

Multi-stakeholder Asia consultation on applying a gender lens to the UN Guiding Principles on Business and Human Rights

Session 4 | Concept Note

Women's experiences of accessing remedies and defending rights

Day: 21 February 2018

Time: 1000 - 1300

Objective

- To document challenges faced by women in accessing remedies in the context of business related abuses and violations
- To document best practices that facilitated and enabled women in accessing remedy against human rights abuses and violations by businesses
- To develop specific steps for States and Businesses in order to protect Women Human Right Defenders

Background

The third pillar of the UN Guiding Principles on Business and Human Rights sets out the role that both States and companies have to play in ensuring that victims of business-related human rights abuses have access to effective remedy¹. The relevance of this pillar can be measured against the backdrop of the increasing governance “gaps” accompanying globalization². While the reach and influence of businesses has increased, there still exists a huge gap in holding businesses accountable for human right violations. As part of its mandate to strengthen Pillar 3, the UN Working Group on Business and Human rights’ 2017 report³ on access to effect remedies recognizes that women experience business-related human rights abuses differently. The report acknowledges that women face additional barriers in seeking access to effective remedies in business-related human rights abuses. However, there is a pressing need to identify these barriers and develop actionable solutions to reduce them and increase women’s access to effective remedies.

Women experience business-related human right abuses in unique ways and therefore their experiences, expectations, and needs must be incorporated into any remedial mechanisms. Amongst the differentiated

¹ Under the UNGPs remedy is defined as righting any harm caused to people as a result of business policies and operations.

² "The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business", European Coalition for Corporate Justice, 10 Dec 2013

³ [Report](#) of the Working Group on the issue of human rights and transnational corporations and other business enterprises: "Access to effective remedies under the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework", 2017

impact on women, one example is of how the emerging State-business nexus⁴ impacts women differently and more adversely. The privatization of public services creates contexts for human right abuses that have a disproportionate impact on women. Privatization of health services, for example, significantly reduce women's access to healthcare and often lead women to resort to unsafe medical procedures. Further, the State-business nexus particularly impacts women belonging to communities affected by large-scale development or land-intensive projects. In India, for example, women have increasingly protested against large-scale mining projects in the State of Odisha⁵. These projects have received government sanction, with powerful business houses being allotted the land for their mining sites. Women activists in the region, mostly indigenous women, have reported facing intimidation not only from agents of business but also from agents of the State- police, security forces etc. In this context, remedies need to take into account the unequal power relations that govern the context of corporate human right abuses.

While State-based judicial mechanisms are fundamental in increasing victim's access to effective remedies, their effectiveness is dependent upon impartiality, integrity and due-process. Women often fear taking legal action against companies as in doing so, they not only challenge the power of business but also patriarchal norms⁶. Law enforcement agents, therefore, need to be made aware of how gender-stereotype impact laws and legal processes. Practical barriers to access to remedy, like poverty or social exclusion, must also be addressed. One of the challenges of judicial mechanisms is that right holders often lack the access to financial resources needed to pay for lawyers or other costs of fighting a case. This is especially true for women as they often lack the control over and access to financial resources. The issues of extra-territoriality, gender based norms, systematic discrimination against women, and increasing corporate power are all factors that lead to women facing additional barriers in accessing effective remedies against business-related human rights abuse.

The UNGPs also place emphasis on the corporate responsibility to respect human rights and therefore to remedy instances where rights have been abused. This responsibility arises out of the recognition of the state-centric nature of international law that poses ethically unacceptable limitations on access to remedy. Therefore, as a part of the remediation process, the UNGPs place a central role on corporate human right due diligence⁷. Such due diligence should include a gender lens so as to effectively capture the actual experiences and needs of women. It would also ensure that company based grievance mechanisms are designed to address the specific expectations and realities of women. For example, company based grievance mechanisms can take into account the lack of legally recognized land rights for women, given that women's ownership of land tends to be informal and unrecognized. Therefore, in cases of compensation for displacement and loss of land and livelihood, these mechanisms will require

⁴ To know more about the impact of State-Business nexus on Human Rights please refer to "Human Rights and Businesses: 14th Informal ASEM Seminar on Human Rights", Background Paper, Sumithra Dhanarajan and Claire Methven O'Brien, 2014.

⁵ "Contesting Women's Rights Within the Political Economy of Mining in India", Dhaarti Resource Centre for Women and Children and Samata, 2010.

⁶ "Submission to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises on Access to Remedy", International Women's Rights Action Watch-Asia Pacific and the Landessa Centre for Women's Land Rights and Other, 2017. To know more about the differentiated impact of business activities on women please refer [here](#).

⁷ "Human Rights and Businesses: 14th Informal ASEM Seminar on Human Rights", Background Paper, Sumithra Dhanarajan and Claire Methven O'Brien, 2014.

consulting women from affected communities in order for the remedies to be effective. Company based grievance mechanisms should also ensure that the remedies offered are compatible with human rights. Merely providing monetary compensation in cases of sexual harassment and violence, for example, may not constitute as an effective remedy. These concerns about non-state based grievance mechanisms have been raised and need to be addressed.

Further, Women are not only “victims” of corporate violation of human rights but have also been at the forefront of the struggle against corporate power. Discussions on effective remedies must also look at protecting women human right defenders⁸ and their rights from added violence as a result of challenging power. Women human rights defenders are subject to the same types of risks as any human rights defender, but as women, they are also targeted for or exposed to gender-specific threats and gender-specific violence. Women human right defenders are more prone to violence not only because they resist corporate power, but also because in doing so they challenge gender norms. This often leads to WHRDs being subjected to ostracism within communities and social stigmatization. Women are also more vulnerable to harassment, threats and political violence in a patriarchal structure. This exertion of power also extends to their loved ones and families. WHRDs fighting against the extractive industries, for example, are more vulnerable to intimidation by both State actors and company agents. They are often stigmatized and their work criminalized as it is viewed as “anti-development”. Women who challenge exploitation of natural resources also face considerable risk as in doing so they also challenge the power relations that govern the control of these natural resources. The murder of Honduran environmental activist and indigenous leader, Berta Caceres, is a reminder of the specific challenges that women human rights defenders face.

It is therefore important to recognize the specific challenges WHRDs face, in order to strengthen protection mechanisms and to respond to their specific concerns. Effective remedies for the human rights abuse faced by WHRDs must take into account the compounded discrimination that they face.

This session aims to document the specific barriers women face in accessing effective remedies against business-related human rights abuse. In doing so, it also aims to unpack the unique needs, experiences and expectations of women, including women human right defenders. The session will also highlight the opportunities and challenges for governments, businesses and civil society to improve women’s access to effective remedies and ensure the protection of women human right defenders.

Moderators

- Bobbie Sta. Maria, Director for Labour Rights and Asia, Business and Human Rights Resource Centre
- Sanyu Awori, Programme Officer, International Women’s Rights Action Watch Asia Pacific (IWRAP Asia Pacific)

⁸ To know more about Women Human Right Defenders, see <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx>