries to secure export opportunities and provides advisory services. They also facilitate women's participation in international trade events and forums.¹¹⁷

Additionally, a USAID funded project Greater Access to Trade Expansion (GATE) has been developing gender and trade value chain analysis to help guide trade policy around the globe.

Finally, women themselves have also begun to take advantage of technology as a means of better positioning themselves for trade opportunities. In Senegal, for example, the Grand Coast Fishing Operators Union, an organisation of female fish sellers have used communications technology to promote their produce, monitor export markets and negotiate prices with overseas buyers.¹¹⁸

4. Corporate responsibility and the gender impact of corporate and international trade practices

The emerging business and human rights agenda and accompanying principles represent a shift in the way that business is done as well as how obligations for protecting human rights are envisioned. However, the specific impacts for women is an emerging topic that has yet to be fully incorporated in to existing frameworks and practices despite the fact that business can and often does exacerbate gender inequalities and places a unique and disproportionate burden of the impacts of transnational corporations on women.

4.1 Changing approaches to business and human rights

In recent years the discussion of human rights has moved beyond the traditional human rights framework of States' responsibility to respect human rights to include obligations to protect against violations by non-state actors, including companies. In this context, the concept of corporate responsibility was developed.

Initially the discussion about the impacts of transnational corporations focused on the extent to which corporations have 'influence' over certain behaviors or practices and the notion that their obligation to take action was based upon the extent to which they were engaged or could influence the outcome.¹¹⁹

¹¹⁷ Ibid

¹¹⁸ Ibid

¹¹⁹ Dovey, Kathryn. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

However, emerging frameworks such as the UN Guiding Principles on Business and Human Rights (UNGPs) have highlighted three pillars of engagement. This includes 1) the State's duty to protect human rights and regulate corporations 2) private actors and companies' responsibility to respect or not violate rights and 3) the duty of both parties to be involved in providing remedy when rights are violated.¹²⁰

4.2 Women, business and human rights

The human rights violations that women face in the context of business activities combines existing gender discrimination with vast power imbalances between business actors and individual women. Together these factors create significant obstacles to justice for women workers at the bottom end of the value chain as well as women in communities where corporations operate. Many States, businesses, and even rights advocates themselves are failing to address these barriers in different ways.¹²¹ Furthermore, as of the most recent research, there is little or no systematic guidance exists to help companies mainstream and report on gender-sensitive practices globally.¹²²

The legal basis for developing international legal regulation of women, business and human rights is rooted in CEDAW obligations to prevent violations by private individuals and actors. Many women's rights advocates work on business and human rights cases without calling them such. However, many of the cases that they address highlight the vulnerability of women not only as employees but also as community members impacted by corporate conduct.¹²³

To date, there is far too little identification of gender specific violations of human rights in company activities. Even where companies are following local laws and international treaties that recognise and protect women's rights, many women work in temporary, informal positions in value chains that are not covered by laws or codes of conduct.¹²⁴

A number of factors have contributed to women's human rights not being incorporated into business and human rights discussions to the extent needed.

¹²⁰ See UN Guiding Principles. A/HRC/17/31. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

¹²¹ Hoctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹²² Dovey, Kathryn. 2009. Putting Gender on the Business and Human Rights Agenda. Scoping Paper. Realizing Rights.

¹²³ Hoctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹²⁴ Mcarthy, Lauren et al. 2012. Gender Equality: it's your business. Oxfam

Firstly, as previously discussed, discrimination against women remains to varying degrees both in laws and practice in all countries around the world. This creates the context for the way in which business practices are structured, the extent to which normative frameworks incorporate women, remedies available and how the business and human rights community relates to women's rights violations, among others.

Within this context one of the greatest stumbling blocks for addressing the violation of women's rights by companies is the concept of those actions being culturally relative and acceptable in the context within which they have taken place.¹²⁵ This serves as an argument that abuses are therefore beyond the responsibility of the company's reach or in some cases that they do not constitute legitimate human rights violations.

In addition, discrimination against women is not always obvious, particularly if gender biased behavior has become the norm in the broader social or legal context. For example, women are more likely to receive temporary contract work than men, making them more vulnerable to various kinds of rights abuses. Additionally, in agriculture, women may be assigned to less fertile fields or given different piece rates or plucking rates than men.¹²⁶

At the same time, a number of external factors continue to exacerbate the challenges faced by women with respect to the private sector, making this issue more important than ever. The financial crisis has made a number of communities and poor women increasingly vulnerable. In many countries women have been the first to lose their jobs, leading them to turn to informal employment where they have less protection. In countries or sectors where women have gained jobs due to shifting global market trends this has often been linked to a search for cheaper and more flexible labour, facilitating the creation of environments in which women workers rights are more likely to be violated.

The crisis has also undercut public funds. As previously noted, the ILO has pointed to the fact that this has led to less attention being focused on issues such as discrimination and has reduced the resources available for enforcement of labour laws and human rights more generally.

