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The relationship between business and human rights

Photo: Flickr/ Lindsay Maizland
In 2011, the Human Rights Council approved the UN "Protect, Respect and Remedy" Framework which set out the boundaries of human rights responsibility for businesses globally from all industries. Under the Framework:

- Companies have a responsibility to RESPECT human rights – i.e. by not infringing on human rights and by addressing any negative impacts on human rights in which they are involved.

- Both govt.’s and companies should provide ACCESS TO REMEDIES – incl.:
  - For govt.’s: Appropriate/effective judicial and non-judicial mechanisms
  - For companies: Enable access to appropriate grievance mechanisms through which stakeholders can seek redress should their rights be undermined by a company’s activities.
The UN Guiding Principles

The [Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework](http://human-rights.unglobalcompact.org/) give guidance on how businesses can operationalise their responsibility to respect human rights. It is based on three key elements:

- **Implement a human rights policy**: This should include embedding their responsibility to respect human rights through a corporate policy statement that is supported by guidance as to the specific actions to be taken to give this commitment meaning.

- **Apply human rights due diligence**:  
  - Periodic assessment of actual and potential impacts of company activities/relationships  
  - Integration of the findings from impact assessments across relevant internal functions and processes, and the taking of appropriate action  
  - Tracking of human rights performance  
  - Communication of human rights performance (formal reporting where impacts are significant)

- **Provide for remediation**: Where companies have caused or contributed to negative impacts, they should provide for or cooperate in their remediation.
The UN Guiding Principles are complemented by two additional frameworks:

- **Principles 1 and 2** of the **UN Global Compact** include a call for participants to not only ‘respect’ human rights – but to actively ‘support’ them.

- The **Women’s Empowerment Principles** (WEPs) articulate the gender dimension of the corporate sustainability to respect human rights.
About gender equality and human rights

Photo: Flickr/ John Haslam
Potential for complicity in human rights abuses

Cultural, legal or business policy frameworks that permit gender-based discrimination may pose challenges to the effective implementation of internationally recognised gender equality standards by responsible businesses. Companies might therefore find themselves associated with or complicit in the violation of women’s and girls’ rights in their direct operations and supply chains.

The risks are exacerbated by a number of factors, including:

- **Inadequate legal protection leading to inequality** (i.e. where anti-discrimination principles are not adequately reflected in national legislation, which fails to meet international standards)
- **Discriminatory laws** (i.e. where women are awarded weaker legal rights and protections than men)
- **Discriminatory social and cultural norms** (i.e. where discriminatory attitudes are socially and culturally entrenched and are therefore reflected in – for example – workplace culture, access to employment, gender pay gaps, under-representation of women in decision-making and harassment)
### Women’s and girls’ rights that companies may impact

<table>
<thead>
<tr>
<th>Right</th>
<th>Reference</th>
<th>Description</th>
<th>Examples</th>
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<tbody>
<tr>
<td>Right to an effective remedy</td>
<td>UDHR, Article 8</td>
<td>Women’s right to an effective remedy for human rights violations may be restricted as a result of state-sanctioned discrimination</td>
<td>The ability of companies to provide grievance mechanisms for gender discrimination is restricted by law</td>
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<tr>
<td>Right to equality in the workplace, marketplace and community</td>
<td>CEDAW, Article 1 ILO Conv. No. 111, Article 1</td>
<td>Women’s representation in business may be restricted due to persistent inequality in other areas of life</td>
<td>The ability of companies to ensure diversity in the workplace may be restricted due to inequality affecting all areas of life</td>
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<tr>
<td>Right to equality before the law, equal protection of the law and the right to non-discrimination</td>
<td>ICCPR, Article 26</td>
<td>A particular risk for companies where women experience discrimination in law and practice, as well as in society and in the workplace</td>
<td>Where domestic legislation prohibits women from working in a particular sector</td>
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<tr>
<td>Right</td>
<td>Reference</td>
<td>Description</td>
<td>Examples</td>
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<td>Right to enjoy just and favourable conditions of work</td>
<td>ICESCR, Article 7</td>
<td>Entrenched discriminatory attitudes place women at increased risk of inequality within the workplace</td>
<td>Company finds that its joint venture partner allows significant gender-based pay gaps for equal work on the basis that ‘men need more to support their families’</td>
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<tr>
<td>Right to family life</td>
<td>ICESCR, Article 10</td>
<td>The value chain is characterised by ‘Just in Time’ delivery and short notice orders make it difficult for employees to meet family commitments</td>
<td>Commercial pressure, incl. large or short notice orders results in long and irregular hours for employees</td>
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<tr>
<td>Right to work</td>
<td>ICESCR, Article 6</td>
<td>Women are at risk of being unfairly deprived of employment or arbitrarily dismissed on the basis of their gender or reproductive status</td>
<td>Company finds that there is a tendency for a vital and largely irreplaceable supplier not to recruit women of a certain age</td>
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Risks posed to business

