
GENDER DIMENSIONS

of the Guiding Principles on Business and Human Rights



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This booklet contains the wording of each guiding principle within Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework" (United Nations publication, Sales No. 13.XIV.5), and the text of "Gender guidance for the Guiding Principles on Business and Human Rights" within the United Nations official document (A/HRC/41/43), Gender dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises.

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GENDER DIMENSIONS

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INTRODUCTION

The United Nations Guiding Principles on Business and Human Rights (UNGPs), which were unanimously endorsed by the Human Rights Council in June 2011, are the global authoritative standards to prevent, mitigate and remediate business-related adverse human rights impacts. The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) has a mandate to promote the dissemination and implementation of the UNGPs. The Working Group is required to integrate a gender perspective throughout its work.

It is widely documented that women and girls experience adverse impacts of business activities differently and often disproportionately. They also face additional barriers in seeking access to effective remedies. Moreover, because of intersecting and multiple forms of discrimination, different women and girls may be affected differently by business activities in view of their age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status. It is, therefore, critical that measures taken by States and business enterprises to implement the UNGPs are gender responsive.

Against this backdrop, the Working Group in 2017 launched a „gender lens to the UNGPs“. This project aims to raise sensitivity among all stakeholders about the need to adopt a gender perspective in implementing the UNGPs and to develop practical guidance for both States and business enterprises. Building on existing standards and drawing insights from regional consultations and submissions, the Working Group’s June 2019 report to the Human Rights Council (A/HRC/41/43) provides guidance to States and businesses on integrating a gender perspective in implementing the UNGPs.

The June 2019 report achieves three results. First, it provides a brief overview of discrimination and differentiated impacts experienced by women and girls in the context of business activities, and analyses selected existing gender equality standards. Second, it develops a three-step gender framework – i.e., gender responsive assessment, gender transformative measures, and gender transformative remedies – that States, business enterprises and other stakeholders could use to achieve substantive gender equality. Third, the report uses this gender framework to provide specific guidance (including illustrative actions) for each of the 31 principles of the UNGPs.

To fulfil its mandate to promote the effective dissemination and implementation of the UNGPs, the Working Group has been collaborating with various organizations. One concrete example of this collaboration is our partnership in Asia with UNDP's Business and Human Rights team led by Mr Livio Sarandrea. We have worked together to organize various events, advise government officials in developing national action plans on business and human rights, and offer capacity-building workshops for civil society organizations. The publication of this booklet, with UNDP's financial assistance, is an extension of this collaborative partnership to assist both States and business enterprises in integrating a gender perspective when implementing the UNGPs.

This booklet produces the Working Group's gender report in a user-friendly manner. It also includes the text of each principle of the UNGPs alongside the gender guidance and illustrative actions. This booklet is part of the collective efforts of the Working Group and UNDP to widely disseminate the gender guidance for the UNGPs. We hope that this will help in a better integration of a gender perspective in the business and human rights field by all relevant stakeholders.

Surya Deva

Member, United Nations Working Group on Business and Human Rights



GENDER **GUIDANCE**

**FOR THE UNITED NATIONS
GUIDING PRINCIPLES ON BUSINESS
AND HUMAN RIGHTS**

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, regulations and adjudication.

Gender guidance

States must take appropriate steps to ensure that all business enterprises operating within their territory and/or jurisdiction respect women's human rights. All State policies, legislation, regulations and adjudication to prevent, investigate, punish and redress all forms of discrimination, harassment and violence against women should integrate the gender framework and guidance for the Guiding Principles on Business and Human Rights.

Illustrative actions

- a. States should address, including through temporary special measures, root causes of discriminatory power structures that operate against women and that prevent the achievement of substantive equality in all spheres;
- b. States should revise existing legislation that directly or indirectly discriminates against women and take effective measures to eliminate sexual harassment and gender-based violence against women, so that women can have access to opportunities on an equal basis with men;
- c. States should encourage and incentivize business enterprises to contribute to achieving substantive gender equality to enable the enterprises to discharge their responsibility to respect women's human rights.
- d. States should ensure the participation of women and women's organizations in taking legal and policy measures to implement, including through a national action plan and other such means, the Guiding Principles;

- e. States should integrate a gender perspective in mandatory human rights due diligence laws, including those concerning modern slavery and transparency in supply chains;
- f. States should ensure that State-based judicial and non-judicial mechanisms are responsive to additional barriers faced by women in seeking effective remedies for business-related human rights abuses.

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.

Gender guidance

States should not only provide guidance but also create incentives and disincentives to encourage all business enterprises domiciled in their territory and/or jurisdiction to respect women's human rights throughout their operations, including in supply chains.

Illustrative actions

- a. States should work collectively to create international frameworks that require business enterprises to respect women's human rights and eliminate discrimination, sexual harassment and gender-based violence wherever they operate;
- b. States should encourage business enterprises to appoint a certain percentage of women to their boards and report on the gender pay gap throughout their operations;
- c. States should use their diplomatic and trade missions to provide guidance and support to businesses operating overseas on how to respect women's human rights when faced with discriminatory norms or practices;

- d. States should consider offering incentives to business enterprises that demonstrate leadership in taking measurable steps to achieve substantive gender equality throughout their operations;
- e. States should require business enterprises domiciled in their territory and/or jurisdiction to respect the rights of women human rights defenders and whistle-blowers throughout their operations.

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.**

Gender guidance

States should assess and address the direct and indirect discriminatory effects of existing laws and policies on women's human rights. They should take account of the gender framework and guidance for the Guiding Principles in providing guidance to business enterprises on how to respect human rights throughout their operations.

Illustrative guidance

- a. States should employ gender equality as a cross-cutting theme in drafting, revising and assessing all laws and regulations that have a bearing on promoting and ensuring business respect for human rights;
- b. States should take proactive measures to ensure meaningful participation of women and women's organizations in developing or updating laws and policies;
- c. States should consider and address the differentiated impact of various laws on women, for example how laws on consumer safety, corporations, labour, human rights, environment, advertising, entertainment, investment, banking, finance, taxation and anti-competition affect women;
- d. State policies, including those concerning implementation of the Sustainable Development Goals, should be gender-transformative. For example, policies related to poverty, health, housing, education, sanitation, decent work, land and climate change should address the root causes of discrimination against women.

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.

Gender guidance

States should ensure that State-owned or State-controlled business enterprises and State agencies not only lead by example in achieving substantive gender equality but also use their leverage to require their business partners to do the same.

Illustrative actions

- a. States should require educational institutions receiving financial support or recognition to raise awareness about substantive gender equality and to build capacity of the relevant stakeholders to achieve this goal;
- b. State should require all State-owned or State-controlled business enterprises to follow the gender framework and guidance in conducting human rights due diligence and in collecting sex-disaggregated data;
- c. States should require agencies dealing with development aid, export credit, pensions and sovereign investment funds to integrate gender equality policies in their mandates;
- d. States should require all State-owned or State-controlled business enterprises to appoint a certain percentage of women to their boards and annually disclose data on progress made in achieving gender parity in employment;
- e. States should require all State-owned or State-controlled business enterprises to take effective measures to protect the sexual and reproductive health and rights of women;
- f. State should require their agencies, as well as State-owned or State-controlled business enterprises, to have policies and mechanisms to address sexual harassment, gender-based violence, pregnancy- and maternity/paternity-based discrimination and the gender pay gap;
- g. State should require their agencies, as well as State-owned
g. States should require all State-owned or State-controlled business enterprises to establish effective gender-responsive grievance mechanisms.

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.

Gender guidance

States should ensure that contracts with business enterprises, including those related to the privatization of public services and public-private partnerships, integrate a gender perspective.