The crisis has also increasingly reduced aid money and slowed private sector investment, which have led to increasing privatisation, the devolving of the government's roles to the private sector and increasing efforts to attract foreign investment. Since private corporations are motivated by profit, they tend to focus on improving cost recovery and efficiency, which often results in price increases that limit poor people, and particularly

¹²⁵ Margaret Jungk, Member of the Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹²⁶ Mcarthy, Lauren et al. 2012. Gender Equality: it's your business. Oxfam

women's, access to basic services.¹²⁷ Additionally, efforts to attract foreign investment particularly at a time of scarcity has in some cases led to deregulation of the private sector with significant social impacts.

Additionally, over the past two decades trade agreements have both created opportunities for women as well as placing an increasing burden on them within the business and human rights sphere. Women are the first to lose jobs and livelihoods as part of massive job loss linked to trade liberalisation.¹²⁸ As previously mentioned, where trade agreements have created jobs for women they are in sectors such as manufacturing in global supply chains and export processing zones (EPZs), which have irregular contracts, substandard working conditions, long working hours and lack of social and unemployment benefits.¹²⁹ Furthermore, many of those jobs have been in sectors that are unregulated such as increasing amounts of work that women carry out for companies from home or fall outside of normal labour laws as is the case with EPZs.

Finally, the increasing mobility of corporations, which continues to grow with the support of free trade agreements, and their growing financial and political power as compared to that of host communities and States can contribute to a lack of accountability for business practices and their impacts on women. This is particularly important given that women are often treated as lesser citizens and as a result their rights are often not treated as equivalent to those of men. Additionally, women have limited financial resources to access justice particularly given the scope of their resources as compared to that of large business entities.

4.3 Key sectors and areas of impact

Reproductive rights

Women's reproductive roles, rights and responsibilities continue to be grounds for discrimination worldwide and have been a critical area where business practices violate women's human rights, particularly the rights of poor and vulnerable women workers.

As early as 1999, Human Rights Watch documented widespread pregnancy testing in the maquiladoras on the US-Mexico border. Findings highlighted that these women were among the poorest, least educated and least experienced in the workforce.¹³⁰ In the US itself, almost 35 years after the Pregnancy Discrimination Act was passed, women workers, particularly those in low-income service jobs, still face discrimination when they become pregnant. Many of these women are immigrants or women of colour.¹³¹

¹²⁷ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Human Rights Watch. 1996. Mexico's Maquiladoras: Abuses Against Women Workers

¹³¹ The National Women's Law Center. 2013. It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers.

Research looking at the South East Textile Factory in Honduras also revealed practices that regularly violated women's human rights. This included regular pregnancy testing, forced sterilisation, injections of DepoProvera contraceptive, contraceptive pills disguised as malaria pills and injections to cause abortion.¹³²

Trade and EPZ zones

Export processing zones (EPZs) are industrial areas that have been delineated to attract trade and offer exemptions to the normal custom and trade regulations in a country. These EPZs process garments and goods for export and include 5174 zones in 116 countries.¹³³

Women account for most of the work force in export processing zones and in some case account for 100% of the work force. More than 85% of all EPZ workers are in Asia.¹³⁴

These zones have flourished in developing countries, which have competed with one another to secure free trade agreements and offer special incentives for big business to set up export manufacturing in hopes of growing their economies. Given tax holidays, free repatriation of profits to their home countries and exemptions from normal labour standards, record profits in EPZs have been registered. For instance profits rose from \$13 million in Mexico's EPZ garment industry in 1990 to \$1.48 billion in 1999.¹³⁵

While women have gained an increasing number of jobs through trade agreements in EPZs, their 'competitive advantage' as workers has been in low wages and inferior working conditions.¹³⁶ The women workers in EPZs face particularly harsh conditions in that labour laws in these zones differ from normal labour laws. In addition, provisions of worker protections are often only on paper.¹³⁷ This is in part due to the fact that government does not often inspect them to see if the laws that do apply to them are being upheld and it is illegal for outsiders to enter the zones.¹³⁸

¹³² Swedish, Jennifer M. The SETISA Factory: Mandatory Pregnancy Testing Violates the Rights of Honduran Maquila Workers. *Northwestern Journal of International Human Rights*. Volume 4, Issue 2. Winter 2005.

¹³³ Women's International League for Peace & Freedom. EPZ Database. Accessed on Nov 10, 2013. <http://www.wilpfinternational.org/economicjustice/EPZ/epzindex.html>

¹³⁴ Sukthankar, Ashwini and Ramapriya Gopalakrishnan. 2012. *Freedom of Association for Women Workers in EPZs. A Manual*. ILO.

