



LandesaTM
Rural Development Institute

Center for Women's
Land Rights

**Submission to the UN Working Group on the issue of human rights and transnational corporations and other business enterprises on Access to Remedy
15 June 2017**

International Women's Rights Action Watch Asia Pacific, the Landesa Center for Women's Land Rights and others¹ welcome the opportunity to contribute to the upcoming report on Access to Remedy by the UN Working Group on Business and Human Rights. We are encouraged by the UN Working Group's growing attention to the impact of business activities on women's human rights.

General Context

Corporate human rights abuses and the impact of business risks occur within a context of unequal power relations, discriminatory practices and systemic inequalities. The power inequalities between States and corporations are illustrated by the fact that the world's top ten corporations have a combined revenue of more than 180 countries.² Trade and investment agreements make more space for corporate interests at the expense of the public interest. They erode the ability of States to regulate corporate activities through clauses that give corporations the right to sue governments through costly investor state dispute settlements. Increasingly, corporations have developed social responsibility pacts, policies, and grievance mechanism to mitigate and redress potential harms that may flow from their business activities, however international and domestic legal frameworks are currently limited in their ability to monitor as well as hold businesses accountable for their negative impacts and violations against individual victims and against community/public interests.

These power inequalities together with neoliberal macroeconomic policies and discriminatory practices often collude to have a disproportionate impact on women and their rights. Women are marginalized by biased laws, entrenched discriminatory practices and patriarchal systems that undermine their agency and autonomy and perpetrate gender inequalities. Women experience multiple and intersecting forms of discrimination based not only on their gender, but on their race, ethnicity, migrant status, religion, disability and other factors. This affects their ability to exercise their right to remedy for violations within the context of business activities. The discussion on access to remedy must therefore be located in this structural context of gender inequalities, unequal power relations and exclusion.

¹ This submission is supported by the Business and Human Rights Resource Centre, Cynthia Morel, Gender Equality Network, Institute for Policy Research and Advocacy (ELSAM) Indonesia, NGO Gender Group Myanmar, the Research Centre for Gender, Family and Environment in Development and STAR Kampuchea.

² Global Justice Now (September 2016): <http://www.globaljustice.org.uk/news/2016/sep/12/10-biggest-corporations-make-more-money-most-countries-world-combined>

How do women experience corporate human rights abuses differently from men? Please provide a few concrete examples or refer to relevant case studies.

Due to substantive inequalities, systemic discrimination, patriarchal barriers and gender stereotyping, corporate human rights abuses often have a disproportionate impact on women. Generally, women are not in equal positions of power and decision making; they are overrepresented in the informal sector and in precarious jobs at the bottom of global value chains. Corporate human rights abuses adversely affect women in their communities, not just because of women's role in the care economy, but because recognition and enforcement of their rights (for example their rights to equal access and control over land and natural resources) is still very limited. Below are a few examples of how corporate human rights abuses impact women.

a) Women workers

Women workers are often found in the most precarious working environments due to the inherent structural inequalities of the neoliberal economy that creates value chains which undervalue or make invisible the economic contributions of women. Prevailing gender social norms and an unequal division of labour in the home, translates into women bearing the brunt of unpaid care work. This burden limits work opportunities for women. Their lack of mobility and thus lack of access to markets affect their participation in the economy and confines them to the very bottom of global value chain operations. This is further exacerbated by gender stereotypes about women's work that often results in job segregation and gendered disparities in wages and benefits. In South Asia and Sub-Saharan Africa, the majority of employed women work in agriculture, but they generally lack secure rights to the land they depend on.³ In India, despite working the land alongside male counterparts, women are often not considered "farmers" because their names do not appear on land documents. In Cambodia for example, 90% of the garment workers are women, predominantly young migrant women from rural provinces. The garment industry, like many others, subscribes to gender stereotypes that women are cheaper, passive and flexible⁴ and Action Aid reports that from 2004-2009 Cambodia's gender wage gap doubled.⁵ Cambodia is not unique. Eighty percent (80%) of the world's garment workers are women working in precarious environments marked by gender stereotypes or beliefs that women are more docile, dexterous or will make fewer demands.

Women are also overrepresented in the informal economy that is characterised by an absence of social, labour and legal protections, and makes it even more challenging for women workers to assert their rights to remedies when their rights are violated.⁶ There is also reduced labour protection for workers in trade export processing zones, where the majority of workers are women.⁷ Advocates have pointed out that in some "countries such as China, Nigeria, Pakistan,

³ Landesa, The Law of the Land and the Case for Women's Land Rights (2016), at <http://www.landesa.org/resources/property-not-poverty/>.