Aside from the moral imperative to avoid perpetuating gender inequality, failure to responsibly manage issues relating to the treatment of women and men within the workplace can result in a number of other risks for companies.

These include:

- **Legal liability**, which may also result in a company having to pay significant legal costs
- **Consumer boycotts**, resulting in reduced sales
- **Brand erosion** due to negative publicity and activist campaigns
- **Divestment** by ethical and/or mainstream investors
- **Alienation of existing and potential female and male employees** resulting in a loss of/failure to recruit talent – as well as associated challenges around morale and employee retention
Grobler v Naspers BPK and ‘n Ander (South Africa)

The High Court in South Africa ordered Naspers, a multinational media company, to pay US$75,375 to the plaintiff (Ms Grobler) after finding the company liable for acts of sexual harassment committed by a fellow employee. The court held that when harassment results in a tangible employment action, such as dismissal, failure to promote, change in working conditions or a material change in benefits for the person harassed, the employer is liable unless they can prove that reasonable care was taken to prevent or stop sexual harassment. The case produced three important outcomes that have a direct impact on businesses in South Africa: (1) Employers have a duty to take reasonable action to prevent or eliminate sexual harassment in the workplace; (2) Employers are vicariously liable for sexual harassment by employees, unless they have taken reasonable action to prevent or address such harassment; (3) Victims of harassment may sue both employer and harasser for related damages.

Prada faces reputational damage after alleged discrimination (Japan)

In 2010, a Senior Retail Operations Manager for Prada in Japan filed a lawsuit against the fashion label after being told by her superior to fire 15 female employees because they were "old, fat, ugly, disgusting…or did not have the Prada look." While the Tokyo District Court ruled in favour of Prada, the company has received much criticism after counter-suing the plaintiff for 'damaging the Prada brand'. For instance, The UN Office of the High Commissioner for Human Rights is backing the ex-Prada employee and has called for Japan to introduce new regulations to make sexual harassment illegal in the workplace. An online petition urging Prada to drop their lawsuit has received over 220,000 signatures, drawing attention to the issue of gender discrimination and criticism of the Prada brand.
Suggestions for responsible business
I. Create and implement policies and practices

A company’s gender policy should ideally be **aligned with international standards**, including the [UN Women’s Empowerment Principles](http://human-rights.unglobalcompact.org/) and relevant International Labour Organization standards (i.e. they should go beyond local compliance requirements). The policy should ideally extend into the supply chain – for example through Supplier Codes and/or relevant contractual provisions.