¹³⁵ ILO. 2003. *Employment and social policy in respect of export processing zones (EPZs)*, Governing Body, 286th Session, Geneva

¹³⁶ Çagatay, Nilufer. 2001. *Trade, Gender and Poverty*. UNDP

¹³⁷ Roelans, Ghita. *CSR and Gender Equality*. ILO Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹³⁸ Women's International League for Peace & Freedom EPZ Database. Accessed on November 10, 2013. http://www.wunrn.com/news/2011/04_11/04_11/041111_export.htm

The greatest problem women face in the EPZs is the lack of rights to organise themselves and unionise, which exposes them to rights violations related to age, working hours, pregnancy, maternity leave, child care, job insecurity and sexual harassment.¹³⁹

As a result, those working in EPZs work 25% longer than elsewhere and women are paid 20-50% less than men.¹⁴⁰

Migrant workers

Increasing unemployment and poverty have been driving forces behind an increase of internal and international migration. This migration has been more and more feminised with women making up to 80% of migrants in some countries. Migrants are also increasingly undocumented.¹⁴¹

However, the practices of companies are a significant factor in whether migration leads to exploitive or forced labour and trafficking. In search of ways to lower costs companies can be an important contributing factor by contracting through a labour supplier that confiscates identity documentation from migrants. They can exacerbate the problem by not paying these intermediary agencies the true cost of labour recruitment which means the costs are passed on to worker's themselves by the agencies placing them in debt. By not planning ahead and placing last minute orders that require a surge in labour supply on short notice, companies can spur abusive hiring of migrant workers. Finally, a lack of corporate human rights due-diligence means that companies may turn a blind eye to what is happening along their supply chain further exacerbating the problem.¹⁴²

Trade liberalisation has also been a driving force behind migration of various kinds. For example, a bilateral agreement between Spain and Morocco has provided the framework for Spanish companies to hire Moroccan women into exploitive farm labour in the strawberry industry. Women in particular are selected for this work.¹⁴³

Part of what makes migrant women workers so vulnerable is their lack of legal standing or resources to protect themselves and pursue justice for rights violations perpetrated by employers. For instance research by the ICJ in Botswana, Kazakhstan and Thailand

¹³⁹ Sukthankar, Ashwini and Ramapriya Gopalakrishnan. 2012. Freedom of Association for Women Workers in EPZs. A Manual. ILO.

¹⁴⁰ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹⁴¹ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹⁴² Institute for Human Rights and Business. 2013. Fees and IDs: Tackling recruitment fees and confiscation of workers' passports

¹⁴³ FIDH. 2012. Importing Workers, Exporting Strawberries: Working conditions on strawberry farms in Huelva Province, Spain.

highlighted that for undocumented migrant women justice is inaccessible in practice and women fear bribery, detention and deportation if they complain to the authorities.¹⁴⁴

Migrant women workers also fall victim to sexual exploitation, violence and trafficking due to their lack of legal migration status and deprivation of labour protections.¹⁴⁵

Home workers

Home work is part of a process of informalisation whereby companies are aiming to reduce costs, overhead and the level of responsibility for their work force allowing them to adjust demand levels according to their own business needs. There are more than 300 million homeworkers in developing countries, over half of who are women and 80% are from the poorest families. Homeworkers are subcontracted or are working for an employer, intermediary or subcontractor for a piece rate.¹⁴⁶

Home workers are among those in informal employment with the least security and the lowest wages in part because of the lack of labour rights protections as well as the cut of earnings taken by middlemen.¹⁴⁷

The textile and garment industries demand for cheap and flexible labour has led home work in the sector to be among the most common. However, businesses in electronics and engineering as well as agriculture use home workers in different parts of the world for packaging, processing and assembling needs.¹⁴⁸

It is estimated that there are 30 million homeworkers in India, 20 million in China and 8 million in the Philippines alone. Subcontracting is also increasing in South and South East Asia, South America, Eastern Europe and the Baltic states in large part due to political and economic transitions that have informalised many workers.¹⁴⁹

That said, there is a significant number of vulnerable homeworkers in Northern countries like the UK where women workers report being paid as little as 20 pence for each garment produced. They also undertake low paid work such as sorting and packing

¹⁴⁴ International Commission of Jurists. Submission to the UN Committee on the Elimination of Discrimination Against Women on Its Consultation on the Drafting of a General Recommendation on Access to Justice. Submitted February 2013.

¹⁴⁵ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹⁴⁶ Ethical Trading Initiative. Homeworker Briefing. April 2010. See <http://www.ethicaltrade.org/sites/default/files/resources/Homeworkers%20and%20homeworking.pdf>

¹⁴⁷ Dovey, Kathryn. 2009. Putting Gender on the Business and Human Rights Agenda. Scoping Paper. Realizing Rights.

¹⁴⁸ Homeworkers Worldwide. 2011. Homeworking: Here & Now. A report of the Northern Homeworking Project on the current realities of homeworking in Northern England.

¹⁴⁹ Ethical Trading Initiative. Homeworker Briefing. April 2010. See <http://www.ethicaltrade.org/sites/default/files/resources/Homeworkers%20and%20homeworking.pdf>

products for supermarkets from home.¹⁵⁰

Extractives/ land intensive sectors

Women in particular have borne the burden of land deregulation linked to trade liberalization. They make up 70-80% of the world's small-scale farmers, are often the first to lose their livelihoods in affected communities and are the last to find work in formal sectors.¹⁵¹ Compensation for dispossessed land is often contentious and women's unequal ownership of land means that resources are placed in the hands of male relatives. This places women at significant risk with respect to land intensive industries such as the extractive industries as well as the increasing amount of land investments being made by agribusiness, biofuel and investment firms.

