

Extractive Industries and Violation of Women's Rights

Between partnerships and regulation – two diverging ways to tackle the problem at the UN

by Karolin Seitz

In June 2018, Anglo-Australian mining giant BHP Billiton and UN Women launched a new partnership. As part of the agreement, the BHP Billiton foundation is granting US\$ 15,562,800 to UN Women's Second Chance Education and Vocational Learning Programme. Given accusations of BHP Billiton's involvement in several human rights abuses, the new partnership between the company and UN Women is astounding.

Similar to UN Women, other United Nations (UN) entities are trying to attract partnerships with the corporate sector. On the one hand, promoting such partnerships is based on the belief that governments and their institutions would not be able to solve today's global problems alone. On the other hand, many UN entities, including UN Women, face financial problems and are therefore trying to attract private funding for their purposes and work. As the case of UN Women shows, potential risks and side-effects of such partnerships are often not properly addressed.

Rather than promoting further smart-looking corporate social responsibility projects that tend to "bluewash" a company's reputation, the UN should be concerned with

systematically addressing human rights abuses by corporations. A strong commitment to women's human rights also needs to be addressed in partnership strategies and other initiatives such as the current negotiations on a UN treaty on business and human rights.

This briefing paper first presents how women are disproportionately affected by negative social and environmental impacts of extractive industries, and explains why the new partnership between UN Women and BHP Billiton is problematic. It then discusses how the human rights impact of business enterprises could be effectively regulated by a UN treaty on business and human rights. The paper argues that such a treaty must comprehensively integrate a gender perspective that addresses the specific impact of corporate abuse on women and marginalized communities and result in a treaty that ensures rights protections, access to justice and effective remedy for all rights holders. The UN should, furthermore, adopt strict rules on engaging with the private sector across the entire system. In order to protect the UN's independence and integrity from corporate influence and ensure that the organization is able to fulfill its mandate, governments should provide the UN with adequate, flexible, and predictable funding.

Brumadinho, a small town in Southeast Brazil on 25 January 2019. The collapse of the Feijao dam, which was used by the Brazilian mining company Vale to collect waste, killed at least 300 people. In February 2019, eight employees of Vale, one of the world's top iron ore miners, were arrested. According to an internal report, the company was aware the dam was at risk of collapsing.¹

This was the second major dam disaster in the state of Minas Gerais. In 2015, 19 people had been killed by the collapse of a dam in Mariana owned by Samarco, a joint venture between the two mining giants Vale, of Brazil, and the Anglo-Australian corporation BHP Billiton.

The collapse of the Mariana dam has been referred to as the worst environmental disaster in Brazil's history. Around 50 million cubic meters of toxic waste flowed into the Doce River, hundreds of

¹ See <https://www.bbc.com/news/business-47209265>.

people were displaced, and cities along the river now face water shortages.²

The reasons for the Mariana dam collapse are officially still under investigation and remain unclear. There have been several proceedings in Brazil, Australia and the UK against the involved companies, based on accusations that they were aware of the safety risks prior to the dam collapse. In 2016, 21 members of the three companies were charged with homicide, including Samarco's former CEO and representatives from Vale's and BHP Billiton's boards of directors.³ All the defendants and three companies were also charged with environmental damage. Some of the lawsuits have still not been settled. In November 2018, a damage claim of more than US\$ 5 billion by a class action of more than 235,000 individuals was filed in the UK High Court in Liverpool against BHP Billiton. The lawsuit seeks compensation for damages caused by the disaster.⁴ The first hearing starts in Summer 2019. BHP Billiton has rejected all charges against the company, as well as current and former staff.

