

# **BUSINESS AND HUMAN RIGHTS: ENGENDERING HUMAN RIGHTS DUE DILIGENCE – A LEGAL ANALYSIS**

**RECOMMENDATIONS TO THE EUROPEAN  
UNION, STATES AND CORPORATIONS**

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**Human Rights Centre Clinic**

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## List of Abbreviations

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFIs	International Financial Institutions
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
HRDD	Human Rights Due Diligence
NAPs	National Action Plans
UNGP	United Nations Guiding Principles on Business and Human Rights
WHRD	Women Human Rights Defenders

## Executive Summary

This report analyses the gender-specific impacts of extractive and large-scale commercial agriculture corporations with a focus on the right to an adequate standard of living as guaranteed under international human rights standards.\* The report demonstrates the specific and unique impacts that extractive and large-scale commercial agriculture corporations' operations have on women's rights, including: displacement and loss of land; changes in the traditional roles of women within communities; increases in violence against women; environmental pollution and destruction; inability to access justice and compensation, among others.

Furthermore, this report highlights how states, the European Union and corporations operating in extractive industries and large-scale commercial agriculture sectors can incorporate gender-specific impacts on the right to an adequate standard of living into their gender-sensitive human rights due diligence processes and address these in their human rights due diligence frameworks, including the right to free, prior and informed consent.

Based on its findings, the report makes the following recommendations:

### ❖ **To the European Union**

Recommendations include modifying existing legislation to incorporate extraterritorial jurisdiction of State Members over their companies operating outside the EU, putting corporations' respect for human rights as a condition for supporting their access to external markets, supporting existing efforts in imposing binding obligations on corporations regarding business and human rights with a gender focus, creating a mechanism to review implementation of EU guidelines and standards on business and human rights in host states, among others.

### ❖ **To States**

Recommendations stress the importance of states advocating and developing gender-sensitive national guidelines for corporations in general and during emergencies, as well as monitoring corporate compliance with voluntary and binding mechanisms on business and human rights from a gender perspective. Special attention is given to issues relating to the operations of international stakeholders, such as IFIs that collaborate with corporations' activities. Adoption and expansion of extraterritorial obligations and adequate contextualised research on the potential gender implications of a proposed business project are recommendations specific to home and host states, respectively.

### ❖ **To Corporations**

Recommendations include the integration of gender perspective in their impact assessments and monitoring and evaluation activities, the support of women's meaningful participation throughout the stages of their impact assessment and operations, the training of staff in gender issues, protection to whistle-blowers and sharing of gender-specific information to the project from all its participants. The report contains detailed recommendations on engendered grievance mechanisms, displacement and evictions, and corruption, violence and other abuses.

## 1. Introduction

Business activities that result in human rights violations have gender-specific impacts and risks that frequently affect women more than men. However, the gender-specific dimensions of these violations remain largely invisible. This is because many violations of women's rights are caused by, or overlooked because of entrenched gender discrimination and are normalised in everyday life. As a consequence, there is a high risk that gender-specific human rights impacts will not be identified or addressed, unless explicitly included in government and corporate policies and corporate human rights due diligence (HRDD) processes. There is, however, little guidance on what gender-sensitive HRDD means, or how States and corporations can ensure that business activities respect women's human rights.

Women make up the majority of the world's small scale farmers and are primarily responsible for providing water and food for their families.<sup>1</sup> As such, women bear a disproportionate share of the social, economic and environmental risks when they are displaced or when land is lost to extractive and large-scale commercial agriculture activities. Men frequently leave to find jobs elsewhere, leaving women to fend for themselves and their children with little means of survival. Extractive and large-scale commercial agriculture activities have been linked to conflicts over the control of land and natural resources.<sup>2</sup> Their activities often result in the pollution of the land women farm. Water contamination and air pollution can lead to a heightened risk of diseases. Sick family members are typically cared for by women which increases their unpaid care workload, particularly in rural areas where health services are already inadequate. Where employment is available, women typically end up in the poorest paid jobs. They are excluded from community consultations on what should happen to their land and rarely receive adequate compensation for lost land and assets. At the same time, women miners and women living in communities affected by extractive and large-scale commercial agriculture industries can experience sexual abuse and rape from industry workers or industry security personnel and have little protection.<sup>3</sup>

This report\* analyses the gender-specific impacts of extractive and large-scale commercial agriculture corporations with a focus on the right to an adequate standard of living as guaranteed under international human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In particular, the report explores the how states, the European Union (EU) and extractive and large-scale commercial agriculture corporations can incorporate gender-specific impacts on the right to an adequate standard of living into their gender-sensitive HRDD processes and address these in their gender-sensitive HRDD frameworks, including the right to free, prior and informed consent (FPIC).

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\* This report was produced by the Human Rights Centre Clinic at the University of Essex by Fabiana Brigante, Diana Figueroa Prado, Mary Kapron and Elizabeth Manginge and under the supervision of Dr. Patricia Palacios Zuloaga and Dr. Anil Yilmaz Vastardis. This project originated from the ideas of Malou Schueller at Progressio and Dr. Anil Yilmaz Vastardis at the Essex Business and Human Rights Project.

## 2. Methodology

The methodology used for this report involved a study of international human rights law and standards, a literature review and four case studies. Together, these sources provided a comprehensive examination of the ways in which women's right to an adequate standard of living is affected by extractive and large-scale commercial agriculture activities.

The review of international human rights law and standards provided the legal framework for the definitions of the rights to an adequate standard of living and to access to remedies, human rights due diligence and free, prior and informed consent. The use of these laws and standards allowed for a comprehensive analysis aimed at formulating recommendations based on international obligations and best practices. Moreover, a gender-sensitive approach to the definitions was taken in order to establish specific standards to address the situation of women in this context.

The literature review, which consisted mainly of academic sources and government and NGO reports, assisted in engendering the definitions as well as the development of the case studies. Feminist theory and business and human rights academic research were the theoretical bases for understanding the effects of extractive and large-scale commercial agriculture activities on women's lives. Government and NGO reports from around the world served the purpose of providing specific examples of these effects and were the main source of information for the elaboration of the case studies.

In order to better understand the issues and to be able to formulate tailored and precise recommendations for the European Union, states and corporations, a case study method was conducted. Applying a gender perspective to these case studies helped to clearly identify the impact of extractive and large-scale commercial agriculture activities on women's adequate standard of living in different contexts. Furthermore, the research design was developed drawing from the work on case studies of Nelson & Martin<sup>4</sup> and Yin,<sup>5</sup> as well as the Miles & Huberman's checklist of six criteria to verify suitability of methodology.<sup>6</sup>

In order to select the case studies for this report, a pool of potential cases was identified which represented a varied number of corporations working in the extractive and large-scale commercial agriculture sectors in different countries. Then, a set of operational criteria was defined that served to select or exclude cases in order to choose those that were best suited to answer the questions posed in this report.<sup>7</sup>

The operational criteria included those from Miles & Huberman's checklist: relevance to the conceptual framework, richness/reasonable amount of information, generalizability, ethical considerations and feasibility. Drawing from the literature on feminist theory, the right to an adequate standard of living and business and human rights principles, additional substantive criteria were selected. These included, for example, variety of geographical setting, clear impact of women's adequate standard of living and the size, origin and type of legal ownership of the company, among others. These operational criteria built up an index that assisted in the selection of cases.<sup>8</sup>

Each case study was conducted separately with the findings discussed among the team

members. First, a pilot case study was performed to test the methodology and to make any necessary revisions. The cases selected were those with the highest index and that met a preliminary gender analysis. The information contained in Section 4 of this report is derived from the four selected case studies.

Due to legal liability reasons, the corporations involved in the case studies are not addressed in this report. This poses limitations on the findings of this report given that addressing very specific impacts may have led to identification of these corporations. However, by identifying common issues and relevant stakeholders in corporate activity in the cases studies, the report demonstrates the impacts of extractive and large-scale commercial agriculture activities on women's right to an adequate standard of living and provides recommendations found in Section 5.

