

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

WOMEN IN BUSINESS AND HUMAN RIGHTS

A MAPPING OF TOPICS FOR STATE
ATTENTION IN UNITED NATIONS
GUIDING PRINCIPLES ON
BUSINESS AND HUMAN RIGHTS
IMPLEMENTATION PROCESSES



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WOMEN IN BUSINESS AND HUMAN RIGHTS

A mapping of topics for state attention in United Nations Guiding Principles on Business and Human Rights implementation processes

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CONTENTS

LIST OF BOXES	5
ABBREVIATIONS	6
EXECUTIVE SUMMARY	7
1 INTRODUCTION	10
1.1 OBJECTIVES	10
1.2 OVERVIEW	11
1.3 METHODOLOGY	11
2 TOPICS FOR STATE ATTENTION IN UNGPS IMPLEMENTATION PROCESSES	12
2.1 EMPLOYMENT AND LABOUR RIGHTS – ISSUES AND COUNTRY EXAMPLES	12
2.1.1 Female participation in the global workforce	12
2.1.2 Segregation, over-representation or absence of women in different industries	14
2.1.3 The gender pay gap	16
2.1.4 Participation of women in senior management	17
2.1.5 Women workers in informal sectors and formalisation of the labour market	17
2.1.6 Sexual harassment and violence against women in the workforce	19
2.1.7 Pregnancy and maternity-related discrimination at work	20
2.1.8 Women migrant workers, including domestic workers	21
2.2 EMPLOYMENT AND LABOUR RIGHTS – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION	23
2.3 LAND AND NATURAL RESOURCES – ISSUES AND COUNTRY EXAMPLES	23
2.3.1 Women's land and property rights	23
2.3.2 Meaningful engagement of women in land-related consultation and agreement-making processes	27
2.3.3 Women in resettlement and compensation arrangements	29
2.4 LAND AND NATURAL RESOURCES – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION	31
2.5 ESSENTIAL SERVICES AND PRIVATISATION – ISSUES AND COUNTRY EXAMPLES	32
2.5.1 Privatisation of essential services and state obligations	32
2.5.2 Educational services	33
2.5.3 Healthcare services	36
2.5.4 Water services	38
2.6 ESSENTIAL SERVICES AND PRIVATISATION – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION	41

2.7	TRADE AND INVESTMENT – ISSUES AND COUNTRY EXAMPLES	41
	2.7.1 Gender equality implications of trade and investment arrangements	41
	2.7.2 Trade agreements on agriculture, including trade liberalisation	44
	2.7.3 Intellectual property provisions, including access to medicines	47
2.8	TRADE AND INVESTMENT – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION	50
2.9	ACCESS TO EFFECTIVE REMEDY – ISSUES AND COUNTRY EXAMPLES	50
	2.9.1 Gender considerations for access to effective remedy	50
	2.9.2 Barriers to judicial remedy and access to justice	51
	2.9.3 Women human rights defenders	54
	2.9.4 Gender and non-judicial remedies	55
2.10	ACCESS TO EFFECTIVE REMEDY – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION	57
	ANNEX I: OVERVIEW OF WOMEN’S RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW AND THE 2030 SUSTAINABLE DEVELOPMENT AGENDA	59
	KEY CONCEPTS AND DEFINITIONS	59
	WOMEN’S RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW	60
	THE RIGHTS OF WOMEN AND GIRLS AND THE 2030 AGENDA	63
	NOTES	66



LIST OF BOXES

Box 1: Country examples – women's participation in the formalised workforce	13
Box 2: Country examples – sex segregation in different industries	15
Box 3: Country examples – addressing the gender pay gap	16
Box 4: Country examples – women's participation in senior management	17
Box 5: Country examples – protection in the informal economy	18
Box 6: Country examples – sexual harassment and violence in the world of work	19
Box 7: Country examples – pregnancy and maternity-related discrimination	21
Box 8: Country examples – women migrant workers' rights	22
Box 9: Country examples – ensuring equality in land and property rights	25
Box 10: Country examples – land policies and land-related decision-making	28
Box 11: Country examples – resettlement and compensation arrangements	30
Box 12: Country examples – privatisation and education services	35
Box 13: Country examples – privatisation and healthcare services	37
Box 14: Country examples – privatisation and water services	40
Box 15: Country examples – agricultural trade and investment arrangements	46
Box 16: Country examples – intellectual property provisions in trade	48
Box 17: Country examples – gender and judicial remedies	53
Box 18: Country examples – women human rights defenders	55
Box 19: Country examples – gender and non-judicial remedies	56



ABBREVIATIONS

2030 Agenda	2030 Agenda for Sustainable Development
AoA	Agreement on Agriculture
BHR	Business and Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CSW	United Nations Commission on the Status of Women
DIHR	Danish Institute for Human Rights
DWU	Domestic Workers United
EPZs	Export Processing Zones
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FPIC	Free, Prior and Informed Consent
FTAs	Free Trade Agreements
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organization
NAPs	National Action Plans on Business and Human Rights
NGOs	Non-Governmental Organisations
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
PPPs	Public-Private Partnerships
SDGs	Sustainable Development Goals
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNWG	United Nations Working Group on Business and Human Rights
US	United States
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WHRDs	Women Human Rights Defenders
WTO	World Trade Organization



EXECUTIVE SUMMARY

This mapping provides an overview of select topics for attention for states in strengthening their gender focus in United Nations Guiding Principles on Business and Human Rights (UNGPs) implementation processes, including, but not limited to, National Action Plans on Business and Human Rights (NAPs).

While there is a need to strengthen all aspects of gender analysis in the implementation of the UNGPs, this mapping focuses in particular on the rights of women and girls. Although it is generally acknowledged that women are disproportionately affected by adverse business-related human rights impacts, there has arguably been too little attention on the rights of women and girls in processes to implement the UNGPs to date, including in NAPs. In this context, the objective of this mapping is to identify gaps in gender analysis of business and human rights (BHR), as well as country examples of how such gaps might be addressed.

The topics which this mapping focuses on are: (1) employment and labour rights; (2) land and natural resources; (3) essential services and privatisation; (4) trade and investment; and (5) access to effective remedy. For each topic, the mapping provides an overview of key gender issues, country examples from existing NAPs and other relevant sources on how these issues might be addressed, and key points for consideration for states on how to strengthen attention to the rights of women and girls in UNGPs implementation processes.

In the area of labour and employment, the mapping examines issues such as women's participation in the global workforce, representation of women in different industries, sexual harassment and violence against women in the workplace, and the particular challenges faced by women migrant workers, including domestic workers. On a positive note, of the five topics addressed, labour and employment is explicitly addressed in several NAPs to date. Nevertheless, overall, sources consulted for the mapping indicate that considerable obstacles to achieving women's equality in the world of work continue to persist. As such, states have a key opportunity to more proactively address women's rights in the context of business activities, including through specific actions and targets in NAPs that address women's rights in the world of work.

While many NAPs address the topic of land and natural resources, none to date address how the rights of women in particular may be impacted by businesses' use of land and interaction with land rights. As the mapping demonstrates, however, in many country contexts women's land rights – both individual and collective – are not recognised or are undermined in practice. Often, this also has negative flow-on effects where land-related processes such as consultation, agreement-making, resettlement and compensation payments take place, as women are explicitly or de facto excluded from, or marginalised, in such processes. This is particularly significant considering that women frequently play a key role in terms of managing land and water

sources for food, and in land-based industries, such as agriculture. Accounting for women's rights in the area of land and natural resources more explicitly in the implementation of the UNGPs could be an important step that states can take to not only re-enforce their commitment to gender equality in the context of international human rights law, but also the 2030 Agenda for Sustainable Development (2030 Agenda).

On the topic of essential services, the mapping focuses in particular on the issue of privatisation, with specific reference to educational, healthcare and water services. While privatisation is neither encouraged nor prohibited by international human rights law, sources consulted highlight notable reservations towards privatisation of essential services from a human rights perspective, on the basis that privatisation may result in changes in the accessibility of essential services that are particularly detrimental for women and girls. However, it is also noted that where privatisation decisions are underpinned by human rights and gender perspectives, in addition to economic and other relevant considerations, positive impacts for women and girls can result. In the implementation of the UNGPs, including the development and implementation of NAPs, the role of businesses as service providers and users could therefore benefit from more explicit gender analysis, including the role of appropriately structured Public-Private Partnerships (PPPs).

On the topic of trade and investment, the mapping focuses on trade provisions in the areas of agriculture and intellectual property. The UNGPs call for attention to policy coherence in the area of trade and investment to ensure that states' agreements, policies and objectives are aligned with their international human rights obligations. While some NAPs set goals to work towards such alignment, again, explicit consideration of gender and potential

differential impacts on women and men is not addressed. As the mapping illustrates, this is a significant gap considering, for example, women's role in the agricultural sector, as well as women's particular needs in terms of access to medicines. As such, strengthening the gender analysis and corresponding action planning to proactively include the rights of women and girls in trade and investment policy and decision-making could be a milestone in terms of moving towards more gender-sensitive UNGPs implementation. The fact that the 2030 Agenda highlights trade as one of the key 'means of implementation' for the 2030 Agenda further elevates the importance of future NAP measures in this area to take a gender perspective.

In the area of access to effective remedy, the mapping considers women's access to judicial and non-judicial remedy for business-related human rights abuses, as well as the role of women human rights defenders (WHRDs). While women and men face many of the same well-documented barriers to access to remedy, such as prohibitive legal fees, physical and language accessibility constraints, challenges in seeking remedy for cross-border cases, to name but a few, sources consulted for the mapping also clearly demonstrate that women and girls may be particularly marginalised in seeking access to effective remedy, for instance due to underlying structural discrimination that places additional burdens on women unionising or defending their land rights. In the area of non-judicial remedies specifically, operational-level grievance mechanisms have been called into question for failing to respond adequately to instances of sexual and gender-based violence. The gendered implications, both positive and negative, of the use of alternative dispute resolution could be further explored. As has been noted in several evaluations of NAPs to date, access to effective remedy has been an area that has been consistently poorly addressed, including from a gender

perspective. On a positive note, however, attention to developing practical measures to enhance access to effective remedy in the business and human rights context has included recent work by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Working Group on Business and Human Rights (UNWG). As such, states have a key opportunity to strengthen their attention to access to remedy in NAPs through the integration of such proposed practical measures, including by addressing the gender dimensions of access to remedy.

In conclusion, the mapping provides only an initial overview of five select topics, many more topics are relevant and need to be taken into consideration to fully address the rights of women and girls in UNGPs implementation. Nevertheless, a key observation from the mapping is the absence of a comprehensive gender approach in NAPs and national implementation of UNGPs to date. As NAPs are key tools for the implementation of the UNGPs, which also increasingly seek alignment with the 2030 Agenda, it is suggested that it is essential to significantly strengthen the focus on the rights of women and girls in NAP development processes and their subsequent implementation going forward. We hope that the information in this mapping can make a contribution to achieving this goal.



INTRODUCTION

1.1 OBJECTIVES

This mapping provides an overview of select topics for attention for states in strengthening their gender focus in United Nations Guiding Principles on Business and Human Rights (UNGPs)¹ implementation processes, including, but not limited to, National Action Plans on Business and Human Rights (NAPs).²

While it is generally acknowledged that women are disproportionately and differently affected by adverse business-related human rights impacts, there has arguably been too little attention to gender in UNGPs implementation processes to date.

This gap has been re-iterated most recently by the United Nations Working Group on Business and Human Rights (UNWG), which launched a gender workstream in 2017 with the aim of producing guidance for states and businesses in 2019 on addressing gender in UNGPs implementation.³ Also worth noting is Sustainable Development Goal (SDG) 5, which calls for the need to 'achieve gender equality and empower all women and girls'; recognising that businesses are key actors in realising the 2030 Agenda for Sustainable Development (2030 Agenda).

In this context, the **objectives** of this mapping are to:

- Contribute to understanding the rights of women and girls in relation to business and human rights (BHR) dialogue and UNGPs implementation processes, including, but not limited to, NAPs;
- Demonstrate the linkages between the UNGPs and the 2030 Agenda and the SDGs with regard to women's rights;
- Identify gaps in gender analysis of BHR, as well as good practices, regarding select topics of concern (employment and labour rights; land and natural resources; essential services and privatisation; trade and investment; and access to effective remedy); and
- Contribute to the work of the UNWG on gender by serving as background information for the 2018 regional consultations and the 2019 guidance to states and businesses on taking a gender-sensitive approach in the implementation of the UNGPs.

The primary **target audience** for the mapping is stakeholders working on national UNGPs implementation, including state institutions, national human rights institutions, non-governmental organisations (NGOs) and others. Therefore, the mapping focuses in particular on actions that states may take to further strengthen attention to gender in UNGPs implementation processes, i.e. rather than on how businesses may implement gender-sensitive human rights due diligence. However, of course business good practice, civil society recommendations, United Nations (UN) guidance and other relevant sources should inform such state action (and vice versa). Furthermore, while the mapping focuses primarily on actions that states may take in national implementation processes, this may include actions that states may take at the national or regional level with the purpose of addressing transnational business impacts on the rights of women and girls.

While there is a need to focus on strengthening all aspects of gender analysis in UNGPs implementation, this mapping **focuses in particular on the rights of women and girls**, recognising that women are not a homogenous group and acknowledging the importance of intersectionality (for an explanation of terms see further Annex I).

Comprehensively addressing the rights of women and girls in BHR will require delving into numerous topics in detail, including consideration of regional, industry, cultural and other specificities. It is also important that diverse actors are involved in such research, documentation and analysis. As such, this mapping does not purport to constitute a comprehensive analysis of gender in BHR but rather, seeks to make a contribution on **five key topics: (1) employment and labour rights; (2) land and natural resources management; (3) essential services and privatisation; (4) trade and investment; and (5) access to effective remedy**. These five topics were selected based on a number of factors, including: prevalence of adverse impacts on women in these areas; perceived urgency to elevate attention to the particular topic; crosscutting importance (e.g., labour rights, land rights, access to remedy); time and resources available for the research; and linkage to Danish Institute for Human Rights (DIHR) focus areas in BHR. However, we acknowledge that this analysis is partial as more themes related to each of the topics are relevant (e.g., cultural heritage under land, access to banking and finance under essential services, goods and services provisions under trade and investment, to name but a few) and additional BHR topics are also relevant (e.g., women's rights and public procurement). To establish comprehensive and dynamic understandings of how to better address the rights of women and girls in BHR the mapping should be viewed as only one piece in the context of the growing body of research and guidance contributed by diverse actors globally.

1.2 OVERVIEW

The mapping contains the following sections:

1. Introduction: objectives, overview and methodology.
2. Topics for attention in UNGPs implementation processes: discussion on select topics (employment and labour rights; land and natural resources; essential services and privatisation; trade and investment; and access to effective remedy), for each providing:
 - 2.1 An overview of key gender issues;
 - 2.2 Selected country examples from existing NAPs, as well as from other relevant resources (e.g., national policies and practices);
 - 2.3 Key points for consideration for states in UNGPs implementation processes, including NAPs.
3. Annex I: key terms and definitions, as well as further information on the rationale for strengthening attention to gender in UNGPs implementation processes from international human rights law and 2030 Agenda perspectives.

1.3 METHODOLOGY

The mapping is based on desktop research as well as conversations with key resource persons to gather insights and country examples. The country examples are drawn from current NAPs, as well as public domain information about actions taken by states in different country contexts. While the examples included appeared noteworthy to the authors, their implementation and effectiveness should be further researched before accepting these as 'good practice' examples.

Two consultation drafts of the mapping were published in 2018. Through this process the mapping has benefitted from the input of peer reviewers from academia, civil society and multilateral organisations, who generously provided comments to earlier drafts on a pro bono basis (for a full list of reviewers see the Acknowledgments).

TOPICS FOR STATE ATTENTION IN UNGPS IMPLEMENTATION PROCESSES

2.1 EMPLOYMENT AND LABOUR RIGHTS – ISSUES AND COUNTRY EXAMPLES

2.1.1 FEMALE PARTICIPATION IN THE GLOBAL WORKFORCE

Businesses, both public and private, are a key source of employment. The UNGPs and the 2030 Agenda recognise the importance of the private sector in contributing to employment, and related development and human rights outcomes. As such, women's participation in the workforce should be a key area for attention for states in UNGPs implementation processes.

Worldwide, although globalisation has brought millions of women into paid labour, the number of women in the formalised workforce is far behind that of men. According to the International Labour Organization (ILO), in 2017, women's participation in the global workforce was at 49.4 per cent – 26.7 percentage points lower than the rate for men.⁴ In terms of regions, the gaps are the widest within the Arab States, Northern Africa and Southern Asia, where they exceed 50 percentage points.⁵ While many countries have eliminated discriminatory legislation and adopted equal employment opportunity laws, there is not full equality of results in any labour market.⁶

Strategies to improve gender equality in outcomes in the labour market can include 'temporary special measures', as noted in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷ According General Recommendation No. 25 of the Committee on the Elimination of

All Forms of Discrimination against Women (CEDAW Committee), the purpose of such measures is to 'accelerate the improvement of the position of women to achieve their de facto or substantive equality with men, and to effect the structural, social and cultural changes necessary to correct past and current forms and effects of discrimination against women, as well as provide them with compensation'.⁸ Furthermore, the term 'measure' includes a variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as: support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time; and quota systems.⁹ The European Institute for Gender Equality, an autonomous body of the European Union (EU) established to promote gender equality, explains that gender quotas establish a defined proportion (percentage) or number of places/seats to be filled or allocated to women and/or men, generally under certain rules or criteria.¹⁰ Gender quotas are sometimes used to improve political representation of women in government, as well as to improve participation of women on corporate boards.

Women's employment options in many countries are significantly limited by gender stereotyping and biased expectations about women's and men's roles and responsibilities that burden them with disproportionate responsibilities for unpaid care and household work. Without adequate support, women have little choice but to work part-time or in informal

work that can be combined with these unpaid responsibilities. According to UN Women, because women typically earn less than men, household decisions tend to reinforce a gender division of labour where men 'specialise' in paid work, while women 'specialise' in homemaking.¹¹ According to the ILO, women carry out at least two and a half times more unpaid household and care work than men. Although this gender gap has decreased over time, even when women are employed, they still tend to carry out the larger share of unpaid household and care work – which limits their capacity to increase their hours in paid, formal and wage work.¹²

According to UN Women, policy can make a real difference. For instance, **EU countries that provide comprehensive support to working parents have higher rates of female employment than countries without such policies.** In southern countries, on the other hand, being married and having young children are associated with lower employment rates for women and higher rates for men.¹³ Countries can take a range of measures to recognise, reduce and redistribute women's unpaid care and household work. UN Women suggests investments in basic social services and infrastructure, particularly healthcare and water and sanitation; and provision of childcare services, which can enable women to participate in paid work. UN Women also suggests the implementation of more comprehensive systems for paid paternal leave as part of facilitating women's access to the job market.¹⁴

BOX 1: COUNTRY EXAMPLES – WOMEN'S PARTICIPATION IN THE FORMALISED WORKFORCE

Some NAPs to date note specific actions on parental leave as part of responding to women's needs in the workplace and to enhance their participation in the formalised

workforce. Looking beyond NAPs, there are also some noteworthy country examples, some illustrative examples are included below.

