

## Consultation on the “Gender Lens to the UN Guiding Principles on Business and Human Rights”, Conference Centre Varembe, Geneva, Switzerland, 31 January – 1 February 2019

### Opening Remarks

- Barbara Fontana, Head of Human Rights Section, Swiss Mission
- Felix Kirchmeier, Manager of Policy Studies, Geneva Academy

### Introduction to the project so far and format of the WG’s 2019 report to the Human Rights Council: Rationale, methodology, scope and structure of the guidance

- Surya Deva, Chairperson, UN Working Group on Business and Human Rights

**Framework of the recommendations for States and business** that may be embedded in the report, to apply a gender lens to the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) - 3 stage cycles:

**1. Gender sensitive assessment:** Both states and business should conduct a gender sensitive assessment which is broader and more holistic than an impact assessment. Segregated data’s and policy frameworks are keys for this process. Existing tools should be used and overhauled, such as integrating gender considerations into codes of conduct and audit processes. The monitoring and the evaluation for such assessments should not be based on declarations and policies but on outcomes. Moreover, affected actors should be invited to participate in these assessments.

**2. Gender responsive measures:** In light of the gender sensitive assessments, gender responsive measures should be taken by States and business.

**3. Gender transformative evaluation:** Gender transformative evaluations should be undertaken and be incorporated in the assessments.

### **Key issues faced by women and girls in the context of business activities:**

- Sexual harassment and sexual violence
- Supply chains
- Attacks and intimidation of women HRDs
- Competing expectations of women in reproduction and production
- Unpaid and unrecognized care work
- Discrimination and harassment in the internet.

- Informal sector
- Discriminatory or lack of law enforcement
- Men-oriented trade union
- Migration
- Role of advertisement industry
- Lack of sensitivity on women at the decision making level
- Protective measures could backfire (e.g. increase maternity leave had negative impact)
- Extractive sector and natural resources; women don't often own the land but they rely on it for family survival
- Education and awareness on women's rights
- Impacts of the 4<sup>th</sup> industrial revolution on women, such as automation
- Limited access to credits and assets for women
- Underrepresentation of women in managerial positions
- Gendered impacts in context of conflict
- Lack of hygiene facilities
- Trafficking, pornography
- Feminization of work
- Professional of judicial and non-judicial mechanisms are often not trained to deal with gender and sexual harassments
- Post-pregnancy disadvantages
- Impacts of austerity measures on women

Some participants raised the importance to build [a gender business case](#) to showcase that gender violence and inequality are very costly for businesses. Men also suffer from gender inequality since it has forced them to work in very hard conditions due to stereotypes. Thereby, gender equality would also benefit men.

Gender participatory audit has proven to be a good practice to get solutions from people who can implement the measures.

The participants underlined the importance to talk about substantive equality, going beyond formal equality. Addressing intersectional and multidimensional discrimination faced by women is key. For example, religion and cultural arguments may be used for maternity leave, constraining rights of women. Women migrant workers in conflicts situation are even more vulnerable since they could be killed just for being foreigner working there.

### **Women, business and human rights: Identifying key challenges and developing a gender-sensitive and gender-responsive framework**

Juan Pablo Bohoslavsky, Independent Expert on the Effects of Foreign Debt presented the main findings of his thematic report on the impact of [economic reform policies on women's human rights](#). Macro-economic policies are male-biased and have gendered impact on health, food and social

security, as the privatization of public services does. Women unpaid care work are not taken into account and cut of social services has intensified the burden of domestic work on women. Economic reforms have also put women under more vulnerability in terms of informality, precarious working conditions and temporary contracts. Austerity has hit the women harder.

The expert calls for a human rights assessment with a specific focus on gender for economic reform to avoid this situation. This assessment should include women and the potentially affected women. Systematic segregated data's collection should track the results of the measures.

On the other hand, the private sector should create conditions that enable women to engage and act in a way which does not contravene with the role of the State to protect women human rights (e.g. role of business in lobby policies), even more the business should take the role to influence Governments in the right way. Business associations should enable their members to respect human rights.