Women are impacted by the extractives industries on numerous counts. Firstly, they are land intensive and displace women from land originally used for farming, impacting both land users and land-owners. The extractives are also a threat to their shelter and a source of environmental degradation to resources that ensure women's health, livelihoods and ability to feed their families, such as water.¹⁵² The arrival of a transient, largely male workforce also increases in prostitution, sexual violence and sexually-transmitted disease.¹⁵³ Mismanagement of extractives projects and the involvement of security forces can also lead to severe violations of human rights that are manifested in unique ways for women. For example, in Myanmar women have faced widespread rape at the hands of military forces used to intimidate ethnic minorities and those that have opposed mining in their communities.¹⁵⁴

Women also have far fewer employment opportunities to be able to benefit from the extractives industries. Additionally, the revenues generated often bypass women and communities and are not invested in development and realisation of rights nor do they offset the negative impacts women face.¹⁵⁵

Increasing land investments and subsequent evictions have also placed women in rural areas in increasingly vulnerable positions and have undermined their rights. Roughly 1.6 billion women depend on agriculture for their livelihoods and are now at risk due to large

¹⁵⁰ Homeworkers Worldwide. 2011. *Homeworking: Here & Now*. A report of the Northern Homeworking Project on the current realities of homeworking in Northern England.

¹⁵¹ Report of the independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (A/67/304)

¹⁵² Publish What You Pay and UN Women. "Communiqué - Towards A Gender-Responsive Extractive Industry in Africa" April 17, 2013.

¹⁵³ van Riet, Marinke and Christine Musisi "Joining hands: UN Women and PWYP to fight the resource curse together" Thomson Reuters Foundation. April 4, 2013.

¹⁵⁴ Earthrights International. *Mining, Gender and the Environment in Burma*. Accessed on November 1, 2013. <http://www.earthrights.org/publication/mining-gender-and-environment-burma>

¹⁵⁵ Publish What You Pay and UN Women. "Communiqué - Towards A Gender-Responsive Extractive Industry in Africa" April 17, 2013.

corporate investments.¹⁵⁶ On one hand, corporate investments in land are increasing for production of cash crops such as sugar, which can be used for either fuel or food depending on which market is paying better prices. These investments entrench rural women in poverty and gender inequality.¹⁵⁷ In 2008 and 2009 alone investors seeking quick returns during economic downturn transferred billions of dollars out of equities and mortgage bonds and into raw materials such as land.¹⁵⁸

Land investment for real estate and other private developments have also been another driving force of significant rights violations for women. For example, an estimated 30,000 people a year are driven from farmland or urban areas to make way for real estate developments, mining and agricultural projects in Cambodia.¹⁵⁹ In Phnom Penh, 10,000 people were evicted from Boeung Kak Lake for a Chinese luxury real estate project with women leading protests and being imprisoned as a result.¹⁶⁰

4.4 Lack of access to justice

Normative frameworks for advancing women's rights have been developed and have progressed significantly over the past couple of decades. And yet, studies show that women around the world continue to have little or no access to formal justice systems,¹⁶¹ much less the ability to hold large corporate actors to account for a number of critical reasons.

Firstly, the same gender norms and power dynamics that limit women's education and mobility, deprive them of economic resources, and burden them with care responsibilities can make it impossible or particularly daunting to confront powerful corporate entities and the men who often run those companies.

Additionally, it can be difficult for women to find viable legal remedies. In some countries for instance, legal frameworks do not exist that protect women against violations commonly found in the business context.¹⁶²

¹⁵⁶ Oxfam. Promises, Power and Poverty: Corporate land deals and rural women in Africa. Oxfam Briefing Paper. April 9, 2013.

¹⁵⁷ Gomez, Mayra. Global Initiative for Economic, Social and Cultural Rights Keynote Presentation to UN Committee on the Elimination of Discrimination against Women. 56th Session (30 September 2013 – 18 October 2013). General Discussion on the Rights of Rural Women - 7 October 2013

¹⁵⁸ Tandon, Nidhi. "Low Income Women: First Casualties of Green Economy Land Grab." Heinrich Boell Stiftung. June 5, 2012

¹⁵⁹ Prak Chan Thul. "World Bank stops funds for Cambodia over evictions." Reuters. August 9, 2011.

¹⁶⁰ The Economist. "Justice in Cambodia: The Boeung Kak 13" June 27, 2012.

¹⁶¹ International Commission of Jurists (ICJ) and Friedrich--Ebert-Stiftung (FES) Submission to the UN Committee on the Elimination of Discrimination Against Women on its Consultation on the Drafting of a Recommendation on Access to Justice. Women's Access to Justice for Human Rights Abuses Committed by Business. February 2013

¹⁶² Hoctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

As pointed out by the International Commission of Jurists (ICJ), finding provisions for bringing rights claims against companies may not be possible in some countries. And even where it is possible, it can be particularly difficult for women to access due to the sensitive nature of some of the issues, such as reproductive rights.¹⁶³

Business operations have also become increasingly complex with parent organisations in one country and business operations across a number of countries in other parts of the world. Such complexity often requires remedies that reach beyond national boundaries and requires an ability to investigate complex corporate structure, finances and relationships such as the relationship between companies and subcontractors, among others.