### 3. Definitions

#### 3.1 Adequate Standard of Living

**Given the strong likelihood that corporations' activities will impact the right to an adequate standard of living of women in a variety of ways, this right must be understood in its widest meaning.**<sup>9</sup> The right to an adequate standard of living is found in Article 25 of the Universal Declaration of Human Rights and Article 11 of the ICESCR.<sup>10</sup> This right includes **the availability, accessibility, acceptability and quality<sup>11</sup> of adequate food, clothing, housing, medical care and necessary social services, as well as the continuous improvement of living conditions.**<sup>12</sup> CEDAW adds to this right **the enjoyment of adequate sanitation, electricity and water supply, transport and communications,** and refers to it as "adequate living conditions."<sup>13</sup> Further, Article 27(1) of the Convention on the Rights of the Child (CRC)<sup>14</sup> associates this right with **"physical, mental, spiritual, moral and social development."**<sup>15</sup>

The Committee on Economic, Social and Cultural Rights (CESCR) has stated that states have a duty to protect the right to health by regulating the activities of individuals and corporations to prevent them from violating this right.<sup>16</sup> Article 11(2) of the ICESCR also binds the private sector to the right to be free from hunger given its critical role in the production, conservation and distribution of world food supplies. The CESCR has asserted that the private sector should be aware of the importance of the right to water when it pursues its activities<sup>17</sup> and that it should do it "within the framework of a code of conduct conducive to respect the right to adequate food," including the prevention of contamination and inappropriate handling of foodstuffs at all levels of the food chain.<sup>18</sup> This obligation to avoid pollution includes water,<sup>19</sup> air and soil pollution, which the CESCR has expressly linked to extractive industries.<sup>20</sup> Further, the Committee has stressed the need to secure legal tenure for all persons and legal protection, especially for women, against forced eviction, harassment and other threats by private actors. This protection can be expanded to include any security destabiliser for women in this context, such as the use of private security staff not trained in human rights.<sup>21</sup>

Together with these provisions, **the right to an adequate standard of living includes a life free of violence and living conditions and structures that enable women to live their lives fully.**<sup>22</sup> The study by the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, highlighted that “the lack of adequate housing can make women more vulnerable to various forms of violence and, conversely, violence against women can lead to the violation of women’s right to adequate housing.”<sup>23</sup> **The right extends beyond the private home to include external settings that impact the ability of women in their different roles and identities to enjoy their human rights.**<sup>24</sup> **This covers the private sector’s regulation as a strategy to address the interlinkage of violence against women and the right to adequate housing.**<sup>25</sup> Moreover, the CESCR has indicated that failure to protect women against violence, including by corporations, may amount to a violation of the right to health,<sup>26</sup> a right interrelated and interconnected with the right to adequate housing.

Other structural factors that impact women’s livelihoods should be taken into consideration when addressing the right to an adequate standard of living of women,<sup>27</sup> such as domestic work and care, which are commonly unequally shared within and outside the household. These are not socially and economically valued because they are mostly not market-oriented although they make all market-oriented work possible.<sup>28</sup> **The Montréal Principles on Women’s Economic, Social and Cultural Rights call to ensure that women do not disproportionately perform an unpaid and undervalued workload within the family and the community,**<sup>29</sup> while Article 23 of the International Covenant on Civil and Political Rights (ICCPR) and Article 16(d) of CEDAW touch upon the need for equal participation in responsibility and authority within the family.<sup>30</sup> **This equality of rights and authority involves the relationship that states and corporations maintain with the work of women.** By linking the value of wages or financial resources with an adequate standard of living, the CESCR has affirmed that **the prices set by the private sector for the components of the right to an adequate standard of living should not be unreasonably high and that their burden should not disproportionately impact the most vulnerable.**<sup>31</sup>

### 3.2 Gender-Sensitive Human Rights Due Diligence

In the context of corporate due diligence processes, **gender-sensitive HRDD should be based “on an explicit recognition of the unequal power relations between women and men, whether as workers, farmers, human rights defenders, family members and/or community members, and an understanding of the ways in which these power relations are institutionalized and normalized within social, economic, political and cultural practices and institutions.”**<sup>32</sup> Given that gender discrimination is so universally entrenched to the point of being invisible, there is a high risk that such issues will not be identified by corporate due diligence processes, resulting in continuous violations of women’s rights by business activities.

**Gender-sensitive HRDD should identify, account for, mitigate, prevent and repair all forms of gender-based discrimination.** This includes gender-specific human rights impacts and risks that corporations may cause or contribute to through their activities, or which may be directly linked to their operations, products or services.<sup>33</sup>



**The content of gender-sensitive HRDD will vary in complexity depending on the size of the corporation, the nature of the operations and the risk of human rights and gender impacts.**<sup>34</sup> Due diligence processes should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.<sup>35</sup> The process should be initiated as early as possible and should be ongoing, recognizing that the human rights and gender risks emanating from the project may change over time.<sup>36</sup>

#### **Gender-sensitive HRDD should include:**

- ❖ **Conducting gender impact assessments of supply chains and wider business operations:** This would include reviewing proposed and existing activities that underpin institutionalized forms of gender inequalities, such as the gender pay gap for women workers. In the case of land investments, women should be able to access land and water resources without discrimination.<sup>37</sup> Corporate impact assessments should comply with internationally recognized human rights standards.
- ❖ **Developing and implementing detailed gender-sensitive policies and management and operational plans:** These plans and policies should address and mitigate the identified negative social and economic impacts of business activities on women.<sup>38</sup> To be effective, these plans and policies must be embedded into all relevant business functions.<sup>39</sup>
- ❖ **Ensuring women’s participation in business activities:** Women’s participation must be ongoing, equal and meaningful throughout the proposal, planning and implementation stages of extractive and large-scale commercial agriculture activities. Particular attention should be given to the barriers which impede women’s effective engagement. In the case of land-related developments, for example, this would include ensuring that women’s FPIC is obtained both before business activities begin and throughout their duration.<sup>40</sup>
- ❖ **Facilitating separate spaces for women:** This would include creating distinct spaces for women from marginalized groups, such as indigenous women, and providing access to information and independent technical advice.<sup>41</sup>
- ❖ **Carrying out transparent reporting:** This would be undertaken against gender-sensitive indicators.<sup>42</sup>
- ❖ **Ensuring women receive adequate and equal compensation and/or other forms of restitution:** This would include compensation to women as prior users of land acquired for business activities. Compensation should be based “on the real value of assets, land, crops, trees and important resources over their productive lifespan” and be included in state and corporate compensation policies.<sup>43</sup> Other forms of restitution may include providing women with legal land tenure.
- ❖ **Carrying out due diligence prior to the resettlement of communities:** Due diligence will ensure that displacement is unavoidable. If resettlement is unavoidable, it will ensure that gender considerations are cross-cutting and explicit throughout the process, with women fully and meaningfully involved at all stages.

Resettlement should allow women to continue their livelihoods which are often centred in the domestic domain and frequently overlooked.<sup>44</sup>

### 3.3 Free, Prior and Informed Consent

There is no universally accepted definition of FPIC. However, FPIC can broadly be defined as **consent obtained without coercion, undue influence or any form of pressure from a third party, the state or other community members or leaders.**<sup>45</sup> **The consent is obtained through an inclusive process in which all members of the community including women are able to participate effectively and the process of seeking consent must be unencumbered by timelines, deadlines, expectations or lack of transparency.**<sup>46</sup> There is a common understanding of FPIC as a standard that “supplements and helps effectuate substantive rights.”<sup>47</sup> In different legal instruments, FPIC is a standard used when dealing with indigenous populations,<sup>48</sup> tribal groups,<sup>49</sup> rural populations<sup>50</sup> and/or any community<sup>51</sup> in possession or ownership of the resources required for economic activity. In this report, FPIC is discussed in relation to women in any community that has the potential to be or which is affected by extractive and large-scale commercial agriculture activities. General Recommendation 6 of the CEDAW Committee obliges stakeholders wishing to obtain consent from a community to do so via an inclusive process as any consent obtained through a process that excludes women contravenes the principle of non-discrimination.<sup>52</sup>

In line with UNGP 17 and 21 the term ‘**prior**’ refers to consent sought in advance of any advancement, agreements or commencement of commercial activities. This requires an understanding of the inequalities and consequences of cultural bureaucracies in communities. Where the leadership of a community is male dominated, any agreement with it prior to engaging the community may result in women being coerced to agree with unfavourable proposals and must, therefore, be avoided. ‘Prior’ also means that corporations should obtain consent at various stages of the project such as before signing investment agreements with the business, before commencing the actual business activity and at any other stage where a decision potentially averse to the interests of the community may be made. Where views are divergent between men and women consent must be obtained in a manner not discriminatory to any group or overtly in favour of any group.

