

“HUMAN RIGHTS BUSINESS AND GENDER: SOME THOUGHTS ON GENDER IMPACTS IN THE PRIVATE SECURITY, GARMENT AND EXTRACTIVE SECTORS”

BY

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On June 21st 2017, Dr. Sorcha MacLeod came to Giessen to give a presentation titled „Human Rights Business And Gender: some thoughts on gender impacts in the private security, garment and extractive sectors“ within the framework of the Comparative Legal Gender Studies Network-Project.

Dr. MacLeod started her talk by giving a general introduction on the nexus between human rights, business and gender. Therefore she quoted a study by an NGO called “Mind the Gap”. It was found that women make 60% of the working poor worldwide, often have to face exploitative work conditions, and often receive 10-30% less pay than their male colleagues for equal work. In this context the study from 2015 found that out of 143 economies 90% have at least one law restricting female economic equality, for example their right to collective organisations.

Especially in Sub-Saharan Africa and South East Asia, MacLeod says, women are very highly represented in informal, unregulated and precarious work, which also puts them in risk of sexual abuse and violence, without having basic labour rights. Another problem she mentions is that women are particularly vulnerable in global supply chains, an issue that has become more and more prominent since the 1990s: Companies from the global North relocating their production to the global South, producing in dangerous circumstances at very low wages, work conditions in which women are overly represented.

Connected to this, Dr. MacLeod also addressed the issue of women often having no social protection. There is often no state oversight over welfare or employment in general and women often have no access to redress after they have faced injustice. Even though this is not only a gender issue, but applies to both men and women, these issues have a greater impact on women. MacLeod says that this is firstly linked to restrictions concerning the participation in the work force, especially to paid work, but also to their responsibilities to care for their children and the elderly and other domestic chores.

After giving this general overview about the general issues that women have to encounter, Dr. MacLeod talked about the particularly high impacts that armed conflicts have on women. As examples she names sexual violence, deterioration in maternal mortality rate, loss of land rights and displacement, less access to education and an increase in child marriage. She says that this is where business actors play a role and make a difference and gives the examples of mining companies in the Democratic Republic of Congo. These have been said to be the “engine of armed conflicts”. There are also companies that buy minerals that have been

extracted using slave labor or these companies pay taxes to armed militia in such countries, thus actively contributing to the continuation of the armed conflict.

Dr. MacLeod then introduced three case studies, starting with a study on the extractive industries. She distinguishes between small scale mines, like the ones in the Democratic Republic of Congo, which are mostly unindustrialized using forced and child labour, and the large scale industrialized mines like in Tanzania. Women there are not only affected by working conditions, but also by displacement and sexual assaults by male workers and security guards in and around the workplace and others coming into their communities. In general, she says that the right to life is affected by various aspects around the extractive industries, but, amongst others, also the right to home, to water and food, to education and to a clean environment.

The second case study Dr. MacLeod introduced deals with the garment industry, which is an industry where women are overly represented, especially in South East Asia. Women are paid very low wages and their labour rights are impacted. As an example she names the lack of breaks and holidays during the work shifts, the lack of health and safety standards. Also unionization and work associations are prohibited, which often results in violence. Women face an impact on their freedom of expression; they are discriminated against and often live in poverty due to even lower wages than their male co-workers get. In this context Dr. MacLeod names the example of Bangladesh, where the garment industry has exploded in the past 20 years. This is due to garment companies looking for cheap prices for their production and as little regulation as possible. With more and more exports in the branch, which are mostly going to the EU and the United States, more people are employed in the industry, around four million in 2010, 80% of them women. Therefore all the negative impacts of the garment industries are affecting women especially. As a sad example of the negative aspects of the garment industry in Bangladesh, Dr. MacLeod talked about the disaster at Rhana Plaza, Dhakar. The building of a production facility, which was used by clothing companies of the global North, collapsed, resulting in the deaths of 1129 workers, due to lacking safety standards. She says that these production facilities are clearly linked to urban migration, poverty and human trafficking, reminding of “modern slavery”, because women have no real chance to escape their situation. Even though the Bangladeshi government has tried to increase the wages in the factory, MacLeod says that the main responsibility is with the companies from the global North looking for the cheapest labour and factories which forget about human rights and labour standards and deny any kind of responsibility concerning incidents like Rhana Plaza.