The **Chilean NAP** states that its Ministry of Labour will promote parental responsibility through the development of Special Covenants. The aim is to prompt unions and employers to reach an agreement on offering workers with parental responsibilities flexible work arrangements, as set out by the country's Article 376 of Law No. 20.940.¹⁵

Ireland's NAP addresses the country's recent positive developments on equality measures, such as the introduction of statutory paternity benefits in 2016 and the launch of a new National Strategy for Women and Girls in May 2017.¹⁶ One of the aims of the Strategy is to respond to women's needs in the workplace. It proposes to continue to invest in childcare, initiate measures to reduce the gender pay gap, to support women entrepreneurs and to improve the conditions of women in insecure employment.¹⁷ Efforts are also progressing on a new Equality/Disability Bill.¹⁸

Norway introduced a four-week paternity quota in 1993,¹⁹ making it the first country to introduce such a so-called 'daddy quota' (a non-transferable paternity leave that is taken on a 'use-or-lose basis').²⁰ Now, paternity quotas in Norway are 15 weeks for all children born after July 2018.²¹ Furthermore, Norway's 2002 Gender and Equality Act requires all employers, in both the public and private sector, to report annually on women's representation on staff and in management positions.²²

2.1.2 SEGREGATION, OVER-REPRESENTATION OR ABSENCE OF WOMEN IN DIFFERENT INDUSTRIES

Sex segregation at work is recognised as an important indication of discrimination by the ILO Convention on Discrimination (Employment and Occupation) No. 111. It is one of the most detrimental aspects of gender inequality in the labour market, since it generally accompanies lower pay and less favourable working conditions in female dominated occupations. According to the ILO, sex segregation is also one of the most enduring aspects of labour markets around the world.²³ The ILO describes sectoral and occupational segregation as a cycle: as women and men are confined to certain occupations, stereotypes are strengthened regarding women's and men's aspirations, preferences and abilities. In turn, this affects the perception of employers about women's and men's skills and attitudes, as well as the aspirations of individual workers. Consequently, women and men are likely to pursue careers in sectors and occupations that are considered 'feminine' and 'masculine' and are often discouraged to do otherwise.²⁴

Women in formal employment are over-represented in a narrow range of sectors and occupations: in 'upper-middle-income countries', 33.9 per cent of women are employed in wholesale and retail services, and 12.4 per cent in the manufacturing sector; in 'high-income countries' 30.6 per cent of women are employed within the health and education sector; and in 'low-income and lower-middle income countries' agriculture is the most important source of employment for women.²⁵ An ILO analysis of 142 countries shows that women remain over-represented as 'clerical, service and sales workers' and in 'elementary occupations' (occupations consisting of simple and routine tasks). These occupations are usually associated with part-time employment and low-pay jobs.²⁶ Women

also make up the majority of the workforce in textile, footwear and apparel sectors and are over-represented at the bottom of these supply chains.²⁷ The global apparel sector faces numerous and well-documented challenges in relation to its workforce, including: low pay, piece-rate pay and/or failure to pay overtime; health and safety concerns (e.g., fire safety and exposure to chemicals); irregular work volume and schedules; lack of access to benefits (e.g., health insurance, social protection and maternity leave); and instances of workplace-based harassment and discrimination.²⁸ Relatedly, studies show that women make up between 70 and 90 per cent of the workforce in Export Processing Zones (EPZs).²⁹ The ILO reports that, while EPZs are undoubtedly major employment generators, particularly for women in southern countries, too many EPZs continue to be hampered by a reputation of low wages, poor working conditions and under-developed labour-relations systems.³⁰

Sex segregation is not only an issue of representation but also linked to 'decent work' factors. The promotion of decent work for women requires the integration of both a mainstreaming and gender-specific strategy, encouraged in the ILO Decent Work Agenda, towards the promotion of work that is 'productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.'³¹ Decent work is becoming universally accepted, as evidenced by its inclusion in major human rights declarations and the 2030 Agenda. Furthermore, it is increasingly recognised that employment generation is not effective on its own, as the eighth UN Secretary-General Ban Ki-moon emphasises: 'Experience shows that economic growth, on its own, is not sufficient.

We must do more to empower individuals through decent work, support people through social protection, and ensure the voices of the poor and marginalized are heard! Frequently, indigenous women are especially vulnerable to discrimination and exclusion in accessing decent work opportunities and may face additional barriers because of limited access to training and skills.³²

The right to organise at work through freedom of association and collective bargaining rights is vital in ensuring the rights of women at work; however, women are far less likely to be in trade unions and enjoy work-related protections, including assembly and association rights. Anti-unionising tactics by the state and employers have been used against women, as highlighted, for example, in a 2016 report of the UN Special Rapporteur on the Rights to Freedom of Assembly and Association.³³



BOX 2: COUNTRY EXAMPLES – SEX SEGREGATION IN DIFFERENT INDUSTRIES

To date, most NAPs do not provide explicit provisions to target occupational segregation. However, country-level initiatives and provisions in national legislations may provide insight into how measures against sectoral and occupational segregation may be addressed in UNGPs implementation. Some illustrative examples are included below.

The **German NAP** refers to the EU G7 framework, which includes the goal to increase the number of women and girls learning occupational skills by one third by 2030. The NAP also stresses that the Government supports the Women's Empowerment Principles and is eager to have more enterprises adhere to the principles as well.³⁴

The **Georgian NAP** states that one of the country's objectives is to 'Develop supportive policy for minor and middle enterprises in order to promote women entrepreneurship'.³⁵ This will be accomplished by developing an expert group that provides the Government with recommendations and implementation suggestions. The agency responsible is the Ministry of Economy and Sustainable Development.³⁶

In 2016, the **Welsh Government** published a five-year plan concerning actions they intend to carry out in order to improve citizens' job opportunities and indirectly address occupational segregation, especially in lower-paid occupations. Furthermore, the Government introduced a strategic equality plan for 2016-2020 that includes a government responsibility to identify and reduce the causes of employment, skills and pay inequalities related to, among other issues, gender.³⁷

2.1.3 THE GENDER PAY GAP

In 2017, the United Nations Commission on the Status of Women (CSW), a functional commission of the UN Economic and Social Council, expressed concern over the persistently low wages earned by women workers, which frequently inhibits women from providing decent and dignified living conditions for themselves and their families.³⁸ According to the ILO's Global Wage Report 2016/17, **the gender pay gap, while on the decline in many countries, is a persistent feature of virtually every nation's labour market.**³⁹ Today, globally, women earn approximately 77 per cent of what men earn – i.e. a 23 per cent pay gap.⁴⁰ Moreover, the ILO reports that although gender pay gaps are found in all types of business enterprises they are particularly high in businesses with high average wages.⁴¹ Disparities in pay are also apparent in the informal economy, where female dominated jobs are concentrated. These include sectors where workers are paid based on production (i.e. quantity of goods produced), as opposed to being paid based on the hours worked.⁴²

The gender pay gap cannot be explained by merely looking at differences in education or age, it is also directly connected to the undervaluation of the work that women generally undertake, and the skills required in female dominated sectors/occupations. It is also linked to the continuous practices of discrimination against women.⁴³ **Certain groups of women, such as racial and ethnic minorities, for example, are often further disenfranchised** because of their status, making it more difficult to assert their rights, including their right to equal pay.⁴⁴

BOX 3: COUNTRY EXAMPLES – ADDRESSING THE GENDER PAY GAP

Many NAPs to date either refer to national legislation and/or international conventions prohibiting discrimination at the workplace

based on gender, or highlight that they promote equal treatment and women's rights in the workplace.⁴⁵ In addition, there are useful examples of actions taken by countries to address the gender pay gap that could further inform future NAPs.

The **German NAP** identifies the substantial pay gap that remains between women and men. The Government has started cooperating with employers' and employees' organisations in order to combat the issue and has introduced a number of non-legislative measures such as the 'Equal Pay Day and a new computer-assisted assessment procedure for the identification of corporate pay discrimination'.⁴⁶

The **Lithuanian NAP** refers briefly to the state's duty to reduce the gender pay gap and how the Government financially supports NGOs that work on ensuring equal employment, gender equality and reducing the gender pay gap.⁴⁷

In 2018, **Iceland** became the first country in the world to enforce equal pay and make the gender pay gap illegal through a change in their legislation. The Government will fine any public or private body with more than 25 employees that has not been independently certified as complying with a national equal pay standard modelled on the International Organization for Standardization's environmental management standards.⁴⁸

In 2000, **Brazil** doubled its minimum wage. This had a significant impact on the gender pay gap, which declined from 38 to 29 per cent between 1995 and 2007. This narrowing has been achieved through increases in both women's and men's wages and not because of a drop in wages for men.⁴⁹

2.1.4 PARTICIPATION OF WOMEN IN SENIOR MANAGEMENT

According to the CSW, women's active participation in economic leadership and decision-making are essential for shaping the changing world of work to achieve gender equality and women's economic empowerment.⁵⁰ **Despite steps forward, women continue to be under-represented in management and leadership positions, in both public and private spheres.** The ILO reports that men remain over-represented in occupations such as legislators, senior officials and managers – positions that are typically well paid and enjoy high status. According to 2016 ILO figures, only five per cent or fewer of the chief executive officers of the world's largest corporations were women.⁵¹

BOX 4: COUNTRY EXAMPLES – WOMEN'S PARTICIPATION IN SENIOR MANAGEMENT

Most NAPs to date do not explicitly address women's participation in senior management. However, there are numerous examples taken at country level that might inform future NAPs. Some illustrative examples are included below.

The **Polish NAP** states that the Government will take measures to promote a balanced participation of women and men in decision-making bodies as part of UNGPs implementation. It will do so through 'promotional and information campaigns, projects co-financed from EU funds' and additionally through 'support for initiatives taken by entrepreneurs'.⁵²

In 2006, **Norway** introduced a 40 per cent quota for women on corporate boards, and the objective was fulfilled within two years. **Belgium, Brazil, France, Germany, Iceland, Italy, Malaysia, the Netherlands and Spain** are countries that have followed suit.⁵³ The most

recent quotas were introduced in Germany (30 per cent) and India (at least one board member has to be a woman). Quotas range from 20 per cent in France to 40 per cent in Iceland, Norway and Spain.⁵⁴

2.1.5 WOMEN WORKERS IN INFORMAL SECTORS AND FORMALISATION OF THE LABOUR MARKET

Informal employment comes in different forms, including wage employment in informal establishments and households, self-employment, unpaid family work, or informal wage employment in formal establishments.⁵⁵ **Informal work is usually characterised by low, or lack of, access to and coverage by, social protections and labour rights, often poor and/or hazardous working conditions, and with low pay and productivity.** Consequently, informal workers usually experience higher levels of decent work deficits and working poverty than those working in formal employment.⁵⁶

Generally, the share of women in salaried employment tends to increase with a country's level of economic development. For instance, in southern countries, merely 13.6 per cent of women are engaged in wage and salaried employment, compared to 24.3 per cent of men. At the other end of the spectrum, the share of women in salaried employment in high-income countries is currently 89.1 per cent, compared with 83.7 per cent of men.⁵⁷ The greatest disparities can be seen in sub-Saharan Africa, where the female share in salaried employment is at 22.6 per cent – 13.7 percentage points lower than the male share (36.3 per cent). Southern Asia also has a large gender gap in salaried employment shares, in which the female share is at 18.2 per cent – 8.6 percentage points lower than the male share (26.8 per cent).⁵⁸

According to the CSW, rural women and migrant women workers are particularly marginalised within the informal economy, as they are often concentrated in low-pay and precarious informal work. Poor working conditions are further exacerbated by commonplace labour discrimination, sexism, racism and xenophobia.⁵⁹

Relatedly, women are over-represented among the 73 per cent of the world's population which has partial or no access to social protections.

According to the CSW, many women face gender-specific barriers to employment and income security because of lower participation in the formal labour market, earning lower wages and enjoying less access to credit and assets than men. As a consequence, many women have lower coverage with regard to contributory social protection instruments, such as unemployment compensation, pensions and health insurance. For example, the proportion of women above retirement age receiving pension is on average 10.6 per cent lower than that of men, globally, and the ILO reports that approximately 65 per cent of people above retirement age without any regular pension are women.⁶⁰ According to the ILO, the majority of social security programmes are formal, employment-based and contributory. Women often face two related difficulties in accessing these programmes: (1) where they are in employment, women on average earn less than men and are more likely to work in the informal economy; and (2) much of the work undertaken by women – i.e. household and care work – is not formally recognised as such, and thus renders them ineligible to participate in social protection schemes.⁶¹

BOX 5: COUNTRY EXAMPLES – PROTECTION IN THE INFORMAL ECONOMY

To date, no NAP explicitly addresses the topic of women's rights in informal employment or formalisation of the labour market from a gender perspective. Furthermore, published NAPs to date do not make specific reference to the gendered aspects of pensions and unemployment compensation. However, provisions in various national legislations and country-level initiatives may provide insights into how gender impacts in informal employment may be addressed in national UNGPs implementation. Some examples are included below.

PROMOTING THE TRANSITION TO FORMAL EMPLOYMENT

In 2000, a group of domestic workers from the Philippines working in New York, **the United States (US)**, founded Domestic Workers United (DWU) with the objective to establish fair labour standards for the industry. Outreach programmes in parks, playgrounds, churches and the street helped to gather members and organise workers. Unions, employers, church leaders and members of the New York State legislature all supported DWU's goal to create a Bill of Rights for domestic workers, 'which for the first time would provide them with the same basic rights that other workers had been entitled for decades.'⁶² In 2010, DWU played a part in helping the New York State Bill of Rights for Domestic Workers to pass. Among other provisions, the Bill ensured the right to overtime pay, a day of rest every seven days, paid leave and protection under state human rights law. Hawaii followed New York's lead and also established labour rights protections specifically for domestic workers, followed by California in January 2014 and Massachusetts in July 2014.⁶³

PROTECTION OF INDIVIDUALS IN INFORMAL EMPLOYMENT

Minimum wage legislation in some cases also covers informal employment – which is significant because many women workers are in informal employment. **Brazil, Costa Rica, Mexico and Peru** are examples of countries that have minimum wage legislation for all workers, regardless of the sector or the status of the company that employs them. **Chile, Kenya, Portugal, Trinidad and Tobago** have extended their national minimum wages to domestic workers, who often have an informal employment relationship.⁶⁴

In 2002, **South Africa** introduced a minimum wage for domestic workers and authorised an eight per cent wage increase that year. Sixteen months after it had been introduced, the wage for domestic workers had increased by 20 per cent.⁶⁵

WOMEN'S ACCESS TO PENSIONS AND UNEMPLOYMENT COMPENSATION

The introduction of universal social pensions in countries such as **Bolivia, Lesotho and Mauritius**, for example, has helped close gender gaps and provide women with basic income security in old age.⁶⁶

2.1.6 SEXUAL HARASSMENT AND VIOLENCE AGAINST WOMEN IN THE WORKFORCE

Violence against women in the world of work is a human rights violation that affects women regardless of age, location, income or social status. Not only does it restrict their economic and social potential, but it can also have significant impacts on their physical and mental health, something which can lead to absenteeism, missed promotions and job losses.⁶⁷ In 2016, UN Women reported that one in three women globally have experienced physical and/or sexual violence at some point in their lives.⁶⁸ Sexual harassment at work is

a common form of violence against women. The World Bank, for instance, indicates that, within EU economies, 40 to 50 per cent of women have experienced sexual harassment at work.⁶⁹ In its 2016 *Women, Business and the Law* report, the World Bank shows that 41 economies out of the 173 examined have no laws against sexual harassment. Where laws do exist, they vary in the areas covered, such as employment, education and public places. However, specific provisions covering sexual harassment in employment are the most common, having been enacted in 114 economies.⁷⁰

BOX 6: COUNTRY EXAMPLES – SEXUAL HARASSMENT AND VIOLENCE IN THE WORLD OF WORK

While a number of NAPs to date address combating gender-based discrimination, they do not mention sexual harassment or violence explicitly.⁷¹ However, provisions in various national legislations and country-level initiatives may provide insights into how sexual harassment could be better addressed in UNGPs implementation. Some examples are included below.

In **Australia**, the Human Rights Commission is leading a world-first National Inquiry into Sexual Harassment in Australian Workplaces. On 12 September 2018, the Australian Sex Discrimination Commissioner released the fourth national workplace sexual harassment survey.⁷² The results of the survey will be used to inform the next stage of the National Inquiry into Workplace Sexual Harassment – a round of public consultations in all capital cities and several regional centres across Australia. Speaking with people, employers, unions and experts around Australia will further develop an understanding of workplace sexual harassment, its causes, impacts and best practice responses. Through the Inquiry the Commission will identify

examples of existing good practice, and will make recommendations for change, providing a way forward for preventing and addressing sexual harassment in Australian workplaces.

In **Kenya**, the Sexual Offences Act requires employers with over 20 staff to have an anti-sexual-harassment policy, training and procedures in place, including provisions for non-retaliation.⁷³

In **India**, the 2013 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act is a legislative act that protects women from sexual harassment at their workplace, including both public and private employers. The Act also covers students in schools and colleges, as well as patients in hospitals.⁷⁴

2.1.7 PREGNANCY AND MATERNITY-RELATED DISCRIMINATION AT WORK

In its 2015-2016 Progress of the World's Women Report, UN Women report that declining fertility rates play a part in increasing workforce participation rates among women of prime working age (24-54).⁷⁵ According to the International Planned Parenthood Federation, **the most frequently cited policies that influence women's participation in the workforce are parental leave, childcare and access to contraceptives, and other policies that are often described as 'family friendly' or 'equal opportunity', which ease the care burden that women face in the home.** Lack of these policies, combined with a lack of policies that seek to distribute care work evenly, are cited as reasons due to which women in many regions remain in the informal or agricultural sectors, and are relatedly more vulnerable to poverty, ill health and precariousness.⁷⁶

It is crucial to not only protect women's employment during pregnancy, maternity

leave and during a given period following their return to work, but also to ensure that maternity is not a source of discrimination in employment. ILO Convention No. 183 provides protection in that the burden of proving that reasons for dismissal are unrelated to pregnancy, childbirth and nursing shall rest upon the employer. However, in 2014 only 54 countries had legal provisions that place the burden of proof on employers.⁷⁷ According to the ILO, the guaranteed right to return to work in the same or equivalent position at the end of maternity leave is important for women's permanence and progression in paid work after childbirth. In an examination of 146 countries in 2016, the ILO found that merely 38 countries had legal guarantees for a woman's right to return to work to the same or equivalent post, 26 guaranteed the same post, and 82 did not have any guarantee in place.⁷⁸

Furthermore, **in many countries women face 'motherhood wage penalties'** (a term coined by sociologists who argue that working mothers encounter systematic disadvantages in pay, competence and benefits relative to childless women⁷⁹) when re-entering employment after having a child. According to Budig and England, motherhood wage penalties are often driven by one or a combination of the following elements: loss of job-experience; less productive at work; trade off higher wages for motherhood-friendly jobs; and/or direct discrimination by employers.⁸⁰ The ILO notes that wage penalties disrupt progress towards gender equality in both low- and middle/high-income countries.⁸¹

Women migrant workers are particularly vulnerable to pregnancy-related discrimination due to their status, frequently being subject to inequitable laws and immigration policies. In countries such as Malaysia, which has the most restrictive legal environment for migrant workers, pregnancy testing as a condition for continued employment is legal. While

Taiwan has made significant improvements on its treatment of women migrant workers, pregnancy discrimination continues to exist and regulatory loopholes remain, for example, the fact that 'children born to low-skilled temporary migrant workers are not eligible for health care or for any type of documentation that would allow them to stay in Taiwan.'⁸²

BOX 7: COUNTRY EXAMPLES – PREGNANCY AND MATERNITY-RELATED DISCRIMINATION

To date, very few NAPs address pregnancy and maternity-related discrimination. However, country-level legislation and initiatives may provide insights into how these aspects of women's labour rights could be better addressed in UNGPs implementation. Some examples are included below.