‘**Informed**’ refers to the nature of engagement and type of information that should be provided prior to seeking consent. In relation to the ‘nature’ of engagement, the CEDAW Committee in General Recommendation 23 states that, “the most significant factors inhibiting women’s ability to participate in public life have been the cultural framework of values and religious beliefs, the lack of services and men’s failure to share the tasks associated with the organization of the household and with the care and raising of children.”<sup>53</sup>

In planning **how to engage women in a community**, the state or a corporation must take into account the following:

- ❖ **Location:** In male dominated communities, women may need to be engaged separately because they may be unable or unwilling to participate in meetings

with men due to cultural or religious reasons. The venue must be a culturally appropriate and easily accessible. Distance to the venue must be considered to ensure accessibility for older women, women with disabilities and women with children.

- ❖ **Time:** Given that women are usually the caregivers and homemakers in most traditional communities, any community meeting must take place after sufficient advance notice is given and must take into account times when women are free and able to meet. As this may differ in each community, the state or corporation must be willing to have multiple small meetings to ensure the full participation of the entire community.
- ❖ **Seating arrangements and manner of engagement:** This entails taking into account cultural expectations regarding dress code and seating arrangements. While it is important to give due regard to cultural norms, traditional practices that undermine women's participation in public life should not be reinforced.<sup>54</sup>

The type and form of information to be given to the community must be adequate to permit women to properly understand the potential negative impacts of the proposed activity on them.

The following aspects regarding the **type and form of information** should be considered;

- ❖ **Access:** In accordance with UNGP 18, language and other potential barriers such as literacy and disability must be taken into account. To ensure that the information is accessible to all groups of women the information should come in various forms such as video, audio and braille when necessary.
- ❖ **Objective:** Both the positive and negative potential impacts of the business activity must be highlighted.
- ❖ **Comprehensive:** Information about the project must cover the whole spectrum of potential social, financial, cultural, scientific and environmental impacts to the community in general and to women in particular.
- ❖ **Clarity:** To ensure the economic activity and its impact is understood, information dissemination and feedback should ensure sufficient time and space for community members to ask questions and to have these questions addressed.
- ❖ **Culturally appropriate:** The type and form in which the information is shared should be culturally appropriate without perpetuating gender inequality.
- ❖ **Ongoing:** Information sharing amongst the stakeholders involved must be ongoing throughout the project.

Whether or not the proposed business activities proceed or are abandoned is dependent upon the consent of the community being given.<sup>55</sup> Without adhering to the standards discussed above, any consent obtained cannot be deemed to be FPIC.

### 3.4 Gender-Sensitive Right to Access to Remedies

The right to access to remedies is encompassed in the multidimensional right to access to justice.<sup>56</sup> The definition of the right to access to remedy is contained in a number of key international human rights instruments, which include various measures aimed at ensuring effective remedies for persons whose human rights have been violated.<sup>57</sup> In this report, **the right to access to an effective remedy is discussed in relation to victims that are or have been affected by, or potential victims that may suffer the negative impacts of, corporations' operations, with a gender-specific focus.**<sup>58</sup> The right to remedy is considered to not only be a human right *per se*, but also a prerequisite for the enjoyment of other human rights, given that it acquires meaning when a right is infringed.<sup>59</sup>

The Third Pillar of the UNGPs is dedicated to access to remedies.<sup>60</sup> The right includes access to judicial and non-judicial remedies by the State as well as access to non-judicial remedies by corporations.<sup>61</sup> Therefore, not only States but also corporations should prevent and remedy any infringement of human rights which they cause or contribute to. A gender perspective should be integrated into the UNGPs to ensure that each recommendation regarding remedy is assessed according to its impacts on women.<sup>62</sup>

**The right to an effective remedy encompasses victims' rights to:** (1) equal and effective access to judicial and non-judicial grievance mechanisms; (2) adequate, effective and prompt reparation for harms suffered; and, (3) access to relevant information concerning violations and reparation mechanisms.<sup>63</sup>

**Equality, including gender equality, is a core principle in the exercise and the fulfilment of the right to access to remedies.** A gender perspective should be incorporated into this right, specifically taking into account the unique impacts of corporate human rights abuses on women and the effectiveness of different remedies for women considering their particular and diverse situations. The marginalization of women which stems from gender-based power dynamics means that they face even greater barriers in accessing remedies. This is especially the case for women living in the Global South.<sup>64</sup> As stated in the CEDAW Committee's General Recommendation 33, "the provision of remedies requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer".<sup>65</sup>

**Guaranteeing equal access to remedies for women means, first of all, identifying the obstacles women face in seeking remedies and removing these obstacles.** In fact, there are numerous barriers that impede women's access to remedies: socio-economic, cultural (e.g. fear of domestic and/or social humiliation and stigmatization, economic dependence, lack of knowledge about rights, laws and procedures and also the possibility of asking for legal aid) and legal (e.g. *de jure* discrimination of women, gaps in legislation on women's rights, negative gender stereotypes in courts, limited use of international standards in judicial decisions, etc.).<sup>66</sup> In promoting access to effective remedies for women within the sectors covered in this report, states should take all necessary steps to ensure that women are informed of their rights. States should provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women.<sup>67</sup>

## 4. Possible Gendered Impacts of Extractive and Large-Scale Commercial Agriculture Activities

### 4.1 Lack of Consultation with Affected Communities

**Women affected, or with the potential to be affected, by extractive and large-scale commercial agriculture activities should have an opportunity to give their FPIC before a corporation begins its activities.** If FPIC is adopted as a standard for all projects in the sectors covered here, whether or not a proposed corporate activity proceeds or is abandoned would be dependent upon the consent of the community.<sup>68</sup> However, corporations and states where extractive and large-scale commercial agriculture activities are taking place often do not attempt to acquire the FPIC of affected communities prior to concessions for these activities being granted.<sup>69</sup>

In cases where corporations and states do engage with community members, these interactions, reportedly, often do not satisfy the requirements of FPIC.<sup>70</sup> **Women community members are often absent from conversations between the community and the corporation.**<sup>71</sup> Further, **the absence or limited presence of female representatives in committees, councils and other leadership positions adds to the non-representation of gender concerns when conversations are held with and licenses are granted to corporations.** For example, it is reported that in Liberia, community traditional leaders, who are predominately male, were given the responsibility of engaging and consulting their community members on behalf of a corporation.<sup>72</sup> This alienated women from the process given that traditional leaders are neither equipped to engage in such an exercise with a gender lens nor do they feel obliged or motivated to ensure that women's voices are sought and included in decision-making processes given the patriarchal nature of their positions and beliefs. In addition, the use of traditional leaders limited the possibility of women receiving adequate information about the potential gender-specific impacts of the corporation's activities in the area and consequently, they were not taken into account in giving consent. In Peru, it has been reported that indigenous women affected by the activities of an extractive corporation were not provided with information about the project, their participation was not sought with regards to environmental impact assessments and their development priorities were not taken into account by the corporation.<sup>73</sup>

**In some cases, even when affected women did have an opportunity to engage in dialogue with a corporation or the government, they reportedly experienced increased difficulties because of their lower level of literacy and lack of ability to negotiate with governmental and external institutions.** According to the Dhaatri Resource Centre for Women and Children, in Cambodia, these difficulties left women discouraged with regards to participation and consultation.<sup>74</sup> **Failure to respect the role of civil society organizations which represent the community and active attempts to co-opt, threaten and bribe these representatives by corporations negatively affect women's ability to give their FPIC.**<sup>75</sup>

## 4.2 Evictions

Given that extractive and large-scale commercial agriculture activities require the acquisition and use of land owned or used by individuals and communities, evictions are common. **For women, evictions constitute more than just loss of housing.** The actions of state and non-state actors prior, during and after evictions has a disproportionate impact on women's livelihoods and personal security. According to the Dhaatri Resource Centre for Women and Children, a large number of mining concessions have been granted to foreign corporations in the north-eastern provinces of Cambodia where there is a large population of indigenous people.<sup>76</sup> The Cambodian police have reportedly evicted indigenous communities from mining sites situated within their traditional territories.<sup>77</sup> Forests have been exploited which has reduced community access to them and has resulted in the loss of food security and traditional livelihoods.<sup>78</sup>

