



**CORPORATE ACCOUNTABILITY
FOR
WOMEN'S HUMAN RIGHTS**



International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations (registered as IWRAP).

This paper is to support women's human rights advocates and other stakeholders, including civil society allies, national human rights institutions and governments in building understanding on the relationship between women's human rights and corporate responsibility and accountability.

Some of the case studies and information featured in this paper are through the kind support of Megi Llubani and Mirela Arqimandriti (Gender Alliance for Development Center); Patrizia Scanella and Maria Munoz Maraver (Women's International League on Peace and Freedoms); Anirudha Nagar (Accountability Counsel) and Sophia Lin (International Corporate Accountability Roundtable).

This paper was written by Amy Lynne Locklear and was edited by Sanyu Awori.

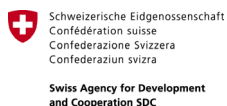
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International Women's Rights Action Watch Asia Pacific (IWRAP-AP)
10-2 Jalan Bangsar Utama 9
59000 Kuala Lumpur
Malaysia
Tel: +603-2282 2255
Fax: +603 2283 2552
Web: <http://www.iwraw-ap.org>
Email: iwraw-ap@iwraw-ap.org
Facebook: [facebook.com/IWRAP.AP](https://www.facebook.com/IWRAP.AP)
Twitter: @IWRAP_AP

Cover, Layout and Design by: Thilini Perera (thiliniperera.com)
Year of publication: 2017
Supported by:



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BACKGROUND

WHAT IS CORPORATE RESPONSIBILITY AND ACCOUNTABILITY?

Corporate responsibility for human rights refers to the “legal, social, or moral obligations imposed on companies”, while corporate accountability defines “the mechanisms for holding them [companies] to these obligations”.¹ According to these principles, all businesses² (whether small, medium or large, operating nationally, regionally or trans-nationally) have a responsibility to respect the human rights of the people directly or indirectly affected by their operations. To fulfil this responsibility, businesses should avoid violating human rights and when rights are violated, should provide remedies to the victims. The state is responsible for ensuring that businesses respect human rights and are held accountable for violations, but civil society has an important role in educating the public and private sectors, monitoring compliance with human rights principles and advocating on behalf of victims when violations occur.

WHY IS AN UNDERSTANDING OF CORPORATE RESPONSIBILITY AND ACCOUNTABILITY IMPORTANT IN THE CONTEXT OF WOMEN’S HUMAN RIGHTS?

Business operations have profound negative impacts on women’s human rights. Traditionally, capitalism and its attendant business culture and practices, privilege investor interests above the interests of the public and community and emphasise winners and losers, short-term exploitation of resources and short-term maximization of profit. The business sector reflects and reinforces patriarchal norms,³ and the resulting inequalities between men and women are often more pronounced than in the public sector. Women suffer discrimination at the top echelons of power, holding few leadership roles in Fortune 500 companies and mid-sized companies and occupying few seats on the boards and other decision-making bodies of companies.⁴ Women as employees routinely experience sexual harassment and violence, earn less money than male counterparts and face discrimination in benefits and promotions and based on their reproductive capacity.

Poor and minority women, especially those living in the Global South, experience the brunt of human rights violations: as workers at the bottom of global value chains and as community members seeking to safeguard their communities and livelihoods from economic development that threatens displacement, environmental pollution and impoverishment. Women comprise the majority of employees in the lower end of the global value chain in factories (e.g. textile and footwear industry). The decision to prefer women for these positions is often motivated by stereotypes. For example, employers seek female employees based on the belief that they are more

WOMEN AS EMPLOYEES ROUTINELY EXPERIENCE SEXUAL HARASSMENT AND VIOLENCE, EARN LESS MONEY THAN MALE COUNTERPARTS AND FACE DISCRIMINATION IN BENEFITS AND PROMOTIONS AND BASED ON THEIR REPRODUCTIVE CAPACITY.

docile and therefore, less likely to agitate for better pay, benefits and working conditions. Some employers perceive females who are poor and/or undocumented migrant workers as more willing to perform undesirable jobs or less likely to complain about discrimination in pay and benefits. Employers often assume that women are the secondary breadwinners in their families and therefore, do not require minimum wage or benefits. As a consequence of this discriminatory treatment, women working in sectors dominated by female employees generally earn less, receive fewer benefits and opportunities for promotion, and are more likely to work in poor and unsafe conditions.

Rather than viewing themselves as legally, ethically or morally bound to respect human rights, business leaders have traditionally treated the liabilities that arise from human rights abuses as a cost of doing business that can be monetised and managed like any other expense. While this culture of corporate impunity may be changing, businesses continue to be responsible for some of the most egregious abuses of women's human rights. Furthermore, although states are obligated under international human rights treaties to ensure that businesses operating within and in certain circumstances outside their borders respect women's human rights and are held to account when abuses occur, they have largely failed to meet this responsibility. As described in more detail below, increasing corporate influence over governments and the United Nations ("UN") is an important cause of this neglect.

In response to the failure of businesses to respect human rights and account when abuses occur, governments and civil society have formulated various responses. However women's voices and agendas have been marginalised in these discussions about corporate responsibility and accountability and most responses have not specifically addressed women's human rights. Women have traditionally figured less prominently in these debates, but as a group, continue to experience serious abuses of their rights at the hands of businesses. As a result, there is an urgent need for advocates to seek greater engagement on the issue of corporate responsibility and accountability and women's human rights.

EMPLOYERS OFTEN ASSUME THAT WOMEN ARE THE SECONDARY BREADWINNERS IN THEIR FAMILIES AND THEREFORE, DO NOT REQUIRE MINIMUM WAGE OR BENEFITS. AS A CONSEQUENCE OF THIS DISCRIMINATORY TREATMENT, WOMEN WORKING IN SECTORS DOMINATED BY FEMALE EMPLOYEES GENERALLY EARN LESS, RECEIVE FEWER BENEFITS AND OPPORTUNITIES FOR PROMOTION, AND ARE MORE LIKELY TO WORK IN POOR AND UNSAFE CONDITIONS.



PURPOSE AND SCOPE

This resource is designed for use by women’s human rights advocates and other stakeholders, including civil society allies, national human rights institutions and governments; its goal is to build understanding on the relationship between women’s human rights and corporate responsibility and accountability.

The historical background of the UN’s work on corporate responsibility and accountability and current developments affecting the issue provide backdrop for the case studies. The case studies illustrate the different strategies advocates have used in demanding that businesses respect women’s human rights. The case studies also identify some of issues that arise when businesses abuse women’s human rights and victims seek redress. The failure of businesses to respect women’s human rights is a global problem and therefore, case studies from Southeast Asia, South Asia and Eastern Europe are included.

This resource continues IWRAW Asia Pacific’s work on business and women’s human rights, which includes the primer and related materials on business and women’s human rights⁵ and the December 2016, IWRAW Asia Pacific meeting in Kuala Lumpur, Malaysia on the topic. Building on these efforts, this resource aims to bring greater clarity and understanding to the issue.



**REGIONAL AND GLOBAL
DEVELOPMENTS AFFECTING
CORPORATE RESPONSIBILITY
AND ACCOUNTABILITY FOR
WOMEN'S HUMAN RIGHTS**

A. INTRODUCTION

The struggle for women's human rights has always been subject to countervailing national, regional and global forces. Before turning to how women's rights advocates and their allies have responded to corporate human rights abuses, it is important to situate these efforts within the broader context in which they are occurring. Corporate capture, the rise of populism and the tendency for civil society to operate in "silos" are three contemporary challenges to advocating for corporate responsibility and accountability. The tax justice movement is an example of how civil society has countered these challenges.

B. CORPORATE CAPTURE

Although corporations have always been powerful actors in the economy, government and society, in the 1980s, their dominance increased when governments began to adopt economic policies that called for the liberalisation of trade and finance, the elimination of regulations protecting labour and the privatisation of natural resources and basic government services.⁶ Today, much of the wealth of the world is concentrated in the hands of a few transnational corporations based in the Global North: in 2011, 40% of the 43,060 transnational corporations worldwide were owned by a core group of 147; most of these are commercial and investment banks and pension funds in the Global North.⁷ In 2011, the combined earnings of the three largest corporations in the world exceeded the gross domestic product of 110 countries, or 55% of the world's countries.⁸

Transnational corporations exercise their economic dominance in a variety of ways. They wield their power formally by taking outsized roles in national and international processes for formulating laws, policies, programs and agreements, especially in the areas of finance, trade, labour, taxation and natural resources.⁹ In addition, the line between public and private governance is gradually blurring as former executives of transnational corporations are appointed to senior government positions and senior officials in national governments, international financial institutions and similar organisations leave the public sector to take up leadership roles in transnational corporations.¹⁰

Corporations exercise "shadow or invisible power" by funding the election campaigns of national politicians. Once elected, corporations devote large budgets to lobbying these politicians on issues that promote corporate agendas.¹¹ Politicians are beholden to their corporate benefactors and execute their will for

fear of losing critical support for future re-election campaigns. In addition, globalisation has made it easier for transnational corporations to move their capital between countries. Governments in the Global South, under constant fear that transnational corporations will divest, taking jobs and opportunities with them, often yield to their demands, even when they undermine labour and other human rights.¹²

Transnational corporations also hide behind the veneer of corporate social responsibility and corporate "best practices", which, at best, amount to marketing campaigns that improve or maintain the corporation's reputation among consumers, facilitate new markets and increase competition, and at worst, cover up outright human rights abuses by businesses.¹³ Perhaps the most insidious use of power by transnational corporations is through their manipulation of the media.¹⁴ Ownership and control of the global media is concentrated in an ever-dwindling number of transnational corporations.¹⁵ These corporations use media to promote consumerism, influence the elections of their favoured candidates, promote the fantasy that the market is the best tool for promoting prosperity and economic growth and generally shape and reinforce prevailing social and cultural norms.¹⁶

There is also growing evidence that corporations are using their influence to shape the agenda at the UN¹⁷ and within international NGOs and civil society.¹⁸ One obvious example is the UN's call for public private partnerships to implement the Agenda for Sustainable Development 2030.¹⁹

C. IMPACT OF POWER, EXTRACTIVE AND AGRIBUSINESSES ON THE NATURAL ENVIRONMENT AND HUMAN POPULATIONS

Corporate responsibility and accountability viewed from the perspective of environmental protection has always been contested and characterised by weak regulatory systems globally and at the level of national policies. Damage to the environment brought about by these major industries globally is characterised by ... “negative effects of environmental degradation ecosystems decline, water shortage, fisheries depletion, natural disasters due to deforestation and unsafe management and disposal of toxic and dangerous wastes and products”²⁰, all of which has critical effects on the human population, their rights and on social and geopolitical inequalities. These industries are characterised by unequal bargaining power between host countries and investors, state ideologies on issues of risk and liability, rent seeking and natural resources as ‘commons’, and the inherent instability of commodity markets – making it easy for corporate actors to take advantage and for states to justify obstacles and inaction through weak laws, lack of transparency and lack of action for violations.

The legal dimensions of the interrelationship between human rights and environmental protection clarified by the United Nations Environment Program (UNEP) include the norm that the environment is a prerequisite for the enjoyment of human rights, thus implying the human rights obligations of States should include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights. Another aspect to this norm is the right to a safe, healthy and ecologically-balanced environment as a human right in itself. But these approaches continue to be debated and legal protections at both international and domestic levels are weak.

D. CONTINUING RISE OF NATIONALIST MOVEMENTS IN RESPONSE TO GLOBALISM

Although most of the attention around issues of corporate responsibility and accountability focus on transnational corporations in the Global North operating across state boundaries in the Global South, domestic, small and medium-sized business enterprises (“SME”) operating exclusively within a country’s borders constitute the numerical majority of business operations.²¹ During the past decade, citizens in, Europe, the United States and South Asia have elected politicians campaigning on platforms of nationalism and populism, which favour protectionist policies designed to shore up economies purportedly damaged by increasing globalism. Anti-migrant policies and a call to return to “traditional values”, which translates to greater patriarchy and increased discrimination against ethnic and religious minorities, are generally part and parcel of these political movements.

For example, in the United States, conservative politicians in national and local governments made significant gains in the 2016 elections. These politicians are seeking policy and legislative changes limiting or reversing women’s traditional access to abortion and birth control. Other proposals call for reductions in federal monitoring of civil rights laws, a change that disproportionately impacts ethnic minorities and migrants. Rollbacks in worker and environmental protections and reductions in social welfare programs have already occurred.

As states turn inward, adopt more conservative policies and distance themselves from the international community, their human rights records will be shielded from public scrutiny. A focus on national interests at the expense of global concerns may cause leaders to care less about their international reputations, which includes their records of compliance with international human rights standards. Historically, the public naming and shaming that is part of human rights advocacy is one of the most effective means for drawing state accountability. If states are no longer concerned about their reputations, this could set the tone for how domestic businesses approach their responsibility for respecting human rights.

E. “SILOING” OF CIVIL SOCIETY MOVEMENTS FOCUSED ON CORPORATE RESPONSIBILITY AND ACCOUNTABILITY

There has always been a tendency for mainstream civil society to treat women’s rights as an issue separate and apart from other, more “important” crusades, such as achieving decolonisation, racial equality, worker’s rights or self-determination for indigenous communities. In this way, women’s rights have been perceived as distinct from the issues prioritised by these other movements. This same pattern has emerged in the context of discussions on corporate responsibility and accountability.

IWRAW Asia Pacific and other women’s rights activists and organisations have been attempting to bridge this gap by working more closely with mainstream organisations around advocacy on economic, social and cultural rights, tax justice and business and human rights. At the same time, more movements are beginning to prioritise women’s rights based on a greater understanding of gender and intersectional discrimination and the realisation that numerically, women are more likely to experience deprivations of economic and social rights and are more gravely impacted by abuses that result from business activities. These intersectional and cross-sectoral collaborations yield mutual benefits: women’s rights advocates, who have not traditionally focused on issues such as taxation, trade policy, corporate transparency, corporate capture, corruption and macro-economic policy, are increasing their knowledge on these issues, while the more mainstream human rights advocates are learning about how women and men are differently impacted by corporate human rights abuses. This exchange enhances the advocacy of both groups and amplifies the voices of women throughout the debates on human rights and corporate responsibility and accountability.