The **Polish NAP** notes that the Labour Code contains a number of provisions governing specific rights of employees related to parenting, including: provisions on maternity, parental, paternity, and childcare leave; as well as provisions to facilitate the fulfilment of parental responsibilities in relation to childcare and education, including regulations that make it possible to combine leave with part-time work or regulations on working time and the use of exemptions from work or breaks from work. Particular protection of employment relationships during pregnancy and maternity leave is subject to modifications resulting from the provisions of the Act of 13 March 2003 on special rules regarding the termination of an employment relationship for reasons not related to employees (Journal of Laws of 2016, Item 1474). This Law, which applies to employers with at least 20 employees, allows for termination of current employment and working conditions with notice, while still prohibiting termination, both in the case of collective redundancies and individual termination of an employment

relationship during pregnancy and maternity leave. Accordingly, these regulations also apply in the case of employees taking parental leave.⁸³

Latin American countries have made considerable progress in complying with the ILO standard of 14 weeks paid maternity leave and in ensuring that more women, including those in informal work, are eligible. In **Brazil**, rural and domestic workers gained the right to maternity leave in 1991 and, following a court ruling in 2012, temporary workers are now also eligible. **Chile** and **Costa Rica** also grant maternity leave rights to temporary workers. Yet, even where informal workers are legally entitled to take maternity leave, take-up is often low.⁸⁴

2.1.8 WOMEN MIGRANT WORKERS, INCLUDING DOMESTIC WORKERS

The ILO Migrant Workers Convention No. 143 defines 'migrant worker' as 'a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker'.⁸⁵ **Approximately half of the world's migrant workers are women. The majority of women migrant workers are channelled into traditionally female dominated occupations, such as domestic work and the garment industry, where they commonly work under precarious conditions.** In these roles, women workers are frequently excluded from labour law protection, affected by discriminatory residence regulations, and often face the risk of numerous human rights abuses, such as violence and forced labour.⁸⁶ While migration creates many economic opportunities, it also bears many risks for women as many end up at the lower end of supply chains.⁸⁷ Furthermore, it can be said to entrench the gender division of labour globally, in which there is a general

demand for women and migrant workers in receiving countries, often within the care and domestic sectors, as well as the service sectors and the sex industry.

The ILO Domestic Workers Convention No. 189 defines 'domestic work' as 'work performed in or for a household or households',⁸⁸ and 'domestic worker' as 'any person engaged in domestic work within an employment relationship'.⁸⁹ **There are currently more than 53 million domestic workers worldwide; more than 21 million are in Asia and the Pacific. According to the ILO, more than 80 per cent of all domestic workers are women.**⁹⁰ Many countries have laws that prevent migrant domestic workers from escaping from abusive employers, unionising, changing employers and from accessing justice. Employers often withhold migrant workers' official documents, including their passports, which leaves them vulnerable to arrest and deportation if workers try to leave their employment.⁹¹ Domestic workers make a valuable contribution to the economic development and social wellbeing in the countries where they work. However, the nature of their work makes them one of the most vulnerable groups of workers. Typically, they work for private households behind closed doors, often without clear terms of employment, and excluded from the protection of labour legislation.⁹² For example, in 2017, Human Rights Watch reported that many domestic migrant workers in the Middle East Gulf region fall under the abusive 'kafala' (visa sponsorship) system, which prevents them from leaving or changing employers without their initial employer's consent. If they do, they risk being arrested and punished with fines, detention and deportation.⁹³ In some of the interviews by Human Rights Watch in the area, women also described how they were often sexually harassed or assaulted by male family members. When trying to report the incidents the victims faced challenges such as language barriers and fear of deportation.⁹⁴

BOX 8: COUNTRY EXAMPLES – WOMEN MIGRANT WORKERS' RIGHTS

To date, no NAP explicitly addresses the issue of women migrant workers, despite the fact that women make up a large proportion of migrant workers in those sectors and situations most prone to human rights abuses, including domestic workers. However, some countries have taken specific steps to address human rights abuses associated with migrant workers that could inform future NAPs and state implementation of the UNGPs. Some illustrative examples are included below.

Under its 1995 Migrant Workers Act, the **Philippines** established a fund to enable migrant workers to access legal services in cases of violations or disputes, including with employers.⁹⁵

Since 2002, **Taiwan** has introduced progressive laws banning pregnancy-related discrimination such as pregnancy testing at different stages of the employment process, and prohibiting employers from terminating contracts and deporting pregnant migrant workers. Furthermore, Taiwan educates migrant workers on their rights immediately upon arrival and maintains a 24-hour hotline for complaints and assistance.⁹⁶



2.2 EMPLOYMENT AND LABOUR RIGHTS – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION

- Take proactive measures to **address over- and under-representation of women in specific sectors** of employment and in decision-making in all of them – e.g., special measures to address the position of rural and indigenous women, as well as women with disabilities, educational policies and programmes to address gender stereotypes of women in the workplace.
- **Address working conditions** in sectors and areas where it is known that women are over-represented and subject to poor labour conditions – such as in export processing zones, apparel, agriculture and services.
- **Take steps to ensure that women's freedom of association and assembly at the workplace is protected.**
- Generate **gender pay gap data** and use this to address systemic wage discrimination – including ensuring equal pay for work of equal value.
- Evaluate the need for measures to **formalise certain sectors of the economy** to ensure better protection of women's labour rights – e.g., agriculture, artisanal mining.
- Require businesses to develop and implement **targets and quotas for the participation of women, including in senior posts and on governing mechanisms.**
- Enact and implement **anti-discrimination legislation applicable to all businesses** and set requirements of businesses to have in place policies, procedures and reporting to meet the requirements set by the legislation – including on sexual harassment and other forms of sexual and gender-based violence.

- Require businesses to implement **'family-friendly' workplace practices and opportunities** – such as through the creation of part-time jobs, flexible work arrangements, childcare facilities and care leave provisions.
- **Address gender stereotypes** that influence women's work opportunities and choices – e.g., use legislative and policy measures to promote paternity leave.
- **Collaborate with relevant sending and receiving countries** to put in place measures to address the labour rights and protections of migrant workers, including domestic workers.
- **Recognise domestic work as work** and regulate accordingly, e.g., regulate recruitment agencies.
- Put in place relevant legislative and policy measures – including accompanying requirements of businesses – to **address women's access to social protections, including pensions and unemployment compensation.**

2.3 LAND AND NATURAL RESOURCES – ISSUES AND COUNTRY EXAMPLES

2.3.1 WOMEN'S LAND AND PROPERTY RIGHTS

For many women, land is key to living a life with dignity and a basis for entitlements that can ensure an adequate standard of living and economic independence, and thereby personal empowerment. Regardless of whether a woman lives in a rural or urban environment, land rights have major implications for the achievement of other human rights.⁹⁷ Consequently, where businesses acquire, lease or use land, women's rights can be significantly adversely affected. This may be directly, such as where businesses negotiate only with male

community leaders regarding land use, or indirectly, such as through flow-on effects on livelihoods resulting from land loss.

Globally, 2017 estimates indicate that women own less than 20 per cent of the world's agricultural land holdings compared to men.⁹⁸ At the same time, women make up approximately 43 per cent of the agricultural workforce.⁹⁹

While land and property can constitute up to 75 per cent of a nation's wealth, three quarters of the world's population cannot prove they own the land on which they live and work, for example, because of lack of ownership documentation or land rights recognition.¹⁰⁰ For instance, according to the NGO Global Initiative for Economic, Social and Cultural Rights, **in many countries women are restricted to secondary land rights, whereby they hold their rights through a male family member.** Moreover, under many systems of customary law, widowed women are not permitted to inherit land or property from their deceased husbands, and continue to be subject to so-called 'property grabbing' by their in-laws. Where women do have access to land, their parcels are often smaller and of lower quality than those of men.¹⁰¹

For indigenous women, land and property rights issues may be particularly pronounced as land rights systems that value collective rights to land and governance may exist but not be recognised formally.¹⁰² The UNWG, for instance, recommends that consideration be given to the local communal system of collective rights when implementing projects or policies, in order to effectively support indigenous women's specific struggle for gender equality in areas such as land rights.¹⁰³ Also worth noting is a 2018 European Parliament resolution on the rights of indigenous peoples that 'calls for the EU and its Member States to actively support partner

countries in ... applying the principle of free, prior and informed consent to large-scale land acquisitions, as set out in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests and in compliance with international human rights law.'¹⁰⁴

According to the World Bank, **giving women greater access to assets, such as land, through inheritance can change outcomes for children – particularly girls,** as it increases the parent's investment, for instance in education, in daughters.¹⁰⁵ Moreover, the Food and Agriculture Organization of the United Nations (FAO) reports that if women would have the same access to productive resources and services as men they could increase yields on their farms by 20 to 30 per cent.¹⁰⁶

In conflict or post-conflict situations women's access to land can be even further undermined. Conflict almost invariably has an impact on the availability and use of natural resources, such as land, agricultural crops and water. Women, especially in rural areas, tend to be disproportionately affected by these changes, since they generally depend on these resources for their livelihoods and are most commonly the ones responsible for acquiring and using them to meet daily household needs. Moreover, conflict significantly disrupts social and cultural systems for managing natural resources, especially land. In conflict-affected areas, this can have acute implications for women because their access to land is typically dependent on the social structures of their communities.¹⁰⁷

BOX 9: COUNTRY EXAMPLES – ENSURING EQUALITY IN LAND AND PROPERTY RIGHTS

To date, ten countries make a specific reference to land in their NAP¹⁰⁸. However, many of these references are very broadly formulated and only highlight the intention of protecting human rights. They thereby do not make a specific reference to the particular, and potentially disadvantaged, position women may be in with regard to land rights when businesses interact with these rights. Relatedly, the only NAP that makes reference to conflict is the **US NAP** in its ‘support for reducing land conflict in West Africa’.¹⁰⁹ However, no reference is made to the vulnerability of women’s land rights specifically.

France, Germany, the United Kingdom (UK) and the **US** stress in their NAPs that they (continue to) support the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT).¹¹⁰ With regard to women’s rights to land, the VGGT note that states should: ensure that women and girls have ‘equal tenure rights’ and ‘access to land, fisheries and forests independent of their civil and marital status’; recognise the barriers women and girls face; and ensure that both women and men are included in the process of developing rules and legislation concerning the management of land, fisheries and forests.¹¹¹

Looking beyond NAPs, numerous states have implemented laws and policies in order to assure women’s land and property rights – some illustrative examples are included below. States seeking to take a gender-sensitive approach to UNGPs implementation may consider some of these examples in formulating actions to address gender discrimination in land and property rights that businesses interact with.

CONSTITUTIONAL RIGHTS

Bolivia, Brazil, Ecuador, Kenya, Malawi and Namibia are examples of states that in their constitution stipulate the state’s responsibility to secure women and men equal rights in access to land.¹¹² In Ecuador, for example, the 2011 Constitution stipulates the state’s responsibility to secure equal rights in access to property and control over the marital estate between men and women.¹¹³ **Malawi’s** 1994 Constitution provides women with the right to a fair allocation of property in the event of dissolution of marriage. Furthermore, it also prohibits legislation that discriminates on the basis of gender and civil status, and explicitly mentions expropriation of property, including inherited property, in relation to this.¹¹⁴

LAND POLICIES

Kenya’s 2009 National Land Policy aimed at abolishing the constitutional provision that permitted discrimination concerning inheritance and marriage, and now requires equal marital rights to property and assures the rights of widows and divorcees.¹¹⁵

In **Ghana**, the 1999 National Land Policy initiated the Land Administration Project to develop the land administration system by constituting a regulatory structure that would assure tenure security for women, landless and vulnerable individuals.¹¹⁶

In **Mozambique**, the 1997 Land Act and the 2004 Family Law have been integrated in order to improve women’s rights to land as the new law abolished marital power (according to which the husband was entitled to make decisions over his family, spouse and their joint property).¹¹⁷ Furthermore, under the 1997 Land Act, communities and individuals can offer proof of land rights through oral testimony. This avoids the need for costly surveying, registration and titling and makes it easier for (poor) individuals to establish their rights.¹¹⁸

MEASURES AGAINST FORCED EVICTIONS

The **Zambian** 1989 Intestate Succession Act governs the administration of land in cases where the deceased did not leave a will. It does not apply to customary land or the property of a family or chief of a tribe. The Law allows for surviving spouses to inherit 20 per cent of the deceased's estate. Furthermore, the surviving spouse can remain in the marital home until remarriage or death if the land or a house of the deceased is held under a state lease. However, the spouse does not 'inherit the land or the house, and cannot transfer, sell or will the property.' Furthermore, Zambia has initiated a special victim support unit within its law enforcement to protect women from 'property grabbing after the death of a spouse and enforce their rights'.¹¹⁹

In **Malawi**, the 2011 Deceased Estates Act imposes criminal penalties and indictment for wrongful deprivation of property by a deceased spouse's relatives.¹²⁰

LAND TITLE CERTIFICATES

As a result of much effort from civil society, **Nepal's** 2011/2012 Budget Policy included a Joint Land Certificate for married couples, which meant that landownership was given to both husband and wife.¹²¹ However, Nepal has not implemented laws securing women's equal rights to inheritance.¹²²

Joint land certificates were introduced in **Ethiopia** in 2003. Women's ability to claim their land rights and consequently benefit from land certification depends on women's knowledge of their rights and society's approval of the formal laws governing women's land rights. There are indications that the law has improved tenure security for both women and men. Although joint certification does not seem to have had much effect on women's influence on household farm management decisions, it has contributed to an increased participation of female-

headed households in the rental market. Joint certification has furthermore improved the welfare of female-headed households and reduced land-related conflicts.¹²³

DOMESTIC VIOLENCE

Considering that women frequently gain land and housing access through their relationship with a man, domestic violence can pose a direct impediment to women's security of tenure. **Brazil, India and Serbia** are some examples of states that have implemented provisions in their national domestic violence legislation that guarantee victims of domestic violence the right to reside in their marital home, irrespective of who owns it.¹²⁴ Hence, this also ensures the access to, use of and control over, land and other resources for women residing in rural areas.

CUSTOMARY LAWS

Legislation in **Ghana** has progressed to strengthen women's land rights by encouraging equality and making it possible for women to inherit land. Nevertheless, women still experience setbacks in achieving these rights in practice. Customary laws continue to influence how land is inherited between family members in the case of death, and women are systematically excluded. Despite this, the country's Western region differs. Some research has indicated that a combination of the expansion of cocoa cultivation and lack of (male) labour brought about the emergence of women's land rights and has reduced their economic reliance on men. Consequently, the customary system developed into giving women an enduring tract of land in exchange for their labour on their husbands' cocoa farms.¹²⁵

The Government of **Rwanda** has a number of laws and policies to deal with the country's customary laws that have implications for women's rights to land tenure, marital property and inheritance. One of them is

the 1999 Law on Matrimonial Regimes and Inheritance that provides for daughters to inherit land from her parents, gives wives equal rights to matrimonial property and grants widows the right to inherit their deceased husband's property. However, the Law does not ensure the rights of women who marry only under customary or religious rites, and although daughters are entitled to equal inheritance, parents during their lifetime often gift their property to sons, leaving little to be inherited later. Furthermore, application of this new Law has been hindered by men continuing to control land allocation, lack of awareness of the new Law and limited access to state courts. The Belgian NGO, RCN Justice & Démocratie, with the support from International Development Law Organization and the Belgian Government, initiated a pilot programme in six villages to support local dispute resolution through teaching on women's legal land rights negotiation approaches. Village heads and traditional mediators were also part of the programme. The pilot resulted in more land conflicts being settled and village heads educated through the programme became more inclined to accept claims of women that correspond to customary laws.¹²⁶

2.3.2 MEANINGFUL ENGAGEMENT OF WOMEN IN LAND-RELATED CONSULTATION AND AGREEMENT-MAKING PROCESSES

The UNGPs highlight the importance of meaningful consultation and engagement as part of a business exercising human rights due diligence. However, **in many contexts women's social disadvantage, including lack of formal land rights, may make it difficult for them to raise their interests in the management and proposed allocation of community land in investment contexts.**¹²⁷ For example, according to CORE (the UK civil society coalition on corporate accountability) and Womenkind (a

non-religious and non-political women's rights organisation) any agreement reached with male-dominated community leadership, prior to engagement with the whole community, may result in women being coerced to agree to unfavourable proposals and should thus be avoided.¹²⁸

In its General Recommendation No. 23, the CEDAW Committee 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 organisation of the household and with the care and raising of children.'¹²⁹ **Specific efforts are therefore needed to ensure that engagement and consultation processes are meaningful for women.** The international community has been paying increasing attention to inclusiveness and community participation in decision-making regarding land, and efforts have been made to make transparency and meaningful consultation part of the norm. For instance, the 2012 VGGT now contain specific provisions for advancing women's participatory rights.¹³⁰

Nevertheless, the overall situation remains problematic. In research on women's voice in land-related decision-making in investment contexts, for instance, the World Resource Institute (a non-governmental global research organisation) found that many communities practice a top-down approach, where decisions are made predominantly by male community leaders and often in men-only meetings. **While some communities may allow wider participation, women present at meetings are often outnumbered by men or remain on the sidelines of the decision-making.**¹³¹ Taking steps to engage women specifically – for example, through women-only meetings or focus groups, household surveys, and having women lead consultation and engagement activities – may therefore be necessary to

ensure an accurate understanding of the gendered impacts of a certain project and how to address them. Lower literacy levels of rural women in many contexts requires particular attention through women-specific engagement methods that address this barrier.