Illustrative actions

- a. Before privatizing public services, States should conduct a gender impact assessment to understand the differentiated impacts of such decisions on women;
- b. When awarding contracts for public services, States should give preference to businesses with a track record of taking measures to achieve substantive gender equality throughout their operations;
- c. States should insert gender-equality provisions, including remedial measures for breach of such provisions, into contracts with business enterprises offering public services;
- d. States should forge public-private partnerships to promote the economic empowerment of women, for example by collaborating with banks to offer women easy access to finance to start a new business or pursue higher education.

GUIDING PRINCIPLE 6

States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

Gender guidance

States should integrate a gender perspective in their laws and policies regulating commercial transactions, including public procurement, with business enterprises.

Illustrative actions

- a. States, as well as intergovernmental institutions, should source a certain percentage of products and services from women-owned businesses;
- b. States should conduct commercial transactions only with businesses that have policies and mechanisms in place to address sexual harassment, gender-based violence, pregnancy- and maternity/paternity-based discrimination, the gender pay gap, and underrepresentation of women in leadership and management positions;
- c. States should ensure that export processing zones and special economic zones promote rather than undermine women's human rights and contribute to their economic empowerment.

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 enterprise 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.**

Gender guidance

States should take additional measures to protect against abuse of women's human rights, including sexual harassment and gender-based violence, by business enterprises in conflict-affected areas. They should also promote women's participation in peacebuilding and transitional justice processes. These measures should be taken, individually and collectively, by both host and home States.

Illustrative actions

- a. States should foster multi-stakeholder collaborative partnerships to change social norms that tolerate, normalize and justify gender discrimination or sexual harassment and gender-based violence;
- b. States should build the capacity of business enterprises, especially those operating in conflict-affected areas, to identify, prevent and mitigate risks relating to sexual harassment and gender-based violence;
- c. States should, in appropriate cases, caution business enterprises domiciled in their territory and/or jurisdiction against operating in conflict-affected areas where it might not be possible to prevent or mitigate risks relating to sexual harassment and gender-based violence
- d. States should create disincentives, including withdrawal of economic diplomacy and financial support, to deter business enterprises domiciled in their territory and/or jurisdiction from causing, contributing to, or being directly linked to sexual harassment and gender-based violence in conflict-affected or other areas;

- e. States should ensure that effective gender-transformative remedies are available to women who experience sexual harassment and gender-based violence. They should also ensure that business enterprises that cause, contribute to or are directly linked to sexual harassment and gender-based violence are held accountable swiftly;
- f. States should give women and women's organizations a central role in conflict resolution and peacebuilding processes.

GUIDING PRINCIPLE 8

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

Gender guidance

States, in line with their international human rights obligations, should treat gender equality as a cross-cutting issue to be integrated in the strategies, policies, programmes and actions of all governmental ministries, departments, agencies and institutions that shape business practices.

Illustrative actions

- a. States should consider setting up an interministerial body to coordinate efforts to promote substantive gender equality in line with international human rights law and policy frameworks across all governmental bodies;
- b. States should organize workshops and peer-learning sessions to enhance gender sensitivity among their officials and policymakers;

- c. States should conduct a gender-impact assessment of all laws and policies, including those related to taxation and budgets;
- d. States should ensure that governmental authorities at the provincial and municipal levels are aware of women's human rights and have the capacity to respect, protect and fulfil them.

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 guidance

States should conduct periodic ex ante and ex post gender-responsive impact assessments of their trade and investment agreements. States should explicitly include in such agreements a binding obligation of investors to respect women's human rights under national and international law.

Illustrative actions

- a. States should ensure the effective participation of women and women's organizations before and during the negotiation of trade and investment agreements;
- b. States should use trade and investment agreements as a strategic tool to protect and promote women's human rights and enhance economic opportunities for women;
- c. States should include provisions concerning access to remedy for business-related human rights abuses in their trade and investment agreements.

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 capacities, to promote business respect for human rights and, where requested, to help States 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.

Gender guidance

States should encourage multilateral institutions to adopt a gender perspective in discharging their respective mandates. States should also ensure that agreements and policy frameworks negotiated in a multilateral setting promote substantive gender equality and avoid exacerbating existing discrimination faced by women.

Illustrative actions

- a. States should consider the gender impact of international agreements and policy frameworks adopted in all relevant areas, such as labour, trade, finance, investment, intellectual property, development, energy, environment, climate change, health, population, disarmament, peace and security;
- b. States should address the underrepresentation of women in leadership positions at multilateral institutions;

- c. States should encourage multilateral institutions to promote gender equality through their policies related to, for example, hiring, work environment and procurement.

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.

Gender guidance

Business enterprises have a responsibility to avoid infringing women's human rights and to address adverse human rights impacts with which they are involved. To discharge this responsibility, business enterprises should contribute to achieving substantive gender equality and avoid exacerbating or reproducing existing discrimination against women throughout their operations.

Illustrative actions

- a. Business enterprises should create an enabling environment for women to have access to all opportunities on an equal basis with men. For example, sexual harassment, the gender pay gap, a lack of personal hygiene facilities and a work environment that is not menstruation friendly might discourage women from taking job opportunities and remaining in employment;
- b. Business enterprises should take steps to support women workers in forming trade unions and taking up leadership positions in them;
- c. Business enterprises should explore innovative ways to promote women's rights and engage in advocacy to change discriminatory laws and social practices;
- d. Business enterprises should find ways to offer loans and access to finance to women, including women who might not own

- property because of discriminatory laws or social practices;
- e. Business enterprises should ensure that their land acquisition and compensation processes neither reinforce gender-discriminatory landownership practices nor adversely affect women's livelihoods and subsistence;
 - f. Business enterprises should not perpetuate gender stereotypes or objectify and sexualize women's bodies in any process, including sales and marketing, related to their products or services;
 - g. Business enterprises should take a range of measures (for example, affirmative action and professional development support) to ensure equal representation of women in the workforce at all levels, including on boards. They should also engage and incentivize their business partners to do the same;
 - h. Business enterprises should take effective measures to ensure that women are not harassed, bullied or intimidated in cyberspace and that they are able to use social media platforms without fear of discrimination or threat of violence;
 - i. Business enterprises should take steps to respect the sexual and reproductive health and rights of women, for example, by providing paid parental leave, offering flexible work hours or work-from-home options for new parents, and providing breastfeeding rooms at work. Business enterprises should also cease the practice of mandatory pregnancy testing.

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.

Gender guidance

In order to respect the internationally recognized rights of women, business enterprises should consider, among other instruments, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child relevant in all circumstances and throughout their operations.

Illustrative actions

- a. Business enterprises should respect women's human rights and contribute to achieving substantive gender equality as a normative principle, although there may also be a business case for doing so;
- b. Business enterprises should integrate a gender equality policy across all departments and throughout operations in discharging their responsibility to respect women's human rights. This may require building the capacity of personnel and business partners with regard to women's human rights and gender equality;
- c. Business enterprises should rely on, and refer to in their codes, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child to avoid the risk of adopting a gender-neutral reading of human rights under the International Bill of Human Rights;
- d. Business enterprises should be aware of the intertwined layers of discrimination faced by women because of intersectionality: different women may be affected differently by business activities owing to variables such as age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status;

- e. When business enterprises may adversely affect indigenous women, they should take into account the rights, including to self-determination and of free, prior and informed consent, set out in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization and in the United Nations Declaration on the Rights of Indigenous Peoples.

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.**

Gender guidance

Business enterprises should not cause or contribute to adverse impacts on women's human rights and should address such impacts when they occur. They should also take adequate measures to prevent or mitigate adverse impacts on women's human rights that are directly linked to their operations, products or services by their business relationships.

Illustrative actions

- a. Business enterprises should avoid undermining women's human rights at a minimum and promote such rights by adopting, and applying in practice throughout their operations, a gender equality policy;

- b. Business enterprises should encourage all their business partners to respect women's human rights, for example by communicating gender equality expectations and assessing performance on that basis, providing advice, building capacity and offering incentives;
- c. Business enterprises should ensure that new technologies such as artificial intelligence and automation do not have disproportionate adverse impacts on women's human rights.