He also underlined the importance to highlight the gendered implications of IFI, as they have a instrumentalist agenda on economic growth but do not look at the gender issues and equality. Some examples are gathered in his [country visit report to Sri Lanka](#).

#### *Good practices*

- Canada has used since 1995 the [gender based analysis plus](#) which is an analytical process used to assess how diverse groups of women, men and non-binary people may experience public policies, programs and initiative.
- Development finance institutions of the G7 committed to mobilize US 3 billion by 2020 for investment in business activities that will benefit women – [the 2 X challenge :financing for women](#).
- [Women's empowerment principles \(WEP\)](#) and its analysis tool are used by international development banks. WEP analysis tool helps business to gather data's and assess outcomes which are essential for gender oriented practices.
- Fairwear foundation, an European multi-stakeholders initiative, verifies that its members garment and textile companies implement the [FWF code of labour practices](#) in their supply chains, including no discrimination in recruitment, wage policy, employee promotion police...
- Ethic Trading Initiative has developed a [course](#) to develop understanding on gender equality for companies and to give tools to assess supply chain and identify the risks women face in the workplace, as well as how to develop appropriate actions that mitigate risks and work towards greater respect for women workers rights.
- [ILO Policy on Gender Equality and Mainstreaming](#) supports a two-pronged approach of gender mainstreaming: analyzing and addressing in all ILO initiatives the specific needs of both women and men, and target interventions to enable women and men to participate in, and benefit equally, from development efforts
- The UN Economic Commission for Europe "[gender responsive standards initiative](#)" aims to strengthen the use of standards and technical regulations as powerful tools to attain SDG 5; integrate a gender lens in the development of both standards and technical

regulations; elaborate gender indicators and criteria that could be use in standards development.

- [The Gender data and impact framework](#) developed by BSR, Ethical Trading Initiative, ISEAL, UNGC, UN Women and Fair Wear Foundation as a pro-bono partner for the piloting of the framework. The Framework is aimed at companies to guide them in identifying, monitoring and evaluating their progress on gender equality in their supply chains, looking at outcome based indicators rather than focusing on the existence of a policy or a practice. It is composed of gender disaggregated data points (workforce profile and workplace practice effectiveness) and outcome indicators (worker perceptions and gender norms) that should be collected through supplier document review on the one hand and direct worker engagement activities on the other hand (through worker interviews or surveys and focus groups). This framework, which will be launched soon, seeks to support companies' due diligence in their supply chain.

A challenge is to get segregated data's, by sex and age. In the UK, the companies have to report on their gender pay gap but in for 2019, only 10% of the employers could provide these numbers. In addition, the data's provided shown that the gender pay gap is getting wider.

Data is also key for gender impact assessments to map and trace the supply chain. Policies should exist at the States and company levels and a due follow up on the implementation should be conducted. The gender impact assessments should be mandatory by law according to the participants. Some tools already exist for gender impact assessment as the WEP analysis tool. Other existing tools, as audit and code of conduct, should be readjusted to incorporate a gender dimension (see [BSR report](#) on code of conduct and [BSR report on audit](#)). The participation is key in these gender assessments, and to make sure that we take the right persons and that all voices are taken on board. This requires a cultural sensitiveness. The timing of the assessment is of importance, it should be conducted before any investment, and throughout the projects. These assessments should be based on predefined methodology and undertaken through a continuous engagement with all stakeholders

The role of investors is highlighted in order to promote gender equality and to push forward the SGD 5.

## **Discussion regarding guidance on Pillar I: Recommendations to states based on challenges and best practices**

*Guiding Principle 1: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication.*

Overarching observation: Women are not inherently marginalized, but rather made marginalized.

Women substantial equality should be mentioned here, highlighting intersectionality of discrimination and root causes of inequality between men and women.