Frequently, women are also excluded from, or marginalised in, Free Prior Informed Consent (FPIC) processes, reflecting a failure to address 'women's tenure rights, lack of gendered division of labor, lack of opportunities for women in community consultation and meetings, lack of employment opportunities, unequal benefit distribution and so on'.¹³²

Research by the Centre for Social Responsibility in Mining showed that **gender equity as a specific requirement for land use agreements in mining is absent in most jurisdictions.**¹³³ The research found that associated agreement procedures were generally also gender-blind, i.e. they failed to identify gendered factors precluding women's issues from being brought to the table in agreement negotiations. It was also noted that agreement negotiations were often based on land ownership, where voting rights were tied to land. Thus, where men typically held land title, women's rights to participate in decision-making processes became more limited.¹³⁴ In summary, the research identified some of the main challenges of involving women in agreement-making processes to be: formal and informal representation of women; tensions between cultural norms and gender equality; and other prevailing challenges in agreement processes (e.g., imbalanced power relations between company and community at the negotiating table, difficulty of finding skilled negotiators, complexity of discussions and lack of information).¹³⁵

BOX 10: COUNTRY EXAMPLES – LAND POLICIES AND LAND-RELATED DECISION-MAKING

Taking specific account of gender in land policies and governance frameworks (which determine factors such as land allocation and land use for specific purposes, such as agricultural development) is critical for promoting engagement of women in decision-making and agreement-making regarding land. Such policies and governance frameworks set the terms for investors and specific business sectors, and as such should be carefully considered in national UNGPs implementation processes.

No NAP to date refers to gender-sensitivity in land policies and land-related decision-making as a specific recommendation or objective. This area therefore seems to be in need of urgent attention. Existing country examples of gender-sensitivity in land policies may provide useful insights and guidance to those drafting future NAPs and implementation activities. Some illustrative examples are included below.

NATIONAL POLICIES

The Ministry of Agriculture in **Botswana** issued the 2013 Agricultural Sector Gender Policy Framework to highlight the measures to be taken to ensure greater participation of women in decision-making regarding agriculture. The purpose of the Framework is to improve gender equality in 'all agricultural development processes'.¹³⁶ The Framework was recognised at the ministerial level in 2007 as representing guiding principles for all processes and procedures within the agricultural sector.¹³⁷

The process resulting in **Uganda's** 2013 National Land Policy, approved by the Government,¹³⁸ has been noted for the partnership between the Government and

civil society during the development of the Policy. As part of the drafting process, a multidisciplinary and multi-sectoral National Land Policy Working Group that included women's rights groups and activists was established under the ministry responsible for land. This helped to ensure that matters regarding women's rights were on the agenda at policy level, and has also enabled the ongoing review of issues to determine whether they are in line with women's land rights.¹³⁹

The 1995 National Agricultural Policy in **Namibia** stresses the importance of women participating in agricultural development and prescribes that women should be acknowledged as farmers in their own right. Namibia's 2002 Communal Land Reform Act furthermore 'guarantees minimum representation for women on community land management bodies and is applicable to areas under customary law'.¹⁴⁰ Out of 12 board members, four must be women.¹⁴¹

In **Cambodia**, the 2001 Land Administration, Management and Distribution Programme¹⁴² acknowledges that women were insufficiently represented in all organisations associated with land and therefore aims at securing that cadastral commissions are made up of at least 30 per cent women.¹⁴³ The Cadastral Commission for the Resolution of Land Disputes was established under the Ministry of Land in 2002. One of its main tasks is to examine and resolve land disputes over unregistered land.¹⁴⁴

In **Tanzania**, various women's rights groups organised the Gender Land Task Force, which managed to get policy-makers to include a gender-sensitive approach in the regulations of the 2005 Land Act and the 2005 Village Land Act. However, further steps are still needed to secure that women enjoy their land rights; in particular rural women have not gained from these provisions, as they are

frequently either unaware of their rights or unable to pursue legal remedies due to the expenses associated with legal remedies. Despite these hindrances, women's rights groups are now acknowledged as important participants in the land reform process.¹⁴⁵

2.3.3 WOMEN IN RESETTLEMENT AND COMPENSATION ARRANGEMENTS

Where investments result in communities losing land, women are more likely to be disproportionately affected than men. It is therefore important to consider the gendered impacts of livelihood replacement, participation in pre-investment consultations and access to benefits from investments, when establishing requirements for businesses using land.

Research has indicated that gender-neutral compensation procedures do not suffice and that without explicit provisions to protect women's interests, compensation or resettlement schemes risk further marginalising women.¹⁴⁶ For instance, drawing on practical case studies on the relocation of customary communities in eastern Africa, the World Resource Institute noted that far fewer women than men received compensation, despite the fact that similar proportions of men and women lost access to similar land. This was because most farms cultivated by women were labelled as 'household' property, and thus registered in the name of the household head, i.e. a husband or other male relative who then received the compensation payments. This had implications for the whole household, since it was women who usually produced for household food consumption, meaning that limited means to acquire replacement land had severe impacts on families' food security. The study also found that the most common use of compensation by the few women who received it was for school fees, whereas for the men it was consumption.¹⁴⁷ In its 2008 Compulsory

Acquisition of Land Compensation Handbook, the FAO notes that if compensation is paid to the male head of the household, 'the needs of women and children may be ignored', as the money vanishes to the detriment of the whole family's health and welfare.¹⁴⁸

International financial institutions have also highlighted the importance of paying attention to gender in resettlement. In its 2003 Gender Checklist for Resettlement, for instance, the Asian Development Bank guides staff and consultants to identify and address gender issues in resettlement planning, implementation and monitoring, and design gender-inclusive resettlement plans. It highlights the importance of the participation of women in the preparation and review of resettlement plans and encourages efforts to ensure that women do not feel hindered from speaking up.¹⁴⁹ Similarly, the African Development Bank's 2003 Involuntary Resettlement Policy seeks to ensure that gender is mainstreamed throughout its projects (including agriculture and rural development, human resource development and private sector development) in a fully participatory manner. The policy addresses issues connected to resettlement, including its gender dimensions – suggesting that a proper examination of the relationship between men and women with regard to land may help to minimise disparities.¹⁵⁰ The International Finance Corporation (IFC) 2002 Handbook for Preparing a Resettlement Action Plan provides that particular attention should be given to vulnerable groups, such as women, when developing and implementing a resettlement plan. For instance, when conducting socioeconomic surveys, resettlement planners should ensure that a statistically valid representative sample of all data of the affected population – including women and other vulnerable groups – is included in the survey. Furthermore, the IFC encourages the establishment of 'resettlement

committees' that include representatives from the community who would otherwise have no formal leadership role, such as women.¹⁵¹

In research on lessons learned from land acquisition and resettlement the International Council on Mining & Metals (ICMM) found that **the needs of women are often ignored in resettlement – with livelihood restoration, cash compensation and employment opportunities mainly targeted at men – leaving women vulnerable to impoverishment.**¹⁵² Based on these lessons learned it was suggested that any form of stakeholder engagement should consider whether community leaders are truly representative, taking steps to create space for vulnerable groups, such as women, which may not always claim leadership. Consultation teams should therefore have a balance between men and women.¹⁵³

BOX 11: COUNTRY EXAMPLES – RESETTLEMENT AND COMPENSATION ARRANGEMENTS

Published NAPs to date generally do not refer to resettlement and compensation arrangements. This is a key gap given that resettlement associated with investment can have adverse impacts on a number of women's human rights. However, insights from country-specific examples could be drawn upon to inform future NAPs. Some illustrative examples are included below.

In **Vietnam**, a Hydropower project called Song Bung 4 Hydropower Project was funded by a multilateral financial institution. The Project included gender equality regulation to all resettlement entitlements, including land, in their investment agreement and included gender considerations in all documents relevant to resettlement. Consequently, the Project 'awarded joint titles and registration of land-use rights for farming, upland areas, use of forest products, and new housing land

in the name of both husband and wife in their presence'.¹⁵⁴ Equal rights for individual households was assured, regardless of the head of the household being a man or a woman. Furthermore, the Project paid cash compensation to both husbands and wives equally and transparently.¹⁵⁵

In 2007, women for the first time played a part during the negotiations at the Ok Tedi mine in **Papua New Guinea**. In order to approach the negotiations in a strategic and tactful way, the women held side meetings while independent facilitators worked with the mine's gender desk and initiated a dialogue with women in affected areas. This resulted in an agreement giving women '10 percent of all compensation, 50 percent of scholarships, cash payments into family bank accounts (to which many women are cosignatories), and mandated seats on the governing bodies implementing the agreement.'¹⁵⁶



2.4 LAND AND NATURAL RESOURCES – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION

- Ensure that the NAP and other UNGPs implementation strategies **explicitly address the gendered implications of land use of domestic and foreign investors.**
- Ensure **equality in formal land and property rights** – such as land ownership, inheritance and titling provisions – and back this up with specific programmes working towards their effective implementation. Set expectations of businesses to respect these rights in law, policy and regulation governing business land ownership and usage rights.
- **Respect customary land rights**, in particular collective rights to land and resources, including through relevant legislative provisions that require businesses to recognise and respect customary land rights.
- Address **customary land laws and practices** that discriminate against women, including through specific requirements that businesses respect women's rights in customary land laws and practices.
- Consider and address the **gendered implications of any land allocations for investment**, including allocations for specific industries or regions in which women may be particularly vulnerable or marginalised.
- Ensure that **land policies** recognise the specific position of women with regard to land use and access, including livelihood sustaining activities, and back this up with specific programmes working towards their effective implementation.
- Require **foreign investors** to demonstrate gender-sensitive land use planning and implementation as a condition of investment permits and licences.

- **Set expectations of businesses** – whether foreign, domestic, state-owned or otherwise – to respect women’s land rights, including through relevant requirements in processes such as licensing, impact assessment and contract renewals.
- Develop and implement a **resettlement framework** that requires explicit attention to potential impacts of resettlement on women and girls and the implementation of associated measures to avoid and mitigate any adverse impacts and enhance livelihoods. Regularly monitor the effectiveness of the framework.
- **Involve women in planning and management** of business-related land ownership and use, and require businesses to do so in specific instances.
- Where land use by businesses is governed by **land-use agreements** between communities and companies, require women’s participation in agreement negotiations and consideration of the rights and interests of women and girls in the content of such agreements (both in terms of addressing adverse impacts as well as being able to share in expected benefits). Set requirements for the periodic monitoring of agreement implementation, including involvement of relevant independent third parties in the monitoring.

2.5 ESSENTIAL SERVICES AND PRIVATISATION – ISSUES AND COUNTRY EXAMPLES

2.5.1 PRIVATISATION OF ESSENTIAL SERVICES AND STATE OBLIGATIONS

‘Privatisation’ covers a range of models and processes, ranging from ownership of assets to models where the state retains ownership but contracts out an institution or delivery

of a public service to private actors. Many governments around the world are embracing the privatisation of services – such as hospitals and schools, and of infrastructure, including roads and water delivery systems – often with the aim of improving efficiency and quality of service delivery. The trend towards private sector involvement has been accelerated by factors such as the policies of international donors, organisations and financial institutions.¹⁵⁷ Moreover, the 2030 Agenda makes clear that Public-Private Partnerships (PPPs), and the private sector more broadly, have a key part to play in the implementation of the SDGs.¹⁵⁸

Privatisation is not precluded from or encouraged by international human rights law. The existence of private provision of essential goods and services was recognised by the drafters of the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁵⁹ and the United Nations Committee on Economic, Social and Cultural Rights (CESCR Committee) has noted that privatisation may be one of the ‘enabling strategies’ to be encouraged by states to supply essential goods and service deficits.¹⁶⁰

The impacts of the transfer of public services to private entities can be both positive and negative. Some general advantages may include increased operational efficiency, improved selection of service providers and the reduction of service costs. On the other hand, privatisation of certain essential services (such as water and electricity) may create single monopolies where private operators seek to increase prices to the detriment of the consumer – hitting the poor and vulnerable the hardest, thereby replicating inequalities. Furthermore, the government often loses dividends after privatisation, which means that there is less capital available to re-invest in society at large.¹⁶¹

According to the Organisation for Economic Co-operation and Development (OECD), **privatisation is coming back into focus in many countries.** For instance, it reports that privatisation revenues have risen from around USD110 billion in 2008 to USD266 billion in 2016.¹⁶² It reports that share issue privatisations accounted for over 95 per cent of the total number of privatisations during 2015, and 87 per cent of the total value while auctions, targeted stake sales, convertible bond offerings, and asset sales accounted for the rest. The corresponding figures for 2016 are 93 per cent and 81 per cent, respectively.¹⁶³ China was, by far, the leading privatising country during both 2015 and 2016, raising an astonishing USD173.2 billion during 2015 and USD148.0 billion during 2016. These Chinese totals represented over half of the worldwide total for both 2015 (54.1 per cent) and 2016 (55.6 per cent). The UK was the second-leading privatising country during 2015 (13 deals, worth USD34.8 billion), while Australia (5 deals worth USD25.7 billion) took second place during 2016. The USD87.1 billion and USD37.8 billion raised by EU governments during 2015 and 2016 represented 27.2 per cent and 14.2 per cent, respectively, of the respective global annual totals.¹⁶⁴

In addressing the delivery of essential services, states must bear in mind their obligations under international human rights standards. For instance, the CESCR Committee, in its General Comment No. 16, provides that states have an obligation to monitor and regulate the conduct of non-state actors to ensure that they do not violate the right of women and men to enjoy their economic, social and cultural rights. The Committee states that this obligation applies, for instance, when public services have been partially and/or fully privatised.¹⁶⁵ Furthermore, the 2017-issued General Comment No. 24 explicitly addresses the topic of essential services and privatisation. The CESCR Committee recalls that while

privatisation is not prohibited by the ICESCR, states have an obligation to ensure that private providers are subject to strict regulations that impose relevant standards for equitable service delivery, noting that it is 'particularly concerned that goods and services that are necessary for the enjoyment of basic economic, social and cultural rights may become less affordable as a result of such goods and services being provided by the private sector'.¹⁶⁶ The CESCR Committee also asserts that privatisation can be associated with problematic effects and processes, in particular equal access by different rights-holder groups, which should be carefully analysed and avoided, and notes that that states cannot use privatisation as a 'convenient excuse' not to discharge their human rights duties.¹⁶⁷ Similarly, CEDAW Committee General Comment No. 28 provides that, in order to prevent discrimination against women, due diligence should be observed in relation to the activities of private actors in the areas of education, employment and health, as well as in any other areas where non-state actors provide services.¹⁶⁸ In addition, CEDAW Committee General Comment No. 34 provides that states 'should address the negative and differential impacts of economic policies ... including privatisation ... on the lives of rural women and the fulfilment of their rights'.¹⁶⁹

2.5.2 EDUCATIONAL SERVICES

Article 13 of the ICESCR provides that state parties shall recognise the right of everyone to education. While recognising the liberty of individuals and bodies to establish and direct educational institutions, **CESCR Committee General Comment No. 13 notes that 'it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances'**.¹⁷⁰ In addition, Article 10 of CEDAW provides that governments shall take appropriate measures to eliminate discrimination against women in the field of education – including by taking into consideration the particular problems

faced by rural women, and the significant roles they play in the economic survival of their families, and ensuring that they obtain all types of training and education.¹⁷¹ Furthermore, the Special Rapporteur on the Right to Education states that 'Governments should ensure that private providers only supplement public education, the provision of which is the Government's responsibility, rather than supplant it'.¹⁷² Similarly, General Comment No. 5 of the Committee on the Rights of the Child emphasises that 'enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realisation of all rights in the Convention'.¹⁷³ The same General Comment suggests that there should be a permanent monitoring mechanism or process aimed at ensuring that all non-state service providers respect the United Nations Convention on the Rights of the Child.¹⁷⁴

The United Nations Educational, Scientific and Cultural Organization (UNESCO) explains that '**public schools' are managed by a public authority or agency, and 'private schools' are controlled and managed by any type of private entity, such as (but not limited to) an NGO, trade union, church, association or business.** Private schools are privately funded for most of their activities and even though they can receive subsidies from the state, their status remains of a private nature.¹⁷⁵

Research shows that privatisation of education can lead to greater discrimination and that marginalised groups, such as women and girls, fail to enjoy the bulk of the positive impacts and bear the disproportionate burden of the negative impacts of privatisation in the area of education.¹⁷⁶ The Special Rapporteur on the Right to Education, for instance, notes that privatisation adversely affects the right to education, both as an entitlement and as empowerment, in particular noting

that 'privatisation in education ... exacerbates discrimination against girls in gaining access to education. It is well known that families prioritize the education of boys over girls and that girls are less likely to be enrolled in private education owing to parents' perceived return on the costs of educating girls compared to that of boys'.¹⁷⁷ Similarly, CEDAW Committee General Comment No. 36 explains that 'it has been established that privatization has specific negative consequences for girls and women and particularly girls from poorer families, excluding them from education'.¹⁷⁸ The Committee recommends that states, inter alia, 'respect the same standards regarding non-discrimination of girls and women as in public institutions as a condition for the right to private actors to run academic institutions'.¹⁷⁹ The CEDAW Committee has also pointed out that privatisation of education may include poor regulation and oversight of education providers leading to, in some cases: lack of accountability for sexual assault of girls by school personnel; promotion of gender stereotypes in schooling; and lack of access to sexual and reproductive health education, which also have a disproportionate impact upon girls.¹⁸⁰

According to the Global Initiative for Economic, Social and Cultural Rights, **free schooling may be the single most important policy measure to ensure that girls are able to access education.**¹⁸¹ In a 2017 study on the effects of privatisation of education in a number of African countries, ActionAid found that more girls than boys go to public schools. This poses a problem of gender equality, since the girls graduating from public schools are generally perceived as having received an education of lesser quality compared to those attending private educational institutions. This, in turn, may negatively affect girls' chances in the job market and possibilities of entering into higher education.¹⁸²

On the other hand, according to the Right to Education Project, **positive human rights**

impacts of privatisation of education may include: an increase in the number of available schools for certain groups, such as women and girls; an expansion in educational choice with some examples of alternative curricula or additional subjects not covered by public education; greater participation of parents in their child's education and an increased sense of empowerment due to an interest in following through on a financial investment; and perceived improvements in quality of education by parents, especially in relation to high-end, fee-paying private schools.¹⁸³ Similarly, UNESCO notes that, in some instances, privatisation of education has led to an increased physical availability and accessibility of education for certain groups, such as women and girls, through the provision of new, privately-sourced schools. For instance, in a study on Mali, physical accessibility was reported to increase due to madrasas (Islamic religious schools) being set up in local communities that were otherwise not serviced by any schools.¹⁸⁴ Similarly, in Bangladesh, non-government schools funded by the international community through the Bangladesh Rural Advancement Committee specifically aim to increase accessibility for students who are usually excluded from education due to geographic distance.¹⁸⁵ The privatisation of education can also lead to an increase of choice for parents in the type and style of education possible for their children. Studies from Burma, Cambodia and Nepal have indicated that private schools offer more appealing curriculum choices to parents, such as the study of foreign and/or indigenous languages.¹⁸⁶ Moreover, ActionAid notes that a positive aspect of private schools in the promotion of gender equality is a higher share of female teachers, which may play a positive role in supporting girls' education.¹⁸⁷

UNESCO argues that **to strike a balance, privatisation needs to be democratically controlled.** To achieve this goal, states need

to develop rules and systems that ensure that the privatisation of education does not end up favouring the corrupt, the already privileged and the few, rather than all.¹⁸⁸ Another way in which the state can address adverse impacts of privatised education is through PPPs, which involve public and private sectors working together to develop policies and programmes that are consistent with the wishes of the community but are delivered by the market. By ensuring that equity concerns are taken into account, including the need to prevent discrimination and exploitation, establish continuity and stability of services, and encourage social cohesion, UNESCO concluded that the public sector can indeed collaborate productively with the market and tame its excesses.¹⁸⁹

BOX 12: COUNTRY EXAMPLES – PRIVATISATION AND EDUCATION SERVICES

While the Polish NAP refers to the right to education, NAPs to date do not discuss access to education in light of privatisation, or the gender impacts of a private education system.¹⁹⁰ However, there are country examples wherein privatisation of education has inhibited girls' access to education and the government took steps to address this, which might inform future NAPs. Some illustrative examples are included below.