Three years after the dam collapse in Mariana, the International Articulation of People Affected by Vale claims that the company has not been properly held responsible, and those affected continue to seek justice.⁵

The Movement of People Affected by Dams (MAB) assessed the situation as follows:

*"(...) no house was built, we do not know the number of people affected, there [is] no study on the impacts on health, women are not recognized as affected, among other environmental violations and rights of those affected. Up to date, the judiciary has not held any of the directors of the companies involved in the crime responsible and has not ensured the full reparation of the families. On the contrary, it has acted in punitive selectivity, criminalizing the struggles of families, popular movements and civil society organizations."*⁶

1. Women in extractive industries

The extraction of raw materials, be it gas, oil, minerals or timber, often goes hand in hand with severe human rights violations and environmental pollution. Women are disproportionately affected by negative social and environmental impacts of extractive industries. The World Bank's 2009 guidance on gender and the extractives industries states:

*"Men have most access to the benefits, which consist primarily of employment and income, while women and the families they care for are more vulnerable to the risks created by Extractive Industries, which consist of mostly harmful social and environmental impacts."*⁷

These harmful impacts are manifold. As women are underrepresented in community, political and economic leadership roles, their views and interests are not considered in the sector. When new extractive projects are set up, women are often excluded from community consultations by governments and companies as well as local leaders, often because of a lack of information, but also because of patriarchal systems under which women rarely have a say in how natural resources are used.⁸

In many rural areas, women are the primary caretakers. Loss of land for farming and access to water caused by involuntary resettlement or environmental damage due to extractive industries increases their workload and worsens their ability to provide food and clean water and generate income for their families.

As the Foreign Bribery Report of the Organisation for Economic Co-operation and Development (OECD) showed, one in five cases of transnational bribery occurs in the extractive sector.⁹ Corruption in the extractive industry diverts public revenue from public social services like education, infrastructure and health, which are vitally important to women.

In addition, the extraction of natural resources has often been cited as a key factor in triggering, escalating or sustaining violent conflicts.¹⁰ Women and

2 See <https://www.business-humanrights.org/en/bhp-billiton-vale-lawsuit-re-dam-collapse-in-brazil>.

3 See <https://www.reuters.com/article/us-brazil-samarco-miner-charges/brazil-prosecutors-charge-21-with-homicide-for-samarco-dam-spill-idUSKCN12K2FE>.

4 See <https://www.theguardian.com/environment/2018/nov/06/bhp-billiton-facing-5bn-lawsuit-from-brazilian-victims-of-dam-disaster>.

5 See <https://www.stopcorporateimpunity.org/brumadinho-25-01-2019-international-articulation-of-people-affected-by-vale-statement/>.

6 <https://viacampesina.org/en/brazil-movement-of-people-affected-by-dams-mab-calls-out-new-crime-by-mining-giant-vale/>.

7 Eftimie, Adriana/Heller, Katherine/Strongman, John (2009): Gender Dimensions of the Extractive Industries: Mining for Equity. World Bank, p. 1 (http://siteresources.worldbank.org/EXTOGMC/Resources/eifd8_gender_equity.pdf).

8 See for example <http://generatietransitie.be/nl/nieuws/mining-equity-gender-perspective-extractive-industries>.

9 See OECD (2014): Foreign Bribery Report. An Analysis of the Crime of Bribery of Foreign Public Officials, p. 22.

10 See Collier, Paul/Hoeffler, Anke (2002): Greed and Grievance in Civil War. The World Bank Policy Research Working Paper (<http://documents.worldbank.org/curated/en/359271468739530199/pdf/multi-page.pdf>).

children are among those who suffer the most in violent conflicts.

When women work in the extractive industries sector, they often face discrimination in wages and unhealthy working conditions, or suffer from sexual abuse by male workers. A study from 2011 showed that the rate of sexual harassment of women in the mining industry was 71 cases per 100,000 female workers, which is 31 times the male rate.¹¹

Women standing up for their rights and defending their land, communities, and the environment often face gender-specific threats and violence from corporations, as well as from state and local authorities, military and police forces, or private security services. Women human rights defenders confronting extractive industries frequently experience criminalization of their actions, violence, sexual abuse, intimidation, reprisals, and discrimination in their communities.¹² Violations of women's human rights in the context of extractive industries are most often inadequately addressed, and are rarely prevented or remedied.¹³

Given the involvement of BHP Billiton in several human rights abuses, the recently established new partnership between the company and UN Women is astounding. It is a classic case of "blue washing" or of a corporation trying to benefit from the good reputation of the UN.