It should be included that there is a need for a comprehensive anti -discrimination legal framework, which takes into account all the sources of discrimination. Mechanisms should be established to ensure the enforcement of these norms.

The steps taken by States should be based on CRC, CEDAW, SDG 5 and other relevant international standards and existing tools. The steps should also be based on a gender impact assessment, which encompasses a meaningful participation and consultation process with interested stakeholders, including women.

*Guiding Principle 2: States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.*

Caution is advised in order not to frame women as a victim but the guidance should be more specific on how business activities can impact women.

During the discussions, the participants emphasized that regarding their extraterritorial obligations, home states should set out clearly the expectations that all business enterprises domiciled in their territory/jurisdiction respect women rights, including providing information on gender-related data's; policies on women and violence against women. It should also be mentioned the collaboration with other states in controlling/overseeing activities of businesses domiciled in their territory but operating abroad.

Specific expectationw should also include the situation of women human rights defenders. In this vein, Canada [voices at risk](#) may be a good example to give guidelines to Government and diplomatic mission to support human rights defenders, especially where Canadian businesses are alleged or appear to be involved in a case.

*Guiding Principle 3: In meeting their duty to protect, States should:*

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

Under this Principle, more sector-specific guidance could be inserted. It is suggested that a mention for male dominated sector could be introduced there. Some examples could also be included.

A type of "Modern Slavery Act" for gender, where companies have to transparently state what they are doing, could be a good option.

Specific measures should also be incorporated to strengthen communications on how businesses benefit women and girls

*Guiding Principle 4: States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

A focus should be put on accountability and monitoring of the State-owned enterprises (SOEs). Mention should be inserted regarding conducting gender impact assessments and undertake human rights due diligence with a gender perspective. SOEs have greater responsibilities if they provide public services/perform duties of the states.

*Guiding Principle 5: States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

Taking into account that privatization has resulted negatively, especially for women, contracting and privatizations need regulation to ensure no discrimination. Therefore, it should be made explicit that there is a duty for States to oversee privatized services. Some distinctions could be made among different services and different contracts available. Additional efforts should be exerted in areas that are underserved.

Gender responsive human rights impact assessment should be made before privatization.

The guidance should enclose specific requirements for the oversight that States should conduct on these companies. In addition, a reminder could be added, regarding the fact that when privatizing public services, the States are not released of the duty to respect/protect and promote the related rights. Therefore, the States should require from private enterprises to give quality and universal public services.

*Guiding Principle 6: States should promote respect for human rights by business enterprises with which they conduct commercial transactions.*

It should be compulsory to insert gender considerations in the call for tender and in public contracts. A multi-functional group should also be set up to monitor the tenders.

It could be contemplated to exclude companies for tender when they don't have specific gender policies or when they have records of abuses against women rights. Another alternative could be to establish a best practice awards and the Governments should prioritize the good ones.

A quota on public procurement to women owned companies is also an idea, as it is used in Canada and in Kenya.

Another idea is to mention an engagement with communities to get information on how the companies have performed before doing the contract renewal.

It should also be required more transparency regarding procurement process and practices.

*Guiding Principle 7: Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:*

*(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;*

*(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;*

*(c) Denying access to public support and services for a business enterprises that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;*

*(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*

Conflicts have a differentiated impact on women ESCR rights, and not only on political and civil human rights. The violence against women should be an issue to seriously look at in this context, including domestic violence. For this reason, public institutions, dealing with women issues, women, and women organizations, should be involved in process of conflict resolution and peace building. The important role of women in conflict resolution and peace building should be highlighted. Another recurring issue in the conflict setting is the precarious condition of women refugees abroad.

It could also be mentioned that in some conditions, there is no go zone for companies, which could only have a negative impact, especially on women rights.

Mitigation of the effects of conflicts and natural disasters should incorporate a gender perspective. The conflict settings generally present an opportunity for gender equality and women empowerment as the gender roles are upside-down.

It should also be stressed the extraterritorial obligations and the obligations of the States during conflict and post conflict settings.

