

**IWRAP ASIA PACIFIC OCCASIONAL PAPERS SERIES
NO. 15**

THE BUSINESS OF WOMEN'S HUMAN RIGHTS

**International Women's Rights Action Watch
Asia Pacific**



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Occasional Paper Series No 15.
THE BUSINESS OF WOMEN'S HUMAN RIGHTS

The UN Guiding Principles On Business And Human Rights and The United Nations
Convention On The Elimination Of All Forms Of Discrimination Against Women:

A Background Paper

International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific) is an independent, non-profit NGO in Special consultative status with the Economic and Social Council of the United Nations.

The IWRAP Asia Pacific Occasional Papers Series makes available emerging discussions and debates related to the organisation's areas of work. The views here reflect those of the author(s) and do not necessarily always reflect the views of the organisation.

This background paper and the Primer on UN Guiding Principles On Business And Human Rights and The United Nations Convention On The Elimination Of All Forms Of Discrimination Against Women are two related publications IWRAP Asia Pacific has produced to support NGOs and women's groups in addressing state accountability for the impact of business and the private sector on women's rights and for NGOs to explore ways of working in complimentary fashion with the private sector.

These publications and the roundtable discussion convened by IWRAP Asia Pacific and its partners in 2012 to discuss the use and complimentary nature of the UNGP and CEDAW frameworks has been made possible through the generous support of Oxfam NOVIB.

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THE BUSINESS OF WOMEN'S HUMAN RIGHTS

I. INTRODUCTION

BACKGROUND

International Women's Rights Action Watch Asia Pacific ("IWRAP-AP") held a Consultation on Migration/Trafficking: Exploring Engagement with Non-state Actors using the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other international standards and tools in Kuala Lumpur, Malaysia from December 3-5, 2012 ("Consultation"). The Consultation brought together experts and activists from Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, as well as others from regional and international organisations.

During the Consultation, participants explored ways in which women's rights activists could engage with non-state business actors¹ to eliminate discrimination against women and protect their rights, specifically in the context of migration and trafficking. The participants also identified the need for basic guidance on using Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), informed by the United Nations ("UN") "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights ("Guiding Principles"), in collaboration with non-state business actors. This Paper for Promoting Women's Rights in Southeast Asia ("Paper") is designed to respond to that need.

OUTLINE OF background paper

This Paper begins with an overview of the UN Protect, Respect and Remedy Framework, the Guiding Principles and the corporate responsibility to respect human rights.² Part III includes a description of CEDAW, its fundamental pillars of

¹ This Paper uses the term business to refer to non-state actor businesses in all their various forms, including, but not limited to a sole proprietorship, corporations, partnerships and limited liability entities.

² Although the UN Protect, Respect and Remedy Framework and the Guiding Principles refer to the corporate responsibility to respect, this responsibility is not limited to

state obligation, substantive equality and non-discrimination, the CEDAW reporting process and the Optional Protocol to CEDAW.

After providing this background, Parts IV and V explore strategic uses of the Guiding Principles, informed by CEDAW, in collaboration with businesses. Part IV explains: (1) why businesses have a responsibility to respect human rights in their operations and what they can gain through collaborations with women's rights advocates; (2) what businesses can do to respect women's human rights; and (3) how CEDAW can make a unique contribution to a business's implementation of its responsibility to respect human rights and by extension women's rights. Part IV also identifies some important issues facing women in Southeast Asia, which might be addressed through collaborations with businesses. Part V provides examples and suggestions for such collaborations, including basic recommendations for developing a strategic approach for engagement.

II. OVERVIEW OF THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS' "PROTECT, RESPECT AND REMEDY" FRAMEWORK.

A. Introduction

In 2008, the Special Representative of the UN Secretary-General for Business and Human Rights, Professor John Ruggie, presented the "Protect, Respect and Remedy" Framework³ to the United Nations Human Rights Council ("Human Rights Council"). The Framework sets out the following:

- The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- The corporate responsibility to respect human rights, which means acting with due diligence to avoid infringing on the rights of others and addressing adverse impacts with which they are involved; and
- The need for greater access by victims to effective remedy, both judicial and non-judicial.

businesses operating as corporations. Instead, the corporate responsibility to respect applies to all business entities, regardless of their form. For example, if a business is organized as a partnership, it is still subject to the corporate responsibility to respect.

³ <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

In June 2011, the Human Rights Council unanimously endorsed the Guiding Principles⁴, which build upon each of the three pillars of the Framework and provide guidance to states, businesses and civil society with regard to the implementation of the Framework.

The clarity provided by the Human Rights Council in 2011 on the issue of corporate responsibility for human rights harms was unprecedented. Professor Ruggie's mandate ran for six years and during this time he was instrumental in bringing together a variety of stakeholders from civil society, business and government to build a common framework. Earlier efforts to build understanding at the international level on corporate respect for human rights had failed to build consensus. In the final year of his mandate, Professor Ruggie promoted efforts to incorporate the Guiding Principles into other international instruments addressing corporate responsibility for social or human rights impacts. Through this effort, the corporate responsibility to respect human rights was incorporated in the Organisation for Economic Co-operation and Development's updated Guidelines for Multinational Enterprises,⁵ the International Organization for Standardization ISO 26000 standard on Social Responsibility⁶ and the International Finance Corporation's Sustainability Framework and Performance Standards.⁷

When the Human Rights Council endorsed the Guiding Principles, they also created a new special mechanism within the UN on business and human rights. The UN Working Group on Business and Human Rights ("Working Group") is made up of five individuals with the mandate to promote the dissemination and implementation of the Guiding Principles and to take other related actions, including country visits. The Working Group has the specific responsibility to integrate a gender perspective throughout its work. In addition, the Working Group is required to guide the work of the Forum on Business and Human Rights, which is an annual gathering in Geneva of all stakeholder groups to discuss progress on implementation of the Guiding Principles.

B. State Duty to Protect.

The Guiding Principles define the scope of the duty of states to ensure that third parties, including businesses, do not abuse human rights in principles 1-10. This reaffirmation of all states' obligations under international human rights law is the

⁴ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁵ <http://www.oecd.org/corporate/mne/>

⁶ <https://www.iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en>

⁷ http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_sustainabilityframework

first pillar of the Framework. The Guiding Principles spell out the practical steps that states must take to meet their obligations. For example, states must pay special attention to situations where they own, control or support businesses that may be involved in human rights abuses. In addition, Guiding Principle 7 directly references gender in the context of conflict affected areas and recommends that states:

“(b) [Provide] adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;”

The European Commission's Communication on Corporate Social Responsibility of 2011 has encouraged member states of the European Union to create National Action Plans setting out their roadmap for implementing the Guiding Principles and for encouraging better conduct by business operating within their territories or overseas. To date, the United Kingdom and The Netherlands have published their National Action Plans⁸.

C. Corporate Responsibility to Respect.

“[B]usiness enterprises should respect human rights” and these rights include, at a minimum, those reflected in the International Bill of Human Rights and principles on fundamental rights in the ILO Declaration on Fundamental Principles and Rights at Work⁹. Circumstances may also require a business enterprise to consider additional standards, including those elaborated in CEDAW.¹⁰ The responsibility to respect applies to all business “enterprises regardless of their size, sector, operational context, ownership and structure”.¹¹

Guiding Principles 11-24 relate specifically to the corporate responsibility to respect human rights. In essence, businesses are required to “know and show” that they are meeting their responsibility to respect human rights. Businesses do this by:

- (i) creating and implementing a statement of policy stating that they respect human rights;

⁸ See <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

⁹ United Nations Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (17th Sess., 21 March 2011)(“2011 Report”) at II.A, Guiding Principles 11 and 12.

¹⁰ 2011 Report at II.A., Commentary to Guiding Principle 12.

¹¹ 2011 Report at II.A., Guiding Principle 14.

- (2) establishing a system of human rights due diligence, which the business uses to identify, prevent, mitigate and account for how it addresses impacts on human rights; and
- (3) engaging in remediation when abuses have occurred. Human rights' due diligence, which is a relatively new concept for businesses, is most easily understood as a set of risk management procedures.

At present, 339 businesses have adopted public human rights policy statements. This is a small number given that there are approximately 80,000 transnational businesses in existence today with many millions more small and medium sized businesses. As such, the number of businesses actively putting in place or aligning their systems to the human rights due diligence standard set out in the Guiding Principles is still low. Nevertheless, as described in more detail below, there are strong business reasons for businesses to address human rights risks, which can, among other things, relate to reputational risk, access to finance, avoidance of protests and potential work stoppages.