F. GLOBAL RESPONSE TO A GLOBAL PHENOMENON: THE TAX JUSTICE MOVEMENT

In recognition that collaboration around common issues strengthens advocacy, civil society has come together in addressing how government spending and tax policy can be used to promote or undermine women’s human rights. Governments require revenues to fulfil their obligations under international human rights treaties. Such funding is particularly important with respect to women’s human rights. One important source of government revenue is taxes collected from corporations and individuals. Several factors, including tax evasion and abuse, have undermined efforts by governments to collect the taxes owed by corporations and individuals operating or living within their jurisdictions. In response, a diverse group of civil society organisations and trade unions around the world have joined together to increase understanding about the negative impacts of tax evasion and corruption on human rights and social justice.²²

Within this movement, non-governmental organisations (“NGOs”) are specifically highlighting how tax evasion and abuse compromises the ability

of governments to fulfil their human rights obligations to women. For example, prior to Switzerland’s review by the CEDAW Committee in 2016, international NGOs and an academic institution submitted a comprehensive report explaining how Switzerland was violating its obligations under CEDAW to ensure that Swiss laws did not directly or indirectly result in the denial of women’s human rights, both within and outside its borders.²³

The report explains that Swiss laws require banks to strictly maintain the privacy of account holder information. These laws enable corporations and individuals with Swiss bank accounts to hide the fact and extent of their assets from the public and other taxing jurisdictions.²⁴ Swiss law also imposes few requirements on corporations to report their income and provides tax incentives for corporations headquartered in Switzerland. Corporations use these laws to avoid paying taxes in other countries.²⁵ These Swiss laws make it difficult (and sometimes impossible) for countries with taxing authority to locate the accounts so that lawful taxes can be imposed and

collected.²⁶ Consequently, many countries, especially those in the Global South,²⁷ lose out on significant tax revenues. Some estimates place the figure at hundreds of billions of dollars of lost tax revenues each year.²⁸ These lost revenues are critical resources that countries could otherwise use to ensure they meet their obligations under international human rights treaties.²⁹ The report pointed to the CEDAW Committee's numerous concluding observations noting the essential role that public resources play in enabling state parties to ensure they met their obligations under CEDAW.³⁰

This advocacy evidently impacted the CEDAW Committee's analysis of Switzerland's obligations. In its concluding observations, the CEDAW Committee expressed concern about the potential negative impact of Swiss financial secrecy, corporate reporting and tax laws on the ability of other state parties, especially those with limited means, to mobilize resources necessary to fulfil women's human rights³¹. The CEDAW Committee recommended that Switzerland conduct "independent, participatory and periodic impact assessments" of these policies to determine their affect on women's rights and substantive equality in jurisdictions outside of Switzerland.³²

The tax justice movement is an excellent example of how women's rights activists can collaborate with mainstream human rights movements to highlight the negative impacts of corporate operations on women's human rights and to urge states to address these impacts by exercising extra-territorial jurisdiction over corporations. (The topic of extra-territoriality is discussed in greater detail below at Part IV.F, regarding recent advocacy at the UN related to Canadian mining companies operating in Guatemala.)



**HISTORY OF UN'S WORK
ON BUSINESS AND
HUMAN RIGHTS**

A. INTRODUCTION

The UN has been at the forefront of efforts to hold corporations responsible for human rights abuses. Given its long history of work in this area, the guidance UN human rights bodies have developed is an important cornerstone for any advocacy on corporate responsibility and accountability. This Part IV provides an overview of the UN's role in shaping the concepts that frame the corporate responsibility to respect women's human rights and describes how advocates have used these concepts to pressure the Canadian government to take action against Canadian mining companies, who abuse the rights of indigenous women in Guatemala.

B. OVERVIEW OF UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

In 2008, Professor John Ruggie, the Special Representative of the UN Secretary General for Business and Human Rights, presented the "Protect, Respect and Remedy" Framework to the UN Human Rights Council ("Human Rights Council").

The Protect, Respect and Remedy Framework identifies three important principles:

- The state duty to protect against human rights abuses by third parties, including business;
- The corporate responsibility to respect human rights; and
- The need for more effective access to remedies.³³

In June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights ("Guiding Principles")³⁴, which build on these three principles and provide guidance to states, businesses and civil society on promoting and implementing the Protect, Respect and Remedy Framework.

When the Human Rights Council endorsed the Guiding Principles, it also created a new entity called the UN Working Group on human rights and transnational corporations and business enterprises ("Working Group on Business and Human Rights" or "Working Group"). The Working Group is made up of five individuals with the mandate to promote the dissemination and implementation of the Guiding Principles and to take related actions, including country visits. The Working Group has the specific responsibility to integrate a gender perspective throughout its work. The Working Group also guides the work of the UN Forum on Business and Human Rights ("Forum on Business and Human Rights" or "Forum"). The Forum is an annual gathering in Geneva, during which stakeholder groups discuss progress on implementation of the Guiding Principles.

C. DEVELOPMENTS SINCE ADOPTION OF GUIDING PRINCIPLES

Following the Human Rights Council's endorsement, UN agencies and civil society began the work of encouraging UN Member States and businesses to implement the Guiding Principles. These efforts have taken many forms, including written guidance on implementation and activities and discussions during sessions of the Working Group and the annual Forum. The UN human rights treaty bodies responsible for implementing CEDAW, the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") have also issued guidance and concluding observations further articulating the obligations of states in the context of business activities. In addition, through the Human Rights Council, some Member States and civil society have separately pushed for the development of an UN binding treaty on corporate responsibility and accountability. These developments are discussed in more detail below.

UN GUIDANCE

In 2012, the UN Human Rights Office of the High Commissioner (“OHCHR”) released a detailed reference titled *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*.³⁵ This document, which was prepared in collaboration with Professor Ruggie, further elaborates the special responsibilities of businesses to respect human rights and to provide access to remedies when abuses occur.

The following year, the UN released two user-friendly explanations of the Framework and Guiding Principles: the Working Group’s four-page document titled *An introduction to the Guiding Principles on Business and Human Rights*,³⁶ which provides a brief overview of the Framework and Guiding Principles and describes the work of the Working Group, and OHCHR’s *Frequently Asked Questions About the Guiding Principles on Business and Human Rights*,³⁷ which explains, in question and answer form, the relationship between the Guiding Principles and “the broader human rights system and other frameworks.”³⁸

ADOPTION OF NATIONAL ACTION PLANS

In 2013, the Working Group recommended that UN Member States develop national action plans (“NAPs”) to promote implementation of the Guiding Principles.³⁹ As of this writing, fourteen Member States have adopted NAPs and twenty-two others have initiated the process of development.⁴⁰ Several civil society organizations and OHCHR have crafted guidance on developing NAPs. At present, the sole publicly available reference specifically addressing how and why women’s human rights should be integrated into NAPs is a briefing paper authored by two civil society groups in the United Kingdom.⁴¹

Given the profound impact of business activities on women’s human rights, NAPs should include robust protections and meaningful access to remedies for abuses. However, most NAPs adopted to date hardly mention gender or simply highlight women as one among other marginalised groups that require special attention.⁴² This treatment of women’s human rights fails to address the fact that women constitute 50% of the population and often face discrimination based on their gender and other circumstances, such as ethnicity, sexual orientation, religion, class or caste.⁴³ When they are mentioned at all, NAPs address women in the context of the need for their

economic empowerment or protection of their right to work, without detailing what governments require businesses to do in addressing the risks women face as workers.⁴⁴ One notable exception is Lithuania’s NAP, which calls for reductions in the gender pay gap and research, training and human rights education promoting non-discrimination and equality.⁴⁵

Despite limited progress thus far, women’s human rights advocates have been involved in efforts to ensure that NAPs pay close attention to the impacts of business activities on women’s human rights. For example, SUHAKAM, the national human rights institution in Malaysia, is pushing for a NAP that includes a section specifically focused on women.⁴⁶ Women involved in the national NAP processes have recommended that advocates participate in the development of NAPs at the initial stages, rather than waiting until a first draft is circulated for comment and review.⁴⁷ Early engagement maximises opportunities for shaping both the content and the process of development. In addition, advocates should lobby for a process that is gender sensitive and ensures that the women most likely to be impacted by human rights abuses are guaranteed a meaningful opportunity to participate.⁴⁸

WORKING GROUP ON BUSINESS AND HUMAN RIGHTS⁴⁹

As noted earlier, the Human Rights Council directed the Working Group “[t]o integrate a gender perspective throughout the work of the mandate”.⁵⁰ In addition, the mandate requires that the Working Group “develop a regular dialogue and discuss possible areas of cooperation with Governments and all relevant actors”, including “civil society organizations.”⁵¹ The Human Rights Council encourages civil society and non-governmental organisations to cooperate with the Working Group in the fulfilment of its mandate.⁵² These directives theoretically require the Working Group to address women’s human rights issues in all aspects of its operation and, as such, provide an important entry point for civil society in these processes. The Working Group’s three primary activities include country visits, communications and the annual Forum.

a. Country visits

Following a request by the Working Group and upon invitation of a Member State, the Working Group conducts country visits.⁵³ To date, the Working Group has conducted visits to Mongolia, Ghana, the United States of America, the Republic of Azerbaijan and Canada. At the conclusion of these visits, the Working Group issues reports identifying the negative human rights impacts of business activities in the state, evaluating the state's progress in implementing the Guiding Principles and making recommendations for improving compliance, preventing future violations and ensuring remedies when violations occur.⁵⁴

Some of these reports devote significant attention to issues facing women. For example, the report on the Ghana country visit identifies the more severe impacts of land loss on women, who often receive less compensation for land and face greater challenges in rebuilding their livelihoods after the loss of agricultural lands. The report also recommended that Ghana and the relevant business enterprises consider how land and resettlement projects differently impact the human rights of women and men and ensure that business enterprises consult with community members "including women" about these projects.⁵⁵ The Working Group's process for the visit included meetings with civil society organisations, which provided opportunities for advocates to submit information regarding the impact of business activities on human rights.⁵⁶

b. Communications procedure

Advocates can submit communications to the Working Group, in the form of urgent appeals or allegation letters. An urgent appeal details time-sensitive information describing alleged human rights violations involving the loss of life, life-threatening situations or "imminent or ongoing damage of a very grave nature to victims" that cannot be adequately addressed by submitting an allegation letter. An allegation letter documents information about human rights violations that have already occurred or are not covered by the urgent appeal process.

After the Working Group receives an urgent appeal or allegation letter, it writes to the relevant state and business, describing the facts alleged and the relevant international norms and standards that apply, including the Guiding Principles. The state and business are then expected to investigate the allegations and take steps to redress any human rights abuses.⁵⁸ Since 2011, the Working Group has received 86 urgent appeals and allegation letters from advocates and victims in all regions of the world. To date, the Working Group has received replies from 46 States.

Although they do not specifically identify violations against women, some of the communications document human rights violations that typically impact women more severely than men. For example, in corresponding with the states, the Working Group described allegations of human rights abuses of migrant workers in Cambodia and Myanmar by businesses operating poultry and fruit processing factories in Thailand.⁵⁹ Another letter from the Working Group to governments, the Mekong River Commission and a Malaysian company reported violations associated with a dam constructed by the company on the Lower Mekong River, which negatively impacted indigenous communities living along the River in Laos, Cambodia, Thailand and Vietnam.⁶⁰

c. Annual Forum

The Forum provides an opportunity for stakeholders to share information about successes and challenges in implementing the Guiding Principles, identify good practices and discuss and coordinate on issues related to business and human rights.⁶¹ Each year, approximately 2,000 people from government, business, community groups, civil society, law firms, investor organisations, UN bodies, national human right institutions, trade unions, academia and the media gather in Geneva, Switzerland for the three-day meeting. After selecting themes, the Forum Secretariat and Working Group encourage stakeholders to submit (prior to the Forum meeting) information about on-going or planned research related to the themes. These submissions, background materials related to specific sessions, summaries of sessions statements

made during the Forum and the Forum Secretariat summary of discussions, are all available on the OHCHR website.⁶²

The Forum is organized around 60+ plenary and parallel sessions related to the themes. Stakeholders can submit proposals for the parallel sessions, and the Forum Secretariat and Working Group base their selections, in part, on the goal of ensuring a balance of stakeholders, regions and gender.⁶³ In addition, proposals must demonstrate how the session would “integrate a gender perspective”. It is not clear how the Forum Secretariat and the Working Group have implemented this requirement. In previous years, panel discussions related to women’s human rights included topics such as “Embedding gender in the business and human rights agenda,”⁶⁴ “Promoting human rights in agricultural supply chains: From palm oil workers in South East Asia to women in Kenya’s horticulture industry”, “Identifying the specific challenges that women human rights defenders face and understanding their valuable role”⁶⁵ and “Obstacles and challenges encountered by indigenous women in their efforts to access effective remedy and recognition as rights-holders by the extractive industry”⁶⁶.

The Forum provides an opportunity for stakeholders to directly interact and exchange information and ideas on business and human rights. Experience to date suggests that women’s human rights tend to be segregated into separate sessions solely devoted to “women’s issues”. The better approach would require analysis of the gendered aspects of the issue in every session. One method for better integrating women’s human rights throughout the Forum would establish the Forum organisers as a link between those proposing sessions (“session proponent”) and women’s rights advocates. A session proponent could be partnered with a women’s human rights organisation or expert, which would assist the proponent in examining the particular impacts on women’s human rights for each proposal and session. Separate sessions focused solely on women’s rights may still be necessary, but connecting each session proponent with a women’s human rights organisation or expert would improve the analysis in every proposal and session and guard against the tendency to segregate women’s issues from the general Forum discussions.

D. GUIDANCE ON BUSINESS AND HUMAN RIGHTS DEVELOPED BY UN HUMAN RIGHTS TREATY BODIES

General Comments

Two UN human rights treaty bodies, the Committee on the Rights of the Child and Committee on Economic, Social and Cultural Rights (“ESCR Committee”), have issued general comments describing the responsibilities of state parties with respect to business activities that threaten or violate human rights.

a. ESCR Committee General Comment No. 24.

On 23 June 2017, the ESCR Committee released General Comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (“General Comment No. 24”).⁶⁷ This interpretation sets out a state party’s specific obligations to adopt measures, take actions and exercise control over business enterprises so that their activities do not violate the economic, social and cultural rights guaranteed under ICESCR.⁶⁸ In addition, General Comment No. 24 provides importance guidance to businesses with respect to their human rights responsibilities⁶⁹ and is designed to help workers and employers engaged in collective bargaining.⁷⁰ General Comment No. 24 also includes robust guidance on a state’s extra-territorial obligations to regulate business activities occurring outside national borders and sets out a state party’s responsibilities for ensuring remedies are available when these activities result in violations.⁷¹ General Comment No. 24 concludes by noting a state party’s responsibilities to ensure that NAPs and similar strategies include specific guidance on the role of business in assisting in implementation of economic, social and cultural rights.⁷² The ESCR Committee clarifies that the term “business activities” as used in General Comment No. 24 is broad and covers transnational and

domestic operations and private and publicly owned entities, without respect to “size, sector, location, ownership or structure”.⁷³

General Comment No. 24 addresses factors and circumstances directly relevant to women’s rights and includes recommendations to a state party for addressing the specific risks women and girls face as a result of business activities. General Comment No. 24 acknowledges that women (along with children and indigenous peoples) often experience a disproportionate number of negative impacts from business activities⁷⁴ and that women and girls face greater risks of violations based on intersectional discrimination.⁷⁵ To address these greater risks, the ESCR Committee recommends that “States Parties address the specific impacts of business activities on women and girls, including indigenous women and girls, and incorporate a gender perspective into all measures to regulate business activities that may adversely affect” their rights and to take measures designed to improve female representation in labour markets, including in corporate leadership positions.⁷⁶

Many of the recommendations in General Comment No. 24 were previously made in the ESCR Committee’s concluding observations to states parties, including prioritising human rights concerns over economic interests,⁷⁷ adoption and enforcement of laws and policies imposing due diligence requirements on businesses⁷⁸ and steps to address the impunity of businesses for human rights abuses.⁷⁹ In addition, General Comment No. 24 identifies several issues raised by the case studies in this paper, including the extra-territorial obligations of states parties to regulate the extractive sector industry⁸⁰, investment related evictions⁸¹, the adverse impacts of bank secrecy laws and lax corporate tax rules on the ability of states parties to raise tax revenues required to fulfil economic, social and cultural rights⁸², the need to ensure that businesses are held criminally liable for the consequences of their activities that result in human rights abuses⁸³ and the state party obligation to ensure that corporations exercise control over their subsidiaries to ensure they respect the obligations in ICESCR⁸⁴.

b. Committee on the Rights of the Child General Comment No. 16

The Committee on the Rights of the Child General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights (“General Comment No. 16”)⁸⁵ covers much of the same ground as General Comment No. 24, but with a focus on the facts and circumstances of business activities that expose children to violations of their rights, as guaranteed in the Convention on the Rights of the Child (“CRC”). Although General Comment No. 16 identifies the generic provision in the CRC proscribing discrimination on the basis of a child’s sex⁸⁶, the guidance only cites a few instances of the factors that make female children more vulnerable to violations. For example, General Comment No. 16 notes that in conflict zones, children can be subject to gender-based violence, a fact that must be accounted for when states provide guidance to businesses operating or with plans to operate in conflict zones.⁸⁷ General Comment No. 16 also notes that a business policy requiring parents to work long hours could negatively impact the right of children to education and play, especially female children, who are more likely to assume domestic and childcare obligations during their parents’ absence.⁸⁸

Concluding Observations

Several UN human rights bodies, including the ESCR Committee, the Committee on the Elimination of Discrimination against Women (“CEDAW Committee”), and the Human Rights Committee, have issued concluding observations addressing Switzerland,⁸⁹ Canada,⁹⁰ Germany,⁹¹ Sweden,⁹² China⁹³ and India’s⁹⁴ responsibilities with respect to business and human rights. These concluding observations provide important precedent for advocates preparing shadow reports on this topic.