Civil remedies such as tort law may be the only option in some of these cases. However, this is not an area of law well suited or intended to address gender discrimination, inequality and human rights abuses.¹⁶⁴ While the US Alien Tort Statute has been one of the few vehicles for holding multinational corporations to account for their actions overseas, the US Supreme Court has recently been asked to investigate the use of tort law for these claims.¹⁶⁵

Finally, there are concerns about remedy for rights violations not taking gender into account and as a result having unintended negative impacts for women. For example, changes in household finances related to the extractives industries can cause increasing domestic violence due to disagreement about priorities for spending the funds.¹⁶⁶ Therefore settlements with companies or profit sharing agreements that don't take into account the gender dimensions of how the money is distributed can unintentionally contribute to increased violence against women.

4.5 Insertion points and tools for women, business and human rights

There are a number of mechanisms and guiding principles for protecting women's rights within the business context. Some of these primarily focus on corporate social responsibility and rights obligations such as the UN Guiding Principles. There are others however that look more broadly at women's empowerment and equal rights such as the Women's Empowerment Principles, which also take into account fundamental rights related to equal opportunity and empowerment of women more broadly within corporate structures.

¹⁶³ International Commission of Jurists. Submission to the UN Committee on the Elimination of Discrimination Against Women on its Consultation on the Drafting of a General Recommendation on Access to Justice. February 2013

¹⁶⁴ International Commission of Jurists (ICJ) and Friedrich--Ebert-Stiftung (FES) February 2013

¹⁶⁵ Samp, Rich. "Post-'Kiobel' Human Rights Suits Vs. Corporations: A New Reliance On Common Law?" Forbes. August 19, 2013

¹⁶⁶ UN Interagency Framework Team for Preventive Action. Extractive Industries and Conflict: Toolkit and guidance for preventing and managing land and natural resources conflict.

CEDAW

As mentioned, CEDAW provides one of the earliest foundations for the responsibility of the private sector to respect women's rights and the State to regulate non-state actors accordingly.

The Convention's article 2(e) was the first human rights treaty to mention 'enterprises' and the State responsibility to "take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise."

The CEDAW Committee has also been an important mechanism for reinforcing non-discrimination against women by private actors. In General Recommendations No. 25 and 28 it specifies that "States parties also have an obligation to ensure that women are protected against discrimination committed by public authorities, the judiciary, organisations, enterprises or private individuals, in the public and private spheres". It also specifically mentions protection and the importance of remedy and sanctions, suggesting that it expects these obligations to be enforced.¹⁶⁷

The Committee also regularly refers to the need to regulate a range of employers, including a number of companies. This has included discussion of companies affecting land resources, financial institutions and tourism companies. It also has included the role of the media and broader discussions of the role of private companies in awareness raising and positive portrayal of women.¹⁶⁸

Though not in a business context, the Committee has also on occasion touched on the issue of extraterritorial obligations. For instance, it has acknowledged the role of States for penalising nationals and residents who travel abroad to perform female genital mutilation.¹⁶⁹ In time, the topic of extraterritoriality may expand within the Committee's discussions to include discussion of companies' extraterritorial obligations.

Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR has also addressed the social and economic vulnerability of women. In its general comment No. 16, the Committee highlights that respect women's ESC rights requires States to conduct gender based due diligence in all of its activities. It also emphasises that protecting women's ESC rights entails ensuring that non-state actors such as private companies don't undermine or obstruct women's rights.¹⁷⁰

¹⁶⁷ Hooctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁶⁸ Special Procedures of the United Nations. State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties. Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women. Report No. 4. September 2007.

¹⁶⁹ Ibid

¹⁷⁰ Committee on Economic Social and Cultural Rights. General comment No. 16 (2005)

Core ILO Conventions and Declaration on Multinationals

In its various core conventions and declarations on multinationals the ILO highlights that business must take an active role in promotion of and contribution to gender equality with respect to their own operations, in communities where they operate and in their value chains and among their other business linkages.¹⁷¹

The ILO has also specifically addressed multinationals and the private sector in its Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. They offer guidelines to MNEs, governments, and employers' and workers' organisations in areas such as employment, training, conditions of work and life, and industrial relations. They specifically reinforce equality between men and women as provided for in ILO Conventions 100 and 111 on issues like equal pay, training opportunities, etc.¹⁷²

These ILO Conventions and guidelines have served as the basis for advising business and human rights initiatives such as the Global Compact. The ILO's various initiatives on decent work for women also looks at ways to ensure that the work that women do in the private sector, as well as more generally, does not make them vulnerable to exploitation and provides equal opportunities for training, advancement and ensuring a livelihood.¹⁷³

UN Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs are the first global set of guidelines on business and human rights and are seen as a cornerstone of the business and human rights discussion after years of development and consultation with a range of stakeholders.