A common barrier in equal gender access to private education is the informal management surrounding privatised schools. In **Malawi**, for example, many private schools were unregistered up until 2010. At this point, the Government closed 800 private schools due to poor education standards. After a thorough government review and subsequent school shutdowns, the Ministry of Education published the National Education Standards in 2015, which are compulsory for public and private schools.¹⁹¹ This effort, in addition to

strengthening registration requirements put in place by the 2012 Education Bill, established mandatory inspection exercises to increase the quality of education.¹⁹²

Informal registration systems likewise affect gender access through fee discrepancies. In **Tanzania**, the authorities have limited inspection capacity in private schools, making it very difficult to monitor school adherence to state regulatory policies. Consequently, monitoring school fees is near impossible. Now, 'fees in private schools are regulated by article 57 of the Education Act, which requires the approval of the commissioner, but there is no monitoring in practice'.¹⁹³ While the Government has recently attempted to mitigate fee increases and put pressure on private schools to stop arbitrarily setting entrance fees, the 2015 National Education Policy delineating these requirements is still not in place. In 2016 'the government tried to bar any fee increase, but private schools argued that they could not accept any non-negotiated fee structure. [However,] after protests by the Tanzania Association of Managers and Owners of Non-Government Schools and Colleges, the government decided not to impose any fee limitation, provided that justification for the increase is given'.¹⁹⁴

In **Nepal**, many actors consider community schools as being weaker than private schools, and girls are frequently excluded from privatised education due to its costs.¹⁹⁵ In 2015, girls made up 52 per cent of primary and 53 per cent of secondary school children, but represented only 43 per cent of primary and 44 per cent of secondary students in the private sector.¹⁹⁶ Research suggests that this disparity is due to parents choosing to send sons over daughters to private schools if money is an issue. Often, parents only able to send sons to private schools will send daughters to government schools, and will pull girls from school altogether if the

alternative options are unsafe.¹⁹⁷ To combat gender inequality and inaccessibility, the Government of Nepal has implemented gender equality strategies and targets in government policies and in the Child Friendly Schools framework. These policy initiatives, though not utilised to the full extent, have created significant improvements in gender equality in education.¹⁹⁸

In **Liberia**, historically, minimal state funding for public schools has resulted in low learning outcomes, notably a male pass rate of 57 per cent and a female pass rate of only 48 per cent, in 2017. On the other hand, females in public schools had a higher 62 per cent pass rate, and male students had a 68 per cent pass rate. To address these disparities, the Government launched the Partnership Schools for Liberia initiative in 2016. The initiative is aimed at ensuring that schools remain free and government-owned during a three-year period, as well as being run by both public and private actors. The initiative aims to determine proven strategies for increasing learning outcomes in the public sector, narrowing the disparity between public and private education in the country. While results from this partnership are still pending, the Partnership Schools for Liberia project suggests that PPPs may be a tool for addressing education disparities in the public sector.¹⁹⁹

2.5.3 HEALTHCARE SERVICES

Article 12 of the ICESCR, asserts that parties shall 'recognise the right of everyone to the enjoyment and highest attainable standard of physical and mental health'.²⁰⁰ In addition, Article 12 of CEDAW provides that **states shall take all appropriate measures to eliminate discrimination against women in the field of healthcare** in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to

family planning. Article 14 of the same treaty necessitates states to take into account the particular problems faced by rural women, ensuring that they have access to adequate healthcare facilities, including information, counselling and services in family planning.

The privatisation of healthcare includes, but is not limited to: privatising the costs of healthcare by shifting the burden of payment to individuals; privatising the delivery of health services by expanding opportunities for private, for-profit health service providers; privatising the delivery of healthcare services by shifting care from public institutions to community-based organisations and private households; privatising care work from public sector healthcare workers to unpaid care givers; and privatising management practices within the health system by adopting the management strategies of private sector businesses.²⁰¹

CESCR Committee General Comment No. 14 provides that **'obligations to protect include, inter alia, the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties; to ensure that privatisation of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services'**.²⁰² The CESCR Committee also recommends that states integrate a gender perspective in their health-related policies, planning, programmes and research, in order to promote better health for both sexes.²⁰³ Similarly, the Special Rapporteur on the Right to Health provides that states have an obligation to protect against harm by third parties, including the private sector, and should work to ensure that private actors support the realisation of the right to physical and mental health while fully understanding their role and duties in that respect.²⁰⁴ For instance, a state should ensure that privatisation of the health sector and the supply of medicines by private

companies does not constitute a threat to the availability, accessibility, acceptability and quality of medicines.²⁰⁵ The Rapporteur states that the right to health requires that essential services include those for populations with specialised needs, such as reproductive health services adapted to the needs of women and girls.²⁰⁶

In General Recommendation No. 24, on women and health, the CEDAW Committee states that it 'is concerned about the evidence that States are relinquishing [their] obligations as they transfer State health functions to private agencies'.²⁰⁷ The Committee specifies that **'State parties cannot absolve themselves of the responsibility in these areas [women's ill health] by delegating or transferring these powers to private sector agencies'**.²⁰⁸ The UN Independent Expert on Foreign Debt and Human Rights notes that the privatisation of public health services, and the associated introduction of user fees in many developing countries have limited access to health services for vulnerable groups, including the poor, HIV-positive persons, sex workers, rural and indigenous women and migrant workers.²⁰⁹

On the other hand, **contracting out health services to non-government actors may have positive impacts**, for instance where governments define standards (e.g., for quality of service) and develop a framework of incentives to address the specific health needs of women and girls with particular health risks.²¹⁰

BOX 13: COUNTRY EXAMPLES – PRIVATISATION AND HEALTHCARE SERVICES

To the extent that current NAPs reference right to health issues, this is usually in the context of workplace health and safety, rather than in relation to the provision of healthcare services per se. While no NAPs mention gender in relation to access to healthcare, or

potential issues associated with privatisation of healthcare, there are numerous country examples that could provide insights for NAP implementation and revision, to embed a more gender-sensitive approach. Some illustrative examples are included below.

In rural **China**, a series of health reforms in the 1980s shifted financial responsibility for health services from the state to local areas and individuals. The consequence was a lack of public funds for service provision, and thus the transition to a primarily fee-for-service system. Funding for preventative care thus decreased and one consequence was a severe reduction in reproductive health services, and a fee increase that made proper reproductive healthcare infeasible for many Chinese women. To mitigate this issue, China's Ministry of Health began a national rural health initiative in 1997, including the Reproductive Health Improvement Project, which was initiated in 1998. The Project intended to reinstate accessible reproductive healthcare for rural, impoverished women.²¹¹

Gender-based analyses of privatisation in the province of Alberta, **Canada**, indicated that deficit reduction initiatives beginning in the 1990s, specifically those cutting healthcare, social services and education, negatively impacted women most out of the regional population. These reforms made healthcare financially inaccessible for many women.²¹² In 2000, as a response to the negative impacts of increasing privatisation of healthcare, the Government of Alberta passed legislation to require a regulatory framework for health services in the region. The Health Care Protection Act provides an overarching framework to make healthcare more accessible, equitable and regulated, and increased care accountability for concerned interest groups.²¹³

2.5.4 WATER SERVICES

In 2010, the human right to water and sanitation was officially recognised by the UN General Assembly in Resolution 64/292.²¹⁴ Moreover, international human rights standards, such as Article 14 of CEDAW, stipulate that states shall ensure to women the right to 'enjoy adequate living conditions, particularly in relation to ... water supply'.²¹⁵ CESCR Committee General Comment No. 15 notes that **states must ensure that water services, 'whether privately or publicly provided, are affordable for all'**²¹⁶ and **shall ensure that 'women are not excluded from decision-making processes concerning water resources and entitlements.** The disproportionate burden women bear in the collection of water should be alleviated'.²¹⁷ In addition, CESCR Committee General Comment No. 14 stresses that 'where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established ... which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance'.²¹⁸ The UN Special Rapporteur on the Right to Water and Sanitation provides that, under international human rights law, states have the obligation to identify and rectify all laws that have direct or indirect discriminatory consequences on the enjoyment of the human rights to water and sanitation. The legal framework should contain provisions on non-discrimination and equality in access to water and sanitation. Such laws should aim to eliminate both formal and substantive discrimination, and take into account both public and private actors.²¹⁹

According to the UN Secretary-General, **women and girls in low-income countries spend some 40 billion hours per year**

collecting water.²²⁰ Similarly, the World Health Organization reports that in one day, more than ¹⁵² million hours of women and girls' time is spent collecting water for domestic use.²²¹ While men occasionally participate in these tasks, women tend to carry the brunt of the work.²²² These tasks put time constraints on women and girls, limiting their ability to participate in food security and agricultural activities, local governance structures and training opportunities (only to name a few).²²³

Privatisation of water services has the potential to exclude and alienate poor women when they cannot pay for the services or are excluded from decision-making in management systems and resource allocation.²²⁴ In most rural areas women's participation in local institutions such as water users' associations is limited, and even when they do belong to such organisations, social restrictions may prevent them from participating on par with their male counterparts. This situation hinders more participatory and equitable decision-making regarding water resources at local and national levels.²²⁵ The FAO, for instance, has noted that mechanisms are needed to ensure that women are included in the membership, decision-making committees and the irrigation professionals of Water Users Associations.²²⁶ According to the Swedish International Development Cooperation Agency, companies which provide water systems may contribute to the additional exclusion of poor people. These groups, often women, may not have been served by the former water utilities but could anyway often get access to water through 'informal' connections.²²⁷ Moreover, ActionAid has argued that women's safety may be put at risk when water restrictions – as a result of privatisation – force them to collect water at night-time, or from far-away or isolated places.²²⁸ Similarly, the Women's Environment and Development Organization states that trekking distances to access water or sanitation can place women in danger of being victims of physical violence.²²⁹

On the other hand, **in some circumstances privatisation may result in a more efficient water management system and may thus allow more people to have access to water.** The corporation's profit-driven nature can, theoretically, eliminate or diminish the inefficiencies or redundancies in construction, maintenance, upgrades and distribution. Furthermore, since management occurs outside government, there is an assumption that less corruption is likely to take place.²³⁰ Meena Palaniappan et al. suggest an elaboration of three principles they consider essential for any privatisation of public water supply. Firstly, they suggest that water should be managed as a 'social good'. In so doing, private water providers should ensure that they fulfil basic needs for water, where all residents are guaranteed a basic water quantity under any privatisation agreement. Secondly, 'sound economics' should be utilised in all private water management. In such manner, water and water services should be provided at fair and reasonable prices, and whenever possible, link proposed rate increases with agreed-upon improvements in services. Thirdly, strong government regulation and oversight is necessary when privatising water services. Thus, public agencies and water service providers should monitor water quality, and governments should define and enforce water quality laws. Moreover, contracts that specify the responsibility of each partner should be a pre-requisite of any privatisation.²³¹

BOX 14: COUNTRY EXAMPLES – PRIVATISATION AND WATER SERVICES

NAPs to date do not explicitly mention access to water or water privatisation. However, there are country examples of the negative gender implications of water privatisation and possible steps that states might take to address these. Some examples are included below.

State legislation concerning water privatisation in countries with inequitable gender access have been fraught. The UN states that this has been largely due to female under-representation in water policy creation and the ‘water world’ in general.²³² Efforts to increase female involvement in water policy have begun with the increase of women serving as ministers of water and environment. In **South Africa, Lesotho** and **Uganda**, for example, ‘women ministers for water are implementing affirmative action programmes in the water sector to train women for water and sanitation related careers, including science and engineering.’²³³ These changes have had a trickle-down effect, as ‘at the local level, women have found their voices and have now been trained to locate water sources in the village, to decide on the location of facilities and to repair pumps.’²³⁴ These changes have considerably reduced the occurrence of pump breakdowns. Additionally, the UN concludes that although ‘it may be hard to imagine a change in orientation of water policy in many countries in the near future, affirmative action policies such as “women in water” awards and a bursary for young women to take up careers in the water sector in South Africa have proved to be a successful means of empowering women.’²³⁵

A 1999 legislation that guaranteed equal access to water for all in **Kenya** was compromised in 2002 by a new government policy which defined water as an ‘economic good’. Additionally, outside investors have encouraged water privatisation. A USD75

million Privatisation and Private Sector Development Project intends to increase water privatisation in the country as its main goal. While water systems remain publicly owned for the time being, about 50 per cent of the population in rural and urban areas do not have access to clean water. Instead, they must buy water from local vendors, paying over 30 times the cost of piped resources. According to the Women’s Environment and Development Organization, although ‘women play a critical role in the water sector, they are rarely integrated into actual practice or policy.’²³⁶ As a result, ‘some women are taking matters into their own hands, forming local associations that work with municipalities to ensure that piped-water points are established within their reach. They have mobilized neighbourhoods, municipalities and other partners to build water tanks, and have generated funds locally to pay for them.’²³⁷



2.6 ESSENTIAL SERVICES AND PRIVATISATION – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION

- Thoroughly analyse and account for any potential gender impacts in delivery of essential services, including decisions regarding privatisation.
- Improve transparency of decision-making regarding delivery of essential services – including by clearly demonstrating how economic, efficiency, accessibility, gender and other factors have been accounted for and weighted in decision-making.
- Ensure thorough consultation with potentially impacted women and men using essential services.
- Address systemic gender discrimination through essential service delivery models – e.g., enhancing girls' education, improving accessibility and quality of reproductive health services for women.
- Where essential services are privatised, put in place concrete measures to ensure that privatised essential services meet relevant international human rights and domestic standards – e.g., through contractual provisions, incentives and ongoing monitoring.
- Periodically evaluate the gender impacts of public service delivery – including through the use of gender-relevant indicators and data.
- Consider using PPPs to balance involving the private and public sectors in delivering equitable essential services.

2.7 TRADE AND INVESTMENT – ISSUES AND COUNTRY EXAMPLES

2.7.1 GENDER EQUALITY IMPLICATIONS OF TRADE AND INVESTMENT ARRANGEMENTS

Increased trade and investment can be important sources of economic growth, which may result to benefit women. However, trade and investment agreements and structures in the global economy have also been criticised for focusing on commercial interests without sufficiently taking into account human rights.²³⁸ As such, states should carefully consider the gendered implications of trade and investment prior to entering into agreements, including by assessing how women and girls may benefit and how they may be adversely impacted. Trade and investment is also relevant in the context of the 2030 Agenda. The SDGs, for instance, refer to increasing aid for trade support for southern countries, and increasing southern country exports with a view to doubling the share of global exports of least developed countries by 2030.²³⁹ The Addis Ababa Action Agenda, which is an integral part of the 2030 Agenda, explicitly links trade and gender equality, noting that by 'recognising the critical role of women as producers and traders, we will address their specific challenges in order to facilitate women's equal and active participation in domestic, regional and international trade.'²⁴⁰ The potential role of trade as a 'means of implementation' to achieve the SDGs has also been recognised by different actors, including the World Trade Organization (WTO).²⁴¹

In 2015, United Nations Human Rights Council mandate-holders voiced concerns about the impacts of trade and investment agreements on human rights. In a collective statement, a group of UN experts stated that trade agreements 'are likely to have a number of retrogressive effects on the protection and promotion of human rights, including lowering the threshold of health protection, food safety and labour

standards, by catering to the business interests of pharmaceutical monopolies and extending intellectual property protection.¹²⁴²

In 2016, the European Parliament noted that **gender inequality in trade is apparent through three main channels: (1) employment; (2) consumption; and (3) public provision of services.** Consequently, different groups of women and men are affected in their multiple roles as workers, producers and consumers, and as citizens and taxpayers entitled to public services.²⁴³ In terms of employment, trade expansion as a consequence of tariff liberalisation leads to changes in the structure of production. This means that, although the overall economy gains and grows, there are sectors that benefit from the trade agreement while others are negatively affected. One cannot say **a priori** which sectors gain and which ones lose, as this depends on relative competitiveness of each of the sectors. Hence, for each trade agreement, the gender effects can be different. From a non-tariff perspective, changes in the regulatory environment could affect the quality and security of employment for various groups, with small-scale producers and low-skilled workers being most affected.²⁴⁴ Due to the occupational segregation between women and men (existing in both northern and southern countries) women are often in the lower segments of the employment categories, and/or working part-time only, and are thus relatively more vulnerable to changes in market structures.²⁴⁵ It also means that they potentially stand to gain most, if trade agreements are negotiated and implemented in a gender-sensitive way. Regarding consumption, trade induced changes in relative prices of goods and services generates changes in real incomes, which affect households and individuals differently depending on their consumption needs, as well as their access and control over income. Gendered effects may then result, for instance, because of prevailing norms assigning women the primary responsibility

for the purchase and preparation of food for the family. Since women generally spend higher percentages of their incomes on food and their children's education, any change in the availability or price of such goods and services may have significant effects for the whole family. Public Services International (a global trade union federation) argues that preferential trade agreements may deepen the economic inequality between women and men, especially where the reduction of tariffs denies governments an important source of revenue that could be spent on essential services.²⁴⁶ For those countries where tariffs still make a sizeable percentage of income, it is important to investigate whether tariff liberalisation, combined with poorly developed tax systems (and/or where tax incentives are used to drive foreign direct investment), would lead to a negative effect on gender equality. Reduced public expenditures usually impact the poor more heavily, particularly poor women.