⁴ ILO Regional Office Report: Action-oriented research on gender equality and the working and living conditions of garment factory workers in Cambodia (2012) and ILO and ADB Report: Gender Equality in the Labour Market in Cambodia (2013)

⁵ Action Aid Report: Close the gap: The cost of inequality in women's work (2015) and Human Rights Watch Report: Work Faster or Get Out (2015)

⁶ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (September 2016)

⁷ Ama Marston, Women, Business and Human Rights: A background paper for the UN Working Group on Discrimination against women in law and practice (2014)

Zimbabwe, Kenya, and Namibia governments explicitly change the law to suspend the right to unionize in export processing zones.”⁸ Further, specific groups of women workers such as undocumented migrant workers and domestic workers face even more barriers in claiming their rights.

As the CEDAW Committee explains:

*“Women belonging to such groups often do not report violations of their rights to authorities for fear that they will be humiliated, stigmatized, arrested, deported, tortured or have other forms of violence inflicted upon them, including by law enforcement officials. The Committee has also noted that, when women from those groups lodge complaints, the authorities frequently fail to act with due diligence to investigate, prosecute and punish perpetrators and/or provide remedies.”*⁹

Women workers often face alarming rates of violence, including rape, sexual harassment and other forms of gender-based violence at the workplace as well as on their way to and from work. For example, 90% of female Kenyan tea and export-processing workers say they have witnessed or experienced sexual abuse at work; nearly all said they were afraid to report it for fear of losing their job. The vast majority noted that promotions were related to some form of sexual relationship with a supervisor.¹⁰ The problem persists even higher up in the value chain. A survey in EU countries found that 75 per cent of women in management and higher professional positions have experienced some form of sexual harassment.¹¹ As a UN Special Rapporteur recently noted: “too many of the world’s working women are forced to labour in climates of violence and fear.”¹²

b) Women in communities affected by business activities

Investment and/or development projects that affect communities can further entrench or exacerbate gender disparities and power dynamics. Business activities and large-scale land projects often affect women more adversely than men. Women make up the bulk of agricultural workers in Asia and Africa, and bear the burden when their crops and livelihood strategies are lost. They also generally have less access to resources and technical capacity to benefit from development projects or new agricultural business environments. Women often lack secure tenure rights to the land they depend on for livelihood, shelter, and identity.¹³ In over 90 countries social norms or custom undercut women’s access to land,¹⁴ and rural women face systemic

⁸ AWID and Solidarity Center: Challenging Corporate Power: Struggles for women’s rights, economic and gender justice (2016)

⁹ CEDAW Committee General Recommendation on Women’s Access to Justice (2015)

¹⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (September 2016)

¹¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (September 2016)

¹² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (September 2016)

¹³ Behrman, J; Meinzen-Dick, R; Quisumbing, *The Gender Implications of Large-Scale Land Deals*, (2011), IFPRI, at 2, hereinafter “IFPRI,” available at:

https://www.iss.nl/fileadmin/ASSETS/iss/Documents/Conference_papers/LDPI/56_Behrman_Meinzen-Dick_Quisumbing.pdf

¹⁴ Landesa, *The Law of the Land: Women’s Rights to Land*, available at: <http://www.landesa.org/resources/property-not-poverty/>

discrimination in access to land and natural resources.¹⁵ Rural women are typically excluded from weighty community decisions about land use and investment either due to custom or competing care demands; they are more likely than their male counterparts to lose access to land and common resources, less likely to receive proceeds from the sale of crops within their household, less likely to be offered employment as a result of an investment, and more likely to face greater challenges in accessing redress and justice.¹⁶ Investment-linked evictions and displacements often result in physical and sexual violence against women and girls and inadequate compensation for loss of crops and other forms of livelihood. Women and girls face additional burdens related to resettlement because their rights to the land are often unrecognized or diluted by law or practice.¹⁷ Unlike their male counterparts, women are less likely to be seen as heads of household whose names and interests are recorded on land documents; because their rights are less likely to be recognized, they will not be considered eligible for adequate compensation or remedy for loss of livelihood and access to natural resources, including water sources and forests on which they rely. While men who typically oversee cash crop cultivation may enjoy adequate valuation for their loss of land, women who engage in subsistence agriculture or forage non-timber products in forests often receive no reparations.¹⁸

c) Women Human Rights Defenders

Women human rights defenders (WHRDs) particularly those challenging the extractive industries face heightened risks of death, intimidation, harassment, exclusion and stigmatization in addition to threats and acts of rape and sexual harassment at the hands of State security and private security forces.¹⁹ Their work is often criminalised and stigmatised and they are labelled as “anti-development” and “enemies of the State.” WHRDs that speak out against the exploitation of natural resources often face substantial risks of reprisals because they are not only challenging traditional gender roles, but they are challenging the power relations governing control of natural resources. The murder of Berta Caceres, a prominent indigenous and environmental leader challenging the exploitation of natural resources in Honduras, is a stark reminder of the grave risks women face in such contexts.

