



**Submission to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises on Access to Remedy
15 June 2017**

International Women's Rights Action Watch Asia Pacific, the Landesa Center for Women's Land Rights and others¹ welcome the opportunity to contribute to the upcoming report on Access to Remedy by the UN Working Group on Business and Human Rights. We are encouraged by the growing attention to the impact of business activities on women's human rights.

How do women experience corporate human rights abuses differently from men? Please provide a few concrete examples or refer to relevant case studies.

Corporate human rights abuses are not gender neutral and due to patriarchal structural barriers and entrenched discriminatory laws and practices they exacerbate gender inequalities.

a) Women workers

Women workers are often found in the most precarious working environments due to the inherent structural inequalities of the neoliberal economy that creates value chains which undervalue or make invisible the economic contributions of women. Prevailing gender social norms and an unequal division of labour in the home, translates into women bearing the brunt of unpaid care work. This burden limits the type of work opportunities for women and their lack of mobility and thus lack of access to markets affects their participation and confines women to the very bottom of global value chain operations. This is further exacerbated by gender stereotypes about women's work which often results in job segregation and gendered disparities in wages and benefits. Despite the majority of employed women in South Asia and Sub-Saharan Africa working in agriculture, they are often not considered as "farmers" to access inputs and benefits because land documents do not bear their names.² In Cambodia for example, 90% of the garment workers are women, predominantly young migrant women from rural provinces and the garment industry, like many others, subscribes to gender stereotypes that women are "cheaper, passive and flexible"³ and Action Aid reports that from 2004-2009 Cambodia's gender wage gap doubled.⁴ Cambodia is not unique. Eighty percent (80%) of the world's garment workers are women working in precarious environments marked by gender stereotypes or beliefs that women are more docile, dexterous or will make fewer demands.

¹ This submission is supported by the Business and Human Rights Resource Centre, Cynthia Morel, Gender Equality Network, Institute for Policy Research and Advocacy (ELSAM) Indonesia, NGO Gender Group Myanmar, the Research Centre for Gender, Family and Environment in Development and STAR Kampuchea.

² Landesa, *The Law of the Land and the Case for Women's Land Rights* (2016), at <http://www.landesa.org/resources/property-not-poverty/>.

³ ILO Regional Office Report: *Action-oriented research on gender equality and the working and living conditions of garment factory workers in Cambodia* (2012) and ILO and ADB Report: *Gender Equality in the Labour Market in Cambodia* (2013)

⁴ Action Aid Report: *Close the gap: The cost of inequality in women's work* (2015) and Human Rights Watch Report: *Work Faster or Get Out* (2015)

b) Women in communities affected by business activities

Investment projects that affect communities can further entrench or exacerbate gender disparities and power dynamics. Business activities and large-scale land projects often affect women more adversely than men. Women – who make up the bulk of agricultural workers in Asia and Africa – must bear the burden when their crops and livelihood strategies are lost. Women often lack secure tenure rights to the land they depend on for livelihood, shelter, and identity.⁵ In over 90 countries social norms or custom undercut women’s access to land,⁶ and rural women face systemic discrimination in access to land and natural resources.⁷ Compared to their male counterparts, rural women are typically excluded from weighty community decisions about land use and investment either due to custom or competing care demands; they are more likely to lose access to land and common resources, less likely to receive proceeds from the sale of crops within their household, less likely to be offered employment as a result of an investment, and face greater challenges in accessing redress and justice.⁸ Investment-linked evictions and displacements often result in physical and sexual violence against women and girls, inadequate compensation for loss of crops and other forms of livelihood, and additional burdens related to resettlement for women and girls, especially because their rights to the land are often unrecognized or diluted by law or practice.⁹ Unlike their male counterparts, women are less likely to be seen as heads of household whose names and interests are recorded on land documents; because their rights are less likely to be recorded, they are often seen as not eligible for adequate compensation or remedy for loss of livelihood and access to natural resources, including water sources and forests on which they rely. While men who typically oversee cash crop cultivation may enjoy adequate valuation for their loss of land, women who engage in subsistence agriculture or forage non-timber products in forests often receive no reparations.¹⁰

What bearing should these different/unique experiences of women have on the effectiveness of remedies?