In particular, there are four core **ILO Conventions relating to women** in the workplace that responsible businesses should follow in developing policy:

- **ILO Convention 100 on Equal Remuneration**, which requires that men and women receive equal remuneration for work of equal value
- **ILO Convention 111 on Discrimination**, which prohibits gender-based discrimination in employment and occupation
- **ILO Convention 156 on Workers with Family Responsibilities**, which makes provision for workers with family responsibilities to continue with employment without conflict between the two duties
- **ILO Convention 183 on Maternity Protection**, which provides for maternity protection in the workplace
I. Create and implement policies and practices

The ‘Women’s Empowerment Principles’ offers companies guidance on how to empower women in the workplace, marketplace & community. They are the result of a collaboration between UN Women and the UN Global Compact, supported by the CEO’s of more than 670 companies. Companies should consider applying these seven principles through their own policy commitments (plus the cascading the same through their supply chains) and signing the CEO Statement of Support.

<table>
<thead>
<tr>
<th>Women’s Empowerment Principles</th>
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<tbody>
<tr>
<td>1 Establish high-level corporate leadership for gender equality</td>
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<tr>
<td>2 Treat all women and men fairly at work – respect and support human right and non-discrimination</td>
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<tr>
<td>3 Ensure the health, safety and well-being of all women and men workers</td>
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<td>4 Promote education, training and professional development for women</td>
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<tr>
<td>5 Implement enterprise development, supply chain and marketing practices that empower women</td>
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<tr>
<td>6 Promote equality through community initiatives and advocacy</td>
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<tr>
<td>7 Measure and publicly report on progress to achieve gender equality</td>
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II. Provide staff training

Staff training initiatives will help employees adhere to relevant policy requirements aimed at promoting internal gender equality. Responsible businesses may consider, for example, the inclusion of modules on gender equality as part of its annual training plan.

In this context, Principle 4 of the Women's Empowerment Principles also advises companies to:

- Invest in workplace policies and programmes that open avenues for female advancement at all levels and across the business, and encourage women to enter ‘non-traditional’ job fields
- Ensure equal access to all company-supported education and training programmes, including literacy classes, vocational and IT training
- Provide equal opportunities for formal and informal networking and mentoring
- Articulate the company's business case for women's empowerment and the positive impact of inclusion for women along with men
III. Provide skills development training and support

Companies may establish programmes that promote access to skills development for female employees. Such training may include: (1) career planning; (2) team and project management; (3) information technology; and (4) financial management.

In countries where women’s access to basic education is restricted, responsible businesses can carry out training to equip female employees with basic life and vocational skills. Training can include: (1) communication; (2) problem-solving; (3) decision-making; (4) financial literacy; and (5) understanding gender equality and discrimination.

If feasible, a company should try and ensure that skills development training is accessible to all female employees, including those with family responsibilities.

In ‘male dominant’ industries (e.g. such as the security sector, mining and information technology), companies may consider providing women with specific technical training to help increase their representation.
IV. Establish a panel to address gender issues

If feasible, a panel could be constituted to address internal gender issues. Ideally, the panel would include:

- A member of the board
- Upper and middle managers
- Employee representatives (both female and male)

Such panels can be used as a tool to identify any barriers to employment or the advancement of women and to raise awareness around gender equality issues. The company can then undertake measures and strategies to meet any identified challenges.

Where gender discrimination has been identified within a company’s supply chain through social auditing, the gender panel can be instrumental inremedying the issue – for example, through the mainstreaming of gender issues in the design, implementation, monitoring and evaluation of relevant supply chain management systems.
V. Grievance mechanisms

A company might develop grievance mechanisms/procedures and provide recourse for employees who have faced gender discrimination. It may be useful to sensitise staff dealing with grievances with the Women’s Empowerment Principles. There are eight procedural steps to be considered in this context:

- Ensure that staff with relevant skills and knowledge deal with complaints (e.g. language, mediation, negotiation and country context)
- Hold a private meeting with the complainant and record allegations in writing
- Discuss the allegations with the alleged wrongdoer
- Allow the alleged wrongdoer to respond and defend themselves against the gender discrimination allegations
- Investigate the claim and collect evidence before transferring the burden of proof to the respondent or complainant
- Make a finding on whether the complaint is substantiated
- Prepare a written report documenting the investigation process, evidence, findings and recommended outcomes
- Implement the recommended outcomes (with the support of senior management) and/or decide on an alternative course of action
V. Grievance mechanisms (continued)

Where gender discrimination is identified, **disciplinary measures** should be applied to ensure such practices do not reoccur.