What bearing should these different/unique experiences of women have on the effectiveness of remedies?

Remedies need to take into account the unequal power relations that govern the context of corporate abuses, particularly as women often face stigma, reprisals and job insecurity for reporting business-related abuses. The compounded discrimination that women from marginalized groups should be taken into account.

¹⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 34 on the rights of rural women*, (March 4, 2016) CEDAW/C/GC/34, at para. 5, hereinafter “CEDAW GR 34,” available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_7933_E.pdf

¹⁶ IFPRI at 4-6.

¹⁷ Landesa Center for Women’s Land Rights, *Comments on the draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, (January 2017), at 4, hereinafter “Landesa CESCR,” available at: <http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/Landesa.docx>

¹⁸ IFPRI at 4.

¹⁹ AWID: Women Human Right Defenders Confronting Extractive Industries: An Overview of Critical Risks and Human Rights Obligations (2017)

For example, for undocumented migrant women who face hurdles in claiming their right to remedy, firewalls could be established between immigration, law enforcement and justice mechanisms.²⁰ As the International Commission of Jurists recommends:

“These should involve measures to ensure through relevant safeguards, including law-reform, government regulations and directives, that where an undocumented woman seeks protection or remedies for human rights abuses her immigration status will not come under scrutiny by officials and authorities and she will not be subject to arrest or deportation. They should also involve the introduction of provisions that provide undocumented women migrants (pursuing legal protection and remedies in respect of human rights abuses) with the right to receive short-term residence and work permits and to pursue longer-term regularization of status.”²¹

Structural impediments i.e. legal, economic, social and cultural barriers to women’s rights to remedies must therefore be addressed in all dimensions. Under CEDAW, State parties have an obligation to remove barriers to women’s access to an effective remedy which also includes, “*an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes that prevent women from exercising and claiming their rights and impede their access to effective remedies.*”²²

Company-based Grievance Mechanisms

Designing effective, gender-responsive remedies requires specifically including and accounting for women’s social contexts and legal rights status. For example, company-based grievance mechanisms can ensure that women’s land rights and interests are captured, even though their rights are generally more likely than men’s to be unregistered, informal, unrecognized, seen as secondary to men’s, and contested.²³ Establishing such effective remedies for women will require local knowledge and assistance (local civil society are often the best candidates), and iterative consultations with men and women in the affected communities.²⁴ Conducting in-depth environmental, social, human rights, and gender assessments and consultations early²⁵ will help establish a company’s “social licence to operate”²⁶ and it will also reveal the interests of women and men in the community so that grievances can be avoided. Impact assessments are the requisite first step to ensure solid grounding for effective remedy and company grievance mechanisms that transcend, rather than entrench, social inequities that often plague existing customary or judicial mechanisms. The UN Guiding Principles on Business and Human Rights specify key elements for company-based grievance mechanisms for non-state dispute resolution

²⁰ International Commission of Jurists (ICJ) Submission to the UN CEDAW Committee on the Drafting of a General Recommendation on Access to Justice (February 2013)

²¹ International Commission of Jurists (ICJ) Submission to the UN CEDAW Committee on the Drafting of a General Recommendation on Access to Justice (February 2013)

²² CEDAW Committee General Recommendation on Women’s Access to Justice (2015)

²³ Landesa Grievance Mechanisms at 4.

²⁴ Landesa, *Malawi Case Study: A Case Study Prepared by Landesa for the DFID-funded Responsible Investments in Property and Land (RIPL) Project*, (October 2015), at 3, hereinafter “Landesa Malawi,” available at: <http://www.landesa.org/wp-content/uploads/Malawi-Case-Study-FINAL-10.6.15.pdf>

²⁵ VGGT 12.10, 12.11.

