A Triple Comparative Study of Business and Human Rights Mechanisms in Türkiye, Colombia, and South Africa from a Gender Equality Perspective

by

İlayda Eskitaşcioğlu Karavelioğlu

A Dissertation Submitted to the Graduate School of Social Sciences and Humanities in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

in

Law



KOÇ ÜNİVERSİTESİ

17 January 2024

A Triple Comparative Study of Business and Human Rights Mechanisms in Türkiye, Colombia, and South Africa from a Gender Equality Perspective

Koç University

Graduate School of Social Sciences and Humanities

This is to certify that I have examined this copy of a doctoral dissertation by

İlayda Eskitaşcioğlu Karavelioğlu

and have found that it is complete and satisfactory in all respects and that any and all revisions required by the final examining committee have been made.

Committee Members:

Prof. Dr. Bertil Emrah Oder (Advisor)

Prof. Dr. Zeynep Gürhan Canlı

Prof. Dr. Billur Yaltı

Prof. Dr. Gülriz Uygur

Dr. Özge Yücel Dericiler

Date: 17.01.2024

To my precious family
and
to feminist solidarity,

ABSTRACT

A Triple Comparative Study of Business and Human Rights Mechanisms in Türkiye, Colombia, and South Africa from a Gender Equality Perspective

İlayda Eskitaşcioğlu Karavelioğlu
Doctor of Philosophy in Law, January 2024

Women and girls are disproportionately and uniquely affected by adverse business and human rights impacts, worldwide. Such impacts are worse and more complex for those living in host states in the Global South. Despite some progress and gradual awareness, there are significant shortcomings with regard to the gender dimension of the business and human rights mechanisms available in the host states, and there is a long overdue need to provide a critical review of the business and human rights area from the perspective of feminist legal theory. Feminist legal theory has the potential to contribute to the progressive development of the business and human rights area to go further than the current, limited gender perspective, which is fixed on the portrayal of a vulnerable, poor, working-class woman of colour from the Global South. Business and human rights, as an area seeking to address the power disparities itself, is at the risk of ignoring another well-documented, structural, and complex power imbalance, gender inequality, experienced daily by women and girls. This thesis has chosen three distinctive countries, Türkiye, Colombia, and South Africa, which are unique host states within the global supply chains, to examine the business and human rights mechanisms through a comparative analysis with a gender equality perspective. The following research question is at the core of this dissertation: To what extent are business and human rights mechanisms in Türkiye, Colombia, and South Africa gender-responsive? Feminist legal theory guides this comparative analysis as it searches for the answer, combining a review of the literature, relevant normative frameworks, and practices with semi-structural, in-depth interviews conducted with the representatives of five major stakeholders involved in the gender dimensions of business and human rights in each country: states; businesses; international organizations; labor movement; and feminist and local human rights defenders and civil society organizations. By questioning the gender responsiveness of business and human rights mechanisms in the three selected jurisdictions, this thesis aims to serve the deconstruction and exposal of the systemic gender bias in a host state context, hoping to contribute to the future reconstruction of gender-equal business and human rights mechanisms.

ÖZETÇE

Türkiye, Kolombiya ve Güney Afrika'da İş Dünyası ve İnsan Hakları Mekanizmalarının Toplumsal Cinsiyet Perspektifinden Üçlü bir Karşılaştırması

İlayda Eskitaşçıoğlu Karavelioğlu
Hukuk, Doktora, Ocak 2024

Kadınlar ve kız çocukları, bütün dünyada iş dünyası ve insan hakları alanındaki olumsuz gelişme ve ihlallerden orantısız ve kendine özgü şekillerde etkilenmektedir. Bu tür etkiler Küresel Güney'deki ev sahibi devletlerde yaşayanlar için daha kötü ve karmaşıktır. Belirli bir ilerleme ve kademeli farkındalığa rağmen, ev sahibi ülkelerde mevcut iş dünyası ve insan hakları mekanizmalarının toplumsal cinsiyet boyutuna ilişkin önemli eksiklikler bulunmaktadır ve feminist hukuk teorisinin perspektifinden, iş dünyası ve insan hakları alanına yönelik eleştirel incelemelere ihtiyaç duyulmaktadır. Feminist hukuk teorisi, iş dünyası ve insan hakları alanını, Küresel Güney'den, beyaz olmayan, kırılgan ve yoksul bir işçi kadın tasvirine odaklanan, sınırlı toplumsal cinsiyet perspektifinin ötesine geçirme ve bu alanın ilerici gelişimine katkıda bulunma potansiyeline sahiptir. Kendisi de güç eşitsizliklerini gidermeye çalışan bir alan olan iş dünyası ve insan hakları, kadınlar ve kız çocuklarının her gün deneyimlediği, yaygınlığı kanıtlanmış, yapısal ve karmaşık bir başka güç eşitsizliği olan toplumsal cinsiyet eşitsizliğini görmezden gelme riskiyle karşı karşıyadır. Bu tez, iş dünyası ve insan hakları mekanizmalarını toplumsal cinsiyet eşitliği bakış açısıyla, karşılaştırmalı bir analiz yoluyla incelemeyi amaçlamaktadır ve bu amaçla küresel tedarik zincirlerinin özgün ev sahibi ülkeleri olan Türkiye, Kolombiya ve Güney Afrika'yı seçmiştir. Bu tezin temelinde şu araştırma sorusu yer almaktadır: Türkiye, Kolombiya ve Güney Afrika'daki iş dünyası ve insan hakları mekanizmaları toplumsal cinsiyete ne ölçüde duyarlıdır? Feminist hukuk teorisi bu karşılaştırmalı analize rehberlik ederken, tez, literatür taramasını, ilgili normatif çerçevelerin ve pratiklerin incelemesini ve iş dünyası ve insan haklarının toplumsal cinsiyet bakımından en önemli beş büyük paydaşının temsilcileriyle gerçekleştirilen yarı yapılandırılmış derinlemesine mülakatları bir arada kullanmıştır. Bu mülakatların gerçekleştirildiği, temsil edilen paydaşlar, beş temel gruba ayrılabilir: devletler; şirketler; uluslararası kuruluşlar; işçi hareketi; feminist ve yerel insan hakları savunucuları ve sivil toplum örgütleri. Seçilen üç ülkedeki iş dünyası ve insan hakları mekanizmalarının toplumsal cinsiyete duyarlılığını sorgulayan bu tez, iş dünyası ve insan hakları alanında, ev sahibi devletler bağlamındaki sistemik toplumsal cinsiyet önyargısını deşifreleme yoluyla önce "yıkıma", ve gelecekte toplumsal cinsiyet bakımından eşitlikçi iş dünyası ve insan hakları mekanizmalarının "yeniden inşaya" katkıda bulunmayı amaçlamaktadır.

ACKNOWLEDGMENTS

I would like to thank Prof. Dr. Bertil Emrah Oder, who is a beacon of feminist hope for me. I am grateful to have met her and for her exceptional mentoring and encouragement. Her role modeling, wisdom, and kindness have been my guiding lights throughout this journey. I keep learning from her every single day. She is and always will be who I want to be when I grow up. I would also like to thank Prof. Dr. Billur Yaltı and Prof. Dr. Zeynep Gürhan Canlı for their support and guidance and Prof. Dr. Başak Çalı for sparking the joy and curiosity of research in me. My heartfelt thanks to Esra Özcan for her guidance and patience, who has helped me to navigate my way throughout this academic journey. I extend my thanks to the GSSSH team and the Koç University library team for their continuous support over the years. I would like to thank Beryl ter Haar, my LLM supervisor. Her mentorship since my days at Leiden University was memorable and instrumental in creating opportunities like my academic visit to the University of Warsaw. Her guidance resonates in every note of "Ode to Joy." I would like to thank my fellow PhD researcher friends for their solidarity and friendship, Aquila, Irina, Betül, Asylai, Levent, Bahadır, Ayşegül, Matteo, Hoitsi, Esra and last but not least Ezel, with whom I share a birthday and a PhD journey. I would like to thank Alp Kağan for his amazing support with the transcripts.

I would like to thank the academic and admin staff of the Warsaw University Law Faculty, Los Andes University Law Faculty, and the University of Cape Town Law Faculty, who have been so kind to host me on their campuses and let me research in their beautiful libraries. I will never forget the absurd around the world trip in which I technically I stepped on 5 continents in 23 days. It was truly the best of times and the worst of times. I would like to thank each and every scholar who made time for me for interviews, who shared their research ideas and wisdom, and who offered some great advise over lunches and coffees.

I would like to thank all of my interviewees for their time and for the wisdom and experiences they have shared with me, as well as their hospitality and their support. I would like to thank the feminist activists from around the world for the feminist joy and solidarity they have shared with me throughout this journey as our paths crossed along the way.

I would like to thank my co-founder, Bahar, for teaching me what feminist solidarity and joy really, truly mean. When my PhD journey started, we were a small initiative, just the two of us, desperately looking for a few boxes of donated menstrual products. Look where we are, 5 years later. We went through thick and thin but seeing what we have built gives me so much strenght and pride. My heartfelt thanks to my amazing team members at We Need to Talk Association. From the fieldworks at the earthquake zone to endless Zoom meetings, thank you for joining this journey, for your commitment and four your friendship. It is an honour to work with you.

My father Gürcan, my mother Ayşe, my sisters Pırıl and Alime, thank you for raising me, and for making me the person that I am. Thank you for always being there for me no matter what, for nourishing that little girl's curiosity and encouraging her to learn, to research, and to explore. I will never thank you enough for the unconditional love and support that you have given me, and for the pep talks. You are my light and my safe haven. To Hilal and to Gediz, two thirds of my trio thank you for bearing with my "Ph.E." journey. I am so lucky that I am growing up with you.

Last but not least, I want to thank my husband Cem. My partner in love and life. Thank you for the library snack packs, the encouraging little love notes and the much needed hugs. Thank you for being my rock. I love you. I can't wait to see the next chapter in our lives and to grow old with you.

This accomplishment would not have been possible without you. Thank you from the bottom of my heart.

TABLE OF CONTENTS

ACKNOWLEDGMENTS **6**

TABLE OF CONTENTS **7**

ABBREVIATIONS **10**

LIST OF CASES **16**

LIST OF LEGISLATION **21**

1. INTRODUCTION **25**

2. AN OVERVIEW OF FEMINIST LEGAL THEORY **37**

2.1. What is Feminist Legal Theory? 37

2.2. Generations and Schools of Feminist Legal Theory 38
2.2.1. "Generation of Equality" or Trailblazers: Liberal Feminism 38
2.2.2. "Generation of Differences" or Angry Voices 39
2.2.3. "Generation of Complex Identities": Diversity, Fluidity and Intersections 46
2.2.4. Beyond Western White Feminism 53
2.2.5. Intersectional Feminism 60

2.3. Using Feminist Tools and Techniques for the Analysis of Law 62

2.4. Theoretical and Methodological Foundations of the Present Research 63

3. A FEMINIST CRITICAL APPROACH TO BUSINESS AND HUMAN RIGHTS NORMATIVE FRAMEWORKS AND PRACTICES **68**

3.1. Analysis of Major Business and Human Rights Normative Frameworks with a Gender Lens 69
3.1.1. The United Nations Guiding Principles on Business and Human Rights (UNGPs) 70
3.1.2. The ILO Mechanisms and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration) 80
3.1.3. The ILO Constitution and Legally Binding ILO Conventions 85
3.1.4. OECD Mechanisms for Business and Human Rights and the OECD Guidelines for Multinational Enterprises (OECD Guidelines) 92

3.2. Analysis of Significant Business and Human Rights Practices with a Gender Lens 95
3.2.1. Human Rights Due Diligence 95
3.2.2. Gender Responsive Human Rights Due Diligence 97
3.2.3. Regional and National Legislative and Political Business and Human Rights Initiatives 102
3.2.5. Business-led Initiatives and Practices: UN Global Compact and Women's Empowerment Principles 106

4. A TRIPLE, GENDER-FOCUSED COMPARISON OF BUSINESS AND HUMAN RIGHTS CONTEXTS IN TÜRKİYE, COLOMBIA, AND SOUTH AFRICA **112**

4.1. Introduction 112

4.2. The Role (and Silent Potential) of Regional Human Rights Mechanisms 118
4.2.1. European Human Rights Mechanisms 118
4.2.2. Inter-American Human Rights Mechanisms 126
4.2.3. African Human Rights Mechanisms 135
4.3. Domestic Legal Arena 146
4.4. Gender-Based Corporate Violations in Armed Conflict: the LaFarge Case and Corporate Violations During Colombian Armed Conflict 183
4.5. Accountability of National Corporations: the Dardanel Case in Türkiye and Misleading Women's Empowerment Advertisements 191
4.6. State Owned Entities: Board Seat Quotas, the ESKOM Case and Access to Basic Necessities 203
4.7. The Most Prevalent Gender Issues and Socio-Political Context Based on the Insights of Feminist Movements 210
4.7.1. Francia Marquez's Promising Leadership in Colombia 211
4.7.2. Türkiye's Withdrawal from Istanbul Convention, the Rise of Anti-Gender Discourse and Shrinking Civic Spaces for Feminists 215
4.7.3. Young Black Feminists Disappointment towards the ANC Women's League . 219
4.7.4. Common Challenges or "Blind Alleys" Amidst Differences: What are the Insights from the Feminists? 222
4.8. Representation Matters: The Chronic Under-Representation of Women in Public Life 226
4.8.1. Parliaments 226
4.8.2. Executive Branches 226
4.8.3. Judiciary and Transitional Justice Mechanisms 227
4.8.4. Trade Unions 230
4.8.5. Leadership, Ownership, and Management in Business 234
4.8.6. Socio-Economic Gender Gap 238
4.9. Gender Dimensions of Seemingly Gender Neutral Sectors/Issues and Everyday Experiences of Gender-based Discrimination 242
4.9.1. Illegal Businesses 242
4.9.2. Commuting and Public Transportation 244
4.9.3. The Soft Belly: Single Mothers 246
4.10. The Impact of COVID-19 and the Business and Human Rights Aspect of Increased Gender-Based Violence 247
4.11. The Problematic Corporate Approach to Gender Equality 250
4.11.1. How Multinational Corporations Isolate Themselves from Gender Inequality? 251
4.11.2. Gendered and Colonial Fashion: Appropriating and Stealing Crafts Designs and Ancestral Knowledge of Indigenous Women 254
4.12. SLAPPs, Targeting, Harassment and Killings of Women Human Rights Defenders 261
4.13. Gender-Blind Preventive Mechanisms as the Dead End of Implementation 283
4.14. Labour Unions: Patriarchal Men's Clubs, Not Safe Havens 298
4.15. Women's Portrayal and Narratives: From Nation-Building to Advantageous Strategic Portrayals and Wi(n)dow Displays 310

4.16. Intersectionality: Questions of Race and Class, Migrant Women as Scapegoats and Invisibilized Domestic Workers 315
4.16.1. Migrant Women as Scapegoats 316
4.16.2. Undervalued and Invisibilized: Domestic Work That Makes the World Go Round 328
4.17. Access to Justice 339
4.17.1. Not Knowing Rights vs. Not Affording their Enforcement 339
4.17.2. Victimhood vs. Agency of Women in Business and Human Rights Lawsuits 340
4.17.3. Worth Fighting? Lengthy and Exhausting Legal Battles, Limited Access to Justice and Lack of Feminist Remedies 345
4.17.4. The Potential of Alternative Dispute Resolution: Mediation through OECD National Action Points 353
4.17.5. Feminist Remedies and Restitutive Justice 361
4.17.6. Who Speaks on behalf of Women? 367
4.18. Culture: A Major Factor or an Excuse? 382
5. CONCLUSION 395
BIBLIOGRAPHY 412
Appendix A 467

ABBREVIATIONS

ACCORD	Accord on Fire and Building Safety in Bangladesh
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACFTA	African Continental Free Trade Area
ACmHPR	African Commission on Human and People's Rights
ACHPR	African Convention on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHPR	African Court on Human and Peoples' Rights
ADR	Alternative dispute resolution
AIDS	Acquired Immunodeficiency Syndrome
AKP	Adalet ve Kalkınma Partisi (Justice and Development Party)
AMV	African Mining Vision
ANC	African National Congress
ANCWL	African National Congress Women's League
ANDI	Asociación Nacional de Industriales (National Association of Industrialists)
APDF	Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (Association for the Progress and Defense of Malian Women's Rights)
APG	Algemene Pensioen Groep (General Pension Group)
APIX	Agence de Promotion des Investissements et des Grands Travaux (Senegalese Agency for the Promotion of Investments and Major Constructions)
Art.	Article
ASM	Artisanal and small-scale mining
ATCA	Alien Tort Claims Act
AU	African Union
AUC	Autodefensas Unidas de Colombia (United Self Defense Forces of Colombia)
BDT	Bangladesh Taka
BHR	Business and Human Rights
BHRRC	Business and Human Rights Resource Centre
BIST	Borsa İstanbul (Istanbul Stock Exchange)
Bir-Metal İş	Birleşik Metal İşçileri Sendikası (United Meral Workers' Union)
BTA	Bilateral Trade Agreement
BWL	Bantu Women's League
CCC	Clean Clothes Campaign
CCJ	Community Court of Justice
CCMA	Commission for Conciliation, Mediation and Arbitration
CCTP	Conditional cash transfer programme
CEDAW	Convention to Eliminate Discrimination against Women
CEO	Chief Executive Officer
CEPAL	Comision Economica Para America Latina y el Caribe (Economic Commission for Latin America and the Caribbean)
CESR	Center for Economic and Social Rights
CEV	La Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No repetición (Commission for Clarification of the Truth, Coexistence and Non-Repetition)
CGT	Confederación General de Trabajo (Federation of Trade Unions)
CIDH	Comisión Interamericana de Derechos Humanos (Inter American Commission on Human Rights)

CIVETS	Colombia, Indonesia, Vietnam, Egypt, , and South Africa
CLS	Critical Legal Studies
CoE	Council of Europe
COIDA	Compensation for Occupational Injuries Act
COL	Colombia
CONSAWU	Confederation of South African Workers Unions
COP	Colombian Peso
COP	Conference of the Parties (United Nations Framework Convention on Climate Change)
COSATU	Congress of South African Trade Unions
COSATU	Congress of South African Trade Unions
COVID-19	Coronavirus disease of 2019
CRC	Convention on the Rights of the Child
CSO	Civil society organization
CSR	Corporate social responsibility
CTC	Confederación de Trabajadores de Colombia (Confederation of Workers of Colombia)
CUT	Central Unitaria de Trabajadores (Central Union ofWorkers)
ÇED	Çevre etki değerlendirmesi (Environmental impact assessment)
DHL	Dalsey, Hillblom and Lynn (courier company)
DIHR	Danish Institute for Human Rights
DİSK	Devrimci İşçi Sendikaları Konfederasyonu (Confederation of Progressive Trade Unions)
DNA	Deoxyribonucleic Acid
DOJ	Department of Justice
DRC	Democratic Republic of Congo
EAO	Emoluments attachment order
EC	European Commission
ECCHR	European Center for Constitutional and Human Rights
ECCHR	European Center for Constitutional and Human Rights
ECHR	European Convention on Human Rights
ECOWAS	Economic Community Of West African States
ECtHR	European Court of Human Rights
EFFAT	European Federation of Food, Agriculture and Tourism Trade Unions
EIA	Environmental impact assessment
ESG	Environmental, Social and Governance
ESKOM	Electricity Supply Commission
EU	European Union
EURO	European Monetary Unit
EVİD-SEN	Ev İşçileri Dayanışma Sendikası (Domestic Workers Solidarity Syndicate)
FAO	Food and Agriculture Organization
FAQ	Frequently Asked Questions
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo (Revolutionary Armed Forces of Colombia – People's Army)
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FEDUSA	Federation of Unions of South Africa
FEMNET	African Women's Development and Communication Network

FESBACI	Fédération Syndicale des Banques, Assurances, Établissements Financiers du Commerce et de L'industrie (Federation of Banks, Insurance and Financial Institutions of Trade and Industry)
FPIC	Free prior informed consent
G20	Group of 20 (Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, México, Russia, Saudi Arabia, South Africa, Korea, , the United Kingdom, United States and European Union)
G7	Group of 7 (Canada, France, Germany, Italy, Japan, the United Kingdom and the United States)
GBP	United Kingdom Pound Sterling
GBV	Gender based violence
GBVH	Gender-based violence and harassment
GDP	Gross domestic product
GEC	Gender Equality Commission
GEKCO	Greater Kyalami Conservancy
GIDA-İŞ	Türkiye Gıda İşçiler Sendikası (Food Workers Trade Union of Türkiye)
GII	Gender equality index
GIWUSA	General Industries Workers Union of South Africa
GONGO	Government-Organized Nongovernmental Organization
GP	Guiding Principle
GYO	Gayrimenkul yatırım ortaklığı (Real estate investment trust)
HAK-İŞ	Hak İşçi Sendikaları Konfederasyonu (Confederation of Turkish Real Trade Unions)
HDSA	Historically disadvantaged South African
HIV	Human Immunodeficiency Virus
HQ	Headquarters
HRD	Human rights defender
HRDD	Human rights due diligence
HRM	Human resource management
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICAR	International Corporate Accountability Roundtable
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICF	International Climate Fund
IDWF	International Domestic Workers Federation
IGWG	Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises
IHRDA	Institute for Human Rights and Development in Africa
ILO	International Labour Organization
ILOSTAT	International Labour Organization Statistical Database
IMF	International Monetary Fund
Inc.	Incorporated
IndustriALL	IndustriALL Global Union
ISIS	Islamic State of Iraq and Syria
ITUC	International Trade Union Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
İÇTAŞ	IC İbrahim Çeçen Yatırım Holding A.Ş. (Ibrahim Çeçen Investment Holding Incorporated Company)
JAC	Juventud de la Acción Comunal (Community Action Board)
JEP	Jurisdicción Especial para la Paz (Special Jurisdiction for Peace)

KADEM	Kadın ve Demokrasi Derneği (Women and Democracy Association)
KAP	Kamu Aydınlatma Platformu (Public Disclosure Platform)
KDK	Kamu Denetçiliği Kurumu (Ombudsperson's Office)
KEFEK	Kadın Erkek Fırsat Eşitliği Komisyonu (Commission on Equality of Opportunity Between Women and Men)
KESK	Kamu Emekçileri Sendikaları Konfederasyonu (Confederation of Public Employees' Trade Unions)
KPI	Key performance indicator
LBT	Lesbian, bisexual, transsexual
LCS	Lafarge Cement Syria
LGBTI+	Lesbian Gay Bisexual Transgender and Intersex plus
LSD	Lumiere Synergie pour le Developpement (Light Synergy for Development)
MNC	Multinational corporation
MNE	Multinational entreprise
MPRDA	Mineral and Petroleum Resources Development Act
MUÇEP	Muğla Çevre Platformu (Muğla Environmental Platform)
NACTU	National Council of Trade Unions
NAP	National action plan
NAWA	Narodowa Agencja Wymiany Akademickiej (Polish National Agency for Academic Exchange)
NBIM	Norges Bank Investment Management
NCP	National Contact Point
NDoH	National Department of Health
NEMA	National Environmental Management Act
NGO	Non-governmental organization
NHRI	National Human Rights Institution
No.	Number(ed)
OAS	Organization of American States
OCJ	Office of the Chief Justice
OEA	Organización de Estados Americanos (Organization of American States)
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OIG	Observatorio de Igualdad de Género (Gender Equality Observatory
ONIC	Organización Nacional Indígena de Colombia (National Indigenous Organization of Colombia)
ÖZ İPLİK İŞ	Tüm Dokuma, İplik Trikotaj ve Giyim Sanayii İşçileri Sendikası (All Weaving, Yarn Knitting and Clothing Industry Workers Union)
Petrol-İş	Türkiye Petrol, Kimya, Lastik İşçileri Sendikası (Petroleum, Chemistry, Rubber Workers' Union of Türkiye)
PGM	Platinum group metals
PIGMLD	El Programa Integral de Garantías para Mujeres Lideresas y Defensoras de Derechos Humanos (Comprehensive Programme of Guarantees for Women Leaders and Defenders)
PKK	Partiya Karkerên Kurdistanê (Kurdistan Workers' Party)
Pvt. Ltd.	Private limited company
RBC	Responsible Business Conduct
REDESCA	Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales (Special Rapporteur on Economic, Social, Cultural and Environmental Rights)
RG	Resmi Gazete (Official Gazette)

RUV	Registro Único de Víctimas (Unitary Victims' Registry)
S.	Section
SA	South Africa
SACCAWU	South African Commercial, Catering and Allied Workers' Union
SACCI	South African Chamber of Commerce and Industry
SACTWU	Southern African Clothing and Textile Workers' Union
SADSAWU	South African Domestic Services and Allied Workers Union
SAFTU	South African Federation of Trade Unions
SAHRC	South African Human Rights Commission
SAMRC	South African Medical Research Council
SAMWU	South African Municipal Workers Union
SBCWC	Saartjie Baartman Centre for Women and Children
SCOTUS	Supreme Court of the United States
SDG	Sustainable Development Goals
SEIU	Service Employees International Union
SERAC	Social and Economic Rights Action Committee
SERAP	Socio-Economic Rights and Accountability Project
SINTRACONTEXA	Sindicato de Trabajadores de la Confección y de la Industria Textil de Colombia (Workers Union of Clothing Production and Textile Industry of Colombia)
SINTRASEDOM	Sindicato Nacional de Trabajadoras del Servicio Doméstico (National Syndicate of Domestic Service Work)
SINTRATEXTIL	Sindicato de trabajadores de la Industria Textil de Colombia (Workers Union of the Textile Industry of Colombia)
SLAPPs	Strategic lawsuits against public participation
SLP	Socil and labour plan
SOE	State owned entity
SPK	Sermaye Piyasası Kurulu (Capital Markets Board)
SRSG	Special Representative of the Secretary General
Stats SA	Statistics South Africa
STD	Sexually transmitted disease
TBMM	Türkiye Büyük Millet Meclisi (Grand National Assembly of Türkiye)
TEKSİF	Türkiye Tekstil Örme ve Giyim Sanayi İşçileri Sendikası (Textile Knitting and Clothing Industry Workers Union of Türkiye)
TİHEK	Türkiye İnsan Hakları ve Eşitlik Kurumu (Human Rights and Equality Institution of Türkiye)
TİSK	Türkiye İşveren Sendikaları Konfederasyonu (Confederation of Turkish Employer Associations)
TKP	Türkiye Komünist Partisi (Communist Party of Türkiye)
TR	Türkiye
TRC	Truth and Reconciliation Commission (South Africa)
TRY	Turkish Lira
TURKSTAT	Turkish Statistical Institution
TÜİK	Türkiye İstatistik Kurumu (Turkish Statistical Institute)
TÜRK-İŞ	Türkiye İşçi Sendikaları Konfederasyonu (Confederation of Turkish Trade Unions)
TÜSİAD	Türk Sanayicileri ve İş İnsanları Derneği (Turkish Industry and Business Association)
TÜV Rheinland AG	TUV Rheinland Aktiengesellschaft (Public Limited Corporation)
TWAIL	Third World Approaches to International Law
UCT	University of Cape Town
UDHR	Universal Declaration of Human Rights

UGT	União Geral dos Trabalhadores (Socialist General Union of Workers)
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
UNGC	United National Global Compact
UNGPs	United Nations Guiding Princples on Business and Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Commission
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
UNSG	United Nations Secretary General
UNTB	United Nations Treaty Body
UNWG	United Nations Working Group on Business and Human Rights
US	United States
USA	United States of America
USD	United States Dollar
UTRASD	Unión de Trabajadoras Afrocolombianas del Servicio Doméstico (Trade Union of Afrocolombians in Domestic Service Work)
VDPA	Vienna Declaration and Programme of Action
WEF	World Economic Forum
WEP	Women's Empowerment Principles
WHRD	Women human rights defenders
YK Energy	Yeniköy Kemerköy Energy
ZA	South Africa
ZAR	South African Rand

LIST OF CASES

Supranational/Regional

European Human Rights System

- Al-Skeini and Others v. the United Kingdom 55721/07 Eur. Ct. H.R. 110-114.(2011)
- Budayeva and Others v. Russia, 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, Eur. Ct. H.R., (2008)
- Burghartz v. Switzerland, 16213/90, Eur. Ct. H.R., (1994)
- Chiragov and Others v. Armenia, 13216/05, Eur. Ct. H.R., (2015)
- Demirtaş v. Turkey (No. 2),14305/17, Eur. Ct. H.R., (2020)
- Dubetska and Others v. Ukraine,30499/03, Eur. Ct. H.R., (2011)
- Emel Boyraz v. Turkey, 61960/08, Eur. Ct. H.R., (2014)
- Fadeyeva v. Russia, 55723/00, Eur. Ct. H.R., (2005)
- Gauthier v. Belgium, 12603/86, Eur. Ct. H.R., (1989)
- Gruba and Others v. Russia,66180/09 and 3 others, Eur. Ct. H.R., (2021)
- Guerra & Others .Italy, 116/1996/735/932,Eur. Ct. H.R, (1998)
- Ilascu & Others v. Moldova &Russia,48787/99, Eur. Ct. H.R., (2004)
- Issa v. Turkey, 31821/96, Eur. Ct. H.R., (2004)
- Jaloud v. Netherlands, 47708/08, Eur. Ct. H.R., (2014)
- Jurčić v. Croatia, 54711/15, Eur. Ct. H.R., (2021)
- Kavala v. Turkey, 28749/18, Eur. Ct. H.R., (2019)
- Kolyadenko and Others v. Russia, 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05, Eur. Ct. H.R, (2012)
- Konstantin Markin v. Russia, 30078/06, Eur. Ct. H.R., (2012)
- Loizidou v. Turkey, 15318/89, Eur. Ct. H.R., (1995)
- Lopez Ostra v. Spain,16798/90, Eur. Ct. H.R., (1994)
- Öcalanv. Turkey, 46221/99, Eur. Ct. H.R., (2005)
- Öneryildiz v. Turkey, 48939/99, Eur. Ct. H.R., (2004)
- Opuz v. Turkey, 33401/02, Eur. Ct. H.R., (2009)
- Petrovic v. Austria, 156/1996/775/976, Eur. Ct. H.R., (1998)
- Tatar v. Romania, 67021/01, Eur. Ct. H.R., (2009)

Inter-American Human Rights System

- Escher et al. v. Brazil, Inter-Am Ct. H.R., C/200, (2009)
- Fernández Ortega v. Mexico, Inter-Am Ct H.R., C/215, (2009)
- González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009)
- Jessica Lenahan (Gonzalez) et al. v. United States, Inter-Am. Cm. H.R., Report No. 80/11 (2011)
- Kaliña and Lokono People v. Suriname, Inter-Am Ct. H.R., C/309, (2015)
- Kawas Fernández Sisters v. Honduras, Inter-Am Ct. H.R., C/196, (2009)
- Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am Ct. H.R., (2012)
- Loayza Tamayo v. Peru, Inter-Am. Ct. H.R., C/33, (1997).
- Maria da Penha v. Brazil, Inter-Am. Cm. H.R., Report No. 54/01, (2000)
- María Eugenia Morales de Sierra v. Guatemala, Inter-Am. Cm. H.R., Report No. 4/01, (2011)
- María Eugenia Morales de Sierra v. Guatemala, Inter-Am. Cm. H.R., 4/01, (2011)

- Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R., InterAm. Ct. H.R., C/160, (2006)
- Missing and Murdered Indigenous Women in British Columbia, Canada, Inter-Am. Cm. H.R., Doc No. 30/14, (2014).
- Plan de Sánchez Massacre v. Guatemala, Inter-Am. Ct. H.R., C/105, (2004)
- Raquel Martín de Mejía v. Peru, Inter-Am. Cm. H.R., Report No. 5/96, (1996).
- Saramaka People v. Suriname, Inter-Am Ct. H.R., C/146, (2006)
- Sawhoyamaxa Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/146, (2006)
- U'wa Indigenous People v. Colombia, Inter-Am Ct. H.R., (ongoing)
- Velasquez Pais v. Guatemala, Inter-Am. Ct. H.R., C/307, (2015)
- Xákmok Kásek People v. Paraguay, Inter-Am Ct. H.R., (2010)
- Yakye Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/125, (2005)
- Yarce v. Colombia, Inter-Am. Ct. H.R., C/325, (2016)
- Yirley Judith Velasco Garrido y núcleo familiar respecto de Colombia, Inter-Am. Cm. H. R., 40/2020, (2020)
- Zoilamérica Narváez Murillo v. Nicaragua, Inter-Am. Cm. H.R., Report No. 118/01, (2009)

African Human Rights System

- African Commission on Human and Peoples' Rights v. Republic of Kenya, 006/212 Afr. Ct. H.P.R., (2022)
- Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali, 046/2016, Afr. Ct. H.P.R., (2018)
- Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Afr. Cm. H.P.R., (2010).
- Delta International Investments S.A., Mr and Mrs A.G.L. De Lange v. Republic of South Africa, 002/2012, Afr. Ct. H.P.R., (2012)
- Dorothy Njemanze & 3 Others. v. Nigeria ECW/CCJ/JUD/08/17, ECOWAS Community Court of Justice, (2017)
- Emmanuel Joseph Uko and Others v. Republic of South Africa, 004/2012, Afr. Ct. H.P.R., (2012)
- Hadijatou Mani v. Niger, ECW/CCJ/JUD/06/08, ECOWAS Community Court of Justice (2008)
- IHRDA v. DRC, 393/10, Afr. Cm. H.P.R., (2016).
- Mary Sunday v. Nigeria, ECW/CCJ/JUD/11/18, ECOWAS Community Court of Justice (2018)
- Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, 155/96, Afr. Ct. H.P.R., (2001)
- The Registered Trustees of the Socio-economic and Accountability Project (SERAP) v. Nigeria & UBEC, ECW/CCJ/JUD/07/10, ECOWAS Community Court of Justice, (2010)
- Valentine Ayika v. Republic of Liberia, ECW/CCJ/AAP/07/11, ECOWAS Community Court of Justice (2012)

Domestic

South Africa

- Baleni and Others v. Minister of Mineral Resources and Others (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018)
- Bhe and Others v. Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004)
- Carmichele v. Minister of Safety and Security (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001)
- Daniels v. Campbell and Others (CCT 40/ 03) [2004] ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) (11 March 2004)
- Grobler v. Naspers Bpk en ‘n ander 2004 (4) SA 220 (C)
- Gumede (born Shange) v. President of the Republic of South Africa and Others (CCT 50/08) [2008] ZACC 23; 2009 (3) BCLR 243 (CC) ; 2009 (3) SA 152 (CC) (8 December 2008)
- Hassam v. Jacobs NO and Others (CCT83/08) [2009] ZACC 19; 2009 (11) BCLR 1148 (CC) ; 2009 (5) SA 572 (CC) (15 July 2009)
- K v. Minister of Safety and Security (CCT52/04) [2005] ZACC 8; 2005 (6) SA 419 (CC); 2005 (9) BCLR 835 (CC) ; [2005] 8 BLLR 749 (CC); (2005) 26 ILJ 1205 (CC) (13 June 2005)
- Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020)
- Maledu and Others v. Itereleng Bakgatla Mineral Resources (Pty) Limited and Another (CCT265/17) [2018] ZACC 41; 2019 (1) BCLR 53 (CC); 2019 (2) SA 1 (CC) (25 October 2018)
- Mayelane v. Ngwenyama and Another (CCT 57/12) [2013] ZACC 14; 2013 (4) SA 415 (CC); 2013 (8) BCLR 918 (CC) (30 May 2013)
- Mineral Sands Resources (Pty) Ltd and Others v. Reddell and Others (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022)
- Minister of Health and Others v. Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002)
- President of the Republic of South Africa and Another v. Hugo (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1 (18 April 1997)
- Prinsloo v. Van Der Linde [1997] ZACC 5; 1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC) (18 April 1997)
- S v. Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117 (9 October 2002)
- Shibi v. Sithole and Others (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004)
- South African Human Rights Commission and Another v. President of the Republic of South Africa and Another 2005 (1) SA 580 (CC)
- University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC v. University of Stellenbosch Legal Aid Clinic and Others; Mavava Trading 279 (Pty) Ltd and Others v. University of Stellenbosch Legal Aid Clinic and Others

(CCT127/15) [2016] ZACC 32; 2016 (6) SA 596 (CC); (2016) 37 ILJ 2730 (CC); 2016 (12) BCLR 1535 (CC) (13 September 2016)
- Volks NO v. Robinson and Others (CCT12/04) [2005] ZACC 2; 2005 (5) BCLR 446 (CC) (21 February 2005)

Türkiye

- Anayasa Mahkemesi, App. No. 2013/2187, (19 December 2013)
- Anayasa Mahkemesi, Merit No. 1990/30, Decision No. 1990/31, (29 November 1990)
- Anayasa Mahkemesi, Merit No. 1998/3, Decision No. 1998/28, (23 June 1998)
- Anayasa Mahkemesi, Merit No. 2022/155, Decision No. 2023/38, (22 February 2023)
- TİHEK, 2023/460 Board Decision No. 2023/460, (30 May 2023)
- TİHEK, Board Decision No. 2021/230, (14 September 2021)
- TİHEK, Board Decision No. 2022/436, (28 June 2022)
- TİHEK, Board Decision No. 2022/941, (29 December 2022)
- Turkish Constitutional Court (Anayasa Mahkemesi), Merit No. 2017/31619, (23 July 2020)
- Yargıtay, 22. Civil Chamber, Merit No. 2016/1327, Decision No. 2018/27134, (13 December 2018)
- Yargıtay, 9. Civil Chamber, Merit No. 2007/22753, Decision No. 2008/18639, (1 July 2008)
- Yargıtay, 9. Civil Chamber, Merit No. 2008/36349, Decision No. 2009/20734, (13 July 2009)
- Yargıtay, 9. Civil Chamber, Merit No. 2015/35411, Decision No. 2019/3553, (26 May 2020)

Colombia

- Corte Constitucional [C.C.], Sentencia, Auto 098/13
- Corte Constitucional [C.C.], Sentencia, Auto 092/08
- Corte Constitucional [C.C.], Sentencia, T-581/93 (14 December 1993)
- Corte Constitucional [C.C.], Sentencia, T-341/94 (27 July 1994)
- Corte Constitucional [C.C.], Sentencia, C-410/94 (15 September 1994)
- Corte Constitucional [C.C.], Sentencia, C-051/95 (16 February 1995)
- Corte Constitucional [C.C.], Sentencia, T-606/95 (12 December 1995)
- Corte Constitucional [C.C.], Sentencia, T-606/95 (12 December 1995)
- Corte Constitucional [C.C.], Sentencia, T-311/96 (15 July 1996)
- Corte Constitucional [C.C.], Sentencia, C-408/96 (4 September1996)
- Corte Constitucional [C.C.], Sentencia, T-568/96 (28 October 1996)
- Corte Constitucional [C.C.], Sentencia, C-710/96 (9 December1996)
- Corte Constitucional [C.C.], Sentencia, SU-039/97 (3 February 1997)
- Corte Constitucional [C.C.], Sentencia, C-470/97 (25 September 1997)
- Corte Constitucional [C.C.], Sentencia, C-622/97 (27 November 1997)
- Corte Constitucional [C.C.], Sentencia, T-373/98 (22 July 1998)
- Corte Constitucional [C.C.], Sentencia, T- 426/98 (18 August 1998)
- Corte Constitucional [C.C.], Sentencia, C- 199/99 (7 April 1999)
- Corte Constitucional [C.C.], Sentencia, C-371/00 (29 March 2000)
- Corte Constitucional [C.C.], Sentencia, C-507/04 (25 May 2004)

- Corte Constitucional [C.C.], Sentencia, C-991/04 (12 October 2004)
- Corte Constitucional [C.C.], Sentencia, T-025/05 (20 January 2005)
- Corte Constitucional [C.C.], Sentencia, T-025/05 (20 January 2005)
- Corte Constitucional [C.C.], Sentencia, C-355/06 (10 May 2006)
- Corte Constitucional [C.C.], Sentencia, T-388/09 (28 May 2009)
- Corte Constitucional [C.C.], Sentencia, T-769/09 (29 October, 2009)
- Corte Constitucional [C.C.], Sentencia, T-547/10 (1 July 2010)
- Corte Constitucional [C.C.], Sentencia, T-129/11 (3 March 2011)
- Corte Constitucional [C.C.], Sentencia, C-366/11 (11 May 2011)
- Corte Constitucional [C.C.], Sentencia, T-326/12 (3 May 2012)
- Corte Constitucional [C.C.], Sentencia, C-117/18 (14 November 2018)
- Corte Constitucional [C.C.], Sentencia, C-055/22 (21 February 2022)
- Corte Constitucional [C.C.], Sentencia, C-055/22 (21 February 2022)

United States

- Baloco v. Drummond Co., 7:09-CV-00557-RDP (N.D. Ala. 2012)
- Carrizosa v. Chiquita Brands Int'l, Inc., 47 F.4th 1278 (11th Cir. 2022)
- China Agritech, Inc. v. Resh, 138 S. Ct. 543, 199 L. Ed. 2d 423 (2017)
- Does 1-976 v. Chiquita Brands International, Inc., 19-13926 (11th Cir. 2022)
- Jesner v. Arab Bank, PLC, 138 S. Ct. 1386, 200 L. Ed. 2d 612 (2018)
- Kiobel v. Royal Dutch Petroleum Co., 569 U.S. 108, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 24 Fla. L. Weekly Supp. 142 (2013)
- Metsagharun v. Chevron Corp., CV-1280274-mis, U.S. District Court of N.D. Cal. (2012)
- Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252 (11th Cir. 2009)
- Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011)

Netherlands

- Milieudefensie v. Royal Dutch Shell, NL:RBDHA:2021:5337, Disctrict Court of the Hague (2021)

LIST OF LEGISLATION

International Conventions and Other Instruments

- Charter of the United Nations (1945)
- Convention on Biological Diversity (1993)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- Convetion on the Rights of the Child (1989)
- ILO Declaration of Philidelphia (1944)
- ILO Declaration on Fundamental Principles and Rights at Work (1998)
- ILO Discrimination (Employment and Occupation) Convention No. 111 (1958)
- ILO Domestic Workers Convention No. 189 (2011)
- ILO Equal Remuneration Convention No. 100 (1951)
- ILO Indigenous and Tribal Peoples Convention No. 169, (1989)
- ILO Maternity Protection Convention No. 183 (2000)
- ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) (2022)
- ILO Violence and Harassment Convention No. 190, (2019)
- ILO Workers with Family Responsibilities Convention No. 156 (1981)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- OECD Due Diligence Guidance for Responsible Business Conduct (2018)
- OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2018)
- OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector (2017)
- OECD Due Diligence Guidance on Responsible Mineral Supply Chains (2011)
- OECD Guidelines for Multinational Enterprises (2023)
- OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015)
- OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016)
- UN Global Compact (2000)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007)
- United Nations Guiding Principles on Business and Human Rights (2011)
- United Nations Sustainable Development Goals (2015)
- Universal Declaration of Human Rights (1948)
- Vienna Declaration and Programme of Action (1993)
- Women's Empowerment Principles (WEPs) (2010)

Regional

- African Charter on Human and Peoples Rights (1981)
- African Continental Free Trade Area (ACFTA) (2018)
- American Convention on Human Rights (1969)
- American Declaration of the Rights and Duties of Men (1948)
- AU African Agenda 2063 (2015)

- AU African Mining Vision (2009)
- AU Strategy for Gender Equality and Women's Empowerment 2018-2028 (2018)
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (2011)
- European Commission Directive on Corporate Sustainability Due Diligence (2023)
- European Convention of Human Rights (1950)
- European Social Charter (1951)
- Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention) (1994)
- Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1952)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (1995)

National

Türkiye

- Bankruptcy and Enforcement Law No. 1241 (2004)
- Civil Code No. 4721 (2001)
- Constitution (1982)
- Corporate Governance Communique No. II-17.1 (2014)
- Eleventh Development Plan of Republic of Türkiye (2019)
- Environmental Law No. 2872 (1983)
- Law No. 6284 to Protect Family and Prevent Violence against Women (2012)
- Law No. 6552 (2014)
- Law on Amendments on Press Law and Other Legislations No. 7418 (2022)
- Law on Collective Labour Law No. 6356 (2012)
- Law on Cooperatives No. 1163 (1969)
- Law on Occupational Health and Safety No. 6331 (2012)
- Law on Protection of Consumers No. 6502 (2013)
- Law on Social Insurances and General Health Services No. 5510 (2006)
- Law on Strike and Lock-out No. 2822 (1983)
- Law on the Human Rights and Equality Institution of Türkiye No. 6701 (2016)
- Law on the Protection of Personal Data No. 6698 (2016)
- Ministry of Justice , National Action Plan on Human Rights (2021)
- Ministry of Labour and Social Security, National Guiding Principles on Work Life (2022)
- Penal Code No. 5237 (2004)
- Presidential Decision No. 2022/342 (28 July 2022)
- Presidential Decision No. 3718 (20 March 2021)

Colombia

- Colombian National Action Plan on Business and Human Rights (2015-2018)
- Colombian National Action Plan on Business and Human Rights (2020-2022)
- Constitution (1991)
- Decree No. 2616
- Decree No. 3047

- Decree No. 721
- Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (24 November 2016)
- Law No. 1010 (2006)
- Law No. 1475 (2011)
- Law No. 1595 (2015)
- Law No. 24 (1992)

South Africa

- Choice on Termination of Pregnancy Act No. 92 (1996)
- Compensation for Occupational Injuries and Diseases Act No. 130 (1993)
- Competition Act No. 89 (1998)
- Constitution (1996)
- Criminal and Related Matters Amendment Act No. 12 (2021)
- Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 13 (2021)
- Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 (2007)
- Criminal Law Amendment Act No. 105 (1997)
- Customary Marriages Act No. 120 (1998)
- Domestic Violence Amendment Act No. 14 (2021)
- Employment Act No.75 (1997)
- Employment Equity Act No. 55 (1998)
- Labor Relations Act No. 66 (1995)
- Maintenance Act No. 99 (1998)
- Mineral and Petroleum Resources Development Act No. 28 (2002)
- National Environmental Management Act No. 107 (NEMA) (1998)
- Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 (2000)
- South African National Development Plan 2030 (2013)

Kenya

- Kenyan National Action Plan on Business and Human Rights (2020-2025)

Uganda

- Ugandan National Action Plan on Business and Human Rights (2021-2026)

United Kingdom

- Modern Slavery Act (2015)

Netherlands

- Child Labour Due Diligence Law (2019)

France

- Law on the Corporate Duty of Vigilance No. 2017/399 (2017)

United States of America

- California Transparency in Supply Chains Act No. 657 (2012)
- Dodd-Frank Wall Street Reform and Consumer Protection Act No. 111/203 (2010)

Mali

- Family Code No. 87 (2011)

Australia

- Modern Slavery Act (2018)

Finland

- Government Resolution On State Ownership Policy (2011)

Portugal

- Council of Ministers Resolution No. 49/2007 (2007)

1. INTRODUCTION

In 2013, the eight-story Rana Plaza building in Bangladesh collapsed in less than 90 seconds, killing at least 1134 textile workers.[1] The building accommodated apparel factories that manufactured for major retail companies in Europe and North America and the tragedy triggered a wave of questioning about the human cost of fast fashion. In the 1990s, several cases were brought against Shell, accusing the company of complicity in the unlawful arrest, detention, and summary execution of protesters by the Nigerian military government.[2] Indigenous peoples have been displaced without prior information or compensation for the installations of extractive businesses.[3] Mounting evidence worldwide on such human rights violations by corporations and collective efforts to address these human rights concerns led to an emerging branch: business and human rights.

Business and human rights has become an increasingly prominent issue of the international agenda as of the 1990s, the "golden age" for the most recent wave of corporate globalization.[4] The liberalization of trade, deregulation, and privatization caused a significant expansion in the global operations of multinational corporations.[5] However, this transformative process came along with severe social and economic consequences, specifically for women and girls in low-income host states of global supply chains.

Women and girls are disproportionately and uniquely affected by adverse business and human rights impacts, worldwide. This is a well-documented fact based on their lived experiences. This undeniable fact, however, has turned into a buzzword within the business and human rights community and has limited how gender equality is integrated within business and human rights discussions for a long time. As the emerging business and human rights scholarship is growing, a remarkable amount of research has shown the direct and indirect impacts of multinational corporations' operations on women and girls. They face multiple forms of discrimination and experience additional barriers in seeking access to justice mechanisms and effective remedies for business-related human rights abuses. There is an increasing concern among the business and human rights community that these differentiated

[1] Michael Safi and Dominic Rushe, "Rana Plaza, five years on: safety of workers hangs in balance in Bangladesh". Guardian, (24 April 2018), available at: https://www.theguardian.com/global-development/2018/apr/24/bangladeshi-police-target-garment-workers-union-rana-plaza-five-years-on

[2] Amnesty International, Nigeria: Shell complicit in the arbitrary executions of Ogoni Nine as writ served in Dutch court, (2017), available at: https://www.amnesty.org/en/latest/news/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/.

[3] See Suzana Sawyer and Edmund T. Gomez, (eds.), The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State, Palgrave Macmillan, (2012).

[4] John G. Ruggie, Just Business: Multinational Corporations and Human Rights, WW Norton & Company, (2013), 16.

[5] Ibid, 26.

experiences are not taken into consideration by the accountable stakeholders, most importantly, the multinational corporations. The impact is worse and more complex for women and girls living in lower-income host states in the Global South. Despite some progress and gradual awareness, there are significant shortcomings in the business and human rights mechanisms available in the host states, and there is a long overdue need to provide a critical review of the business and human rights area from the perspective of feminist legal theory. As claimed by Chinkin, Charlesworth and Wright, "*international law is a thoroughly gendered system*"[6] and "*both the structures of international lawmaking and the content of the rules of international law privilege men*"[7]. In parallel, business and human rights is at a similar risk of the phenomenon described rightfully by Dianne Otto as the "*imperviousness of international law to feminist perspectives*".[8] Feminist legal theory has the potential to contribute to the progressive development of business and human rights area and go further than its current gender perspective, which is fixed on the image of a vulnerable, poor, working-class woman of colour from the Global South. Moreover, as Bonita Meyersfeld argues, it is ironic that an area seeking to address the power disparities between communities from the developing world and wealthy multinational corporations; is sidelining gender inequality, another well-documented and complex power imbalance.

Feminist scholars have strongly criticized how the international legal system is embroiled in global neoliberal capitalist order, building a market-friendly system that enables and protects business activities and fails to (or refuses to) address the gender impact of such activities and *"enriches the few at the expense of everyone else, …wrongs women with particular efficiency, and … is environmentally destructive and unsustainable".*[9] Holding on to this criticism, on the gender front, a growing number of scholars and business and human rights practitioners from different disciplines have started to apply gender perspectives into their work, embracing intersectional approaches, discussing and conducting analysis on how the acknowledged disproportionate and differential impact of corporate activities on women can be addressed. These efforts are promising, yet there is little attention paid to the complex experiences of women and girls from the low-income host states, and their relationships with the available, mostly gender-blind business and human rights mechanisms, one of the biggest tangles of the gender dimension of business and human rights.

In the face of the well-acknowledged gender dimension of business and human rights, and recognizing the need for empirical feminist research, this thesis examines the business and human rights mechanisms in Türkiye, Colombia and South Africa through a comparative analysis, with a gender

[6] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 615.
[7] Ibid, 615.
[8] Dianne Otto, Feminist Approaches to International Law, In Anne Orford, and Florian Hoffmann (eds), The Oxford Handbook of the Theory of International Law, Oxford Handbooks (2016), 489.
[9] Melisa N. Handl, Sara L. Seck, and Penelope Simons, Gender and Intersectionality in Business and Human Rights Scholarship, Business and Human Rights Journal 7(2), (2022).

equality perspective. It is founded on the following research question: To what extend are business and human rights mechanisms in Türkiye, Colombia and South Africa gender-responsive? While searching for an answer, it will navigate with the help of the critical perspectives of feminist legal theory.

At this point, it may be helpful to clarify a few issues, going through some elements of the core research question for a better understanding of the objective of this thesis. Starting with the "business and human rights mechanisms" that this thesis will look into, the scope of the critical feminist analysis will be broad, expanding beyond the available remedies or justice mechanisms. The comparative analysis will examine a wide range of aspects of business and human rights systems globally, and more specifically in the selected jurisdictions: normative frameworks (domestic legislations, policy documents, international treaties and documents, guidelines, national action plans…) private sector initiatives such as UN Global Compact's Women's Empowerment Principles, the function, experiences, and impact of several stakeholders (feminist civil society, labour unions, business associations, legal practitioners, scholars, grassroots community solidarity networks…) the relevant case law and jurisprudence of available regional and national justice mechanisms (not limited to traditional dispute resolution) available remedies, and most importantly the lived experiences of women and girls in connection with the available or unavailable business and human rights mechanisms. Rather than the introduction of the business and human rights mechanisms themselves, women and girls' interactions and experiences with such mechanisms matter the most for this research.

The terminology which will be used throughout the dissertation also requires further explanation. In addition to "gender-responsive", which is at the focus of the research, some other adjectives will be used to describe some mechanisms or situations, such as "gender-blind", "gender-neutral" or "gender-transformative". Noting that these terms are used in a wide range of contexts, for the purposes of this research, they will be used for three main categories of business and human rights mechanisms. First are the completely gender-blind or discriminatory systems. Such systems deepen or perpetuate gender inequality, do not address gender inequality or women at all, or treat all genders the same when they are not, keeping corporate operations completely "gender-neutral" and disguising this approach as non-discriminatory. Gender-discriminatory practices are easier to detect, and there are promising efforts to eliminate them. However, the intentional silence and gender-neutrality of business and human rights mechanisms, the less visible root cause of deeply gendered and male-dominated systems are more difficult to determine. The difference between gender-neutral and gender-blind is critical: gender-neutral systems or policies are not specifically aimed at a specific gender. They are instead treating all genders exactly the same (in an Aristotelian conception of equality, when those who are alike should be treated alike) with the assumption to affect everyone equally, not treating persons differently because of arbitrary characteristics. This is seen by some as the right path for non-discrimination, however, gender-neutral approaches can only provide formal equality, with identical treatment for everyone, failing to address the different experiences, historical oppression and the complexity of

power dynamics. Meanwhile, the preferred notion of substantive equality *"orients the right to equality from a negatively-oriented right of non-discrimination to a positively-oriented right to substantive equality"*.[10] This can be done by ensuring that the laws and policies do not further reinforce the already established social, political, and economic inequalities and disadvantages, and by recognizing and accomodating the differences. The essence of a substantive notion of equality is captured by the former South African Constitutional Court Justice O'Regan: *"Although the long term goal of our constitutional order [the South African Constitution] is equal treatment, insisting upon equal treatment in established inequality may well result in the entrenchment of that inequality"*.[11] Gender-neutral policies and mechanisms, especially in contexts like Türkiye, Colombia and South Africa with deepened, historical gender-based inequality and socio-economic disparities, are often gender-blind. Gender-blindness means the ignoring of the difference of experiences, needs, priorities and roles of different genders. Such policies, seemingly designed in a non-discriminatory manner, take the male standard as the norm, and are derived from male experiences, needs, and interests. The second category is the gender-responsive systems, which is the main spotlight of this dissertation. Gender-responsive business and human rights systems accurately describe the needs of girls, women, LGBTI+ and gender-expansive persons, address their different needs and include specific actions to try and reduce gender inequalities. The ultimate goal of applying feminist legal theory on business and human rights, is to reach the third category: to have gender-transformative business and human rights systems, which are designed for and explicitly focus on ending gender inequality, which address root causes, empower disadvantaged groups, remove structural barriers before women and girls and build agency and sel-efficacy. Business and human rights is a fairly new area and starting the investigation with gender-transformativeness would mean skipping many foundational steps and not addressing the core causes of gender-blindness and discrimination, prevalent in the three selected host states. In other words, this dissertation would be much shorter; ending with an inescapable "no" as an answer to the question: "Are the available business and human rights mechanisms gender-transformative in Türkiye, Colombia and South Africa?". This is why this dissertation takes one step back, and starts questioning the gender-responsiveness, patiently deconstructing and exposing the gender bias in the newly emerging mechanisms, hoping to contribute to a more gender-equal foundation for many future mechanisms.

The third important element of this dissertation's core research question, is why Türkiye, Colombia and South Africa have been selected for this comparative analysis. Studying the business and human rights mechanisms of host states from the Global South with feminist legal theory's perspective will hopefully provide inputs for a less studied business and human rights area within the literature. The limited literature on the gender dimension of business and human rights serves in two aspects. Firstly, it provides a gender-focused review of global normative frameworks, such as the report prepared by

[10] Anne Smith, Constitutionalising Equality: The South African Experience, International journal of Discrimination and the Law 9(4), (2008).
[11] President of the Republic of South Africa and Another v. Hugo (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1 (18 April 1997) para112.

the United Nations Working Group on Business and Human Rights on the gender dimensions of the United Nations Guiding Principles on Business and Human Rights (UNGPs). However, these resources have a broad, universal approach with not much attention paid to the fact that the gender-focused assessments are not the same and will not have the same implications around the world. Furthermore, they aim to support the states and the businesses, the two actors with the leading roles in business and human rights, to guide them with "what to do on the gender question", and do not center impacted women as the subjects. Secondly, the limited literature provides studies documenting the labor-exploitative sectors and the violations and barriers experienced by women in the Global South, symbolized as "sweatshop women", spotlighting their victimhood rather than their experiences, demands and agency. All in all, the few gender-focused resources either support and guide states and businesses, or expose them, building the narrative around them, while precluding the very subject of the matter. The experiences and voices of women in the face of the semi-functioning and newly emerging business and human rights mechanisms in host states often get lost in the shuffle. Having said this, with plenty of host states in the world, what makes these three stand out? Türkiye, Colombia, and South Africa are uniquely suitable for a business and human rights comparison concerning three commonizing factors. First factor is about gender; specifically, the significant gender inequality records of these countries and the resilient feminist movements positioned right across this record. Second factor is the shared socio-economic inequality and disparities, and the prevalence of deep poverty. The third factor is the struggling constitutional democracies, manifesting themselves as extreme consolidation of power, transitional justice in arrested development, limited access to justice or the safety of human rights defenders. In addition to these three commonizing factors, all three states are in typical host state positions. It should be noted here that in contemporary global business order, strictly categorizing a state as a home state or a host state would not do justice to the complexity of global supply chains. However, the three selected countries stand out as host states: there is a significant capital inflow through their position as host states as they provide relatively cheap labour force, raw materials, or manufactured goods for global supply chains of multinational corporations with headquarters in home states. The subcontractors and supply chains situated in host states are often where women experience human rights violations and exploitation the most. Their experiences, needs and interactions with the mechanisms are worthy of attention. These commonizing concepts are discussed further in the comparative analysis chapter. There are also significant differences among the three countries that contribute to the potential of this comparison. Each State is a part of a different regional human rights mechanism, providing an opportunity to understand the intersection (or lack thereof) of gender equality and business and human rights jurisprudence of regional mechanisms. They have uniquely different socio-political backgrounds; most notably, but not limited to the legacy of apartheid in South Africa, the post-peace accord process in Colombia, and the democratic backslide in Türkiye. In addition, the political will, policy and law-making trends, the engagement of human rights commissions and national human rights institutes, and their overall progress in business and human rights are unique and vary vastly, providing an opportunity to see how different levels of policy and

law-making impacts gender responsiveness, and how these different levels of progress and implementation reflect on the experiences of marginalized women.

The positionality of the researcher and the limitations of this research should also be discussed. As a PhD researcher, I identify as a cisgender heterosexual woman from Türkiye. I have been involved in the feminist movement in Türkiye since 2016 through the civil society organization I co-founded, working on menstrual justice, period poverty and menstruation stigma. I have been in involved in youth-led gender equality advocacy efforts at the United Nations since 2019 through different platforms, such as Beijing+25 process or the Generation Equality campaign. I have fieldwork experience with grassroots women's organizations through fieldwork in more than 32 provinces in Türkiye, and my academic work has focused on feminist legal studies. I also have to acknowledge my privilege: I had the privilege to receive high quality education. I am able to speak English and therefore can exist, communicate and produce within international academic and policy communities. I have a supportive family, partner and community. I am living in a big city, in a safe environment and I have the adequate financial stability and the ability to receive support for care work. This privilege has made this research possible and undeniably changes my perspective. My positionality as a feminist activist and a youth rights advocate has also unconsciously shaped my relationship with grassroots women's organizations and local, national and international feminist solidarity. There are personal experiences and observations shared with regard to corporations' approach to humanitarian response, based on my fieldwork experiences from the earthquake zone in Hatay and Kahramanmaraş in 2023. However, my experiences are not comparable to the experiences reflected in this thesis, from working class, rural and indigenous women's everyday realities. I am not a working class woman and I have not been directly, gravely impacted by a corporate activity. My upbringing and academic/advocacy work in Türkiye gives me an adequate understanding of the gender inequality in our context, yet I am informed about the Colombian and South African contexts through literature reviews, black-letter research and in-depth, semi-structured interviews and they, without a doubt would not provide a thorough or excellent understanding of the contexts and everyday realities. I acknowledge the limitations of my understanding, specifically with regard to the historical and socio-cultural elements, despite my best efforts.

Moving on with the limitations, I am proficient in Turkish and English, yet I have very basic Spanish knowledge not adequate to understand legal texts, and I do not speak Afrikaans or any other official languages spoken in South Africa, or the languages spoken by minorities in Türkiye or Colombia. The language barrier has particularly affected my access to Colombian resources, and at times I had to use online translation tools to have a basic understanding of certain documents, and had to conduct a few of the interviews through translated written correspondence, or in certain parts of the interviews in which the interviewee struggled to speak in English, I had ask for the support of some colleagues for instant translation of certain sentences, which is not ideal and does not equate to formal translation.

Although I specifically had confirmed that translation will not be needed with some interviewees, this has limited my access to knowledge. I haven't had a chance to integrate the perspectives of minority, migrant or indigenous women who are not able to speak English or Turkish, at first hand. My physical research visits were limited to Bogotá, Cape Town, Ankara and Istanbul, the biggest and wealthiest cities of the selected jurisdictions. Having said this, my research visits covered socio-economically disadvantaged neighbourhoods and communities. I did not have the resources to expand my research visits to include field visits in rural areas, indigenous communities or the work sites, as I had to finance my travels partially through the support of Koç University and mostly through my personal savings. My in-person interviews mostly took place in office spaces, trade unions, NGO and community centers, academic institutions or via online platforms such as Zoom. Five major stakeholders were represented for all three jurisdictions: the states, private sector, academia, international organizations, and feminist/local defenders and civil society. It must be noted that some interviewees were not very informative due to their limited knowledge. Some interviewees were of representative leadership roles yet they were not actively involved in the constituencies they represented (for example, they were trade union workers or retired persons who used to work in a specific sector). Some interviewees had reservations about the information they are comfortable sharing with. Specifically, reaching out to the state representatives and the workers/indigenous peoples were challenging due to such concerns, limited response to reach out, not being able to schedule, or the language barriers. Due to the limited financial resources and time spent in Colombia and South Africa, and my early return to Türkiye to join humanitarian response efforts in the earthquake zone following the Kahramanmaraş earthquakes in February 2023, there is a limited sample size with regard to the interviewees. This restricts the generalizability of findings to a broader context. However, the combination of black-letter analysis with semi-structured interviews, and attentive selection of interviewees with key informant positions and experience compensate for this as far as possible. While all interviewees are fully informed about and confirmed their participation as interviews, all responses are anonymized for research integrity. Lastly, the black-letter analysis of national policies, documents, and cases are limited to those who are closely connected to the gender responsiveness of business and human rights mechanisms, and it is not possible to provide a feminist critical analysis of the entire global business and human rights corpus.

The main, dominant perspective, the polar star of this thesis, is feminist legal theory. Third World approaches to international law and the decolonization efforts within business and human rights mechanisms, specifically in their implementation in the host states are, while not at the center of this research, remain inseparable and important. The discussions around the intersection of the two theoretical approaches, including but not limited to Third World feminism, the commonality in challenging the status quo, the importance of addressing the specific needs and concerns of marginalized groups in the Global South, and exposing the biased patriarchal and colonial foundations

of international law[12] are pivotal in this research. A struggle closely related to this guiding intersection is that while writing this thesis, I found myself referencing studies, theories and scholars from the Global North to understand the business and human rights context in Türkiye, Colombia and South Africa. Mohanty's criticism against the *"implicit assumption of 'the West'(in all its complexities and contradictions) as the primary referent in theory and praxis*"[13] has been kept in mind throughout this research. Accordingly, *"western feminist writing women in the Third World must be considered in the context of the global hegemony of western scholarship - i.e., the production, publication, distribution and consumption of information and ideas"*[14]. My attempt to avoid this hegemonic knowledge production, to the best of my capacity, also played a role in why I chose to make a comparative analysis, particularly focusing on the experiences of women in Türkiye, Colombia and South Africa and their interactions with the business and human rights mechanisms. However, with regard to my research on the global business and human rights corpus, I had to refer to the resources and epistemology provided mostly by the Global North, since the research area is mostly dominated by long standing Global North-oriented knowledge production, and scholars from the Global North. The local scholars that I reviewed also seemed to use knowledge, epistemologies and connecting events (there are still a few, mostly Geneva-centered annual gatherings) from the Global North. I am indebted to the feminist scholars from Global North who have done remarkable work on host state contexts, however while intentionally trying to avoid focusing on knowledge built in high-income home states I unintentionally ended up using such knowledge as a reference point to understand the cases of host states at certain points. I hope my dissertation can find a place within the growing business and human rights literature and contribute to feminist knowledge production on business and human rights mechanisms in host states, reflecting the experiences from within the host states, for the foundation of incrementally gender-responsive and gender transformative, effective and just mechanisms.

This dissertation has used a combination of feminist socio-legal research methodologies, an amalgam of feminist social research methods, and feminist legal theory. The aim of feminist socio-legal research methodologies, as suggested by Martha Fineman, is to *"raise questions about women's relationships to law and legal institutions."*[15] Adapting this ultimate aim to this research, the combination of methodologies aimed to raise the questions with regard to the relationship of women in Türkiye, Colombia and South Africa with the business and human rights mechanisms, and to exhibit these questions through a comparative analysis, hoping to have a better understanding of how to improve gender-responsiveness in the host states contexts.

[12] Bhupinder S. Chimni, Third World Approaches to International Law: A Manifesto in The Third World and International Order, Brill Nijhoff, (2003).
[13] Ranjoo Seodu Herr, Reclaiming Third World feminism: Or why transnational feminism needs Third World feminism, Meridians 12(1), (2014).
[14] Chandra Talpade Mohanty, "Under western eyes" revisited: Feminist solidarity through anticapitalist struggles, Signs: Journal of Women in Culture and Society 28(2), (2003).
[15] Martha Albertson Fineman, Introduction in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds.), At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory, Routledge, (2013).

Martha Fineman has provided several characteristics of feminist methodologies,[16] some of which are specifically resonating with this dissertation's approach. First, is the critical stance that feminist methodology gains from adopting a women-focused perspective informed by women's experiences. The endeavour of integrating the information gathered from the interviews and local news reflecting women's experiences is for this exact reason, to build a critical stance based on first hand empirical evidence. The second characteristic is that feminist methodology does not only critically assess the outcomes but *"the fundamental concepts, values and assumptions embedded in legal thought."*[17] In parallel with this important necessity, the empirical knowledge gathered from the comparative analysis is not only used to provide policy recommendations, but to discuss the conceptual structure of business and human rights and overall, international law, asking fundamental questions such as how to define the scope of business and human rights, aiming to avoid replicating unjust, ineffective mechanisms of international law, only to be rebranded with a new agenda and the businesses entering the picture. The third characteristic is that feminist methodology seeks and proposes alternatives, sometimes challenging and standing explicitly opposite of the existing order with the ultimate goal to transform the society. The status quo and the contemporary understanding of corporate accountability are persistently challenged with the findings from Türkiye, Colombia and South Africa in this research. This constant challenging is closely connected to the final characteristic of feminist legal theory: an evolving, dynamic nature. According to Fineman, feminist methodology represents "*a contribution to a series of ongoing debates and discussions which take as a given that " truth " changes over time as circumstances change and that gains and losses, along with wisdom recorded, are not immutable but part of an evolving story."*[18] The evolving and plural nature of such "truths" and realities are regarded to the best of capacity throughout this thesis, as the change and evolution of the gender dimensions of business and human rights are shown along with the changing socio-political contexts, or with the impact of crises such as natural disasters, climate crisis or the COVID-19 pandemic.

It is not possible to identify a singular feminist methodology for this dissertation. Various kinds of feminist methodologies are discussed, and the embracing of multiple approaches and techniques in itself is a deliberate methodological choice. Having said this, two feminist methodologies come to forefront as dominantly influential: "world travelling" and "searching for the silences". Searching for silences methodology depends on the problem of business and human rights mechanisms, deeming

[16] Martha Albertson Fineman, Introduction in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds.), At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory, Routledge, (2013).
[17] Catherine A. MacKinnon, Feminism, Marxism, method, and the state: An agenda for theory, Signs: Journal of Women in Culture and Society 7(3), (1982); Martha Albertson Fineman, Introduction in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds.), At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory, Routledge, (2013).
[18] Martha Albertson Fineman, Introduction in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds.), At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory, Routledge, (2013).

certain matters irrelevant or unimportant[19] through being silent about them. This was the most common issue that came to the forefront while analyzing the normative frameworks. The silence, or to put it more correctly, absence of women's human rights and gender equality within the business and human rights normative frameworks is reflecting the gender blindness of international law. In cases where women or gender discussions are included, Charlesworth emphasizes that *"they are viewed in a very limited way, often as victims, particularly as mothers, or potential mothers, in need of protection."*[20] The one dimensional depiction of women as vulnerable victims of corporate abuse is a theme that has emerged repeatedly in this dissertation's comparative analysis. One way to pay further attention into the intentional silences is to expose the dichotomies that are created within business and human rights, as in many systems of knowledge: where the "male" side of such dualisms, the business aspect of issues that matter the most are valuable enough to mention; while the "female" side is absent and deemed irrelevant, less necessary or deproritized. The second prominent methodology, "world travelling", requires feminist researchers to integrate *"multicultural dialogue and a shared search for areas of overlap, shared concerns, and values",* as developed and argued by Gunning.[21] This approach is a response by the postcolonial and intersectional feminists against Western feminist legal theory's tendency to erase the unique differences, intersectional identities and experiences among women. Aiming to avoid an arrogant, homogenizing perception of women of the world, this thesis tries to incorporate an intersectional approach for a better understanding of how discriminating corporate practices have a complex impact on women of colour, women of varying classes, socio-economic status, (dis)ability and so on, across multiple variables and experiences.

Feminist research methods aim to expose and uncover the unseen gender bias of institutions in how they function, first deconstructing, and then reconstructing the instititons in *"a way that does not support or reinforce the domination of women by men."*[22] Taking this as a basis, the goal of this research is to develop a nuanced and comprehensive understanding of the gender responsiveness of business and human rights mechanisms in three selected host states. In order to do so, this research uses doctrinal and empirical research methods and incorporates qualitative socio-legal research methods in the form of semi-structured in depth interviews with actors involved in the gender dimensions of business and human rights in Türkiye, Colombia and South Africa. This is supported respectively with a literature review on feminist legal theory, followed by a broad global review of major business and human rights normative frameworks and mechanisms, further scoped down to a

[19] Hilary Charlesworth, Feminist Methods in International Law, American Journal of International Law, 93(2), (1999), 381.
[20] Hilary Charlesworth, Feminist Methods in International Law, American Journal of International Law, 93(2), (1999), 381.
[21] Isabelle Gunning, Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries, 23 Columbia Human Rights Law Review 191, (1992).
[22] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University Press, (2000), 61.

comparative analysis of the business and human rights mechanisms in Türkiye, Colombia and South Africa. The comparative analysis chapter has been guided and reshaped following the interviews, and ended up having a flow consisting of the cross-cutting issues that came to the forefront as a result of the findings from these conversations. They are supported within this comparative chapter with blackletter research methodology in which the analysis of the regional practices and policies are often exhibited through the local news, and are presented together with the first hand experiences of the actors.

Prior to the research visits for this dissertation, I successfully obtained an ethical committee approval from Koç University (2022.068.IRB3.021) and as a part of this process, I developed guiding questions specific for each stakeholder group, and information and consent documents for the interviewees. I provided these documents to the interviewees in advance of the scheduled interviews and have shared detailed information and got their consents orally during in-person or online interviews. In January 2023, I conducted a short research visit at the University of Warsaw, with a short term research scholarship I received from the Polish National Agency for Academic Exchange (NAWA). For the comparative research purposes, in February 2023 I travelled to Bogotá, Colombia where I conducted my interviews and visited neighbourhoods and community centers, with the support of Los Andes University Law School, a partner of Koç University Law School through Law Schools Global League (LSGL). Right after, I travelled to Cape Town, South Africa for the same purpose where I got support from Cape Town University Law School, another partner of Koç University Law School through LSGL. My visits to Bogotá and Cape Town were financially supported partially by the GSSSH of Koç University, and mostly through my personal savings. They were shorter than planned, since I had to return to Türkiye to join humanitarian response efforts in the earthquake zone, however they were dense and compact and I was able to follow-up with certain interviewees or schedule online meetings for later. My interviews in Türkiye were spread through a longer period of time, with both in-person meetings in İstanbul and Ankara, and online meetings. I conducted 59 interviews in total. These interviews were held with individuals based in Türkiye, Colombia, South Africa and Poland, a majority of which were conducted in-person in public spaces, and some conducted online. For research integrity and keeping in mind those participants who wished to remain anonymous, I ended up anonymizing all interviewees. The names of the interviewees are not of critical value, since the methodology required integrating the findings from the interviews into the analysis by only including the stakeholder/constituency they represent. The selected and reached out individuals represented different actors: state departments, private sector associations, businesses, legal practitioners, business and human rights experts, workers, feminist activists, civil society, academia, trade unions and UN entities and other international organizations. Some individuals represented several stakeholders. Upon their consent, I either took voice records and used transcripts, or took notes as they spoke. I redesigned my comparative analysis chapter, based on the recurring themes that emerged from the interviews.

Ending with the structural flow, this thesis consists of five chapters. This introductory chapter serves to introduce and to establish the research question of this dissertation, focusing on and further explaining parts of the overall objective of providing a comparative analysis of the business and human rights mechanisms in Türkiye, Colombia, and South Africa, focusing on their gender-responsiveness. The second chapter provides a literature review of feminist legal theory. The main aim of this chapter is to have a better understanding of the feminist critique of law, from socialist feminisim to intersectionalism, particularly emphasizing the generations and schools closely connected to the business and human rights discussions. The third chapter provides an analysis of international business and human rights normative frameworks and mechanisms, with a gender lens, from pioneer normative frameworks such as the UNGPs to business-led initiatives such as Women's Empowerment Principles. The fourth chapter is the core chapter of the thesis, aiming to answer the main research question. Following a detailed analysis of the interviews, combined with blackletter review, the comparative chapter provides an analysis of cross-cutting themes which are of importance for the gender-responsiveness of business and human rights mechanisms such as the invisibilized experiences of marginalized women or the potential of certain mechanisms which remain gender-blind. The chapter starts with a look into the potential of European, Inter-American and African human rights mechanisms, followed by a detailed analysis of the domestic legal arena in Türkiye, Colombia and South Africa. Next, the focus is on three case studies from each country, connected to a specific gender-focused business and human rights issues: the Colombian case regarding the extraterritorial effect of gender-focused corporate violations in armed conflicts; the Turkish case regarding the accountability of large-scale, national corporations and the South African case regarding access to basic services offered by state-owned entities. This is followed by the socio-political contexts with the most prevalent gender issues based on the insights of the feminist movements, a review of women's representation in public life through statistical data; the gendered dimensions of seemingly gender-neutral sectors and issues and women's everyday experiences and the impact of COVID-19 pandemic. The cross-cutting issues from the comparative analysis of Turkish, Colombian and South African contexts are further discussed with a focus on the problematic corporate gaze on gender equality; the strategic lawsuits against public participation (SLAPPs); the killings, harassment and dangers faced by women human rights defenders; the gender-blind preventive mechanisms; the patriarchal structures of labour unions; women's one-dimensional portrayal in business and human rights contexts; the intersectional experiences of migrant and domestic worker women; the limited access to justice; and lastly, the influence of culture. The concluding chapter draws upon the thematic findings and lessons from the comparative analysis, for possible ways to strengthen and improve business and human rights mechanisms in terms of gender-responsiveness in Türkiye, Colombia and South Africa, and overall, in the host state contexts.

2. AN OVERVIEW OF FEMINIST LEGAL THEORY

This chapter aims to provide a broad overview of feminist legal theory through a literature review before moving on to a feminist critical review of some business and human rights normative frameworks and practices. Some major schools of feminist legal thought included in this chapter are particularly selected because their perspectives are closely related to and necessary for a gender-based analysis of business and human rights mechanisms. It should be noted, of course, that it is impossible to include all strands of feminist legal theory (notwithstanding the fluid borders and growing interaction) or to have a very inclusive, comprehensive, and perfect representation of this constantly evolving legal theory.

2.1. What is Feminist Legal Theory?

Feminist legal theory, or feminist jurisprudence is a legal theory founded on the belief that women are maintained in a subordinate, inferior, unequal position in society and that the law reflects, legitimates, and reinforces this subordination.[23] According to Ann Scales, feminism is not a way of thinking confined to a person's sex or gender, nor a female point of view. Feminism, instead, is *"a concrete analysis of systematic oppressions, which analysis has led to a critique of objectivity in epistemological, psychological, and social—as well as legal—terms,"*[24] which recognizes that the so-called neutral systems such as law are indeed socially constructed systems that conscript individuals into a gendered way of seeing the world. [25]

Feminist legal theory is a vast scholarship, a complex and dynamic philosophy of law which includes diverse methods, approaches, and foci. These different perspectives constantly talk to and clash with each other, evolve, dissolve, and cultivate each other. It is therefore challenging to come up with a singular universal definition, or to pigeonhole and strictly periodize the views of feminist scholars and overlook the fact that these categories might overlap at times.[26] However, for a better understanding of the diversity and evolution of feminist legal theory, Martha Chamallas' reliable -yet mostly U.S. centered- three generations

[23] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis, with a New Introduction, Manchester University Press, (2022), 1.
[24] Ann Scales, Legal feminism: activism, lawyering, and legal theory, New York University Press, (2006), 83.
[25] Ibid, 83.
[26] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis, with a New Introduction, Manchester University Press, (2022), 38.

of feminist legal theory approach will be guiding this chapter, in which she uses "generations" to mark periods of intensive development of this particular scholarship.[27] This categorization is ideal since it enables embracing the plurality of feminisms and the use of generations are not used to express linear progression, but roughly aligned, simultaneously co-existing, or overlapping strands, examined separately due to their substance. This plural understanding of feminist legal theory centers intergenerational co-existence and dialogue, and are discussed one by one only to understand their foci and stances.

2.2. Generations and Schools of Feminist Legal Theory

2.2.1. "Generation of Equality" or Trailblazers: Liberal Feminism

The "Generation of Equality", in 1970s as identified by Chamallas, primarily emphasized three issues. First, women are the same as, or similar to men and that gender should be irrelevant to the distribution of legal benefits and duties. Second, persons should be treated as individuals and sexual differences should be challenged. Third, social change is possible through dismantling sex-based legal distinctions.[28] Liberal feminists can be considered as the pioneers of this generation, focusing their efforts on advocating for equality, committing to individual autonomy and choice and defending that individual freedoms should be afforded to women as well as men. The term "feminist legal theory" was not of use throughout the 1970s and feminist lawyers often identified as women's rights advocates or "egalitarians". Prior to the invention of the term "feminist legal theory", liberal feminists focused mostly on individual cases of sex-based discrimination. They based many of their arguments on individual rights, aiming for the reform of the law and eliminating legal barriers before women's similar treatment to men in public spheres.[29] Their primary goal was to achieve equality of treatment among women and men in public spheres, in areas such as political representation, access to equal payment, and education.

Liberal feminism is criticized for a number of aspects. The main critique is that the goal for equality as sameness to men and the demand for similar treatment only provide access to a world already defined by and for men with male-oriented parameters. Nicola Lacey finds the principle of equal treatment unuseful to criticize and transform "*a world in which the distribution of good is structured along gender lines."* Lacey objects to the assumption of a

[27] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 17.
[28] Ibid, 17.
[29] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis, with a New Introduction, Manchester University Press, (2022), 39.

world of autonomous individuals running a race while making free choices while it is a fact that men and women are running different races..[30]

Although some liberal feminists aim for much more than formal equality; for equality of opportunity and outcome, through attempts like affirmative measures and the prohibition of indirect discrimination; they acknowledge the need for structural change in a limited way. Liberal feminists often do not see the legal system itself as the problem that contributes to the subordination of women and act with the belief that law is rational and impartial. Accordingly, justice can be achieved by allowing individual freedoms and choice, through legal strategies within the status quo. Liberal feminists often identify the male-centeredness in law as a methodological bias which is eradicable. As Sandra Harding puts it, they see *"the bad law as the problem, not law-as-usual".*[31] Nicola Lacey defines this era as the early *"women and law work,"* and while accepting that these efforts have laid foundations for the growth of feminist legal scholarship, criticizes their methods for prevailing the ideology of gender-neutral law.[32]

2.2.2. "Generation of Differences" or Angry Voices

The 1980s are identified by Chamallas as the Generation of Differences, in which feminist legal theorists start to focus on differences, aiming to uncover the shortcomings of liberal feminists. Radical feminism and cultural feminism emerged during this generation. The discussions focused on concepts such as the glass ceiling, working mothers, and second shifts, through which there was a questioning of the irrelevance of gender and the prospects of a gender-blind society. The concept of equality has evolved into *"something more than identical treatment of men and women"*[33] and the idea of treating likes alike weakened as feminists started to engage in discussions around pregnancy, sexual violence, rape, domestic violence, prostitution, and pornography. In this next stage of development women's social experiences and perspectives were used as a methodological starting point, both empirically and theoretically.

Radical Feminism

[30] Nicola Lacey, Legislation against sex discrimination: questions from female perspective. Journal of Law and Society, 14(4), (1987), 411.
[31] Sandra Harding, The Science Question in Feminism, Cornell University Press, (1986), 25.
[32] See Nicola Lacey, Legislation against sex discrimination: questions from female perspective. Journal of Law and Society, 14(4), (1987); Nicola Lacey, Women's Law: An Introduction to Feminist Jurisprudence, Cambridge University Press, (1988), 3.
[33] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 21.

Radical Feminism is highly critical of liberal feminism and sees inequality as a product of men's domination of women.[34] According to Catharine MacKinnon, one of the most well-known exponents of this theory, social relations between men and women are organised in a structure in which men dominate and women must submit.[35] The legal systems have reinforced women's systemic subordination, keeping them "out and down" by protecting a gender-based hierarchical system.[36] Radical feminists argue that law reflects a way of thinking based on clashing masculinity and femininity: masculinity is associated with strength, force, aggressiveness and domination while femininity is associated with fragileness, submission and subordination.[37] Since the relations between sexes in the status quo is a hierarchical one, the male-dominated law formulated by men, having the male perspective at its core, would protect the interests of men at the expense of women whenever there is a conflict of interest.

One specific focus is on how law fails to protect women's bodily integrity. This criticism is reflected on the anti-pornography stance of some radical feminists, connecting women's portrayal as sex objects with the prevalence of sexual violence.[38] This feminist case against pornography, however, has evolved and is contemporarily redirecting its focus and critique from the "objects" to the problematic consumption and production of pornography.[39]

According to radical feminism, the patriarchal construction of gender makes domination the model of masculinity. In line with this, it makes sexuality the social construct of male power. This makes rape a manifestation of male control over women's bodily sovereignty.[40] While applying her theory of sexuality and dominance on rape, MacKinnon points out to *"the*

[34] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: A Feminist Analysis, with a New Introduction, Manchester University Press, (2022), 42; Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 22.
[35] Catharine A. Mackinnon, Feminism Unmodified: Discourses of Life and Law, Harvard University Press, (1987), 3.
[36] Ibid, 205.
[37] Leslia Francis and Patricia Smith, Feminist Philosophy of Law, Stanford Encyclopedia of Philosophy, (2017), available at: https://plato.stanford.edu/entries/feminism-law/#:~:text=Feminist%20philosophy%20of%20law%20identifies,not%20conform%20to%20cisgender%20norms.
[38] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013),22.
[39] See Amanda Cawston, The feminist case against pornography: a review and re-evaluation, Inquiry, 62(6), (2019), 624.
[40] See Leslia Francis and Patricia Smith, Feminist Philosophy of Law, Stanford Encyclopedia of Philosophy, (2017), available at: https://plato.stanford.edu/entries/feminism-law/#:~:text=Feminist%20philosophy%20of%20law%20identifies,not%20conform%20to%20cisgender%20norms. ; Catharine A. MacKinnon, Sexuality, pornography, and method:" Pleasure under Patriarchy, Ethics, 99(2), (1989), 315; Catharine A. MacKinnon and Reva Siegel, (eds.), Directions in Sexual Harassment, Yale University Press, (2004);
Susan Estrich, Sex & Power, Riverhead Books, (2001); Susan Estrich, Real Rape, Harvard University Press, (1987); Elizabeth Schneider, Battered Women & Feminist Lawmaking, Yale University Press, (2000); Stephen Schulhofer, Unwanted Sex: The Culture of Intimidation & the Failure of Law, Harvard University Press, (1998).

equation of lack of physical resistance to consent"[41], and how the *"level of acceptable force"* was set *"just above the level set by what is seen as normal male sexual behaviour, including the normal level of force".*[42] She reveals the male bias around consent and argues that law actually tolerates forced sex. For MacKinnon, the social construct of women's sexuality has caused a biased view of consent and in certain cases, immunized rape.[43]

In addition to the discussions around rape, the public-private dichotomies are another major theme of feminist legal philosophy that radical feminists have taken up. The public/private divide attributes *"the public sphere of the work place, the law, economics, politics and intellectual and cultural life, where power and authority are exercised, as the natural province of men; while the private world of the home, the hearth and children is seen as the appropriate domain of women."*[44]

Feminist legal theory points out to the asymmetrical value accorded to the two spheres, with greater significance given to the male public dimension, compared to the female private dimension.[45] Radical feminists criticize how liberal feminists see the non-regulation of the private as a way for the protection of individual freedoms[46] and how they believe the distinctions operate in a neutral way.[47] They criticize the gendered character of liberal public/private distinctions[48] and blame the dichotomy for reinforcing a socially inferior position of women in society. Mackinnon argues for greater public (state, government and law) intervention into the private sphere (home and family), and in fact, overall opposes the privacy doctrine and the public/private split. According to her, home is the place where women experience oppression the most, and feminists should "explode" the private and see the personal as the political. In MacKinnon's words, "*Why a person would 'allow' force in private (the "why doesn't she leave" question raised to battered women) is a question given its insult by the social meaning of the private as a sphere of choice.*"[49] She describes the right to privacy *"like a sword in men's hands presented as a shield in women's."*[50] However, when it comes

[41] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 59.
[42] Catharine A. MacKinnon, Toward a Feminist Theory of the State, Harvard University Press, (1989), 173.
[43] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 59.
[44] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 626.
[45] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 626.
[46] Katherine O'Donovan, Sexual Divisions of Law, Weidenfeld and Nicholson, (1985), 7.
[47] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 43.
[48] Ibid, 44.
[49] Catharine A. MacKinnon, Toward a Feminist Theory of the State, Harvard University Press, (1989), 191.
[50] Ibid, 191.

to the discussions around "intervention", other feminist legal scholars, such as Frances Olsen, while criticizing the rhetoric of "non-intervention into private family", argue that the discussions around "intervention" or "non-intervention" of the state over the family are meaningless.[51] Accordingly, state nevertheless is *"deeply implicated into the formation and functioning of families,"*[52] and has a great influence through its political choices.[53]

Radical feminism's critique of liberal feminism argues that some concepts liberal feminists resort to, such as equality as equal treatment and individual rights, actually preserves the oppressive status quo,[54] does little to eliminate male domination, and revolves around the the male norm. They call for a radical, major transformation in law to eradicate patriarchal domination of women. This transformation should lead to freedom from the systematic subordination as a whole, not the freedom to be treated in a gender-neutral way.[55]

Radical feminism's approach to sexuality has been misundertood by some critics, claiming that radical feminism sees every sexual act as an act of domination, or rape, while in reality, they have instead recognized and emphasized the role of sex for domination.[56] Other rather more plausible critiques have raised that radical feminism, particularly MacKinnon's theories, endorse essentalism and do not pay sufficient attention to race, class, capitalism, or sexuality.[57] Carol Smart has criticized MacKinnon for according too much power, significance and authority to law.[58] Law must be urged to radically transform and recognize the real experiences and pain of women,[59] but attaching too much importance to law, singularly, might result in law preserving its place in hierarchical male-oriented structures.

[51] Frances E. Olsen, The myth of state intervention in the family, University of Michigan Journal of Law Reform, 18, (1984), 835.
[52] Ibid, 837.
[53] Ibid, 837.
[54] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 22.
[55] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 43.
[56] Leslia Francis and Patricia Smith, Feminist Philosophy of Law, Stanford Encyclopedia of Philosophy, (2017), available at: https://plato.stanford.edu/entries/feminism-law/#:~:text=Feminist%20philosophy%20of%20law%20identifies,not%20conform%20to%20cisgender%20norms
[57] Angela P. Harris, Race and Essentialism in Feminist Legal Theory, Stanford Law Review 42(3), (1990), 581. For MacKinnon's defence against this critique, see Catherine A. MacKinnon, From practice to theory, or what is a white woman anyway, Yale Journal of Law and Feminism 4(13), (1991), 13.
[58] Carol Smart, Feminism and the Power of Law, Routledge, (2002), 81.
[59] Catherine MacKinnon, Feminism Unmodified: Discourses on life and law, Harvard University Press, (1987), 104.

Putting legal arena into the center, or to put it in other words, the significance accorded to law for gender equality has been widely debated in feminist legal theory, not only with regard to the critique of radical feminism. Some feminists have argued that limiting feminist jurists "*to a polarized choice between a liberal conception of the state as neutral arbiter and an instrumentalist Marxist conception of the state as a reflection of dominant interests"*[60] is wrong. Accordingly, in order to engage with law, a discourse about power relations is transformed and adapted into a discourse of rights.[61] A rights-based discussion is necessary, however, the criticism is towards the exclusion of power dynamics. While recasting demands can result in legal victories, for some, such victories are "dubious"[62] because they occur when feminist demands fall in line with state agendas or the contemporary interests of male-dominated legal structures.[63]

Cultural Feminism

Another important scholarship challenging liberal feminism is cultural feminism, which recognizes, identifies and celebrates women's differences from men.[64] Cultural legal feminists have been influenced by Carol Gilligan's psychological studies about "different" voices of girls compared to boys which based their decision-making and problem skills on caring values instead of abstract logic.[65] They see law as a patriarchal institution, which has a language and structure glorifying male characteristics such as rationality, objectivity and abstractness in contrast with emotion, subjectivity, caring and contextualization – typically female characteristics.[66] Feminist jurists have sought ways to build new ways for a feminist justice in which values of caring, nurturing, empathy, connection and maternity are integrated with the hope that women judges and women's "different voice" can improve and further humanize

[60] Kate Sutherland, Marx and MacKinnon: The Promise and Perils of Marxism for Feminist Legal Theory, Science & Society, 69(1), (2005), 130.
[61] Judy Fudge, The effect of entrenching a Bill of Rights upon political discourse: feminist demands and sexual violence in Canada, International Journal of the Sociology of Law, 17(4), (1989), 445.
[62] Kate Sutherland, Marx and MacKinnon: The Promise and Perils of Marxism for Feminist Legal Theory, Science & Society, 69(1), (2005), 130.
[63] Judy Fudge, The effect of entrenching a Bill of Rights upon political discourse: feminist demands and sexual violence in Canada, International Journal of the Sociology of Law, 17(4), (1989), 445; Susan B. Boyd, (Re) placing the state: Family, law and oppression. Canadian Journal of Law and Society/La Revue Canadienne Droit et Société, 9(1), (1994), 39.
[64] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 22; Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 40.
[65] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 40.
[66] Frances Olsen, Feminism and Critical Theory: An American Perspective. International Journal of the Sociology of Law 18, (1990), 203.

the decision making processes of traditional adversarial models of justice. [67] Cultural feminism's attribution and celebration of certain characteristics on men and women are deemed controversial by some scholars. Carol Smart warns that accepting the distinctive voice of women can result in a socio-biologist approach *"which merely puts women back in their place."*[68] MacKinnon argues: *"For women to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness… When you are powerless, you don't just speak differently. A lot, you don't speak."*[69] Some cultural feminists have tried to explore alternative dispute resolution methods such as mediation and reconciliation instead of confrontational, win-or-lose adversarial models of justice.[70] This has also been criticized, emphasizing that these "feminine" labeled methods for dispute resolution, when conducted among parties with asymmetrical power and skills, can exacerbate inequalities.[71]

Liberal, radical, and cultural feminism can be defined as the major three strands of U.S. centered feminist jurisprudence, and has served as foundational theories and foci of criticism for the upcoming generations of feminist legal scholars, who have built further complex feminist legal thoughts, and "the generation of complex identities", as named by Martha Chamallas. Before moving into these feminist legal theories focusing on complex identities, it is important to have an overview of Socialist and Marxist feminism, for a better understanding of how feminist legal scholars approach the connection between patriarchy and capitalism.

A Gendered Look Into Economic Subordination and Capitalism: Socialist and Marxist Feminism

Socialist feminism has emerged through the debates in feminist communities about the roots of women's oppression, and has been closely associated with labour rights movement and

[67] Carrie Menkel-Meadow, The Trouble with the adversary system in a postmodern, multicultural world, 38 William and Mary Law Review 5, (1996), 6; Bertha Wilson, Will women judges really make a difference?, 28 Osgoode Hall Law Journal 507, (1990), 507; Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 40; Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 22.
[68] Carol Smart, Feminism and the Power of Law, Routledge, (2002), 75.
[69] Catherine MacKinnon, Difference and Dominance: On Sex Discrimination, in Catherine MacKinnon, Feminism Unmodified: Discourses on life and law, Harvard University Press, (1987), 386.
[70] Carrie Menkel-Meadow, The Trouble with the adversary system in a postmodern, multicultural world, 38 William and Mary Law Review 5, (1996), 42..
[71] See Hilary Astor and Christine Chinkin, Dispute Resolution in Australia, LexisNexis Butterworths, (2002).

women's unions in its early era.[72] For socialist feminists, the economic subordination of women, the feminization of poverty, and women's economic dependency on men are the main causes of women's sexual exploitation. They argue that a combination of patriarchy and capitalism causes women's subordination. In Zillah Eisenstein's words, *"socialist feminists are committed to understanding the system of power deriving from capitalist patriarchy"*[73] and the interrelationship and interdependence of capitalism and patriarchy. Accordingly, women's liberation is only possible through focusing on a full range of oppressive systems related to race, class, gender, and sexuality instead of a singular focus on gender. The ongoing effects of colonization, imperialism, and racism on women all around the world should be understood and challenged simultaneously.[74]

Socialist feminism criticizes liberal feminism for failing to understand the depth and complexity of women's subordination and for addressing the problems of white, upper-middle-class women exclusively. They also argue that women have been oppressed in all known societies, yet the economic realities have changed how women experience this oppression.[75] Noting how poorer women are generally subjected to more sexual exploitation, socialist feminists see the increase of women's economic independence and power as an antidote for the eradication of subordination. Under a socialist economic system, women and men would be able to build equal and healthy relationships free from economic, social, and sexual domination and violence. Law is not the most significant institution under socialist feminism, and economic determinants are prioritized instead. Having said this, socialist feminists have contributed significantly to feminist legal scholarship with their efforts and focused around the labour rights of women, employment discrimination, job segregation, sexual harassment at the workplace, women's overrepresentation in precarious jobs and part-time work, unpaid care labour, and equal pay for work of comparable worth.[76] While taking up such matters, they expose the complicity of patriarchal labour movements and some male leftists.[77]

[72] See Chicago Women's Liberation Union, Socialist Feminism: A Strategy for the Women's Movement, (1972), available at: https://repository.duke.edu/dc/wlmpc/wlmms01035.
[73] Zillah Eisenstein, Constructing a theory of capitalist patriarchy and socialist feminism, Insurgent sociologist 7(3), (1977), 17.
[74] Holly Graf, A Very Short Summary of Socialist Feminist Theory and Practice, (2012), available at: https://www.oakton.edu/user/4/ghamill/Socialist_Feminism.pdf
[75] Ibid.
[76] Frances Olsen, What Is Feminist Legal Theory and Why Should Gender Studies Care about It?, availabe at: http://www.igs.ocha.ac.jp/igs/IGS_publication/journal/01/01_03.pdf
[77] See Zillah Eisenstein, Capitalist patriarchy and the case for socialist feminism, Monthly Review Press, (1979).

Arlie Hochschild argues how gender inequality is closely connected to unpaid domestic labour, calling for recognition and respect for all work.[78] She names unpaid domestic labour the "second shift" and emphasizes how invisible and overlooked it is: women carry the burden of giving birth, socializing and raising children, caring for the sick and elderly, and restless home-making to provide a retreat for men to escape from the realities and workload of the workplace and the public arena.[79]

Marxist feminism and socialist feminism are closely connected[80] and often used synonymously. However, despite sharing the common theoretical foundation of Marxism, their approach to women's oppression are distinguishing. While Marxist feminists consider only capitalism as the cause of women's exploitation and focus their analysis only on a class paradigm, socialist feminists take both class and gender into consideration and challenge both patriarchy and capitalism.[81] Marxist feminism is reluctant to accord women status as a stand-alone group, particularly criticizes the economic organization of societies, and according to some, even aims to avoid a struggle between the sexes in fear of class division.[82]

While socialist and Marxist feminism's criticism of liberal feminism and efforts to defend double exploited (oppressed both due to their class and gender) women's interests are notable, they have been criticized by some feminists on a number of issues; their semi-silence on other forms of oppression, including race, sexuality, or disability; an excessive focus on the economic dimension of gender inequality without paying much attention to sexual violence; and the prevalent sexism in communist and left-wing political structures agaisnt feminists.[83]

2.2.3. "Generation of Complex Identities": Diversity, Fluidity and Intersections

Stepping into the era of more recent, multivocal feminist legal scholarships focusing on more complex identities, as Martha Chamallas titles 1990s and beyond "the Generation of Complex Identities", as a new focus on the diversity of women has emerged. Non-white, non-heterosexual women who are not from the Global North have critically voiced that they have

[78] See Arlie Russell Hochschild and Anne Machung, The second shift: Working families and the revolution at home, Penguin, (2012).
[79] Ibid.
[80] See Elizabeth Lapovsky Kennedy, Socialist Feminism: What Difference did it make to the History of Women's Studies?. Feminist Studies, 34(3), (2008), 497.
[81] See Camille Cottais, Marxist and Socialist Feminism, Gender in Geopolitics Institute, (2021), available at: https://igg-geo.org/wp-content/uploads/2021/04/Technical-Sheet-Marxist-and-socialist-feminism.pdf
[82] Ibid; Guy Bouchard, Typologie des tendances théoriques du féminisme contemporain, Philosophiques, 18(1), (1991), 119.
[83] See Michele Barrett, Women's Oppression Today: The Marxist/Feminist Encounter, Verso Books, (2014).

been left out of the major, classic feminist legal scholarships.[84] Essentialist ideas on the commonality of women's experiences were critiqued and replaced with the diversity of women's experiences based on multiple factors (race, sexuality, disability, migration status …).[85] Feminist legal scholars have started to analyze the law with multiple perspectives reflecting complex identities, and have accepted that they might agree, disagree, clash and cooperate from time to time, instead of trying to agree upon one ultimate feminist legal strategy to eradicate the patriarchy in legal structures.[86]

Postmodern Feminism

Postmodern feminism has emerged through some feminist scholars questioning and challenging the fixed status of identity and the search for a common, universal theoretical explanation for women's oppression.[87] Instead, they argue how dynamic and performative different fractions of identities are, searching for a deeper understanding of how individuals present themselves differently on a variety of settings, how there is no belonging to a certain group and how these groups themselves have biased dynamics within themselves.[88] They have shifted their attention from the existence of gender hierarchies, determining "resisting the binary" as their main aim. Postmodern feminists challenge the idea that there are two stable and opposite sexes and overall reject the status-based identities.

Carol Smart questions whether a "Grand Feminist Theory" would be useful to end inequalities since it would fail to capture contextualized knowledge and fractured identities.[89] Instead of general and abstract theories, Smart and others argue that feminist legal thought should focus on women's realities and experiences and should expose the inconsistencies of legal regulations.[90] According to postmodern feminists, the law does not operate in a monolithic way to oppress women and there are many experiences and stories untold and unseen by the law. According to Harding, "*by giving up the goal of telling one true story,* […] *we can instead embrace the permanent partiality of feminist inquiry"*[91] Instead of uncertain and general legal reforms, focusing on specific applications of law for the particular contexts and experiences

[84] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 23.
[85] Ibid, 24.
[86] Ibid, 91.
[87] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 44; Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 26.
[88] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 26.
[89] Carol Smart, Feminism and the Power of Law, Routledge, (2002), 70.
[90] Ibid, 68.
[91] Sandra Harding, The Science Question in Feminism, Cornell University Press, (1986), 194.

of women should be the path to be chosen and it would be "*more useful to be a feminist journalist than a feminist lawyer*."[92]

Postmodern feminists have paid attention to two prominent aspects while examining the law: language and the multiplicity of viewpoints. Firstly, they argue that the analysis of the language of law can show how gender is constructed in legal structures and how some experiences are filtered by law.[93] According to Mary Joe Frug: *"The postmodern position locating human experience as inescapably within language suggests that feminists should not overlook the constructive functions of legal language as a critical frontier for feminist reforms."*[94] Secondly, postmodern feminists promote the multiplicity of viewpoints and contextual judgments. They resist the idea that there is a single analysis or a single correct answer to the question of how law enables gender-based inequality.[95]

Postmodern feminist legal theory has been criticized in several ways. Some argue that *"its emphasis on localized narratives produces too weak a discourse to respond to the global structures of continued oppression of women."*[96] Chamallas argues that postmodern feminism's post-identity approach is difficult to translate for positive legal transformation and that some postmodernists have deregulatory tendencies and presume that law serves to reinforce dominant ideologies and identity politics.[97] Another critique is with regard to the post-identity approach, claiming that distancing from identity means "*distancing away from a feminism centered on women."*[98] Sutherland recognizes the prospects of postmodernism for feminist legal theory and the possibility of framing legal claims "*in a manner that does justice to the complexity and multiplicity of women's voices,"* yet argues that only the most liberal claims that fall most into capitalist principles and the goals of dominant authorities are heard in legal forums, showing how postmodern feminism can end up being "*reductionist"* and "*co-opting,*" unintentionally.[99]

---

[92] Carol Smart, Feminist Jurisprudence, (Speech at La Trobe University, Melbourne, 2 December 1987), (1987).
[93] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 45.
[94] Mary Joe Frug, Postmodern Feminist Legal Manifesto (An Unfinished Draft), Harvard Law Review, (1991), 1046.
[95] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 45; Gary Minda, Postmodern Legal Movements: Law and Jurisprudence at the Century's End, New York University Press, (1995), 141.
[96] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 45.
[97] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 26.
[98] Ibid, 26.
[99] Kate Sutherland, Marx and MacKinnon: The Promise and Perils of Marxism for Feminist Legal Theory, Science & Society, 69(1), (2005), 131.

