



Comments on the draft 'Guiding Principles' for the implementation of the 'Protect, Respect and Remedy' framework: Integrating a gender perspective January 2011

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We welcome the draft Guiding Principles as part of the work of the Special Representative on Business and Human Rights (Professor John Ruggie) to operationalize the *Protect, Respect and Remedy* framework. The Principles are a valuable step towards ensuring corporate respect for human rights.¹ With the aim of facilitating implementation of the mandate with respect to integrating a gender perspective, we offer four overarching comments followed by specific suggestions on seven of the Guiding Principles and ten of the Commentaries². Our comments are designed to be constructive and forward-looking and to encourage future debate on what is meant by the integration of a gender perspective.

Overarching comments:

1. **Reference to gender considerations in the Guiding Principles, and guidance on the integration of gender issues:** In June 2008 when the mandate of the Special Representative was renewed by the Human Rights Council for a further three years, the Council explicitly requested Professor Ruggie “[t]o integrate a gender perspective throughout his work ...”.³ The Introduction to the Guiding Principles states that the implementation of the Principles should be undertaken with “*due regard to gender considerations*”. This provides a good foundation upon which to integrate a gender perspective throughout the work, and is to be welcomed as a forward-looking statement about the way in which the Guiding Principles should be implemented. However, neither the individual Principles, nor the related

¹ For comments on the Guiding Principles in general please also refer to the Submission from the Institute for Human Rights and Business.

² The Special Representative was also requested ‘to give special attention to persons belonging to vulnerable groups, in particular children’ (Resolution 8/7 paragraph 4 (d)). We recognize that many of the recommendations herein apply to other vulnerable groups, and particularly to children. However, in this submission we focus solely on gender issues, which are our main area of expertise.

³ 8/7 paragraph 4 (d). This recommendation was noted in Professor Ruggie’s preliminary work plan which stated: “*In keeping with the Council resolution, all work streams will consider how best to integrate a gender perspective ...*”. In June 2009, an expert consultation was held with Professor Ruggie on the subject of integrating a gender perspective into his work. <http://198.170.85.29/Gender-meeting-for-Ruggie-29-Jun-2009.pdf>

commentaries, provides any specific guidance on this issue at present. The comments below comprise proposals to achieve further integration of a gender perspective throughout the work of the Special Representative. It is hoped that they will also inform future UN work on the subject of human rights and transnational corporations and other business enterprises.

2. ***Applying the Guiding Principles to all business and human rights impacts and rights holders:*** Gender mainstreaming is a specific focus of the United Nations, as overwhelming evidence reveals that an ostensibly gender-neutral approach to policy making renders invisible important gender issues, and marginalizes women's experience. Historically, the call for precise and express human rights for women has resulted in the development of international instruments, bodies and organizations that specifically address their rights in international law. This is not because there is something inherently vulnerable about women but rather because the human rights principles that exist to protect all rights have been refined to respond to the reality of sex and gender discrimination that characterizes every society and every country, to varying degrees. Thus reference to gender issues needs to be strengthened within the Principles if they are effectively to address all human rights. In particular, in order to identify, assess and address their human rights impacts relating to all rights-holders, business enterprises will need to collect sex-disaggregated data, and ensure that they routinely consult women as well as men. Below we make suggestions on integrating consideration of gender issues into due diligence processes, particularly impact assessments, tracking performance, communicating and reporting, stakeholder engagement and grievance mechanisms.
3. ***The central role of women in society should not be overlooked:*** Women's contributions to society through their productive work (paid and unpaid), reproductive roles, domestic and caring work, and contributions at the community level, are central to the survival and sustainability of business, and the economy more broadly. Yet the Guiding Principles position women as marginal and vulnerable (for example Principles 12 and 18). Because women's roles and voices are often overlooked and marginalized, and women are sometimes vulnerable, it is important that women are not marginalized in the business and human rights debate, and particularly in relation to the operationalization of the *Protect, Respect and Remedy* framework. It is in order to avoid such marginalization, that we make our recommendations (below) for more specific guidance on how to integrate a gender perspective in the implementation of the Principles.⁴
4. ***The issue of sexual and gender-based violence in the context of conflict zones warrants particular attention:*** Sexual and gender-based violence in conflict zones is an issue that affects women, men, girls and boys. Research shows overwhelmingly that women and children are disproportionately affected in these contexts and this needs to be recognized in the context of businesses operating in conflict-affected countries.