²⁶ The concept of social license means that affected communities accept and even support a project, rather than creating delay through protest or conflict. See generally, Sustainable Business Council, *Social License to Operate Paper*, (2013), available at: https://www.sbc.org.nz/_data/assets/pdf_file/0005/99437/Social-Licence-to-Operate-Paper.pdf

processes, namely, (1) legitimacy, (2) accessibility, (3) predictability, (4) equity, (5) transparency, (6) rights-compatibility, (7) source of continuous learning, and (8) based on dialogue and engagement.²⁷

Do women expect any special types of remedies in view of their different/unique experiences of corporate human rights abuses?

Women are not inherently vulnerable. They are marginalized and disenfranchised by biased laws, discriminatory policies and practices, and adverse gender-based social norms that perpetrate gender inequalities. Remedies for corporate human rights abuses should be in accordance with human rights law standards and principles and be prompt, accessible and meaningfully redress all types of harm. (Please see response below for details)

How to ensure that remedies for business-related human rights abuses are responsive to the experiences and expectations of rights-holders, especially of marginalized or vulnerable groups of society?

We draw attention to six interrelated and essential components outlined by the UN Committee on the Elimination of Discrimination Against Women (CEDAW)²⁸ that should be applied to ensure the systems that will enforce women's right to an effective remedy are responsive to women's lived realities:

- **Justiciability** requires the unhindered access by women to justice. They need to have the ability and power to claim their rights;
- **Availability** requires the establishment of courts and other quasi-judicial or other bodies across the State in both urban, rural and remote areas, as well as their maintenance and funding;
- **Accessibility** requires that all justice systems, both formal and quasi-judicial systems, are secure, affordable and physically accessible to women, and are adapted and appropriate to the needs of women including those who face intersectional or compounded forms of discrimination;
- **Good quality of justice systems** requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems are contextualized, dynamic, participatory, open to innovative practical measures, gender-sensitive, and take account of the increasing demands for justice by women;
- **Provision of remedies** requires the ability of women to receive from justice systems viable protection and meaningful redress for any harm that they may suffer; and

²⁷ United Nations, *Guiding Principles on Business and Human Rights*, (2011), at Principle 31, available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²⁸ See CEDAW Committee General Recommendation on Women's Access to Justice (2015)

- **Accountability of justice systems** is ensured through monitoring their functioning so that they are in accordance with the principles of justiciability, availability, accessibility, good quality and provision of remedies. The accountability of justice systems also refers to the monitoring of the actions of justice system professionals and of their legal responsibility in cases in which they violate the law.

Specific issues related to the justice system

To understand the experiences and expectations of women and men in affected communities, States should review their substantive, procedural, and practical barriers to remedies.²⁹ This review should include meaningful consultation with women and men (all genders) in communities that have already been affected by investments to determine what remedies are accepted and pursued in practice.

a. High cost and accessibility

The high cost of utilising formal remedies and judicial processes is a key barrier to their effectiveness. A key priority is to reduce the resource and time cost for victims to access such remedies. State provision for legal aid at all stages of civil, administrative and criminal legal procedures can contribute to ensuring justice systems are economically accessible to women.³⁰ Formal judicial mechanisms are frequently not accessible to rural communities, because of poverty, the geographical distance, the lack of infrastructure, and illiteracy.³¹ This is especially true for women and other marginalized groups (pastoralists, migrants, religious minorities, those with disabilities, the elderly, etc.). States should document these dynamics and incorporate the needs of communities vis à vis remedies into legislative, administrative and regulatory mechanisms designed to comply with international human rights standards and compel companies to comply.

b. Court Jurisdiction and competence

State obligation to ensure the right to an effective remedy is not limited to just their jurisdiction, but also applies extraterritorially. International law affirms that States have a duty to prevent and redress corporate human rights impacts regardless of where the harm occurs.

The Maastricht Principles³² clarify that “*where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim. To give effect to this obligation, States*

²⁹ Minority Rights Group, *Initial Observations on the Draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, (January 2017), at 6, available at: http://www.ohchr.org/Documents/HRBodies/CESCR/Discussions/2017/25-Minority_Rights_Group_International_MRG.pdf

³⁰International Commission of Jurists (ICJ) and Friedruch-Ebert-Stiftung (FES) Submission to the UN CEDAW Committee on the Drafting of a General Recommendation on Access to Justice (February 2013)

³¹ World Resources Institute, *Making Women’s Voices Count in Community Decision-Making on Land Investments*, (July 2016), at 3, hereinafter “WRI,” available at:

http://www.wri.org/sites/default/files/Making_Womens_Voices_Count_In_Community_Decision-Making_On_Land_Investments.pdf. This paper contains case studies on increasing women’s participation and voices in land-based investment processes from Tanzania, Mozambique, and the Philippines.

³² Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

should: a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy; b) ensure remedies are available for groups as well as individuals; c) ensure the participation of victims in the determination of appropriate remedies; d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and e) accept the right of individual complaints and develop judicial remedies at the international level.”

Extraterritorial human rights obligations affirm the universality of human rights³³ and can be used to counter the structural barriers and unequal power relations between States, corporations and affected communities by triggering corporations’ home State duties and by giving victims recourse to spaces outside their territory to pursue the right to an effective remedy.

c. Ensuring effective non-judicial remedies – State based and non-State based

The UN Guiding Principles on Business and Human Rights include recourse to operational grievance mechanisms for human rights violations based on the key principles³⁴ such as - legitimacy; accessibility; predictability/certainty; equitable; transparent; rights-compatible; a source of continuous learning; based on engagement and dialogue with stakeholders and affected community. Yet given the gender and power inequalities in the contexts in which corporate abuses occur, there are lingering concerns that these mechanisms may lead to further violations and even impunity for harm caused. For example, in the case of Barrick Gold in Papua New Guinea where over 100 women reported allegations of rape by the company’s private security firm and the company’s “remediation package” fell short of international standards, including the UN Guiding Principles. Operational grievance mechanisms should therefore be independently reviewed and the right to access court, obtain a judicial review or appeal decisions should be facilitated.³⁵ State parties must also ensure that violence against women should not be addressed by non-judicial mechanisms, in particular operational grievance mechanisms, but must be sanctioned under criminal law.³⁶

d. Burden of Proof and Locus Standi

The evidentiary burden of proof should take into account unequal power relations that may deprive women of their right to remedy. Thus, as the CEDAW Committee stressed, the burden of proof should not be disproportionately shouldered by claimants seeking a remedy.³⁷ Civil society actors should also be granted standing to initiate petitions and participate in proceedings.³⁸

e. Access to Information

Often information on the impacts of corporate activities are not publicly disclosed or available and this inhibits the collection of evidence for legal action, in particular for marginalized groups that

³³ ETO Consortium Fourteen misconceptions about extraterritorial human rights obligations (2014)

³⁴ https://www.hks.harvard.edu/m-rcbg/CSRI/publications/workingpaper_40_Strengths_Weaknesses_Gaps.pdf

³⁵ International Commission of Jurists (ICJ) and Friedrich-Ebert-Stiftung (FES) Submission to the UN CEDAW Committee on the Drafting of a General Recommendation on Access to Justice (February 2013) and CEDAW General Recommendation on Women’s Access to Justice (2015)

³⁶ CEDAW General Recommendation on Women’s Access to Justice (2015)

³⁷ CEDAW General Recommendation on Women’s Access to Justice (2015)

³⁸ CEDAW General Recommendation on Women’s Access to Justice (2015)

face additional barriers in accessing and processing information.³⁹ Data on corporate structures, activities and impacts need to be disclosed and publicly available to strengthen victims' claims in court.

Accessible information on available mechanisms and procedures are a critical component of the right to an effective remedy and this information needs to be accessible in various languages and formats.⁴⁰

There needs to be regular and systematic monitoring of judicial and non-judicial systems on women's right to remedy.

Company Role in Creating Remedies Tailored for Communities: Example on Land Rights

Companies should provide all women and men claiming land rights or interests with fair and prompt compensation for the leasing, purchasing, or any other use of their land. The agreed compensation should be enshrined in contract. Consultations should only be held after the business enterprise has shared all material information with those claiming land rights or interests, including information in the form of assessment results. Consultations should be participatory, with those claiming land rights or interests should be given the fullest opportunity to ask questions, request additional information, and express their concerns and expectations.⁴¹

Special efforts should be made to ensure that women are included in consultations; many societies privilege men as the leaders and heads of household, and there is a high risk that the views of women may be ignored. Women's land use rights and interests are often secondary and unrecognized by government entities and investors (e.g. gathering forest resources or cultivating household food crops). These land uses are central to household livelihoods and are almost certain to be significantly impacted by any effort to acquire land. To ensure that women are included, special sensitization of men may be required in order to socially legitimize women's participation.⁴²

Women need to be engaged in decision-making processes, including consultation and negotiation processes, related to investments in land that will help illuminate how grievance mechanisms and remedies can be tailored to their interests. The participatory processes themselves must be accessible and gender-sensitive. Women must be explicitly invited to meetings, separate meetings for women should be held in most contexts, and meetings must be held at times and in places that are accessible and culturally appropriate for women. Without these efforts, there is a significant risk that women will be effectively excluded, even if they are present.⁴³ Women's participation can also be incentivized and tracked by quotas or quorums, but these mechanisms must be enforced.⁴⁴ Companies, because they are often cultural outsiders with financial leverage,

³⁹ Amnesty International: *Injustice Incorporated: Corporate Abuses and the Human Right to Remedy* (2014)

⁴⁰ CEDAW General Recommendation on Women's Access to Justice (2015)

⁴¹ Landesa Grievance Mechanism at 7.