2. The wrong signal: the new partnership between BHP Billiton and UN Women

In June 2018, BHP Billiton and UN Women launched a new partnership. Between July 2018 and June 2021, the BHP Billiton foundation is to grant US\$ 15,562,800 to UN Women's Second Chance Education and Vocational Learning Programme.¹⁴ BHP Billiton is promoting its partner-

ship with the UN entity with a glossy video¹⁵, although both press releases announcing the partnership on the websites of UN Women and BHP Billiton have disappeared.

The UN Women's program aims "to develop context specific, affordable and scalable learning, entrepreneurship and employment pathways for empowering the world's most disadvantaged women and young women."¹⁶

The program will run in Chile, Mexico, India, Jordan and Cameroon. Australia is also among the target countries of the partnership program. Any puzzlement over the selection of countries may disappear when noticing that BHP Billiton's headquarters is in Melbourne. In fact, the company has suffered serious reputational damage in Australia.

BHP Billiton and its dubious human rights record

In June 2018, two class actions were brought on behalf of 800 workers at Australia's Mount Arthur Coal Mine against both BHP Billiton and labor hire companies Chandler Macleod and TESA. According to the plaintiffs, BHP Billiton hired hundreds of mine workers through contract labor companies to avoid paying proper wages and benefits.¹⁷ Furthermore, in July 2018, a class action lawsuit of more than 3,000 BHP Billiton investors sought to recover shareholder losses. The plaintiffs claimed that BHP had failed to disclose the risk of the Mariana dam collapsing in 2015 to the stock market, and had misled investors over the company's safety guarantees.¹⁸ In February 2019, the International Transport Workers' Federation (ITF) stated that crewmembers aboard a ship at a BHP terminal in Queensland were neglected and underpaid.¹⁹

BHP Billiton has been involved in several other human rights violations. Apart from the Mariana dam collapse, it is accused of causing severe health impairments among the population as well as environmental damage in the Cerrejón coalmine and the Cerro Matoso ferronickel mine areas in Colombia.²⁰

11 See Hersch, Joni (2011): Compensating differentials for sexual harassment. *American Economic Review Papers and Proceedings* 101:3, p. 630–634.

12 See <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx> and <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/>.

13 See Barcia, Inmaculada (2017): Women Human Rights Defenders Confronting Extractive Industries. An Overview of Critical Risks and Human Rights Obligations. AWID/Women Human Rights Defenders International Coalition (https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf).

14 See <https://www.bhp.com/community/community-news/2018/12/un-womens-second-chance-education-and-vocational-learning-programme>, https://www.bhp.com/-/media/documents/community/bhpfoundation/180910_bhpbillitonfoundationunwomensceprojectsummary.pdf?la=en and <https://www.devex.com/news/meet-the-new-global-education-donor-bhp-billiton-93784>.

15 See https://www.youtube.com/watch?v=3jN_OZHVQzA.

16 https://jobs.undp.org/cj_view_job.cfm?cur_job_id=78738

17 See <https://www.abc.net.au/news/2018-06-26/casual-coal-miners-launch-class-action-bhp/9910218>.

18 See <https://www.bbc.com/news/world-australia-44919859>.

19 See <https://worldmaritimeneeds.com/archives/271319/itf-claims-crew-neglected-aboard-ship-at-bhp-terminal/>.

20 See the compilation of BHP Billiton's involvement in human rights and environmental violations in *Facing Finance* (2019): *Dirty Profits* 6, p. 22 (http://www.facing-finance.org/files/2018/05/DP6_ONLINEVERSION.pdf).

In the case of the Cerro Matoso ferronickel mine in Colombia, BHP Billiton still refuses to accept responsibility for polluting the air, soil, and water with toxic particles, and causing serious health problems among people living in the surrounding area, including skin complaints, rheumatoid pneumoconiosis, heart problems and lung cancer.