Using General Comments and Concluding Observations in advocacy

The independent members of the UN human rights treaty bodies are widely respected experts, and thus their interpretation of state obligations under the treaties are highly persuasive. In addition, their guidance—as seen in General Comments/Recommendations and Concluding Observations—contains concrete analysis

and specific examples and direction.⁹⁵ For these reasons, the guidance provides important advocacy tools for promoting implementation of women's human rights on issues related to corporate responsibility and accountability. Women's human rights activists should use this guidance in national, regional and international advocacy, including efforts to develop shadow reports to UN human rights bodies, influence regional debates on human rights, impact trade and other bilateral or multi-lateral agreements affecting women's economic rights⁹⁶ and promote implementation of human rights obligations on the national level.

E. EFFORTS AT THE UN TO DEVELOP A BINDING TREATY ON CORPORATE RESPONSIBILITY AND ACCOUNTABILITY

Although the UN has been working on corporate responsibility and accountability, there are currently no UN mechanisms for holding businesses directly accountable for the violation of women's human rights. Instead, the state party to UN human rights treaties must take action to ensure remedies for corporate human rights abuses. When the state party fails to act, the victims of abuse have little recourse.

To fill this enforcement gap, in June, 2014, the Human Rights Council adopted a resolution establishing an Intergovernmental Working Group responsible for elaborating "an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."⁹⁷ To date, the open-ended intergovernmental working group on transnational and other business enterprises with respect to human rights ("IGWG") has held two sessions⁹⁸. Non-governmental organisations ("NGOs")⁹⁹ have been very involved, making written contributions prior to and attending and presenting information during the sessions.¹⁰⁰

In March 2017, the Chair of the IGWG presented to the Human Rights Council the report on the results of its second session.¹⁰¹ This report noted that NGOs raised the need to mainstream gender perspectives in any future treaty because "human rights violations by transnational corporations might exacerbate pre-existing inequalities and exert negative gender impacts."¹⁰² In addition, women's rights advocates urged the inclusion of gender perspectives in human rights impact assessments for activities planned by transnational corporations, including the issues faced by women's human rights defenders.¹⁰³ The IGWG report included several other recommendations addressing women's human rights in the context of business enterprises.¹⁰⁴

The IGWG will hold its third session from 23-27 October 2017. Prior to that session, the IGWG Chair plans to hold informal consultations with, among others, civil society and other relevant stakeholders¹⁰⁵ and present draft elements to the treaty, which will be subject to further consideration and discussion during the third session.¹⁰⁶

F. ADVOCACY AT THE UN

Advocacy at the UN on business and human rights takes many forms. For example, advocates have documented human rights violations committed by businesses in shadow reports submitted to UN human rights treaty bodies. Others have participated in the Annual Forum on Business and Human Rights and, as noted above, in the IGWG sessions devoted to the development of a new treaty addressing the human rights obligations of businesses.

Women's rights advocates have seized the positive developments at the UN in their efforts to increase state regulation of business actors and to focus international attention on the business practices that result in the abuse of women's human rights. Recent advocacy at the UN urging Canada to improve its regulation of Canadian mining companies operating in Guatemala is a good example of how UN mechanisms can be used to draw accountability from a state party that fails to prevent women's human rights abuses by a transnational corporation.¹⁰⁷

1. CEDAW COMMITTEE'S REVIEW OF CANADA

In 2016, the Women's International League for Peace and Freedom ("WILPF") and Plataforma Internacional Contra la Impunidad (the International Platform against Impunity)("PICI") jointly submitted a shadow report to the CEDAW Committee, which documented human rights abuses resulting from the operations of Canadian mining companies in Latin America. The shadow report included information that PICI gathered from local grass-roots human rights activists and organisations about Guatemalan indigenous women affected by the Canadian mining companies. WILPF also supported PICI's efforts to arrange for the in-person participation of two Guatemalan indigenous women at the CEDAW Committee's review of Canada. WILPF's work illustrates one potential model for how advocates can collaborate on cross-border women's human rights issues.

Background on WILPF and its use of the principle of extra-territorial obligation to advocate for accountability from transnational corporations

WILPF is devoted to identifying and preventing the root causes of war. In this regard, WILPF asks, "Why do wars happen?" One source of conflict is the inequality between people and the inequality between states.

WILPF holds the view that in this global, neoliberal phase of capitalism, the power of corporations and financiers has far outstripped the ability of elected governments to moderate or control them. In many cases, transnational corporations take advantage of weak environmental and human rights laws in the countries where they operate to carry out their activities in a manner inconsistent with environmental and human rights standards in their home countries.

¹⁰⁸

Identifying the capitalist system as one of the root causes of war, WILPF is using the principle of state extraterritorial obligation (also known as extra-territoriality) as a tool for challenging the imbalance of power between corporations and states and promoting social and economic justice. The principle of extra-territorial obligation places responsibility on the state to regulate the activities of companies operating abroad by requiring their compliance with the human rights standards applicable in the country where they are headquartered, incorporated, registered or otherwise use as their home base.

WILPF has used principle of extra-territoriality in preparing shadow reports to the CEDAW Committee during its review of Germany, Italy, Spain, Sweden and France. Applied in these contexts, WILPF emphasised state obligations, including under CEDAW, to robustly regulate arms transfers in order to prevent the weapons from ultimately being used to facilitate or exacerbate gender-based violence or violence against women in other countries. WILPF also used the principle of extra-territoriality in urging Sweden to ensure that its national garment retailers operating at the top end of the global value chain ensure safe and decent working conditions throughout their supply chains. This requires, in particular, that the company managing factories at the lower end of the value chain comply with human rights standards applicable in the retailer's home country.

There are limits to utilising the principle of extra-territoriality. Corporations operating abroad sometimes hail from countries with poor human rights records and weak regulation of corporate activities. In those instances, it is not useful to refer to the home country's standards as the measure for operations abroad. This is one reason why many human rights organisations, including WILPF, support the efforts at the UN for a new treaty to establish uniform human

rights standards governing the activities of business enterprises.

WILPF and PICI's shadow report to the CEDAW Committee

WILPF and PICI highlighted the importance of extra-territoriality during the CEDAW Committee's review of Canada in 2016. As noted earlier, prior to that review, the two organizations jointly prepared and submitted a shadow report for the CEDAW Committee, in which they detailed the activities of Canadian mining companies that led to women's human rights abuses in Guatemala, including: (1) water pollution, which caused illness and forced women to travel further and further away from their homes to find uncontaminated water; (2) preference for men over women for higher paying jobs in the mines; (3) physical and sexual assaults of women by security guards employed by Canadian mining companies; and (4) barriers to accessing justice for these violations.¹⁰⁹

WILPF efforts to build cross-border alliances between women during CEDAW Committee session

During the CEDAW Committee's review of Canada, WILPF supported PICI in facilitating the attendance of two Guatemalan indigenous women from communities affected by the Canadian mining industry. A large delegation of Canadian NGOs participated in the CEDAW Committee session and highlighted a wide range of issues from their national context. As a result, the speaking time available for individual NGO statements was limited. Even though raising the concerns of the Guatemalan advocates took up some of the time that otherwise would have focused on the circumstances of women in Canada, the Canadian NGOs shared the concerns of the Guatemalan advocates and recognised the importance of sharing the space.

To this end, during their public meeting with the CEDAW Committee, the Canadian NGOs included in their joint statement a call for Canada to more robustly regulate Canadian companies operating abroad and to ensure that victims of corporate-related human rights abuses in other countries have access to remedies in Canada. This call for greater action was based on a statement that WILPF and PICI gave to the Canadian NGOs before the public meeting. In addition, during the Canadian NGOs' lunch meeting with the CEDAW Committee, one of the Guatemalan advocates made

a brief statement echoing the concerns raised during the public meeting. In these ways, Canadian NGOs worked with and supported the efforts of Guatemalan advocates to hold the Canadian mining companies accountable. WILPF, PICI and the Canadian NGOs' efforts demonstrate the importance of cooperative advocacy, collaboration and international solidarity of women: in other words, building a sisterhood of women across borders.

WILPF's coordination with Amnesty International Canada

Prior to the CEDAW Committee's review of Canada in October 2016, WILPF consulted Amnesty International Canada ("AI Canada") to ensure consistency between WILPF's advocacy before the CEDAW Committee and AI Canada's approach to the same issues during Canada's review by the Human Rights Committee in 2015 and the ESCR Committee in early 2016. AI Canada's earlier shadow reports to these committees (described in more detail below) assisted WILPF and PICI in preparing their shadow report to the CEDAW Committee. In addition, AI Canada submitted its own shadow report to the CEDAW Committee for Canada's October, 2016 review, which raised concerns similar to those addressed by WILPF and PICI in their shadow report to the CEDAW Committee, namely that Canada was not doing enough to address violence against indigenous women and girls in the context of intensive and large-scale development of oil, gas and other resources across Canada. WILPF liaised with AI Canada to provide input into Canadian NGOs' coordination activities in the lead up to the CEDAW Committee's session.

In addition, in the preparation of their shadow report to the CEDAW Committee, WILPF and PICI used information provided by Canadian NGOs to the ESCR Committee for its review of Canada in 2016, which addressed the specific questions on business and human rights that the ESCR Committee members asked during that review. WILPF and PICI used that information as the basis for their recommendations in their shadow report to the CEDAW Committee. This collaboration assisted WILPF and PICI in sharpening and making their recommendations in the shadow report as specific as possible to the Canadian national context.

CEDAW Committee's concluding observations to Canada

In its concluding observations to Canada, the CEDAW Committee directly addressed the state's obligation to ensure that transnational companies registered or domiciled in Canada and operating abroad do not negatively impact the enjoyment of the rights enshrined in CEDAW by women and girls in other countries.¹¹⁰ The CEDAW Committee highlighted mining corporations as a source of concern and recommended that Canada require corporations to conduct human rights gender impact assessments before making investment decisions, ensure access to remedies for violations and establish an extractive sector ombudsperson with authority to receive and independently investigate complaints.¹¹¹ These recommendations were consistent with some of WILPF and PICI's suggestions.¹¹²

2. OTHER TREATY BODY REVIEWS OF CANADA

Other UN human rights treaty bodies have reviewed Canada's obligation to protect against human rights violations caused by Canadian mining companies operating abroad.¹¹³ When the Human Rights Committee reviewed Canada in 2015, it expressed regret that the state party had not established an independent mechanism empowered to investigate complaints against Canadian companies (specifically mining companies) operating abroad and allegedly violating human rights.¹¹⁴ The Human Rights Committee recommended that Canada improve the effectiveness of existing procedures for ensuring that Canadian corporations respect human rights when operating abroad, consider establishing an independent mechanism to investigate alleged violations by such corporations and develop a legal framework that allows victims to access remedies.¹¹⁵ Although it did not focus specifically on the impacts to women, AI Canada's shadow report to the Human Rights Committee highlighted Canada's failures to enact laws establishing human rights standards for its extractive companies, to ensure the effectiveness of the Ombudsman for the Corporate Social Responsibility of Canadian Extractive Corporations Working Outside of Canada as a vehicle for victim's redress, to establish an independent ombudsman with authority to investigate human rights complaints against corporations operating abroad and to prioritise its human rights obligations in negotiating trade agreements.¹¹⁶ Thus, AI Canada's submission

covered some of the same problems identified by WILPF and PICI in their shadow report to the CEDAW Committee.

After its review of Canada in 2016, the ESCR Committee issued concluding observations similar to the Human Rights Committee's 2015 observations. The ESCR Committee noted concern that victims of human right violations caused by Canadian corporations operating abroad have limited access to Canadian courts and that the non-judicial remedies available through Office of the Extractive Sector Corporate Social Responsibility Counsellor had not been effective.¹¹⁷ The ESCR Committee recommended that Canada strengthen its laws governing how Canadian-registered or domiciled corporations operated abroad, require that corporations conduct impact assessments prior to making investments abroad, establish effective mechanisms for investigating complaints filed against those corporations and establish laws that allow victims to bring claims against those corporations in domestic courts.¹¹⁸ The ESCR Committee also recommended that Canada prioritise human rights obligations over investor interests in negotiating trade and investment agreements.¹¹⁹ AI Canada had submitted a shadow report to the ESCR Committee highlighting Canada's failure to enact laws establishing human rights standards for its extractive companies and the ineffectiveness of the Ombudsman for the Corporate Social Responsibility of Canadian extractive corporations working outside of Canada in providing an effective vehicle for victim's redress.¹²⁰

3. WORKING GROUP ON BUSINESS AND HUMAN RIGHTS COUNTRY VISIT TO CANADA

After the UN Working Group conducted a recent country visit to Canada, it devoted several paragraphs in its End of Mission Statement to the human rights violations caused by Canadian mining companies operating abroad.¹²¹ Importantly, the End of Mission Statement includes specific recommendations to the Canadian mining industry regarding how they can use the Guiding Principles to ensure respect for human rights in their overseas operations. These recommendations complement the concluding observations of the UN human rights treaty bodies and provide another resource for advocates working on this issue. The Working Group's formal report on the visit will be available in June, 2018.


4. CONSIDERATIONS FOR FUTURE ADVOCACY AT THE UN

Being an effective advocate at the UN requires considerable coordination and planning. This is especially so when working on issues related to transnational corporations. As a general approach, international NGOs or NGOs working outside the country should coordinate with national NGOs and grassroots movements to ensure consistency of advocacy approach, complementary efforts and the inclusion of recommendations in the shadow report that are as specific as possible to the national context of the country being reviewed. Specific suggestions from NGOs help the UN human rights treaty bodies, such as the CEDAW Committee- make more precise and detailed recommendations to the state party, which in turns strengthens NGO advocacy using those recommendations.

Advocates should also refer to previous pronouncements of other human rights bodies (including at the UN, but also regional bodies)

on the same issue, as it helps strengthen the recommendations in the NGO shadow report. It is also important for international NGOs or NGOs from outside the country being reviewed to coordinate with national NGOs well in advance of any treaty body session. The ideal time for coordination is in the planning stages of the shadow report, as this increases the likelihood that the national NGOs will join in the report, allows for greater understanding of the domestic context and provides opportunities to collectively investigate ways for the extraterritorial obligations to be featured in statements and other advocacy activities with the UN human rights treaty body

Finally, prior to any treaty body session, international NGOs or NGOs from outside the country being reviewed should consider additional ways to facilitate opportunities in other forums at the UN for advocates attending the session in Geneva to share information about the human rights violations affecting women in their country.