⁴² Landesa Grievance Mechanism at 8.

⁴³ WRI at 8.

⁴⁴ OHCHR/UN Women, *Realizing Women's Rights to Land and Other Productive Resources*, (2013), HR/PUB/13/04, at 18, hereinafter "OHCHR Women," available at: <http://www.ohchr.org/documents/publications/realizingwomensrightstoland.pdf>

can often play a central role in implementing and enforcing these requirements for meaningful participation and protections for women.⁴⁵

What role can civil society organisations and human rights defenders play in facilitating women’s access to effective remedy in cases related to business-related human rights abuses?

Civil society organisations and human rights defenders, in particular trade unions, farmers’ groups, women’s rights and social movements play a pivotal role in creating a supportive environment for communities to exercise their rights to remedy for human rights abuses.

Civil society actors are able to document and expose systematic failures that perpetrate inequalities and lead to gross human rights violations. Their role in evidence-gathering and reporting urges State and corporate actors to respond and take actions to remedy the situation.

Civil society actors create awareness and build the capacity of communities to understand their rights and the mechanisms for mediating their claims. They provide legal support to communities to directly engage with the justice system, including legal aid, counsel and as *amicus curie*. Their role in connecting communities to the formal justice system is key, especially in rural areas where few lawyers operate, courts are sparse, distant and costly to access, and help is needed to navigate what are often time-consuming and bureaucratic legal processes.⁴⁶

They can also play a crucial role in connecting rural communities with company and government representatives, and facilitating the process of investment design, including consultations and assessments.⁴⁷ Where companies set up grievance mechanisms, civil society actors can assist with monitoring and providing two-way communication between the company and community members.⁴⁸ Large scale land-based investments for example, are often beset by a lack of effective community consultations, biased negotiations and contracting, unfair compensation and resettlement. Civil society actors can help to design and facilitate company engagement with communities and relevant state organs.

Civil society actors campaign for progressive law and policy reforms and also monitor compliance with decisions to ensure that the right to remedy is implemented in accordance with human rights standards.

⁴⁵ Leslie Hannay et al., *Realizing Socially-Responsible Investments in Land from a Gender Perspective: Unpacking “Zero Tolerance” to Identify Barriers and Practical Steps to Achieve Equitable and Sustainable Investments*, (2016) at 3, World Bank Land and Poverty Conference Paper, available at: <http://www.landesa.org/wp-content/uploads/LandConference2016-WorldBank.pdf>

⁴⁶ Mokoro Ltd., *Women, Land and Justice in Tanzania*, (2015) at 2, available at: http://mokoro.co.uk/wp-content/uploads/HD_seminar_Nov15.pdf

⁴⁷ Landesa, *Case Study: Kilombero Sugar Company Ltd. In Tanzania: Prepared for Landesa’s Responsible Investments in Property and Land (RIPL) Project*, (2017) at 26, hereinafter “Landesa Tanzania,” available at: <http://www.landesa.org/wp-content/uploads/KSCL-Tanzania-Case-Study-FINAL.pdf>

⁴⁸ Landesa Tanzania at 14.

These roles are especially critical given stark power inequalities between women whose rights have been violated by business activities and the State actors and corporations responsible.

In many cases, however, civil society actors that challenge corporate power and corporate abuses face specific risks of intimidation, harassment and violence impacted by pervasive, current global conditions of impunity for the human rights abuses targeted at them for their work. Costly legal proceedings and judicial harassment are among the most common tactics to silence critics challenging corporate abuses.⁴⁹ For civil society actors to facilitate women's access to effective remedy, they must be an enabling environment for them to work free of intimidation, harassment, violence and reprisals. The UN Declaration on the Rights of Human Rights Defenders⁵⁰ in particular the fundamental rights to peaceful assembly, association and expression must be emphasized when articulating Access to Remedy for corporate abuses.

Please share good practice examples, landmark judicial decisions or other regulatory innovations contributing to strengthening access to effective remedy for women in cases related to business-related human rights abuses.