The Corporate Human Rights Benchmark (CHRB) 2018 ranks BHP Billiton high, with 70–80 percent on the index reflecting the corporation's efforts to respect human rights across their business.²¹ The high ranking, however, is questionable. After the dam collapse of Brumadinho, CHRB declared that it would review its methodology, as Vale was also considered a relatively well performing company with 60–70 percent.²² The good results might be explained by Facing Finance's 2018 Report "Dirty Profits 6", which classifies BHP as a "Miner Threat: Poor in Practice", that is showing good human rights policies and strong voluntary commitments, but in practice, being involved in severe human rights and environmental violations. According to the report, BHP has improved its human rights policies, but has only recently started to improve governance processes for its non-operated joint ventures.²³

BHP's earlier mining operations in Ok Tedi in the Western Province of Papua New Guinea (PNG) are arguably one of the company's most controversial, earning it 'global notoriety'. BHP held the majority shares and was the operating partner for Ok Tedi Mining Ltd (OTML), a copper and gold mine which caused incalculable environmental and social damage by daily discharging 80,000 tons of mine waste (tailings) over two years into two river systems in the province, polluting the rivers, floodplains and surrounding forests, and ruining subsistence livelihoods. A lawsuit by more than 30,000 landowners in PNG, brought against BHP in the Australian Supreme Court in 1994, resulted in an out-of-court settlement. To block a second US\$ 4 billion class action being brought by PNG landowners living downstream from the mine in the Australian courts, BHP allegedly drafted a controversial law for the PNG government – the Compensation (Prohibition of Foreign Legal Proceedings) Act.

Passed by the PNG parliament in 1995, the law criminalised pursuing compensation claims in foreign courts and prevented legal challenges to its constitutionality. It carried heavy penalties – massive fines (including for every day of a court proceeding, and for any person assisting in a case) or a prison term of five years. It also sought to make judgments in foreign courts unenforceable in PNG.²⁴ BHP was subsequently pressed to agree to meeting further compensation claims from landowners in Western Province.

Then, in 2001, BHP (now BHP Billiton) negotiated a controversial exit deal with the PNG government, under which it agreed to transfer its 52 percent shares in the mine to a new entity called the PNG Sustainable Development Program Company (PNGSDPC), which it incorporated in Singapore, in return for the guarantee of legal immunity from any further environmental claims. The PNGSDPC, now holding 63.4 percent ownership of the mine, would invest two thirds of the mining profits in a Long Term Fund and provide the remaining third, together with the interest earned on the Long Term Fund, to support sustainable development programs and projects in mining-affected areas of Western Province and the rest of PNG. This deft move by BHP, intended to "remove this blemish from its (...) portfolio",²⁵ enabled it to escape any further legal liability for the massive, and likely irreversible, environmental damage it had caused in PNG.²⁶ In 2013, the Peter O'Neil administration passed legislation to take control of the mine, and in a separate bill overturned BHP's immunity, opening the way for new damages claims to be brought against the company.

UN Women's partnership strategy

Given BHP's controversial record, either UN Women's due diligence requirements for entering into a new collaborative partnership with a company were not assiduously applied in this case or other political considerations have influenced the decision in favor of the partnership.

21 See Corporate Human Rights Benchmark (2018): Key Findings. Apparel, Agricultural Products and Extractives Companies (<https://www.corporatebenchmark.org/sites/default/files/documents/CHRBKeyFindings2018.pdf>).

22 See <http://www.ethicalcorp.com/vale-suspended-corporate-human-rights-benchmark-over-dam-disaster>.

23 Ibid.

24 For a full account of the case, see Stuart Kirsch (2014): Mining Capitalism: The Relationship between Corporations and their Critics, University of California Press, Chap. 3 (Down by Law).

25 Filer, Colin/Imnun, Benedict (2004): A Short History Of Mineral Development Policies In Papua New Guinea (https://crawford.anu.edu.au/rmap/pdf/Wpapers/rmap_wp55.pdf).

26 Ibid. and Danielle Knight (2002) BHP Billiton Leaves the Scene of the Crime: Papua New Guinea's OK Tedi Mine <http://www.pireport.org/articles/2002/01/07/bhp-billiton-leaves-scene-crime-papua-new-guinea-s-ok-tedi-mine>.