Studies also show that **globalisation and trade liberalisation, through increasing competition, may weaken the bargaining power of workers**, especially of female workers if they are disproportionately employed in sectors increasingly competing on the basis of 'cheap labour'.²⁴⁷ The International Centre for Trade and Sustainable Development, for instance, states that trade liberalisation may adversely affect wages paid if female workers in northern economies have lower average skills than their male workers (then the wages of female workers will drop more significantly than those of male workers as trade with southern countries increases). This skill effect would increase the gender wage gap, indicating the importance of increasing skill levels in order to empower women and to ensure they benefit from trade liberalisation. However, it has been suggested that the gender wage gap should decrease in southern economies with increase in trade, empowering women.²⁴⁸

On the other hand, it has been argued that **regional trade agreements may present opportunities for encouraging cooperation around gender equality** as they may pressure governments to address key structural barriers to gender equality, including eliminating legal constraints and barriers to access finance.²⁴⁹ The World Bank, for instance, has noted that trade and economic agreements can provide a channel for international pressure to elicit domestic action on gender equality, for example, through the inclusion of anti-discriminatory and social clauses that link a country's access to the economic benefits in an agreement to adherence to certain minimum standards.²⁵⁰ Moreover, when gains in economic growth, as a result of trade, are utilised to increase infrastructure and to improve availability and quality of public services, gender disparities in human capital are likely to fall, and with them the gender pay gap.²⁵¹

Economic policies impact different segments of the population, including men and women, in different ways. **Taking into account gender perspectives in macro-economic policies, including trade policies, is thus essential to pursuing inclusive development, and to achieve fairer and beneficial outcomes for all.**²⁵² The International Centre for Trade and Sustainable Development states that there are at least two ways in which trade policy can be more gender-responsive: **ex ante** gender assessments of trade measures and the inclusion of gender-related considerations in trade-related instruments.²⁵³ Firstly, assessments of the risks and benefits of trade for a country should be complemented by an analysis of impacts on specific segments of the population – in particular those at risk of being left behind, including women and girls. Secondly, gender-related considerations should be included in the text of the trade agreement.²⁵⁴

The UN Conference on Trade and Development's Trade and Gender Toolbox provides a methodological approach for carrying out **ex ante gender impact assessments of trade reforms.**²⁵⁵ The Toolbox is intended for policy-makers involved in trade negotiations, including government officials, but also for development practitioners working on gender equality issues. It aims to equip relevant stakeholders with the necessary tools to gauge the potential effects of trade policies on gender equality and it provides a checklist to guide policy-makers in selecting measures to accompany trade reforms in the event that **negative impacts on gender inequalities are foreseen.**²⁵⁶ The Guiding Principles on Human Rights Impact Assessment of Trade and Investment Agreements, developed by the UN Special Rapporteur on the Right to Food, also note the importance of specific attention to the impact of trade and investment agreements on gender equality, including, for example, through the use of disaggregated indicators and data in analysis.²⁵⁷

The European Parliament, in its 2016 study on gender equality in trade agreements, makes recommendations on how to ensure that new trade agreements take gender equality objectives more fully into account.²⁵⁸ Firstly, it states that it is important to use sex-disaggregated data throughout the analysis – examining the gender effects in all sectors of the economy concerned, rather than in a few instances. Secondly, the study notes the importance of ensuring that the economic model used to assess the potential impacts of investment agreements is designed to capture the diversity in female employment rates and welfare regimes across countries within Europe itself. Thirdly, it is recommended that the gender analysis should not be limited to employment effects, but should also investigate consumption effects and public provision effects to the extent possible. The study also notes that attention needs to be

paid to implications for social services, which are especially salient for gender equality because changes in access to such services (and their quality) have direct implications for the distribution of unpaid care work. The Parliament encourages the participation of women's groups in trade consultations and states that it is essential that gender experts are appointed as members of the research team. Lastly, the study recommends that states promote training of government officials on gender issues and trade.²⁵⁹

The African, Caribbean and Pacific – European Union (ACP-EU) Partnership Agreement is the most exhaustive agreement between southern countries and the EU, addressing challenges such as climate change, food security, regional integration, state fragility and aid effectiveness. In its chapter on thematic and crosscutting issues, it mandates that technical cooperation should create the appropriate framework to 'integrate a gender-sensitive approach and concerns at every level of development cooperation including macroeconomic policies, strategies and operation, and encourage the adoption of specific positive measures in favour of women'.²⁶⁰ Some earlier Free Trade Agreements (FTAs) have also included gender-related capacity building mechanisms. For instance, in the EU-Mexico global agreement, gender equality is regarded as a crosscutting issue to be mainstreamed in development cooperation between partners.²⁶¹ Similarly, the European Union – East African Community (EU-EAC) economic partnership agreement calls for promotion of gender equity in fisheries, as well as for developing capacity of women traders involved and intending to engage in fisheries.²⁶² **In more recent trade agreements, gender issues tend to be addressed in specific chapters – significantly shifting the visibility of such issues within trade instruments.** For instance, trade and gender chapters can be found in the Chile-Uruguay FTA²⁶³ and the Canada-Chile FTA,²⁶⁴ both of which recognise

the importance of gender mainstreaming for achieving economic growth, as well as the key role that gender equality policies play in fostering socioeconomic development.

2.7.2 TRADE AGREEMENTS ON AGRICULTURE, INCLUDING TRADE LIBERALISATION

Agriculture plays a significant role in the lives of women (and men) in the global economy, particularly in many southern countries, where it is still a significant part of the total domestic output, as well as a source of employment for a large proportion of the population. Since women tend to make up the majority of workers in the agricultural sector in most southern countries, **agricultural policies – including those on trade of agricultural produce – have major implications for women's livelihoods.** For instance, according to the UN Special Rapporteur on the Right to Food, gender gaps are observed in access to all productive resources, such as land, seeds, fertilisers, pest control measures and mechanical tools, credit and extension services.²⁶⁵

Agricultural trade liberalisation is often premised on export-promotion policies that benefit larger-scale farmers. Liberalisation has opened smaller markets to subsidised imports, thereby displacing the farmed products of smaller-scale farmers (often women), and encouraging the production of export crops over subsistence agriculture. Women tend to hold smaller plots, which are often circa 20 to 30 per cent less productive than plots managed by men; therefore, their production is not compatible with a large, corporate model of farming.²⁶⁶ As such, many female small-scale farmers struggle to maintain household incomes due to the increased competition with imported agricultural goods, reduced prices, and declining commodity prices in international markets.²⁶⁷ However, for women working in larger agriculture export-oriented industries, the effect may be positive. A challenge is that many female farmers are excluded from the

benefits of contract farming arrangements, central to the agro-industrial model of modern agriculture. This is largely because men continue to be in control of contract arrangements.²⁶⁸ This is an argument in favour of adjusting domestic patterns and contracts to allow for a larger share of the trade gains accruing to women. Currently, even without formal prohibitions to market access, structural barriers may challenge women's ability to establish relationships with buyers or to market their own goods. In addition, women may lack sufficient time to engage in market activities as a result of their unpaid household and care burdens.²⁶⁹

The Agreement on Agriculture (AoA) is an international treaty of the WTO, which came into force in 1995.²⁷⁰ **In short, the aim of the AoA is to ensure tighter discipline in agricultural trade policies, to facilitate exports by way of commitments by member states to cut tariffs and other trade barriers on imports of agricultural goods, and to reduce trade distorting government support to domestic producers and export.**²⁷¹ According to BRIDGE (a specialised gender and development research and information service within the Institute of Development Studies in the UK), the reduction of import tariffs mandated by the AoA has led to the displacement of local farmers, who are pushed out of domestic markets as a result of the dumping of cheap subsidised food imports from other countries.²⁷² This downward pressure on prices benefits women as consumers; however, it also means that pressures could increase on women farmers working in countries where farmers are not subsidised and where it costs more to produce the crop than it is possible to sell it for. In addition, it has been argued that the removal of state support to the agricultural sector, including the extension of services and subsidies for inputs and credits, has entailed further marginalisation of small and poor producers in many countries, in terms of access

to productive resources.²⁷³ Subsidies continue to have a disproportionate effect on women because of pre-existing gender inequalities in access to, and control over, productive resources and in their role as primary producers and managers of food security in households, especially if also used in other (competing) countries.

Moreover, **trade policies that promote cash crops and prioritise export-oriented growth generally work for the benefit of men, rather than women**, as men tend to hold the overall responsibility in this area. Gender inequalities in access to and command of productive assets, such as land and credit, or storage and transport facilities, tend to constrain women's benefits from such policies.²⁷⁴ These asymmetries could be adjusted by appropriate domestic flanking policies. In addition, women in many countries lack access to technology and training. In Africa, for example, while the majority of agricultural activities are performed by women, they receive less than 10 per cent of the credit granted to small farmers.²⁷⁵ Furthermore, agro-biotechnology is posing specific challenges for women, who may be less likely to understand the impacts of technological developments and the effective and safe use of technology. If women's participation in the development of agro-biotechnology is restricted, technologies are likely to fail to account for the specific needs of women.²⁷⁶ It has therefore been argued that it is necessary to rebalance rules that are biased against women's needs and interests and that undermines their livelihoods in a context where they constitute the majority of the poor. Governments should step up their domestic flanking policies by addressing supply-side constraints facing women and low-income producers, such as access to resources, training and extension services, assistance with scale-economies, and access to childcare.²⁷⁷

BOX 15: COUNTRY EXAMPLES – AGRICULTURAL TRADE AND INVESTMENT ARRANGEMENTS

Numerous NAPs stress that they intend to protect human rights in the context of trade and investment. Furthermore, many NAPs emphasise that they either have, or plan to, incorporate the OECD Guidelines and the UNGPs in relation to trade and investment agreements.

The **Finish NAP**, for instance, states that 'Finland will support the strengthening of human rights assessments in third countries during EU trade or investment agreement negotiations and when monitoring their implementation'.²⁷⁸ References to trade and investment in other NAPs are similarly phrased.

However, NAPs to date do not refer to women and gender in the context of investment or trade. Looking beyond NAPs, there are country examples of measures that promote women's rights in the context of agricultural trade and investment arrangements, which could provide insights and guidance for the implementation of human rights commitments in current and future NAPs. Some illustrative examples are included below.

PROGRAMMES

The 2006 Ten Year Agricultural Sector Development Programme in **Tanzania**, launched as an implementation tool of three agricultural development and poverty reduction procedures, recognises gender as a specific 'crosscutting and cross-sectoral issue and addresses gender in specific areas of implementation'.²⁷⁹ For instance, it is required that local investment meets social and gender standards, as part of the Programme's performance assessment at district level which is carried out every year.

Similarly, the 2013 National Agricultural Policy identifies gender as a crosscutting theme that must be addressed when applying the Policy. The same is true of the 2011 Tanzania Agriculture and Food Security and Investment Plan, which particularly emphasises the need for agribusiness investment policy to apply a gender-sensitive approach in employment opportunities. While it has been noted that implementation of these initiatives has been weak,²⁸⁰ they nevertheless provide insights as to how gender can be more explicitly called out and taken into account in agricultural investments.

TARIFFS

To protect sensitive products, **Swaziland**²⁸¹ and **Botswana**²⁸² have used import quotas on products like dairy and poultry. Since Malawi introduced its agricultural support for seeds and input in 2005,²⁸³ the country has been credited for advancing agricultural development among small-scale producers.²⁸⁴

The 2002 Southern African Customs Union Agreement allows national protection for infant industries, which is often used to justify import bans to protect local manufacturers.²⁸⁵ For example, **Botswana** has reduced imports of specific sorts of tomatoes and UHT milk. Accompanying seasonal import constraint on maize, wheat and flour aims to ensure that national production is consumed first.²⁸⁶ Export taxes also impose costs and restrain the development of regional supply chains. An illustrative example is the case of small stock exports from **Namibia**, where the Namibian Government has limited exports to boost local slaughtering since 2004.²⁸⁷

As part of the AoA agricultural reform process, farm sizes in **Brazil's** dairy sector have increased, with large-scale firms replacing traditional cooperatives. However, a FAO case study from 2000 suggests that the solution is not to avoid the reform process, but instead

to promote safeguards for rural populations and small-scale farmers, such as by reforming contract law to ensure the rights of small-scale farmers in the face of large agricultural companies and by establishing new credit institutions. Likewise, FAO's case study of **India** suggests that a constructive response to the negative effects that agricultural trade liberalisation has on the rural and poor is safety net measures such as employment programmes, targeted food supplies and a programme of food stabilisation, all of which would be in conformity with the AoA.²⁸⁸ These types of measures can be particularly beneficial to women since they are often small-scale farmers.

OFFICIAL INDEPENDENT ADVISORY BODY

In 1985, the UK Gender Expert Group was founded by the Department of Trade and Industry.²⁸⁹ It is supported by the Women's National Commission, which is the Government's official independent advisory body on women, tasked to ensure that gender is integrated into UK/EU trade policy and to give expert advice on issues regarding gender. The UK Gender Expert Group is made up of representatives of women's and development organisations who are engaged in trade and gender issues, academics, and UK government observers.²⁹⁰

2.7.3 INTELLECTUAL PROPERTY PROVISIONS, INCLUDING ACCESS TO MEDICINES

Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), all WTO members are required to apply uniform intellectual property rights and minimum standards on patents, copy-rights, trademarks and trade secrets.²⁹¹ Supporters of TRIPS have claimed that it will lead to increased intellectual property protections and investments in more research and development on the priority health needs of

southern countries.²⁹² However, TRIPS has also been criticised for its potential adverse impacts on human rights related to public health, agriculture, biodiversity, traditional knowledge and technology transfer.²⁹³

According to the 1992 UN Convention on Biological Diversity, traditional knowledge, innovation and practices of indigenous communities and local communities must be protected by domestic legislation.²⁹⁴ It also suggests that when such knowledge is commercialised, it should be done so with the consent and wider participation of such communities, and that benefits that accrue from such commercialisation be shared with the communities.²⁹⁵ The Institute for Agriculture & Trade Policy (a non-profit research and advocacy organisation that promotes sustainable food, farm and trade systems) states that, as a result of **some patents granted on inventions based on traditional knowledge, intellectual property rights on bio-technical inventions (as granted under TRIPS) may encourage corporations to patent inventions based on traditional knowledge without acknowledging their source, or sharing benefits that arise from the commercialisation of such products.**²⁹⁶ Lack of recognition of the traditional knowledge of local and indigenous communities may serve as a major setback to women because, in many instances, they play a vital role in conserving biological diversity at its site of occurrence.²⁹⁷ The continued patenting of seeds and biological resources, as well as the use of genetically modified organism (GMO) technology for agricultural policies, have direct impacts on women as farmers – severely hampering their access to seeds, farm inputs and plants.²⁹⁸ On the other hand, it may be argued that new technologies and seeds have made a significant contribution to reducing poverty and improving livelihoods for rural communities, including women.

According to the Institute for Agriculture & Trade Policy, **TRIPS may also have critical implications for women's health – particularly in terms of access to medicines for their specific health needs.**²⁹⁹ To the extent that stronger intellectual property protections – as those anticipated by TRIPS – result in drug prices that people in southern countries cannot afford, TRIPS arrangements (and TRIPS-Plus agreements) may contribute directly to reduced access to medicines. Another set of factors that affects access to essential medicines is the presence, or absence of, efficient distribution mechanisms at national, regional and local levels for drugs and healthcare services in southern countries. In the absence of drug and healthcare distribution networks, medicines will not reach people who need them the most – even if they are available at affordable prices.³⁰⁰ Generally, women are more vulnerable to price rises of patent protected drugs, including ARV drugs. For instance, according to UN Women, 51 per cent of all HIV&AIDS affected persons are women, and 60 per cent of all youth affected by HIV&AIDS are young women and adolescent girls.³⁰¹ In many situations, women also have important responsibilities as carers, further increasing their need for accessible ARV drugs.

BOX 16: COUNTRY EXAMPLES – INTELLECTUAL PROPERTY PROVISIONS IN TRADE

To date, no NAP refers to gender impacts of intellectual property provisions in trade and investment arrangements. However, provisions in various national legislations and country-level initiatives may provide insights into how the gender impacts of intellectual property provisions in trade and investment may be addressed in national UNGPs implementation. Some illustrative examples are included below.

LEGISLATION PROTECTING TRADITIONAL KNOWLEDGE

The Government of the **Philippines** has passed legislation specifically addressing women's rights in the context of protecting traditional knowledge. The 2009 Magna Carta of Women provides equal rights to men and women in land titling, and in use and management of land, water and other natural resources.³⁰² The Act also acknowledges special rights of indigenous women, including their 'rights to the enjoyment, use, and management of land, water, and other natural resources within their communities or ancestral domains'. It also seeks to ensure the protection of indigenous women's 'knowledge systems and practices, traditional livelihoods, and other manifestations of their cultures and ways of life ... [p]rovided that [such] cultural systems and practices are not discriminatory to women'.³⁰³

The **Peruvian** 2002 Law No. 27811 deals with protecting the collective knowledge of indigenous peoples attained from biological resources, aiming 'to promote the fair and equitable distribution of the benefits derived from the use of ... collective knowledge'. It also acknowledges customary laws and protocols concerning benefit sharing.³⁰⁴

Likewise, the role of customary law and practices is recognised in the 2010 Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore within the Framework of the African Regional Intellectual Property Organization.³⁰⁵ This type of legislation can benefit women, who frequently play a vital role in conserving biological diversity, as it provides for the sharing of benefits that arise from the commercialisation of products based on traditional knowledge.

MEASURES AGAINST PATENT PROTECTED DRUGS

In order to supply its HIV programme and make it more available for its citizens, the **Brazilian** Government has sought ways to encourage the international pharmaceutical industry to negotiate the price in sale of drugs. With specific reference to the United Nations Development Programme Human Development Index, the Government developed the 1997 Brazilian Intellectual Property Law.³⁰⁶ The Law grants a government authority the power to 'issue a compulsory licence where a patent holder exercises patent rights in an abusive manner, or by means of an abuse of economic power proven by an administrative or court decision'. For several years, the enactment of the law was useful to the Government in negotiations with companies, resulting in lower prices of patent medicines.³⁰⁷ Furthermore, in 2007, the Law allowed the Government to issue a compulsory licence on efavirnez, a medicine treating HIV.³⁰⁸ This licence allows the government to import generic efavirnez from India instead of patented efavirnez, which significantly reduces the cost of the medicine.³⁰⁹ While issues associated with the quality of generic drugs need to be acknowledged and addressed, generic drugs can make an important contribution to reduction of costs, providing they meet the relevant quality standards.

The Treatment Action Campaign was set up in 1998 and is a **South African** social movement working to secure access to effective treatment through the public health system for people living with HIV and AIDS. In 1997, the South African Government initiated the Medicines and Related Substances Control Amendment Act, which 'allowed for the substitution of brand-name medicines with generic medicines once a patent had expired,

the importation of generic medications, and a transparent pricing mechanism'.³¹⁰ Multinational pharmaceutical companies saw the Act as a violation of their drug patents and future profits for new innovations. As an effort to stop the Act, the Pharmaceutical Manufacturers' Association and 40 international drug corporations took the South African Government to court, with the support of the US Government, and postponed the implementation of the Law for three years.³¹¹ As a reaction to this, the Treatment Action Campaign was initiated to support the Government against the pharmaceutical companies and worked closely with the Congress of South African Trade Unions to organise communities against the actions of the transnational corporations. Medecins sans Frontières supported the campaign by initiating a universal 'Drop the case petition' against the pharmaceutical corporations. In 2001, the Pharmaceutical Manufacturers' Association dropped its lawsuit after the US FDA agreed with the South African Government on the fact that for emergency situations like the HIV&AIDS epidemic (but no more) the TRIPS flexibilities would apply.³¹²

Being categorised as a 'least developed country', **Bangladesh** has had access to a special WTO waiver. This waiver has allowed **Bangladesh** to enact its 1982 Drugs Control Ordinance, which makes it possible for the Government to regulate the price of drugs and limit the imports of medicine if the drug, or a substitute, is produced domestically in Bangladesh. The 2005 National Drug Policy declared that the Government would provide basic services and facilities to local generic drug manufacturing industries.³¹³

2.8 TRADE AND INVESTMENT – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION

- Evaluate and address the actual and potential gender implications of trade arrangements – such as liberalisation of specific sectors, implications of tariffs, potential impacts on social services.
- Perform ex ante human rights and gender analysis of trade and investment proposals to evaluate potential adverse impacts and potential benefits for women and girls. This should include robust and meaningful consultations with affected rights-holders and communities, as well as other relevant stakeholders such as civil society.
- Generate and use sex-disaggregated data in the human rights analysis of trade and investment options.
- Ensure parliamentary oversight of trade and investment agreements.
- Pay particular attention to critical issues in trade and investment that are known to disproportionately adversely impact women and girls – such as food security and access to medicines.
- Use trade and investment negotiations and arrangements to proactively address gender inequalities – such as through targeting women in job creation in under-represented sectors and industries.
- Align human rights and trade and investment objectives in policy and practice to ensure policy coherence and the transfer of commitments to non-discrimination and gender equality in trade and investment policies and agreements.
- Ensure that any trade and investment agreements allow sufficient policy space for

the state to meet its international human rights obligations – e.g., avoid international investor-state dispute settlement mechanisms.