Ecofeminism

Ecofeminist jurisprudence is a relatively young feminist legal scholarship. A jurisprudential extension of ecofeminist thought focuses on and recognizes the conceptual connections between class, race, gender and environmental degradation.[100] An ecofeminist environmental jurisprudence reflects the insights of both feminism and environmentalism, both responding to the harms and subordination which systematic failures enable or advance,[101] and finding a place in law where the domination of nature and women intersects.[102]

It is important to note here that many ecofeminists warn against the essentialist tendency of the gendered language describing nature in expressions like "Mother Nature," and they are against building connections between women's femininity, maternity, nurturing and caregiving roles and the abundance and fertility of nature.[103] Instead, they emphasize how women in society and polluted and extracted nature share oppression experiences caused by capitalist, male-dominated forces.

While environmentalism focuses on *"constraining unbridled ecosystem destruction,"*[104] feminism focuses on "*discovering and unraveling the systems that subordinate women*".[105] There have been emerging political efforts, particularly at the United Nations, to explore further and strengthen the linkages between these movements.[106] Ecofeminism combines the mutual understanding of these two movements on how overlapping subordinating structures operate and their common demand for a multivocal, justice-oriented approach. With the

[100] Chaone Mallory, Toward an Ecofeminist Environmental Jurisprudence: Nature, Law, and Gender, (Master's Thesis, University of North Texas), (1999), 5.
[101] Cinnamon Carlarne, Environmental Law and Feminism, in Deborah L. Brake, Martha Chamallas, and Verna L. Williams (eds.), The Oxford Handbook of Feminism and Law in the United States, Oxford University Press (2021), 1.
[102] Chaone Mallory, Toward an Ecofeminist Environmental Jurisprudence: Nature, Law, and Gender, (Master's Thesis, University of North Texas), (1999), 51.
[103] Mark Stoddart and David Tindall, Ecofeminism, Hegemonic Masculinity, And Environmental Movement Participation In British Columbia, Canada, 1998-2007: "Women Always Clean Up The Mess", Sociological Spectrum 31(3), (2011), 343; Karen J. Warren, Feminist Environmental Philosophy, The Stanford Encyclopedia of Philosophy, (2015), available at: https://plato.stanford.edu/entries/feminism-environmental/#LinPer.
[104] Cinnamon Carlarne, Environmental Law and Feminism, in Deborah L. Brake, Martha Chamallas, and Verna L. Williams (eds.), The Oxford Handbook of Feminism and Law in the United States, Oxford University Press (2021), 1.
[105] Ibid, 1.
[106] The priority theme of the sixty-sixth session of the Commission on the Status of Women (14-25 March 2022) was achieving gender equality and the empowerment of all women and girls in the context of climate change, environmental and disaster risk reduction policies and programmes. Similarly, Feminist Action for Climate Change is one of the core action coalitions operating under the Generation Equality campaign, a political strategy and a multistakeholder and multigenerational initiative led by UN Women, galvanizing the 25th anniversary commemoration of the Beijing Declaration and Platform for Action.

current momentum of movements such as #MeToo and #TimesUp! and the climate activism movements such as Fridays for Future, there is a rising discourse in both feminism and environmentalism about the potential prospects of feminist legal thought and environmental law strenghtening their mutual engagement.[107]

LGBTI+[108] Scholarship and Queer Legal Theory

In parallel with and closely connected to feminist legal theory, a comprehensive scholarship focusing on LGBTI+ issues has emerged in early 1990s, produced by gay, lesbian, transgender and queer scholars. These scholars have taken up issues such as same-sex marriage, sexual orientation and gender identity-based discrimination and have built queer legal theories. LGBTI+ scholarship aims to analyze and critique the heteronormative, discriminatory and oppressive cultural norms, discourses and legal structures. Queer legal theorists question how repression is reproduced and what role patriarchy plays in LGBTI+ subordination. Sylvia Law introduces the interconnectedness between heterosexism and male supremacy and argues that the strong ideological endorsement of heterosexuality results in the preservation traditional concepts of masculinity and femininity, or *"the social meaning of gender."*[109] This preservation reinforces traditional families, and political and economic structures that imitate gendered division of roles and labour.[110] The intolerance for sexual diversity[111] in law and in culture therefore worsens women's subordination. It pressures and channels women into traditional and "inevitable" marriages and sexual orientation towards men,[112] and promotes male-female relationships in which men are the dominant party.[113]

[107] Cinnamon Carlarne, Environmental Law and Feminism, in Deborah L. Brake, Martha Chamallas, and Verna L. Williams (eds.), The Oxford Handbook of Feminism and Law in the United States, Oxford University Press (2021), 14.
[108] This dissertation will use the most well-used acronym for Lesbians, Gays, Bisexuals and Transsexuals, with a (+) at the end, recognizing and aiming for the visibility of other sexual and gender minorities, such as intersex people, and ensuring the changing and extending quality of LGBTI+ community for other identities of experiences. This approach has been borrowed from Ramos' 2021 article "Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law". See Marcelo Maciel Ramos, Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law, Revista Direito e Práxis 12(3), (2021).
[109] Sylvia A. Law, Homosexuality and the Social Meaning of Gender, Wisconsin Law Review, (1988), 187.
[110] Ibid; Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 207.
[111] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 207.
[112] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 207; Adrienne Rich, Compulsory Heterosexuality and Lesbian Existence, Signs: Journal of Women in Culture and Society 5(4), (1980), 640.
[113] See Eve Kosofsky Sedgwick, Epistemology of the Closet, University of California Press, (2008); Michael Warner, The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life. Harvard University Press, (2000); Judith Butler, Gender Trouble, Routledge, (2002).

Queer legal theory is a new genre of postmodern scholarship which focuses on analyzing sexuality, sexual orientation, gender identities and gender non-conformation through a legal perspective. According to Janet Halley, queer legal theory *"regards the homosexual/heterosexual distinction with skepticism and even resentment, arguing that it is historically contingent and itself oppressive."*[114] Michel Foucault has discussed in "The History of Sexuality" how sexuality has historically become a discursive production in Western societies.[115] Judith Butler has questioned the concrete identities and well-defined conceptual boundaries, as well as how we define womanhood.[116] For Butler, gender is not a natural or fixed identity. Instead, it is performative, constituted through acts of performance of what is repetitively perceived and reinforced to be an act of a certain category of gender.[117] Eve Sedgwick has discussed how a binary understanding of sexuality (homosexuality/heterosexuality) is very limited and oversimplifying, and analyzed the function of "closets," a concept built for the reinforcement of heterosexuality and for the subordination of queer people.[118] All in all, queer theorists approach identities based on sex, gender and sexuality to be socially constructed, interpretable, and fluid, and they aim for emancipating people from the constraints of such identities.[119]

Queer theory's approach to law is a complicated one. Some queer legal theorists tend to be anti-statist,[120] and according to Martha McCluskey,[121] like some of their feminist allies, they are skeptical of relying on government programmes and legal discourse.[122] They emphasize that "*legal rights regulate rather than simply liberate those who are subordinated."*[123] For Adam Romero, the term "queer" refers to an oppositional stance, a positionality, and a methodological descriptive, not a definitive concept.[124] According to Romero, the term queer, *"in its contemporary reclaimed form tends to be associated with prideful opposition to, and*

[114] Janet Halley, Sexuality Harassment, In Wendy Brown and Janet Halley, J. (eds.). Left Legalism/Left Critique, Duke University Press, (2002), 82.
[115] See Michel Foucault, The History of Sexuality, Pantheon Books, (1978).
[116] See Judith Butler, Gender Trouble, Routledge, (2002).
[117] See Judith Butler, Gender Trouble, Routledge, (2002).
[118] See Eve Kosofsky Sedgwick, Epistemology of the Closet, University of California Press, (2008).
[119] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 224.
[120] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 225.
[121] Martha T. McCluskey, How Queer Theory Makes Neoliberalism Sexy in Feminist and Queer Legal Theory, In Martha Albertson Fineman et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009), 115.
[122] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 225.
[123] Martha T. McCluskey, How Queer Theory Makes Neoliberalism Sexy in Feminist and Queer Legal Theory in Martha Albertson Fineman et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009), 115.
[124] Romero, A. P. (2007). Methodological Descriptions: "Feminist" and "Queer" Legal Theories, 19 Yale Journal of Law and Feminism 227, 247.

transgression of, dominant norms, especially those related to sexuality, gender, intimacy and kinship."[125] McCluskey observes that unlike mainstream legal theorists, queer legal theorists are more open to embracing *"moral ambiguity*, *even immorality",* for the sake of resisting against conventional hegemonic normative practices,[126] including those articulated and prevalent in law.[127]

Feminist and LGBTI+ scholars generally agree upon how heterosexism reinforces male domination and draw a connection between the violence and discrimination experienced by women and sexual minorities. However, in addition to mutually nourishing each other and talking to each other, they also clash and have "uncomfortable conversations"[128] particularly on how they approach group and personal identities. Exploring the tensions, connections and divergences between feminist legal theory and queer legal theory is complicated. Positioning them as for or against each other is not possible and if done, it would be too simplistic. There are many different kinds of feminist and queer theories offering diverse perspectives, positions, and strategies.[129] While some queer and feminist legal theorists approach law pragmatically as a tool for equality and protection, some *"formulate a radical mistrust in relation to the contradictions and limits of law, proposing its destabilization or even its complete refusal.*"[130] Feminist and legal theory's relationship, therefore, depends on the particular theory's perspective.

One commonality between feminist legal theory and queer legal theory, which is remarkably pointed out by Ramos, is that as critiques of law, feminist and queer legal theory both establish themselves as critical epistemological theories and political practices.[131] Epistemologically, they both demonstrate, based on the experiences of women and LGBTI+, the limits and contradictions of legal knowledge on gender, and the foundations, categorizations, norms and practices of law.[132] As a political practice, they can aim for reformist strategies for legally

[125] Ibid, 247.
[126] Martha T. McCluskey, How Queer Theory Makes Neoliberalism Sexy in Feminist and Queer Legal Theory, In Martha Albertson Fineman et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009), 125.
[127] Adam P. Romero, Methodological Descriptions: "Feminist" and "Queer" Legal Theories, 19 Yale Journal of Law and Feminism 227, (2007), 190.
[128] See Martha Albertson Fineman, et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009).
[129] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 227; Adam P. Romero, Methodological Descriptions: "Feminist" and "Queer" Legal Theories, 19 Yale Journal of Law and Feminism 227, (2007), 256.
[130] Marcelo Maciel Ramos, Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law, Revista Direito e Práxis 12(3), (2021), 1681.
[131] Ibid, 1701.
[132] Ibid, 1701.

protecting and including women and gender minorities. They can defend radical transformation of or dismantling of law and gender itself. They can perform insubordination, (which is how Foucault defines critique)[133] *"that displace and subvert the meanings and uses of legal discourses and norms."*[134]

Despite their diverse methodologies, strategies and opinions; feminist and queer legal critique share powerful position in the face of traditional legal theories which see gender in a limited, binary way or which count gender as irrelevant.[135] They both put an effort to create a multi-dimensional analysis of oppressive systems, and to make experiences, which were erased and invisibilized by hegemonic, patriarchal systems of norms and knowledge, much more visible and intelligible.[136]

2.2.4. Beyond Western White Feminism

Feminist arguments, contributions and critique of law is not limited to Western white scholars. The theories discussed hereunder commonly criticize the sole focus on Western women and demand a more intricate study of the forms and intersections of oppressive systems such as racism and colonialism on women of colour and non-Western women in a post-colonial context.[137]

Black Feminism

Black feminists[138] have brought important critical contributions to feminist legal theory. Angela Harris criticizes prominent feminist legal scholars like Catherine MacKinnon and Robin West[139] for basing their arguments on gender essentialism with a unitary understanding of women' experiences, because of the intellectual convenience of such an essentialist

[133] Michel Foucault, What is Critique? In What is Enlightement?, Bulletin de la Société Française de Philosophie, 84(2), (1978).
[134] Marcelo Maciel Ramos, Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law, Revista Direito e Práxis 12(3), (2021), 1701.
[135] Ibid, 1702.
[136] Ibid, 1702.
[137] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 48.
[138] For a broader discussion of black feminism, see Patricia Hill Collins, Black feminist thought: Knowledge, Consciousness, and the Politics of Empowerment, (2009);
for a contemporary understanding of black feminism see Jennifer C. Nash, Black Feminism Reimagined: After Intersectionality, Duke University Press, (2019).
[139] For Robin West's ideas on women's humanity and how feminist jurisprudence can contribute to the construction of a humanistic legal theory, see
Robin West, Jurisprudence and Gender, The University of Chicago Law Review, 55(1), (1988).

approach. Harris argues that such an approach *"means not having to do as much work, not having to try and learn about the lives of black women, with all the risks and discomfort that that effort entails."*[140] Accordingly, feminist legal theory is in need of less abstraction and that the unity of women should be destabilized and subverted by introducing the voices of black women,[141] because even committed and anti-racist feminists such as MacKinnon and West tend to build a monolithic understanding of women's experiences. Feminist legal theory, similar to law itself, which aims to speak for everyone, yet ends up silencing those with less power. Feminist jurisprudence is in danger of unintentionally silencing who have been ignored or kept from speaking, including black women.[142]

Harris suggests subverting feminist legal theory with *"narratives and stories, accounts of the particular, the different and the hitherto silenced"*[143] in order to "energize" it. Other legal scholars of colour have also emphasized the importance of story-telling for feminist legal theory. Patricia Williams, looking from the perspective of and simultaneously criticizing Critical Race Theory, has emphasized how the struggle for rights and right-assertion are still important, despite the criticism of critical legal studies about how indeterminate and contradictory the rights discourse can be. Williams tries to *"redescribe the historical alchemy of rights in black lives"* through multilayered stories.[144]

Mari Matsuda (who is not a black feminist yet a prominent critical race theorist) calls for *"multiple consciousness"* as a jurisprudential method, and for the recognition of specific experiences and histories as relevant to jurisprudential inquiry. Making legal consciousness with multiple approaches is similar to speaking several languages, strategically, at different times. In Matsuda's words: *"There are times to stand outside the courtroom door and say 'this procedure is a farce, the legal system is corrupt, justice will never prevail in this land as long as privilege rules in the courtroom.' There are times to stand inside the courtroom and say 'this is a nation of laws, laws recognizing fundamental values of rights, equality and personhood'."*

In addition to the rights discourse, it would be helpful to place a particular focus on black feminism's criticism against feminist jurisprudence's relationship with legal instruments.

[140] Angela P. Harris, Race and Essentialism in Feminist Legal Theory, Stanford Law Review 42(3), (1990), 616.
[141] Ibid, 585.
[142] Ibid, 585.
[143] Ibid, 615.
[144] See Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights. Harvard Civil Rights-Civil Liberties Law Review, 22(2), (1987).

While many feminist jurists, as explained above, prefer to use law as a practical tool for concrete achievements, feminists from other disciplines, (also from within feminist jurists themselves) have criticized spending too much time and effort of practical legal strategies, prioritizing how to "win" in an already unfair legal system, and losing the focus of the wider, holistic theoretical criticism of the system.[145] Wendy Brown puts it as "dependence and agreement to abide by the protector's rules", being the "heavy prize of institutionalized protection".[146]

How the Feminist Stance Against Colonialism Evolved: From Third World to Transnationalism

Third World and Postcolonial Feminism

In parallel with Black feminism, Third World feminism has emerged in response to white Western feminists' allegedly narrow analyses of women's subordination which exlucded Third World women's multiple and complex oppression experiences. Third World and Postcolonial feminism are grouped together under a separate title in order to have a closer look into how non-Western and non-White women built a stance against imperial and colonial legacy, with commonizing characteristics and conditions including but not limited to race, focusing on the silencing, exclusion and systemic impoverishment of the Global South. Hereinafter in this thesis, whenever the term "Third World" is used, it will be used as a reappropriated, reclaimed expression used by Third World people, as put forward by Mohanty[147] and Herr[148], representing the political opposition and resistance against the exploitation of the "First World."[149] While looking through the perspectives of contemporary feminist legal theories focused on Türkiye, Colombia and South Africa, the use of terms like "First World" or "Third World" might be inappropriate and outdated particularly due to the

[145] Janet Halley, Split Decisions: How and Why to Take a Break from Feminism, Harvard University Press, (1995), 125.
[146] Wendy Brown, States of Injury: Power and Freedom in Late Modernity, Princeton University Press, (1995), 169.
[147] See Chandra Talpade Mohanty, Under Western Eyes: Feminist Scholarship and Colonial Discourses, Boundary 2, (1984); Chandra Talpade Mohanty, Cartographies of Struggle: Third World Women and the Politics of Feminism, In Feminism without Borders: Decolonizing Theory, Practicing Solidarity, Duke University Press, (2003).
[148] See Ranjoo Seodu Herr, The possibility of nationalist feminism, Hypatia, 18(3), (2003); Ranjoo Seodu Herr, Reclaiming Third World Feminism: Or Why Transnational Feminism Needs Third World Feminism, Meridians, 12(1), (2014).
[149] For further online resources on World Bank's use of these terms see Tariq Khokhar and Umar Serajuddin, Should we continue using the term 'developing world'?, World Bank Blogs, (2015), available at: https://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world; World Bank, "How does the World Bank Classify Countries?", (9 May 2022), available at: https://datahelpdesk.worldbank.org/knowledgebase/articles/378834-how-does-the-world-bank-classify-countries

fall of the "Second World", and the heterogeneous distribution of wealth within these nations. While discussing Third World feminism, the term will be used in its reappropriated context and for a better understanding of divergence from white, Western feminism. While discussing the business and human rights contexts in Türkiye, South Africa, and Colombia, despite their significant similarities, since these countries' relationships with colonialism have been different and unique and their position as typical "host countries" in global supply chains are more closely related to their economic status in comparison with the home countries of multinational corporations, the terms "developing countries" or "high/low/middle income countries" can alternatively be used. Having explained their unique distinction from the wealthy Global North which is the home of many multinational corporations, the terms "home states" and "host states" will be adopted throughout the business and human rights discussion for its technical accuracy and for the conscious choice not to use language connotating inferiority.

Coming back to the stance of Third World feminists, they have criticized liberal feminism's conquest against individual cases of discrimination, and avoided a direct application of Western feminist critique in their societal context. They have pointed out that in addition to gender and class, Third World women experience multiple and complex forms of oppression based on racism and colonialism.[150] Mohanty criticizes the comparisons between First and Third World in Western feminist theories and argues that Western feminists' narrow definition of Third World women are based on assumed problems and fixed characteristics. This geographically essentialist approach does not pay regard to specific, unique, local contexts, effectively removing Third World women *"from history, freezing them in time and space."*[151]

Before moving further, at this point, it is important to explain Third World feminism's connection to postcolonial feminism and transnational feminism. Third World feminism has often been used interchangeably with postcolonial feminism. Here it should be emphasized that some postcolonial scholars have criticized the use of the term "third" particularly, arguing that it justifies the superiority and dominance of the West. The term "postcolonial" is typically used for nations like India carrying some legacy from a former colonial power which is now removed. Some scholars emphasize the importance of not masking the continuing impact of colonialism on the daily lives of women living in such regions and nations. Keeping in mind

[150] Cheryl Johnson-Odim, Common Themes, Different Contexts in Chandra Talpade Mohanty and Rousse and Lourdes Torres, (eds.), Third World Women and the Politics of Feminism, Indiana University Press, (1991), 314.
[151] Chandra Talpade Mohanty, Cartographies of Struggle: Third World Women and the Politics of Feminism, in Feminism without Borders: Decolonizing Theory, Practicing Solidarity, Duke University Press, (2003), 7.

the emphasis on colonialist and imperialist legacy, and recognizing the criticism over the risk of such identity constructions exacerbating the "othering" of non-Western women,[152] postcolonial and Third World feminismt jurisprudence will be used together in this dissertation. They will be used to describe the theories focusing on the perspectives of women living in specific regions, and will at certain times be broadened to include women of colour and migrant women living in the First World, keeping in mind the debates surrounding these terms and the impossibility of capturing the diverse experiences of women living in different geographies with similar experiences. [153]

Third World feminism, developed by non-Western, non-white feminists, has a strong connection with Third World nationalism. According to Jayawardena, in Third World contexts, feminism and nationalism are *"intricately connected"* with a common goal: gaining independence from a hegemonic colonial power.[154] The Third World feminist approaches, just like Third World nationalisms are unique *"political struggles to (re)gain national independence."*[155] This complicated relationship contains sympathy, support and solidarity, yet also competitive tension. Herr emphasizes how Third World male nationalists *"always considered feminist agendas secondary, deferring their implementation until after the success of the nationalist struggle."*[156] Such collaborations can at times result in Third World feminists' further exploitation and the postponement, or abadonment of feminist demands.

A pattern of such dynamics is observed with regard to Palestinian struggle for self-determination; the intifada. Throughout and after the intifada, prominent feminist leaders such as Zahira Kamal and Hanan Ashrawi have actively participated in peace processes.[157] Palestinian women's policial organization gained considerable momentum, in order words, *"women became the backbone of intifada"*[158]. However, the imagery of women used as a part of Palestinian nationalist movement was limited to sacrifice, nurturing, motherhood and

[152] Nancy Naples, Changing the Terms: Community Activism, Globalization and the Dilemmas of Transnational Feminist Praxis, In Nancy Naples and Manisha Desai, (eds.), Women's Activism and Globalization: Linking Local Struggles and Transnational Politics, Routledge, (2002), 5.
[153] Ibid, 5.
[154] See Kumari Jayawardena, Feminism and Nationalism in the Third World, Zed Books, (1986).
[155] Ranjoo Seodu Herr, The possibility of nationalist feminism, Hypatia, 18(3), (2003), 152.
[156] Ibid, 135.
[157] For women's active involvement in the Israeli-Palestinian peace dialogues see Nahla Abdo, Middle east politics through feminist lenses: Negotiating the terms of solidarity. Alternatives, 18(1), (1991).
[158] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 157.

traditional duties within the family.[159] With the dominance of Palestinian patriarchal traditions and a motivation to preserve Palestinian men's pride and self-respect, the intifada and national struggles ended up undermining Palestinian women's agenda for equal rights, and resulted in very tokenistic, almost absent representation of women in political decision-making.[160]

Similar to the Palestinian context, Indian feminist scholars have criticized Mahatma Gandhi's resistance to British colonial powers for using particularly gendered representations and imagery. They are critical of Gandhi's leadership and approach for encouraging a passivity which is strongly connected to femininity, using symbols of female sexuality from Hindu mythology to build a nationalist spirit, confining women into traditional roles of wifehood and motherhood and equating the female to the pre-colonial, "untouched" homeland.[161] Indian and Palestinian women's frustration with the political liberation stuggle and their clear demands *"not wanting to be heroines for the sake of the nation"*[162] are illustrative examples of the tension, frustration and the lack of trust from Third World feminists towards nationalist movements. In Nahla Abdo's words: *"national liberation is not a movement for the liberation of gender and class oppression"*.[163]

This fall out has resulted in a complicated, antagonistic[164] relationship as nationalism tried to hold on to traditional characteristics and roles to resist hegemonic occupation. Post-colonial theorists, such as Franz Fanon,[165] established the theoratical foundations for post-colonialism by using several methodologies, such as psychoanalysis to reconfigure racial identities. However, while doing so, they kept using the black men as the norm, as the exemplary colonized subject, and considered women only with regard to their sexual relationships with men.[166] Moreover, they criticized feminists for having neo-liberal universalist approaches.[167]

---

[159] Simona Sharoni, Middle East politics through feminist lenses: Toward theorizing international relations from women's struggles, Alternatives, 18(1), (1993), 15.
[160] Souad Dajani, Between national and social liberation: The Palestinian women's movement in the Israeli occupied West Bank and Gaza Strip, Routledge, (1994), 42.
[161] See Ketu Katrak, Indian Nationalism, Gandhian 'Satyagraha' and the Engendering of National Narratives, In Andrew Parker et al., (eds.), Nationalisms and Sexualities, Routledge, (1992).
[162] Maya Rosenfeld, I Don't Want My Body To Be a Bridge for the State: Palestinian Novelist Sahar Khalifa on Her Work and Issues of Women in the Intifada, Challenge 2(6), (1991), 24.
[163] Nahla Abdo, Middle east politics through feminist lenses: Negotiating the terms of solidarity. Alternatives, 18(1), (1991), 31.
[164] Ritu Tyagi, Understanding postcolonial feminism in relation with postcolonial and feminist theories. International Journal of Language and Linguistics 1(2), (2014), 46.
[165] See Frantz Fanon, Black Skin, White Masks, Grove Press, (2008); Gwen Bergner, Who Is That Masked Woman? or, The Role of Gender in Fanon's Black Skin, White Masks, PMLA/Publications of the Modern Language Association of America, 110(1), (1995), 75.
[166] Gwen Bergner, Who Is That Masked Woman? or, The Role of Gender in Fanon's Black Skin, White Masks, PMLA/Publications of the Modern Language Association of America, 110(1), (1995), 77.
[167] Ritu Tyagi, Understanding postcolonial feminism in relation with postcolonial and feminist theories. International Journal of Language and Linguistics 1(2), (2014), 46.

In the face of this, some feminists grew skeptical of nationalism[168] and some of them have started to critically engage with postcolonialism, encouraging it to *"produce a more critical and self-reflexive account of cultural nationalism."*[169] Based on these experiences, and with the attempt to *"empower a community of women that transcends cultural characteristics and geographic boundaries,"*[170] transnational feminism has emerged. Transnational feminism shares two major concerns with Third World feminists: firstly, they aim for a feminist analysis of Third World women's oppression experiences and their resistance with a historical context, and secondly, they strongly believe in amplifying the voices of Third World women, respecting their unique experiences and agency.[171] However, while Third World feminists focus their efforts in naitonal and local contexts, transnational feminists argue that nationalism is detrimental to the feminist agenda and instead, they primarily focus their efforts around transnational level feminist organizations, networks and movements and building networks of solidarity transnationally.[172]

A prominent focus of contemporary Third World, postcolonial and transnational feminists has been the eradication of poverty, and particularly, women's deep poverty. Feminist legal theory has pointed out to how institutions of international law have supported a capitalist global economy in which "developed" nations' wealth and success is built on the exploitation of "developing" world's women, providing cheap labour force. In connection with the focus of this thesis, the way global supply chains and free trade zones are established by international trade law is criticized for trying to attract investments of multinational corporations with cheap and irregular labor force, in which women are often overrepresented.[173]

Cheryl Johnson-Odim points out to the real questions connected to Third World women's poverty experiences. Accordingly, they are not only questions of internal redistribution of resources but questions on wealth's generation and control; instead of equal opportunity

[168] See Caren Kaplan et al. (eds.), Between Woman and Nation: Nationalisms, Transnational Feminisms, and the State, Duke University Press, (1999).
[169] Leela Gandhi, Postcolonial Theory: A Critical Introduction, Edinburgh University Press, (1998).
[170] Ritu Tyagi, Understanding postcolonial feminism in relation with postcolonial and feminist theories. International Journal of Language and Linguistics 1(2), (2014), 46.
[171] Ranjoo Seodu Herr, Reclaiming Third World Feminism: Or Why Transnational Feminism Needs Third World Feminism, Meridians, 12(1), (2014).
[172] See Ranjoo Seodu Herr, The possibility of nationalist feminism, Hypatia, 18(3), (2003); Inderpal Grewal and Caren Kaplan, Global identities: Theorizing transnational studies of sexuality, GLQ: A Journal of Lesbian and Gay Studies 7(4), (2001); Richa Nagar and Amanda Swarr, Introduction: Theorizing Transnational Feminist Praxis, In Amanda Swarr, and Richa Nagar, (eds.), Critical Transnational Feminist Praxis, University of New York Press, (2010).
[173] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 47.

between men and women, they are questions on the creation of such opportunities, and instead of women's position in society, they are about the oppressive dynamics that Third World women are facing everyday.[174] Third World women therefore respond to First World women's call for a united sisterhood with these realities, and expect them to acknowledge their privilege and the benefits available to them, gained from the economic oppression of the Third World. Here, bell hooks' views on "sisterhood" should be mentioned. According to hooks, *"The vision of Sisterhood evoked by women's liberationists"* is based on the notion of *"common oppression",* mostly supported by "bourgeois white women" and is indeed *"a false and corrupt platform disguising and mystifying the true nature of women's varied and complex social reality."*[175] While women are divided based on racism, class privileges and other prejudices, she argued that *"wishful thinking or romantic reverie about common oppression*" will not eliminate these divisions.[176] Exposing the privilege of First World women, Third World feminism demands a much more intricate study of the interaction of gender, race, class, colonialism, capitalism, and the intersectional impact of these oppressive systems.[177]

2.2.5. Intersectional Feminism

As shown above, there is a significant emphasis on the interaction of different kinds of oppression women are experiencing. Intersectional feminism,[178] coined by feminist jurist Kimberlé Crenshaw,[179] is the prominent approach for understanding such complex experiences, and has emerged from black women's experiences before traditional anti-discrimination law. Crenshaw's analysis of the U.S. court decisions has shown that anti-disrimination law traditionally focused on mutually exclusive categories of discrimination and only provided protection to black women when their experiences coincided with either white women's experiences, or black men's experiences.[180] According to Crenshaw, both feminist

[174] Cheryl Johnson-Odim, Common Themes, Different Contexts in Chandra Talpade Mohanty and Rousse and Lourdes Torres, (eds.), Third World Women and the Politics of Feminism, Indiana University Press, (1991), 320.
[175] bell hooks, Sisterhood: Political solidarity between women, Feminist Review, 23(1), (1986), 127.
[176] Ibid, 127.
[177] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 48; also see Cheryl Johnson-Odim, Common Themes, Different Contexts in Chandra Talpade Mohanty and Rousse and Lourdes Torres, (eds.), Third World Women and the Politics of Feminism, Indiana University Press, (1991).
[178] See Brittney Cooper, Intersectionality in Lisa Disch and Mary Hawkesworth, (eds.), The Oxford Handbook of Feminist Theory, Oxford University Press, (2016).
[179] Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989), 139.
[180] See Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989); Kimberlé Crenshaw, Mapping the margins: Intersectionality, identity politics, and violence against women of color. Stanford Law Review, 43, (1990).

and anti-racist discourses have failed to address the experiences of women of colour, and black women end up being marginalized within both courses. In her work, Crenshaw uses the concept of intersectionality *"to denote the various ways in which race and gender interact to shape the multiple dimensions of Black women's experiences"*[181] while studying two major areas: discrimination at work,[182] and violence against women.[183]" She exposes the *"single-axis analysis"* and argues that such analyses erase Black women's experiences when identifying, conceptualizing and remedying discrimination, because the inquiry is only limited to the experiences "*of otherwise-privilege members of the group".*[184] Intersectional feminism therefore objects to conceptual dichotomies, and embraces a "both/and", instead of an "either/or mindset".[185] This is in order to avoid erasing the experiences of specific subgroups of women, reducing people's experiences to only one aspect of their identity or attributing discrimination to only one form of oppression.

Intersectional feminism has also sparked various criticisms. Some have claimed that intersectional feminism only provides narratives and exposes intersectional marginalization, yet fails to provide subgroups of women such as black women "*an epistemological standpoint*"[186] and leaves *"much of the theoretical work ... undone."*[187] Some have pointed out that intersectional feminist jurisprudence has prioritized race and gender at the expense of other identities that might create privilege or discrimination.[188] Some are critical of relying too much on identity categories,[189] while others argue it fails to adequately include the impact of colonialism over systems of power and privilege.[190]

---

[181] Ibid, 1244.
[182] See Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989).
[183] Kimberlé Crenshaw, Mapping the margins: Intersectionality, identity politics, and violence against women of color. Stanford Law Review, 43, (1990), 1243.
[184] Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989), 140.
[185] Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013), 24.
[186] See Brittney Cooper, Intersectionality in Lisa Disch and Mary Hawkesworth, (eds.), The Oxford Handbook of Feminist Theory, Oxford University Press, (2016).
[187] Peter Kwan, Complicity and complexity: Cosynthesis and praxis, DePaul Law Review 49, (1999), 687.
[188] For a broader engagement with critique and defense of intersectionality see Anna Carasthathis, Intersectionality: Origins, Contestations, Horizons, University of Nebraska Press, (2016); Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf ; Darren Lenard Hutchinson, Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics, Buff L Rev 47(1), (1999).
[189] Maria Lugones, Radical multiculturalism and women of color feminisms. Journal for Cultural and Religious Theory, 13(1), (2014), 73.
[190] Institute for Intersectionality Research and Policy, Dialogue on Intersectionality and Indigeneity: Summary of Themes, (2012), available at: https://www.ualberta.ca/institute-intersectionality-studies/media-library/intersectionality-readings/sarah-hunt-2012-dialogue_on_intersectionality_and_indige.pdf, 12.

All in all, intersectionality aims to understand the overlapping, complex impact of multiple systems of oppression. Intersectional feminist jurists emphasize how these unique acts of marginalization can cause asymmetrical power dynamics in law, manifested in unequal access to justice or lack of legal knowledge.[191]

2.3. Using Feminist Tools and Techniques for the Analysis of Law

Following an overview of some of the most relevant feminist legal theories for this research, it might be helpful to briefly look into the "how" question: what are the best tools and techniques to build a feminist critical analysis of law and how can they be used? Charlesworth and Chinkin explain a feminist inquiry into (in their case, international) law through an archeological digging analogy.[192] As the excavation goes deeper; new layers are revealed. First, the absence or underrepresentation of women in legal institutions, followed by the gendered vocabulary and language used in law; then, how the apparently neutral principles of law apply differently to women and men; and in the deepest layer, the gendered nature of many basic concepts of law.[193]

One methodology that is used by feminist scholars, and embraced in this research is searching for the silences. The silence on gender, or women's rights is indeed quite vocal about the gender-blindness of law. One way to expose such silence is to pay attention to how systems are gender-coded through dichotomies and binary oppositions, such as the public vs. private (as emphasized by radical feminists), the objective vs. subjective, or the active vs. passive.[194] The pattern that feminist scholars try to identify is how one set of characteristics are attibuted to the "male" and are given a higher importance and strenght while the other set of characteristic attributed to the "female" and are considered secondary, irrelevant or undesirable, and therefore, deliberately left absent.

Other methodologies developed for a feminist analysis of law prioritize building dialogues: "world travelling" method, for example, aims to build a multicultural dialogue by being explicit about one's historical and cultural context, and while recognizing the complexities and contexts of the lives of other women, tries to understand how women see themselves and

[191] Ibid, 5.
[192] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 49.
[193] Ibid, 49.
[194] Ibid, 51. Also see Katherine O'Donovan, Sexual Divisions of Law, Weidenfeld and Nicholson, (1985).

each other and to look through each others perspectives.[195] Similarly, the "shifting" methodology was developed in a way in which women hold on to their roots, histories and identities while shifting to understand other women's roots and experiences.[196] Rosi Braidotti suggests "multiple literacies", which aims engagement in conversations using a variety of styles, disciplines and if possible, languages.[197]

In addition to exposing silences by identifying dichotomies, and building dialogues, the "situated judgment" metholodogy developed by Margaret Radin is also contributional.[198] This methodology rejects using a single feminist theory and instead, uses a variety of analytic strategies.[199] Accordingly, for a comprehensive feminist analysis of law, various concepts and techniques should be borrowed from liberal, radical, postmodern, Third World and intersectional feminist approaches to law, and more, as practiced in this disseration.

2.4. Theoretical and Methodological Foundations of the Present Research

Ending an overview of different schools of feminist legal theory, it must be emphasized that this dissertation notes and recognizes that the lines between different strands of feminist legal thought are getting more blurry day by day. The different feminist legal approaches are intersecting and constantly talking to each other. Contemporary feminist jurists can borrow different aspects of these strands in their work. For discussing business and human rights from the perspective of feminist legal theory, given its diverse, dynamic and interdisciplinary nature, it is of utmost importance to understand that it is not possible to chose one overarching feminist legal theory. Having said this, and adopting the "situated judgment" methodology, this dissertation will borrow and reflect demands and perspectives from various feminist legal thoughts and other critical legal theories, such as the queer legal theory. While the critical analysis of business and human rights mechanisms in Türkiye, Colombia and South Africa is made from feminist legal theory's perspective, the experiences of women and LGBTI+ will be centralized, and whenever women and/or girls are mentioned throughout this text as

[195] Isabelle Gunning, Arrogant perception, world-travelling and mulitcultural feminism: the case of female genital surgeries, Columbia Human Rights Law Review 23(2), (1992).
[196] Nira Yuval-Davis, Women, ethnicity and empowerment, In Ann Oakley and Juliet Mitchell, (eds.) Who's Afraid of Feminism? Seeing through the Backlash, The New Press, (1997).
[197] Rosi Braidotti, The exile, the nomad and the migrant: reflections on international feminism, 15 Women's Studies International Forum 7, (1992).
[198] Margaret Jane Radin, The Pragmatist and the Feminist, 63 Southern California Law Review (1990).
[199] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 50.

subjects, the reader should note that without equalizing diverse experiences and with respect to their uniqueness, LGBTI+ individuals and groups are also included and recognized.

There are many ideas and core questions borrowed from different feminist legal theories, simultaneously used for the comparative analysis of this dissertation. Socialist feminism's focus on working class women's (although it is not possible to draw strict class lines in global supply chain economies) experiences and the aspects of oppression caused by patriarchal capitalism resonate with the parts focused on the exploitation of women's labour in this dissertation. Ecofeminism's focus on the interconnectedness between women's oppression and environmental degradation has guided this dissertation while studying the impact of extractive businesses, and specifically rural and indigenous women's resilience against their destructive operations. Postmodern feminism's empasis on language and women's experiences have shaped how seemingly gender-neutral normative frameworks are exposed, and how invisible everyday experiences of women are highlighted throughout the comparative analysis. Intersectional, third-world and post-colonial feminism's focus on various forms of oppression and discrimination experiences; their recognition of intersectional identities and experiences have helped the triple comparison to have a better understanding of colonialism's legacy on business operations, and the disparities among gender equality standard practices in headquarter offices in wealthier home states versus the supply chains in host states.

Intersectional feminism deserves a particular focus in this dissertation. This dissertation argues that intersectional feminism can and should be integrated into business and human rights research mehtodologies and most importantly, should be used as a tool for legal advocacy primarily through the notions of positionality and allyship.[200] Positionality and allyship are two of the most important notions in order to operationalize intersectionality.

Positionality refers to the ways complex identities of individuals (gender, race, sexuality, ability status and more) situate them to be more or less powerful in social, political and legal contexts.[201] With this understanding, jurists need to be aware of how law might operate as an instrument of sexism, racism, colonialism, capitalism and so on, and can have different impacts on differently positioned individuals. Jurists should also be willing to question and

[200] Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), 5, available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf.

[201] Linda Alcoff, Cultural feminism versus post-structuralism: The identity crisis in feminist theory, Signs: Journal of women in culture and society, 13(3), (1988), 405.

deconstruct *"presupposed truths."*[202] While discussing positionality, it is important to return to one of feminist legal theory's core debates: whether law, an imperfect tool itself, can transform "*the very dynamic it reinforces*."[203]. Martha Minow discusses this concept by interpreting Audre Lorde's analysis in her powerful essay "The Master's Tools Will Never Dismantle the Master's House". The core problem that Lorde points out is that claims that are made in established legal institutions can not adequately challenge the oppressive practices in political or legal systems. Minow, however, is more optimistic: *"... just as her (Lorde's) own prose transformed inherited language and ideas, ... an emphatic claiming of differences through rights language could help transform existing legal and social structures. To continue with the metaphor of the Master's House, the tools may be used to make new tools, which then can help renovate the house for others."*[204] This dissertation similarly argues for the use of imperfect tools of legal advocacy to bring in change and transform patriarchal legal systems whilst preserving a critical approach to the legal structures.

Allyship, often confused with and critiqued for stepping into the territory of "white saviorism"[205] and having a colonial underpinning[206] refers to an *"active, on-going process of listening, learning, unlearning, accepting criticism, and continuing to show up and offer various forms of support to relatively less privileged people and communities*"[207]. In accordance with this notion, feminist jurists, but not only them, also male-dominated business sector representatives, who might be in a relatively privileged position should keep self-educating about the social and historical context of women's unique experiences of oppression and poverty, and amplify the voices, experiences and agency of other women to whom they

[202] Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), 34, available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf.; Linda Alcoff, Cultural feminism versus post-structuralism: The identity crisis in feminist theory, Signs: Journal of women in culture and society, 13(3), (1988), 406.
[203] Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), 36, available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf.
[204] Martha Minow, Between Vengeance and Forgiveness: Facing history after genocide and mass violence, Beacon Press, (1998), 297; also see Audre Lorde, The Master's Tools Will Never Dismantle the Master's House, Penguin UK, (2018).
[205]Devon W. Carbado, Colorblind Intersectionality, 38(4) Signs: Journal of Women in Culture and Society 811, (2013), 831.
[206]Jenalee Kluttz et al., Unsettling allyship, unlearning and learning towards decolonising solidarity, Studies in the Education of Adults, 52(1), (2020), 53.
[207] Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), 37, available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf; for a broader discussion of the notion of allyship, See Haneen Ghabra and Bernadette Marie Calafell, From failure and allyship to feminist solidarities: Negotiating our privileges and oppressions across borders, Text and Performance Quarterly, 38(1-2), (2018), 38; Jenalee Kluttz et al., Unsettling allyship, unlearning and learning towards decolonising solidarity, Studies in the Education of Adults, 52(1), (2020).

are allies to or whom they are legally/politically representing.[208] Constant awareness of positionalities and allyship have been aimed and practiced as much as possible throughout the researching and writing phases of this dissertation.

With respect to its diversity and divergences which this chapter has tried to summarize with a brief overview, a feminist analysis of law, in conclusion, has two major functions: deconstruction and reconstruction.[209] Deconstruction refers to making a detailed analytical study and exposal of the explicit and implicit sexism built in legal systems; challenging the so-called neutrality, rationality and objectivity of law, and discovering its deeply gendered nature. This discovery can be done in a number of ways: either by challenging the values and content of international legal systems, such as questioning its silence when it comes to women's experiences and problems; by showing how women were excluded or underrepresented throughout the construction of these systems; by analyzing the language of legal texts, and more. All feminist legal theories, in their own way, reveal the *"partial and partisan instead of the universal or representative position of patriarchal discourse."*[210] Once the myth of neutrality of law is debunked and its deeply gendered nature is exposed, the second function steps in; the reconstruction. Charlesworth, Chinkin and Wright point out to the necessity of this transition from challenging the nature, operation and context of (international) law, or in short, unbuilding, to rebuilding. They argue that feminist legal theory can actually *"contribute to the progressive development"* of law.[211] This can be done by identifying the possibilities of change, rebuilding the basic concepts of relevant areas of law, and suggesting and building new and inclusive language.

This dissertation, pursuing this ambitious goal, and by using multiple feminist legal theories as a compass, aims to firstly identify, analyze and challenge how gender-responsive the current business and human rights mechanisms in Türkiye, Colombia and South Africa actually are. This will constitute the major mission of this comparative analysis. Hopefully, this exposing

[208] Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), 6, available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf.; for a report by the Office of the United Nations High Commissioner for Human Rights on how to effectively implement notions such as allyship in strategic litigation cases, see OHCHR, Strategic Litigation for Sexual and Gender-based Violence: Lessons Learned, (2019), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf

[209] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 60.

[210] Elizabeth Gross, What is feminist theory? in Carole Pateman and Elizabeth Grosz (eds.) , Feminist Challenges: Social and Political Theory, Allen and Unwin, (1986), 197.

[211] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 615.

analysis will lead to contributive suggestions and actions for the transformative potential of building gender-responsive business and human rights mechanisms in the host states.

3. A FEMINIST CRITICAL APPROACH TO BUSINESS AND HUMAN RIGHTS NORMATIVE FRAMEWORKS AND PRACTICES

Business and human rights is a dynamic interdisciplinary field, which has been evolving over the recent decades. However its entrance into mainstream international human rights law discussions, and the international agenda, coincides with the wave of corporate globalization, starting in the 1990s and accelerating in the 21st century.[212] Historically, and within the contemporary global finance order, businesses prioritize making profit, exclusively, and their social impact has been seen secondary and less relevant. This corporate mindset on businesses' social responsibility had been perfectly captured by Milton Friedman in the 1960s: *"...there is one and only one social responsibility of business: to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud".*[213] Today, allowing corporations to operate with impunity and exempt from human rights obligations is no longer acceptable. Businesses' legal accountability for the human rights violations they commit or cause must be upheld. Business and human rights has emerged and is evolving for this exact purpose. The early start of the acknowledgement of businesses' social and environmental impact, and the concept of corporate accountability was in 20th century, when several pivotal events highlighted corporate abuses. After the World War II, senior company officials were convicted for aiding the Nazi regime to commit war crimes by supplying poisonous gas to concentration camps knowing how it would be used. South African apartheid regime, and along with it, the apartheid regime corporations were globally condemned and sanctioned through the withdrawal of invesments and operations. Union Carbide was denounced for the 1984 Bhopal chemical gas leak which killed thousands in India. In the 1990s, several cases were brought against Shell, accusing the company of complicity in the summary execution of protesters by Nigerian military government. More recent catalyst events, such as the the Deepwater Horizon oil spill in 2010 or the Rana Plaza Disaster in 2013

[212] John G. Ruggie, Just Business: Multinational Corporations and Human Rights, WW Norton & Company, (2013), 16.
[213] See Milton Friedman, Capitalism and Freedom, University of Chicago, (1962).

highlighted the environmental and human cost of global supply chain operations, and the urgency to take legally binding action for corporate accountability. With the intense efforts of the victims, civil society organizations and lobbying efforts from the Global South, human rights violations by corporations became an increasingly prominent feature of the international agenda as of the 1970s, gained momentum as of 1990s and 2000s, and normative frameworks and guidelines were introduced with the aim to regulate corporate behaviour concerning human rights.

Despite the challenges with regard to implementation, the recurring business-influenced voluntary, social responsibility-focused sustainability discourse and the deadlocks in multi-stakeholder negotiations, the imperative to prioritize business and human rights is growingly acknowledged. The United Nations Guiding Principles on Business and Human Rights symbolize a global shift towards greater accountability and multistakeholder engagement in safeguarding human rights within corporate operations. The progress is not homogenous worldwide, without a doubt, specifically considering the unique implementation challenges in host states. The absence of a gender perspective in major normative frameworks is concerning, and manifests itself in the continuing, even deteriorating disproportionate impact on women and girls worldwide. For this reason, before moving on to a detailed triple comparative analysis of the business and human rights mechanisms in Türkiye, Colombia and South Africa, some of the major, foundational normative frameworks and practices must first be reviewed from the critical perspective of feminist legal theory for a better understanding of the situation worldwide.

3.1. Analysis of Major Business and Human Rights Normative Frameworks with a Gender Lens

Under current international human rights law, there are no legally binding instruments or standards which regulate human rights obligations and which are directly applicable to corporations. However, there are a number of non-binding soft law instruments which focus on the conduct of multinational corporations (MNCs) within the human rights domain. The most important among them is the United Nations Guiding Principles on Business and Human Rights.

3.1.1. The United Nations Guiding Principles on Business and Human Rights (UNGPs)

The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (the "UNGPs"), drafted by John Gerard Ruggie, the UN Secretary General's former Special Representative on human rights and transnational corporations and other business enterprises; is the most significant business and human rights to date, providing clarity on the human rights responsibilities of businesses. The Guiding Principles are non-binding, and can be categorized as a soft law standard. In Ruggie's words, the UNGPs "lay out in some detail the steps required for states and businesses to implement", the "Protect, Respect and Remedy" Framework which was proposed by him to the United Nations Human Rights Council in 2008. The Framework rests on three pillars: First, the state duty to protect; second, the corporate responsibility to respect; and third, the access to effective remedies.

Collective efforts are ongoing for a binding treaty on multinational corporations with respect to human rights: an open-ended intergovernmental working group ("Working Group") with the mandate to elaborate an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights, mandated by the Human Rights Council, was established in 2014. However, the draft binding treaty is still in progress. Most recently, a draft report was adopted in October 2023, as a result of negotiations, and the Chair-Rapporteur of the Working Group will keep conducting consultations and working to release a new draft of the treaty for the 55th meeting of the Human Rights Council in March 2024. As the negotiations for a binding treaty are continuing, shadowed by the lack of consensus and political will, and despite the existence of other international instruments regarding corporate responsibility in the human rights area, the UNGPs remains to be the most important and relevant international document for business and human rights.

The textual analysis of UNGPs from a gender perspective is of great significance due to its foundational quality. Looking at the text of the UNGPs as a whole, there are not many references, quantitatively, on gender issues or women. The gender-neutrality and the portrayal of women as victims are prevalent problems with regard to the use of language, which are replicated in future international, regional, and national business and human rights instruments. According to Simons and Handl, concerning the UNGPs, "*one would be hard-pressed to say that a gender perspective has been integrated throughout the text of the*

document."[214] The Working Group, while reporting on the Gender Lens to the UNGPs, divided these references into three windows: First, a general, cross-cutting non-discrimination principle window; second, the window for provisions explicitly highlighting the need to integrate a gender perspective at certain places, and third, the window of the additional standards that business enterprises "may need to consider depending on the circumstances".[215] Considering the significance of the text, instead of a general overview with this gender windows categorization, all gender references within the text of the UNGPs will be examined one by one, and the problematic approaches which will be resurfacing in other business and human rights instruments and practices worlwide and in this dissertation's triple comparison, will be first introduced and discussed in this section.

The Debatable Effectiveness of General Non-Discrimination Principles

The Guiding Principles start with a general non-discrimination principle. Accordingly, the Guiding Principles should be implemented in a non-discriminatory manner, with due regard to the different risks that may be faced by women and men. This general principle was considered as *"an important cross-cutting principle, which could be employed to develop a gender-responsive reading of the Guiding Principles"* by the Working Group, however, the adequacy and effectiveness of non-discrimination clauses are debatable. The concept of non-discrimination has been critically studied by feminist legal scholars. The right to equal treatment and non-discrimination on the basis of sex have been the major foci of the protection of women's human rights[216] both as a part of the traditional canon of human rights (Article 1(3) of the UN Charter, Articles 3 and 26 of the ICCPR, Article 2(2) of ICESCR, Article 14 of ECHR, Article 1 of ACHR, Articles 2 and 18(3) of the ACHPR etc.) and entirely in women's rights focused specific instruments (CEDAW, Istanbul Convention, Belém do Para Convention, Maputo Protocol etc.).

The insertion of non-discrimination into the canon of human rights instruments is a result of the hard work and lobbying of women's rights movement.[217] However, non-discrimination clauses are criticized for their ineffective implementation, limited monitoring, the weak

[214] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019), 116.
[215] United Nations Working Group on Business and Human Rights, "Gender Lens to the UNGPs", available at: https://www.ohchr.org/en/special-procedures/wg-business/gender-lens-ungps
[216] See Rebecca Cook and Valerie Oosterveld, Select Bibliography of Women's Human Rights Law, A Conference on the Interventional Protection of Reproductive Rights, American University Law Review 44(4), (1995).
[217] Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University (2000), 214.

language of umbrella non-discrimination clauses and their commitment to the binarised and asymmetrical heteronormative understanding of gender.[218] Furthermore, they are vulnerable to the danger of cultural relativism, often manifested as the exclusion of non-listed bases of discirmination, such as gender identity or sexual orientation. In the brief non-discrimination principle of the UNGPs, there is a specific emphasis on different risks women may face. However, inadequate enforcement and implementation, possible exclusion of certain groups from non-discrimination clauses due to cultural or political justifications (i.e. possible justified exclusion of LGBTI+ women, or refugee and migrant women) and a very binary understanding of gender remains concerning. In addition, the "add non-discrimination clause and stir" approach reflect the limited understanding of equality in international law. Nevertheless, non-discrimination is still a necessary and useful tool, and as Butler's cultural translation work shows, non-discrimination can be re-envisaged beyond its current limitations by keeping them open and contesting them through political debate and cultural translation. The UNGPs is a living document and if regularly reviewed and updated with a critical feminist perspective, the understanding and application of non-discrimination can be improved. Similar to the successful approach of CEDAW, and how it is further clarified, expanded on and updated through General Recommendations, a better, gender-responsive understanding of non-discrimination and a shift from formal to substantive equality are possible.

Gender Responsive/Corrective Language vs. Gender-Blind Language

Guiding Principle 3 of the UNGPs provides guidance to states on how to meet international legal obligations to protect the human rights of persons that might be affected by the business activities. The commentary recommends that states should provide appropriate guidance to businesses on "*how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families."* Guiding Principle 18, on the other hand, is directed at business enterprises and focuses on corporate human rights due diligence. The commentary suggests that while assessing the *"actual and potential adverse human rights impacts",* the corporations should *"pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization and bear in mind the different risks that may be faced by women and men."* Finally, the commentary to Guiding Principle 20, which is also directed at

[218] Ibid, 220.

business enterprises, provides that business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, underlining the importance of using gender-disaggregated data where relevant.

Guiding Principles 3, 18 and 20 are promising in the sense that they contribute to the text with a recognition of the differentiated impacts of business activities on women. These three reminder-like commentaries have managed to adapt a gender-responsive, or as some other feminist legal theorists use, "corrective language,"[219] and are able to address situations that impact women differently. The language of the rest of the text, however, is gender-blind and fails to reflect the experiences of women.

Quantitative data from within the text may not provide detailed information about the context of the international documents, however the number of mentions of gender or women, in itself can be illustrative. As a remarkable example, both the words "women" and "gender" are used within the text only four times. The annex of the Working Group's "Gender lens to the UNGPs" report provides gender guidance for each and every guiding principle, however, the language of the primary text is lacking such an approach. John Ruggie published several addenda and a companion report to the UNGPs on specific issues, but none of them elaborate on the issue of the differentiated impacts of corporate activities on women.[220] Thus, such a reference is not found in supportive documents of the UNGPs either.

Feminist scholars have highlighted the language of international human rights instruments are used to *"disempower women and to exclude them from the ambit of protection".*[221] Indeed, the only parts of the text in which "women" are mentioned, they are mentioned as a part of or

[219] For a further explanation on "gender-neutral" language and why "corrective language" has advantages over gender-neutral language in international treaties, see Natalie Hevener Kaufman and Stefanie A. Lindquist, Critiquing Gender-Neutral Treaty Language: The Convention on the Elimination of All Forms of Discrimination Against Women in Julie S. Peters and Andrea Wolper (eds.), Women's Rights, Human Rights: International Feminist Perspectives, Routledge, (1995).

[220] These documents are: John Gerard Ruggie, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, A/HRC/17/31, (2011); John Gerard Ruggie, Addendum-Piloting Principles for Effective Company/Stakeholder Grievance Mechanisms: A Report of Lessons Learned, A/HRC/17/31 Add.1, (2011); John Gerard Ruggie, Addendum-Human Rights and CorporateLaw: Trends and Observations from a Cross-National Study Conducted by the Special Representative, A/HRC/17/31 Add.2, (2011); John Gerard Ruggie, Addendum-Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators, A/HRC/17/31 Add.3, (2011).

[221] Surya Deva, Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles, In Surya Deva and David Bilchitz (eds.), Human rights obligations of business: beyond the corporate responsibility to respect?, Cambridge University Press, (2013), 80; Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991); 613.

closely related to the heightened risk of vulnerability or marginalization. It is factual that women are disproportionately affected and often victimized by corporate activities. However, the fact that the mentioning of women was only made in relation with vulnerability or marginalization indicates a hidden bias towards women, seeing them only as vulnerable or marginalized. This is remarkable since when vulnerability or marginalization are in question, women are always specifically mentioned, yet when activities which require agency and power, such as consultations are in question, the term *"affected stakeholders"* is used.[222] This is closely connected to the one-dimensional victimhood portrayal of women which will be further discussed below. Women's weakness and their position as the objects of business and human rights are highlighted, yet they are erased, or camouflaged within the broader impacted communities or stakeholders whenever there is a position as a subject, that has a voice, willpower, and capability to decide.

The Paradox of Feminist Law Reform and Victimhood vs. Agency

It is important to visit the paradox of feminist law reform here. Joan Scott explains the paradox as the feminist law reform aiming "*to eliminate 'sexual difference' as a marker of women's exclusion and/or inferiority"* yet at the same time*"making its claims on behalf of 'women' who are discursively produced by sexual difference"*[223] and *"ending up reproducing the sexual difference that it sets out to eliminate".*[224] Dianne Otto points out that this paradox, in contemporary feminist debates, has evolved into a discussion on whether focus must be on addressing the specificities of women's situations, or alternatively, seeking their inclusion in universal norms.[225] According to Otto, "*the paradox of simultaneously needing to reject and rely on women's sexual differences continues to trap feminists in the repeating cycles of reconsituting women as 'other' to the masculine universal."*[226]

The UNGPs is not necessarily a feminist law reform or a text focused exclusively on gender, however, when the paradox is applied, the following question emerges: Should the UNGPs, or other business and human rights instruments and practices emphasize the different experiences women have due to the human rights violations of business corporations, or does this further marginalize them?

[222] United Nations Guiding Principles on Business and Human Rights (2011), Guiding Principle 21.
[223] Joan Wallach Scott, Only Paradoxes to Offer, Harvard University Press, (1997), 3.
[224] Ibid, 4.
[225] Dianne Otto, Feminist Approaches to International Law, In Anne Orford, and Florian Hoffmann (eds), The Oxford Handbook of the Theory of International Law, Oxford Handbooks (2016), 498.
[226] Ibid, 501.

This dissertation argues that the discussions around emphasizing differences do not result in a paradox. It is possible to highlight unique experiences and to build a gender-responsive language without marginalizing women. The approach to differences does not have to result in an either empowered or weak woman portrayal in business and human rights. Simon and Handl also touch upon this issue by rejecting the existence of a paradox. Firstly, they recognize *"the importance of not reproducing the stereotype of the monolithic woman as the quintessential victim, one who must always be protected from 'evil' corporations and predatory subjects and entities alike."*[227] However, they build their theoretical approach about women's experiences on Kimberlé Crenshaw's intersectional critique of the rhetoric of law.[228] Accordingly, the one-dimensional "victim" versus "agent" characterizations of women is another invisibilized dichotomy and this oversimplifying binary approach fails to address the shifting and complex matrix of power, and the different, intersectional positions women occupy in highly unequal societies.[229] They underline power relations and intersectional identities, instead of the portrayal of "victimhood" or "agency".

Similarly, Dovey and others point out in their joint submission, reviewing the UNGP's early drafts from a critical feminist perspective, that women are positioned only as marginal and vulnerable in the UNGPs.[230] While accepting that women are sometimes vulnerable, they remind Ruggie that it is important not to marginalize them within the business and human rights debate.[231] In the current text of the UNGPs, women's differentiated experiences are not sufficiently dealt with, and when they are mentioned, the one axis "victimhood" portrayal is dominant. This problematic alignment, as discussed, is visible in other business and human rights documents worldwide, which have taken the UNGPs as a textual foundation.

[227] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019), 121.
[228] See Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989), 139.
[229] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 113, (2019), 122.
[230] Kathryn Dovey et al., Comments on the Draft "Guiding Principles" for the Implementation of the 'Protect, Respect and Remedy' Framework: Integrating a Gender Perspectives, Institute for Human Rights and Business, (2011), 2, available at: https://www.ihrb.org/pdf/2011_01_28_Submission_on_Draft_Guiding_Principles-Integrating_gender_perspective_FINAL.pdf
[231] Ibid, 2.

Chinkin, Charlesworth and Wright underline that "*feminist method must be concerned with examining the fundamentals of the legal persuasion,"* including *"the language it uses".*[232] Some of the terms which have been chosen within the language of the UNGPs' text are problematic. Surya Deva criticizes the overly soft terminology by stating that the conscious choice to use "impact" or "risk" instead of "violation", or as he calls, "*the deliberate attempt to replace violation typology with impact typology"*[233] can undermine human rights since "impact" is a neutral word. It *"cannot adequately reflect the perspectives of victims"* and can *"devalue both the importance attached to human rights and the consequence of their violation on victims."*[234] This approach is specifically problematic when applied to a gender context: describing the gender-based violence which women may experience as a result of business activities as "impact" is insufficient and devaluing. The obvious failure to call gender-based violence what it is, a human rights violation, facilitates the isolation and distancing of businesses away from accountability, clearing the way for corporate impunity and oversimplifying systematic problems into exceptional, non-recurring crimes committed by individuals. This creates a deliberate immunity, a protective shield for corporations, positioning them relevant only in cases of business and profit, and irrelevant in cases of invidiual crimes and violations.

The deliberate use of soft terminology creates an understatement of human rights violations in business operations. One of the ways for such understatement is to exceptionalize systematic human rights violations. This is remarkable in Guiding Principle 7 of the UNGPs, addressed to the states, focusing on the issue of sexual violence in relation to business activities in conflict zones. It underlines that States should provide adequate assistance to business enterprises operating in conflict-affected areas to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence. The problematic aspect of this Guiding Principle, is that it only raises gender-based and sexual violence in relation to the business activities in conflict zones. This is the only mention of violence against women within the whole text, and it excludes a remarkable part of violence against women and sexual violence which happens outside conflict areas, at times of peace, within public and

[232] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 634.
[233] Surya Deva, Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles, In Surya Deva and David Bilchitz (eds.), Human rights obligations of business: beyond the corporate responsibility to respect?, Cambridge University Press, (2013), 97.
[234] Ibid, 97.

private spheres. Simon and Handl rightfully sum up the problem as follows:"*the narrow focus of the UNGPs on sexual violence in 'conflict-affected areas' relies on the idea that such abstract moments of crisis are 'exceptional', and it ignores the daily manifestations of systemic discrimination and socio-economic marginalization of women."*[235] This approach overlooks and excludes all forms of sexual violence which women face everyday in non-conflict areas and situations, in their daily work lives. By confining cases of gender-based violence, or the connection between business operations and gender-based violence to conflict areas only, the UNGPs fail to acknowledge the everyday nature of gender-based violence and to address the deeply embedded oppression behind it. Last but not least, in addition to the limited attention to everyday forms of violence, the exceptionalization of sexual violence only as war atrocities only can further entrench gender stereotypes (i.e. male fighter and his female victim).[236]

Building a Hierarchy of Applicable Human Rights Norms

Another issue with regard to the normative frameworks and practices in the area of business and human rights is the categorization of women's human rights. The final example to be reviewed within the UNGPs is the Guiding Principle 12, which is addressed to the business enterprises, and is about the normative content of their responsibility to respect. The Guiding Principle reads as follows: *"The responsibility of business enterprises to respect human rights refers to internationally recognized human rights-understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour."*

The commentary further explains how this principle sets out the minimum prescribed human rights standards. However, while doing so, it divides human rights instruments into two. First category consists of *"an authoritative list of the core internationally recognized human rights"* as contained in the International Bill of Human Rights (consisting of UDHR, ICCPR and ICESCR), coupled with fundamental rights principles in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work which must be respected at all times. The second category of rights are: women's, children's, indigenous peoples', disabled peoples' and other minority groups' rights which the commentary explains as *"additional standards"* which business enterprises *may* need to consider *"depending on the circumstances".* There are no references in the text to any relevant international human

[235] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019), 130.
[236] Carsten Stahn, A Critical Introduction to International Criminal Law, Cambridge University Press, (2019).

rights instruments (such as CEDAW or CRC) for these additional standards. There is a hierarchy of rights between the core internationally recognized ones embedded in the International Bill of Rights and the "other rights".

This hierarchy of applicable human rights norms is problematic for a number of reasons. Firstly, this approach is not compatible with Article 5 of the 1993 Vienna Declaration and Programme of Action (VDPA) which accepts all human rights as *"universal, indivisible, interdependent and interrelated"* and urges the international community to *"treat human rights globally in a fair and equal manner, on the same footing, with the same emphasis"* [237] Mertus and Goldberg describe VDPA as a milestone for women's rights[238] and O'Hare sees it as a tool to mainstream women's human rights concerns within the UN system.[239] The UNGPs, by categorizing and putting different emphasis on rights, is in conflict with the "indivisibility of rights" doctrine.

Moreover, this categorization of rights suggests that women's rights are not *"equally universal, but ... particular, biased, special interests"* and less relevant than the "gender-neutral" human rights treaties such as ICCPR and ICESCR.[240] Such bifurcation of rights suggests that these rights are not relevant to everyday business operations and that the MNCs may disregard women's rights at their discretion.[241] They warn against the danger of categorizing women's rights as "special interests" because it may cause reductionist gender essentialism,[242] and can reinforce stereotyping of women as one-dimensional vulnerable victims rather than resilient humans with fundamental rights.[243] As Charlesworth, Chinking and Wright point out, this can create a system in which issues "traditionally of concern" are seen as general human concerns, while "women's concerns" are relegated to a special, limited, devalued category.[244]

---

[237] Vienna Declaration and Programme of Action (1993), Article 5.
[238] Julie Mertus and Pamela Goldberg, A perspective on women and international human rights after the Vienna Declaration: The inside/outside construct, 26 New York University Journal of International Law and Politics 202, (1993), 202.
[239] Ursula A. O'Hare, Realizing human rights for women, 21 Human Rights Quarterly 382, (1999), 382.
[240] Rosemary Hunter, Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism in Vanessa E. Munro and Margaret Davies (eds.), The Ashgate Companion to Feminist Legal Theory, Routledge, (2016)**, 15.**
[241] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019), 122.
[242] Ibid, 133.
[243] Juanita Elias, Davos Woman to the Rescue of Global Capitalism: Postfeminist Politics and Competitiveness Promotion at the World Economic Forum, 7(2) IPS. 154, (2013), 154.
[244] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991), 625.

Simon and Handl further critique this hierarchy of applicable human rights norms as it disregards *"the well-established understanding of why a specific universal convention on women's human rights was necessary.*"[245] For further clarification, it can be helpful to take a brief look at feminist legal theorists approach the international human rights law instruments. Charlesworth argues that *"the development of international human rights law generally has been partial and androcentric, privileging a masculine world view,"*[246] and that traditional international human rights law reinforces the idea of women being inferior and powerless. Rachel Cook argues that the keystone instruments of current international human rights law, ICCPR and ICESCR, are based on gender-neutral norms suggesting equal treatment of men and women, and are not sufficient to address how discrimination against women is pervasive and systemic.[247] They also fail to address the power dynamics causing such discrimination. CEDAW, on the other hand, is regarded by many feminist scholars as *"the human rights instrument with the greatest potential to address and combat women's socio-economic marginalization, dependency, and inequality*"[248] because it has a transformative approach aiming for substantive equality which, rather than the formal gender-equality approach adopted by treaties like ICCPR and ICESCR. CEDAW manages to recognize the structural subordination of women in a much better way than ICCPR or ICESCR. Although these two Covenants are foundational for the current international human rights law, their language of non-discrimination and formal equality understanding are criticized for giving women access to a world, the world international law, already built by men for men.[249]

In the UNGPs, while women's rights are categorized as "additional standards" that *may* be considered, and there are no references to CEDAW, or any other international instrument relevant to women's rights. This is a lost opportunity to recognize and address the systemic discrimination against women, to set an important gender-focused international law instrument among the international standards and to reinforce an understanding of substantive equality. Such an approach sets gender-neutrality as the dominant tone in this text, and can

[245] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019), 133.
[246] Hilary Charlesworth, What Are 'Women's International Human Rights?' in Rebecca Cook, (ed.), Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, (1994).
[247] Rebecca Cook, Introduction: The Way Forward, In Rebecca Cook, (ed.), Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, (1994), 11.
[248] See Anne Hellum and Henriette Sinding Aasen (eds.), Women's Human Rights : CEDAW in International, Regional and National Law, Cambridge University Press, (2013).
[249] Clare Dalton, Where We Stand: Observations on the Situation of Feminist Legal Thought, 3 Berkeley Women's Law Journal 5 (1987), 5.

further "*replicate and support the androcentric bias of traditional international human rights law."*[250]

3.1.2. The ILO Mechanisms and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration)

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, also known as the MNE Declaration, is the only ILO instrument which provides guidance to multinational and national enterprises on social policy and sustainable, inclusive, and responsible workplace practices. The Declaration is significant in a number of ways. It was collectively adopted by the representatives of governments, employers and workers in parallel with ILO's tripartite foundations and remains to be the only major business and human rights instrument in which these three major stakeholders have been represented and engaged in the making. The principles embedded within are addressing multinational and national enterprises, governments of home and host states, and employers' and workers' organizations. Although the most amended version was adopted in 2022, having been adopted in 1977, it is one of the earliest business and human rights instruments. It has been stated by the ILO Governing Body, that recent developments in business and human rights area, such as the UNGPs and the goals and targets of the 2030 Agenda for Sustainable Development that are particularly relevant to the Declaration; as well as the OECD Guidelines for Multinational Enterprises were taken into account for the amendments. Having mentioned its early date and the multistakeholder engagement, the Declaration is a voluntary promotional instrument, not legally binding, and not subject to a complaints-based mechanism. The Governing Body of ILO instead "invites" governments of Member States of the ILO, the employers' and workers' organizations and the multinational enterprises to observe the principles of the MNE Declaration.

The text of the declaration, can overall be defined as gender-blind. There are significantly few references to gender equality within the text of the Declaration. The term "gender" is not used within the text at all. Under the Equality of Opportunity and Treatment section only governments are addressed, suggesting that they "*should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any*

[250] Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 113, (2019), 122.

discrimination"[251] based on sex, among other bases; and that they *"should promote equal remuneration for men and women workers for work of equal value."*[252] An umbrella non-discrimination clause has been used and only addressing the governments, without mentioning the non-discrimination responsibilities of MNEs. In addition, under the Safety and Health Section, it is stated that *"Governments should ensure that both multinational and national enterprises provide adequate safety and health standards and contribute to a preventative safety and health culture in enterprises progressively achieving a safe and healthy working environment…"* which would include *"steps to combat workplace violence against women and men and attention to building safety."*[253] Under this clause the gendered dimension of workplace violence, gender-based violence or sexual harassment at the workplace are not mentioned. While violence in the workplace can be experienced by anyone regardless of their gender, the disproportionate and unique forms of gender-based violence experienced by women are disregarded with this wording.

In addition to the lack of gender references within the main text, the supportive documents have not addressed gender at all. In 2022, ILO published a self-assessment tool for enterprises about the MNE Declaration, which has no mention of women workers. Gender and sex are only mentioned twice in this self-assessment tool. One mention with regard to collecting gender or sex-disaggregated data (among other grounds, such as race and age) as an illustrative action for enterprises to increase employment opportunities and standards overall, and to give priority to the employment and advancement of nationals of the host country. The second mention of sex is as one of the prohibited grounds of discrimination, requiring enterprises to have a policy and procedures that prohibit discrimination. Although the Declaration had a sixth edition in 2022, when some guiding sources were available with regard to the gender dimension of business and human rights, gender equality remains to be significantly absent, which is a lost opportunity to recognize the systemic nature of gender inequality in a labour context. The absence of gender as an issue overall makes it difficult to provide a critical feminist review of its normative approach, yet it is an important finding within itself.

Lack of gender focus in collaborative efforts among different normative frameworks

[251] ILO MNE Declaration, (1977), Art. 28.
[252] ILO MNE Declaration, (1977), Art. 29.
[253] ILO MNE Declaration, (1977), Art. 43.

There are no mentions of sex or gender in a supporting briefing note co-prepared by the ILO, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Working Group on Business and Human Rights dated 2021 and titled "The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights."[254] Similarly, there are no mentions of sex or gender in the "Responsible Business: Key Messages from International Instruments"[255] document co-published by the OHCHR, OECD, EU and ILO. Concerns have been raised in business and human rights focused meetings calling for further collaboration among different business and human rights mechanisms and the need to harmonize laws and regulations across countries, and to eliminate variations in the practices of the same multinational enterprises in different countries.[256] Clearly, there are recent multilateral efforts and studies on the interconnectivity between ILO standards, the OECD Guidelines, the UNGPs and the National Action Plans on Business and Human Rights (NAPs) and some growing communication among majors actors in business and human rights area. The gender-blindness of such documents, however, is concerning since it shows how gender is not seen or addressed as a relevant, overlapping, prioritized issue for multistakeholder discussions.

Raised concerns in follow-up mechanisms, lack of action and non-implementation

For the promotion and implementation of the MNE Declaration, regional follow-up reports are presented to the Governing Body regularly on a four-year cycle, based on inputs received by governments, and employers' and workers' organizations of ILO member States of the specific region concerned. The shortfalls of the Declaration's blind approach to gender equality are more evident in these reports, specifically evident in the differences between the demands expressed in regional meetings that were held before the amendment of the MNE Declaration in 2017, and the amended version. Concerns with regard to gender equality had been repetitively shared, but it was not integrated into the final version of the text. For example, in 2014, at the Regional Meeting for the Americas, workers' organizations noted the

[254] ILO and OHCHR, The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/briefingnote/wcms_800261.pdf

[255] ILO, OECD, EU and OHCHR, Responsible Business Key Messages From International Instruments, (2018), available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_724747.pdf

[256] ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa (2019), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_724152.pdf

absence of gender equality policies in several MNEs, particularly those operating in traditionally male-dominated sectors, and expressed concerns about sexual harassment at the workplace.[257] The report for the Regional Meeting for Africa in 2015 also recorded Kenyan Government's note on training opportunities that tend to follow gender patterns (male employees benefiting more than women counterparts); the Trade Union Federation of Banks, Insurance and Financial Institutions of Trade and Industry (FESBACI) of Burkina Faso calling for gender and youth mainstreaming in activities that might be organized in relation to the promotion of the MNE Declaration;[258] and the Mozambican Worker's Organization stating notable discrimination in treatment between men and women particularly in multinational companies. In the Regional Meeting for Asia and the Pacific in 2016, the Ministry of Labour and Employment of the Bangladeshi Government described the spillover effect of gender barriers to skill-development programmes, causing low female participation in technical vocational education and training, resulting in low wages and less-skilled work for women workers, as seen in the garment industry.[259] In March 2017, the MNE Declaration was substantially amended; addressing issues related to international investment and trade and the growth of global supply chains, social security, forced labour, transition from the informal to the formal economy, wages, due diligence processes, grievance mechanisms and access to remedy for victims of business-related human rights violations, all of which have been mentioned in the regional follow-up meetings. However, the only major addition to the previous edition with regard to gender equality in the 5th Edition of the MNE Declaration of 2017 was the addition of *equal remuneration for men and women workers for work of equal value.*[260] Other issues that were repeatedly raised, such as structural barriers, unequal opportunities and sexual harassment were not integrated within the amended text.

The gender-equality challenges were continuously shared in the Regional Meetings following the 2017 Amendment. For example, in the Regional Meeting for Europe and Central Asia in

[257] ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in the Americas, (2014), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_311677.pdf

[258] ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa, (2015), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_420594.pdf

[259] ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Asia and the Pacific, (2016), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534135.pdf

[260] ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) 5th Edition (2021)

2017, representatives of Swiss, Portuguese and Ukrainian government emphasized the need to ensure equal remuneration for work of equal value between women and men and to reduce the gender pay gap that exists in some MNEs and industries.[261] In the Regional Meeting for the Americas in 2018, the challenges linked to hiring and promoting women, the gender pay gap, and occupational segregation have been noted. The Argentinian Ministry of Labour reported women's employment rate to be lower than men's while in the private sector, the rate of non-registered employment is higher among women compared to men. The Confederation of Workers of Colombia shared that the gender wage gap remains in the public sector where 53% of employees are women and that women are more subjected to demands exceeding their job descriptions.[262] At the Regional Meeting in Africa in 2019, sexual harassment at the workplace has been mentioned as a rising issue of concern with the Civil Servants Union of Liberia flagging the problem of gender-based violence and the Central Organization of Trade Unions of Kenya mentioning sexual harassment in the workplace. Ghana Employer's Association recognized efforts to bridge gender-related gaps in employment opportunities and fair treatment at work, but noted that inequalities remained and called for an affirmative action bill into an act of law in order to increase the number of women in top managerial positions.[263] Despite these vocal demands, no amendments were made with regard to gender in the most recent 2022 edition of the Declaration.

In addition to the shared concerns of stakeholders, ILO itself has also recognized that problems persist in gender equality in its reports.[264] All in all, there is a common understanding and repetitive emphasis on gender-equality related issues voiced by all three stakeholders and recognized by the ILO itself[265] - most importantly, sexual harassment at workplace, women's

[261] ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Europe and Central Asia, (2017), available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/meetingdocument/wcms_574188.pdf

[262] ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in the Americas, (2018), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_644917.pdf

[263] ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa, (2019), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_724152.pdf

[264] ILO, Promoting decent work and protecting fundamental principles and rights at work in export processing zones: Report for discussion at the Meeting of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones, MEWEPZ/2017, (2017), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf

[265] The ILO also indicates that "problems persist in the protection of fundamental principles and rights at work, in particular freedom of association and collective bargaining, and gender equality" within the abovementioned report.

participation in employment and gender pay gap- yet these issues mentioned in regional follow-up meetings are not being integrated into the normative business and human rights framework of ILO. This repetitive pattern is indicating a problem concerning how gender-focused demands vocally expressed in regional consultations are not integrated into the final amended texts, and that there is a resistance or deprioritization in the negotiation, amending and rewriting procedures of such normative frameworks.

Duty to Protect vs. Responsibility to Respect: Disproportionate Responsibilities on States vs. Corporations

There is a parallel pattern in the ILO MNE Declaration similar to the "states' duty to protect vs. corporations' responsibility to respect" disproportionality embedded within the UNGPs. The general principle of equality of opportunity and treatment, one of the few sections in which sex is mentioned, should apply throughout an enterprise's own operations and business relationships. However, governments are held responsible for a comprehensive set of actions: accordingly, they should pursue policies designed to promote equality of opportunity and treatment in employment with a view to eliminating any discrimination including discrimination based on sex; they should avoid requiring enterprises to discriminate on any of the listed grounds and provide, where appropriate, ongoing guidance on the avoidance of such discrimination in employment (which might not be possible or effective in every context due to the bigger financial power of certain multinational corporations operating in low income countries); and they should be promoting equal remuneration for men and women workers for work of equal value. In the meanwhile, enterprises are expected to be only "guided" by the principle of non-discrimination throughout their operations and to make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels. While the state-centric nature of legally binding international law instruments is expected, it is significant that a similar tendency of states's hard duties vs. enterprises' soft responsibilities discourse is observed in a multistakeholder non-binding soft law instrument.

3.1.3. The ILO Constitution and Legally Binding ILO Conventions

Apart from the MNE Declaration, the ILO Consitution and five key ILO Conventions are relevant to gender equality and gender-based discrimination.

The ILO Consitution only mentions sex within the Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philidelphia) in its Annex:

"...the Conference affirms that:

(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;...."

Apart from this particular clause, there is no mention of sex, gender or women workers. On one hand, in the preamble, women are listed among constituencies needing protection along with children and young persons. There are affrimative clauses with regard to women's participation in ILO proceedings. According to Article 3(2), while each delegate may be accompanied by advisers, *"When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman"* and according to Article 9(3), while the Director General appoints the staff of the International Labour Office, *"A certain number of these persons shall be women,"* without further guidance or a specific quota.

The Equal Remuneration Convention No. 100

Among the gender-related ILO Conventions, the first one is the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), which entered into force in 1951, applying to all workers in all (public and private) sectors and set out principles for national policy on how to promote and secure equal remuneration for men and women workers for work of equal value. The Convention text is short and important in the sense that it emphasizes the principle of equal remuneration for men and women workers for work of equal value, addressing the gender pay gap (without using this specific term) for the first time in an international law document.

The Discrimination Convention No. 111

Secondly, the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), adopted in 1958, require states to enable legislation which prohibits all discrimination and exclusion on any basis including of race or colour, sex, religion, political opinion, national or social origin in employment and repeal legislation that is not based on equal opportunities. Within this Convention, sex is listed among the bases on which discrimination is prohibited. Conventions 100 and 111 are among the eight fundamental ILO Conventions. It is also stated that the principles and rights enshrined in these two

Conventions are found in another important ILO document; the ILO Declaration on Fundamental Principles and Rights at Work, which was adopted in 1998 and amended in 2022 as a statement of commitment by governments, employers' and worker's oprganizations to uphold basic human rights. Having said this, gender equality seems to be missing among the enshrined principles as there are no open mentions of sex, gender or women workers within this major ILO document. Instead, "the elimination of discrimination in respect of employment and occupation" is listed among the five categories of Fundamental Principles and Rights at Work, with the 2022 amendment.

Workers with Family Responsibilities Convention No. 156

Thirdly, the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), adopted in 1981, applies to men and women workers who have care responsibilities for their dependent children and/or other members of their families, and covers measures to be taken by Member States within national policies that respond to the care giving workers' special needs. An emphasis on both men and women workers' family responsibilities throughout the text; and the recalling of paragraph 14 of the Preamble of CEDAW in which States Parties are *"aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women"* are noteworthy.

Maternity Protection Convention No. 183

The Maternity Protection Convention (No. 183) and the Recommendation (No. 191) comprise five core elements of maternity protection: maternity leave; cash and medical benefits; health protection at the workplace; employment protection and non-discrimination; and breastfeeding arrangement.[266] The core principle provided within this Convention is that maternity protection aims to ensure that women's economic activities do not pose risks to their health and that of their child, and to ensure that women's reproductive function does not compromise their economic and employment security.[267] Common parental responsibilities are not mentioned within the text, and the text particularly focuses on women workers. To date, there are no ILO standard concerning paternity leave.[268] However, the Resolution

[266] ILO, Maternity Protection Resource Package: From Aspiration to Reality for All Part One: Maternity Protection at work: What is it?, (2012), available at: https://mprp.itcilo.org/allegati/en/m1.pdf
[267] Ibid.
[268] ILO, Maternity and paternity at work: Law and practice across the world, (2014), available at: https://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/publications/maternity-paternity-at-work-2014/lang--en/index.htm

concerning gender equality at the heart of decent work adopted by the International Labour Conference in 2009 recognizes that work-family reconciliation measures concern both men and women and calls for governments to develop adequate policies for a better balance of work and family responsibilities, to include paternity and/or parental leave, with incentives for men to use them.[269]

A Promising and Significant Good Example: Violence and Harassment Convention No. 190

Last but not least, the most recent ILO Convention focused on gender and labour is the Violence and Harassment Convention (No. 190). The Convention No. 190 and Recommendation (No. 206) are the first international labour standards to provide a common framework to prevent, remedy and eliminate violence and harassment in the world of work, including gender-based violence and harassment.[270] The text of the Convention includes the specific recognition, for the first time in international law, of the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment. Gender-based violence and harassment is defined as *"violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex of gender disproportionately and includes sexual harassment."*[271]

ILO Conventions are important international labour law documents and legally binding if ratified by Member States. However, despite the tripartite structure of the International Labour Conference, only Member States are legally responsible for the measures, and the responsibility of businesses is rarely mentioned and when so, it is rather promoted or encouraged. ILO Conventions serve more as international labour standards instead of business and human rights documents due to their state-centric structure. Nevertheless, ILO Conventions, if properly implemented by the ratifying state, have a concrete impact on the business practices of multinational corporations operating in the mentioned ratifier state. The gender focus of the five major gender-related ILO Conventions has evolved and improved chronologically. The Convention No. 190, particularly, can be shown among good examples for gender-responsive normative frameworks for a number of reasons.

Firstly, the Preamble acknowledges *"that gender-based violence and harassment disproportionately affects women and girls, and recognizing that an inclusive, integrated and*

[269] ILO, Resolution concerning gender equality at the heart of decent work, International Labour Conference 98th Session, (2009), paras 6 and 42.
[270] ILO, Convention No. 190 and Recommendation No. 206 at a glance, (2020), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738114.pdf
[271] ILO Convention No. 190, (2019), Art.1.

gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work." This makes the Convention the first ILO document to openly address unequal gender-based power relations and multiple and intersecting forms of discrimination. This approach to gender equality as a structural issue based on power relations is consolidated with Article 4(2), which provides: *"Each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable."* The adoption of an inclusive, integrated and gender-responsive approach as a measure that Member States need to take, and the clear mention of violence and harassment involving third parties, which include businesses, are noteworthy examples for the use of gender-responsive language in a normative framework. Furthermore, the Convention's gender responsive approach is supported by a wide range of actions for prevention, protection, enforcement, remedies, guidance, training, and awareness raising.

From a business and human rights perspective, Article 4(2) states that Members shall, in preventing and addressing violence and harassment in the world of work, take into account the involvement of third parties, both as victims and perpetrators, which is more easily applicable to complex work and contract schemes in global supply chains with multiple layers of contractors and sub-contractors. Article 4(3) mentions that in adopting this approach, the Convention requires Members to recognize the different and complementary roles and functions of governments, employers and workers, and their respective organizations, taking into account the varying nature and extent of their respective responsibilities. While this clause can be interpreted in a way to limit the responsibility of non-state stakeholders, it also recognizes their involvement and responsibility. The responsibilities of employers (in many cases, the multinational corporations) for prevention and protection are addressed in detail under Article 9, which requires Members to *"adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment"*. In addition, the Convention's broad scope applying to all sectors, and persons working regardless of their contractual status (Article 2(2)) both in the formal and informal economy provides protection for those in informal precarious job sectors in which women are overrepresented.

With regard to effective remedies, under Article 10(e) it is specifically provided that *"victims of gender based violence and harassment must be provided with access to gender-responsive, safe and effective complaints and dispute resolution mechanisms, support, services and remedies."* The Recommendation further explains that such mechanisms should include courts with specific expertise, timely and efficient processing, legal advice and assistance, accessible guides and the shifting of the burden of proof (paragraph 16), support to help victims re-enter the labour market, counselling and information services, 24-hour hotlines, emergency services, medical care and treatment, crisis centers including shelters, specialized police units or specially trained officers (paragraph 17). In addition, the Recommendation specifies that the guidelines, resources, training programmes and other tools directed to employers, workers and their organizations, and other relevant authorities should be gender-responsive (paragraph 23(b)). Lastly, in accordance with an intersectional approach, the Recommendation requires Members to take protective measures particularly for women migrant workers.

Gender-responsiveness, as provided under the Convention No. 190 and Recommendation No. 206 is further explained by the ILO[272] as *"intentionally employing gender considerations to affect the design, development, implementation and results of programmes and strategies, policies, laws and regulations, as well as collective agreements."* This approach accordingly *"reflects all girls' and women's realities; pays attention to their unique needs; ensures their participation in decision-making processes at all levels; values their perspectives; respects their experiences; and understands the developmental differences between girls and boys, women and men in all their diversity and throughout their life cycle."* Gender-responsiveness is a broad term and the fact that how gender-responsiveness should be understood by all stakeholders is explained in a supportive ILO Guide is noteworthy. In addition, the reference to both "sex or gender" within the Convention text to include both the biological functions and characteristics that differentiate men from women (sex) and the sociological differences between men and women that are learned and changeable over time (gender)[273] is a newly-adopted language in ILO Conventions. ILO Convention No. 190 is, overall, a good example for gender-responsive normative frameworks.

There is an ongoing global campaign for Members States to ratify C190[274] (#RatifyC190) -as of December 2023, 36 countries have ratified the C190. Although its effectiveness and

[272] ILO, Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_814507.pdf
[273] Ibid.
[274] ILO, C190 campaign toolkit, (2022), available at: https://brand.ilo.org/d/XdDMx745iKTL/events-and-campaigns#/campaigns/c190-campaign-toolkit ; C190 Guide, available at: https://c190guide.ilo.org/en/

implementation is yet to be seen, the Convention is widely supported by feminist organizations[275] worldwide who have been actively contributing to this global call and includes the most gender-responsive language of all ILO documents so far.

Table 3.1.: Türkiye, Colombia and South Africa's ratification status of ILO Conventions No. 100, No. 111, No. 156, No.183 and No. 190.

	Türkiye	Colombia	South Africa
Equal Remuneration Convention (No. 100) Date of entry into force: 23 May 1953	Ratified on 19 July 1967, in force	Ratified on 7 June 1963, in force	Ratified on 30 March 2000, in force
Discrimination (Employment and Occupation) Convention (No. 111) Date of entry into force: 15 Jun 1960	Ratified on 19 July 1967, in force	Ratified on 4 March 1969, in force	Ratified on 05 March 1997, in force
Workers with Family Responsibilities Convention (No. 156) Date of entry into force: 11 Aug 1983	-	-	-
Maternity Protection Convention (No. 183) Date of entry into force: 07 Feb 2002	-	-	-
Violence and Harassment Convention (No. 190) Date of entry into force: 25 June 2021	-	-	Ratified on 29 November 2021, in force

[275] Women's Legal Centre, "We need feminist places of work: How ILO Convention 190 can help to get us there", available at: https://wlce.co.za/we-need-feminist-places-of-work/; International Center for Research on Women and ITUC, Ending Gender-Based Violence and Harassment in the World of Work: The Critical Importance of Implementing ILO Convention 190, (2021), available at: https://www.icrw.org/wp-content/uploads/2021/06/ICRW_ImplementingILO190_05.21.pdf ; International Federation of Journalists, "ILO Convention 190 on Violence and Harassment in the Workplace It can save lives!", available at: https://www.ifj.org/actions/ifj-campaigns/ilo-convention-190-it-can-save-lives.html; Women in Global Health Australia, "Respect@Work and ILO Convention 190", available at: https://www.wghaustralia.org/news/respect-at-work-international-labour-organization-ilo-convention-190.

3.1.4. OECD Mechanisms for Business and Human Rights[276] and the OECD Guidelines for Multinational Enterprises (OECD Guidelines)

The OECD Declaration on International Investment and Multinational Enterprises is a political commitment document adopted by adhering governments[277] aiming *"to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress."*[278] The adhering governments jointly recommend to multinational enterprises operating in or from their territories the observance of the Guidelines, provided in the annex of the Declaration which remains to be the major OECD business and human rights instrument. The OECD Guidelines for Multinational Enterprises, adopted in 1976 and most recently updated in 2023, is a key international instrument consisting of non-binding principles and standards for responsible business conduct recommended by governments to multinational enterprises - *"the expectations from governments to businesses on how to act responsibly"*[279]- operating in or from the 50 adhering countries. The Guidelines function as a multilaterally agreed code of responsible business conduct that governments have committed to promoting. Although the Guidelines are not legally binding, the OECD Investment Committee and its Working Party on Responsible Business Conduct are encouraging and promoting implementation and government commitments. Each of the 50 adhering States is required to establish National Contact Points (NCPs), which are offices charged with promoting observance of the Guidelines by multinational enterprises, but most importantly, providing one of the most widely known business and human rights grievance mechanisms called 'specific instances' for alleged cases of violation of the Guidelines.

A Gender-Focused Overview of the OECD Guideline Chapters

---

[276] OECD, Responsible Business Conduct and the Corporate Responsibility to Respect Human Rights, (2018), available: at http://mneguidelines.oecd.org/Responsible-business-conduct-and-human-rights.pdf

[277] Türkiye, a founding member of the OECD since 1961, and Colombia, having completed the accession process in 2020, are among adhering governments as OECD Member States, and both have an NCP mechanism. South Africa, although one of the 5 key partners of the OECD, has not adhered to the declaration and the guidelines, and does not have an NCP.

[278] OECD Guidelines for Multinational Enterprises (2023); OECD, OECD Declaration and Decisions on International Investment and Multinational Enterprises, available at: https://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm#:~:text=First%20adopted%20in%201976%2C%20the,to%20economic%20and%20social%20progress.

[279] OECD Guidelines for Multinational Enterprises (2023).

The Guidelines' chapters cover a wide range of issues with regard business responsibility, or as termed within the text, responsible business conduct, in the following specific chapters:

- Disclosure: This chapter calls on enterprises to be transparent in their operations and to disclose timely and accurate information on all material matters regarding enterprises' activities, structure, financial situation, performance, ownership and governance. There is no reference with regard to gender-focused data, or gender equality overall.

- Human rights: According to the set of recommendations under this chapter, while states have a duty to protect human rights, enterprises should respect human rights; and *"avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved"* including prevention, mitigation, carrying out due diligence and providing remediation of adverse human rights impacts linked to their operations. It is stated that with the recent amendments, the human rights chapter is aligned[280] with the UN "Protect, Respect and Remedy" Framework and the UNGPs, however, the gender-related guiding principles have not been integrated, except for the problematic categorization of human rights instruments. In parallel with the UNGPs, the OECD Guidelines require all operations of all enterprises to make a reference *"at a minimum to the internationally recognised human rights expressed in the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and to the principles concerning fundamental rights set out in the 1998 International Labour Organisation Declaration on Fundamental Principles and Rights at Work."* However, after mentioning these prioritized instruments, it is stated that depending on the circumstance, *"enterprises may need to consider additional standards,"* and women's rights are listed among *"the human rights of individuals belonging to specific groups or populations that require particular attention"* along with the rights of indigenous peoples; minorities; children; persons with disabilities; and migrant workers and their families. The deprioritization or "exceptionalization" of women's rights and women's rights instruments such as CEDAW are reproductions of the UNGP's problematic approach.

[280] OECD, Responsible Business Conduct and Gender, (2020), available at: http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf

- Employment and industrial relations: Issues with regard to discrimination are addressed under this chapter. Accordingly, *"Enterprises should be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status"*. As further explained in the Commentary, the term "other status" for the purposes of the Guidelines refers to trade union activity, characteristics such as age, disability, pregnancy, marital status, sexual orientation, or HIV status. Although included within the commentary, this makes the OECD Guidelines the only business and human rights instrument addressing sexual orientation explicitly as a basis for discrimination. Equal opportunities for women are mentioned twice in the Commentary of this chapter. First mention states that *"enterprises are expected to promote equal opportunities for women and men with special emphasis on equal criteria for selection, remuneration, and promotion, and equal application of those criteria, and prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood."* The second mention refers to the ILO Human Resources Development Recommendation No. 195 of 2004, where *"enterprises are encouraged to invest, to the greatest extent practicable, in training and lifelong learning while ensuring equal opportunities to training for women and other vulnerable groups, such as youth, low-skilled people, people with disabilities, migrants, older workers, and indigenous peoples."* In parallel with the approach of UNGPs, whenever women are mentioned, they are listed among vulnerable, marginalized groups.

- Environment: This chapter includes a set of recommendations for MNEs to raise their environmental performance and help maximize their contribution to environmental protection such as "*engaging in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies and operations of the enterprise."* The gendered impact of environmental damage or consultations with rural or local women are not mentioned, which is a lost opportunity.

- Other Chapters: The Combating Bribery, Bribe Solicitation and Extortion chapter consists of a set of recommendations for enterprises to not, directly or indirectly, offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. The Consumer Interests chapter is a call on enterprises to apply fair business, marketing, and advertising practices and to ensure the quality

and reliability of the products. The Science and Technology chapter encourages enterprises to promote technology transfer to host countries and contribution to their innovative capacities. The Competition chapter calls for MNEs to carry out their activities in a manner consistent with all applicable competition laws and regulations.The Taxation chapter makes the OECD Guidelines the first international corporate responsibility instrument to cover taxation specifically. There are no references with regard to sex, gender or women in any of these chapters.

All in all, the OECD Guidelines text is completely gender-blind, and includes no gender aspects although the Guidelines have been updated in alignment with the UNGPs. It must be noted, however, that the OECD Centre for Responsible Business Conduct recognizes that gender issues cut across all aspects of business activity. The terms "sex" or "women" only appears in paragraphs 40, 54, and 58 in the Commentary under the Human Rights chapter as well as in the chapter on Employment and Industrial Relations. Important issues such the disclosure of accurate information and data, and consultations and communication with environmentally affected communities, which have serious gender dimensions, have been mentioned in a completely gender-blind manner. Gender-based violence is not addressed. The problematic approach of the UNGPs, most significantly, listing women exclusively among vulnerable groups in need of protection instead of active agents of communities and the deprioritization of women's rights instruments have been copied and reproduced under this most recent edition of the Guidelines.

3.2. Analysis of Significant Business and Human Rights Practices with a Gender Lens

3.2.1. Human Rights Due Diligence

Human rights due diligence is one of the most significant business and human rights practices required by businesses, provided under all major business and human rights instruments; the UNGPs (Articles 17-21); the ILO MNE Declaration (Article 10(d)) and the OECD MNE Guidelines (IV. Human Rights, paragraph 5). Human rights due diligence is a practice required (or, as the UNGPs provide, an independent responsibility) of the enterprises *"to identify, prevent, mitigate and account for how they address impacts on human rights"*. It can be defined as the core of corporate responsibility to respect human rights. For enterprises to proactively manage potential and actual adverse human rights impacts with which they are involved, human rights due diligence consists of four core steps:

1. Identifying and assessing actual and potential adverse human rights impacts (caused or contributed to by the enterprise, or directly linked to its operations, products, services and business relationships);
2. Taking appropriate action based on the assessment findings;
3. Tracking the effectiveness of measures;
4. Communicating on how the enterprise addresses these impacts to stakeholders (particularly those who are affected).

In addition to these four key actions, the UNGPs set parameters for the effective implementation of human rights due diligence. There are some parameters set by the UNGPs for the effective implementation of human rights due diligence. For example, human rights due diligence should cover all adverse human rights impacts that the business enterprise may cause, or may contribute to, or may be directly linked to via its operations, products or services by its value chain. Also, since human rights risks may change over time as business operations evolve, the due diligence practice should be regular and ongoing. The main purpose of human rights due diligence, in contrast with other corporate due diligence practices, is the specific focus on the risk to the people and not the business, with the motivation to prevent adverse impacts. Mandatory human rights due diligence should be informed by meaningful stakeholder engagement such as trade unions and grassroots organizations, with risks to human rights defenders and other critical voices kept in mind.[281]

Early versions of corporate human rights due diligence have emerged with multinational corporations' corporate social responsibility reports and have been seen as a matter of corporate communications for a while.[282] However, with accelerating initiatives such as the UN Global Compact and the adoption of the Sustainable Development Goals in 2015, human rights due diligence has evolved into a core aspect of environmental, social and corporate governance (ESG) practices of corporations. From a corporate perspective, human rights and environmental due diligence (often considered together) are seen as requirements to *"ensure compliance and to provide targeted, bespoke intelligence to make informed decisions about the environmental and social impact of any potential investment.*"[283] In other words, human

[281] United Nations Working Group on Business and Human Rights, "Corporate human rights due diligence – identifying and leveraging emerging practices", available at: https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices
[282] Widiarto A. Sutantoputra, Social disclosure rating system for assessing firms' CSR reports, Corporate Communications: An International Journal, 14(1), (2009), 34.
[283] Kathleen Wainwright, Environmentally sound investment: EDD is key, Refinitiv, (5 June 2019), available at: https://www.refinitiv.com/perspectives/financial-crime/environmentally-sound-investment-edd-is-key/

rights due diligence has been seen as one of the main requirements for the "social" chapter of ESG practices, often with a business case motivation.

Human rights due diligence, as a corporate compliance practice with voluntary standards, has evolved into a comprehensive, responsible business legal requirement in a short period of time. Human rights due diligence is a standard set out in the second pillar of the UNGPs, yet despite its legally non-binding foundations, its implementation is getting more widespread.[284] There is an increasing policy response worldwide, and a slow yet steady movement towards codification of human rights due diligence within supply chain law.

3.2.2. Gender Responsive Human Rights Due Diligence

In 2018, the Working Group submitted a report to the UN General Assembly, aiming to highlight the key features of human rights due diligence, gaps and challenges, emerging good practices, and how key stakeholders (States and investment community) can contribute.[285] According to this report, one of the characteristics of human rights due diligence is to *"...be commensurate with the severity and likelihood of the adverse impact (the higher the likelihood and severity of an adverse impact, the more extensive the due diligence should be)"* and to be *" tailored to specific risks and how they affect different groups (such as applying a gender lens or taking into account how actual or potential adverse impacts may differ for or may be specific to women)".* Tailoring and specifying human rights due diligence to cover and emphasize the specific risks faced by women is encouraged, yet there is no guidance with regard to the topics (gender based violence and discrimination, maternity rights etc.), or how to involve more women within the design and implementation processes.

While assessing gaps and challenges with regard to business practices, the Working Group noted the weak performance when it comes to taking action and tracking responses, instead of actually identifying risks and underlined the *"inadequate integration of a gender lens"*.[286]

[284] International Organization of Employers and Konrad Adenauer Stiftung, Key developments in mandatory human rights due diligence and supply chain law: Considerations for employers, (2021), available at: https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5#:~:text=Human%20rights%20due%20diligence%20should,services%20by%20its%20business%20relationships.

[285] UN Working Group on Business and Human Rights, Summary of the UN Working Group's Report to the UN Human Rights Council: "Leading by example: The State, State-owned enterprises, and Human Rights", (2016), available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement

[286] UN Working Group on Business and Human Rights, The report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/73/163, (2018), para 26.