**CASE STUDIES AND
STRATEGIES FOR DRAWING
ACCOUNTABILITY FOR
VIOLATIONS OF HUMAN
RIGHTS IN THE CONTEXT
OF BUSINESS ACTIVITIES**

A. INTRODUCTION

The increasing power, presence and intervention of corporations in society at large, the economy and within government, both nationally and internationally, has been met with demands that national governments prioritise human rights and regulate the business activities that threaten them. These demands have yielded some positive results, as demonstrated in the case study above, describing the recent reviews of Canada by various UN human rights treaty bodies.

Although the UN is a critical forum for advancing women's human rights, it is but one among many tools advocates have used. The case studies in this Part V illustrate other ways advocates have sought protect women's human rights from abuse by business actors. The first two case studies provide examples of how traditional advocacy, in the form of community mobilisation and research documenting human rights abuses, can be expanded and amplified through partnerships with global campaigns, complementary efforts by international NGOs and international advocacy. The third case study demonstrates how grassroots campaigns can utilize alternative dispute mechanisms within international financial institutions in seeking redress for human rights abuses. The last case study explores the potential for national criminal laws to provide redress for victims of corporate human rights abuses.



B. FORCED EVICTIONS AND LAND GRABS IN CAMBODIA

BACKGROUND

The Cambodian government initiated major land reforms beginning in 2001. These reforms were aimed at privatising the ownership of state-owned land formerly held as communal property during the reign of the Khmer Rouge regime in the 1970s.¹²² Privatisation of land ownership was purportedly necessary to promote foreign investment and other economic development.¹²³ The first land reform laws legalised the eviction of people living on communal lands when “justified by the public interest of the state”.¹²⁴ Although the Cambodian government directly undertook many of these evictions, they were also carried out by the employees of private corporations holding land concessions issued by the government.¹²⁵ The evictions were commonly violent and to date, are responsible for the homelessness and dire poverty of approximately 350,000 Cambodians.¹²⁶

Although the forced evictions occurred throughout Cambodia, one incident involving a community in Phnom Penh, the country's capital, received significant media and international attention. In 2007, the city of Phnom Penh entered into a 99-year lease agreement with Shukaku, Inc., a private development company owned by a Cambodian government official, for lands around Boeung Kak Lake, a community of about 20,000 residents.¹²⁷ The lease extinguished the land privileges of the residents and authorised Shukaku, Inc. to fill the lake with sand, which flooded surrounding areas and displaced local residents, leaving them homeless.¹²⁸ In the end, 4000 families were forcefully removed from their homes.¹²⁹

The displaced residents of Boeung Kak Lake engaged in public protests and filed complaints in Cambodian domestic courts, all of which were rejected.¹³⁰ In September, 2009, with the help from an international NGO, the community filed a complaint with the World Bank Inspection Panel, which had financed a land titling project

in Cambodia purportedly designed to improve the security of land tenure in the country.¹³¹ In 2011, the World Bank Inspection Panel found that the World Bank had failed to comply with its operational policies in financing the land titling project, a failure that impacted the ability of the residents from Boeung Kak Lake community to assert their rights to the land. The Cambodian government, however, refused to implement remedial measures recommended by the World Bank Inspection Panel.¹³² In response, the World Bank placed a moratorium on loans to Cambodia until it resolved the dispute with the Boeung Kak Lake community.¹³³ This eventually led the Cambodian government to issue a decree granting land titles to 800 families and by the end of December, 2011, 500 additional families had received titles. Nevertheless, other families were excluded from the process.¹³⁴ On 24 September 2012, the UN Special Rapporteur on the situation of human rights in Cambodia issued his report, in which he described the violent evictions of residents from the Boeung Kak Lake community.¹³⁵

In 2014, the 4000 families evicted from their land in the Boeung Kak Lake community were paid a tiny fraction of the market value of their property.¹³⁶ In October of that same year, victims from throughout the country filed a communication with the International Criminal Court, alleging that land grabbing by members of the government of Cambodia, government security forces and “government-connected business leaders” constituted crimes against humanity in violation of Article 15 of the Rome Statute of the International Criminal Court.¹³⁷ On August 7, 2015, a group of civil society organisations wrote to the head of the World Bank, expressing alarm at the institution’s decision to initiate consultations with the Cambodian government for the purpose of lifting the moratorium on lending to the country.¹³⁸

THE IMPACT OF LAND GRABS ON WOMEN

The women from the Boeung Kak Lake community led the advocacy efforts that responded to the forced evictions. These women worked closely with local NGOs in organising and carrying out numerous non-violent protests before the Cambodian parliament, Phnom Penh City Hall and outside the offices of the Shukaku, Inc,¹³⁹ They also took the lead in coordinating the complaint to the World Bank Inspection Panel, which is described above.¹⁴⁰

The land is the fixture around which the women and their communities are based and eviction from the land results in the breakdown of the informal support networks these women rely on in their daily lives.¹⁴¹ More directly, women depend on the land to fulfil their traditional roles as the providers of food, clean water and shelter for their families.¹⁴² Many rural women in Cambodia play critical roles in subsistence and wage farming activities¹⁴³ and thus, the loss of land not only impacts their ability to provide food for their families, but also cuts off an important source of family income. In addition, indigenous women have spiritual and cultural ties to the land, making the prospect of moving away worse than losing their lives.¹⁴⁴

The grievous impact of land losses on Cambodian women has been well-documented. Through interviews with women in five communities across Cambodia, Amnesty International chronicled the loss of livelihoods, homes and possessions, and resulting psychological trauma experienced by the victims of forced evictions.¹⁴⁵ In a recent study by a Cambodia NGO, which assessed the impact of forced evictions on 612 women in 12 provinces across Cambodia, 98% stated that the land conflicts had negatively affected their mental health, half the women considered suicide and 18% had attempted suicide.¹⁴⁶ In addition, 95% of the women interviewed stated that government authorities had threatened them and 1/3 had been subjected to physical violence.¹⁴⁷ The report also noted increased domestic violence and child abuse.¹⁴⁸ Several recent reports suggest that Cambodian women human rights defenders have suffered the most: not only have they lost their houses, lands and communities, they have been targets of violence and unlawful arrest and their familial relationships have broken down under the pressure of their work.¹⁴⁹

ADVOCACY TARGETING INTERNATIONAL FINANCIERS

The international NGO Global Witness has played an important role in uncovering information about the business enterprises receiving land concessions from the Cambodian government and their ties to other businesses,

especially banks based in the Global North. In May, 2013, Global Witness published a report detailing information about the Vietnamese corporations holding land concessions in Cambodia and Laos, and the resulting human rights violations from their operations.¹⁵⁰ In Cambodia alone, Vietnamese companies own 14% of the land concessions issued by the Cambodian government.¹⁵¹

Global Watch documented how secrecy surrounding the land concessions made it nearly impossible for community members to identify the companies until after development on the land began.¹⁵² Thus, lack of data is a major barrier to asserting rights to land and obtaining remedies after violations have occurred.¹⁵³ The Global Watch report also documented how one Vietnamese company hired Cambodian security forces as guards, who shot at villagers and threatened them with penalties when they tried to reclaim fields.¹⁵⁴

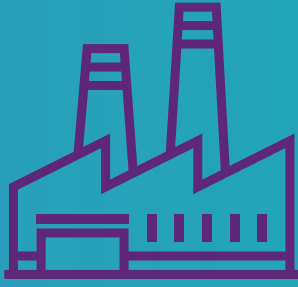
In addition to mapping the various partnerships and subsidiaries related to the Vietnamese companies holding the concessions in Cambodia and their relationships to Cambodian government officials, the Global Watch report identified investments of the International Finance Corporation and Deutsche Bank in the Vietnamese companies and related entities.¹⁵⁵ On 20 November, 2013, just a few days after Global Watch recommended that Deutsche Bank divest from one of the Vietnamese companies, the bank did just that, although it refused to confirm that the decision was made in response to Global Watch's research.¹⁵⁶

CONSIDERATIONS FOR FUTURE ADVOCACY

A critical lesson from the Cambodian case study is the high cost of ignoring the risks to women's human rights defenders. The ability of these defenders to enjoy their human rights is doubly challenged—in their role as members of the communities they are seeking to protect and as the primary targets of threats and violence by the state and corporations. Support for women's human rights defenders, in all phases of their work, should be a primary concern.

The case study also illustrates the benefits of a multi-pronged approach to advocacy that connects what is happening at the local level with the international arena. While the Cambodian government was the main target of advocacy at the national level,

the international NGO, Global Watch, sought accountability from banks in the global North, who were funding businesses in Vietnam, who in turn, were the beneficiaries of the Cambodian government's land concessions.¹⁵⁷ Simultaneously, Cambodian human rights defenders pursued remedies with the accountability mechanism at the World Bank. And in 2014, national level advocates began the process of seeking criminal accountability through the International Criminal Court. During Cambodia's review by the CEDAW Committee in 2013, advocates also documented the human rights violations caused by the land concessions, as they specifically impacted ethnic minority groups in the country. All of these efforts drew national and international attention to a range of actors—the UN human rights treaties bodies, the International Criminal Court, international financial institutions, international banking institutions in the Global North, businesses and the Cambodian government—all of whom had the ability to address, redress or otherwise influence the human rights issues.



C. ALBANIA TEXTILE AND FOOTWEAR INDUSTRY

BACKGROUND

The textile and footwear industry in Albania is a significant part of the country's manufacturing sector and overall exports. Approximately 938 businesses operate in the industry, which provides 46% of all employment in Albania's manufacturing sector. The textile and footwear industry accounts for 37% of total exports of the country. Of the final products made, 95% are exported to Italy (80%), Germany (7%) and Greece (8%). Foreign investment in the industry is significant, which the Albania government encourages by offering government property leases for €1/year, quick Value Added Tax ("VAT") refunds, VAT exemptions on machinery and equipment, simplified customs, investment, employment and social security procedures, subsidies for social security, health insurance for new employees and privileged representation on important Albanian governmental bodies.

HUMAN RIGHTS VIOLATIONS

Based on desk research and interviews with 57 female workers and 1 male worker in 3 shoe factories and 1 clothing factory in Albania, the Gender Alliance for Development Centre ("GADC") collected data demonstrating the following human rights violations.

Failure to pay minimum wage

The factories paid workers less than legal minimum wage and paid women less than men. One in two workers interviewed reported being paid €100 inclusive of overtime. Albania's legal minimum wage is €140, but in 2015, 60% of the average net wage (poverty line) was €169, and the average net wage €282. The legal minimum wage, however, does not reflect what is necessary to meet basic needs, sometimes referred to as the "living wage". The living wage is an amount that the Albanian government does not measure because it would require an increase in the legal minimum wage. GADC calculates living wage at €588/month, leaving a considerable gap between that amount and the actual wage (€100) paid to the workers interviewed by GADC. Because of low wages, the women interviewed lived in a cycle of constant debt. A typical pattern for workers was to use the monthly salary to pay off debt from the previous month. During the last two weeks of the month, the worker then borrowed money to cover expenses, which she paid off at the beginning of the following month.

Violation of overtime and leave requirements

The GADC interviews revealed that factory management failed to pay overtime and treated Saturdays and public holidays as part of the regular workweek. Despite being entitled to 20 days of annual leave, factory management routinely refused to allow workers to use the benefit in full and when leave was allowed, factory management often determined the dates for the workers' leave.

Poor and hostile working conditions

The women interviewed described how they worked under extreme temperatures (no air conditioning when it was warm or no heat when it was cold), with polluted air from the toxic substances used in the manufacturing processes, without drinking water or running water, and without access to medical care when injuries or illness arose. Factory management routinely failed to comply with health and safety

regulations requiring a doctor on site for injured workers. During required monthly health and labour inspections, inspectors would fail to show up or were bribed by management. Often management and workers knew about the “surprise” inspections beforehand and would hide uninsured workers. Politicians and government officials used these inspections, which reported few or no violations, in denying any compliance gaps or legal violations.

The women also described demeaning verbal abuse at the hands of management. The GADC interviewers also suspected physical, including sexual, abuse had occurred, although because the workers were unwilling to discuss the issue, GADC was unable to document it.

Violation of right to organize

Some of the workers interviewed had no knowledge of trade unions in the country and those with knowledge stated that when union representatives visited factories, they would primarily engage with management. Thus, in the minds of the workers, unions were associated closely with factory management. The threat of termination was pervasive and the grounds for termination were arbitrary. One woman was fired for asking to read her work contract. The fear of being fired was identified as an important reason for why the workers did not organise or take their grievances to the media.

IMPUNITY

Although Albania wants to join the European Union and has signed all of the UN treaties on human rights, there is a significant gap between the legislation and its implementation. The government has a poor record of enforcing labour laws, in part because the government and trade unions are primarily concerned about the interests of the corporations. Rather than protecting worker and women’s rights, which is their traditional role, the government and trade unions prioritise the interests of the factory owners and investors. The government views its principal goal as attracting as many investors as possible. This is despite the fact that the factories provide no real benefit to the country on a macroeconomic level. Rather than holding the factory owners accountable, as described above, the Albanian government provides them important economic incentives and subsidies.

ADVOCACY

GADC has used its research in several different kinds of advocacy. In coordination with the Clean Clothes Campaign, an international alliance of trade unions and NGOs devoted “to improving working conditions and empowering workers in the global garment and sportswear industries”, GADC used the research to develop a factsheet highlighting the human rights violations of workers in Albania’s clothing and footwear industry.¹⁵⁹ GADC also feed its research into a larger Clean Clothes Campaign publication highlighting the circumstances of workers in the Eastern Europe shoe manufacturing industry.¹⁶⁰

GADC also used the research in preparing a shadow report to Albania’s state report to the CEDAW Committee. In its Concluding Observations, the CEDAW Committee expressed concern that women employees were concentrated in Albania’s informal labour market “especially in the textile and shoe industries, without adequate labour and social protection” and recommended that the State improve these protections.¹⁶¹

On the national level, GADC presented the results of its research to high ranking public officials, including the Prime Minister of Albania. GADC has also engaged in advocacy at the policy and institutional levels through informal meetings with public officials, members of parliament and heads of public institutions, including the Inspectorate of Labor, Ministry of Social Welfare and municipalities in affected cities. GADC has also strengthened its cooperation and coordination with trade unions to improve working conditions in factories and empower workers. This effort included partnering with the Olof Palme International Center, an international NGO,¹⁶² to build a wide coalition of partners, including local CSOs and trade unions.

REFLECTIONS ON BUILDING AN EVIDENCE BASE IN SUPPORT OF ADVOCACY

This case study demonstrates the mutual benefits that flow from partnerships between national NGOs with expertise on women's human rights and international NGOs focused on labour rights. Using the Clean Clothes Campaign's research methodology and related tools, GADC applied its expertise, knowledge of the local context and reputation as one of the oldest NGOs in Albania to produce the first systematic report on the situation of women workers in textile and footwear factories in Albania. The Clean Clothes Campaign gained critical information, which contributed to its global knowledge bank, and developed an alliance with a leading national organisation in Albania. This mutual exchange of expertise and knowledge continues to benefit both organisations through training, sharing information and best practices and coordinating on issues of common concern. As noted above, the research was also used in the development of the shadow report to the CEDAW Committee and in GADC's continuing work with the Clean Clothes Campaign.

The case study also illustrates the importance of centering a research project on the needs of the women workers. Job insecurity and the real threat that whistle blowers would be fired required that GADC take precautions to protect the anonymity of the women interviewed. GADC placed a priority on their safety, well-being and security while conducting the interviews. At the same time, GADC sensed a strong willingness among the women to voice their concerns and have their experiences documented; many expressed relief that they finally had the opportunity to do so. The critical importance of ensuring that workers have the means to communicate their grievances and negotiate their demands for fair working conditions through formal institutional channels was an important learning point for the researchers.