Similar to other UN entities, UN Women faces financial problems.²⁷ In 2017, 85 percent of the UN development system's budget was earmarked, while only 15 percent was core-budget.²⁸ This provides individual donors, including private donors from the business sector, with more influence over the priorities of the UN entities, while at the same time shrinking the flexibility of UN entities to carry out their respective mandates, respond to unexpected challenges, ensure their value-based commitments and extend their normative responsibilities.

Over the years, the UN Women's budget has increased overall. However, the agency states: "Generally speaking, political support has only been modestly and partly translated into financial support."²⁹ Its financial report of 2016–2017 claimed:

"While progress is being made, there continues to be chronic underinvestment in gender equality and women's empowerment."³⁰

Owing to the decreasing share of core-contributions since 2014 (2017: 40 %) and an enormous increase in non-core earmarked resources (2017: 60 %), the organization has become less flexible in the allocation of its budget. At four percent of the total contributions (US\$ 15.7 mill.) in 2017, the share of contributions by the private sector, foundations and others was still relatively small.³¹ But in the context of increasing calls by governments and business for multi-stakeholder-partnerships – similar to other UN agencies and funds – UN Women now strongly promotes partnerships with and welcomes donations from the private sector.

UN Women has an active campaign to broaden and deepen its donor base (see Box 1). It has already established partnerships with the Bill & Melinda Gates Foundation, Elizabeth Arden, the Ford

Box 1: Benefits of partnering with UN Women

"Long-term partnerships based on a mutually beneficial relationship are important to UN Women's mandate. We deliver value to our partners in several ways:

- » "UN Women's partnerships with companies are underlined by shared agendas. This provides an opportunity to build corporate networks and relationships with like-minded business and philanthropic leaders.
- » "UN Women has a global mandate to promote women's empowerment and gender equality and, by partnering with UN Women, businesses and philanthropies receive global recognition for their transformative efforts to reach parity and ensure that no women or girls are left behind. UN Women can offer strengthened visibility of your positive contribution towards women's empowerment and gender equality through communication and public relations support.
- » "UN Women can offer guidance in conducting business in an equitable and sustainable manner.
- » "UN Women is not only an ideal partner to implement solutions aimed at promoting gender equality; we are also primed to convene government, corporate, civil society, and grassroots leaders and individuals to broker a variety of partnerships.
- » "Partnering with UN Women in cause marketing can help businesses increase awareness of their brand, enhance relationships with their clients and suppliers, and increase their sales and market share."

Source: www.unwomen.org/en/partnerships/businesses-and-foundations/why-un-women

Foundation, the Open Society Foundation, Procter & Gamble, PROYA Cosmetics Co. Ltd, the Rockefeller Foundation, The Coca-Cola Company, Unilever, and the Zonta International Foundation.³²

The organization promises global recognition of its efforts, visibility and awareness of the partnering company's brand. The reputational risks for UN Women, when collaborating with a company that is involved in environmental and human rights violations seem, however, to receive less attention.

A strong commitment to women's human rights needs to be at the center of partnership strategies and other initiatives involving corporations, such as intended in the current negotiations on a UN treaty on business and human rights.

27 See Adams, Barbara/Judd, Karen (2018): The 2030 Agenda, donor priorities and UN mandates. Lessons from the WHO experience. Global Policy Watch #20 (<https://www.globalpolicywatch.org/blog/2018/01/15/the-2030-agenda-donor-priorities-and-un-mandates/>).

28 See UN Secretary-General (2017): Repositioning the United Nations development system to deliver on the 2030 Agenda: ensuring a better future for all. Report of the Secretary-General. New York: UN (UN Dok. A/72/124–E/2018/3).

29 www.unwomen.org/en/partnerships/donor-countries/frequently-asked-questions

30 UN Women (2018): Annual Report 2016-2017, p. 45 (www2.unwomen.org/-/media/annual%20report/attachments/sections/library/un-women-annual-report-2016-2017-en.pdf#page=47?la=en&vs=5634)

31 See UN Women (2019): Annual Report 2017-2018. Financial Statement (www2.unwomen.org/-/media/annual%20report/attachments/sections/library/un-women-annual-report-2017-2018-financial-statements-en.pdf?la=en&vs=2850).