*Guiding Principle 8: States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe that State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.*

The guidance should mention that gender sensitive NAPs could play a critical role to ensure policy coherence in women rights area, e.g. it could help to coordinate external and economic policies with feminist regulatory frameworks.

A mention should also be included with regard to budget and taxation and women equality.

Gender transparency requirement could also be incorporated.

Good practices:

- Turkey has established an independent body on budget within the Parliament, that checks that all the policies are coherent.
- Canada has established a gender interdepartmental Working Group on natural resources which analyzes how to address gender-related issues inside and outside Canada

*Guiding Principle 9: States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*

Gender should be mainstreamed in international investment agreements (IIA), emphasizing that investors should not violate human rights. Sanctions should also be included in case of non-compliance.

Women should be involved in the negotiations of the agreement and the dispute settlement mechanisms, e.g. women should be able to directly file a suit against company. A gender impact assessment should be conducted before signing the IIA.

Mention should also be made regarding the differentiated impacts of women rights in export processing zones.

Good practices:

- In the Free Trade Agreement between Chile and Canada of 2017, there is a [chapter on gender and trade](#).
- [US-South Korea Trade agreement](#) encloses an environmental chapter, which demonstrates significant commitments to environmental protections. This should be replicated for human rights and gender
- [Development Finance Institutions \(DFI\) Gender Finance Collaborative](#) supports the development of shared financing principles, definition and methodologies to promote the integration of “gender smart” decision-making into investment processes and operations

*Guiding Principle 10: States, when acting as members of multilateral institutions that deal with business-related issues, should:*

*(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights:*

*(b) Encourage those institutions, within their respective mandates and capacity, to promote business respect for human rights and, where requested, to help meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity building and awareness-raising:*



*(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.*

Economic multilateral systems should be more gender-sensitive. A stronger working relation between ILO and WTO should be encouraged to ensure a stronger gender approach in global economic growth, in labour law and privatization of public utilities.

### **Discussion regarding guidance on Pillar II: Recommendations to businesses based on challenges and best practices**

*Guiding Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

It should be stressed that companies should go beyond “no harm” women rights, but could promote women rights, highlighting the importance of gender attention and the negative impact of the neutral gender approach.

It could be highlighted that sometimes respecting only national laws could be detrimental for gender equality. In addition, cultural norms could also be a barrier for gender equality, therefore culture should be used in a way that it is positive for women and not an excuse not to promote women’s rights.

Business should take proactive measures to achieve substantive equality. In this vein, it could be important to stress the gain for the enterprises to integrate a gender perspective, with some examples. The [G7](#) has underlined that achieving gender equality in the business sector would lead to more performance. “Achieving gender equality of the world could increase global GDP by 12 trillion USD in a single decade. This may require taking temporary measures (as quotas) to achieve gender substantive equality, setting progressive targets tailored to the local contexts.

*Guiding Principle 12: The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.*

A reference to SDG 5 and other international standards that are not the core human rights treaties is key for this Principle. It is recommended to include specific examples of different international human resources that business could look at.

[Shift](#) has published a report on good practices of business to achieve SDG 5.

*Guiding Principle 13: The responsibility to respect human rights requires that business enterprises:*  
*(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*  
*(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts*

The respect and promotion of women rights should be stressed for women at work and in the surrounding communities, and in the supply chain, through a holistic approach of activities in a transversal and coherent way. The term work should refer to the whole work cycle: private sphere, where workers are fed, live, when commuting to work.

*Guiding Principle 14: The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.*

It should be mentioned that measures taken by companies are sector-specific, as the impact on women are different from sector to sector. It could also be inserted a mention to informal economic and domestic work. Companies should not only look at the current impacts, but also how women will be impacted in a future scenario, as with the 4<sup>th</sup> revolution and the impact of automation on women.