D. AMPLIFYING THE VOICES OF TEA PLANTATION WORKERS IN ASSAM, NORTH-EAST INDIA TO THE WORLD BANK GROUP

BACKGROUND

At any point in time, there are up to one million people that live and work on tea plantations in the north-east Indian state of Assam. The majority of these people identify as Adivasi or Indigenous Peoples, whose forebears originally lived in central India. Starting in the 1840s, the British brought these tribal communities to Assam to work in the tea plantations. The migration then continued until the 1960s under different systems. Since that time, the descendants of these workers have remained on the plantations, and find themselves trapped in a cycle of poverty and generational servitude. Health indicators on Assam's tea plantations are alarmingly poor, with high incidences of tuberculosis, anaemia, malnutrition, and maternal mortality. In most cases, workers are born, live, and die on the plantation, with little opportunity for upward social mobility.

This virtual generational servitude is fuelled by a prevailing system of dependence: workers rely upon their employers for almost every facet of life, from housing, drinking water and healthcare, to education and childcare for their children. Under the Plantations Labour Act, 1951, responsibilities for such social services lie with tea plantation companies. Because Adivasi tea workers are a distinct cultural group, with their own language and customs, they have a separate existence and identity from the Assamese. Plantation managers maintain strict control over access to the plantations, making it difficult for visitors to enter the plantation, and limiting workers' ability to organise. This separation exacerbates barriers workers face in accessing proper education, jobs and other opportunities available to locals outside the plantations. Making matters even worse, Adivasis in Assam are not granted Scheduled Tribe status, which deprives them of educational and employment benefits, even though such status is granted in their homelands in central India.

Another root cause of Assam tea workers' continued poverty lies in the deprivation of their freedom of association, which is protected under the Constitution of India. Under the wage-setting framework in the Assam tea sector, only one union is recognised as eligible to negotiate with the tea industry. This union, the Assam Chah Mazdoor Sangha ("ACMS"), is historically affiliated with the Congress Party in India and has a history of undermining the rights of workers and acting in collusion with tea industry management. In 2016, tea workers across Assam were paid a daily cash wage of Rs126 (USD2) pursuant to a negotiated wage agreement between ACMS and the tea industry. This woefully low wage is not enough for a worker to live a life with dignity, and leaves workers facing a daily struggle to survive. The living wage in 2014 was approximately Rs330 (USD5) per day.

International development efforts directed at empowerment of the tea workers have faced formidable challenges. One such attempt concerns the second largest producer of tea in India, known as Amalgamated Plantations Private Limited ("APPL"). APPL has 21 tea estates in Assam and 4 tea estates in West Bengal. APPL was set up in 2007 after Tata Tea (now Tata Global Beverages) divested from its plantation business. In 2009, the International Finance Corporation ("IFC"), the private arm of the World Bank Group, invested around USD7.8 million in equity to implement an employee-shareholder model, which Tata had previously adopted on its tea estates in Munnar, Kerala. Tata Global Beverages remained the single largest shareholder, taking a 49.6% stake of the shares in APPL.

The IFC's investment was intended to provide workers with agency and decision making powers within the company by being shareholders. The IFC's Performance Standards were envisioned to improve living and working conditions. Unfortunately, implementation of the project has not lived up to this vision.

COMPLAINT TO THE COMPLIANCE ADVISOR OMBUDSMAN

In 2013, three local Adivasi NGOs – Promotion and Advancement of Justice, Harmony and Rights of Adivasis, Peoples Action for Development and Diocesan Board of Social Services – filed a complaint to the Compliance Advisor Ombudsman (“CAO”), the accountability office of the World Bank Group, alleging poor living and working conditions on APPL plantations. The CAO complaint process is a non-judicial process that begins with the filing of a complaint, and communities have the option to request dispute resolution or a compliance review. During compliance review investigations, the CAO investigates the IFC's compliance with its environmental and social policies, performance standards, procedures and requirements (“IFC procedures”). The investigation is limited to the act or omissions of the IFC. After the CAO issues its report, the IFC is required to prepare a written response. If there are findings of non-compliance, the IFC is expected to work with the client to ensure remedial measures are taken.

Soon after filing the complaint with the CAO, the local NGOs approached Accountability Counsel for support with the CAO process. Nazdeek, a legal empowerment organisation, is also supporting the complaint process. Accountability Counsel is a non-governmental organisation of lawyers that amplifies the voices of communities around the world to defend their human and environmental rights. It specialises in non-judicial grievance mechanisms with respect to projects that are internationally financed. Throughout the compliance review phase, Accountability Counsel provided technical assistance to the NGOs in developing legal arguments and documenting how the IFC violated its procedures.

In 2016, the CAO released a report on its investigation, finding that living and working conditions continue to be sub-standard on APPL plantations, that wages on the plantations do not protect the health of workers, and that APPL workers were not given proper information about the risks of share ownership and their rights as shareholders. Other violations of IFC's procedures included failures with respect to freedom of association and health and safety standards regarding pesticide use.

The IFC's initial response was disappointing. It responded to the CAO's report by agreeing that some violations had occurred, but denying the majority of the findings. The IFC proposed a draft action plan, which largely mirrors an earlier action plan called “Project Unnati”, agreed upon by Tata Global Beverages and APPL in 2014. However this plan had not brought meaningful and timely improvements to the lives of workers. Most importantly, the plan did not address the root causes of poverty as found by the CAO, including low wages, the lack of freedom of association, and the inability of the workers to join truly representative unions. Instead, it focused only on improving infrastructure and ensuring access to potable water and sanitation.

LESSONS LEARNED

Accountability Counsel's objective in assisting the local NGOs in Assam was to amplify the voices of the workers throughout the CAO complaint process as a means of enabling them as empowered agents to directly engage with the accountability mechanism, the IFC and APPL. Accountability Counsel's engagement in the process revealed important lessons potentially applicable to similar efforts in the future.

First, a respect-based approach, where voices and roles of women, children and marginalised groups are emphasized, was crucial. This was especially important because 80% of APPL tea plantation workers are women, and yet their representation in community decision-making structures and amongst tea plantation managers was disproportionately low. Specific techniques were employed in the process of documenting violations that ensured their voices were heard.

Retaliation by employers was a real risk for the workers and communities, and informing them of this risk and devising ways to identify it was central to supporting the communities throughout the complaint process. Special care was taken to maintain the anonymity of the workers.

Due to the limitations of non-judicial mechanisms, it is important to manage community expectations and for advocates to be honest about their limitations; these mechanisms can be effective if they are complementing other strategies, including litigation, media advocacy and protests on the ground. It is rare that they will be successful on their own. Ultimately, non-judicial grievance mechanisms depend on the good faith of institutions like the IFC to accept the findings of their own accountability offices and apply resources and goodwill to incorporating changes on the ground. Civil society has an important role to play in exerting pressure on these institutions, through insider and outsider advocacy strategies, to hold them account if they fail to comply.

Accountability Counsel and the local NGOs are presently doing just that. They are trying to bridge the “last mile” by engaging with IFC management, the World Bank Group’s Board of Directors, and the public at large by publicizing the issues through the media, so that public opinion can be brought to bear. They created a website - Accountabilitea.org - as a platform to heighten public awareness of the conditions that workers are experiencing and to implore the public to voice their concerns with investors so that improvements are made.



E. HOLDING CORPORATIONS CRIMINALLY ACCOUNTABLE FOR HUMAN RIGHTS ABUSES

IMPORTANCE OF CRIMINAL ACCOUNTABILITY

State parties to international human rights treaties have a duty to protect against human rights violations and an obligation to ensure that perpetrators of such abuses are held accountable. One way they can meet this obligation is by punishing human rights abuses under national criminal laws. Criminal liability carries a greater stigma than civil liability. This stigma can have a powerful deterrent effect; while corporations may view civil lawsuits as frivolous or settle them as a cost of doing business, they are likely to take criminal investigations more seriously. In this way, the threat of criminal liability has greater potential to change their behaviour and to have far-reaching impacts on an entire industry. Criminal accountability under national laws is also theoretically more accessible; when compared to human rights victims and their lawyers seeking justice through international mechanisms, national prosecutors generally have more resources to pursue criminal cases.

CRIMINAL PROSECUTION OF CORPORATIONS

When a corporation fails to respect international human rights law,¹⁶⁵ that failure may also constitute a crime punishable under national laws. Some countries have national laws holding corporations criminally liable.¹⁶⁶ Although few countries have enacted laws specifically criminalising human rights abuses by corporations, national criminal laws sometimes provide remedies for this behaviour. Thus, there are a few examples of prosecutors successfully pursuing remedies for human rights abuses through the enforcement of national criminal laws against corporations.¹⁶⁷

Examples of activities related to human rights abuses and routinely subject to criminal punishment under national laws and include human trafficking and

forced labour, land grabs, violations of environmental and health regulations and environmental crimes (e.g. toxic waste dumping and air, land and water pollution), violations of economic sanctions that enable corporate actors to profit from human rights abuses, handling of stolen goods (when the sale benefits an entity that has violated human rights laws), economic crimes, such as fraud when used to avoid environmental or health regulations, and tax evasion and corruption, which deprives governments of the funds they require to provide critical social services.¹⁶⁸

BARRIERS TO CRIMINAL PROSECUTIONS OF CORPORATIONS

Despite the potential for national level prosecutions of corporations for crimes associated with human rights abuses, many states have failed to pursue this option for redress. The result is widespread impunity: corporations avoid criminal liability for actions that clearly represent failures to respect international human rights law. A variety of factors contribute to this impunity.

Prosecutors and law enforcement officials, who play a key role in ensuring justice, are often neglected in conversations about access to remedies for victims of human rights abuses. In part, this is a result of their limited historical role in the investigation or prosecution of corporations for crimes linked to human rights abuses. Compounding this problem is the fact that many prosecutors have little experience with corporate crimes and therefore, lack the requisite skills to develop legal strategies and methods for evidence collection. Collecting evidence is especially challenging and expensive if it is located abroad.

Although a lack of political will accounts for some of the challenges to the national level criminal prosecution of corporations for human rights abuses, there are

also important legal challenges. Some countries do not have adequate laws imposing corporate criminal liability or addressing extraterritorial harm. The time intensive nature of gathering complex facts and difficulty in obtaining evidence about corporate wrongdoing can result in statutes of limitations prematurely cutting off a victim's right to seek redress for human rights abuses. Many criminal laws require that the prosecutor establish intent or a specific state of mind, which is sometimes impossible if the criminal is an entity.

There are also practical challenges to building a case, such as the absence of procedures for international cooperation in collecting evidence. Systematic challenges also create barriers. In many countries, there is internal pressure on prosecutors to win and resolve cases quickly. This creates an incentive for prosecutors to prefer small, straightforward cases rather than those raising complex questions about corporate criminal liability for human rights abuses and requiring substantial time and resources. In addition, other types of criminal prosecutions may take precedent over corporate crime cases. In the United States, for example, current policies emphasize the prosecution of street and anti-terrorism crimes, rather than white-collar crimes commonly associated with businesses. Corruption and corporate capture of law enforcement and government policy are additional barriers to prosecution.

THE CORPORATE CRIME PRINCIPLES

In recognition of the challenges described above and in light of the importance of holding corporations criminally liable for human rights abuses, an independent commission of experts, along with NGOs Amnesty International and the International Corporate Accountability Roundtable, developed the 2016 *Corporate Crime Principles: Advancing Investigations and Prosecutions in Human Rights Cases* ("Corporate Crime Principles"). The Principles are meant to set a global standard on how law enforcement approach these cases.

The Corporate Crime Principles address a range of topics, including case selection, cross-border collaboration (between jurisdictions and between law enforcement and civil society organisations), evidence collection, decisions on whom to charge and for what offenses, strategies in addressing the

economic and political imbalance between companies and law enforcement, transparency in the justice process, victims' rights (e.g. how they should be informed and participate in proceedings), protections for witnesses and whistle-blowers and strategies for law enforcement in pursuing human rights abuse cases involving corporations. The Corporate Crime Principles encourage and support the efforts of law enforcement agencies and prosecutors to exert pressure on business enterprises to respect human rights. They are also designed to ensure that human rights issues become a normal part of the portfolio of law enforcement officials and prosecutors.

FURTHER CHALLENGES IN PURSUING CRIMINAL PROSECUTIONS OF BUSINESSES THAT ABUSE WOMEN'S HUMAN RIGHTS

The Corporate Crime Principles do not address the additional challenges that frustrate the prosecution of corporations for crimes associated with the abuse of women's human rights. The first step in a criminal case is to report the crime to local law enforcement. Many law enforcement officials lack training on women's human rights and are often afflicted by societal norms and stereotypes that shift the blame from the perpetrator to the victim and/or minimize the severity of or condone certain crimes against women. This is typical in criminal cases involving sexual harassment or violence. In some countries, law enforcement officials are corrupt or closely connected to the businesses committing human rights abuses. For these reasons, local law enforcement may refuse, in the first instance, to file a report of the crime.

Some prosecutors may not be aware of or sensitive to specific impacts of a crime on women and may hold discriminatory attitudes towards women.¹⁶⁹ These factors may result in the prosecutor not prioritising the prosecution of crimes against women and may negatively influence how the prosecutor consults and interacts with the female victims during the course of the case. The criminal laws themselves may not adequately address or punish the types of criminal violations women experience, especially those involving sexual harassment in the workplace.¹⁷⁰

Further, if a woman who has been the victim of a crime testifies at the criminal trial, she may be subject

to further discrimination during cross-examination by the attorney representing the perpetrator and in subsequent media accounts of the testimony. In addition, judges and other court personnel may express discriminatory attitudes during the testimony. Thus, the process of testifying can subject a female victim to further discrimination.

A criminal prosecution can be a long process and a victim may be precluded from pursuing a civil case during the criminal proceedings. Reparation in the form of money damages plays a crucial role in acknowledging a victim's suffering. However, depending on the jurisdiction, a criminal conviction may not result in money damages for the victim. A separate civil proceeding, another time consuming process, may be necessary before the victim can recover money damages. This delay hits poor women particularly hard, whose time commitments to the criminal case have already disrupted her ability to meet employment and family responsibilities. Oftentimes, remedies do not account for the unremunerated domestic activities of women, which are also affected by human rights abuses.¹⁷¹

REFLECTIONS ON CRIMINAL ACCOUNTABILITY FOR BUSINESSES THAT ABUSE WOMEN'S HUMAN RIGHTS

Pursuing justice under national criminal laws is another option for redressing human rights abuses committed by businesses. As explained above, however, many challenges, including the lack of political will, inadequate laws and practical and systematic challenges have stood in the way of successfully prosecuting businesses. The Corporate Crime Principles seek to address these challenges.

The Corporate Crime Principles, however, do not respond to the specific problems women face in accessing justice.¹⁷² Thus, even assuming the principles effectively remove the barriers to the criminal prosecution of corporate actors for human rights abuses, additional steps would be necessary before women can successfully pursue this remedy.

Women's rights advocates can address the Corporate Crime Principles limitations by informing them with CEDAW and especially, the CEDAW Committee's general recommendation on women's access to justice ("General Recommendation No. 33").¹⁷³ Though

it does not address the specific issue of corporate criminal liability for abuses of women's human rights, General Recommendation No. 33 can be used with the Corporate Crime Principles to draw out solutions for the particular challenges women face in accessing remedies under criminal law.