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.

Gender guidance

All business enterprises, including micro-, small and medium-sized enterprises, should take appropriate steps in line with the Guiding Principles to respect the human rights of women, including those working in the informal economy.

Illustrative actions

- a. A gender perspective should be adopted in determining the severity and irremediable character of adverse human rights impacts under the Guiding Principles;
- b. Business enterprises should use their leverage over business partners with which they are involved to encourage them to respect women's human rights;

- c. Business enterprises should map workers in the informal economy who are part of their supply chains, identify gender-specific issues and take appropriate steps to address these issues;
- d. Business associations, including of micro- and small enterprises, should raise awareness among their members and build the capacity of those members to practise gender equality.

GUIDING PRINCIPLE 15

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a. A policy commitment to meet their responsibility to respect human rights;**
- b. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;**
- c. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.**

Gender guidance

Business enterprises should integrate the gender framework and guidance in all policies and processes put in place to implement all aspects of their responsibility to respect human rights under the Guiding Principles, namely, making a policy commitment, conducting human rights due diligence and remediating any adverse human rights impacts caused or contributed to.

Illustrative actions

- a. Business enterprises should use tools such as the Women's Empowerment Principles Gender Gap Analysis Tool to assess the nature and extent of gender discrimination throughout their operations as well as the effectiveness of their gender equality measures;
- b. Business enterprises should integrate gender equality as a cross-cutting issue in all policies, processes and strategies across all departments, rather than treating it merely as a diversity or inclusion issue relevant only for the human resources department.

GUIDING PRINCIPLE 16

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 enterprise;**
- b. **Is informed by relevant internal and/or external expertise;**
- c. **Stipulates the 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.**

Gender guidance

Business enterprises should embed their commitment to respect women's human rights and to contribute to achieving substantive gender equality in a gender equality policy that is developed

from the bottom up in a participatory manner but adopted at the highest level. Such a policy may be a stand-alone document or integrated in an enterprise's generic human rights policy.

Illustrative actions

- a. Business enterprises should develop, and review periodically, a gender equality policy in meaningful consultation with women, women's organizations, women human rights defenders and gender experts;
- b. The gender equality policy should:
 - i. Make a reference to the relevant international standards, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, and draw on the gender framework and guidance for the Guiding Principles; Take account of the intersectional nature of discrimination;
 - ii. Include measurable targets and indicators and clearly outline what is expected from business partners;
 - iii. Be communicated to all internal and external stakeholders, including women employees and workers, in an accessible language and format;
 - iv. Be integrated in the operational processes of all departments;
- c. Business enterprises should allocate necessary funds and identify responsible persons to implement the gender equality policy;
- d. Business enterprises should annually disclose sex-disaggregated data concerning the progress made throughout their operations as per the indicators outlined in the gender equality policy.

GUIDING PRINCIPLE 17

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 enterprise 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 enterprise, 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.

Gender guidance

Business enterprises should explicitly integrate a gender perspective in carrying out all steps of human rights due diligence as per the Guiding Principles. The ongoing human rights due diligence should cover both actual and potential adverse impacts on women's human rights that a business enterprise may cause or contribute to, or that may be directly linked to its operations, products or services by its business relationships.

Illustrative actions

- a. Unless business enterprises adopt a gender perspective, they will not be able to identify differentiated and disproportionate adverse impacts that their operations may have on women;

- b. Business enterprises should internalize gender as an equality issue, rather than treating it as a “tick-box exercise” or as an add-on to human rights due diligence;
- c. If a business enterprise needs to identify priority areas where risks of adverse impacts are most significant, this should be done with the participation of potentially affected communities, including women and women’s organizations;
- d. Business enterprises should always regard sexual harassment and gender-based violence as risks of severe human rights impacts. They should have zero tolerance for such impacts throughout their operations.

GUIDING PRINCIPLE 18

In order to gauge human rights risks, business enterprises 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.**

Gender guidance

In identifying and assessing any actual or potential adverse human rights impacts, business enterprises should adopt a gender-responsive approach, draw on gender experts, and conduct meaningful consultations with potentially affected women, women’s organizations (including grass-roots organizations) and women human rights defenders.

Illustrative actions

- a. To overcome practical barriers, patriarchal norms or threats of violence that might discourage potentially affected women from participating in impact assessment processes, business enterprises should take a proactive approach and adopt innovative means (for example, providing childcare during meetings or holding separate meetings for women);
- b. Affected communities may regard participation in consultations meaningful only if it is done before a project commences, adequate information about the project is provided in an accessible and timely manner, concerns expressed by communities are taken seriously and addressed, and continuous and transparent communication is maintained;
- c. Business enterprises should use sex-disaggregated data and outcome indicators to assess the true impact of their activities on women and consider that different women may be affected differently because of the intersectional nature of discrimination;
- d. The presence of women's organizations and/or trade unions in the consultation process may address the power asymmetry that generally exists between business enterprises and affected communities

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 within 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 enterprise 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 extent of its leverage in addressing the adverse impact.**

Gender guidance

Business enterprises should integrate the findings from their impact assessments in all relevant processes and take a range of gender-transformative measures to prevent and mitigate adverse impacts in line with the Guiding Principles.

Illustrative actions

- a. Depending on the impact assessment findings, gender-transformative measures may include:
 - i. Revising the gender-equality policy and management processes and practices to address systematic concerns related to adverse impacts on women's human rights;
 - ii. Modifying an ongoing project to prevent or minimize adverse impacts on women;
 - iii. Increasing gender sensitivity among enterprise personnel across all departments and supporting business partners in developing gender-responsive management systems;
 - iv. Building the capacity of the enterprise's own personnel and business partners to effectively handle sexual harassment and gender-based violence;
 - v. Adopting affirmative action policies to overcome underrepresentation of women in managerial positions and on boards;

- vi. Developing collaborative partnerships with women's organizations;
- vii. Providing effective transformative remedies for, or cooperating in the remediation of, adverse impacts that have already occurred;
- b. In appropriate cases, business enterprises should also conduct advocacy in support of gender equality.

GUIDING PRINCIPLE 20

In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- a. Be based on appropriate qualitative and quantitative indicators;**
- b. Draw on feedback from both internal and external sources, including affected stakeholders.**

Gender guidance

Business enterprises should track the effectiveness of their responses by using sex-disaggregated data, collected in line with a human rights-based approach, and outcome indicators developed in consultation with affected women, women's organizations and gender experts.

Illustrative actions

- a. Business enterprises should ensure that indicators are gender-responsive, otherwise differentiated impacts on women may not be captured by the tracking process;
- b. Business enterprises should track the effectiveness of their responses for their entire operations, including supply chains;
- c. Business enterprises should engage women, women's organizations and local community groups to assess the effectiveness of their gender-transformative responses.

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 requirements of commercial confidentiality.

Gender guidance

Business enterprises should communicate adequate and easily accessible information to the affected stakeholders regularly. Both the information and the means of communication should be responsive to gender discrimination and the differentiated impacts experienced by women.

Illustrative actions

- a. Business enterprises should take appropriate steps to ensure that the means of communication of information are accessible to potentially affected women;
- b. If the information communicated concerns sexual harassment and gender-based violence, business enterprises should respect the victims' right to privacy and should not disclose the identity or other personally identifiable information of victims to avoid social stigmatization and further victimization;

- c. In the information provided, sex-disaggregated data should be used wherever appropriate;
- d. The commercial confidentiality exception should be interpreted narrowly and with due regard to how a lack of information disclosure could worsen the situation of disadvantaged, marginalized or vulnerable individuals and communities.

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.

Gender guidance

Business enterprises should provide for, or cooperate in the provision of, gender-transformative remedies where they identify that they have caused or contributed to adverse human rights impacts.