Depending on the nature of violations (intentional or unintentional) actions may include gender-based training, written warning or reprimand, removal of management authorities or duties and – in serious cases – suspending or terminating employment.

Companies should make grievance mechanisms easily accessible to women, particular in countries with deeply entrenched gender-based discrimination. Grievance mechanisms should ideally be available to both company employees and workers in the supply chain.

Companies may also consider developing confidential mechanisms (e.g. a whistle-blowing hotlines or an SMS service allowing workers to voice their concerns on an anonymous basis).
VI. Create family friendly working conditions

Adequate **maternity protection**, the implementation of policies promoting a **healthy work-life balance** and **flexible working hours** can support equal opportunities for women – both in accessing employment and within the workplace. In particular, this can help ensure that family responsibilities – such as maternity or caring for elderly family members – are not a barrier to career advancement. The [Women’s Empowerment Principle 5](http://human-rights.unglobalcompact.org/) can serve as guidance to companies in this respect.

In addition, companies might consider cascading similar provisions within their supply chains, for example through:

- The inclusion of family friendly requirements in Supplier Codes of Conduct and/or contracts
- The application of responsible procurement practices (incl. well-planned procurement schedules and the payment of reasonable prices to avoid inducing unpredictable/over-demanding working practices amongst suppliers)
- Risk-based social auditing of suppliers to ensure family friendly policies are in place and having effect
VI. Create family friendly working conditions (continued)

Gender sensitive practices of this nature may also help **women remain in the workplace before and after childbirth**. In such circumstances, companies may wish (where possible) to:

- Offer flexible working hours
- Offer the choice to work from home
- Provide on-site and/or company-subsidised day care
- Provide medical coverage, including antenatal clinics and scans
- Offer paternity leave to male employees
- Offer transition coaching before and after maternity leave
- Establish ‘buddy’ programmes to keep women well-informed of business while on maternity leave and facilitate workplace reintegration
- Provide rooms for breastfeeding and the changing of baby’s nappies
- Give targeted training to women who are returning to work
- Sensitise men regarding the family benefits to be gained through the application of a better work-life balance
VII. Participate in multilateral gender equality initiatives

When companies are establishing operations in regions characterised by culturally and socially embedded gender-based discrimination, it may be advisable for them to join existing multilateral initiatives to address these issues.

For example, the World Bank’s **Gender Equity Model** (GEM) (an international public-private partnership initiative) promotes gender equality around:

- Selection and hiring processes
- Training policies
- Professional development
- Family-work balance
- Prevention, handling, and follow-up of cases of sexual harassment

Likewise, the **Women’s Empowerment Principles** (see relevant slides above) provide, amongst other things:

- **Guidance and practical examples** as to how to apply the 7 Principles
- **Communication and training materials** (including thematic webinars)
- **Case studies** of good company practice
Scenario exercise: Responding to discriminatory laws that restrict female employment
Addressing national legislation that restricts female employment opportunities in a country where gender discrimination is legally, socially and culturally accepted

- **Location**: Middle East

- **Context**: You are the in-country manager of a progressive, multi-national engineering and construction company, which is expanding its operations in a non-democratic, fast-growing state (Country X) that offers great opportunities around state-sponsored construction projects. You are looking for a skilled and dynamic workforce and will be recruiting 250 employees. There is Group-wide gender policy in place, which stipulates that women should be guaranteed full and equal access to employment opportunities. However, in your new country of operation, gender discrimination is entrenched in law, society and culture – preventing full and equal access to employment for women. Despite this, the country enjoys a significant pool of skilled female graduates who would be perfectly suitable for the kinds of technical positions you are creating.