*Guiding Principle 16 – Policy commitment: As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:*

- (a) Is approved at the most senior level of the business enterprises;*
- (b) Is informed by relevant internal and/or external expertise;*
- (c) Stipulates that enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;*
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;*
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.*

It is suggested to call for an integrated gender policy which will be part of the human rights or CSR policy. The preparation of this policy should be done in consultation with women across the supply chain. The policy commitment should be get alongside with resource and accountability, which could be inserted in the same policy. Disclosure requirement should also be incorporated in the policy. The gender policy should be based on relevant international standards that may be worth mentioning. Reference to women human rights defenders should also be made; women human rights defenders inside and outside the companies. The policy should address the gender challenges/issues, which are sector specific. The policy should be shared to the greatest extend possible, including wit all workers in order to empower people in the company to carry out policy. The policy should be followed by a strategy and Action plan for an effective implementation. It is also vital that the strategy and the action plans are reviewed against outcomes, indicators and targets.

*Guiding Principle 17 – Human Rights Due Diligence: In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should*

*carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human Rights due diligence:*

- (a) Should cover adverse human rights impacts that the business enterprises may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;*
- (b) Will vary in complexity with the size of the business enterprises, the risk of severe human rights impacts, and the nature and context of its operations;*
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.*

A specific gender impact assessment should be applied for States and companies. These impact assessments should be conducted to identify and prevent impacts. In this vein, it should be noteworthy identifying specific most salient women rights violations, highlighting intersectionality of discrimination. Gender impact assessments, as part of the human rights due diligence, should involve rights holders and communities. This should be done before the activity begins and should be ongoing.

*Guiding Principle 18: In order to gauge human rights risks, business enterprise should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:*

- (a) Draw on internal and/or independent external human rights expertise;*
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.*

It should be mentioned in the guidance that the expertise should not only be male but made of women too, and/or the men should have a gender experience. For this expertise, knowledge of the context is essential. Relevant stakeholders include: workers in the supply chain, trade unions, (but male dominated), workers committee, women.

In order to understand what consultation means, a reference to FPIC may be useful. In addition, consultation should be ongoing and people consulted have the right to say no. Consultations also require to go back to people consulted in order to explain which decisions have been made and why their opinions have not been taken into account, if relevant. The consultations should also include governments, which should play a proactive role in ensuring that the consultation is meaningful. A document should be issued in the end of the consultation. Consultations may also require some capacity building with stakeholders who are not familiarized with their rights and the project impacts.

*Guiding Principle 19: In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.*

(a) *Effective integration requires that:*

(i) *Responsibility for addressing such impacts is assigned to the appropriate level and function with the business enterprise;*

(ii) *Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.*

(b) *Appropriate action will vary according to:*

(i) *Whether the business enterprises causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*

(ii) *The extend of its leverage in addressing the adverse impact.*

The integration of the findings should be accompanied with a framework of measures to enable actors to address the findings.

Good practices:

- [BSR's Act, Enable and Influence Framework](#) outlines company sector specific case studies for women economic empowerment around three axes:
  - o Act: adjusting policies, business processes such as procurement and product development, and investments that impact women
  - o Enable: partnering to enable NGOs, community organizations, and business partners to promote women's empowerment along the value chain
  - o Influence: engaging in research, advocacy, and communications campaigns to build an environment that promotes gender equality and opportunities for women.

*Guiding Principle 21: In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:*

(a) *Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences:*

(b) *Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;*

(c) *In turn not pose risks to affected stakeholders, personnel or to legitimate requirement of commercial confidentiality.*

A reference should be made in the importance of disaggregated data's and their publication. It could be contemplated to ask for a list of participants and indicate whom they should communicate to.

*Guiding Principle 22: Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.*

It should be recalled as a starting point that a legitimate process may be biased by gender stereotypes and/or are not accessible for women. It should also be highlighted that any lengthy and complex process should be avoided since it may be not suitable for women workers or community members. The business should analyze what mechanisms are available to access remedy and which are the less discriminatory. On this basis, they should decide with stakeholders what type of mechanisms would be the most suitable and what the stakeholders want. In this context, consulting women separately may be a good thing to do. The legitimacy of the process may be guaranteed through this consultation with the affected groups, while proactively involving them in the process from the beginning, including identifying the barriers to get access to grievance mechanisms.