They were "unanimously endorsed" by the all of the member States on the Human Rights Council, providing a unique vehicle for addressing these critical issues.

As previously mentioned, the Principles are organised into three pillars detailing the state duty to protect, and the need for greater access by victims to effective remedy. They also spell out operational principles for companies to make human rights policy commitments, undertake due diligence and provide legitimate processes for remedy.¹⁷⁴

The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/2005/4, paras. 18, 20, 21, 28 and 30.

¹⁷¹ Roelans, Ghita. CSR and Gender Equality. ILO Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁷² ILO. 2006. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

¹⁷³ ILO. 2000. Decent Work for Women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action

¹⁷⁴ See http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

The rights that are supported through the framework are those found in a range of existing international instruments. Therefore the UNGPs provide guidance on operationalising the “Protect, Respect, Remedy” Framework’ within the business context.¹⁷⁵ The UNGPs should be understood in the context of State obligations of non-discrimination and their regulation of companies and non-state actors. This means that company self-regulation must be undertaken in order to meet obligations imposed on the State and therefore by the State on their activities.¹⁷⁶

Despite the importance of women in the business and human rights context, there is very limited mention of the issue in the UNGPs. However, they make brief mention of the unique risks women face, among a list of other groups. They further state that:

These Guiding Principles should 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 marginalised, and with due regard to the different risks that may be faced by women and men.

Those working extensively on business and human rights argue that this provides the opportunity to further elaborate the meaning of the UNGPs for women’s rights issues in the context of business and how they can be applied.¹⁷⁷ For instance, there is a need to carry out due diligence and provide access to remedy that is specific to discrimination against women and women’s human rights.

OECD Guidelines for Multinational Enterprises

Of the various guidelines and normative frameworks the OECD guidelines for multinationals go into the most depth about how standards of corporate conduct apply to women.

They highlight that businesses may need to elaborate specific guidelines related to women and other specific groups. They also emphasise that enterprises are expected to “promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood.” Additionally they emphasise the importance of gender equality in access to learning and training throughout one’s life.¹⁷⁸

¹⁷⁵ Mearthy, Lauren et al. 2012. Gender equality: it's your business. Oxfam

¹⁷⁶ Margaret Jungk, Member of the Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁷⁷ Dovey, Kathryn. Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁷⁸ See <http://www.oecd.org/corporate/mne/1922428.pdf>

Women's empowerment principles (Global Compact and UN Women)

The Women's Empowerment Principles are a joint undertaking of the Global Compact and UN Women focused on how businesses can respect women's rights and support women's empowerment. CEOs from 604 companies have signed on thus far.

There are 7 principles that cut across promotion of women's leadership and entrepreneurship, education and training, equal opportunities and non discrimination in the workplace as well as laws that protect their health and safety and protect them exploitation. They also promote transparency, measuring and reporting on these key issues.¹⁷⁹

Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights

The Maastricht Principles are a set of principles adopted by a set of international human rights experts and represent a consensus view as to where international law is at in terms of States extraterritorial obligations.¹⁸⁰ While they focus on State obligations and the behavior of businesses overseas, they incorporate principles of gender equality.

Specifically the responsibility of States extends to acts and omissions of non State actors such as corporations and businesses overseas whether or not those entities are under direct control of the State.¹⁸¹

States must also undertake and apply international agreements and standards in a fashion that is consistent with their human rights obligations. This includes international trade, investment, finance, taxation, environmental protection, development cooperation, and security.¹⁸²

Additionally, the Maastricht Principles require that States observe human rights principles relevant to women such as the right to participate in decision-making, non-discrimination and gender equality.¹⁸³

¹⁷⁹ See <http://tinyurl.com/WEP-GlobalCompact>

¹⁸⁰ Hoctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁸¹ Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights. Final version 29 February 2012

¹⁸² Lusiani, Niko. "Dignity, or Indignation? Implementing a Human Rights- Centered Framework to Economic Policies" Center for Economic Social and Cultural Rights presentation at Human rights and the financial crisis in focus, OHCHR. Vienna. Monday, 1 July 2012

¹⁸³ Maastricht Principles on Extraterritorial Obligations of States

4.6 Examples to build upon

While there is no common course of action to be taken across sectors and by State and non-state actors there are a handful of examples that demonstrate the extent to which the inclusion of women is critical to business and human rights and how they can be better incorporated in business practices and regulation.