D. Access to remedy.

The third pillar of the Framework, set out in principles 25 – 31, suggests ways for states and businesses to improve access to effective remedy for victims of business-related human rights harm, including judicial and non-judicial remedies. The third pillar also sets out some effectiveness criteria that businesses can use when creating operational-level grievance (or complaints) mechanisms. These criteria are rooted in human rights principles and provide a helpful checklist for businesses and civil society in measuring the quality of the mechanism.

E. Key points to note.

The Guiding Principles are an innovative tool and they represent the culmination of six years of work to draw together perspectives of civil society, business and government. They are groundbreaking in their recognition of the minimum standard expected of business with regard to human rights and the need for businesses to examine the actual human rights impacts they may cause or contribute to. In addition, for the first time, the Guiding Principles set out the complementary, but distinct roles of businesses and governments. This clarification is fundamental in ensuring that all actors play their part in respecting human rights in practice and underlines the need for advocacy efforts on business and human rights to explore the roles of the state and the business on each occasion.

The Guiding Principles also recognize that businesses can potentially impact all human rights – this is an important move from previously focusing solely on the core labour conventions of the International Labour Organization. In addition, they recognize that the corporate responsibility to respect applies to all businesses, in all sectors, and of all sizes. This is important in understanding that it is not only certain industries, such as mining or oil and gas, where negative human rights impacts have been long documented, but that other industries, such as recruitment agencies or the Information and Communications Technology (ICT) industry, can also have negative impacts.

III. OVERVIEW OF CEDAW

A. Introduction.

CEDAW establishes a framework for states to follow in implementing their obligations under the treaty. The strength of CEDAW lies in the interpretative nature of its normative standards. The overarching framework includes three concepts: substantive equality, non-discrimination and state obligation.¹²

B. Substantive equality and non-discrimination.

CEDAW is based on a principle of equality between men and women. It mandates both legal and development policy measures to guarantee the rights of women to ensure substantive equality. Substantive equality recognizes differences, but affirms equality between men and women. It places on the state the obligation to correct the environment that disadvantages women. Under substantive equality, all initiatives of the state (e.g., laws, policies, programmes and services) must lead to equal opportunities, equal access to such opportunities and equal results and benefits.

¹² This overview of CEDAW is based in part on the IWRAP Asia Pacific 2012 “Background Paper: The Role of Non-State Actors in Protecting the Rights of Women Migrant Workers in South-East Asia” at pages 30-31. Parts III.E and III.F are based on the summary of the CEDAW reporting process and description of the Optional Protocol to CEDAW on pages 11 and 14 of the 2012 publication of the Asian Pacific Resource and Research Centre for Women (ARROW”) titled “Reclaiming & Redefining Rights Guidance Series: Analysing Sexual and Reproductive Health and Rights under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)”, written by Amy Lynne Locklear and Sunila Abeysekera, available at http://www.arrow.org.my/publications/ICPD+15/R&R_GuidanceSeries.pdf (last visited 14 November 2013).

CEDAW recognises the fact of discrimination against women and that the inequality of women is socially constructed. CEDAW not only prohibits discrimination, but Article 1 also provides a comprehensive definition of discrimination:

The term 'discrimination against women' shall mean 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 freedom in the political, economic, social, cultural, civil, or any other field.

Thus, discrimination includes both direct and indirect discrimination. The definition of discrimination provides a guide for assessing when the different treatment accorded to women is permissible. For example, affirmative action or maternity provisions are not discriminatory because they will not “nullify the recognition, enjoyment or exercise by women—of human rights and fundamental freedoms”. On the other hand, protective measures like barring women from migrating based on their sex have been construed as discrimination, as such measures work against women’s interests in the long term.

CEDAW draws a distinction between *de jure* (in law) and *de facto* (in practice) rights. In this regard, it recognises not only current discrimination, but also past discrimination and requires corrective measures to overcome the effect of past discrimination. Article 4 of CEDAW provides for measures through which affirmative action and women-centered development policies can be used to ensure *de facto* equality for women. In addition to legal measures, the provisions under Article 4 obligate governments to implement policy and programme interventions, including reverse discrimination (i.e., affirmative action) in order to enable women to access the rights guaranteed in the law.

CEDAW also recognises intersectional discrimination, which is discrimination women face because they are women and are members of other groups or categories suffering discrimination, such as ethnic, racial or religious minorities, migrant workers or victims of trafficking.

C. State obligation and non-state actors.

CEDAW carries with it the principle of state obligation. Under the treaty, the dynamics of the relationship between the state and women is no longer one of the dependency of women on the goodwill or vagaries of the state. Instead, the

state has responsibilities to women from which it cannot withdraw. The state must respect, promote, protect, fulfill and realise women's human rights by "adopting appropriate legislation and other measures including sanctions where appropriate, prohibiting all discrimination against women".¹³ Hence, CEDAW mandates the protection of women's rights through the legislative and other processes. This means that there is an avenue for drawing accountability from the state for the guarantee of these rights.

CEDAW addresses the need to tackle power relations between women and men at all levels, from family, to community, market and state. The treaty also discards the distinction between the private and the public spheres, by recognising violations of women in the private sphere, i.e., the home or workplace, as violations of women's human rights.

CEDAW also recognises the negative impact of social, customary and cultural practices which are based on the idea of the "inferiority or the superiority" of either sex or on stereotyped roles for women and men.¹⁴ This feature of CEDAW, which distinguishes it from other treaties, requires state parties to modify negative social and cultural behaviours and patterns with the goal of removing and eliminating prejudices and practices (customary, religious or other) so as to ensure non-discrimination and substantive equality. A critical feature of CEDAW is that it requires the state party to "take all appropriate measures to eliminate discrimination by any person, organization or enterprise." Art. 2(e). CEDAW was one of the first international human rights treaties to include a reference to "enterprise", which encompasses all forms of businesses. In this way, CEDAW establishes the state party's obligation to protect women against human rights abuses involving businesses.

D. Articles of CEDAW.

Against the foundation of substantive equality, non-discrimination and state obligation, CEDAW protects specific rights critical to the well-being of women. CEDAW calls for the elimination of discrimination against women "in all forms",¹⁵ and requires states to take action "in all fields" particularly "in the political, social, economic and cultural fields."¹⁶ Article 1 provides a definition of discrimination

¹³ CEDAW, Article 2b.

¹⁴ CEDAW, Article 5.

¹⁵ The Committee has noted that CEDAW accommodates new forms of discrimination that had not been identified at the time the instrument was drafted. CEDAW General Recommendation 28, paragraph 9.

¹⁶ CEDAW, Article 2.

and forms a fundamental basis for eliminating discrimination. Articles 2 to 4 outline the nature of the state obligation to eliminate discrimination. Articles 6-16 specify the different areas in which governments are obligated to eliminate discrimination through measures described in Articles 2-5. These include sex roles and stereotyping and customary practices detrimental to women (Article 5), trafficking and prostitution (Article 6), political and public life (Article 7), participation at the international level (Article 8), nationality (Article 9), education (Article 10), employment (Article 11), health care and family planning (Article 12), economic and social benefits (Article 13), rural women (Article 14), equality before the law (Article 15), and marriage and family relationships (Article 16). Articles 17-22 detail the establishment and functions of the CEDAW Committee and Articles 23-30 address the administration and other procedural aspects of CEDAW.

CEDAW is a legal instrument and therefore, is subject to interpretation. Articles 1 and 5 give CEDAW the widest applicability, as together they can be interpreted to refer to almost any situation that adversely affects women in all sectors and contexts and with respect to all issues pertaining to women.

E. CEDAW Reporting Process.

States are held accountable for their obligations under CEDAW through periodic reports to the Committee on the Elimination of Discrimination Against Women (“Committee”). The Committee monitors a state party’s progress in meeting its obligations under CEDAW. A state party must submit an initial report to the Committee within one year of ratifying CEDAW and periodic reports every four years thereafter.¹⁷ In these reports, the state describes how it has met or the reasons it was unable to meet its obligations under CEDAW. The state must appear in person before the Committee and answer questions regarding the report.