*Guiding Principle 23: In all contexts, business enterprises should:*

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;*
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;*
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.*

It should be reiterated that the expectation of business to respect human rights, goes beyond compliance with national laws. An additional mention to their positive role could be underlined, promoting women human rights.

With regard to gross violations of human rights, it should be mentioned that sometimes it is not possible to operate in certain contexts without being complicit of human rights violation.

### **Discussion regarding guidance on Pillar III: Recommendations to states and businesses based on challenges and best practices**

*Guiding Principle 25 – Foundational Principle: As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

A mention should be made on the need of more gender sensitive remedy. A non-exhaustive list of remedies could be included, stressing on transformative remedies that can address structural discrimination. The General recommendation on women's access to justice N°33, paragraph 19, provides recommendations on provision of remedies that "are adequate, effective, promptly attributed, holistic and proportionally to the gravity of the harm suffered.(..) taking into account the unremunerated domestic and caring activities of women in assessment of damage for the purposes of determining appropriate compensation for the harm(..) "respond to the different types of violation experiences by women, as well as adequate reparations; and ensuring women's participation in the design of all reparation programs." It should also be recognised the local remedies, and plural mechanisms, as sometimes these local and community-based mechanisms are more appreciated. In this case, these customary tribunals should be in compliance with

international standards and gender sensitive. In addition, a mention should be made on ensuring access to effective remedy in the country where the company is domiciled, holding the business accountable on the criminal and civil levels.

The steps taken to ensure that affected women have access to effective remedy should take into account the barriers faced by women. The term “effective” should be defined.

*Guiding Principle 26: States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.*

It should be stressed in the guidance, that the professionals of justice systems need to handle cases on a gender sensitive manner, which involve capacity building and awareness raising. The justice systems should also be available, including in remote and rural areas. A specific fund for women to ensure that women receive reparation and assistance (such as free legal aid, when financial need, and other medical and psychological assistance) should be established. Specific support should be provided to women in hearings. The rules on the burden of proof should ensure equality between the parties.

When there are systematic complaints regarding specific rights, a reform should be contemplated by the state to address the structural underlying issues.

*Guiding Principle 28- Non-State based grievance mechanisms: States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.*

*Guiding Principle 29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.*

Operational based grievances mechanisms should be complementary and legal waivers to access other types of remedies should be prohibited, unless in exceptional circumstance's when there is an informed consent. The body which handles the complaints should be composed with women.

A call should be made to ensure gender sensitivity in NCP and IFI grievances mechanisms as CAO.

*Guiding Principle 30: Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanism are available.*

It should be recognized the role of local committees established by factories in these processes. An equal representation for women should also be ensured. In addition, privacy of people submitting the complaints should be secured.

Good practices:

- Kimberly process has pushed for gender equality in this multi-stakeholder process
- Fair food program is tackling gender-based violence and harassment alongside sub-poverty wages, forced labor, access to remedy, and many other human rights-related issues that have afflicted this industry.
- Fair Wear Foundation (FWF) receives complaints and share complaint with the brand sourcing from that factory. Brands are in-charge of remediation, but they are supported by FWF. Remediation plan has to be discussed between brand, factory and worker and is approved by FWF. Fair Wear, on its part verifies with the complainant on the status of his/her grievance and reports about the complaint publicly on its website.

*Guiding Principle 31: Effectiveness criteria for non-judicial grievances mechanisms- In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievances processes;*
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- (d) Equitable: Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms*

*Operation-level mechanisms should also be:*

- (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.*

The composition of these bodies should be gender-balanced. Dialogue and engagement should be secured with local committees within the factories and women who have filed the complaints to make sure they are informed about the process. In addition, measures should be taken to impede any retaliation against women filing complaints.