However, the Working Group mentioned that companies tend to proactively take action and include a gender lens in two broad exceptional areas: when facing *"a risk of being linked to sexual violence or harassment"* as a reaction, and *"...as part of inclusiveness and diversity, for example, in the workforce or on boards."*[287] This observation might be an indicator that companies still see human rights due diligence practices as an investment to showcase a sustainable image, instead of internalizing a gender-based analysis covering their global supply chains as a whole.

Lastly, *"engaging directly with affected stakeholders in good faith" is* listed among good practices for stakeholder engagement, and integrating gender-sensitive approaches is recommended by the Working Group for addressing specific risks affecting different groups.[288] Suggestions for this direct engagement include *"operational-level grievance mechanisms"* and *"community-based human rights impact assessment*". Apart from the recognition of the lack of gender lenses and framing gender concerns linked to specific risk groups, there is no detailed guidance, a template structure, or a toolkit provided.

The Working Group has a deeply problematic approach while categorizing gaps and challenges with regard to translation of the human rights due diligence norm into practice, regarding how the problems are categorized. Gaps and challenges are divided into three: as business practices, state practices and "systematic issues and market failures". Under systematic issues, a number of human rights risks in which business enterprises may be involved are listed, such as child labor, lack of access to remedy and discrimination against women. Such systemic issues are considered *"in many contexts linked to root causes or fundamental development issues, such as poverty, corruption and weak rule of law"* which *"represent challenges that individual business enterprises cannot solve on their own."*[289] This approach may distract the focus from the liabilities of companies, labeling important business and human rights issues as unsolvable problems beyond the companies' efforts and capacities.

Corporate human rights due diligence is addressed in other business and human rights instruments. The OECD Due Diligence Guidance for Responsible Business Conduct, adopted in 2018, is a document which provides practical support to enterprises for the implementation of the OECD MNE Guidelines with a specific focus on the recommendation for businesses to

[287] Ibid, para 26.
[288] Ibid, para 45(b).
[289] Ibid, para 35.

carry out risk-based due diligence to avoid and address adverse impacts associated with their operations, their supply chains and other business relationships. The OECD Due Diligence Guidance offers practical guidance to companies on how to integrate a gender perspective into the due diligence process and can be defined as a good example for a gender-responsive supportive document. In the Annex of the Guidance, Question 2 on "How can an enterprise integrate gender issues into its due diligence?" is provided with actionable answers.[290] An observation commonly shared by all stakeholders throughout the consultations process for this Guidance is that "*gender-focused due diligence starts with knowing where women are involved in the supply chain"* [291]and specifically, that there is a need for awareness and a more focused gender lens in areas where women may be disproportionately impacted.

Taking the Guidance's approach as a basis, there are four major areas in which businesses need to be responsive with regard to gender issues: First, are the contexts where women face severe discrimination. (i.e. if sexual harassment is a high-risk in a particular geographic location, it is a high-risk within the workplace). Second, are the contexts where the companies' activities significantly affect the local economy, environment, and access to land and livelihood. Third, are the conflict and post-conflict zones. And last but not least, the sectors and supply chains where women are overrepresented (these include but not limited to garment, tourism, health and social care, domestic work, agriculture, fishery, and fresh-cut flowers).[292]

Region, sector and context specific prioritization in gender-responsive human rights due diligence is crucial, and it is promising to see that such an approach is included within the OECD Guidance, a supportive instrument that is often referred to by human rights due diligence practicing businesses. Some of the significant actions for identification, prevention and mitigation of human rights impact with a gender-responsive approach include but not limited to:

- Collecting and assessing gender-disaggregated data;
- Developing, designing and evaluating gender responsive policies and plans to mitigate and address real and potential adverse impacts;
- Identifying overlapping vulnerabilities affecting women;
- Developing gender responsive warning systems and the protection of whistleblowers;

[290] OECD, Responsible Business Conduct and Gender, (2020), available at: http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf
[291] Ibid.
[292] Ibid.

- Ensuring women's equal and meaningful participation in consultations and negotiations;
- Assessing whether grievance mechanisms are gender responsive, whether there are barriers preventing women from accessing them, and whether women can benefit equitably in compensation payments or other forms of restitution;
- Consulting women without the presence of men and facilitating separate safe spaces for women to share opinions and provide input on business decisions.[293]

In contrast with the rather gender-blind approach of the OECD Guidelines, the OECD Due Diligence Guidance can be seen as a good gender-responsive example. There are further, sector-specific guides such as the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, the OECD-FAO Guidance for Responsible Agricultural Supply Chains, OECD Due Diligence Guidance on Responsible Mineral Supply Chains, and the OECD Due Diligence Guidance on Meaningful Stakeholder Engagement in the Extractive Sector.[294] They provide specific sets of recommendations for sector-specific risks, suggesting companies to ensure meaningful engagement of women decision-making, ensuring that impacted women are appropriately identified and prioritized, and going a step beyond identification towards effective stakeholder engagement, monitoring, and evaluation mechanisms.

All in all, it is justifiable to conclude that there is a problem of the "*current general business practice of gender-neutral human rights due diligence."*[295] Although the UN Working Group emphasizes the intersectional nature of discrimination, the main, common focus when it comes to human rights due diligence is on forms of discrimination in crisis situations, and specifically gender-based violence. A broader approach to the issue, however, is highly necessary - instead of a band-aid approach to the seemingly exceptional atrocities and crises, corporations "*need to recognize the existence of gender norms embedded in our daily life, of complex cultural stereotypes, and power imbalances in public and private relations"*.[296] Companies often display their zero-tolerance policies, and gender-focused targets and indicators which are often exclusively for the corporate working environment. Such initiatives do not often reach out to

[293] Ibid.
[294] OECD, Responsible Business Conduct and Gender, (2020), available at: http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf
[295] Ganna Khrystova and Olena Uvarova, Gender Component of Internal Displacement in Ukraine: A Case of Business (In)Capability to Localize Human Rights Impact Assessment, 7 Business And Human Rights Journal, (2022).
[296] Ibid.

various labor-intense working environments within supply chains based in other countries. Such minimal efforts are often seen adequate to "do their part" when it comes to due diligence and the blame falls onto the cultural context, the domestic legislations or the lack of implementation on the host state's part. While companies are not expected to transform the national context or the prevalence of gender inequality as a whole, they must recognize and detect the situations increasing the vulnerability of women, avoid advancing or benefiting the existing negative practices or stereotypes, take effective measures and follow up, for due diligence to actually funciton its purpose.[297]

A research on the gender component of internal displacement in Ukraine and its incorporation into corporate human rights policies[298] has shown that gender discrimination is largely undetectable by using standard human rights risk assesments. Companies must explicitly raise gender issues in every step of due diligence processes. Gender must be mainstreamed within such due diligence processes, instead of having a list of questions to be answered only under the compartmentalized "gender" title and not mentioning gender in other aspects of the assessment. Khrystova and Uvarova, in their research focusing on Ukranian context, have found that companies' actions *"will only be effective if, from the very outset, the respective company, on the basis of a preliminary review of data, analytical materials, and reports from human rights organizations would make assumptions about potential risk areas"* and *"raise the issue of additional vulnerabilities manifested in certain groups of women".*[299] In other words, companies should intentionally ask the gender questions throughout the process, instead of waiting for such impact to show up in final reports of the human rights due diligence. This research has shown that a two step approach can be helpful for gender component's incorporation into human rights due diligence practices. The first step is indicating spheres of vulnerability for women, which are not identifiable by the usual human rights risk assessments. A preliminary formulation of the potential risks of impact is needed. The second step is analyzing the identified areas of vulnerability, and minimizing them through self-regulation of the company, by not necessarily waiting for government regulation. Companies can develop their unique models -set of practical tools for gender incorporation into business policies and self-regulatory acts to implement them - by cooperating with civil society

[297] Joanna Bourke Martignoni and Elizabeth Umlas, Gender-Responsive Due Diligence For Business Actors: Human Rights-Based Approaches, The Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing 12, (2018), 6.
[298] Ganna Khrystova and Olena Uvarova, Gender Component of Internal Displacement in Ukraine: A Case of Business (In)Capability to Localize Human Rights Impact Assessment, 7 Business and Human Rights Journal, (2022).
[299] Ibid.

organizations and academia. Stronger communication and collaboration with civil society is significantly important in certain regions (not only in post-Soviet region as the mentioned research indicates but also in illiberal democracies or democracies struggling with widespread violence or problematic human rights records as in Türkiye, Colombia and South Africa). Civil society is often seen as partners (of an inferior position) in corporate social responsibility projects, and corporations refrain from consulting them for due diligence, despite their often deeper and context-specific human rights knowledge and experience. Civil society is also often excluded from public stakeholder consultations in order to avoid harsh criticism and confrontation.

Gender responsive human rights due diligence require much more than formal compliance with law, or *"merely filtering out the existing mechanisms of human rights due diligence."* [300] Instead, it requires the recognition and addressing of gender norms, stereotypes and power imbalances in daily business operations, and taking the liberty of explicitly raising up the issues of additional, intersectional vulnerabilities. [301]

3.2.3. Regional and National Legislative and Political Business and Human Rights Initiatives

Business and human rights mechanisms, and particularly human rights due diligence practice has received attention from policy makers, with supportive statements from G7 and G20 leaders and an increasing call for a binding standard on corporate due diligence with a focus on human rights. However, human rights due diligence is still seen as a newly emerging area and gender-responsiveness is not mentioned within the supportive policy statements. There is a growing movement towards further codification of mandatory environmental and human rights due diligence.

EU Directive on Corporate Sustainability Due Diligence

One of the most important developments in this area is the European Commission's Directive on Corporate Sustainability Due Diligence, which was adopted in February 2022. The Directive requires EU Member States to adopt or amend their national laws to create a corporate due diligence duty for adverse human rights and environmental impacts, applying to all operations, subsidiaries and value chains of companies. This means Member States have

[300] Ganna Khrystova and Olena Uvarova, Gender Component of Internal Displacement in Ukraine: A Case of Business (In)Capability to Localize Human Rights Impact Assessment, 7 Business and Human Rights Journal (2022).
[301] Ibid.

two years to transpose the Directive into national law, and the impact and of human rights due diligence practice is soon expected be extended to all businesses linked to EU-based companies (large EU limited liability companies as listed within the directive, and non-EU companies and third country companies active in the EU with specified turnover threshold, generated in the EU). However, the text of the Directive lacks any mention or guidance with regard to a gender-focused approach within the human rights due diligence duty beared upon companies. The only mention of women or gender equality is within the annexed list of international human rights and fundamental freedoms conventions, in order to specify the adverse environmental impacts and adverse human rights impacts relevant for the Directive, with CEDAW being included within the list.

National Business and Human Rights Legislative Initiatives

In recent years, an increasing number of states have started developing their own legal frameworks in corporate due diligence area, and a number of multinational companies have taken measures to deploy due diligence processes, often using the existing international voluntary standards on responsible business conduct. These frameworks differ from each other in terms of scope, risks covered, level of detail, enforcement and liability. Some of the major recent business and human rights legislative initiatives, providing a legal foundation for corporate due diligence responsibilities of companies, with a specific focus on supply chain law and anti-slavery, are listed below, along with information on whether the national legislations have any mention with regard to gender equality. In parallel, the UNGPs and other major normative frameworks the contents of such legislations are mostly gender-blind.

Table 3.2.: A selection of national business and human rights legislative initiatives, their years and relevant content with regard to gender equality/women's rights/sex-based discrimination.

Legislative Initiative	Year	Content of the Legislation & information about the mention/integration of gender equality
Section 1502 of the U.S. Dodd-Frank Act	2010	The Dodd-Frank Act is a federal law enacted "*to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."* Section 1502 of the Act focuses on the exploitation and trade of conflict minerals. In Section 1502(a) the following recognition of sexual and gender-based violence in eastern Democratic Republic of Congo is given: "*It is the sense of Congress that the exploitation and trade of*

		conflict minerals originating in the Democratic Republic of the Congo is helping to finance conflict characterized by extreme levels of violence in the eastern Democratic Republic of the Congo, particularly sexual- and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(p) of the Securities Exchange Act of 1934, as added by subsection (b).” Furthermore, under (d), the Comptroller General of the United States is required to submit annual baseline reports *“to appropriate congressional committees a report that includes an assessment of the rate of sexual and gender-based violence in war-torn areas of the Democratic Republic of the Congo and adjoining countries.”* While the recognition of gender-based violence with a geographical and sectoral specificity is promising, the mere responsibility to report is insufficient, and the exclusive focus on armed conflict and certain selected “war-torn areas” undermines the everyday nature of workplace harassment with regard to the mining sector.
California Transparency in Supply Chains Act (Senate Bill No 657)	2012	This Bill requires retail sellers and manufacturers doing business in California *“to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale, as specified.”* Although the main focus of the act is on forced labour, modern slavery and human trafficking which has a strong gender dimension, there are no mentions with regard to gender equality.
UK Modern Slavery Act	2015	The UK Modern Slavery Act of 2015 is *“An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Antislavery Commissioner; and for connected purposes.”* The Act sets out a range of measures on how to address modern slavery and human trafficking, including requiring businesses to disclose a “slavery and human trafficking statement”, covering their operations in any of their supply chains under the “Transparency in Supply Chains” section. Sexual exploitation is included as part of the meaning of exploitation, with regard to slavery, servitude and forced or compulsory labour, and human trafficking, under the “Offences” section of the Act. (Part 1, 3(3)) Sexual exploitation is understood as offences commited under section 1(1)(a) of the Protection of Children Act 1978 (indecent photographs of children), or Part 1 of the Sexual Offences Act 2003 (sexual offences). However, gender analysis through value or supply chains, or forced sexual exploitation of women and girls are not mentioned throughout the text.
French Law on the Corporate Duty of Vigilance	2017	The French Law places a corporate duty of vigilance on large French companies and requires them to publish their vigilance plans annually. Accordingly, these plans must establish effective

		measures to identify and prevent adverse impact on human rights and environment caused not only by directly and indirectly (subsidiaries) controlled companies, but also subcontractors and suppliers. However, there is no mention of gender with regard to risk mapping, mitigating actions, alert mechanisms of implementation mechanisms. There are civil society efforts ("Duty of Vigilance Radar" initiative by Sherpa) in order to analyze the quality and effectiveness of published vigilance plans, and to push companies who fail to publish vigilance plans to take action. However, these analyses too fail to integrate or to question the existence of a gender lens within their reporting.[302]
Australian Modern Slavery Act	2018	The Modern Slavery Act of 2018 is *"an Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes".* Except for mentioning CEDAW and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), which are listed among the international agreements this Act aims to (among other things) give effect to, there are no mentions of gender equality or sexual exploitation.
Dutch Child Labour Due Diligence Law	2019	The Dutch Child Labour Law, adopted in 2019, introduces a duty of care to prevent the supply of goods or services which have been produced using child labour, a duty to exercise due diligence, and dictates the appointment of a regulator (Article 3), who publishes the corporate human rights due diligence statements in an online public registry. The Law also introduces criminal sanctions for failure to exercise human rights due diligence. However, the scope of the law covers only child labour. A Dutch legislative initiative by the national parliament to expand the scope of the Child Labour Law to cover other human rights impacts, such as discrimination and environmental damage, is currently under progress.[303] The Child Labour Due Diligence Law does not have any mention of specific needs of girls in child labour cases, or gender equality overall.

[302] Sherpa, Mining With Meaning, Protecting Human Rights and the Environment in the Shift to Clean Energy: Frace's Duty of Vigilance Law and the supply chains of the minerals used for energy transition, (2020), available at: https://vigilance-plan.org/vigilance-plans-analysis/

[303] "A 2023 update on Netherlands' mandatory human rights and environmental due diligence legislation" (2023), available at: https://blog.worldfavor.com/the-netherlands-announces-human-rights-and-environmental-due-diligence-law; Anneloes Hoff, "Dutch child labour due diligence law: a step towards mandatory human rights due diligence", Oxford Human Rights Hub, (10 June 2019), available at: https://ohrh.law.ox.ac.uk/dutch-child-labour-due-diligence-law-a-step-towards-mandatory-human-rights-due-diligence/

3.2.5. Business-led Initiatives and Practices: UN Global Compact and Women's Empowerment Principles

Established in 2000, United Nations Global Compact is a special initiative of the UN Secretary General Kofi Annan, functioning as a non-binding United Nations pact calling and encouraging businesses worldwide to align their business operations with Ten Principles, to adopt sustainable and socially responsible policies and to report their implementation. As of 2023, there are more than 16,000 companies and 3,800 non-business participants (such as municipalities and academic institutions) as signatories in over 160 countries, and there are 69 Global Compact Local Networks. The Global Compact Local Networks are multi-stakeholder platforms led by businesses, supporting local firms and subsidiaries of multinationals with implementation and reporting, based on local priorities and needs. There are active Local Networks in Türkiye, Colombia and South Africa.

The foundation of Global Compact, simply, is a principles-based approach towards business operations, with responsibilities in four main areas; human rights, labour, environment and anti-corruption, enlisted as 10 main principles. There are no clear references to gender among the principles, however, Principle 1 (supporting and respecting the protection of internationally proclaimed human rights), Principle 2 (not to be complicit in human rights abuses) and Principle 6 (elimination of discrimination in respect of employment and occupation) are closely connected to gender equality.

The Global Compact's governance reflects the male-dominated senior executive positions within business. Although the Executive Director is Ms. Sanda Ojiambo, only 9 out of 25 board members are women. On the positive side, the Global Compact has put remarkable effort on gender equality issues. Almost all local networks have a gender equality working group. The recently launched the Target Gender Equality accelerator programme which aims to support companies to set and reach targets for women's representation, participation and leadership in business (in line with Sustainable Development Goal 5.5, and as one of the kep components of Women's Empowerment Principles) through facilitated performance analysis, capacity building workshops, peer-to-peer learning and multi-stakeholder dialogue at the country-level.[304]

[304] UN Global Compact, "Target Gender Equality", available at: https://www.unglobalcompact.org/take-action/target-gender-equality?fireglass_rsn=true

Target Gender Equality, similar to other gender-focused business acceleration programmes, are introduced with a broad, ambitious and comprehensive scope and goals. However, it might be helpful to take a critical look into the content of the program. There is an emphasis on *"setting ambitious and realistic corporate targets for gender equality demonstrating commitment and action to employees, investors and other stakeholders"; "building a network of peers, UN partners and experts to support gender equality strategies"* and *"showcasing women in companies who are driving business success"*, as stated in the website of the programme.[305] In Executive Director Sanda Ojiambo's words, the programme *"helps participating companies to set and meet corporate targets for women's representation and leadership in business."* Although supply chains are also mentioned within the mandate of the program, the focus is mostly around senior management and C-seats. Two representatives are allocated from each participating company (based on the testimonies, they are almost always white collar staff from corporate communications departments) and the programme can de defined as a corporate level learning and networking opportunity. On the positive side, the programme can support the standardization of gender equality performance analysis (businesses are encouraged to use the Women's Empowerment Principles Gender Gap Analysis Tools) and around 30% of participating companies are representing multinational corporations. The programmme offers special sources for MNCs to combine global, regional and local target setting efforts. However, given the lack of reach to the supply chains, the voluntary participation and self-evaluation without a concrete accountability mechanism or a follow-up on the set targets, the impact for these types of accelerator programmes limited. For example, the participating companies are under no obligation to publicly communicate their targets after the programme.[306] Furthermore, the accelerator programme is a 10 months long learning opportunity, yet a one-time engagement. Once the companies complete the full programme, they are encouraged to start implementing and to stay engaged. However, there is no tracking, follow-up or accountability mechanism set up by the Global Compact. Lastly, it is often implied that this programme is primarily for private sector actors, and capacity building workshops (there are three, titled "Defining Ambition & Setting Targets", "Strategies for Success" and "Measuring & Communicating Progress") or the multi-stakeholder action dialogues (which are organized in some countries and are high-level dialogues with business,

[305] UN Global Compact, "Target Gender Equality", available at: https://www.unglobalcompact.org/take-action/target-gender-equality?fireglass_rsn=true

[306] The following statement has been used in the website: "We recognize that each gender equality journey depends on the company's specific context. While some are ready to announce new targets upon the completion of the programme, for others it might take longer to formulate their next steps."

government, investors and other stakeholders) are among peers. They lack inclusivity in the sense that they are meeting among corporate level business people, for business people.

In addition to the gender-focused Target Gender Equality accelerator programme, a business and human rights accelerator programme has also been established and launched in 2023, which is introduced similarly as a *"a six-month learning journey for participating companies of the UN Global Compact*".[307] The call for applications by the Network member companies indicate that this accelerator programme is separately dedicated to *"action on human rights and labour rights"* and human rights due diligence process. The companies are offered to learn how to identify responsibilities in respecting human rights and labour rights as expressed in UDHR or the ILO Declaration on Fundamental Principles and Rights at work; and how to establish an ongoing human rights due diligence process with effective reporting and communication. Based on the publicly available curriculum, gender equality seems not to be not included in this programme.

Both for the Target Gender Equality and the business and human rights accelerator programmes, there have been no participation by the representatives from workers unions or feminist civil society. The experts included within these meetings tend to be middle-income academics from prestigious universities. Along with other accelerator programmes, Target Gender Equality, in a way, functions as an implementation and training mechanism for Women's Empowerment Principles, framework developed by and within the Global Compact, focusing exclusively on women's rights.

Women's Empowerment Principles (WEPs) are a set of guiding principles for businesses, on *"how to promote gender equality and women's empowerment in the workplace, marketplace and community."* The WEPs include the following 7 principles, self-defined as *"ways that businesses can adopt to ensure that women are respected and supported in their workplaces, across their value chains and in the communities where they operate".* These broad Principles are as following:

- Establish high-level corporate leadership for gender equality;
- Treat all women and men fairly at work — respect and support human rights and non-discrimination;

[307] UN Global Compact, "Business & Human Rights Accelerator", available at: https://www.unglobalcompact.org/take-action/business-and-human-rights

- Ensure the health, safety and well-being of all women and men workers;
- Promote education, training and professional development for women;
- Implement enterprise development, supply chain and marketing practices that empower women;
- Promote equality through community initiatives and advocacy;
- Measure and publicly report on progress to achieve gender equality.

Being a WEP signatory is completely voluntary, can easily be obtained by an online application and a published CEO Statement of Support. There is no selection process or a set of standards required to become a signatory. While it is promising to have a commitment framework focused specifically on gender equality, there is a serious risk of performative commitment. The implementation of WEPs, follow-up and regular reporting is remarkably low, worldwide. Private sector representative interviewees have primarily mentioned their signatory status in sustainability/business and human rights related events and public conversations. However, the WEPs signatory status should not be perceived as a bare minimum. The private sector representative interviewees often shared their confusion on how to move forward, and their demand for further guidance for UN Women or UN Global Compact. Very few among the signatory companies, are owned and/or by women. In addition, textiles sector, one of the most prevalent sectors prone to business and human rights related problems in which women's labour force is overrepresented, is underrepresented among the signatories. Business-led initiatives are helpful with regard to awareness raising and mainstreaming of gender-focused business and human rights practices, however, in their current state, they are unable to exceed performative commitments without actual internal systemic gender transformative change.

In preparation of the upcoming comprative chapter at the core of this dissertation, a brief overview of how the local Global Compact Networks, the Target Gender Equality Programmes and the Women's Empowerment Principles operate in Türkiye, Colombia and South Africa (based on publicly available information and their most recent meeting reports) is provided below.[308] In parallel with the findings shared above for the global programmes, such business-led initiatives in the three selected countries have similar potential with regard to awareness-raising and generalizing the terminology and approaches among the private

[308] UN Global Compact Türkiye, "Target Gender Equality (Hedef Toplumsal Cinsiyet Eşitliği) Programı Başladı", available at: https://www.globalcompactturkiye.org/un-global-compact-target-gender-equality-hedef-toplumsal-cinsiyet-esitligi-programi-basladi/

sector, yet remains carrying the risk of being rather performative commitments for their perceived prestige among peers.

Table 3.3.: Global Compact Local Networks, Target Gender Equality Programme and Women's Empowerment Principles Signatories in Türkiye, Colombia and South Africa.

Global Compact Local Networks	Türkiye	Colombia	South Africa
UN Global Compact Local Network, Governance and Scope of Work	Global Compact Türkiye was initially launched in 2002 and co-founded as a platform in 2013 by TÜSİAD (Turkish Industry and Business Association) and TİSK (Turkish Confederation of Employer Association). It has 350 members. The secretariat is run by TÜSİAD. The secretariat team, led by Secretary General and Deputy Secretary General are women leaders with similar executive leadership roles in TÜSİAD. It has 16 members in its executive board chaired by a man, with 6 woman members. The impact of TÜSİAD (common members of executive boards, secretariat leadership, aligned statements) is highly visible within the work culture and operations of the network. There is a Gender Equality Working Group, co-chaired by a man and a woman. Based on the most recently published Activity Report of the Türkiye Network (2020),[309] the working group almost exclusively focuses on increasing the number of women leaders at the executive level (exclusively white collar).	Global Compact Colombia was launched in 2009 and has 575 companies and non-business institutions as members. Within the website of the Local Network, there is a platform dedicated to Women's Empowerment Principles, and a Working Group for Business and Human Rights (with a rich database of resources, tools and reports), however no working group or agenda exclusively dedicated to gender. The Local Networks runs an active blog (interactively read and commented by corporate executives in Colombia) with short texts written by experts and corporate executives and gender is often addressed within these texts. Business case for gender equality, glass ceiling in corporate execuite level and how building inclusive decision making teams can benefit businesses are the most promoted topics of discussion. [310]	Global Compact South Africa was launched in 2007, and has 91 members. The local network is led by a woman, Executive Director Dr. Achieng Ojwang. Among 11 Board members, 8 are women. The network has a Gender Equality and Women Empowerme nt prgoramme. The website of the Local Network is not active, therefore detailed information about the activities is not available.
Target Gender Equality Programme	The programme has been held in Türkiye annually since 2021. In 2022, 25 companies committed,	In Colombia, the programme has been active since 2021, and 17 companies who are	Noting the lack of updated

[309] UN Global Compact Türkiye, "Global Compact Faaliyet Raporu 2020", (2021), available at: https://www.globalcompactturkiye.org/wp-content/uploads/2021/03/Global-Compact-Faaliyet-Raporu-2020.pdf

[310] Pacto Global Colombia, "Nuestra Voces", available at: https://www.pactoglobal-colombia.org/

	from a wide range of sectors. Through 2 years of the programme, the most represented ones have been banking and financial services, food and beverage industry, chemicals and textile. A majority of the commiting companies were Turkish conglomerates (multi-industry companies), with little representation from multinational companies and no representation from civil society.	members of the network have committed to Target Gender Equality in 2022. The most represented sector is extractive sector (specifcally, oil and gas). A majority of the companies were regionally operating conglomerates and multinationals, with very few representation from global multinational. On the positive side, there has been representation from a university and multiple NGOs, most remarkably, a labour-focused NGO titled Organización Americana Mujeres Lideres en Mantenimiento Automotriz (American Organization Women Leaders in Automotive Maintenance). Moreover, the accelerator programme was held in collaboration with the local networks in Bolivia and Peru, reinforcing regional cooperation.	information due to the inactive website, the accelerator programme has been active since 2021, with 11 companies committed this year. Financial services, mining and healthcare sectors are most represented, with no participation from civil society or academia.
Women's Empowerment Principles Signatories	Türkiye has the highest number of signatories to Women's Empowerment Principles after Brazil (with 660), with 540 signatory companies as of December 2023.	Colombia has 127 signatory companies as of December 2023.	South Africa has 128 signatory companies.

4. A TRIPLE, GENDER-FOCUSED COMPARISON OF BUSINESS AND HUMAN RIGHTS CONTEXTS IN TÜRKİYE, COLOMBIA, AND SOUTH AFRICA

4.1. Introduction

This chapter will focus on a three-way comparison of the business and human rights mechanisms in Türkiye, Colombia, and South Africa. This comparison does not necessarily focus on each host state separately but dives into cross-cutting patterns and combines the black-letter analysis of normative frameworks and practices with the semi-structured, in-depth interviews held with relevant stakeholders during research visits. Studying the business and human rights mechanisms of host states with feminist legal theory's perspective through the three selected countries will hopefully provide inputs for a less studied business and human rights area within the literature: how the mechanisms work in practice and how women's interactions are with them. Türkiye, Colombia, and South Africa are uniquely suitable for this comparative study for several factors, and three among them are significant: gender inequality, socio-economic inequality, and struggling constitutional democracies.

It can be helpful to take a look into gender inequality first. According to UNDP's 2021 gender inequality index (GII) (which is composed of three main dimensions: reproductive health, empowerment or political representation, and labor market), Türkiye ranks 65th (classified as very high human development), South Africa ranks 97th, and Colombia ranks 102nd (both classified as high human development).[311] However, according to the 2022 World Economic Forum's Global Gender Gap Index (which benchmarks national gender gaps on economY, policy, education, and health),[312] South Africa ranks 20th, Colombia ranks 75th and Türkiye ranks 124th across 146 countries. According to UNICEF's global database,[313] the percentage of child marriage is 14.7% in Türkiye, 3.6 % in South Africa, and 23.4% in Colombia. While

[311] UNDP, Gender Inequality Index (2021), available at https://hdr.undp.org/data-center/documentation-and-downloads

[312] WEF, the Global Gender Gap Report (2022), available at https://evaw-global-database.unwomen.org/en/countries/asia/turkiye#5

[313] This percentage represents women aged 20 to 24 years who were first married or in union before the age of 18. UNICEF Global Databases (2021), available at https://evaw-global-database.unwomen.org/en/countries/asia/turkiye#5

there are significant differences among women's access to political and socio-economic rights, one common prevalent problem is gender-based violence. According to the UN Women's Global Database on violence against women, 33.3% of women in Colombia experience physical and/or sexual violence by intimate partners at least once in their lifetime.[314] This rate is 38% in Türkiye,[315] and 21.3% in South Africa.[316] While there is no global database in which an exact contemporary comparison can be made for the rate of femicides; based on the Eliminating Violence Against Women Global Database of UN Women, in 2021, the rate of femicides per 100,000 women was reported as 0.8 in Colombia[317] and according to 2018 data, 0.4 per 100,000 women in Türkiye.[318] In 2017, the South African intimate partner violence rate was reported as 4.6 per 100,000, five times higher than the estimated global rate of 0.8 per 100,000.[319] Limited political representation, strong misogynistic elements in cultural practices, prevalent gender-based violence, and public discourse focused on gender stereotypes in which women are often associated with motherhood as their primary societal role, are common problems raised by feminist groups in all three countries.

The second commonizing concept among Türkiye, Colombia, and South Africa is socio-economic inequality in the background of fragile yet developing economies and constitutionally protected yet inadequately fulfilled socio-economic rights (including labour rights). Colombia, South Africa, and Türkiye are all described as a part of CIVETS (Colombia, Indonesia, Vietnam, Egypt, Türkiye, and South Africa) which is an investing acronym

[314] This percentage represents the proportion of ever-partnered women aged 15-49 years experiencing intimate partner physical and/or sexual violence at least once in their lifetime. Bott S, Guedes A, Ruiz-Celis AP, Mendoza JA, Intimate partner violence in the Americas: A systematic review and reanalysis of national prevalence estimates, Asociación Probienestar de la Familia Colombiana, Profamilia, 2016, Encuesta Nacional de Demografía y Salud 2015, Profamilia, Bogotá, Colombia.

[315] This percentage represents the proportion of ever-partnered women aged 15-59 years experiencing intimate partner physical and/or sexual violence at least once in their lifetime. Hacettepe University Institute of Population Studies, Ministry of Family and Social Policies, Research on Domestic Violence against Women in Türkiye (2015), Ankara, Türkiye.

[316] This percentage represents the proportion of ever-partnered women aged 18+ experiencing intimate partner physical and/or sexual violence at least once in their lifetime. National Department of Health (NDoH), Statistics South Africa (Stats SA), South African Medical Research Council (SAMRC), and ICF, South Africa Demographic and Health Survey 2016 (2019), Pretoria, South Africa, and Rockville, Maryland, USA.

[317] OIG CEPAL, Femicide or Feminicide (2021), available at https://oig.cepal.org/en/indicators/femicide-or-feminicide

[318] UNSDCF, Türkiye Draft Results Framework (2021-2025), available at: https://www.undp.org/sites/g/files/zskgke326/files/undp/library/corporate/Executive%20Board/2020/Second-regular-session/DPDCPTUR4_UNSDCF_Draft_Result_Matrix_26052020.pdf

[319] It should be noted that this significant statistic must be approached with caution due to differences in methodology and the fact that South African studies include women 14 years and older: The United Nations Office on Drugs and Crime, Global Study on Homicide 11 (2019).

describing emerging market economies with high potential and significant risks.[320] Their economies share fast growth, diversity, young populations, and fragility.

All three countries are in a slow yet growing financial recovery following the COVID-19 pandemic, with the OECD year-on-year real GDP growth projections for Türkiye being 3.6%, South Africa being 0.3%, and Colombia %1.5.[321] According to the IMF, in 2023, Türkiye's real GDP growth was 2.7%, with a serious 50.6% inflation rate on average consumer prices and an 11% unemployment rate.[322] South Africa's real GDP growth was 0.1%, with an inflation rate of 5.8% on average consumer prices and a significantly high 34.7% unemployment rate.[323] Colombia, on the other hand, had a real GDP growth of 1%, with an inflation rate of 10.9%, and an 11.3% unemployment rate.[324] For the Colombian economy, the pandemic caused one of the largest recessions in its national history, and the recovering economy can face elevated external financing risks, as it is dependent on large and complex financial conglomerates with increasing cross-border exposures.[325] South African economy seemed to recover strongly in 2021, after an unprecedented crisis with the pandemic, however, the recovery pace is unlikely to be sustained with a precarious political environment, low levels of projected future growth, high unemployment, and adverse debt dynamics.[326] Specifically, the record-breaking power cuts, electricity crisis, and volatile commodity prices have contributed to the country's weak growth performance.[327] South African society is infamous for its deep socio-economic gaps with the top 0.01 richest percent of the adult population (3,500 people) controlling almost the same percentage of wealth (14–15 percent) as the bottom 90 percent (31.8 million people)[328]. This inequality is deeply racialized and gendered with white-headed households earning 4.7 times more than black-headed

[320] Jonathan Russell, Geoghegan digests and delivers new acronym, (2010), available at https://www.telegraph.co.uk/finance/comment/citydiary/7886195/Geoghegan-digests-and-delivers-new-acronym.html

[321] OECD, A long unwinding road: OECD Economic Outlook(2023), available at: https://www.oecd.org/economic-outlook/june-2023/

[322] IMF, Republic of Türkiye and the IMF, available at: https://www.imf.org/en/Countries/TUR

[323] IMF, South Africa and the IMF, available at https://www.imf.org/en/Countries/ZAF

[324] IMF, Colombia and the IMF, available at https://www.imf.org/en/Countries/COL

[325] IMF, Colombia: Financial System Stability Assessment, (2022), available at: https://www.imf.org/en/Publications/CR/Issues/2022/04/04/Colombia-Financial-System-Stability-Assessment-516087

[326] IMF, South Africa: Financial Sector Assessment Program-Financial System Stability Assessment, (2022), available at https://www.imf.org/en/Publications/CR/Issues/2022/02/11/South-Africa-Financial-Sector-Assessment-Program-Financial-System-Stability-Assessment-513014

[327] "South Africa's Economy Loses Momentum Amid Record Power Cuts" (2023), available at https://www.imf.org/en/News/Articles/2023/06/15/cf-south-africas-economy-loses-momentum-amid-record-power-cuts

[328] Chatterjee & Léo Czajka & Amory Gethin,Estimating the Distribution of Household Wealth in South Africa (No. 2020/45), (2020).

households; and, with female-headed households being 10% more likely to be poor than male-headed households.[329] Türkiye, on the other hand, has aggravated pre-existing economic and financial vulnerabilities throughout its strategies to minimize the impact of COVID-19, which resulted in significantly high levels of inflation, increased dollarization, a rise of heavy foreign exchange sales leading to steep reserve declines from already-low levels, non-flexible macroeconomic policies heavily influenced by Erdoğan's leadership, constant changes in financial governance leadership and a middle-class crisis for the costs of housing and living specifically in metropolises.[330]

In the post-COVID context, all three states shared struggling economies with a dependency on foreign investment and the operations and employment opportunities of multinational corporations.[331] Some potentially problematic and high-risk sectors (in terms of their impact on gender equality in a business and human rights context), such as extractive businesses, the textile and garment sector, and agriculture, are positioned in a unique way in which they provide relatively cheap labour, raw materials, and fast manufacturing for multinational corporations, and they are the gateway to the inflow of foreign currency, potential investment and growth.[332] These sectors are crucial for fragile economies and employ a significant section of the population.

While all three states provide constitutional protection of social and economic rights, including labour rights, their fulfillment is inadequate and socio-economic disparities within society are an increasing trend, along with the feminization of poverty. It is estimated that, globally, 388 million women and girls lived in extreme poverty in 2022 (compared to 372 million men and boys).[333] There is no country-specific global database for comparing the feminization of poverty. However, as of 2020, in South Africa, 6.6% of employed women live below the international poverty line, compared to 6.1% of men.[334] In Colombia, 2.3% of employed women live below the poverty line compared to 2% of men.[335] In Türkiye, a minimum of 1.6%

[329] Ibid.
[330] IMF, Türkiye: 2021 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Türkiye, (2021), available at https://www.imf.org/en/Publications/CR/Issues/2021/06/11/Türkiye-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-50205
[331] IMF, G-20 Report On Strong, Sustainable, Balanced, and Inclusive Growth , (2022), available at https://www.imf.org/external/np/g20/pdf/2022/111322.pdf
[332] Angélica Guerra-Barón & Álvaro Méndez, A comparative study of foreign economic policies: the CIVETS countries, (2015)
[333] Worldbank, Understanding Poverty, available at https://www.worldbank.org/en/understanding-poverty
[334] UN Women Data Hub, Country Fact Sheet:South Africa, available at https://data.unwomen.org/country/south-africa
[335] UN Women Data Hub, Country Fact Sheet:Colombia, available at https://data.unwomen.org/country/colombia

gender poverty gap has been found, and higher levels of female poverty rates are statistically documented in all population groups except formal workers.[336]

National poverty and gender studies indicate that as the number of children and the size of the household increase, the poverty rate of women significantly increases compared to men's. On the other hand, higher education levels and formal employment reduce the poverty rate of women more than men's.[337] Typical implications of the feminization of poverty shared in empirical studies and interviews held for this dissertation include a conceived unbreakability of the cycles of poverty among generations, and marriage is seen as a potential alleviation of poverty, resulting in objectification of girls as prospects, and an increased tendency toward forced child marriages. This becomes more complex with the intersectional and deepened experiences of poverty of ethnic and racial minority women, the increase of deep poverty with an increased adoption of neoliberal policies in an already established patriarchal society, and the bigger impact of the lack of basic services on women who have to spend more time in households and who are responsible for nutrition and domestic work. This results in single mothers entering into cycles of borrowing and debt. The deeply fractured, ghettoized urban neighborhoods and socio-economically categorized professions, and the expectation towards poor women to abide by and accept a life of perpetual suffering, violence, social exclusion, and impoverishment reinforces a vicious cycle of feminization of poverty.[338]

The third concept with significant similarities regarding all three countries is the fragile, struggling condition of constitutional democracies, with problems concerning either extreme consolidation of power, political instability, illiberal democracies, corruption, or transitional justice with arrested development. These problems have their fair share of reflections on protecting human rights and access to justice. The engagement, proactiveness, and

[336] Gürdal Aslan, Gender poverty gap in Türkiye, 1 FORCE 85 (2020), available at: https://www.forcejournal.org/index.php/force/article/download/17/10/

[337] Gürdal Aslan, Gender poverty gap in Türkiye, 1 FORCE 85 (2020), available at: https://www.forcejournal.org/index.php/force/article/download/17/10/ ; Luis Jorge Garay Salamanca & Jorge Enrique Espitia Zamora & Pompeu Fabra, Women and youngsters, the most impacted by poverty in Colombia, Periodico UNAL, (2020), available at: https://periodico.unal.edu.co/articulos/women-and-youngsters-the-most-impacted-by-poverty-in-colombia/ ; Saranel Benjamin, The Feminization of Poverty in Post-Apartheid South Africa: A Story Told by the Women of Bayview, Chatsworth, 23 Journal of Developing Societies 175 (2007).

[338] Saranel Benjamin, The Feminization of Poverty in Post-Apartheid South Africa: A Story Told by the Women of Bayview, Chatsworth, 23 Journal of Developing Societies 175 (2007); Marcelo Medeiros & Joana Costa, Is there a feminization of poverty in Latin America?, 36 World Development 115, (2008) ; Ummuhan Gökovalı & Aysun Danışman, Feminization of poverty: Does it really exist in Türkiye?, 42 New Perspect. Turk.179 (2010); Ummuhan Gökovalı, Everyone's own poverty: Gendering poverty alleviation policies in Türkiye, 41 Women's Studies International Forum 65 (2013); Sarah Bradshaw & Sylvia Chant & Brian Linneker, Challenges and changes in gendered poverty: The feminization, de-feminization, and re-feminization of poverty in Latin America, 25 Fem. Econ. 119, (2019).

progressiveness of human rights commissions and national human rights institutes vary vastly in each State, with similarities and differences in different areas. For example, while the "heroic" Constitutional Courts of South Africa and Colombia deliver interpretations and decisions indicating judicial activism, their Turkish counterpart is rather timid. On the other hand, Türkiye shares the alarming record of violence and intimidation towards human rights defenders, ecofeminist activists, and unionists as with the former two.

The three states have unique backgrounds concerning democracy and social justice, such as the legacy of apartheid and concerns around the corruption of ANC in South Africa, the ongoing transitional justice process following the Peace Agreement with FARC in Colombia and the long-standing democratic backslide in Türkiye under the AKP government and Erdoğan's presidency. These unique socio-political backgrounds share a common element. The impoverishment, socio-political struggles, and fragile economies are causing the systematic invisibilization of women's experiences and perspectives, not only by the state but also by the private sector and multinational corporations. More importantly, the diverse and resilient women's rights movements have started to mobilize against businesses as well. While each state is on different levels of progress concerning the gender responsiveness of the available business and human rights mechanisms, a critical feminist approach to these mechanisms is timely and much needed.

The following chapter will focus on the gender-responsiveness of business and human mechanisms and will visibilize and expose the unique, deeply gendered problems and women's experiences in relation to the business activities. The chapter is divided into thematic titles starting with a focus on the potential of regional human rights mechanisms and the domestic legal arena. This will be followed by three gender-focused BHR issues, each examined through case studies: first, the extraterritorial effect of gender-focused corporate violations in armed conflicts (with a focus on the recent LaFarge case and the Colombian context); second, the accountability of large-scale, national corporations (focusing on the Dardanel workers in Türkiye) and lastly, access to basic services offered by state-owned entities (focusing on the ESKOM electricity crisis in South Africa). The next section will focus on the socio-political context in Türkiye, Colombia, and South Africa with the most prevalent gender issues based on the insights of the feminist movement. Then, the cross-cutting aspects of gendered business and human rights contexts will be discussed under common themes: the chronic under-representation of women in public life with statistical data comparison; the gender dimensions of seemingly gender-neutral sectors and issues, and everyday experiences

of gender discrimination; the impact of COVID-19; the problematic corporate approaches to gender equality; the strategic lawsuits against public participation (SLAPPs), harassment and killings of women human rights defenders; the gender blindness of preventive mechanisms; the patriarchal structure of labour unions; women's portrayal and narratives in BHR context; race and class-focused intersectional experiences with the cases of migrant women and domestic workers; the question of access to justice and lastly, the impact of culture.

4.2. The Role (and Silent Potential) of Regional Human Rights Mechanisms

A common pattern in this triple comparison is the complicated relationships of the respective national judiciaries of Türkiye, Colombia, and South Africa with the relevant regional human rights mechanisms that they are a part of. In this respect, we can raise the question: Can the regional human rights mechanisms function as a useful and effective tool to build gender-responsive business and human rights mechanisms in these three countries?

An overall analysis indicates that bringing corporate abuses of human rights before regional human rights mechanisms, - the new and experimental legal path taken by some- remains almost completely gender-blind. There is almost no mention of sexual harassment, gender-based violence, gender-based discrimination, or the gender dimensions of corporate violations. In other words, there are no exclusively gender-focused corporate cases before the regional human rights mechanisms, as of date, except for a few cases of gender-based discrimination or sexual harassment in the workplace. Having said this, the question that needs to be asked is whether regional human rights mechanisms can be of particular use for a more gender-responsive business and human rights domain and whether the human rights obligations of the home state of the parent/controlling company can protect the women victims (women workers or women members of affected communities) against corporate abuse in third countries. Türkiye, Colombia, and South Africa are all member states of relevant regional human rights mechanisms, which have developed significant gender and extraterritoriality jurisprudence, as well as jurisprudence on the state obligation to protect against third-party violations of rights.

4.2.1. European Human Rights Mechanisms

It might be helpful first to discuss the State obligation to prevent and redress corporate-related human rights violations under the European Convention on Human Rights (ECHR), most specifically about the Court's jurisprudence on gender discrimination and work-related

rights.[339] The European Human Rights Mechanism, specifically the Council of Europe as a leading institution, has a complicated relationship with Türkiye, yet the ECHR remains a foundational source for the canon of all human rights-related normative frameworks and the jurisprudence of the European Court of Human Rights (ECtHR) is still significantly influential in Türkiye. There is no direct liability of multinational corporations in any of the regional human rights mechanisms. Instead, they primarily focus on the state's duty to protect (including against third parties). The evolving jurisprudence of the ECtHR should be looked at with a gendered lens, in relevance to two areas: the application of international human rights obligations to non-state actors (the public-private divide); and the territoriality scope of international human rights treaties (the territoriality-extraterritoriality divide). The case law of the ECtHR on the public-private divide is worth discussing in terms of two categories of State obligations. The first category concerns negative obligations to respect human rights in relation to corporations acting as state agents, and the second category concerns positive obligations to protect human rights in relation to corporations acting as third parties. The extraterritoriality of State obligations, on the other hand, can be discussed in terms of direct extraterritorial jurisdiction; acts directly performed by Member States outside their territories; and the extraterritorial effects. The extraterritorial effects, produced outside the State's territories, are often the case for multinational corporations' business activities in host states.

One of the biggest prospects held by regional human rights mechanisms is the potential of extraterritorial human rights protection over the supply chains or business activities operating in host states. A cross-cutting pattern that was raised in interviews with strategic litigators and human rights lawyers was the impossibility of overcoming the jurisdictional barriers. Accordingly, it is a common strategy of multinational corporations to establish subsidiaries and other affiliated corporate structures to benefit from tax, accounting, legal, political, and administrative advantages.[340] A parent company can *"reap the gains from expanding abroad while limiting its exposure to legal and economic risk*"[341] while continuing to be a part of a conglomerate group. The existence of the subsidiaries as a separate legal entity, and the

[339] Daniel Augenstein & Lukasz Dziedzic, State Obligations to Regulate and Adjudicate Corporate Activities under the European Convention on Human Rights, (2017);
For a summarized fact sheet on Gender Equality cases, See the Strasbourg Court's Gender Equality fact sheet: https://www.echr.coe.int/documents/fs_gender_equality_eng.pdf; and Work-related rights fact sheet: https://www.echr.coe.int/Documents/FS_Work_ENG.pdf

[340] Phillip I Blumberg, The law of corporate groups: Procedural problems in the law of parent and subsidiary corporations, Little Brown, (1983).

[341] Jennifer A. Schwartz,Piercing the Corporate Veil of an Alien Parent for Jurisdictional Purposes: A Proposal for a Standard that Comports with Due Process, 96 California Law Review 731, (2008).

intricate, fragmented corporate structures, in addition to the questions with regards to territorial jurisdiction, make the allocation of accountability, authority, and control quite challenging.[342] John Ruggie noted the inherent difficulty of holding multinationals liable to be their *"fundamental disjuncture between [their] economic reality and legal form"*.[343] This disjuncture forces victims, and in our case, women who often lack sufficient resources, to *"navigate their way through a complex web of legal entities, and quite literally 'pierce the corporate veil' if they are to stand any chance of having a claim successfully filed in court.*"[344] Territorial jurisdiction remains to be seen as a barrier, a "brick wall" and the biggest "corporate veil" impossible to pierce, as noted by interviewees. A legal representative from South Africa named it *"a card corporations like to raise"*[345]. During one in-depth interview with a Turkish tier one supplier to European clothing brands, they shared how whenever there is a documented violation or a risk of liability, clothing brands *"like to throw each other the ball (among the headquarters, the domestic subsidiaries and suppliers/contractors) as if they are playing volleyball,*" and at the end, none of the stakeholders take the responsibility[346].

The ECtHR's extraterritoriality jurisprudence has evolved[347] , however, the territorial notion of jurisdiction remains to be the norm, and the extraterritorial application of the European Convention (with regard to States' obligation to secure human rights to everyone within their jurisdiction as per Article 1 of the Convention, encompassing acts performed outside the State's territory and acts producing effects outside the State's territory) is an exception[348]. It should be noted, additionally, that the ECtHR is often criticized from within too- for the lack of a coherent extraterritorial application of the Convention with a strong sense of direction. Maltese Judge Bonello described this as the Court's *"inability or unwillingness to establish a coherent and axiomatic regime, grounded in essential basics and even-handedly applicable across the widest spectrum of jurisdictional controversies.*"[349]

---

[342] Ibid.
[343] John Ruggie, Multinationals as global institution: Power, authority and Relative autonomy, 12 Regulation & Governance 317, (2008).
[344] Oran Magee, Piercing the Corporate Veil? The Future of Transnational Civil Claims for Business-Related Human Rights Abuses under the Upcoming European Union Due Diligence Directive, (2021), available at https://repository.gchumanrights.org/server/api/core/bitstreams/7398d973-449c-4ab7-93ee-2efeb9587984/content
[345] Oral interview with a human rights lawyer from South Africa (February 2023).
[346] Oral interview with a textile supplier representative from Türkiye (December 2022).
[347] Al-Skeini and Others v. the United Kingdom 55721/07 Eur. Ct. H.R. 110-114.(2011); Issa v. Turkey, 31821/96, Eur. Ct. H.R., (2004); Jaloud v. Netherlands, 47708/08, Eur. Ct. H.R., (2014).
[348] European Court of Human Rights, Extra-territorial jurisdiction of States Parties to the European Convention on Human Rights, (2018), available at https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf
[349] Conall Mallory, A second coming of extraterritorial jurisdiction at the European Court of Human Rights?, 1 QIL 31, (2021) ; Al-Skeini and Others v. the United Kingdom 55721/07 Eur. Ct. H.R.,(2011), paras 110-114.

The Court's current extraterritoriality jurisprudence is not useful for the business and human rights domain, including its gender dimensions. For the acts performed outside the State's territory, the Court requires physical presence and effective control over persons[350] or areas,[351] with for example military presence on the territory of another State.[352] The jurisdictional link is established between State agents operating abroad and the human rights violations happening extraterritorially. For business and human rights cases in host States such as Türkiye, Colombia, and South Africa, the extraterritorial human rights violations are typically committed by a corporate (non-state) actor, which belongs to a parent company that has its headquarters in a Member State's territory, and therefore is under the member State's de facto and de jure control. If the corporate conduct can be attributed directly to a State, (for example, if the corporation is state-owned and/or acts as a state agent) then the human rights abuse victims could be considered to be under the State's human rights jurisdiction. While there is no precedent of such a case, particularly focused on gender-based violence or sex discrimination within the jurisprudence of the ECtHR, there is a promising potential with regard to how the ECtHR approaches positive extraterritorial human rights obligations in situations of military intervention or occupation. This could provide a basis for potentially addressing extraterritorial corporate human rights abuses in conflict-affected areas. The UNGPs, -while criticized by this dissertation previously- also emphasize that corporations operating in conflict-affected areas should treat the risk of complicity in gross human rights violations as a legal compliance issue; and that States should provide adequate assistance to business enterprises operating in conflict-affected areas *"to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence."*[353] The European Court of Human Rights does not yet have a precedent with a focus on extraterritorial corporate human rights abuses with a gender focus. While narrowing gender focus exclusively to conflict-affected areas is inadequate, it is concerning that some recent business and human rights cases with regard to corporate conduct in such conflict-affected areas have failed to integrate gender perspectives at all.

While extraterritorial effects cases appear more promising in this regard the ECtHR has not (yet) endorsed the view that a State's exercise of authority and control over a corporation

[350] Öcalan v. Turkey, 46221/99, Eur. Ct. H.R., (2005).
[351] Issa v. Turkey, 31821/96, Eur. Ct. H.R., (2004); Ilascu & Others v. Moldova &Russia,48787/99, Eur. Ct. H.R., (2004).
[352] Loizidou v. Turkey, 15318/89, Eur. Ct. H.R., (1995); Chiragov. and Others v. Armenia, 13216/05, Eur. Ct. H.R., (2015).
[353] United Nations Guiding Principles on Business and Human Rights (2011), Principle 7.

domiciled within its territory is sufficient to establish a jurisdictional link with a victim located outside its borders. The Court's approach to extraterritorial jurisdiction in the context of access to justice, finally, suggests that if a victim of corporate-related human rights violations from outside the State's territory brings civil proceedings in the domestic courts of that State, it comes under the latter's human rights jurisdiction within the meaning of Article 1 ECHR, and while this does not enshrine a right to the victims to have their case decided by a civil court of a State part, the decisions of the domestic courts in such matters must be in conformity with the Convention, with specific consideration put on the right to a fair trial (Article 6). Once again, the jurisprudence of the ECtHR has yet failed to incorporate a gendered approach into their corporate-related violation cases with an extraterritorial quality.[354]

Having said this, substantively, the ECtHR jurisprudence has made it clear that States are under an obligation to regulate and control corporate activities in a way that strikes a fair balance between the rights of the individual affected by environmental pollution and the interests of the community as a whole. In cases such as *Dubetska*[355]*, Lopez Ostra*[356]*, and Tatar*[357]*,* which are about incidents of pollution caused by privately owned or state-owned corporations and waste treatment plants, the Court has assessed whether *"the State could reasonably be expected to act so as to prevent or put an end to the alleged infringement of the applicant's rights",* or whether *"the national authorities took the necessary steps to ensure the effective protection of the applicants' rights."*[358] The majority of these corporate-related violations with regard to large-scale pollution, have been brought before the court by male applicants and there has been no mention of the gendered impact of such violations.

A highly important case in the Court's jurisprudence was the Öneryıldız case, ruled against Türkiye, concerning an explosion in a waste-collection site that killed numerous of the applicant's relatives. The Court, in its ruling, has put forward what it sees as 'reasonable' and 'necessary' measures in the context of Article 2 and Article 8 ECHR:

[354] Daniel Augenstein and Lukasz Dziedzic, State Obligations to Regulate and Adjudicate Corporate Activities under the European Convention on Human Rights, EUI Department of Law Research Paper, 2017(15), (2017); Prince Hans-Adam II of Liechtenstein v. Germany, 42527/98, Eur. Ct. H.R. ,110-114.(2001); Gauthier v. Belgium (Admissibility Decision of 16 October 1996).
[355] Dubetska and Others v. Ukraine,30499/03, Eur. Ct. H.R., (2011).
[356] Lopez Ostra v. Spain,16798/90, Eur. Ct. H.R., (1994).
[357] Tatar v. Romania, 67021/01, Eur. Ct. H.R., (2009).
[358] Fadeyeva v. Russia,55723/00, Eur. Ct. H.R., 89(2005); Lopez Ostra v. Spain,16798/90, Eur. Ct. H.R., 55, (1994) ; Guerra & Others v. Italy, 116/1996/735/932,Eur. Ct. H.R, 58, (1998);Dubetska and Others v. Ukraine,30499/03, Eur. Ct. H.R; E, (2011); Tatar v. Romania,67021/01, Eur. Ct. H.R, (2009).

"The positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction ... must be construed as applying in the context of any activity, whether public or not, in which the right to life may be at stake, and a fortiori in the case of industrial activities, which by their very nature are dangerous, such as the operation of waste-collection sites. ... The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security, and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks."[359]

In the Öneryıldız case, as well as similar *Budaveya*[360] and *Kolyadenko*[361] cases, the Court also stressed the State obligation to provide essential information to the public about risks involved in the corporate activity, as a crucial prospective and precautionary measure.[362]

The groundbreaking *Opuz v. Turkey*[363] case, although not necessarily related to a business or labour context, has set the standard within the gender equality jurisprudence of the European Court of Human Rights with regard to the states' positive obligations to take proactive meansures to prevent and address violations by third parties, most importantly, in cases of violence against women, defined as a form of gender-based discrimination. The Strasbourg Court delivered several judgments focusing on sex discrimination in the workplace, with an increasingly progressive approach to gender stereotypes. In *Emel Boyraz v. Turkey,*[364] concerning the dismissal of a woman security guard from a State-run electricity company, the fact that security officers had to work on night shifts and in rural areas and had to use firearms and physical force under certain conditions had not in itself justified any difference in

[359]Öneryildiz v. Türkiye,48939/99,Eur. Ct. H.R., paras 71, 89, 90, (2004); applied by Budayeva and Others v. Russia, 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, Eur. Ct. H.R.,(2008) and Kolyadenko and Others v. Russia, 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05, Eur. Ct. H.R, (2012).
[360] Budayeva and Others v. Russia, 15339/02, 21166/02, 20058/02, 11673/02, 15343/02, Eur. Ct. H.R., (2008).
[361] Kolyadenko and Others v. Russia, 17423/05, 20534/05, 20678/05, 23263/05, 24283/05, 35673/05, Eur. Ct. H.R, (2012).
[362] Öneryildiz v. Türkiye, 48939/99, Eur. Ct. H.R., (2004), para 90.
[363] Opuz v. Turkey, 33401/02, Eur. Ct. H.R., (2009), para 200.
[364] Emel Boyraz v. Turkey, 61960/08, Eur. Ct. H.R., (2014).

treatment between men and women, and the Court ruled that the applicant's dismissal on the ground of gender constituted a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right for respect to private and family life) of the Convention.[365]

In *Gruba and Others v. Russia,*[366] concerning the difference in entitlement to parental leave for male and female police officers, the Court noted that the difference in treatment between policemen and policewomen regarding entitlement to parental leave could not be reasonably and objectively justified. There was no reasonable relationship of proportionality between the legitimate aim of maintaining the operational effectiveness of the police and the contested difference in treatment. The Court emphasized that *"gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners, cannot be considered to amount to sufficient justification for a difference in treatment between men and women as regards entitlement to parental leave."*[367] It reiterated its significant precedent of *Konstantin Markin v. Russia*[368] and refused the traditional, gendered divide of care responsibilities, by ruling that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life). In this respect, the Court implicitly promoted gender equality, by indicating that only very weighty reasons may justify a difference in treatment on grounds of sex.[369] With the reiteration in *Gruba,*[370] it is possible to say that the Court no longer supports its outdated vision of gender roles in child-raising, in its *Petrovic*[371] decision, where it ruled that women and men are in a comparable position with regard to the care of their children but a preferential treatment of women could still be objectively and reasonably justified.[372] Despite the promotion of a more active role of fathers in the upbringing of their children and a more equal distribution of caring responsibilities, the Court continued to unintentionally use certain stereotypes in its language, emphasizing "motherhood" benefits in relevant domestic frameworks, rather than parenthood.[373]

[365] Emel Boyraz v. Turkey, 61960/08, Eur. Ct. H.R., (2014).
[366] Gruba and Others v. Russia,66180/09 and 3 others, Eur. Ct. H.R., (2021).
[367] Gruba and Others v. Russia,66180/09 and 3 others, Eur. Ct. H.R., (2021).
[368] Konstantin Markin v. Russia, 30078/06, Eur. Ct. H.R., (2012).
[369] Burghartz v. Switzerland, 16213/90, Eur. Ct. H.R., (1994).
[370] Gruba and Others v. Russia,66180/09 and 3 others, Eur. Ct. H.R., (2021).
[371] Petrovic v. Austria, 156/1996/775/976, Eur. Ct. H.R., (1998).
[372] Petrovic v. Austria, 156/1996/775/976, Eur. Ct. H.R., 26-29, (1998).
[373] Alicia Hendriks, Gruba and Others v. Russia: the ECTHR repeats its Konstantin Markin v. Russia jurisprudence but (again) misses a child-oriented perspective, Strasbourg Observers, (2021).

Another important case is *Jurčić v. Croatia,*[374] concerning the denial to the applicant of employment health-insurance coverage during pregnancy, where the Court found a violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 1 (protection of property) of Protocol No. 1 to the Convention. It argued that the Croatian authorities had failed to demonstrate any fraud, and had implied that pregnant women should not seek work, thus discriminating against the applicant. This was because the Croatian authorities had claimed that her employment contract, which had been signed shortly before she had learned about her pregnancy, had been fictitious, and that she should not have started work while undergoing IVF treatment. Significantly, the Court cautioned that gender stereotyping by the authorities, as observed in the applicant's case, presented a serious obstacle to the achievement of substantive gender equality, one of the major goals of the Member States of the Council of Europe. It stressed that a refusal to employ or recognize an employment-related benefit to a pregnant woman amounts to direct discrimination on grounds of sex.

While the Strasbourg Court should be applauded for its growingly progressive stance and emphasis on sexist stereotypes in work life, the jurisprudence is inevitably limited to individual, clear cases of gender-based discrimination, exclusively for the residents and citizens of Member States with limited impact on systematic gender-based discrimination in the supply chains of multinational corporations. Moreover, the pro-gender equality stance in individual cases with clear claims regarding sex discrimination is not visible in other cases of corporate-related human rights violations, such as occupational accidents or pollution incidents. It is not possible to say that the gender dimensions of other violations are taken into consideration. This is, undoubtedly, due to the separate realm of socio-economic and labour rights under the European Social Charter and the narrow spaces left for gender discussions, only connected to discrimination. However, gender mainstreaming is possible in other cases with State obligation in corporate-related violations, which is not practiced fully by the Court. In addition, while the gender-based discrimination cases ruled against Türkiye have been implemented through the payment of compensation, the progressive stance on gender stereotypes in work life has not impacted the Turkish judiciary, with very few references made to the jurisprudence of the Court in domestic cases. This could be due to three possible reasons: the gender bias prevalent in the Turkish judiciary; handling workplace discrimination cases as labour cases with a gender-blind approach and referring to other sources such as ILO Conventions instead of the jurisprudence of the ECtHR; and lastly, the tense and deteriorating

[374] Jurčić v. Croatia, 54711/15, Eur. Ct. H.R., (2021)

relationship between Türkiye and the Council of Europe which went downhill following the non-implementation of *Kavala* and *Demirtaş* rulings.[375]

4.2.2. Inter-American Human Rights Mechanisms

The Inter-American human rights system has been addressing business and human rights, through the Inter-American Commission on Human Rights (IACHR), the Inter-American Court of Human Rights (IACtHR), and the Commission's Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights[376] (REDESCA, by its initials in Spanish), following the increase of foreign investment, development projects and operations of extractive businesses, with a need for clarification and guidance on indigenous peoples' rights, privatization, dangerous extractivist business activities and armed conflicts. The regional system typically interprets the scope of the state's duty to protect when it comes to corporate violations. It is also noteworthy that the initiative for the creation of a binding business and human rights instrument through the Statement on behalf of a Group of Countries at the 24th Sessions of the Human Rights Council[377] was led by South Africa and Ecuador, and the political initiative at the UN has been supported by Cuba, Nicaragua, Bolivia, Venezuela, and Peru from the region, and recognized by the REDESCA. The case law of the Inter-American system is legally binding in Colombia, alongside other States, however, victims of corporate violations of human rights accuse governments of a lack of political will to implement the decisions.

The Inter-American human rights system has a well-established jurisprudence on women's rights enshrined within Inter-American human rights documents. While women's rights were addressed in the American Declaration on the Rights and Duties of Man (American Declaration), and in the American Convention on Human Rights (ACHR), the most significant integration of women's rights within the Inter-American Human Rights corpus is through the Belém do Pará Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Para Convention).[378] The Belém do Pará Convention obliges State Parties to prevent, punish, and eradicate violence against women and to adopt appropriate

[375] Başak Çali, Autocratic Strategies and the European Court of Human Rights, 2 European Competititon Law Review 11, (2021).
[376] REDESCA, Business and Human Rights: Inter-American Standards (2020), available at: https://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf
[377] https://media.business-humanrights.org/media/documents/files/media/documents/statement-unhrc-legally-binding.pdf
[378] Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, (Belém do Pará Convention), (1994).

administrative measures where necessary, with special account of the vulnerabilities due to a wide range of reasons, including race, ethnic background, migrant status, displacement, pregnancy, disability, age, socio-economic status, deprivation of freedom or being affected by armed conflict.[379]

More importantly, the Convention defines violence against women, obliges states to protect women's right to be free from violence in both the public and private spheres, and is the first regional human rights document to explicitly include sexual harassment at the workplace within its definition of violence against women. In addition to the Court and the Commission's ability to process individual complaints regarding violations of the treaty, a Rapporteurship on the rights of women, assisting the Commission with thematic and country-focused visits, reports, and processing petitions, was established in 1994. The Commission and the Court have addressed several fundamental women's rights in their well-established gender jurisprudence, with a particular focus on violence against women, discrimination, sexual and reproductive health, and rights, as well as political participation, education, work, and armed conflict.[380] For example, the *Raquel Martín de Mejía v. Peru* case was the first international case, explicitly qualifying rape as a form of torture under international law.[381]

In parallel with the Commission, the Court provided definitions of rape and sexual violence, ruling them as violations of human dignity and the right to humane treatment and private life in many decisions, [382] with further detailing of the state's duty to act with due diligence to prevent violence against women,[383] the need to adopt a gender perspective to ensure victims' full access to justice free from stereotypes,[384] and the need to prevent the revictimization of victims during investigation.[385]

The Commission reiterated the Belém do Para Convention with its decisions on how States should prevent the adoption of legislation directly or indirectly discriminating against women, for example, by conferring the representation power over the marital union exclusively to the

[379] Ibid.
[380] Bernard Duhaime, Women's Rights in Recent Inter-American Human Rights Jurisprudence, In Proceedings of the ASIL Annual Meeting, 111, Cambridge University Press, (2017).
[381] Raquel Martín de Mejía v. Peru, Inter-Am. Cm. H.R., Report No. 5/96, (1996).
[382]Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R., InterAm. Ct. H.R., C/160, (2006); González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009); Fernández Ortega v. Mexico, Inter-Am Ct H.R., C/215, (2009)
[383] González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009).
[384] González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009); Velasquez Pais v. Guatemala, Inter-Am. Ct. H.R., C/307, (2015)
[385] Fernández Ortega v. Mexico, Inter-Am Ct H.R., C/215, (2009).

husband.[386] Moreover, the Commission and the Court both recognized the additional vulnerabilities caused by intersectional discrimination based on race, ethnic background, age, or status as a human rights defender.[387] The Commission also reaffirmed in its reports the obligation of the state to adopt, if necessary, affirmative measures in favour of women in order to achieve substantive equality of opportunity.[388]

The Inter-American human rights system has a well-established jurisprudence with regard to cases of gender-based violence (GBV), proper investigation and prosecution of cases of GBV, with the Commission issuing several precautionary measures and recommendations for states (based on CEDAW, the ACHR and the Convention of Belém do Pará) to provide sensitive and integral access to medical care for victims of sexual violence, implementation of legislative and administrative measures, and training of officials to deal with cases of sexual violence and assault as first responders, and ensuring full participation of grassroots women's groups in the planning and implementation of policies designed to combat and prevent sexual violence.[389] One of the most significant cases is the Inter-American Court's 2009 judgment in *González et al. ("Cotton Field") v. Mexico*[390] about three young victims of gender-based violence in Ciudad Juárez, Mexico, including a detailed analysis by the Court on the gender-specific causes and the systematic structures and deficiencies in the police, judiciary, legislation and public policy which perpetuated the sexual violence causing the death of the victims and the prevalence of it in Ciudad Juárez. The structural inequality and pervasive gender-based violence, and the need for reparations to be transformative and to address systemic and structural problems are pointed out clearly in the judgment:

"...[B]earing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State [...], the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification. In

[386] María Eugenia Morales de Sierra v. Guatemala, Inter-Am. Cm. H.R., 4/01, (2011), para. 44; Cornell Law School Legal Information Institute, Women and Justice: Court: Constitutional Court of Colombia, available at: https://www.law.cornell.edu/women-and-justice/court/constitutional_court_of_colombia
[387] Yarce v. Colombia, Inter-Am. Ct. H.R., C/325, (2016), para. 193; Jessica Lenahan (Gonzalez) et al. v. United States, Inter-Am. Cm. H.R., Report No. 80/11 (2011) para. 113; Missing and Murdered Indigenous Women in British Columbia, Canada, Inter-Am. Cm. H.R., Doc. No. 30/14, (2014).
[388] IACHR, Annual Report 1999, OEA/Ser.L/V/II.106, (1999)
[389] Some of the most significant Commission decisions are: Zoilamérica Narváez Murillo v. Nicaragua, Inter-Am. Cm. H.R., Report No. 118/01, (2009); Maria da Penha v. Brazil, Inter-Am. Cm. H.R., Report No. 54/01, (2000); Raquel Martín de Mejía v. Peru, Inter-Am. Cm. H.R., Report No. 5/96, (1996).
[390]González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009).

this regard, re-establishment of the same structural context of violence and discrimination is not acceptable.."[391]

Moreover, the judgment lists parameters on how State policies can constitute reparations with a gender perspective, and that they should:

" (i) question and, by means of special measures, are able to modify, the status quo that causes and maintains violence against women and gender-based murders;
(ii) have clearly led to progress in overcoming the unjustified legal, political, social, formal and factual inequalities that cause, promote or reproduce the factors of gender-based discrimination, and
(iii) raise the awareness of public officials and society on the impact of the issue of discrimination against women in the public and private spheres."[392]

Unfortunately, the gender responsiveness of this judgment, which is welcomed and celebrated as a transformative progress in the region by both the academia and the OHCHR,[393] did not reflect on the business and human rights cases. The Court's ability to handle structural inequality with comprehensive analysis is kept limited to cases directly concerning sexual violence and has not been integrated into BHR cases concerning indigenous land rights. This is a missed opportunity considering the potential of Inter American system with its unique, creative approach to reparations, through its specific emphasis on collective healing and symbolic reparations, and concepts such as "the life plan."

The "life plan" or "proyecto de vida" is an innovative approach to the understanding of reparations that the Inter-American Court developed in its *Loayza Tamayo v. Peru*[394] decision. "Proyecto de vida" can be defined as the project of life, meaning the lost opportunities, enjoyment of life, future plans, and damages independent of lost future earnings, or options and reasonable expectations of a victim to reach their full potential, as an important factor to be taken into consideration for reparations.[395]

[391] González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009) para 450.
[392] González et al. ("Cotton Field") v. Mexico, Inter-Am. Ct. H.R., C/205, (2009) para 495.
[393] Katrin Tiroch, Violence against women by private actors: The Inter-American Court's judgment in the case of Gonzalez et al.("Cotton Field") v. Mexico, Max Planck Yearbook of United Nations Law Online 14(1), (2010).
[394] Loayza Tamayo v. Peru, Inter-Am. Ct. H.R., C/33, (1997).
[395] Loayza Tamayo v. Peru, Inter-Am. Ct. H.R., C/33, (1997).

The Loayza Tamayo case, although it is mostly about claims of torture and sexual violence in prison, is an important case for gender dimensions of possible future business and human rights cases for a number of reasons. The case concerns María Elena Loayza-Tamayo, who was detained by the National Counter-Terrorism Bureau of Peru, severely tortured and raped in prison to force her to confess her membership to the Peruvian Communist Party, and held in solitary confinement after being found guilty for treason. She filed a complaint with the Inter-American Commission of Human Rights, which submitted the case to the Inter-American Court. The Court held that Peru violated several Articles of the American Convention on Human Rights, including Articles 5, 7, and 8 (right to humane treatment, personal liberty, and the right to a fair trial). While developing the notion of "project of life" and accepting the applicant had suffered harm to her project of life, or *"the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a person's prospects for self-development,*"[396] the Court failed to develop a methodology to calculate such damages and could not translate this injury into financial terms and abstained from awarding compensation for such loss.[397] The Inter-American Court does not address the project of life anymore in its current decisions,[398] which is a lost opportunity. However, a collectivized understanding of the "project of life" in close connection with the right to develop and the right to live in a healthy environment has the potential to address the complicated and long-term impact of exploitative corporate activities on local communities, especially local and indigenous women.

In addition to the unfulfilled potential of the project of life, the understanding of justice in Inter-American human rights mechanisms carries an aim to heal victims of violence and to reconcile opposing groups, which highly resonates with the Colombian transitional justice following the 2016 Peace Accord. The inclusion of therapeutic aspects into the understanding of justice acknowledges the emotional and psychological impact of grave human rights violations on the victims, their families, and broader society, most specifically, the traumatic impact of political violence, enforced disappearances, and systematic cases of sexual violence in armed conflict. The symbolic reparations include recommending the States to create monuments dedicated to honoring the memory of the victims,[399] or that the states should publicly acknowledge their responsibility for the human rights violations by providing a public

[396]Gina Donoso, Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach, Revista Instituto Interamericano De Derechos Humanos 49(1), (2009).
[397] Ibid.
[398] Ibid.
[399] Kawas Fernández Sisters v. Honduras, Inter-Am Ct. H.R., C/196, (2009)

apology to the victims' families and the society.[400] Well-processed reparations which allow the victims' active involvement and space to channel their frustration, aggression and grievance through language and symbolic act, and the use of interdisciplinary work (psychology and sociology, i.e.) can lead the way for collective healing and possible transformation of exploitative or abusive systems. Collective healing and positive transformation hold potential not only in cases of political violence and inner armed conflict but also in complicated relationships between local communities (specifically rural and indigenous women) and operating businesses. A comprehensive approach to reparations which is not limited to material (often undelivered) reparations is in line with a feminist understanding of remedies, for acknowledging the collective experiences of women. There have been critiques of such healing and reconciling justice approaches, arguing that such an approach is non-neutral and *"detrimental and risky to the core mission of establishing truth and justice."*[401] Some critics of the Truth and Reconciliation Commission in South Africa (TRC), for instance, have sarcastically called the Commission the "Kleenex Commission." However, the inclusion of symbolic reparations, and a deeper focus on healing, reconciling and socializing and empowering victims, is an important, complementary step to build gender-responsive business and human rights mechanisms. In addition, combining reconciliation efforts with women's active engagement is important to secure the reintegration of women and effective access to justice. The South African Truth Commission is a successful example with regard to women's active involvement in reparational justice: it was reported by the Commission that the number of testifying women were significantly higher than men, and women who were able to testify spoke more about the experiences of their spouses, children, families and communities that their own experiences as victims, contributing to collective healing.[402]

In the case of gender-responsive business and human rights mechanisms, the ultimate goal would not necessarily be indigenous women making peace with or reconciling with a corporation, which would be absurd, but about creating spaces and ways to acknowledge the traumatic experiences of women and reiterating corporations' legal accountability through acknowledgment and through a victim-centered approach. Etymologically, "to repair" comes from the Latin concept *reparare* which means "to be prepared again", which is exactly what

[400] Escher et al. v. Brazil, Inter-Am Ct. H.R., C/200, (2009)
[401] Minow, M., Between Vengeance and Forgiveness: Facing history after genocide and mass violence. Beacon Press, Boston, US, 1998, p. 63; Gina Donoso, Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach, Revista Instituto Interamericano De Derechos Humanos 49(1), (2009).
[402] Ibid.

is needed to build gender-responsive, just, and efficient business and human rights mechanisms[403]. Inter-American human rights mechanisms offer significant lessons with regard to the use of symbolic reparations (complementary to material reparations), however, this approach has not yet been integrated within business and human rights cases. There is a double missed opportunity with regard to the well-established jurisprudence on symbolic reparations and the well-established and relatively progressive approach towards women's rights (which can be qualified as gender-sensitive, if not gender-responsive) are not well connected, and not integrated with the slowly growing business and human rights jurisprudence. One of the main reasons for this could be the relatively few numbers of business and human rights cases before the Commission and the Court, however, there are some cases concerning corporate violations of human rights, involving sexual violence or women's labour rights, and the promising recognition of the need for a gender analysis is present yet not fully settled, needing further improvement and remains to be state-centric.

It must be noted that the Inter-American Court has shown slow yet progressive improvement with regard to its recognition of the need for a gender analysis. For example, the Case of *Plan de Sánchez Massacre v. Guatemala* concerns several women and girls between the ages of 12 and 18 were sexually abused, and despite the court has shown sensitivity to the sexual violence experiences of women during the public hearings, it failed to integrate a gender perspective into the Plan de Sánchez massacre events or to address the survivors of sexual violence.[404] A few years later, in the Case of *Miguel Castro-Castro Prison v. Perú,*[405] which was about extreme cases of violence and cruelty against inmates in Miguel Castro-Castro Prison, both men and women, the Court took a closer look into the gender dimensions by stating the applicability of the Belém do Para Convention for the very first time in a case, taking into consideration the gender-based violence definitions of CEDAW, and paying attention to the specific forms of punishment used on women inmates, focusing on their female identity.[406] Judge CanVado Trindade emphasized the need for a gender analysis in their separate opinion:

"In this Case of the Miguel Castro-Castro Prison there have been acts of extreme violence and cruelty against the interns –women and men,– as it is pronounced in the file of the case,

[403] Gina Donoso, Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach, Revista Instituto Interamericano De Derechos Humanos 49(1), (2009).
[404] Ibid; Plan de Sánchez Massacre v. Guatemala, Inter-Am. Ct. H.R., C/105, (2004).
[405] Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R., InterAm. Ct. H.R., C/160, (2006).
[406] Accordingly, the prison regimen denied them access to menstrual care, gynecological attention, and maternity rights, and there were cases of sexual violence.

which, however, requires a gender analysis in reason of the nature of determinate human rights violations that the women suffered particularly."[407]

Legal scholars and business and human rights experts argue that although business and human rights jurisprudence is still in its early phases in Latin America, the Inter-American Court's jurisprudence has had an indirect impact on the business and human rights arena through characteristic approaches. Firstly, the complex decisions of the Court show the need for "multi-orders", or *"several different modalities of reparations to effectively remedy a violation"*[408] which is connected to the corporate activities. This is based on the principle of restitution in integrum developed by the Court, setting forth five modalities as remedies for the victims: restitution in kind, compensation, satisfaction, rehabilitation and guarantees of non-repetition.[409] Moreover, the Court is well known for its "collectivizing approach": more specifically, how it extends the function of justice and the benefits of a judgment from the adjudication of the victims and the benefits of the plaintiffs to the benefit of the collective by creating law through an *erga omnes* effect.[410]

There are several cases with regard to business and human rights, almost exclusively focusing on indigenous people's land rights and the operations of extractive businesses (mining and logging companies which are typically subsidiaries of MNEs) in ancestral territories without proper consultation or effective access to justice.[411]. In *Yakye Axa Indigenous Community v. Paraguay*[412], which involves the Yakye Axa Indigenous community's land rights and Paraguay's failure to legalize their ancestral lands and the State allowing third parties to exploit the land's resources, indigenous women's land rights are only indirectly touched upon,

[407] Miguel Castro-Castro Prison v. Peru, Inter-Am. Ct. H.R., InterAm. Ct. H.R., C/160, (2006).
[408] María Carmelina Londoño-Lázaro et. al, The Inter-American court of human rights and multinational enterprises: towards business and human rights in the Americas?, The Law & Practice of International Courts and Tribunals 16(3), (2017).
[409] Ibid.
[410] María Carmelina Londoño-Lázaro, Las garantías de no repetición en la jurisprudencia interamericana – derecho internacional y cambios estructurales del estado, Universidad de la Sabana, (2014), available at. https://intellectum.unisabana.edu.co/handle/10818/35829; María Carmelina Londoño-Lázaro, "Las cortes interamericana y europea de derechos humanos en perspectiva comparada, Revista Colombiana de Derecho Internacional 3,(5), (2005), p.107 ; María Carmelina Londoño-Lázaro et. al, The Inter-American court of human rights and multinational enterprises: towards business and human rights in the Americas?, The Law & Practice of International Courts and Tribunals 16(3), (2017).
[411] Some of the most significant cases, chronologically, are: Yakye Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/125, (2005); Sawhoyamaxa Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/146, (2006); Saramaka People v. Suriname, Inter-Am Ct. H.R., C/146, (2006); Xákmok Kásek People v. Paraguay, Inter-Am Ct. H.R.,(2010); Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am Ct. H.R., (2012); Kaliña and Lokono People v. Suriname, Inter-Am Ct. H.R., C/309, (2015).
[412] Yakye Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/125, (2005).

and women are grouped with the elderly and children throughout the decision as the most vulnerable community members most affected by poor living conditions.[413]

In more recent cases from the 2010s such as *Sarayaku Indigenous Community v. Ecuador*[414] and *Kaliña and Lokono Peoples v. Suriname*[415] concerning extractive businesses operating in ancestral lands without proper consultations, the gender dimensions are completely absent. In *Sawhoyamaxa Indigenous Community v. Paraguay*[416], *Xákmok Kásek Indigenous Community v. Paraguay*[417], and *Saramaka People v. Suriname*[418], women were only mentioned either with regard to their role as gatherers of fruit and honey and caregivers, when pregnant women were categorized along with the elderly and children for their vulnerability and when the Court included the need for ensuring medical care for pregnant women listed among the rehabilitation measures to be taken by the State.[419] Apart from the lack of gender perspective, these cases are promising and significant with regard to business and human rights, as the Court found the relevant States to be in violation of several rights under the American Convention by failing to adopt effective measures and domestic legislations to recognize, ensure and guarantee the indigenous or minority people's right to own property in accordance with their communal traditions, to use and enjoy their ancestral lands, and to effective access to justice. In addition to the previously indirect recognition of corporate responsibility towards human rights, in 2015, with the *Kaliña y Lokono v. Suriname,*[420] the IACtHR officially endorsed the UNGPs for the very first time as a soft law instrument, analyzed and recognized shared obligations between the States and the MNEs, including: compulsory environmental and social impact assessments, ensuring prior consultation with the potentially affected communities, ensuring benefit-sharing with communities, and integral reparation for victims.

According to the BHR scholars, this approach indicates that IACtHR *"has not exercised self-restraint with regard to the kind of measures imposed on the State, but it has also ordered remedies that might eventually make corporations subject to legal consequences."*[421]

[413] Yakye Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/125, (2005).
[414] Kichwa Indigenous People of Sarayaku v. Ecuador, Inter-Am Ct. H.R., (2012).
[415] Kaliña and Lokono People v. Suriname, Inter-Am Ct. H.R., C/309, (2015).
[416] Sawhoyamaxa Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/146, (2006).
[417] Xákmok Kásek People v. Paraguay, Inter-Am Ct. H.R.,(2010).
[418] Saramaka People v. Suriname, Inter-Am Ct. H.R., C/146, (2006).
[419] Sawhoyamaxa Indigenous Community v. Paraguay, Inter-Am Ct. H.R., C/146, (2006); Xákmok Kásek People v. Paraguay, Inter-Am Ct. H.R., (2010).
[420] Kaliña and Lokono People v. Suriname, Inter-Am Ct. H.R., C/309, (2015).
[421] María Carmelina Londoño-Lázaro et. al, The Inter-American court of human rights and multinational enterprises: towards business and human rights in the Americas?, The Law & Practice of International Courts and Tribunals 16(3), (2017).

Unfortunately, this promising and growing jurisprudence has completely missed an opportunity to rule for gender-responsive and inclusive consultation processes engaging women, or gender-focused benefit sharing with the communities so far. The *U'wa Indigenous People v. Colombia* case with ongoing hearings before the Inter-American Court of Human Rights and which is much anticipated by the BHR experts in Colombia, holds the potential for improvement with regard to gender responsiveness. The political mobilization and the public hearings have had women members of the U'wa community involved[422], and one testifying victim only focused on the impact of extractive business operations on U'wa women.[423]

4.2.3. African Human Rights Mechanisms

According to the UNDP's 10th Year Baseline Assessment for BHR, Africa has *"lagged behind other regions"* when it comes to the implementation of the UNGPs and its business and human rights agenda.[424] This dissertation raises reservations concerning the fairness and validity of such assertions. The frequency of business and human rights-focused violations does not per se denote host states' negligence or inferiority in their obligations. On the contrary, while typical home states in Western Europe and North America are ahead in developing their own due diligence legislations, they have been resistant toward some progressive business and human rights steps in UN diplomacy and have failed to show political commitment with regard to extraterritorial liability of their MNCs. In host states, in light of the multitude of dangerous extractive operation sites, higher levels of violations may be anticipated. It is imperative to acknowledge the Euro-centric presumptions that home states invariably lead the discourse on business and human rights.

Contemporarily, in addition to the operations of multinational corporations in Africa, African states' status and economies are evolving and developing, and are no longer exclusively in the host state status. African businesses are expanding their operations and economic activities across the region. Foreign direct investments are increasing, recently consolidated with the

[422] Hannah Sharland, U'wa nation's fight at international tribunal could set a precedent for Indigenous rights, Canary Workers Co-Op, (2 May 2023), available at: https://www.thecanary.co/global/world-analysis/2023/05/02/uwa-nations-fight-at-international-tribunal-could-set-a-precedent-for-indigenous-rights/

[423] U'wa Indigenous People v. Colombia, Inter-Am Ct. H.R., (ongoing); Earth Rights Defenders, U'wa Indigenous People v. Colombia: Indigenous People in Colombia Fight for their Land and Culture Against Extractive Industries, available at: https://earthrights.org/case/uwa-indigenous-people-vs-colombia/#:~:text=The%20IACHR%20found%20that%20Colombia,their%20right%20to%20judicial%20protection.

[424] UNDP, A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next, (2022), available at: https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-nex

African Continental Free Trade Area (ACFTA). The "lagging behind" argument can be further contested, since African governments, national human rights institutions, civil society organizations, and businesses are visibly and increasingly engaged in building and implementing corporate accountability frameworks. African governments, national human rights institutions (NHRIs), civil society organizations (CSOs), and corporations are slowly yet progressively intensifying their efforts to build and strengthen regional corporate accountability frameworks. In 2022, the African Union co-organized the first ever African Business and Human Rights Forum in Accra, Ghana, with a specific focus on "gender justice" in its agenda.[425] In addition, there are promising National Action Plans with thematically dedicated chapters for women's rights, and explicit mentions of the gendered impact of businesses and the need for gender-focused human rights due diligence[426] in a more detailed manner compared to the UNGPs and national action plans (NAPs) of several typical home states in Western Europe or North America, such as the Ugandan 1st National Action Plan[427] and the Kenyan 1st National Action Plan[428]. Ghana, Mozambique, Nigeria, Tanzania, and Zambia are currently developing NAPs based on national baseline assessments. BHR experts who observe a *"low uptake of business and human rights justice mechanisms in the African region"* explain this with a lack of awareness and ownership of the UNGPs, a lack of political will for the sake of keeping and promoting foreign direct investment, and inadequate financial and know-how capacity, and a skeptical approach towards voluntary Guiding Principles and BHR initiatives.[429] This is evident in how African states have strategically voted towards a binding BHR treaty at the Human Rights Council and the calls for a binding framework at the African BHR Forum. In November 2019, the African Commission issued an Advisory Note to the African Group in Geneva,[430] setting out principles to guide the African Group in the ongoing UN processes and negotiations of developing a global binding treaty on business and

[425] African Union, "African Union and Partners Organize First Ever African Business and Human Rights Forum to Promote Corporate Accountability in Africa", (24 October 2022), available at:https://www.peaceau.org/en/article/african-union-and-partners-organize-first-ever-african-business-and-human-rights-forum-to-promote-corporate-accountability-in-africa

[426] Kenyan National Action Plan on Business and Human Rights (2020-2025) available at: https://globalnaps.org/wp-content/uploads/2021/07/Kenya-BHR_NAP-2021.pdf

[427] Ugandan National Action Plan on Business and Human Rights (2021-2026) available at:https://globalnaps.org/wp-content/uploads/2021/08/uganda_approved-national-action-plan-on-business-and-human-rights_august-2021.pdf

[428] Kenyan National Action Plan on Business and Human Rights (2020-2025) available at: https://globalnaps.org/wp-content/uploads/2021/07/Kenya-BHR_NAP-2021.pdf

[429] UNDP, A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next, (2022), available at: https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-nex

[430] African Union, Advisory note to the African group in Geneva on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations, (4 November 2019), available at: https://achpr.au.int/en/news/communiques/2019-11-04/advisory-note-african-group-geneva-legally-binding-instrument

human rights. Despite the promising and leading example of a regional human rights mechanism being actively involved in global BHR movements, the advisory note and principles did not include a gender lens except for an umbrella non-discrimination clause.

In line with the regional preference and prioritization of a binding BHR instrument, in South Africa, civil society organizations have published a shadow national baseline assessment; however, it has not been effective and influential on policymaking to date, since the Government has rather prioritized negotiations on a binding treaty at the Working Group.[431] This lack of interest and lack of implementations have been explained by the South African BHR researchers with the voluntary nature of the UNGPs, and its perceived weakness for impact. Yet, against this opposition of skepticism, the voting patterns of African States and the fact that no Sub-Saharan African state has voted against the 2014 Human Rights Council resolution to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights to draft a legally binding instrument (South Africa has voted in favour at the time), are illustrative examples.[432] For example, in a statement on behalf of the African Group, Burkina Faso noted that the Group *"remains committed to the letter and spirit of the Human Rights Council resolution"* creating the working group and *"is of the view that the revised draft represents a significant improvement as compared to the previous one"*[433]. The strongly opinionated regional stance lacks a gender lens, based on the written statements. It should be noted that creating and perceiving a dichotomy between the UNGPs and the proposed international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, is detrimental to the advancement of African business and human rights mechanisms, as it manifests in several states as refusal to commit to creating National Action Plans. The instrument can be treated as complementary to UNGPS, and the compartmentalization of the two initiatives is risky if current efforts to agree on a binding instrument do not produce results.

[431] African Coalition for Corporate Accountability (ACCA), ACCA's submission to the call for inputs on "Business and human rights: towards a decade of global implementation" – UNGP 10+ (2020).
[432] United Nations Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/RES/26/9, 2014. The Working Group's mandate includes "elaborat[ing] an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises".
[433] Specifically, the representative noted: "the draft should seek to fill the existing gap in international law in regards to the human rights abuses and violations by [transnational corporations] and provide reparations and remedies to victims" and "stick to the regulation of the activities of [transnational corporations and overseas business enterprises], with respect to human rights, instead of placing many obligations to States, even though the African Group acknowledges the letters' primary duty to respect, protect, uphold and realize human rights of their peoples."

African regional institutions and frameworks that enable addressing business-related human rights violations and hold potential with regard to gender-responsive BHR justice mechanisms are the African Union (AU) Draft Policy on Business and Human Rights (which is not accessible online), the African Commission on Human and Peoples' Rights (ACmHPR), the African Court of Human and Peoples' Rights (ACtHPR), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), regional economic blocs and their respective courts of justice, the African Continental Free Trade Area (ACFTA), and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol). The African Commission has a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa, and there is an ACERWC Working Group on Children's Rights and Business. Among these, the Maputo Protocol plays a crucial role in gender-responsive justice mechanisms, calling on States to adopt and implement appropriate measures to prohibit any exploitation or degradation of women, and to adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence, under "women's right to dignity"[434]. Under Article 13, the Protocol calls on States to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement and other economic opportunities. Although the responsibilities of the private sector are rarely and very broadly mentioned, women's unique experiences in business and human rights contexts such as invisible and unpaid domestic work, sexual harassment at workplace and women's overrepresentation in informal sectors are uniquely addressed. There are clauses providing for "ensuring transparency in recruitment, promotion and dismissal of women and combating and punishing sexual harassment in the workplace", "establishing a system of protection and social insurance for women working in the informal sector and sensitise them to adhere to it", or "taking the necessary measures to recognise the economic value of the work of women in the home"[435]. Overall the Maputo Protocol mandates States Parties to integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life. The need for and the lack of such gender integration within business and human rights mechanisms are not only valid for African human rights mechanisms but also for the

[434]The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol), (2005), Art. 3.
[435] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, (Maputo Protocol) (2005), Arts.12 and 13.

actively operating corporations and the trade agreement and mechanisms such as ACFTA, as reported by African BHR experts in several baseline assessment reports.[436]

There are some regional business initiatives which aim to address the gender dimensions of BHR , such as the Treaty Establishing the Common Market for Eastern and Southern Africa, which created the Federation of National Associations of Women in Business, aiming to develop women's entrepreneurship to promote the effective and equal participation of women within the Common Market. There are some other regional human rights frameworks, on the other hand, such as the African Mining Vision, a policy framework created by the AU in 2009, which fails to sufficiently integrate gender equality.[437] It is possible to conclude that regional human rights mechanisms, including AU policy frameworks need further advancement and refinement to unleash for proper implementation of the UNGPs. Based on African ecofeminist critiques of extractivist businesses, there is a striking contradiction between the actual gendered impacts of extractive businesses in Africa[438] and the business and human rights frameworks on paper. The crucial yet unrecognized resources, which are misused by extractivist economies are community wealth, food production and women's labour.[439] These resources are often undercounted and not included in development policy-making.[440] Indeed, even the regional BHR mechanisms which mention gender equality or women's rights lack recognition of displacement, rural women's separation from community wealth (land , resources , agriculture, water), how women bear the burden of food production (which is more difficult and less accessible due to pollution and displacement) and the doubling of women's labour. The doubling of labour is because they have to "*subsidize health care and social service costs in extractive economies, caring for workers who fall sick or get injured on the*

[436] Abe Oyeniyi, The State of Business and Human Rights in South Africa, Friedrich-Ebert-Stiftung African Union Cooperation Office, (2022), available at: https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf; UNDP, A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next, (2022), available at: https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-next

[437] African Union, Building a Sustainable Future for Africa's Extractive Industry: from Vision to Action – Action Plan for Implementing the African Mining Vision, (2011), available at: https://au.int/sites/default/files/documents/29812-doc-action_plan_final_version_jan_2012.pdf; Oxfam, From Aspiration to Reality: Unpacking the Africa Mining Vision, (2017), available at: https://policy-practice.oxfam.org/resources/from-aspiration-to-reality-unpacking-the-africa-mining-vision-620208/

[438] Womin African Alliance, Development Alternatives, available at: https://womin.africa/development-alternatives/

[439] Salimah Valiani, The Africa Mining Vision: A Long Overdue Ecofeminist Critique. WoMin, (2015), p. 5, available at: https://womin.africa/archive/country-studies/; https://surface.syr.edu/cgi/viewcontent.cgi?article=2438&context=etd .

[440] Nneka Eke, Gender and the Political Economy of Oil in the Niger Delta: A Feminist Critique, (PhD Thesis, Syracuse University), (2021).

job".[441] In other words, cause-and-effect relationships of gender inequality are almost never addressed in policy frameworks, which causes a shallow approach to gender, if it is included.

The jurisprudence of sub-regional human rights mechanisms are promising with regard to corporate liability. For example, the ECOWAS Community Court of Justice has ruled against Nigeria in *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria*.[442] The Court held that the Federal Republic of Nigeria violated Articles 1 and 24 of the African Charter on Human and Peoples' Rights (respectively, the right to peace and security and the right to a general satisfactory environment favourable to their development) by failure to protect the Niger Delta environment, with a further warning that the government could face regional sanctions in a follow-up, however, there is no record of Nigeria taking action or ECOWAS taking action with sanctions. The gender dimensions of oil industry's impact in Niger Delta, specifically economic and health effects on local women, despite being well-established and proven in literature and research,[443] was not addressed in the celebrated SERAP v. Nigeria judgment or other lawsuits[444] and ongoing initiatives (alternative dispute resolutions and formal lobbying and mobilization activities) against oil companies, Royal Dutch Shell, ExxonMobil, Chevron, Total/Elf, and Eni, with regard to oil spills in the Niger Delta.

The African Court on Human and Peoples' Rights (ACtHPR), was established aiming to complement and reinforce the functions of the African Commission on Human and Peoples' Rights, and geared towards "*strengthening the human rights protection system in Africa and ensuring respect for and compliance with the African Charter on Human and Peoples' Rights, as well as other international human rights instruments, through judicial decisions"*. South Africa is a State Party to the African Court Protocol, yet it does not recognize the competence of the Court to receive cases directly from NGOs and individuals.[445] There have been two

[441] Womin, "Development Alternatives", available at: https://womin.africa/development-alternatives/.; Salimah Valiani, The Africa Mining Vision: A Long Overdue Ecofeminist Critique. WoMin, p.5., (2015).
[442] The Registered Trustees of the Socio-economic and Accountability Project (SERAP) v. Nigeria & UBEC, ECW/CCJ/JUD/07/10, ECOWAS Community Court of Justice, (2010).
[443] Nneka Eke, Gender and the Political Economy of Oil in the Niger Delta: A Feminist Critique, (PhD Thesis, Syracuse University), (2021); Edward Uche Omeire et. al, Between the devil and the deep blue sea: Niger delta women and the burden of gas flaring, European Scientific Journal 10(26), (2014); Bridget Oghale Omoruyi and Mary Uhunoma Isibor, Women and Conflict in the Niger Delta, Port Harcourt Journal Of History & Diplomatic Studies 7(1), (2020).
[444] Metsagharun v. Chevron Corp., CV-1280274-mis, U.S. District Court of N.D. Cal. (2012); Milieudefensie v. Royal Dutch Shell, NL:RBDHA:2021:5337, Disctrict Court of the Hague (2021).
[445] ACtHPR, "African Court in Brief", available at: https://www.african-court.org/wpafc/basic-information/

cases against South Africa so far, both struck out due to lack of jurisdiction.[446] The jurisprudence of the ACtHR is slowly building, although it has not yet received exclusively BHR-focused cases and has not yet mentioned the UNGPs. Having said this, it has ruled on a few cases indirectly related to corporate activities, such as its landmark 2021 judgment in favor of reparations for the Ogiek community, evicted from their ancestral Mau forest in Kenya for development projects.[447] Victims of corporate human rights violations seek redress extraterritorially at the regional human rights mechanisms due to a lack of effective remedies at home, however, the regional human rights mechanisms are reported by the African Coalition for Corporate Accountability (ACCA) to lack effective enforcement mechanisms which limits their credibility as avenues for such redress against corporate abuse[448]. In addition to the lack of enforcement mechanisms, African human rights experts have reported that Member States are reluctant to comply with judgments and that victims have to wait for many years for compensation or honouring of the judgments, if they are complied with.[449] Most importantly, despite the highly equitable gender representation in the election processes and the decision-making bodies for regional bodies[450], such verdicts and reports have completely lacked a gender perspective with no mention of women's experiences. It must be noted here, that not only the human rights mechanisms but also international human rights NGOs such as Amnesty International fail to integrate gender within their analysis and reporting of business and human rights mechanisms or have a narrow approach limited to reporting of gender representation of institutional boards without analyzing the content of the decisions or documents.[451]

Furthermore, the African Charter fails to effectively integrate gender.[452] The Charter singles out women as a group that deserves special protection, and the single provision in the African Charter that refers to women, simply requires the elimination of discrimination against women and the protection of women's rights as provided for in international treaties and

[446] Delta International Investments S.A., Mr and Mrs A.G.L. De Lange v. Republic of South Africa, 002/2012, Afr. Ct. H.P.R., (2012); Emmanuel Joseph Uko and Others v. Republic of South Africa, 004/2012, Afr. Ct. H.P.R., (2012)
[447] African Commission on Human and Peoples' Rights v. Republic of Kenya, 006/212 Afr. Ct. H.P.R., (2022)
[448] Accountability Counsel and ACCA, Accountability in Africa: Harm from International Financial Flows and Strategies for Supporting Community-led Access to Remedy, (2020), available at: https://www.accountabilitycounsel.org/wp-content/uploads/2020/11/accountability-in-africa-web.pdf.
[449] African Commission on Human and Peoples' Rights v. Republic of Kenya, 006/212 Afr. Ct. H.P.R., (2022)
[450] Amnesty International, The State of African Regional Human Rights Bodies and Mechanisms (2019-2020), (2020), available at:https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR0130892020ENGLISH.pdf
[451] Ibid.
[452] Lilian Chenwi, Women´s Representation and Rights in the African Court, The Age of Human Rights Journal, (18), (2022).

declarations[453]. However, the Maputo Protocol (African Women's Protocol), the AU Strategy for Gender Equality and Women's Empowerment 2018-2028'[454], and the AU Agenda 2063 shows a firm commitment to the advancement of gender equality and realizing women's rights also within the private sector. In parallel, the regional human rights mechanisms, specifically the courts, are pivotal mechanisms for the advancement of gender equality and women's rights. For example, Maputo Protocol specifically tasks the ACtHPR with its interpretation.[455] Despite this clear commitment on paper, there are only a few cases on gender equality and women's rights ruled by the African Court, or the ECOWAS Community Court of Justice.