- Recognise and proactively address the over-representation of women in the services sector and the resulting gender concerns in the services sector implicated by trade and investment arrangements.

2.9 ACCESS TO EFFECTIVE REMEDY – ISSUES AND COUNTRY EXAMPLES

2.9.1 GENDER CONSIDERATIONS FOR ACCESS TO EFFECTIVE REMEDY

The right to remedy is not only a human right on its own but also a pre-requisite for the enjoyment of other human rights.³¹⁴ A gender analysis is therefore necessary to ensure that women who are victims of business-related human rights abuses have access to effective remedies. The third pillar of the UNGPs is dedicated to remedy. This includes access to judicial (e.g., courts, including specialised courts such as on land, labour or consumer issues) and non-judicial remedies (including both state-based mechanisms, such as national human rights institutions, as well as non-state-based mechanisms, such as grievance mechanisms provided by financial institutions or operational-level grievance mechanisms provided by companies).³¹⁵ In national UNGPs implementation, states should ensure that each of these avenues is accessible for women, as well as address any gender-related factors in setting up and administering these remedy channels for business-related complaints and instances.

The OHCHR, for example, has undertaken extensive research looking at the barriers to access to remedy in BHR and has recommended law and policy measures on how states might address them, including several references to the importance of gender in doing so.³¹⁶ Gender

norms, interfering with women's leadership and agency, along with their disproportionate unpaid care responsibilities, undermine women's voice, time and freedom of movement to participate in remedial processes.³¹⁷ Furthermore, gender inequalities in access to education means that women frequently have lower levels of literacy and awareness of rights, laws and available mechanisms for redress – whether judicial or non-judicial – and how to access them. Additionally, women working under insecure (or non-existent) work contracts often have to put their jobs and livelihoods at risk when trying to access remedy.³¹⁸

Overall, the general **absence of gender sensitivity within judicial, non-judicial and company-based grievance mechanisms (and among the state or business actors overseeing them) means that women's specific concerns – whether immediate or long-term – are often overlooked.**³¹⁹ The UNWG, for instance, notes that 'States should take appropriate affirmative action to provide access to effective remedies to marginalized or vulnerable groups', specifically women, as they experience the impacts of business-related human rights abuses differently and face additional barriers because of 'discriminatory laws, gendered roles, economic marginalization, social stigma, power imbalances, religious values and cultural norms'.³²⁰

The threat of sexual or gender-based violence perpetrated by business or state actors, and the stigma associated with such violence, can deter women from seeking redress. Even where it is possible, it can be particularly difficult for women to access redress due to the potentially sensitive nature of the issues, such as reproductive rights.³²¹ In industries or settings where the majority of the workers are women and most supervisory and management positions are held by men, for example in the apparel industry, access to remedy is impeded as women may be reluctant to come forward to

report even the most egregious abuse or sexual harassment. The lack of female representation among management can also mean that women's needs are not properly articulated and addressed – such as requests to improve quantity and quality of on-site childcare, or the desire of female workers to access transportation from their work place.³²²

There are also concerns about remedy for human rights violations that fails to take into account the gender dimensions within households. For instance, the UNWG notes that 'even if women do have access to remedial mechanisms, the dispute resolution process may lack gender sensitivity or compensation awarded may not reach them because of patriarchal social structures.'³²³ Changes in household finances may also cause increasing domestic violence due to disagreement about priorities for spending the funds. When payment of compensation or benefits are paid out by companies, these often go to the man of the household, or on behalf of their families and communities. This denies women access to, and control over, the financial benefits of, for instance, large-scale industry projects. Instead, it encourages women's economic dependence on men – exacerbating existing inequalities.³²⁴ Settlements with companies or profit sharing agreements that do not take into account the gender dimensions of how the money will be distributed can also indirectly contribute to increased levels of violence against women.³²⁵

2.9.2 BARRIERS TO JUDICIAL REMEDY AND ACCESS TO JUSTICE

Normative frameworks for advancing women's rights have progressed significantly over the past decades. However, **studies show that women around the world continue to have little or no access to formal justice systems, and much less the ability to hold large business actors to account.**³²⁶ The marginalisation of women in many contexts, stemming from entrenched gender-based power asymmetries,

means that their barriers to accessing justice are frequently further increased.³²⁷ As noted by the UN Working Group on the Elimination of Discrimination Against Women in Law and Practice, for instance, the effective elimination of discrimination against women in economic and social life requires gender-responsive and effective accountability systems. Although there have been some judicial decisions on discrimination against women in economic and social life at the international, regional and national levels, the numbers are disturbingly low.³²⁸ A European Union and Council of Europe study in Five Eastern Partnership Countries found that despite the significant legislative progress made, especially in the adoption of laws and policies, women still face barriers in access to justice including 'de jure discrimination of women, such as protective labour legislation that restricts women's access to certain professions and types of work, or gaps in the antidiscrimination legislative frameworks. Further barriers have been observed in the area of labour law, such as limitations on fathers' access to parental leave or the unlawful dismissal of pregnant women.'³²⁹

A 2016 World Bank Report on Women, Business and the Law highlights that **women's access to justice can be affected by limits on their representation in judicial institutions.**³³⁰

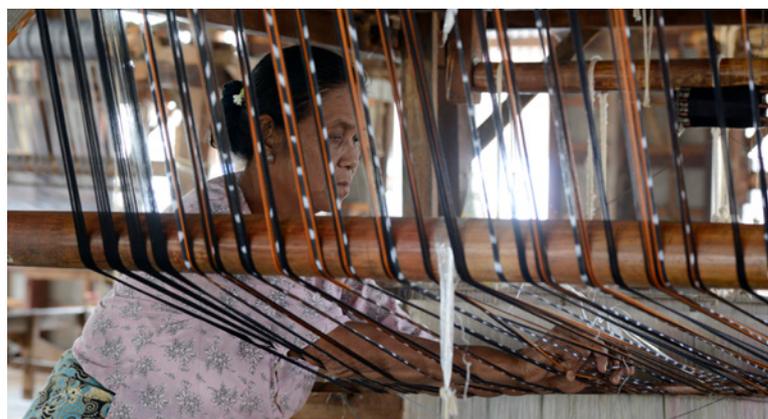
Evidence is emerging that women judges can make a difference in cases where gender is an issue, such as sex discrimination and sexual harassment, and plaintiffs were twice as likely to win when a woman was on the panel deciding the cases. With that said, 'the United Nations estimates that globally women account for 27% of all judges.'³³¹

Financial costs of participating in grievance processes and the lack of legal aid can be a huge obstacle for women accessing justice, given their socioeconomic marginalisation in many contexts.³³² Small claims courts have been shown to provide an alternative to more

expensive judicial litigation making it ideal for small businesses, many of which are owned by women. However, fifty-three economies do not have small claims courts and while 90 per cent of OECD high-income economies have such courts, only 46 per cent of economies in Sub-Saharan Africa do.³³³

Moreover, women within marginalised groups can encounter additional legal and structural barriers in accessing judicial mechanisms. These include, for instance, migrant women, displaced or indigenous women – especially if they only communicate in their own native language.³³⁴ An intersectional lens that unpacks these nuances is therefore especially important to ensure that justice systems can adapt and respond to these contexts (e.g., firewalls to ensure undocumented migrant women can register complaints, or greater sensitivity within the judicial system on addressing the rights of sex workers).

The increasing complexity of business operations (operating in different countries, through different actors) requires remedies that reach beyond national boundaries and that are able to investigate complex corporate structures, finances and relationships. Thus, civil remedies, such as tort law, may be the only option in some of these cases. However, this area of law may not always be the best suited to address gender discrimination, inequality and human rights abuses.³³⁵



BOX 17: COUNTRY EXAMPLES – GENDER AND JUDICIAL REMEDIES

To date, no NAP explicitly refers to women or gender in the context of access to remedies.³³⁶ However, looking beyond NAPs, there are examples of legislation and court cases that promote women's access to remedy in BHR, which might be useful in informing future NAP developments. Some illustrative examples are included below.

DOMESTIC LAWS

Sex, pregnancy and family responsibilities are explicitly referred to as illicit reasons of discrimination in the legislation of numerous countries, for example, **Australia, France, Italy** and the **Republic of Korea**.³³⁷ According to legislation in **Argentina, Colombia, Germany, Mauritania, Sri Lanka** and **Zambia**, when firing a pregnant employee, the burden of proof that the termination of employment is not linked to the pregnancy lies with the employer.³³⁸ In **Austria, Chile, Guatemala** and **Panama**, employers are bound to request legal or administrative approval before dismissing a pregnant or nursing employee.³³⁹ A legal or administrative permission is required before dismissing a pregnant or nursing employee in **Venezuela, Equatorial Guinea** and **Slovenia**.³⁴⁰ These types of provisions are important for women employees in all industries to seek remedy for discrimination based on sex, pregnancy or family responsibilities.

CLASS ACTION

Class action can be beneficial for women as it can decrease legal costs and risks for plaintiffs. Collective legal actions are possible in several countries, for instance, **the US, the UK, France, Germany, Japan** and **China**; however, there are some differences in the types of claims that can qualify as class actions, depending on the state. Furthermore, the collective action arrangements that are

permitted do not always meet the particular needs of claimants in cases involving gross human rights abuses.³⁴¹

LEGAL AID

Legal aid is critical for overcoming barriers to judicial remedies for women, as it helps to address the economic barrier that frequently constrain women's access to remedy.³⁴² The availability and accessibility of legal aid for women in BHR cases is therefore important. **Denmark, England** and **Wales**, for example, grant legal aid regardless of the plaintiffs' nationality or residence.³⁴³

JUDICIAL DECISIONS ON DISCRIMINATION AGAINST WOMEN

In 2001, six women employed at Walmart initiated a lawsuit against their workplace in the **US** Federal Court, claiming that they were being discriminated against in relation to pay, benefits and training.³⁴⁴ In 2003, the complainants filed an amended complaint requesting that the court validate the case as a class action on 'behalf of current and former female Walmart employees maintaining that the discrimination faced by the original plaintiffs was systematic in nature and affected all women employed by Walmart.'³⁴⁵ In 2004, the court accepted the complainants' submission for class action, meaning that the lawsuit would represent roughly 1.5 million women. This was appealed by Walmart, arguing that each claim should be made individually. The Ninth Circuit Court of Appeals maintained the ruling in 2007 and 2009. However, in 2011 the Supreme Court overruled the decision. The plaintiffs re-filed their complaint with the Federal Court in San Francisco, and with the US Equal Employment Opportunity Commission, but it was denied there as well. In November 2017, the women who were part of the initial suit filed a new lawsuit in Florida Southern District Court and the case is currently ongoing.³⁴⁶

In 2013, the largest public sector union in the **UK** (Unison) made an agreement with Birmingham City Council that involved roughly 11,000 women council workers. It alleged that the council had subjected women working as cooks, cleaners and care assistants to systematic discrimination by paying them less in their bonuses and benefits than male council workers. At first, the council disputed the allegation but ultimately agreed to settle the claim.³⁴⁷

In the period 2010-2012, the **Australian** Service Union brought a claim to the government's employment ombudsman (Fair Work Australia) about equal pay for women. Fair Work Australia decided that gender had been an important factor in underrating the public sector's largely female workforce. Ultimately, the case resulted in an increase of 23 to 45 per cent to the workers' salary over the span of eight years, benefitting 150,000 workers. Unions hope that the case will help to establish an equal pay standard in more industries.³⁴⁸

In 2012, the Kingsland garment factory in **Cambodia**, a subcontractor of a supplier to the companies H&M and Walmart, shut down their factory.³⁴⁹ Most of the workers were women and were left without work and compensation.³⁵⁰ Roughly 200 workers demonstrated for two months by sleeping outside the factory and preventing the sewing machines from being transferred, and 82 workers initiated a hunger strike.³⁵¹ Even though the supplier's use of the subcontractor breached its agreement with H&M, which technically did not have any direct legal liability, H&M decided that it could help to improve the situation. Together with NGOs, the Cambodian Arbitration Council, the Government and the ILO, the workers were compensated. H&M developed clear guidance on their expectations of suppliers and, with cooperation from trade unions, established a whistle-blower system.³⁵²

REMEDIES THAT REACH BEYOND BORDERS

In 2016, the Regional Court of Dortmund in **Germany** issued a primary resolution to accept jurisdiction for a case regarding individuals who have suffered from a fire in a textile factory in Pakistan. The claim was brought against the German discount clothing merchant KiK. The case is still pending but the initial hearing indicated that German companies may be held accountable for illegal conduct in foreign countries under certain circumstances. As the workforce in many apparel factories consists mainly of women, these types of judicial decisions may contribute to strengthening the position of women in access to remedy for business-related human rights abuses.³⁵³

2.9.3 WOMEN HUMAN RIGHTS DEFENDERS

While women human rights defenders (WHRDs) are subject to the same types of risks as other HRDs, they are also targeted for, or exposed to, gender-specific threats and violence. This is particularly true where the **work of WHRDs is perceived as challenging traditional family and gender roles in society**.³⁵⁴ As noted by the Special Rapporteur on the Situation of Human Rights Defenders, for instance, 'women human rights defenders are particularly at risk when leading the opposition to companies and reporting human rights abuses. They are targeted both as human rights defenders but also because they are women. Women human rights defenders are often at the forefront of human rights battles, partly because they are directly affected by human rights violations and because they challenge companies' power and deeply rooted patriarchy.'³⁵⁵

In 2017, the UNWG launched a workstream on this issue, noting the **'increasing records of killings, attacks, threats and harassment against human rights defenders who speak up against business-related human rights issues,**

including the particular challenges faced by WHRDs.³⁵⁶ National human rights institutions have also called for particular attention to WHRDs in the 2018 Marrakech Declaration on human rights defenders, which notes that ‘women human rights defenders, whilst facing similar risks as other human rights defenders, may also face additional gender-specific discrimination and violence, not only by State agents but also private actors. This comes in the form of intimidation, threats, and sexual violence. This may also happen not only in their own organizations, in their communities, and in their families. They also face social, political, cultural and religious barriers.’³⁵⁷ According to the 2017 report of Front Line Defenders, threats were more commonly used against WHRDs than their male counterparts. Approximately 23 per cent of the Urgent Appeals on WHRDs issued by Front Line Defenders in 2017 related to threats or intimidation as a result of their work, compared to 10 per cent for their male counterparts. Reportedly, the gendered dynamic to the targeting of WHRDs was prevalent in every region in 2017.³⁵⁸

BOX 18: COUNTRY EXAMPLES – WOMEN HUMAN RIGHTS DEFENDERS

As an outcome of strong promotion from many women’s rights groups in Colombia, the country’s Ministry of Interior adopted the 2012 Resolution 0805, which acknowledges WHRD’s ‘specific prevention and protection needs’³⁵⁹ and has therefore initiated a gender protocol to improve their safety. The resolution’s essential provisions include, for instance, ‘the extension of the state sponsored protection measures to WHRD’s children and other family members and the inclusion of principles that prioritizes consultation with WHRD’s’ and ‘gender sensitization and training of officials involved in WHRDs protection cases.’³⁶⁰

2.9.4 GENDER AND NON-JUDICIAL REMEDIES

Non-judicial grievance mechanisms include, for instance, intergovernmental grievance mechanisms (such as mechanisms linked to UN treaty-based and charter-based bodies), the ILO’s Committee on Freedom of Association, national contact points, national human rights institutions, mechanisms associated with the international finance institutions (such as the Inspection Panel of the World Bank and the Compliance Advisor/Ombudsman of the IFC), sectoral and multi-stakeholder grievance mechanisms (such as the Fair Wear Foundation), and operational-level grievance mechanisms (established by businesses themselves).³⁶¹ **All non-judicial grievance mechanisms should meet the effectiveness criteria set out in the UNGPs, as being: legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement.**³⁶²

In its 2018 report to the UN General Assembly, the UNWG explains how women’s experiences and expectations should inform the provision of effective remedies, in all types of remedial mechanisms, in line with the UNGPs. It states that women’s experiences should be relevant in three interrelated ways: ‘how corporate activities may affect women differently, including by reinforcing or exacerbating existing gender discrimination or exacerbating existing gender discrimination by adopting gender-neutral policies; what additional barriers women may face in gaining access to effective remedies to redress human rights abuses; and what remedial responses women may need to achieve substantive justice in an era in which the private sector is playing a dominant role.’³⁶³ The UNWG thus states that it is ‘critical for both States and business to engage with women by applying gender lens while implementing the UNGPs, including pillar III.’³⁶⁴

According to the International Women's Rights Action Watch in Asia Pacific and Landesa, **designing effective, gender-responsive remedies requires specific attention to women's social contexts and legal rights status.** For instance, company-based grievance mechanisms can ensure that women's land rights and interests are captured, although their rights are generally more likely than men's to be unregistered, informal and contested. Establishing such remedies will require local knowledge and assistance and involve consultations with both men and women in the affected communities.³⁶⁵ Considering effective gender representation and participation in local contexts and cultural dynamics is also important. Mediation and other types of alternative dispute resolution, such as assisted dialogue or joint fact-finding, can assist in this regard.³⁶⁶

Moreover, there have been cases of women reporting allegations of sexual assault and rape by companies' private security firms, with remediation packages falling short of international standards, including the UNGPs. **Operational-level grievance mechanisms should thus be independently reviewed, and the right to access court and obtain judicial review or appeal decisions should be facilitated.** Stakeholders have also argued that states should ensure that violence against women should not be addressed by non-judicial mechanisms, in particular operational-level grievance mechanisms, but should be sanctioned under criminal law.³⁶⁷ Where in place, operational-level grievance mechanisms can serve to not only address specific instances but to also filter and capture more systemic gender issues in a particular community-company context.