Remedies need to take into account the unequal power relations that govern the context of corporate abuses, particularly as women often face stigma, reprisals and job insecurity for reporting business-related abuses. The compounded discrimination that women from marginalized groups face should be taken into account.

Structural impediments i.e. legal, economic, social and cultural barriers to women’s rights to remedies must therefore be addressed in all dimensions. Under CEDAW, State parties have an obligation to remove barriers to women’s access to an effective remedy which also includes, “*an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes that prevent women from exercising and claiming their rights and impede their access to effective remedies.*”¹¹

⁵ Behrman, J; Meinzen-Dick, R; Quisumbing, *The Gender Implications of Large-Scale Land Deals*, (2011), IFPRI, at 2, hereinafter “IFPRI,” available at: https://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/56_Behrman_Meinzen-Dick_Quisumbing.pdf

⁶ Landesa, *The Law of the Land: Women’s Rights to Land*, available at: <http://www.landesa.org/resources/property-not-poverty/>

⁷ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 34 on the rights of rural women*, (March 4, 2016) CEDAW/C/GC/34, at para. 5, hereinafter “CEDAW GR 34,” available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf

⁸ IFPRI at 4-6.

⁹ Landesa Center for Women’s Land Rights, *Comments on the draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, (January 2017), at 4, hereinafter “Landesa CESCR,” available at: <http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/Landesa.docx>

¹⁰ IFPRI at 4.

¹¹ CEDAW Committee General Recommendation on Women’s Access to Justice (2015)

Designing effective, gender-responsive remedies requires specifically including and accounting for women's social contexts and legal rights status. For example, company-based grievance mechanisms can ensure that women's land rights and interests are captured, as their rights are more likely than men's to be unregistered, informal, unrecognized, seen as secondary to men's, and contested.¹² This means that establishing effective remedies for women requires local knowledge and assistance (local civil society are often the best candidates), and iterative consultations with men and women in the affected communities.¹³ In-depth environmental, social, human rights, and gender assessments and consultations should be conducted early;¹⁴ this helps to establish a company's "social license to operate"¹⁵ but it will also reveal the interests of women and men in the community so that grievances can be avoided. Impact assessments are the requisite first step to ensure solid grounding for effective remedy and company grievance mechanisms that transcend, rather than entrench social inequities that often plague existing customary or judicial mechanisms.

Do women expect any special types of remedies in view of their different/unique experiences of corporate human rights abuses?

Women are not an inherently vulnerable group. They are marginalized and disenfranchised by discriminatory laws, policies, and practices that perpetrate gender inequalities. Remedies should be in accordance with human rights law standards and principles and be prompt, accessible and meaningfully redress all types of harm. (Please see response below for details.)

How to ensure that remedies for business-related human rights abuses are responsive to the experiences and expectations of rights-holders, especially of marginalized or vulnerable groups of society?

To understand the experiences and expectations of women and men in affected communities, States should review the substantive, procedural, and practical barriers to remedies.¹⁶ This review should include meaningful consultation with communities that have already been affected by investments to determine what remedies are accepted and pursued in practice.

Formal judicial mechanisms are frequently not accessible to rural communities, due to the effects of poverty, geographical distance, lack of infrastructure, and illiteracy.¹⁷ These factors especially

¹² Landesa Grievance Mechanisms at 4.

¹³ Landesa, *Malawi Case Study: A Case Study Prepared by Landesa for the DFID-funded Responsible Investments in Property and Land (RIPL) Project*, (October 2015), at 3, hereinafter "Landesa Malawi," available at: <http://www.landesa.org/wp-content/uploads/Malawi-Case-Study-FINAL-10.6.15.pdf>

¹⁴ VGGT 12.10, 12.11.