- **Legislation restricts employment opportunities for women**: Women in the country are legally prohibited from working within the construction sector, due to the prevailing local culture that perceives a range of social, cultural and sexual ‘risks’ of female involvement in an otherwise male-dominated industry. However, the law makes a limited exception for women who work in administrative roles in the sector. Although these restrictions contravene your human rights commitments, the commercial opportunities mean your company is under strong pressure to expand operations to the country. Yet, the decision to recruit women beyond administrative roles would entail breaking local laws and antagonising your host government. You face additional difficulties as socially and culturally entrenched discriminatory attitudes make the treatment of women in the workplace problematic – even though it is legal.
Initial issues to consider

Before any action is taken, you should consider some immediate questions with respect to what should guide you in this situation and who you should inform about it. Questions to consider include the following:

- What are my immediate priorities in this situation?
- What internal guidance should I apply in this situation?
- Who are the internal stakeholders that I should contact about this?
- Who are the external stakeholders that I should consider contacting about this?

Note: Suggestions on next slide
Initial steps to consider (continued)

Potential immediate priorities
- Establishing a fit for purpose workforce to support immediate operations
- Avoiding complicity in violating human rights
- Avoiding potential reputational damage

Potential internal guidance
- Company principles/values
- Policies/procedures (Gender Policy, Human Resources Policy, Ethics Policy)

Anyone other priorities?

Any other guidance?
Initial steps to consider (continued)

Potential internal stakeholders to contact
- Country/region human resources manager
- Group legal counsel
- Group government relations manager
- Group human resources manager

Potential external stakeholders to contact
- Country X government officials
- Country X employment lawyers
- Country X civil society organisations
- Country X UN Gender Equality office
- Other multi-national companies operating in the same market
- Potential female employees, including female technical graduates

Anyone else to contact internally?
Anyone else to contact externally?
In addition, when framing your decision-making you need to take into account the different stakeholders in the situation. Questions to consider include the following:

- Who are the key stakeholders in this situation?
- What are the priorities of each of these stakeholders in this situation?
- What risks do each of these stakeholders pose in this situation?

Note: Suggestions on next slide
### Potential stakeholders (continued)

<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Stakeholder priorities</th>
<th>Associated risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>The government</td>
<td>- Business compliance with national policy/laws</td>
<td>- Legal compliance may breach the company’s human rights commitments, esp. the right to non-discrimination</td>
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<td>- Attraction of foreign investment</td>
<td>- Non-compliance will result in legal sanctions</td>
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<td>- Non-compliance may also antagonise powerful govt. officials with significant influence over the allocation of major construction contracts</td>
</tr>
<tr>
<td>Potential female employees</td>
<td>- Achieving fundamental human rights, incl. the right to non-discrimination</td>
<td>- Legal compliance will undermine the human rights of pot. female employees</td>
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<td>- Legal compliance will significantly reduce the pool of skills the company can draw on as it seeks to build a high-quality local workforce</td>
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<td>- Legal compliance may expose the company to negative press coverage and reputational damage in its other countries of operation</td>
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<tr>
<td>Stakeholders</td>
<td>Stakeholder priorities</td>
<td>Associated risks</td>
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<tr>
<td>Group management</td>
<td>❑ Recruitment of top-talent</td>
<td>❑ Legal compliance likely to result in sub-optimal talent portfolio</td>
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<td></td>
<td>❑ Stable and profitable operations</td>
<td>❑ Non-compliance will harm prospects for viable operations in Country X</td>
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<td></td>
<td>❑ Protection of brand, policy and values</td>
<td>❑ Risk of reputational harm and loss of credibility around the company’s leadership and values</td>
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<td>❑ Share price</td>
<td></td>
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<tr>
<td>Investors</td>
<td>❑ Share price</td>
<td>❑ Divestment by socially responsible (and other) investors if company is associated with gender discrimination</td>
</tr>
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<td></td>
<td>❑ Avoidance of complicity with human rights violations</td>
<td>❑ Divestment by investors if the company fails to meet its compliance obligations</td>
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<td></td>
<td></td>
<td>❑ Divestment if company growth prospects are compromised by the antagonisation of the government</td>
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Anyone else?