In Honduras, evictions affect the livelihoods of women in different ways. Trócaire has reported women faced the threat of losing their land given that their subsistence agriculture conflicts with the government's economic development policy centred on palm tree cultivation.<sup>79</sup> Further, it has been reported that agribusiness projects have caused **destruction of crops, homes and belongings leading to a lack of access to sufficient food, clean water and health care along with a lack of alternative land or employment opportunities after displacement.**<sup>80</sup> Sometimes, the persecution of men in cases of violent evictions, leads them to leave the household, and women are left with all the responsibilities, including saving their belongings.<sup>81</sup> **The fact that traditional practices deny women title to land leaves women uncertain about where and how to resettle and build a new household.**

## 4.3 Changes in the Social Fabric of Communities

The activities of extractive and large-scale commercial agriculture corporations often irreversibly change the social fabric of affected communities which results in violations of women's right to an adequate standard of living.<sup>82</sup>

**In many cases, the presence of extractive and agriculture corporations in communities' results in women being burdened with increased household responsibilities.** In Cambodia, the demarcation of mining concession boundaries reportedly restricted community access to forest resources, meaning that women are forced to go longer distances in search of food and firewood.<sup>83</sup> In Peru, it has been reported that the arrival of extractive activities resulted in many men leaving their jobs to begin working for the corporation which saw them outside of the community for long periods of time each month. This changed the family structures of the affected indigenous communities.<sup>84</sup> According to NGOs, the fact that men are no longer working in the community and assisting women with agricultural activities has negatively impacted food security which has **resulted in an increase in chronic child malnutrition.**<sup>85</sup>

Changes in societal structures caused by extractive and large-scale commercial agriculture activities **expose women to new forms of violence both at home and within the community.**<sup>86</sup> **The increased presence of men in the form of migrant labour and**



**mining corporation staff greatly impacts social behaviour and lifestyle.** After the arrival of mining corporations to various Cambodian communities, NGOs noted that criminal activities increased, along with drug use, alcohol consumption and gambling.<sup>87</sup> In Liberia, the activities of large-scale commercial agriculture corporations are reported to have resulted in **the dispossession of women from their source of livelihood – land – which increased exposure of women and young girls to commercial sex work** and its potentially violent and unhealthy consequences. In Peru, reports show that the introduction of cash and corporate employees from outside into these communities has increased the availability of imported processed food and alcohol further impacting the communities' lifestyles.<sup>88</sup>

#### 4.4 Gender-Based Violence

The lifestyle changes discussed above may result in **restrictions on women's right to move and their sense of personal security.** In Cambodia, NGOs have reported that the presence of migrant labour and mining corporation staff has produced a general climate of fear for the social welfare of women and **higher rates of domestic violence** as they became more financially dependent on their husbands.<sup>89</sup> Domestic violence has also increased as a result of the operations of extractive industries in Peru, according to the Machiguenga Council of the Urubamba River.<sup>90</sup> It is alleged that women have been subjected to sexual abuse by armed forces and police that provide security services to corporations.<sup>91</sup>

**Women human rights defenders (WHRD) face additional gendered threats compared to men human rights defenders given that women challenge both the power of corporations and the state as well as patriarchal notions in society.**<sup>92</sup> In Honduras, NGOs have reported that women who have taken an active part in social movements to defend their land have endured daily discrimination and physical, mental and sexual violence.<sup>93</sup> Moreover, state and private security forces have threatened women with sexual violence; these threats occur at night because they are frequently at home while men are away working the land.<sup>94</sup>

#### 4.5 Impact on Women's Health

**The changes in the social fabric of the community coupled with the violence and sexual abuse that result from it has an impact on the health of women living in communities where extractive and/or large-scale commercial agriculture activities are carried out.** In Cambodia, changes in the social fabric of communities affected by these activities have indirectly led to an increase in diseases like HIV/AIDS due to the rise of trafficking and commercial sex work.<sup>95</sup> **Increased sexual violence** in Honduras discussed above has also resulted in increased sexual and mental health problems amongst women. **Displacement and evictions also have an impact on health.** In Peru, after a mining corporation began its activities, an NGO reports that there were severe changes in lifestyle "with impacts on diet and nutrition – with increased childhood malnutrition, increased domestic violence and alcohol consumption."<sup>96</sup>

Apart from health consequences resulting from changes in community social structures, corporate activities can have a direct impact on the health of women. NGOs in Cambodia

have reported that women in communities affected by extractive activities had no knowledge of chemicals being used and the potential impacts they have on their health.<sup>97</sup> Given that women are responsible for collecting fresh water and using rivers for cooking, washing and other activities, they are, consequently, disproportionately exposed to the health risks caused by corporations' water pollution. Another example of a direct impact on women's health is how heavy traffic to mine sites in Cambodia has damaged roads which has resulted in a higher risk for pregnant women when travelling to the health centres especially at the time of delivery.<sup>98</sup>

**Where there is an outbreak of disease or pandemic, how a corporation reacts also impacts the health of the community.** Global Witness reports that in Liberia, a corporation's failure to cease operations during the Ebola crisis resulted in continued meetings of large groups of people. This increased the risk of spreading the deadly virus.<sup>99</sup> Such actions by corporations during such a crisis indirectly put women's health at risk as they are, in most cases, the primary caregivers. An increase in sick people means an increased burden on them and, in cases of such an infectious disease, it means an increase in their risk of infection.

It is often the case that extractive and large-scale commercial agriculture activities are carried out in rural areas that lack development and infrastructure, including health services.<sup>100</sup> This means that where a corporation's activities impact the health of a community, the community is likely ill-equipped to deal with these health problems. **Due to social practices and traditions that marginalize women, women's health is at a greater risk.** It is therefore important that a corporation is aware of the potential health risks caused by its activities including latent risks and that it takes measures to avoid or at least mitigate these negative impacts, particularly health risks to women in the society.

## 4.6 Environmental Damage and Pollution

Extractive and large-scale commercial agriculture activities often cause environmental damage and pollution. Corporations disrupt local environments by cutting down trees and excavating land next to villages. **The demarcation of concession boundaries for extractive and large-scale commercial agriculture activities can restrict women's access to forest, water and other resources that their livelihoods are dependent upon.** This results in women having to go longer distances in search of food, water and firewood. Spills and leaks from gas pipes cause serious damage to river ecosystems and fish stocks, and have polluted fresh water supplies.<sup>101</sup> The use of chemical pesticides and mine tailings dumped into the water causes environmental damage. Not only does the land become unfit for cultivation, rivers also become contaminated.

While environmental damage and pollution that has been caused by extractive and large-scale commercial agriculture activities is well-documented, corporations often **fail to conduct environmental impact assessments** (EIAs).<sup>102</sup> In cases where EIAs are carried out, the participation of affected and potentially affected women is often not sought by the corporation meaning that the specific environmental effects on and concerns of women will likely not be considered.<sup>103</sup>



## 4.7 Absence of Domestic Law to Protect Women

The consequences women face as a result of the introduction of extractive and/or large-scale commercial agriculture activities in their communities are further heightened where the country lacks **an effective legal system. The absence of a strong gender sensitive legal framework presents a challenge for women from the investment contract negotiation stage.** Failure to adopt a gender lens at the investment contract making stage results in the creation of the first gender hazard. Global Witness has reported that a particular investment contract between a large corporation and an African state provided that the corporation could sue the state if, “too many land claims get in the way of its operations.”<sup>104</sup> Such a provision automatically impedes women’s ability to access justice as it means the state, which should be protecting them, has no motivation to ensure fair settlement of claims against the corporation so as to limit the number of claims against the corporation.

**Even where the possibility of justice exists via the criminal or other justice systems, corruption can have a negative effect on the effectiveness of the law.** In the same report mentioned above, Global Witness alleges that the corporation bribed members of the police force and political leaders such that they actively blocked reports against the corporation and in some instances, brutalized community members to benefit the corporation’s land grab.<sup>105</sup> A similar situation was reported in Honduras<sup>106</sup> and in Indonesia.<sup>107</sup> As a result, incidents of sexual violence continue unabated and women continue to suffer the health and other consequences of such practices.

**Meaningful participation to ensure attainment of FPIC as well as a fair and adequate compensation and resettlement is compromised where the state does not have an effective legal framework that allows these standards to be enforced.** However, this should not be the case given that a corporation cannot relinquish its obligation under UNGP 11 to respect human rights wherever it operates.<sup>108</sup> With a comprehensive engendered due diligence mechanism in place, effects of the absence of an effective domestic legal framework can be mitigated.