BOX 19: COUNTRY EXAMPLES – GENDER AND NON-JUDICIAL REMEDIES

To date, although many states have a section in their NAP regarding non-judicial grievance resolution, only the NAPs for Denmark and Norway explicitly refer to gender.³⁶⁸

The **Danish** Government has established a Mediation and Complaints-Handling Institution for Responsible Business Conduct, which receives complaints and investigates and mediates in cases concerning alleged breaches of the OECD Guidelines for Multinational Enterprises by Danish organisations or their business partners. Additionally, non-judicial institutions for business-related human rights abuses, such as the Employment Tribunals, national Ombudsman and Consumer tribunal, are accessible for filing complaints. Furthermore, the Danish NAP explicitly mentions mechanisms in place for dealing with cases of gender discrimination in employment or services.³⁶⁹

The **Norwegian** Government has set up institutions such as the Labour Inspection Authority and the Equality and Anti-discrimination Ombudsman. The Norwegian NAP furthermore states that there are complaints mechanisms in connection with the rights of employees, children, women and men.³⁷⁰

FEMALE REPRESENTATION IN GRIEVANCE MECHANISMS

If grievance mechanisms build on and complement other community engagement processes, their cultural appropriateness is likely to be increased. An example of this is Newmont's Ahafo project in **Ghana**, which initiated a Women Consultative Committee in 2008.³⁷¹ The Committee has 95 members that come together each quarter to review matters

affecting women, such as employment, access to credit, and scholarships for children's education.³⁷² Resolving officers in charge of Ahafo's grievance mechanism explain how the raised issues are dealt with, and the committee members then inform other women. If an issue cannot be solved at a meeting, it is dealt with through Ahafo's grievance procedure.³⁷³

Together with local partner NGOs in **Bangladesh and India**, the Fair Wear Foundation initiated a programme in 2011 to raise awareness of anti-harassment laws in garment factories with the establishment of anti-harassment committees. As the trust for the committees and the awareness of anti-harassment laws grew, more severe issues were reported in these workplaces. The committees consist of elected workers who can file grievances on behalf of workers who experience harassment or concerns about safety. In order to make sure that the cases are resolved properly, they work with the factory management. In both India and Bangladesh, the law requires that factories create policies to address grievances and to prevent and respond to workplace harassment; in turn, these laws govern the work of the committees.³⁷⁴ Although there is still plenty of room for improvement, progress has been made. Since 2014, Fair Wear Foundation, with their partners Social Awareness and Voluntary Education and CIVIDEP India, have managed training programmes for factory supervisors in India's garment industry.³⁷⁵

2.10 ACCESS TO EFFECTIVE REMEDY – POINTS FOR STATE CONSIDERATION IN UNGPS IMPLEMENTATION

- **Address barriers to judicial remedies** that have particular relevance to women – such as access to legal aid, physical accessibility (taking into account women with disabilities but also rural women and women living in remote areas), language and literacy barriers.
- **Periodic monitoring of BHR data within the judicial system** – i.e. periodically and systematically collect data to understand how many cases per year deal with BHR, including details on how these were addressed from a women's rights perspective.
- Adjust **domestic laws** to enable the hearing of business-related human rights complaints, including addressing common barriers such as burden of proof.
- Implement **capacity building for the judiciary** on business-related human rights complaints, including any relevant gender dimensions – such as challenges around sexual and gender-based violence cases or discrimination in land rights that inhibit women's access to judicial remedies.
- **Improve investigation and prosecution of crimes associated with business entities.**
- Make provisions for hearing **extraterritorial human rights claims** in home countries, particularly in instances where access to justice in host countries is limited or has been exhausted.
- Mandate the **national human rights institution and/or equality body** to address gender and business-related human rights complaints – including through the application of multiple mandate areas, such as investigations, complaints handling and education.

- Proactively address threats faced by **WHRDs** – including by targeting specific industries or issues where WHRDs are at risk (e.g., adopt laws and policies that reaffirm that no interference, intimidation, abuse, threat, violence or reprisal against WHRDs will be tolerated; conduct prompt, thorough and impartial investigations into any interference and ensure accountability for perpetrators; and strengthen state institutions responsible for safeguarding and supporting the work of human rights defenders³⁷⁶).
- Provide guidance to industry on the **compliance of operational-level grievance mechanisms with the eight effectiveness criteria of the UNGPs**, including specific provisions to ensure that processes and outcomes of such mechanisms are compatible with international human rights law and do not prevent access to judicial remedies.
- **Involve women in the design and implementation of non-judicial grievance mechanisms** for business and industry to ensure that gender-related aspects are adequately addressed.
- Reflect awareness of the **particular challenges faced by specific groups**

- **of women**, e.g., indigenous women, in business-related human rights complaints – such as by requiring women's participation in the hearing and resolution of complaints regarding land use agreement implementation.
- **Address barriers to access to justice experienced by women** – such as by providing legal access to individuals despite their nationality, residence or migrant status, and allow class action.
- **Enable access to remedy for women and work specific grievances** – e.g., the burden of proof should lie on the employer in cases of dismissal of pregnant or nursing workers, employers should be obliged to request legal or administrative approval for dismissal of a pregnant or nursing worker.
- Assist and require companies to develop **clear guidance on their grievance resolution expectations of suppliers**, in particular in female dominated industries.
- **Encourage companies to work with diverse and independent civil society actors, human rights defenders and national human rights institutions**, and use them as access points to BHR-related grievances.



ANNEX I: OVERVIEW OF WOMEN'S RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW AND THE 2030 SUSTAINABLE DEVELOPMENT AGENDA

This Annex provides an overview of key concepts and definitions regarding women's rights and further outlines the rationale for strengthening attention to gender in UNGPs implementation, based on international human rights law and 2030 Agenda perspectives.

KEY CONCEPTS AND DEFINITIONS

DEFINITION OF DISCRIMINATION AGAINST WOMEN AND GIRLS

The prohibition of discrimination against women and girls in international human rights law is broad, and includes both direct and indirect discrimination. Article 1 of CEDAW describes discrimination against women and girls as: 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'³⁷⁷

Sex and gender are often used interchangeably in the context of discrimination, however, it is important to understand that there are some differences between the terms. While 'sex' is usually used to refer to a person's biological and anatomical characteristics,³⁷⁸ 'gender' is usually used to describe characteristics that are associated with a certain sex through social roles, norms and expectations. 'Gender identity' is a term frequently used to refer to personal identification of one's own gender.³⁷⁹

FORMAL AND SUBSTANTIVE EQUALITY

While formal (or **de jure**) gender equality looks at equality between men and women in and before the law, substantive (or **de facto**) gender equality considers whether women enjoy equality with men in practice.³⁸⁰ For example, women and men may formally have the same right to apply for work in a certain industry, however, due to social roles, norms and stereotypes women may be less likely to apply for jobs in the industry, be successful in the case of applying, or work in the industry for long enough to be eligible for more senior positions. The concept of substantive equality arose out of the realisation that formal equality may not be sufficient for ensuring full equality between men and women.³⁸¹

MEANING AND RELEVANCE OF INTERSECTIONALITY

Women are not a homogenous group and their experiences vary greatly depending on the region, country, socioeconomic class and their identities as members of different groups, such as minorities and migrants (among others).

Multiple (or intersectional) forms of discrimination arise from a combination of discriminatory treatments based upon various grounds which produces compounded discrimination. Intersectionality takes into account historical, social and political contexts, and recognises the unique experience of women who have been targets of discrimination on more than one ground.³⁸² Importantly, intersectionality recognises that women who may be subject to discrimination on more than

one ground (e.g., race and gender) do not simply experience 'double' discrimination but experience discrimination from a particular and unique position that is shaped by these multiple factors.³⁸³

MEANING AND USE OF SPECIAL MEASURES

At times, non-identical treatment of women and men will be required to address and overcome certain substantive inequalities. A common strategy to combat such inequalities is the use of temporary 'special measures' to support the achievement of equality. This is sometimes called 'affirmative action' or 'equal opportunities'. An example might be a hiring programme targeting female applicants in a male-dominated profession, or setting quotas for female participation on company boards.

Article 4(1) of CEDAW states that the 'adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objective of equality of opportunity and treatment have been achieved.'

According to the CEDAW Committee, the purpose of Article 4(1), on temporary special measures, is to accelerate the improvement of the position of women in order to achieve their *de facto* or substantive equality with men.³⁸⁴

WOMEN'S RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental human rights and essential UN values. Today, discrimination based on sex is prohibited under almost every human rights treaty, and states have a positive obligation to protect and promote gender equality in all their activities.

UN CHARTER AND UDHR PROVISIONS

Adopted in 1945, the UN Charter stipulates that one of its goals is 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, (and) in the equal rights of men and women'.³⁸⁵

It also states that one of the core purposes of the UN is to promote respect for human rights and fundamental freedoms 'without distinction as to race, sex, language or religion'.³⁸⁶ The prohibition of discrimination based on sex is repeated in Articles 13 (on the mandate of the United Nations General Assembly) and 55 (on the promotion of universal human rights).

Similarly, the Universal Declaration of Human Rights (1948) proclaims that the rights contained in it must be applied 'without distinction of any kind, such as ... sex'.³⁸⁷

ICCPR AND ICESCR PROVISIONS

The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) prohibit discrimination based on, inter alia, sex (Common Article 2), and ensure the equal right of men and women to the enjoyment of all rights contained in them (Common Article 3). The ICCPR also provides for equality before the law and equal protection of the law (Article 26).

CEDAW PROVISIONS

Among the international human rights treaties, CEDAW takes an important place in bringing the female half of humanity into focus of human rights concerns. Adopted in 1979, it has come to be known as the 'international bill of women's human rights'.

Article 3 of the Convention gives positive affirmation to the principle of equality, requiring ratifying states to take 'all appropriate measures, including legislation, to ensure the full development and advancement of women,

for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men'.³⁸⁸

Not only does CEDAW provide that states are obliged to address discriminatory laws, but also to take measures to eliminate discrimination against women 'by any person, organisation or enterprise'.³⁸⁹ Thus, when developing a policy of eliminating discrimination against women, states must engage the private sector, including business enterprises, and enlist their involvement in adopting measures that fulfil the goals of the Convention.³⁹⁰

Article 4 provides that states may invoke temporary special measures (also known as 'equal opportunity measures') to accelerate **de facto** equality between men and women. These measures are not considered discriminatory under the Convention, as long as they are discontinued when the objectives of equality of opportunity and treatment have been achieved.³⁹¹

The Convention also seeks to ensure equal opportunities, free choice of profession, the right to promotion and equal remuneration and equal treatment, among others (Article 11).

Article 14 specifically addresses discrimination against women in rural contexts, and provides that they should have equal access to economic opportunities through employment or self-employment, including through organising self-help groups and/or cooperatives.

Oversight of the implementation of CEDAW is the task of the CEDAW Committee.³⁹² The Committee issues general recommendations (the equivalent of general comments), all of which are directly related to critical areas of concern, as well as state reviews. Several of these recommendations are directly relevant to BHR, addressing topics such

as equal remuneration for work of equal value (Recommendation 13), unpaid women workers in rural and urban family enterprises (Recommendation 16) and women migrant workers (Recommendation 26), for example.³⁹³

The Optional Protocol to CEDAW allows the Committee to consider complaints made by individuals on violations of rights enshrined in the Convention.³⁹⁴

ILO PROVISIONS

The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work states that all members states, even if they have not ratified the relevant conventions, have an obligation to promote and realise the principles concerning fundamental rights, such as 'the elimination of discrimination in respect of employment and occupation'.³⁹⁵ Moreover, the ILO Declaration on Equality of Opportunity and Treatment for Women Workers provides that 'all forms of discrimination on grounds of sex which deny or restrict such equality are unacceptable and must be eliminated'.³⁹⁶

Two out of the eight ILO core conventions include specific provisions seeking to promote gender equality, including the Equal Remuneration Convention (No. 100), which establishes equal pay for equal work, and the Discrimination (Employment and Occupation) Convention (No. 111) which provides that persons cannot be discriminated against in employment or their occupation based on their sex, race, colour, religion etc.

In addition, many other conventions address women's reproductive roles and ability to participate in work life, including the Workers With Family Responsibilities Convention (No. 156), the Workers With Family Responsibilities Recommendation (No. 165), the Maternity Protection Conventions (Nos. 103 and 183), and the Maternity Protection Recommendation No. 191.

REGIONAL HUMAN RIGHTS INSTRUMENTS PROVISIONS

In addition to international standards, regional human rights treaties include key provisions aimed at promoting and protecting women's human rights.

For instance, the African Charter on Human and People's Rights prohibits discrimination on any grounds, including sex, in the enjoyment of the rights guaranteed by the Charter (Article 2). It also specifically mentions the obligation of African states to ensure the elimination of every discrimination against women, as stipulated in international declarations and conventions (Article 18). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (also known as the 'Maputo Protocol') further elaborates states' obligations with regard to women's rights.³⁹⁷

The Charter of the Organization of American States includes a non-discrimination provision in Chapter II, and Article 3 (I), and the American Convention on Human Rights in its Article 1. In 1994, the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

The Revised Arab Charter on Human Rights upholds the right to non-discrimination (Article 3) and to equal protection before the law (Articles 11, 12 and 22).

The European Convention on Human Rights and Fundamental Freedoms prohibits discrimination on any grounds, including sex, in the enjoyment of the rights contained in the Convention (Article 14).

THE BEIJING DECLARATION AND PLATFORM FOR ACTION

The 1995 Beijing Declaration and Platform for Action of the Fourth World Conference on Women identified, as a critical policy

priority in the global economy, the continuous burden of poverty on women, inequalities in education, training, economic structures and policies, productive activities and access to resources. The Declaration identifies a number of action points specific to women's rights in the context of business activities, for example, noting the need for: increased training opportunities for women to enable participation in different industries; better understanding the contribution of women's paid and unpaid work in economies; increased access to finance for women and women's businesses; and promoting small and cooperative enterprises, including by reforming laws and regulations that may discriminate against women's participation in these types of business activities.³⁹⁸

The Commission on the Status of Women has the primary mandate to monitor and review the implementation of the Beijing Declaration and Platform for Action, and in mainstreaming a gender perspective throughout the UN's activities.

Following the adoption of the 2030 Agenda for Sustainable Development in 2015, the Commission on the Status of Women also contributes to the follow-up to the 2030 Agenda, so as to accelerate the realisation of gender equality and empowerment of women.³⁹⁹

RELEVANT PROVISIONS ON WOMEN, BUSINESS AND HUMAN RIGHTS FROM UN SPECIAL PROCEDURES

The special procedures of the United Nations Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. These procedures cover all human rights, including civil, cultural, economic, political and social rights.

Several thematic mandates are specifically devoted to women's rights, namely: the Special

Rapporteur on violence against women, its causes and consequences; the Working Group on discrimination against women in law and practice; and the Special Rapporteur on trafficking, especially women and children.

The Working Group on discrimination against women in law and practice:

Notes that there are significant barriers to women's access to leadership and decision-making positions in many financial institutions, which generate policies that determine the quality of life of women, men and their communities. Moreover, in the emerging area of business responsibility, the gendered harm to women, resulting from transnational business and trade policies, has been largely invisible. There is thus a need to address these issues, and develop tools for gender responsiveness in economic leadership and business responsibility.⁴⁰⁰

The Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly social, economic and cultural rights:

Notes that corporate tax abuse forces governments to raise revenue from other sources, including through regressive taxes, the burden of which falls the hardest on the poor. He argues that this has important human rights implications since regressive tax structures limit the redistributive impact of social programmes, because they effectively end up being funded by the very people they are supposed to benefit. The need to make up revenue shortfalls via regressive taxes further undermines the realisation of economic and social rights for the most vulnerable. When low-income households face deteriorating public services, women and girls are frequently forced to take on additional costs of unpaid care needs. Furthermore, tax systems themselves are not gender neutral, and regressive taxes (such as consumption taxes) tend to fall

disproportionally upon women. Both regressive taxes and their effects, therefore arguably undermine the achievement of substantive equality for women.⁴⁰¹

The Special Rapporteur on trafficking, especially women and children:

Notes that individuals in conflict contexts are particularly vulnerable to human rights violations. Pre-existing vulnerabilities, such as gender-based discrimination affecting women, children and non-citizens, are usually worsened during conflict as opportunities for exploitation increase and protections break down.⁴⁰²

In post-conflict zones, the vulnerability of women and girls to trafficking-related exploitation is often heightened by their general lack of access to resources, education, protection and personal documentation. Moreover, the demand for cheap labour, in the aftermath of crises, when countries and businesses start to rebuild, may also lead to trafficking.⁴⁰³

THE RIGHTS OF WOMEN AND GIRLS AND THE 2030 AGENDA

Women's economic empowerment and the realisation of women's rights to and at work are critical for the achievement of the 2030 Agenda for Sustainable Development. Equality and non-discrimination – 'leaving no one behind' – are key crosscutting principles of the Agenda.⁴⁰⁴

Of particular importance is Goal 5 to 'achieve gender equality and empower all women and girls', consisting of the following targets and indicators:

- Target 5.1: End all forms of discrimination against women and girls everywhere; Indicator 5.1.1 - Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex.

- Target 5.2: Eliminate all forms of violence against all women in the public and private spheres, including trafficking and sexual and other types of exploitation. Indicator 5.2.1 - Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological violence by a current or former intimate partner in the previous 12 months, by form of violence and by age; and indicator 5.2.2 - Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence.
- Target 5.3: Eliminate all harmful practices such as child, early and forced marriage and female genital mutilation. Indicator 5.3.1 - Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18; and indicator 5.3.2 - Proportion of girls and women aged 15-49 years who have undergone female genital mutilation/cutting, by age.
- Target 5.4: Recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate. Indicator 5.4.1 - Proportion of time spent on unpaid domestic and care work, by sex, age and location.
- Target 5.5: Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life. Indicator 5.5.1 - Proportion of seats held by women in national parliaments and local governments; and indicator 5.5.2 - Proportion of women in managerial positions.
- Target 5.6: Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences. Indicator 5.6.1 - Proportion of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive healthcare; and indicator 5.6.2 - Number of countries with laws and regulations that guarantee women aged 15-49 years access to sexual and reproductive healthcare, information and education.
- Target 5.A: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. Indicator 5.A.1 - (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure; and indicator 5.A.2 - Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.
- Target 5.B: Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women. Indicator 5.B.1 - Proportion of individuals who own a mobile telephone, by sex.
- Target 5.C: Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels. Indicator 5.C.1 - Proportion of countries with systems to track and make public allocations for gender equality and women's empowerment.

Goal 8 is also important to achieving gender equality, seeking to accomplish “full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value”.

Further linkages to gender equality and women’s empowerment can be found in Goal 10 which seeks to “reduce inequality within and among countries”, emphasising income growth of the bottom 40 per cent of the population, the elimination of discrimination, and the adoption of fiscal wage and social protection policies to progressively achieve greater equality.

In his 2017 report, the Special Rapporteur on the right to development observes that the implementation of the right to development and related sustainable development processes have not been successful in integrating a gender perspective. He thus aims to pay particular attention to the gender dimensions of his work – especially the developmental challenges that women and girls face in most societies. These challenges are many, and range from laws that give unequal access to land and other resources, to development or disaster reduction policies that do not provide women with access to education and financing to develop their businesses, or even enough food to feed their families.⁴⁰⁵

CONTEXTUALISING THE LINKAGE BETWEEN BHR AND THE SDGS

The SDGs include a call to all businesses to play a role in their implementation.⁴⁰⁶ Contributing to the SDGs is neither a substitute for, nor unrelated to, implementation of the UNGPs. In fact, the two agendas are interwoven; in order for business to realise its full contribution to sustainable development, it must put efforts to advance respect for human rights at the heart of its strategy.⁴⁰⁷



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