Under the Harmonized Guidelines adopted by the Chairpersons of the UN Human Rights Committee, states parties must prepare two documents, a common core document and a treaty-specific document, to satisfy their reporting obligations under the various UN human rights treaties. The core document must include an overview of the state party’s demographic, economic, legal and political structure. The state party submits the core document to the Office of the High Commissioner for Human Rights and all the treaty-monitoring bodies use the document in their reviews of that state party. States parties prepare treaty-specific

¹⁷ Because the Committee is receiving an increasing number of state party reports, our understanding is that it is requesting that states parties submit combined reports covering multiple reporting periods.

reports, in which they report on their implementation of a particular treaty. Each treaty body has issued guidelines for this purpose.¹⁸

The state reporting process provides an opportunity for non-governmental organizations (“NGOs”) to submit their own reports, called shadow or alternative reports. A shadow or alternative report contains information on the status of women with respect to their ability to access, exercise and enjoy their rights under CEDAW and recommendations on how the state party can improve this status.¹⁹ This information is not included in a state report or differs from or supplements the information in the state report. A shadow report also includes a critique of the information in a state report.²⁰ NGOs prepare a shadow report after or contemporaneous with the state’s preparation of its report to the Committee. NGOs can also prepare an alternative report when the state has failed to prepare a report, is unwilling to share its report with NGOs or when a state report is not available prior to the Committee’s review.²¹ The Committee has shown a willingness to review a state party in their absence if the state persistently fails to report.²²

In addition to submitting a shadow or alternative report, NGOs can meet with the Committee prior to the state’s review. During this meeting, NGOs can highlight important issues and concerns. After the Committee completes the state’s review, the Committee issues concluding observations, which provide recommendations to the state on how it can better meet its obligations under CEDAW. In subsequent reviews, a state party is expected to report on how it has implemented or addressed the recommendations in the concluding observations.

The CEDAW reporting process provides an ideal opportunity to ensure that businesses operating in a country are complying with their responsibility to respect

¹⁸ This information is derived from “New Guidelines for Human Rights Treaty Reporting: Opportunities for Women’s Human Rights NGOs Final Draft for Comment November 2008”, International Women’s Rights Action Watch, available at <http://www1.umn.edu/humanrts/iwraw/CCDmanual-09.html#NewHarmonizedGuidelines>.

¹⁹ International Women’s Rights Action Water Asia Pacific, IWRAW Asia Pacific Shadow Report Guidelines, http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm.

²⁰ International Women’s Rights Action Water Asia Pacific, IWRAW Asia Pacific Shadow Report Guidelines, http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm.

²¹ International Women’s Rights Action Water Asia Pacific, IWRAW Asia Pacific Shadow Report Guidelines, http://www.iwraw-ap.org/using_cedaw/sr_guidelines.htm.

²² *See, e.g.*, Commission on the Status of Women (Fifty-third session, 2 March – 13 March 2009), Note by the Secretary-General, Results of the forty-second and forty-third decisions of the Committee on the Elimination of Discrimination Against Women, para. 14 (E/CN.6/2009/CRP.1)(available at <http://www2.ohchr.org/english/bodies/cedaw/docs/E-CN6-2009-CRP-1.pdf>).

human rights. Although the Guiding Principles do not impose legal obligations on businesses, as noted above, CEDAW requires a state party to ensure that non-state actors do not violate the rights protected under the treaty. Thus, the Committee can enforce the Guiding Principles through the reporting process by issuing concluding observations addressing the obligations of state parties to protect women against violations committed by businesses.

F. Optional Protocol to CEDAW.

The CEDAW framework and the specific rights recognized under CEDAW are primarily enforced through the reporting process described above.²³ In addition, the Optional Protocol to CEDAW (“OP-CEDAW”) is a separate treaty, which states parties can ratify if they have already ratified CEDAW. Under OP-CEDAW, an individual can submit a complaint, called a communication, to the Committee, in which she alleges a violation of her rights under CEDAW.²⁴ If the Committee decides that a communication meets the procedural requirements set out in the OP-CEDAW and is admissible²⁵, it will review the document and issue views and recommendations to the state party.²⁶ The state party has six months to provide information on actions it took in response to the Committee’s views and recommendations.²⁷

To date, the Committee has issued twenty-three decisions on communications, many of which only address whether the procedural requirements of OP-CEDAW were satisfied. The decisions on the merits considered domestic violence, division of property, forced sterilization, parental leave, a judge’s reliance on gender stereotypes in issuing a decision in a rape trial, discrimination against female prisoners, right to a therapeutic abortion and maternal health.²⁸

²³ A state party implements CEDAW at the domestic level through the incorporation of the treaty’s requirements in domestic laws and policies.

²⁴ OP-CEDAW, Article 2.

²⁵ OP-CEDAW, Article 4.

²⁶ OP-CEDAW, Article 7(3).

²⁷ OP-CEDAW, Article 7(4).

²⁸ The Committee’s decisions on communications submitted under OP-CEDAW are available on the UN Office of the High Commissioner for Human Rights website at <http://www2.ohchr.org/english/law/jurisprudence.htm> (last visited on 30 May 2012). In addition to the communications procedure, the OP-CEDAW allows individuals to request that the Committee undertake an inquiry procedure on the basis of information pointing to “grave or systematic violations by a State Party of rights” protected under CEDAW.OP-CEDAW, Article 8(1). At the conclusion of the inquiry, the Committee sends findings, comments and recommendations to the state party. The state party has six months to respond with observations to the Committee. OP-CEDAW, Article 8(3)-8(4). The inquiry procedure has been used only once in a case where

IV. THINKING STRATEGICALLY: ENGAGING WITH BUSINESSES TO PROMOTE WOMEN'S RIGHTS.

A. HOW TO START A CONVERSATION WITH BUSINESS REPRESENTATIVES ON HUMAN RIGHTS.

For many businesses, human rights are starting to enter their risk monitoring systems along with other risks tracked by the business. However, this is still a relatively new topic for many businesses worldwide. In addition, if individuals working for a particular business do not have an understanding of what human rights mean to them, then the term can sometimes provoke negative or defensive reactions. Each conversation will be different but it is often helpful to begin with an understanding of the ways in which a particular business may impact people's human rights in practice. This can help move the conversation away from a focus on philanthropic or corporate responsibility discussions alone. When discussing human rights, it is often important to go back to the basic core principles of dignity and respect and emphasise the ways in which businesses can impact rights in a negative way. It is important to also understand the structure and reach of a particular business and any human rights litigation they may have faced in the past.²⁹ Finally, the Guiding Principles have ensured that businesses need to explore risk not solely in terms of risk to the business but also risk to potentially effected individuals – the rights-holders. This is a new understanding of risk for many businesses and civil society plays an important role in helping a business understand the perspective of rights-holders.

B. WHAT MOTIVATES BUSINESSES TO ADDRESS HUMAN RIGHTS IMPACTS?

Businesses have a responsibility to respect human rights in their operations and in their relationships with other businesses and states, as set out in the Guiding Principles. However, there are still many businesses today that have not yet heard

the Committee found that Mexico had violated CEDAW when it failed to adequately prevent, investigate and punish crimes involving the rape, abduction and murder of women in and around Ciudad Juarez in the State of Chihuahua. CEDAW/C/2005/OP.8/MEXICO, paragraph 55, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, 27 January 2005.

²⁹ The Business and Human Rights Resource Centre tracks allegations against businesses relating to human rights harm and also encourages businesses to respond. It is a hugely important resource for advocacy on business and human rights. www.business-humanrights.org

of the Guiding Principles and may be unaware of the impacts their operations have on individual's human rights.

In the past, businesses have taken a closer look at their potential human rights impacts for a variety of reasons including:

- As a result of a lawsuit or NGO campaign either against their business or against one of their competitors
- Following questions by investors relating to their human rights policy or due diligence system
- Changes in the law to reflect human rights protections or human rights reporting requirements
- Leadership from within the senior ranks of the business
- Issues brought to the business's attention by local or international civil society organisations

Each of these avenues can be explored by civil society organisations looking to encourage greater action from a business on human rights.

C. WHAT CAN CORPORATIONS DO TO ADDRESS HUMAN RIGHTS?

In order to address their potential human rights impacts, businesses need to put in place a system of human rights due diligence which covers the following:

- Map and assess any actual or potential human rights abuses the business may be involved in through their own operations or as a result of their business relationships
 - This includes drawing on external or internal human rights expertise and meaningful consultation with potentially affected groups and relevant stakeholders
- Integrate the findings from the impact assessments across the business and take appropriate action
- Track the effectiveness of responses to potential and actual impacts
 - This includes using appropriate qualitative and quantitative indicators and drawing on feedback from both internal and external sources, including affected stakeholders
- Account for how they are addressing their human rights impacts by communicating externally particularly when concerns are raised by or on behalf of affected stakeholders.

In addition, if a business identifies that it has caused or contributed to negative human rights impacts, the Guiding Principles stipulate that it should provide for or cooperate in processes through which victims of human rights violations can obtain remedies.