1) Regional Court of Dortmund, Germany (Initial decision August 2016)

In August 2016, the Regional Court of Dortmund, Germany issued an initial decision to accept jurisdiction to hear the case of those affected by a textile factory fire in Pakistan as well grant legal aid to the claimants to cover the costs of legal fees. The factory fire left 260 dead and 32 injured and those affected brought a lawsuit in Germany against the factory's main customer- the German discount clothing retailer KiK. While the Court is yet to decide on the merits of the case, the initial decision sends a signal that German companies can be held liable for actions abroad and it strengthens the call for accountability in global supply chains, where women workers make up 80% of the labour force. By granting legal aid, this Court decision also addresses the prohibitive costs of litigation, an economic barrier that constrains women's access to remedy.

2) Migrant Workers Rights in Greece: Chowdury and others v. Greece (2017)⁵¹

The European Court of Human Rights ordered Greece to pay compensation to migrant agricultural workers from Bangladesh. The case was filed after armed guards shot at the workers for protesting that they had not been paid their wages for several months. The Court found that the workers were working under conditions of forced labour; and that the police knew but had failed to act to protect the workers and hold the perpetrators responsible. This decision strengthens understanding of a State's due diligence to ensure that the rights of workers are not violated.

⁴⁹Ciara Dowd and Elodie Abo: "Why its getting harder and more dangerous to hold companies accountable" - May 2017: <https://www.opendemocracy.net/openglobalrights/ciara-dowd-elodie-aba/why-it-s-getting-harder-and-more-dangerous-to-hold-companies->

⁵⁰ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998)

⁵¹ Open Society Foundations European Court of Human Rights Rules in Favor of Bangladeshi Migrant Workers in Greek Abuse (2017) <https://www.opensocietyfoundations.org/press-releases/european-court-human-rights-rules-favor-bangladeshi-migrant-workers-greek-abuse>

3) Legal Advocacy in Formal Judicial Systems in Tanzania

In 2007, based on the grounds that they had not been involved in establishing the Burunge Wildlife Management Area (WMA) and had never agreed to its formation, the Datoga community lodged a case against the village authorities. They hired a lawyer, using money raised from the sale of their livestock. The case was first taken to the Manyara Region Land and Housing Tribunal, then later, in 2008 to the Land Division of the High Court. This court ruled in favour of the defendants, ordering the Datoga community to vacate the land immediately. However as this ruling was made in the absence of the community's lawyer the community appealed to the Court of Appeal of Tanzania (Civil Appeal No.77 of 2012). The Court of Appeal of Tanzania ruled in favour of the Datoga community, saying that the community should be reinstated and that the community had the right to remain on their land. In particular it was noted that there was no record of any meeting where the village council had recommended to the village assembly that the Maramboi area be given over to the Burunge WMA authorities, and no record of any meeting of the village assembly that it had agreed to give over the land. These are legal requirements under the wildlife management regulations for establishing a WMA and as there was no evidence that the legal requirements had been followed, the Datoga community retained the rights to their land.⁵²

4) Women's leadership in local governance in Brazil:

Communities are often at a disadvantage in bargaining with companies because customary conceptions of land ownership differ from the market-based approach taken by companies. Civil society can play a key role in preparing communities to interact with companies through processes designed to strengthen land governance and clarify individual rights within the community and rights of the community as a whole.⁵³ Women must play a key role in these processes because of the gendered dynamics of land and natural resource use and ownership, food production, and access to markets. Including women in decision-making about land governance results in greater voice, protection for, and benefit to women in the event that their community is affected by an investment or government concession.⁵⁴

Ponte do Maduro is an informal settlement in central Recife, the state capital of Pernambuco, Brazil. Female residents from four communities in Ponte do Maduro (Chié, Santa Teresinha, Ilha de Joaneiro, and Santo Amaro) struggled for their right to land titles through a State-led land regularization process. Starting in 2015, with the support of Espaço Feminista and other partners,⁵⁵ women have been participating in the regularization process and acting collectively to make their demands visible, demonstrating their capacity both to understand the technicalities of the process and to act on knowledge from their own communities. Their experience illustrates key lessons:

⁵² IWGIA, *Tanzanian Pastoralists Threatened: Evictions, Human Rights and Loss of Livelihood*, (2016) at 68, available at: http://www.iwgia.org/iwgia_files_publications_files/0727_Report_23_Tanzania_for_eb.pdf

⁵³ Namati, *Community Land Protection Facilitators' Guide*, (2016), available at: <https://namati.org/wp-content/uploads/2016/02/Namati-Community-Land-Protection-Facilitators-Guide-Ed.1-2016-LR.pdf>

⁵⁴ WRI at 4.