For example, some of the specific barriers women encounter in the criminal justice system relate to institutionalised discrimination, societal norms and stereotypes. As a result, justice system officials blame women for falling victim to crimes, condone crimes against women, deprioritise the prosecution of crimes against women and generally diminish the importance of seeking justice for women. General Recommendation No. 33 highlights this issue and includes robust recommendations to states parties on educating justice system officials (including judges, magistrates, adjudicators, prosecutors and law enforcement officials) about the norms and stereotypes that perpetuate discrimination against women.¹⁷⁴

The Corporate Crime Principles similarly pinpoint inadequate training and education of law enforcement and prosecutors as one barrier to the criminal prosecution of corporations and recommend education and training as an important solution.¹⁷⁵ When read with General Recommendation No. 33, the Corporate Crime Principles should prompt the state to develop educational programs for justice system officials that promote understanding of state obligations under CEDAW, the particular risks faced by women with respect to corporate actors and the discrimination, societal norms and stereotypes that prevent law enforcement from reporting and prosecutors from prosecuting corporate crimes committed against women.

VII SUMMARY



There is growing consensus that corporations must respect human rights and states must hold corporations accountable for human rights abuses. Despite the fact that business enterprises are responsible for some of the most egregious human rights abuses of women, addressing and preventing these abuses is a topic largely absent from discussions on corporate responsibility and accountability. Thus, there is a critical need for focus on these issues.

Regional and global developments present significant barriers to ensuring corporations respect human rights and are held to account for abuses. Since the 1980s, transnational corporations have greatly expanded their influence and authority over governments, the global economy and society at large. The UN and NGOs have also been targets of this campaign of corporate influence. A backlash against globalism (of which the transnational corporations are a part) is, at least in part, responsible for the wave of nationalism in Europe, the United States and South Asia. This nationalism directly threatens democracy and hard-won recognition for the rights of women, migrants and religious, ethnic and racial minorities.

In response to these challenges, civil society has increased efforts to share resources and coordinate on issues of common concern. The tax justice movement is an example of how NGOs, each with specialised expertise on particular human rights issues, have collaborated on a shadow report to the CEDAW Committee that highlights the failure of a state party to prevent the abuse of women's human rights through regulation of transnational corporations.

The tax justice movement focused its efforts on the UN because the body is an increasingly important forum for advocacy on corporate responsibility and accountability. Since the early 2000s, the UN has been articulating the concepts and content of corporate responsibility and accountability. In 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights, which recognise the state duty to protect against human rights abuses by third parties, including business, the corporate responsibility to respect human rights and the need for more effective access to remedies. In general, greater attention to women's rights issues is required to ensure that the UN's efforts to implement the Guiding Principles are comprehensive in scope.

Even prior to the adoption of the Guiding Principles, several UN human rights treaty bodies, including the CEDAW Committee, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, issued concluding observations articulating the state obligation to prevent human rights abuses by private business actors and to provide remedies when abuses occur. Two UN Committees have recently issued general comments specifically addressing these state obligations in the context of economic, social and cultural rights and children's rights. In addition, the Human Rights Council, Member States and civil society have separately pushed for the development of an UN binding treaty that would hold corporations directly accountable for human rights violations.

Women's rights advocates have harnessed the developments at the UN on corporate responsibility and accountability and applied them to specific issues facing women. Their work at the UN has produced key insights into maximising positive results from engagement. First, effectively advocating at the UN requires considerable coordination and planning, especially on issues related to transnational corporations and the principle of extra-territorial obligation. The principle of extra-territorial obligations has been useful in addressing abuses by corporate actors in settings where governments have poor records of protecting women's human rights. One successful collaboration on a shadow report between an international and local NGOs focused on ensuring a consistent advocacy approach, early coordination, which increased the likelihood that the local NGOs will join in the report, allows for greater understanding of the domestic context and provides opportunities to collectively investigate ways for the extraterritorial obligations to be featured in statements and other advocacy activities with the UN human rights treaty body, recommendations in the shadow informed by the specific national context of the country being reviewed. Reference to previous pronouncements by other human rights bodies on state obligations to regulate non-state corporate actors also help strengthened recommendations in a shadow report.

Corporate human rights abuses have been met with a variety of other advocacy approaches, including community mobilisations, research and documentation, complaints and petitions to international multi-lateral institutions, public

education campaigns and criminal prosecutions of corporations under national laws. Case studies based on these methods, along with other research, suggests several important points for guiding future advocacy around the corporate responsibility to respect women's human rights:

- ◆ Capitalism works in tandem with other systems of oppression, including imperialism, patriarchy and white supremacy. This makes advocacy targeting corporate abuse of women's human rights especially controversial because it challenges all of these powerful systems of domination.
- ◆ The adoption of NAPs by UN Member States has been one important means for implementing the Guiding Principles, but progress to date on incorporating women's human rights in NAPs has been disappointing. Women's early engagement in the national processes of developing NAPs significantly increases the likelihood that they will promote women's human rights;
- ◆ Regardless of the type of advocacy, CEDAW, in conjunction with the relevant concluding observations and general comments from other UN human rights treaty bodies, can be used to centre the approach on women's human rights, which then informs all aspects of the analysis of the state obligation to regulate non-state corporate actors and the corporate responsibility to respect and account for human rights abuses;
- ◆ The health and welfare of women's human rights defenders must be prioritised because their advocacy puts them at risk on several fronts:
 - they face gendered threats to their rights and carry additional responsibilities in their role as the leaders of the community resistance,
 - they often become the primary targets of threats and violence by the state and corporations, and
 - their well-being and familial relationships suffer under the weight of these multiple burdens;
- ◆ A multi-pronged approach linking advocacy at the local level with the international arena can be an effective means for drawing accountability; grass-roots agitation combined with the work of international NGOs, petitions to accountability mechanisms within international financing organisations, appeals to the International Criminal Court or reports to UN or regional human rights treaty bodies, can draw national and international attention to a range of actors with the ability to address, redress or otherwise influence the human rights issues;
- ◆ In the right context, and with the right publicity, information and education, consumers, international banks and national prosecutors can be powerful allies of women's human rights advocates;
- ◆ Mutual benefits flow from alliances and partnerships between national NGOs with expertise on women's human rights and international NGOs focused on related issues, such as labour, employment and migration. Alliance building and processes for advocacy solidarity on common issues at the country level between different sectors such as labour unions, migrant worker's rights and women's rights organisations amplify the voices and security of various sectors of groups seeking greater compliance by corporates for women's human rights.
- ◆ Advocates have a special responsibility to focus their work on the needs of women, which, depending on the context, can mean different things:
 - the anonymity and physical safety of workers and women's human rights defenders must be protected,

- special processes must be developed to overcome traditional barriers to women's participation in having their voices and needs heard,
 - specific attention and analysis must focus on the effects of intersectional discrimination, which creates greater or different impacts on the human rights of women who are also members of other marginalised groups, and
 - women must be informed up front about the pros and cons of a particular approach for seeking redress in light of the demanding roles of women as workers, partners, mothers and caregivers;
- ◆ The prosecution of corporations under national criminal laws holds potential as a means of redress for human rights abuses and the Corporate Crime Principles, informed by CEDAW and the CEDAW Committee's general recommendation on women's access to justice, can overcome some of the barriers to successful criminal prosecution of corporations that abuse women's human rights.
 - ◆ Use of domestic laws to ensure state regulation and monitoring of corporate actors are also a means for raising awareness for the need for legal recognition for human rights in a particular context related to corporate accountability

APPENDIX

List of additional resources on corporate responsibility to protect human rights

1. Guidance on remedies for violations of human rights perpetrated by businesses.

International Federation for Human Rights, *Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms* (May 2016), available at <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a#>

2. Guidance on human rights defenders and corporate responsibility and accountability.

International Service for Human Rights, *Human Rights Defenders & Corporate Accountability Human Rights Monitor* (November 2015), available at http://www.ishr.ch/sites/default/files/documents/business_and_human_rights_monitor_-_english_november_2015-final_last_version-2.pdf

3. Regional guidance.

FORUM-ASIA, *Corporate Accountability in ASEAN: A Human Rights-Based Approach* (2013), available at <http://www.forum-asia.org/uploads/publications/2013/September/Corporate-Accountability-ASEAN-FINAL.pdf>.

4. Additional Guidance on NAPs.

International Service for Human Rights and International Corporate Accountability Roundtable, *Human Rights Defenders in National Action Plans (NAPs) on Business and Human Rights* (June 2016), available at https://www.ishr.ch/sites/default/files/documents/ishr_icar_hrds_in_naps_guidance_eng.pdf

Danish Institute for Human Rights and International Corporate Accountability Roundtable, *National Action Plan on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitment to Business and Human Rights Frameworks* (June 2014), available at <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5865d59fe6f2e17f4f0cb629/1483068841826/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf>.

Danish Institute for Human Rights, International Corporate Accountability Roundtable and UN Children's Fund (UNICEF), *Children's Rights in National Action Plans (NAPs) on Business and Human Rights* (November, 2015), available at [https://www.unicef.org/csr/files/Childrens_Rights_in_NAPs_WEB\(1\).pdf](https://www.unicef.org/csr/files/Childrens_Rights_in_NAPs_WEB(1).pdf).

END NOTES

¹ Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts* at para. 6, A/HRC/4/035 (9 February 2007), available at <https://business-humanrights.org/sites/default/files/media/bhr/files/SRSG-report-Human-Rights-Council-19-Feb-2007.pdf>.

² Although they refer to a specific kind of legal entity, for purposes of this document, the terms “corporate” and “corporation” are used to refer to all legal forms through which businesses operate, including partnerships, limited liability companies and all other forms of business enterprises.

³ As in the public sector, patriarchy is one of the root causes of women’s inequality in the private business sector. American feminist bell hooks defines patriarchy as “a political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence.” bell hooks, *Understanding Patriarchy* at p. 1, available at <http://imaginoborders.org/pdf/zines/UnderstandingPatriarchy.pdf>. hooks’ critique of patriarchy places it within a larger system of oppression, which she describes as “imperialist white-supremacist capitalist patriarchy.” *Id.* This understanding of patriarchy captures the colonized-colonizer dynamic, the role that racism assumes in the patriarchal structure as an additional basis for discrimination against women and the economic system of capitalism, which depends on and reinforces these relationships of domination and oppression while benefitting a numerical minority of the world’s population at the expense of the majority. (Note: bell hooks uses lowercase letters for her name “to get away from the ego associated with names.” <https://www.thoughtco.com/bell-hooks-biography-3530371>).

⁴ Ama Marston, *Women, Business and Human Rights: A background paper for the UN Working Group on Discrimination Against Women in Law and Practice* at p. 11 (March 7, 2014), available at <http://www.ohchr.org/Documents/Issues/Women/WG/ESL/BackgroundPaper4.pdf>.

⁵ *The Business of Women’s Human Rights*, IWRAP Asia Pacific Occasional Papers Series No. 15 (2014), available at http://admin.iwraw-ap.org/plugins/tinyMCE/plugins/moxiemanager/data/files/Organization%3EOur%20Publications/Training%20Materials/OPS15_20Mayversion.pdf.

⁶ Racel Moussié, *Challenging Corporate Power Struggles for women’s rights, economic and gender justice* at 6 (2016)(Association for Women’s Rights in Development and Solidarity Center)(“Challenging Corporate Power”), available at https://www.awid.org/sites/default/files/atoms/files/ccp_fullreport_eng.pdf. Of particular importance to women’s rights, businesses have increasingly assumed responsibility for the delivery of services traditionally provided by governments, such as health care, water and sanitation. When businesses take over traditional government functions, they typically increase costs to users or otherwise restrict or prevent access to services critical to the enjoyment of human rights. Although international human rights treaties require that governments ensure private actors do not violate human rights in providing these services, they often fail to meet this obligation.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 13-20.

¹⁰ *Id.* at 20.

¹¹ *Id.* at 20.

¹² *Id.* at 20. Specifically, businesses use their influence to extract incentives from governments in exchange for commitments to invest and facilitate economic development. These incentives often negate government policies for worker and environmental protections and reduce tax revenues that fund social services essential to the enjoyment of women’s human rights.

¹³ *Challenging Corporate Power* at 22-23.

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 24.

¹⁶ *Id.* at 24. As part of its Corporate Capture Project, ESCR-Net, a network of over 280 social movements, NGOs and activists in 75 countries, developed the following definition of corporate capture: “the means by which an economic elite undermine the realization of human rights and the environment by exerting undue influence over domestic and international decision-makers and public institutions.” <https://www.escr-net.org/corporateaccountability/corporatecapture> ESCR-Net has also identified how corporations influence national judicial decision-making processes by sponsoring meetings for judicial officers and by requesting that their home country governments weigh in on legal cases in other countries where the corporations are facing legal liability for corporate human rights violations.

¹⁷ See, for example, Global Policy Forum, *Fit for whose purpose? Private funding and corporate influence in the United Nations* at p. 8 (September 2015) available at https://www.globalpolicy.org/images/pdfs/images/pdfs/Fit_for_whose_purpose_online.pdf (questioning whether the UN’s emphasis on public-private partnerships “allow[s] the corporate sector and their interest groups growing influence over agenda setting and political decision-making by governments”).

¹⁸ James A. Paul, Executive Director, Global Policy Forum, *NGOs and Global Policy-Making* (June 2000) available at <https://www.globalpolicy.org/empire/31611-ngos-and-global-policy-making.html> (noting that “when NGOs take money from businesses, big foundations and rich individuals, such hefty grants can likewise create relations of influence and potentially lead NGOs away from their mandate to serve the broader public”); *Challenging Corporate Power* at 25-27.

¹⁹ United Nations, Addis Ababa Action Agenda of the Third International Conference on Financing for Development at para. 48 (p. 24),

available at http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf.

²⁰ United Nations Environment Programme website: Human rights and the environment available at <http://www.unep.org/divisions/delc/human-rights-and-environment>

²¹ “Small and medium-sized enterprises (SMEs), which constitute the bulk of employment in South Asian and Southeast Asian economies, have limited presence in trade.” Asian Development Bank and Asian Development Bank Institute, *Connecting South Asia and Southeast Asia*, at p. ix (2015), available at <https://www.adb.org/sites/default/files/publication/159083/adbi-connecting-south-asia-southeast-asia.pdf>. See also, UN Economic and Social Commission for Asia and the Pacific, *SMEs in Asia and the Pacific*, available at <http://www.unescap.org/sites/default/files/7%20-%201.%20SMEs%20IN%20ASIA%20AND%20THE%20PACIFIC.pdf> (“Perhaps the one common denominator is that SMEs typically make up more than 90 per cent of all registered enterprises in any country [in Asia and the Pacific regions]. Thus in terms of the number of incorporations at least—if not always in terms of aggregate asset size or cumulative productivity—SMEs tend to dominate the corporate community.”).

²² For more information on the tax justice movement, see Global Alliance for Tax Justice, <https://www.globaltaxjustice.org/en/about>, and Tax Justice Network, <http://www.taxjustice.net/about/who-we-are/>. These affiliated organisations work together, with the Tax Justice Network generating research and knowledge around issues related to tax justice and the Global Alliance for Tax Justice using the research in carrying out direct campaigns advocating for transparency, oversight and a more fair redistribution of wealth in tax systems. Information about the emerging partnership between the tax justice and human rights movements can be found on the Tax Justice Network website, <http://www.taxjustice.net/2015/05/08/building-the-foundation-for-tax-justice-through-human-rights/>.

²³ Berne Declaration, Center for Economic and Social Rights, Global Justice Clinic at New York University School of Law and Tax Justice Network, *State Responsibility for the Impacts of Cross-border Tax Abuse on Women’s Rights & Gender Equality* at pp. 15-16 (February 22, 2016) (“Swiss Obligations under CEDAW”), available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHE/INT_CEDAW_NGO_CHE_23184_E.pdf.