The *Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali*[456] is the first and so far the only African Court decision exclusively focusing on gender equality. In the case, upon the submission of two women's rights organizations against Mali's Family Code of 2011 (Mali is a State Party to CEDAW, Maputo Protocol and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC)), reducing the minimum age of marriage for girls and limiting the rights to consent to a marriage and inheritance for women. The Court ruled that Mali was in violation of several provisions of international treaties, including the right to non-discrimination of women and girls under Article 2 of the Maputo Protocol, Articles 3 and 4 of ACERWC, and Article 16 (1) of CEDAW, and ordered Mali to amend its Family Code and harmonize its laws, including customary law practices which may constitute discrimination towards girls and are not in conformity with international human rights standards.[457]

The ECOWAS Community Court of Justice (CCJ) has also ruled in a few cases with claims of gender discrimination. For example, in the groundbreaking *Dorothy Njemanze and Others v. Nigeria* (2017)[458], the CCJ ruled that violent raids targeting local women and sex workers carried by state agents and security forces which the petitioners claimed to experience

[453] African Charter (1981), Art. 18(3).
[454] African Union, AU Strategy for Gender Equality and Women's Empowerment 2018-2028, (2018), available at: https://au.int/sites/default/files/documents/36195-doc-au_strategy_for_gender_equality_womens_empowerment_2018-2028_report.pdf; African Union, Agenda 2063, (2015), available at: https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf
[455] The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), (1995), Art. 27.
[456] Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and The Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali, 046/2016, Afr. Ct. H.P.R., (2018)
[457] Ibid.
[458] Dorothy Njemanze & 3 Others. v. Nigeria ECW/CCJ/JUD/08/17, ECOWAS Community Court of Justice, (2017).

beatings, verbal abuse, sexual assault, and threats during the raids and in detention constituted gender-based discriminatory treatment violating several articles of the African Charter, Maputo Protocol, CEDAW, the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR).[459] There are a few noteworthy aspects of the case. There is a strong emphasis on the failure and refusal of the Nigerian authorities to investigate allegations of violations against its agents despite the formal complaints; and the Court strictly refused the Nigerian state's defense resting on the notion that petitioner women were prostitutes and that violence in cases of immorality could be justified. Despite there being no detailed analysis or critique towards gender stereotypes, the case started a discussion for challenging the vagrancy and prostitution laws which discriminate against marginalized and vulnerable sex workers.[460] However, in other cases, involving one regarding domestic violence[461], one regarding women's access to land management[462], and one regarding slavery[463], the CCJ had avoided clear pronouncements of gender discrimination, did not probe the relevant state's actions or inactions and failed to develop verdicts addressing systemic gender discriminations, and rather limited itself to ruling with regard to petitioner women's access to effective remedies.[464]

The African Commission on Human and Peoples' Rights, as the quasi-judicial body empowered to promote and protect human and peoples' rights, as well as the interpretation of the provisions of the Charter[465], is a much more engaged stakeholder with regard to business and human rights in Africa, compared to the regional courts. The Commission has a Working Group on Extractive Industries, Environment and Human Rights Violations, which has developed State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, and a Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector. These documents urge States Parties to adopt laws and

[459] These Articles are: Articles 2, 3, and 18(3) of the African Charter, Articles 2 and 8 of the Maputo Protocol, Articles 2, 3, and 15 (1) of CEDAW, Articles 2 (1), 3, and 26 of the International Covenant on Civil and Political Rights, and Articles 2 and 7 of the Universal Declaration of Human Rights.
[460] Benson Chakaya, ECOWAS court challenges vagrancy laws that target women, Reprohealthlaw Blog, (30 November 2017), available at. https://reprohealthlaw. wordpress.com/2017/11/30/africa-nigeria-ecowas-court-challenges-vagrancylaws-that-target-women/
[461] Mary Sunday v. Nigeria, ECW/CCJ/JUD/11/18, ECOWAS Community Court of Justice (2018)
[462] Valentine Ayika v. Republic of Liberia, ECW/CCJ/AAP/07/11, ECOWAS Community Court of Justice (2012)
[463] Hadijatou Mani v. Niger, ECW/CCJ/JUD/06/08, ECOWAS Community Court of Justice (2008)
[464] Osai Ojigho, Litigating gender discrimination cases before the ECOWAS Community Court of Justice and the African Court on Human and Peoples' Rights, In J. Jarpa Dawuni (ed.), Gender, Judging and the Courts in Africa, Taylor & Francis, (2022), 142.
[465]African Charter on Human and Peoples' Rights, (1981), Art. 45.

regulations, and to report (similar to the human rights due diligence frameworks) on extractive businesses' activities with specific requirements on women's ownership and use of land and natural resources. There are other articles stipulating states' duty to ensure prior consultation, substantive and rigorous participation and equal representation of women in legislative and decision-making fora and consultations; women human rights defenders's full protection from possible reprisals, threats, attacks, and intimidation without impunity.

Moreover, they address women's experiences with regards to informal artisanal mining sector.[466] The Commission makes explicit references to the UNGPs and businesses' duty to respect under Article 11, not only in the above mentioned Guidelines but also in its reports, policies and documents. The Commission also refers to the UNGPs and the need to ensure in its reports[467], policies and documents.[468] Having said this, the need for business and human rights mechanisms and corporate accountability is emphasized with regard to *"the most marginalized and socio-economically excluded members of society, including most notably women, but also children, persons with disabilities and older persons"*[469]. Although women's marginalization and experiences are mentioned, it is hard to say that the existing documents are gender-responsive. They can be categorized as gender-sensitive instead, since their focus is limited to the different experiences.

The Commission has delivered several decisions in communications in which it dealt with business and human rights issues, even predating the UNGPs. For example, in the seminal *SERAC v. Nigeria*[470] case, the Social and Economic Rights Action Committee (SERAC) and the Center for Economic and Social Rights (CESR), acting behalf of the Ogoni people claimed that the Nigerian state, through its state-owned subsidiary, Nigerian National Petroleum Corporation, operating in a consortium with Shell, *"caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni*

[466] African Commission on Human and Peoples' Rights, State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, (2021).
[467] African Commission on Human and Peoples' Rights Working Group on Extractive Industries, Environment and Human Rights,, Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights, (2022); available at: https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-3
[468] African Commission on Human and Peoples' Rights, "National Dialogue on the Rights of Indigenous Peoples and Extractive Industries, from 7 to 8 October 2019, Nairobi, Kenya", (2019), available at: https://achpr.au.int/ar/node/203
[469] African Commission on Human and Peoples' Rights, State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, (2021), Art. 7.
[470] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, 155/96, Afr. Ct. H.P.R., (2001).

people" and violated several fundamental rights under the African Charter, thorugh providing the legal and military state agencies at the disposal of oil companies, causing the execution of human rights activist and leader of the Ogoni people, Ken Saro Wiwa.[471] The Commission had found that the Nigerian government had violated Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter, and ordered the government to ensure the protection of the environment, health, and livelihood of the people of Ogoniland, to conduct a prompt investigation into the human rights violations, to pay adequate compensation to victims of the human rights violations and to undertake a comprehensive clean-up of lands and rivers damaged by oil operations.[472] However, while the state's duty to protect against corporate violations of human rights was emphasized, the decision missed the opportunity to highlight or recognize the corporate responsibility (of both Shell and the Nigerian subsidiary) to respect human rights. There was no mention of the gendered dimensions of the pollution and grave human rights violations in Ogoniland, cases which were mostly carried to the attention of global public opinion by the widows of the executed activists and local Ogoni women. Similarly, in the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya* case[473], in which the Commission recognized and upheld the protection of the African Charter over the *"right of indigenous communities to use and enjoy natural resources under their property rights … that lie on and within the land, including subsoil natural resources"*[474] or the *IHRDA and others v. DRC*, in which the commission recognized the role and responsibility of an Australian mining company providing operational support to local military forces who indiscriminately shot at civilians, killing about 28 people, the Commission has missed opportunities to provide gender-responsive decisions which recognized women's experiences in such cases of corporate abuse, and had a completely gender blind approach.[475]

The National Human Rights Institutions (NHRIs) also hold potential to play an important role in investigating complaints arising from corporate abuses of human rights through a range of dispute resolution methods, such as mediation, conciliation, legal aid, training of stakeholders and other "culturally appropriate and rights-compatible processes", however regionally, many

[471] Abe Oyeniyi, The State of Business and Human Rights in South Africa, Friedrich-Ebert-Stiftung African Union Cooperation Office, (2022), available at: https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf
[472] Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, 155/96, Afr. Ct. H.P.R., (2001).
[473] Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, 276/2003, Afr. Cm. H.P.R., (2010).
[474] Ibid.
[475] IHRDA v. DRC, 393/10, Afr. Cm. H.P.R., (2016).

NHRIs are not able to fully function this way due to lack of funds or their strictly national jurisdiction.[476] South African Human Rights Commission (SAHRC) constitutes an exceptional example in the region, with its proactive engagement (which remains gender-neutral) as will be discussed below.[477]

All in all, a common problem shared by business and human rights cases and gender equality cases, is that the African regional human rights mechanisms have decided on many human rights claims yet there have been very few cases on women's rights and gender discriminations, and similarly, relatively more yet overall few cases with a business and human rights focus, which have been litigated or submitted. The regional mechanisms hold potential with regard to their approach to both topics, yet they have no intersections and the two issues, specifically with regard to cases about corporate liability, are separately taken into consideration, failing to pursue the often mentioned gender mainstreaming principle[478] in African human rights mechanisms.

4.3. Domestic Legal Arena

Colombia, Türkiye, and South Africa exhibit varying degrees of development and progress concerning their domestic business and human rights mechanisms, with each nation positioned at a different stage of advancement. Having said this, none of them has a comprehensive legislative framework addressing human rights due diligence or corporate liability with regard to human rights violations yet. Common patterns in Colombia, Türkiye and South Africa are the promising developments in labour law, a very slow, gradual improvement (with exceptional areas such as Türkiye's retrogression on feminist civic spaces, or rising rate of gender-based violence in South Africa) of gender equality, and business and human rights being a fairly new area in the domestic legal arena, yet to be developed. The interviewees who are BHR experts (mostly lawyers and academics) have pointed out that current and possible future BHR frameworks will always be meticulously shaped in a way to always prioritize

[476] Oyeniyi Abe, Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions. Routledge, (2022).

[477] SAHRC, Annual Report 2015/16, (2915), available at: https://www.sahrc.org.za/home/21/files/SAHRC%20Annual%20Report%202016%20full%20report%20low%20res%20f

[478] African Court on Human and Peoples' Rights, 20th Pre- Summit Consultative Meeting On Gender Mainstreaming, In The African Union -(GIMAC) (Fas) By Justice Gerard Nıyungeko, (9 July 2012), available at: https://www.african-court.org/wpafc/20th-pre-summit-consultative-meeting-on-gender-mainstreaming-in-the-african-union-gimac-fas-by-justice-gerard-niyungeko/

foreign direct investment and extractive businesses, and it is unlikely that the gender approach of such frameworks will go further than women's economic empowerment discourse.

Colombian domestic legislation is getting significantly more progressive and adopts an inclusive language when it comes to gender equality. The resilient feminist movement in Colombia (although some interviewees have pointed out a distinction among the demands and feminist approaches of privileged middle-class Colombian women versus indigenous and Afro-Colombian rural women in smaller, peripheral regions highly impacted by the ongoing armed conflict) has been instrumental in advocating for gender equality, and challenging patriarchal norms and discriminatory legislations and practices. They are well-known for their successful mobilization in the street protests, particularly about gender-based violence and high rates of femicides. It was also shared that feminist organizations are invited by the government to the Colombian Congress for the national baseline assessment and preparatory workshops, however, these are mostly limited to directly gender-focused topics, healthcare or social services. Over the years, feminist activists have effectively fought for the implementation of gender-responsive laws.



Figures 4.1.a., 4.1.b., 4.1.c.: Graffitis with feminist slogans and emblems in Bogotá reading "No to Femicidies/ Femicides are not your Show" and " Angry Women" (February 2023, photographs taken by the author).

Several Articles of the Colombian Constitution constitute its constitutional framework for gender equality: Article 13 guarantees the principle of equality before law, and prohibits discrimination on the basis of gender among others. Article 40 provides that *"the authorities shall guarantee the adequate and effective participation of women in the decision-making ranks of the public administration"*. Article 43 declares: *"Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination. During their*

periods of pregnancy and following delivery, women shall benefit from the special assistance and protection of the State and shall receive from the latter food subsidies if they should thereafter find themselves unemployed or abandoned," and most importantly, provide special measures for the state to support female heads of households in a special way. Last but not least, Article 53 provides equality of opportunity and the protection of minimal fundamental labour rights for workers, with special protection for women, mothers, and minor-age workers. Focusing on these articles, and having a broad interpretation of fundamental rights, the Constitutional Court has produced an important body of gender jurisprudence since 1992, grounded in principles of equality, and autonomy, *"with a rapid and openly activist involvement in the society's debates."*[479] Some feminist scholars have considered the Court's early gender jurisprudence during the 1990s as *"an important, albeit limited, example of judicial commitment to making a constitution more than "just words" in the war against machismo and for human rights culture."*[480] Tutelas have played an important role, especially in the areas of sexual and reproductive health and rights (SRHR), women prisoners's living conditions, sex education, teenage pregnancy, abortion, and sexual orientation.[481] There have been several decisions with regard to women's labour rights, such as a decision in 1997 striking down labour laws that prohibited women factory workers from working at night,[482] and a 1995 decision invalidating sections of the labour code that provided less unemployment benefits for domestic worker women.[483]

In the employment context, Colombian women have mostly used tutelas to raise issues of maternity rights and reproductive and sexual rights and health. The Court has afforded protection to pregnant workers by recognizing a concept of *fuero de maternidad* (analogous to the concept of *fuero syndical* meaning job security of union activists) to protect against loss of employment on the basis of pregnancy, by ruling that women workers cannot be dismissed from their jobs without cause during pregnancy or within the first three months after giving birth and that employers who unlawfully terminate an employee during these periods are not only obligated to pay the employee 60 days' salary as provided in Article 239 of the Labour Code but also must reinstate all employment rights.[484] Colombian Constitutional Court's stance for the protection of pregnant workers' labour rights was previously reinforced in 1994,

[479] Martha I. Morgan, Taking Machismo to Court: The Gender Jurisprudence of the Colombian Constitutional Court, University of Miami Inter-American Law Review, 30 (1998).
[480] Ibid.
[481] Ibid.
[482] Corte Constitucional [C.C.], Sentencia, C-622/97 (27 November 1997).
[483] Corte Constitucional [C.C.], Sentencia, C-051/95 (16 February 1995).
[484] Corte Constitucional [C.C.], Sentencia, C-470/97 (25 September 1997).

against Avianca Airlines, one of the leading business stakeholders in Colombian transportation sector, through a tutela action brought by a co-pilot denied healthcare coverage for a miscarriage on the grounds that it was not an illness. The Court found violations of fundamental rights related to health, procreation, irrevocable social security protections for maternity, and personal integrity, characterizing the denial of sexual and reproductive health services as a form of "discrimination based on women's role in procreation".[485] It must be noted, however, that there is a caveat and confusion with regard to women's access to justice in cases of maternity rights and pregnancy, as the tutela is mostly not available to women workers because there are other available means of judicial relief under labour laws, however, an exception exists in cases of pregnant workers. The tutela may be used as a transitory mechanism to prevent irreparable injury when reinstatement is required to assure the minimum necessities of life (*el minimo vital)* for a mother or her newborn.[486]

One significant milestone in terms of legal reforms in Colombia is the enactment of Law 1257 in 2008, which has become Colombia's primary legislation with regard to violence against women. The Law established the definition of domestic violence as a crime, the right of a woman to live a life free of violence as a fundamental human right that is also protected by Colombia's Constitution, the ability of women to seek an order of protection, and it recognized different forms of violence against women, including physical, psychological, sexual, and economic violence. It aims to fulfill Colombia's obligations under CEDAW and Belém do Para Convention, and provides measures for prevention, protection, and punishment of perpetrators.

Another important legal development is the progressive recognition of reproductive rights, specifically, abortion rights. In 2006, the Constitutional Court of Colombia issued a landmark ruling (C-355/2006) that decriminalized abortion in specific cases, such as risks to the woman's life or health, the fetus having severe malformations or pregnancy being a result of rape or incest. Colombian feminist movement has been an active part of the Green Wave or the Green Tide in Latin America, a collective regional movement for abortion rights, firstly contributing to the legalization of abortion in Argentina in 2020. This was followed by another landmark decision by the Colombian Constitutional Court in 2022 (Case C-055/22), which

[485] Corte Constitucional [C.C.], Sentencia, T-341/94 (27 July 1994).
[486] For other cases on preganncy nad maternity rights See: Corte Constitucional [C.C.], Sentencia, C- 199/99 (7 April 1999); Corte Constitucional [C.C.], Sentencia, T- 426/98 (18 August 1998); Corte Constitucional [C.C.], Sentencia, T-373/98 (22 July 1998); Corte Constitucional [C.C.], Sentencia, T-311/96 (15 July 1996); Corte Constitucional [C.C.], Sentencia, T-606/95 (12 December 1995); Corte Constitucional [C.C.], Sentencia, C-710/96 (9 December 1996); Corte Constitucional [C.C.], Sentencia, T-568/96 (28 October1996).

decriminalized abortion up to the 24th week of pregnancy, with exceptional cases allowed in later stages. Welcomed with celebrations in front of the Constitutional Court[487], several interviewees have joined conversations proudly showing their green bandanas, or green accessories, with one noting the decision to be *"one of the biggest achievements of their movement"*, and that she is *"proud of sisterhood and solidarity in the Americas"* also emphasizing the strong opposition they have faced by the Catholic church and conservative Congress members.[488]

The feminist movement has been vocal in demanding justice for gender-based violence and femicides.[489] A cross-cutting concern among all women's rights activists interviewed in all three countries was the lack of effective investigation and enforcement in contrast to legislations and action plans which seem adequate on paper, the culture of impunity, retraumatization of victims and survivors throughout investigation and prosecution, lack of access to and trust in justice systems, low rates of reported abuse, and tolerance towards gender-based violence as an occasional marital conflict that requires no intervention.[490] The public-private dichotomy when it comes to gender-based violence is particularly visible in Türkiye, Colombia and South Africa.

The Colombian feminist movement has also advocated for laws and policies to address gender-based discrimination and promote women's political participation. The Law No. 1475 was adopted in 2011, which is a gender quota law aiming to ensure women's representation and participation, and to hold political parties accountable. It requires all political parties made up of five or more seats in the congress to include at least 30% of candidates of each gender. The quota legislation primarily aims to ensure women's representation in decision-making, including legislated quotas for its bicameral parliament, the single/lower house and upper house, and for the local and central government election candidate lists, as well as an overall 30% minimum gender quota for the highest public decision-making and managing positions

[487] New York Times, "Colombia Supreme Court ruling on abortion: Colombia Decriminalies Abortion", (21 February 2022), available at: https://www.nytimes.com/live/2022/02/21/world/colombia-court-abortion
[488] Oral interviews with feminist civil society representatives from Colombia (February 2023).
[489] For a general background on Colombian laws concerning gender-based violence, legislated and amended with the push of Colombian feminist movement, See: Martha I. Morgan and Monica Maria Alzate Buitrago, Constitution-making in a time of cholera: women and the 1991 Colombian Constitution, Yale Journal of Law & Feminism 4 (1991); Greta Friedemann-Sánchez and Margaret Grieve, General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelters, Hubert Humphrey School of Public Affairs (2017), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Shelters/FriedemannSanchezGrieve.pdf
[490] Oral interviews with feminist civil society representatives from Colombia, South Africa and Türkiye. (February and May 2023).

with powers in designing, planning, coordinating, implementing and monitoring the actions and policies of the state.

The Colombian Constitutional Court's unique approach to substantive equality,[491] correcting de facto inequality, and the necessity of positive measures is determinant in its progressive gender jurisprudence. The Court's approach to equality is not only formal equality in the eyes of the law, but a substantive understanding of equality, which can be achieved by the State's action and in practice, and that the social and democratic rule of law *"... is fully manifested in the mandate to afford special protection and consideration to the comparatively more disadvantaged when administering and meting out limited resources."*[492]

The Constitutional Court has defined substantial equality, as the *"State's commitment to remove the obstacles that de facto economic and social inequalities pose. Substantive equality, therefore, has a corrective, compensatory, emancipatory, countervailing and defensive quality for groups in positions of inferiority, through the positive actions taken in the branches of government."*[493] In decision C-410/94, the Court asserted that the "elimination of sexual discrimination required under Article 13 of the Constitution is more than just a prohibition of such discrimination; instead, the constitutional intent is to undo the inferior status that Colombian women have historically had to endure" and reaffirmed that the workplace is among the "vulnerable" spheres in which sexual discrimination is most likely to manifest itself and that there is a need to determine such spaces where such measures are needed. "[494] One of the most recent examples of a detailed understanding of substantive equality, with a focus on socio-economic rights and gender-responsive taxation is the Court's approach to the tax over menstrual products. The groundbreaking C-117/18 decision, which is much celebrated in the menstrual justice movement, struck down the 5% VAT on menstrual products, based on arguments that the legislative body's margin of discretion in taxation cannot infringe principles of reasonableness and non-discrimination, how access to menstrual products is inextricably linked to women's public participation, the disproportionate economic burden which the VAT puts on women of low socio-economic status, worsening structural

[491] Inter-American Commission on Human Rights Rapporteurship on the Rights of Women, Access To Justice For Women Victims of Violence in The Americas, available at: http://www.cidh.org/women/access07/chap1.htm#_ftn163
[492] Corte Constitucional [C.C.], Sentencia, C-507/04 (25 May 2004).
[493] For specific cases in which the Constitutional Court has justified the necessity of special measure on behalf of women, See: Corte Constitucional [C.C.], Sentencia, C-408/96 (4 September 1996), Corte Constitucional [C.C.], Sentencia, C-470/97 (25 September 1997), Corte Constitucional [C.C.], Sentencia, T- 426/98 (18 August, 1998) and Corte Constitucional [C.C.], Sentencia, C-991/04 (12 October 2004).
[494] Corte Constitucional [C.C.], Sentencia, C-507/04 (May. 25, 2004); Corte Constitucional [C.C.], Sentencia, C-410/94 (15 September 1994).

barriers before the fulfillment of their economic potential, and rural women's limited access to alternative products.[495]

In line with its activist role and strong understanding of substantive equality, there are some of the landmark decisions of the Colombian Constitutional Court, which were shared during the interviews by several legal experts, singling out the Constitutional Court as the extraordinary, most progressive superior court.[496]

In its decision T-581/93, dated 1993, about the right to equal treatment and non-discrimination in the workplace, the Constitutional Court ruled in favour of a female employee who has been facing gender-based discrimination and harassment in her workplace, emphasizing the constitutional principle of gender equality, holding that employers have a duty to provide a safe and non-discriminatory working environment and equal opportunities for women in terms of hiring, promotion, and access to benefits and protections. The decision is an important precedent for gender-based discrimination in Colombian work culture, heavily criticized for being influenced by machismo by working women interviewees.

Another decision dated 2000, the decision C-371/00 of the Colombian Constitutional Court addressed the issue of maternity leave and the protection of women's reproductive rights, ruling that it is unconstitutional to discriminate against pregnant women or mothers in the workplace, establishing legal safeguards for women's rights with regard to pregnancy and childbirth in Colombian work life. The Court ruled that employers must grant adequate maternity leave and provide the necessary support to ensure the well-being of pregnant employees. Having said this, interviews have revealed the dangerous working conditions, especially in the fresh-cut flower industry for predominantly female workers, including pregnant women and young mothers, and prevalent discrimination with very limited to no support with regard to maternal leave: newlywed young women or pregnant women are not hired in the first place. Women are hired temporarily with short-term, maximum 3 months-long contracts and are not official employees of fresh-cut flower businesses and therefore can not enjoy and claim labour rights due to their precarious status as temporary service performers

[495]Corte Constitucional [C.C.], Sentencia, C-117/18 (14 November 2018); İlayda Eskitaşçıoğlu, Access to Menstrual Products is a Constitutional Right.: Period, Verfassungsblog, (2019).

[496] For an analysis of Colombian constitutional justice mechanisms, and its activist role in the protection of fundamental rights, See: Cornell Law School Legal Information Institute, Women and Justice: Court: Constitutional Court of Colombia, available at: https://www.law.cornell.edu/women-and-justice/court/constitutional_court_of_colombia; Patrick Delaney, Legislating for equality in Colombia: Constitutional jurisprudence, Tutelas, and social reform, The Equal Rights Review 1, (2008).

outside of the traditional employment relationship, making the jurisprudence of the Constitutional Court of no use for them.

Colombian legislative frameworks have a growingly inclusive language with regard to the LGBTI+ rights. The Colombian Constitutional Court's approach and its landmark decision T-326/12 have been influential: in the decision, the Court recognized the right of transgender individuals to be treated equally in the workplace, and the principle of non-discrimination based on gender identity, while affirming the importance of diversity and inclusion in the workplace.

There is an ongoing political mobilization and lobbying, led by feminist organizations and trade unions in Colombia for the ratification of the ILO Convention No. 190 on Violence and Harassment. In Colombia, there is no specific labour law regulation which defines sexual harassment at workplace, however, Article 210A of the Colombian Criminal Code criminalizes sexual harassment. Law No. 1010 of 2006 regulates the measures to prevent, correct and punish labour harassment and other behaviours within the framework of employment relationships, which briefly mentions sexual harassment as a form of "labour harassment." Although there is no obligation for sexual harassment training provided by the employer at the workplace, companies are obligated to create a labour committee that is mandated to receive and investigate mobbing complaints, and provide recommendations to the managers such as training in order to prevent and correct labour harassment. Gender-based discrimination is also included in the understanding of labour harassment. The Law No. 1010 of 2006 was initially focused on employment relationships, limiting its application to direct employees, however, the Supreme Court of Justice has extended the regulation to cases with no direct employment relationship. Having said this, the Labour Law and regulations with regard to "labour harassment" are gender-blind legal texts. The Colombian Constitutional Court has emphasized the duty of employers to prevent and address sexual harassment, creating a safe and respectful work environment for women employees, and the obligation to promptly investigate complaints and to impose appropriate sanctions on perpetrators, provide support services and implement effective workplace policies through its decisions.[497]

The most significant and unique mechanism in the Colombian justice system is the *Acción de Tutela* overseen by Article 86 of the Colombian Constitutions, for the protection and enforcement of fundamental rights protected under the Colombian Constitution, before the

[497] Corte Constitucional [C.C.], Sentencia, T-388/09 (May. 28, 2009), Corte Constitucional [C.C.], Sentencia, SU-039/97 (3 February 1997).

Constitutional Court. Tutelas can be filed against individuals, companies, the government itself and even judicial rulings. Colombian Constitutional Court describes itself as carrying an "avant-garde guardian" role for *"the fundamental rights of the people, employing the optional review of judicial decisions concerning the protection of their constitutional rights petitioned, throughout the country, through guardianship action, also called the Amparo or Tutela action."*[498] Interviews with Colombian scholars and practitioners have indicated that tutela mechanism is not used very often or strategically for gender focused human rights cases, and women use the mechanism less (although statistical data is not available). The majority of tutela applications initiated by women are concerning three topics: health rights, internal displacement population, and social benefits, mostly social security and old age payments. Experts explain this inequality with women's lower representation in the formal workforce, yet they are over-represented in cases concerning survivor's pension, with debated jurisprudence of the Constitutional Court's approach to benefits, and protecting concubine women as well, in addition to widows.[499] A considerable number of tutelas submitted by women for social benefits are regarding their access to information from the relevant institutions or procedural difficulties with regard to receiving benefits timely. There are several facilitations and prioritization opportunities for women heads of houses in cases of internal displacement due to armed conflict, and although there is no statistical data available, constitutional law scholars have shared an approximate percentage of 10% among all tutelas that have significant gender dimensions. They have shared that in addition to pensions, when it comes to labour rights, women mostly submit cases for maternal leave or cases concerning sexual and reproductive rights, such as birth pensions or access to health services. While tutelas are not used often and strategically by women, and their individual applications are underrepresented, when women submit tutelas, the courts are reported to take their claims more seriously, specifically as women heads of households are ruled as a category of vulnerability that leads for a reinforced constitutional protection.

With regard to the gender dimensions of business and human rights, the tutela system holds great potential as it has further opened the judicial system with easier access for marginalized women. However, tutelas have not developed a jurisprudence which can fully address the patriarchal practices, oppressive experiences and exploitation of women by multinational or large-scale corporations. The means of redress are limited to individual cases with a significant majority having a state-centric approach. Moreover, cthe ritics of tutelas have complained that

[498] Corte Constitucional, "About the Court", available at: https://www.corteconstitucional.gov.co/english/
[499]Martha I. Morgan, Taking Machismo to Court: The Gender Jurisprudence of the Colombian Constitutional Court, University of Miami Inter-American Law Review, 30 (1998).

the country is suffering from an epidemic of acute "tutelitis"[500] due to its huge backlog. Colombian scholars have interpreted the contemporary position of the tutela mechanism "as a victim of its own success" due to its overwhelming number of applications in the face of an undercapacitated Court. An interviewee has shared: *"The extraordinary redress mechanism has become the ordinary and the state is almost signaling and showing the tutela mechanism as an answer to all problems. This diseffectivizes other judicial mechanisms."*[501] Practitioner interviewees have shared that for gender-focused cases, it is unlikely that the judges handling the tutela have broad knowledge about gender equality, or even a gender perspective since any judge (who may not be knowledgeable about gender) can deal with a specific tutela case. Many cases which have indirect or invisibilized gender dimensions are dealt with a gender-blind approach due to the lack of gender-focused training of judges and their overwhelming workload. This causes judges to often use similar templates of justified verdict texts by merely changing the names of the applicants. There are four gender-specific problems of the tutela system as expressed by the interviewees. The first problem is the lack of an intersectional approach, in which only one aspect of the applicant's identity is taken into consideration in practice. They are either considered to be an elderly citizen, or a woman, or an indigenous community member, exclusively. Second problem is the lack of gender diversity in the judiciary, which feminist scholars attribute mostly to the methods of appointment to the Supreme Court, resulting in male-dominated benches (with the exception of the Constitutional Court and Peace Tribunal). The third problematic aspect is "the fetishization of legalization",[502] further explained as the tendency of lawyers to mobilize exclusively among themselves and hoping for gender equal improvements only through amendments of legislation or through creating new laws, without inviting feminist sociologists or other gender experts engaging in interdisciplinary collaboration or knowledge sharing. Fourth and last problem is the lack of tools to support the strategic use of tutelas to gain widespread political support, despite the promising engagement of NGOs and strategic litigation practitioners using tutelas with hopes to establish precedents.

When it comes to National Action Plans, Colombia is ahead of the curve compared to Türkiye and South Africa, with two published Business and Human Rights National Action Plans (one

[500] Martha I. Morgan, Taking Machismo to Court: The Gender Jurisprudence of the Colombian Constitutional Court, University of Miami Inter-American Law Review, 30 (1998), p. 262.
[501] Oral interview with constitutional law scholar from Colombia (February 2023).
[502] Oral interview with constitutional law scholar from Colombia (February 2023).

covering 2015-2018[503] and one covering 2020-2022[504]) and an expected third one (although there is no completed baseline assessment or preparatory work that is shared publicly). The first National Action Plan has addressed gender in a limited way, with the Council to the President for Women Equality having an intangible and broad role to *"strengthen the coordination for the application of the international standards on women's rights"* and an added differential approach principle which foresees *"affirmative actions based on respect for identities as a step to overcome prejudice, discrimination and stigma practices restricting"* the rights of women, alongside other listed vulnerable groups and identities, such as children, LGBTI+, people with disabilities.[505] The National Action Plan (NAP) addresses vulnerable and excluded groups through several action points. The second National Action Plan has reproduced this problematic and limited approach towards women, often categorizing them among vulnerable groups that require special attention. It must be noted that the Assessments of the Colombian National Action Plans (NAPs) on Business and Human Rights conducted by think tanks and NGOs fail to address this exclusion properly.[506] The National Task Force has no state representatives with a focus on gender equality.[507] According to Action Point 1.3. of the NAP, ethnic and national diversity is ensured within the Monitoring Commission or the Expert Committee (*Comisión de Seguimiento*), with representatives elected by the indigenous organizations and the national organizations of black communities. However, no gender experts from state institutions or civil society representatives are included. Notably, the Ombudsman's Office (*Defensoría del Pueblo*) which operates as Colombian National Human Rights Institution holds the potential to play an important role in the creation and implementation of business and human rights policies and practices with a gender perspective,

[503] Presidential Minister-Counselor for Post-conflict, Human Rights and Security, Colombian National Action Plan (2015-2018), available at: https://globalnaps.org/wp-content/uploads/2018/04/pna-colombia-english.pdf
[504] Presidential Counselor for Human Rights and International Affairs, Colombian National Action Plan on Business and Human Rights (2020-2022), available at:. https://globalnaps.org/wp-content/uploads/2021/06/colombia-2020-2022-plan-nacional-de-accion-de-empresa-y-derechos-humanos.pdf
[505] Ibid.
[506] International Corporate Accountability Roundtable (ICAR) and the Center for the Study of Law, Justice, and Society (Dejusticia), Assessment of the Colombian National Action Plan (NAP) on Business and Human Rights, (2016), available at: https://media.business-humanrights.org/media/documents/files/documents/ICAR-Dejusticia_Evaluacion_of_Colombian_NAP_FINAL.pdf
[507] According to the First National Action Plan, "a Task Force on Business and Human Rights has been created –in the Context of the Subsystem for Economic, Social, Cultural and Environmental Rights (DESCA) of the National Human Rights and International Humanitarian Law System– as an inter-institutional entity charged with the coordination of entities to work on this matter. This Task Force is formed by: the Department for Social Welfare; the National Department for Planning; the Ministry of the Interior; the Ministry of Education; the Ministry of Culture; the Ministry of Labor; the Ministry of the Environment; the Ministry of Agriculture; the Ministry of Commerce; the Ministry of Mines; the Ministry of Finances; the Ministry of Foreign Affairs; the Ministry of Health; the Ministry of Transportation; the Ministry of Housing; SENA; Coldeportes; Colciencias. And, the Ombudsman's Office; the Treasury Inspector's Office of the Republic; and the Attorney General's Office": Presidential Minister-Counselor for Post-conflict, Human Rights and Security, Colombian National Action Plan (2015-2018), available at: https://globalnaps.org/wp-content/uploads/2018/04/pna-colombia-english.pdf

yet it has remained rather passive. The office has put forward meaningful reporting and monitoring work, specifically with regard to the protection of human rights defenders,[508] has identified businesses -"private agents with economic interests"- as a type of actor linked to attacks against human rights defenders and warned in a report:

"…Violence against leaders and human rights defenders is not exercised exclusively by armed groups outside the law. The confluence of violence factors in the territory, and the instrumentalisation that other agents make of it, when their interests are threatened, creates a high risk scenario for the work carried out by the people and organisations that organise the defense of human rights and the claim of economic, social, cultural and environmental rights. In particular, these have been situations where private agents defend economic interests (land, extractive activities, agribusiness, etc.) of individuals or […] consider their interests have been threatened in the restitution processes of land, protests for the implementation of extractive projects (hydrocarbons and mining) or by the reporting of abuses against communities and people."[509]

Although the *Defensoría del Pueblo* has been one of the main institutions in the drafting of both of the National Action Plans, and a representative of the Office is included within the Monitoring Committee to advise and guide for the implementation of the NAP, it is not actively engaged within the business and human rights policy-making, and scholar interviewees have mentioned they have a similar passive role with regard to corporate abuses of women's rights or gender dimensions. The Ombudsman's Office, along with the regional and municipal ombudsman's offices (*Defensor del Pueblo Regional* and *Personero*), prioritizes gender-responsive policy-making and have appointed Delegates for Women's Rights, however, their focus is mostly on gender-based violence response, discrimination, providing legal aid[510] and the implementation of Colombian National Gender Policy along with the President Council for Gender Equality,[511] which lacks any business and human rights

[508] BHRRC, "Business & Human Rights Defenders in Colombia", (2020), avalable at: https://media.business-humanrights.org/media/documents/files/Business__Human_Rights_Defenders_in_Colombia.pdf

[509] Colombian Ombudsperson's Office, Alerta Temprana 26-18, (2018), available at: http:// www.indepaz.org.co/wp-content/uploads/2018/03/AT-N%C2%B0-026-18- Defensores.pdf

[510] World Bank, Gender Equality in Colombia: Country Gender Assesment, available at: https://documents1.worldbank.org/curated/en/665381560750095549/pdf/Gender-Equality-in-Colombia-Country-Gender-Assessment.pdf.

[511] OECD, "Gender Equality in Colombia : Access to Justice and Politics at the Local Level", (2020), available at https://www.oecd-ilibrary.org/sites/99444453-en/index.html?itemId=/content/component/99444453-en#:~:text=Moreover%2C%20in%20comparison%20to%20many,lower%20than%20average%20female%20participation

perspective except for equality for opportunity in employment,[512] and does not necessarily address the gender dimension of business and human rights, or corporate related gendered abuse and exploitation.[513]

It must be noted that the Second National Action Plan[514] (only available in Spanish and) has a much more developed, gender-sensitive, if not a responsive language with regard to the inclusion of gender perspective, with specific action points for the formulation and implementation of gender guidelines for energy and mining sector and banking industry. There are references to SDG 5 on gender equality and the 2030 Sustainable Development Agenda, a more active role of the Presidential Council for Women to initiate gender parity incentives and advise and guide private companies to do so, awarding good practices of companies with initiatives for closing gender gaps and the empowerment of women and girls. Most importantly the language of the Action Plan has evolved from vulnerability to the "approach with a gender perspective" principles included as following:

(Approach with a gender perspective includes…) *"a rights-based approach to human rights, applied to gender issues revealing how corporate violation of human rights affect women and men differently, and how the power dynamics and gender discrimination affect the effective enjoyment of rights"*[515]. The Gender Dimension of BHR Document prepared by the UN Working Group was referred to and taken as a basis for consideration to understand gendered impacts better. Clearer roles for the Presidential Council, identified sectors with required gender policies and a cause-focused understanding of the integration of gender approach are promising developments indicating gradual improvement. Having said this, the Colombian BHR experts are critical and skeptical about the soft nature of the action plan, the limited implementation of gender-focused action points, the lack of enforcement with regard to gender policies, the ongoing lack of recognition and awarding of those who perform well with good practices, and the lack of sanction for those failing to create gender policies or to meet gender quotas.[516]

---

[512] Lorena Trujillo, Evaluation of the national gender policy in Colombia, Departamento Nacional de Planeación, (2021), available at: https://nec.undp.org/sites/default/files/2021-03/Evaluation-of-the-national-gender-policy-in-Colombia.pdf

[513] Colombian Ombudsperson's Office, Advocacy Report: Violence Based on Gender and Discrimination, (2019), available at: https://www.defensoria.gov.co/public/pdf/Informe%20Defensorial-Violencias-Basadas-Genero-Discriminacion.pdf.

[514] Presidential Counselor for Human Rights and International Affairs, Colombian National Action Plan on Business and Human Rights (2020-2022), available at:. https://globalnaps.org/wp-content/uploads/2021/06/colombia-2020-2022-plan-nacional-de-accion-de-empresa-y-derechos-humanos.pdf

[515] Ibid.

[516] Oral interview with a scholar/BHR expert from Colombia (February 2023).

It could be debated whether the National Action Plans could be analyzed under "Domestic Legal Arena". Indeed, there is a growing interest on NAPs among BHR scholars,[517] with some seeing the potential to advance national compliance as a necessary first step while other describing them as a "mirage"[518] or "*cosmetic devices that states use to deflect attention from persisting abuses and needed regulation*"[519], evoking a debate reminiscent of the everlasting discussion around the soft nature and effectiveness of the UNGPs.

Indeed, the problematic gender approaches of UNGPs (such as the exceptional recognition of gender based violence as a wartime atrocity, or a disproportionate emphasis on the vulnerability of women, rather than their agency) are reproduced under NAPs, as seen in the Colombian NAPs. Gender experts or gender-focused institutions are often not included among the relevant stakeholders, and as BHR scholars identified, across business and human rights NAPs drafting processes, *"...LGBTI, persons with disabilities, women, representatives of indigenous communities, the self-employed, and small and medium-sized businesses"*[520] have not been adequately included, or to put it in other words, their absence is visible. Regardless, National Action Plans remain the most relevant normative or political frameworks in many jurisdictions that lack a mandatory human rights due diligence or a supply chain legislation with legally binding obligations on businesses. For better or for worse, they initiate a momentum by gathering relevant stakeholders in the multi-stakeholder spirit of the UNGPs, show political commitment despite the lack of implementation in most cases, hold potential for effective integration of gender in national BHR policies and practices, and takes a step further than umbrella clauses of non-discrimination or women's empowerment discourse which is within the purely voluntary corporate social responsibility territory.

Proceeding with the Turkish domestic legal arena, business and human rights is a fairly new area without a favourable foundation for a gender responsive business and human rights mechanism. The Ministry of Labour and Social Security published the "National Guiding

[517] See: Claire Methven O'Brien et. al, National action plans: Current status and future prospects for a new business and human rights governance tool, Business and Human Rights Journal 1(1), (2016); Humberto Cantú Rivera, National Action Plans on Business and Human rights: Progress or Mirage?, Business and Human Rights Journal, 4(2), (2019); Damiano De Felice and Andreas Graf, The potential of National Action Plans to implement human rights norms: An early assessment with respect to the UN Guiding Principles on Business and human rights, Journal of Human Rights Practice 7(1), (2015).
[518] Humberto Cantú Rivera, National Action Plans on Business and Human rights: Progress or Mirage?, Business and Human Rights Journal, 4(2), (2019).
[519] Claire Methven O'Brien, John Ferguson, and Marisa McVey, National Action Plans on business and human rights: an experimentalist governance analysis, Human Rights Review (2021)
[520] Claire Methven O'Brien, et al., Securing sustainable and accountable business in Europe: the Role of National Action Plans, (2018), available at: https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2019/01/scotlandnap_accountability_workshop_report.pdf.

Principles on Working Life" in 2022, which is the closest policy framework to a National Action Plan. The National Guiding Principles is a document lost in translation according to BHR expert interviewees from Türkiye, and is limited to labour rights perspective of business and human rights. The gender blind approach of Turkish National Guiding Principles is a typical indicator of the problem of limited representation of women in decision-making (both in law and policy-making and implementation). Türkiye's "National Guiding Principles on Work Life"[521] (The Principles) was prepared by the Ministry of Labour and Social Security, Labour Directorate, "with the contributions of" the Ministry's General Directorate of Foreign Relations, General Directorate of Occupational Health and Safety, the Ministry of Justice, the Human Rights and Equality Institution of Türkiye, and with the participation of only two trade unions: TÜRK-İŞ and HAK-İŞ, and TİSK (Turkish Employer's Union). The UNGPs and relevant domestic legislation were taken as a basis, according to the text. The normative frameworks' preparatory process is not transparently shared, however, based on the publicly shared available information, DİSK, the third biggest trade union confederation (which is more progressive and is currently the only trade union with a woman president), women's rights NGOs, or the Ministry of Family and Social Services, who are the relevant ministry for women's rights issues, were not involved in the consultations. The launch event had no visible women participants. This male-dominated and state-focused preparatory process is heavily reflected in the text, in which there are no references to gender equality or gender dimensions of business operations except for an umbrella non-discrimination guiding principle under which sex is among the enumerated bases for discrimination and relevant references to Article 11 of CEDAW, and Article 50 of the Constitution, which focus on non-discrimination and affirmative measures. It is only stated that "equal rights and opportunities for women and men", "equal treatment principle", "equal pay for equal work or work of equal value" are among the principles for a system of working life under the guarantees provided by vaguely referenced relevant domestic and international legislation[522].

All in all, the Principles clearly fail to integrate gender issues overall. According to the interviews with experts and participants of the consultation meetings, this is mainly caused by the lack of knowledge and coordination among ministries, and that even the relevant state departments focusing on gender, namely, the Ministry on Family and Social Services or the

[521] Turkish Ministry of Labour and Social Security Ministry, National Guiding Principles on Work Life, (2022).
[522]These include barely mentioning ILO Equal Pay Convention No. 100, ILO Convention on Discrimination No. 111, Article 4 of the European Social Charter on the right to a fair remuneration, the Constitution, Turkish Civil Code and Penal Code, the Law on the Human Rights and Equality Institution of Türkiye and the Labour Law No. 4857. Article 50 of the Constitution on the special protection to be enjoyed by minors, women, and disabled persons with regard to working conditions is also mentioned.

Directorate on Women's Status were not involved within the preparation process at all, let alone academics or civil society.[523] Two academics, who have provided feedback for the draft principles text, have mentioned the need to integrate gender equality, among some other significant gaps (such as addressing supply chains and subcontractors, due diligence mechanisms, or free, prior, and informed consent). However, these feedbacks, provided through unofficial channels were not taken into consideration. The Principles are heavily criticized for their lack of focus, insufficient content, and its haphazard preparation process, and are not well-known within the labour rights community or feminist civil society.[524]

Taking the Principles as Türkiye's first official Business and Human Rights Framework, the biggest problem can be clearly identified as a completely gender-blind approach and the lack of any kind of representation and engagement of women's rights organizations or the relevant gender-focused state departments. In terms of the available normative frameworks with a specific focus on business and human rights, Türkiye firstly needs to ensure representation for a gender-responsive business and human rights system.[525] Comprehensive addressing of gender within the frameworks and meaningful engagement and representation of women in public institutions and decision-making matters for actual implementation. Effective multi-stakeholder engagement is a prerequisite for gender-responsive BHR mechanisms.

Apart from an inadequate initial business and human rights policy document, it is possible to state that Turkish legislations had shown a slow and gradual improvement with regard to gender equality, starting with the second-wave feminism wave increasing legal mobilization efforts, coincided with the ratification of CEDAW and the post 1980 coup democratization, until 2010s. Feminist organizations have mobilized successfully and achieved several legal reforms, such as the 2001 reform of the Turkish Civil Code which defines family as an entity based on equality between the spouses, replacing the recognition of the man as the head of the family, the improvement with regard to women's equal power to represent families, and the equalization of minimum ages for marriages among the sexes. Article 10 of the Turkish Constitution provides that "*Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds,"* with an addition of equality between men and women in 2004, and most importantly, the constitutional recognition of special measures in 2010: "*Measures taken for this purpose shall not be interpreted as contrary to the principle of equality."*

[523] Oral interview with BHR expert from Türkiye (May 2023) .
[524] Oral interview with BHR expert from Türkiye (May 2023).
[525] Turkish Ministry of Labour and Social Security Ministry, National Guiding Principles on Work Life, (2022).

Several improvements were done in the Turkish Criminal Code in 2005, with the amendment of the "hatred and discrimination" provisions, amendments with regard to violence against women, and the criminalization of marital rape and sexual harassment at the workplace. Following the ratification of the Istanbul Convention (which Türkiye later withdrew from in parallel with the general deterioration and retrogression of gender equal policies as will be discussed in detail in following sections), in 2012, the Law on Protection of Family and Prevention of Violence against Women No 6284 was enacted.

Gender-focused aspects of domestic laws with regard to business and human rights contexts, and women's labour rights are mostly about the prohibition of discrimination, maternity rights and sexual harassment at the workplace. Article 5 of the Labour Act prohibits discrimination based on sex, among other grounds, in employment relationships, under the title "Principle of Equal Treatment". The same article also further stipulates that it is prohibited to provide different compensation based on gender for a job that holds the same or equal value, and that implementing specific protective measures based on an employee's sex does not serve as a valid reason to pay them a lower wage.[526]

With regard to sexual harassment at the workplace, Turkish Labour Law obliges employers to protect their employees as part of their duty of care, which does not explicitly mention, yet covers protection against sexual harassment. The Law deems sexual harassment in the workplace as a reason for immediate termination of employment. In other words, if an employee who has experienced harassment at work and has previously reported the harassment to the employer, and the employer has failed to take the necessary precautions against the harassment, the harassed employee would be able to resign with immediate effect and seek certain statutory payments. Article 105 of Turkish Criminal Code stipulates sexual harassment and has specific clauses focusing on sexual harassment in relation with workplace or employment relationships. Accordingly, *"if a person is subject to sexual harassment by another person, the person performing such act is sentenced to a term of imprisonment from three months to two years or to a judicial fine"* and if the act of offence is committed *"a) by undue influence based on public office or employment relationship or by using the advantage of intrafamilial relationships,",* or *"c) by using the advantage of working in the same workplace with the victim,"* the punishment to be imposed according to the above paragraph

[526] Turkish Labour No. 4857, (2003), Art. 5.

is increased by one half. If the victim is obliged to quit their job or leave their school or family for this reason, the punishment to be imposed cannot be less than one year. In addition, the criminal law aspect of a case of harassment would not be binding on labour courts, meaning if a suspect is acquitted of criminal proceedings in relation to a case of sexual harassment, they may continue to face labour law sanctions (i.e. termination of employment).

In addition, the Turkish Code of Obligations also requires employers to establish order in the workplace ensuring that the personal rights of employees are protected. This obligation, implemented in 2011, includes the obligation of employers to take proactive action to prevent sexual harassment in the workplace as part of their duty of care to their employees. However, in practice, Turkish courts typically review whether an employer has taken the necessary precautions against harassment once it has been reported by an employee (as opposed to whether the employer took precautions and preventive measures before the harassment took place).[527]

There is no specific legislation dedicated to sexual harassment in the workplace yet. However, the abovementioned clauses of Turkish Labour Law, Turkish Code of Obligations and Turkish Criminal Code are applicable in cases of sexual harassment at the workplace. There is no progress with regard to Türkiye's ratification of the ILO Convention No. 190 on sexual harassment at workplace. However, there are several initiatives, trainor trainings and informative events led by ILO Türkiye Country Office[528] in collaboration with the fundings of Embassies of European States and civil society, several social media campaigns (#ILO190ıİmzala) and lobbying efforts led by labour unions, primarily by DİSK and several professional associations such as Turkish Medical Association, and Union of Turkish Engineers and Architects Chambers (although it should be noted that the efforts are always initiated by women's rights committees, or women members of the unions, instead of a strong institutional stance) and the Federation of Turkish Women's Association.[529] DİSK has prepared a policy paper on "Preventing Violence and Harassment in Work Life" based on the ILO Convention No. 190, and committed to the implementation of this policy within its member unions, and has demanded the ratification in meetings with the Minister of Labour. Although the Convention has not been ratified and therefore integrated within the domestic

[527] Oral Interview with legal representative of a trade union from Türkiye, (December 2022).
[528] ILO Türkiye Office, "ILO Türkiye Ofisi, 190 Sayılı Şiddet ve Tacizin Önlenmesi ILO Sözleşmesi ile Uyumlu Bir Çalışma Hayatı İçin "Değişimin Öncüleri Eğitici Eğitimi" Verdi", (7 July 2022), available at: https://www.ilo.org/ankara/news/WCMS_850613/lang--tr/index.htm.
[529] Kadın İşçi, "ILO 190'ı onaylayan ülkelerin sayısı 18'e yükseldi", (14 June 2022), available at: https://www.kadinisci.org/uluslararasi/ilo-190i-onaylayan-ulkelerin-sayisi-18e-yukseldi/

labour legislation, labour unions, such as Turkish Journalists Union[530]. In addition, Antalya Metropolitan Municipality became Türkiye's and world's first local government ever to sign the International Labor Organization (ILO) Policy Document No. 190.[531]

There are several important precedents in Turkish Constitutional Court's gender equality jurisprudence, such as the *Sevim Akat Ekşi* decision[532] concerning women's right to use their birth surnames exclusively, in which the Court took CEDAW as a basis for progressive legal interpretation, and interpreted Article 90 of the Turkish Constitution in a way to overrule national laws with international human rights conventions. In 2023, with a new decision, the relevant provision of Article 187 of the Turkish Civil Code regarding the surname of women was annulled, as the different treatment towards men and women was found contrary to the principle of equality.[533] Other precedents have led the way to eliminate discriminatory clauses of domestic legislations, such as the 1990 decision annuling Article 159 of the former Civil Code which required the permission of the husband for married women to work outside their homes[534], or the 1998 decision annulling Articles 440 and 441 of the former Penal Code which demarcated husband's and wife's adultery separately[535]. In 2020, the all-male bench of Constitutional Court issued a progressive decision in favour of access to abortion services, declaring that the procrastinations of the decision on a victim's request for terminating her pregnancy following a criminal act constituted a violation of her right to protect her corporeal and spiritual existence, providing a rare interpretation of the norms in favor of women's autonomy and dignity with regard to access to abortion.[536] This decision has distanced the Constitutional Court from the government's anti-abortion position reflected on the de facto ban, or the inaccessibility of abortion in public health services. Turkish Supreme Court has a slowly growing jurisprudence with regard to sexual harassment at the workplace, despite the extremely low rates of reporting.[537] In 2020, the 9th Civil Chamber of the Supreme Court delivered a precedent regarding the severance pay claims of a worker who got dismissed due to allegations of sexual harassment, and provided a detailed interpretation of sexual

[530] Bianet, "DİSK'ten hükümete: ILO 190'ı uygulayın", (15 November 2022), available at: https://m.bianet.org/bianet/siyaset/270026-disk-ten-hukumete-ilo-190-i-uygulayin
[531] Türkiye Women's Associations Federation, "Antalya Büyükşehir'den Çalışma Yaşamında Şiddeti ve Tacizi Önlemeye Yönelik İmza", (14 January 2023), available at: https://www.tkdf.org.tr/bizden-haberler/antalya-buyuksehirden-calisma-yasaminda-siddeti-ve-tacizi-onlemeye-yonelik-imza
[532] Turkish Constitutional Court (Anayasa Mahkemesi), App. No. 2013/2187, (19 December 2013).
[533] Turkish Constitutional Court (Anayasa Mahkemesi), Merit No. 2022/155, Decision No. 2023/38, (22 February 2023)
[534] Turkish Constitutional Court (Anayasa Mahkemesi), Merit No. 1990/30, Decision No. 1990/31, (29 November 1990)
[535] Turkish Constitutional Court (Anayasa Mahkemesi), Merit No. 1998/3, Decision No. 1998/28, (23 June 1998)
[536] Turkish Constitutional Court (Anayasa Mahkemesi), Merit No. 2017/31619, (23 July 2020).
[537] Beyza Erkoç, Sosyal Hizmet Perspektifinden Mobbing, Ombudsman Akademik 8 (2021).

harassment at the workplace, with an emphasis on the need to provide a workplace environment in which the victim of sexual harassment is able to oppose and to report the harasser without being subjected to any humiliation and that the perpetrator knows that they will be subjected to sanctions. The Supreme Court ruled that the employers have an obligation to act sensitively, to take all necessary measures to prevent sexual harassment harassment and to provide an environment where the victim can complain without hesitation, investigate the allegations properly and enforce all necessary sanctions. The decision included a recognition that sexual harassment can take place among all genders, yet mostly committed by men towards women workers, that it has become a systematic problem globally and in Türkiye with multidimensional harms towards the victims, and that sexual harassment is one of the major problems women come across in work life, ruling that civil chamber judges should consider that sexual harassment often takes place in place where the victim and the perpetrator are alone, and that very few of the victims can report such incidents. The ruling stated that the assessment should be made in favour of the victim and that acquittal decision in a criminal case due to a lack of evidence should not bind a civil judge deciding whether the worker alleged with sexual harassment should receive severance payment.[538] In other decisions, the Supreme Court ruled that cases of sexual harassment at the workplace such as calling a woman employee late at night and harassing them through work phone;[539] or sending an intern high school student unwanted flirty text messages[540] are rightful causes for termination, deemed as sexual harassment at the workplace. In addition, the Supreme Court has interpreted the Labour Code in favour of women workers' maternity rights, and has clarified that the rights of the pregnant worker, including the optional use of unpaid leave on top of the maternity leave are rights which are not at the discretion of the employer.[541]

There is an ongoing project titled "Business and Human Rights: Promoting Responsible Conduct in Türkiye", a joint initiative of UNDP Türkiye and the Japanese Embassy, aiming to provide capacity building and awareness-raising support for the Turkish public sector to develop business and human rights policies, to provide baseline assessment reports and tools, and to bring together stakeholders from public and private sector, as welll as civil society. The findings from the project and the statements from the public institutions, specifically, the Turkish Institution of Human Rights and Equality indicate that the gender dimension of business and human rights is mostly understood in a way limited to statistical data on women's

[538] Yargıtay, 9. Civil Chamber, Merit No. 2015/35411, Decision No. 2019/3553, (26 May 2020)
[539] Yargıtay, 9. Civil Chamber, Merit No. 2007/22753, Decision No. 2008/18639, (1 July 2008)
[540] Yargıtay, 22. Civil Chamber, Merit No. 2016/1327, Decision No. 2018/27134, (13 December 2018)
[541] Yargıtay, 9. Civil Chamber, Merit No. 2008/36349, Decision No. 2009/20734, (13 July 2009)

participation in the workforce. Turkish Pre-National Baseline Assessment, in preparation for a future national action plan has recognized that businesses' responsibility to respect human rights is dispersed across different domestic legal frameworks[542] (mostly labour legislations) and concluded that there is a need for a national legislation specifically dedicated to business and human rights, the corporate responsibility to respect, and mandatory human rights due diligence. There are few milestones with regard to national legislations and regulations, the Capital Markets Board's (SPK) Corporate Governance Communique in 2014,[543] the National Human Rights Action Plan in 2021[544] which stipulated the National Guiding Principles on Working Life of 2022,[545] which were all adopted without the inclusion of civil society and remained gender-blind, except for general principles on equality of opportunity for women's employment, and a gender quota recommended for the executive boards of companies by the Capital Market Board (further analyzed below).[546] Türkiye has 71 bilateral investment treaties in force, as of September 2023[547] and neither the BIT principles enlisted by the Ministry of Trade, nor the text of any of such treaties include points regarding respect for human rights, labour rights or gender equality. The available justice mechanisms, similar to the relevant legal frameworks, are dispersed across different institutions. These are limited to the Turkish OECD National Contact Point, the Turkish Institute for Human Rights and Equality, the Ombudsperson's Office, the Consumer Arbitration Committee, the Institute for the Protection of Personal Data, the Labour Inspectorships and the Provincial and District Human Rights Committees. These institutions are not well known among workers and civil society as viable options for remedy mechanisms, and require capacity building and training with regard to business and human rights, including its gender dimensions. There are a few decisions by TİHEK, with regard gender based discrimination in work life, one including violation ruling with regard to gender based mobbing and discrimination,[548] recruitment calls only open for male applicants,[549] and gender-based discrimination in the recruitment process or during

[542] These are: the Constitution of the Republic of Türkiye; Labour Code No. 4857, (2003) ; Environmental Law No. 2872, (1983), Criminal Code No. 5237, (2004); the Law on Occupational Health and Safety No. 6331, (2012); the Law on Turkish Institution on Human Rights and Equality No.6701, (2016); the Law on Collective Labour Law No. 6356 (2012); the Law on Strike and Lock-out Law No. 2822, (1983); the Law on Protection of Consumers No. 6502, (2013); and the Law on the Protection of Personal Data No. 6698, (2016).
[543] Turkish Capital Markets Board, "Sürdürülebilirlik", available at: https://spk.gov.tr/surdurulebilirlik
[544] Ministry of Justice of Republic of Türkiye, National Action Plan on Human Rights, (2021).
[545] Ministry of Labour and Social Security of Republic of Türkiye, National Guiding Principles on Work Life, (2022):
[546] Turkish Capital Markets Board, "Sürdürülebilirlik", available at: https://spk.gov.tr/surdurulebilirlik
[547] Ministry of Trade of Republic of Türkiye, "Bilateral Investment Treaties", available at: https://www.trade.gov.tr/legislation/bilateral-investment-treaties
[548] TİHEK, 2023/460 Board Decision No. 2023/460, (30 May 2023)
[549] TİHEK, Board Decision No. 2022/941, (29 December 2022)

employment due to pregnancy.[550] Having said this, it is not possible to say that TİHEK has a gender policy or a specific gender focus, and apart from participation within BHR-related policy discussions and meetings,[551] and being involved in the consultation process during the preparation of the National Guiding Principles, the Institution has not contributed to gender-focused work with regard to employment or overall national BHR mobilization efforts.

Similar to Türkiye and Colombia, South African domestic legal arena places business and human rights duties mostly on the States, and is diplomatically leading[552] the idea of an international binding treaty (as the leader of the proposal for Binding Treaty on BHR along with Ecuador, and leading the African Group within the Human Rights Council on this agenda), putting more weight to the binding treaty approach. The government has not yet officially committed to developing a NAP. Nevertheless, the domestic legal arena provides domestic laws through which both business and human rights and gender equality can be advanced, although these two areas seem to be intersecting rarely, and the main problem is their implementation, similar to the other two jurisdictions of this dissertation's triple comparison. It must be noted, however, that business and human rights related legislations in South Africa have the most gender sensitive language and approach. The post-apartheid legal regime in South Africa extensively produces legislations with a strong human rights language, and women's status and their subordination in the private sphere have been acknowledged gradually since 1994. These legislations function to extend rights and benefits, but also aim to challenge traditional gender roles by establishing strong normative frameworks, supported by constitutional rights both from the texts and through the progressive interpretation of the South African Constitutional Court.

Gender equality is enshrined in the South African Constitution, specifically, within the Bill of Rights under Section 9 on Equality. Human dignity, freedom and the achievement of equality are among foundational democratic values in South African Constitution with a strong emphasis on socio-economic rights[553]. Sub Section 9(3) of the Constitution provides that *"the*

[550] TİHEK, Board Decision No. 2022/436, (28 June 2022) ;TİHEK, Board Decision No. 2021/230, (14 September 2021).
[551] TİHEK, ""İş Dünyası ve İnsan Hakları: Türkiye'de Sorumlu İşletme Davranışlarının Desteklenmesi Projesi" kapsamında TİHEK Farkındalık Artırma ve Eğitim Toplantısı düzenlendi", (22 December 2022), available at: https://www.tihek.gov.tr/is-dunyasi-ve-insan-haklari-turkiyede-sorumlu-isletme-davranislarinin-desteklenmesi-projesi-kapsaminda-tihek-farkindalik-artirma-ve-egitim-toplantisi-duzenlendi
[552] Abe Oyeniyi, The State of Business and Human Rights in South Africa, Friedrich-Ebert-Stiftung African Union Cooperation Office, (2022), available at: https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf
[553] Catherine Albertyn, Law, gender and inequality in South Africa, Oxford Development Studies 39(2), (2011).

state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth."

After 1994, there was a series of laws[554] addressing gender equality, or women's access to rights. The 1996 Act on the Choice on Termination of Pregnancy Act, provides for access to abortion services on request in the first 12 weeks and in terms of broad conditions between 12 and 20 weeks. The Recognition of Customary Marriages Act No. 120 of 1998 recognizes customary marriages and women's equality in status, decision-making, marital property ownerships and parental rights over children (except for Muslim and Hindu marriages, which are separately regulated, yet they are recognized too), the Maintenance Act No. 99 of 1998, has improved access to and security of maintenance for children, and the Basic Conditions of Employment Act No.75 of 1997 extended maternity and parental rights and protections with regard to employment. The Domestic Violence Act of 1998, which was most recently amended and extended with the Domestic Violence Amendment Act, in 2021, is the major legislative framework on women's freedom from violence, providing definitions and preventive mechanisms and protective measures against abusive partners and perpetrators. The amendment of the Domestic Violence Act was part of a series of amendment acts[555] signed by President Ramaphosa, providing improvements to the Criminal Law Amendment Act No. 105 of 1997, and the Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007, which constitute the procedural and substantive legal foundations for the fight against different forms or gender-based violence.

These series of GBV amendment acts were in response to the widespread protests and legal advocacy efforts of South African feminist organizations due to the pandemic of gender based violence, in parallel with the COVID-19 measures, aiming to strengthen efforts to fight against GBV and to have a more victim focused approach with new and broader definitions and extended protective mechanisms.[556] With regard to women's labour rights and gender-based discrimination, the Employment Equity Act No. 55 of 1998 aims *"to implement affirmative action measures to redress the disadvantages in employment experienced by designated*

[554] For summaries and a critical analysis of such laws See: Michelle O'Sullivan and Christina Murray, Brooms sweeping oceans? Women's rights in South Africa's first decade of democracy, Acta Juridica 2005(1), (2005).
[555] The Criminal and Related Matters Amendment Act No. 12 (2021), the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Act No. 13 (2021) and the Domestic Violence Amendment Act No. 14 (2021).
[556] Oral interview with feminist civil society representative from South Africa, (February 2023).

groups", and *"to ensure their equitable representation in all occupational categories and levels in the workforce."* The designated groups are listed as black people, women and people with disabilities. The Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 provides a broader definition of unfair discrimination on the ground of gender, under its Article 8, addressing systemic inequality, discriminatory practices of customary law and access to socio-economic rights:

"(a) gender-based violence;

(b) female genital mutilation;

(c) the system of preventing women from inheriting family property;

(d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;

(e) any policy or conduct that unfairly limits access of women to land rights, finance, and other resources;

(f) discrimination on the ground of pregnancy;

(g) limiting women's access to social services or benefits, such as health, education and social security;

(h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;

(i) systemic inequality of access to opportunities by women as a result of the sexual division of labour."

The Act's preamble mentions the requirement of *"the eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people"* and upholds *"the values of human dignity, equality, freedom and social justice in a united, non-racial and non-sexist society where all may flourish."* Similar to this Preamble, patriarchy is traditionally named following apartheid and colonialism in many other legal frameworks addressing socio-economic rights. This is illustrative of the uniqueness of redistributive legislations and policies, which have prioritized racial inequality, and women's rights have somehow remained as a crucial yet secondary value, which have supported poor black women in their access to such rights yet failed to address and develop systems to transform their exclusions, or their place remaining at the at the bottom of the socio-economic hierarchy. Feminist scholars have criticized women's political movement for failing to address issues and their *"tendency to address issues of recognition rather than*

redistribution, and to focus on formal rights and broad normative questions rather than detailed conceptual frameworks that offer concrete policy alternatives."[557] This has reflected on the flourishing business and human rights community as well, with corporate abuses of human rights, specifically due to extractive operations are often approached with a race lens, then by gender, and not being able to fully apply an intersectional approach yet, according to the interviews with BHR experts in South Africa.

The law plays an immense role in South African democracy when it comes to access to rights and resources, and the struggle for gender equality, as feminist organizations mobilize their advocacy efforts as much around legal reforms as their strategic litigation efforts. However the law may be a mixed blessing in contemporary South Africa, and similarly, in Türkiye and Colombia. It is an essential and necessary tool, to respond to South African women's struggles yet at the same time, it remains insufficient, may push legal scholars to the trap of legal fetishization, and may fail to dismantle traditional gender roles and patriarchal dynamics by not being implemented and enforced properly. The law may reinforce and reproduce such roles on the contrary by remaining as a merely well-intentioned tool, protective of vulnerable mothers and daughters of the nation, and not fulfilling its transformative potential. Moreover, a disproportionate emphasis on the law shadows the alarming need to improve and ensure implementation.

For example, redistributive policies and laws, such as the Black Economic Empowerment policies, have mostly adopted inclusive, rather than transformative approaches which do not ignore gender aspects of issues, yet focus more on deracialization of socio-economic inequalities instead of fundamentally transforming colonial and patriarchal systems. Such legislations and policies, which are successful at inclusion, yet failing at transformation manifest themselves clearly in status-based legislation aiming to eliminate barriers before women's active participation at work life, caused by their reproductive role such as maternity leave or social benefits. However, they do not transform the work culture, or address women's specific, tangible needs with regard to social support. A comprehensive understanding and a strong language of social justice and inclusion do not always equate to gender-transformative systems or smooth implementation in practice, which is the complicated case in South Africa.[558]

[557] Catherine Albertyn, Law, gender and inequality in South Africa, Oxford Development Studies 39(2), (2011).
[558] Ibid.

With regard to women's active participation in decision-making, in addition to the political quotas introduced by the ANC[559] (as discussed below) the 2003 Board-based Black Economic Empowerment Act introduced several affirmative measures for higher participation of black people in economic activities, with certain clauses aiming to increase "*the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training",* which directly addresses businesses, although there are no monetary sanctions, yet incentives instead, and the focus is significantly on racial diversity, rather than gender.[560]

The South African gender equality jurisprudence is well-established and still growing, through landmark decisions of the Supreme Court of Appeal, the High Courts, and most importantly, the Constitutional Court.[561] For example, the Supreme Court of Appeal's *Grobler v. Naspers BPK en 'n Ander*[562] judgment of 2004 is described as a landmark[563] by feminist scholars with regard to sexual harassment at the workplace, in which the Court held an employer vicariously liable for sexual harassment perpetrated by one of its employees unless they have taken reasonable action to prevent or eliminate such behaviour at the workplace, which is their duty. The Court further rules that in such cases victims of harassment may sue both their employer and the perpetrator for damages.[564] *Carmichele v. Minister of Safety and Security et al.,* is another landmark case of the Constitutional Court, which had international impact[565] as a precedent recognizing gender-based violence as a form of discrimination and for recognizing the positive obligations of the state to prevent gender based violence,[566] predating ECtHR's

[559] Mavivi Myakayaka-Manzini, Political party quotas in South Africa, presented in International Institute for Democracy and Electoral Assistance (IDEA)/Electoral Institute of Southern Africa (EISA)/Southern African Development Community (SADC) Parliamentary Forum Conference, Pretoria, (2003), available at: https://www.aceproject.org/ero-en/topics/parties-and-candidates/CS_South_Africa_Manzini-final2-6-2004.pdf

[560] Anna Minasyan, "Board gender quotas bring women to the board but not to senior management", LSE Bsuiness Review Blog, (24 September 2020), available at: https://blogs.lse.ac.uk/businessreview/2020/09/24/board-gender-quotas-bring-women-to-the-board-but-not-to-senior-management/

[561] Justice and Constitutional Development department of the Republic of South Africa, Women and the Law in South Africa: Gender Equality Jurisprudence in Landmark Court Decisions, (2009), available at: https://www.gov.za/sites/default/files/gcis_document/201409/2009womenlawcourt-decisions0.pdf,
Catherine Albertyn, Law, gender and inequality in South Africa, Oxford Development Studies 39(2), (2011); Gender UN Women, Equality and Wmoen's Empowerment: Constitutional Jurisprudence, (2017), available at:https://www.idea.int/sites/default/files/publications/gender-equality-and-womens-empowerment-constitutional-jurisprudence.pdf

[562] Grobler v. Naspers BPK en 'n Ander 2004(4) SA 220 (C).

[563] Benita Whitcher, Two Roads to an Employers Vicarious Liability for Sexual Harassment: S Grobler v. Naspers BPK en'n Ander and Ntsabo v. Real Security CC, Indus. LJ 25 (2004).

[564] Grobler v. Naspers Bpk en 'n ander 2004 (4) SA 220 (C).

[565] Maluleke, M. J. and Madonsela T., Women and the Law in South Africa: Gender Equality Jurisprudence in Landmark Court Decisions (Pretoria: Department of Justice and Constitutional Development, 2004).

[566] Another landmark case with a similar approach to the state's positive obligations to actively protect women against gender-based violence is K v. Minister of Safety and Security (CCT52/04) [2005] ZACC 8; 2005 (6) SA 419 (CC); 2005 (9) BCLR 835 (CC) ; [2005] 8 BLLR 749 (CC); (2005) 26 ILJ 1205 (CC) (13 June 2005)..

Opuz v. Turkey.[567] The Constitutional Court held that the police has a positive duty to protect women from violence to protect their rights to dignity and freedom, and security of the person, and that the South African state has a duty under international law (most specifically, CEDAW) to prohibit and eliminate gender-based discrimination which impairs the enjoyment of women's rights.

Bhe and Others v. The Magistrate, Khayelitsha and Others; Shibi v. Sithole and Others; and *South African Human Rights Commission and Another v. President of the Republic of South Africa*[568], is a trilogy of cases where the Constitutional Court dealt with the constitutionality of the customary law rule of primogeniture, and relevant provisions of the Black Administration Act, which excluded and discriminated against mostly black women married under customary law and extra-marital children in the context of customary law. The Constitutional Court had a challenging task of balancing a number of constitutional rights, including the rights to human dignity (Article 10), equality (Article 9) in relation to gender and birth, and to cultural diversity (Articles 30 and 31) and ruled in favour of women's equal access to customary inheritance, paving the way for a dynamic, gender-equal interpretation of customary law:

"It is a form of discrimination that entrenches past patterns of disadvantage among a vulnerable group, exacerbated by old notions of patriarchy and male domination incompatible with the guarantee of equality under the constitutional order....[The implication] that women are not fit or competent to own and administer property ... subject[s] these women to a status of perpetual minority, placing them automatically under the control of male heirs, simply by virtue of their sex and gender."[569]

Similarly, in *Daniels v. Campbell NO*[570], (2004) and *Hassam v. Jacobs*[571], (2009), the Constitutional Court upheld women's rights to maintenance and inheritance in (legally

[567] Opuz v. Turkey, 33401/02, Eur. Ct. H.R., (2009).
[568] Bhe and Others v. Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004); Shibi v. Sithole and Others (CCT 50/03, CCT 69/03, CCT 49/03) [2004] ZACC 18; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004); South African Human Rights Commission and Another v. President of the Republic of South Africa and Another 2005 (1) SA 580 (CC).
[569] Shibi v. Sithole; SA Human Rights Commission v. President of the RSA 2005 1 SA 580 (CC); 2005 1 BCLR 1(CC), para 91.
[570] Daniels v. Campbell and Others (CCT 40/ 03) [2004] ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) (11 March 2004).
[571] Hassam v. Jacobs NO and Others (CCT83/08) [2009] ZACC 19; 2009 (11) BCLR 1148 (CC) ; 2009 (5) SA 572 (CC) (15 July 2009).

unrecognized) Muslim marriages.[572] It must be noted, however, that despite the well-developed gender jurisprudence of the Constitutional Court, there have been some cases in which gender equal interpretations of women's fundamental rights have been missed, such as *Volks NO v. Robinson*[573] where a woman, who was in a cohabiting heterosexual relationship with her partner was unsuccessful in her claims to maintenance rights from her deceased partner, or sex workers' claims for recognition of certain rights and decriminalization of sex work as in *S v. Jordan.*[574]

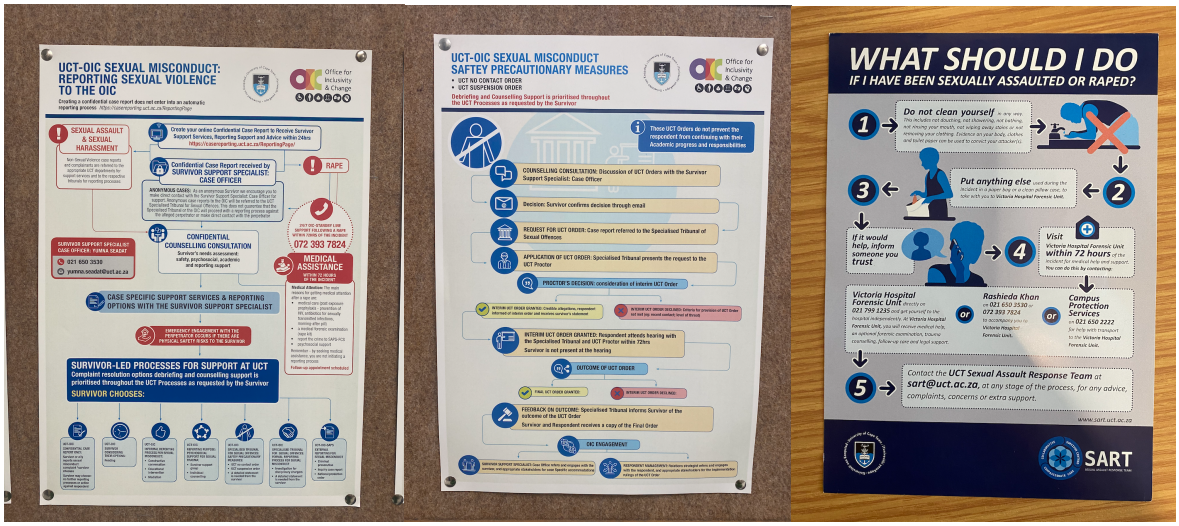
What is unique in South African gender equality jurisprudence, is the active engagement of women's rights organizations, or to put it in other words, a well-developed system of women's groups and other interested groups being appointed or admitted as interveners or amici curiae. This has been the case in several landmark decisions, resulting with Constitutional Court explicitly adopting some of the arguments of the amicus curiae in *Gumede*, and in *Mayelane* (another landmark case for gender equal interpretation of "living" customary law), *Bhe*, and *Mahlangu* (an intersectional interpretation in favour of the recognition of domestic workers' labour rights, further discussed in the sections below) decisions,[575] the arguments of the interveners, namely, the Women's Legal Centre Trust and the South African Commission for Gender Equality prevailed. Interviews with representatives from both organizations have shown that while their ability to be actively involved as *amici curae* position have given them credibility and impact on gender jurisprudence, this is a double-edged sword: having overcapacity, backlog and state institution's dependency on such organizations as the rescuers, with many reported cases of women turned away from formal procedures and directed to these organizations instead, at times asking for clarifications and advice due to their deep expertise on certain matters.[576] Both institutions have shared through interviews with representatives, that although business and human rights is a topic of concern and close connection, and that there are several individual cases with regard to domestic workers' rights and sexual

[572] Daniels v. Campbell and Others (CCT 40/ 03) [2004] ZACC 14; 2004 (5) SA 331 (CC); 2004 (7) BCLR 735 (CC) (11 March 2004); Hassam v. Jacobs NO and Others (CCT83/08) [2009] ZACC 19; 2009 (11) BCLR 1148 (CC) ; 2009 (5) SA 572 (CC) (15 July 2009).
[573] Volks NO v. Robinson and Others (CCT12/04) [2005] ZACC 2; 2005 (5) BCLR 446 (CC) (21 February 2005).
[574] S v. Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117 (9 October 2002).
[575] Gumede (born Shange) v. President of the Republic of South Africa and Others (CCT 50/08) [2008] ZACC 23; 2009 (3) BCLR 243 (CC); 2009 (3) SA 152 (CC) (8 December 2008); Mayelane v. Ngwenyama and Another (CCT 57/12) [2013] ZACC 14; 2013 (4) SA 415 (CC); 2013 (8) BCLR 918 (CC) (30 May 2013); Bhe and Others v. Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004); Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020).
[576] Oral interviews with legal practitioners from South Africa (February 2023).

harassment at the workplace, and that they hope such landmark cases can be extended to "better the lives and livelihoods of working class black women", they also admit that the prevalence of gender-based violence and the lack of implementation -"the broken nature of institutions"- have not given them the opportunity to fully deal with the issue or lead a specific case to transform corporate abuses of human rights in supply chains yet.[577] Both interviewees have mentioned environmentalist strategic litigators and think tanks with regard to active legal advocacy work against multinational corporations, instead of feminist organizations, reinforcing the exclusively "green" image of business and human rights community in contemporary South Africa context.

With regard to policy implementations on sexual harassment, interviewees from feminist organizations, universities and the Commission for Gender Equality have all pointed out to the proliferation of sexual harassment policies, starting primarily at the universities and slowly becoming more popular in private sector. However, while there is a significant awareness and acknowledgement of the prevalence of gender-based violence (specifically within the complex power dynamics in hierarchical academic and professional environments) among the higher management of such institutions, the sexual harassment response mechanisms are reported to be set up with a top down approach without consulting the victims or groups under higher risk. The procedures are complicated and require excessive paperwork and often, the informative websites for applications are not properly functioning or the hotlines are not working. This has created a distinct collective sense of weariness and pessimism, evident from the interviews, specifically among young women in academia or in work life.

[577] Oral interviews with legal practitioners from South Africa (February 2023).





Figures 4.2.a., 4.2.b., 4.2.c., 4.2.d, 4.2.e.: Posters and brochures for reporting sexual misconduct and safety precautionary measures, by the Sexual Assault Response Team and the Office for Inclusivity and Change of UCT, a graffiti on no excuse for rape and sexual harassment and a campus security mobile unit at the UCT campus. (February 2023, photographs taken by the author).

In the face of the well-established gender jurisprudence and legal frameworks, the available business and human rights mechanisms in South Africa are not completely gender-blind, yet their gender approach remains limited to the recognition of women's, specifically black women's unique experiences. Since there is no official commitment for a NAP, the only National Baseline Assessment available is a "shadow" version co-prepared by the Centre for Human Rights, University of Pretoria and International Corporate Accountability Roundtable (ICAR). The shadow baseline assessment, along with South African BHR experts point out to three major issues: lack of victims' access to judicial remedies, lack of human rights due

diligence mechanisms, and the historically unequal and discriminatory land ownership.[578] With regard to gender dimensions of business and human rights, three main constitutional protective mechanisms hold potential: the South African Human Rights Commission (SAHRC); the Commission for Gender Equality; and the Commission for Conciliation, Mediation, and Arbitration (CCMA). The SAHRC, according to the South African Human Rights Commission Act (2013) and the South Africa Constitution (Section 184), is the national human rights institution with a mandate to promote and protect human rights, addressing violations and seeking effective remedies, and monitoring and assessing the observance of human rights. While business and human rights is among the strategic focus areas of the Commission since 2010s,[579] it has mostly organized dialogue events and multi stakeholder discussions, and reporting them,[580] which did not go further than a conveying function, and several recommendations on minimum wages within agricultural sector or monitoring employment contracts[581]. It must also be noted, that the SAHRC has submitted inputs in response to the call for the UNGPs 10+ by the UN Working Group on Business and Human Rights (UNWG), which included the statement *"The UNGPs do not explicitly consider inter-sectional rights and gender, which is essential for the progressive development of human rights and business,"* without further detail.[582]

The South African Commission for Gender Equality was established as a state institution under the Chapter 9 of the Constitution, with a mandate and role to advance gender equality in all spheres of society and make recommendations on any legislation affecting the status of women. An in-depth interview with a representative from the Commission of Gender Equality has exhibited that business and human rights has not been a prioritized focus for the Commission, as they mostly provide legal and technical support not only to women but also all relevant State institutions, and that they have focused on gender-based violence and femicides much more following the significant increase during the COVID-19 pandemic. The experts from the Commission for Gender Equality, however, are fully aware of the need to

[578] Shadow National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks, (2016), available at: www.chr.up.ac.za/images/centrenews/2016/ files/Shadow-SA-NBA-Final.pdf.
[579] SAHRC, Annual Report 2015/16, (2015), available at: www.sahrc.org.za/home/21/files/SAHRC%20Annual%20Report%202016%20full%20report%20low%20res%20for%20web.pdf.
[580] Ibid.
[581] SAHRC, Business and Human Rights Dialogue Report, (2018), available at: https://www.sahrc.org.za/home/21/files/Business%20and%20Human%20Rights%20Dialogue%20Report.pdf
[582] SAHRC, Response to Call for Input: UNGPs 10+ Next decade of business and human rights action, (2020), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPsBHRnext10/inputs/nhris/south-african-commission.pdf

shift the attention from the numbers and percentage of women in work life to the quality, power dynamics and conducive environment women are facing in work life. Interviewees have shared the very high number of single mothers and how the work life fails to accommodate their needs and care responsibilities; the reality of motherhood punishment, especially with the high levels of performance expectation in private sectors, without any support with regard to childcare (such as options for reasonable accommodation for mothers who are travelling with their children for work, which are doable yet missed steps that could make a real difference in working mothers' lives).[583] They have pointed out to how single mothers' dependency on their income put them in a vulnerable and exploitable position in the eyes of the employer and to the prevalent yet shadowed sexual harassment experiences in the workplace, followed by domestic violence ("a working woman has no escape from the violence, only the environment changes").[584] They have also shared that a significant among of budget was dedicated by the government for the "central management in the world of work" but instead of giving some to the Commission for Gender Equality, they have given all of it to the Commission for Conciliation, Mediation and Arbitration (CCMA), to resolve labour disputes. They have shared that budgetary allocations with regard to business and human rights or labour rights fail to include gender institutions, which result in gender-blind and exclusively punitive mechanisms, only dealing with cases reported by the victims who have enough strength and capacity to do so. The CCMA is not able to provide a gender responsive and preventive approach, in the experts' words: *"Victims of sexual harassment at the workplace are caught in the middle: if they deposit their case to the CCMA, they are questioned why they did not go to the Gender Commission, and vice versa."*[585] Submitting simultaneously to two institutions can be tricky and not possible for each case, showing the lack of coordination and potential for collaboration among institutions. Still, the Commission experts receive significantly high volumes of complaints with regard to sexual harassment, however they are limited in their capacity, or "tied" as shared by the experts, as they are able to recognize the violations, but they are not able to hold the companies accountable. They are able evaluate their available internal mechanisms from a gender perspective, and although the private sector is the biggest employer in South Africa, the only way the Commission can engage with private sector is through recommendations for preventive mechansism, training programmes, seminars, consultations, etc. without any investigations that are of legally binding nature.

[583] Oral interview with a representative from the Commission for Gender Equality (February 2023).
[584] Oral interview with a representative from the Commission for Gender Equality (February 2023).
[585] Oral interview with a representative from the Commission for Gender Equality (February 2023).

The CCMA, on the other hand, has a strictly limited labour dispute approach to issues and internal mechanisms, often lacking gender perspective completely, yet is seen as the legitimate forum in the eyes of the labour courts. The CCMA functions as a dispute resolution body established under the Labor Relations Act No. 66 of 1995, and provides alternative dispute settlement methods for labour disputes. They are able to provide individual remedies and in certain cases, compensation, but they do not actively participate as *amici curae* for broader impact, as much as the Commission for Gender Equality does. These two institutions have participated in the BHR events hosted by the SAHRC, however, it is not possible to say that they led such processes or have properly internalized an intersectional understanding, balancing BHR and gender together.

The plurality of fora and the ambiguity of limited mandates are detrimental to the gender responsiveness of business and human rights mechanisms. The interviewees have shared that the Gender Equality Commission experts often try to find creative ways to put accountability indirectly on the corporations, along with the State, for example, by creating 100 day plans and challenges with extractive businesses to revise and reform their internal mechanisms in a gender equal way, or to localize and adapt the ILO Convention No. 190 internally. Nevertheless, by the end of each project, the implementation is up to the management of the businesses. The interviewee has shared that while some extractive corporations have reacted positively and improved their gender policies, and have started awareness-raising programmes and dismissed some abusive employees following internal investigations, some have remained strongly resistant to tracking and reporting the number of cases and incidents, because they are not obliged to (or to put it better, face no sanctions) and their corporate image concerns tend to prevail. The Commission can choose a specific company by itself and analyse their policies, and companies can be invited to "hearings" where the Commission shares their findings, provides the companies with self-assessment tools and give them space to defend their initiative or ask questions. While private sector managers are obliged to respond to the call of the commissioners they are often not available (with cases of CEOs of extractive businesses rescheduling or not showing up to some hearings or meetings), and they get defensive at times. The Commission experts collect and analyze data and provide the tools, and indeed, their recommendations are binding due to its nature as a "Chapter 9 Institution", an independent statutory body supporting democracy, however, they are often poorly interpreted by the companies, not enforced or implemented with much resistance. The most common recommendations include collecting gender-focused data, increasing diversity and representation in certain departments which have caught attention, regular reporting, setting

up a sexual harassment policy and internal complaint mechanisms, often with deadlines which some experts are critical of as they are "prolonging the disease". In addition to the investigations and training, the Commission often actively follows up strategic litigation cases as *amicus curae*, and has been impactful in several landmark decisions. Having said this, because there is only one gender commission covering a wide range of topics and rights from political and socio-economic rights to customary practices and religion, and because the other relevant business and human rights mechanisms do not have sub-sections or departments expertised on gender, Commissioners often have to be selective about which cases to follow as amicus curae due to budgetary limitations and immense workload. This has been the case in Mahlangu case, as the Commission decided the case held potential for broader impact on domestic workers' labour rights. In addition, the Commission has a department which provides inputs for new legislations, participates in consultations and analyzes legal frameworks and policy texts from a gender perspective, including those related to labour rights. There is no domestic legislation in preparation with regard to business and human rights yet. They have submitted several inputs and reports to the Labour Legislation Commission of the Parliament, however, the bureaucratic correspondence is slow and how it will turn out is ambiguous. South Africa, similar to Türkiye and Colombia, is struggling with governmental departments (in this case, the Ministry (Department) of Women, Youth and Persons with Disabilities) which are not dedicated specifically to gender equality, but which have a wide range of scope, with inclusion and diversity of many groups or other areas such as social services or benefits (as in the Ministry of Family and Social Services in Türkiye and the anticipated Ministry of Diversity in Colombia). Gender-focused institutions often struggle working in coordination with such departments having a broader scope and more focus on diversity or social support than advocacy for women's human rights. Such plurality of institutions create confusion in the eyes of individuals seeking remedy and solutions.

Experts from the Commission for Gender Equality have not been actively engaged in business and human rights discussions, other than several consultation and dialogue events, however, based on their involvement and observations, there are a few important changes needed for a gender responsive business and human rights system. Firstly, the legal domestic frameworks and the bilateral investment treaties[586] are completely gender neutral and gender equality and human rights impact of foreign investment must be included as a part of the discussions with regard to foreign investment's entry into the country. A common pattern for Türkiye,

[586] UNCTAD, Investment Policy Hub - South Africa Bilateral Investment Treaties, available at: https://investmentpolicy.unctad.org/international-investment-agreements/countries/195/south-africa

Colombia and South Africa is that as host governments, they enter contractual agreements with the MNCs with very little bargaining power, extremely protective provisions for the investors and the interests of investors being prioritized over communities'. Secondly, preventive mechanisms and further emphasis on root causes and drivers of gender based discrimination and violence must be addressed, and the extremely punitive discourse around gender-based violence. An interviewee from a feminist organization has shared: *"The zero tolerance principle is easily confused with 'death to rapists! 'chants*."[587] Thirdly, the overemphasis of women's participation in spaces can distract women from the essence of the struggle for equality. This means there is a tendency to compromise or trade equity with "protection and promotion of women's rights", with a softer language for the sake of maintaining seats for women in decision-making, which reflects on the domestic legal arena with gender equality as a principle to consider, without tangible indicators. Lastly, multinational corporations' engagement with gender or labour focused statutory bodies remain selective: interviewees from the Commission for Gender Equality has shared that multinational corporations who are present in South Africa through their subsidiaries are generally open to engagement, yet they "hide behind the corporate veil", and immediately distance themselves from their subsidiaries when serious allegations and problematic patterns of labour security or illicit flow of finances are raised. They are open to collaboration with regard to "softer and safer" topics around gender equality, and as the institutions try to use a softer language and approach to their advantage to keep such institutions engaged, a complex dynamic and an unstable, selective compliance practices are created, instead of a concept of corporate accountability based on clear, minimum human rights standards. An interviewee shared, *"Once we use diversity issues and soft languages and secure the meeting with the representative of a multinational corporation, once we have them in the room, we are able to raise more serious topics."*[588]

Article 8(2) of the South African Constitution imposes human rights obligations on businesses, providing that the Bill of Rights is binding for all natural and juristic persons. Similarly, the Companies Act (2008) stipulates compliance with the Bill of Rights. However, both the Companies Act of 2008 and the Mineral and Petroleum Resources Development Act 28 of 2002 (amended in 2008) (MPRDA) which are the two major legal framework sfor all corporate governance, and for extractive businesses, respectively, are almost completely gender-blind. In other cases, gender equality or women's representation are merely mentioned in domestic

[587] Oral interview with representative from feminist civil society from South Africa (February 2023).
[588] Oral interview with a representative from the Commission for Gender Equality (February 2023).

legislations. One of the National Environment Principles under the The National Environmental Management Act No. 107 of 1998 (NEMA), is *"the promotion of the vital role of women and youth in environment~ management and development must be recognised and their full participation".*[589] Article 59 of the MPRDA stipulates that the Minerals and Mining Development Board's composition *"must reflect the gender and racial composition in the Republic".*[590] In addition, the MPRDA has mentioned that the understanding of "broad based economic empowerment" as an overall principle, should aim at *"redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries."*[591] However, there is no further requirements or guidance with regard to how several requirements and procedures for extractive businesses and the most problematic and debated aspects, such as the social and labor plans (which will be discussed in further detail below), the closure and abandonment of mining sites, mineral rights ownership or the right to occupational health of mine workers, (especially silicosis), can truly have a gender perspective integrated.

It is difficult to state that there is a well-established business and human rights jurisprudence in South Africa, as the area is still in its early development. In *University of Stellenbosch Legal Aid Clinic and others v. Minister of Justice and Correctional Services and others,*[592] which is about the debt collection procedures of micro-landing industry and employed by the micro-lending industry, and large-scale abuse of emoluments attachment orders (EAO) by credit providers on debtors, the Western Cape Division of the High Court of South Africa held that the South African EAO system fails to comply with human rights principles as encapsulated in various instruments. These included the ILO's Protection of Wages Convention, the ILO Recommendation concerning the Protection of Wages, as well as the UNGPs, as the court noted that they place a duty upon the state to take measures to prevent the abuse of human rights in their territory by business enterprises. Accordingly, states are obliged to reduce legal and practical barriers that may deny individuals a remedy. The Constitutional Court, although without referencing the UNGPs, partially confirmed the High Court's approach and

[589] National Environmental Management Act No. 107 of 1998 (NEMA).
[590] Mineral and Petroleum Resources Development Act No. 28, (2002).
[591] Mineral and Petroleum Resources Development Act No. 28, (2002).
[592] University of Stellenbosch Legal Aid Clinic and Others v. Minister of Justice and Correctional Services and Others; Association of Debt Recovery Agents NPC v. University of Stellenbosch Legal Aid Clinic and Others; Mavava Trading 279 (Pty) Ltd and Others v. University of Stellenbosch Legal Aid Clinic and Others (CCT127/15) [2016] ZACC 32; 2016 (6) SA 596 (CC); (2016) 37 ILJ 2730 (CC); 2016 (12) BCLR 1535 (CC) (13 September 2016).

interpretation. Although the case was about socio-economic justice and the security of debtors' earnings, there was no gender perspective included neither by the High Court, nor the Constitutional Court.

Another important development in the area of business and human rights in South Africa, which is a missed opportunity for the integration of a gender perspective, is how the Treatment Action Campaign movement in late 1990s mobilized successfully against multinational drug corporations to ensure access to effective treatment for people living with HIV and AIDS, through the public health system. In 1997, South Africa enacted the Medicines and Related Substances Control Amendment Act, allowing for the substitution of brand-name medicines with generic medicines after patents expired, easier importation of generic drugs and transparent pricing, which multinational pharmaceutical companies saw as a violation of drug patents and future profits, and sued the South African government with the support of the US Government and the Pharmaceutical Manufacturers' Association, postponing the implementation of law. Treatment Action Campaign, with was strongly supported by feminist activists,[593] combined their advocacy forces with the Congress of South African Trade Unions and *Medecins sans Frontières* in support of the South African government and initiated a global "Drop the case petition" against the lawsuit and the leading corporations. In 2001, following an agreement between the South African government and US FDA, allowing for exceptional flexibility in HIV& AIDS epidemics, the Pharmaceutical Manufacturers' Association, along with the companies, dropped the case in 2001.[594] The HIV crisis in South Africa has significant gender dimensions, and the gender impacts of intellectual property provisions in trade and investment arrangements, specifically with regard to access to vital patent protected drugs is an invisibilized aspect of business and human rights discussions.[595] The Constitutional Court has a well-established jurisprudence with regard to access to HIV treatment, the most important one being the *Minister of Health and Others v. Treatment Action Campaign and Others,*[596] a socio-economic rights case about the inadequacy of the government's response to the mother-to-child HIV transmission and related treatments in the light of the right to health care under Section 27 of the Constitution. The Constitutional Court delivered a detailed judgment for the case which once again had Treatment Action Campaign

[593] Erik Gunnarson, How Feminists Responded to Aids Crisis, Karolinska Instituet, (2020), available at: https://faceofaids.ki.se/theme/women-and-aids/how-feminists-responded-to-the-aids-crisis

[594] Danish Institute for Human Rights, Women in Business and Human Rights A mapping of topics for state attention in United Nations Guiding Principles on Business and Human Rights implementation processes, (2018), available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/bhr_gender_mapping2018_web.pdf

[595] Ibid.

[596] Minister of Health and Others v. Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002).

as the leading applicant, and ruled in favour of all pregnant women's right to treatment, counselling and testing services aiming to reduce mother-to-child HIV transmissions. The Court upheld pregnant women's and their newborn children's rights to have access to health services in order to combat mother-to-child transmission of HIV; and detailed the requirements of such programmes, finding that that the government's policy for reducing such risks fell short of compliance with the listed requirements.[597] While the landmark decision is a crucial achievement for pregnant women's access to health services and medication, the responsibility of private sector, pharmaceutical companies or private health institutions were not addressed, and such cases fail to integrate a gender dimension by approaching the right to health in a gender-neutral perspective, which is a missed opportunity in South African context.

Following a gender focused analysis of Colombian, Turkish and South African domestic legal arena, the following sections will focus on three specific issues which are problematic in host states, and case studying each concept, by focusing on one of the jurisdictions. The first issue is the gender-based corporate violations in armed conflict. This will be discussed by connecting the most recent and globally anticipated Syrian Lafarge case with the role of businesses in Colombian armed conflict. The second issue is the accountability of national corporations and how misleading the women's empowerment discourse and advertisements can be. This will be discussed through the Dardanel case in Türkiye. Lastly, the role of state owned entities and its impact on women's access to basic necessities will be discussed over the ESKOM energy crisis in South Africa.

4.4. Gender-Based Corporate Violations in Armed Conflict: the LaFarge Case and Corporate Violations During Colombian Armed Conflict

The gender dimension of corporate operations in armed conflicts requires specific attention. The Lafarge case in Syria has sparked discussions on the extraterritorial accountability of corporations recently, and provides an illustrative example for the context of host states. The French multinational company Lafarge (now acquired by and named Holcim) which is one of the world's largest cement manufacturers, and Lafarge's subsidiary, Lafarge Cement Syria (LCS) made arrangements with and payments to IS and several other armed groups in order to keep its Jalabiya cement factory plant open and running between 2012 and 2014 in Syria. By providing finances to ISIS, not only did Lafarge seriously endanger the lives of its employees, but it could be found complicit in crimes against humanity committed by the Islamic State in Syria.

[597] Minister of Health and Others v. Treatment Action Campaign and Others (No 2) (CCT8/02) [2002] ZACC 15; 2002 (5) SA 721 (CC); 2002 (10) BCLR 1033 (CC) (5 July 2002).

In the wake of a criminal complaint filed in France in 2016 by Sherpa, the European Center for Constitutional and Human Rights (ECCHR) -both civil society organizations providing pro bono legal support to victims- and a dozen former Syrian Lafarge employees, which addressed Lafarge's activities in Syria via its subsidiary, Lafarge Cement Syria (LCS); the parent company (Lafarge SA) was indicted in June 2018 for complicity in crimes against humanity, endangering the lives of others, financing terrorism, and violating an embargo. The judicial inquiry revealed that Lafarge transferred at least 15 million USD to armed groups and intermediaries, including the Islamic State, to maintain operations in its newly renovated cement factory in Syria. Lafarge did so even as the Islamic State was accelerating its atrocities in the region and despite the repeated, reported kidnappings and disappearances of Lafarge's local employees. Thw UN has reported murder, torture, enslavement, rape, and sexual violence among crimes against humanity that ISIS has perpetrated in the region.[598]

In a groundbreaking decision, French courts upheld in May 2022 the charges of complicity in crimes against humanity and endangering the lives of its employees faced by the cement multinational Lafarge (today Holcim, after merging with Swiss company Holcim in 2015 and becoming the world's largest cement maker). The company has appealed the decision and a new decision of the Supreme Court is awaited.

On 18 October 2022, in separate US proceedings, Lafarge SA and LCS pleaded guilty before a federal court to conspiring to provide material support to foreign terrorist organizations and agreed to pay 778 million US dollars in fines and forfeiture. It is the first time in the United States that a company is prosecuted on this charge. In court, Lafarge chair officially admitted the former company executives *"knowingly and willfully agreed to participate in a conspiracy to make and authorize payments intended for the benefit of various armed groups in Syria."*[599]

While the unprecedented proceedings for the Lafarge/Syria case remain a milestone in the fight against impunity for companies doing business in war and conflict regions, four issues come to the forefront: First issue is the significant silence of and lack of claims against the French state with regard to the Lafarge case (considering the published documents with regard

[598] UNHRC, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria, A/HRC/27/CRP3, (2014).
[599] Sandra Cossart, Anna Kiefer, Cannelle Lavite and Claire Tixeire, Multinational Lafarge Facing Unprecedented Charges for International Crimes: Insights Into the French Court Decisions, Opinio Juris, (2022) available at:http://opiniojuris.org/2022/11/15/multinational-lafarge-facing-unprecedented-charges-for-international-crimes-insights-into-the-french-court-decisions/

to French state and intelligence's awareness of the conditions and agreements under which Lafarge maintained its activity in Syria, in territory partly occupied by the Islamic State).[600] The second issue is the almost complete lack of any mention of sexual violence and sexual slavery perpetrated by ISIS in a very widespread and systematic manner, as war crimes and crimes against humanity throughout the proceeding documents (both before French and U.S. courts), except for a listing or war crimes and crimes against humanity committed by ISIS, with no specific mention of gender dimensions of widespread gender-based violence committed by ISIS in the region in which Lafarge operated. The third issue is that the sustainability and annual reports of Holcim Lafarge have no mention of the proceedings with regard to the Syria case, except for a one-page press release, with no mention of regard to the gender equality and human rights situation within their supply chains, other than a broad list of human rights-focused documents, containing umbrella non-discrimination clauses. Any mention of pro-gender equality initiatives of the company focuses on the number of women at the executive level or their representation within the workforce. Fourth, is the fact that Lafarge was later acquired by Holcim, which provides an important example for a different case of corporate veil, in which violations conducted by a corporation that no longer exist, or are acquired by another corporation carry the risk of non-accountability. In parallel with this tendency, Holcim has published a statement that states:

"None of the conduct involved Holcim, which has never operated in Syria, or any Lafarge operations or employees in the United States, and it is in stark contrast with everything that Holcim stands for. The U.S. Department of Justice (DOJ) noted that former Lafarge SA and LCS executives involved in the conduct concealed it from Holcim before and after Holcim acquired Lafarge SA, as well as from external auditors."[601] Holcim refers to the U.S. proceedings as *"inquiry into Lafarge SA and its long-defunct subsidiary Lafarge Cement Syria ("LCS") related to the legacy conduct of certain former executives during the Syrian civil war, before Holcim acquired Lafarge SA."*[602]

[600]Syria cement firm scandal: "Lafarge group knew they were treating with the Islamic state group"(2017), available at https://www.france24.com/en/video/20170303-syria-cement-firm-scandal-lafarge-group-knew-they-were-treating-with-islamic-state-group

[601] HOLCIM, HOLCIM Affirms Support For Lafarge SA Resolution With The U.S. Department of Justice Regarding Legacy Lafarge Operations In Syria (18 October 2022) available at: https://www.holcim.com/media/media-releases/statements-18-october-2022

[602] HOLCIM, HOLCIM Affirms Support For Lafarge SA Resolution With The U.S. Department of Justice Regarding Legacy Lafarge Operations In Syria (18 October 2022) (on file with author), available at https://www.holcim.com/media/media-releases/statements-18-october-2022

LaFarge SA, on the other hand has published the following statement:

"Lafarge SA and LCS have accepted responsibility for the actions of the individual executives involved, whose behavior was in flagrant violation of Lafarge's Code of Conduct. We deeply regret that this conduct occurred and have worked with the U.S. Department of Justice to resolve this matter. The DOJ noted that its inquiry did not find that any of the individuals who were involved in the conduct shared or supported the methods, goals, or ideologies of the terrorist groups that were operating in the area. The conduct occurred during a period of intense violence and coercive pressure from terrorist groups, as LCS tried to manage the grave security challenges in the area surrounding its cement plant during the Syrian civil war. Lafarge continues to cooperate fully with the French authorities in their investigation of the conduct and will defend itself against any judicial actions that it regards as unjustified in the French proceedings."[603]

LaFarge SA has merely accepted the responsibility of the individual executives, stating that the "deeply regretful conduct" was against its Code of Conduct and Holcim has gone on in its Group Statement to emphasize its non-involvement confirmed by the DOJ.[604] Holcim, while not being involved in LaFarge's previous operations in Syria and having never operated in Syria, has acquired LaFarge and has benefited from its operation network and capital. While these two corporate reactions are highly expected and for some, deemed reasonable, there is no mention of the human rights violations and their cost over local communities in Syria (let alone the gendered dimensions of such atrocities) with no commitment or plan to address or support the affected communities. The only response has been to withdraw from Syria completely and continuing the legal defense thorugh the French and U.S. proceedings. Complete withdrawal from a region in the face of accusations is a common and highly problematic corporate tactic in BHR crises and leaves the community with no jobs, or tools for long-term recovery and development.