¹⁵ The concept of social license means that affected communities accept and even support a project, rather than creating delay through protest or conflict. See generally, Sustainable Business Council, *Social License to Operate Paper*, (2013), available at: https://www.sbc.org.nz/__data/assets/pdf_file/0005/99437/Social-Licence-to-Operate-Paper.pdf

¹⁶ Minority Rights Group, *Initial Observations on the Draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, (January 2017), at 6, available at: http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/25-Minority_Rights_Group_International_MRG.pdf

¹⁷ World Resources Institute, *Making Women's Voices Count in Community Decision-Making on Land Investments*, (July 2016), at 3, hereinafter "WRI," available at: http://www.wri.org/sites/default/files/Making_Womens_Voices_Count_In_Community_Decision-Making_On_Land_Investments.pdf. This paper contains case studies on increasing women's participation and voices in land-based investment processes from Tanzania, Mozambique, and the Philippines.

affect women and other marginalized groups (pastoralists, migrants, religious minorities, those with disabilities, the elderly, etc.). States should document these dynamics and incorporate the needs of rural communities vis a vis remedies into legislative, administrative, and regulatory mechanisms designed to comply with international human rights standards related to investment, and to compel companies to comply.

Extraterritorial human rights obligations affirm the universality of human rights¹⁸ and can be used to counter the structural barriers and unequal power relations between States, corporations and affected communities by triggering corporations' home State duties and by giving victims recourse to spaces outside their territory to pursue the right to an effective remedy.

Company Role in Creating Remedies Tailored for Communities: Example on Land Rights

Companies must provide all women and men claiming land rights or interests with fair and prompt compensation for the leasing, purchasing, or any other use of their land; agreed upon compensation should be enshrined in contract. Consultations should only be held after the business enterprise has shared all material information with those claiming land rights or interests, including information in the form of assessment results. Consultations should be participatory, with those claiming land rights or interests given the fullest opportunity to ask questions, request additional information, and express their concerns and expectations.¹⁹

Special efforts should be made to ensure that women are included in consultations; particularly as women's land use rights and interests are often secondary and unrecognized by government entities and investors.²⁰

What role can civil society organisations and human rights defenders play in facilitating women's access to effective remedy in cases related to business-related human rights abuses?

Civil society actors provide awareness and capacity building to communities so that they understand their rights and mechanisms to mediate their claims. They provide legal support for directly engaging with the justice system, including legal aid, counsel and as *amicus curie*. They play a key role in connecting communities to government and corporate grievance and dispute resolution processes, and to the formal justice system, especially in rural areas where few lawyers operate and courts are sparse, distant, and costly to access and help them navigate what are often time-consuming and bureaucratic legal processes.²¹

Civil society actors campaign for progressive law and policy reforms and also monitor compliance with decisions to ensure that the right to remedy is implemented. However for civil society actors to facilitate women's access to effective remedy, there must be an enabling environment for them to access funding, and operate and work free of intimidation, harassment, violence and reprisals.

¹⁸ ETO Consortium Fourteen misconceptions about extraterritorial human rights obligations (2014)

¹⁹ Landesa Grievance Mechanism at 7.

²⁰ Landesa Grievance Mechanism at 8.

²¹ Mokoro Ltd., *Women, Land and Justice in Tanzania*, (2015) at 2, available at: http://mokoro.co.uk/wp-content/uploads/HD_seminar_Nov15.pdf

Please share good practice examples, landmark judicial decisions or other regulatory innovations contributing to strengthening access to effective remedy for women in cases related to business-related human rights abuses.

Regional Court of Dortmund, Germany (August 2016)

In August 2016, the Regional Court of Dortmund issued an initial decision to accept jurisdiction to hear the case of those affected by a textile factory fire in Pakistan as well grant legal aid to the claimants to cover the costs of legal fees. While the Court is yet to decide on the merits of the case, the decision strengthens the call for accountability in global supply chains, particularly as women workers make up 80% of the labour in supply chains. By granting legal aid, this decision also addresses the prohibitive costs of litigation- an economic barrier that constrains women's access to remedy.

Submitted on behalf of the following individuals and organizations:

Business and Human Rights Resource Centre

Cynthia Morel

Gender Equality Network

Institute for Policy Research and Advocacy (ELSAM) Indonesia

International Women's Rights Action Watch Asia Pacific

Landesa Center for Women's Land Rights

NGO Gender Group Myanmar

Research Centre for Gender, Family and Environment in Development

STAR Kampuchea

Women's International League for Peace and Freedom