There are several points where the role of local and international civil society organisations is specifically mentioned in the Guiding Principles as being key to ensuring that businesses are developing robust human rights due diligence systems. These entry points for civil society are described in more detail in the case study below.

Specifically, the Guiding Principles single out several examples of situations when civil society representatives should be called on to assist business in meeting their responsibility to respect. These include:

- The process of identifying and assessing actual or potential adverse human rights impacts which should “[i]nvolve meaningful consultation with potentially affected groups and other relevant stakeholders” (Guiding Principle 18)
- Where it is not possible to consult directly with affected stakeholders, alternatives should be sought, including consultation with “human rights defenders and others from civil society.” (Commentary to Guiding Principle 18)
- Businesses should communicate on how they are addressing human rights impacts and this is particularly important where “concerns are raised by or on behalf of affected stakeholders.” (Guiding Principle 21)
- Situations involving gross human rights abuses where businesses are advised to consult civil society organisations and relevant multi-stakeholder initiatives, when determining how to respond (Guiding Principle 23)

In addition, civil society organisations and other advocacy organisations should view all three pillars as interconnected and encourage action from states and businesses to ensure that their respective responsibilities are met and that access to remedy is ensured.

D. HOW DOES CEDAW GUIDE A BUSINESS'S APPROACH TO PROTECTING WOMEN'S RIGHTS?

The Guiding Principles do not impose new obligations or responsibilities on states and actor businesses. Instead, they provide a framework for enforcing rights protected under existing international human rights treaties. Women's, as well as men's human rights are protected under other treaties, such as the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights (“ICESCR”) and the International Convention on the Rights of All Migrant Workers and Members of their Families. Women often suffer the same types of violations as men and therefore, these other treaties also protect their rights. CEDAW, however, is unique among the international

human rights treaties because it protects women against the specific rights' violations they experience because they are women.

Consequently, in implementing its responsibility to respect human rights under Guiding Principles, a business must analyze and address women's rights in the distinct context of CEDAW. This means that a business must first consider the human rights implications of its activities, but take an additional step by reviewing how women are affected differently and what CEDAW requires to ensure that women's human rights are respected.

For example, to respect women's rights in employment, ICESCR requires a state party to enact and enforce laws that require non-state actors to provide, "safe and healthy working conditions".³⁰ But this does not fulfill a business's responsibility to respect women rights. CEDAW also requires that state parties enact and enforce laws prohibiting businesses from dismissing women "on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status", requiring "maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances" and providing "special protection to women during pregnancy in types of work proved to be harmful to them."³¹

³⁰ Article 7 of the UNESCR requires that:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

³¹ Article 11 of CEDAW requires:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

In addition, under Article 5 of CEDAW, state parties are responsible for modifying cultural, religious or social practices that prevent women from enjoying their rights. Part of a state's efforts in this regard may focus on facilitating a business's adoption of policies that challenge stereotypes about women and men in the context of employment. For example, assume an employer has a practice of discouraging male employees from using paternity leave benefits, which reinforces the stereotype that women should bear the primary obligation to care for children. This often results in women taking additional time off from employment that would be unnecessary if male employees took advantage of paternity leave. Under CEDAW, a state party would be required to address this stereotype, by, for example, providing rewards to employers that demonstrate an improved record of male utilization of paternity leave. Another example is a business that establishes childcare facilities on employment premises for the children of its employees.³²

E. WHAT ARE THE HUMAN RIGHTS CHALLENGES FACING WOMEN IN SOUTHEAST ASIA?

Women in Southeast Asia face of myriad of human rights challenges and violations, and businesses often play a role. This section highlights three examples from Cambodia, Vietnam and Malaysia.

Cambodia

According to the International Labor Organization, men comprise only five percent of the 7.4 million people in the Cambodian workforce. Yet women, who are the vast majority of workers, earn on average USD25 less than male counterparts. One factor that contributes to this disparity is greater access to educational opportunities for Cambodian men versus women. Gender norms in Cambodia also play a key role in this regard. A common Cambodian saying sums it up: "Men are gold, women are white cloth."

A primary source of employment for Cambodian women is work in garment factories, where 80% of the employees are women. These women face significant human rights violations related to poor and unsafe working conditions and unfair compensation.

³² Although both of these examples deal with maternity, a non-state actor must also address other types of discrimination that affects women differently or disproportionately, such as violence in the form of sexual harassment by co-workers or superiors.

Vietnam

Like Cambodia, Vietnamese women play a critical role in the country's economy. According to the International Labor Organization, as of December 2005, Vietnamese women owned 24% of the 113,352 incorporated businesses in that country. Despite this success, Vietnamese women continue to earn less than men. In urban areas, women earn 83% of male wages and in rural areas, women earn 85% of male wages.

In 2007, Vietnam adopted the Gender Equality Law, with the goal of building a society that guaranteed equal political, economic and social rights for women. Despite this law, in 2013, the Vietnamese government adopted a new labor law, which banned women from doing jobs that could negatively affect their reproductive function and childcare duties. Examples of such work included jobs in the metal processing, mining, diving and seafaring industries and employment that required a woman to carry goods over 50 kilograms or have regular contact with human corpses. This prohibition has a significant impact on pregnant rural women, who can earn significantly more money working in urban areas. If banned from these jobs, these women are often forced to return home during pregnancy and forego the opportunity for greater financial opportunities.

Malaysia

In 2008, the Swiss-based Bruno Manser Fund first brought general public awareness to the severe human rights violations committed against Penan women and girls by workers of logging businesses in the Baram district of Sarawak. These violations included rape and sexual abuse. In 2009, the Government of Malaysia conducted an investigation that confirmed these violations.³³

The Penan are an indigenous community located in the state of Sarawak, East Malaysia. The human rights violations experienced by the Penan women and girls are part of a general culture of abuse perpetrated by Government and business against the community. According to reports, the Sarawak government's economic policy encourages the exploitation of the land and forest resources for commercial and private gain, without respect or consideration for the environmental or human rights implications. The Sarawak Government has awarded highly lucrative logging and other land concessions to private businesses closely tied to the ruling government. The result is little monitoring of logging and little enforcement of good practices.

³³ Malaysiakini News, "Govt report confirms Penan girls were raped" (accessed on 30 January 2014), <http://www.malaysiakini.com/news/112450> .

These reports³⁴ also claim that the Sarawak Government's economic model ignores the human rights of the indigenous communities, who hold land, resource and other rights dating back hundreds of years. The Sarawak Government's agreements with logging facilitate the illegal appropriation of the Penan's land and other resources. These losses are the direct cause of the extreme impoverishment of the Penan community. This cycle of poverty, which has its greatest impact on female members of the Penan community, makes women and girls more vulnerable to other violations of human rights and exploitation.

F. HOW ARE BUSINESSES FOCUSING ON WOMEN'S RIGHTS ISSUES?

Many businesses now track the numbers of women who are reaching senior management and leadership positions within the business. In addition the question of women on boards has become a live issue as governments in Europe, North America and Asia are looking at the possibility of introducing quotas to encourage more diversity in their most senior positions.

Similarly, there is a recognized global 'gender gap' as a result of inequalities of opportunities and results for women across the globe. These inequalities manifest themselves in different ways, but at their core, they point to unequal opportunities earlier in life due to social conventions. These prejudices and discrimination result in girls having less access to education than boys or in some cases, girls suffering the effects of a societal preference for male children, a condition that afflicts some communities.

Within the 11 ASEAN member states there are significant differences with regard to gender equality. The World Economic Forum Global Gender Gap ranks 10 of the 11 members according to four criteria of Economic Participation and Opportunity, Educational Attainment, Health and Survival and Political Empowerment³⁵. The ten economies were ranked out of the 136 countries examined in 2013 as follows:

- Philippines (5)
- Singapore (58)
- Lao (60)
- Thailand (65)

³⁴ A wider context of sexual exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak Malaysia (2010) http://hornbillunleashed.files.wordpress.com/2010/07/penan-report_web.pdf

³⁵ Hausmann, Tyson and Zahidi, "The Global Gender Gap Report 2012" (World Economic Forum, 2012) <<http://www3.weforum.org/docs/WEFGenderGapReport2012.pdf> > accessed 14 December 2013

- Vietnam (73)
- Brunei Darussalam (88)
- Indonesia (95)
- Malaysia (102)
- Cambodia (104)
- South Korea (111)

It is against the backdrop of global inequality that businesses operate globally and as such it is in their interests to ensure that women's rights are respected in the workplace, in their supply chains and in the local communities where they operate.

A recent initiative of the UN Global Compact and UN Women demonstrates growing interest in this area from business. The Women's Empowerment Principles are a set of principles, which act as the first global code of conduct for business on gender equality.