## 5. Recommendations

### 5.1 European Union

1. **The EU should call on Member States to incorporate a gender-mainstreaming approach into all their policies, including their National Action Plans (NAPs), and to guarantee effective compliance with international standards on women’s rights.**
2. **The EU should modify existing legislation to incorporate extraterritorial jurisdiction of State Members over their corporations operating outside the EU.** The EU should provide guidance so that there is a common understanding among Member States on how to proceed with cross-border cases. This would ensure adequate EU-level damages are awarded to deter corporations from being complicit in human rights violations overseas.

3. **The EU should provide guidelines for corporations on how to incorporate gender-sensitive HRDD into their operations. This should include guidance to corporations on best practices to be adopted when operating in countries facing emergency situations such as conflicts, epidemics and/or political instability.**
4. **The EU should make corporations' respect for human rights a condition for supporting their access to external markets.** The negotiation by the EU of Free Trade and Investment Agreements should be an opportunity to help improve both respect for the rights of women and dialogue between corporations and civil society on corporate impacts on women's rights.
5. **The EU should support existing global efforts in imposing binding obligations on corporations regarding business and human rights with a gender focus.** Alternatively, the EU should advocate for the adoption of a regional business and human rights treaty with extraterritorial application.
6. **The EU should promote greater transparency in corporate human rights impact.** Information about state policies and state-business links should be published on the official websites of Member States.
7. **The EU should create a mechanism to review the implementation of EU guidelines and standards on business and human rights in host states, similar to the EU Committee on Torture.** This mechanism should be capable of conducting a "bottom-up" process by collecting information on gender-sensitive human rights issues at the site level, e.g. through field surveys, and then analyse the information to understand human rights risks.

## 5.2 States

### 5.2.1 General

1. **States should ratify and implement all existing regional and international human rights instruments, in particular ICESCR and CEDAW, and remove reservations to these treaties.**
2. **States should advocate for and support existing efforts to create binding gender-sensitive human rights obligations on corporations at the domestic, regional and international levels.**
3. **States should ensure that their NAPs on business and human rights are gender-sensitive.**
4. **States should develop gender-sensitive human rights-based guidelines for corporations on how to conduct their operations during emergencies, such as epidemics, natural disasters and armed conflict.**

5. **States should encourage and assist the UN, IFIs, international organizations and regional human rights bodies to adopt and incorporate gender-sensitive HRDD into their institutional frameworks and current operations.**
6. **States should develop independent accountability mechanisms to monitor FDIs.** These bodies should have the authority to stop the conclusion of investment agreements that lack explicit and effective gender components. States should conduct studies and publish official reports on the gendered impacts of extractive and large-scale agriculture corporations' operations as a way of encouraging investors to invest responsibly while at the same time, encouraging corporations to respect human rights during their operations.
7. **States should monitor corporations' compliance with voluntary and binding mechanisms on business and human rights.** This includes domestic legislation and regulations as well as voluntary mechanisms such as the Equator Principles, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector and the OECD-FAO Guidance for Responsible Agricultural Supply Chains.
8. **States should incentivize corporations, financially or by other means, to promote adoption and implementation of gender-sensitive HRDD.**
9. **States should advocate for the creation of effective gendered monitoring and grievance mechanisms for corporate activities.** This will help ensure that investments do not result in violations of women's human rights. Such mechanisms should include regular site visits to the project or programme area and should encourage lenders to pressure corporations to take concrete steps ensure that the human rights of women are not violated directly or indirectly by their operations.
10. **States should provide effective and timely remedies and ensure that they respond to the different types of violations experienced by women.** In doing so, states should assess the adequacy of existing legislation and address any gaps that prevent it from being applicable in cases of violations of women's rights. Adequate legal, technical and financial resources to ensure women's access to remedies should be provided (e.g. by creating women specific funds), and states should ensure that the existing mechanisms are effective by paying attention to cases that concern violations of women's rights. Women's participation should be guaranteed at every stage of the reparation process, including during design, implementation, evaluation and decision-making.

### 5.2.2 Host States

1. **Host states should conduct adequate contextualized research on the potential gendered human rights effects of a proposed business activity within their territory.** The outcome of such research should be a key component of the overall decision on whether or not to proceed with a proposed project.

2. **Host states should ensure that agreements made with corporations and/or investors include the creation and implementation of accessible, adequate, effective and tailor-made gender-sensitive human rights based grievance mechanisms.**
3. **Host states should guarantee that women human rights defenders' activism to defend their land is carried out safely.**

### 5.2.3 Home States

1. **Home states should facilitate spaces through their embassies or appointed representatives to allow affected women and their communities to engage in dialogue with the corporations or investors domiciled in their jurisdiction.**
2. **Home states should establish regulation and monitor compliance to prevent negative impacts of actions undertaken by corporations and investors domiciled in their jurisdiction on women's livelihoods and community life.**
3. **Home states should adopt and/or expand on domestic legislation to enable foreign victims of human rights violations committed by corporations domiciled in their jurisdiction to bring claims in the home state.**

### 5.3 Corporations

1. **Corporations should complete an initial environmental and social impact assessment including a gender needs audit before an agreement is concluded with a host state and/or lenders.** Such assessments would allow the parties to conduct a cost-benefit analysis of the intended project and ensure that embarking on the project does not result in human rights abuses.
2. **Corporations must support women's meaningful participation throughout the proposal, planning and implementation stages of its impact assessment and operations.** Barriers to women's participation at the household and community levels should be considered. Access to information and independent technical advice should be facilitated for women in different spaces, taking into account culture, time, literacy and other factors which may marginalize women.
3. **When corporations engage in dialogue with communities, women should be adequately represented amongst the community members as well as in the corporate delegation.**
4. **Corporations must put in place safeguards for whistle-blowers, so that their staff is not incentivised to withhold key information or findings during the gender impact assessment or during the operation of the business project.**

5. **All participants in value chains must share gender-specific information about their contributions to the project.** They should also promote the inclusion of gender analysis in their impact assessments.
6. **Staff training in gender issues must be integrated into corporate structures.** Where necessary the corporation should engage gender experts to assist in designing and implementing gender sensitive human rights due diligence mechanisms.
7. **When monitoring their operations, corporations should develop, collect and analyse gender-sensitive human rights indicators, and collect and analyse corresponding data to allow for gendered reporting and evaluation.** Suspension of operations must be established whenever there is credible report of violence against women and their communities, until effective measures are in place to prevent further risk.

### 5.3.1 Gendered grievance mechanisms

8. **Grievance mechanisms should have independent mediators who have a firm understanding of gender issues.** These mechanisms should have the necessary authority to make decisions which are binding.
9. **Corporations should halt operations pending completion of investigations where their activities would result in irreparable harm to women.**
10. **In addition to internal mechanisms, there should be a mechanism for receiving external information and complaints about the intended project which has necessary safeguards to protect any person or group providing information or making a claim(s).** It must also have an appeal structure for the claimants.
11. **Grievance mechanisms should offer a prompt, adequate and effective remedy for women.** Corporations should ensure that the remedies are tailored to women's needs, livelihoods and productive lifespan. Compensatory remedies should coexist and complement preventive ones.

### 5.3.2 Displacement and Evictions

12. **Corporations must do everything possible to avoid displacement and forced evictions.** When this is not possible, they must make sure that women's right to an adequate standard of living is not infringed.
13. **When women are displaced from their homes, corporations must launch special gender monitoring units, gender-based community projects and provide free legal support.**

### 5.3.3 Corruption, Violence and Other Abuses

14. **Corporations should neither offer nor accept corrupt arrangements with local and/or national leaders, especially when this would disproportionately affect women.**
15. **Corporations must refrain from threats, coercion or fraud when acquiring land.**
16. **Corporations must exert due diligence to ensure that their operations do not lead to land grabbing.**
17. **Corporations should have the least possible negative impact on the economic life of a region, refraining from disproportionately increasing prices, dislocating (self) employment structures and causing male emigration.** Corporations should ensure that the impact of their activities enhances women's ability to maintain or improve their livelihoods, for example, granting safe and free access to natural resources, workplaces and/or health centres.
18. **Pollution of air, soil and water should be avoided or mitigated as much as possible, including within corporations' property.**
19. **Corporations must train security staff to perform their duties in the most gender-sensitive manner, guiding against sexual violence and harassment.** Corporations should ensure that assistance from police and armed officers is only sought when it is strictly necessary and will not result in an escalation of violence.