[603] HOLCIM, Lafarge SA Resolves U.S. Department of Justice Inquiry Related to Legacy Operations in Syria, (18 October 2022) (on file with author), available at https://www.holcim.com/sites/holcim/files/2022-10/20221018_press_lafarge_sa_company_statement_en_5161029389.pdf

[604] HOLCIM, Lafarge SA Resolves U.S. Department of Justice Inquiry Related to Legacy Operations in Syria, (18 October 2022) (on file with author), available at https://www.holcim.com/sites/holcim/files/2022-10/20221018_press_lafarge_sa_company_statement_en_5161029389.pdf

Holcim has published policy documents on its website: A Human Rights and Social Policy[605] and a Human Rights Directive[606] in which they directly refer to UNGPs, and identify salient human rights risks to people from their business activities which they may cause or contribute to, and which they seek proactively to identify, cease, prevent or mitigate. The salient human rights risk includes discrimination and harassment, and women's rights. While Holcim is publicly committed to gender equality involving its supply and value chains, its further commitment to provide remedies for the affected communities in Syria would be solid proof of actual impact.

The Lafarge/Syria case is important for the gendered dimensions of corporate violations and for the discussions under this dissertation. It is a milestone in the fight against impunity for companies doing business in war and conflict regions, one of the first large-scale cases in which a European MNC faced charges for their complicity with grave human rights violations, even if they were committed abroad via a subsidiary, within a host state with ongoing armed conflict.[607] It sent a clear message to corporations and has shown the importance of heightened human rights due diligence obligation for companies and investors operating in armed-conflict areas.[608]

The Lafarge case perfectly illustrates the risks that companies and their investors can run into in conflict-affected and high-risk areas. However, companies can and should have dealt appropriately with the heightened and specific risks inherent to operating and/or having business relationships. In practice, effective due diligence in conflict-affected and high-risk settings is rarely practiced, and despite the specific emphasis of the UNGPs, gender-based risks are rarely addressed. There have been several reports published by scholars, and NGOs who are legal representatives of the victims, as well as BHR organizations,[609] describing in detail how the company should have identified the risks in the Syrian context, what actions they could and should have taken, and what responsibilities remain for the company as well

[605] HOLCIM Human Rights and Social Policy (2021), available at https://www.holcim.com/sites/holcim/files/images/21062021_holcim_sustainability-human-rights-social-policy.pdf

[606] HOLCIM Human Rights Directive (2021), available at https://www.holcim.com/sites/holcim/files/images/21062021_holcim_sustainability-human-rights-directive.pdf

[607] ECCHR, Lafarge in Syria: Accusations of complicity in grave human rights violations, available at https://www.ecchr.eu/en/case/lafarge-in-syria-accusations-of-complicity-in-grave-human-rights-violations/

[608] PAX for Peace, Lafarge in Syria shows importance of heightened human rights due diligence in conflict-affected areas(2023), available at https://paxforpeace.nl/news/lafarge-in-syria-shows-importance-of-heightened-human-rights-due-diligence-in-conflict-affected-areas/

[609] Eva Gerritse and Cor Oudes, Funding Conflict: Heightened human rights due diligence in conflict-affected areas, with a case study on Lafarge and its investors, (2023), available at https://paxforpeace.nl/wp-content/uploads/sites/2/import/2023-02/PAX_Rapport_Lafarge_2023.pdf; Lafarge case in Syria(2023), available at https://www.asso-sherpa.org/lafarge-case-syria

as its investors today, in particular regarding the responsibility to ensure that the affected stakeholders, starting with Lafarge's former Syrian employees, get access to an effective remedy. However, while the Islamic State's existence and control in the region and their grave gender-based atrocities are well-documented, there is no single mention of sexual violence and or slavery, or the mention of local women among affected stakeholders. The sole focus has been on former male cement factory workers, as the main affected stakeholders. It is concerning to see how progressive and promising developments in business and human rights areas, including reports and evaluations by the actively involved civil society and advocacy groups remain to be gender-blind.

In Lafarge's case, the occurrence of negative impacts was foreseeable, yet they cannot be undone. What remains is the responsibility of the company and its investors to ensure that all affected stakeholders have access to effective remedies. While the responsibility to contribute to remedies lies with the company, investors have, at a minimum, the responsibility to continue to pressure the company to do so, including through divestment, which should not sever all links with the affected individuals and communities.[610]

It is possible to draw parallels between LaFarge SA's corporate violations of human rights in Syria and the accountability of corporations operating in Colombia, specifically in regions affected by the armed conflicts. Lafarge case, while being an important achievement, is also a missed opportunity for gender-focused corporate liability in armed conflict, and the how the investors' leverage could have been used, and many lessons can be learned for the Colombian BHR context.

In Colombia, there are several lawsuits through which multinational corporations are accused of funding paramilitary or terrorist groups (via security companies or groups directly controlled by them) framed as "the cost of doing business" by some corporate representatives.[611] While the perpetration of sexual violence against women by these paramilitary groups is well-documented, they are rarely mentioned, except for a list of crimes these groups are involved in, within the framework of claims. For example, in 2007, Chiquita Brands, a Swiss-domiciled U.S. headquartered multinational banana company, pled guilty to funding the United Self-Defense Groups of Colombia (AUC), a paramilitary organization

[610] Eva Gerritse & Cor Oudes, Funding Conflict: Heightened human rights due diligence in conflict-affected areas, with a case study on Lafarge and its investors, (2023), available at https://paxforpeace.nl/wp-content/uploads/sites/2/import/2023-02/PAX_Rapport_Lafarge_2023.pdf
[611] Oral interview with BHR expert from Colombia, (February 2023).

categorized as a terrorist organization by the U.S. designated by the United States Government as a terrorist organization.[612] Chiquita made regular monthly payments, totaling more than 1.7 million USD, to security forces controlled by the AUC. EarthRights International initially filed a lawsuit in 2007, representing families of hundreds of victims murdered, tortured, and injured by the AUC. After Chiquita pled guilty to financing AUC in 2007 and agreed to pay a 25 million USD fine, in early 2018, it settled lawsuits[613] (with confidential financial terms) brought by families of American citizens killed in Colombia[614]. In 2022, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta unanimously reversed[615] a 2019 Florida district court summary judgment (in which U.S. District Judge Kenneth Marra of the Southern District of Florida in West Palm Beach had denied class status and dismissed a handful of individual plaintiffs' cases in 2019). Accordingly, more than 200 Colombians who were allegedly tortured or had family members killed by paramilitary forces funded by Chiquita will be able to proceed with their case, seeking compensation. While the sexual violence of AUC in the region in which Chiquita operated is reported and well-known by the locals, claims have only focused on killings and physical torture (which did not include cases of sexual assault or rape). Feminist activist interviewees have shared that this is most probably because sexual violence victims choose not to come forward, and they do not believe they can get proper remedies. The legal strategists find it highly difficult to submit sufficient evidence to prove individual cases of assault and harassment when they are struggling with providing sufficient evidence with cases of murder, which have more concrete connections to the corporations.

There are two other examples, including the 2002 lawsuit against the Drummond company, a U.S. based coal mining corporation; [616] and the 2006 lawsuit against the Coca-Cola Company.[617] In both cases, the companies were accused of complicity in the killings of labor union leaders (via contracted paramilitary groups), including women. Both cases were ruled in favor of the corporations, with the Alien Tort Claims Act, and Torture Victims Protection Act, Colombian wrongful death law claims were dismissed because the plaintiffs "*failed to*

[612] "3 US Execs Indicted in Chiquita Terrorist Funding Probe in Colombia", (2018), available at https://www.law.com/corpcounsel/2018/09/10/three-u-s-execs-indicted-in-chiquita-terrorist-funding-probe-in-colombia/

[613] Reuters, Chiquita settles with families of U.S. victims of Colombia's FARC(2018), available at https://www.reuters.com/article/us-usa-court-chiquita/chiquita-settles-with-families-of-u-s-victims-of-colombias-farc-idUSKBN1FP2VX

[614] "Families Settle With Chiquita Over Deaths of Americans in Colombia" (2018), available at https://www.law.com/dailybusinessreview/2018/02/05/families-sue-chiquita-over-deaths-of-americans-in-colombia/

[615] Does 1-976 v. Chiquita Brands International, Inc., 19-13926 (11th Cir. 2022)

[616] Baloco v. Drummond Co., 7:09-CV-00557-RDP (N.D. Ala. 2012)

[617] Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252 (11th Cir. 2009)

sufficiently plead factual allegations to connect the paramilitary forces, who perpetrated the wrongful acts, with the Colombian government" and the relevant corporations[618].

An often overlooked aspect of these lawsuits is how the lawsuits are predominantly filed by women plaintiffs, "Jane Doe"s or the "Mothers", who are widows (wives and permanent companions) or family members of murdered activists. These plaintiffs were identified as "the estates" of the murdered unionists. They used pseudonyms to refer to the wives or permanent companions and their children, such as *"Jane Doe I, on behalf of herself and her minor child individually and as heirs of ....."*. The text of the complaint stated that each Doe Plaintiff sought damages for the harm that Doe Plaintiff had suffered individually, including emotional harm, loss of consortium, and financial support; and secondly, "*for the harm suffered by the decedents leading up to and during their murders and for their loss of life."* It was ruled that for the second set of claims, only the heirs of the deceased, meaning only children and not wives or permanent companions, may sue for damages sustained by the decedent before his death, excluding the women plaintiffs positioned as partners of the victims.[619] The widows of the killed activists have testified about the loss of financial support provided to their children by their fathers on a monthly basis. In their testimonies, they shared that they are suing *"for the damages and suffering that (their) family, including (their) minor children, has experienced as a result of the assassination of (her) husband, and on behalf of (her) husband's estate to which (she is) an heir."* Despite the well-documented financial and mental burden, as well as confusion with regard to the legal procedures of the widow mothers with minor children, there was no mention of any gender dimensions, except for the Plaintiff's counsel arguing that the families are asking for compensation from the corporations *"taking into consideration the loss of a father, a husband, and a son,"* once against with an inevitable, one-axis victim approach towards the plaintiff Jane Does.[620]

These examples highlight only a fraction of the complex and multifaceted corporate accountability for gendered dimensions of human rights violations in the Colombian armed conflict.[621] As previously mentioned, cases of sexual harassment and discrimination are not exceptional wartime atrocities as the UNGPs misrepresent with a narrow emphasis,. They are everyday experiences embedded in the daily lives of women. However, these cases indicate

[618] Sinaltrainal v. Coca-Cola Co., 578 F.3d 1252 (11th Cir. 2009)
[619] Baloco v. Drummond Co., 7:09-CV-00557-RDP (N.D. Ala. 2012)
[620] Baloco v. Drummond Co., 7:09-CV-00557-RDP (N.D. Ala. 2012)
[621] PAX Policy Brief,Business, Conflict and Human Rights Conflict & Due Diligence Legislation, available at https://paxforpeace.nl/wp-content/uploads/sites/2/import/2022-06/PAX%20Policy%20Brief%20-%20Conflict%20&%20Due%20Diligence%20Legislation.pdf

that systematic gender-based violations are not even properly addressed in armed conflict contexts, and legal actions and lawsuits against corporations' actions and complicities are mostly limited to compensation concerning killings, with no mention of the systematic sexual violence committed or facilitated by corporate-connected armed actors, and the approach to financing terrorism is yet again gender-blind. For the research preparation of this subchapter, several documents dedicated to business and human rights in armed conflict have been scanned, which were prepared by NGOs and think tanks that have been *amici curiae* in several BHR lawsuits, as well as the UN Working Group on Business and Human Rights, and the gender dimensions are found to be rarely mentioned, and if so, limited to the mention of sexual violence risks, or the relevant UNGPs.

4.5. Accountability of National Corporations: the Dardanel Case in Türkiye and Misleading Women's Empowerment Advertisements

Discussing the gender-focused corporate human rights abuses only with an "abusive Global North corporation vs. women victims in Global South host states" approach would be a one-dimensional and narrow approach. The complexity of business and human rights domains in Türkiye, Colombia, and South Africa requires a focus on corporate abuses of human rights in a domestic context, with violations conducted by another important category of corporate actors: large-scale private domestic companies with their headquarters located in these host states. Dardanel, a food packaging company known for being Türkiye's leading canned tuna fish and seafood company, reported to export seafood to more than 40 countries, provides an illustrative example about the gender dimension of labour rights violations by domestic corporations. It was accused by several women who are factory workers in their industrial site in Çanakkale for inhumane working conditions during the COVID-19 lockdown. Accordingly, after more than 40 of their factory workers tested positive for Coronavirus, and they had to quarantine at home, Dardanel contacted the Çanakkale Provincial Public Health Committee due to disruption and slowing down of the production, and with their permission and suggestion of the official authorities, as claimed by the CEO Niyazi Önen, their Çanakkale factory shifted to a closed-circuit production system. In this system, the workers were forced to stay in dormitories within the factory throughout the 14-day quarantine period. Önen stated in a newspaper interview that all workers were hosted in comfortable, 2-person rooms with

personal bathrooms with an additional 5 days of annual leave with all necessary measures to prioritize their health.[622]

However, an anonymous Twitter account with the nickname "Dardanel Workers Solidarity" started sharing the working and living conditions in the Dardanel factory, the experiences of women workers, and the exploiting approach of their employers. These claims have been supported by GIDA-İŞ Union's official statements and in-depth interviews with union experts. Some of these claims, shared by women workers, are that they were not allowed to take bathroom breaks and that bathroom doors were locked. Accordingly, cameras were placed in front of the women's bathrooms and changing rooms. There were almost no breaks available, with no water or proper, filling food provided. The factory in Çanakkale is reported to be one of the very few remaining factories in Çanakkale province, leaving local working-class women with no other options.[623] There are reported cases of women leaving their jobs and later having to go back for a minimum wage and social security, with a collective sense of exigence and desperation. Dardanel is a critical source of income for Çanakkale, owned by a well-respected local family. It is claimed that the Çanakkale Provincial Public Health Committee, with the collaboration of political figures from different parties[624] has confirmed the decision for a closed-circuit production system, which is argued to be against Labour Law despite the extraordinary COVID-19 measures. Throughout the 14-day quarantine period, Dardanel workers, more than 70% of whom are women, were forced to stay within dormitories inside the factory platform, putting workers with care responsibilities in a very difficult position.[625]

The experience of women workers at Dardanel factories gives away important lessons with regard to gender-responsiveness of business and human rights mechanisms. Firstly, the annual reports (starting from 2020 up to today)[626] and sustainability reports (publicly available since

[622] Habertürk, "Kapalı devre çalışma modelinin uygulandığı Dardanel'den açıklama: Sadece gönüllü çalışanlar katıldı", (2020), available at: https://www.haberturk.com/kapali-devre-calisma-sistemini-resmi-makamlar-onerdi-2763895-ekonomi;

[623] Duvar, "Gıda İş: Dardanel işçisi balık kadar değerinin olmadığını düşünüyor", (2021), available at: https://www.gazeteduvar.com.tr/amp/gida-is-dardanel-iscisi-balik-kadar-degerinin-olmadigini-dusunuyor-haber-1541967

[624] Birgün, "Kapalı çalışma ve Dardanel gerçekleri",(2020), available at https://www.birgun.net/amp/haber/kapali-calisma-ve-dardanel-gercekleri-310336

[625] Evrensel, "Dardanel workers 'taken hostage' in the factory after Covid-19 outbreak", (2020), available at https://www.evrensel.net/haber/410846/dardanel-workers-taken-hostage-in-the-factory-after-covid-19-outbreak

[626] Ser & Berker, Dardanel Önentaş Gıda Sanayi A.Ş. 2020 Yılı Faaliyet Raporu, (2021), available at https://www.dardanel.com.tr/_FILES/Contents/1069/dardanel_2020_yili_faaliyet_raporu.pdf; KPMG, Dardanel Önentaş Gıda Sanayi A.Ş. 2021 Yılı Faaliyet Raporu, (2022), available at https://www.dardanel.com.tr/_FILES/Contents/1179/dardanel_2021_yili_faaliyet_raporu.pdf; Ser&Berker, Dardanel Önentaş Gıda Sanayi A.Ş., Dardanel Önentaş Gıda Sanayi A.Ş. 2022 Yılı Faaliyet Raporu, (2023), available at https://www.dardanel.com.tr/_FILES/Contents/1361/dardanel_2022_yili_faaliyet_raporu.pdf .

2022) have no mention of the Dardanel Workers Solidarity Twitter account (which is plausible) or the claims by women workers about the close-circuit production practice. There is no mention of the close-circuit production practice or any detailed information about COVID-19 measures throughout the pandemic period within the publicly available reports, other than broad statements on how all necessary measures have been taken for the hygienic standards for production and the health of the workers. The only available statements from Dardanel came from a newspaper article and official responses to a journalist who has reached out to them after writing several criticizing columns.[627] The statements of Dardanel officials (claiming that only volunteering workers have stayed in the dormitories, that the workers who did not want to participate were allowed to quarantine at home, that they could stay with their families at dormitories and that all workers had regular PCR tests and there were no workers with COVID-19 within the premises of the factory) contradicted with the claims of worker and GIDA-İŞ (claiming that workers who have tested positive were forced to stay at the same dormitories with negative-tested workers, risking their health[628]; and that workers who are not treated at the hospitals with light symptoms continued working at the factory). The closed-circuit production practice, although confirmed by the Public Health Committee, violates the Labour Code and Dardanel has left these questions unanswered. With over 12-hour shifts throughout the day and obligatory stay within the dormitories inside the factory campus, the practice violated several labour rights. Deputy Mayor of Çanakkale stated: *"On one hand we had public health and on the other, workers who would be fired right before Eid. We did not have much time to think and we had to decide in the midst of a very busy schedule. We can review the objections and revise"*[629]. He indirectly admitted to the problematic practices.

This is an important indicator of how businesses were tolerated for serious problematic labour practices during the pandemic for the sake of the continuation of production. The extraordinary nature of pandemic times, questionable legal measures and the desperate need for income have facilitated such labour rights violations to go under the radar. In cases like Dardanel, where the factory is one of the main sources of income and employment in a local context, the power dynamics of business owners over local authorities emerge. Dardanel's CEO, Niyazi Önen is a well-respected figure in Çanakkale with an honorary doctorate from the local university and the leading employer in the province. The claims of workers and unions point out the

[627] Sözcü, "Dardanel: Bütün Çalışanlara PCR Testi Yapılıyor", (2020), available at https://www.sozcu.com.tr/2020/yazarlar/cigdem-toker/dardanel-butun-calisanlara-pcr-testi-yapiliyor-5978682/
[628] Bianet, "Dardanel'de 153 işçi enfekte, 56'sı hastanede(2020), available at https://bianet.org/bianet/print/228632-dardenel-de-153-isci-enfekte-56-si-hastanede
[629] "Dardanel işçisinin evi neresi?",(2020), available at https://sendika.org/2020/08/dardanel-iscisinin-evi-neresi-593256/

possibility that the problematic practices were tolerated by, even encouraged (as Niyazi Önen has mentioned that closed-circuit production model was suggested by official authorities[630]) by local authorities for the sake of business remaining in the region. GIDA-İş Union's president Seyit Aslan has mentioned the factory's value for the local community, emphasizing how a few other factories have shut down or have withdrawn from the region, leaving the Dardanel factory as the only reliable source of income for the local workers. The lack of supervision and inspection from an independent institution might have worsened the situation. Another prevalent problem is the culture of impunity, specifically concerning corporations that have strong relationships with ruling parties or government offices. In an interview, a female factory worker shared that they see comments on social media stating *"How can we believe you? If the working conditions are horrible, how come no one from the Ministry comes to inspect?"* [631]. She further claimed, *"Niyazi Önen Taş Holding has won the tenders to prepare the soldier's rations for the military. They would not be able to win such a tender if they were not close to AKP. Because of this closeness, we have an institution with no braking mechanism and no fear of repercussions. They are afraid of nothing. They are known for many scandals but there are no sanctions."*[632]

Secondly, Dardanel factory is known to be employing the highest number of female factory workers in Türkiye, with over 70% employment rate, or as reported by Dardanel itself, 1485 women workers out of 2217. Dardanel's approach and common use of "women empowerment" discourse as a part of its corporate communication strategy clearly show the risks of such empowerment language. Similarly, it shows how high levels of female employment does not necessarily equate to favourable working conditions for women workers.

Dardanel has shared an 8th of March advertisement in social media and national TV channels in 2020. Dardanel CEO has shared the following message about their 8th of March campaign: *"Behind this success story, with our investment and production in the food market for 37 years is the hard work of our female employees. It is our greatest happiness to provide employment to thousands of women in our region, to create income and reach out to households.*

[630] Habertürk, "'Kapalı devre çalışma sistemini resmi makamlar önerdi", (2020), available at https://www.haberturk.com/kapali-devre-calisma-sistemini-resmi-makamlar-onerdi-2763895-ekonomi
[631] Esra Tokat, "Dardanel'de işçilerin sesi duyulmuyor: 'AKP arkasında olduğu için…'", Dokuz8 Haberi (2021), available at: https://www.dokuz8haber.net/dardanelde-iscilerin-sesi-duyulmuyor-akp-arkasinda-oldugu-icin
[632] Ibid.

Increasing female employment is the main focus of our new investment and growth plans for 2021."

In the advertisement, the male actor, who praises the easy opening of the tuna can at dinner time in the kitchen tells his wife, *"Those men did it"* (*"Adamlar yapmış"* in Turkish) after opening the lid of the tuna and the cameras go to Dardanel's production facility, focusing on a female employee from the production facility, as the female employers cease the ongoing production in surprise and react: *"Men?"*. The voiceover then continues, stating that women have made Dardanel the leader of the industry and that *"Women did it, not men"*. The ad received a lot of praise within the marketing and corporate communications community, naming it within the list of "women-friendly" companies.[633]

CEO Önen also pointed out in several statements that *"Destroying sexist stereotypes in the society and the business world first starts with the language we use. For this reason, in our film, we emphasized that women are behind Dardanel's success story by saying, 'What a beautiful thing women have done, not men.' We, private companies, have a great responsibility to eliminate gender discrimination and ensure that women find the place they deserve in the economy. We believe that it is necessary to start by changing the perspective and the language we use first."*[634]

The previous year, in 2020, in another International Women's Day ad, two middle-aged women workers are recorded saying *"Dardanel is our home,"* and *"Dardanel is our everything,"*[635] smiling to the camera, crossing their arms with confidence with the voice over thanking women workers (at the time, 1000 out of 1570 workers were women), stating that what makes Dardanel Dardanel is the hard work and effort of their 1000 workers. Several critical newsletter columns were later published, questioning where were the homes of Dardanel workers, mentioning the obligatory dormitory quarantines.[636]

---

[633] Akşam, "Dardanel 8 Mart Dünya Kadınlar Günü'nü 1000 kadın çalışanıyla kutluyor!",(2020), available at https://www.aksam.com.tr/guncel/dardanel-8-mart-dunya-kadinlar-gununu-1000-kadin-calisaniyla-kutluyor/haber-1051276

[634] Ibid.

[635] Youtube (video), "Dardanel 8 Mart Kadınlar Günü", (2020), available at https://www.youtube.com/watch?v=s1UvOr64VMw)

[636] "Dardanel'in çalışma kampından İstanbul Sözleşmesi'ne bir yol var…",(2020), available at https://ekmekvegul.net/gundem/dardanelin-calisma-kampindan-istanbul-sozlesmesine-bir-yol-var; "Dardanel işçisinin evi neresi?", (2020), available at http://isigmeclisi.org/20492-dardanel-iscisinin-evi-neresi-can-kartoglu; "Yine Dardanel; Yine kadın ve işçi düşmanlığı!", (2021), available at https://siyasihaber9.org/yine-dardanel;-yine-kadin-ve-isci-dusmanligi/

These two advertisements are typical examples of the misleading women's empowerment discourse in communication language, which happens to be in the corporate social responsibility sphere, rather than business and human rights. While appreciating and celebrating the hard work of women workers, and challenging sexist language are positive steps, Dardanel fails to match this discourse when it comes to transparency and reporting of the working conditions and problems women workers are facing within its factories.

In its Sustainability Report, it is stated that they have preventive and remedial policies against discrimination, inequality, human rights violations, forced labour and child labour; however, these policies are not publicly shared. Similarly, it is reported that their workers' rights policy includes investments in employees (education, development policies), compensation, fringe benefits, right to unionize, and work/life balance, yet, such policies are not publicly shared. They have also mentioned that dispute resolution and complaint mechanisms are established for employees, yet these mechanisms are once again not shared in public. The above-mentioned information is shared under principles and goals, and are checked off as Yes/No/Partially/Not Available with a limited space for explanation. The only two gender-focused principles/goals reported under the Sustainability Report are: *"The commitment to include fair workforce, improvement of working conditions, women's employment, inclusion and non-discrimination within its employees' rights policy;"* and *"Commitment to publicly share the measures taken throughout its value chain for pay regard and protect the rights of minorities and groups that are sensitive to societal factors (low-income groups, women) and to promote equality of opportunities."* Both are checked off as partially fulfilled, with no available information on such measures or policies, and a short explanation stating *"80% women's employment, women football team".*[637]

The present study has focused on and scanned the internal reporting of Dardanel since there are no ongoing collective labour lawsuits against Dardanel with a specific focus on pandemic practices or the working conditions of women workers. There is a clear lack of capacity and willingness to bring claims, despite statements by labour unions and occupational safety and health lawyers about the closed-circuit production practices being clearly non-compliant with the Labour Laws. Labour unions shared that they would be closely following the cases with

[637] Public Disclosure Platform, Dardanel Önentaş Gıda Sanayi A.Ş., 2022 Sürdürülebilirlik Raporu, (2022), available at https://www.kap.org.tr/tr/Bildirim/1124205

their lawyers, yet there is no ongoing collective litigation or other formal dispute resolution, which is a data by itself.

Another interesting aspect is that there have been heated arguments with regard to Dardanel in public opinion, however, they have not been able to cross the limits of rather marginalized left-wing, pro-labour media platforms, labour unions[638], with the exception of one determined woman journalist from a mainstream newspaper, who received an informative note from Dardanel after writing four critical columns about the problematic practices. A member of parliament from HDP (left wing), Züleyha Gülüm has submitted an official written parliamentary question towards the Minister of Labour of the time, Vedat Bilgin, asking whether the Ministry is aware of the labour rights violations, whether the Ministry had a plan/initiative to address the sexual harassment of women workers through camera recordings of toilets and changing rooms, the need for day-care facilities, the prevention of unionization rights under Turkish Penal Code Article 118, and the claims of discrimination towards women, Kurdish, Syrian and Roma workers. The written question was left unanswered by the Minister.[639] While it is promising for the claims of workers to be carried to the Grand National Assembly, the awareness and reaction from public opinion was not very wide.

The heated arguments with regard to Dardanel was instead about two incidents: one about how the women workers have used their bare hands while preparing tuna fish (with a focus on public health and hygiene, rather than the occupational health and safety or workers, and GIDA-İŞ union has claimed that gloves are not used on purpose in order to decrease the costs and that public health and workers' health are risked by employer to eliminate extra costs[640]) and the second about a sexist-sounding adversitement posted right before a national football match (*"Bu akşam makarnaya koyuyoruz"*). Dardanel's failure to effectively manage the following social media crisis has indeed lost value in the stock exchange.[641] These two cases have created a much bigger public reaction, compared to the women workers' working

[638] "Dardanel bildiğimiz gibi…",(2021), available at https://ekmekvegul.net/gundem/dardanel-bildigimiz-gibi; "Distopya değil Dardanel gerçeği",(2021), available at https://www.birgun.net/haber/distopya-degil-dardanel-gercegi-365008 ; "Dardanel'de 153 işçi enfekte, 56'sı hastanede", (2020), available at https://bianet.org/bianet/print/228632-dardenel-de-153-isci-enfekte-56-si-hastanede

[639] Turkish Grand National Assembly, Written Question submitted by MP Züleyha Gülüm, 7 / 54689, (2021), available at https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c2-1203-037b-e050-007f01005610 ; "Dardanel'deki insanlık dışı çalışma koşulları Meclis gündeminde", (2021), available at https://sendika.org/2021/11/dardaneldeki-insanlik-disi-calisma-kosullari-meclis-gundeminde-636729/ ;

[640] Duvar, "Gıda İş'ten Dardanel açıklaması: Eldiven demek patron için maliyet demek", (2021), available at https://www.gazeteduvar.com.tr/gida-isten-dardanel-aciklamasi-eldiven-demek-patron-icin-maliyet-demek-haber-1514415

[641] Ahmet Talha Ağca, Crisis Management In Social Media: Analysis Of The Dardanel Crisis With The Situational Crisis Communication Model, 18 Kilad 170 (2021), available at https://dergipark.org.tr/en/download/article-file/1894411

conditions within the factories. This is a common pattern which was prevalent in interviews with experts and activists from South Africa and Colombia: general public seems to be less interested in labour conditions and labour rights in supply and value chains and more involved in politically correct language, women's empowerment projects under corporate social responsibility, corporate pride celebrations and/or sexist language in ads. It also shows how the understanding of sustainability must change from the weight given exclusively to the consumer's experiences and the end product (how 'organic' and healthy the product is, rather than who grew/produced it under which circumstances), to a more holistic look including the production phases. This is a strong indicator that the understanding of gender-responsiveness or an equal and inclusive, or a "women-friendly company" needs to be transformed for more effective consumer mobilization and to gain wider public support.

Last but not least, attention must be given to the fact that the woman worker who decided to expose the working conditions in Dardanel factories have decided to do so anonymously, under the Dardanel Workers Solidarity Twitter account, which is now deleted. In addition, it was not possible to find a woman worker from Dardanel who would be willing to comfortably give an interview about their working conditions for a long while, despite the promise for anonymity. This case is quite similar to the cases in South Africa and Colombia. Even if a safe space is provided with a guarantee of anonymization of their statements, women workers are often intimidated and are reluctant to share details about their working conditions, with fears of repercussions, job termination or, specifically in the three focus countries, in certain informal jobs such as domestic work or care work, bad references which would greatly affect their future prospects. One of the main reasons why women workers prefer not to take action, or expose their employers is the risk of building a bad reputation and losing future job opportunities. It has been shared by SADSAWU, the domestic workers union, that *"being unionized is already a bad start, and if you negotiate, demand your legal rights, object or take legal action, you are in black list and since there are so many women who are desperate for such positions, you are easily replaced."* It takes much courage and risk for women workers to step up. Journalists have also pointed out that women workers who are sharing testimonies would like to remain anonymous and do not prefer to give away information about the locations/names of the factories in which violations happen. The fear of repercussions towards whistleblowers is a cross-cutting pattern in all three countries.

Claims against Dardanel, shared from the anonymous Dardanel Workers Solidarity account and by several workers in different factories reveal the deeply gendered nature of problematic

labour practices, especially in production bands. Demanding working conditions, with no possibility for daycare or support for caring responsibilities put women workers in a more vulnerable position against their partners within the household, and harsh working conditions return as verbal and physical violence caused by a masculinity crisis, especially if women are the sole or dominant earners in the household. A testimony by a woman worker in Dardanel's Dudullu factory in Istanbul is as follows: *"The three-shift working system is like hell for a female worker with a child. Your psychology would be ruined in a month. I am put through the wringer, thinking of my children, my husband's shouting and battering. With 4-5 hours of sleep, we work an average of 12 hours a day with overtime. .... I am devastated by exhaustion, house chores, taking care of children, putting them to sleep, preparing them for school, regular beatings, swearing and insults from my husband. We are all forced to work under minimum wage."*

Other claims included locking the toilets to eliminate toilet breaks, putting cameras in front of women's bathrooms and changing rooms, lack of water or tea during breaks, having more than 70% of worker from subcontractors and not as the workers of Dardanel, hiring systems such as "dayıbaşılık" which is common among seasonal agricultural workers in which hirings are made through references with commissioning middle persons, Kurdish, Syrian and Roma workers experiencing discrimination, providing different quality uniforms, gloves and boots according to the employment status (subcontractor or direct employee). Minority workers hired through subcontractors are marked with different coloured uniforms and are forced to work without social security in degrading, dirty jobs with a kilogram quota system and without proper hygienic measures. The marked workers who are given the dirtiest and hardest jobs are isolated, and verbally assaulted and bullied even by fellow factory workers, according to the claims.

A selection of the points were raised as a part of the testimonies shared under Dardanel Workers Solidarity (@dardanelisciler on Twitter) account on 6 November, 2021 are listed below:

"I am a female worker working in Dardanel Niyazi Önentaş holding. I will tell you about the mobbing and unlawfulness we experienced while working as a woman, violating the very sacred secrecy of the factory.

"The rudimentary production methods and lack of job description, makes our work twice as difficult, and turn us into soldiers who can be commanded all the time. It is never enough to do the tasks given to us. The biggest problem in the factory is the subcontracted workers."

"More than seventy percent of us work as subcontractors. Subcontracted workers are not recruited by subcontractor companies as in other factories, they are found through middle-persons, similar to the methods in agricultural employment. These workers, who lack legal rights, are chosen from the most marginal of society.

"Since there is no insurance, in case of an occupational accident, we are sent home, not to the hospital. As Kurdish, Syrian, Roma and female contractors, we are at the bottom of the existing hierarchy"

"To marginalize us further at the factory, we are given different uniforms from those of the insured workers. We are given the hardest, dirtiest jobs. Minimum communication between workers in the fish department is prohibited."

"When we do not meet the weight quotas, we end up having serious problems at the end of the day. We have a bonus/premium-style production, and this of course works perfectly for the boss. With a few pennies they give per kilo, their logic is less workers, more money.

"There are many labour practices which are against the Labour Code in all parts of the factory. For example, during the 9.5-hour working period, we are only given a half hour break. We can not take our on-hour breaks that we are entitled to during working time that exceeds 7.5 hours."

"The new excuse for this long-standing unlawfulness is COVID-19. The virus is somehow not transmitted during working hours, with dozens of people working in closed areas, on the same band, on the same bench next to each other; but it is treated as if it can be transmitted outdoors, in the break areas and during rest time."

"When working for 12 hours, we are not provided with tea or water during breaks. We have to buy it ourselves from the canteen at constantly increasing prices. Insects are constantly coming out of our food in the cafeteria. After the meal, all the workers complain of stomach ache, the cheap oils used cause heartburn and severe nausea."

"It is forbidden to record anything with a camera inside the factory because they are afraid that we will shoot wormy and damaged products and give them to the press. During packaging, we separate the spoilt and very spoilt products and re-box the spoilt products and serve them to the consumer."

"Since there is no union in the factory, we cannot seek our rights. Our friends who speak out are dismissed without any reason. Our overtime wages are not paid, we are faced with wage cuts for various excuses.

"When we print the staff card a minute early, we get a two-hour pay cut. Checking the time on the phone is just one of the reasons for wage cuts."

"Insured employees (although their number is small) who earn a salary above the minimum wage are provided with insurance based on the minimum wage."

"Dardanel isn't a fish expert, they are experts on wage cuts and misogyny. We know the misogyny of the employer very well ...(there is a reference to the sexist joke in Dardanel ad)... and we also expose the misogyny that spreads within the factory."

"We are the women who meet the tuna fish needs of Türkiye and many countries in Europe and prepare the army's food. We are nobody's 'women' (referring to the common "our women" discourse also used by Niyazi Önen) as Niyazi Önen wrote in his apology."

"We are the women who meet the tuna fish needs of Türkiye and many countries in Europe and prepare the army's food. We are working women who produce labour in factories, workshops, parks, gardens, fields, offices and production facilities. We are Syrian, Afghan, Turkmen, Roman, Kurdish, Kyrgyz, Albanian, Somali and Turkish women workers. We do not accept the terms of slavery, we want to make our voices heard."

Another woman worker who gave an interview to Birgün has addressed unions as well *"I am unionized, but no one got in touch with me. I don't know if there are other unionized workers. These conditions must be improved and this is only possible through unions."*[642] In one newspaper article, women workers have asked "*Are we not as valuable as tuna fish?"*[643]

While the claims in this exposing thread are not proven, they have been supported by several other former workers and labour unions. In addition to the written parliamentary question by Züleyha Gülüm, Turkish Communist Party has filed a criminal complaint against Dardanel, claiming that workers were forced to work under unsafe and unhealthy conditions with the closed-circuit production system decision.[644] There has been no follow-up by the public prosecutors. It is also important to note that such action was initiated by the male spokespersons of the party, not the workers themselves. None of these claims have been officially investigated by the Ministry of Health, the Ministry of Food and Agriculture, or the Ministry of Labour. This is a strong indicator that in order to build gender responsive business and human rights mechanisms, the missing link between exposure of working conditions and taking action (investigation, taking legal action, inspection, litigation) needs to be fixed. The exposure of deeply gendered violations is often not enough. Labour unions, think tanks and NGOs need to take a step further than dissemination of information and showing solidarity, and offer legal support as an integrated part of their advocacy efforts. The Turkish Communist Party's criminal complaint is a good practice, yet it was not widely shared with the public or followed up.

There are serious conflicts between the claims of workers and Dardanel's broad statements[645] with regard to the Sustainability and Labour Rights principles. While some workers claim to be unionized, a majority claims that unionization is not allowed in the factory. While the workers' rights document is not publicly available, workers' unionization rights are recognized under the Sustainability reports. On the other hand, the president of GIDA-İŞ union Seyit Aslan shared that they are informed by the workers that any initiatives for unionization are oppressed with an "either your job or the union" approach, and threats of termination of

[642] Birgün, "Distopya değil Dardanel gerçeği", (2021), available at https://www.birgun.net/haber/distopya-degil-dardanel-gercegi-365008

[643] "Dardanel işçilerinin ton balığı kadar değeri yok mu?", (2020), available at https://ekmekvegul.net/gundem/dardanel-iscilerinin-ton-baligi-kadar-degeri-yok-mu

[644] Turkish Communist Party, "Çanakkale Dardanel hakkında suç duyurusu",(2020), available at https://www.tkp.org.tr/uncategorized-tr/canakkale-dardanel-hakkinda-suc-duyurusu/

[645] Dardanel, "Hakkımızda", available at https://www.dardanel.com.tr/8-hakkimizda/1189-surdurulebilirlik/ https://www.dardanel.com.tr/8-hakkimizda/1189-surdurulebilirlik/

their jobs. The three prevalent collective feelings shared by women workers are insecurity, obligation and desperation.

Having said this, labour unions' approach to the case should be approached with a critical lens. While it should be noted that they have actively worked to involve media and to amplify the voices of Dardanel workers, and their statements always have gender lens embedded, their discourse mostly focuses around having open calls to women workers, inviting them to be unionized and to "break their chains and wheels of exploitation", to mobilize among themselves under the unions. In addition, GIDA-İŞ has organized a protest and a press statement in front of Dardanel headquarters in Istanbul and shared that they would file a criminal complaint if the closed-circuit working system is not terminated.[646] The dated call to women workers to break free fails to recognize the deeply gendered pattern of exploitation, and does not offer alternative paths to women who do not have an option to unionize due to their dependency on the income.[647] There is a sentiment of anger towards some unions by women workers in Colombia as well. An interviewee shared: *"They are not reaching out to us. How can I start the revolution by myself from the factory? They should work more actively to unionize, and not expect all the work from us."*[648] Similarly in the Turkish context, the constant emphasis on solidarity does not always result in solid legal support or action.

There are some strong takeaways from the Dardanel case, for building truly gender-responsive business and human rights mechanisms: Legal actions should be followed up, unlike the abortive criminal complaint initiative by the Turkish Communist Party as seen in this case study. The gender-responsiveness record of companies should be shifted from empowering corporate communications language to legally accountable and independently inspected, just working conditions for worker women within the supply and value chains. The deep divides between contracted workers and subcontracted workers and intersectional discrimination experiences of minority and migrant women workers must be addressed. The whistleblowers should be guaranteed security and sustainability. Annual operative reports and human rights due diligence should be standardized with further transparency and obligations to publicly share remedy mechanisms, employer's rights policy papers and gender equality action plans.

[646] Habertürk, "DİSK'ten Dardanel fabrikasındaki çalışma sistemine tepki" (2020), available at https://www.haberturk.com/disk-ten-dardanel-fabrikasindaki-calisma-sistemine-tepki-2764592-ekonomi
[647] "Dardanel işçilerinin ton balığı kadar değeri yok mu?", (2020), available at https://ekmekvegul.net/gundem/dardanel-iscilerinin-ton-baligi-kadar-degeri-yok-mu
[648] Oral interview with a former worker and a trade union expert from Türkiye (April 2022).

4.6. State Owned Entities: Board Seat Quotas, the ESKOM Case and Access to Basic Necessities

The State duty to protect, under the UNGPs and within BHR discussion should include states' roles as economic actors, particularly their accountability with regard to the state-owned enterprises. There is a need for further scrutiny around how they are managed, the horizontal and vertical policy coherence for these state owned entities (SOEs) (whether the state keeps its promises about BHR principles and progress), the investment and credit mechanisms, public procurement, employment practices, and most importantly, how they provide services. What puts SOEs in a unique position, specifically in host states such as Türkiye, Colombia, and South Africa is that many state-owned entities having BHR problems, also happen to be providing basic necessities such as clean water or energy, which have overlooked gender dimensions and connections to the everyday experiences of low-income women. Building gender-responsive BHR mechanisms for SOE operations is specifically important: The States have legal obligations not to discriminate against women, to protect their rights, and to promote gender equality, in addition to their duty to protect against corporate abuse of human rights, a duty that is directly attributable to the States if these abuses are committed by such enterprises. In addition, States should not ask less of companies that they own or that they are associated with, compared to what they ask of private businesses and multinational corporations. In Türkiye, Colombia, and South Africa, the SOEs mostly have a gender-blind approach to their operations, which is a missed opportunity to set legitimate, credible standards for their business operations. There are some examples of good practices globally, for example, the Working Group has shared the example of Finland, providing in its State ownership policy resolution that for enterprises fully/majority owned by the State, the Gender Equality Act must be complied when making appointments to boards of directors, and steps must be taken to ensure equal opportunities for appointments to managerial posts, including senior leadership and executive positions.[649] Another shared example is Portugal requiring SOEs to adopt gender equality plans.[650] However, while sharing such good practices, the Working Group stated that states may focus on specific areas of human rights which they wish to put more emphasis on, which is problematic in the sense that gender strategies are specified and narrowed down as a niche area of the human rights canon, suggesting a voluntary or selective nature, which can be celebrated and applauded but not enforced.

[649] Finland Government Resolution On State Ownership Policy(2011), p. 9, available at https://vnk.fi/documents/10616/1221497/Periaatepaeaetoes03112011_eng.pdf/daf2cf64-ffea-4102-9c75-0803c227afeb

[650] Portugal Council of Ministers Resolution of 2007, 49/2007, (2007).

Building gender-responsive BHR mechanisms starting from the SOEs has the potential to reinforce policy coherence and effective implementation, both in national gender equality policies and for national business and human rights action plans.[651] A concept through which gender equality and BHR agendas can talk to and learn from each other more in the context of SOEs is "active ownership". Active ownership is a concept that is at the core of the OECD Guidelines on Corporate Governance of State-Owned Enterprises, which constitute the *"internationally agreed standard for how governments should exercise the State ownership function to avoid the pitfalls of both passive ownership and excessive State intervention."* States are expected to act as *"an informed and active owner, ensuring that the governance of SOEs is carried out in a transparent and accountable manner, with a high degree of professionalism and effectiveness."*[652] The "active ownership" approach would be an effective method to ensure gender equality is well-integrated into the value chains of SOEs, and can help foster efficient, transparent, and accountable business practices.[653]

Gender equality within SOEs has been raised by CEDAW, considering such enterprises as quasi-state organs or agents, and calling on States to increase the number of women in decision-making positions of SOEs, equating them to other governmental bodies.[654] The Working Group also urges States to *"ensure gender equality in the recruitment and membership of the boards of State-owned enterprises"*, as well as the OECD Guidelines on Corporate Governance of State-Owned Enterprises.[655]

---

[651] Camilla Wee, Regulating the Human Rights Impact of State-owned Enterprises:Tendencies of Corporate Accountability and State Responsibility, (2008), available at https://media.business-humanrights.org/media/documents/files/reports-and-materials/State-owned-enterprises-Oct-08.pdf

[652] UN Working Group, Summary of the UN Working Group on Business and Human Rights' report to the UN Human Rights Council:Leading by example: The State, State-owned enterprises, and Human Rights , (2016), available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement

[653] Ibid.

[654] See CEDAW, UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Mauritius, (2006), CEDAW/C/MAR/CO/5; CEDAW, UN Committee on the Elimination of Discrimination against Women: Concluding Comments, Bosnia and Herzegovina, (2006), CEDAW/C/BIH/CO/3; CEDAW, Report of the UN Committee on the Elimination of Discrimination against Women, Twenty-fourth and Twenty-fifth Session (2001), A/56/38, para. 171 (about Uzbekistan); and CEDAW, Report of the UN Committee on the Elimination of Discrimination against Women: Twenty-sixth Se

[655] OECD, OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015); CEDAW, UN Committee on the Elimination of Discrimination against Women: Concluding observations on the combined seventh and eighth periodic reports of Poland , CEDAW/C/POL/CO/7-8, (2014); CEDAW, UN Committee on the Elimination of Discrimination against Women: Concluding observations of the Committee on the Elimination of Discrimination against Women: Finland, CEDAW/C/FIN/CO/6, (2008); CEDAW, UN Committee on the Elimination of Discrimination against Women: Concluding observations on the combined fifth and sixth periodic reports of Morocco, CEDAW/C/MAR/CO/5, (2022).

OECD's Ownership and Governance of State-Owned Enterprises Report has shown that in 2021, around one-third of the 49 surveyed jurisdictions have adopted mandatory quotas for SOEs, setting a minimum number or percentage of women on SOE boards, while a smaller share (16%) of jurisdictions have taken more a flexible approach through the adoption of voluntary goals or targets.[656] It is promising that there is continued and stronger emphasis on gender diversity on SOE boards, with disclosure requirements, binding quotas and voluntary gender representation targets specific to SOEs, some of which are more ambitious than those set for companies (showing further dedication and potential to set examples). However, gender equality is only taken into consideration with a narrow approach, only focusing on the number of women in the executive board. Both in Colombia and South Africa, there is a mandatory 30% gender quota, specifically for the boards of SOEs while there is no such mandatory provision in place in Türkiye.[657] Having said this, interviews with representatives of the private sector in Colombia and South Africa have shown the greater risk of corruption and deeply hierarchical structures in SOEs compared to the private sector, which can result in non-compliance of quotas (the states often lack resources to properly investigate whether gender quotas are fulfilled, or to put sanctions in force) and purposeful assignment of women board members with political favoritism and nepotism, or assignment of less qualified, less confrontational and more obedient team members, which can reinforce prejudice towards women members' lack of qualification. In Türkiye, the Capital Market Board's Corporate Governance Communique provides that all companies should target a percentage for women members among the executive board, not to be below 25%, and should develop policies to reach targets and evaluate annual progress (Principle 4.3.9.)[658]. In addition, in an amending Communique, the principle to have at least one woman member within the executive board was introduced for companies with public ownership which include companies partially owned by states,[659] even though there is no specific mention of SOEs. However, research has shown that following these communiques, the percentage of women members within boards, 52.9% in 2012, only increased to 59% in 2016. According to 2019 records by the Capital Market Boards, which include SOEs as well, the compliance of Principle 4.3.9 is significantly low, with only 10% of BIST 100 companies, and 13% of BIST 30 companies. In 34% of the

[656] OECD, Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices, (2021), available at https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf
[657] Ibid.
[658] Republic of Türkiye Corporate Governance Communique, II-17.1, 28871, (2014), available at https://www.mevzuat.gov.tr/anasayfa/MevzuatFihristDetayIframe?MevzuatTur=9&MevzuatNo=19225&MevzuatTertip=5
[659] KAP,"BIST Şirketleri", available at https://www.kap.org.tr/tr/bist-sirketler

companies, there are no women members on the board of directors, with no sanction.[660] This is an indicator of the ineffectiveness of voluntary recommendations without any sanctions, and the unwillingness to take initiative for gender divesity in executive boards.[661] This inefficiency was also noted under the Women's Empowerment Strategy Document and National Action Plan 2018-2023, led by the Ministry of Family and Social Services.[662] In addition, interviews with Turkish representatives of the private sector and academic experts have pointed out that certain stereotypes or "men's club" cliques are rooted and prevalent among SOEs, which engenders women's exclusion from "serious matters of the state" and "men's business".

In many host states, SOEs tend to partner with MNCs in mega infrastructure and construction projects, often confronting and having more contact with local communities and activist women compared to the MNCs, and their approach towards prior informed consent and consultations, their reaction to protesting/objecting locals, and their due diligence is of determinant quality for the gender dimension. Most importantly, the state-owned (and in local contexts, municipality or local government owned) enterprises provide basic services which are closely connected to women's care responsibilities and everyday life, including clean water and electricity. The operations, governance and problems with regard to such services have serious yet invisible impacts on low-income women's everyday lives.

A very recent and significant example is the South African electricity crisis in relation to ESKOM. ESKOM is the largest South African state owned enterprise, and it has been operating as the largest producer of electricity as a public utility.[663] Energy precarity has been a significant problem in South Africa, and the focus of post-apartheid energy policy, with an imperative to fair access to energy. In the late 2000s, energy affordability became a serious policy concern, load shedding practices (imposing targeted and often scheduled blackouts for certain residential regions or high-use industrial consumers) began, and prices began to

[660] Turkish Capital Market Boarrd, Corporate Governance Follow-up Report, (2019), available at https://spk.gov.tr/data/61e87f6a1b41c611a4c53a96/6c78f00c239fca0f7e2243dae27d69c7.pdf

[661] Sabancı University Corporate Governance Forum, 10th Annual Women On Board 2022 Türkiye, (2022), available at https://iwdTürkiye.sabanciuniv.edu/sites/iwdTürkiye.sabanciuniv.edu/files/2023-03/report-2022-4.pdf

[662] Ministry of Family and Social Policies of the Republic of Türkiye, Women's Empowerment Strategic Document and Action Plan 2018-2023, (2023), available at http://www.sp.gov.tr/upload/xSPTemelBelge/files/RySPo+KADININ_GUCLENMESI_STRATEJI_BELGESI_VE_EYLEM_PLANI_2018-2023_.pdf

[663] John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021).

increase with an accumulating debt in the energy sector, in order to fund new coal-based power generation. This was followed by several breakdowns of power stations, strikes and protests in the next years, and in 2022, South Africa had experienced more than 200 days of power cuts, the most in a calendar year in the country's history.[664] The electricity crisis has deepened and worsened in 2023 with the ESKOM "scandal", as named by national media, which broke down during my research visit in Cape Town for this dissertation, with more than 6 hours of load shedding experienced on certain days. In February 2023, Eskom's CEO Andre de Ruyter gave an interview in which he criticized the lack of political will on the ANC government's side to fix the electricity crisis, claimed that there were cartel-like groups operating in critical coal mines with impunity, and that the ESKOM board has exercised overreach towards professional executives, fueling the ongoing debates about allegations of corruption and mismanagement at ESKOM and increasing the unprecedented power cuts.[665]

These unprecedented practices of load shedding, the decreasing affordability of electricity, and disrupted energy access got combined with structural unemployment, informal livelihoods, and incremental housing, resulting in non-payment or theft of electricity through illegal connections. The decline of energy consumption in households has mostly affected housewives who are responsible for childcare, cooking and housework; and many smaller, poorly resourced municipalities became increasingly indebted to the vertically integrated Eskom, and had to cut budgets from social welfare programmes which supported local women. In addition, the unaffordability and unavailability of electricity pushed residents into using cheaper yet more dangerous alternatives such as kerosene, candles, fuelwood, or coal instead of relatively safe and more convenient electricity. In addition to poor and precarious supply of energy, there are gendered vulnerabilities caused by the use of such as the risk of fire and indoor pollution, disproportionately affecting women and children. Low-income women systematically experience chronic vulnerability to energy deprivation, precarity and risks.[666]

---

[664] Munyaradzi Makoni, Power cuts and South Africa's health care, The Lancet 401(10386), (2023).

[665] IMF, "South Africa's Economy Loses Momentum Amid Record Power Cuts", (2023), available at https://www.imf.org/en/News/Articles/2023/06/15/cf-south-africas-economy-loses-momentum-amid-record-power-cuts ; IOL, "Andre de Ruyter says cartels operated with impunity at Eskom", (2023), available at https://www.iol.co.za/news/politics/andre-de-ruyter-says-cartels-operated-with-impunity-at-eskom-4eba29aa-266a-4a88-9e1b-380b766c1856; John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021).

[666] John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021);
Yachika Reddy & Peta Wolpe, Pathways to Urban Transformation in South Africa: The Case of the City of Johannesburg and Polokwane, (2018).

The energy crisis, closely connected to the mismanagement of state-owned ESKOM has two significant and illustrative gender aspects of SOE practices in host states: first is the invisibilized experiences of low-income women, which indicate the harm of seemingly gender-neutral measures and practices. Second is how the current energy policies shaped by the states and the SOEs (which include energy conservation strategies) remain individualized, how insufficient and inefficient they are to challenge gendered vulnerabilities by taking the accountability away from the businesses and introducing palliative solutions, often laying the responsibility on individual women.

Interviews with South African working women and representatives of labour unions and activist collectives have revealed that load shedding hours tend to be around the ends of the shifts when working women try to reach their houses and the dark streets increase the risk of assault and harassment. In 2020 ESKOM introduced load reduction *"to avoid network overloading in high density areas"*, a practice which disproportionately affected black and low-income neighbourhoods, criticized as "energy racism" by several scholars.[667] Partners and parents also discourage women from working long shifts if they have to use public transportation or if they have to walk in the dark as a part of their commutes. The insecure feeling while commuting or walking in the dark and the mental toll of "constant vigilance" is indicative of how women have to compromise with their safety in order to be able to work or actively participate in public life. Interviewees also shared that certain critical meetings (including labour union meetings or prior informed consultations) are strategically scheduled for times in which either it is inconvenient for women to travel (when they have children coming from school), or within periods in which there is electricity and women have to stay at home taking care of housework or care work depending on the energy. The lack of electricity exacerbates unpaid reproductive labour, including domestic work, chores and care work which mostly fall on women, as they become harder and take much longer, forcing women to spend more time within the households. All in all, research shows that electrification of households reduce time poverty[668] and mostly benefit women, by making their everyday lives significantly easier with less health risks.[669] The alternative methods and tools for household energy cause

[667] Terri Maggott & Siphiwe Mbatha & Claire Ceruti & Lydia Moyo & Alice Mporo & Trevor Ngwane & Cleopatra Shezi & Luke Sinwell, Energy Racism Report: The electricity crisis and the working class in South Africa, (2022) available at https://www.uj.ac.za/wp-content/uploads/2022/04/energy-racism-csrp-web.pdf

[668] Department of Energy of South Africa, Socio-Economic Impact of Electrification: Household Perspective, (2009), available at https://www.energy.gov.za/files/media/explained/statistics_households_2001.pdf

[669] Lauren Clark, Powering Households and Empowering Women: The Gendered Effects of Electrification in sub-Saharan Africa, JPIA, (2021), available at https://jpia.princeton.edu/news/powering-households-and-empowering-women-gendered-effects-electrification-sub-saharan-africa

serious risks for fire (with many reported cases of women and young girls' longer hair catching fire from candles or indoor fires), an increased risk in fires within informal dwellings[670] known as "shack fires" with women and children disproportionately represented among burn victims[671], food waste due to lack of preservation,[672] increased risk of domestic violence due to the disrupted domestic work, and disproportionate suffering from small or informal businesses mostly led by local women which require energy and rarely have access to generators.

In addition to the widely recognized and proven gendered impacts of energy deprivation,[673] scholars have identified a problematic approach in many policies and strategies which *"mobilize a problematic binary in the feminization of energy poverty and the heroic entrepreneurialism of women who suffer the effects of energy deprivation disproportionately, refracted by intersectional identities*."[674] A celebratory discourse on women's empowerment and strong women entrepreneur figures are notable in the South African context.[675] However, such individual success stories or limited, short-term energy-saving solutions distract and mislead the focus away from the accountability of state-owned or private companies who are often the primary cause of systematic energy deprivation. Such initiatives are criticized for shifting the advocacy from gender-responsive energy policies to a *"narrow, class-based project of promoting the growth of elite businesswomen in the energy sector"*.[676] There is a strong emphasis on increasing the female labour force in the energy sector while the gendered impact of the energy crisis is often overlooked by the business representatives within the energy sector, in a discourse which suggests the problems are not connected to their operations, but are of a matter of state policy, poor governance or general socio-economic inequalities.

---

[670] Natalia Flores Quiroz & Richard Walls & Antonio Cicione, Towards Understanding Fire Causes in Informal Settlements Based on Inhabitant Risk Perception, 4 Fire 39, (2021).
[671] Ibid.
[672] South Africa's food system is broken and urgent government intervention is needed(2022), available at https://www.dailymaverick.co.za/opinionista/2022-11-01-south-africas-food-system-is-broken-and-urgent-government-intervention-is-needed/
[673] Wendy Jill Annecke, Women and energy in South Africa, 4 Energy Sustain Dev 44, (2000); Gisele Prasad, Improving access to energy in Sub-Saharan Africa, 3 Current Opinion in Environmental Sustainability 248, (2011).
[674] John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021), available at https://journals.sagepub.com/doi/full/10.1177/0308518X20986807 ;
; Romy Listo, Gender myths in energy poverty literature: A critical discourse analysis, 38 ERSS 9, 2018
[675]Horman Chitonge, The Political Economy of Energy Policy in South Africa: From a Gender Agenda to a Class Project, JRD Tata Ecotechnology Centre, (2017).
[676] Ibid.

The energy solutions in which material resources or energy efficient and labour saving household technologies are introduced and provided to individual women, hoping to reduce the cost and burden of domestic work do not necessarily affect and transform power relations within the households. On the contrary, they can reinforce gender divisions of labour. For example when households are given solar panels, the motivation is to make sure women can cook and clean easier to support their families.[677] Off-grid solar home systems indeed provide energy for the households in informal neighborhoods, but often do not meet all household energy needs, for example by being sufficient for lighting but not cooking, formalizing and taking away the flexibility that women may exercise. Such individualized remedies are often *"in efforts to unleash the productive potential of energy and women's labour."*[678] While supporting entrepreneurship of poor women, and the incubator/mentorships programmes supporting innovative ideas of youth from vulnerable communities can be beneficial, the rhetoric around women's entrepreneurship and sustainable development, often supported by businesses, chooses to focus around identifying exceptional entrepreneurial individuals and not pushing for the accountability of businesses, state owned enterprises and local governments and states to solve racialized and gendered systematic energy deprivation or other poverty experiences due to lack of basic necessities provided by the SOEs.

4.7. The Most Prevalent Gender Issues and Socio-Political Context Based on the Insights of Feminist Movements

Colombia, South Africa and Türkiye all share resilient, diverse and complex feminist movements with overlapping struggles and prioritized advocacy areas, significantly, femicides and other forms of gender-based violence. This dissertation, in parallel with several feminist scholars such as Springer,[679] is critical of the waves approaches in which feminist movements are divided into strictly cut-out periods of time, or as waves with defined borders since these approaches can be misleading, overly linear, oversimplifying and might take Eurocentric feminist movements as the norm (suffragist movement as the first wave, sexual rights movement as the second, etc., assumed to be represented women's global struggles). Considering the limited space and the focus of this research, instead of a strictly categorized

[677] John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021), available at https://journals.sagepub.com/doi/full/10.1177/0308518X20986807

[678] John Phillips & Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environment and Planning A 1031, (2021), available at https://journals.sagepub.com/doi/full/10.1177/0308518X20986807; Jiska de Groot & Nthabiseng Mohlakoana & Abigail Knox & Hans Bressers, Fueling women's empowerment? An exploration of the linkages between gender, entrepreneurship and access to energy in the informal food sector, 28 ERRS 86, (2017).

[679] Kimberly Springer, Third wave black feminism?, 27 Signs 1059, (2002).

chronological description of women's emancipatory struggles in Türkiye, Colombia, and South Africa in this comparative context, the most prevalent and recent gender issues and feminist insights into contemporary, nation-specific socio-political contexts will be shared, mostly informed by the interviews with feminist scholars and activist.

4.7.1. Francia Marquez's Promising Leadership in Colombia

Based on interviews with three women's rights organizations from Colombia, La Casa de Mujer[680], RadFem Colombia,[681] and Fundación Buena Semilla,[682] the most prevalent women's rights issue in Colombia is gender-based violence: most specifically, femicides, sexual assault and harassment and domestic violence. A common understanding is that the domestic legislations are sufficient and the political will to fight against gender-based violence is visible. National Action Plans and "to-do-lists" are often prepared with active engagement of feminist organizations (through consultations in law-making and policy-making process) and women's rights issues are often included within the legislations and proposals.

Following the Presidential election in May 2022 in Colombia, Gustavo Petro, former mayor of Bogotá, was elected as the first left-wing candidate in Colombia with a narrow win against Rodolfo Hernandez Suarez. One of the most interesting figures of this political campaign has been Francia Marquez, aged 42, who became the first Afro-Colombian, and the second woman to hold the Vice Presidency position.

[680] Oral Interview with a feminist civil society organization representative from Colombia, (February 2023).
[681] Oral Interview with a feminist civil society organization representative from Colombia, (February 2023).
[682] Oral Interview with a civil society organization representative from Colombia, (February 2023).



Figures 4.3.a., 4.3.b.: Graffitis in Bogotá streets in support of Vice President Francia Marquez and encouraging citizens to vote. (February 2023, photographs taken by the author).

She is a well-known environmental feminist activist, coming from a rural village in Cauca. Her advocacy background is of close connection with gendered dimensions of business and human rights. In her early teens, she mobilized the women of La Toma community for the defense of Ovejas river against Unión Fenosa's Salvajina hydroelectric dam projects, eventually succeeding in the prevention of the project. She has led a 10-day, 560 km march with 80 women to Bogotá, protesting the illegal gold mining on ancestral lands, eventually resulting in the removal of illegal mining business from her community. The Historic Pact for Colombia, which she is a part of, is strongly supported by socialist, environmental and feminist associations. The presidential campaign strongly advocated for progressive proposals for women and LGBTI+ rights. Marquez is well-known for her representing role with not only the Afro-Colombian community but most marginalized groups who feel discriminated against and excluded from politics and society.[683] Although she is primarily known as an environmental activist rather than a feminist, she has led the advocacy efforts for meaningful engagement of women, Afro-Colombians and indigenous communities, has announced her candidacy during the National Feminist Convention and was publicly supported by the

[683] BBC, "Gustavo Petro and Francia Márquez: A new era for Colombia", (2022), available at https://www.bbc.com/news/world-latin-america-61863885

Estamos Listas, the most powerful and biggest political movement led by women for equal political representation[684].

Some feminist organizations describe Marquez as an environmentalist, first, rather than a feminist. Her vice presidency has created an optimistic environment and a visible prioritization in gender equality and diversity in policy-making. One remarkable change is how often women's rights organizations are invited to consultative processes. One of the most anticipated political promises of Marquez is the establishment of a new Ministry of Diversity which will be responsible for gender equality politics. Although the name, mandate and the structure of this new ministry is yet to be determined, feminist organizations have high expectations. Marquez's advocacy history, her ecofeminist identity, (not self-identified, yet often described as an ecofeminist by national media) her criticism of multinational corporations' mega infrastructure projects and her award-winning political activism and marches, all in all, her successful and charismatic political history taking sides with indigenous communities (primarily women)[685] can be seen as a sign of hope for a gender-responsive business and human rights culture in Colombia. While noting the importance of political moment of hope and charismatic, promising leadership; the general skepticism of human rights organizations, activists and feminist collectives towards radical change under the Petro-Marquez leadership indicates that leadership initiatives is not sufficient for fundamental change, which can address and transform power relations and to deconstruct systems of gender oppression.

[684] Laura Bedoya, The Political Empowerment of Women in Colombia
Towards Gender Equality, Revista Harvard Review of Latin America, (2022), available at: https://revista.drclas.harvard.edu/the-political-empowerment-of-women-in-colombia/

[685] Goldman Prize, "2018 Goldman Prize Winner: Francia Márquez", (2018), available at: https://www.goldmanprize.org/recipient/francia-marquez/



Figures 4.4.a., 4.4.b., 4.4.c.: Protestors camping in front of the steps of the Congress. Women actively involved in street protest mobilization against the socio-economic reforms promoted by the government. Police helmets lined up in front of the interior door of the Constitutional Court, heavy security measures taken during the protest days at the Plaza de Bolivar. (February 2023, photographs taken by the author).

The long, complex and diverse history of the feminist movements in Colombia find common ground in their efforts to consolidate peace amidst their diversity and different approaches towards transitional justice. The establishment of the unprecedented Sub-Commission on Gender and the integration of a gender focus within the 2016 Final Peace Accord are among significant achievements of the feminist movement. Starting from the suffrage movement in the mid-20th century (Colombian women achieved the right to vote in 1954) to the politicization of women's bodies and sexuality, feminist groups have worked hard for the gender-focused transformation of law, with significant contributions to the 1991 Constitution. Mindful of the importance of the moment, Colombian feminists sought to take advantage of the opening provided by the constitutional process, trying to influence the drafting of the new Constitution and to set the stage for future legislative struggles over gender equality in a traditionally machista society.

In contemporary Colombia, millenial and Generation Z feminists are mostly mobilized through social media, with well-organized protests taking place in big cities like Bogotá, Medellin, Cali and Cartagena on 8th or March and 25th of November. While gender-based violence and misogynistic media content are widely discussed on social media, there is not as much interest and support for women workers' rights or cases of discrimination in employment, or women workers' issues. The lack of connection among feminist and labour movements is a common theme in all three jurisdictions.

4.7.2. Türkiye's Withdrawal from Istanbul Convention, the Rise of Anti-Gender Discourse and Shrinking Civic Spaces for Feminists

Türkiye has a poor and deteriorating record on gender equality and gender based violence: 36% of ever-married women between 15-59 have experienced intimate partner violence (physical or sexual) at least once within their lifetime.[686] The COVID-19 outbreak caused a sharp increase in reported cases of violence and femicides. Istanbul Security Directorate has reported a 38.2% increase in domestic violence cases in March 2020 compared to March 2019 - NGOs specifically working on gender-based violence, such as We Will End Femicides Platform, reported a critical increase in the percentage of cases, specifically in the number of suspicious deaths presented as suicide or natural death, and the number of women who were found dead in a suspicious way, throughout the pandemic.[687] According to Turkish Federation of Women's Association there was an 80% increase in physical violence cases[688] comparing March 2019 to March 2020. Against this backdrop of feminist civil society's strong concerns, the Minister of Interior recently announced that violence against women cases decreased 7% after the spread of COVID-19. Considering the difficulties in seeking help during lockdown and the fact that only 11% of women report cases of violence in Türkiye, the situation is much more severe than the official records. The brutal murder of Pınar Gültekin in July 2020 sparked nationwide protests led by feminist civil society, demanding the government to address the issue and to fully implement Istanbul Convention and the Law No. 6284 to Protect Family and Prevent Violence against Women.

In 2011, Türkiye was the first state to sign and ratify the Istanbul Convention, as well as the host of the negotiations, therefore naming the Convention. Following the signature on 11 May 2011, the law for the approval of the Convention's ratification was adopted unanimously (with one abstaining vote and zero votes against) on 24 November 2011. In the following years, in parallel with the noticeable rise in the anti-gender discourse in Türkiye, Istanbul Convention was opened up for discussion by certain government representatives, conservative government-organized non-governmental organization (GONGOs) and small radical groups. These small yet politically powerful religious anti-feminist and anti-LGBTI+ groups had been attacking the Convention with the arguments that it caused family separation, infringed the

[686] Hacettepe University Institute of Population Studies, Ministry of Family and Social Policies, Research on Domestic Violence against Women in Türkiye, (2015), available at https://hips.hacettepe.edu.tr/en/national_research_on_domestic_violence_against_wom-319

[687] We Will End Femicides, "2020 Report of We Will End Femicide Platform", (2021), available at: https://kadincinayetlerinidurduracagiz.net/veriler/2949/2020-report-of-we-will-end-femicide-platform

[688] 5Harfliler, "TKDF Başkanı Canan Güllü: 'Salgın Döneminde Kadına Şiddet Yüzde 80 Arttı'", (2020), available at: https://www.5harfliler.com/tkdf-baskani-canan-gullu/

traditional Muslim-Turkish family values and *"promoted the LGBTI+ and marginal groups*."[689] The extremists' critique also targets CEDAW, the Law No. 6284 to Protect Family and Prevent Violence Against Woman, and the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention. The attacks and heated debate continued during the summer of 2020. The feminist groups strongly responded with several protests and a black-and-white-photo challenge in social media that received worldwide support. As the political tensions concerning the Convention were ongoing, Türkiye's sudden withdrawal from the Istanbul Convention was announced with the Presidential Decision No. 3718,[690] published in the Official Gazette on 20th of March 2021. The discussions over withdrawal from Istanbul Convention and the criticism towards other international and national legislation has caused disagreements between these extremely conservative groups, their supporters within the AKP; and some women politicians within AKP and conservative women's rights NGOs, including KADEM, known for its closeness to the government.

The rise of "anti-gender politics"[691] requires further attention at this point. The withdrawal from Istanbul Convention has been the most concrete and retrogressive outcome of such political discourse, yet similar retrogressive steps were being taken by the government for a while. The AKP government has been pushing for the "gender-justice" terminology instead of gender equality, promoting women's traditional roles as mothers within families, and has shown a rather weak support for women's part-time employment, not to interfere with their family duties.[692] Some clear examples of this tendency is the retrogressive replacement of the Ministry for Women and Family with the Ministry of Family and Social Policies, reducing the emphasis on women's rights and strengthening the focus on traditional, patriarchal family life and women's role as caretakers of their families. This institutional change in Ministries was made in 2011, which is often detected as the year from after AKP government's anti-gender

[689] Al Monitor, "Murder of Turkish woman sparks nationwide protests", (2020), available at https://www.al-monitor.com/originals/2020/07/Türkiye-murder-woman-withdraw-convention-combat-violence.html#ixzz7x8bvn9cO

[690] Presidential Decision No. 3718 (20 March 2021), available at: https://www.resmigazete.gov.tr/eskiler/2021/03/20210320-49.pdf

[691] According to Özkazanç, there are four main streams of anti-gender politics in contemporary Türkiye: 1. conservative-Islamist government policy favouring and promoting traditional family values and gender roles and motherhood; 2. Radical views asking for more anti-gender politics; 3. emerging men's movement organised on social media with the support of pro-government people; 4. growing verbal or sometimes psychical attacks and misogynistic intimidations on women, feminist women, young people or LGBTI+ on social media and on the street level by ordinary men. See: "Gender justice the "Turkish" way: anti-gender politics in the land of AKP" (Interview with Alev Özkazanç),Euromed Rights, (5 March 2020), available at: https://euromedrights.org/publication/gender-justice-the-turkish-way-anti-gender-politics-in-the-land-of-akp/;and https://blogs.lse.ac.uk/gender/2019/05/20/new-episode-anti-gender-Türkiye/.

[692] Ibid.

policies have started consolidating.[693] Another example is the push from the Higher Education Council towards Gender Studies Centers in universities to change their names into "Women and Family Studies" centers.

The global liberal terminology of "women's empowerment" and the UN terminology such as " promoting women's rights" or "fighting against violence against women" are somehow still used by the high level bureaucrats (Türkiye's diplomatic language at CSW or within the submitted CEDAW State Reports). There is a formal understanding of equality and umbrella non-discrimination clauses are often in use, almost always focusing exclusively on gender as a basis for discrimination and never on gender identity or sexual orientation. At present, the "anti-gender" sentiment and discourse among Islamist groups, pro-government media, conservative or extremist intellectuals and lower echelons[694] of the ruling elite are widespread. Their attacks on the so-called "gender ideology" and the term "gender equality" were followed by demands about certain legislations to be amended or repealed. For example, in addition to the heavily debated withdrawal from Istanbul Convention, the Law No. 6284 has been criticized for favouring women and the recently emerged men's rights movements have targeted "unjust law" and practices with regard to alimony payments, custody and protective measures against perpetrator men in cases of violence against women, with an emphasis on traditional Turkish and Islamic family values being under attack or claims for "LGBTI+ perversity" propaganda.

Positioned on the opposite side against the anti-gender discourse, with regard to the ownership of Istanbul Convention and other rights-based achievements, feminist organizations have not stayed silent, and been vocal with their criticism despite the shrinking civic spaces (and increasing bureaucratic barriers with regard to the financing and mobilization of feminist civil society) and disproportionate, violent physical interventions by the police in protests such as the traditional Feminist Night March which is held annually on 8th of March.

[693] Ibid.
[694] Ibid.



Figures 4.5.a., 4.5.b., 4.5.c.: Canvas in support of Istanbul Convention in the streets of Istanbul before the Feminst Night March 2022, street graffiti promoting the Law No. 6284, artwork depicting Nevin Yldırım, who killed the man who systematically sexually abused her and was handed life sentence, reading: "(The stain) does not get out by washing, Nevin is looking at you."

Feminist lawyers have challenged the lawfulness of the withdrawal decision before the Council of State, however, the decision was found lawful in January 2023. There is an ongoing process before the Constitutional Court, with an expressed determination by the Turkish Federation of Women's Association to apply to the European Court of Human Right in the future if need be.[695]

In addition to the ongoing efforts to challenge the lawfulness of the withdrawal decision, an interesting outcome of the discussions around Istanbul Convention, and the rising number of femicides has been the stance of businesses in Türkiye. Turkish private sector, specifically as of 2000s has been cautious not to position themselves in a politically extreme stance, and has prioritized preserving good relationships with the ruling political party -AKP- for the last two decades. TÜSİAD, the Association of Turkish Industrialists and Businesspeople, the major representative of the private sector, which has seen by the government as the secular

[695] Duvar, "Top Turkish court finds withdrawal from Istanbul Convention 'lawful'", (2 January 2023), available at: https://www.duvarenglish.com/top-turkish-court-finds-withdrawal-from-istanbul-convention-lawful-news-61665

bourgeois, has been able to remain critical of government policies in a number of different areas, due to its financial status and representation. This was the case in the aftermath of the withdrawal from the Istanbul Convention. Interestingly, in addition to TÜSİAD's call on the government to annul the withdrawal and its ongoing commitment to gender-equal policies,[696] a number of conglomerates, businesses and brands, including Koç Holding, Sabancı Holding, Zorlu Holding, Borusan, Saran Group, and Eker[697] have publicly supported the Istanbul Convention and called on the government to annul the decision. Private sector is also growingly vocal and critical about its concern regarding femicides and gender-based violence. Having said this, internally, their focus and efforts around gender equality as business entities remain to be addressing mostly middle class white collar employees, safe discussions around gender diversity within boards, senior management and the glass ceilings, or the appreciation and celebration of women labour force within the supply chain, instead of addressing the risk of gender-based violence within their value chains, everyday experiences of discrimination or the working conditions or childcare support for women workers.

4.7.3. Young Black Feminists Disappointment towards the ANC Women's League

One of the most significant debates among South African feminists is an intergenerational divergence on ANC's political will and the efficiency of the advocacy efforts of the ANC Women's League (ANCWL). Young generations of black South African feminists have often expressed how they see ANC Women's League as a passive institution. They have shared ANCWL's failure to address the misogyny within and outside of the ANC leadership, and how disappointing it is to see that *"the ANCWL today is a far cry from the anti-Apartheid organization that earned its place in history under the leadership of women such as Lilian Ngoyi, Albertina Sisulu, and Winnie Madikizela-Mandela."*[698] The African National Congress Women's League was founded in 1948 as the auxiliary women's organization of ANC, having its roots within the Bantu Women's League (BWL) (founded in 1913) which has historically aimed to integrate women's politics within ANC's nationalist struggles and the anti-apartheid

[696] TÜSİAD organized an event titled "Capturing the Goals of the Turkish Republic in Its Second Century through Gender Equality" in March 2023 in which feminist activists have been invited and given a platform, and business leaders have reshared their commitment to gender equality and have openly criticized the anti-gender discourse and the backsliding in government policies. TÜSİAD is openly owning the term gender equality within its working groups and agenda.

[697] Independent Türkçe, "İş dünyası İstanbul Sözleşmesi'nden çıkılmasına karşı: Kadınların yaşam güvenliği şart", (2020), available at: https://www.indyturk.com/node/216681/i%C5%9F-d%C3%BCnyas%C4%B1-istanbul-s%C3%B6zle%C5%9Fmesi%E2%80%99nden-%C3%A7%C4%B1k%C4%B1lmas%C4%B1na-kar%C5%9F%C4%B1-kad%C4%B1nlar%C4%B1n-ya%C5%9Fam-g%C3%BCvenli%C4%9Fi-%C5%9Fart

[698] Naledi Refilwe Mashishi, The ANC Women's League is Dead, Africa is a Country (2015), . available at: https://africasacountry.com/2015/12/the-anc-womens-league-is-dead/

movement. ANCWL has played a major role in anti-apartheid resistance, however, they are currently criticized for being silent and absent with regard to several incidents, including Jacob Zuma's trial in which he was accused of sexual assault, misogynistic comments of male ANC politicians, and their failure to denounce virginity testing practices. The concerns around ANCWL becoming *"a hollow echo chamber for the party's leaders"*[699] is common among young black feminists, in parallel with the dissatisfaction of younger generations born in the post-apartheid period towards ANC leadership, which is allegedly becoming corrupt and distancing from Mandela's post-apartheid vision. Members of ANCWL are mostly recruited based on their political potential, and not for their qualification and ambition to promote gender equality, which is a common problem in nationalist/national-building discourses, framing women's liberation and societal function as reproducers of not only the younger generations, but also the visioned image of the nation, be it the rainbow nation in a post-apartheid South Africa, the "devout" generation of Türkiye under the AKP rule, or Colombia's new, modern image freed from its armed conflict and drug trafficking past. These visions are often created for women with attached responsibilities, by men in leadership.

Coming back to the South African context, ANCWL has been criticized for its *"inability to respond to demands that challenged the hierarchies that supported the political power of men because it happened within the authorising frame of nationalism that 'imposes its hegemony on all women it mobilizes,"*[700] its self-denial of being a feminist organization,[701] and its palliative care approach towards gender based violence. They are criticized for failing to pronounce a woman presidential candidate to this date.[702] This palliative care approach means viewing GBV as a moral issue, instead of locating it within a wider context, the lack of access to socio-economic rights and systemic patriarchal structures. Their "performativity" in how they are involved in GBV cases, through colourful protests, chanting and populist slogans such as "*Even animals are better than (rapists). (They) deserve to rot in prison and never see the light of day*"[703] in front of the court buildings are seen as insufficient and fail to address the

[699] Ibid.
[700] Shireen Hassim, Women's organizations and democracy in South Africa: Contesting Authority. University of Wisconsin Press, (2006), p. 40.
[701] Amanda Gouws, "Women in South African Politics", IDEES, (2022), available at https://revistaidees.cat/en/women-in-south-african-politics/#note-015 ; Brenda Madumise, "Is the ANC Women's League really feminist?", (14 January 2018), available at https://www.news24.com/news24/is-the-anc-womens-league-really-feminist-20180112
[702] Oral interview with a representative from the Commission for Gender Equality, (February 2023).
[703] Thamasanqa Magubane, "He deserves to rot in jail and never see the light",(27 July 2012), available at https://www.citizen.co.za/witness/archive/he-deserves-to-rot-in-jail-and-never-see-the-light-20150430/

causes of violence.[704] The ANCWL is accused for *"eroding the spaces of feminist activism, by starting its own state driven women's movement called the Progressive Women's Movement that mobilizes women according to a state driven agenda, sidelining feminist initiatives that were developed in civil society, especially around gender based violence."*[705] This pattern is reflected in the gender equality approach of multinational corporations which, setting aside the funding and donations, tend to sideline the advocacy efforts of civil society and promote their own campaigns which lack the subject matter knowledge.

Having said this, feminist scholars and activists, women's shelter organizations and the Commission for Gender Equality agree upon the alarming prevalence of gender based violence in South Africa as the most urgent issue to address a matter of priority, followed by other commonly raised issues such as feminization of poverty, the impact of HIV/AIDS on women and xenophobic attacks.[706] The femicide rate in South Africa remains to be six times the global average, with surveys indicating one in four men admitted to having committed rape,[707] with proven correlation between gender-based violence and HIV epidemic.[708] However, it must be noted that there is a dangerous, Eurocentric tendency among Western human rights organizations and media to approach the prevalence of gender-based violence as an "endemic within South African culture" or dubbing South Africa as the "rape capital of the world"[709] without a comprehensive understanding of contributing factors, such as hyper-masculinity, political impunity and lack of enforcement, pervasive patriarchy, widespread poverty and the low rate of reporting.[710]

---

[704] Lindiwe D. Makhunga, South African Parliament and Blurred Lines: The ANC Women's League and the African National Congress' Gendered Political Narrative, 28 Agenda 40, (2014).

[705] Amanda Gouws, "Women in South African Politics", IDEES, (2022), available at https://revistaidees.cat/en/women-in-south-african-politics/#note-015

[706] Commission for Gender Equality , "Challenges facing South Africa in relation to Gender Equality", avalable at: https://cge.org.za/challenges-facing-the-south-africa-in-relation-to-gender-equality/

[707] Lacey George, Gender-Based Violence Against Women in South Africa, (2020), available at https://ballardbrief.byu.edu/issue-briefs/gender-based-violence-against-women-in-south-africa

[708] Amnesty USA, One in Four Men Admits to Rape in South Africa, available at https://www.amnestyusa.org/updates/one-in-four-men-admits-to-rape-in-south-africa/#:~:text=A%20leading%20research%20group%20in,raping%20more%20than%20one%20person.

[709] News24, "The Rape Capital of the World", (2014), available at https://www.news24.com/news24/the-rape-capital-of-the-world-20140821 ; Endemic rape culture in South Africa, available at https://www.google.com/search?q=endemic+rape+culture+in+southa+frica&rlz=1C5CHFA_enTR870TR870&oq=endemic+rape+culture+in+southa+frica&aqs=chrome..69i57.3709j0j7&sourceid=chrome&ie=UTF-8

[710] Guardian, " How rape became South Africa's enduring nightmare", (2015), available at https://www.theguardian.com/world/2015/sep/29/south-africa-rape-nightmare-crime-stats



Figures 4.6.a., 4.6.b.: Iziko Slave Lodge museum, exhibited a canvas collectively filled with the names and signatures of feminist activists following a congress workshop for "Let's End Femicide!" campaign, with slogans used by South African feminists: #EndVaw #SayMyName #KnowMyName #AmINext #MayWeKnowThem. A sitting bank covered in handcrafted mosaics as a part of "Rock Girl" campaign placed in the Company's Garden public park in central Cape Town, messaging solidarity against GBV. (February 2023, photographs taken by the author).



Figures 4.7.a., 4.7.b: The lobby of Saartjie Baartman Centre for Women and Children, located in Manenberg township, operating as a civil society initiative, functioning as an innovative one-stop centre for women and children who are survivors of abuse as a 24-hour emergency shelter, providing short and medium term residential care, childcare services and counselling. (February 2023, photographs taken by the author).

4.7.4. Common Challenges or "Blind Alleys" Amidst Differences: What are the Insights from the Feminists?

The lack of implementation and enforcement by the public officers, gender bias of judges and administrative leaders, the lack of resources, follow-up, evaluation, and accountability

mechanisms for the commitments, and alarmingly prevalent gender based violence are common issues raised in interviews held with feminist activists from each jurisdiction. The lack of implementation is the common blind alley for all three jurisdictions: South Africa shares a similar context with Colombia in which political will and pro-gender equality language is much more visible in legislations and political documents, compared to the decrease in political will and retrogressive political steps in Türkiye. This, however, is indicative of how political will and inclusive language do not always equate to effective implementation and positive transformation.

Secondly, the lack of allyship and support from male-dominated political leadership, pushing gender equality to the margins as a "women's club issue" is another common problem, which is reflected on business management and leadership as well. An interview with an expert from the Commission for Gender Equality in South Africa has shown that women's rights have not been on the table as the negotiations and transition to build a new South Africa were ongoing, and the male-dominated political leadership of ANC have told their women counterparts *"Hold on comrades, when we become the leaders of the country, when we rule, we will then deal with your issues*".[711] However, accordingly, even after the ANC began ruling, they never fully reconciled with the atrocities and violence towards women, and the political system is stuck. The following section from the interview transcript is illustrative in the sense that it summarizes the common frustration and mistrust of feminist experts towards the political system. What is more important, there is a common understanding and sense of exasperation, also within the BHR community to take a step further than sensitivity towards responsiveness, and long-lasting change:

"So as we always say, we can never trust and think our gender transformation in South Africa will come from a political system. It will not. It will actually come from the masses. So it will be society saying, we are done, we are demanding this. And one of such examples is the Total Shutdown Movement (a nation-wide women's march to protect the lack of action against gender based violence) in 2018. That was not a political movement. It was simply collectives of women saying, we're done. ...saying, we've been responsive for a very long time, can we move on now? Can we transform? Because we can't be responsive forever, that's why we're so stuck with women in mining, women in sport, women in business. We are always the exception. The ones that 'need to be found in the industry'. Where are the women? Oh, we

[711] Oral interview with a representative from Commission for Gender Equality from South Africa (February 2023).

have found them! Where would you like me to put them? This is not the mindset to sustain. This is what we need to change for business and human rights. We need a total transformation."[712]

Nation-wide expressions, or as shared in one of the interviews with a Colombian feminist activist, "eruptions" of collective feminist anger, often expressed through protests or social media campaigns are seen more often in the recent years, in all three countries which is indicative of the frustration towards the lack of implementation and towards impunity. A second insight by feminist civil society representatives is, the bigger and "angrier" the protests get, the more reluctant businesses are to get involved in gender equality issues with the fear of politicization, and the more vocal anti-gender political narratives get about the unreasonableness or disruptiveness of the feminist movement, showing an increasing tension among stakeholders who are supposed to collaborate.

There are multi-stakeholder initiatives, such as the Generation Equality campaign led by UN Women in line with the 25th year of Beijing Declaration and Platform for Action, bringing states, international organizations, corporations, civil society and youth organizations together; however feminist activists in the BHR area often express that these gatherings fail to go beyond "empowerment discourse" or that the funding prospects of corporations give a disproportionate bargaining, gathering and agenda-setting power to the corporations, to a certain point in which several civil society collectives feel the need to publish manifestos and statements with regard to UN Women's private sectors partnerships with questionable human rights records. Such interventions have resulted in success for the civil society in some cases, including UN Women's termination of its partnership with BlackRock, one of the largest investors in the fossil fuel industry, following an open letter signed by more than 600 women's rights organizations.

While UN Women has been responsive and taken action, feminist civil society representatives are critical and *"concerned with the embrace of the private sector rather than (…) the feminist movement"*.[713] The fact that international organization-private sector partnerships are built

[712] Oral interview with a representative from Commission for Gender Equality from South Africa (February 2023).

[713] Women's Major Group, "Feminist Advocacy Ends UN Women's Partnership with BlackRock, Inc", (2022), available at https://womensmajorgroup.org/feminists-demand-end-of-un-womens-partnership-with-blackrock-inc/; "UN Women terminates partnership with investment firm BlackRock after public outcry", (2022), available at https://19thnews.org/2022/08/un-women-partnership-blackrock-public-outcry/

without prior consultation with feminist civil society is an ongoing debate globally. However, the shrinking civic spaces and lack of resources for feminist groups and BHR advocates in host states, such as Colombia, Türkiye and South Africa make such selections impossible at certain contexts, as feminist civil society with limited resources can be dependent on funders and donors with problematic corporate practices, pushed towards a difficult choice between operating by accepting donations vs. not being able to support themselves by holding on to principles and rejecting corporate donations.

The limited and selective commitment to gender equality by businesses is another common problematic phenomenon in all three jurisdictions. There is no available data in none of these states about how many businesses have created and are implementing an internal sexual harassment policy or available, accessible and functional complaint mechanisms for women workers and employees. It should also be noted that, in South African context, the number of comprehensive action plans or complaint mechanisms increase day by day (they are now a widespread practice in South African tertiary education institutions, and slowly spreading among South African businesses) however, feminist scholars criticize them for not always prioritizing the needs of sexual harassment and assault survivors and are created with a top-down approach rather than through collaborative and participatory methods. In addition, the focus of gender equality initiatives are still mostly focused on rather more privileged, white-collar employees (for its convenience, comfort and safety, as expressed by one of the interviewees from Türkiye), and not the rest of the workers. While blue-collar women workers in supply chains matter as statistics indicating female labour force participation, white-collar workers within the headquarters or liaison offices, and even customers (based on certain marketing strategies) are provided with more deeply-thought, intricate understanding of gender stereotypes, inclusive language, and supportive options.

Another common problem is with regard to the digitalization of gender-focused initiatives. There is a plethora of online tools and smartphone applications for women's safety against gender based violence or "empowerment through entrepreneurship" projects, however, they do not always work properly, and they may be impractical due to lack digital infrastructure, digital literacy (commonly shared examples are banking applications) and have a limited access (for women without access to energy or the internet). Some of these digital tools are provided by the state while others are led by local governments or private initiatives, which result in a lack of data sharing and a comprehensive data pool.

4.8. Representation Matters: The Chronic Under-Representation of Women in Public Life

One common pattern in all three states is that women are significantly underrepresented in areas of influence in public life, and specifically, in institutions and decision-making mechanisms in relation with business and human rights.

4.8.1. Parliaments

As of June 2023, women held 19.8% of the seats in the Grand National Assembly of Türkiye;[714] 28.9% of the seats in the Colombian Congress[715], and 46.2% of the National Assembly of South Africa.[716] Compared to the 26.7% global average for parliamentary representation, Türkiye significantly falls behind according to global and regional[717] (31% for Europe) averages while Colombia, despite a slight increase in women parliamentarians following the 2022 election, is below the Americas average of 34.8%. South Africa, however, is among the states with the highest parliamentary representation of women in the world, (top 10%) surpassing the Sub-Saharan African average of 27.7%.

4.8.2. Executive Branches

Moving to the national executive branch, as of 2023, in Türkiye, only 5% of the presidential cabinet consists of women (the number of women ministers in cabinets has been historically low, and women are traditionally appointed as the Ministers of Family and Social Services under the AKP government). In Colombia, the cabinet representation has drastically changed under the Petro government as 52% of the cabinet members are women, with the Republic's vice president Francia Marquez being the second woman and first Afro-Colombian to hold the position. In South Africa, 50% of the cabinet consists of women, a first in the nation's history under the ANC government led by President Ramaphosa. Except for Colombian Vice President Marquez, all three countries are led by male vice presidents and presidents, with heavily male-dominated political histories and well-respected "founding father" figures; Bolívar, Mandela, and Atatürk.

---

[714] Representation of Seats the 28th Period of Turkish Grand National Assembly, available at: https://www.tbmm.gov.tr/sandalyedagilimi

[715] IPU, "Colombia House of Representatives", available at https://data.ipu.org/content/colombia?chamber_id=13366

[716] IPU, "South Africa National Assembly", available at https://data.ipu.org/parliament/za?chamber_id=13311

[717] IPU, "Global and regional averages of women in national parliaments", available at https://data.ipu.org/women-averages

4.8.3. Judiciary and Transitional Justice Mechanisms

The judiciary in all three states is also male-dominated, yet in different ways. As of 2023, women compose 36.6% of all judges and prosecutors in Türkiye.[718] Among the four higher courts, the Constitutional Court (*Anayasa Mahkemesi*), currently has an all-male bench, with only one woman justice who has served as a president, historically. The Court of Cassation *(Yargıtay)* is led by male justices and a male chief public prosecutor (with no woman president or chief public prosecutor historically) and only one woman judge as the head of a civil chamber out of 12, and no woman heads of penal chambers.[719] Interestingly, against this male-dominated high-level leadership in Court of Cassation, the number of women judges is more than double the number of male judges[720] (579 women judges and 282 men judges). The Council of State *(Danıştay)* is led by a male president and a male council of state chief prosecutors (with three women who have served as presidents, and only one woman serving as the chief prosecutor historically), and there are currently no women heads of chambers in the Council of State.[721] Lastly, the Court of Jurisdictional Disputes *(Uyuşmazlık Mahkemesi)* is led by a male president and 2 of 12 members are women justices.[722]

In Colombia, following the Peace Agreement with the Revolutionary Armed Forces of Colombia (FARC) signed in 2016, 53% of selected judges to serve in the Colombian Peace Tribunal are women. Among the appointed woman judges, more than 10% are Afro-Colombian and another 10% are Indigenous.[723] In Xiomara Balanta's words, who is one of the Afro-Colombian women judges appointed, *"...the top courts have been a restricted space for women, especially for Afro-Colombian and indigenous women,"* and that having a more diverse and gender-equal set of judges, and clear recognition of the gender dimension within the peace deal is *"a historic moment"*[724]. According to Balanta, *"...women have an affinity for gender issues .. that women, and the LGBTI community, have suffered (the conflict) and have*

[718] Council of Judges and Prosecutors of the Republic of Türkiye, 2022 Annual Activity Report, available at: https://www.hsk.gov.tr/Eklentiler/2103202309502022-yili-faaliyet-raporu-sonpdf.pdf
[719] Turkish Supreme Court, Presidents of Chambers, available at https://www.yargitay.gov.tr/kategori/80/daire-baskanlari
[720] "Female judges in the Supreme Court of Appeals and First Instance Courts", (2022), available at https://www.turkiyehukuk.org/hakim-ve-savci-sayilari-2022/#:~:text=Yarg%C4%B1tay'da%20579%20kad%C4%B1n%2C%20282,Yarg%C4%B1%20%C4%B0lk%20Derece%20Mahkemeleri%3A%209.548
[721] Council of State, "Organizational Structure", available at: https://www.danistay.gov.tr/icerik/236
[722] Court of Jurisdictional Dispute, "Members", available at: https://www.uyusmazlik.gov.tr/Kisiler/HukukUye/
[723] Anastasia Moloney, " Gender justice? Women judges to dominate Colombia war tribunals", Reuters, (2017), available at https://www.reuters.com/article/us-colombia-women-rights-idUSKCN1C324M
[724] Ibid.

felt pain in different ways,"[725]. The gender representation in the Tribunal is celebrated by several women's rights groups, such as the National Summit of Women and Peace who named the composition of the tribunal as an unprecedented triumph, and a success of Colombian women's active work for feminist transitional justice.[726]

It should be noted, however, that the clear recognition and inclusion of *enfoque de género* or "gender-based approach" in the Colombian peace accords, and an inclusive Tribunal bench does not equate to a fully gender-responsive peace process. Interviewees from feminist civil society organizations such as La Casa de Mujer, have shared how they have advanced norms from the outside looking in, with extensive domestic legislation and a peace accord, written in progressive, gender-inclusive language, yet they remain on paper, "collecting dust".[727] In other words, gender representation on paper and in the benches is not enough.[728] Feminist civil society identifies "mujerismo" as a common problem, in which women's participation in the peace process and the implementation of the accords have not been active or meaningful, and rather done to check the boxes.[729]

As for the representation within the judiciary, as of 2023, the Colombian Constitutional Court (*Corte Constitucional de Colombia*) has 4 out of 9 women justices, and is led by a woman president. The Supreme Court of Justice (*Corte Suprema de Justicia*) is led by a male president and vice president. Among the civil and agrarian cassation chamber, criminal cassation chamber, labour cassation chamber, special investigation cassation chamber, and special chamber of first instance, only the civil and agrarian chamber is led by a female president. Among the 23 magistrates, 5 are women. A majority of business and human rights related cases are treated in the Labour Cassation Chamber, which has 1 woman judge among 6, and the Labour Congestion Room, which has 5 women judges among 12. The Council of State (*Consejo de Estado*) is led by a male president and vice president. Out of 27 magistrates, 6 are

[725] Ibid.
[726] Ibid.
[727] Laura Cossette and Kenia Saba Perez, "Machismo & Mujerismo: Women's Perspectives On The Implementation Of The Colombian Peace Accords", Latin America Working Group, (2019), available at https://www.lawg.org/machismo-mujerismo-women-colombia-peace-accords/
[728] Adam Isacson, "A Long Way to Go: Implementing Colombia's peace accord after five years", Advocacy for Human Rights in the Americas, (2021), available at: https://www.wola.org/analysis/a-long-way-to-go-implementing-colombias-peace-accord-after-five-years/; Carol Sánchez, Regina Chung & Esther Brito Ruiz, "The Colombian Peace Accords: the dynamics of LGBTI and Gender Diverse inclusion in modern peacebuilding efforts", (2022), available at https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/cfi-report-ga77/others/2022-11-10/GRN-Submission.pdf
[729] Laura Cossette and Kenia Saba Perez, "Machismo & Mujerismo: Women's Perspectives On The Implementation Of The Colombian Peace Accords", Latin America Working Group, (2019), available at https://www.lawg.org/machismo-mujerismo-women-colombia-peace-accords/

women.[730] The Superior Council of the Judiciary (*Consejo Superior de la Judicatura*) is led by a male president and a female vice-president. 3 out of 5 magistrates of the Superior Council are women.[731] The Office of the Attorney General of Colombia, which was created by the 1991 Colombian Constitution, has had 2 woman attorney generals in its history, currently being led by a male attorney general and a female vice attorney general.[732]

Based on February 2022 statistics,[733] there are 254 judges in the superior courts of South Africa, consisting of the Constitutional Court, the Supreme Court of Appeal, and the High Courts. Among these judges, approximately 44% are women. The Constitutional Court has never been led by a female chief justice.[734] However, Justice Mandisa Maya serves as the Deputy Chief Justice, the first woman to ever hold the role in South African history, and she has previously served as the President of the Supreme Court of Appeals. The Constitutional Court of South Africa[735] consists of 7 male and 4 female judges. The Supreme Court of Appeal has an acting male president, and nearly half of the bench (48%) consists of women judges.[736] The other Superior Courts are composed of 222 judges, of which 60 are black women, 29 are white women, 75 are black men, and 39 are white men, making a total of 40% women representation at the High Court.[737]

Comparing this to the early years of post-apartheid South Africa, there is an impressive improvement in gender and race-based representation in the judiciary. In 1994, there were only two white women on the Constitutional Court's bench, when the first black woman judge was appointed. The Truth and Reconciliation Commission (TRC), the post-apartheid restorative justice body vested in innovative quasi judicial powers, had 6 women among its 15 commissioners.[738] As for today, the Judiciary Annual Report of 2021-2022 has shown that

[730] 2 magistrates' names and identities were not available on the official website of the Council of State.
[731] "Colombian Superior Council of the Judiciary -Acuerdos Y Circulares Relacionados Con El Ataque Cibernético A La Infraestructura De Ifx Networks", available at https://www.ramajudicial.gov.co/web/consejo-superior-de-la-judicatura/magistrados
[732] "The Office of the Attorney General of Colombia", available at: https://www.fiscalia.gov.co/colombia/
[733] The most recent Annual Judiciary Reports and official websites of Superior Courts are inaccessible online.
[734] "Chief Justice Honorable Mogoeng Mogoeng", available at: https://www.gov.za/about-government/contact-directory/mogoeng-mogoeng-honourable-0
[735] "South African Constitutional Court", available at: www.concourt.org.za
[736] "Current Statistics on Race and Gender Composition in the Judiciary", (2022), available at https://www.judgesmatter.co.za/opinions/women-and-the-bench-what-justice-mandisa-mayas-interview-tells-us-about-a-womens-place-in-the-judiciary/#:~:text=The%20Constitutional%20Court%20currently%20has,men%2C%20and%201%20white%20man.
[737] Ibid.
[738] South African Truth and Reconciliation Commission, Truth and Reconciliation Commission of South Africa Report, (1998), available at https://www.justice.gov.za/trc/report/finalreport/Volume5.pdf

during this period, out of 52 judges appointed, 24 were women, and out of 158 appointed magistrates, 77 were women. In 2022, in the superior courts, the race and gender composition of the judges were: 39% black men, 32% black women, 17% white men, and 13% white women. President Ramaphosa's term has brought some positive changes, with his appointment of Justice Maya as the Deputy Chief Justice as the first woman in this role, and the nomination of Justice Mahube Betty Molemela as the Judge President of the Supreme Court of Appeal.[739] The Office of the Chief Justice's ('OCJ') Annual Report 2021-2022, has shown that the OCJ achieved 48% women representation on the senior management services level, almost reaching its 50% representation goal. Having said this, statistically, the lower court judiciary has a much better representation of women in leadership positions,[740] and senior women judges and experts from the Commission on Gender Equality have expressed how despite the nearly 50% representation in the judiciary, women are under-represented in judicial leadership and the "highest echelon in the legal" and that the gender bias remains.[741]

4.8.4. Trade Unions

The invisibility of women in leadership is prevalent within trade unions as well. Labour law scholars and interviewees have pointed out the "pretentious and transient" nature of gender-focused activities organized by workers' unions, the common tendency to exclude women from managerial or leadership positions (with the exception of the recent, promising election of a few women presidents) and prevalent misogynistic approaches, gender bias and victim-blaming specifically in cases of sexual harassment.[742]

[739] "Ramaphosa nominates Judge President of the Supreme Court of Appeal", (2023), available at https://www.thesouthafrican.com/news/ramaphosa-nominates-judge-president-of-the-supreme-court-of-appeal-2-february-2023/

[740] Office of the Chief Justice of South Africa, "Annual Report 2021-2022", available at: https://www.judiciary.org.za/index.php/sajei-ar/annual-reports-sajei?download=10640:ocj-annual-report-2021-22

[741] "Judge Maya urges JSC to commit to ensuring gender transformation in the judiciary", (2022), available at https://www.sabcnews.com/sabcnews/judge-maya-urges-jsc-to-commit-to-ensure-gender-transformation-in-the-judiciary/

[742] Alpkan Birelma, Trade Unions In Türkiye, (2022), available at https://library.fes.de/pdf-files/bueros/tuerkei/19420.pdf ; M Yeğen, Sendikalar ve Kadın Sorunu: Kurumsal Gelenekler ve Cari Zihniyetler. 3 Sos. Ar. D. 1, (2000); Şemsa Özar, Türkiye'de 1980 Sonrası Dönemde Kadın Emeği ve İstihdamı Politikaları: Kadın Hareketi, Sendikalar, Devlet ve İşveren Kuruluşları., In A. Makal & G. Toksöz (Eds.). Geçmişten Günümüze Türkiye'de Kadın Emeği. Ankara: İmge; Urhan, B. (2019); Türkiye'de Kadın İşçilerin Sendikal Örgütlenmesi: Zorluklar, Engeller ve Fırsatlar. In M.S. Kayaoğlu (Ed.) 2000'li Yıllarda Türkiye'de Sendikacılık. Ankara: Epos; Alnıaçık, A. (2018). Politik Bir Sorun Olarak Kadın İstihdamı ve Toplumsal Cinsiyet Siyasetindeki Kurumsallaşma. In O. Savaşkan & M. Ertan (Eds.). Türkiye'nin Büyük Dönüşümü. İletişim: İstanbul, 475-499; Birelma, A., Türkiye'de Sendikal Hareketin ve Hakların Yukarıdan Görünümü: Niteliksel bir Araştırma. Çalışma ve Toplum, 3, (2021).