What are their priorities and what risks do they represent?

Next, you need to consider the respective opportunities and risks with respect to each of the following courses of action:

- **Option 1**: Comply with the law – yet make it clear and public that this contravenes your gender policy and you are doing so against your will

- **Option 2**: Comply with the law by only employing local women in 'administrative' roles *within* Country X – but offer them employment in non-administrative roles in your other countries of operation

- **Option 3**: Take a ‘flexible’ approach to defining administrative roles for women within the workplace

- **Option 4**: ‘Off-set’ the impact of Country X’s legislative obligations with community-based projects designed to empower local women

- **Option 5**: Refuse to comply with the law, initiate full market exit and provide a statement on the reasons for the decision
<table>
<thead>
<tr>
<th>Option</th>
<th>Implications</th>
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</table>
| **1:** Comply with the law – but make it clear it is against your will | **Opp.:** The company can establish new operations without complication. The disclaimer may help mitigate any reputational damage.  
**Risk:** The company may still be perceived as complicit in human rights violations, and the disclaimer may undermine relations with the government. |
| **2:** Offer local women non-administrative roles in your other countries of operation | **Opp.:** Company can meet the letter, if not the spirit, of the law and remain technically compliant.  
**Risk:** May sour govt. relations, as would undermine public policy (which supports gender discrimination). |
| **3:** Take a ‘flexible’ approach to defining administrative roles for women within the workplace | **Opp.:** Would allow company to mitigate the human rights impacts of legal compliance and help it gain access to a larger talent pool.  
**Risk:** Breach of own values, Business Ethics Policy – and potential illegality and souring of government relations. |
## Analysis of potential reactions (continued)

<table>
<thead>
<tr>
<th>Option</th>
<th>Implications</th>
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</table>
| **4: ‘Off-set’ legal obligations with community-based gender projects** | **Opp.:** Would help ‘compensate’ for the impacts of legal compliance – and actively protect the company from reputational risk  
**Risk:** Likely to antagonise local stakeholders (including government) due to entrenched social and cultural gender discrimination – and does not address the fundamental human rights issue at stake |
| **5: Refuse to comply with the law and initiate full market exit** | **Opp.:** Offers the maximum degree of protection from allegations of complicity  
**Risk:** Commercially not viable and reduces the ability of the company to play a positive role in promoting gender equality in Country X |

**Any other options?**

**What are the risks/opportunities?**

What precautions could have been taken before this situation arose to ensure that you were not placed in this dilemma in the first place?
Potential retrospective good practice might include:

- Engage with Country X’s govt. prior to market entry, stating that your decision to invest in the country will be partly informed by whether you receive an explicit dispensation allowing you to employ women at all level/roles
  - **For:** Would allow for the maximum application of leverage – and could remove the dilemma entirely if successful
  - **Against:** Demand may be refused by officials who do not want to be seen to be undermining their own policy/law, meaning (a) govt. relations start on a bad footing; (b) the dilemma remains; and (c) company leverage is weaker thereafter

- Engage with Country X’s govt. prior to market entry to negotiate a broader interpretation of ‘administrative’ roles (either in terms of general legal interpretation or in terms of one-off bilateral agreement)
  - **For:** Could broaden the number of roles women can be recruited into – and would give the govt. space to compromise without being seen to undermine its own policy
  - **Against:** Still unlikely to open up *full* scope of roles to women – and likely to antagonise local stakeholders

Any other options? What are their respective strengths and weaknesses?
Continue the discussion at:
http://human-rights.unglobalcompact.org