## Annex

### Operational criteria

#### a) Criteria to verify suitability of the methodology

This subset of criteria is based on Miles & Huberman's checklist of six criteria to verify suitability of the methodology. These are formal criteria that the cases met to be examined and discussed.

##### 1. Relevance to the conceptual framework

After the theoretical framework is selected, the next step was to ask if there was any empirical basis for the claims that this framework brings forward. In our case, literature on women and the effects of extractive industry and large-scale agriculture in developing countries was examined to assert the relationship between the criteria and reality (case studies). The information provided by the cases should demonstrate how the theoretical framework is observed in reality.

##### 2. Richness/reasonable amount of information

There is enough information of different sources to be able to provide a comprehensive picture of the case study. The availability of information determines the reach and scope of the conducted study.

This criterion is related to the substantive criteria that the cases had to meet in order to provide a full picture. Not all cases complied with all substantive criteria, since they were different and, together, they aimed to provide complementary scenarios for the making of recommendations.

##### 3. Generalizability (or paradigmatic nature)

Cases are cited in the literature, coverage in the media, NGO reports, business and human rights' websites, case-law databases, and other online databases relevant to our field of study. Those that were most widely known had a better probability to be selected in the judgment phase of the method.

##### 4. Believable descriptions/explanations

This is answered to a great extent by the reputation of the reporting sources. Also, feminist theory allowed us to identify that the patterns reported were consistent with the impact of business activity on women's livelihoods, as well as for the assumptions and inferences we have done in our report.

##### 5. Ethical considerations

This was not a concern because no source was directly contacted. Care was taken when making assumptions to ensure that there was report or theory that supported it.

## 6. Feasibility

The feasibility of the case studies depended on available online information.

### Other methodology remarks

Our methodology was slightly changed in its substantive criteria when we found other relevant aspects in face of being unable 'to specify an entirely satisfactory sampling strategy from the outset.'

The number of cases selected was discretionary and set according to the availability of information. When the cases provided a reasonable coverage of all operational criteria, the number was set at four.

### b) Substantive criteria

The following questions illustrate the substantive criteria used for the selection of case studies.

- Is there **availability of information** of the case?
- Has the country had a **positive response** to UN Guiding Principles or OECD Guidelines? (such as voted positively to the adoption of the resolution)
  - Useful to use both cases, where a country has not shown willingness to abide by the principles and where it has actively participated
- Does the case present a ground of discrimination or vulnerability? (**intersectionality approach**)
  - Age, disability, sexual identity and expression, rural women, ethnicity, migrant status, language, education level, work activity (domestic, sex work, public sphere -contract as farmers in large crop areas), health (mental, HIV), within marginalized groups, level of education, in conflict area
- Does the company involved have a **parent** company in a developed country?
  - What is the operational structure of the company?
- Is the case **representative** of the regional situation of women?
- Does the case have an impact on:
  - Women as caretakers?
  - Women as (domestic or not) workers?
  - Women as farmers?
  - Women as community members?
  - Women as WHRD?
  - Women's physical and mental security? (gender-based violence)
  - Women's right to property?
- Does the case impact on the **adequate standard of living** of women?
- Does the case address **free, prior and informed consent** of women and their community in some way? (What does this consent look like for women?)
  - Voice, agency and participation
  - Access to information
  - Receiving compensation for the expropriation



- Do the countries related to the case have **local legislation and/or policies** regarding (extraterritorial) obligations of companies?
  - Legal environment
  - Omission/action/acquiescence of government
- **Size** of the company
- How **well-known and reputable** is the reporting organization?
- **Variety of geographical setting**
- **Does the company operate in a conflict-zone?**
- **Has displacement occurred?**
- **Is it a private/public company?**
- **Is the business venture a new project or an old project?**

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## Endnotes

<sup>1</sup> Progressio, “Why the UK must put women’s rights at the centre of its business and human rights agenda” (2015), available at: <http://www.progressio.org.uk/blog/progressio-blog/why-uk-must-put-women’s-rights-centre-its-business-and-human-rights-agenda>.

<sup>2</sup> Global Witness, “Defenders of the Earth. Global Killings of Land and Environmental Defenders in 2016” (2017), p 9.

<sup>3</sup> Progressio, note 1

<sup>4</sup> V. Nelson & A. Martin, *The Strategic Use of Case Studies in the Monitoring and Evaluation Systems of Sustainable Standards*, (Natural Resource Institute, 2013), University of Greenwich.

<sup>5</sup> Yin, R., *Case study research: design and methods*, (SAGE Publications, 2014).

<sup>6</sup> Curtis, S. Gesler, W., Smith, G., Washburn, S. ‘Approaches to sampling and case selection in qualitative research: examples in the geography of health’, (2000) *Social Science & Medicine* 50, pp 1001-1014.

<sup>7</sup> A more detailed description of the operational criteria used are available in the annex of this report.

<sup>8</sup> We considered to refer to this instrument as ‘index’, since indices are ‘rating scales or scores based on expert knowledge and judgement’. See Moghadam, V. M. and Senftova, L., *Measuring women’s empowerment: participation and rights in civil, political, social, economic, and cultural domains*, ISSJ 184 UNESCO (Blackwell Publishing Ltd, 2005).

<sup>9</sup> Some of the critiques of the right to an adequate standard of living include the following. CEDAW highlights additional elements to the right to an adequate standard of living that are particularly relevant for women. For example, water supply and sanitation are particularly important given that these are underlying determinants of the right to health, especially for sexual and reproductive rights. The availability of adequate water supply and sanitation facilities within the household enables women to keep good hygiene, which has a direct impact on their freedom of movement and their ability to perform tasks related to the provision of food, access to education, care-related activities, participation in political and public life, etc. However, the right to an adequate standard of living, as stated in the ICESCR, is abstract and conveys a seemingly neutral but actually male experience of living (For more on the purported neutrality of international human rights law, see: H. Charlesworth, C. Chinkin & S. Wright, “Feminist Approaches to International Law” (1991) 85 *African Journal of International Law* 613-645; C. Mackinnon, *Towards a Feminist Theory of the State* (Harvard University Press, 1989), Chapters 8 & 13). ICESCR provides for ‘the right of everyone to an adequate standard of living for *himself* and *his* family’ [emphasis added], which places men as the heads of the family. It also assumes that families are heterosexually founded and that households are not only composed of two parents and their children. Thus, it must recognise that the living conditions and needs of men and women are different and that they do not participate equally in the enjoyment of this right. The use of the term ‘adequate standard’ should not lead to a homogenization of the different identities of women and the communities they belong to, but rather include these diverse identities through a careful revision of the dimensions of availability, accessibility, acceptability and quality of economic, social and cultural rights. The Committee on Economic, Social and Cultural Rights (CESCR) has stated in its General Comments on the rights to housing, food, health, water, social security, and sexual and reproductive health that participation is a fundamental component of those rights. This challenges the idea of the state as the provider, companies as suppliers of goods and services and that of individuals as recipients and customers. However, the specificities of women’s participation in the provision of the components of an adequate standard of living have not sufficiently been recognised. Only in relation to the rights to food (see CESCR, General Comment 12, para 26) and water (see CESCR, General Comment 15, paras 7, 16 & 29) has the Committee briefly addressed the specific ways in which women access and make use of these goods. Similarly, the disproportionate burden women have in these tasks has only been highlighted by the CESCR regarding water collection for the household.

<sup>10</sup> International Covenant on Economic, Social and Cultural Rights, UNTS 993 (16 December 1966) [ICESCR].

<sup>11</sup> The AAAQ Framework (availability, accessibility, acceptability and quality) comprises four dimensions the Committee on Economic, Social and Cultural Rights has developed in its General Comments to provide guidance for states and set the normative expectations for the full and adequate enjoyment of economic, social and cultural rights. The Committee has used this framework in its General Comments on the rights to housing, food, education, health, water, social security, cultural life and sexual and reproductive health.

<sup>12</sup> ICESCR, note 10, Article 11, para 1.

<sup>13</sup> While CEDAW provides this in relation to the rights of rural women, these elements should be extrapolated to the right to an adequate standard of living for all women.

<sup>14</sup> Convention on the Rights of the Child, UNTS 1577 (20 November 1989) [CRC].