²⁴ Swiss Obligations under CEDAW at pp. 9-11.

²⁵ Id. at pp. 11-12.

²⁶ Id. at p. 13.

²⁷ Id. at p. 7.

²⁸ Id. at p. 1.

²⁹ Id. at p. 7.

³⁰ Id. at p. 4.

³¹ CEDAW Committee, *Concluding observations on the combined fourth and fifth periodic reports of Switzerland*, CEDAW/C/CHE/CO/4-5 at para. 40 (25 November 2016) (“Switzerland COs”), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/99/PDF/N1640299.pdf?OpenElement>.

³² Switzerland COs at para. 41.

³³ Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Protect, Respect and Remedy: A Framework for Business and Human Rights*, A/HRC/8/5 (7 April 2008), available at <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>.

³⁴ The Guiding Principles are available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

³⁵ This document is available at <http://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf>.

³⁶ This document is available at http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf.

³⁷ This document is available at http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf.

³⁸ OHCHR, *Frequently Asked Questions About the Guiding Principles on Business and Human Rights* at p. 1.

³⁹ UN Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* at p. 1, n. 3 (November 2016), available at http://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.

⁴⁰ Information on the status of NAPs by country is available at <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

⁴¹ Gender & Development Network and CORE, *Why National Action Plans on Business and Human Rights must integrate and prioritise gender equality and women’s human rights* (November 2015) (“NAPs and WHRs”), available at https://static1.squarespace.com/static/536c4ee8e4b0b60bc6ca7c74/t/5665b7ef69492ed58501622f/1449506799634/GADN+BHR+paper+for+UN+Global+Forum+Nov+15_FINAL.pdf. See Appendix for list of additional guidance on NAPs.

⁴² NAPs and WHRs at 3.

⁴³ NAPs and WHRs at 3.

⁴⁴ NAPs and WHRs at 4.

⁴⁵ NAPs and WHRs at 4.

⁴⁶ Proceeding Report for IRAW Asia Pacific’s Meeting on Women’s Human Rights and Corporate Accountability, Kuala Lumpur, Malaysia from 14-16 December 2016 at p. 2 (“Proceeding Report”) (14 December 2016 Presentation of Aishah Bidin, SUHAKAM).

⁴⁷ Proceeding Report at p. 47 (15 December 2016 Presentation of Wandisa Phama, Centre for Applied Legal Studies noting the importance of timing in ensuring that women’s rights are addressed).

⁴⁸ Proceeding Report at p. 48 (15 December 2016 Presentation of Wandisa Phama, Centre for Applied Legal Studies).

⁴⁹ Since the Human Rights Council established it in 2011, the Working Group has met three times each year. After each session, the Working Group issues an outcome document. The list of sessions and accompanying outcome documents are available at <http://www.ohchr.org/EN/Issues/Business/Pages/WGSessions.aspx>.

⁵⁰ Human Rights Council Resolution 17/4 at 6(f), A/HRC/RES/17/4 (6 July 2011), available at <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>

⁵¹ Human Rights Council Resolution 17/4 at 6(h).

⁵² Human Rights Council Resolution 17/4 at 7.

⁵³ Human Rights Council Resolution 17/4 at 6(d).

⁵⁴ The Working Group's report on country visits are available at <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx#visit>.

⁵⁵ *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, A/HRC/26/25/Add.5 at pp. 12, 22 (6 May 2014).

⁵⁶ *Id.* at p. 3.

⁵⁷ At each session of the Human Rights Council, the Working Group submits information on the status of the communications it has received. This information, which is submitted in a joint report with other UN entities receiving communications, is available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

⁵⁸ The communications procedure is set out on the OHCHR website at <http://www.ohchr.org/EN/Issues/Business/Pages/Submittingcomplaints.aspx>.

⁵⁹ OHCHR, Letter from various UN special rapporteurs and UN Working Group on the issue of human rights and transnational corporations and other business enterprises to Government of Laos (16 February 2016), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=20145>; OHCHR, OHCHR, Letter from various UN special rapporteurs and UN Working Group on the issue of human rights and transnational corporations and other business enterprises to Government of Thailand, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=15281>.

For information on the conditions of migrant pregnant women working in Thai poultry factories, see Swedwatch and Finnwatch, *Trapped in the Kitchen of the World: The situation for migrant workers in Thailand's poultry industry* (25 November 2015), available at http://www.swedwatch.org/sites/default/files/tmp/76_thaikyckling_151123_ab.pdf.

⁶⁰ OHCHR, Letter from various UN special rapporteurs and UN Working Group on the issue of human rights and transnational corporations and other business enterprises to Mr. Pham Tuan Phan, Mekong River Commission Secretariat (29 February 2016), available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=18159>; OHCHR, OHCHR, Letter from various UN special rapporteurs and UN Working Group on the issue of human rights and transnational corporations and other business enterprises to Mr. Goh Nan Kioh, Chairman, Mega First Corp BHD, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=13483>; OHCHR, OHCHR, Letter from various UN special rapporteurs and UN Working Group on the issue of human rights and transnational corporations and other business enterprises to Government of Malaysia, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=20612>.

The Mekong River system is crucial to the agriculture, fisheries and livelihood of the people residing in the region. Women in this region are particularly vulnerable to the resulting human rights abuses, which routinely include land loss and disruption of traditional livelihoods. (See below at Part V.A.1 for more information about the impact of land loss on the human rights of rural women in Cambodia.)

⁶¹ Human Rights Council Resolution 17/4 at 12, A/HRC/RES/17/4 (6 July 2011).

⁶² See OHCHR website at <http://www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx>.

⁶³ *Invitation to stakeholders to submit proposals for parallel sessions*, 2017 United Nations Forum on Business and Human Rights, 27-29 November, available at <http://www.ohchr.org/Documents/Issues/Business/ForumSession6/InvitationParallelsessions.pdf>.

⁶⁴ *Leadership and Leverage: Embedding human rights in the rules and relationships that drive the global economy*, 2016 United Nations Forum on Business and Human Rights, Geneva, 14-16 November, available at <http://www.ohchr.org/Documents/Issues/Business/ForumSession5/PoW.pdf>.

⁶⁵ *Tracking progress and ensuring coherence*, 2015 United Nations Forum on Business and Human Rights, Geneva, 16-18 November, available at <http://www.ohchr.org/Documents/Issues/Business/ForumSession4/FullProgramme.pdf>.

⁶⁶ *Advancing business and human rights globally: alignment, adherence and accountability*, 2014 United Nations Forum on Business and Human Rights, Geneva, 1-3 December, available at <http://www.ohchr.org/Documents/Issues/Business/ForumSession3/Programme.pdf>.

⁶⁷ Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f24&Lang=en.

⁶⁸ GC No. 24 at paras. 7-24.

⁶⁹ GC No. 24 at para. 5.

⁷⁰ GC No. 24 at para. 6.

⁷¹ GC No. 24 at paras. 25-57.

⁷² GC No. 24 at paras. 58-59.

⁷³ GC No. 24 at paras. 38-57.

⁷⁴ GC No. 24 at para. 8.

⁷⁵ GC No. 24 at para. 9.

⁷⁶ GC No. 24 at para. 9.

⁷⁷ GC No. 24 at paras. 12-13.

⁷⁸ GC No. 24 at paras. 15, 16, 17, 31, 50.

⁷⁹ GC No. 24 at paras. 44-48.

⁸⁰ GC No. 24 at para. 32.

⁸¹ GC No. 24 at para. 9.

⁸² GC No. 24 at para. 37.

⁸³ GC No. 24 at para. 49.

⁸⁴ GC No. 24 at para. 33.

⁸⁵ Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en

⁸⁶ GC No. 16, III at para. 1.

⁸⁷ GC No. 16, V.E. at para. 2. GC No. 16, VI.A.1 at para. 8 refers to prostitution and child sex tourism, but does not specifically refer to the vulnerability of female child with respect to the violations associated with these practices.

⁸⁸ GC No. 16, III.C. at para. 2.

⁸⁹ CEDAW Committee, Concluding observations on the combined fourth and fifth periodic reports of Switzerland, CEDAW/c/CHE/CO/4-5, paras. 16-17 (25 November 2016), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/99/PDF/N1640299.pdf?OpenElement> (noting the negative affects on women of Swiss corporations weapons exports to conflict zones and State's failure to adequately monitor these corporations with respect to use of exported weapons in violence against women and recommending that the State ensure it requires that the corporations monitor and report on use of their weapons in violence against women).

⁹⁰ CEDAW Committee, Concluding observations on the combined eighth and ninth periodic reports of Canada (25 November 2016) available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCAN%2fCO%2f8-9&Lang=en

⁹¹ CEDAW Committee, Concluding observations on the combined seventh and eighth periodic reports of Germany, CEDAW/C/DEU/CO/7-8, paras. 15 & 18 (9 March 2017), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/DEU/CO/7-8&Lang=En (expressing concern about the negative impacts of the activities of “transnational companies” on women’s human rights, particularly textile and large-scale agricultural corporations registered in Germany but operating abroad, the inadequacy of the State party’s laws in holding these companies accountable when they violated women’s human rights in their activities abroad, the lack of a gender perspective in its NAP, the lack of access to judicial remedies and absence of “effective independent mechanisms with powers to investigate complaints alleging abuses by such corporations”, the failure to conduct impact assessments that expressly accounted for women’s human rights prior to negotiating international trade and investment agreements and recommending that Germany strengthen legislation addressing the activities of corporations operating abroad, require those corporations to conduct human rights and gender impact assessments before investing, establish mechanisms responsible for investigating complaints and adopt measures to ensure (1) victim’s rights to adequate remedies, (2) that judicial and administrative procedures account for gender, (3) trade and investment agreements recognize that human rights obligations take precedence over investor interests and (4) that investor-State dispute resolution procedures do not prevent the State’s full compliance with CEDAW).

⁹² CEDAW Committee, Concluding observations on the combined eighth and ninth periodic reports of Sweden, CEDAW/c/SWE/CO/8-9, paras. 34-35 (10 March 2016), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/066/41/PDF/N1606641.pdf?OpenElement> (praising the State for its adoption of an Action Plan on Business and Human Rights, but noting its limited impact on the operations of Swedish companies abroad and recommending that it fulfill its due diligence “to ensure that companies under its jurisdiction or control respect, protect and fulfill women’s human rights when operating abroad”). When the Human Rights Committee reviewed Germany in 2012, it expressed similar concerns about business enterprises operating abroad and made similar recommendations regarding the exercise of due diligence over these enterprises and the provisions of remedies for victims of human rights abuses caused these enterprises. Human Rights Committee, Concluding observations on the sixth periodic report of Germany, CCPR/C/DEU/CO/6, para. 16 (12 November 2012), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/DEU/CO/6&Lang=En (expressing concern about the adequacy of Germany’s measures to provide remedies when German companies acting abroad violate human rights, encouraging the State party to clearly establish its expectation that such companies will respect human rights “throughout their operations” and encouraging the State party to adopt measures to strengthen remedies for victims of human rights violations by companies operating abroad).

⁹³ ESCR Committee, *Concluding observations on the second periodic report of China, including Hong Kong, China and Macao, China*, E/C.12/CHN/CO/2, para. 13 (13 June 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CHN/CO/2&Lang=En (expressing concern that the State had not adopted adequate and effective measures to ensure that State-owned and private companies operating domestically and abroad respect economic, social and cultural rights, recommending that China establish clear regulations to ensure that the business activities of companies operating domestically do not negatively impact economic, social and cultural rights and recommending China’s adoption of such measures “to ensure the legal liability of companies and their subsidiaries operating in or managed from the States party’s territory” for the violation of such rights).

⁹⁴ CEDAW Committee, *Concluding observations on the combined fourth and fifth periodic reports of India*, CEDAW/C/IND/CO/4-5, paras. 14-15 (24 July 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/IND/CO/4-5&Lang=En (expressing concern regarding the State’s failure to ensure a gender perspective and to consult with women on a post-conflict housing project in Sri Lanka and regarding the impact of a dam project on women (including women in Nepal) that threatens their livelihood, housing and food security, reaffirming a State party’s obligation to ensure that national corporations operating abroad and under the State’s “effective control” do not violate CEDAW rights, reaffirming the State party’s obligation to protect the human rights of persons outside the State party’s territory where actions affect those rights and recommending that the State review the housing project and consult and ensure a gender perspective in future phases to address the needs of the most marginalized women and adopt measures and assess the impact of the dam project on women in Nepal to prevent or remedy losses to livelihood, housing and food security and provide compensation for violations).

⁹⁵ For example, in the context of government privatization of health care services, GC No. 24 states that if a private health practitioner refuses

to provide abortion services on the ground of religious or moral beliefs, the state must ensure that the practitioner is obligated to refer the woman to another provider within “reasonable geographical reach, willing to provide such services”. GC No. 24 at para 21.

⁹⁶ An example of how this guidance could be used in the context of multi-lateral negotiations on trade agreements is upcoming negotiations between Canada, the United States and Mexico, who will be renegotiating the terms of the North American Free Trade Agreement. The New York Times recently reported that the Canadian government has called for protections for women and indigenous people in the renegotiated treaty. Catherine Porter, *Canada Wants a New Nafta to Include Gender and Indigenous Rights*, New York Times (Aug. 14, 2017), available at <https://www.nytimes.com/2017/08/14/world/americas/canada-wants-a-new-nafta-to-include-gender-and-indigenous-rights.html>. This follows on the heels of Canada’s free trade agreement with Chile, “which called for both countries to apply a gender lens to trade.” *Id.*; *Canada breaks new ground as it signs modernized free trade agreement with Chile focusing on trade and gender*, News Release, Government of Canada (June 5, 2017), available at https://www.canada.ca/en/global-affairs/news/2017/06/canada_breaks_newgroundasitsignsmodernizedfreetradeagreementwith.html.

⁹⁷ Human Rights Council, 26th Session, Resolution 26/9 *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, A/HRC/RES/26/9 (14 July 2014), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement>.

⁹⁸ The first session was from 6-16 July, 2015 and the second from 24-28 October, 2016.

⁹⁹ For example, Asia Pacific Forum on Women, Law and Development and Women’s International League for Peace and Freedom were participants in the IGWG’s second session. Human Rights Council, 34th Session, *Report of the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, A/HRC/34/47 at p. 25, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/000/94/PDF/G1700094.pdf?OpenElement>.

¹⁰⁰ The written contributions of NGOs and other stakeholders during the IGWG’s second session are available at <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session2/Pages/Session2.aspx>. A range of NGOs sponsored side events during the session. A list of these events and associated materials is available at <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session2/Pages/Session2.aspx>.

¹⁰¹ Human Rights Council, 34th Session, *Report of the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights* (“IGWG 2nd Sess. Report”), A/HRC/34/47 (4 January 2017), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/000/94/PDF/G1700094.pdf?OpenElement>.

¹⁰² IGWG 2nd Sess. Report at p. 10 (noting reference made to CEDAW Committee guidance on extraterritorial obligations of states with respect discrimination against women, including national corporations that operate abroad).

¹⁰³ IGWG 2nd Sess. Report at p. 18 (noting need for proposed treaty to pay attention to those most at risk, including women and noting suggestion that the proposed treaty refer to CEDAW).

¹⁰⁴ IGWG 2nd Sess. Report at p. 6.

¹⁰⁵ IGWG 2nd Sess. Report at p. 22.

¹⁰⁶ IGWG 2nd Sess. Report at p. 22.