State and multilateral action

At the international level, CEDAW has been an ongoing forum for addressing the impacts of the private sector on women and may increasingly serve for this purpose as the issue continues to gain traction. For example, when the CEDAW Committee reviewed India, it raised concerns about the privatisation of health services and the impact on the ability of women to access those services. The Committee called on the State to monitor the impacts on women and report on it in its next review.¹⁸⁴

The CEDAW Committee also passed a ruling against the State of Brazil related to a case in which a pregnant woman died due to improper health care by private health providers. The Committee ruled against the State of Brazil for neglect of its due diligence obligation to ensure appropriate pregnancy related health services; neglect of its duty to regulate and monitor private health care providers; failure to address the multiple forms of discrimination against a poor woman of African descent; and failure to ensure effective judicial protection for the family.¹⁸⁵ Interestingly the State argued that it was not responsible for the actions of a private medical entity. However, the Committee held it responsible.¹⁸⁶

As part of its work on women in economic life the Working Group on Discrimination Against Women in Law and Practice has turned its attention to the importance of addressing corporate social responsibility and the impacts of business on women's human rights as evidenced by elaboration of this paper.

Additionally, following elaboration of the UN Guiding Principles, the Human Rights Council formed a task force to promote and disseminate the UNGPs and support their further development and application. Among the mandate of the Working Group on the issue of Human Rights and Transnational Corporations and other Business Enterprises its members are expected to integrate a gender perspective throughout the work of the business and human rights mandate.¹⁸⁷ The Gender, Business and Human Rights

¹⁸⁴ Special Procedures of the United Nations. Individual Report on CEDAW. Report No. 4. 2007.

¹⁸⁵ Galli, Beatriz. Comment on Alynne da Silva Pimentel Teixeira Case: landmark decision for women's human rights related to maternal mortality in Brazil. Committee on the Elimination of Discrimination against Women (CEDAW) Communication No. 17/2008. *Reprohealthlaw*

¹⁸⁶ Hoctor, Leah. ICJ Presentation at the Workshop on Business and Gender, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva October 3, 2013

¹⁸⁷ See <http://tinyurl.com/BHRWorkingGroup>

Reference Group, an informal working group that brings together those who have worked on the issues within multilaterals, business and civil society has begun to elaborate how gender fits into UNGPs. As a result, its members have made submissions to the UN Working Group on the elaboration of the gender dimension and its application in the UNGPs.¹⁸⁸

Looking at the links between trade, business and human rights, there are examples of where international trade agreements have been used to attempt to create incentives for corporate social responsibility and improved labour standards. For example, there have been attempts to move away from a race to the bottom with respect to labour standards in order to compete in international markets and attract investment in a country. The US-Cambodia trade agreement linked access to US garment markets with improved labour conditions for the largely female garment workers in Cambodian factories. This was undertaken with the help of the ILO and was able to reduce some of the worst forms of violations of women worker's rights.¹⁸⁹

Private sector efforts

Companies themselves have also proactively worked to create change in the cultural contexts within which they are working and ensure that their products and services do not contribute to the violation of human rights.

For instance, General Electric discovered that its mobile technology was being used in India and China to facilitate sex selective abortions. After deliberating about the delicateness of the company's situation in that cultural context it devised an extensive plan of action. This included reiterating in all of its contracts with customers and suppliers relevant laws prohibiting the practice. They also worked with doctors and provided trainings to address how to identify and deal with the issue. And, they undertook a significant amount of public awareness raising geared toward shifting cultural perceptions of women and girls and highlighting the girl child as future women leaders.¹⁹⁰

In the garment sector in Sri Lanka, the company MAS Holdings realised that they could reduce the number of workers they were losing and associated costs by providing child care, career development and training, among other benefits. Despite competitors having lower costs, the company's commitment to workers rights has led to additional contracts for them with buyers such as Victoria's Secret, Gap, Nike, Adidas, and Marks & Spencer.¹⁹¹

¹⁸⁸ See <http://tinyurl.com/BHR-Ref-Group>

¹⁸⁹ Marston, Ama. 2007. Labor Monitoring in Cambodia's Garment Industry: Lessons for Africa. Realizing Rights.

¹⁹⁰ Promoting Ethical Ultrasound Use in India. "A BLIHR Emerging Economy Case Study from GE." January 2009

¹⁹¹ Mcarthy, Lauren et al. 2012. Gender equality: it's your business. Oxfam

Others have looked at creating better opportunities and fair treatment for women in their value chains. For example, three of the largest chocolate companies, Mars, Mondelez and Nestle, have worked with Oxfam and taken a pledge to ensure that women farmers are not being excluded from their sourcing and value chains. As part of the commitment that the companies have made, they must 'know and show' the social and economic status and work conditions of women in their cocoa supply chains. They must also make public commitments to protecting women's rights, ensuring opportunities for women smallholder farmers. Finally they must take steps to address gender inequality and women suppliers concerns as well as encouraging that others do so.¹⁹²

Civil society efforts

A number of civil society efforts have undertaken initiatives to bridge the gap between workers, local communities and companies to encourage corporate social responsibility and more equitable distribution of the benefits and burdens of business practices.