Illustrative actions

- a. When providing a “bouquet” of remedies to redress adverse impacts, in line with the report submitted by the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly at its seventy-second session (A/72/162), business enterprises should keep in mind differentiated intersectional impacts on women and their human rights;
- b. Remedies offered by business enterprises for sexual harassment and gender-based violence should be responsive to women’s experiences. Compensation settlements, for example, should never exclude access to judicial or non-judicial mechanisms and non-disclosure agreements should not be used unless requested by the affected women;

- c. In addition to remedying specific adverse impacts, remedies in appropriate cases should also be aimed at bringing about systematic changes in discriminatory power structures. For example, if sexual harassment complaints in factories are not taken seriously owing to an underrepresentation of women in managerial positions, this imbalance should be addressed;
- d. Where adverse impacts, including on women's human rights, are directly linked to a business enterprise's suppliers, the enterprise, while not required to provide for remediation itself under the Guiding Principles, should still require and incentivize its suppliers to provide for effective remedies;
- e. Business enterprises should show coherence in discharging their responsibility to cooperate in remediation of adverse impacts through legitimate processes. For example, they should comply with decisions emanating from such processes and avoid targeting affected communities, including women human rights defenders and trade union leaders, for seeking legitimate remedies.

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.**

Gender guidance

Business enterprises should, in all contexts, respect all relevant national laws, as well as regional and international standards concerning women's human rights, and contribute to achieving substantive gender equality.

Illustrative actions

- a. If norms or social practices in a country discriminate against women, business enterprises should explore innovative ways to uphold women's international human rights and use their influence to positively change those discriminatory norms;
- b. Business enterprises should be mindful of legal liability where they cause or contribute to sexual harassment and gender-based violence.

GUIDING PRINCIPLE 24

Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Gender guidance

In prioritizing action to address those adverse human rights impacts that are most severe or irremediable, business enterprises should recognize that gender discrimination, sexual harassment and gender-based violence have severe and irremediable impacts.

Illustrative actions

- a. Business enterprises should regard gender-based discrimination, sexual harassment and gender-based violence as adverse impacts to be prevented, mitigated and remediated on a priority basis;

- b. Business enterprises should ensure that any decision in prioritizing action is informed by the meaningful participation of potentially affected women and women's organizations.

GUIDING PRINCIPLE 25

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.

Gender guidance

States must ensure that all necessary judicial, administrative, legislative or other steps that they take to provide affected persons with access to effective remedies for business-related human rights abuses are gender-transformative.

Illustrative actions

- a. States should ensure the participation of women and women's organizations in carrying out legislative, administrative or judicial reform to improve access to effective remedies for business-related human rights abuses
- b. States should take effective steps to investigate, punish and redress business-related adverse impacts on women's human rights, including sexual harassment and gender-based violence, that occur in their territory and/or jurisdiction;
- c. (States should create mechanisms and processes to redress extraterritorial adverse impacts caused, or contributed to, by business enterprises domiciled in their territory and/or jurisdiction, and enhance cross-border cooperation in cases with a transnational dimension;

- d. States should ensure that judicial and non-judicial institutions are capable of providing gender-transformative remedies to achieve substantive gender equality;
- e. States should build the capacity of judges, prosecutors, police officers and other relevant actors to ensure that they operate with gender sensitivity and without discriminatory gender stereotyping when dealing with complaints about adverse impacts on women's human rights.

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.

Gender guidance

When taking steps to reduce legal, practical and other barriers in accessing domestic judicial mechanisms for cases of business-related human rights abuse, States should pay attention to the additional barriers faced by women in seeking effective remedies.

Illustrative actions

- a. In line with general recommendation No. 33 (2015) on women's access to justice, of the Committee on the Elimination of Discrimination against Women, States should take proactive and targeted measures to reduce additional barriers that may be faced by women in holding businesses accountable for human rights abuses, for example a low level of literacy, limited economic resources, gender stereotyping, discriminatory laws, patriarchal cultural norms and household responsibilities;

- b. States should introduce systematic reform to address gender bias and discriminatory power structures that disadvantage women in seeking effective remedies for business-related human rights abuses. For example, the gender pay gap would result in women having fewer resources to seek remedies;
- c. States should put in place mechanisms to ensure that no reprisals or retaliatory action are directed against women, including women human rights defenders and trade union leaders, seeking remedies;
- d. States should consider how technological innovations could be used to reduce practical barriers, including with regard to physical access and additional victimization caused by repeated testimonies, faced by women in accessing courts;
- e. Legal aid schemes may adopt a differential financial threshold to provide support to affected women seeking remedies, while support should be available to all victims of sexual harassment and gender-based violence.

GUIDING PRINCIPLE 27

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Gender guidance

States should confer an explicit mandate on non-judicial grievance mechanisms, and provide them with adequate powers and resources, to deal with business-related human rights abuses, including gender-discrimination and sexual-harassment complaints against business enterprises.

Illustrative actions

- a. States should grant non-judicial grievance mechanisms the powers necessary to provide effective transformative remedies in business-related cases of gender discrimination and sexual harassment;
- b. When making appointments to non-judicial grievance mechanisms, such as national human rights institutions and national contact points, States should consider the gender balance;
- c. Global and regional associations of national human rights institutions should build the capacity of their members to integrate gender equality as a cross-cutting issue throughout their operations, including in dealing with complaints;
- d. The national contact points should identify and address additional barriers that women face in filing complaints. They should also adopt a gender-responsive approach in examining complaints and a gender-transformative approach in facilitating conciliation, mediation or dialogue between parties and in making recommendations in final statements;
- e. States should ensure that customary or indigenous justice systems operate in line with women's international human rights standards.

GUIDING PRINCIPLE 28

States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Gender guidance

States should take necessary steps, individually or collectively, to ensure that all non-State grievance mechanisms, whether administered by business enterprises, industry associations, multi-stakeholder bodies or international financial institutions, dealing

with business-related human rights abuses apply the gender framework and guidance for the Guiding Principles.

Illustrative actions

- a. States should provide guidance to business enterprises establishing operational-level grievance mechanisms and exercise oversight over the process to bridge the various asymmetries that exist between enterprises and affected communities, including women;
- b. Grievance mechanisms established by international financial institutions should take specific measures to make potentially affected women aware of those mechanisms, draw on input from women's organizations, adopt a gender-responsive approach in all stages of the complaint process and recommend gender-transformative remedial measures.

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.

Gender guidance

Operational-level grievance mechanisms established by business enterprises should integrate a gender perspective in accordance with the gender framework and guidance for the Guiding Principles.

Illustrative actions

- a. Business enterprises should ensure that potentially affected women, women's organizations and women human rights defenders meaningfully participate in designing and administering operational-level grievance mechanisms. Moreover, the composition of bodies processing complaints should be gender-balanced;
- b. Operational-level grievance mechanisms should take into account various forms of discrimination, disadvantages and barriers faced by affected women in seeking remedies and take appropriate measures to overcome those limitations;
- c. Business enterprises should not require affected individuals or communities to waive their right to seek judicial or non-judicial remedies for human rights abuse;
- d. Business enterprises should ensure that women making complaints do not face any intimidation or reprisals.

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 mechanisms are available.

Gender guidance

Grievance mechanisms established under human rights-related standards of industry associations, multi-stakeholder bodies or other collaborative initiatives should be developed in a gender-responsive manner and should be able to provide gender-transformative remedies.

Illustrative actions

- a. The entire process of developing, and reviewing the effectiveness of, such grievance mechanisms should involve the participation of women representatives, draw on sex-disaggregated data about adverse impacts on women's human rights and consider additional barriers that women face in accessing grievance mechanisms;
- b. The remedies provided by these industry-wide or multi-stakeholder grievance mechanisms should be aimed at redressing not only specific human rights abuses but also systemic root causes of discrimination against women.