⁴ A helpful reference here are the Women's Empowerment Principles launched by the UN Global Compact and the United Nations Development Fund for Women (UNIFEM part of UN Women) in March 2009: http://www.unglobalcompact.org/Issues/human_rights/equality_means_business.html

Specific suggestions regarding the Guiding Principles:

Guiding Principle 10:

As the issues facing men and women are often very different during times of conflict, it is important to draw attention to the heightened risk of sexual and gender-based violence in the context of businesses operating in conflict-affected areas.

We suggest inserting the following words highlighted in bold:

- d. Ensuring that their current policies, regulation and enforcement measures are **gender sensitive and** effective in addressing the risk of business involvement in situations which could amount to the commission of international crimes.

Guiding Principle 14:

In order to ensure that gender is integral to overarching policies, add:

- f. is gender sensitive in terms of content and application**

Guiding Principle 16:

The 'process' aspects of engagement need to be gender inclusive. Here we suggest inserting the words highlighted in bold:

- b. Involve meaningful engagement with **women and men from** potentially affected groups and other relevant stakeholders, as appropriate...

Guiding Principle 18:

It is vital that human rights performance tracking include sex-disaggregated data. The Principle itself should specify this as a key requirement of operationalizing the framework. We suggest inserting the words highlighted in bold:

- a. Be based on appropriate qualitative and quantitative metrics **and include sex-disaggregated data**

Guiding Principle 24

Gender is a significant barrier that could lead to a denial of access to state-based judicial mechanisms. Barriers that relate to gender may extend beyond legal and practical barriers. We suggest inserting the words highlighted in bold:

- ...including considering ways to reduce legal, practical and other relevant barriers, **such as those based on gender and other forms of discrimination**, that could lead to a denial of access to remedy

Guiding Principle 25

We suggest adding the following sentence, highlighted in bold, to the principle:

- States should consider ways to reduce legal, practical and other relevant barriers, such as those based on gender and other forms of discrimination, that could lead to a denial of access to remedy.**

Guiding Principle 29

Finally, we believe there is merit in naming gender under the effectiveness criteria of Accessibility. Barriers to access such as language, literacy and awareness are listed, but the criteria are silent on the issue of gender. We suggest inserting the words highlighted in bold:

- a. Accessible: being publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access including **gender or other discrimination**, language, literacy, awareness, finance, distance, or fear of reprisal.

Specific suggestions regarding the Commentaries:

Guiding Principle 10:

Commentary on this point could be augmented by inserting the following sentence after the first sentence in the first paragraph:

Sexual and gender based violence is common in times of conflict and businesses need to be aware of their potential complicity in such human rights abuses through their relationships with other parties who may be perpetrating them.

Guiding Principle 12:

We suggest that the commentary provide an example that refers to gender by inserting the following sentence before the last sentence in the second paragraph:

For example, some businesses may have disproportionate impacts on the human rights of women and girls.

There is an opportunity to adjust the commentary in the fourth paragraph to read:

Depending on circumstances ..., they should also respect international humanitarian law in conflict-affected areas; and those rights specific **to women** and vulnerable and/or marginalized groups, such as indigenous peoples, ~~women~~; national, ethnic and religious minorities; and children.

The fourth paragraph could also draw attention to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as part of the “additional standards” which would also highlight the issue of discrimination, rather than positioning women only as vulnerable and marginalized. Currently, CEDAW is mentioned only in relation to Access to Remedy.

Guiding Principle 13:

In order to ensure that enterprises identify, prevent, mitigate and remediate adverse human rights impacts upon women as well as men, sex-disaggregated data needs to be collected as part of human rights processes to draw out the specific manner in which women are affected by the presence of a business enterprise. We suggest inserting an additional sentence before the last sentence in the first paragraph:

Business enterprises cannot know and show that they respect the human rights of women and men unless they collect sex-disaggregated data about their human rights impacts.

Guiding Principle 15:

The second sentence of the third paragraph of the commentary should read:

...should identify general areas of heightened human rights risk, whether due to certain suppliers' operating context, the particular products or services involved, **employment of large numbers of women in sub-standard working conditions**, or other relevant considerations, and prioritize those suppliers for human rights due diligence'.

Guiding Principle 16:

In the first paragraph, after the words "existing enjoyment of those rights", the following sentences should read:

A gender impact assessment is a fundamental component of assessing the human rights impact of a business enterprise. During this **assessment** process, particular attention should be paid to identify any actual or potential human rights impact on **women and** vulnerable **and/or** marginalized groups who may face particular human rights risks.

Guiding Principle 18:

The second paragraph of commentary to this principle should be adjusted as follows:

Business enterprises should make particular efforts to track their human rights performance with regard to **women and** vulnerable and/or marginalized groups, such as indigenous peoples; ~~women~~; national, ethnic and religious minorities; and children.