The seven principles are set out as follows:

- Principle 1: Establish high-level corporate leadership for gender equality
- Principle 2: Treat all women and men fairly at work – respect and support human rights and nondiscrimination
- Principle 3: Ensure the health, safety and well-being of all women and men workers
- Principle 4: Promote education, training and professional development for women
- Principle 5: Implement enterprise development, supply chain and marketing practices that empower women
- Principle 6: Promote equality through community initiatives and advocacy
- Principle 7: Measure and publicly report on progress to achieve gender equality

Although the principles are not explicitly framed in a human rights context, they do represent a helpful leverage point when working with businesses or the suppliers or customers of businesses that have agreed to follow them. At the time of writing, 670 businesses had committed to the principles.³⁶

³⁶ See <http://www.weprinciples.org/Site/Companies/1>

Another important initiative is the HERproject, which was launched in China in 2007 and is now also active in Bangladesh, Egypt, Kenya, India, Indonesia, Pakistan, and Vietnam. In essence the project brings together multinational businesses, suppliers and NGOs to run women's health programmes in factories. The programmes focus on providing health information and services to the women to ensure their general and reproductive health. The project builds on a business need to ensure a healthy workforce, but also the specific health needs and concerns of female workers.

There are many examples of how businesses have worked collaboratively with local civil society organisations to ensure that women's rights are recognized and respected in their relations with the surrounding community. Nevertheless, there are times when impacts affecting women need to be brought to the attention of business representatives, both locally and at headquarters. Incidents such as ensuring reproductive rights are not harmed through work conditions or as a result of requirements in place for female migrant workers for instance, or ensuring that risks of sexual harassment or assault are being monitored and responded to. Such incidents should also be examined from the perspective of the state obligations, and in particular, how is the state responding to unjust laws that continue to discriminate against women.

Responsible businesses rely on local organisations to help raise awareness of women's rights issues in practice and issues of abuse can be most effectively responded to when businesses and civil society organisations can work collaboratively.

V. USING THE GUIDING PRINCIPLES AND CEDAW IN COLLABORATIONS WITH BUSINESSES.

A. INTRODUCTION.

This Paper is one of the first attempts to demonstrate how a business can use the Guiding Principles in implementing its responsibility to respect women's human rights protected under the CEDAW framework.³⁷ Nevertheless, other treaty

³⁷ This Paper is also one of the first efforts to apply a CEDAW analysis in developing collaborations to implement the responsibility of businesses to respect women's human rights under the UN Guiding Principles. IWRAP Asia Pacific is in the process of identifying examples of collaborations that might assist other advocates considering

bodies and international and regional organisations have begun the process of integrating the Guiding Principles in particular contexts, such as child's rights or projects funded by the International Finance Corporation of the World Bank Group.

In addition, through its concluding observations, prior to the UN Human Rights Committee's endorsement of the Framework and Guiding Principles, the Committee addressed state party obligations to protect against violations of women's rights committed by business entities. This existing guidance, which is described below in V.A.2, is an important starting point for developing plans for collaborations between non-state actor businesses and women's rights advocates.³⁸

1. THE GUIDING PRINCIPLES IN CONTEXT.

As highlighted earlier in the publication, key elements of the Guiding Principles have been incorporated into international instruments addressing the responsibility of businesses to respect human rights in practice. For instance:

- The OECD Guidelines for Multinational Enterprises were updated in 2011 to include a new human rights chapter with content drawn from the Guiding Principles. These provide national mechanisms for hearing complaints in the 46 countries that have signed up to the Guidelines. The complaints relate to the actions of businesses operating within or headquartered within those states.
- The International Finance Corporation ("IFC"), which is the private sector lending arm of the World Bank, has updated its Sustainability Principles and Performance Standards to recognize the corporate responsibility to respect human rights. These standards set out whether

or initiating partnerships with businesses to promote women's human rights. To this end, IWRAP Asia Pacific encourages readers and users of the Paper to send relevant information to iwraw-ap@iwraw-ap.org under the subject heading: UNGP/CEDAW – Updates. Information on both successful and more challenging collaborations is welcome. To protect confidentiality, identifying information regarding the participants and country will not be included.

³⁸ It is important to keep in mind that CEDAW not only lists or defines specific rights that a state party must protect, but also establishes a specific approach that a state party must take in implementing its obligations under the treaty. Thus, CEDAW does more than delineate rights. It requires a state party to protect these rights within the framework of non-discrimination, state obligation and substantive equality. Furthermore, CEDAW's list of rights is not exhaustive and the treaty anticipates that state parties will be responsible for recognizing and protecting new rights as circumstances change and evolve.

investment should be provided for certain private sector projects and therefore provide a compelling leverage point at the outset of a project. The standards are also referred to by over 80 private sector banks and other lending institutions. In addition, there is a complaints procedure associated with the IFC known as the Compliance Advisor Ombudsman (“CAO”), which can be accessed by project-affected communities in relation to social and environmental matters of concern.

- The human rights chapter of the Guidance on Social Responsibility by the International Organization for Standardization (“ISO”) draws heavily on the content in the Guiding Principles related to the corporate responsibility to respect human rights.
- At the state level, the United States passed legislation related to conflict minerals from the Democratic Republic of Congo, which was grounded in the concept of human rights due diligence. In addition, the United States created a set of Reporting Requirements which apply to businesses investing in Myanmar and call on the businesses to report publicly on how they are meeting the corporate responsibility to respect human rights in that specific context.
- The European Union has issued guidance aimed at small and medium sized businesses, as well as guidance for three specific sectors: oil and gas, informational technology and employment and recruitment services. In addition, the European Union has called upon member states to create National Action Plans to set out the steps they will take to implement the Guiding Principles.

In addition, there have been examples of standards inspired by the UN Framework and the Guiding Principles being created for specific groups. For instance the Children’s Rights and Business principles were created in March 2012 following a collaborative process of creation by UNICEF, Save the Children and the UN Global Compact. In essence, the purpose of the principles is to ensure that children’s rights feature as a key component of the corporate responsibility to respect human rights. They essentially look at human rights impacts from the perspective of children who are negatively affected.

What is particularly interesting about the advocacy efforts related to children and business is that the role of businesses is addressed through the principles, but the role of the state has also been placed front and center. In February 2013, the UN Committee on the Rights of the Child adopted General Comment 16, which focuses on state obligations regarding the impact of the business sector on

children's rights. This is the first General Comment to speak specifically to the private sector. When advocacy efforts deal simultaneously with the respective state and business responsibilities at play, there is a greater chance of long-lasting impact and action on both sides. This is why it is essential to consider all three pillars of the UN Framework and Guiding Principles when exploring business involvement in human rights abuses.

2. CEDAW AND NON-STATE ACTORS.

Although the state party is ultimately responsible for carrying out the obligations under CEDAW, non-state actors, including business entities, play a critical role in ensuring that women enjoy their rights to non-discrimination and substantive equality.³⁹ In 2010, the Committee adopted General Recommendation 28 ("GR 28"), its most comprehensive guidance to date on the obligations of the state party under CEDAW.⁴⁰ GR 28 describes in detail the state duty to respect, protect and fulfill women's human rights.⁴¹ As part of its duty to protect, the Committee

³⁹ The CEDAW Committee has implied that non-state actors may have direct obligations under the treaty. For example, in concluding observations, the CEDAW has made recommendations directly to the media and health care providers. UN Office of the United Nations High Commissioner for Human Rights, Special Procedures of the United Nations Human Rights Council, *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties*, Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women, Report No. 4 (September 2007), at 41-42. Nevertheless, the Committee has explicitly noted that certain non-state actors, including political parties and trade unions, do not have direct obligations under the treaty. *Id.* at 42.

⁴⁰ General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, paragraph 9 (16 December 2010).

⁴¹ The CEDAW Committee explained these duties in the following terms:
The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights de jure and de facto, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and general recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures. General Recommendation 28, at paragraph 9.

noted that the state party must “protect women from discrimination by private actors”. GR 28, paragraph 9. Consequently, a state party cannot stand passive in the face of discrimination committed by non-state actors. Instead, the Committee explained that a state party must “react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors.” GR 28, paragraph 10.

The Committee further explained that CEDAW imposed “a due diligence obligation on States parties to prevent discrimination by private actors.” GR 28, paragraph 13. As part of this obligation, the Committee noted that,

In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities, such as banking and housing.

- GR 28, paragraph 13.