GUIDING PRINCIPLE 31

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 grievance 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;

Operational-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.

Gender guidance

All effectiveness criteria for non-judicial grievance mechanisms should be interpreted in a gender-responsive manner, considering especially the intersectional nature of discrimination faced by women in accessing such mechanisms and in enforcing effective remedies against business enterprises.

Illustrative actions

- a. Non-judicial grievance mechanisms should take targeted measures:
 - i. To ensure that non-judicial grievance mechanisms are accessible to potentially affected women and enjoy their trust
 - ii. To address the imbalance of power, information, financial resources and legal expertise faced by affected communities, including women;

- b. Non-judicial grievance mechanisms should be gender responsive in dealing with complaints about adverse impacts on women and ensure that the remedies granted are in line with women's international human rights standards;
- c. Non-judicial grievance mechanisms should collect sex-disaggregated data and consult women's organizations and women human rights defenders to enable gender-responsive continuous learning.complaints do not face any intimidation or reprisals.

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

I. INTRODUCTION

A. Context

1. In the present report, the Working Group on the issue of human rights and transnational corporations and other business enterprises provides guidance to States and businesses on how to integrate a gender perspective in implementing the Guiding Principles on Business and Human Rights, in order to apply the “protect, respect and remedy” framework to the realization of the rights of women in the context of business-related human rights abuses. All references to “women” in the present report should be understood to include girls as well as transgender and intersex women.
2. The overall context of the report is provided by three main factors. First, as the Working Group noted in the report it submitted to the General Assembly at its seventy-second session, rights holders are not a homogenous group.¹ Therefore, measures to implement the Guiding Principles in the form of laws, regulations, policies, plans, practices and decisions must be responsive to differences among rights holders. Women experience adverse impacts of business activities differently and disproportionately. They may also face additional barriers in seeking access to effective remedies. Moreover, because of intersecting and multiple forms of discrimination, different women may be affected differently by business activities in view of their age, colour, caste, class, ethnicity, religion, language, literacy, access to economic resources, marital status, sexual orientation, gender identity, disability, residence in a rural location, and migration, indigenous or minority status.

1. A/72/162, para. 26.

3. Second, since women's human rights are an inalienable, integral and indivisible part of universal human rights² both States and business enterprises should take concrete steps to identify, prevent and remedy gender-based discrimination and inequalities in all areas of life. In this vein, there are several references to gender and women's human rights in the Guiding Principles, as described below. However, neither States nor business enterprises have paid adequate attention to gender equality in discharging their respective obligations and responsibilities under the Guiding Principles. The limited integration of a gender perspective in existing national action plans on business and human rights³ and the gender-neutral nature of current modern slavery legislation⁴ illustrate this. Consultations convened by the Working Group revealed that many businesses relegated gender to a "tick-box exercise", without meaningfully addressing structural forms of inequality. Therefore, States and businesses could benefit from specific and practical gender guidance in implementing the Guiding Principles.
4. Third, pursuant to Human Rights Council resolution 17/4, the Working Group has an explicit mandate to integrate a gender perspective throughout its work. In line with this mandate, the Working Group has been paying attention to gender equality issues in its reports and during country visits.⁵ The gender-lens project it launched in 2017, from which the present report stems, is aimed at embedding gender as a cross-cutting issue in the business and human rights field.⁶

2. Vienna Declaration and Programme of Action, part I, para. 18.

3. See <https://globalnaps.org/issue/gender-womens-rights/>.

4. Surya Deva, "Slavery and gender-blind regulatory response", Cambridge Core blog (8 March 2019). Available at <https://www.cambridge.org/core/blog/2019/03/08/slavery-and-gender-blind-regulatory-responses/>

5. See, e.g., A/72/162, A/HRC/41/43/Add.1 and A/HRC/38/48/A

6. See www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx.

B. Objectives

5. In the present report, the Working Group seeks to achieve one primary and two secondary objectives. The primary objective is to provide guidance to States and businesses on integrating a gender perspective in implementing the Guiding Principles. The Working Group proposes a three-step gender framework – gender-responsive assessment, gender-transformative measures and gender-transformative remedies – and uses the framework to develop gender guidance specific to each of the 31 guiding principles (see annex).

6. The two interrelated secondary objectives of the report are: (a) to raise awareness about the need for gender integration in the business and human rights field; and (b) to highlight good practices of gender integration implemented by States and businesses.⁷

C. Methodology

7. The gender framework and guidance proposed in the present report and the annex thereto builds on existing gender equality standards. The adoption of Convention on the Elimination of All Forms of Discrimination against Women, the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform for Action reflect the need to adopt specific measures to achieve substantive gender equality. The standards in the business and human rights field are becoming increasingly sensitive to gender equality and women's rights. The Women's Empowerment Principles and the OECD Due Diligence Guidance for Responsible Business Conduct are examples of this trend.⁸

7. Some specific examples of these good practices will be posted on the Working Group's website. See www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx.

8. See also "Stakeholder statement on implementing gender-responsive due diligence and ensuring the human rights of women in mineral supply chains". Available at <https://mneguidelines.oecd.org/Stakeholder-Statement-Implementing-Gender-Responsive-Due-Diligence-and-ensuring-human-rights-of-women-in-Mineral-Supply-Chains.pdf>.

8. The report, as well as the compilation of good practices, is also informed by: (a) the work of various international organizations and United Nations agencies, treaty bodies and special procedures; (b) submissions made by States, businesses, industry associations, civil society organizations and academics in response to an open call for input issued by the Working Group;⁹ and (c) insights gained at multi-stakeholder regional consultations that the Working Group convened in Bangkok, Geneva, Mexico City, Nairobi, New Delhi, Ottawa, Suva and Sydney.¹⁰

D. Scope and limitations

9. The present report contains gender guidance for States and business enterprises in relation to all three pillars of the Guiding Principles. The term “gender” refers to socially constructed roles of and power relations among men, women and gender non-binary persons, all of whom may be affected differently by business activities. However, considering that women have historically been discriminated against owing to patriarchal norms and power structures, the guidance in the report focuses only on women, although the gender framework proposed herein could be used in relation to any group of rights holders. The guidance should be read together with other relevant standards, such as the standards of conduct for business, published by the Office of the United Nations High Commissioner for Human Rights, aimed at tackling discrimination against lesbian, gay, bisexual, transgender and intersex persons, and the Children’s Rights and Business Principles.

9. See www.ohchr.org/EN/Issues/Business/Pages/2018Survey2.aspx.

10. See www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx.

10. The gender guidance provided in the present report is generic in nature: it applies to all States and to all businesses irrespective of their size, sector, location, operating context, ownership and structure. However, the development of specific guidance for different types of businesses (e.g., informal businesses, small and medium-sized enterprises and multinational corporations) would be useful. Similarly, business enterprises operating in different sectors might benefit from supplementary guidance tailored to the specific challenges that they face.

II. WOMEN, BUSINESS AND HUMAN RIGHTS: CHALLENGES

11. Women comprise almost half of the world's population. Despite non-discrimination provisions in the constitutions and laws of many countries, in practice women continue to experience various forms of discrimination and violence in all spheres of life due to discriminatory social norms, patriarchal power structures and gender stereotypes. For example, the World Bank recently reported that the average global score in the Women, Business and the Law index is 74.71, indicating that a typical economy gives women only three quarters of the legal rights of men in the measured areas.¹¹ As at 1 January 2019, only 24.3 per cent of national parliament members worldwide were women.¹² In 2018, only 4.8 per cent of chief executive officers of the Fortune 500 companies were women,¹³ while women comprised just 8 per cent of directors of Hollywood's 250 top-grossing films.¹⁴

11. World Bank, *Women, Business and the Law 2019: A Decade of Reform* (Washington, D.C.), p. 3.

12. Inter-Parliamentary Union, "Women in national parliaments". Available at <http://archive.ipu.org/wmn-e/world.htm>.

13. See <http://fortune.com/2018/05/21/women-fortune-500-2018/>.

14. Martha M. Lauzen, "The celluloid ceiling: behind-the-scenes employment of women on the top 100, 250 and 500 films of 2018" (2019). Available at https://womenintvfilm.sdsu.edu/wp-content/uploads/2019/01/2018_Celluloid_Ceiling_Report.pdf.