For instance, civil society efforts focused on the garment industry have looked at how to help companies understand and address the ways in which they contribute to and can mitigate recruitment processes that are exploitive and may lead to forced labour and trafficking. Verité an NGO focused on fair labour practices in the garment sector launched its 'Help Wanted' programme in 2011. The programme offers a tool kit for understanding fair hiring of migrant labour and Verité is currently seeking companies to take part in a pilot project applying these tools within their own management structures.¹⁹³

Additionally, civil society and women workers themselves have been important agents for change, providing information, resources, organising tools and support to help women to better protect themselves against rights violations at work. For example, in Cambodia Womyn's Agenda for Change, an affiliate of Oxfam Hong-Kong worked with local women garment workers to create worker's drop in centres where young women garment workers learned about labour rights, international trade laws and trends and organised and educated other women workers.

In the US, women working on the Imokalee tomato farm who had lived in slavery like conditions organised themselves over time to create widespread change in their conditions as well as those of many others. Their organising work and collaboration with the US Department of Justice to identify numerous multi-state slavery operations in the agriculture sector in the US and has led to the release of 1200 workers in slavery conditions.¹⁹⁴

¹⁹² Oxfam. Equality for women starts with chocolate Mars, Mondelez and Nestle and the fight for women's rights. Media Briefing. February 26, 2013

¹⁹³ See <http://www.verite.org/helpwanted>

¹⁹⁴ Kaufmann, Greg. "Immokalee Workers Deliver on 'Freedom From Want' ". Moyers and Company. October 18, 2013

In addition, in their work has helped create new models of social responsibility. In 2010 they created the Fair Food Program (FFP), under which corporate buyers that sign on to the FFP platform agree to abide by a 'penny-per-pound agreement' and only source tomatoes from growers that sign a code of conduct drafted together by workers in consultation with growers and buyers. Since 2011, this has resulted in over \$11 million in additional earnings for workers. Workers also educate one another about their rights and monitor their own workplace.¹⁹⁵

Extraterritorial obligations

Cases focused on extraterritorial obligations of States to regulate the actions of non-state actors abroad have been limited. However, the handful of existing cases may have implications for women and the possibility of cases specifically focused on women impacted by corporate practices in the future. For instance, in Indonesia, there has been forward progress on extraterritoriality related to Exxon Mobil's activities in Aceh. The company hired Indonesia military for security, which then perpetrated rights violations including murder, torture, and sexual violence such as the rape of a pregnant woman. A case was brought to US Federal Court by the International Labor Rights Fund on behalf of 11 surviving families. In 2011 US circuit courts decided that Exxon Mobil doesn't have immunity under US Torte statute.¹⁹⁶

In April, 2013 in another case, *Kiobel vs Royal Dutch Petroleum* the US Supreme Court ruled in favor of Royal Dutch, stating that the Alien Tort Statute could not be used to hold corporations liable for abuses committed on foreign soil. It is however too soon to tell what this will mean for cases focused on extraterritorial obligations. While the US Supreme Court's ruling could narrow the use of the Alien Torte statute for extraterritorial obligations, it was not as tightly worded as it could have been and it is expected that it may still be used to attempt to bring cases related to human rights and extraterritorial obligations.¹⁹⁷

¹⁹⁵ See <http://ciw-online.org/fair-food-program/>

¹⁹⁶ ICTJ, HRWG, Imparsian and KontraS. 2008. *A Matter of Complicity? Exxon Mobil on Trial for its Role in Human Rights Violations in Aceh*

¹⁹⁷ Samp, Ritch. "Supreme Court Observations: *Kiobel v. Royal Dutch Petroleum* & the Future of Alien Tort Litigation" *Forbes*. April 18, 2013.

5. Conclusions

Despite growing awareness and initiatives to include women in economic governance, decision-making and entrepreneurship in the private sector, they continue to be excluded to a large extent.

While women have been excluded from the highest-ranking positions in business, current business models often supported by international trade agreements have also spurred a global search for cheap labour and business environments with lax regulation. This has disproportionately impacted women workers in the lower echelons and those in communities where transnational corporations operate.

Both ends of the spectrum highlight the extent to which discrimination continues to exist in the private sector within the internal structures of business as well as in their business practices and external impacts. And yet, this signals the broader cultural and political context within which businesses and companies are operating.

In many cases government and multilateral agencies have been the driving force behind change to enshrine principles of equality in law, policy and practice. However, the private sector itself is becoming an increasing driver for change, particularly with growing evidence that women's leadership and entrepreneurship makes important contributions to economic gains and business effectiveness.

The conversation about incorporating gender into corporate responsibility and business and human rights is just emerging. However, it too is a field ripe for growth and change that can significantly contribute to more effective and more responsible business with fewer risks for companies and greater shared benefits for women and their communities.

A growing number of guidelines and tools exist for working with business to understand how to elaborate and apply this in day-to-day operations.

In hand with business leaders, multilateral agencies, governments and others in civil society women must be given an equal opportunity to shift the balance of the costs and benefits of business. A number of corporate responsibility initiatives are underway at all of these levels to provide models and food for thought for further change. Now these need to be built upon, expanded and eventually seen as part of normal business practice.

The first step is making visible the bias and unequal laws and practices we have come to accept as part of the business and cultural landscape around us. This requires dedicated efforts to further establish a baseline of where we are, identify targets for where we need to be and track the progress along the path between the two.