The duty to protect against discrimination by non-state actors also requires that the state party establish “competent tribunals and other public institutions” and enforce the principles of non-discrimination and equality “by sanctions and remedies, where appropriate.” GR 28, paragraph 17. In addition, the state party must “formulate and implement a policy that is targeted as clearly as possible towards the goal of fully eliminating all forms of discrimination against women and achieving women’s substantive equality with men.” GR 28, paragraph 24. The policy “must be comprehensive” and “apply to both public and private economic spheres”. GR 28, paragraph 25. Finally, this “policy must engage the private sector, including business enterprises, the media, organizations, community groups and individuals, and enlist their involvement in adopting measures that will fulfill the goals of the Convention in the private economic sphere.” GR 28, paragraph 28.

The Committee specifically interpreted Art. 2(e) as establishing “an obligation of States parties to eliminate discrimination by any public or private actors”. GR 28, paragraph 36. In addition to adopting laws, the state “should also adopt measures that ensure the practical realization” of women’s rights to non-discrimination and substantive equality. GR 28, paragraph 36. These include measures that ensure

women can make complaints when their rights are violated and access effective remedies, including remedies against private actors. GR 28, paragraph 36.⁴²

In conclusion, the Committee has described a critical role for non-state actors in the realization of women's rights, with the state party implementing legal and other measures directed at the private economic sphere. The state party must adopt laws and other measures that protect against violations committed by non-state actors and enlist non-state actors in fulfilling women's rights. When non-state actors violate women's rights, the state party must ensure that women have access to effective remedies for such violations.

3. OTHER GUIDANCE.

The above guidance on the role of business in respecting women's rights is not exhaustive. Two important initiatives described below should also be considered in developing collaborations with businesses.

a. DHAKA PRINCIPLES.

Launched in 2012, the Institute for Human Rights and Business developed the Dhaka Principles for migration with dignity ("Dhaka Principles")⁴³ through a consultative process with business, government and civil society. The Dhaka Principles identify some of the human rights issues that arise in the recruitment and employment of migrant workers and provide guidance to businesses in addressing these issues, adopting best practices and undertaking due diligence to ensure a process that respects the dignity of migrant workers. Some of the Dhaka Principles specifically address human rights issues facing women. For example, Principle 5 calls for non-discrimination with respect to the treatment of migrant workers, including discrimination on the basis of gender. Principle 5 notes that many migrant workers who have become pregnant are sent home or dismissed without pay and that migrant workers should not be subject to "sexual or other gender-based discrimination or harassment"

⁴² In 2007, the Office of the United Nations High Commissioner for Human Rights ("High Commissioner") prepared a report titled "State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women" ("2007 Report"). The High Commissioner prepared this report in support of John Ruggie's work as the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The 2007 Report contains a comprehensive review of CEDAW and the Committee's guidance related to business enterprises.

⁴³ The Dhaka Principles are available at http://www.ihrb.org/about/programmes/dhaka_principles_for_migration_with_dignity.html.

b. ASEAN BASELINE STUDY ON BUSINESS AND HUMAN RIGHTS.

In April 2013, the Human Rights Resource Centre at the University of Indonesia released “Business and Human Rights in ASEAN A Baseline Study” (“Baseline Study”).⁴⁴ The Baseline Study focuses on the first step in ASEAN member states implementing their responsibility to protect against human rights abuses by third parties, including businesses, as described in the UN Framework. In particular, the Baseline Study summarizes some of the publicly available resources on formal (i.e., legally binding regulatory framework) and informal, non-binding guidance (e.g., codes of conduct or guidelines) from ASEAN member states related to business and human rights. The Baseline Study also seeks to identify gaps between national legal frameworks and the UN Framework. It is hoped that ASEAN member states will use the information in the Baseline Study to develop actions plans that “bring the national legal framework into line with the UN Guiding Principles”. Baseline Study at 1, paragraph 4.

4. DEVELOPING A PLAN FOR COLLABORATION.

Every plan for collaborating with a business will be unique. It will be based on the particular context, which will include, among other things:

- (1) the international human rights treaties that the state has adopted;
- (2) the domestic legal and policy framework, including the extent to which the state has incorporated international human rights obligations into domestic law and is enforcing those laws;
- (3) the state’s commitment to protecting, promoting and respecting human rights;
- (4) trade or other agreements between the state and the relevant industry or business;
- (5) the prevailing political, social and economic climate on the domestic, regional and/or international level;
- (6) the conditions in the specific industry and possibly, the specific business, including such factors as the extent to which leaders in the industry or business understand the responsibility to respect human rights, the business has a risk management plan that accounts for this responsibility, and the business or industry is sufficiently motivated to take action to address its responsibility to respect;
- (7) the various relationships or history between the relevant stakeholders (e.g., women’s rights advocates and the state, women’s rights advocates and the business or industry, women’s rights advocates and investors

⁴⁴ The Baseline Study is available at <http://hrrca.org/system/files/u6/Business%20and%20Human%20Rights%20in%20ASEAN%20Baseline%20Study%20ebook.pdf> .

- or shareholders, the government and the business or industry);
- (8) the existence of other campaigns or initiatives of civil society and/or human rights advocates (including international and regional human rights organisations) focusing on the same or similar issues; and
 - (9) special circumstances, such as lawsuits against the business or industry concerning human rights or related violations, availability of funding for collaborations, etc.

In addition to collecting and analyzing the information relevant to these factors, an advocate must assess the strength of its case for the collaboration. This will include determining what the business has to gain (or stands to lose) if it fails to address its obligation to respect women's human rights. An assessment of the case requires a number of steps. The case study detailed below is designed to demonstrate how could use the CEDAW in analyzing a business's responsibility to respect human rights, in accordance with the Guiding Principles.

5. Using CEDAW to define the Corporate Responsibility to Respect: case study.⁴⁵

a. Facts.

Women migrant workers constitute approximately 90% of the employees in the supplier's factory. The supplier relies on a recruitment agency to identify the employees. The multi-national corporation ("MNC") relies on the supplier to manufacture its products, which the MNC sells in several countries. The MNC is concerned that the supplier is not following human rights standards in its operations. This failure is causing boycotts among MNC's consumers. MNC wants the supplier to address the conditions before it loses market share to its competitors.

b. Adoption of policy commitment and non-discrimination guarantee.

The three business enterprises in the case study, i.e., the MNC, the supplier and the recruitment agency (collectively "Business Enterprises"), all have a responsibility to respect the human rights of women migrant workers, including the specific rights protected by CEDAW. To meet this duty, each entity should adopt a policy statement reflecting its commitment to respect human rights. In addition, it may be the case that the supplier is subcontracting work to other suppliers without informing the MNC. In such instances the risks of abuse can

⁴⁵ This case study is based in part on the IWRAP Asia Pacific 2012 "Background Paper: The Role of Non-State Actors in Protecting the Rights of Women Migrant Workers in South-East Asia"

increase as suppliers further down the supply chain may be subject to less controls, creating greater vulnerabilities for the workers involved.

Given the significant level of women employees in the supplier's factories, the supplier's policy statement should express its intent to specifically address the human rights violations that stem from sex and gender discrimination. Similarly, the recruitment agency, which identifies the largely female employees for the supplier, should ensure that its policy explicitly states that it will operate in accordance with CEDAW's guarantee of non-discrimination. In addition to the policy statement, each entity should create a system of human rights due diligence to ensure that they can identify, prevent, mitigate and account for how they address their impacts on human rights and in particular in relation to the women migrant workers. Finally, each entity should also take steps to create processes to ensure any adverse human rights impacts can be remediated if the entity has caused or contributed to them.

c. Policy commitment and substantive equality.

The gap between *de jure* and *de facto* equality under law deprives women of their legal right to be free from discrimination. This gap occurs because the state party to CEDAW adopts laws requiring equality and non-discrimination, but fails to enforce them or create the social conditions necessary to ensure that, in practice, women actually enjoy the rights protected under the laws. The Business Enterprises must ensure that they do not create the same kind of gap by adopting policies on non-discrimination and then failing to implement them or establishing the pre-conditions necessary for their implementation. Therefore, the goal of substantive equality should inform the Business Enterprises' approach in preparing a policy statement and in embedding it in its operational policies and procedures. The policy statements should be framed so that they reflect both a formal policy against sex and gender-based discrimination as well as a commitment that the formal policy will result in equal conditions in actual practice. In this way, the Business Enterprises will incorporate the goal of substantive equality into their policies.

To further ensure the protection of women's human rights, the MNC may need to include in its contracts with suppliers a requirement that the supplier comply with the MNC's human rights policies or adopt comparable policies.

d. Implementation of policy statement and substantive equality.