<sup>15</sup> Even though the CRC does not specifically address girls and female adolescents, the approach to the right to an adequate standard of living is more progressive in that it focuses on the end, rather than on the goods and services. It also evokes the notion of development as freedom, or development as capabilities (see A. Sen, *Development as Freedom* (OUP, 1999) pp 3-5; M. Nussbaum, *Women and Human Development. The Capabilities Approach* (CUP, 2000) pp 309-310).

<sup>16</sup> CESCR General Comment No. 14, ‘The Right to the Highest Attainable Standard of Health’ E/C.12/2000/4 (11 August 2000), para 51.

<sup>17</sup> CESCR General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/2002/11 (20 January 2003), para 49.

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- <sup>18</sup> CESCR General Comment No. 12: The right to adequate food (art. 11), E/C.12/1999/5 (12 May 1999), paras 10, 20 & 27.
- <sup>19</sup> The General Comment No. 15 on the right to water is the document where the CESCR links the private sector the most to a right that is a component of the right to an adequate standard of living. See note 17, paras 23-24, 33, 44(b), 48 & 56.
- <sup>20</sup> CESCR General Comment No. 14, note 16.
- <sup>21</sup> CESCR General Comment 4: The right to adequate housing (art. 11 (1) ICESCR) E/1992/23 (13 December 1991), para 8(a); CESCR General Comment 7: The right to adequate housing (art. 11 (1) ICESCR): Forced evictions, E/1998/22 (20 May 1997), paras 9-10.
- <sup>22</sup> The conceptual basis of this notion of development is that of 'development as capabilities' or 'development as freedom' formulated by Amartya Sen and, for a gendered dimension of the term, Martha Nussbaum. This concept sees persons as being free and able to do and be what they have reason to value, and requires the removal of 'major sources of un-freedom', including poverty. See Sen and Nussbaum, note 15.
- <sup>23</sup> Commission on Human Rights, "Women and Adequate Housing – Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari", E/CN.4/2005/43 (25 February 2005), paras 41-42.
- <sup>24</sup> *Ibid*, paras 45 & 47.
- <sup>25</sup> *Ibid*, para 48.
- <sup>26</sup> CESCR General Comment No. 14, note 16.
- <sup>27</sup> Such as the power differential in the different relationships women have with their family, community and external settings, the unequal burden of domestic work, economic, social, cultural and religious barriers to access to goods and services, the obstacles women face in obtaining social security services or exercising property rights.
- <sup>28</sup> S. Fredman. "Engendering Socio-Economic Rights" (2009) 25 *South African Journal of Human Rights* 413.
- <sup>29</sup> IFHR, *Montréal Principles on Women's Economic, Social and Cultural Rights*, (December 2002), section 24.
- <sup>30</sup> Specifically, they address the equality of rights and responsibilities of the spouses, which a more inclusive phrasing would be that all members comprising the affective partnership should equally share the household responsibilities. See CCPR General Comment 28: Article 3 (The Equality of Rights Between Men and Women) CCPR/C/21/Rev.1/Add.10 (29 March 2000), para 25.
- <sup>31</sup> See CESCR General Comment 12, note 18, para 26; CESCR General Comment 15, note 19, paras 24, 26-27 & 44(a); CESCR General Comment 18: The right to work (Art 6 ICESCR) E/C.12/GC/18 (6 February 2006), paras 44 & 52.
- <sup>32</sup> Gender and Development Network Women's Economic Justice Group & CORE, "Submission to the Review of the UK National Action Plan on Business and Human Rights – Why the UK National Action Plan on Business and Human Rights must integrate and prioritize gender equality and women's human rights" (July 2015), p 15 [GDNW & CORE].
- <sup>33</sup> Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights – Implementing the "Protect, Respect and Remedy" Framework* (UN, New York & Geneva, 2011), Principle 17 [UNGP].
- <sup>34</sup> *Ibid*.
- <sup>35</sup> GDNW & CORE, note 32; UNGP, note 33, Principles 17-21.
- <sup>36</sup> UNGP, *ibid*, Principles 17 & 18.
- <sup>37</sup> *Ibid*.
- <sup>38</sup> GDNW & CORE, note 32; UNGP, note 33, Principles 17 & 19.
- <sup>39</sup> UNGP, *ibid*, Principle 19.
- <sup>40</sup> GDNW & CORE, note 32, pp15 & 22; UNGP, *ibid*, Principle 18.
- <sup>41</sup> GDNW & CORE, *ibid*, p 15.
- <sup>42</sup> *Ibid*.
- <sup>43</sup> *Ibid*, pp 15 & 22.
- <sup>44</sup> *Ibid*, p 15.
- <sup>45</sup> UN-REDD Programme (FAO, UNDP, UNEP), "Guidelines on Free, Prior and Informed Consent", 2013.
- <sup>46</sup> *Ibid*.
- <sup>47</sup> *Ibid*.
- <sup>48</sup> FPIC is a basic right for indigenous groups in terms of the United Nations Declaration on the Rights of Indigenous Persons adopted in 2007. The Inter-American Court of Human Rights has also developed jurisprudence on FPIC in relation to indigenous groups e.g. in cases such as *Awas Tingni Mayagna (Sumo) Indigenous Community v Nicaragua* (2001) and *Saramaka People v Suriname* (2007).
- <sup>49</sup> The International Labor Organization's Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries requires states to ensure FPIC in relation to tribal peoples.
- <sup>50</sup> African Charter on Human People's Rights Resolution on "Human Rights based Approach to Natural Resource Governance" (2012).
- <sup>51</sup> The Convention on Bio-diversity (1992) applies FPIC to communities more broadly as it makes reference to FPIC in the context of genetic resources, subjecting any access to such resources to the FPIC of the community concerned. Principles 18 of the United Nations Guiding Principles on Business and Human Rights makes reference to 'potentially affected groups.' This means FPIC within the context of the UNGP relates to any community affected to be affected by a business's activities.

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<sup>52</sup> Committee on the Convention Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 19: Violence against women (1992), para 6.

<sup>53</sup> CEDAW Committee, General Recommendation No. 23: Political and Public Life (1997) A/52/38, para 10.

<sup>54</sup> Convention on the Elimination of All Forms of Discrimination Against Women (1979) UNTS 1249:13, Arts 5 & 7 [CEDAW].

<sup>55</sup> Whereas Oxfam Australia interprets FPIC as a right to veto, other institutions, such as the World Bank, suggest that it is not. See “International Finance Corporation, ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients” (2007) p 6, available at: <[www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_ILO169/\\$FILE/ILO\\_169.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ILO169/$FILE/ILO_169.pdf)>.

<sup>56</sup> It is considered that the right to access to justice “refers to the various elements leading to appropriate redress against the violation of a right”. See Parliamentary Assembly of the Council of Europe (PACE), Resolution 2054 (2015), *Equality and non-discrimination in the access to justice*, para 1, available at: <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21753&lang=en>>.

<sup>57</sup> Various human rights instruments providing for a right to access to remedy: ICESCR, Art 2; International Convention on the Elimination of all Forms of Racial Discrimination, Art 6; CEDAW, Art 2; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art 14; International Convention for the Protection of All Persons from Enforced Disappearance, Arts 3–8; CRC, Arts 12, 19(2), 37 & 39; Convention on the Rights of Persons with Disabilities, Art 13; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Art 83; European Convention for the Protection of Human Rights and Fundamental Freedoms, Art 13; American Convention on Human Rights, Art 25; African Charter on Human and Peoples’ Rights, Art 7(1)(a); Charter of Fundamental Rights of the European Union, Art 47; Arab Charter on Human Right, Arts 12 & 23.

<sup>58</sup> The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law have described victims as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”. See, UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly (2006) A/RES/60/147. The UNGP have been interpreted in a number of cases in relation to the mentioned Basic Principles, in order to stress that remedy is an obligation and not an act of discretion of the wrongdoer. See J. Martin & E.K. Bravo, *The Business and Human Rights Landscape: Moving Forward, Looking Back* (Cambridge University Press 2016), p 321. It is interesting to note that Principle 26 of the UNGP is the only one (apart from Principle 1), that has been formulated in mandatory terms.