⁵⁵ OHCHR Women at 19. Landesa and Espaço Feminista are currently partnering to develop, document, and replicate a model for local-level implementation and data gathering of the Sustainable Development Goals (SDGs).

1. Community leaders, especially women, know their communities best and are therefore best placed to effectively and practically contribute to the design and implementation of public policy.
2. Community leaders demonstrated that they can and should be more than just beneficiaries, and play roles that are more than mere support to land specialists; rather, they are proving that they themselves are specialists in finding solutions for their own communities and solving disputes among residents.
3. Creating dialogue between different stakeholders and sectors in a horizontal process can help build clarity about and respect for rights.⁵⁶

5) Establishing a company policy and guidance for community engagement in Tanzania:⁵⁷

Approximately 350 miles west of Dar es Salaam, the Kilombero Valley sits in the districts of Kilosa and Kilombero of the Morogoro Region in Tanzania. Local residents meet their livelihood needs by farming both cash and food crops—mainly sugarcane, rice, maize and vegetables—and some grazing of livestock. The majority owner of the Kilombero Sugar Company Ltd. (KSCL) is Illovo Sugar. Illovo Sugar released “Group Guidelines on Land and Land Rights” in March 2015, and developed an accompanying Road Map to guide the company’s operations in 6 countries, including Tanzania. The Guidelines aim to establish a zero tolerance policy for land grabs, collaborate with communities, ensure secure tenure rights to land for women and men affected by the company’s operations, and resolve disputes in its supply chains. The Road Map outlines practices throughout the investment process, with a particular focus on early-stage interventions, to create and support effective grievance mechanisms and access to remedy:

- Establish a Land Policy Roundtable consisting of Illovo key personnel and external experts from NGOs, international donors, and other development organizations
- Perform land situation assessments at each of Illovo’s operations, with the assistance of external experts where necessary
- Develop a strategy for the resolution of consequently identified areas of concern, along with timelines, resource requirements, and budgets
- Develop a communications plan to facilitate stakeholder engagement on the proposed actions
- Develop an operation-wide (and locally appropriate) grievance and dispute resolution procedure for stakeholders, including communities and out-growers
- Internally integrate the land guidelines within Illovo’s operations and management approaches
- Continuously engage with international forums, civil society, and other organizations in relation to land-related matters in the areas in which Illovo operates

6) Recommendations from UN Human Rights Treaty Bodies

The UN human rights treaty bodies have issued recommendations to State parties on measures they can take to implement their obligations to fulfil the right to remedy and ensure access to

⁵⁶ OHCHR Women at 19.

⁵⁷ All information in this section is from Landesa’s Tanzania Case Study, *supra* note 30.

justice. Implementation of these recommendations would strengthen women's access to remedy. Below are a few illustrations.

- In 2017, the CEDAW Committee recommended that Germany:
“(a) Strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments before making investment decisions; (b) Introduce effective mechanisms to investigate complaints filed against those corporations, with a mandate to, among other things, receive complaints and conduct independent investigations, and incorporate a gender perspective into the national action plan; (c) Adopt specific measures, including a mechanism for redress to facilitate access to justice on behalf of women who are victims of human rights violations, and ensure that judicial and administrative mechanisms in place take a gender perspective into account⁵⁸.”
- In 2016, the CEDAW Committee's recommended that Canada:
“(a) Strengthen its legislation governing the conduct of corporations registered or domiciled in the State party in relation to their activities abroad, including by requiring those corporations to conduct human rights and gender impact assessments prior to making investment decisions; (b) Introduce effective mechanisms to investigate complaints filed against those corporations, including by establishing an Extractive Sector Ombudsperson, with the mandate to, inter alia, receive complaints and conduct independent investigations; (c) Adopt measures to facilitate women victims of human rights violations access to justice and ensure that judicial and administrative mechanisms put in place take into account a gender perspective.⁵⁹”
- In 2014, the CESCR's Committee recommended that China:
“(a) Establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights; (b) Adopt appropriate legislative and administrative measures to ensure the legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding violations of economic, social and cultural rights in the context of their projects abroad.⁶⁰”

Submitted on behalf of the following individuals and organizations:

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Institute for Policy Research and Advocacy (ELSAM) Indonesia
International Women's Rights Action Watch Asia Pacific
Landesa Center for Women's Land Rights
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⁵⁸ CEDAW Concluding Observations- Germany (March 2017)

⁵⁹ CEDAW Concluding Observations- Canada (November 2016)

⁶⁰ CESCR Concluding Observations- China (June 2014)

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