In addition to adopting policies, the Business Enterprises must integrate those policies into their operational policies and procedures and ensure that the principle of respect for human rights is implemented.

Substantive equality under CEDAW can only be achieved if a state party continuously assesses and monitors the status of women and uses the information from this process to improve its efforts to eliminate discrimination based on sex and gender. The Business Enterprises also have a responsibility to undertake human rights due diligence, which includes assessing their actual and potential human rights impacts. As part of their assessment, integration, tracking and communication processes, the Business Enterprises can gather information on the status of women's human rights in their operations and use the information to continuously improve their processes and programmes for respecting those rights.

As part of their integration of the policy of respect for human rights, the Business Enterprises must undertake periodic assessments of their success in achieving non-discrimination and substantive equality in their business operations. These assessments would measure, for example, the frequency with which women are filing sexual harassment complaints, the response to such complaints and any barriers to women filing complaints. This information would then be used to determine if the Business Enterprises' policies and procedures are having their intended effect of providing women with a means to seek redress for violations of their right to be free from sexual harassment. In addition, the information may point to the need to assess the work culture and whether measures are needed to ensure that sexual harassment does not occur, such as training and education of managers and employees regarding a woman's right to be free from sexual violence.

e. Adoption of specific employment policies important to women's rights.

Like a state party to CEDAW, a business will only achieve non-discrimination by adopting a policy providing equality between men and women with respect to their rights. For the MNC and the supplier who employs women migrant workers, the most important category of rights will relate to conditions of employment.⁴⁶

Thus, the MNC must expect that the suppliers will adopt a policy of non-discrimination on employment rights, including rights to maternity benefits, child-care and other pregnancy and maternity-related benefits. The supplier must also ensure that it adopts and implements policies on sexual harassment and violence.

⁴⁶ For example: Are women paid the same wages as men in comparable positions? Are they afforded the same rights? Are they provided with the same opportunities for promotion? What are the policies on maternity leave and benefits? Is childcare available? Does the factory have a sexual harassment policy? Are there certain jobs for which only men are eligible (whether by formal policy or in practice) and do these jobs pay higher salaries than those jobs performed by women?

Implementation might require that the supplier⁴⁷ take further steps to create the conditions under which women feel free to exercise the rights to which they are entitled. If, for example, women fear that they will be terminated if they file a sexual harassment claim against a supervisor or manager, then the fact that the business has a sexual harassment policy will not satisfy the right to substantive equality. As noted above, in such a case, the supplier may have to do more, such as educate workers and management on the policy and/or provide special protections for women who file complaints.

Similarly, the supplier must ensure that women actually exercise and enjoy their rights related to protections for pregnancy, maternity and childcare. This might require training and capacity-building of the supplier so that women are taking advantage of these benefits in practice. The supplier may need to adopt measures that support a work culture that does not tolerate discrimination against women, respects the importance of maternity to society as a whole and supports the special requirements of female workers who are pregnant or mothers. As part of the supplier's due diligence to assess how its operations may be leading to human rights violations, it must determine if women are taking advantage of pregnancy, maternity and childcare-related benefits and if they are not, the supplier must ask why and take action to address the barriers.

Even a business provides pregnancy and maternity-related benefits, the work culture may result in women quitting rather than continuing to work while pregnant or leaving employment after giving birth rather than taking maternity leave and returning to work at the conclusion of the leave.⁴⁸ For example, during the 2011-2012 reporting period, the Better Work Vietnam programme⁴⁹ documented

⁴⁷ The MNC has the same responsibility to adopt, implement and provide remedies in the event of human rights violations, including the responsibility to bring about changes that are required for women to feel that it is acceptable for them to exercise their rights and that they will not be punished if do so.

⁴⁸ Article 5 of CEDAW requires that states take measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women” and “ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases”. This article will be relevant in defining the supplier's approach to respecting substantive equality with respect to pregnancy, maternity and childcare benefits.

⁴⁹ International Labour Organization and International Finance Corporation, *Better Work Vietnam: Garment Industry 4th Compliance Synthesis Report* (28 March 2012) (“*Better Work Vietnam*”). 7. <http://betterwork.org/global/?p=854> (14 November 2013). Initiated in 2009, the ILO and International Finance Corporation's Better Work Vietnam programme

that nine factories were out of compliance with gender non-discrimination requirements, with three factories conditioning employment on pregnancy testing or use of contraceptives.⁵⁰ Under these circumstances and as part of its due diligence, a supplier may need to do more to ensure that the benefits are utilized by women.

f. Addressing systematic sex and gender discrimination.

Beyond these specific actions, the MNC must recognise that systemic sex and gender discrimination may be impacting the opportunities, wages and working conditions of migrant women workers at the supplier's factory. If, for example, on the basis of stereotypes of migrant women as docile, non-confrontational and poor (and therefore, desperate to accept any employment regardless of the conditions), the supplier primarily employs migrant women, pays them lower wages, forces them to accept mandatory overtime and generally requires them to work under poor conditions, the MNC may need to examine the working terms and conditions of men in similar factory settings. If men in similar factory settings enjoy greater wages, benefits and better working conditions, then the MNC must consider whether the supplier's general approach is based on sex or gender discrimination.⁵¹ Instead of being a promoter of women's rights, a factory that hires only migrant women may be motivated by stereotypes based on sex and gender discrimination to pay lower wages and provide less favorable working conditions.⁵²

Women migrant workers may also be vulnerable to human rights abuses associated with the recruitment process. Some recruitment agencies take advantage of stereotypes of women migrant workers as inexperienced and poor

(“Programme”) responded to the demands of consumers and importers for apparel that was produced in factories where worker’s rights were protected and respected. As of 2012, 150 factories in Vietnam were participating in the Programme, which involves policy makers, employers, workers and international buyers in achieving improved working conditions in Vietnamese factories while also promoting productivity and competitiveness.

⁵⁰ *Better Work Vietnam 7.*

⁵¹ This is not to say that women are only entitled to the benefits and working conditions afforded men, particularly where those benefits and working conditions fail to meet applicable human rights standards. Men, especially migrant men, are also susceptible to human rights violations. Businesses must always be guided by their responsibility to respect human rights and cannot excuse a failure to do so on the basis that they are providing the same salaries, benefits and working conditions to women and men when those employment terms fall below the applicable human rights standards.

⁵² For example, the wages, benefits and working conditions in a factory that produces electronics equipment and primarily employs men who are nationals of the country should be compared to a factory that produces apparel and primarily employs migrant women performing tasks similar to the men at the electronics factory.

and therefore willing to take any kind of work under any conditions to support their families. As noted earlier, these agencies may impose excessive fees, thereby severely limiting the worker's options for leaving abusive employment or for organizing to improve their working conditions. Thus, the MNC must ensure that its suppliers are meeting their human rights responsibilities and using recruitment agencies that respect women's human rights.

g. Undocumented migrant workers, trafficking and forced labour.

While all migrant workers are at risk of falling victim to trafficking and forced labour, undocumented workers face even more danger. Undocumented female migrant workers are at particular risk both before they migrate and after they have reached their country of destination. For example, private agents purporting to offer assistance to a woman migrant without proper documentation may represent that a particular job is available in the country of destination, but upon arrival, the migrant will discover that she has been trafficked and is working under conditions of forced labour.

A supplier who employs undocumented migrant workers is in violation of national labour laws. Furthermore, a supplier who employs victims of trafficking or who employs workers under conditions of forced labour potentially violates national and international laws. Thus, the MNC must ensure that its supplier adopts and implements policies to avoid employing female migrant workers who are undocumented, the victims of trafficking and/or are working under conditions of forced labour.⁵³

⁵³ The assumption here is that the supplier has unknowingly employed undocumented workers or workers who have been trafficked or are working under conditions of debt bondage. If the supplier knowingly engages in these practices, then MNC may determine that the best way to ensure that its operations do not indirectly contribute to human rights abuses is to terminate its relationship with the supplier. For information on role of business in addressing trafficking and forced labour, see United Nations Global Initiative to Combat Human Trafficking, *Human Trafficking and Business Good Practices to Prevent and Combat Human Trafficking* (2010). http://www.ilo.org/sapfl/Informationresources/NonILOpublications/WCMS_142722/lang--en/index.htm (23 November 2012); International Labour Organization, *Combating Forced Labour: A Handbook for Employers and Business* (2008). http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm (23 November 2012); International Labour Office, Report of the Director-General, *The cost of coercion* (International Labour Conference 98th Session (2009)). http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_106268/lang--en/index.htm (23 November 2012); and International Labour Organization, *Meeting the Challenge, Proven Practices for Human Trafficking Prevention in the Greater Mekong Sub-region* (2008 http://www.ilo.org/asia/whatwedo/publications/WCMS_099806/lang--en/index.htm (23 November 2012).