In Türkiye, according to the most recent available gender-disaggregated data published by the Ministry of Labour and Social Security, in 2015, 16% of all union members, 8% of the members of managerial bodies, 4% of the union leaders, and on and only 2% of confederation leaders were women.[743] In 2020, there were 400,000 female union members as opposed to 1.5 million male union members, with a 10% union density for women and 15% for men.[744] There are two points that are noteworthy: first is the increase in the percentage of women among union members from 16% to 21%, between 2015 and 2020; and second is the higher union density and less difference in unionization among civil servants, with 59% among men and 41% among women in 2020.[745]

In Colombia, within the total union membership in the country, 39% are women and 61% are men.[746] Men's trade union membership density is higher than women's with only 0,51% in the private sector. In the public sector, on the other hand, the trade union density of women is higher with 2.51%.[747] Statistically, women have a slightly lower (0.25% points) average probability of union membership compared to their male counterparts, with an increase in this probability with age and increased education levels. In the 2010s, regardless of gender, union membership density was negatively affected by anti-unionism measures, such as systematic suspension of union leaders' contracts and police force against protestors, police raids to social and labour organizations days before the national strike,[748] causing unionization rates to reach around 12% of employees in 2019, which became the lowest in Latin America. Although the number of registered cases of violence against and killings of unionists have relatively dropped during the 2010s, it remains to be among the highest in the world.[749]

In South Africa, the union membership percentage among women workers has increased from 27.1% in 2001 to 31. 5% in 2021. In addition, women's representation within the total number

[743] Ministry of Labour and Social Security of the Republic of Türkiye, Çalışma Hayatı İstatistikleri 2015. Ankara: Çalışma ve Sosyal Güvenlik Bakanlığı, (2016).
[744] Ministry of Labour and Social Security of the Republic of Türkiye, Çalışma Hayatı İstatistikleri 2020. Ankara: Çalışma ve Sosyal Güvenlik Bakanlığı, (2021).
[745] Ibid; Alpkan Birelma, Trade Unions In Türkiye, (2022), available at https://library.fes.de/pdf-files/bueros/tuerkei/19420.pdf

[746] Agencia de Información Laboral, La Escuela Nacional Sindical presentó su Informe de Coyuntura Económica, Laboral y Sindical, (2023), available at: https://ail.ens.org.co/informe-especial/la-escuela-nacional-sindical-presenta-su-informe-de-coyuntura-laboral-y-sindical/
[747] Guataquí R, Juan Carlos, Andrés García S, and Mauricio Rodríguez A., Structural determinants of trade union membership in Colombia, Perfil de Coyuntura Económica 17 (2011).
[748] ITUC, Survey of Violation of Rights:Colombia, (2013), available at https://survey.ituc-csi.org/Colombia.html?lang=en#tabs-3
[749] Danish Trade Union Development Agency, Labour Market Profile Colombia – 2020/2021, available at https://www.ulandssekretariatet.dk/wp-content/uploads/2020/10/LMP-Colombia-2020-final1.pdf

of organized workers over the period increased from 35.1% in 2001, to 43.7% by 2019 and then declining slightly to 43.1% in 2021. This decline is connected to the COVID-19 pandemic, indicating the disproportionate impact of job losses on women workers.[750] The gender breakdown of key national executive leadership positions of the Congress of South African Trade Unions (COSATU), one of the leading trade union federations, shows that women constitute one-third of the total leadership positions of COSATU.[751] Despite the relatively higher participation of women, South African scholars have found that women's representation in the trade union movement is not as strong as in national party politics or governmental positions.[752] Male domination in trade unions' leadership and organizations structures is common[753] and patriarchal power is seen as "non-gendered"[754], and the norm to be accepted. As Franzway puts is, the male leadership is reflected on a masculine labour movement:

"The majority male leadership has consistently utilised dominant masculine identities within the unions to define politics that are relevant for the labour movement, therefore silencing women on gendered issues such as sexual harassment of women members in the trade unions. The patriarchal relations and discourses within the unions promote a hegemonic masculine culture that devalues women's presence in the unions, relegating them to an inferior status and therefore ignoring their gendered concerns."[755]

As a common problem in all three countries, there is a lack of reliable, up-to-date gender-disaggregated data on union membership. It should also be noted that traditional statistics on union memberships fail to capture the alternative mobilization methods of informal workers and younger generations, such as social media mobilization and informal solidarity networks.[756] With the available limited data, however, a few points can be raised on gender representation in unions.

---

[750] COSATU, COSATU Gender Review 2021, (2021), available at http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-35-year-gender-review_30-November-2021.pdf

[751] Janet Munakamwe, Women in the Trade Union Movement: Country Case Study: South Africa, (2014)

[752] Akua Britwum & Sue Ledwith, Visibility and Voice for Union Women: Country case studies from Global Labour University researchers, (2014), available at https://global-labour-university.org/wp-content/uploads/fileadmin/books/Visibility_and_Voice_for_Union_Women.pdf ; Shireen Hassim, Women's Organizations and Democracy in South Africa, 40, (2005).
; Meintjes, S. and M. Simons (2003) Women and Democracy, Women in Democracy, Gender and Democracy. Johannesburg: Electoral Institute of Southern Africa (EISA).

[753] Dorothy Sue Cobble, Don't Blame the Workers, 59 Dissent (Winter) 35, (2012).

[754] Jeff Hearn & Wendy Parkin, Gender, Sexuality and Violence in Organizations: The Unspoken Forces of Organization Violations, (2001).

[755] Suzanne Franzway, Sexual politics and greedy institutions, (2001)

[756] COSATU, COSATU Gender Review 2021, (2021), available at http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-35-year-gender-review_30-November-2021.pdf

While there is a global trend of an increased participation of women workers in trade unions, the union membership figures by sector indicate a pattern of occupational segregation based on gender.[757] In addition, there are several arguments that the feminization of union membership has limited impact on actual gender responsive policies or an increased focus on mobilizing women workers, but the trend actually reflects changing employment patterns and union growth.[758] In many host state countries, the feminization of trade union membership is the result of the decline of private sector unionization which tends to be male-dominated, and an increase in unionization in the public sector instead, where women's employment is higher, and working conditions are relatively safer with lower risk of exploitation.[759] This change in private sector unionization is linked to both the decline in manufacturing but also the systematic mass dismissals of unionized workers by multinational corporations, such as Huawei's recent strategies and submitted requests for the mass dismissal of unionized workers in Colombia.[760] In other words, higher numbers of female membership, or having women in the room does not always equate to gender-responsiveness.

Having said this, both interviewees and the literature indicated that higher levels of women's representation within unions as members and leaders correlate with a stronger push for women workers' rights and leadership, higher levels of inclusivity and diversity, and more gender-responsive trade union agendas.[761] This has been the case according to the testimonies of unionists and feminist activists in Türkiye, with a stronger gender-responsive approach and visibly higher engagement with UN human rights and women's rights mechanisms (submitted shadow reports, public statements, meetings with Special Rapporteurs) in DİSK following the presidency of Arzu Çerkezoğlu.[762] It should be noted that overemphasis on women's leadership without actual weight given to systematic change (the problem of deeply patriarchal union culture will be discussed further in this chapter as a cross-cutting pattern),

[757] Ibid ; Ruth Milkman and Stephanie Luce, Labor unions and the Great Recession, 3 RSF 145 (2017).
[758] COSATU, COSATU Gender Review 2021, (2021), available at http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-35-year-gender-review_30-November-2021.pdf
[759] Ruth Milkman and Stephanie Luce, Labor unions and the Great Recession, 3 RSF 145 (2017).
[760] ITUC, Survey of Violation of Rights:Colombia, (2013), available at https://survey.ituc-csi.org/Colombia.html?lang=en#tabs-3
[761] COSATU, COSATU Gender Review 2021, (2021), available at http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-35-year-gender-review_30-November-2021.pdf
[762] DİSK, "Genel Başkanımız, BM İnsan Hakları Yüksek Komiserliği Kadına Yönelik Şiddet Özel Raportörü İle Görüştü", (2022), available at https://disk.org.tr/2022/07/genel-baskanimiz-bm-insan-haklari-yuksek-komiserligi-kadina-yonelik-siddet-ozel-raportoru-ile-gorustu/

runs the risk of limiting gender-responsive approaches to a presidency term or turning promising initiatives into temporary adjustments.

4.8.5. Leadership, Ownership, and Management in Business

According to ILOSTAT, the percentage of women in senior and middle managerial positions in all sectors in Colombia is 41.7%,[763] 36.5% in South Africa[764] and 20.7% in Türkiye.[765] A pattern of male domination and poor gender inclusivity in decision-making is evident in the management of businesses as well. According to the World Bank, only 4% of firms have women as their top managers in Türkiye, with 19% in Colombia and 39% in South Africa.[766] In Colombia, 14.5% of the seats on boards in Colombian companies were occupied by women in 2016,[767] with evidence of wage gaps in decision-making positions.[768] In South Africa, only 10.6% of firms had some female participation in ownership in 2020[769] while this rate is 11.3% in Türkiye in 2019[770] and a surprisingly high 66.9% in 2017 in Colombia.[771] This comparatively high level of women's representation in business ownership in Colombia is due to the prevalence of small family businesses and successful political progress in the promotion of female entrepreneurship. Colombian women still have less access to financial resources compared to men and are overrepresented in the poor population, indicating women-led businesses do not flourish without systematic support and sustainability.[772] One interviewee has shared that there is also a perceived culture of Colombian "machismo" looking from the outside, despite the high levels of female entrepreneurship and the potential of hardworking

[763] ILO, "SDG indicator 5.5.2 - Proportion of women in managerial positions (%) - Annual", available at https://www.ilo.org/shinyapps/bulkexplorer3/?lang=en&id=SDG_T552_NOC_RT_A
[764] Ibid.
[765] Ibid.
[766] Worldbank, "Firms with female top manager (% of firms) - Colombia, Turkiye, South Africa",avaliable at https://data.worldbank.org/indicator/IC.FRM.FEMM.ZS?locations=CO-TR-ZA
[767] Catalyst, "Women in the Workforce, Latin America", available at: https://www.catalyst.org/research/women-in-the-workforce-latin-america
[768] Colombian Secretariat for Women, "Ranking de Equidad de Género en las Organizaciones", (2019), available at: https://sdmujer.gov.co/el-ranking-de-equidad-de-genero-en-las-organizaciones-llega-a-su-quinta-edicion
[769] World Bank, "South Africa Gender Landscape", available at: https://documents1.worldbank.org/curated/en/099101507042221723/pdf/IDU0a8cd1b01053fb0464509e000a3822d6f9865.pdf
[770] World Bank, "Türkiye Gender Landscape", available at: http://documents.worldbank.org/curated/en/099012307042210882/IDU0f11742f80896f04375097ed0ad0fe2ade52a
[771] World Bank, "Colombia Gender Landscape", available at: https://documents1.worldbank.org/curated/en/099915006302225456/pdf/IDU0a852569b006d10423f09780038ba78bfc5b8.pdf
[772] World Bank, Gender Equality in Colombia: Country Gender Assesment, available at: https://documents1.worldbank.org/curated/en/665381560750095549/pdf/Gender-Equality-in-Colombia-Country-Gender-Assessment.pdf.

women, and it deeply influences how foreigners invest and do business: accordingly, in the Colombian context if multinationals send over managers or consultants from headquarters (especially from the U.S.), they specifically send male managers *"to make sure they can influence and be respected by the employees and because they assume the work culture in Colombia is extremely masculine."*[773]

There is no statistical data available for the gender-segregated leadership and management positions of multinational corporations and subsidiaries operating in Türkiye, Colombia and South Africa. However, interviews have pointed out to a tendency of appointing male leaders and managers to such host states which are perceived to have patriarchal cultures or a "machismo" character, out of the assumption that the business culture requires male leadership and the operation would continue smoothly. Feminist activists have emphasized the hypocrisy of certain "woke", progressive brands which promote gender equity in their leadership and white-collar management in their headquarters and home states, but ending up failing to implement their equal and inclusive management policies in the host states where their supply chains are.

Below, Table 4.1. provides a list of the top 10 companies which have their headquarters located in Türkiye, Colombia and South Africa based on the market cap as of December 2022, and their executive board leaders, based on gender, showing an extremely male-dominated business management structure,[774] with only 1 female CEO among 30 companies.

Table 4.1.: Top 10 companies with the highest national market cap and the sex of their CEOs/Presidents of Executive Board in Türkiye, Colombia and South Africa.

Country	**Top 10 companies with highest national market cap**	**CEO / President of Executive Board**
Türkiye	SASA Polyester	Male
	Koç Holding	Male
	Turkish Airlines	Male
	ENKA İnşaat	Male

[773] Oral interview with a business sector representative from Colombia (February 2023).
[774] "Türkiye Largest and Top Companies List by Market Cap" (30 July 2023), available at: https://www.value.today/headquarters/Türkiye

	QNB Finansbank	Male
	Ford Otosan	Male
	Ereğli Demir ve Çelik	Male
	TÜPRAŞ	Male
	Türkiye İş Bankası	Male
	ASELSAN	Male
Colombia	Ecopetrol	Male
	Bancolombia	Male
	Interconexion Electrica	Male
	Grupo de Inversiones Suramericana	Male
	Grupo Nutresa	Male
	RAPPI	Male
	Banco de Bogotá	Male
	Grupo Energia Bogotá	Male
	Banco Davivienda	Male
South Africa	Naspers	Male
	Anglo American Platinum	Female
	Firstrand	Male
	Standard Bank Group	Male
	Textainer Group Holdings	Male
	MTN Group	Male
	Capitec Bank	Male

	Vodacom Group	Male
	Impala Platinum Holding	Male
	Sasol	Male

Some of the biggest multinational corporations (based on market cap as of 2023)[775] in the world which have subsidiaries in Türkiye, South Africa and Colombia, and a sample of the biggest multinational companies with active supply chains and manufacturing ongoing in these three countries are in a similar situation, as the following examples show their male-dominated executive level leadership:

Table 4.2.: Top 10 multinational corporations with the highest market cap and the sex of their global CEOs, and the subsidiary leads/CEOs/country leads in Türkiye, Colombia and South Africa.

Company	**Global CEO**	**Turkish Subsidiary CEO/ Country Lead**	**Colombian Subsidiary CEO/ Country Lead**	**South African Subsidiary CEO /Country Lead**
Apple	Male	Female	Male	Male
Microsoft	Male	Male	Male	Female
Saudi Aramco	Male	N/A	N/A	N/A
Google	Male	Male	Male	Male
Amazon	Male	Male	Male	Male
NVIDIA	Male	N/A	N/A	N/A
Meta	Male	Female	Male	N/A
Tesla	Male	Male	Male	Male

[775] "Largest Companies In The World", (2023), available at: https://www.gfmag.com/global-data/economic-data/largest-companies

Berkshire Hathaway	Male	N/A	N/A	N/A
Eli Lilly	Male	N/A	N/A	N/A

The leading business associations, representing private sector, TÜSİAD, the Turkish Industry and Business Association; ANDI, National Business Association of Colombia; and SACCI, South African Chamber of Commerce and Industry are all led by male presidents as of 2023, with a male-dominated record of leadership.

4.8.6. Socio-Economic Gender Gap

Statistical data shows significant socio-economic gender gaps in all three states. A number of economic parameters should be further looked into, such as gender dimensions of poverty, unemployment, participation in the labor force, and unpaid care work. World Bank's Women, Business and the Law (WBL) measures can provide a clear picture, through its dataset identifying barriers to women's economic participation scores and gender equality in law through eight economy-level indicators. Accordingly, South Africa has scored highest with an 88.1 out of 100, followed by Colombia with a 84.4 and lastly, Türkiye with a 82.5 in the WBL 2023 Index.[776]

Gender Wage Gap

According to the ILO Global Wage Report 2018/19, women earned on average about 20% less than men.[777] As of 2023, women make 77 cents for every dollar men make globally and according to UN Women, it will take 70 years to close this gap.[778] Women with children experience the motherhood penalty: for example, the gender pay gap is 31% for women with children in Sub-Saharan Africa, compared to 4%, for women without children.[779] Earning gaps

[776] World Bank, Women, Business and the Law, (2023), available at https://openknowledge.worldbank.org/server/api/core/bitstreams/b60c615b-09e7-46e4-84c1-bd5f4ab88903/content

[777] ILO, The Gender Pay Gap, (2022), available at https://www.ilo.org/travail/areasofwork/wages-and-income/WCMS_867160/lang--en/index.htm#:~:text=Gender%20pay%20gaps%20represent%20one,are%20wide%20variations%20across%20countries.

[778] UN Women, Equal pay for work of equal value, available at https://www.unwomen.org/en/news/in-focus/csw61/equal-pay#:~:text=Worldwide%2C%20women%20only%20make%2077,women%20are%20retiring%20into%20poverty.

[779] UN Women, Women In the Changing World of Work: Facts You Should Know, (2017), available at https://interactive.unwomen.org/multimedia/infographic/changingworldofwork/en/index.html ; ILO, Women at Work, Trends, (2016), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf

for women amount to 38% in South Africa, and furthermore, when race, a key driver of inequality in education and labour market, is considered within the analysis, its contribution to income inequality amounts to 41 percent, while the contribution of education is around 30 percent.[780] Gender wage gap in Türkiye is reported to be 21,1% in 2020, according to a joint study of ILO Türkiye Office and TURKSTAT,[781] and the wage gap widens as the age increases: while it is relatively narrow at the beginning of working life (3.8%), it widens remarkably against women in their 40s (25.9%), and persists in later ages. In addition, the wage gap among informal workers (24.2%) is wider than among formal workers (11.5%). Similar to the African context, the motherhood wage gap is significant in Türkiye as well, with the wage gap between working mothers and non-mothers is found to be 11% against mothers; and between working mothers and fathers 19% against mothers.[782] Colombia has a relatively narrow gender pay gap compared to the OECD countries and the Latin American region[783], with 6% in 2018.[784] However, this may be driven by Colombia's lower female labour force participation rate and a "selecting out" of women with lower potential market earnings.[785] In Colombia, the wage gap is the biggest among those with lowest and highest incomes, as well as among those with lowest and highest education, creating a wage gap experience in both extremes, which is described as the "glass-ceiling" and the "quick-sand floor" effects by scholars.[786]

Labour force participation rate

According to the World Bank, the global labour force participation rate for women is just over 52.9% compared to 80% for men.[787] 2022 data shows that in Türkiye, the labour force

[780] World Bank, Inequality In Southern Africa: An Assessment of the Southern African Customs Union, (2022), available at https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf

[781] ILO and TurkStat, Measuring The Gender Wage Gap: Türkiye Case, (2020), available at https://www.ilo.org/ankara/publications/WCMS_756627/lang--en/index.html

[782] ILO, "Gender Wage Gap is 15.6% in Türkiye, according to the joint study by ILO Türkiye Office and TURKSTAT", (2020), available at https://www.ilo.org/ankara/news/WCMS_757055/lang--en/index.htm

[783] OECD, "Gender Equality in Colombia : Access to Justice and Politics at the Local Level", (2020), available at https://www.oecd-ilibrary.org/sites/99444453-en/index.html?itemId=/content/component/99444453-en#:~:text=Moreover%2C%20in%20comparison%20to%20many,lower%20than%20average%20female%20participation

[784] OECD, "Decile ratios of gross earnings: Gender wage gap", available at http://stats.oecd.org/index.aspx?queryid=64160;

[785] OECD, OECD Family Database, available at: http://www.oecd.org/els/family/database.htm

[786] Alejandro Hoyos & Ximena Peña & Hugo Ñopo, The Persistent Gender Earnings Gap in Colombia, 1994-2006, IDB Work. Pap. Ser.. N.IDBWP-174.; Alejandro Badel and Ximena Peña, Decomposing the Gender Gap with Sample Selection Adjustment: Evidence from Colombia, 25 Revista de Analisis Economico 169, (2010).

[787] World Bank, "Female labor force participation", available at https://genderdata.worldbank.org/data-stories/flfp-data-story/

participation rate among females is 34.2% and among males is 71.1%.[788] In Colombia, this rate is 50.9% among females and 76.3% among males, and[789] in South Africa, it is 50.6% among females and 63.6% among males.[790]

Time spent on unpaid domestic and care work

In Türkiye, women are reported to spend 5.2 times as much time on unpaid domestic and care work than men,[791] with 1.7 times as much time in Colombia[792] and 2.4 times as much time in South Africa.[793]

Account ownership

Account ownership is another important data, which indicates individuals having a bank account (by themselves or with someone else) at a bank or another type of financial institution or the use of a mobile money service. According to 2017 data, 54.3% of women and 83% of men in Türkiye; 42.5% of women and 49.4% of men in Colombia; and 70% of women and 68.4% of men in South Africa had an account.[794] It should be noted, as raised by one of the interviewees, however, that women's high level of account ownerships is linked to the fact that many pension payments and welfare benefits can only be received through such systems, and some accounts remain passive with very limited control or saving possibilities for the owner women, who depends on family members to follow transactions and withdraw money.

Unemployment rate

The unemployment rate is 10.7% among men and 14.7% among women in Türkiye;[795] 8.6% among men and 13.2% among women in Colombia;[796] and 27.4% among men and 30.5% among women in South Africa.[797] In the labour force recovery process following the COVID-19 pandemic, the global pattern of gender gap in unemployment did not change and on the

[788] World Bank, "Turkiye Income Group: Upper middle income Region: Europe & Central Asia Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/turkiye
[789] World Bank, "Colombia Income Group: Upper middle income Region: Latin America & Caribbean Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/colombia
[790] World Bank, "South Africa Income Group: Upper middle income Region: Sub-Saharan Africa Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/south-africa
[791] World Bank, "Turkiye Income Group: Upper middle income Region: Europe & Central Asia Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/turkiye
[792] World Bank, "Colombia Income Group: Upper middle income Region: Latin America & Caribbean Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/colombia
[793] World Bank, "South Africa Income Group: Upper middle income Region: Sub-Saharan Africa Gender Landscape Brief", available at https://genderdata.worldbank.org/countries/south-africa
[794] ILO Stat, Data Country Profile, available at https://ilostat.ilo.org/data/country-profiles /?
[795] Ibid.
[796] Ibid.
[797] Ibid.

contrary, worsened. Some of the major causes of historically higher rates of unemployed women in all three countries, shared in the interviews, are lack of access to social networks, immediate prioritization of unemployed men assumed to be head of the house (prioritization of unemployed men compared to women in the same household), unequal access to public employment and reemployment agencies, high levels of employer bias towards married women or mothers and the gender pay gap.

Share of youth not in employment, education or training

Share of youth not in employment, education or training is 17.5% among men and 32.4% among women in Türkiye;[798] 17.3% among men and 31.7% among women in Colombia[799] and 31.3% among men and 34.5% among women in South Africa.[800]

When it comes to the representation of women in law-making, governance, and the judiciary from the best to worst record goes South Africa, then Colombia, and in the last place, Türkiye. However, a cross-cutting pattern is a problematic tendency to put men in leadership positions even in sectors or areas in which women are over-represented. Even in successful cases with almost 50% balanced representation achieved, women are grossly under-represented as decision-makers or senior leaders. A common conclusion from interviews with interviewees indicates that numbers matter and the improvement of women's statistically significant representation makes a difference. More women in senior leadership and decision-making positions is a common, repeated demand in all three contexts. "*Having women in the room, by that table behind the closed doors truly makes a difference"*, as expressed by one of the private sector interviewees.[801]

However, feminist researchers and activists, while calling for women's better representation, are also skeptical about having a narrow focus on statistics or an exclusive focus on quotas. Based on the interviews, even in cases and areas where gender parity is achieved at all levels of leadership or decision-making, gender-based violence, and misogynistic political discourse are still prevalent. South Africa can be a perfect example for this discussion: post-apartheid South Africa is often cited as a success story for "women's representation in politics", and a "raft of progressive women-friendly laws."[802] It is regarded as the only case for this triple

[798] Ibid.
[799] Ibid.
[800] Ibid.
[801] Oral interview with a business sector representative from Colombia (February 2023).
[802] "Women in South African Politics", (2022), available at https://revistaidees.cat/en/women-in-south-african-politics/

comparison where feminism is openly integrated and embraced in national policy-making. This high level of gender and race representation and the relatively strong integration of intersectional feminism is reflected in the gender-transformative language and better integration of gender dimensions in policy papers, frameworks, and legislation. Acknowledging the nationalist paradigm in the post-apartheid political environment, high levels of corruption, and socio-economic gaps, South Africa, however, also happens to have one of the highest levels of gender-based violence and femicides, globally. This does not mean, on the other hand, that women's representation in national politics fail to make a difference with regard to gender equality. Interviewees have shared that high levels of gender based violence in areas with higher levels of women's representation in politics, or national economic crises in women's leadership terms can be used as a counter-argument against quotas, affirmative measures or women's qualification for political leadership as a whole.[803]

Equitable representation requires meaningful engagement and it is hardly equal to a gender transformation in political culture. A common feeling among women legal practitioners and judges is that women judges often have to navigate with gender biases both on and off the bench, as reflections of institutional patriarchy, and the biggest need and call for action should be solidarity among women and allyship from male counterparts against standing up and speaking up against patriarchal practices.[804]

4.9. Gender Dimensions of Seemingly Gender Neutral Sectors/Issues and Everyday Experiences of Gender-based Discrimination

4.9.1. Illegal Businesses

An often overlooked topic is the exclusion of or the indifference towards gender inequality in seemingly gender neutral sectors and issues in BHR. Interviewees' shared examples have shown how overlooked the gender aspects of illegal businesses are. A unique example is the wildlife crimes in South Africa. Individual perpetrators of wildlife crimes, most specifically rhino and elephant poachers and traffickers are predominantly male. Wildlife crimes, an illegal yet big economy, providing income for and impacting thousands of families, is an up-to-date problem which is heavily and violently policed, with increased efforts in law and policy making. A significant amount of international biodiversity funds are allocated to this area and

[803] Oral interviews with an academic expert from South Africa (February 2023) and a feminist activist from Türkiye (April 2023).
[804] African Women in Law, "Women Judges in South Africa: Breaking Barriers & Biases", available at https://www.africanwomeninlaw.com/post/women-judges-in-south-africa-breaking-barriers-biases

supply chains for poaching have strong financial connections with other organized crime groups. In contemporary South Africa, wildlife crimes are seen as a completely gender-neutral issue and women and girls' experiences with wildlife crimes are often overlooked and ignored. While poachers and the majority of the labour force in the illegal poaching industry are men, women have also been involved in the business. Women living in the deeply impoverished peripheral neighborhoods to the national parks often have to provide food, accommodation, and cleaning services for men involved in the supply chains. They are reported to be involved within the transportation of the illegal goods too.[805]

Illegal and informal industries are often taken into consideration with a narrow perspective and gender dimensions are often excluded with the argument that local women are not involved with crime, which is simply not true. The Egipto neighborhood of Bogotá, Colombia is known to have women residents who used be gang members, nicknamed "Cleopatras" who are actively involved in financial operations of gangs, including drug cartels or illegal car parking businesses.



Figures 4.8.a., 4.8.b., 4.8.c.: Barrio Egipto is a neighbourhood notorious for its gang violence legacy, however, former gang members and community is rebuilding its narrative. From left to right: Community volunteer elderly women regularly provide food for the residents and homeless. Former gang members explain the meaning of symbols painted in front of the doorsteps. On the right corner of the lower step, there is a rubbed out symbol of a stiletto, representing the hard work and contributions of "Cleopatras" the women residents of the neighbourhood. Local women are starting businesses at the local market, cooking and selling traditional food and hiring young teenage girls, teaching them the recipes and service methods for the catering industry. (February 2023, photographs taken by the author).

[805] Oral interview with a scholar interviewee from South Africa (February 2023).

In the Turkish context, even though the "organized crime" element is not as evident, women are heavily involved and engaged within the counterfeit luxurious goods (bags, wallets) economy and their circulation in the black market. The perpetrators or those who are directly involved with criminal activities are predominantly male, however, women's labour force is crucial for these illegal yet significant economies. In other words, the discourse of women not being involved in criminal or illegal sectors is not factual or context-appropriate, and so are the gender-neutral approaches to it. Additionally, in neighborhoods with high crime rates or illegal sectors, many men who are first degree principals, for example, poachers in South Africa or drug dealers or street sellers in Colombia either lose their lives within violent environments or get imprisoned or are incarcerated in their homes with ankle monitors and very limited mobility and their mothers, partners or daughters are often left alone to take care of their families and communities left behind, with no support.[806] Fighting against illegal businesses (with complex and large supply chains and which employ many people) should (and often fail to) provide ways to support communities financially, to rebuild an environment for legal businesses to flourish, and especially for single mothers and women-led households to have access to sustainable income. Duty of care during rehabilitation and reformation of illegal businesses for the left behind communities, and working with women as agents of change are promising approaches for long-lasting change in such neighborhoods.

4.9.2. Commuting and Public Transportation

One of the often overlooked experiences of working class women (mostly factory and retail workers, and domestic workers) is their everyday commutes and the use of public transformation. Public transformation is frequently used by worker women, multiple times a day, to drop children off to school or daycare, to go to work and to return everyday (as well as parental or domestic organizational responsibilities visiting government institutions for social benefits, healthcare services and doctor's appointments of children and buying affordable groceries for the household). Public transportation costs are often overlooked and almost never included within the wages. Employers often expect working women to cover their own transportation expenses.

While in Türkiye, shuttles are often available for factory workers in organized industrial sites, this is often not the case in Colombia or South Africa. Domestic worker women often commute to the households they work for in all three countries, taking an approximate amount of 3-5

[806] Oral interview with a scholar interviewee from South Africa (February 2023).

hours of commute. Exposure to toxic masculinity, expectations for nurturing and care within public transportation spaces (giving seats to the elderly or those in need), inhaling high doses of air contaminants,[807] and the risk of sexual harassment are everyday experiences of working women. Socio-economic inequality, deep poverty and spatial segregation (based on race and class) are quite common in big cities in all three countries, meaning domestic worker women have to commute for long hours everyday from informal[808] settlements in the peripheries of big cities (based on observations in the field and interviews, townships such as Langa and Manenberg in Cape Town; the barrios bajos or comunas such as Southern district of Ciudad Bolivar or Egipto neigbourhood in Bogotá; and *gecekondu* neighbourhoods in Bağcılar and Zeytinburnu in İstanbul). Insufficient public transportation networks, missing bus stops or not providing public transportation means to richer neighbourhoods and complexes on the assumption that the residents use their own vehicles, or failing to provide sufficient transportation links from the peripheries or rural areas to the city centers cause domestic women workers to spend more time commuting to work.

A very common conundrum that poor working class women have to face is that they have to put extra time and effort, and often take risks to ensure their livelihoods.[809] Transportation and housing policies reinforce geographical divides in urban areas, which are heavily class and gender-based. Domestic workers are placed in the periphery, both spatially and politically. As they have to support themselves and their households through commuting, their bodies become disposable and they negotiate these divides using inadequate and dangerous public transportation systems.[810] The invisible daily commuting experiences of domestic workers, and the gendered and class-based divides deepened by neutral public transportations policies (an area one might assume to be irrelevant to business and human rights mechanisms) perfectly show how impactful law, public health, urban planning and labour policies can be on working class women's everyday experiences. The serious impact of public transportation commutes

[807] Valentina Montoya-Robledo & Laura Iguavita & Segundo López, Breathing in and out: Domestic workers high exposure to air pollution in Bogotá's public transportation system, 0 Environ. Plan C Politics Space, (2022), available at https://journals.sagepub.com/doi/abs/10.1177/23996544221077810?journalCode=epcb

[808] An interesting division of opinions should be noted here. Based on interviews, there were different approaches on whether to use the terms "townships", "barrios bajos/comunas" or "gecekondu" neighbourhoods. While NGO representatives and experts who are rather outsiders to the communities yet who have good and respectful relationships with them (often with a higher education and privileged background) have strongly opposed the use of these term for their pejorative use, the interviewees who are actual residents have embraced the terms and have used them to transform the narrative or proudly owning their identity and roots in low-income neighbourhoods.

[809] Valentina Montoya-Robledo & Laura Iguavita & Segundo López, Breathing in and out: Domestic workers high exposure to air pollution in Bogotá's public transportation system, 0 Environ. Plan C Politics Space, (2022), available at https://journals.sagepub.com/doi/abs/10.1177/23996544221077810?journalCode=epcb

[810] Ibid.

on working women, especially domestic workers and the fact that businesses often isolate themselves from this crucial aspect of their workers' daily lives perfectly reflects on the ignorance of such policy designs over gender, and how business and human rights mechanisms fail to consider different aspects of women workers' experiences. Understanding and recognizing women's existence only within the working hours, at the workplace by isolating the businesses from the working women's invisible, unseen, "far away" responsibilities and realities (such as how they make to work everyday) is a good example for the indifference, seemingly gender-neutral and yet deeply gendered face of public policies, in parallel with feminist legal theory's critique. Businesses should keep in consideration how women they employ are transporting to the workplace. This is also a reflection of the public vs. private dichotomy, of limiting businesses' responsibility, accountability and interest over women only within the physical, professional sphere of the workplace where their labour is profitable and not giving a thought on how women have physical access to these spaces.

4.9.3. The Soft Belly: Single Mothers

Specifically in Colombia and South Africa, there is a common social phenomenon of financially struggling single mothers. Single mothers are the ones most exploited by the MNCs, as shared by labour unionists and feminist activists. They desperately need their jobs, are reluctant to join labour unions or any sort of mobilization which may disfavour their position in the eyes of the employer, do not negotiate wages and benefits for the sake of being able to get out of work on time at the end of their shifts to be able to pick up their children from schools or secondary caregivers (often relying on other women in their communities, neighbours and most commonly, grandparents), are under debt or have regular payments to make for their dependent children, and often lack any support from their ex-partners who are the father of their children.

For the Colombian cases, women workers have expressed abandonment after pregnancy caused by premarital sex (often putting pregnant women in a difficult position in conservative Catholic societies, frowning upon premarital sex and opposing abortion), fathers having been killed by criminal violence or armed conflict (or being hired by or forcefully joining guerilla or paramilitary groups), fathers being imprisoned due to criminal activities or being conditionally released with electronic tracking and having very limited mobility and employment opportunities as common reasons behind the very high number single mothers as the only breadwinners of households. In the South African context, in addition to abandonment

after pregnancy (partnerships and parenthood without marriage is more common and accepted in South Africa), imprisonment or other criminal activities of fathers, the nation-wide alcoholism problem (more common in low socio-economic level neighbourhoods such as townships) and drug abuse, most commonly, of crystal meth are shared as common reasons of a high number of households led by single mothers. In the Turkish context, single motherhood and economic struggles related to this status is often associated with divorced women who struggle to receive alimonies from the father of their children. In all three countries, single mothers who bring the income into the households they need heavily depend on grandparents often grandmothers' unpaid care support. There is very limited statistical data about working single mothers as they are not easily identified (and sometimes hide their status purposefully), and are at the risk of further sexual harassment and social exclusion within workplaces.

4.10. The Impact of COVID-19 and the Business and Human Rights Aspect of Increased Gender-Based Violence

A common pattern of regression in Türkiye, Colombia, and South Africa is the deepened gender disparity and a serious decline in women's employment due to COVID-19. The ILO has reported a 4.2% decline in female employment in 2020, compared to a 3% decline in male employment. COVID-19 measures and quarantines have had similar gendered impacts on all three countries. Cases of violence against women have peaked as women had to be quarantined with abusive partners or family members in financially distressed households. Described as a global "shadow pandemic" by UN Secretary General Guterres, violence against women has reportedly rose in all three countries.

The previous Colombian Vice President Marta Lucía Ramírez shared in June 2020 that the calls to the domestic violence hotline (155) were up 150% in 2020 compared to the same period in the previous year.[811] In addition, the *Instituto Nacional de Medicina Legal* (National Forensic Medicine Institute) has reported that 8,972 women were victims of domestic or sexual violence, and 164 were killed during the first four months of the lockdown in Colombia, with a significant gradual increase in reported cases of violence as lockdown months passed by.[812] South African Police Service reported receiving 2,300 hotline calls related to gender-based violence during the first week of lockdown - a sharp and significant increase - and that

[811] France 24, "Lockdown in Colombia leads to spike in domestic violence", (2020), available at https://observers.france24.com/en/20200706-colombia-domestic-violence-lockdown-covid-19-women
[812] Instituto Nacional de Medicina Legal, "Feminicidio: desde el enfoque forense", (2022), available at: http://www.medicinalegal.gov.co/documents/20143/522189/Informe_INML_tres_meses_aislamiento.pdf/ab03caa2-8bce-45d5-d19e-e1e03060c4be

by mid-June 2020, 21 women and children had been killed by intimate partners. During the lockdown, Tshegofatso Pule, a pregnant 28-year-old woman was brutally murdered, making it one of the most emblematic cases of the lockdown period which has caused a public outrage about institutional failures to implement Domestic Violence Act of 1998 and to administer justice for gender-based violence victims, Ronald Ozzy Lamola, the Minister of Justice and Constitutional Development, publicly admitted systematic weaknesses and cases failure to protect victims of gender-based violence.[813] One interviewee, a former textile worker woman (currently a community center staff and a part-time guide) and a resident of a peripheral township of Cape Town shared her experiences during the pandemic as follows: *"I had to part ways with my partner. I am very lucky that he is still involved and we are co-parenting our daughter. Being stuck in the same room and working at the same job? All the financial insecurity and stress…our relationship did not survive the lockdown. I was lucky that we ended things in a civilized way, without violence. I know so many friends from the neighbourhood who had to part ways with their partners. Not everyone is as luck as me. So many single mothers struggling to raise their children and making the end of the month."*[814]

The COVID-19 outbreak caused a sharp increase in reported cases of violence and femicides in Türkiye as well. Istanbul Security Directorate has reported a 38.2% increase in domestic violence cases in March 2020 compared to March 2019 - NGOs specifically working on gender-based violence, such as We Will End Femicide Platform, reported a critical increase in the percentage of cases, specifically in the number of suspicious female deaths presented as suicide or natural death, and the number of women who were found dead in a suspicious way, throughout the pandemic.[815] According to Turkish Federation of Women's Association there was an 80% increase in physical violence cases[816] comparing March 2019 to March 2020. Against this backdrop of feminist civil society's strong concerns, the Minister of Interior recently announced that violence against women cases decreased 7% after the spread of COVID-19, considering the difficulties in seeking help during lockdown and the fact that only 11% of women report cases of violence in Türkiye, the situation is much more severe than the official records.

[813] Amnesty, "Southern Africa: Homes become dangerous place for women and girls during COVID-19 lockdown", (2021), available at: https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/
[814] Oral interview with a former textile worker from South Africa (February 2023).
[815] We Will End Femicide Platform, 2020 Femicides Report, (2021), available at: https://kadincinayetlerinidurduracagiz.net/veriler/2949/2020-report-of-we-will-end-femicide-platform
[816] 5 Harfliler, "TKDF Başkanı Canan Güllü: 'Salgın Döneminde Kadına Şiddet Yüzde 80 Arttı'",(2020), available at: https://www.5harfliler.com/tkdf-baskani-canan-gullu/

COVID-19 increased the fragility of businesses, especially small businesses in certain sectors such as restaurants, hotels, coffee shops, performance and entertainment services, which mostly employ low-paid and low-skilled women. Women workers were the first ones that were dismissed in all three contexts. In South Africa, for example, the female labour force participation rate declined by 11% points during this period.[817] Women with abusive partners have lost both their full-time jobs keeping them away from unsafe households, and their financial security. In households where women lost their jobs and their male counterparts haven't the loss of income also translated into to a loss in the bargaining power for women, especially in host states and developing and emerging markets.[818] Based on ILO data, women in the labour market suffered more than men during the first phase of the pandemic and fewer women than men have regained employment in the COVID-19 recovery process.[819] Being restricted inside homes with abusive partners due to lockdown measures and social distancing with the additional, disproportionate burden of unpaid care work, supporting children's online and partially accessible education and overall financial stress with very limited support for childcare and increased household costs and health risks for the household. Women who are overrepresented in informal sectors, which require physical work and contact, such as domestic work or hairdressing businesses have lost their income completely. Sectors such as tourism, hospitality, food services, and personal care in which women labour force is more concentrated, are yet to bounce back to the pre-pandemic levels.[820] The decline in women's participation in the labour force, reaching rock bottom during the pandemic, is a major setback into the slow improvement of gender equality globally. On top of this, the blue-collar women workers who were kept employed in mass production facilities, (specifically, food and garment) were pushed to abide by sanitation measures violating labour rights, forced to stay in industrial facilities separated from their families, and experienced increased levels of violence and discrimination which they had to tolerate out of dependency on income.[821]

---

[817] Deloitte, " Gender equality, dealt a blow by COVID-19, still has much ground to cover", (2022), available at https://www2.deloitte.com/za/en/insights/economy/impact-of-covid-on-women.html/#endnote-4

[818] UN Women, "What does gender equality look like today?", (2021), available at https://www.unwomen.org/en/news/stories/2021/10/feature-what-does-gender-equality-look-like-today

[819] ILO, Fewer women than men will regain employment during the COVID-19 recovery says ILO, (2021), available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_813449/lang--en/index.htm

[820] United Nations World Tourism Organization,"International Tourism Swiftly Overcoming Pandemic Downturn", (2023), available at https://www.unwto.org/taxonomy/term/347

[821] Fairwear, "How does Covid-19 affect women garment workers?", available at https://www.fairwear.org/covid-19-dossier/worker-engagement-and-monitoring/gender-analysis/; ILO, "Gendered impacts of COVID-19 on the garment sector", (2020), available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_760374.pdf, IUF, "Türkiye: Canned fish company held workers captive in production after COVID-19 outbreak", (2020), available at

4.11. The Problematic Corporate Approach to Gender Equality

The corporate interest in gender equality and sustainable development has significantly grown in recent years. The millennial and Generation Z employees, customers and consumers are more invested in sustainability, and "equality, inclusion and diversity" policies of businesses. Corporate communications teams, sustainability, diversity and inclusion leads are being established at corporate management levels, with sustainability and "diversity"[822] integrated into the key performance indicators (KPIs), and periodic goals within evaluation processes. This was visible during interviews with private sector representatives: for example, they were quick to mention their status as signatories to Women's Empowerment Principles, the high numbers of women employed by their sector, and the corporate social responsibility projects focusing on "women's empowerment".[823] Business representatives admit that there is not much implementation or follow-up after the WEP signature, and that their teams are confused, seeking guidance and help (often expecting guidance and help from UN Women or UN Global Compact). In all three countries, gender equality policies and projects are often appointed to the Equality, Inclusion and Diversity Committees if the businesses are subsidiaries of multinational corporations, and they are often led by Corporate Communications teams, who are Public Relations or Human Resources professionals. Unless there are Equality, Inclusion and Diversity Committees, legal teams are often not involved in the work of such teams. Corporate communications teams are often not qualified or fully equipped to handle gender equality policies and projects from a rights-based approach.

There are two kinds of problematic phenomena in corporate culture, as a cross-cutting issue in Türkiye, Colombia and South Africa. First one is to position gender-equality problems far away from the corporation. Internal cases of gender-focused mobbing, sexual harassment, sexist workplace environment and the labour rights of women workers in supply chains are often dealt with separately, often with a gender-neutral approach, and are not included within the publicly available reporting. While zero-tolerance policies against sexual harassment at the workplace or improved gender representation at the executive level are often promoted in annual reports and sustainability reports, cases of sexual harassment or how complaints

https://www.iuf.org/news/Türkiye-canned-fish-company-held-workers-captive-in-production-after-covid-19-outbreak/

[822] Corporate language has a broader approach to inclusivity with the use of "Diversity, Equity and Inclusion." Instead of developing specific approaches and strategies for gender equality. These three values are strategized broadly, aiming to support differences and variety among its employees, banding together race, ethnicity, religion, ability, gender, sexual orientation and more together, often under the same strategy.

[823] Oral interviews with private sector representatives from Colombia, South Africa and Türkiye, (February 2023 and May 2023).

submitted by women employees are being dealt with, or the ongoing SLAPPs initiated by the corporations are almost never mentioned. From a business perspective, it is understandable for businesses to use their sustainability reporting as a strategy to build a favourable image and to satisfy the expectations of shareholders.

However, this selective reporting, or non-transparency indicates that if reporting is to be used as an accountability mechanism, there is a need to standardize the human rights due diligence and reporting of corporations, to get a realistic picture of the gender dimension of corporate operations throughout their value chains and to prevent cherry-picked and glossed over reporting on gender equality in business. The second problematic phenomenon is the corporate appropriation or theft of cultural elements and knowledge from minority and indigenous women with the aim of marketing, or for the use of mass production, without giving credit, profit share, or other benefits back to such communities.

4.11.1. How Multinational Corporations Isolate Themselves from Gender Inequality?

The corporations having supply chains in host states tend to ignore internal problems and see gender inequality as an external problem which is experienced by distant, extremely disadvantaged communities, positioning themselves as the noble saviours before the helpless rural, poor women, often replicating a colonial power structure. There is a significant difference of socio-economic status between the "helping" corporate community and the beneficiary, and a romanticization of employee volunteering, often focusing on short-term, measurable outcomes and projects such as distributing aid packages or building schools/libraries without providing the local community and women with tools or a sustainable mechanisms to benefit from these sources, and without building long-term, sustainable relationships with the communities.

A significant example of this attitude is visible in cases where businesses support women and girls in the aftermath of crises, mostly, natural disasters. Here, as the author of this dissertation, I will be providing personal experiences as the participant observant of a feminist collective, a NGO that I am the co-founder of. We Need to Talk Association is a feminist NGO fighting against period poverty and menstruation stigma in Türkiye since 2016. Functioning as a legal association since 2021, We Need to Talk Association took action for humanitarian response and organized several field projects in 11 provinces affected by the earthquakes in Kahramanmaraş and Gaziantep which happened throughout February 2023. Many businesses

and brands, including brands of multinational corporations have donated menstrual and hygiene products to We Need to Talk and national and local NGOs who are operating in the earthquake zone. While product donations are vital to provide menstrual care needs of millions of earthquake survivors, and national and local feminist NGOs need long-term and sustainable product donations; international and national menstrual product brands had sustained a problematic corporate social responsibility or "charity" culture during the time of crisis. This was a common struggle that many NGOs experienced with funding/donating corporations. While it is reasonable for donor businesses to have certain expectations, in terms of reporting and documenting how the donations are being distributed and used, they often put excessive pressure on women's rights NGOs to provide promotional visual materials for their brands, to have photos and videos during field projects with demands that exceed the legal and ethical limits or humanitarian response cases (such as demanding photos and videos of earthquake survivor women and children or demanding to send over unqualified and unprepared corporate employees as volunteers or observers at the earthquake zone) or they send short-term donations and prioritize quantitative targets (the number of women that the brand reached) with product distribution rather than providing long-term support, building safe spaces or providing tools, resources or training. The NGOs' dependency on products, especially for basic menstrual hygiene needs of women and girls who are expected to live in temporary accommodation, shelters and tents, create a power imbalance in which civil society organizations have to compromise their principles or to channel their labour force, time and resource to satisfy the demands of the donor brands to make sure the desperately needed donations continue.

The second significant cross-cutting example is how multinational corporations often use "charitable acts" as a strategy to isolate themselves from controversial gender-focused discussions. While they are non-transparent with regard to the working conditions of women workers or internal complaint mechanisms for sexual harassment; working with local women and children, is seen as a rather safe, non-politicized area for corporate social responsibility projects. Noting few exceptions, corporations often prefer supporting causes which are seemingly non-controversial and which prioritize women's roles as mothers, nurturers of their communities, or women as small-business owners and entrepreneurs. Feminist activism with political undertones, feminist movements in collaboration with minorities, politicized discussions that often target or criticize policies of the governments, sexual and reproductive health and rights which can cause controversies, or gender-based violence and femicides are areas which businesses often avoid addressing. In addition, multinational corporations often

prefer to initiate their own projects with their large-scale international foundations rather than giving space and resources to the local women's NGOs. In one feminist activist's words: *"They have their own fancy projects going on with their charity foundations. Like they salve their conscience."*[824] These projects are often led by corporate communications teams who do not consult with local communities and women, and provide pre-assumed help, which is often short-term. In South Africa, corporations have built community centers with computers, however, they do not follow up if these centers operate. When there are no teachers or staff working, these centers are locked up for safety reasons and unavailable to the local community.

Similarly, in Cape Town, one of the biggest and most impactful local women shelters, the Saartjie Baartman Centre for Women and Children (SBCWC) which functions as "a one-stop centre" for women and children who are survivors of abuse, was built with the sponsorship of Coca-Cola. Coca-Cola has supported the building and running of the main building of the center for a while, and donated gifts to the residing children, such as toiletries, towels, food, cleaning materials and party packs. However, according to the Director of the Center, Bernadine Bachar, while these sponsorships are very valuable, the Centre needs millions of ZAR to run and the admin team has to constantly seek for funding since these large-scale gifts and sponsorships are often one-time or short-term supports.

In Colombia, multinational corporations often avoid investing in such corporate social responsibility projects in remote rural areas where armed conflict continues, or the socio-economically disadvantaged neighbourhoods where crime rates are high, such as the Egipto neighborhood in Bogotá. Women residents of Egipto, many of whom are survivors of domestic violence, and many of whom have lost their jobs as textile workers following the COVID-19 pandemic, need the support of civil society, either for job opportunities, childcare services or to learn skills. Fundacion Buena Semilla is one of the few NGOs actively operating in Barrio Egipto, which is women-led and have established a textile workshop for local women (former textile workers who were let go during the pandemic, or house wives who weave or sew) to learn how to weave, hand-know and produce garments, carpets and accessories, and they sell them at the workshop and earn money. A small percentage of the earnings is spent to run the workshop and to pay for the trainers, but the rest goes back to the community.

[824] Oral interview with a civil society representative from Colombia (Febaruary 2023).



Figures 4.9.a., 4.9.b., 4.9.c., 4.9.d., 4.9.e.: Tejiendo Corazones (Weaving Hearts) Textile workshop founded by former textile workers (and local residents) who were let go during the pandemic with the support of Fundacion Buena Semilla in Bario Egipto. (February 2023, photographs taken by the author).

While this grassroots NGO has created a safe space and financial opportunities for local women, they are also heavily religious, strongly encouraging their beneficiaries to join Sunday masses and religious ceremonies, and their discourse have a strong emphasis on the love of God and Jesus and turning to Jesus Christ in order to solve their struggles, including domestic violence and poverty. While the local women share these beliefs and are embracing the religious tone of these social services, the fact that the few NGOs who are present to support local women are heavily religious raises the question on whether women can have access to certain sexual and reproductive health services, such as abortion, or whether the NGOs are inclusive in terms of sexual orientation and gender identity.

4.11.2. Gendered and Colonial Fashion: Appropriating and Stealing Crafts Designs and Ancestral Knowledge of Indigenous Women

A significant example of deeply gendered corporate violations of rights is the exploitation of indigenous women's visual ancestral knowledge through appropriation, commodification and

stealing of indigenous women's crafting with ancestral indigenous patterns of carpentry, weaving and cloths. This has been the case with several multinational corporations, with luxurious and fast fashion clothing brands using distinctive indigenous patterns and designs used by indigenous women. There have been cases in which Inditex and Anthropologie using Mixteca community's patterns; Ralph Lauren plagiarizing Indigenous designs from Contla and Saltillo people; Gucci, Isabel Marant, and Carolina Herrera receiving backlash for cultural appropriation in their designs; Zara using South African Xhosa knitwear designs in their sock lines[825] and Colombian clothing brands expanded abroad, using Emberá Chamí women and Afro Colombian *palenqueras* women in their traditional dressings in silent, inert, decorative roles in fashion shows.[826]

While indigenous patterns, designs and crafting taking the center stage from the margins is to be celebrated, the way the fashion industry utilized this knowledge and skills is highly problematic. Indigenous women's visual ancestral knowledge is built up through generations, often having spiritual meanings for the community and functions as collective story-telling. This highly valuable knowledge is used by multinational corporations to make profit, without any financial pay back or even credit given back to indigenous communities through appropriation, co-optation, exploitation and stealing, even promoted as celebration of exotic, "other" cultures.[827]

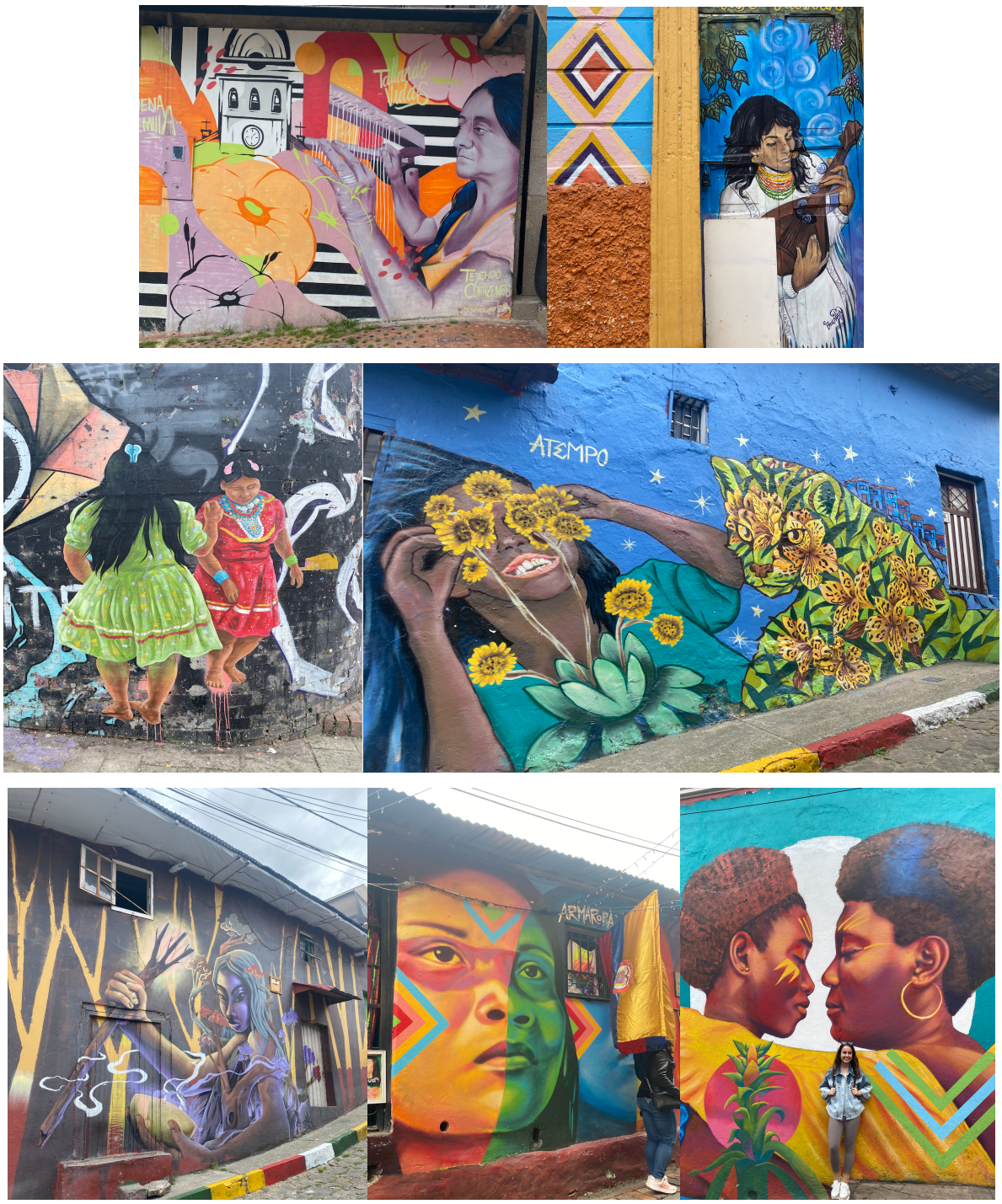
These carpentry and weaving patterns and designs are channels of communication, cultural and material expressions of women with rooted identities, taught through oral traditions, emphasizing the harmony between nature and human being, often produced with traditional, sustainable methods and manual, meaningful labour. The colors, shapes, patterns and designs reflect the transformation of culture as generations come and go, and give pride and dignity to indigenous women, making them visible and heard through craft-making. A cross-cutting pattern in all three countries is how women use such crafts as a way of expression, and how

[825] Times Live South Africa, "Spot the difference: Zara accused of stealing local brand MaXhosa's design", (2018), available at: https://www.timeslive.co.za/sunday-times/lifestyle/fashion-and-beauty/2018-04-24-spot-the-difference-zara-accused-of-stealing-local-brand-maxhosas-design/

[826] El Pais, "Working with artisans or cultural exploitation? Aesthetic racism on the catwalk", (2023), available at https://english.elpais.com/culture/2023-05-27/working-with-artisans-or-cultural-exploitation-aesthetic-racism-on-the-catwalk.html

[827] Jennifer Jagire, Indigenous African Knowledges and African Feminism
Resisting Eurocentric Ways of Knowing, In: Ruptures: Anti-colonial & Anti-racist Feminist Theorizing, 77-89 (2023).

they learn and teach such skills through an intergenerational bond, producing exclusive, and authentic pieces with value, durability and stories.



Figures 4.10.a.,4.10.b.,4.10.c.,4.10.d.,4.10.e.: Patterns, symbols, clothes and depictions celebrating indigenous and AfroColombian women in murals created by local artists in the streets of Colombia. Women are often depicted in joyful, productive and healing roles. (February 2023, photographs taken by the author).

Cultural appropriation, or to put it in clearer words, stealing of the collective ancestral knowledge of indigenous women without compensation not only violates the collective visual

intellectual property of indigenous communities, specifically the parts which are painstakingly built by women with limited spaces and platforms of expression in patriarchal indigenous and rural societies, but also silences and erases women's experiences. *"Industrial design and its rational connection to modernity"*[828] lacks the indivisible line of connection between the products and their female creators. Mass producing the appropriated or stolen designs destroys the bond between such crafts and communities, hollows out their meaning and commodifies indigenous women's knowledge.

It should be discussed how business and human rights can transform such abusive practices into good practices that can actually contribute to decolonization of the business and human rights mechanisms. What kind of a decolonization would serve and support indigenous women, and how? Third World feminist approaches to international law, and critical race theory agree on how narratives matter, and how decolonization should be an anti-oppressive practice through the use of indigenous methodologies to reposition these narratives. Tuck and Yang point out that decolonization is not a metaphor, but a practice and how the exclusion of indigenous women from the decolonization discussion can result in worse realities when settler narratives are recentered.[829] Some scholars are critical of liberal multicultural discourses which aim to give away the same medicine to all minorities, racial and ethnic groups and women, which reinforces colonialism in discussions around race and gender.[830] This is in parallel with the critical approach of intersectional feminism, which rejects the "add and stir" approach. This add and stir understanding of complex identities fails to provide definitive answers to social problems by offering a fixed understanding and solution of social justice, once again shaped and defined by white patriarchal norms.[831] A truly feminist, transformative, intersectional understanding that would bring indigenous women the support they need would be through reframing how we understand marginalization and "*creating spaces for reflexive consideration and critical engagement."*[832] This understanding of intersectionality is also seen as essential to fulfill the United Nation's ultimate pledge to leave

[828] Presley Mills, Fashioning decolonization: telling stories of Canadian Indigenous women through fashion hacking, Master of Arts, Ryerson University, Canada, (2018).
[829] Eve Tuck and K. Wayne Yang, Decolonization is not a metaphor, Tabula Rasa 38 (2021), 3.
[830] Maile Arvin et al., Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy, In Carole McCann, Seung-kyung Kim and Emek Ergun (eds.), Feminist Theory Reader, Routledge, (2020).
[831] Kathryn Henne, From the Academy to the UN and Back Again: The Travelling Politics of Intersectionality, 33 Intersections: Gender and Sexuality in Asia and the Pacific 1 (2013).
[832] Ibid.

no one behind.[833] Indigenous feminists fight for the eradication of both heteropatriarchy and settler colonialism, together.[834]

According to Tuck and Yang, *"When metaphor invades decolonization, it kills the very possibility of decolonization; it recenters whiteness, it resettles theory, it extends innocence to the settler, it entertains a settler future. Decolonize (a verb) and decolonization (a noun) cannot easily be grafted onto pre-existing discourses/frameworks."*[835] In other words, decolonization should be practiced by indigenous women themselves, realized through their choices, customized to their unique experiences, and unsettling social constructs that oppress them. In other words, "stopping cultural appropriation", and fulfilling the bare minimum negative obligation is not enough.[836] The corporate promotion of feminism and environmentalism towards consumers (without internalizing such values), or the "green washing" and "fem washing" done by fashion brands as a marketing strategy are not providing any solution, and on the contrary, can be harmful through further exoticization of indigenous women and appropriate their culture.[837] Decolonization should be led and practiced by indigenous women, with intention and through a shift of norms, not because the responsibility burden to transform is put on them, but because the discussions around cultural appropriation of indigenous women's craftworks are often done without them involved, through state authorities or white saviour feminism defending them on their behalf.

Fashion has been used as a tool for colonization of suppression and controlling Indigenous people, especially indigenous women. There are other examples through which strict rules and enforcements on women's clothings, as can be seen in several examples, from historical Indian Acts banning expressions of Indigenous cultures to Taliban regime's strict dressing codes over women in contemporary Afghanistan. However, thinking of fashion as a visual display of daily choices and identity, it can be reclaimed and used to explore and freely express personal

[833] UN Women, "Intersectionality Resource Guide And Toolkit An Intersectional Approach to Leave No One Behind", (2022), available at: https://www.unwomen.org/sites/default/files/2022-01/Intersectionality-resource-guide-and-toolkit-en.pdf

[834] Maile Arvin et al., Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy, In Carole McCann, Seung-kyung Kim and Emek Ergun (eds.), Feminist Theory Reader, Routledge, (2020).

[835] Ibid.

[836] Eve Tuck and Wayne Yang, Decolonization is not a metaphor, Tabula Rasa 38 (2021); Presley Mills, Fashioning decolonization: telling stories of Canadian Indigenous women through fashion hacking, Master of Arts, Ryerson Univ., Ontario, Toronto, Canada, 2018

[837] Mariko Takedomi Karlsson and Vasna Ramasar, Selling women the green dream: the paradox of feminism and sustainability in fashion marketing, 27 Journal of Political Ecology 335, (2020).

identities and to interpret and practice decolonization.[838] The production of clothes and fashion, similarly, has been usual mediums for exploitation of poor women's labour in host states, yet preservation and supporting of traditional ways of producing clothes holds the power to further strengthen indigenous women. The longing for a transition from culturally appropriated, mass produced garments made by working class women in sweatshops to ethically produced, indigenous women owned sustainable clothing practices and production (with several promising good practices led by women in Türkiye, Colombia and South Africa) is commonly shared in the interviews with women on the potential of fashion industry.

It should also be noted that narrow, "politically correct" approaches to such problems, tend to deflect the responsibility from institutions to individuals and create a fear of cultural appropriation which *"blurs the line between helping and supporting indigenous creators."*[839] Indigenous designers, creators and business owning women that try to sell artisanal design pieces made by their own communities encounter suspicion and questioning of their works' authenticity, or potential buyers being afraid of cultural appropriation by buying and using indigenous-made designs and items. White individual customers, but also retailers and corporations have the opportunity to build systems to support indigenous businesses by recognizing their artistry, fact-checking the authenticity and the creators, providing financial compensation for their work and making sure some of the income is given back to indigenous women. In the meanwhile, indigenous women create culturally neutral products with their traditional methods and would like the customers to own and use their creations, and sometimes depend on the sale of such items for their livelihoods. As an indigenous business-owner woman puts it: *"Cultural appropriation is real but that should not inhibit our ability to share our art and knowledge, nor should it drive people away from wanting to support our businesses if done respectfully and correctly."*[840]

Similar to the identified problem of middle-men as will be discussed below under the experiences of domestic workers, in addition to the multinational corporations, the resellers constitute a serious problem. Resellers tend to pose as indigenous people, selling products made by indigenous women (this was observed by the author of the dissertation in the streets of Bogotá with street sellers having a few indigenous women in the back, creating accessories

[838] Ibid; Dan Eshert, Stolen Lives: The Indigenous Peoples of Canada and the Indian Residential Schools, Facing History & Ourselves, (2016).
[839] Andreina Rodriguez, "How 'Cultural Appropriation' Fears Blur The Line Between Helping & Hurting Indigenous Creators", (2021), available at: https://www.refinery29.com/en-us/2021/06/10512604/cultural-appropriation-indigenous-brands
[840] Ibid.

with indigenous patterns using beads, while a man stands in the front of the counter and does the selling, not answering the author's questions about the women producing the items or translating her questions, and providing broad answers about the meanings of the symbols in the accessories) and misidentifying sacred items as fashion pieces. Resellers are often reported to pay indigenous women very low amounts for their labour and take the largest share of the profit from the items by upselling the products and undercutting the women artists, often with no credit or recognition.[841]



Figures 4.11.a. and 4.11.b.: Indigenous women and girls making accessories from beads using indigenous patterns for the resellers, not communicating with the customers and not involved with the money exchange. (February 2023, photographs taken by the author).

What feminists should refrain from is to create further dichotomies, and creating object/subject divides which may create scenarios of active colonizers exploiting and utilizing the cultural heritage of passive colonized women in a manner that reinscribes and strengthens the speaking/silencing, binarism. What needs to be done, in addition to the bare minimum of eradicating cultural appropriation by multinational fashion brands and the exploitation of women workers' labour, are providing space and opportunities for indigenous women's active involvement, seeking their permission and respecting their decision, supporting their traditional methods of production and recognizing, celebrating and upon their permission, turning their work into income that gives back to them, without any agents. This could be *"the first step in dislocating the assumed authority of the colonizer to exploit whatever she might choose in respect to her own, independent intellectual creations."*[842] Drawing clear borders of ownership for indigenous women's work and not violating these borders, would

[841] Ibid.
[842] Peter Shand, Scenes from the Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights, and Fashion, 3 Cultural Studies 47, (2002), available at https://www.ocf.berkeley.edu/~culturalanalysis/volume3/pdf/shand.pdf

challenge the hegemonic privilege which has historically allowed multinational corporations to take whatever they would like for aesthetic purposes, and would give dignity, autonomy and choice back to indigenous women, without the need to "reclaim" what is already theirs. This, of course, requires a gender transformative and inclusive approach throughout the whole value chain of global fashion brands, which includes a new understanding towards intellectual property rights and authentic design. What needs to be exposed, further, is that systematic stealing of elements of indigenous culture is often glossed over as the unethical behaviour or plagiarism of a single designer or bad decision-making of individual executives while the mass production of garments are often gone through detailed procedures of approval from multiple levels of management, and profit-gaining corporations should be held accountable to do their due diligence. This approach of avoiding accountability or degrading the seriousness of such issues is yet another form of devaluation of indigenous crafts work.

4.12. SLAPPs, Targeting, Harassment and Killings of Women Human Rights Defenders

One of the most important issues with regard to the gender-responsiveness of business and human rights mechanisms is the proper protection of women human rights defenders, from being targeted and harassed, especially from the malicious strategic lawsuits against public participation (SLAPPs) brought by both the governments and businesses. The 'SLAPPs' term was first coined by Pring and Canan[843] in order to describe abusive or meritless attempts to *"use civil tort action to stifle political expression, by claiming injury resulting from citizen efforts"* to influence the government or the community on a significant public issue.[844] SLAPPs are used by corporations in an ill-intentioned way to stop individuals and communities from raising concerns and objecting to their practices, and they can be in various forms, such as criminal or civil lawsuits or threats of legal action.[845] The purpose of SLAPPs is not necessarily to seek justice, or compensation, but rather to intimidate, silence and drain the financial and physical resources of victims by creating a chilling effect that goes beyond the individual case, and aims to indirectly intimidate communities who make their voices heard and object to the corporate violations of human rights. They are, at the same time,

[843] George W. Pring, and Penelope Canan, SLAPPs: Getting Sued for Speaking Out § 1996; Penelope Canan & George W. Pring, Strategic Lawsuits against Public Participation, 35 Social Problems 506, (1988).
[844] Penelope Canan & George W. Pring, Strategic Lawsuits against Public Participation, 35 Social Problems 506, (1988).
[845] Ibid.

threatening pluralistic civic spaces.[846] SLAPPs typically target journalists, activists, environmentalists, local community leaders and women human rights defenders in Türkiye, Colombia and South Africa.

It might be helpful here, to provide a definition of "women human rights defenders". In parallel with the United Nations Office of the High Commissioner on Human Rights, and the 2013 UNGA Resolution on protecting women human rights defenders, women and human rights defenders in the area of business and human rights, (for the present dissertation) cover *"women and girls working on business and human rights issues and civil society actors who may not self-identify as human rights defenders or those who work on non-traditional human rights fields (journalists, health workers, environmental activists, peacebuilders, private actors, development and humanitarian actors, etc.)"* including LGBTI+ activists, and women members of indigenous communities, labour unions and informal local neighbourhood solidarity networks.[847] Specifically, rural women and local indigenous women are pivotal in addressing corporate abuses of human rights, sustainable development and preservation of natural resources, being at the forefront of social justice movements. A common finding from interviews with activists from Türkiye, Colombia and South Africa is that rural and indigenous women take more charge and act braver speaking against corporate abuse, compared to the men in their families/villages/communities.

In addition to this, testimonies from local women's resistance against coal mining operations in İkizdere, at the Black Sea region and Akbelen Forest in Muğla, in Türkiye, reveals that in cases when women dare to speak up, to mobilize and to take action, the first objection often comes from their male country folk. A testimony from a documentary is as follows:

"We don't know A or B. I went to school and graduated from primary school. I went to my mukhtar. I told him, I beg you, let's do something, let's call a journalist, let's share what is going on in here. He told me, do you have a penny in your pocket? What would the journalists do with you? Then let's hire a lawyer. He said you are spitting blood out of your pain, how

[846] Micaela Del Monte and Maria Díaz Crego, European Parliament EU Legislation in Progress Briefings: Strategic lawsuits against public participation (SLAPPs), (2023), available at https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf

[847] UN General Assembly, Resolution on the Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders, A/RES/68/181, (30 January 2014), available at: https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/68/181&Lang=E

the heck are you gonna hire a lawyer? But see… Journalists are here. A lawyer was found. Not everything is money."[848]

The first and strongest forms of discouragement and disbelief towards indigenous and minority women often come from their community and even family members, with a condescending approach. Indigenous and rural women therefore end up fighting a battle on two fronts.

There is surprisingly little to no research on the gender dimensions of targeting of human rights defenders and SLAPPs. There are also many forms of intimidation and challenges, which are deeply gendered: gender-specific threats and violence, such as verbal assault using misogynistic slurs and threats of rape, targeting of family members and loved ones, hostility received by community and official authorities, exclusion and marginalization, stigmatization and ostracism by community leaders, gender-sepcific violence and harassment at online spaces, harmful narratives built on gender stereotypes (accusations for being "unchastity", "promiscuous", "know-it-all", "not knowing one's limits") and targeting and defamation campaigns.[849] While these threats are never directly made by corporate officials, interviewees have shared that the private security companies, paramilitary groups or online trolls have financial support from such corporations to carry on these "silencing missions".

Women human rights defenders are specifically targeted in states with problematic gender equality records because they are seen as *"threatening the status quo and challenging traditional notions of family and gender roles."*[850] This multi-faceted, complex and intersectional oppression and stigmatization that they are experiencing is also for challenging the imposed codes and stereotypes for hardworking, grateful, submissive working class women barely making both ends meet. Their questioning of the system and challenging of the working conditions may lead to exclusion and hostility not only by businesses, but also the state, community leadership and families since such behaviour may be seen as a threat to the deep-seated patriarchal structures of religion, culture, family and national narratives.

[848] Aytaç Yakar in Youtube (video), "Umut Her Zaman Var: İkizköy'ün Hikayesi", available at: https://www.youtube.com/watch?v=KNGD1U8ayK4&t=120s&ab_channel=350T%C3%BCrkiye
[849] OHCHR, Women human rights defenders OHCHR and women's human rights and gender equality, available at https://www.ohchr.org/en/women/women-human-rights-defenders
[850] Ibid.

A common tactic is to target leading and most verbal individual women human rights defenders and disproportionately attacking them (threatening the family members of the leader of a protesting group, or firing a few of the unionizing workers) with hopes to discourage other women, individually and collectively, from pursuing their works, by showing "*how they can easily lose their much-needed jobs and income and how the bosses have no pity if you cross their lines"*[851] as shared by a Colombian labour activist.

According to the Business and Human Rights Resource Centre's 2021 research, in which they identified 355 cases filed since 2015, SLAPPs are used in every region of the world, with the highest numbers occurring in Latin America (39%), but it should be noted that no region is exempt. Nearly two-thirds (63%) of the cases included in this research involved criminal charges, mostly, libel and other defamation-related charges. Often, the lawsuits are filed within the jurisdictions of the host states, where human rights defenders are based. Sometimes, suing corporations use charges specific to these jurisdictions, such as computer crime laws, anti-boycott laws, racketeering, disinformation (towards journalists) or conspiracy. It should also be noted that identifying SLAPPs and directly linking them to companies is a challenging task. BHRRC's research found out that more than 40% of attacks towards human rights defenders were in the form of judicial harassment, including a range of legal tactics, such as criminal and civil lawsuits, arbitrary detention, abusive subpoenas, and fabricated charges by governments and business actors. Defenders often face unfair trials, or are detained in inhuman or degrading conditions.[852].

There are recent examples of SLAPPs against women human rights defenders in Türkiye, Colombia and South Africa. In Türkiye, Demirören Media Group has filed two separate defamation cases against journalist Canan Kaya, and demanded high compensations, one for a story about a female employee of the media group that was forced to resign after failing to take her shoes off on a management floor (the case, in which Demirören group demanded 50,000 TRY compensation was later dismissed by the court) and another pending for a report she published about the possibility of several media workers being unemployed due to the media group's unpaid debt to a bank.[853] Turkish Grand National Assembly has passed the

[851] Oral interview with a labour activist from Colombia (February 2023).
[852] BHRRC, SLAPPed but not silenced, Defending Human Rights In The Face Of Legal Risks, (2021), available at https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf
[853] "Demirören'in gazeteci Canan Kaya'ya açtığı davada karar 18 Temmuz'a kaldı", (2023), available at https://www.mlsaTürkiye.com/tr/demirorenin-gazeteci-canan-kayaya-actigi-davada-karar-18-temmuza-kaldi/ ; "Türkiye: Defamation Lawsuit Filed Against Journalist Canan Kaya", (2022), available at https://www.womeninjournalism.org/threats-all/Türkiye-defamation-lawsuit-filed-against-journalist-canan-kaya

controversial "disinformation bill" in October 2022, aiming to criminalize disinformation, specifically, "spreading information that is inaccurate", in order to "create fear and panic" or "disrupt Türkiye's domestic and external security", "public order" and "public health".[854] The bill has been widely criticized and protested by human rights groups and journalists[855] for further restricting the freedom of expression, freedom of press and heavily influencing public debate and civic spaces. In addition, the multinational social media corporations, social network providers and instant messaging applications are required to establish country offices in Türkiye, respond to requests for information from the judiciary directly and in a timely manner, and share information on those creating content that "endangers the safety of life and property of people" with the law-enforcement agencies, with a risk of penalties and administrative fines.[856] It is likely that journalists and women human rights defenders who are critical of corporate human rights abuses (including state owned enterprises, or operations of public private partnerships) may have to self-censor or silence themselves in the face of the risk of prosecution based on the disinformation bill.[857]

In the Turkish context, the most common repercussions against women workers and labour unionists is wrongful termination. Such firings which are done symbolically to make an example can have a broad chilling effect, and deter other workers from speaking out against violations of labour rights or discourage them from unionizing. Some workers prefer not to take legal action by not following up with claims before the labour court (due to financial concerns) and immediately try to find alternative jobs specifically if they are the sole income of their households and if they are single mothers.

For environmental activists, lawsuits on the grounds of defamation or unfair competition are commonly observed. A recent example is the pending case filed by Sinpaş GYO against 57 year-old environmental activist and human rights defender Halime Şaman,[858] a member of Marmaris City Council Environmental Executive Committee and the spokesperson for Muğla

[854] Aslı Aydıntaşbaş, "Türkiye's new media law is bad news – but don't report it", (18 October 2022), available at: https://www.brookings.edu/blog/order-from-chaos/2022/10/18/Türkiyes-new-media-law-is-bad-news-but-dont-report-it/

[855] Bianet, "Türkiye's new 'disinformation law' explained", (2022), available at https://m.bianet.org/english/freedom-of-expression/268523-turkiye-s-new-disinformation-law-explained

[856] Law No. 7418 on Amendments on Press Law and Other Legislations (2022).

[857] "Fears For Journalist Safety As Türkiye Passes New Law Against Disinformation", (17 October 2022), available at https://www.ebu.ch/news/2022/10/fears-for-journalist-safety-as-turkiye-passes-new-law-against-disinformation; Bianet, "Türkiye's new 'disinformation law' explained", (14 October 2022), available at https://m.bianet.org/english/freedom-of-expression/268523-turkiye-s-new-disinformation-law-explained

[858] Sessiz Kalma, "Halime Şaman", (2023), available at https://www.sessizkalma.org/en/defender/halime-saman

Environmental Platform (MUÇEP). Şaman has been sued for damages by Sinpaş GYO due to her statements about the recent hotel and time-share housing projects planned by Sinpaş GYO, in İçmeler . The ongoing case carries typical features of abusive legal strategies against women human rights defenders. The project, for which Halime Şaman is sued, has been going on for 30 years. In August of 2021, the Ministry of Environment and Urban Planning decided that the hotel construction did not require the Environmental Impact Assessment (ÇED). The decision was objected by several environmentalists, including Halime Şaman, who explained in a briefing the serious pollution risk the project creates for Marmaris harbour, the serious mistakes in the assessment report and the very low chance of the project file being approved. On September 16th 2021, Şaman received a summons at her home. Sinpaş GYO had filed a lawsuit against her for damages. In the case overseen at the 5th Commercial Court of First Instance, the plaintiffs Sinpaş GYO and Kızılbük GYO demanded a compensation of 300,000 TRY from Halime Şaman on the grounds of unfair competition, and Şaman's press statements were submitted as evidence. A disproportionate financial compensation is being demanded by a retired civil servant, filed in Istanbul and requiring her to travel regularly from Marmaris, creating an extra economic burden. She shared during her defence: *"I have not shared any information that the plaintiffs didn't already possess. If there are any holes or mistakes in the information that I've shared, it is sourced by the plaintiffs themselves because I've only shared information based on open sources and plaintiff files. It is my duty as a civil servant to disclose these matters to the public. I am a retired person, how can I unfairly compete with two giant real estate investing companies?"*[859]

There have been cases in which Şaman, along with other Marmaris City Council members were detained in 2022 during a vigil, taken to the police station, spent the night in custody and had their phone confiscated, with the complaint of "violation of workplace immunity". The pending lawsuit is a typical example of using material compensation aiming to deter her from making further statements. On January 10th 2022, a group of environmentalist Marmaris went to the construction site accompanied by a journalist. Sinpaş officials blocked the group, which included Halime Şaman. Seeing that Şaman was talking to the reporter, Sinpaş officials accused her of *"giving interviews to leftist and PKK-supporting newspapers"*, and tried to provoke the workers by claiming that Şaman was *"trying to take their jobs away."*[860] There has been solidarity, shared by several environmentalist and feminist NGOs and individuals, as

[859] Ibid.
[860] Sinpaş'ın yaşam alanı savunucusuna açtığı davanın ikinci duruşması görülecek(2022), available at https://www.evrensel.net/haber/456589/sinpasin-yasam-alani-savunucusuna-actigi-davanin-ikinci-durusmasi-gorulecek

announced by Aegean City Councils Union, stating that Marmaris City Council Executive Committee member Halime Şaman is not alone, with a signed collective statement. However, the narratives about her political involvement, provocation towards workers, disproportionate and costly legal proceedings shows typical features of a SLAPP, used to deter and discourage women human rights defenders.[861] Two points are worth mentioning: First, corporations are fully aware of the unethical quality of their legal strategies and often refrain from publicly sharing or reporting their lawsuits against women human rights defenders. For example, there is no mention of the ongoing lawsuit against Halime Şaman, or the objections of Marmaris City Council in publicly available annual reports or sustainability reports of Sinpaş, or any press statements. Second, for the İçmeler construction case, in accordance with the shared concerns and objections of Halime Şaman and the Marmaris City Council, Muğla 3rd Administrative Court annulled the decision of environmental impact assessment (EIA) not being required regarding the project on 3 August 2022. Despite the court's annulment of the decision, Sinpas GYO continued the construction work for five days. The annulment decision was further approved by the Council of State in November 2022, much celebrated by the environmentalists and Halime Şaman, as shared in a press statement.[862] The only press statement with regard to the decision was shared on Public Disclosure Platform: *"It was announced on the Public Disclosure Platform (KAP) that the decision 'Environmental Impact Assessment (EIA) Is Not Required' given on 04.08.2022 for our Kızılbük Thermal Resort project was annuled by the Muğla 3rd Administrative Court. The relevant court decision was upheld by the Council of State. After the court decision, our company started the EIA process simultaneously with the Ministry of Environment, Urbanization and Climate Change, the EIA process is still ongoing….We would like to share with the public once again that our Company, which is not involved in any work or action that is against the laws, regulations and environmental factors, fulfills all legal requirements in this project as well."*

Another example would be the judicial harassment against Füsun Ergün, also known as Füsun Kayra, and Gülören Demir, ecofeminist activists, facing criminal proceedings on the ground of "prevention of public duty" for their participation in the İkizköy Akbelen Resistance, in a

[861] Ibid ; Evrensel, "Sinpaş'ın yaşam alanı savunucusuna açtığı davanın ikinci duruşması görülecek", (2022), available at https://www.evrensel.net/haber/456589/sinpasin-yasam-alani-savunucusuna-actigi-davanin-ikinci-durusmasi-gorulecek; Yeşil Gazete, "Sinpaş'ın çevre aktivistine açtığı 300 bin liralık davada ikinci duruşma", (2022), available at https://yesilgazete.org/sinpasin-cevre-aktivistine-actigi-300-bin-liralik-davada-ikinci-durusma/; Birgün, "Sinpaş'a karşı direnen yurttaşın davası ertelendi", (2023), available at https://www.birgun.net/haber/sinpas-a-karsi-direnen-yurttasin-davasi-ertelendi-418907

[862] Cumhuriyet, "Danıştay, Sinpaş'ın projesine verilen 'ÇED gerekli değildir' kararının iptalini onadı!", (2022), available at: https://www.cumhuriyet.com.tr/turkiye/danistay-sinpasin-projesine-verilen-ced-gerekli-degildir-kararinin-iptalini-onadi-2016609

series of peaceful protests aiming to protect Akbelen Forest in İkizköy Neighborhood located in Muğla, south-west of Türkiye, protesting against mining operations.[863] The lawsuit has been ongoing for over 3 years, with several adjournments, making the process abrasive and draining for human rights defenders. It should be noted that judicial interventions, or SLAPPs are not always initiated directly by the corporations but criminal complaint procedures and prosecution led by the state may also have similar restricting effects on human rights defenders. Füsun Kayra summarized the ecofeminist resistance against mining and construction projects and the understanding of ecofeminism behind the women-led watches and vigils, that they, as ecofeminists *"do not separate the domination of nature from the domination of women, and see women the same with nature, as same victims of phallocentrism standing at the center of the capitalist patriarchal system. The forcible seizing of nature, cannot be separated from the rape culture. The domination of the flattened wildlife that is cleared for plantation forests, industrial agriculture and mining areas cannot be seen as different from the imposing social pressures on women and masculine tyranny."*[864] Füsun Kayra is also well known for her feminist advocacy and her participation at the civil watch/vigil in Kaz Dağları (Mount Ida), in which local rural communities led by women and several civil society organizations resisted against the deforestation, the use of cyanide, and gold mining operations of Canadian Alamos Gold.

A young ecofeminist activist, Ferzan Aktaş, from Kaz Dağları Kardeşliği Initiative has shared the following: *"Women were at the forefront of the Kazdağları resistance, both in organizing and planning. We opposed the mine in a completely peaceful, nonviolent manner, organizing a walk every morning and every evening through the forest, about a mile and a half from the mine gate, where the company's machinery stops. We were trying to raise our voices against all ecological destruction: not just the Kazdağları or in Türkiye, but globally. The community formed by that watch was called Everywhere is Kazdağları. That's the name of the voice that came out of there.*"[865]

Two of the major resisting civil mobilizations against construction projects in Türkiye, aiming to protect Kazdağları[866] (Mount Ida) in Çanakkale (against the gold mining operations of

[863] Duvar, "Ağaç kesimine karşı çıkan İkizköylülere hapis cezası", (27 June 2023), available at: https://www.gazeteduvar.com.tr/agac-kesimine-karsi-cikan-ikizkoylulere-hapis-cezasi-haber-1625663
[864] Yeşil Direniş, "Kazdağları'nda, Sarıkız'ın eteğinde yaşıyorum!", (2021), available at: https://www.yesildirenis.com/2021/01/16/kazdaglarinda-sarikizin-eteginde-yasiyorum-fusun-kayra-2/
[865] Arts of the Working Class, "Her Yer Kazdağları", available at: https://artsoftheworkingclass.org/text/her-yer-kazdalari-everywhere-kazdalari
[866] SFB, "Aesthetics of Resistance: The Ways of Spatializing Women's Ecological Struggle in Türkiye", (25 November 2022), available at: https://sfb1265.de/en/blog/aesthetics-of-resistance-the-ways-of-spatializing-womens-ecological-struggle-in-Türkiye

Alamos Gold) and İkizköy-Akbelen[867] (against coal mining operations of YK Energy, a joint venture of Limak Holding and İÇTAŞ), have been led by rural women and ecofeminist activists, who have faced cases of physical violence[868] and "manhandling" by law enforcement officers, faced several suits for damages and criminal suits, stretched through a long period of time which took a serious mental and financial toll on the defendants.[869]

A recent example of strategic litigations against public participation from South Africa, is a defamation case filed by Mineral Commodities Limited, an Australian mining firm, and its South African subsidiary against six individuals (three environmental lawyers, two activists and a social worker), including two attorneys working for the Centre for Environmental Rights, who are known for defending environmental activists and women human rights defenders and for providing low bono and pro bono support. The company and its subsidiary sued the defendants for a total of 14.25 million ZAR (approximately 980,000 USD). The High Court of South Africa's approach to the case is rather promising: In 2021, the Western Cape High Court concurred with the human rights defenders' defense, dismissed the case and characterized it openly as a SLAPP lawsuit, and ruled that the case constituted an abuse of the Court's process.[870] In her ruling Deputy Judge President Patricia Goliath, made a powerful statement against the use of SLAPPs, that the lawsuits amount to an abuse of court process by the mining companies in an effort to *"weaponise the legal system against the ordinary citizen and activists in order to intimidate and silence them"* and further that the action *"matches the DNA of a SLAPP suit, ... constituting an abuse of process, and are inconsistent with our constitutional values and scheme."*[871] The mining companies have since approached the Constitutional Court directly to appeal the judgment. On 14 November 2022, the Constitutional Court delivered a landmark judgment,[872] confirming that South African law recognises a special defense against SLAPP suits. Justice Majiedt found that *"abusive*

[867] Sessiz Kalma, "Keep the Volume Up For Rights Defenders in Türkiye, Ikizköy Akbelen Resistance", (2023), available at:
https://www.sessizkalma.org/en/defender/ikizkoy-akbelen-resistance
[868] Ekmek ve Gül, "Akbelen Ormanı'nda nöbet tutan İkizköylü kadın: Jandarma kolumu morarttı", (2021), available at https://ekmekvegul.net/gundem/akbelen-ormaninda-nobet-tutan-ikizkoylu-kadin-jandarma-kolumu-morartti
[869] Ekmek ve Gül, "Yargılanan Akbelen savunucularına adli para cezası", (2023), available at https://ekmekvegul.net/gundem/yargilanan-akbelen-savunucularina-adli-para-cezasi; Yeşil Direniş, "Kazdağları'nda, Sarıkız'ın eteğinde yaşıyorum!", (2021), available at: https://www.yesildirenis.com/2021/01/16/kazdaglarinda-sarikizin-eteginde-yasiyorum-fusun-kayra-2/
[870] BHRRC, "S. Africa: Court slams mining giant for attempting to use a SLAPP suit to silence criticism and environmental activism",(2021), available at: https://www.business-humanrights.org/en/latest-news/s-africa-court-slams-mining-giant-for-attempting-to-use-a-slapp-suit-to-silence-criticism-and-environmental-activism/
[871]Mineral Sands Resources (Pty) Ltd and Others v. Reddell and Others (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC) (14 November 2022).
[872] Ibid.

litigation would fall within the common law doctrine of abuse of court process" which would *"consist of a consideration of both the merits and the motives for bringing the case".*

The Court recognised the serious consequences of SLAPPs for environmentalists and human rights defenders exercising their rights to freedom of expression and access to courts: *"SLAPP suits appear to be on the increase here, as is the case globally. The finding here that the common law doctrine of abuse of process can accommodate the SLAPP suit defence ensures that courts can protect their own integrity by guarding over the use of their processes. And, ultimately it ensures that the law serves its primary purpose, to see that justice is done, and not to be abused for odious, ulterior purposes."*[873]

Human rights advocates and civil society are increasingly concerned about the growing use of SLAPPs against NGOs and activists.[874] SLAPPs are often based on ambiguous and elastic provisions of law, and target individual women human rights defenders from local communities, poor neighborhoods or indigenous/working class background, as well as their legal representatives to exhaust resources, capacity and morale, to intimidate and lower their potential of mobilizing their communities. They often resort to motions, injunctions, and other procedurally onerous processes (particularly the expensive and resource-intensive discovery/disclosure processes) to impose heavy burdens on activists and civil society organizations, according to the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.[875]

There is surprisingly little to no research on the gender dimensions of SLAPPs, specifically in business and human rights contexts. However, there are several examples of SLAPPs targeting women human rights defenders who have active, mobilizing roles in their communities and who do not have the resources or know-how for proper legal representation and defense.

[873] Lee-Anne Bruce, "Constitutional Court rules 'SLAPP' suit defence forms part of our law", Wits University Centre for Applied Legal Studies (14 November 2022), available at: https://www.wits.ac.za/news/sources/cals-news/2022/constitutional-court-rules-slapp-suit-defence-forms-part-of-our-law.html

[874] Lisa Chamberlain, Growing Threats to Environmental Human Rights Defenders: The Latest Slapp Suit Developments In South Africa, 26 SAJELP 5 (2020), available at link.gale.com/apps/doc/A692582520/AONE?u=anon~5093a542&sid=googleScholar&xid=8da3a3ef. Accessed 13 June 2023.

[875] OHCHR, Info Note: SLAPPs and FoAA Rights, available at: https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx

Women's rights groups[876] and feminist activists, including women[877] who have shared their harassment stories as a part of the global #MeToo movement have been targets of SLAPPs on the grounds of defamation. There are many SLAPPs targeting women human rights defenders pending before South African courts, including the 197 million ZAR lawsuit filed by Century Property Developments and Riversands Developments against Johannesburg based environmentalist Kristin Kallesen and her non-profit, Greater Kyalami Conservancy (GEKCO) for the income they have lost because of her alleged "obstructive, delaying and frustrating" objections to their projects in Riversands and Helderfontein.[878]

The approach of South African Constitutional Court is a promising development, and it should be noted that a number of companies have recently adopted a *"zero-tolerance approach to violence against defenders and understand defenders' critiques as important early warnings of abuse or risks in their operations and supply chains"*, such as Adidas.[879] The UNGPs put a responsibility not only on states but also companies (including law firms) and investors to avoid infringing on the rights of others and to identify, prevent and mitigate human rights risks to defenders, which includes refraining from abuse of legal procedure through SLAPPs. There are calls for investors and companies to commit to a clear public policy of non-retaliation against defenders and organizations that raise concerns about their practices, and adopt a zero-tolerance approach on reprisals and attacks on defenders in their operations, value chains, and business relationships, as seen in examples of good practice. This should include a gender dimension to it, with a specific emphasis on the protection of women human rights defenders. A discussion is necessary with regard to how companies' track records and histories of SLAPPs can be included within the mandatory human rights due diligence and investment reviews. In addition, the stances of bar associations, law firms and lawyers with regard to refraining from representing companies in SLAPP suits, and the development and update of ethics codes against the practice of SLAPPs are critical.

---

[876] Dentons, "Dentons represents BC coalition of women's rights groups in Supreme Court of Canada interventions: a focus on protecting the vulnerable against weaponized SLAPP suits", (2020), available at https://www.dentons.com/en/insights/alerts/2020/october/27/dentons-represents-bc-coalition-of-womens-rights-groups-in-supreme-court-of-canada

[877] "A History Of Using SLAPP Suits To Silence Women",(2020), available at: https://www.rcmediafreedom.eu/layout/set/print/News/A-History-Of-Using-SLAPP-Suits-To-Silence-Women ; "There Is A History Of Using SLAPP Suits To Silence Women", (2018), available at https://www.shethepeople.tv/news/there-is-a-history-of-using-slapp-suits-to-silence-women/

[878] BHRRC, "S. Africa: Environmentalist sued for objecting to proposed projects by property developers", (2021), available at: https://www.business-humanrights.org/en/latest-news/s-africa-environmentalist-sued-for-objecting-to-proposed-projects-by-property-developers/

[879] BHRRC, SLAPPed but not silenced, Defending Human Rights In The Face Of Legal Risks, (2021), available at https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf

A deeply problematic practice of global law firms is their pro bono or low bono support towards "vulnerable groups" including women's rights organizations against SLAPPs in Global North contexts while initiating SLAPPs for their clients operating in Global South, as pointed out by a practicing interviewee based in South Africa.[880] This is an important indicator of the need for further focus on the responsibility of law firms and bar associations in order to build gender-responsive business and human rights mechanisms. Secondly, for all lawsuits discussed under this subchapter, the plaintiff corporations have not publicly shared that they have initiated such lawsuits and have left such information out of their annual reports or sustainability reporting vis a vis the diverse and inclusive corporate image and gender-equality focused corporate social responsibility profiles they build and promote. This is indicating their knowledge about the ethical questions or probably reputational damage such cases can cause. The deliberate, selective sharing of such information, specifically against women human rights defenders who are critical of the operations of such corporations, must be transformed through standardized sustainability reporting and publicly shared human rights due diligence reports.

While the call for anti-SLAPP legislation is reasonable, it should be noted that for host states like Türkiye, South Africa and Colombia, the discouraging impact of such legislation on potential investors might explain the unwillingness for initiating such legislative action. This has been expressed in South African context: the decision of the Constitutional Court is widely celebrated across the legal community with the *"extension of the protection afforded to freedom of expression and from a constitutional democracy point of view,"* however, pro-business communities have raised their concern and questions such as whether additional protection could have a negative effect on South Africa's development, and *"what will be the real social and economic impact for South Africa's sustainable development when developments do not proceed? What legal certainty is afforded to investors looking to invest in infrastructure development in South Africa when underlying policy invites such investment?"*[881]

Specifically in post-crisis periods in which economies are fragile, host states tend to prioritize setting an inviting market for foreign investors and focus on facilitating their operations, providing "greater regulatory certainty", "greater opportunities", "providing security" and

[880] There are no concrete examples found concerning the same global legal office representing simultaneously in such cases, however, this testimony is shared to emphasize the views of legal practitioners in the Global South.
[881] Cliffe Dekker Hofmeyr, The implications of the Constitutional Court's decisions on defamation and the existence of the SLAPP suit defence, (2022), available at: https://www.cliffedekkerhofmeyr.com/en/news/publications/2022/Practice/Dispute/dispute-resolution-alert-6-december-The-implications-of-the-Constitutional-Courts-decisions-on-defamation-and-the-existence-of-the-SLAPP-suit-defence.html

"building confidence" as stated commonly in Turkish National Development Plan 2019-2023, South African National Development Plan 2030 and Colombian National Development Plan 2022-2026, despite their unique and difference political agendas and emphasis.[882] The goal to create an inviting market for investments has been quite clear under the governments led by Erdoğan and Ramaphosa, while there there is a transformation from the purely pro-business approach of former Colombian President Uribe to a more pro-social justice under left-wing Petro, whom, regardless, has also been working to have good relationships with "*capitalist, market-oriented Colombia who create employment, attract internal and foreign direct investment and keep Colombia's economy stable.*"[883] It should also be noted that a heavy emphasis on sustainability of business operations seem to be weighing more on "the green side," with much focus given to climate change, carbon footprint and environmental impact of corporate operations, compared to the human cost and impact on labour rights or the livelihoods of local communities, setting a concrete example of the unbalanced expectations and limitations over corporate activities.

In addition to SLAPPs, women human rights defenders often face various forms of violence and threats. The killings of environmental activist women, such as Fikile Ntshangase from South Africa in 2020 is a recent example.[884] She was a leading member and a campaigner of the Mfolozi Community Environmental Justice Organization, which had been involved in a legal dispute over the extension of an opencast mine operated by Tendele Coal near Somkhele, close to Hluhluwe–Imfolozi park, which is one of the oldest nature reserves in Africa and an ancestral land to local Zulu community.[885] In October 2020, she was shot dead in her home by three gunmen, and no one has so far been charged.[886] Nsthangase had reportedly refused to sign a memorandum of agreement to withdraw court claims against the company, and shortly before her killing stated that she wanted to write an affidavit about an alleged bribe offer in

[882] Republic of Türkiye Eleventh Develpment Plan (2019), available at: https://www.sbb.gov.tr/wp-content/uploads/2022/07/Eleventh_Development_Plan_2019-2023.pdf; South African National Development Plan 2030, (2013), available at: https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf; Summary of the draft for Colombian National Development Plan (2022-2026), available at: https://finlandabroad.fi/documents/384951/0/Analysis.pdf/72a6dc51-c97d-8d9e-c37b-7eba209bb2ae?t=1682529757603

[883] Latin America Advisor, "What Will Petro's Presidency Mean for Colombia?", (2022), available at: https://www.thedialogue.org/analysis/what-will-petros-presidency-mean-for-colombia/

[884] Human Rights Watch, Still No Justice for Killing of South African Mining Activist, (2021), available at: https://www.hrw.org/news/2021/10/22/still-no-justice-killing-south-african-mining-activist

[885] "Lessons from the assassination of Fikile Ntshangase: Climate violence, the 'Right to say No!', uncompensated resource extraction, financial profiteering and unpaid ecological debt in South Africa's coal mining belt", (2021), available at: https://www.cadtm.org/Lessons-from-the-assassination-of-Fikile-Ntshangase-Climate-violence-the-Right

[886] Guardian, "The murder of Fikile: the woman who took on a coal mine", (2021), available at https://www.theguardian.com/news/audio/2021/sep/17/the-of-fikile-the-woman-who-took-on-a-coal-mine

return for her signature.[887] Lawyers representing the Somkhele community have shared that those who are objecting and mobilizing against the mining operations have received threats of violence and intimidation, and families that have refused to be relocated from their ancestral lands have reportedly been shot at by security staff.[888]

The mine owners, Tendele Coal Mine stated that any link to Ntshangase's is completely unfounded and called the incident a *"senseless killing"*, repeatedly sharing that they are operating lawfully, and that their expansion was necessary *"to keep the mine viable and protect 1,600 direct jobs and hundreds of indirect jobs in this impoverished part of the country,"*[889] which is a common development discourse used by extractive businesses.