<sup>59</sup> International Organization of Employers, *Making Access to Remedy a Reality for All: Recommendations for Governments and UN Institutions* (2014), available at: <[http://www.csrgermany.de/www/csr/cms\\_relaunch.nsf/id/D0D4A5F23DA06072C1257D78002578FB/\\$file/\\_2014-09-22\\_\\_Making\\_access\\_to\\_remedy\\_a\\_reality\\_for\\_all\\_\\_final\\_.pdf?open](http://www.csrgermany.de/www/csr/cms_relaunch.nsf/id/D0D4A5F23DA06072C1257D78002578FB/$file/_2014-09-22__Making_access_to_remedy_a_reality_for_all__final_.pdf?open)>.

<sup>60</sup> UNGP, note 33, Principles 25-31.

<sup>61</sup> *Ibid*, Principles 26-28.

<sup>62</sup> On 29 June 2009 a small group of experts met in New York in order to help the Special Representative of the Secretary-General on Business and Human Rights, Professor John Ruggie, to “integrate a gender perspective throughout his work and give special attention to vulnerable populations”. This was part of his mandate. See Human Rights Council, Resolution 8/7 (12 June 2008), available at: <[http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_7.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf)>.

<sup>63</sup> UN Basic Principles on the Right to a Remedy, note 52, Art VII.

<sup>64</sup> GDNW & CORE, note 32.

<sup>65</sup> UNGA, Report of the Committee on the Elimination of Discrimination against Women, 61st session (6-24 July 2015), 62nd session (26 October-20 November 2015), 63rd session (15 February-4 March 2016), 2015, A/71/38. In the cited report, the element of ‘provision of remedies for victims’ is considered as interrelated with other essential components, such as: justiciability, availability, accessibility, good-quality and accountability of justice systems. They are all considered essential to ensure the access to justice.

<sup>66</sup> Council of Europe, *Guaranteeing Equal Access of Women to Justice*, available at: <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066db99>>. In some cases, it can be difficult for women to find viable legal remedies, since there are countries lack legal frameworks that protect women against violations commonly found in the business context. See, L. Hcctor, *ICJ Presentation at the Workshop on Business and Gender*, held by the Working Group on Discrimination against Women in Law and Practice, Office of the UN High Commissioner for Human Rights in Geneva (3 October 2013).

<sup>67</sup> UNGA, *Report of the Committee on the Elimination of Discrimination against Women*, note 65.

<sup>68</sup> “International Finance Corporation, ILO Convention 169 and the Private Sector: Questions and Answers for IFC Clients” (2007) p 6, available at: <[www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p\\_ILO169/\\$FILE/ILO\\_169.pdf](http://www.ifc.org/ifcext/enviro.nsf/AttachmentsByTitle/p_ILO169/$FILE/ILO_169.pdf)>.

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- <sup>69</sup> See, for example, Enric Llopis, “Las prácticas de Repsol en los territorios indígenas de Perú” (2014) *Rebelión*, available at: <<http://www.rebellion.org/noticia.php?id=186238>> [Llopis].
- <sup>70</sup> *Ibid.*
- <sup>71</sup> *Ibid.*
- <sup>72</sup> See, for example, “GVL Calls for Fact based dialogue and sound socio-economic research on Oil Palm in Liberia”, November 19 (2016), pp 5-6, available at: <[http://goldenveroleumlberia.com/images/pdf/2016-1119\\_GVL's\\_Full\\_Response\\_to\\_GW\\_and\\_Sync\\_Reports.pdf](http://goldenveroleumlberia.com/images/pdf/2016-1119_GVL's_Full_Response_to_GW_and_Sync_Reports.pdf)>.
- <sup>73</sup> Llopis, note 69.
- <sup>74</sup> Dhaatri Resource Centre for Women and Children & International Women and Mining Network/Red Internacional Mujeres y Minería (RIMM), in collaboration with Development and Partnership in Action (Cambodia), Centre for Gender, Family and Environment in Development (Vietnam) and Social Development Alliance Association (Lao PDR), supported by Oxfam America–East Asia office, *Gender Equality and the Extractive Industry in the Lower Mekong Region* (2013), p 100, available at: <[https://www.researchgate.net/profile/Seema\\_Mundoli/publication/264541539\\_Gender\\_equality\\_and\\_extractive\\_industry\\_in\\_the\\_Lower\\_Mekong\\_region/links/53e377f0cf22eeecde8f056/Gender-equality-and-extractive-industry-in-the-Lower-Mekong-region.pdf](https://www.researchgate.net/profile/Seema_Mundoli/publication/264541539_Gender_equality_and_extractive_industry_in_the_Lower_Mekong_region/links/53e377f0cf22eeecde8f056/Gender-equality-and-extractive-industry-in-the-Lower-Mekong-region.pdf)> [Dhaatri Resource Centre].
- <sup>75</sup> Philippa de Boissière *et al.*, *Corporate Conquistadors: The Many Ways Multinationals Both Drive and Profit from Climate Destruction* (2014) The Democracy Center, Corporate Europe Observatory & The Transnational Institute, p 9 [de Boissière].
- <sup>76</sup> Dhaatri Resource Centre, note 74, p 89.
- <sup>77</sup> *Ibid.*, p 77.
- <sup>78</sup> *Ibid.*
- <sup>79</sup> Trócaire, “Economías de Desposesión: Mujeres de Honduras y Guatemala en la Lucha Global por la Tierra” (2015), pp 22 [Trócaire].
- <sup>80</sup> *Ibid.*, pp 20-22.
- <sup>81</sup> *Ibid.*, p 21.
- <sup>82</sup> de Boissière, note 75, p 8.
- <sup>83</sup> Dhaatri Resource Centre, note 74, p 92.
- <sup>84</sup> Y. Campanario Baqué & P. García Hierro, *Empresas domiciliadas en países ratificantes del convenio 169-OIT operando en territorios de pueblos indígenas en Perú: El caso de la empresa española Repsol* (2013), p 76 [Campanario Baqué].
- <sup>85</sup> *Ibid.*
- <sup>86</sup> See Global Witness, *Country for sale: How Cambodia’s elite has captured the country’s extractive industries* (2009), available at: <[https://www.globalwitness.org/sites/default/files/library/final\\_english.pdf](https://www.globalwitness.org/sites/default/files/library/final_english.pdf)> [Global Witness, “Country for sale”].
- <sup>87</sup> Dhaatri Resource Centre, note 74, p 94.
- <sup>88</sup> de Boissière, note 75, p 8.
- <sup>89</sup> Dhaatri Resource Centre, note 74, pp 94-5.
- <sup>90</sup> de Boissière, note 75, p 8.
- <sup>91</sup> *Ibid.*, p 18.
- <sup>92</sup> AWID, “Women Human Rights Defenders confronting extractive industries”, (21 April 2017), available at: <<https://www.awid.org/publications/women-human-rights-defenders-confronting-extractive-industries>>.
- <sup>93</sup> Trócaire, note 79, p 26.
- <sup>94</sup> *Ibid.*, p 22 & 24.
- <sup>95</sup> Dhaatri Resource Centre, note 74, p 90.
- <sup>96</sup> de Boissière, note 75, p 9.
- <sup>97</sup> *Ibid.*
- <sup>98</sup> Global Witness, “Country for sale”, note 86.
- <sup>99</sup> Global Witness, “The New Snake Oil: Violence, Threats and False promises at the heart of Liberia’s palm oil expansion” (2015) p 21, available at: <[www.globalwitness.org/en/campaigns/land-deals/new-snake-oil/](http://www.globalwitness.org/en/campaigns/land-deals/new-snake-oil/)> [Global Witness, “The New Snake Oil”].
- <sup>100</sup> *Ibid.*
- <sup>101</sup> de Boissière, note 75, pp 7-8.
- <sup>102</sup> Dhaatri Resource Centre, note 74, p 89.
- <sup>103</sup> Llopis, note 69.
- <sup>104</sup> Global Witness, “The New Snake Oil”, note 99, p 15.
- <sup>105</sup> *Ibid.*
- <sup>106</sup> Global Witness, “Honduras: The Deadliest Country in the World for Environmental Activism” (31 January 2017) available at: <<https://www.globalwitness.org/en/campaigns/environmental-activists/honduras-el-pa%C3%ADs-m%C3%A1s-peligroso-del-mundo-para-el-activismo-ambiental/>>.
- <sup>107</sup> Amnesty International, “The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names, Executive Summary” (2016).
- <sup>108</sup> UNGP, note 33, Principle 11.

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