Worldwide, as compared to 72 per cent of men, only 65 per cent of women have bank accounts,¹⁵ and women own less than 20 per cent of the world's land.¹⁶ About 21 per cent of women aged 20 to 24 worldwide were married as children,¹⁷ while 71 per cent of the estimated number of people in modern slavery are women.¹⁸ About 327 million fewer women than men worldwide have a smartphone and can access mobile Internet.¹⁹

12. Women's contribution to economy is either not recognized (e.g., household work) or is undervalued (e.g., in feminized occupations and industries). Women carry out the majority of care work (e.g., caring for children, elderly and sick persons and persons with disabilities in families), but most do not get paid for this work. Women are overrepresented in informal, casual and part-time work worldwide, as well as in supply chains of numerous industries, where they are more vulnerable to exploitation and abuse.²⁰ Moreover, women face pregnancy and maternity-related discrimination, are underrepresented in managerial positions and, on average, are paid approximately 20 per cent less than men across the world.²¹
13. Trade unions could play a key role in protecting women's rights and fighting against discrimination in the organized work place. However, owing to several factors (e.g., patriarchal values and household responsibilities), many women workers are unable to play an active role in trade unions.

15. See <https://globalindex.worldbank.org/basic-page-overview>.

16. See <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/>.

17. United Nations Children's Fund (UNICEF), "Child marriage: latest trends and future prospects" (2018), p. 2.

18. See www.globalslaveryindex.org/2018/findings/highlights/.

19. Organization for Economic Cooperation and Development (OECD), Bridging the Digital Gender Divide: Include, Upskill, Innovate (2018), p. 13.

20. Danish Institute for Human Rights, Women in Business and Human Rights (2018), pp. 14–18.

21. International Labour Organization, Global Wage Report 2018/19: What Lies Behind Gender Pay Gaps (Geneva, 2018), p. 23.

Moreover, as women remain marginalized with respect to decision-making positions in most trade unions, their human rights concerns are frequently overlooked or not taken seriously. These factors undermine the potential of trade unions in promoting gender equality at work.

14. The Working Group's consultations confirmed that sexual harassment and gender-based violence is pervasive in all walks of life: at home, in educational institutions, at work, in sports, in markets, in public transport, in social gatherings, in cyberspace and in the community generally. Consultations revealed that demands for sexual favours in return for better work conditions are common and that sexual violence by security guards in the extractive industry is an endemic problem. Yet, of 189 examined economies, 45 do not have laws on domestic violence and 59 do not have laws protecting women from sexual harassment at work.²² Multiple barriers, including fears of social stigmatization, job loss and further victimization, discourage women from reporting sexual harassment and gender-based violence.
15. In marketing and delivering products and services, many businesses tend to perpetuate gender stereotypes, normalize discriminatory social norms and objectify and sexualize women's bodies, resulting in the commodification of women. The digital manipulation of women's images in advertisements to create an unrealistic ideal of beauty, which puts pressure on women to use excessive cosmetics, resort to unhealthy dieting or undergo plastic surgery, illustrates this.²³ In some extreme forms, businesses play a role in trafficking of women for sexual exploitation,²⁴ including for production of pornography.

22. World Bank, *Women, Business and the Law 2018* (Washington, D.C.), pp. 19–20.

23. See generally A/HRC/32/44, paras. 65–66.

24. A/67/261, paras. 9–11.

16. Women also tend to experience a disproportionate impact on²⁵ their human rights in conflicts and post-conflict situations, settings that businesses may operate in, contribute to or benefit from. For instance, in conflicts, sexual violence is used as a tool to show male power and dominance. In addition, the adverse impacts on women's human rights in conflicts are not meaningfully addressed in peacebuilding and transitional justice responses because women's experiences are not adequately considered.
17. As trade and investment policies are often gender-neutral, they tend to exacerbate existing discrimination against women. Adverse impacts of the exploitation of natural resources, tax evasion, austerity measures²⁶ and the privatization of public services²⁷ are also experienced by women differently and disproportionately. Moreover, the "fourth industrial revolution" might affect women more adversely if regulatory responses are not gender-responsive, for example, as a result of automation of tasks that are predominantly conducted by women currently.²⁸
18. The impacts of environmental pollution, climate change and land acquisition are not gender-neutral either. If a water source is polluted by a business activity, this may mean a longer walk every day for the affected women in a rural area to fetch potable water. Similarly, when land is acquired for infrastructure and mining projects, or to build a dam, women dependent on such land for their livelihood and/or subsistence are rarely consulted or involved specifically in the decision-making processes. Consequently, they might not receive a fair share in the development project nor receive compensation for loss of livelihood.

25. See www.ohchr.org/EN/Issues/Women/WRGS/Pages/PeaceAndSecurity.asp.

26. See A/73/179.

27. Danish Institute for Human Rights, *Women in Business*, pp. 32–40.

28. See Institute for Women's Policy Research, *Women, Automation, and the Future of Work* (2019).

19. Women affected adversely by business activities face additional barriers in seeking access to effective remedies.²⁹ Even if affected women are able to access certain judicial, non-judicial or operational-level mechanisms, they are unable to enforce suitable remedies, because these remedial mechanisms typically adopt gender-neutral processes or, worse, operate within existing patriarchal norms.
20. Women human rights defenders – who play a vital role in challenging business-related human rights abuses and promoting and protecting human rights, including the right to an effective remedy – often face additional and different risks,³⁰ such as sexual violence, misogynistic public shaming and online harassment, and domestic violence.
21. The forms of discrimination noted above all reflect a failure to integrate a gender perspective in laws, regulations, policies, plans, practices, processes and decisions. The current general business practice of gender-neutral human rights due diligence is a case in point.³¹ A gendered approach to decision-making by States and businesses should also consider the intersectional nature of discrimination. For example, a single mother, a migrant woman, a lesbian, a woman of colour and a woman with disability may experience discrimination and sexual harassment at work in varied ways.

29. A/72/162, para. 30; Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015) on women's access to justice, paras. 3, 8–10 and 13.

30. A/HRC/40/60, para. 6.

31. See Joanna Bourke Martignoni and Elizabeth Umlas, *Gender-Responsive Due Diligence for Business Actors: Human Rights-Based Approaches* (Geneva Academy of International Humanitarian Law and Human Rights, 2018).

III. SELECTED EXISTING STANDARDS

Convention on the Elimination of All Forms of Discrimination against Women

22. The Convention on the Elimination of All Forms of Discrimination against Women provides a gender-transformative articulation of the International Bill of Human Rights by setting the goal to eradicate all forms of discrimination against women and achieve substantive gender equality. The Convention defines “Discrimination against women” broadly (art. 1). It requires States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (art. 2 (e)). This may include adopting temporary special measures – also known as affirmative action – to achieve substantive equality (art. 4).
23. The Committee on the Elimination of Discrimination against Women has elaborated further on the implication of several provisions of the Convention. In its general recommendation No. 13 (1989) on equal remuneration for work of equal value, the Committee suggests ways to overcome the gender-segregation in the labour market, which remains a concern in certain male-dominated sectors, such as the extractive sectors, as well as in, for example, the garment industry, where most workers are women. The situation of unpaid women workers in family enterprises and unremunerated domestic activities are dealt with in, respectively, the Committee’s general recommendations No. 16 (1991) on unpaid women workers in rural and urban family enterprises and No. 17 (1991) on the measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product. In general recommendation No. 26 (2008) on women migrant workers, the Committee makes several recommendations for countries of origin and destination to protect the rights of women migrant workers.