The threats, physical attacks, property damages and killings of women activists in retaliation for criticism and resistance, specifically in Kwazu-Natal area in Eastern South Africa have been well documented and published in a 2019 report by Human Rights Watch in collaboration with the Centre for Environmental Rights and Earthjustice.[890] No arrests or proper investigations have been made about such attacks. The tendency to approach such killings of environmental activist women as random unsolved murders is common. While comprehensive and progressive legal protection against SLAPPs is a promising development for South Africa, the culture of impunity against gender-based violence and lack of prompt investigation of intimidation, threats, violence and other abuses threatening primarily the right to life remains to be the most urgent action needed to build effective, inclusive and gender-responsive justice mechanisms. The public institutions and corporations which are potential accomplices in such cases of violence must be put under further scrutiny. For example, there are cases in which the municipalities, governor's offices and public institutions have given locals false impressions that protests need to be approved even when there are no such legal requirements.[891] Furthermore, in several cases of such killings, companies have either stayed silent, almost never acknowledging the conflicts with the killed human rights defender or the objections of the communities, and refuting claims with short official statements and almost always pledging to cooperate with the state investigation without any recognition or support

[887] BHRRC, "Fikile Ntshangase - Mfolozi Community Environmental Justice Organisation (MCEJO)", (2020), available at:https://www.business-humanrights.org/en/latest-news/fikile-ntshangase-mfolozi-community-environmental-justice-organisation-mcejo/
[888] Ibid.
[889] Guardian, "The murder of Fikile: the woman who took on a coal mine", (2021), available at https://www.theguardian.com/news/audio/2021/sep/17/the-of-fikile-the-woman-who-took-on-a-coal-mine
[890] Human Rights Watch, "'We Know Our Lives are in Danger': Environment of Fear in South Africa's Mining-Affected Communities" (2019), available at: https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected
[891] Ibid.

to the communities.[892] While killings of women human rights defenders are often unsolved with unknown perpetrators, the role of the police, government officials, specifically private security providers that act on behalf of mining companies (which sometimes happen to be paid paramilitary groups or ex members of such groups with sexual violence allegations against them in armed conflict contexts, as shared by a BHR expert in Colombia) require further scrutiny. Those actors who may initiate or facilitate such attacks or who use disproportionate physical force against protestors should face prompt, thorough and impartial investigations.

The potential indirect links of killings of women human rights defenders and the companies against which they protest must be efficiently searched. Threats, exclusion and intimidation by other community members against activists often stem from the demagogues created against them, accusing them or preventing employment opportunities for local able-bodied men and economic benefits for the community, blaming them to get involved in men's business which is beyond their capacity. In some cases, government officials or corporation staff deliberately exploit the divides among the community, stigmatize and target activists on social media,[893] use misogynistic, agitating language and stigmatize the opposing activists women.[894] An interviewee representing the South African Commission for Gender Equality has shared that in some cases, high level bureaucrats, including ministers publicly call out and target women human rights defenders, resulting in such figures losing their social currency and credibility within their own communities.[895]

Similar to South Africa, the attacks and the prevalent killings of business and human rights defenders in Colombia is an alarming problem. Colombia is one of the most dangerous countries in the world for human rights defenders,[896] and was officially recorded as the

[892] Joshua Robertson, "Australian mining company denies role in murder of South African activist," Guardian, (25 March 2016), available at: https://www.theguardian.com/environment/2016/mar/25/australian-mining-company-denies-role-in-of-south-african-activist (accessed July 12, 2018).
[893] BHRRC, "Colombia: Colectivo juvenil de Cajamarca, Tolima denuncia campaña de desprestigio de AngloGold Ashanti, que pondría en riesgo la vida del líder Robinson Mejía; con respuesta de la empresa", (2021), available at https://www.business-humanrights.org/es/latest-news/colombia-colectivo-juvenil-de-cajamarca-tolima-denuncia-campa%C3%B1a-de-desprestigio-de-anglogold-ashanti-que-pondr%C3%ADa-en-riesgo-la-vida-del-l%C3%ADder-robinson-mej%C3%ADa-con-respuesta-de-la-empresa/
[894] Human Rights Watch, "'We Know Our Lives are in Danger': Environment of Fear in South Africa's Mining-Affected Communities" (2019), available at: https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected
[895] Oral interview with a representative from the South African Commission for Gender Equality (February 2023).
[896] BHRRC, Business And Human Rights Defenders in Colombia: Urgent Protection Needed For People Protecting Land, Territory And The Environment, (2022), available at: https://media.business-humanrights.org/media/documents/2020-2021_HRDs_in_Colombia.pdf

deadliest country for human rights defenders in 2022, with 186 killings, 46% of global total registered, according to Front Line Defenders.[897]

More than half a century of internal armed conflict, violence related to organized crime, and dominance of land-intensive and extractive industries (such as mining, oil, gas, coal and fracking projects) have created an insecure, violence-prone climate of systemic intimidation of social leaders, unionists and feminist activists in Colombia. Since 2015, Business and Human Rights Resource Centre (BHRRC) has collected data on attacks against human rights defenders (HRDs) raising concerns about the human rights impacts of business operations: attacks on women human rights defenders related to business has been increasing every year with 137 attacks recorded in 2019, more than half of which are indigenous women, women of colour and affected community leaders. [898] The 2019 data on Colombia shows that at least 72 defenders have been killed because they were raising business-related human rights concerns. 90% of attacks were on defenders working on either mining, fossil fuels, and agribusiness, or hydroelectric plants and dams, and the districts with high investment in these industries were the most dangerous for human rights defenders. OHCHR and BHRRC have reported cases of sexual violence against women human rights defenders by police officers. According to BHRRC, 58 new attacks against HRDs raising concerns about business were reported between 2020 and 2021, contributing to a total of 239 recorded since 2015. The business sectors linked to attacks against HRDs in Colombia recorded by the BHRRC were oil, gas and coal; agribusiness (including banana, sugar and palm); mining; private security, transportation and hydropower and other sources of renewable energy, with the majority of attacks targeting land and environmental defenders. Tracking attacks and linking them to businesses is difficult and the already restricted, publicly available data is not gender segregated, with many cases of unreported attacks.

It is important to discuss, at this point, the gender dimension of attacks against women human rights defenders advocating against business operations, and how it is unique for the Colombian context. An important aspect is the non-compliance of the Peace Agreement and the aggravated vulnerability of women defenders of agricultural and environmental rights due

[897] Guardian, "Almost half of human rights defenders killed last year were in Colombia", (2023), available at https://www.theguardian.com/world/2023/apr/04/colombia-human-rights-defenders-killings-2022; Frontline Defenders, "Statement – Colombia: Failure to protect, threats and killings of human rights defenders continue in Magdalena Medio with impunity", (2022), available at: https://www.frontlinedefenders.org/sites/default/files/statement_colombia_magdalena_medio_eng.pdf

[898] BHRRC, Human Rights Defenders & Business - Annual Snapshot, (2020), available at: https://www.business-humanrights.org/en/from-us/briefings/human-rights-defenders-business-annual-snapshot/

their territories becoming highly desirable property during the peace process. In August 2016, the Peace Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace was signed. However, the long-awaited and highly debated, partially celebrated - partially interiorized the Peace Agreement and the ongoing transitional justice process remains fragile. Certain "abandoned" rural regions are still under the risk of armed conflict and ongoing violence; and to date, only a small section of Peace Agreement provisions have been completed and almost half have not yet been initiated. The disarmament of the FARC has led to the emergence of a new wave of armed groups, and a power vacuum which got seized upon by legal and illegal extractive corporations and monoculture agribusinesses, extending activities and often excluding local communities.[899]

Women human rights defenders have played a crucial role in peacebuilding, through transitional justice and for the implementation of the Peace Agreement. A gender approach has been one of the guiding principles of the Peace Agreement: women and LGBTI+ activists of Afro-Colombian and indigenous background are actively engaged in the process. Priority is given to rural women, female heads of household and victims of the conflict in the rural land access for the transformation of rural Colombia. Lastly, affirmative action measures are stipulated to strengthen the participation and leadership of women in public affairs.[900] Despite a gender responsive text and a yet-to-be-completed peace process, the role of multinational corporations and private sector, and the gendered aspect of corporate violations of human rights are not dealt with in detail within the agreement. Rather than the accountability of businesses in armed conflict and their responsibility for peacebuilding, the focus has been on promotion of private sector's participation as a stakeholder. The strong orientation towards the needs of businesses and the aim of the private sector thriving for rural development is also visible in the first business and human rights action plan of Colombia, as criticized by human rights civil society.

Colombia's long history of inequalities and poverty, and most recently, the transitional justice process have mobilized women to assume leadership roles in human rights advocacy, as human rights defenders with intersectional identities and constituencies as youth, indigenous and Afro-Colombian women, peasants, academics, students, lesbian, bisexual and trans

[899] Oxfam, Women Defenders of Agricultural, Territorial, And Environmental Rights In Colombia Risking Their Lives For Peace, (2019), available at https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620872/bp-colombia-women-environmental-defenders-021019-en.pdf;jsessionid=24277269F3C6C2146E42DFFAA8B77A12?sequence=2

[900] The Office of the High Commissioner for Peace of Colombia, Colombian Peace Agreement, (2022), available at https://www.ila-americanbranch.org/wp-content/uploads/2022/10/The-Columbian-Peace-Agreeement.pdf

women, artists, victims, ex-combatants and more. They have created diverse collective processes and social networks, unique forms of resistance and played a crucial role in peacebuilding. The forms and impacts of violence against them have differential characteristics with respect to other defenders, most importantly, through sexual violence in armed conflict, with indigenous, peasant, queer women facing aggravated risks. According to Pajardo and Palacio, women's visibility in the defence of peace during the Peace Accord process had high costs for them, firstly because they supported the implementation of the Peace Accord while certain sectors opposed it, specifically with regard to land rights.[901] Secondly and most importantly women in defense of the Accord defied the low-key behaviours traditionally expected from women in Colombia political arena. [902]

While there is no comprehensive study about the women human rights defenders who are specifically advocating against corporations, the studies with regard to the killings of women human rights defenders in the peace process are important and illustrative. Notably, Fajardo has evidenced the relationship between the beginning of the peace process in 2012 and the participation of women until the achievement of the Final Agreement in 2016, with the increase in murders year after year.[903]

The absence of characterization of the facts of these killings, in parallel with femicides in all three selected countries, create an impossibility of determining whether cases consist of acts of femicide, and whether they are in connection with business activities. The killings of women human rights defenders indicate that some murders were committed with cruelty, with signs of sexual violence and may be commited as "exemplary" murders, to silence the local communities.[904] Women human rights defenders face the structural difficulties of women, in general, face in accessing justice, and cases of sexual violence remain highly under-reported.

The peace process in Colombia is ongoing, through which the conflict can reconfigure with economic interests, and in cases where women environmental defenders face aggressions, when they are identified as military targets by criminal structures and paramilitary groups. In

[901] July Samira Fajardo & María Adelaida Palacio, The marks of gender in the defence of human rights in Colombia, 31 Gender and Development 53, (2023).
[902] Ibid.
[903] Corporacion Humanas, Ni en tiempos de guerra ni en tiempos de paz: que la defensa de los derechos humanos no nos cueste una vida más, (2017), available at: https://www.humanas.org.co/ni-en-tiempos-de-guerra-ni-en-tiempos-de-paz-que-la-defensa-de-los-derechos-humanos-no-nos-cueste-una-vida-mas-2/ (Parts of the report has been translated by the author using ChatGPT.)
[904] Ibid.

such cases, the business factor of such conflicts and aggressions are not visible, and the attacks are categorized under ongoing political armed conflict, terrorism and violence.

In relation to violence against women leaders and defenders, data is scarce and the systems for recording information are insufficient. 229 murders were identified in Colombia, committed against women leaders and human rights defenders between 2012 and September 2022. Additionally, there is information systematized by the Corporación Sisma Mujer (a feminist legal NGO) which has identified a number of aggressions, besides murder, between 2016 and 2020, ranging around 452 cases, and recognising high levels of under-reporting.[905] Between 2016 and 2019, 55 women defenders were killed and in the first half of 2019, there was one women social leader murdered, on average, every two weeks[906]. Based on this data, it also became evident that the women leaders most affected by murder between 2012 and September 2022 were indigenous (28%) and community leaders, members of Community Action Boards (JACs) (28%), peasant leaders (7%), and lesbian, bisexual or trans women defenders (7%).[907]

The sexist characteristics of such aggressions are also recognized by the Inter-American Commission on Human Rights (IACHR)[908], as it has granted Yirley Judith Velasco Garrido, a rural women's rights defender and the legal representative of a grassroot's women's NGO, precautionary measures and for the first time recognizing the gender marks in the threats perpetrated against her, through different means (telephone, messages, and through social networks) in its jurisprudence. Threats included the message *"we will give you a lead if you continue to defend bitches,"* as well as other private information in retaliation for her legitimate work on behalf of women's rights.[909] The Commission found in its Resolution 40/2020 that, unlike the threats made against men, the language used in the aggression was intended to diminish her work by attacking her status as a woman. Accordingly, it recognized the

[905] Corporación Sisma, Patrones de violencia sociopolítica de género contra lideresas y defensoras de derechos humanos en Colombia: Claves conceptuales y metodológicas 2016–2020, (2022), available at: https://www.sismamujer.org/lideresas-y-defensoras-publicaciones/.
[906] Oxfam, Women Defenders of Agricultural, Territorial, And Environmental Rights In Colombia Risking Their Lives For Peace, (2019), available at https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620872/bp-colombia-women-environmental-defenders-021019-en.pdf;jsessionid=24277269F3C6C2146E42DFFAA8B77A12?sequence=2
[907] July Samira Fajardo & María Adelaida Palacio, The marks of gender in the defence of human rights in Colombia, 31 Gender and Development 53, (2023).
[908] Yirley Judith Velasco Garrido y núcleo familiar respecto de Colombia, Inter-Am. Cm. H. R., 40/2020, (2020).
[909] Frontline Defenders, "Death Threat Against Woman Human Rights Defender Yirley Judith Velasco Garrido", (2020), available at https://www.frontlinedefenders.org/en/case/death-threat-against-woman-human-rights-defender-yirley-judith-velasco-garrido

existence of a urgent risk of suffering irreparable damage to their rights in the context of Velasco Garrido's work as a social leader and woman human rights defender in Colombia.[910]

The Colombian Constitutional Court and Colombian Truth Commission have both had a gender responsive approach towards gender-motivated attacks against women human rights defenders, which is important for identifying the characteristics of the risk faced by women leaders and defenders, to build adequate and effective response mechanisms. The Colombian Constitutional Court, in a 2013 ruling,[911] defined the concept of socio-political violence against women. The ruling explained that such type of violence intends to send the message that this work is not for women, and characterized by the use of gender-based violence as punishment. These punishment threats may range from, sexual violence and intimidation with sexist content, to attacks against their loved ones. The Colombian Constitutional Court has played a trailblazing role in this aspect, as the Colombian Truth Commission have referenced and used this approach while discussing the situation of peasant women defenders of rural territories during the armed conflict:

"For peasant women, this [the defence of the territory] entailed punishment, not only for defending a project and rights that were opposed to the political and economic interests of the armed group in power in the territory, but also for being women who occupied places of leadership, visible in the public sphere, which were typical for men. In fact, the Constitutional Court, in order 092 of 2008, recognised the risks they ran because of their gender. Among the ten factors identified[912] that placed them in conditions of special vulnerability were the fact that they belonged to social and community organisations, played leadership roles, and defended human and territorial rights."[913]

The gendered characteristics of aggressions are well-recognized by the judiciary, and civil society's efforts to monitor the violations of the women human rights defenders' rights is valuable. However, the high rate of impunity, ineffective investigations, under-reporting and the lack of concrete strategies to identify the actors behind the planning and materialization of these aggressions are significant barriers. Most importantly, a problematic approach in all gender-responsive and progressive rulings is the disproportionately state-centric approach and

[910] Yirley Judith Velasco Garrido y núcleo familiar respecto de Colombia, Inter-Am. Cm. H. R., 40/2020, (2020).
[911] Corte Constitucional [C.C.], Sentencia, Auto 098/13, arose as a follow-up to Corte Constitucional [C.C.], Sentencia, T-025/05 (20 January 2005), on forced displacement in the context of the armed conflict.
[912] Corte Constitucional [C.C.], Sentencia, Auto 098/13.
[913] Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, Hay futuro si hay verdad, (2022), p.7, available at: https://www.comisiondelaverdad.co/sites/default/files/descargables/2022-07/Informe%20final%20Mi%20Cuerpo%20Es%20La%20Verdad%20mujeres%20LGTBIQ.pdf,

the lack of consideration given to the corporate accountability in these deeply gendered aggressions. The final report of the Colombian Truth Commission has dedicated an entire thematic chapter on the topic of violence against women and LGBTI+ people and their role in peacebuilding as defenders.[914] However, when corporate accountability -as the responsibility of economic actors, including companies- is mentioned within the transitional justice process, there is almost no mention of a gendered approach.

The most important finding is the lack of intersection between gendered approaches to transitional justice and corporate accountability. This has been the case within the transitional justice process of South Africa as well. The overall conclusion of the South African Truth and Reconciliation Commission (TRC), in its findings arising out of business sector hearings, had concluded as follows:

"Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefited from co-operating with the security structures of the former state. Most businesses benefited from operating in a racially structured context."[915]

Similarly, an interesting and unique feature of the transitional justice framework in Colombia is the fact that it would not focus solely on combatants in illegal armed groups and state agents, but also on third parties or non-combatants who participated directly or indirectly in the armed conflict, which include businesses.[916] Investigating corporate accomplices throughout the Colombian peace talks implies acknowledging that the domestic conflict in the country was more than just an armed confrontation between insurgent groups and state forces over more than 60 years, with the involvement of different sectors of society and economic powers that have not only benefited from, but also contributed to, serious human rights violations and the phenomenon of land concentration.[917]

---

[914] Natalia Venegas, Colombian Truth Commission's Final Report, Geneva International Centre for Justice, (20 July 2022), available at: https://www.gicj.org/positions-opinons/gicj-positions-and-opinions/2810-colombian-truth-commission-s-final-report

[915] Truth and Reconciliation Commission Report, Vol. 4, Chapter 2, "Findings arising out of business sector hearings", (1998), para 161, available at: http://www.justice.gov. za/trc/report/

[916] Final Agreement to End the Armed Conlict and Build a Stable and Lasting Peace; Colombian government and FARC-EP, (12 November 2016), Arts. 15, 34, 50(f).

[917] Institut Català Internacional per la Pau, Companies in Conflict Situations: Building a research network on Business, Conflicts and Human Rights, (2013), available at: https://www.icip.cat/wp-content/uploads/2020/11/web_-_icip_research_num_01.pdf ; Alejandro Jiménez Ospina, "The role of economic actors in Colombia's armed conflict: How much do we know?", Dejusticia, (2 March 2018), available at: https://www.dejusticia.org/en/column/role-economic-actors-colombias-armed-conflict-much-know/ ; Pax for Peace, "Peace, everyone's business! Corporate accountability in transitional justice: lessons for Colombia",

Coming back to the issue of killings and attacks towards women human rights defenders, a promising normative precedent is the Comprehensive Programme of Guarantees for Women Leaders and Defenders (PIGMLD) programme in Colombia, which is a public policy tool designed for the protection, with a gender and comprehensive approach, of women leaders and human rights defenders, as an achievement of women's rights movement following an advocacy of longer than 10 years.[918] The pilot PIGMLD Action Plan has recently ended and a new action plan will be developed in the upcoming years.

In this respect, it might be helpful to focus on the lessons to be learned from the PIGMLD. The Programme was found to be at a low level of compliance in most of its components and, in general, it was found that the measures adopted do not have the potential to mitigate the risks faced by women. In the prevention component, it became evident that the measures were merely formative calls, without a clear strategy for capacity building. For example, it was difficult for women in the territories to access educational offers, as they had difficult requirements for enrolment and did not adapt to their time needs. In the protection component, women received inadequate protective measures not appropriate for the contexts, such as bulletproof vests which were never worn in regions with extremely hot climates all year round. In other cases, women leaders were allocated cars for their movements but were not given enough money to fill gas; they were surrounded by security men which did not create a safe environment and further stigmatized and attracted attention to them. Lastly, in the component of guarantees of non-repetition, the persistence of challenges of women's access to justice, and insufficient investigations destined to fail towards identifying businesses, involvement in harassments or the economic motivations behind violence, by either rapidly closing the files as inconclusive or describing violations as "skulduggery" incidents, individualizing attacks instead of accepting the systematic oppressions of women human rights defenders, which indicates how law enforcement officers do not internalize the motivation behind such protection programmes.

When it comes to the use of SLAPPs and other forms of threat and violence, prompt investigation, properly planned and funded prevention, non-repetition guarantees, and transparent and detailed reporting of intimidation, threats, violence and other abuses against women human rights defenders are necessities with priority. This is a pre-condition to build

(2017), available at: https://www.dejusticia.org/wp-content/uploads/2017/05/PAX_COL_PZ_BIZ_FINAL_WEB.pdf

[918] July Samira Fajardo and María Adelaida Palacio, The marks of gender in the defence of human rights in Colombia, Gender & Development 31(1), (2023).

effective, inclusive and gender-responsive business and human rights mechanisms in Türkiye, Colombia and South Africa. Ensuring the safety of women human rights defenders in a business and human rights context is crucial since they often champion the rights of marginalized and vulnerable groups and be their voice when justice seeked against corporate violations. Threats towards women human rights defenders may have a chilling effect on civil society's ability to engage and hinder the possibility of an open and vibrant civic space for dialogue, advocacy, and accountability. It's important to recognize that women human rights defenders' advocacy should not be viewed as a hindrance to development but rather as an opportunity for progress. They have the capacity to motivate corporations towards adopting improved practices, greater transparency, enhanced reporting mechanisms, and more benefits for their communities and the environment. Notwithstanding the indispensable fundamental human rights of women human rights defenders, from a business perspective, it is evident that any threats directed at these defenders can be intricately linked back to the corporations they address. This linkage, particularly in the age of social media, can lead to rapid and widespread international scrutiny, potentially causing significant reputational damage. Ensuring the safety of women human rights defenders is not merely a matter of legal compliance but a fundamental step towards a more gender-responsive business and human rights mechanisms.

4.13. Gender-Blind Preventive Mechanisms as the Dead End of Implementation

Preventive measures, including human rights due diligence are core requirements for businesses in fulfilling their responsibility to respect under the UNGPs. A common prerequisite for gender responsive BHR mechanisms raised by BHR experts in UN Working Group's documents,[919] in research reports[920] and throughout the interviews held for this dissertation, is to put more effort and resources into gender responsive preventive measures before having to provide remedies after violations happen, in order to address the root causes and to transform patriarchal structures. This has been described as the need for "pursuing preventive solidarity strategies" by an independent expert.[921]

[919] UN General Assembly Meetings Coverage, "Preventive Measures, Accessible Remedies Required to Address Myriad Human Rights Violations, Experts Tell Third Committee During Interactive Dialogues", GA/SHC/4206 (17 October 2017), available at https://press.un.org/en/2017/gashc4206.doc.htm

[920] Danish Institute for Human Rights, Nora Götzmann and Kayla Winarsky Green, Addressing The Gender Dimensions Of Business And Human Rights: A Summary Report From Three Thematic Gender Learning Exchanges On The Digital Transition, National Action Plans And Feminist Approaches, (2021), available at: https://www.humanrights.dk/publications/addressing-gender-dimensions-business-human-rights

[921] UN General Assembly Meetings Coverage, "Preventive Measures, Accessible Remedies Required to Address Myriad Human Rights Violations, Experts Tell Third Committee During Interactive Dialogues", GA/SHC/4206 (17 October 2017), available at https://press.un.org/en/2017/gashc4206.doc.htm

There are many different forms of preventive measure practices in Colombia, South Africa and Türkiye, such as human rights due diligence, prior informed consultations, community gatherings through the use of indigenous justice mechanisms, licensing and certification. Regrettably, a majority of such practices remain gender-blind. This is partially due to a limited understanding of sustainability related responsibilities of corporations, in which green transition, carbon footprints and environmental impacts are exclusively identified with sustainability, while social justice and equality are still categorized under voluntary ESG initiatives and not completely included under the mandatory due diligence and reporting duties of corporations.

Conversations with feminist NGOs and indigenous women human rights defenders have revealed the need for decolonial feminist critical scrutiny on a much appraised and advocated business and human rights practice: free, prior, informed consent (FPIC) for business operations, specifically in Colombian context for extractive businesses in indigenous lands of Colombia. Following the 1991 Constitution, indigenous justice systems have been recognized in Colombia, along with the right to free, prior, informed, consent. The 1991 Constitution not only recognized it but the Constitutional Court extended it to both indigenous peoples and AfroColombian communities through its jurisprudence.

Several international documents, mainly, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention on Biological Diversity and the International Labour Organization Convention No. 169, recognize the rights of indigenous people, and provide the basic criteria for the practice of free, prior and informed consent (FPIC). These criteria are also confirmed by the interpretations of the Special Rapporteur on the Rights of Indigenous Peoples. However, gender representation and meaningful engagement of rural and indigenous women and girls in FPIC is rarely mentioned[922] and are not included within the basic criteria and standards, except a few international documents. For example, CEDAW's General Recommendation No. 34 on the Rights of Rural Women, recognized, for the first time under the UN human rights treaty system, rural women's right to FPIC before development projects are carried out on their lands. It required states to ensure that rural development

[922] Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Standard-Setting Legal Commentary on the Concept of Free, Prior and Informed Consent, E/CN.4/Sub.2/AC.4/2005/WP.1, (14 July 2005), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=223729.https://www.ohchr.org/Documents/Issues/IPeoples/WG/E-CN4-Sub2-AC4-2005-WP1.doc

projects are implemented only after participatory gender and environmental impact assessments are conducted with full participation of rural women, and after obtaining their free, prior and informed consent. In these international documents stipulating indigenous peoples' rights, FPIC obligations are solely put on states. The accountability of corporations, or rural and indigenous women's representation are not mentioned.

Indigenous women's active engagement and meaningful inclusion are not only necessary for the promotion of gender equality, but also to ensure that the primary affected stakeholders are properly informed and involved, and that they can consent. Indigenous women's role as knowledge keepers and leaders of their communities (notwithstanding the patriarchal structures) are crucial here, as they are *"custodians of a collective accumulation of scientific knowledge and technical skills related to food and agriculture, health and medicine, natural resource management, weather patterns, language, textiles, arts, crafts and spiritual practices."*[923] UN Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay has reported them being described by their own communities as *"teachers, caretakers, healers, guardians of community values, protectors, leaders, adjudicators, first responders and keepers of scientific, cultural and spiritual knowledge."*[924] Women's knowledge is critical for maintaining cultural identity; conflict resolution through indigenous justice; risk management; achieving sustainable development; and building resilience in the face of pandemics and other crises. Their commitment to the community and natural resources, engagement and knowledge are often seen in examples where rural and indigenous women were on the frontline of the Akbelen resistance in Muğla, Türkiye; the Lake Tarapoto protests of the Tikuna, Cocama, and Yagua (Ticoya) Indigenous people in Colombia,[925] in the protests of Khoi and San women against the construction project for Amazon's new African headquarters in South Africa.[926] Such knowledge and perspective is often missing within the FPIC practices. Indigenous women are particularly, disproportionately impacted by the

[923] OHCHR, "Human Rights Council Hears that It Is Crucial to Respect the Rights of Indigenous Peoples when Infrastructure, Development, and Natural Resource Extraction Projects in or near their Territories Are Undertaken", (27 September 2023) available at: https://www.ohchr.org/en/news/2023/09/human-rights-council-hears-it-crucial-respect-rights-indigenous-peoples-when

[924] Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Standard-Setting Legal Commentary on the Concept of Free, Prior and Informed Consent, E/CN.4/Sub.2/AC.4/2005/WP.1, (14 July 2005), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=223729.https://www.ohchr.org/Documents/Issues/IPeoples/WG/E-CN4-Sub2-AC4-2005-WP1.doc

[925] "Indigenous women in Colombia protect rich Amazonian wetland from overfishing", (2023), available at https://news.mongabay.com/2023/04/indigenous-women-in-colombia-protect-rich-amazonian-wetland-from-overfishing/

[926] Dalena Tran, Realities beyond reporting: women environmental defenders in South Africa realities beyond reporting: women environmental defenders in South Africa, 23 Feminist Media Studies 2152 (2022).

operations of extractive industries on their lands, through the devaluation of their knowledge, the loss of access to and ownership of lands, deprivation from their community roles, occupations and ability to maintain and transmit their knowledge. The deep impact of indigenous and rural women's experiences are perfectly summarized in how local women call the tactics of companies aiming to make living unviable in the disputed regions and dricing the population out: *estrangulación* or strangulation.[927]

The three following testimonies are from interviews with indigenous women's rights activists and lawyers working in the field in Colombia:

"How can they know if the chiefs have consulted to us? They only ask for the blessings of the male leaders, who happen to be good friends (gesturing money) with the companies and his vote equates to the vote of the whole community. He doesn't ask for what the community wants he barely talks to the women. …. If they gather us in a room with men and women all together, I can't talk comfortably. I can speak easier if it is a circle of women. How can I tell what is on my mind when the person I want to complain about is in that exact room?"[928]

"The recognition of indigenous justice was not really beneficiary for indigenous women. They only consult or inform the chief, and that is it."[929]

"I don't think they want the loud women in the room. That is why they barely announce the consultations, if there are any, or they strategically hold them in times and places where local women with caring responsibilities can't make it or they hear about it after the meeting takes place".[930]

Indigenous participation is most definitely a pathway to decolonialism, and FPIC plays a vital role in the decoloniality process, especially in terms of preserving indigenous land and identity, giving them the right to participate as a political community in development projects according to their worldview; using their local knowledge; and, exploring local solutions. However, based on the conversations with indigenous women, those indigenous voices that

[927] OECD Watch, "Colombian communities vs. Xstrata: BHP Billiton and forced evictions at Colombian coal mine", available at: https://www.oecdwatch.org/complaint/colombian-communities-vs-xstrata/
[928] Oral interview with a human rights defender from Colombia (February 2023).
[929] Oral interview with a legal practitioner from Colombia (February 2023).
[930] Oral interview with a legal practitioner from Colombia (February 2023).

are heard are often male voices.[931] Within indigenous justice systems, women may face patriarchal prejudice and have limited voice and participation as well. Creating a one-dimensional indigenous identity and the lack of an intersectional approach result in indigenous communities being tokenized in many political processes.

In addition, the interviewees have criticized a colonial, simplifying image of homogenous indigenous front. Indigenous communities, among themselves, have serious conflicts, hierarchical structures of power and women have expressed time after time that they can often comfortably express themselves in women-only consultation sessions. The planned construction for the African headquarters of Amazon has created a serious debate among Khoi and San communities and has reportedly deepened the divide among indigenous communities' political organizations in Cape Town, sparking debates about who can claim indigenous heritage and can speak on behalf of the communities, through a polarization among vocal male leaders, some of which support the project (which is presented as indigenous communities' full support by the developers) and some of which object. In the meanwhile, there is no involvement or platform available for Khoi and San women.[932] Within indigenous justice systems or practices of FPIC, women are not always included in decision-making processes about land and resources, even when they are in the room. Promoting meaningful engagement instead of mere invitation, and paying attention to who is in the room and who is given time and space for informed consent and expression are crucial for FPIC to be gender-responsive.

[931]For more information on FPIC and Indigenous Women's Rights, see OHCHR, "Annual thematic reports: Special Rapporteur on the rights of indigenous peoples", available at https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/annual-thematic-reports ; Danielle DeLuca, "Rural Women's Right to Free, Prior and Informed Consent", Cultural Survival, (7 June 2016), available at https://www.culturalsurvival.org/publications/cultural-survival-quarterly/rural-womens-right-free-prior-and-informed-consent; FAO, Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities, (2016), available at: https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/;
César Rodríguez Garavito and Carlos Andrés Baquero Díaz, The Right to Free, Prior, and Informed Consultation in Colombia: Advances and Setbacks, OHCHR, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/GaravitoAndDiaz.pdf ?;
Due Process of Law Foundation, Right to Free, Prior, and Informed Consultation and Consent in Latin America Progress and challenges in Bolivia, Brazil, Chile, Colombia, Guatemala, and Peru, (2015), available at https://www.dplf.org/sites/default/files/executive_summary_consultation_2015_web_02-17-2016_c.pdf.

[932] John Eligon, "New Amazon Headquarters Sparks Feud Among Indigenous South Africans", New York Times, (26 February 2022), available at: https://www.nytimes.com/2022/02/26/world/africa/south-africa-amazon.html ; Linda Givetash, "South Africa's Indigenous People Fight Planned Amazon Headquarters in Court", VOAV News, (21 January 2022), available at https://www.voanews.com/a/south-africa-s-indigenous-people-fight-planned-amazon-headquarters-in-court-/6407067.html

An interviewee, who is a representative of private sector, has shared her experiences from consultation processes for energy projects in Cabo de la Vera in Guajira and in Llanos in Colombia, where she spended extra effort and energy to make sure indigenous women are included within the consultation meetings, at times having to reschedule or relocate the meetings to make them more accessible and convenient:

"In the Lillianos Regions, they ask: who are the traditional authorities? We are only going to reach out to them, that is what I am obligated to do. They don't go and reach out to or even speak to women, they don't even put an extra effort. If I am not there to object and put an extra effort, then nothing is done for the local women."[933]

The Colombian model of FPIC is widely celebrated as a successful example for indigenous peoples' engagement,[934] through a combination of the Constitutional Court's jurisprudence and indigenous groups' insightful political and legal mobilization, the practice has been significantly improved and *"is often considered a model to emulate how to regulate, litigate, and claim this right"*.[935] However, as shared in the interviews, even the most appreciated model lacks a gender perspective.[936] The well-established jurisdiction of the Colombian Constitutional Court requires further scrutiny. The Court has been upholding the fundamental FPIC right of indigenous peoples and afro descendant communities in its well-established case law, since 1997,[937] mostly with regard to large extractive projects. The Court has ordered the suspension of many projects in several rulings because the FPIC rights of indigenous people and Afro-Colombian communities have not been respected, or were held inadequately.[938]

In line with the basic criteria required for a consultation process, as determined by the ILO Convention No. 169 and UNDRIP, and the interpretation of the Special Rapporteur on the Rights of Indigenous Peoples, the well-established jurisdiction of the Colombian Constitutional Court lays out certain requirements for FPIC, including its timing,

[933] Oral interview with a private sector representative from Colombia (February 2023).
[934] César Rodríguez Garavito and Carlos Andrés Baquero Díaz, The Right to Free, Prior, and Informed Consultation in Colombia: Advances and Setbacks, OHCHR, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/GaravitoAndDiaz.pdf ?;
[935] Ibid.
[936] Pax for Peace, Free, Prior and Informed Consultation in Colombia: the case of the expansion of the Cerrejón project, (2012), available at: https://paxforpeace.nl/wp-content/uploads/sites/2/2020/11/free-prior-and-informed-consultation-colombia.pdf
[937] Corte Constitucional [C.C.], Sentencia, SU-039/97 (3 February 1997) regarding consultation on oil extraction in the habitat of the U'wa.
[938] Some of these rulings are: Ruling T-547/10 (2010); T-129/11 (2011); C-366/11 (2011) in which the Court invalidated the recently amended Mining Act (Act 1382 of 2010) because the government did not consult indigenous communities before its enactments.

comprehensibility of information and cultural appropriateness,[939] yet there is no mention of gender diversity or the active participation of women.[940] This is surprising compared to the progressive jurisdiction of the Court with regard to gender representation. And indicative of the lack of intersectionality as the "impacted stakeholders" with regard to business operations are often seen through a singular identity. It must be noted however, that there are some problems with regard to the implementation of the Court's rulings. For example, in 2009, with its Ruling T-769, the Court ordered the Mandé Norte mining project in Murindó, Antioquia to stop due to inadequate consultation with the Emberá and Afro-Colombian communities.[941] However, following the appeals of the Ministry of Interior and Justice, and lack of effective enforcement, the national indigenous organization ONIC has criticized the lack of implementation and the political will of the Colombian government.

Mandatory human rights due diligence is not standardized or practiced yet within Colombia, Türkiye and South Africa, however, reporting and licensing/certification procedures which require some kind of an assessment of "social impacts" of business operations, in addition to environmental impacts, are a part of the legislative frameworks. It must be noted, however, that these steps are often seen as formalities with little to no follow-up about their implementation.

The environmental impact assessment (EIA) processes (*çevre etki değerlendirmesi - ÇED*) in Türkiye provides an illustrative example. The environmental impact assessment is a process which the required projects and activities (either state or business-led) which may have possible environmental effects must go through, under Article 10 of the Environmental Law. Such projects shall not be initiated until the EIA process is finalized. There is no mandatory, prior informed consent process with a focus on human rights impact, or a mandatory human rights due diligence under Turkish legislation. However, ÇED remains to be the most important preventive measure corporations have to go through before major projects. Under Article 9 of the new ÇED Regulation dated 2022[942] titled "*public participation meeting*", the Ministry of Environment and Administration departments determine a time and place for

[939] Accordingly, the consultation must: occur prior to the commencement of a project; be based on full and comprehensible information; be in good faith in accordance with procedures that are appropriate to the circumstances; be culturally appropriate and take place through the representative institutions of the indigenous people.

[940] Pax for Peace, Free, Prior and Informed Consultation in Colombia: the case of the expansion of the Cerrejón project, (2012), available at: https://paxforpeace.nl/wp-content/uploads/sites/2/2020/11/free-prior-and-informed-consultation-colombia.pdf

[941] Corte Constitucional [C.C.], Sentencia, T-769/09 (29 October, 2009).

[942] Presidential Decision No. 2022/342 (28 July 2022).

meetings to be held to receive opinions and suggestions from the local community who is affected by the planned project or who is likely to be affected, with, a time-frame for the opportunity to consolidate and convey the opinions and suggestions even after the meeting. There are some amendments under the new regulation, such as the inclusion of "environmental and social management plans" under the ÇED application and project presentations forms, which could possibly include human rights impact and gender equality, however there is no explicit mention, guidance or details provided. One of the requirements of public participation is the preparation of a stakeholder engagement plan, which explains how, and through which methods and tools (consultation meetings, announcements, brochures, information offices etc.) the potentially affected stakeholders (real/legal persons) may be communicated with, informed and involved in stages of the project. Interviews and several publically available "stakeholder engagement plans" have shown that the following template paragraph has been copied and used in many plans:

"Potential vulnerable groups which may be found among land owners/users should be prioritized when it comes to access to information. These vulnerable groups include women, people with disabilities and some disadvantaged groups (i.e. illiterate people, the elderly, people with special needs, land users who do not have title deeds etc.)."[943] The only mention of women's engagement within the ÇED procedures is their categorization under vulnerable groups, in parallel with the language of many national action plans.

Activists have shared several anecdotes in their interviews in which ÇED meetings are often seen as a formality and are often organized in violation of the procedures provided under the regulation, in unannounced, inconveniently distant locations through which rural women, who are often the most vocal when objecting to such projects, can not actively participate in. They have shared that the Ministry and business representatives often come together with heavy security measures and avoid confronting the public. There is a significant incident in 2018 with a ÇED meeting, which was organized in a meeting tent far away from the village that would be affected by a geothermal power plant planned to be constructed in Aydın Kızılcaköy, was "busted" by rural women who learned about the unannounced meeting with placards in their hands and protesting with whistles, forcing the authorities to leave the meeting.[944]

[943] OEDAŞ Stakeholder Participation Plan, (2018), available at: https://www.osmangaziedas.com.tr/CMSFiles/file/OEDAS_paydas-katilim-plani.pdf

[944] Ekmek ve Gül, "Kadınlar ÇED toplantısını bastı, yetkililer toplantıyı terk etti", (2018), available at https://ekmekvegul.net/gundem/kadinlar-ced-toplantisini-basti-yetkililer-toplantiyi-terk-etti

Women are often not seen as equal, worthy members of communities and companies hastily organize the meetings by inviting a number of inhabitants who support such projects or whom they trust, not to voice any objections.[945] Another anecdote was about a ÇED meeting in which only the men of Dondurma village in Çanakkale were invited and the informative meeting was held in a coffeeshop to which only men went to socialize. When a journalist asked where the local women were, the mukhtar (village chief) replied, *"What would women know about gold mining? We did not invite them, and even if we did, they would not come. We can let them know later.*"[946] Some local women, who learned about the meeting quickly mobilized and came to the meeting, however, they did not feel comfortable speaking up in a coffee house with a male majority crowd. Even in cases where informative meetings are held, women are deliberately excluded and gender representation in such meetings is not standardized.[947] Women's involvement and the engagement of environmentalists and expert lawyers have been facilitated by civil society organizations, however, under the new EIA Regulation, as a retrogressive step, the definition of stakeholders ("public") has been narrowed down[948] (currently only including Turkish citizens and foreign residents), no longer covering legal persons and associations, organizations and groups of these legal persons. The ecofeminist groups and NGOs closely monitoring environmental issues are deliberately left out. The literature, as well as national and international reports have shown the inadequacy of public participation and inclusiveness, (as concluded following the interviews and analysis of several ÇED processes, the gender-blindness) of such environmental impact analysis procedures in Türkiye, in parallel with the inadequate participation of affected communities globally.[949]

The operations of extractive businesses in South Africa, and how the mining law is shaped, require further scrutiny when it comes to the gender dimension of preventive mechanisms, as indicated through an interview with a mining law scholar. The Mineral and Petroleum Resources Development Act (MPRDA) functions as the main legal framework, and the basis

[945] Ibid.
[946] Güneş Dermenci, "Köylüler ÇEV Toplantısını Yaptırmadı", Güneşin Enerjisi, (30 January 2015) available at: https://gunesinenerjisi.wordpress.com/tag/dondurma-koyu/
[947] Oral Interview with feminist civil society representatives from Türkiye (May 2023).
[948] Norton Rose Fullbright, "Impacts of the amendments to the environmental impact assessment regime on Turkish infrastructure projects", (2022), available at https://www.nortonrosefulbright.com/en/inside-Türkiye/blog/2022/09/impacts-of-the-amendments-to-the-environmental-impact-assessment-regime ; Orhan Y. Mavioğlu and Bora Eruçman, "Türkiye: Environmental Impact Assessment (EIA) In Turkish Environmental Laws", Mondaq, (25 June 2021), available at: https://www.mondaq.com/Türkiye/environmental-law/1084160/environmental-impact-assessment-eia-in-turkish-environmental-laws
[949] Rukiye Mehtap Özlü, The Comparison of the Public Participation in the Environmental Impact Assessment Process Implemented in France and Türkiye, 5 Alanya Akad. Bakış 727, (2021).

for the ideas of consent and consultation, in which the mining companies can only obtain a mining license if they can prove that they have consulted the communities and the community has given them the consent to proceed with mining. While the framework is not a gender-responsive text, there are clauses such as the obligation for the Minerals and Mining Development Board to *"reflect the gender and racial composition in the Republic"*.[950] In addition, the Act stipulates "*the development of a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources."*[951] How "broad based socio-economic empowerment" is understood is interesting. Accordingly, ''broad based economic empowerment''means a social or economic strategy, plan, principle, approach or act which aims at redressing "*the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries"*[952] and to transform such industries. In parallel with this, one of the objectives of the Act is "*substantially and meaningfully expanding opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources"*.[953]

While this foundation, and the emphasis on women, can be considered a promising approach, it remains theoretical as it is not further detailed out under the consultation procedures, and in practice, mining companies "find ways around it." The ineffective and procedurally held consultations have resulted in a few strong Constitutional Court cases, basing a foundation for a jurisdiction around how community consultations should be, and how to make them meaningful. In *Maledu*[954] and *Baleni*[955] cases, the South African Constitutional Court has put out the features of a meaningful community consultation, including how full and informed consent can be obtained, how to properly inform the landowners and impacted communities, and the necessity of *"the active participating of the landowner in respect of possible interference with her rights in respect of the property."*[956] However, there is no mention of

[950] Mineral And Petroleum Resources Development Act, (2002).
[951] Mineral And Petroleum Resources Development Act, (2002).
[952] Mineral And Petroleum Resources Development Act, (2002).
[953] Mineral And Petroleum Resources Development Act, (2002).
[954] Maledu and Others v. Itereleng Bakgatla Mineral Resources (Pty) Limited and Another (CCT265/17) [2018] ZACC 41; 2019 (1) BCLR 53 (CC); 2019 (2) SA 1 (CC) (25 October 2018).
[955] Baleni and Others v. Minister of Mineral Resources and Others (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018).
[956] Ibid.

gender diversity regarding those who are consulted. This gender-blind approach is fully reflected on practice. An interviewee has shared *"while consulting an indigenous community, their traditional leader, which always happen to be a man, can get compromised by the mining companies through offering money and the widespread corruption, and they give away consent on behalf of their whole community. In the meanwhile the other half of the community, women, are not even asked their opinion, they are not even informed."*[957]

Another problem is with regard artisanal and small-scale mining (ASM), which has been considered illegal in South Africa, although the ASM miners represent the majority of total miners, referred to in Zulu words, "zamazama" meaning "try-try" or "try again and don't give up". A mining lawyer expert has shared, *"There are recent efforts to formalize and legalize artisanal mining, which is mostly focused on gold and diamonds and the majority of the exploited workers are women and foreigners."*[958] According to official statistics, the ASM workforce comprises no less than 40-50% women,[959] yet there are very few yet growing studies about the exploitation of women miners in ASM. The platinum group metals (PGM) on the other hand, of which South Africa is the leading producer, is mostly formalized and the sector is mostly operated through multinational mining companies, with a much lower female labour force participation. These multinational mining companies have some kinds of complaint mechanisms, sexual harassment policies and structures in place. However, these remain on paper, rarely used and in effective. The interviewee has also shared that there is no reinforcement or sanctions with regard to such mechanisms.

An interesting aspect of the requirements for obtaining mining licensing, or granting mining rights in South Africa is the required submission of a prescribed social and labour plan, which must be complied with for the granting and duration of mining and production rights or for their renewal. Such plans are not regulated in detail, however, the South African Mineral Resources Department, as well as several universities and think tanks have provided guidelines and toolkits for businesses. The Social and Labour Plans are defined, simply put, as *"the mining company's commitments to contribute to the wellbeing of the communities which are host to the mining operations, the mine's major labour-sending areas, and mine employees."*[960]

[957] Oral interview with a mining law scholar from South Africa, (February 2023).
[958] Oral interview with a mining law scholar from South Africa, (February 2023).
[959] AMDC, African Women in Artisanal and Small-scale Mining § (2015), available at: https://archive.uneca.org/publications/african-women-artisanal-and-small-scale-mining
[960] UMSIZI, "Social and Labour Plans", available at: https://umsizi.co.za/slp-a-z-everything-you-need-to-know-about-social-and-labour-plans/

The Social and Labour Plans system is also far from gender-responsive. Under the Social and Labour Plans Guidelines provided by the Mineral Resources Department, there are a few times in which women and/or gender are mentioned: Firstly, under the social and economic background information of the mining community which includes Gender Profile (not specifically explained) among other profiles, concerning HIV/AIDS prevalence, economic profile, education levels and so on, which companies must submit within their plans; and secondly, a mentorship plan for all employees, which must include women (and a gender-segregated mentorship plan must be submitted). Thirdly and most importantly, the mining and production companies must submit an Employment Equity Plan, and *"provide the employment equity statistics … accompanied by a plan on how the mine would achieve the ten percent (10%) women participation in mining and the forty percent (40%) HDSA (historically disadvantaged South Africans) participation in management."*[961]

The scanning of a number of publicly available Social and Labour Plans of mining companies[962] has shown that Employment Equity Plans and employment targets for women in mining are included in submitted Plans, yet a majority of such plans stick to the minimum quota of 10% and it depends on the companies' initiatives to provide an action plan or a roadmap to ensure reaching the women's employment targets. Among the scanned Social and Labour Plans, gender is only mentioned under "striving to increase the participation of black women in managerial, professional and core mining related positions" and "action plans to increase the participation of women in mining in general". The following Action Plan is from one of the Social Labour Plans which which had the most detailed clauses dedicated to "Women in Mining", and the broadness of the plan is illustrative of the inadequacy of voluntary, general targets:

Table 4.3.: Action Plan for the participation of women in mining under the social & labour plan (2019 - 2023) submitted for Tshipi éNtle Mining (Pty) Ltd Tshipi éNtle.

[961] Department of Mineral Resources of South Africa, Guideline For the Submission Of A Social And Labour Plan As Required In Terms Of Regulation 46 Of The Mineral And Petroleum Resources Development Act § (2010), available at: https://www.dmr.gov.za/Portals/0/social%20and%20labour%20plan_guideline.pdf

[962] Tshipi éNtle Mining (Pty) Ltd, Social And Labour Plan (SLP) 2019 – 2023, available at: https://www.tshipi.co.za/slpdocuments/tshipi_slp_english_version.pdf; AngloGold Ashanti, Vaal River Operations Social and Labour Plan 2015-2019, (2014), available at: https://thevault.exchange/?get_group_doc=143/1502873985-VR-SLP2015-2019.pdf; Anglo American Coal, Khwezela Colliery Social and Labour Plan (2019-2023), available at: https://southafrica.angloamerican.com/~/media/Files/A/Anglo-American-Group-v5/South-Africa/our-difference/building-resilient-communities/social-and-labour-plan-downloads/khwezela-slp-2019-2023.pdf

ACTION	DELIVERABLES
Discussion and brain-storming of the issues, problems and compliance gaps in terms of Women in Mining in relevant forums. Discussion of issues relating to: 1. Devising measures to address the potential issues/obstacles preventing the successful integration and retention of women; 2. Devising measures to change the physical mining environment and adapting the technical equipment to be women-friendly; and 3. Implementing awareness Programmes to sensitize the perceptions of men towards women.	Identification of the primary issues, challenges and solutions on the way forward to bring about meaningful change at Tshipi.
Ongoing monitoring of the women in mining implementation Programme in line with the Employment Equity Plan.	Ongoing monitoring of women in mining project Programme.

Gender expert interviewees express their skepticism towards the Social and Labour Plans: *"...so if the social plans were working, why are all mining towns poor? And secondly, why when the mining is done, then nothing else moves? Because if the social plan was intentional, it should also be intentional about building alternative economic streams that are not only tied to the mine, but tied to the sustainability of the town…even we* (Gender Equality Commission experts) *are not clear on the social plan as to what is the role of gender equality in values and fundamental principles, and what its means to have gendered lens starting from planning - shouldn't it mean that the mining company must build different streams and facilies that actually help sustain the gender equality side of the ecosystem in the mining town? So far, that has not been the case."*[963]

Moreover, the understanding of women in mining is only limited to women formally employed by the mining company, not including the value chains, and women and girls living in mining communities are not included. In addition, there is a confusion with regard to how women are included within the "historically disadvantaged South Africans", as they are separately taken into consideration in such plans, with some statistics shared for historically disadvantaged South Africans (HDSA), some for "women" and others for " black women" who are employed/in managerial positions. The need for further unpacking and clarification of the HDSA and women's involvement is raised by the academia as well.[964] The Mineral

[963] Oral interview with a representative from the Gender Equality Commission from South Africa, (February 2023).
[964] Msuthukazi Makiva, Isioma Ile and Omololu M. Fagbadebo, Evaluating transformation progress of historically disadvantaged South Africans: Programme perspective on the downstream petroleum industry, 7 AEJ 1 (2019).

Resources Department, takes the legal connotation provided under the South African Competition Act No.89 of 1998 into consideration, and defines "Historically Disadvantaged South Africans" as *"South African citizens, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation which should be representative of the demographics of the country"*[965] which precludes white persons from HDSA categorization, yet includes South African women of all races and disabled people. This approach is not clearly established under the Guidelines, however, and employment equity targets are therefore unstandardized and taken into consideration differently in each Social and Labour Plan, some focusing on black women as a separate category for employment equity targets while others take the female labor force as a whole into consideration. The inclusion of women, without respect to intersectional identities, under vulnerable groups is an ineffective and confusing approach, notwithstanding the post-apartheid context of South Africa.[966]

The highly limited gender approach is replicated in the guidelines and reports prepared by the academia and NGOs.[967] Several shortfalls concerning the SLPs can be listed. The broad and superficial commitments including promises to build roads, schools and hospitals without actual proper improvement and tools for the mining community often end up as unkept promises with no sanction, enforcement or follow-up. The companies' willingness to abide by only profitable rules, such as obligatory hiring of a certain percentage from local communities which means cheap labour, and the lack of accountability in a general sense are problematic. Last but not least, the sudden withdrawal of multinational companies once the operations are over and the mines closing or scaling down without a proper transition or restitution of the mining area, shows that the end of profitable mining operations *de facto* becomes the end of companies' responsibilities to its workforce and communities. Throughout these analyses, the patriarchal structure of preventive mechanisms such as licensing requirements, the lack of women's meaningful engagement or any potential SLP initiatives for the improvement of the women of the mining community, or taking a step further than the employment targets, have

[965] South African Competition Act 89 of 1998, para 3(2).
[966] Msuthukazi Makiva, Isioma Ile and Omololu M. Fagbadebo, Evaluating transformation progress of historically disadvantaged South Africans: Programme perspective on the downstream petroleum industry, 7 AEJ 1 (2019).
[967] Wits University Centre for Applied Legal Studies, Open Society Foundation for South Africa, and Raith Foundations, Social and Labour Plan Mining Community Toolkit, available at https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/SLP%20Community%20Toolkit%202%20March%202017.pdf

not been mentioned within the interviews with experts, or addressed within the scanned reports.

It must be noted here that South African feminist legal scholars, such as Meyersfeld are highly critical of the "myth of mining" which is the narrative used by mining companies' for promises of economic growth and the profit resulting in the development of affected poor mining communities through local employment, socio-economic welfare of the community through better infrastructure and public services.[968] Feminist scholars are exposing the myth of mining by showing how mining operations in the Global South end up in regression, not progress for the affected communities, including women. They argue that the mining companies' proposals for jobs and local development are very rarely reflected in reality and that mining is not an instrument of development and poverty reduction, especially for women.[969] According to their critical arguments, it is very unlikely for mining companies to honestly and fully provide information about the project to the affected communities, and if practiced, FPIC often excludes marginalized sub-groups of communities. The (mostly) male community leaders do not harness the full set of concerns which women members of the community have, and *"the methodology used in FPIC is to have a superficial engagement with some representatives of affected communities, based on information that is selectively provided"*[970].

Feminist scholars have discussed the potential Social and Labour Plans hold, and see them as a sensible approach to development, if they *"ensure the equal benefit of mining, not only for mineworkers but also for the 'whole community of non-employees' who are affected by the mining project."*[971] On paper, the plans compel mining businesses to use their profit to address a wide range of topics, from housing and living conditions to infrastructure and poverty eradicating projects, to employment equity, although the promotion of gender equality is not explicitly mentioned. This is promising, yet SLPs should not be seen as a voluntary, socially responsible CSR initiatives, and must be understood as legal requirements. Not all Social and

[968] Bonita Meyersfeld, Empty promises and the myth of mining: Does mining lead to pro-poor development?, Business and Human Rights Journal 2(1), (2017).
[969] Wits University Centre for Applied Legal Studies and Raith Foundation, Community Engagement Policy, (2014), available at: https://www.wits.ac.za/media/wits-university/faculties-and-schools/ commerce-law-and-management/research-entities/cals/documents/CALS%20Community%20Engagement%20Policy.pdf; Andrea Cornwall, Unpacking "Participation: Models, Meanings and Practices, 43 Community Development Journal 269, (2008); Bonita Meyersfeld, Business and Human Rights and Gender: A Legal Approach to External and Internal Considerations In Surya Deva and David Bilchitz (eds.), Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect, Cambridge University Press, (2013).
[970] Bonita Meyersfeld, Empty promises and the myth of mining: Does mining lead to pro-poor development?, Business and Human Rights Journal 2(1), (2017).
[971] Bonita Meyersfeld, Empty promises and the myth of mining: Does mining lead to pro-poor development?, Business and Human Rights Journal 2(1), (2017).

Labour Plans are publicly available, and when they are, their undertakings regarding gender equity in employment, as well as local economic development are not definitive, deliverable or tangible but instead, they are vague and broad.[972]

The preventive mechanisms are important to transform how women are positioned in BHR discourse: including women (with an intersectional approach) within the processes from the very beginning, recognizing and fulfilling their right to be involved in formal consultation processes and their representative role of their communities, have the potential to change their exclusive categorization as the vulnerable affected groups or victims who can only be addressed by providing remedies in the aftermath of the tragedies they face. Such consultations can provide insights of diverse groups of women. This is possible by actively seeking to involve and consult women workers, business and/or land owners, farmers, community members, migrant and minority women, with an intersectional lens. Such an approach to preventive mechanisms and consultations can give them a platform to have their voices heard, and their perspectives integrated within business plans in advance, not as an afterthought. Baseline researches and interviews for this dissertation have shown that such consultations should be ongoing, rather than a one-of exercise to be checked off, and that gender-representation should be included among the basic criteria or standards required for consultations, if necessary through quota measures. In addition to the impacted women, consulting gender experts and feminist civil society groups with gender mainstreaming expertise is essential and can deepen the understanding of gendered impacts, which are often overlooked.[973]

4.14. Labour Unions: Patriarchal Men's Clubs, Not Safe Havens

Labour unions are important actors for the business and human rights agenda in Türkiye, Colombia and South Africa, most importantly, through their representation and collective bargaining power, which remain to be an under-developed and under-used tool for promoting gender equal labour practices. Collective bargaining, one of the strongest tools labor unions have access to, henceforward, can be taken into consideration with a broad coverage on all

[972] Ibid.
[973] Danish Institute for Human Rights, Addressing the Gender Dimensions of Business and Human Rights: A summary of three thematic learning exchanges on the digital transition, national action plans and feminist approaches, (2021), available at: https://www.humanrights.dk/publications/addressing-gender-dimensions-business-human-rights

forms of joint engagement between unions and employers focusing on working conditions and activities.[974]

Women in unionized employment tend to have better terms and conditions in general compared to those who are not.[975] Labour unions provide a formal employment relationship, an official work contract and standardized wages and benefits through collective agreements. Collective bargaining can be a potential mechanism for the active promotion of gender equality at workplace, however, a cross-cutting pattern in all three jurisdictions is that labour unions remain to be heavily patriarchal spaces, not always necessarily safe for women, with male leadership, and which often fail to prioritize women workers' rights and demands.

In South Africa, there are five major labour union groups: The Congress of South African Trade Unions (COSATU), The Federation of Unions of South Africa (FEDUSA), the National Council of Trade Unions (NACTU), the Confederation of South African Workers Unions (CONSAWU), South African Federation of Trade Unions (SAFTU). Among these, COSATU, founded in 1985, is the largest federations trade union with over 2 million members (including some of the biggest labour unions such as the National Union of Mineworkers) and is in a tripartite alliance with the ruling African National Congress and the South African Communist Party.[976] Black workers constitute the majority of COSATU's workers, and COSATU was founded following the series of strikes for an anti-apartheid independent trade union movement for black workers, and had an important political role within the struggle against apartheid and the mobilization of black working class. COSATU, in its official discourse, emphasizes its commitment to a "non-racial, non-sexist and democratic South Africa"[977] and has a comprehensive gender policy.[978]

COSATU has also elected its first female president, Zingiswa Losi in 2018. Losi remains to be the only female labour union leader in South Africa. She stated: *"I would love to see women taking their rightful place in the federation, not for the purposes of achieving gender equity, but for the transformation of the broader society….This will go a long way towards*

[974] Linda Dickens, Collective bargaining and the promotion of gender equality at work: opportunities and challenges for trade unions, 6 Transfer: European Review of Labour and Research 193, (2000).
[975] Ibid.
[976] "COSATU", available at https://mediadon.co.za/cosatu/
[977] "The Congress of South African Trade Unions (COSATU)", available at: https://www.ecsecc.org/page/organised-labour
[978] COSATU, Gender Policy Booklet (2022), 10, available at: http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-Gender-Policy-Booklet.pdf

eradicating the patriarchal tendencies that still exist in our society" following her unanimous election.[979] There is a consensus among interviewees within the labour movement that Losi's election has been impactful for the integration of gender issues into the labour union agendas.

Taking a look into COSATU's Gender Policy, the understanding of gender within the text and COSATU's approach to the struggle for gender equality and women's emancipation is much further than gender responsive - it is a potentially gender transformative framework which addresses a wide range of topics: sexual harassment, parental leave and maternity protection, equal pay for equal work and work of equal value. But more importantly, it includes progressive approaches to protecting women's reproductive health rights, building women leadership, eliminating the gender division of labour in trade unions, and women's participation in collective bargaining. There is an overall recognition of the intersectionality of race, class, age, and geographic location among other factors affecting women workers' experiences of oppression with a specific emphasis on the experiences of disabled, young black women from poor neighborhoods, lesbians and migrant women.[980]

The following two paragraphs from the Gender Policy of COSATU indicates an impressive and deep understanding of gender inequality and a gender-transformative approach, aiming for substantive equality and addressing the root cause of unequal power relations. It states:

"A 'gendered perspective' aims to mainstream and integrate gender struggles, rather than seeing these struggles as women's issues that are taken up in a separate and isolated way. Nevertheless, we recognise that women are oppressed and that women are the agents of their own liberation who must lead the gender struggle.

It is also important to emphasise that the struggle to transform gender relations will benefit both women and men by creating an enabling environment for all to realise their full human potential in different spheres of life. While patriarchy benefits men in various ways it also limits the fullness of their lives. The struggle for gender equality will bring visible benefits to society by eliminating barriers to women's participation in productive activity, by making social reproduction a social responsibility, and by expanding access to basic needs and services for

[979] COSATU, "Zingiswa Losi", available at: https://mediadon.co.za/bio-zingiswa-losi/
[980] Ibid.

all. However, this cannot be realised without conscious strategies to redress unequal power relations between men and women in the family, the workplace and in the broader society."[981]

In the South African context, trade unions are grossly male-dominated, specifically at the level of leadership. In the words of a trade unionist interviewee, *"...there aren't a lot of women in the labour union in my position. There are a lot of labour union members who are women. But in positions of power and leadership, we are in the minority."*[982]

Taking a look into the Turkish context, the feminist impact within the labour movement has become visible in mostly in late 1980s and 1990s, with Türk-İş's first Annual National Working Women Congress, and KESK's (*Kamu Emekçileri Sendikası*) first institutionalization and mobilization of women's studies with the women's secretariat. It was followed by *Petrol-İş-Kadın* magazine founded in 2003 and published by Petrol-İş, a publication that played a big role in giving voice to women unionists' demands and experiences. This was not welcomed by the male-dominated industry and often received criticism and budget cuts.[983] The principle of "women's statement is essential" for the prosecution of crimes against women has been integrated into the labor unions' charter, through its engagement with the feminist movement (*Petrol-İş* Union's Charter in 2011, Turkish Journalist's Union's Charter in 2013 and most recently, the collective contracts of *Bir-Metal İş).*

In Türkiye, labour unions have also been traditionally and predominantly led by men. There are very few examples historically in which women have led labour unions. One of the most interesting examples is Dervişe Koçoğlu, who became Türkiye's first female labour union leader, when she was elected as the chairperson of Bandırma Balıkesir Çanakkale Region Tobacco, Distillery and Food Auxiliary Workers Union in 1955, and kept this position until 1969. She was, however, recorded in the archives as Derviş Koç, most probably under the assumption that there was a typo within the general assembly archives and that the union was most probably led by a man.[984] This mistake was caught and Dervişe Koçoğlu's identity was discovered by yet another female labor unionist, who, very ironically, was given the duty for

[981] COSATU, Gender Policy Booklet (2022), available at: http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-Gender-Policy-Booklet.pdf
[982] Oral Interview with trade union representative from South Africa (February 2023).
[983] Oral Interview with trade union representative from Poland (January 2023).
[984] Necla Akgökçe and Muazzez Pervan, "Günün Portresi: Dervişe Koçoğlu", Ekmek ve Gül, (15 June 2018), available at: https://ekmekvegul.net/sectiklerimiz/gunun-portresi-dervise-kocoglu

organizing the archives of the union.[985] This error, made consciously or unconsciously, is a perfect example of the invisibilization of women's agency, potential for leadership and hard work, due to deeply gendered prejudices.

An interesting pattern within the Turkish labour movement is that significant gender-sensitive steps are taken with the extraordinary efforts or initiatives by (few) women in power. For example, in 2005, Leyla Güven, the mayor of Seyhan Küçükdikili municipality, took initiative with regard to a two-year collective agreement and imposed a sanction on union members who perpetrate violence against their partners by deducting half of the wages of the perpetrator union member and giving it to the survivor woman. In 2018, Arzu Çerkezoğlu was elected as the first female president of DİSK (Confederation of Progressive Trade Unions of Türkiye), one of the biggest confederations in the country and her presidential term had a serious impact on DİSK's gender-focused policies. DİSK Women's Representatives Board has started actively lobbying and engaging with stakeholders for the ratification of ILO Convention No. 190; and based on the recommendations of women members, gender-focused changes were made in the statute of DİSK in its 16th General Assembly. For example, they have integrated the term "gender equality" under the "Aims and Principles of the Confederation" and "Duties and Powers of the Confederation" of the DİSK Statute. This is of significant importance since using the term "gender equality" openly can be a political statement itself.

DİSK has taken further actions with the establishment of "Women's Representatives Board" and an open official call for the ratification of the ILO Convention No. 190 on Harassment and Violence at its 16th General Assembly. In 2019, the United Metal Workers Union revised its statute, with the initiatives of women unionists and added its commitment to combat discrimination based on "sexual identity and sexual orientation."[986]

Arzu Çerkezoğlu's election was a first within the three biggest labour union confederations: *Türk-İş, Hak-İş*, and *DİSK*. Her leadership, and women's (limited) representation in executive boards of labor unions had resulted in significant progress. However, the male-centered understanding of organization and mobilization, gender-based hierarchical order and delegation systems, daily sexist culture, language, norms and stereotypes continue to exist within the unions. Even though there is (symbolic) political will towards gender-equality in higher management, at least at policy level, sexism is prevalent in mid-level, local

[985] Ibid.
[986] Birleşik Metal-İş, "Charter", (2019), available at: https://www.birlesikmetalis.org/index.php/tr/sendikamiz/anatuzuk

management and grassroots organizations. Women's rights focused policies are often not mainstreamed, and confined to women workers' departments, and the existing policies are often made *"under the control of men and within the boundaries drawn by them."*[987] The transformation of the unions and the construction of a gender-sensitive policies and culture can be possible through stable presence and pressure of a strong, independent feminist labour movement (not the extraordinary hard work of a few determined members, but a transformed culture), the continuation of gender studies within the labour unions, and meaningful engagement and proper representation of women.

In Colombia, there are three major labour union groups: *Central Unitaria de Trabajadores* (CUT), *Confederacion General de Trabajo* (CGT) and *Confederacion de Trabajadores de Colombia* (CTC). None of these three major labour unions ever had a female leader in their history. While all trade unions have women's committees or gender departments, the labour union culture in Colombia is also heavily patriarchal. Women labour unionists and human rights defenders, especially those who are from marginal groups, such as indigenous and Afro-descendant women are at particular risk and under-represented in unions. There are reported cases, specifically from rural unions (typically made up of associations of agriculture workers, small and landless farmers, rural women, tenant farmers, day labourers, and other rural-based groups) of unionist men expressing how they think women's place are their homes, or not "allowing" their wives to become politically active or join meetings, as well as a general sense of women's labour not being counted as "real labour".[988] Reported cases in the literature and the interviews held for this dissertation point out to a hypocritical approach: when men come together for meetings or get involved in labour unionization it is seen as an important work qualified to represent the whole working class of a specific region yet when women come together with similar motivations, it is perceived as a social gathering or a "gossip chamber."[989] Membership in labour unions, such as FENSUAGRO, a union of peasants, adds stigma on top of being working mothers within their communities, and more importantly, push women to be targets of state and paramilitary repression. The slowly built and improving representation of women in executive boards is the result of hard work of a few labour unionist women. Records and interviews point out to how the male leaders of trade unions limited

[987] "Gender justice the "Turkish" way: anti-gender politics in the land of AKP" (Interview with Alev Özkazanç), Euromed Rights, (5 March 2020), available at: https://euromedrights.org/publication/gender-justice-the-turkish-way-anti-gender-politics-in-the-land-of-akp/;and https://blogs.lse.ac.uk/gender/2019/05/20/new-episode-anti-gender-Türkiye/.
[988] Terry Gibbs, Voices from the Colombian left: Women and the struggle for social transformation, Labour, Capital and Society/Travail, capital et société (2010).
[989] Ibid.

women's issues to occasional cooking classes, first aid classes or discussions only focused on women's reproductive role.[990] The persistent work of a few women in the mid 1990s inside the trade unions have faced resistance, and many women left their positions due to their male counterparts blocking the advancement and leadership of women. Feminist labour unionists are also alarmed about the decline in unionization, especially among young women, and have accused neoliberal agendas of the governments of depoliticization of gender issues and the dissolution of many labour unions.[991]

The impressive gender policy framework and the wind of change with the women labour union leaders have not truly changed the heavily patriarchal character of labour unions. While a sense of equality, comradery and solidarity are a part of the labour movement culture, the majority of the management positions of labour unions are male-dominated. Labour movement has been historically led by male leaders, and the unionization rates among women workers are significantly low. While there are gender committees, or women workers committees as sub-departments in almost all labour unions, women are almost always only in a leading position within these sub departments, and are given the gender-focused discussions and special days like 8th of March or in South African case, 9th of August, the National Women's Day, and remain alienated from the mainstream labour discussions, which are often dealt with in a gender-neutral manner. Women members of labour unions and labour experts often express their disappointment in the extraordinary (often pushed) workload during these special days in contrast to the indifference and disinterest in gender by the higher management during the rest of the year. In addition, a common experience shared by women members of labour unions is how male-dominated delegations use collective contract clauses benefiting women workers (such as menstrual leave, breastfeeding breaks and maternal leave) as dispensable items, to strengthen their leverage on other, "more important" clauses on wages and benefits. Another shared experience has shown that when the menstrual leave issue is raised during union meetings, it is often ridiculed and mocked by male union leaders and is not seen as a serious issue worth discussing.[992]

A typical example of male dominated leadership is how for the sectors in which female workers are typically overrepresented, such as the textile industry, the labour unions are often led by men. This is the case with the leadership of SACTWU (Southern African Clothing and

[990] Ibid.
[991] Ibid.
[992] Oral Interview with trade union representative from Poland (January 2023).

Textile Workers' Union), National Union of Textile Workers in South Africa; National Workers Union of the Textile Industry of Colombia (SINTRATEXTIL) and Workers Union of Clothing Production and Textile Industry (SINTRACONTEXA) in Colombia; and *DİSK Tekstil İşçileri Sendikası, Türkiye Tekstil Örme ve Giyim Sanayi İşçileri Sendikası* (TEKSİF) and *ÖZ İPLİK İŞ* in Türkiye, which are all led by men and have predominantly male executive boards although national textile workforce have female majorities.

Labour unions still hold a significant potential with the powerful tool of collective bargaining as a mechanism for the promotion of gender equality at the workplace and as a legitimate and effective platform to raise women workers' demands. However, feminist labour scholars often discuss how *"adding women on to existing bargaining agendas and as members of unchanged unions"* is not enough[993] and that the labour unions themselves need radical change and the challenging of their existing nature. A feminist critique of labour unions, questioning their allyship for working class women raises questions about power within unions and resistance from the current power holders and beneficiaries within trade unions.[994] Active male resistance, in the from of institutional and cultural impediments placed in the way of women is not a specific feature of labour unions, but many institutions, such as public offices and academia.[995] However, in the face of declining unionization (especially among women and Generation Z, as shared by interviewees) and shrinkage of labour rights civic spaces, labour unions have much to gain through addressing their own patriarchal structures, male leadership's resistance, and not clinging to their *"receding empires with encrusted rigidity."*[996] This recognition of the need for renewal can help unions to attract and retain women, and using collective bargaining or other sorts of mobilizations as a mechanism to promote gender equality at the workplace can be both a catalyst for such transformation and the outcome of it.[997]

Within the context of Türkiye, Colombia and South Africa, unionized workers are in a slightly better position compared to non-unionized workers and the unionization rates are not very

[993] Linda Dickens,Collective bargaining and the promotion of gender equality at work: opportunities and challenges for trade unions, 6 Transfer: European Review of Labour and Research 193, (2000).
[994] Ibid.
[995] Cockburn, C. (1991) In the Way of Women Basingstoke, Macmillan ?; Margaret Hodgins& Pat O'Connor, Progress, but at the expense of male power? Institutional resistance to gender equality in an Irish university, 6 Front. Sociol 1, (2021).
[996] Barbara Pocock,Gender Strife and Unions' in B. Pocock (ed.) Strife: Sex and Politics in Labour Unions Allen and Unwin § (1997).
[997] Linda Dickens,Collective bargaining and the promotion of gender equality at work: opportunities and challenges for trade unions, 6 Transfer: European Review of Labour and Research 193, (2000).

high nation-wide. Thus, within the heavily exploited working class, the executive boards or leaders of labour unions tend to hold a relative privilege and this position, combined with a heavily patriarchal culture creates an interesting replica of patriarchal governance within the labour union community, despite the rather progressive discourse and the sense of comradery. This can be distinctly seen in visual representation of women in the narratives and materials of trade unions. At the historical Community House in Cape Town, which still hosts the headquarters of many nation wide trade unions, the building is decorated with murals, and exhibits photos, newspaper pages, old propaganda and strike posters for the commemoration of former trade unions leaders and labour activists. The majority of the commemorated leaders are young black men, who were both actively involved in black working class and anti-apartheid movements.



Figures 4.12.a., 4.12.b., 4.12.c., 4.12.d., 4.12.e., 4.12.f., 4.12.g., 4.12.h.: The historical Community House is the home to many labour unions offices, such as COSATU. The building is decorated with many colourful murals and posters honouring the fallen heroes of the labour rights movement, achievement, historical narratives of action to call. In the murals, women are typically depicted in motherly roles, a step behind the male comrades, "supporting the cause". (February 2023, photographs taken by the author).



Figures 4.13.a., 4.13.b., 4.13.c.: A typical visualization of women workers' representation can bee seen in a wall covered in historical posters of several labour unions, and campaign calls. Women workers are represented with one poster from the Federation of South African Women in wall covered in posters and illustrations depicting male leaders of the movement. On the right, the only corner dedicated to a woman comrade is for Jeanette Curtis Schoon, who was an anti-apartheid activist killed with a letter bomb along with her daughter by the Security Branch of the South African Police. While it is possible to say that women are included within the visual depictions, this is somehow limited with a stronger emphasis on martyrdoom, sacrifice and motherhood. (February 2023, photographs taken by the author).

In the exhibited newspaper articles and headlines, women are often represented as the mothers and wives of imprisoned trade unionists who are giving public statements after prison visits or are represented as the left-behind, resilient and acclaimed householders.



Carol Van Der Rheede of Mitchells Plain holds her 5-day-old daughter Jody. Her husband Neville, a Bonteheuwel schoolteach was detained in April last year, months before Jody's birth. Neville is now on trial with 14 others in the Cape Town Supreme Cou

WIVES OF TRIALISTS HAVE GROWN VERY CLOSE

Oscar Mpetha

I WANT to wish all Cahac affiliates and everyone fighting for a free South Africa, a prosperous new year. I want to wish them well in the future. To grow from strength to strength and to take forward the struggle to achieve our goal for a united, undivided, democratic South Africa.

We can only achieve this by working together and speaking with one voice. Unity is strength. An injury to one is an injury to all. A united people we shall remain. Amandla.

Mrs Benjamin

I greet all the women and daughters of South Africa who are in our struggle.

I greet all who are in our UWO and in our UDF.

I say "Forward People, forward." This is the time of our freedom. This is the time to our new South Africa, this is the time to be free.

Let us fight for our demands. Let us resist the removal of people to Khayelitsha.

The SADF wants to use our sons. Let us fight for an end to conscription.

Mama Zihlangu

ains his problems to the speakers at a recent mass meeting held to t increases in rents

Bo-Kaap pensioner, Mrs Samuels, struggles to pay her rent. Here she is surrounded by her grandchildren.

STRAND

Figures 4.14.a., 4.14.b., 4.14.c.: Three newspaper clippings exhibited at the Community House. On the left, news about how the wives of unionists who were detained, have given birth, waiting for their husbands and keeping in solidarity with each other. In the middle, a statement from Mama Zihlangu, a motherly figure for the labour movements, greeting all women and daughters of South Africa, encouraging them to resist and how the South African Dense Force wants to use their sons. On the right, a grandmother with her grandchildren, struggling to pay her rent, sharing the difficulties of raising children with the high cost of living. (February 2023, photographs taken by the author).

4.15. Women's Portrayal and Narratives: From Nation-Building to Advantageous Strategic Portrayals and Wi(n)dow Displays

Women's portrayal and the ownership of narratives are an understudied, yet crucial aspect of the gender dimensions of business and human rights. Feminist legal theory emphasizes the visibility and perception of women's experiences and constantly questions how women are positioned and portrayed by patriarchal legal systems and who has the narrating power.[998] The question of portrayal must be further explored.

The interviews with feminist activists in South Africa has raised Winnie Mandela's name frequently. The status of women in labour movement (who often happens to be family members or partners of other fellow activists) shares a similar position with Winnie Mandela. She is named as the mother of the nation and known for being Nelson Mandela's wife internationally. In this respect, her portrayal can be a helpful example.

Winnie Mandela's impact on the South African women's anti-apartheid struggles must be acknowledged and briefly discussed here. Despite being known as Nelson Mandela's wife, and often depicted as "*the waiting woman,*"[999] Winnie Mandela has been an emblematic figure in the anti-apartheid struggle, with -at times controversial- advocacy of militancy and so-called justified acts of violence against the apartheid regime. She has successfully attracted public attention and mobilized black youth and women while at the same time utilising norms of womanhood, wifehood and motherhood, and building her reputation as the "Mother of the Nation".[1000] While it can be discussed that using motherhood was a part of her advocacy strategy, shadowing her immense efforts and work with the wifehood status -not necessarily in South Africa, but from a Eurocentric point of view towards modern South African history- is a textbook example of how patriarchal systems erase women's experiences and contributions. This builds a vicious cycle of accepting women in the political sphere with their first-lady or first-daughter status as their passholder, often depicting the image of a heroic, devoted, downtrodden mother or wife figure.[1001] Such a tendency is similarly seen in labour unionist movements. There is an interesting quality to the patriarchal nature of so-called more

[998] Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991); Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law; a Feminist Analysis, Manchester University (2000).
[999] Betine van Zyl Smit, From Penelope to Winnie Mandela–Women Who Waited, 15 IJCT 393, (2008).
[1000] Emily Bridgeri. From 'Mother of the Nation' to 'Lady Macbeth': Winnie Mandela and perceptions of female violence in South Africa, 1985–91, 27 Gend. 446, (2015).
[1001] Betine van Zyl Smit, From Penelope to Winnie Mandela–Women Who Waited, 15 IJCT 393, (2008).

progressive, leftist social movements, particularly, labour unions, in which women are visibly involved, treated as respectable comrades, or "sisters", with acknowledgement of their rights and contributions to the movement. However, this respect is shown in a limited way and involvement does not often amount to meaningful engagement or leadership. Women are often positioned in a selfless mother or devoted wife position, entrusted to the collective movement, or martyrized as victims, which erases their agency.

There are similar examples in Türkiye, with the use of gender in nation building and political narratives. Despite the struggle between the secularist and Islamist discourses on Turkish national identity and public visibility, there is an overlap on built expectations around women's roles within society. Both political groups have traditionally seen the private sphere as the designated domain for women, the clothing of women as a reflection upon national cultural/religious identity and women's agency in the public sphere is limited with symbolic duties and motherhood, with the expectation of a performance of "ideal Turkish woman" according to the idealized national image.[1002] In other words, women's participation in the workforce is tolerated as long as it does not interfere with their most valuable reproductive role as mothers.

Similarly, in Colombia, motherhood is the overpowering identity, built in the national and Latin American idealization of gender roles, through "female virtues", which is named "marianismo", as the opposite feminine compensatory to the masculine "machismo". Accordingly, *"the ideal mother should be domestic and endlessly self-sacrificing, she should have the patience and the humility similar to the ideal mother, the virgin mother Mary."*[1003] Gender stereotypes in Colombia, in parallel with Latin America are heavily influenced by the Catholic faith, creating complex and idealised femininity and motherhood norms, resulting in "*a series of beliefs about women's spiritual and moral superiority to men that acted to legitimate their subordinate domestic and societal roles."*[1004] Notwithstanding the gender stereotypes around motherhood Colombia has the most significant progress with amplifying decolonizing feminist narratives about the country's history. The visibility of indigenous and Afro-Colombian women have increased through their celebration and contributions to Colombian history. Some examples are: Cacica Gaitana, an indigenous woman who galvanized armed resistance against Spanish colonizers; Polonia, a free black woman leading

[1002] Meral Uğur Çınar, Construction of gender and national identity in Türkiye: Images of the first lady in the Turkish media (2002–7), 50 Middle Eastern Studies 482, (2014).
[1003] Sylvia Chant, & Nikki Craske, Gender in Latin America § Rutgers University Press, (2003).
[1004] Ibid.

a resistance movement against a Spanish conquistador; Policarpa Salavarrieta, affectionately called “La Pola”, who was a pro-independence spy whose portrait is displayed on the 10,000 COP bill, and whose death anniversary on 14 November is commemorated as the Day of the Colombian Woman. Last but not least, in a business and human rights context, two historical figures are of great relevance: Betsabé Espinal and María Cano.

Betsabé Espinal was a labour rights activist and a textile worker who organized the first woman-led strike of female textile workers. At the age of 24, she mobilized 400 female textile workers, demanding equal pay, abolition of exploitative practices (i.e. child labour, long working hours, working barefoot) and the dismissal of male foremen who were accused of sexual harassment. The strike was successful with a majority of the demands being met, yet Espinal was fired as an act of retaliation by the owner of the factory and died at a young age due to a labour accident.

María Cano was a socialist feminist political activist and a union organizer, who demanded the liberation of political prisoners and union members, denouncing unfair working conditions with intense propaganda work and mobilizing strikes. She was critical of socio-economic injustice, government repression on workers unions, and publicly confronted and denounced the U.S. banana and oil companies and British mining companies for inhumane working conditions and for Colombian national sovereignty. She was imprisoned for conspiracy following the infamous Banana Massacre in 1928. The Banana Massacre was the mass killing of United Fruit Company workers in December 1928, in Santa Marta. Maria Cano was among the organizers of a strike, in which workers ceased working for the negotiation of dignified working conditions. Following unsuccessful negotiations and the refusal of the United Fruit Company, Mendes' government sent in the Colombian army which resulted in the massacre of workers.[1005] The infamous massacre has an important place in modern Colombian history, from being depicted fictionally in Marquez’s One Hundred Years of Solitude,[1006] to its strong connection to the role of atrocities committed by the paramilitary group AUC (United Self Defense Forces of Colombia) supported and funded by the Chiquita Brands in Colombia. To this day, Colombian plantain workers report feeling terrorized and threatened by multinational fruit companies like Chiquita and their connection with paramilitaries.[1007] Fruit companies’

[1005] Jorge Enrique Elias Caro & Antonino Vidal Ortega, The worker's massacre of 1928 in the Magdalena Zona Bananera-Colombia. An unfinished story 18 Revista Digital de Historia y Arqueología desde el Caribe, 2, (2012).
[1006] Sana Tariqi, Historicizing Fiction or Fictionalizing History: A Rediscovery of Colombian History via One Hundred Years of Solitude, 34 PENNSYLVANİA JUNİOR ACADEMY OF SCİENCE, (2021)
[1007] Youtube (video), Banana Land: Blood, Bullets & Poison Documentary ,(2018), available at https://www.youtube.com/watch?v=MoRmtQht8-E

operations in Colombia and the pattern of supporting or financing the violent repression of workers, either via strong relationships with the government or via paramilitary terrorist groups can be traced back to atrocities like the Banana Massacre. Following the Banana Massacre, Maria Cano was arrested and imprisoned along with her colleagues. The corporate financing of violent groups by the fruit industry has continued until 1990s and early 2000s Chiquita was sued by families of victims of paramilitary terrorists in 2007, and after nearly 16 years of litigation, in March 2023, the U.S. District Court for the Southern District of Florida ordered the banana company Chiquita Brands International to stand trial for illegally financing paramilitary death squads in Colombia, allowing 17 victims' families to present their cases to a jury in January of 2024.[1008]

Known as the first Colombian woman political leader due to her co-founding role in Socialist Revolutionary Party, Cano was nicknamed the "*La Flor del Tarabajo de Medellín*" (The Labour Flower of Medellin).[1009] She became a symbol of rebellious women, to a certain point where parents in Antioquia region sought to prevent their daughters from becoming *mariacanos*.[1010] Despite the tributes, honouring and celebration of Maria Cano today (there are several schools, streets, a university and a labour organization named after her), her demonization as the "angry feminist" at her time, her isolation from the socialist movement, the coining of the term "Maria Cano" for young rebels and most importantly her prosecution following the Banana Massacre, is replicated today with the targetings and attacks of Colombian women human rights defenders and unionist who are critical of multinational corporations in fruit and fresh-cut flower industries.

An important lesson to be learned from such historical figures is that a feminist approach to business and human rights requires much more than acknowledging, honouring and martyrization the sufferings of women community leaders and activists, and to create spaces in which their advocacy efforts can turn into concrete impact for the working and living conditions in their communities, and for ancestral lands. Particularly indigenous women's recognition and representation at international business and human rights platforms and organizations are still limited to providing spaces for short speeches, and collecting and exhibiting their narratives and testaments. While storytelling and amplifying narratives are

[1008] Earth Rights, "U.S. Court Orders Chiquita to Stand Trial for Colombians' Murder Claims", (2023), available at https://earthrights.org/media_release/u-s-court-orders-chiquita-to-stand-trial-for-colombians-murder-claims/
[1009] Michael Edward Stanfield, Of Beasts and Beauty: Gender, Race, and Identity in Colombia § 2013.
[1010] Juana Suarez, María Cano, In Tompkins, Foster Cynthia, David William (eds.). Notable Twentieth-century Latin American Women: A Biographical Dictionary, Greenwood Publishing Group, (2001).

important, indigenous and minority women are often tokenized, or displayed strategically as the voice of the wronged communities, which may put them into further risk for targeting, social exclusion within their communities or the SLAPPs. These short opportunities “to shine", and “empowering highlights” may do more damage than good for indigenous women, as the interviewees from Türkiye and Colombia have shared that labour leader women and indigenous women are often left alone once the fancy gatherings are over. Once the news articles are published, or short documentaries are shot, they have to deal with the social pressure, further agonized corporate representatives, and reactions from their local communities who are not always supportive of their activism work, by themselves. Recognizing the agency of women activists requires prioritizing their voices, experiences and demands at all phases of dispute resolution, and further, building preventive legislations and policies, and not only as a tactic to gain public support for a cause.

A South African women’s rights activist invented an interesting wordplay during an interview: She used the term “display widow” instead of window, while talking about how local women known as Marikana widows, the spouses and women who are resiliently protesting and calling for justice following the killing of 34 protesting mineworkers by police officers. There is a collective sense of being left alone and a sense of discomfort with being displayed due to their identity as widowed/wronged rural and indigenous women. This is a cross-cutting criticism towards business and human rights experts, advocates, pro bono lawyers and strategic litigators who, from time to time, fall into the error or victimization of indigenous women and use them to build narratives which may have good intentions of mobilization or building public support. However, this can be harming and can bring a deeper colonial and gendered motivation to the surface, for the sake of creating a favourable and likable image. The image of a resilient, victimized and rightful indigenous woman is a powerful one. Some of the most problematic, tokenizing practices and experiences that were mentioned during the interviews are are gathered below:

- Inviting indigenous or ethnic minority women to hand them awards by hosting them and providing them with travel and accommodation support for certain events/award shows but not continuing any sort of communication;
- Asking indigenous women to specifically bring in their accessories or indigenous clothing if there will be press statements, protests or hearings;
- Talking to them in unintentionally condescending manners or using a tone similar to one which one could use explaining something to a child while explaining procedures;

- Not being transparent or diligent with explaining next steps, or;
- Showing solidarity or providing spaces to speak only in certain dates like 8th of March, 25th of November, or South African Women's Day, 9th of August or the Day of the Colombian Women, 14th of November.

Such tokenistic actions are exacerbating indigenous women's inclusing in business and human rights spaces, and furthermore creates a one-dimesional portrayal for them. While building narratives and sharing women's stories (in certain cases, such stories and narratives can be strategically used in legal battles in favour of indigenous and local women) hoping to build decolonized, gender equal mechanisms, power relations and intersectional identities must be addressed instead of choosing one of the two extremes of "miserable victimhood" or "unbreakable, powerful agency". In parallel with this, Dovey and others, as a collective of feminist scholars, had urged caution in their joint submission to integrate feminist perspectives into one of the earlier drafts of UNGPs, that women are positioned only as marginal and vulnerable.[1011] Accepting that women, and in this case, indigenous women are sometimes vulnerable, it is important not to marginalize them within the business and human rights debate.[1012] While women's and indigenous communities' differentiated experiences are not sufficiently dealt with in the text of UNGPs, when it is mentioned, it is mostly limited to a one axis "victimhood" approach. This language and narrative tendency are borrowed and replicated in other national business and human rights frameworks, and they are observed in some practices shared above, which further alienate indigenous women.

4.16. Intersectionality: Questions of Race and Class, Migrant Women as Scapegoats and Invisibilized Domestic Workers

Crenshaw, while coining the concept of the "intersectional" nature of discrimination, aimed to demonstrate how overlapping categories of identity (such as gender and race) impact individuals and institutions. Intersectionality aims to evaluate how intersecting and overlapping forms of oppression result in certain groups being subject to distinct and compounded forms of discrimination, vulnerability and subordination. Intersectional approach is desperately needed in a business and human rights context in order to build gender-responsive mechanisms, to properly recognize and articulate intersectional discrimination and

[1011] Kathryn Dovey et al, Comments on the Draft "Guiding Principles" for the Implementation of the 'Protect, Respect and Remedy' Framework: Integrating a Gender Perspectives, Institute for Human Rights and Business (2011), 2, available at: https://www.ihrb.org/pdf/2011_01_28_Submission_on_Draft_Guiding_Principles-Integrating_gender_perspective_FINAL.pdf
[1012] Ibid, 2.

to understand the burdening experiences of women of colour, and women from minority or migrant backgrounds. Feminist legal theories' exposing function must be combined with intersectionality's capacity to shed light on the experiences and vulnerabilities of certain groups of women who are being invisibilized in business and human rights systems. Such systems are trying to build just mechanisms (in vain) only with the visibilized, formal and often dominantly male workforce, and failing to put forward the experiences of women who are the running power behind very large informal economies.[1013]

Gender intersects with other identities of working women and these intersections contribute to unique experiences of oppression and privilege. The common tendency in business and human rights areas to take issues in single-axis comparison (either as a working-class issue, a race discrimination issue or a sexual harassment issue) fails to yield the full extent of the systemic discrimination and deeply gendered, complex exploitation mechanisms. The experiences of migrant women and domestic worker women, which were voiced repeatedly in interviews with feminist activists, scholars, and unionists, should be examined particularly closer to better understand the context in Türkiye, Colombia and South Africa.

4.16.1. Migrant Women as Scapegoats

A common pattern in typical host states like Türkiye, Colombia and South Africa in which the deeply rooted socio-economic disparities are growing, there are financial struggles and limited access to basic needs and services already experienced by the citizens, the exodus from neighbouring countries and regions or waves of migration create a socially tense environment, especially among low-income communities. The xenophobic discourse of refugees and migrants stealing jobs, hostilities, discrimination in public spaces, and stereotypes and bias towards the newcomer refugee communities have an impact on business and employment practices. The undocumented migrant communities, desperate for income are often exploited and underpaid, immediately create an over-representation in manual, low-skill, and low-paid labour. This social tension has reflections on local women's perception of refugee women with whom they have to co-exist and compete with for jobs, income and welfare benefits. In addition to the economic, physical and sexual violence migrant women face within the family,

[1013] Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020); Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989); Kimberlé Crenshaw, Mapping the margins: Intersectionality, identity politics, and violence against women of color. Stanford Law Review, 43, (1990).

in the work environment, they experience forms of violence, and discrimination based on stereotypes, creating a battle with double fronts. Some stereotypes were repetitively brought up during interviews with either women's rights activists, women employers from the upper-middle class, or the migrant workers themselves.

Women's motivations to migrate to the host states, (and not necessarily the high income, home states) can be complex and multiple, due to the economic, social and political conditions in their home countries. There are economic reasons pushing, such as hopes of finding better prospects for jobs, a stable income, and economic freedom, to save money and to support their family members left behind, as common motivational experiences of migrant women. There are also political reasons, such as being forced to flee to the host states as refugees due to armed conflict, the relatively easier visa procedures and travel opportunities, family members, social networks and support systems, and a sense of community facilitating adaptation and employment processes. Alternatively, some of them reside in host states as temporary stations with hopes to further migrate to Western European or North American states as the visa/asylum procedures continue. The neighboring location of the host states are also significant, which is a major factor for the Syrian community in Türkiye, the Venezuelan community in Colombia and the Zimbabwean community in South Africa.[1014]

Cross-cutting experiences of migrant working women include daily manifestations of violence and harassment in the streets (for example, African migrant women in Istanbul report cases of sexual harassment with the use of racial slurs[1015]) on their commute, in their relationships with locals, their hiring and work processes fueled by stereotypes and prejudice based on their nationality, gender, gender identity or sexual orientation. Interviews with feminist activists and law clinics working with migrant women have indicated their precarious migrant status is often used as a trump card over them, and that they face major obstacles, most importantly re-traumatization, misinformation about their rights, or further discrimination from migration authorities or law enforcement officers who are supposed to receive their claims and promptly

[1014] Mariya Bikova, The Egalitarian Heart. Global Care Chains in the Filipino Au Pair Migration to Norway, (Doctoral Thesis, University of Bergen), (2017); Nkirote Laiboni, A Job at Any Cost: Experiences of African Women Migrant Domestic Workers in the Middle East, Global Alliance Against Traffic in Women, (2020); Julia Lausch, Reinventing Intimacy and Identity: Filipina Domestic Workers' strategies for coping with family separation in Dubai. In: Maria Kontos & Glenda Tibe Bonifacio (eds.), Migrant Domestic Workers and Family Life, Springer, (2015); Helma Lutz, Gender in the migratory process, 36 Journal of Ethnic and Migration Studies. 1647 (2010); Helma Lutz, Care migration: The connectivity between care chains, care circulation and transnational social inequality, 66 Current Sociology 577, (2018).

[1015] Doğuş Şimşek, İstanbul'daki Afrikalı Göçmenlerin Gündelik Irkçılık Deneyimleri , 10 Mukaddime 233, (2019).

investigate.[1016] Desk research and interviews have resulted in two specific abusive employment and recruitment practices which migrant women workers are specifically and disproportionately impacted by, and can amount to forced labour exploitation: recruitment fees charged to migrant workers which can lead to debt bondage;[1017] and confiscating passports and identity documents.[1018] Migrant women domestic workers often come to work in households and live there alone, to send their earnings to their children who are often left behind with their grandparents or other caretakers. Debt bondage through exorbitant loan repayments may trap them with no ability to leave since they have dependents on their income. Similarly, confiscating workers' identity documents is a practice used much more often on female migrant workers to control their freedom of movement, compared to male migrant workers. There are deeply problematic practices such as the *kafala* system used in the Middle East, often in the Gulf countries. In *kafala* systems, the migrant worker is legally "tied" to an employer (by strictly linking their employment visa to their sponsor employer) if they want to remain in the country with little or no power to challenge abusive employment condition."[1019] *Kafala* system is not practiced in the jurisdictions that are the main focus of this dissertation, however there are similar violations of labour rights and similar tendencies to dominate and restrict migrant women workers and to intervene in their freedom of movement and their personal lives, especially those who live in the household with sexist motivations such as "upholding the honour of the household" or misogynistic stereotypes.

It should be noted that the literature has noted negative associations with female migration, or a "moral panic", with negative responses to young mothers who migrate to work, blaming them for abandoning their children and leaving them vulnerable, lacking the love and care of a mother. In other words, female migrant workers challenge the expectations of traditional motherhood as they are not nurturing and interacting with their children closely.[1020] Having

[1016] Amnesty, "Colombia and Peru: Protect Venezuelan Women and Diversities", available at: https://www.amnesty.org/en/petition/inclusion-has-no-borders/

[1017] ILO, Addressing Forced Labor in Global Supply Chains: Lessons and Applications of the Brazilian Experience, (2011), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/presentation/wcms_183873.pdf

[1018] ILO recognizes cases in which both charging of recruitment fees leading to debt bondage, and retention of identity documents are present,as trafficking for forced labour. A list of ILO Indicators of Forced Labour determined by the Special Action Programme to combat Forced Labour is available at: http:// www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/ lang--en/index.htm

[1019] Institute for Human Rights and Business, Fees and IDs: Tackling recruitment fees and confiscation of workers' passports, (2013), available at https://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf; ITUC CSI IGB, Hidden faces of the Gulf miracle, (2011), available at https://www.ituc-csi.org/hidden-faces-of-the-gulf-miracle-9144

[1020] Precious Baison,Cross-border care practices: Experiences of Zimbabwean migrant women engaged in care work in households in South Africa , (Doctoral Thesis, University of Pretoria), (2021); Paola Bonizzoni and Paolo Boccagni Care (and) circulation revisited: a conceptual map of diversity in transnational parenting, Transnational families, migration and the circulation of care: Understanding mobility and absence in family life,

said this, while the traditional notions of motherhood are held against migrant worker women, their attempts to communicate with their family members and children online or through calls from messaging apps are frowned upon for avoiding work or using the internet data of the households.

Migrant women workers often lack the language or knowledge of the labour system in which they are employed, often have no transparent employment contracts with clear terms and conditions in a language they understand. They are more vulnerable to the risk of sex trafficking, sexual harassment in households they can not leave, and desperation born out of poverty or their dependant children.[1021]

In Colombia, especially following the 2017 constitutional crisis in Venezuela under the government of President Nicolas Maduro and the worsening hyperinflation, the number of Venezuelan migrants has significantly increased. In 2022 there were over 2.47 million Venezuelan citizens[1022] residing in Colombia, with Bogotá hosting the highest share of immigrants.[1023] Venezuelan migrant women have deteriorating working conditions,[1024] especially after the pandemic, with high rates of unemployment, decreased income, and a lack of pension/benefit systems. According to 2021 data, 3 out of 10 Venezuelan women in the Colombian job market are unemployed, and 92% of those employed work informally, mostly in undervalued jobs, such as domestic workers, hairdressers or seasonal workers in the fresh-cut flower industry and agriculture.[1025]

Some of the common stereotypes mentioned during interviews were that Venezuelan women (often called "Venecas", a derogatory way to address Venezuelan women) are hypersexualized, not to be trusted as domestic workers because they would seduce husbands and sons or that they are flamboyant. A common discourse is that they should be grateful to have a job in Colombia, that they can not be trusted with care work for the elderly since they would not treat them respectfully or nicely, or that they would involve their male family

(2013); Helma Lutz and Ewa Palenga-Möllenbeck, Care workers, care drain, and care chains: Reflections on care, migration, and citizenship, Social Politics 19(1), (2012).

[1021] Institute for Human Rights and Business, Fees and IDs: Tackling recruitment fees and confiscation of workers' passports, (2013), available at https://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf

[1022] Statista Research Department, Number of migrants from Venezuela residing in Colombia in 2022(2023), available at: https://www.statista.com/statistics/819401/entry-points-migration-flow-venezuela-colombia/

[1023] Reuters, "Work conditions worsen for Venezuelan migrant women in Colombia: report", (7 March 2022), available at:https://www.reuters.com/world/americas/work-conditions-worsen-venezuelan-migrant-women-colombia-report-2022-03-07/

[1024] Ibid.

[1025] Ibid.

members who are dangerous or criminals. Amnesty International has reported a case in Colombia in which a Venezuelan woman called the police to ask for help and to report an aggressor who was armed and nearby, and the answer she received on the phone was *"ah… you are a Venezuelan, you must have seduced him because he is here looking for you".*[1026]

In Türkiye, Syrian women and children are overrepresented in the textile industry and in seasonal agriculture. A commonly repeated observation by Turkish employers or business representatives within these industries is that the Turkish textile or agriculture sector would barely exist if the Syrian labour force did not exist. There is a sense of reprehension in Turkish employers, blaming working-class Turkish and Kurdish youth for belittling jobs and being selective. An interviewees has shared the perspectives of women employers in agriculture sector: *"We have to hire Syrians as shepherds! Can you believe that we can not find one Turkish citizen who is willing to do the honourable hard work!"*[1027] Syrian worker women are often criticized for being lazy, for getting hired as seasonal agricultural workers but having their husbands to do all the work, for having so-called easier access to social services and for continuing to have children.

Another stereotype, specifically raised after the earthquakes in Hatay and Kahramanmaraş, is that Syrian women and girls are dirty and can not manage their personal hygiene and that they can not be hired for cooking and catering. Syrian women getting paid less or having to do heavier work is often justified with the discourse that they should be grateful. Central Asian, Georgian and Moldovan women are also overrepresented in care work for the elderly and for babies and toddlers.[1028] An interesting finding from interviews with working mothers in Türkiye is the recent trend of preferring Asian au pairs among upper-class women, and the classification of the nationality of foreign care worker, with a so-called trend of having Southeast Asian au-pairs and babysitters; instead of those who migrate from the Caucasus or Central Asia, as an indicator of wealth. A deeply problematic childcare trend based on the labour of migrant women, often based on racial or national stereotypes is worth further examination. The stereotypes about care workers from the Caucasus or Central Asia are that

[1026] Amnesty International, Colombia and Peru: Abandoned by the state in host countries, Venezuelan women face increasing gender-based violence, (2022), available at https://www.amnesty.org/en/latest/news/2022/07/colombia-peru-venezuelan-women-face-gender-based-violence/; Amnesty International, Colombia and Peru: Protect Venezuelan Women and Diversities, available at: https://www.amnesty.org/en/petition/inclusion-has-no-borders/.

[1027] Oral interview with alabour rights defender from Türkiye, (February 2023).