Guiding Principle 19:

Best practice reporting includes reporting on gender equality impacts (see forthcoming updates to the Global Reporting Initiative). We suggest that the commentary here includes reference to gender issues. At the end of the first paragraph a sentence should be added as follows:

An appropriate level of transparency includes reporting on gender equality policies, processes and impacts.

Guiding Principle 21:

We suggest that the following might be included in the commentary to this principle:

In situations where domestic law is discriminatory towards women, or men, business enterprises should aim to follow the spirit of international human rights law and ensure that their actions do not exacerbate existing inequalities.

Guiding Principle 24

The final paragraph of the commentary to this principle should read:

Additional barriers to access for business-related human right claims may exist within some jurisdictions and legal systems. For example, whether through active **gender or other forms of** discrimination or as the unintended consequences of the way judicial mechanisms are designed and operate, **women and** vulnerable **and/or** marginalized groups often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from them.

Guiding Principle 25

The fourth paragraph of the commentary should be amended as follows:

As with judicial mechanisms, **women and** vulnerable and marginalized groups often face particular barriers in accessing, using and benefiting from non-judicial grievance mechanisms, which should be taken into account at each stage of the remedial process.

About the authors:

Kathryn Dovey has worked in the field of business and human rights since 2004 and has advised a variety of multinational companies, UN agencies and NGOs on this subject. She has developed a global specialism on gender issues as they relate to business and human rights and is Research Fellow to the Institute for Human Rights and Business on this topic. Kathryn is also Director of the Global Business Initiative on Human Rights (GBI), a programme focused on business engagement with human rights. Kathryn previously worked for five years as Programme Manager within the secretariat of the Business Leaders Initiative on Human Rights (BLIHR), chaired by Mary Robinson. Kathryn has addressed audiences on business and human rights in Africa, Europe, Latin America, the Middle East, North America, and South Asia.

Jane Gronow has been with Rio Tinto for 4 years as a Principal Advisor for Community Relations. In this role she contributes to the maintenance and implementation of Rio Tinto's Communities policy, standard, guidelines and programmes, provides Communities guidance and advice to Business Units globally and participates in Communities assurance monitoring and reviews. She was instrumental in the creation of the Rio Tinto guide for integrating gender into communities work. Prior to this she worked for over 25 years in the development and humanitarian sectors. Her experience includes extensive engagement with government, business and non government sectors, bi and multilateral agencies and donors in both conflict and non conflict settings. Jane has extensive senior management experience and has worked in the non government sector and for UNICEF and UNAIDS, overseeing development and humanitarian programmes in; South East Asia, Russia, South Eastern Europe, the Pacific, Central America and Australia. Her thematic expertise includes women and children in conflict, trafficking of human beings, gender and development and HIV. Jane has post graduate degrees in Education and Psychology.

Kate Grosser is a Visiting Fellow at the International Centre for Corporate Social Responsibility, Nottingham University Business School. Over the past eight years her work has focused on corporate social responsibility (CSR) and gender equality/diversity, exploring the relationship between gender mainstreaming and CSR, and between mandatory and voluntary regulation of international business with respect to gender equality. Her PhD thesis addressed CSR, gender equality and organizational change. Kate has been a consultant to, among others: the Global Corporate Governance Forum; the European Academy of Business in Society; UNIFEM; Plan International; Oxfam International. She has also advised various national government equalities organizations on the CSR agenda. Kate previously worked on gender equality and human rights issues for NGOs working at the United Nations. She was a member of the Global Reporting Initiative's recent Gender Working Group. Her research has been published in numerous academic journals, and by the Association of Chartered Certified Accountants.

Deanna Kemp is a Senior Research Fellow at the Centre for Social Responsibility in Mining (CSRM), which is part of the Sustainable Minerals Institute at The University of Queensland (UQ) in Australia. Deanna manages some of CSRM's key projects, which focus on issues of human rights, conflict management, gender, and social accountability systems. For the past 15 years her work and research

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Bonita Meyersfeld is an associate professor of law at the University of Witwatersrand School of Law in Johannesburg, South Africa. She is also the head of gender at the Centre for Applied Legal Studies and managing editor on the South African Journal on Human Rights. Bonita teaches international law, business and human rights and, prior to working in South Africa, was a legal advisor in the House of Lords in the United Kingdom. Bonita has written, lectured and presented in Africa, the United States, Canada and Europe in the areas of international human rights law, transitional justice, women's rights, business and human rights and development. She is also the author of *Domestic Violence and International Law*, Hart Publishing (UK) (2010).