In general recommendations No. 19 (1992) on violence against women and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee recommends that States take measures to deal with gender-based violence, including by non-State actors. In its general recommendation No. 33 (2015) on women's access to justice, the Committee outlines a range of measures to improve women's access to justice for human rights abuses.

24. The standards contained in the Convention apply to all businesses as part of their responsibility to respect human rights under the Guiding Principles. The relevance of the provisions of the Convention to businesses can be illustrated here briefly. To respect article 5, corporate advertisements should avoid promoting sexual stereotyping, and to act in conformity with article 6, businesses should not facilitate trafficking of women (including for sexual exploitation). To act in line with article 10, private education providers should ensure that women have equal access to education and vocational training. All businesses should eliminate discrimination against women in every aspect of employment, including with regard to the gender pay gap, pregnancy-based discrimination and a lack of work-family life balance (art. 11). If women are not able to access bank loans and other forms of financial credit on an equal footing with men, this may breach article 13 of the Convention. The business practice of requiring women to undergo pregnancy tests, and restrictions on marriage during employment, would infringe article 16.

Beijing Declaration and Platform for Action

25. The Beijing Declaration and Platform for Action mark an important step in that they invite Governments, the private sector and civil society organizations, including women's groups, to take concrete actions to achieve gender equality and empower women in all spheres of life. In the Beijing

Declaration, it is reaffirmed that women's empowerment and their full participation on the basis of equality in all spheres of society are fundamental for the achievement of equality, development and peace (para. 13), and men are encouraged to participate fully in all actions towards equality (para. 25).

26. In the Platform for Action (para. 44), Governments and the private sector, among others, are called on to take strategic action in areas of concern such as the persistent and increasing burden of poverty on women; inequalities and inadequacies in and unequal access to education and training; violence against women; inequality in economic structures and policies; and gender inequalities in the management of natural resources and in the safeguarding of the environment. Moreover, regional development banks, regional business associations and other regional institutions are invited to contribute to and help mobilize resources in their lending and other activities for the implementation of the Platform for Action (para. 351).

Women's Empowerment Principles

27. The Women's Empowerment Principles were launched in 2010. They comprise seven principles aimed at promoting gender equality in the workplace, marketplace and community. Representatives of more than 2,000 companies from different sectors operating all over the world have signed a statement of support for the Principles.³² The number of participating companies, while not insignificant, is quite small on a global scale.
28. In March 2017, the Women's Empowerment Principles Gender Gap Analysis Tool was launched to assist companies in assessing their policies and practices vis-à-vis the Principles and, in turn, enable them to design further measures to achieve gender equality.

32. See www.empowerwomen.org/en/weps/companies.

A 2018 report on global trends revealed that although 69 per cent of companies using the Tool had a leadership commitment for gender equality and women's empowerment, only 30 per cent had set time-bound, measurable goals and targets to achieve gender equality through the Principles.³³ Only 16 per cent of companies using the Tool ensure equal participation of women and men in community consultations.³⁴ This shows that much more needs to be done to expand both the breadth and the depth of business engagement with the Principles.

Sustainable Development Goals

29. The 2030 Agenda for Sustainable Development, in which gender is considered both as a stand-alone and cross-cutting issue, seeks, among other things, to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.³⁵ Goal 5 operationalizes this collective aspiration through targets 5.1 and 5.2, aimed at ending all forms of discrimination and violence (including trafficking and sexual exploitation) against all women and girls everywhere in the public and private spheres. Other targets under the goal include target 5.4, to recognize the value of unpaid care and domestic work, often done by women and girls, and 5.5, to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.
30. Targets 5.a to 5.c encourage the use of legislation, policies, reforms and technologies to empower women and girls, which in turn helps to achieve substantive gender equality. A critical role for businesses is envisioned in the 2030 Agenda.³⁶ However, if States and businesses adopt a gender-neutral approach in

33. "Women's Empowerment Principles: global trends report 2018", p. 4.

34. Ibid.

35. General Assembly resolution 70/1, preamble

36. Paras. 28, 39, 41, 52, 60, 62 and 67, and Goal 17.

implementing the Sustainable Development Goals or consider gender an issue relevant only under Goal 5, they might end up leaving behind half of the world's population. A gender perspective should, therefore, be integrated in realizing all the goals and targets under the 2030 Agenda. For example, measures aimed at ending poverty and hunger (Goal 1), promoting decent work for all (Goal 8), reducing inequality within and among countries (Goal 10), combating climate change (Goal 13), providing access to justice (Goal 16) and strengthening public-private partnerships (Goal 17) should be gender-responsive.

OECD Due Diligence Guidance for Responsible Business Conduct

31. The OECD Due Diligence Guidance for Responsible Business Conduct provides enterprises with practical guidance in implementing the due-diligence components of the OECD Guidelines for Multinational Enterprises. The Guidance represents an important step, as it contains recommendations urging businesses to apply a gender perspective to risk-based due diligence.³⁷ OECD recommends that, in assessing adverse impacts, businesses pay special attention "to different risks that may be faced by women and men".³⁸ Businesses should also "be aware of gender issues and women's human rights in situations where women may be disproportionately impacted".³⁹ OECD further recommends "applying a gender perspective to due diligence when appropriate".⁴⁰ To avoid any doubt, it should be stressed that a gender perspective is always appropriate for all States and businesses in all situations. the public and private spheres. Other targets under the goal include target 5.4, to recognize the value

37. See also sector-specific due-diligence guidance, available at <http://mneguidelines.oecd.org/duediligence/>.

38. OECD Due Diligence Guidance for Responsible Business Conduct, p. 27.

39. Ibid., p. 41

40. Ibid.

of unpaid care and domestic work, often done by women and girls, and 5.5, to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.

32. OECD suggests several gender-sensitive steps that businesses should take, such as collecting and assessing sex-disaggregated data, developing and evaluating gender-sensitive and gender-responsive policies, identifying overlapping or accumulated vulnerabilities, and assessing whether grievance mechanisms are gender-sensitive.⁴¹ It also reminds businesses that stakeholders such as women "may need additional attention in the context of stakeholder engagement activities".⁴² Although there is no specific reference to gender in the context of the national contact points, the relevance of gender to providing remedies was expressly acknowledged during a workshop on gender convened by the Working Party on Responsible Business Conduct.⁴³ More such awareness-raising and capacity-building workshops could assist in mainstreaming a gender perspective in implementing all components of the OECD Guidelines.

International Labour Organization standards

33. Over the years, the International Labour Organization has developed several gender equality standards:
- a. The principle of equal remuneration for men and women workers for work of equal value (Equal Remuneration Convention, 1951 (No. 100));
 - b. The prohibition of discrimination on the basis of, among others, sex (Discrimination (Employment and Occupation) Convention, 1958 (No. 111));

41. Ibid.

42. Ibid., p. 51.

43. OECD, "Workshop on responsible business conduct and gender: Chair's summary", 20 March 2019, pp. 5–6.

- c. The provision of equal opportunities and equal treatment for workers with family responsibilities to engage in employment (Workers with Family Responsibilities Convention, 1981 (No. 156));
 - d. The provision on supporting women's reproductive rights (Maternity Protection Convention (Revised), 1952 (No. 103) and Maternity Protection Convention, 2000 (No. 183)).
34. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, revised most recently in 2017, offers guidance to multinational enterprises and Governments in areas such as employment, training, conditions of work and life, and industrial relations. Although the Declaration does not embed gender as a cross-cutting issue, Governments are asked to "promote equality of opportunity and treatment in employment" and eliminate discrimination based on, among other things, sex (para. 28), "promote equal remuneration for men and women workers for work of equal value" (para. 29) and take "steps to combat workplace violence against women and men" (para. 43). Multinational enterprises should also be "guided by the principle of non-discrimination throughout their operations" (para. 30).
35. Furthermore, the 108th session of the International Labour Conference, in June 2019, will include a discussion of the text of a proposed convention concerning violence and harassment against women and men in the world of work.⁴⁴