The last case study concerns the private security sector, which is Dr. MacLeod’s area of specialization. She says that there are three stages of development of the private security sector: in the 1990s there were private military companies that were hired by the governments of countries like Sierra Leone to fight militia within their countries. Around the millennium - with the intervention in Iran and Afghanistan - the number of such companies exploded. This is due to the countries involved in those interventions. They cut back on their military spending and therefore turned to the private sector. In this phase a lot of human rights violations happened, shown by the example of Blackwater. The third stage, MacLeod says, is the one with the biggest impact on human rights issues, with the private security sector taking over more and more functions of the state, like operating prisons or immigration and detention facilities as for the Australian government in Papua New Guinea,

which led to killings and sexual violence against women and children and a lack of proper health and living facilities. Issues that arise in this context are concerning the right to life, to the freedom from torture, sexual abuse, not only in armed conflict situations, but also for example in the UK where disproportionate force and inhuman and degrading treatments have been used in youth detention facilities.

After laying out the last case study Dr. MacLeod asked for a regulatory approach to face such issues. In 2011 the Human Rights Council of the United Nations unanimously approved the Guiding Principles of Business and Human Rights, which as a fact in itself MacLeod found remarkable. These principles are addressed to states as well as to all business actors, however, they do not create legal obligations for business actors to respect human rights, but only lay out an expected standard of behaviour.

The Guiding Principles essentially work through three different pillars:

- states have the legal duty to protect human rights, including making sure that companies based within their jurisdiction do not violate human rights.
- The second pillar illustrates the expectation that business actors will respect human rights. MacLeod emphasizes again, that this is not a legally binding obligation.
- The final pillar represents remedy. Victims of human rights violations have access to effective remedy.

Dr MacLeod argues that there should be state remedies, for example through the courts or national contact points, but also internal business remedies, so people whose rights have been violated can have some kind of compensation as a consequence.

MacLeod criticizes that within the Guiding Principles there are very little specific references to gender. On the one hand, she says, that women's rights are human rights, but that does not reflect the specific impact that human rights violations have on women. These issues are not specifically addressed, but "bundled up" within the general principles. Only within the commentary women are explicitly mentioned, amongst other groups that are at higher risk of discrimination like indigenous groups or ethnic and religious minorities. This marginalizes the issues that women have to face concerning human rights and business. Therefore and for the reason that the principles are not legally binding, she states, that even though the Guiding Principles have been adopted for six years hardly anything has changed significantly. Only within the human rights due diligence, that businesses are supposed to observe within their supply chain, they are supposed to "bear in mind the different risks that may be faced by women and men".

Looking at the case study of women's issues concerning the private security sector there are some regulatory approaches that actually address women's issues more specifically. As an example Dr MacLeod named the International Code of Conduct for Private Security Providers, which applies to security companies providing security in so called complex environments (conflict and post-conflict environments). She explained that even though women are not specifically referred to, within the code rules can be found that are concerning particular impacts on women, for example sexual exploitation and abuse or gender-based violence and that the employees of the security providers should be trained on these issues. Other rules concern human trafficking, forced or slave labour and children's rights. There can be found a general anti-discrimination provision as well, demanding that there should be no discrimination of any kind by these private security businesses. Still, this Code of Conduct, as well as the General Principles by the UN, does not create a legal obligation, even though hundreds of private security companies have signed it. However, it led to an auditing of the companies to find out if they meet the standards of the International Code of Conduct. As a consequence, several standards have emerged which

reflect gender provisions. This means that companies have to adopt a human rights policy in order to get a certificate saying that they meet the standards, which has to be publicly available and they have to adhere to it. Dr MacLeod set out that in order to be able to contract with governments, businesses have to reach a certain certification that their code of conduct has to reflect. Still this bears the danger of companies seeing this as a “tick box exercise” and only doing it to satisfy the auditors, but also that the auditors themselves are not well trained concerning issues of human rights. MacLeod said that since it is still a very early stage of using auditing to change company behavior no one can say how effective it is yet. One of the problems that has already shown is that businesses do not know what human rights mean and what to incorporate into their codes of conduct. They are also expected to have a grievance mechanism, so that people can find remedy if their human rights are violated. Dr MacLeod argued that they do not know either what this is supposed to look like. She concluded that the private security sector is a little bit further forward concerning the implementation of the Guiding Principles of the UN, because the companies are actually required to do certain things including gender issues to be awarded certificates. In the regulatory frameworks of the other case study industries, especially the extractive industry, there is no or very little specific reference to gender issues, which MacLeod sees as a major problem.

MacLeod concluded that businesses clearly have an impact on women and women’s rights, which can either be disproportionate or impact women exclusively. In the general regulation of business and human rights there is very little reference to gender at all, but it is bundled in with other issues. Even though there are some emerging protections, MacLeod stated that it is going to be a long and slow process to put the Guiding Principles of Business and Human Rights effectively into action in all industries, making sure that women’s rights are actually protected.