32 See www.unwomen.org/en/partnerships/businesses-and-foundations/major-partners.

3. A promising initiative: towards a legally binding UN treaty on business and human rights

Experience has shown that corporate social responsibility initiatives, such as the UN Global Compact, and voluntary guidelines like the UN Guiding Principles on Business and Human Rights (UNGP), have failed to encourage corporations to take adequate measures to prevent human rights abuses and environmental pollution in their operations.

Existing international human rights law does not regulate corporations or hold them accountable for violations related to their cross-border activities. Victims of human rights abuses by transnational corporations are often faced with insurmountable legal, procedural and financial barriers to attaining justice.

In light of the failure of existing voluntary mechanisms to hold corporations systematically and effectively accountable, a new initiative has started at the UN. In June 2014, the UN Human Rights Council adopted Resolution 26/09, which established a working group to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises (OEIGWG). Since 2014, the working group has convened four times. In July 2019, the Ecuadorian chair of the working group presented a revised draft.³³

While the revised draft lacks clarity in some aspects and needs improvement in others, the published document provides a good basis for further negotiations.³⁴ It includes an urgently needed provision that will oblige states to carry out mandatory human rights due diligence for companies, provisions to improve access to remedy for people affected by human rights violations by companies, provisions for legal liability, international cooperation and monitoring and implementation of the treaty.

If the document is strengthened in some aspects, taking into account the lived realities of women and girls, it will have the potential to contribute significantly to stopping business-related human rights

abuses of women and other affected and marginalized communities, and overcoming barriers faced by such groups in seeking remediation.³⁵

4. Conclusion: more caution with partnerships and including a gender perspective for an ambitious treaty on business and human rights

Facing a financially precarious situation caused by stagnating and decreasing contributions by Member States, UN entities are looking for ways to attract and encourage other financial resources, mainly from corporations and philanthropic foundations. In recent years, there have also been increasing calls for partnerships between the public and private sector.³⁶ This focus, however, carries several risks for the UN, including conflicts of interest, undue corporate influence on norm and agenda setting, risks for the UN's integrity, reputation, credibility and independence, and ultimately a preponderance of private interest over public interest policies.³⁷

In order to protect the UN's independence and integrity from corporate influence and ensure that the organization is able to fulfill its mandate, **governments should provide the UN with adequate flexible and predictable funding.**

In addition, new and existing UN-business interactions must be consistent with the UN's values on human rights and sustainable development. What appears to be missing is a robust and appropriate regulatory framework and UN capacity to determine when, whether and how to engage.

In his December 2017 report on UN reform, the UN Secretary-General António Guterres noted that the UN "must do better to manage risks and ensure oversight in a manner that protects its values and yet allows space for innovation and expanded partnership arrangements."³⁸ He further stated:

"Due diligence standards and procedures are highly heterogeneous across the United Nations system and need to be streamlined. The lack of a system-wide approach to due diligence results in the inefficient use of financial and human resources, as multiple United Nations agencies

33 See Chair of the Working Group (2019): Legally Binding Instrument to regulate, in international Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises. Revised Draft 16.7.2019. (https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf).

34 For more detail, see Treaty Alliance Germany (2019).

35 See Feminists for a Binding Treaty (2018b).

36 See also Seitz et al. (2019).

37 For more information on corporate influence on political decision-making see also the websites <https://www.globalpolicy.org/corporate-influence.html> and <https://www.escr-net.org/corporateaccountability/corporatecapture>.