Equally important, however, is that once the worker's undocumented status is established, the supplier may have an obligation to ensure that the worker does not fall victim to trafficking or other human rights violations. At a minimum, the supplier should ensure that the worker is safely returned to her country of origin. If a supplier's employees are primarily female migrants, this obligation of safe return is especially important since, women migrants are more often the victims of trafficking and other forms of labour exploitation, are less likely to have the means to return home and are therefore, have fewer options to earn money so that they can do so.⁵⁴

h. Role of CSOs in assisting business enterprises in meeting the obligation to respect human rights.

CSOs, especially those with expertise on CEDAW and the rights of migrant women workers, have an important role to play in ensuring that businesses properly account for CEDAW and bring about the realization of women's human rights within the framework of substantive equality and non-discrimination. As noted earlier, the Guiding Principles recommend that businesses consult with and draw on the expertise of CSOs and other stakeholders in implementing the corporate responsibility to respect. In addition, the Dhaka Principles for Migration with Dignity set out a framework for ensuring responsible recruitment of migrant workers and recognize the particular challenges affecting female migrant workers.⁵⁵ CSOs could partner with businesses in developing a policy commitment, operationalizing the policy throughout the business, including with respect to contractual relationships with suppliers and others, assessing and monitoring the business enterprise's human rights impacts, retooling the process when necessary and providing appropriate remediation when rights are violated.

6. Using CEDAW to define the Corporate Responsibility to Respect: the impact of large infrastructure projects on women's rights.

The above case study explored the risks inherent for women migrant workers within a manufacturing industry. Many other sectors of business activity may have a negative impact on the women's human rights. For instance, large-scale infrastructure projects such as dams or mines can cause significant disruption

⁵⁴ The fact that undocumented female migrants may not want to return to their country of origin is an additional factor that will make them vulnerable to those who purport to offer them legitimate employment. This is an important issue, but this case study focuses solely on the obligation of a supplier who employed an undocumented migrant worker to ensure the worker's safe return to her country of origin.

⁵⁵ Dhaka Principles for Migration with Dignity available at www.dhakaprinciples.org

and have severe impacts on rural and indigenous peoples located within the project site.

In case where large-infrastructure projects are undertaken; for example in the Malaysian Bakun Dam case study, CEDAW specifically addresses such situations through Article 14 on Rural Women, which provides that:

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Based on credible reports⁵⁶ on the Bakun Dam by civil society organizations, the Malaysian Government had failed to comply with the above conditions set out in CEDAW and Article 14 specifically.

⁵⁶ A wider context of sexual exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak Malaysia (2010) http://hornbillunleashed.files.wordpress.com/2010/07/penan-report_web.pdf

Below is a list of potential risk areas that an advocate should consider when examining the potential women's human rights at stake when a business undertakes an infrastructure project:

- Need for consultation with all affected parties. There is a risk in certain communities that only the community leaders (often male) will be consulted on the potential impacts of a large-scale project, such an approach can mean that issues affecting women in particular may be ignored.
- Need for an inclusive compensation plan to include not only heads of household but to ensure that women and men are fairly compensated (including women-only households and widows).
- Need to understand the use of natural resources such as water or land by both men and women. If the consultation has been limited, there is the risk that women's use of the natural resources will not be captured and adequately compensated for. For instance, the income-generating activities of women in the community may be less visible and therefore not compensated for.
- Need for a grievance mechanism that can be accessed by women and men to raise complaints at an early stage in the process. Such a mechanism would need to take into consideration any cultural barriers that may hinder women's access.
- Need to examine safety issues that may be a concern due to sexual violence risks.
- Need to examine gender-specific health concerns that may arise from pollution at the site or pollution of water sources.
- Need to analyze the system of land titling and the impacts that loss of land may have on women-only households where title may not have been transferred.
- Need to analyze the gender-specific needs during and following resettlement in order to ensure a sustainable livelihood for both women and men, including a mapping of any gender-based violence risks associated with resettlement.

At a minimum, businesses should collect sex-disaggregated data when mapping the ways in which a community may be impacted by resettlement to ensure that steps are being taken to mitigate the potential negative impacts on women and men respectively.

VI. SUMMARY.

This paper and the Paper provide guidance on using the Guiding Principles to promote women's rights in the context of business. All businesses have a responsibility to respect human rights, including women's rights. The Guiding Principles specifically recognize that where relevant, businesses must also take into consideration women's rights, as reflected in UN treaties and guidance, in fulfilling their responsibility to respect human rights⁵⁷. Therefore, to fulfill their corporate responsibility to respect, businesses should consider the specific rights of women protected under CEDAW.

CEDAW requires that state parties bring about the conditions that are necessary for women to enjoy their human rights through the framework of non-discrimination, state obligation and substantive equality. Substantive equality requires an environment where women enjoy equality under law (*de jure*), as well as equality in practice (*de facto*). To achieve substantive equality, a state party must establish a legal and administrative infrastructure aimed at achieving equality between men and women, but the state party's obligation does not end there. To achieve equality in practice, it might be necessary for a state party to adopt laws, regulations, policies and programs that establish affirmative action in favor of women. In addition, a state party must adopt policies and programs that aim to dismantle social and cultural patterns that perpetuate stereotypes and the idea that women are inferior to men.

Although CEDAW imposes these obligations on the state party, it also requires the state party to enforce them against non-state party actors. Thus, businesses often play a critical important role in achieving the realization of women's rights recognized under CEDAW. The CEDAW Committee has outlined the specific ways in which a state must enforce these obligations against non-state actors, including businesses.

The Guiding Principles identify specific actions ("Human Rights Due Diligence") that businesses should take to meet their responsibility to respect human rights, including:

- (1) mapping and assessing any actual or potential human rights abuses the business may be involved in through their own operations or as a result of their business relationships;
 - (2) integrating the findings from the impact assessments across the business and taking appropriate action;
 - (3) tracking the effectiveness of responses to potential and actual impacts;
- and

⁵⁷ 2011 Report at II.A., Commentary to Guiding Principle 12.

- (4) accounting for how they are addressing their human rights impacts by communicating externally, particularly when concerns are raised by or on behalf of affected stakeholders.

The Guiding Principles also identify specific entry points for civil society to assist businesses in meeting their responsibility to respect women's human rights, including:

- The process of identifying and assessing actual or potential adverse human rights impacts which should “[i]nvolve meaningful consultation with potentially affected groups and other relevant stakeholders” (Guiding Principle 18)
- Where it is not possible to consult directly with affected stakeholders, alternatives should be sought, including consultation with “human rights defenders and others from civil society.” (Commentary to Guiding Principle 18)
- Businesses should communicate on how they are addressing human rights impacts and this is particularly important where “concerns are raised by or on behalf of affected stakeholders.” (Guiding Principle 21)
- Situations involving gross human rights abuses where businesses are advised to consult civil society organisations and relevant multi-stakeholder initiatives, when determining how to respond (Guiding Principle 23)

In Southeast Asia, businesses have enormous potential to promote women human rights, especially in the context of employment and migration for work. In developing collaborations with businesses, women's rights advocates must use CEDAW along with the Guiding Principles to analyze how businesses can respect women's human rights in their operations. Although IWRAP Asia Pacific is not aware of any current collaborations between women's rights advocates in Southeast Asia and businesses that utilize both CEDAW and the Guiding Principles, it is encouraging its partners to provide information on such initiatives that could be used as examples for or in developing other such efforts.

Other human rights groups have begun using the Guiding Principles to promote protections for children. In addition, the OECD, IFC, ISO and European Union have initiated efforts to incorporate the Guiding Principles in their specific contexts. These initiatives provide examples of how women's rights advocates can begin to use the Guiding Principles, informed by CEDAW, to analyze, develop and launch plans for collaborations between businesses operating in Southeast Asia and women's rights advocates.

Any collaboration between women's rights advocates and businesses must also be considered in the larger framework of the state obligation under CEDAW to protect, respect and fulfill women's human rights. The state party plays an essential role in protecting women against human rights violations committed by non-state actors, including businesses. While some businesses may willingly take steps to meet their responsibility to respect women's human rights, including through collaboration with other actors, the state party must provide clear legal and other guidance to all businesses so they understand the scope of their legal obligations to avoid abusing women's human rights. The state party must also enforce the laws and implement the policies that apply to those business operations with the potential to impact women's human rights.



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