¹⁰⁷ This case study is based in part on the 15 December 2016 video presentation of María Muñoz Maraver, Human Rights Programme Director, International Secretariat (GVA), Women’s International League for Peace and Freedom, during the IRAW Asia Pacific’s Meeting on Women’s Human Rights and Corporate Accountability, held in Kuala Lumpur, Malaysia from 14-16 December 2016.

¹⁰⁸ Home country is used here to mean the place where a company (or its parent, if it is a subsidiary) is based, domiciled, headquartered, incorporated or registered.

¹⁰⁹ Plataforma Internacional Contra la Impunidad and Women’s International League for Peace and Freedom, *Creating an international Gender and Peace agenda: Impact of Canadian mines in Latin America* at pp. 6-9 (October 2016)(“WILPF & PICI Shadow Report”).

¹¹⁰ CEDAW Committee, *Concluding observations on the combined eighth and ninth periodic reports of Canada*, CEDAW/C/CAN/CO/8-9 at para. 18(a) (25 November 2016)(“Canada COs”), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/03/PDF/N1640203.pdf?OpenElement>.

¹¹¹ Canada CO, para. 19(b).

¹¹² WILPF & PICI Shadow Report at 10-11.

¹¹³ In addition to these bodies, in September 2017, the Committee on the Elimination of Racial Discrimination recommended Canada to swiftly establish an independent ombudsman mandated to receive and investigate human rights complaints against Canadian corporations operating in other countries. *Concluding observations on Canada by the Committee on the Elimination of Racial Discrimination* CERD/C/CAN/CO/21-23, paragraph 21 and 22(13 September 2017). In 2012, the Committee on the Rights of the Child recommended that Canada adopt regulations to, among other things, require Canadian gas, mining and oil companies operating abroad to ensure their activities do not affect human rights. *Concluding observations on Canada by the Committee on the Rights of the Child*, CRC/C/CAN/CO/3-4, paras 28-29 (6 December 2012). Note that in 2007, the Committee on the Elimination of Racial Discrimination had “expressed concern over ‘reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside of Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of indigenous peoples in these regions.’” Amnesty International, *Canada Submission to the UN Human Rights Committee*, 114th Session at pp. 7-8 (5 June 2015) (“Amnesty International Submission”), available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CAN/INT_CCPR_CSS_CAN_20749_E.pdf

Thus, concerns about Canada’s poor record of protecting against corporate human rights abuses were raised at least three times prior to Canada’s review by the CEDAW, ESCR and Human Rights Committees in 2015 and 2016

¹¹⁴ Human Rights Committee, *Concluding observations on the sixth periodic report of Canada*, CCPR/C/CAN/CO/6 (13 August 2015), para. 6,

available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/CAN/CO/6&Lang=En.

¹¹⁵ Id.

¹¹⁶ Amnesty International Submission at pp. 7-11.

¹¹⁷ Committee on Economic, Social and Cultural Rights, Concluding observations on the sixth periodic report of Canada, E/C.12/CAN/CO/6, para. 15 (23 March 2016) (“ESCR Committee COs”), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/CAN/CO/6&Lang=En.

¹¹⁸ ESCR Committee COs at para. 16.

¹¹⁹ ESCR Committee COs at para. 16.

¹²⁰ Amnesty International, *Canada Submission to the UN Committee on Economic, Social and Cultural Rights*, 57th Session at pp. 8, 12-16 (22 February 2016), available at http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/CAN/INT_CESCR_CSS_CAN_22905_E.pdf

¹²¹ *Statement at the end of visit to Canada by the United Nations Working Group on Business and Human Rights*, 1 June 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21680&LangID=E>.

¹²² Hannah Gerber, *ICC Expands Remit to Environmental Crimes: Is this What the People of Cambodia Have Been Waiting For?*, *The McGill International Review* (October 28, 2016) (“ICC Expands Remit”), available at <http://mironline.ca/icc-expands-remit-to-environmental-crimes-is-this-what-the-people-of-cambodia-have-been-waiting-for/>.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Id. Other estimates place this figure at 770,000 people. See, Global Diligence, LLP, *Communication under Article 15 of the Rome Statute of the International Criminal Court: The Commission of Crimes Against Humanity in Cambodia July 2002 to Present* (7 October 2014) (“Communication to ICC”), at para. 7, available at https://www.fidh.org/IMG/pdf/executive_summary-2.pdf.

¹²⁷ ICC Expands Remit.

¹²⁸ Id.

¹²⁹ Id.

¹³⁰ Id.

¹³¹ Inclusive Development International, *Cambodia: Boeung Kak Lake Evictions*, <http://www.inclusivedevelopment.net/campaign/cambodia-boeung-kak-lake-evictions/>

¹³² Id.

¹³³ Id.

¹³⁴ Id.

¹³⁵ Human Rights Council, 21st Session, *Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, A/HRC/21/63/Add.1* (24 September 2012), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-63-Add1_en.pdf.

¹³⁶ ICC Expands Remit.

¹³⁷ Communication to ICC, paras. 3-4.

¹³⁸ Inclusive Development International, *Joint Letter to the World Bank: Fulfill Your Commitment to Upholding the Right to Remedy for Boeung Kak Lake Community*, available at <http://www.inclusivedevelopment.net/wp-content/uploads/2015/08/Letter-to-WB-re-Cambodia-Reengagement.pdf>.

¹³⁹ Radio Free Asia, *Cambodian Women Strip in Protest* (May 1, 2012), available at <http://www.rfa.org/english/news/cambodia/boeung-kak-05012012140129.html>; Cambodia’s women activists; Eviction and Resistance at 56.

¹⁴⁰ Cambodia’s women activists.

¹⁴¹ Amnesty International, *Eviction and Resistance in Cambodia: Five women tell their stories* at p. 12 (September 2011) (“Eviction and Resistance”) available at <https://www.amnesty.org/en/documents/ASA23/006/2011/en/> (describing the destruction of Mai’s family rice crop by the Angkor Sugar Company and the burning and bulldozing of her home by police, forestry department officials and Angkor Sugar Company employees and documenting the extreme poverty in which she currently lives after the destruction of her community and loss of land).

¹⁴² Erin Handley, *Women ‘bear brunt’ of land grabs* (28 September 2016) (“Women bear brunt of land grabs”), *The Phnom Penh Post*, available at <http://www.phnompenhpost.com/national/women-bear-brunt-land-grabs>. See also, Katherine Brickell, *Cambodia’s women activists are redefining the housewife*, 2 April 2013 (“Cambodia’s women activists”), *The Guardian*, available at <https://www.theguardian.com/commentisfree/2013/apr/02/cambodia-activists-housewife> (“Western feminists should not lose sight of the fact that in many countries around the world, women’s role as wife and mother remains central to their family and societal status. When homes are threatened with destruction, it is women who are disproportionately affected.”).

¹⁴³ Asia Development Bank, *Country Partnership Strategy: Cambodia, 2014-2018* at p. 1, available at <https://www.adb.org/sites/default/files/linked-documents/cps-cam-2014-2018-ga.pdf> (noting that 66.3% of workers in Cambodia’s agriculture, forestry and fishery sectors are women).

¹⁴⁴ Cambodian League for the Promotion and Defense of Human Rights, *Cambodian Women on the Front Line: Six Stories of Resistance* (March 13, 2015), available at <http://www.licadho-cambodia.org/articles/20150313/145/index.html#nhav> (reporting an interview with Rocham Nhav, a woman from the Tumpu indigenous group at Malik village in the Andong Meas district, Ratanakiri province, who said “[o]ur village is ancient and for us it’s better to die than to move and lose everything”).

¹⁴⁵ Eviction and Resistance at 7.

¹⁴⁶ Women bear brunt of land grabs.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Cambodian League for the Promotion and Defense of Human Rights, “Good Wives”: Women Land Campaigners and the Impact of Human Rights Activism (November 23, 2014), available at http://www.licadho-cambodia.org/collection/24/good_wives_women_land_campaigners; Voice of America, *Women on the Frontlines of Cambodia Lands Right* (June 23, 2017), available at <https://www.voanews.com/a/women-frontlines-cambodia-land-fight/3914103.html>.

¹⁵⁰ Global Witness, *Rubber Barons: How Vietnamese Companies and International Financiers are Driving a Land Grabbing Crisis in Cambodia and Laos* (May 2013) (“Rubber Barons”), available at <https://www.globalwitness.org/en/campaigns/land-deals/rubberbarons/>.

¹⁵¹ Rubber Barons at p. 9.

¹⁵² *Id.* at p. 12.

¹⁵³ *Id.* at p. 12.

¹⁵⁴ *Id.* at p. 16.

¹⁵⁵ *Id.* at p. 21, 30, 33-35.

¹⁵⁶ Global Witness, Press Release, *Deutsche Bank Divests From Vietnames Land Grabber HAGL Following Global Witness’ Expose* (November 29, 2013), available at <https://www.globalwitness.org/en/archive/deutsche-bank-divests-vietnamese-land-grabber-hagl-following-global-witness-expose/>.

¹⁵⁷ Note that the human rights abuses documented by Global Watch did not involve the Boeung Kak Lake community. Nevertheless, attention to the role of banks in the global North in financing land development in Cambodia associated with human rights abuses is helpful in drawing attention to the problem of land grabbing and forced evictions generally.

¹⁵⁸ This case study is based on the Proceeding Report at 11-14 (14 December 2016 presentation by Megi Llubani, Gender Alliance for Development Centre) and the Gender Alliance for Development Centre, *Shadow Report With a special focus to the Applications and Implications of the Article 11 in shoes and textile industry in Albania* (June 2016) (“GADC Shadow Report”), which was submitted for the CEDAW Committee for Albania’s review during the 64th Session (4-22 July 2016), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fALB%2f24256&Lang=en. This case study does not reflect all of the violations documented by GADC.

¹⁵⁹ The factsheet is available on the Clean Clothes Campaign website at <https://cleanclothes.org/resources/publications/factsheets/albania-factsheet/view>.

¹⁶⁰ Clean Clothes Campaign, *Labor on a Shoe String* (June 2016), available at <https://cleanclothes.org/resources/recommended-reading/labour-on-a-shoestring/view>.

¹⁶¹ CEDAW Committee, *Concluding observations on the fourth periodic report of Albania*, CEDAW/C/ALB/CO/4 (25 April 2016), paras. 30-31, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fALB%2fCO%2f4&Lang=en.

¹⁶² The Olof Palm International Center is an international NGO whose work in Europe focuses on strengthening democracy, gender equality and human rights. <https://www.palmecenter.se/en/europe/>.

¹⁶³ This case study is based on the Proceeding Report at pp. 34-36 (15 December 2016 presentation by Anirudha Nagar, South Asia Director, Accountability Counsel) and information on the Accountabilitea website at <http://accountabilitea.org>, including the report of the Office of the Compliance Advisor Ombudsman for the International Finance Corporation and Multilateral Investment Guarantee Agency, *CAO Investigation of IFE Environmental and Social Performance in relation to: Amalgamated Plantations Private Limited (APPL), India* (September 6, 2016).

¹⁶⁴ This summary of the Corporate Crime Principles is based on the Proceedings Report at pp. 38-40 (15 December 2016 presentation by Sophia Lin, International Corporate Accountability Roundtable).

¹⁶⁵ Subsequent references to human rights standards and norms refer generally to international human rights law reflected in UN human rights treaties.

¹⁶⁶ National laws have traditionally only imposed civil liability on corporations on a means of regulating their behavior.

¹⁶⁷ For examples of successful criminal prosecutions of business entities and/or their owners, see Amnesty International and the International Corporate Accountability Roundtable’s *Corporate Crime Principles: Advancing Investigations and Prosecutions in Human Rights Cases* (2016) (“CCP”) at p. 12 (prosecution by the Dutch International Crimes Unit of the Government of the Netherlands of Frans van Anraat, a Dutch businessman who sold chemicals to Saddam Hussein’s regime); p. 45 (prosecution of the owners of the Rana Plaza factory in Bangladesh following a fire that killed approximately 1,100 workers and injured more than 2,000), and p. 62-63 (prosecution by South Africa’s Public Prosecutor of mining company and individual directors of the company for severe environmental damage that harmed residents of the village of Tlhabine in Limpopo). The Corporate Crime Principles are available at available at <http://www.commercecrimehumanrights.org/wp-content/uploads/2016/10/CCHR-0929-Final.pdf>.

¹⁶⁸ CCP at p. ii.

¹⁶⁹ Friedrich Ebert Stiftung and 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, Women’s Access to Justice for Human Rights Abuses Committed by Business Actors* (February 2013) (“ICJ Submission to CEDAW”), para. 21 (“Simultaneously, in matters where criminal law enforcement is appropriate, State authorities may fail to conduct effective investigations with a view to ensuring accountability. As discussed in the separate ICJ submission, this can sometimes be because infringements of women’s rights are considered ‘less important’ and are not accorded priority or because officials display discriminatory attitudes towards women who seek protection or condone or implicitly permit certain abuses. However, where business actors are involved in abuses, failures in State response can also result from

additional factors such as inequality of arms and a lack of training and official capacity to effectively investigate corporate crime. Moreover, at times high-level economic and political pressure can prevent effective investigations and prosecutions.”). The ICJ Submission to CEDAW is available at <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2013/ICJ.pdf>. Inequality of arms is a reference to the principle of “equality of arms”, developed in the jurisprudence of the Council of Europe and European Union law. Equality of arms is the principle that “involves ensuring that each party has a reasonable opportunity to present its case in conditions that do not disadvantage either party.” European Union Agency for Fundamental Rights, European Court of Human Rights and Council of Europe, *Handbook on European law relating to access to justice* (January 2016) at p. 41, available at <http://fra.europa.eu/en/publication/2016/handbook-european-law-relating-access-justice>.

¹⁷⁰ ICJ Submission to CEDAW at para. 17 (“In some jurisdictions legal frameworks may not effectively prohibit abuses of women’s rights that commonly occur in business activities. For example, many jurisdictions have not established any, or adequate, legislative prohibitions of sexual harassment. . . . Where frameworks do exist they may be limited in remit and may not be fully applicable to forms of employment predominantly undertaken by women.”).

¹⁷¹ CEDAW Committee General Recommendation on women’s access to justice, CEDAW/C/GC/33, (23 July 2015)(“GR No. 33”), para. 19 (with respect to remedies, recommending that state parties “[t]ake full account of the unremunerated domestic and caring activities of women in assessment of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative and other proceedings”), available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf.

¹⁷² Although the introduction to the Corporate Crime Principles identifies Article 2 of CEDAW (and the CEDAW Committee’s interpretation of that article in General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women) as an example of an international human rights treaty that requires state parties to prevent corporations headquartered or incorporated in its jurisdiction from abusing human rights in another jurisdiction, the principles do not otherwise mention women or their particular vulnerability to human rights abuse at the hand of corporate actors.

¹⁷³ GR No. 33 at para. 19 (with respect to remedies, recommending that state parties “[t]ake full account of the unremunerated domestic and caring activities of women in assessment of damages for the purposes of determining appropriate compensation for the harm, in all civil, criminal, administrative and other proceedings”).

¹⁷⁴ GR No. 33 at paras. 26-29 (“[e]liminating judicial stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors”).

¹⁷⁵ CCP at 3 (“States should provide targeted training and guidance on corporate crimes.”); CCP at 30 (“Where investigators and prosecutors do not have expertise in this areas [laws and evidence relevant to corporate crimes], they should request guidance and training from relevant senior officials or departments”). GR No. 33, para. 32-33, which advises state to inform women about their human rights and the means for accessing justice by disseminating “multi-format materials”, is similar to CCP 3, p. 20, which recommends that law enforcement issue “publicly-available guidance on how to access the [legal] system.”



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ISBN 978-983-44563-6-8