38 UN Secretary-General (2017), para. 132.

often screen the same partners, and this poses a significant reputational risk to the Organization. It sometimes leads to contradictory decision-making across entities, undermining the integrity and increasing the vulnerability of the Organization.”³⁹

It is clear, therefore, that the **UN General Assembly should adopt rules on engaging with the private sector across the entire system.**⁴⁰

All interactions between the UN and private actors should be based on a set of basic principles, and minimum standards for the interaction between the UN and the private sector have to be formulated. These standards should prevent undue corporate influence on UN policies and prevent companies that violate internationally agreed environmental, social and human rights standards or otherwise violate UN principles (via corruption, breaking UN sanctions, lobbying against UN global agreements, evading taxes, etc.) from engaging with the UN. Before a UN entity enters into a new collaboration or partnership with one or more private actors, the possible impact of such a collaboration or partnership must be systematically assessed. This should include evaluating the added value of the initiative for the realization of the UN's goal, the relation between the risks, costs and side effects and the potential benefits, and possible alternatives to the proposed partnership or initiative. The UN should not consider individual projects with individual companies until they have demonstrated altruistic intent by contributing to pooled funding. An institutional framework for partnership accountability will require new and additional capacity within the UN Secretariat. Staff are needed for the tasks of screening partnerships, monitoring, evaluation and impact assessments. The impact assessments and evaluations should be carried out by neutral UN bodies and not by institutions which see themselves as promoters of UN-business partnerships.

In order to reach the transformation outlined in the 2030 Agenda, it is not sufficient to mobilize additional resources and investments. The additional, but in particular also the existing, investments have to respect human rights and environmental standards. A fundamental change in the way our society consumes and produces goods and services is needed, as specified in SDG 8 on employment and inclusive growth, and in SDG 12 on consumption and production.

³⁹ Ibid., para. 133.

⁴⁰ See Martens/Seitz (2019).

Box 2: Key recommendations for including a gender-perspective into the UN Treaty by Feminists4BindingTreaty

1. Mandatory gender impact assessments

The Treaty should require that any preventive measures, such as due diligence procedures, be undertaken through a human rights-based gender impact assessment. Impact assessments should be conducted with the meaningful participation of women from affected communities, including in the design and definition of the scope of impact assessments, and should be made public and accessible. It should explicitly state that gender impact assessments shall be conducted by an independent entity chosen by, or agreed on by, the communities and women from whom information will be gathered, in a process that ensures free, prior and informed consent (FPIC).

2. Gender-sensitive justice and remedy mechanisms

The Treaty should put rights holders at the centre of any agreed remedy mechanisms by specifying that women and men, particularly women from marginalized groups, should be consulted meaningfully in creating, designing, reforming and operating remedial mechanisms. States should commit to take positive measures to ensure effective access to remedies, without discrimination, to women. In order to remove obstacles in access to justice and effective remedies, including by women, the treaty must also clearly define the extra-territorial dimension of states' obligations to ensure access to justice and remedy for survivors of violations committed by businesses that occur outside their territories.

3. Respect, protection and an enabling environment for Women Human Rights Defenders

The Treaty should include strong and clear language on the protection of all rights holders adversely affected by business activities as well as those challenging corporate abuses, including human rights defenders and whistleblowers. Such measures should take into account the gender-specific and other identity-based risks and impacts for women human rights defenders, such as indigenous, LGBTQI+, and migrant and refugee women.

Source: <https://www.wilpf.org/wp-content/uploads/2018/09/Fem-4BT-2018-Womens-rights-beyond-the-business-case.pdf>

If governments want to show their serious commitment to the 2030 Agenda, including the achievement of gender equality, they have to address violations of women's rights by transnational corporations and other business enterprises. The human rights impact of business enterprises has to be effectively regulated by a legally binding instrument.⁴¹

A UN treaty on business and human rights must comprehensively integrate a gender

⁴¹ See also Martens/Seitz (2016).

perspective that addresses the specific impact of corporate abuse on women and marginalized communities and ensures rights protections, access to justice and effective remedy for all rights holders. This includes (i) mandatory gender impact assessments of business activities, (ii) gender-sensitive justice and remedy mech-

anisms, and (iii) ensuring respect, protection and an enabling environment for women human rights defenders (see Box 2). Instead of signing partnership agreements with corporations with a dubious human rights record, UN Women should show its clear support of such a UN treaty on business and human rights.

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