44. See www.ilo.org/ilc/ILCSessions/108/lang--en/index.htm.

IV. A GENDER FRAMEWORK FOR THE GUIDING PRINCIPLES

36. The Guiding Principles contain several references to gender and women. The references can be grouped into three “gender windows”. The first window is framed by the general principle of non-discrimination: the Guiding Principles should be implemented in a non-discriminatory manner with due regard to the different risks that may be faced by women and men.⁴⁵ This is an important cross-cutting principle, which could be employed to develop a gender-responsive reading of the Guiding Principles.
37. The second window is shaped by provisions explicitly highlighting the need to integrate a gender perspective at certain places. The commentary to guiding principle 3 provides that States should provide appropriate guidance to businesses on how to consider effectively issues of, among other things, gender, recognizing the specific challenges that may be faced by women. Guiding principle 7 underlines that States should provide adequate assistance to business enterprises operating in conflict-affected areas to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence. The commentary to guiding principle 18 stresses that when identifying any adverse human rights impacts, business enterprises should bear in mind the different risks that may be faced by women and men. Finally, the commentary to guiding principle 20 provides that business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, underlining the importance of using gender-disaggregated data where relevant.

45. A/HRC/17/31, p. 6.

38. The foundation of the third gender window is the commentary to guiding principle 12, which provides that, depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention. A specific mention is made of the instruments that have elaborated further on the rights of groups such as women. The Convention on the Elimination of All Forms of Discrimination against Women should be part of the additional standards that businesses should consider at all times, as adopting a gender perspective will be appropriate in all circumstances.
39. Building on those three gender windows and the international standards concerning women's rights discussed in section III above, the Working Group has developed a gender framework for the Guiding Principles, comprising a three-step cycle relevant to all three pillars: gender-responsive assessment, gender-transformative measures and gender-transformative remedies (see figure). The assessment should be responsive: it should be able to respond to differentiated, intersectional and disproportionate adverse impacts on women's human rights as well as to discriminatory norms and patriarchal power structures. The consequent measures and remedies should be transformative in that they should be capable of bringing change to patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping.

GENDER FRAMEWORK

FOR THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- Offer a range of preventive, redressive and deterrent remedies
- Engage women's organizations and gender-sensitive experts to identify appropriate remedies
- Address both specific and systematic abuses affecting women
- Propose remedies that could change discriminatory power structures and reduce violence against women
- Engage with governments and other stakeholders to reform discriminatory laws



**GENDER-
TRANSFORMATIVE
REMEDIES**


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graph TD; A((GENDER-RESPONSIVE ASSESSMENT)) --> B((GENDER-TRANSFORMATIVE MEASURES));
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GENDER-RESPONSIVE ASSESSMENT

- Review whether laws, policies, norms, standards and practices are, directly or indirectly, discriminatory towards women
- Assess how the State or business enterprise's current and future actions or omissions might adversely affect women
- Collect sex-disaggregated data
- Consider intersectionality
- Ensure meaningful participation of women and women's organizations in the assessment process
- Engage gender-sensitive experts to conduct impact assessments
- Evaluate the effectiveness of gender transformative measures and remedies

GENDER-TRANSFORMATIVE MEASURES

- Make a public commitment to achieve substantive gender equality
- Practice rights-based empowerment of women
- Take measures (including affirmative action) to achieve substantive equality and eliminate all forms of discrimination, harassment and violence against women
- Engage gender-sensitive experts to evaluate the efficacy of measures taken
- Communicate regularly with stakeholders
- Collaborate with women's organizations
- Sensitize decision makers about gender equality
- Conduct advocacy for gender equality

40. States and businesses should periodically carry out gender-responsive assessments of the terrain of laws, policies, norms, practices and activities to identify existing gender inequalities and discriminations, as well as the impact of their respective current and future actions or omissions on such a terrain. Such an assessment process should make use of sex-disaggregated data, engage gender-sensitive experts, and include consultations with women's organizations, including those operating at the grass-roots level. The findings of the assessments should inform States and businesses in taking a full range of gender-transformative measures to achieve substantive gender equality in all spheres of life. If those measures fall short of achieving this goal, gender-transformative remedies should be available for affected women. The remedies should combine preventive, redressive and deterrent elements⁴⁶ and change existing power structures that discriminate against women.
41. The Working Group has applied the gender framework to propose gender guidance specific to each of the 31 guiding principles (see annex). The guidance for each guiding principle includes selective illustrative actions showing how States and businesses can integrate a gender perspective throughout their operations. Examples of good practices that will be posted on the Working Group's website should provide further practical assistance in this integration process.
42. All initiatives and reporting frameworks aimed at facilitating the implementation of the Guiding Principles should integrate the proposed gender framework and guidance. Moreover, any future standards in the business and human rights field should be developed with the meaningful participation of women and should propose gender-responsive measures, in line with the

46. A/72/162, para. 40.

Declaration for Gender Responsive Standards and Standards Development.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

43. Despite much progress made over the years in achieving substantive gender equality, many challenges remain. Women continue to experience multiple forms of discrimination, disadvantage, exclusion and violence in all spheres of life. They are underrepresented in decision-making positions, are often affected differently and disproportionately by business activities, and face additional barriers in seeking effective remedies. Women might also be affected more adversely by new technologies.
44. There is some evidence of an increased integration of a gender perspective in business and human rights standards in recent years. However, most States and business enterprises still pay little or inadequate attention to the diverse experiences of women in implementing their respective duties and responsibilities under the Guiding Principles. This practice of “gender tokenism” must change. To eliminate all forms of discrimination against women and achieve substantive gender equality, States and business enterprises should work together with women’s organizations and all other relevant actors to ensure systematic changes to discriminatory power structures, social norms and hostile environments that are barriers to women’s equal enjoyment of human rights in all spheres. The proposed gender framework and guidance provide concrete steps on how this can be done.

Recommendations

45. The Working Group recommends that:

- a. States apply the gender framework and guidance in developing or revising all initiatives and measures, including national action plans on business and human rights, aimed at implementing the Guiding Principles;
- b. States encourage, through a range of effective incentives and disincentives, business enterprises to integrate the gender framework and guidance in discharging their human rights responsibilities under the Guiding Principles;
- c. Business enterprises apply the gender framework and guidance in all aspects of their responsibility to respect human rights, namely, making a robust policy commitment, conducting meaningful human rights due diligence and providing for or cooperating in effective remediation, and in contributing to achieving substantive gender equality;
- d. Business enterprises ensure meaningful participation of potentially affected women, women's organizations, women human rights defenders and gender experts in all stages of human rights due diligence;
- e. Business enterprises provide support and use their leverage to ensure that all their business partners apply the gender framework and guidance in their operations and respect women's human rights;
- f. Experts and consultants advising enterprises on implementing the Guiding Principles adopt a gender-responsive approach and recommend gender-transformative measures and remedies;
- g. Stock exchanges, industry associations and investors take effective steps to encourage businesses to contribute to achieving substantive gender equality in line with the proposed gender framework and guidance and other relevant standards;
- h. International financial institutions integrate the gender framework and guidance, including in the conduct of human

rights due diligence, in approving any financial support for projects, in monitoring such projects and in dealing with complaints concerning the supported projects;

- i. National human rights institutions, civil society organizations, trade unions, women's organizations, human rights defenders, lawyers, law firms, judges, journalists and academics make use of the gender framework and guidance in their respective roles in promoting substantive gender equality and implementing the Guiding Principles;
- j. Agencies, organizations and foundations funding projects to support the dissemination and implementation of the Guiding Principles by States and/or businesses should explicitly integrate a gender perspective in such projects in line with the proposed gender framework and guidance.