[1028] Cemile Gizem Dinçer, Türkiye- Gürcistan Bağlamında Göçmen Kadın Emeği: Güvencesizliğin ve Belgesizliğin Mekanı Olarak Ev İçi Alan,Göçler Ülkesi § 95 (2015)

they are prone to stealing from the elderly, change jobs frequently, that they can let their employer family down once they find a better offer, they demand too much money, they have to go back to their countries regularly due to visa requirements and that they can not be trusted.[1029]

Migrant domestic workers are vulnerable to gender-based violence. There are cases, however, in which migrant workers mobilize and demand prompt investigation in violation cases or suspicious deaths. In 2019, there was a remarkable collective reaction from the civil society following the suspicious suicide of Nadira Kadirova, a migrant worker who worked as a domestic helper at the house of a Turkish MP, who allegedly committed suicide with her employer's gun. The incident has initiated some mobilization among migrant workers, particularly domestic workers from Caucasia and Central Asia. [1030]

In the South African context, labour migration is deeply gendered and closely connected to the legacy of segregated labor structures and pass-law systems designed and executed throughout the apartheid. Turell describes this historical system as racial discrimination being based on the migrant labour system (and vice versa) in which typically men *"contract to work in the major cities while leaving their families and political rights behind them in the 'homelands'.* "[1031] Black South Africans, mostly male workers, were treated as foreigners, confined to strictly defined living spaces, and provided cheap labour for the mining sector. According to Posel, these gendered patterns of migration *"was reinforced by 'internal structures of control' in rural communities that sought to maintain a gendered division of labour,"*[1032] which further reinforced women's traditional roles in rural areas as unpaid caregivers and gave superiority and authority to the breadwinning fathers, husbands, and chiefs to restrict women's mobility. This is partly true in how mining employment works even today, with ongoing practices of men of the family going away to stay in mining camps for a few years or seasons. This ongoing, slightly improved segregated and gendered system has unique impacts on women who are left behind in homelands, taking care of the children and elderly. Women get sexually transmitted diseases (STDs) because their partners and husbands engage in high-risk sexual behaviors, including multiple sex partners, and engage in

[1029] Evrensel, Nadira Kadirova'nın hatırlattığı: Göçmen ev işçisi kadınlar ne yaşıyor?, (3 Ekim 2019), available at https://www.evrensel.net/haber/388148/nadira-kadirovanin-hatirlattigi-gocmen-ev-iscisi-kadinlar-ne-yasiyor
[1030] Ibid.
[1031] Rob Turell, Diamonds and migrant labour in South Africa, 1869-1910, 36 History Today 45, (1986).
[1032] Dorrit Posel, Have migration patterns in post-apartheid South Africa changed?, 15 Journal of Interdisciplinary Economics 277 (2004).

commercial sex while away at the mining camps without proper protection. The HIV and STD prevalence and the risk of miners transmitting these diseases to their wives and partners, after working in mining districts is a prevalent public sexual and reproductive health issue not only in South Africa,[1033] but also globally in mining sectors with similar working structures.[1034] There are reported cases of sexual harassment and assault towards a few women workers who are responsible for domestic work, housekeeping, and cooking in these male-dominated mining camps.[1035] The internal migrant work practices in extractive businesses continue to reinforce deeply gendered roles and stereotypes with women remaining in rural areas and are expected to maintain the care work for the families.

Another dimension of migrant work in South Africa is the experiences of migrant women workers, most specifically Zimbabwean, Rwandan, Congolese, and Somali women who are overrepresented in undervalued and underpaid jobs, such as domestic work and temporary and informal hairdressing and manicurist jobs and who are commonly blamed for stealing jobs.[1036] There are reported cases of Somali women being sterilized without their consent and serious problems with regard to language barriers in sexual and reproductive health and rights.[1037] The live-in migrant domestic workers often face *"high levels of verbal, physical, psychological and sexual abuse largely due to the private and isolated nature of their workspaces"*[1038]. Refugee and asylum-seeking unregistered workers tend to move to the marginalized black neighborhoods, *"within the racialized economic geographies of the neo-apartheid city"*.[1039] They are forced to settle in "tightly knit clusters"[1040] in urban regions, creating a cycle of deepening poverty and ghettoization and further marginalization of certain neighborhoods as cross-cutting problems, not only happening in Cape Flats in Cape Town, but also Bağcılar and

[1033] Susan Foster, The implications of HIV / AIDS for South African mines, 7 AIDS Analysis Africa 5 (1996), available at https://pubmed.ncbi.nlm.nih.gov/12157886/
[1034] Guolei Zhang et. al, HIV-1 and STIs prevalence and risk factors of miners in mining districts of Yunnan, China, 53 Journal of Acquired Immune Deficiency Syndromes 54, (2010), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2904874/
[1035] Oral Interview with a mining law scholar from South Africa, (February 2023).
[1036] Vivence Kalitanyi & Kobus Visser, African immigrants in South Africa: Job takers or job creators?, 13 South African Journal of Economic and Management Sciences 376, (2010).
[1037] Denys Uwimpuhwe and Greg Ruiters, Organising Somalian, Congolese and Rwandan Migrants in a Time of Xenophobia in South Africa: Empirical and Methodological Reflections, 19 Journal of International Migration and Integration 1119, (2018).
[1038] Precious Baison, Cross-border care practices: Experiences of Zimbabwean migrant women engaged in care work in households in South Africa , (Doctoral Thesis, University of Pretoria), (2021); Mariama Awumbilai Joseph Kofi Teye and Joseph Awetori Yaro, Of silent maids, skilled gardeners and careful madams: Gendered dynamics and strategies of migrant domestic workers in Accra, Ghana 82 GeoJournal 57, (2017); International Labour Organisation, Care work and care jobs for the future of decent work § (2018).
[1039] Shannon Morreira, Seeking solidarity: Zimbabwean undocumented migrants in Cape Town, 2007, 36 Journal of South African Studies 433, (2010); Patrick Bond and Greg Ruiters, Uneven development and scale politics in Southern Africa: what we learn from Neil Smith, 49 Antipode 171, (2017).
[1040] Ibid.

Esenyurt in Istanbul and Santa Fé in Bogotá. It should be noted that although migrant women workers commonly experience discrimination and xenophobia, their social backgrounds (for example, whether they are climate change refugees or financially motivated migrants) change their exposure to violence and discrimination, and it is not possible to portray a homogeneous migrant woman worker experience - which is a common mistake business and human rights mechanisms or reports make in their subchapters or brief mentions of migrant women's vulnerability and experiences.

Since the eruption of xenophobic violence in Johannesburg in 2008 which spread to other provinces, resulting in 62 deaths, there has been a significant rise in the anti-immigration movement and xenophobic attacks towards migrant, refugee, and asylum seeking communities in SA.[1041] This had implications on the immigration system, which has deteriorated with punitive policies, the closing of refugee reception offices in urban centers and the restriction of some job offers to South African ID holders, excluding migrant workers from the formal economy completely, making certain services offered to migrant women such as job and skill training less useful to undocumented migrant women who are unable to work.[1042]

Migrant women's experiences in South Africa, as gathered from the interviews, have put forward four important business and human rights problems, which in parallel apply to the Turkish and Colombian contexts. First, is the undervaluing of collective mobilization in the eyes of scholars and feminist civil society/labour unions. This could also be described as the disbelief or skepticism towards the potential of collective mobilization of migrant women workers. This is understandable to a certain degree, in cases where unionizing is not an option for foreign workers, as in the example of unionization rights only being recognized for Turkish citizens under Turkish labour law, until very recently. Undervaluing collective mobilization for migrant workers is evident in some scholars' work which often focus on the lack of capacity, short-lived, fragile and fragmented natures of migrant associations.[1043] This is partly due to the bias towards migrant women workers being transient, living in host states for short-

[1041] Human Rights Watch, "South Africa Events of 2008", (2009) available at https://www.hrw.org/world-report/2009/country-chapters/south-africa ; UN Academic Impact, "University Combats Xenophobia in South Africa", available at: https://www.un.org/en/academic-impact/university-combats-xenophobia-south-africa

[1042] UNHCR and University of Witwatersrand African Centre for Migration and Society, Protection From Xenophobia: An Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programmes, (2015): available at https://www.unhcr.org/sites/default/files/legacy-pdf/55cb153f9.pdf

[1043] Loren B. Landau and Iriann Freemantle, Tactical cosmopolitanism and idioms of belonging: Insertion and self- exclusion in Johannesburg, 36 Journal of Ethnic and Migration Studies 375, (2010).

term and being too vulnerable to mobilize and protest. Some scholars discuss that individual solutions, such as finding lawyers, law clinics and NGOs to take up individual cases are preferred by migrant women because *"their vulnerability, tenuous position makes them refrain from and abjure collective action or social protests."*[1044] This disproportionate emphasis on the vulnerability of migrant women is problematic from a feminist point of view, since it undermines and invisibilizes the will power and resilience of migrant workers and assumes their temporariness, and limits the freedom of assembly and association to the citizens. New research shows however that although migrant worker women feel threatened and insecure due to the increasing xenophobia and anti-immigration discourse, the percentages of migrant workers who wish to return home or are planning to stay temporarily in Cape Town are indeed low and decreasing, compared to those who are willing to build their livelihoods.[1045]

Secondly, similar to their failure to prioritize gender equality and the advocacy of women workers' rights, labour unions have failed to effectively respond to xenophobia and the exploitation of migrant workers. Following the rise of xenophobic attacks in South Africa, some scholars have argued that labour unions had a crucial responsibility in providing humanitarian aid and support to victims of xenophobic attacks, and criticized their unwillingness or lack of action to organize any strategy or to mobilize migrant workers.[1046] While there have been certain resolutions and policy papers focused on migrant workers, and the left-wing labour unions tend to refrain from discriminatory or openly xenophobic stances in all three jurisdictions, there is a general lack of strategy and recognition of migrant workers, specifically, migrant worker women. There is a sense of othering in public statements of the leadership of certain unions in South Africa, such as COSATU.[1047]

There are exceptions of course. For example, SACCAWU is mobilising the hospitality sector, in which migrant worker women from Zimbabwe are overrepresented. In some statements, foreign members of labour unions are recognized, however in general, they are emphasizing that they are only organizing migrants who are legally here and who have proper documents, which excludes the most exploited workers. Regional gender coordinators of labour unions

[1044] Leah Mundell and Emma Caron, Models for migrant leadership: the Cape Town women's platform, 2 AHMR 489, (2016).
[1045] Jonas Nzabamwita, Exploring the link between international migration and remittances: a case study of African immigrants in Cape Town, (Doctoral Thesis, University Of the Western Cape), (2015).
[1046] Jonathan Crush, Abel Chikanda, and Godfrey Tawodzera, The third wave: Mixed migration from Zimbabwe to South Africa, Canadian Journal of African Studies/Revue canadienne des études africaines 49(2), (2015).
[1047] Mondli Hlatshwayo, Research Report: COSATU'S Responses to Xenophobia, (2010), available at https://www.atlanticphilanthropies.org/wp-content/uploads/2010/07/8_Cosatu_c.pdf

also recognize that they have "foreigner", migrant women worker members, especially working in the food and hospitality industry, but there is no detailed data available or knowledge about their whereabouts or their experiences.[1048] The SAWMU and COSATU have previously publicly condemned raping, gender-based violence and attacks towards women from migrant communities. However, there is not much progress beyond condemning. It is clear that South African labour unions do not have a strategy that focuses on migrant women workers.[1049] Migrant worker women are often approached with compassion, but even labour unions fail to fully recognize them as individuals or collective groups with social agency or ability to mobilize properly. The fact that labour union memberships are conditional to citizenship or formal registration/migration documents is the major structural barrier in this sense, for effective mobilization of migrant women in host states. However, the interviews with labour union experts from all three countries have a clear dichotomy of "our own struggling working class" vs. "those migrant workers we are in solidarity with". This is a sign of intentional distinction and an unwillingness to include migrant women workers into union advocacy.[1050]

Thirdly, there is an inevitable categorization of migrant women workers as "low-skilled." Migrant women workers, including domestic workers and caregivers have to navigate through complicated work visa processes and immigration laws which are always more favourable towards highly skilled professional migrants, such as "digital nomads" or "white-collar expats". This is because employers have to prove why they are hiring a foreigner instead of a qualified national citizen. Migrant women are routinely and systematically denied the opportunities for education, skill training and other qualifications which would potentially categorize them as "highly skilled" in the eyes of the states. Care work and domestic work, and other branches of work in which women are overrepresented are almost never qualified for such categorization, and pregnant women or mothers with children are disadvantaged from the start. Low-skilled migrant domestic workers are also expected to provide proof that they have sufficient financial means to live in their destination countries (creating a risk of debt bondage or debt cycles). They have to go through a rigorous screening process that systematically eliminates or disadvantages migrant workers (mostly women with statistically lower education levels), pushing them to enter the countries without proper documentation

[1048] Ibid.
[1049] COSATU, "COSATU Central Executive Committee statement" (28 May 2008), available at: http://amadlandawonye. wikispaces.com/COSATU+Central+Executive+Committee+statement.
[1050] Mondli Hlatshwayo, Research Report: COSATU'S Responses to Xenophobia, (2010), available at https://www.atlanticphilanthropies.org/wp-content/uploads/2010/07/8_Cosatu_c.pdf

and through illegal ways which further strip them away from any possible legal protection, access to health services or social security.[1051] All in all, migration in low-income host states has been understood as a male phenomenon for years, with a stereotypical scenario in which male workers go far away and leave their families and the female members of the community behind for care. As the face of migration is substantially changing and the volume and exploitation of female migrant workforce is increasing in host states, business and human rights mechanisms must actively work to transform migration regulation systems to shift the male norm and expose and transform the gendered aspects of seemingly neutral systems.

Last but not least, from a gendered business and human rights approach, attention must be given to the recruitment agencies and their accountability (or lack thereof). Migrant women rely on these recruitment agencies for services (support for acquiring certain documents and translation) and access to labour markets,[1052] to negotiate salaries and working conditions, and mediate through legal processes of foreign employment, holding significant power and advantage against their clients, the migrant worker women.[1053]

These agencies or "brokers" can range from individual agents to informal collectives -often nicknamed as "gangs" or "masterminds" among employers of foreign domestic workers in Türkiye- to large-scale companies often recruiting workers for corporations operating in their supply chains or who are bringing their local workers for mega projects (as can often be seen in practices of Chinese construction companies) with the possibility of being both formal and registered, and informal.

These recruitment agencies of brokers are in a similar position with the subcontractors, through which multinational corporations can use to delegate, or further layer the recruitment processes and labour practices, and create a protective distance between themselves and the

[1051] Jennifer N. Fish, Rights across borders: policies, protections and practices for migrant domestic workers in South Africa, In Darcy Du Toit, (ed.), Exploited, Undervalued–and Essential: Domestic Workers and the Realisation of their Rights, PULP, (2013); Vusilizwe Thebe, Two Steps Forward, One Step Back": Zimbabwean Migration and South Africa's Regularising Programme (the ZDP), Journal of International Migration and Integration 18(2), (2017); Kudakwashe P. Vanyoro, Zimbabwean migrant domestic worker activism in South Africa, University of Sussex, (2019), available at: https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/14871; Mbiyozo, A. N. (2018). Aimée-Noël, Gender and migration in South Africa: Talking to women migrants, ISS Southern Africa Report 16 (2018).

[1052] Mariama Awumbila, Joseph Kofi Teye and Joseph Awetori Yaro, Social networks, migration trajectories and livelihood strategies of migrant domestic and construction workers in Accra, Ghana, 52 Journal of Asian and African Studies 982, (2017).

[1053] Kellynn Wee, Charmian Goh and Brenda S.A. Yeoh, Translating people and policy: The role of maid agents in brokering between employers and migrant domestic workers in Singapore's migration industry, 54 International Migration Review 1015, (2020), Alice Kern and Ulrike Müller-Böker. "The middle space of migration: A case study on brokerage and recruitment agencies in Nepal." Geoforum 65 (2015).

labour rights violations. However, the variety of sizes and relations, the direct connection, communication, and dependency of migrant women on these agencies, and their disproportional control over migrant women's livelihoods, passports, and safety (concerning the risk of deportation) increase the risk of their operations. In addition, they do not only work for corporations but also with less inspected, less visible individual employers. There are reported cases of violation of rights and abusive behaviours as mentioned above with debt bondage, recruitment fees, and confiscation of passports. In addition to these cases of exploitation, studies have found a significant, nuanced role that recruitment agencies play, through gatekeeping and shaping migration flows with their selection, hiring, and guiding practices. They hold the power to determine the regions which particular workers should go to by engaging in spatially, regionally, racially and ethnically selective recruitment from certain places. They are guided by their own political tendencies or prejudices in selection processes and discriminate against certain types of workers based on age, religion, marital or parenthood status through conscious social choices that define and categorize workers. In the South African context, there are reported cases of discrimination towards Zimbabwean women domestic workers based on stereotypes and prejudices concerning theft, unfriendliness, laziness, unwillingness to work, long-term unemployment, or presentability/physical appearance.[1054] This gatekeeping pushes migrants to seek job-seeking mechanisms that are even more unsafe and unregulated and open them up to the risk of trafficking and modern slavery. They also reinforce racial stereotypes and prejudices by shaping the employers' approach towards domestic workers, warning employers about "their flirty or seductive behaviour", "inappropriate clothing and make-up" or advising employers to hold strict control over the domestic workers. [1055]

Emphasizing migrant women's experiences in host states such as Türkiye, Colombia and South Africa are of particular importance in a business and human rights context because experiences of migrant women within host states are not given as much attention as transnational relationships between migrant workers from the Global South migrating and living in the Global North, working for the Global Northern employers.

[1054] David Du Toit, We cannot discriminate against someone without an eye or a leg... But I do look at obesity": statistical discrimination and employers' recruitment strategies at housecleaning service companies in Johannesburg, 40 South African Journal of Labour Relations 25, (2016).
[1055] Allan Findlay et al., The Role of Recruitment Agencies in Imagining and Producing the "Good" Migrant, 14 Social & Cultural Geography, (2013); Julien Debonneville, An organizational approach to the Philippine migration industry: recruiting, matching and tailoring migrant domestic workers, 9 Comparative Migration Studies 1, (2021).

Migrant care workers and domestic workers, who are experiencing deep, intersectional and multidimensional discrimination are already less visible, and more vulnerable to exploitation largely due to unregulated migration processes, as opposed to South-North value and supply chains. There is little yet growing, evidence-based research showing the increased vulnerability of migrant women in host states. The employment conditions, migration laws, and policies, as well as national labour standards often intersect to shape the status and experiences of migrant domestic workers."[1056]

4.16.2. Undervalued and Invisibilized: Domestic Work That Makes the World Go Round

The situation of domestic workers and their very limited access to justice mechanisms require a new approach to the way BHR is understood. The qualitative data collected during research visits have transformed the approach and flow of this very dissertation, and the issue of domestic workers has been determinant in this change. If the business and human rights agenda is exclusively understood within the framework of the operations and impact of multinational corporations, and particularly the violations experienced by the formal/registered laborers (with the exception of the informal economy as a part of the value and supply chains through subcontractors), the deeply exploited communities, and the women and girls within these communities are left out of radar. In the current context, they are included within the picture as indirectly victimized, most vulnerable community members. The operations of multinational corporations in host states are comparatively visible, and trackable, yet the gender-focused violations can be equally committed by small and medium-sized, national or regional businesses and within non-traditional employer-employee relationships, or informal and unregistered yet big sectors, such as domestic work. In other words, to have a better understanding of the business and human rights challenges in host states, the presumptive picture of "evil corporation vs. exploited workers/community" is not adequate or realistic. Many business-related violations of rights happen in small businesses, workshops, and even households; far away from the industrial complexes. The full recognition of challenges faced by working women lies in a holistic look into formal, and informal economies in various scales. This is why this dissertation chooses to focus on gender dimensions of business-related violations and the gendered structure of mechanisms and relationships among smaller actors as well.

[1056] Alice Kern and Ulrike Müller-Böker. "The middle space of migration: A case study on brokerage and recruitment agencies in Nepal." Geoforum 65 (2015); Precious Baison, Cross-border care practices: Experiences of Zimbabwean migrant women engaged in care work in households in South Africa, (Doctoral Thesis, University of Pretoria), (2021).

Domestic workers are often in vulnerable positions, mostly due to their non-traditional and often informal employer-employee structure, their low rate of unionization or mobilization, and their rare attempts to take legal action. In all three countries, the domestic work sector is heavily dominated by low-income women. In Türkiye, more than 90% of domestic workers are women, and according to the information provided by trade unions, it is estimated that there are more than one million domestic workers in Türkiye. Having said this, since informal employment is prevalent, the estimation is made based on self-reporting and the information collected from trade unions. Accurate numbers for statistics, and valid information about the informality rate are difficult to maintain.

Interviews with former domestic workers in Türkiye, Colombia, and South Africa, as well as with SADSAWU, and the ILO reports on domestic work set forth a number of issues. First one is the common over-representation of women in domestic work. More than 90% of domestic workers in Türkiye,[1057] 94.5% of domestic workers in South Africa[1058] and 95% in Colombia[1059] are reported to be women. Domestic work constitutes a significant percentage of female workforce in all three countries, as domestic work is often seen as an appropriate or tolerated sort of work for women from low-income communities and minority/migrant women. For example, in South Africa, 30.1% of the female workforce are made up of women in non-standard employment[1060], and 12% of the female workforce consists of domestic workers.[1061] Black African women constitute an overwhelming majority (over 95%) of domestic workers[1062] and the domestic work sector has been found to have the highest concentration of workers with the lowest education level.[1063] Domestic work is the biggest source of urban employment for women in Colombia, with a 33.6% rate. A 2013 research has shown that 61.9% of domestic workers had an average monthly income ranging between 81

[1057] Ceyhun Güler, Ev İşçiliğinin Türkiye'deki Görünümü: Kapsam, Boyut ve Sorunlar, ILO Türkiye, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_803900.pdf
[1058] Statistics South Africa (Stats SA), Quarterly Labour Force Survey Quarter 2, (2021), available at: http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2021.pdf
[1059] Rights CoLab, "Symplifica Case Study", available at https://rightscolab.org/case_study/symplifica/
[1060] Statistics South Africa (Stats SA), Quarterly Labour Force Survey Quarter 2, (2021), available at: http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2021.pdf
[1061] "12% of working women in South Africa are domestic workers – yet they don't receive proper maternity leave or pay", (2022), available at: https://theconversation.com/12-of-working-women-in-south-africa-are-domestic-workers-yet-they-dont-receive-proper-maternity-leave-or-pay-189766
[1062] Maria Hengeveld, South Africa's Domestic Workers: Invisible labor in plain sight, Africa is a Country (2015), . available at: https://africasacountry.com/2015/03/south-africas-domesticworkers-bonded-labor-in-plain-sight
[1063] Nkosinathi Gama and Lodene Willemse, A Descriptive overview of the education and income levels of domestic workers in post-apartheid South Africa, 80 GeoJournal 721, (2015).

and 161 USD, while the current minimum wage was 315 USD. 91% of domestic worker women worked between 10 and 18 hours per day, 90.5% were not paid for working overtime, only 33.3% had access to social security and 50% of them lacked registration in any sort of a retirement program.[1064] Based on TURKSTAT and Social Security Institution's data, at least 70%; and according to the domestic workers' unions, 90% of domestic workers in Türkiye are unregistered and lack any kind of effective social protection.[1065]

There are several international and domestic legal frameworks to provide further protection over the labour rights of domestic workers in all three states.[1066] ILO's Domestic Workers Convention No. 189 (2011) is ratified by Colombia (in force since May 2014) and South Africa (in force since June 2013). Türkiye is not a party to the Convention, yet domestic workers unions and NGOs are calling for the ratification of the Convention.

In Türkiye, the Law No. 6552 and the addition of Article 9 to Law No. 5510 on Social Insurances and General Health Services have regulated easier employment of domestic workers, with easier and simpler procedures for the registration and employment of domestic workers. Accordingly, if domestic workers work for 10 days or more in a month with the same employer, then they are included under the scope of long-term and general health insurance. However, domestic workers who work less than 10 days are only included under the scope of work accidents and occupational diseases insurance, with an option available for them to be fully insured.[1067]

In Colombia, the Law No. 1595 which incorporates the ILO Convention 189 was passed, followed by the Decree No. 721, regulating domestic workers' registration into the Family Benefits System and the Decree No. 2616 regulating social security payments for employees working for periods shorter than a month and labour training for informal workers in 2013.[1068] There are still a number of discriminatory aspects under labour laws for domestic worker women, excluding them from receiving bonuses (because the houses of the employers, which happens to be the workplace of domestic workers, are not considered productive economic

[1064] Escuela Nacional Sindical, "El Sindicalismo Cuenta", available at: http://ens.org.co/apc-aa-files/45bdec76fa6b8848acf029430d10bb5a/Informe_ejecutivo.pdf
[1065] Ceyhun Güler, Ev İşçiliğinin Türkiye'deki Görünümü: Kapsam, Boyut ve Sorunlar, ILO Türkiye, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_803900.pdf
[1066] Ibid.
[1067] Ibid.
[1068] Colombian Ministry of Health and Social Protection, Decree No. 3047, (27 December 2013); Gabby de Cicco, "The gap between laws and reality for Colombian domestic workers", AWID, (5 Spetember 2014), available at https://www.awid.org/news-and-analysis/gap-between-laws-and-reality-colombian-domestic-workers#:~:text=AL%3A%20Domestic%20work%20is%20the,by%20citizens%20and%20their%20institutions.

units in the same way as businesses) and longer standard work days for domestic workers who sleep in the house of the employers (known as internal domestic workers), compared to all standard Colombian workers.[1069]

In South Africa, the legislative frameworks and regulations are the result of the hard work of well-mobilized women domestic workers, led by the South African Domestic Service and Allied Workers Union (SADSAWU). Interviewees from SADSAWU have commemorated and recalled their recently passed feminist founder, and well-known domestic workers rights activist Myrtle Witbooi, sharing *"It wasn't something that the government gave to domestic workers. It was domestic workers themselves that have fought for this."*[1070] Following protests in which five domestic workers chained themselves to the gate of the government office, their crucial achievements include domestic workers' access to the Unemployment Insurance Fund (UIF) which provides short-term relief to people who are unemployed or on temporary leave. In addition to its function as a financial lifeline, the UIF recognized domestic workers de facto as legitimate workers.[1071]



Figures 4.15.a., 4.15.b., 4.15.c.: SADSAWU headquarters office with current executive board members, memorial for the late founder and labour rights activist Myrtle Witbooi, posters for Labour Pains for the Nations, a platform for domestic workers' experience sharing and a poster for the International Labour Resource and Information Group. (February 2023, photographs taken by the author).

[1069] Gabby de Cicco, "The gap between laws and reality for Colombian domestic workers", AWID, (5 Spetember 2014), available at https://www.awid.org/news-and-analysis/gap-between-laws-and-reality-colombian-domestic-workers#:~:text=AL%3A%20Domestic%20work%20is%20the,by%20citizens%20and%20their%20institutions.

[1070] Oral interview with a representative from SADSAWU, from South Africa (February 2023).

[1071] "South Africa Is Pioneering a Better World for Domestic Workers", (2022), available at https://reasonstobecheerful.world/south-africa-domestic-worker-rights-unions/

In November 2020, the South African Constitutional Court gave a landmark ruling in *Mahlangu and Another v. Minister of Labour and Others*.[1072] SADSAWU was the second applicant along with Ms. Mahlangu, the daughter and dependant of a domestic worker who died in an accident that occurred in the course of her employment, in a house she was working in. The Commission for Gender Equality and Women's Legal Centre Trust, both of whom are interviewees in this dissertation research, have been amicus curiae. The case has been a successful example of strategic litigation led by domestic workers, with concrete collective achievements impacting the labour rights of domestic workers throughout SA.

The ruling provided a comprehensive analysis and a recognition of how domestic workers' labour rights are at the intersection of gender, race and class, with references to *"the lingering gendered implications of apartheid's racist system"* and *"a gendered and racialised system of poverty, that was particularly burdensome for Black women."*[1073] Furthermore, according to the majority ruling written by Victor AJ, the case:

"... brings to the fore the need to consider patterns of group disadvantage and discrimination along intersectional lines. Multiple axes of discrimination are relevant to the case of domestic workers. Domestic workers experience racism, sexism, gender inequality and class stratification. This is exacerbated when one considers the fact that domestic work is a precarious category of work that is often undervalued because of patronising and patriarchal attitudes. The application of an intersectional approach helps us to understand the structural and dynamic consequences of the interaction between these multiple forms of discrimination."[1074]

The second and critical finding within the ruling applies to the cross-cutting experiences of domestic worker women in Colombia, Türkiye and South Africa, and even further, globally, on how domestic work is not regarded as real work and has been systematically undervalued. This also carries implications on how we need to understand business and human rights if we are hoping to build gender-responsive mechanisms, and how we need to prioritize including informal, undervalued and underpaid work of working-class women. The ruling puts forward two reasons on why domestic work has been historically undervalued. First, because it has

[1072] Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020).
[1073] Ibid, para 98.
[1074] Ibid, para 90.

been seen as work typically done by a "despised race"[1075] and second, because it has been regarded as "women's work" or a "labour of love" that has no economic currency.[1076] Similarly, in a business and human rights context, the work tends to be undervalued precisely because of who performs the work: poor women of colour, with minority or migration backgrounds. As the Committee on Economic, Social and Cultural Rights adopted in its General Comment No. 23, the skills required for domestic work are undervalued and result in lower pay because of gendered stereotypes.[1077] The missing piece in low-income, developing host states like Türkiye, Colombia and South Africa, which typically struggle with strict household labour divides and roles based on gender stereotypes, the enormous economic contribution of women's unpaid care work is not formally included within the calculations - not even calculated or to put it in other words, taken for granted.

As Justice Victor AJ stated, *"The reasons for undervaluing this work and not according it the necessary dignity are deeply gendered and reflect the patriarchal values which inform what counts as real work."*[1078] ILO's Decent Work for Domestic Workers Report captures that domestic work *"is looked upon as unskilled because most women have traditionally been considered capable of doing the work, and the skills they are taught by other women in the home are perceived to be innate. When paid, therefore, the work remains undervalued and poorly regulated."* [1079]

The duties performed by domestic workers are not regarded as "real, back-breaking work", and the assumption that they are engaging in an inherently feminine endeavour is a sexist approach. The systematic undervaluing of domestic workers' work and the often exploitative relationships between domestic workers and their employers raises questions about dignity. The South African Constitutional Court has a well-established commitment to human dignity in relation to its apartheid past, and its jurisprudence prohibits the idea that people can be reduced to objects and treated as a means to achieve an end.[1080] All in all, the assumption that

[1075] Hina Shah, and Seville Marci, Domestic Worker Organizing: Building a Contemporary Movement for the Dignity and Power, Albany Law Review 413 (2011), p. 416.
[1076] Ibid.
[1077] Committee on Economic, Social and Cultural Rights, General Comment No. 23 on the right to just and favourable conditions of work on (27 April 2016), para 47(h).
[1078] Mahlangu and Another v. Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020).
[1079] ILO, Decent Work for Domestic Workers § (2010).
[1080] Rinie Steinmann, The core meaning of human dignity, Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsbladi 19(1), (2016), at 17. South African Consitutional Court has set the foundations of its understanding of inherent human dignity in para 31 of Prinsloo v. Van Der Linde: "We are emerging from a period of our history during which the humanity of the majority of the inhabitants of this country was denied. They were treated as not having inherent worth; as objects whose identities could be arbitrarily

women are responsible for doing care work and domestic work for free within the households reflects upon the chronic undervaluation of the required skills, effort and time given to domestic work.[1081]

In addition, the employers and primary contacts of domestic workers often happen to be women of a higher class, or middle-class working women, which creates inter-class or inter-racial dynamics among women within the same household. As one of the interviewees who was a feminist legal scholar at a law school in Colombia shared: *"We (middle-class working women) owe our careers and opportunities to the domestic women's hard work back home. I am here giving lectures, doing research and talking to you because of our nanny back home taking care of my son."*

The South African Constitutional Court, in its landmark *Mahlangu* decision, held that certain sections of the Compensation for Occupational Injuries Act[1082] (COIDA) are unconstitutional for excluding domestic workers from the definition of an "employee" and denying them compensation if they were to be injured or died while working. Following the successful strategic litigation and the ruling of the Constitutional Court, COIDA was successfully amended by the Parliament in April 2023, granting domestic workers the status of formal employees and providing them with benefits such as compensation for work-related injuries or illnesses. The Compensation Fund started accepting claims from domestic workers and their dependents for injuries or deaths resulting from work-related accidents. The new Act identifies the "main employer" of a domestic worker and holds them accountable for any workplace injuries sustained by the employee and requires them to contribute to the Unemployment Insurance Fund.

It should be noted, however, that the legislative framework has mostly targeted employers, and the benefits provided to domestic workers are still conditional upon the employer's registration, often aiming to make the process easier and more attractive to the employer, rather than prioritizing the needs of domestic workers. The 10-days-a-month limitation under Turkish legislation has caused many employers to ask their domestic workers to come to work

---

defined by those in power rather than as persons of infinite worth. In short, they were denied recognition of their inherent dignity."

[1081] Çağla Ünlütürk Ulutaş, Evin İçi İşyeri: Ev Hizmetleri, Ücretli Emek ve Göçmen Kadın Emeği, In Saniye Dedeoğlu ve Melda Yaman Öztürk (eds.), Kapitalizm, Ataerkillik ve Kadın Emeği: Türkiye Örneği, Sav, (2010); Çağla Ünlütürk Ulutaş and Nagihan Durusoy Öztepe, Ev Hizmetlerinde Mesleki Sağlık ve Güvenlik Sorunu, Çalışma İlişkileri Dergisi, 4(2), (2013); Ferhunde Özbay, Türkiye'de Ev Emeğinin Dönüşümü: Ondokuzuncu Yüzyıldaki Osmanlı Ev Kölelerinden Günümüzdeki Kaçak Göçmen İşçilere, In Ahmet Makal and Gülay Toksöz (eds.), Geçmişten Günümüze Türkiye'de Kadın Emeği, Ankara Üniversitesi Yayınevi, (2012).

[1082] Compensation for Occupational Injuries and Diseases Act 130 (1993).

less often to make sure they do not have to provide full insurance, causing serious loss of income for the workers or pushing them to search for work, and try to juggle three employers a month to make the ends meet. Another common phenomenon is for domestic workers asking their employers not to insure them and give them the extra money instead, pushing them to choose higher income over long-term social security and health benefits, since they are living from paycheck to paycheck. Having mentioned paychecks, the payments in person and the common lack of contracts also make it difficult for domestic workers to bring claims before their employers or prove their employment; or for fiscal and labour inspectors to detect unregistered labour.

There are mobilization platforms and unions specifically focused on domestic workers:[1083] such as the Sindicato Nacional de Trabajadoras del Servicio Doméstico (SINTRASEDOM), and the Unión de Trabajadoras Afrocolombianas del Servicio Doméstico (UTRASD), which is the first-ever union in Colombia founded entirely by Afro-descendant women, who often face racial discrimination and are over-represented in domestic work sector. South African Domestic Service and Allied Workers Union (SADSAWU) in South Africa, and İMECE Ev İşçileri Sendikası and Ev İşçileri Dayanışma Sendikası (EVİD-SEN) in Türkiye are actively working for labour rights of domestic workers, all led by women, and they are all members of International Domestic Workers Federation (IDWF).

IDWF was founded in 2006 as a network, and it mobilized and unionized significantly late, compared to other sectors.[1084] Despite their hard work and advocacy, their membership rates are quite low. Interviews with the South African Domestic Service and Allied Workers Union (SADSAWU) have indicated how the grey legal areas with regard to domestic workers' rights create confusion and lack of knowledge on the state officials' side; how often domestic workers are redirected and sent over to them from labour departments and the Commission for Conciliation, Mediation and Arbitration (CCMA), and how they sometimes call SADSAWU office to clarify certain cases. While collaboration with civil society is applaudable, this shows how progressive legal achievement does not always equate to proper and effective implementation, that States often fail to properly train officers and how the few, already underfunded and understaffed unions and civil society mobilizations of domestic workers are given a disproportionate burden. Some domestic worker unions have shared that

[1083] International Domestic Workers FederationInternational Domestic Workers Federation, "IDWF Affiliates", available at: https://idwfed.org/affiliates/
[1084] International Domestic Workers Federation, "About Us", available at https://idwfed.org/about-us/

domestic worker women come and ask for information and support from the union yet they refrain from becoming members with fear of their employers' reaction.

In addition to legislative frameworks aiming to simplify and facilitate the formalization and registration of domestic work, there are innovative good practices. Symplifica is a Bogotá-based software start-up founded and led by young women in 2015, and growing popular (recently expanded and launched in Mexico), which aims to simplify the complex procedures of contract affiliation and termination, registering domestic workers and nannies, providing regular payroll payments and legal social benefits like health insurance.[1085] While the initiative is praised both by the interviewee activists and scholars for its practicality and benefits for domestic workers, it is an indicator of how the improved legislative frameworks fail to facilitate or encourage employers to register their domestic workers.

In the Colombian context, similar to Türkiye and South Africa, women domestic workers' working conditions and dignity at their workplace are dependent on their employers, or as named in Colombia, "*patrones*". Some domestic workers are not aware of their rights under labour laws while some are fully aware of certain violations, yet tolerate how their employers disregard such laws with the excuse of compensating their workers with intangible goods like "affection" or "good treatment", or with overvalued goods and services such as housing and food. As Colombian feminist human rights activist pointed out, this hierarchical, class-based relationship among women creates a serious contradiction: an employer, often claims her worker is *"the most important family member"*, that she *"is almost a family member"*, or that *"without her, their family would be in a chaos"*.[1086] But this appreciation is not reflected on their labour rights or proper payment that is at least the minimum wage, or social benefits, or specific and limited working hours. Domestic workers who are living within the households, taking care of children or elderly are specifically more open to exploitation as they can not leave the abusive spaces, have much less work-life balance and are often compromised with the food and accommodation they are provided with. There is a common expectation towards domestic worker women to be obedient and grateful.

[1085] "Five Questions With: Symplifica", (2022), available at https://contxto.com/en/five-questions/five-questions-with-symplifica/#:~:text=Salua%20Garc%C3%ADa%2C%20COO%20and%20cofounder%20of%20Symplifica. ; https://rightscolab.org/case_study/symplifica/; https://www.symplifica.com/

[1086] Gabby de Cicco, "The gap between laws and reality for Colombian domestic workers", AWID, (5 Spetember 2014), available at https://www.awid.org/news-and-analysis/gap-between-laws-and-reality-colombian-domestic-workers#:~:text=AL%3A%20Domestic%20work%20is%20the,by%20citizens%20and%20their%20institutions.

The power dynamics and the pressure of maintaining good relations with employers, and not risking a bad reference in the future are important factors. Another risk is the sense of insecurity and the risk of harassment in private spaces. A former Turkish domestic worker shared in an interview, *"I also encountered bad things… You work in unfamiliar homes…you feel insecure, especially if there is a man in the house as you are working. I came to work thinking I was going to take care of children, but the homeowner I work for tried to traffic me…These are not urban legends, they actually happen."*[1087] A study in South Africa found that domestic workers resort to keeping quiet and minimally communicating with their employers for fear that they will be victimized, and they exercise patience and extreme tolerance while dealing with the demands of their workers, fearing losing their jobs. The precarious nature of the jobs makes domestic work one of the most oppressed, racialized and exploited sectors in the South African economy.[1088]

There are some cross-cutting problems faced by domestic worker women in all three jurisdictions include: First is the fragility of their citizens' rights because many of them lack proper identification documents, with minimum levels of literacy and schooling, and lack of access to the digital social benefit systems. They are often refraining from being unionized or being politically involved in order to prevent " a bad reputation" among employers. Secondly, domestic workers are often dispersed, working in distant, geographically far away single labour unit spaces, -houses, which are private secluded spaces- that makes exerting pressure and mobilizing as a group much more difficult compared to workers collectively working in factories and corporate productive units. Thirdly, there are no effective legal mechanisms for domestic workers to fully benefit from labour rights and benefits or no proper complaint mechanisms. This is due to three main reasons: the difficulty of proving an employment relationship; the difficult and costly procedures and paperwork to register a domestic worker; and the systematic undervaluation of domestic work as reflected on the different labour rights provided under labour legislations, domestic work not included within what is seen as the norm labour relations. This is highly significant, and the argumentation of the "exceptional" nature of domestic work can not be put forward since many branches of work and labour that require very specific and niche expertise are regulated in immense detail while domestic work, employing a significant section of population, employing millions of women and constituting

[1087] Oral interview with a former domestic worker from Türkiye, ()
[1088] Tsoaledi Daniel Thobejane & Sibongile Khoza, Becoming a Domestic Worker: The Case of Mpumalanga Province, South Africa, 12 International Journal of Sustainable Development 27, (2019).

as much as 9 percent of global GDP[1089] (11 trillion USD worldwide) is purposefully left unregulated. The lack of social benefits, contract practices, flexible working hours and lack of job descriptions are typical examples of undervaluation of domestic work.[1090] Maternity protection is available only for some domestic workers, since components of maternity protection are dispersed and there is weak alignment within domestic legislation and government implementation on maternity protection. The enforcement of maternity protection is highly problematic because workers are hesitant to report their employers for fear of missing future job opportunities, there is little awareness of maternity protection entitlements, labour inspection systems lack the capacity to monitor private households efficiently.[1091]

There are practices in which domestic women workers, who often know each other, who may be related and referencing each other as domestic workers for the same neighborhoods, who commute from poor suburbs to middle class and upper class neighborhoods, communicate and learn about their wages and benefits, and try to act together. However, on the opposing side, there are neighbouring middle or upper class women employers who also communicate with each other and take similar stances against raise demands, which complicates the relations with opposed fronts of solidarity, a clash of fronts between domestic workers and their employers.

There are innovative models of domestic work, in which companies hire and send over daily cleaners for their clients, or may provide cleaning services for schools, malls, universities, and workplaces. These work models are more advantageous in the sense that the domestic workers are hired with (collective) labour contracts and have social security and benefits, however, these models are not as common in Colombia, South Africa and Türkiye, as it is in Europe and North America, and long-term, personal relationships with domestic workers are still preferred.[1092] It is also reported that such daily cleaning company services may take heavy commissions from domestic workers and can still be precarious, not guaranteeing a regular

[1089] APEC Secretariat, Unpaid Care and Domestic Work: Counting the Costs § (2022), available at https://www.apec.org/publications/2022/03/unpaid-care-and-domestic-work-counting-the-costs#:~:text=The%20ILO%20estimates%20the%20value,at%202.4%20percent%20of%20GDP.

[1090] Ceyhun Güler, Ev İşçiliğinin Türkiye'deki Görünümü: Kapsam, Boyut ve Sorunlar § (2021), available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_803900.pdf

[1091] Catherine Pereira-Kotze, Tanya Doherty and Mieke Faber, Maternity protection for female non-standard workers in South Africa: the case of domestic workers, 22 BMC Pregnancy Childbirth 657, (2022), available at https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-022-04944-0

[1092] Ceyhun Güler, Ev İşçiliğinin Türkiye'deki Görünümü: Kapsam, Boyut ve Sorunlar § (2021), available at https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_803900.pdf

flow of income for the workers which traditional, personal relationships can guarantee to a certain point.

4.17. Access to Justice

4.17.1. Not Knowing Rights vs. Not Affording their Enforcement

A common theme in international and national reports, workshops and business and human rights gatherings is that women workers, especially in host states' context, do not know their rights and that they need to be informed/educated. The technicalities about labour contracts or available legal fora may not be known in detail, but this biased assumption about women workers is sometimes informed by colonial or class-based presumptions and interviews have indicated otherwise. Interviews with women workers, especially domestic workers indicate that they often know and are aware of the violation of their rights or the ongoing exploitation. However, the power dynamics between them and the employers, their dependency on the income and their care responsibilities push them to ignore the violation or consciously avoid taking action. Especially in the Turkish context, this is one of the biggest reasons why women workers do not unionize since they think they can draw attention and be targeted.

In all three countries, there are cases where the labour union representatives or the department chiefs/leaders are the perpetrators of sexual harassment or gender-based mobbing. Sections or workshops within factories, dominated by women workers, are often managed by male workers. In a few cases where there is an available complaint mechanism in the workplace, the authority or contact person to which the complaints are submitted can be the perpetrator or may protect the perpetrator. Internal mechanisms are not trustworthy in the sense that a majority of women do not believe that their complaint will be taken seriously or that there is a realistic chance to get the perpetrator punished or that they can be awarded with a satisfactory remedy. They choose not to take action or to remain silent, not to get reactions or to be socially stigmatized. In addition to the stigmatization of surviving sexual assault, it is quite difficult to take legal action against a company or an institution and to keep working, without any social implications by fellow workers or managers. In the Colombian judiciary, a majority of women who bring lawsuits before labor courts, pursuing their due wages or benefits have already quit their jobs and are disaffiliated from their employers. In small businesses or specific sectors that require crafting, in which there is a small network of employers, taking legal action or claiming labour rights is frowned upon and may result in negative references, a bad reputation or exclusion from the sector. This is especially the case in domestic work in which households

(often employing women within the households) are in close communication with each other about the performances and wages of domestic workers and new job opportunities depend on having good relationships with employers. Women workers often prefer a good reputation and good references, over claiming their rights. Women workers with migrant or minority backgrounds have to struggle with stereotypes based on their identities and are often expected to be grateful, to consider themselves lucky, and to be abstemious with less payment or heavier work.

4.17.2. Victimhood vs. Agency of Women in Business and Human Rights Lawsuits

The need to establish the delicate balance between victimhood and agency is particularly important when it comes to business and human rights justice mechanisms. There have been some examples of international business and human rights lawsuits filed against multinational corporations, with a focus on gender equality, or where the plaintiffs are by an overwhelming majority, women. Under this section, and the following section, the case studies are not from Türkiye, Colombia or South Africa, however, these exceptional and highly documented lawsuits in which the details are publicly available, are illustrative examples for the complex and gender-specific barriers before access to justice. They apply well to the gender discussions in business and human rights contexts of host states. For a discussion on the delicate balance between victimhood and agency of women, specifically, indigenous women, the Chevron case from Ecuador will be examined, followed by the class action gender discrimination cases against Wal-Mart in the United States, to discuss the impact of lengthy and exhausting legal battles on collective groups of working class women.

Chevron Case in Ecuador

In 2011, a group of Ecuadorian women who are members of the indigenous communities filed a lawsuit against Chevron, alleging that the environmental contamination caused by the oil company has disproportionately affected their indigenous and rural communities, specifically, women and children. The Chevron case in Ecuador is indeed a complicated series of legal procedures that dates back to the 1960s when Texaco, which was later acquired by Chevron, began oil drilling operations in the Ecuadorian Amazon. The company was accused of causing widespread environmental damage and harming the health and livelihoods of local communities, including indigenous women. In 1993, local communities filed a lawsuit against Texaco in US courts. Steven Donziger, the attorney for the affected communities, worked closely with Huaorani women from Lago Agrio in the Ecuadorian Amazon, building the 1993

case that eventually became a 30,000 person class action lawsuit[1093]. Texaco/Chevron did not dispute that the pollution occurred and argued that the Ecuadorian government released it from liability after paying for an earlier, allegedly insufficient, clean-up. The case was later transferred to the Ecuadorian courts at Chevron's request. After more than two decades of litigation, in 2011, an Ecuadorian court ordered Chevron to pay 9.5 billion USD in damages. Chevron refused to pay and instead accused the plaintiffs and their lawyers of fraud, bribery, and corruption. The company claimed that it was the victim of a conspiracy between the plaintiffs' lawyers and the Ecuadorian judiciary, and filed counterclaims against them in US courts. In 2014, a U.S. court found that the plaintiffs' lawyers had used corrupt means to obtain the verdict in Ecuador and barred them from collecting the damages. In 2018, a U.S. federal court ruled in favour of Chevron, stating that the Ecuadorian judgment was obtained through fraud and racketeering. However, the case is still ongoing, as the plaintiffs continue to fight for compensation and justice.

An interesting aspect of this case is the leading attorney, Steven Donziger, who represented indigenous women in Ecuador seeking to hold Chevron accountable for environmental damage caused by Texaco, which Chevron acquired in 2001. Donziger was a controversial figure, with allegations of misconduct and ethical violations made against him by Chevron and other critics. Donziger, in addition to his roles as a lawyer and a PR strategist, had become, by necessity, an expert fund-raiser, in order to sustain the legal battle against the multinational corporation. He was highly effective at gaining support from Hollywood celebrities, and wealthy patrons, believing that it was important to find ways to maintain the legal efforts, as the main strategy of a multinational corporation is to wear down its opponents through legal and financial means. His way of leading the lawsuit was seen as *"a suit driven not by poor EcuadoranS, but by lawyers and consultants and financiers"*, and Donzinger's ambition was seen *"certainly grandiose, but it seemed motivated as much by a combative idealism as by a desire for riches".*[1094] He initially *"wanted to recalibrate the power dynamic that had traditionally made it difficult for marginalized foreigners to sue American companies"* and that he was hoping to *"create a viable business model for a human-rights case."*[1095]

[1093] Steven Donziger, Laura Garr and Aaron Marr Page, Rainforest Chernobyl Revisited: The Clash of Human Rights and BIT Investor Claims: Chevron's Abusive Litigation in Ecuador's Amazon, (2010), available at: https://biblioteca.corteidh.or.cr/tablas/r24170.pdf

[1094] Joe Nocera, Behind the Chevron Case, The New York Times, (22 September 2014), available at https://www.nytimes.com/2014/09/23/opinion/joe-nocera-behind-the-chevron-case.html

[1095] Ibid.

In addition, Donzinger was claimed to have pressured Judge Yánez by blackmailing him because of his alleged womanizing and drinking. Judge Yánez presided over the Chevron case in Ecuador and ruled in favor of the plaintiffs. He was accused of sexually harassing an intern, a charge that he dismissed as politically motivated. Dozinger, after being found guilty of criminal contempt of court by a U.S. federal judge in July 2021 and has been under house arrest since then due to his refusal to comply with court orders related to the Chevron case.

Lastly, Chevron's approach to this legal battle is noteworthy. Chevron has fought the case in Ecuador and more than a dozen U.S. federal courts, and hired hundreds of lawyers, which has created a significant amount of legal paperwork, according to their attorneys. Donzinger has stated that *"Chevron is motivated not merely by fear of an adverse judgment but by a desire "to destroy the very idea that indigenous people can bring an environmental lawsuit against an oil company."*[1096] Similarly, in 2008, a Chevron lobbyist in Washington told journalists that they *" can't let little countries screw around with big companies like this"* and one Chevron spokesman said, *"we're going to fight this until Hell freezes over—and then we'll fight it out on the ice."*[1097]

The reason why the Chevron case in Ecuador is taken under the lens in this dissertation is because of important takeaways it provides for the business and human rights community. In the midst of this deeply complicated and long legal battle with controversial legal strategies on both sides, the gender dimension of this case was narrowed down, particularly, how the contamination caused by Chevron's operations has had a disproportionate impact on women and children in rural communities who often play a central role in farming, food production, water gathering and how the contamination of rivers and soil has made it difficult for them to grow crops or access clean water. Women from the most affected Cofán, Kichua, Secoyas, and Huaroani Indigenous Peoples are often responsible for managing natural resources and caring for their families' health. The toxic waste has also been linked to high rates of cancer, a significant rise in miscarriages, and other health problems throughout pregnancies. Women are often the primary caregivers in indigenous communities, and the pollution caused by Chevron's oil drilling has had significant impacts on their health and well-being. They have

[1096] Patrick Radden Keefe, Reversal of Fortune, Newyorker, (1 January 2012), available at: https://www.newyorker.com/magazine/2012/01/09/reversal-of-fortune-patrick-radden-keefe
[1097] Patrick Radden Keefe, Reversal of Fortune, Newyorker, (1 January 2012), available at: https://www.newyorker.com/magazine/2012/01/09/reversal-of-fortune-patrick-radden-keefe

reported higher rates of miscarriages, birth defects, reproductive health problems and cases of gender-based violence against protesting women.

While the resilience, agency and mobilization of indigenous women from the affected communities is undeniable and clearly evident through their community gatherings and protests against Chevron, and their forefront position in the struggle for justice, the legal battle actually took place among North American lawyers. Here, the Chevron case requires some attention as a typical reflection of the Western-centricism of business and human rights (like most other scholarly discourse) with little representation of those who experience (post)colonial contexts and directly affected groups. In this respect, the neocolonialism critique towards the business and human rights trials in Global North courtrooms step forward. The Global North courtrooms and Anglo-American or Eurocentric legal systems and language can be preferred as the ideal fora and medium on which contemporary international human rights law canon is built by the impacted communities and their representatives with higher hopes to receive proper remedies, and to hold multinational headquarters accountable. However, the legal battles in the Global North courtrooms is at risk of "delocalising justice," and doing so at a very high cost.[1098]

The delocalising justice is a critique towards neo-colonial features of business and human rights discourse. However, this critique can be combined with feminist approaches to business and human rights to better understand the limited access to justice of local and indigenous women. Delocalization can happen in two ways. Firstly, through the physically removed control over the trial from the indigenous peoples whose human rights have been directly impacted and secondly, by epistemically removing control over the trial from the people, country and legal systems in which the human rights violations took place. One misjudgement or assumption which was prevalent through the interviews held in Colombia, Türkiye and South Africa is that upper-middle class or comparatively privileged human rights practitioners and researchers regard the lack of knowledge as lack of interest or commitment at certain times.

The interviews with worker women and indigenous women's rights activists confirmed that it is mentally, socially (due to repercussions from colleagues, peers, and fellow community and family members), and financially challenging to keep being invested in a battle for justice.

[1098] Nicky Touw and Jindan-Karena ('Nina') Mann, Relocalizing Justice: Addressing Colonial Legacies Through Business and Human Rights Cases in Global North Courtrooms, (Symposium: Colonisation in, of and through Business & Human Rights, Tilburg University) (26 April 2023).

Women often have to prioritize earning some sort of income if they are the only income providers of their households, i.e. single mothers. However, this does not mean they are not aware of their rights, the fact that their rights were violated or that they are not committed to the cause. Their commitment to collective justice is evident in multiple cases, such as the resistance of Flormar workers in Türkiye, the collective of Marikana Widows in South Africa, or La Toma women's march to Bogotá in protest of the gold mining activities around the Ovejas River. Women have been at the forefront of protests and mobilization efforts often at the cost of being targeted, attacked and sanctioned. In the Chevron case, Huaorani women have been actively involved with the legal battle, and participated as much as they could during the trials in Lago Agrio. This physical participation, or detailed translation of all documents and proceedings, however, was not possible during the hearings in U.S. courts, and the information would translated by the Spanish-speaking leading lawyers of the plaintiffs, such as Donziger, who would shuttle between Ecuador and U.S. These kinds of imperious shifts leave women plaintiffs very little control over the narrative, often pushing them to the wronged victim position, and eliminate collective justice and feminist, indigenous knowledge and ways of knowing as irrelevant or non-judicial and therefore, insignificant.

Some business and human rights scholars have suggested relocalizing the justice, and using global transition justice in doing so, to address neocolonialism through business and human rights cases in Global North courtrooms.[1099] This dissertation is of the opinion that in parallel with the potential collaborations between Third World Approaches to International Law (TWAIL) and feminist legal theory, feminist critique of business and human rights can learn from the decolonization efforts in BHR and can borrow and learn from this approach.

The women from affected communities have been at the forefront, yet the amplified voices in legal battles have almost always been Western male voices, while indigenous women were put in a display position, often encouraged to gather in front of the Supreme Court, with their traditional attire. Overall, the Chevron case highlights the need for multinational corporations to conduct human rights due diligence to prevent harm to vulnerable communities, including women and indigenous people, and to be held accountable when they do cause harm. It also underscores the importance of ensuring that access to justice is available to all, including those who are marginalized and have limited resources to pursue legal action.

[1099] Ibid.

The Chevron case in Ecuador, is a perfect example to show how lengthy and complicated legal battles in developing host states against large multinationals, despite its significant gender dimensions, and the first-hand experiences of women plaintiffs, lack (or gradually lose) a gender-responsive approach. For example, there were concerns raised by some advocates and supporters of the indigenous communities in Ecuador that the voices of indigenous women were not adequately represented in the Chevron case. These advocates argued that women's perspectives and experiences were not taken into account in the legal proceedings, which had a significant impact on their lives and well-being and focused mainly on economic and environmental damage claims. This is in parallel with the critique of the sole focus on damages and misconduct within business and human rights litigation, which undermines a human rights-focused approach and collective rights.

The implications of gender bias in legal proceedings, as exemplified by the Chevron case in Ecuador, are not isolated individual incidents but are echoed in other parts of the world, including Türkiye, Colombia and South Africa. There is an urgent need for systemic changes in judicial systems to prioritize the inclusion of women's voices and experiences in all facets of these proceedings. The experiences and voices of local and rural women and women human rights defenders in these regions remain marginalized, even when they have succeeded in taking their cases to the judiciary. This shows the often unspoken responsibility of legal practitioners in how they approach the communities and women they are representing and transfer their knowledge and experiences to the judiciary.

4.17.3. Worth Fighting? Lengthy and Exhausting Legal Battles, Limited Access to Justice and Lack of Feminist Remedies

There are other examples of high-profile gender-focused business and human rights cases, with a focus on gender-based discrimination in employment. One promising case is the lawsuit of a female job applicant's lawsuit against Juren Academy, a tutoring school alleging gender-based discrimination, before the Haidian District Court in China. This case, which is China's first gender-discrimination case, filed with the support of anti-discrimination NGO, Yirenping, ended in a mediated settlement in 2012, with Juren offering the plaintiff a 30,000 yuan fund that she could use to promote and protect equal employment of women in China, as well as an apology.[1100]

[1100] "Plaintiff obtains 30,000 yuan in China's first gender discrimination lawsuit", China Labour Bulletin, (9 January 2014), available at: https://clb.org.hk/en/content/plaintiff-obtains-30000-yuan-china%E2%80%99s-first-gender-discrimination-lawsuit; https://www.business-humanrights.org/en/latest-news/juren-academy-lawsuit-re-employment-gender-discrimination-in-china/

Wal-Mart Case in U.S.

However, not all gender-focused legal battles against multinationals end up with progressive and transformative verdicts. *Wal-Mart Stores Inc. v. Dukes*[1101] has been an outstanding case in U.S. jurisdiction and is a typical systemic discrimination case. Betty Dukes, a Wal-Mart employee, along with five other women filed a class action lawsuit in which they claimed that the company's policies across the country resulted in unequal pay and slower promotion rates for women in comparison to men. The certified class, which in 2001 was estimated to comprise more than 1.5 million women, included all women employed by Wal-Mart nationwide, making it the largest class action lawsuit in U.S. history. In 2011, the Supreme Court ruled in Wal-Mart's favor by stating that the plaintiffs did not have enough in common to form a class, based on the Court's interpretation of the commonality requirement stated in Federal Rule of Civil Procedure 23.3, which is a procedural rule required for a lawsuit to be certified as a class action so that the substantive issues may be heard.[1102] Due to differences in their circumstances, however, it ruled by a vote of 5-4 that it could not proceed as any kind of class action suit.

While the Dukes case against Wal-Mart does not fit the archetype this dissertation focuses on, it significantly shows the impact of lengthy and exhausting class action discrimination cases against multinational corporations on working-class women, and provides an interesting comparison point for the Global Southern context.[1103] There have been no collective, large-scale lawsuits with systematic gender-based employment discrimination claims in Türkiye, Colombia, or South Africa yet.

In the motion for class certification filed in 2003, the plaintiffs' attorneys laid out a clear pattern of discriminatory policies throughout different stores in different states. Their analysis showed that in 2001, women made up 67% of the company's hourly workers but only about 14% of store managers; and that their ranks thinned at every step up the company's hierarchy.[1104]

[1101] Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011).
[1102] Roger W. Reinsch and Sonia Goltz, You Can't Get There From Here: Implications of the Wal-Mart v. Dukes Decision for Addressing Second-Generation Discrimination, 9 Northwestern Journal of Law and Social Policy 265, (2014).
[1103] Ibid.
[1104] Bryce Covert, Nearly Two Decades Ago, Women Across the Country Sued Wal-Mart for Discrimination. They're Not Done Fighting, (9 May 2019), available at: https://time.com/5586423/walmart-gender-discrimination/

While the pattern for discrimination was clearly laid out, the 2011 Supreme Court ruling found that the plaintiffs–as many as 1.5 million female employees–did not have enough in common to be considered a class. Originally, the strategic plan was to regroup the cases into smaller, regional classes, however, a 2018 ruling on an unrelated case (*China Agritech, Inc. v. Resh*[1105]) held that upon denial of a class certification, a putative class member may not, in lieu of promptly joining an existing suit or promptly filing an individual case, commence a new, smaller class action, anew beyond the time allowed by the applicable statute of limitations. In other words, the subsequent lawsuits had to be brought individually, and plaintiffs could not regroup and continue the legal battle with collective claims. This is widely considered as a setback, and the procedural failure of class action lawsuits, or similar (yet much smaller) labour lawsuits of collective nature are also mentioned by the practitioners in Türkiye, South Africa and Colombia. Interviewees have pointed out the possibility that the often understaffed and underfunded judiciary, often working overcapacity, especially in low-income host states may abstain from the potential backlog caused by a precedent.

The Wal-Mart case shares parallels with the cross-cutting concerns raised by interviewee legal practitioners, pointing out lower chances of success in potentially more impactful collective cases, compared to individual cases. Both a setback and a potential holding aspect is that as in the case of Wal-Mart, the hurdles are often procedural, and the courts do not rule on the actual claims. The Wal-Mart decision is criticized for making it incredibly difficult to certify a class without a prohibitive amount of work on the part of plaintiff attorneys, requiring an immense amount of discovery and laying out patterns of discrimination, strategically, which can not be reasonably expected from the plaintiffs.

The Wal-Mart case law has been followed with high hopes by the plaintiff women, some of whom had to follow the case for a long period of time, and through generations as they had children and grandchildren. It is noteworthy that women of color have been among the lead plaintiffs and spokespersons of this case - although the literature focusing on the case has rarely provided an intersectional approach to it. It should also be noted that unlike some of their counterparts in Colombia, Türkiye and South Africa, the plaintiffs had relatively easier access to justice mechanisms (despite their limited financial capacity). There is no known report of the plaintiffs receiving threats or harassment and they kept their jobs at Wal-Mart. They were able to draw attention to their case through media, with widespread support without

[1105] China Agritech, Inc. v. Resh, 138 S. Ct. 543, 199 L. Ed. 2d 423 (2017).

the fear of repercussions or harm to their families and communities. In other words, although the legal battle was a lengthy and challenging one, they had safer conditions and a more accommodating judicial system.

In the aftermath of the refusal of the SCOTUS to certify the class action, the disappointment, and the mental toll on plaintiff women is noteworthy with regard to the failed collective lawsuits. Plaintiff Claudia Renati's statement following the 2011 ruling of the Supreme Court is as follows: *"That was just a blow ... "It was just overwhelming sadness that nothing happened for me, that I didn't get my day in court ... It left an open wound that's never healed."*

Lead plaintiff Betty Dukes shared the following testimony:

"After 21 years and 7 months of working in an environment that I considered and come to call a family, I am going now in a different direction because that era has ended and the work yet goes on. ee were not able to accomplish what we we set out to accomplish and we ended up in the Supreme Court in June of 2011. That was the first defeat that the Dukes case suffered was at the hands of the highest court of the land. But I am more determined now to stay focused on women's issues and causes because when women are strong, the family is strong and society prospers and do better. ...I was blessed to turn 67 last month. ... And I won't be around forever -none of us will. But I am determined to do what I can in regards of women's equality. Truly, equals mean equals. And to every men that might not love the sound of my voice and to every man that might be gazing upon my face. I am here to tell you: I am just as equal with you if I have a penny in pockets or if I have a million dollars in my bank account. Your gender has no place to determine that you can live better than I can. Equal means equal."[1106]

Betty Dukes died in 2017, and many leading plaintiffs are now supported not only by their children, but their grandchildren, making the lengthy legal battles intergenerational. Some original plaintiffs, such as Lissa Medeiros are continuing with new rounds of individual litigation, while starting her third decade at Wal-Mart. Mederios shared, *"I will be there at the finish line, ... I don't want to run halfway and decide, 'Nah, I'm too tired now.'"*[1107]

[1106]Youtube (video), "Betty Dukes Speaking on Gender Panel", (2017), available at: https://www.youtube.com/watch?v=QMI9lVn-Qsg&ab_channel=RooseveltHousePublicPolicyInstituteatHunterCollege

[1107] Bryce Covert, Nearly Two Decades Ago, Women Across the Country Sued Wal-Mart for Discrimination. They're Not Done Fighting, Time, (9 May 2019), available at: https://time.com/5586423/walmart-gender-discrimination/

In the meanwhile, there have been some institutional changes in Wal-Mart, as shared by their spokespersons, including instituting pay bands, and providing new hires with credits for previous working experiences, and launching a Women's Resource Council and Wal-Mart Academies to provide training for workers who want to move up the ranks. Wal-Mart also reported that in 2018, women accounted for 57% of its U.S. hourly promotions and 43% of management promotions and that in 2016 the company began using a culture, diversity and inclusion scorecard that helped to provide biannual reports to senior management. Showcasing good practices, improved representative employment statistics and inclusion and diversity initiative is a common legal and communications tactic often used by multinational corporations not only in the face of accusations, but also in sustainability or corporate accountability events and platforms[1108]. However, working women and plaintiffs are skeptical of such initiatives, their genuinity, and their actual benefit. A 2018 motion for class certification against Wal-Mart has shown that the pay gap still exists and that the changes "*may have changed the mechanism through which it caused the pay disparity, but not the existence of the pay disparity."*[1109]

Another noteworthy aspect of the Wal-Mart case, applicable to the context in host states, is the ultimate discussion of whether collective labour lawsuits or class action cases actually benefit class members, specifically working women. Critics of class action cases claim that they provide far fewer benefits to individual class members and that class actions are most effective at generating large transaction costs—in the form of legal fees—that benefit both plaintiffs and defense lawyers. A 2013 empirical study by the U.S. Chamber Institute for Legal Reform has shown that statistically, class actions do not provide class members with anything close to the benefits claimed by proponents. Class actions in the U.S. can often be concluded with "coupon settlements", with plaintiffs receiving small benefits such as a small check or a coupon. While this is a common problem for consumer rights cases, binding victims and class members with low settlements is similarly quite common in business and human rights cases.[1110] The vast majority of the cases in the data set for the class actions empirical study has shown that the class actions have produced no benefits to most members of the

[1108] Oral interviews with private sector representatives from Türkiye, (May 2023).
[1109] Bryce Covert, Nearly Two Decades Ago, Women Across the Country Sued Wal-Mart for Discrimination. They're Not Done Fighting, Time, (9 May 2019), available at: https://time.com/5586423/walmart-gender-discrimination/
[1110] Rebecca Prentice, Just Compensation?: The Price of Death and Injury after the Rana Plaza Garment Factory Collapse, 39 Res. Econ. Anthropol. 1, (2019), available at http://sro.sussex.ac.uk/id/eprint/80053/3/Prentice%20Just%20Compensation%20accepted%20version.pdf

putative class, in the face of lawyers often enriching themselves .[1111] Skeptics of class action cases are critical about the large fees for the attorneys and cases remaining pending for long periods of time.[1112] Accordingly, class action cases end up being settled on an individual basis, meaning a payout to the individual or leading plaintiff who brought the suit, leaving class members with no remedies and non-transparent settlements with regard to such individual settlement payments.[1113] In other cases, the published notices are not properly delivered or written in a confusing way which prevents the class members from fully understanding and effectively exercising their rights, such as their right to opt-out in certain cases.

The Wal-Mart case, one of the most anticipated cases globally within the BHR community for its potential regarding gender-focused class action lawsuits raises serious questions with regard to how women's limited access to justice and the lengthy procedures impact business and human rights mechanisms. Literature has shown that women around the world, and more specifically in the Global South and in lower-income host states, have very limited or no access to formal justice systems, *"and much less the ability to hold large business actors to account".*[1114] Although there is no statistical evidence, interviews with feminist activists and worker women from all three jurisdictions have pointed out that one of the biggest discouraging factors before claiming their rights with regard to a business and human rights case is the toll that such legal battles take on the claimants. A list of some adjectives and keywords used for such legal battles gathered from the conducted interviews are as follows: "dreadful", "tiresome", "unavailing", "long", "exhausting".

One worker woman from Colombia, who was wrongfully dismissed from her job at a textile workshop without proper notification or compensation during COVID-19 has shared the following: *"I would not even imagine going to the court. It is too expensive for me; time and money wise."*[1115] A feminist activist from South Africa shared that women are often discouraged through examples of women who had to go through lengthy processes and that most of the time, their own partners or children try to persuade them not to go further.[1116]

[1111] Mayer Brown LLP, Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions, (2013), available at https://instituteforlegalreform.com/wp-content/uploads/media/Class-Action-Study.pdf
[1112] Ibid
[1113] Ibid.
[1114] Ama Marston, Women, Business and Human Rights: A Background Paper for the UN Working Group on Discrimination Against Women in Law and Practice, Marston Consulting, (2014), available at: http://www.ohchr.org/Documents/Issues/ Women/WG/ESL/BackgroundPaper4.pdf
[1115] Oral interview with a former textile worker from Colombia (February 2023).
[1116] Oral interview with a feminist civil society representative from South Africa(February 2023).

Working-class women with dependants, or single mothers who are the only breadwinners of their households often move on to a new job without having the time or opportunity to take legal action. The interviews have shown, unlike the common false notion, women know about their rights or have a basic understanding that their labour rights have been violated but they deliberately chose not to take action, after assessing their situation. Another common problem that is raised through the interviews is that if women workers or community members get into such legal battles, they are often harassed by employers, reaching out to persuade them to drop the cases, or they are excluded within their own social circles, with limited and often symbolic support from unions and feminist groups.

The prevalent barriers with regard to women's access to justice, the judiciary's gender bias and women's lack of trust towards the judiciary are well-documented, common problems in Türkiye, Colombia and South Africa. Many women are unable to pay for legal fees and will either drop the case or attempt to represent themselves without the necessary legal knowledge. Even in cases where they can get some legal aid, their lack of financial resources can hinder their access: being unable to leave their children to childcare for testifying or a trial, lack of transportation, or taking time off from their work are often overlooked, yet real everyday problems women have to handle. In addition, the legal advice provided through legal aid centers and clinics which are often underfunded and understaffed, are considered to be inadequate, inconsistent, and even misleading at certain times.[1117]

For example, in the Colombian context, under Colombian law, public defense services are to be provided in labour, civil and administrative cases.[1118] However, the Ombudsman's Office provides free legal aid only for criminal cases. Dejusticia's research has shown that the Office falls short of addressing and helping indigenous and Afro-Colombian community members due to the overwhelming number of cases.[1119] In the Turkish context, a common problem, along with other barriers, is with regard to women's access to legal aid: when women decide to bring their claims before a Labour Court and apply for legal aid, they face complex and bureaucratic application procedures (unlike criminal legal aid, women who want to be

[1117]OECD, Gender Equality in Colombia: Access to Justice and Politics at the Local Level, (2020),OECD Publishing; Miguel Emilio La Rota, et al., Ante la Justicia: Necesidades Jurídicas y Acceso a la Justicia en Colombia (Prior to Justice: Legal Needs and Access to Justice in Colombia), Dejusticia (2014), available at: https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_665.pdf.
[1118] Law No. 24 of 1992, Art. 2.
[1119] Miguel Emilio La Rota, et al., Ante la Justicia: Necesidades Jurídicas y Acceso a la Justicia en Colombia (Prior to Justice: Legal Needs and Access to Justice in Colombia), Dejusticia (2014), available at: https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_665.pdf.

beneficiaries of civil legal aid (in labour cases) have to undergo a bureaucratic means test to prove their financial eligibility) and challenges with meeting the financial criteria, professional bias and gender stereotyping by legal aid lawyers. In addition, women who work as legal aid lawyers also face discriminatory practices and bias within the judicial process. There is a lack of uniformity in delivering gender-responsive legal aid and the ability to evaluate and monitor the legal aid system, with no available gender-disaggregated data.[1120] Interviews have indicated that women workers, especially if they are not unionized, avoid taking legal action or filing a suit unless there are successful leading cases with guaranteed benefits, due to the common lack of trust in the judiciary or their chances to get proper remedies. There is a common misconception that legal aid is only available for gender-based violence victims. In addition, data analysis and reporting by international organizations and the literature disproportionately focus on women's access to justice with regard to gender-based violence, and there is very little data on gender-focused research on women's access to justice in other areas closely related to BHR, such as labour cases, or collective administrative cases.

According to the interviewees based in South Africa, there is a strong commitment to constitutional democracy, a well-established Constitutional Court jurisprudence on socio-economic rights and greater opportunities to challenge discriminatory practices hindering women's rights through strategic litigation.[1121] However, women's access to justice is still limited, and the gender bias in the judiciary, despite the feminist undertones in legal frameworks and many judgments, prevails. This prevalent problem hinders the gender-responsiveness of BHR mechanisms. Named as "the clash between women's practical needs vs. strategic needs" by experts, the main problem is the reproduction of gender biases within the process of law. Even if a court is committed to gender justice, and has feminist judges, the judgments reproduce ideas of women that rely on gender stereotypes. Women may get judgments, and judgments in their favor, yet they are often based on women performing their traditional roles, positioned as victims against big, "demonized" employers. Also, when women are outside their typical roles, when they are sex workers, or do not fit the stereotypical

[1120] Ministry of Justice, Legal Aid, available at: https://magdurbilgi.adalet.gov.tr/282/Adli-Yardim#:~:text=Adli%20yard%C4%B1m%20sistemi%20ceza%20davalar%C4%B1,a%C3%A7%C4%B1lm%C4%B1%C5%9Fsa%20adli%20yard%C4%B1m%20talep%20edilebilir; Uygur, Gülriz, and Eileen Skinnider, Understanding Barriers to Women's Access to Justice and Legal Aid in Türkiye, Council of Europe, (2022), available at: https://rm.coe.int/understanding-barriers-to-women-s-access-to-justice-and-legal-aid-in-t/1680a967d,

[1121] Yetunde Adenike Aiyedun, Fair trial and access to justice in South Africa how traditional tribunals cater to the needs of rural female litigants., (PhD Dissertation, University of Cape Town), (2013), available at: .https://open.uct.ac.za/bitstream/handle/11427/4677/thesis_law_2013_aiyedun_yetunde_adenike.pdf?sequence=1&isAllowed=y

understanding of good mothers, they tend to fail to achieve justice. Most importantly, the judgments fail to address the bigger problems, including the accountability of businesses, and mostly have an individual remedial approach towards exceptional, one-time violations. Practical interests of claimant women's needs (short-term individual financial remedies) prevail over the strategic ideas of how gender equality in BHR context should be shaped, with lawyers tending to build easier-to-win arguments based on traditional, stereotypical, victimizing approaches towards women, who are positioned as "poor unemployed, victimized mothers", instead of active agents with choices and labour rights. Thus the justice that is achieved often suits practical needs and individual remedies rather than strategic objectives on how businesses should be accountable for their practices. [1122]

4.17.4. The Potential of Alternative Dispute Resolution: Mediation through OECD National Action Points

A common suggestion for the improvement of women's access to justice in BHR contexts is to orient towards alternative dispute resolution (ADR) processes. While this is reasonable, questions must be asked with regard to how to *"construct feminist applications for redress, create feminist rules of evidence and procedure, select feminist adjudicators, and develop feminist forms of ADR decision making*".[1123] Throughout the interviews, the closing questions have been focused on giving space for the interviewees to share their own suggestions and recommendations to turn BHR mechanisms into gender-responsive ones. Nearly all have mentioned alternative dispute resolution mechanisms. While ADR is perceived as a sensible, cost-effective alternative to litigation. Feminist scholars believe ADR has *"tremendous potential (...) as a means for giving women, as disputants and as lawyers, the freedom necessary to explore (their) own voices, however (they) may speak"* and *"to help make room in the world for women's experience, and thus to help transform both the world and women's experience.*"[1124]

However, traditional legal systems are critiqued by feminists[1125] for using male-defined and male-centered understandings of objectivity, adverseness, hierarchy, and abstraction as its

[1122] Maitrayee Mukhopadhyay, Gender and access to justice in sub-Saharan Africa: Conference Report, Royal Tropical Institute and Wits University Centre of Applied Legal Studies, (2008), available at: https://www.kit.nl/wp-content/uploads/2018/08/1530_Gender-and-access-to-justice_Conference-report-2008.pdf

[1123] Constance Backhouse, A feminist remedy for sexual assault: A quest for answers, Sexual Assault Law, Practice, and Activism in a Post Jane Doe Era, (2012).

[1124] Eve Hill, Alternative dispute resolution in a feminist voice, Ohio State Journal on Dispute Resolution 5 (1989).

[1125] Catherine MacKinnon, Feminism unmodified: Discourses on life and law, Harvard University Press, (1987), p.54; Ann Scales, Towards a feminist jurisprudence, Indiana Law Journal 56 (1980), p. 644.

primary tools[1126] and the alternative dispute resolution movement, adopts many of these criticized aspects and not much change can be expected without changed attitudes in practice. For example, for rural and indigenous women, it is equally inaccessible to be present in negotiation/arbitration/mediation spaces, instead of formal courtrooms. There is the vulnerability to abuse by competitive bargaining corporate agents, who can treat women's demands and perspectives as weak and irrelevant, can purchase excellent representation and know-how with disproportionate resources and increase manipulative tactics.[1127]

Mediation is seen as promising by feminist scholars in the sense that a trained mediator (who nevertheless would have to be fully informed about and embrace a gender-responsive approach) can keep her mind open to women's subjective experience, limiting the exclusive maleness of the "objective" stance; or can balance the hierarchy[1128]. The OECD National Contact Points (NCPs) hold some potential in this sense, as their function is to provide a mediation and conciliation platform for helping to resolve cases (which are named "specific instances") relating to non-observance of the OECD Guidelines by companies. There are OECD National Contact Points in Türkiye and Colombia, but not in South Africa, although there are specific instances in which South Africa has been the host state within the value chains of referred companies. The interviews in all three jurisdictions have indicated that the NCPs, as a forum for dispute resolution, are not well-known among feminist organizations or even trade unions, with a few exceptions.

Under the OECD National Contact Points mechanism, there are 3 cases involving South Africa as a host state, 2 of which were not accepted by the relevant NCPs, and 1 in progress. There are 11 cases involving Türkiye as a host state, 4 of which are directly submitted to the Turkish NCPs. Among these, 3 were not accepted by the NCP, 3 were concluded due to failure of agreement, 2 were concluded because the companies refused to engage, and 3 were concluded with some sort of mutual agreement among parties.[1129] There are 17 cases involving Colombia as a host state, with 7 of them submitted to the Colombian NCP. Among these, 7 were not accepted by the NCP, 5 were concluded without an agreement, 3 were concluded with mutual agreement between parties and 2 are in progress.

[1126] Eve Hill, Alternative dispute resolution in a feminist voice, Ohio State Journal on Dispute Resolution 5, (1989).
[1127] Ibid.
[1128] Janet Rifkin, for example, has taken a feminist perspective on mediation: Janet Rifkin, Mediation from a feminist perspective: Promise and problems, Law & Inequality 2 (1984).
[1129] OECD Responsible Business Conduct Database, "Türkiye", available at: https://mneguidelines.oecd.org/database/?hf=10&b=0&r=%2Bf%2Fmne_hostcountry%2FTürkiye&q=Türkiye

There was one case against DHL in which the submission was made to the German NCP with regard to the alleged violation of trade union rights in Colombia, Türkiye and South Africa, among other various countries. For the alleged violations in South Africa, the NCP did not accept the complaint as it considered the allegations to be not sufficiently specific or referring to cases already resolved which took place several years before the complaint was raised. For the cases in Türkiye and Colombia however, the Turkish and Colombian NCPs worked together as supporting NCPs with the leading German NCP, both concluded with a mutual agreement between the parties for further measures and negotiations. This case, like many other submissions concerning Türkiye, Colombia and South Africa, are completely gender-blind, with no mention of gender, women workers and lack any gender-segregated data.

A common pattern for Turkish and Colombian NCPs is that a significant majority of the cases submitted to them were not accepted by the NCPs and did not proceed, while other cases (involving Turkish and Colombian supply chains) that were submitted to other lead NCPs had a much higher rate of conclusion. The higher rates of rejection are common among NCPs based in host states, compared to the NCPs in home states. In parallel with the tendency in strategic litigation against multinational corporations, this pushes trade unions, NGOs and individuals to submit applications before home states NCPs, which require additional resources and create language barriers.[1130] Some NCPs, like Türkiye, do not have all necessary application procedures publicly available in multiple languages.[1131] All OECD National Contact Points are positioned within the relevant Ministries of Trade and Industry, with government officials as contact persons. They sometimes conduct mediation of specific instances in-house, or hire external professionals, however, this raises questions with regard to the impartiality and accessibility of NCPs especially in government-supported projects, and the state-centered position of the mediators or facilitators fail to change the status quo for women.

There is a lack of coordination and standardization among the reasoning of the NCPs, and all NCPs have a diverse set of requirements as well as processes and criteria for undertaking initial assessments[1132]. For example, some NCPs rejected the cases by determining that "an offer of good offices could not contribute to the resolution of the issues raised"; that the NCPs

[1130] OECD, Guide for National Contacts Points on the Initial Assessment of Specific Instances, (2019), available at: https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf
[1131] Ibid.
[1132] OECD, Guide for National Contacts Points on the Initial Assessment of Specific Instances, (2019), available at: https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf

were not the competent authority; that individual applications were outside the scope and purpose of the OECD Guidelines; or because. parallel because court proceedings were taking place. However these decisions were not consistent and final statements were not properly detailed and justified in all cases. Some NCPs published conclusions "*that a subsidiary company cannot be held generally responsible for the activities of its parent company*"[1133] which contradicts the core principles of OECD guidelines and extraterritoriality of corporate accountability in a BHR context. Most importantly, the background of several cases (which are not publicly available, and were researched individually for this dissertation) have well-proven gender dimensions such as local rural women getting disproportionately affected by construction and energy plant projects near their neighborhoods, yet these aspects were not mentioned in any of the submissions or statements. The facilitation functions are promising yet the dialogue is fragile and its continuance completely depends on the voluntariness of the corporations. Some reports that companies ought to submit are kept confidential. Individual applications are consistently denied and a significant majority of the applications are submitted by trade unions or large-scale NGOs, meaning women who do not have access to institutional support have a low chance of finding a remedy through this mechanism.

It might be helpful to take a closer look into the only gender-focused specific instance[1134] before the OECD NCPs, among over 650 specific instances treated by country NCPs in over 100 countries and territories.[1135]

A closer look into selected examples among the very few gender-focused cases submitted, will be illustrative of their limited efficiency and the lack of reach and capacity to address the

[1133] OECD Responsible Business Contac Database, "Oil infrastructure project in Azerbaijan, Georgia and Türkiye", (29 April 2003), available at:https://mneguidelines.oecd.org/database/instances/uk0002.htm

[1134] OECD Dutch National Contact Point, Final Statement NCP specific instance 4 Trade Unions (IUF, EFFAT-IUF, SEIU, UGT) vs APG Asset Management, (3 February 2022), available at: https://www.oecdguidelines.nl/documents/publication/2022/02/03/fs-4-trade-unions-vs-apg

[1135] There is a case submitted before the Swiss NCP in which Tibetan Women's Association Switzerland is one of the co-applicants (OECD Responsible Business Conduct Database, "Swiss-Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein and Tibetan Women's Association Switzerland & International Olympic Committee", available at:http://mneguidelines.oecd.org/database/instances/ch0023.htm) which ended up with a conclusion with rejection of the parties to participate. Similarly, there is a case submitted before the US NCP and Swiss NCPs in which Women's Earth and Climate Action Network (WECAN) is one of the co-applicants (OECD US National Contact Point, "Specific Instance between Divest Invest Protect, Indigenous Peoples Law and Policy Program, Women's Earth and Climate Action Network and Credit Suisse", available at: https://www.state.gov/specific-instance-between-divest-invest-protect-indigenous-peoples-law-and-policy-program-womens-earth-and-climate-action-network-and-credit-suisse/) which was not accepted by the NCP. Both cases are gender-blind, with no mention of women except for the names of the applicant NGOs. This is an indicator of women's organizations failing to include gender dimensions of corporate violations in such mechanisms.

gender issues in host states. The very low number of gender-focused specific instances [1136] are especially striking, considering there are over 650 specific instances treated by country NCPs in over 100 countries and territories.[1137] These examples are ideal for a discussion with regard to discussions around gender-responsive access to justice and feminist remedies, because, unlike strategic litigations cases, the submissions are only taken into consideration within the framework of a business and human rights document, the OECD guidelines, only focusing on human rights violations and environmental impact caused by multinational corporations, and it offers an understanding of the contemporary soft language of average business and human rights mechanisms; the consequences of dependency on voluntariness of businesses; and lastly, the prospects of alternative dispute resolution mechanisms. Three examples will be taken into consideration:

In 2017, The European Center for Constitutional and Human Rights (ECCHR), together with FEMNET, Medico International, Garment Workers Unity Forum, the Comrade Rubel Memorial Center, and survivors of the Rana Plaza Factory collapse, filed a complaint against TÜV Rheinland AG and its Indian subsidiary TÜV Rheinland India Pvt. Ltd. for carrying out an inadequate social audit of a factory in the Rana Plaza building, specifically mentioning poor working conditions and discrimination experiences of women workers.[1138] The parties accepted the mediation offer, yet they did not reach an agreement. After some initial dialogue, the German NCP had a very limited contribution to the process, with suggestions including forward-looking dialogue on social audits, and a statement that "a humanitarian gesture by Respondents, which both parties agree could not be interpreted in any way as an admission of guilt by Respondents". The survivors of Rana Plaza collapse, as well as those who are seeking justice, are mostly women, and the gender dimension of the incident was not taken into

[1136] OECD Dutch National Contact Point, Final Statement NCP specific instance 4 Trade Unions (IUF, EFFAT-IUF, SEIU, UGT) vs APG Asset Management, (3 February 2022), available at: https://www.oecdguidelines.nl/documents/publication/2022/02/03/fs-4-trade-unions-vs-apg

[1137] There is a case submitted before the Swiss NCP in which Tibetan Women's Association Switzerland is one of the co-applicants (OECD Responsible Business Conduct Database, "Swiss-Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein and Tibetan Women's Association Switzerland & International Olympic Committee", available at:http://mneguidelines.oecd.org/database/instances/ch0023.htm) which ended up with a conclusion with the rejection of the parties to participate. Similarly, there is a case submitted before the US NCP and Swiss NCPs in which Women's Earth and Climate Action Network (WECAN) is one of the co-applicants (OECD US National Contact Point, "Specific Instance between Divest Invest Protect, Indigenous Peoples Law and Policy Program, Women's Earth and Climate Action Network and Credit Suisse", available at: https://www.state.gov/specific-instance-between-divest-invest-protect-indigenous-peoples-law-and-policy-program-womens-earth-and-climate-action-network-and-credit-suisse/) which was not accepted by the NCP. Both cases are gender-blind, with no mention of women except for the names of the applicant NGOs. This is an indicator of women's organizations failing to include gender dimensions of corporate violations in such mechanisms.

[1138] OECD German National Contact Point, Finanl Statement on ECCHR et al vs. TÜV Rheinland AG, (26 June 2018), available at: https://www.oecdwatch.org/complaint/ecchr-et-al-vs-tuv-rheinland-ag/

account by the German NCP. Furthermore, the suggestion for a humanitarian gesture is dangerously close to the charitable CSR language rather than corporate accountability in the face of one of the biggest milestones[1139] for the business and human rights area.

On 18 May 2020, the Dutch NCP received a submission from four trade unions: International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), the Service Employees International Union (SEIU) and the União Geral dos Trabalhadores (UGT), about gender-based violence and harassment (GBVH) in the global operations (involving its conduct in Colombia) by McDonald's Corporation (headquartered in U.S.), and related due diligence of its investors APG Asset Management (headquartered in the Netherlands) and Norges Bank Investment Management (NBIM) (headquartered in Norway). The Dutch, US, and Norwegian NCPs agreed to split the case into three separate specific instances: the United States NCP would handle the specific instance concerning McDonald's Corporation, the Norwegian NCP the specific instance related to NBIM and the Dutch NCP the specific instance regarding APG. The cases before Norwegian and Dutch NCPs were concluded successfully with mutual agreements. The complainants argued that the two institutional investors should address the global problem of GBVH at McDonald's under the OECD Guidelines and the investors' social responsibility commitments, and that "GBVH problems at McDonald's should have come to the investors' attention through their normal due diligence operations." Through the use of good offices and mediation, both APG Asset Management[1140] and Norges Bank Investment Management[1141] reached an agreement with the trade unions. While the agreement texts are broad and have a soft and general language, the investor institutions have committed to further a common understanding of what "applying a gender-based lens" means from an investment perspective, parties were open to dialogue on how to integrate this into their policies and programmes through, for example, the development of indicators and data sets, the drafting of enterprise (thematic/industry) engagement guidance and/or the production of an internal document on GBVH. The agreements, nevertheless include a common understanding and a roadmap for further

[1139] Günseli Berik, Revisiting the feminist debates on international labor standards in the aftermath of Rana Plaza, Studies in Comparative International Development 52 (2017); Motoko Aizawa, and Salil Tripathi, Beyond Rana Plaza: Next steps for the global garment industry and Bangladeshi manufacturers, Business and Human Rights Journal 1(1), (2016).

[1140] OECD Dutch National Contact Point, Final Statement NCP specific instance 4 Trade Unions (IUF, EFFAT-IUF, SEIU, UGT) vs APG Asset Management, (3 February 2022), available at: https://www.oecdguidelines.nl/documents/publication/2022/02/03/fs-4-trade-unions-vs-apg

[1141] OECD Norwegian Contact Point, "IUF, EFFAT-IUF, SEIU and UGT vs. NBIM", (9 March 2022), available at: https://www.responsiblebusiness.no/iuf-effat-iuf-seiu-and-ugt-vs-nbim/

cooperation, an agreement on the risk of GBVH for workers in the fast-food restaurant sector especially prevalent towards young workers and related to precarious and insecure working arrangements, the need for a worker-centered approach, and the critical role and responsibility of institutional investors:

"..that institutional investors have a role to play in contributing to responsible business conduct by considering associated risks throughout the investment process and to use leverage to influence investee companies to prevent or mitigate adverse impacts. The agreement states that institutional investors should undertake human rights due diligence to identify actual and potential adverse impacts, and, where directly linked to an entity causing or contributing to adverse impacts, seek to prevent and mitigate adverse impacts by using leverage."[1142]

Having said this, the agreements do not address the structural problems and have a deep understanding of gender inequality, and a majority of the representatives of companies, trade unions, and selected mediators were male without the involvement of gender-based violence and harassment survivors. More importantly, the withdrawal of McDonalds, the most critical stakeholder, and the failure of the process before the U.S. NCP has hindered the dispute resolution process completely, deprecating the value of the progress with investor institutions through the other two NCPs.

The Specific Instance alleged conducts that were inconsistent with the Guidelines regarding GBVH in the global operations of McDonald's, and the case has been put together collectively and labouredly with a lengthy and detailed submission, as "the first-ever Specific Instance taking aim at systematic sexual harassment at a multinational enterprise." They have asserted that there is "*gender-based violence and harassment plague McDonald's workers around the world" and it is "part of an overall crisis in the fast-food industry generally*."[1143] To support their claims and to prove the global pattern, the submitters have presented a number of alleged incidents in several countries, and even provided significant detail of several of the alleged incidents, with citations supporting documentation and quotations from alleged victims. One of the complainants is UGT from Colombia, and they have provided that "at least fifteen cases of sexual harassment claims against McDonald's" have been identified. Despite the detailed submission, the U.S. NCP's finding of the matters raised being bona fide,[1144] and discussions

[1142] OECD Norwegian NCP, "IUF, EFFAT-IUF, SEIU and UGT vs. NBIM", (9 March 2022), available at: https://www.responsiblebusiness.no/iuf-effat-iuf-seiu-and-ugt-vs-nbim/

[1143] The U.S. NCP does not publish parties' submissions. However, the Norwegian NCP has published the submitters' two initial filings. See ibid.

[1144] OECD US NCP, "Specific Instance between International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Associations (IUF), European Federation of Food, Agriculture and

about the possibility of mediation, McDonald's declined to participate in mediation through the office of the U.S. NCP, citing their *"belief that the submitters were engaged in inappropriate actions and misleading statements to the NCP and in the press."*[1145] Since mediation could not be established the case was concluded despite being a potential "lengthy, detailed, and well-supported" case for a global business and human rights problem in the fast food sector. The dependency on the voluntariness of the company had a serious influence on the NCP's evaluation of the specific instance, although there were several statements reinforcing that the taken steps did not indicate the NCP considered the company to have acted inconsistently with the Guidelines, with a constant effort to keep the company a part of the dialogue. Compared to the relative success of the progress with the investing institutions, strategic submissions before alternative dispute resolution mechanisms are vulnerable to the sudden withdrawal of companies from dialogue-based mechanisms.

Last but not least, a pending case submitted to the Turkish NCP by the Lumiere Synergie pour le Developpement (LSD), a Senegalese NGO and Fisher Women Association of Bargny, against Tosyalı Holding Senegal, a Senegalese subsidiary of a global steel manufacturer headquartered in Türkiye is worth further examination. The complaint by LSD alleges that Tosyalı, which has signed an agreement with the Senegalese government for iron and steel manufacturing on a site on which more than 1500 women have been continuing fish drying, processing, and selling for several generations. Upon Turkish NCP's contact, the company has shared that "the fish processors of Bargny and the population living nearby the Special Economic Zone of Bargny-Sendou are optimistic about Tosyalı's project after an awareness programme that APIX (Senegalese Agency for the Promotion of Investments and Major Constructions) had launched in order to facilitate the social acceptance of the project. This indicates the predetermined agendas of the meetings with local communities and local women did not provide an opportunity for free, prior, and informed consent but rather functioned as a process to convince and impose the benefits of the project, *"explaining the advantages of the project and of the resettlement site where they will be able to continue their activities under*

Tourism (EFFAT), Service Employees International Union (SEIU), Unión General de Trabalhadores (UGT) and McDonald's Corporation", (14 March 2022): https://www.state.gov/specific-instance-between-international-union-of-food-agriculture-hotel-restaurant-catering-tobacco-and-allied-workers-associations-iuf-european-federation-of-food-agriculture-and-tourism-e/

[1145] OECD US NCP, "Specific Instance between International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Associations (IUF), European Federation of Food, Agriculture and Tourism (EFFAT), Service Employees International Union (SEIU), Unión General de Trabalhadores (UGT) and McDonald's Corporation", (14 March 2022): https://www.state.gov/specific-instance-between-international-union-of-food-agriculture-hotel-restaurant-catering-tobacco-and-allied-workers-associations-iuf-european-federation-of-food-agriculture-and-tourism-e/

better conditions."[1146] The language is problematic in the sense that explanation is done by the external corporate towards the local community who had inhabited the region for generations, through a hierarchical approach.

Moreover, the Turkish company reported that "they are waiting for the finalization of the environmental and social impact studies accompanied by an Environmental and Social Management Plan", indicating that comprehensive due diligence work or local community consultations have not been completed beforehand and are often held upon an investigation, complaint or objection from local women and that "the Ministry of Fisheries, representatives of Tosyali and APIX have met several times with the fish processing women of Khelcom to try to find common ground, however, there were still disagreements over the location of the new site and accompanying measures." Fisherwomen of Khelcom have not been meaningfully engaged in the decision-making process, but are rather pressured to be persuaded, and the gendered impact of such operations on the local economy is not mentioned, showing how local women are positioned as a formality or a challenge, rather than equal stakeholders.[1147]

4.17.5. Feminist Remedies and Restitutive Justice

In line with the third pillar of the UNGPs; access to remedy, the questions of what gender-responsive access to justice and remedies is, how women can reach worthy compensation, and whether feminist remedies for corporate violations are available, must be discussed. First, one needs to unpack what is meant by a gender-responsive approach, and how this can contribute to substantive equality. A gender-responsive approach goes further than "doing no harm" (which may translate into the often criticized, limited, and soft responsibility to respect that is put upon businesses under the UNGPs) and only identifying the gender issues. It means an approach aiming to "do better", to achieve substantive gender equality, and to make it possible for women to meaningfully engage and benefit from the processes and measures. Based on feminist legal scholars' BHR critique, substantive equality through BHR mechanisms, within the protect-respect-remedy framework must achieve four important tasks:[1148]

[1146] OECD Turkish National Contact Point, Specific Instance "LSD v. Tosyalı", (27 August 2021), availablr at: https://www.sanayi.gov.tr/assets/pdf/anlasmalar/OECDInitialAssesmentLSDvsTosyaliENG.pdf

[1147] OECD Turkish National Contact Point, Specific Instance "LSD v. Tosyalı", (27 August 2021), availablr at: https://www.sanayi.gov.tr/assets/pdf/anlasmalar/OECDInitialAssesmentLSDvsTosyaliENG.pdf

[1148] Sandra Fredman and Beth Goldblatt, Gender Equality and Human Rights, UN Women, (2015), available at: http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights;
Feminists for a Binding Treaty, Integrating a gender perspective into the legally binding instrument on transnational corporations and other business enterprises: Comments on the zero draft proposed by the OEIGWG Chair (2018), available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/SubmissionLater/FeministsBindingTreaty.docx

1. Redressing disadvantages, based on historical and contemporary patriarchal social structures and power relations through which (and strengthened by) businesses affect women's human rights;
2. Addressing stereotypes, prejudice, discrimination, and violence, and aiming to change the way women and perceived and positioned, not only by the external "business actors" but also by their own communities and most importantly, themselves;
3. Facilitating inclusion and participation, by taking measures to ensure social inclusion, participation, and active engagement in all decision-making processes, that their voices are involved:
4. Transforming male-oriented and excluding practices, and most importantly and hardest, the structures in a persistent, effective way.

Feminist scholars, and primarily, the Feminists For a Binding Treaty[1149] collective have put significant effort to include gender-responsive access to justice and remedies within the negotiated treaty text and within the BHR area. This dissertation prefers to also use the term "feminist remedies", which is a term inspired both by feminist legal scholars' work on what a feminist approach to sexual assault would be, and the feminist tort scholarship.[1150]Feminist remedies can be defined as remedies that take into account the deeply gendered power relations that govern the context of corporate abuses and the intersecting forms of gender-specific violence, stigma, reprisals, job insecurity, and discrimination experienced by women, by making sure justice is constituted through (formal, quasi-judicial or non-formal) systems which are secure, affordable and physically accessible to women, providing solutions and reparation that are beneficial, adapted and appropriate to the needs of women.[1151]

What are the qualities of feminist remedies in a business and human rights context? Competence, efficiency, independence, impartiality, and timeliness are universal requirements for ideal justice mechanisms. However, the gender dimensions of remedies discussion must be differentiated from the overall problems and barriers with regard to the justice systems in Türkiye, Colombia, and South Africa. Based on interviews with male representatives of the

[1149] Feminists for a Binding Treaty define themselves as: "a collective of over 15 organisations working together to integrate a gender perspective into the legally binding instrument on the activities of transnational corporations and other business enterprises and to ensure that a gender approach and women's voices, rights, experiences and visions are visible and prioritized throughout the negotiation process." Feminists for a Binding Treaty, Integrating a gender perspective into the legally binding instrument on transnational corporations and other business enterprises: Comments on the zero draft proposed by the OEIGWG Chair (2018), available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/SubmissionLater/FeministsBindingTreaty.docx

[1150] For a more detailed discussion on feminist tort scholarship, See: Leslie Bender, Overview of feminist torts scholarship, Cornell Law Review 78, (1992).

[1151] Ibid.

business sector there is a common tendency to "neutralize" the problem, and a covert rejection to include women's experiences. For example, a Turkish private sector representative has ironically asked "Oh! And the male workers have proper access to justice, you say?" during his interview, after learning about the context of this dissertation. Gender responsive access to justice and feminist remedies must be "contextualized, dynamic, participatory, open to innovative practical measures"[1152] and take into account the demands for justice, actual needs and further emancipation of women in exploitative corporate practices.

Feminist scholars' approach to gender-based violence questions the usefulness of long prison sentences in institutions that are drenched in masculinist culture, and therefore clearly responding to what a feminist remedy is not. One-dimensional, punitive justice systems are rarely beneficial for the betterment of the patriarchal corporate culture, and feminists should continue to explore restitutive justice options.[1153]

Restitution is crucial for reparation. However, if restitutive remedies by corporations shall function as in definition and restore the victim to the original situation they were before the violation took place, this would not be a favorable outcome since women's current position in business and human rights is entrenched with prevalent discrimination, disadvantage, and bias. In other words, restituting an exploitative job or a discriminatory work environment to a wrongfully dismissed worker would only serve short-term benefits and the continuance of a vicious cycle. As the United Nations Special Rapporteur on violence against women, puts it: *"Reparations for women cannot be just about returning them to the situation in which they were found before the individual instance of violence, but instead should strive to have a transformative potential. This implies that reparations should aspire, to the extent possible, to subvert instead of reinforce pre-existing patterns of cross-cutting structural subordination, gender hierarchies, systemic marginalization and structural inequalities"*.[1154]

In most cases, women are fully aware of the inaccessibility of just remedies or restitution. A labour activist has shared the experiences of women from low-income neighborhoods in South Bogotá, and Facatativá. who would be hired (informally) with daily wages during the busiest weeks in the fresh-cut flower industry, to work temporarily in greenhouses and gardens, specifically during the upcoming weeks of Valentine's Day or Mother's Day, or only for a

[1152] Ibid.
[1153] Constance Backhouse, A feminist remedy for sexual assault: A quest for answers, Sexual Assault Law, Practice, and Activism in a Post Jane Doe Era, (2012).
[1154] UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, (23 April 2010), A/HRC/14/22, available at: https://www.refworld.org/docid/4c0cb3812.html

few months during the high season between Valentine's Day and the summer wedding season (with 16-20 hour workdays), rushing to get fresh-cut flowers daily to the U.S. market with significantly increased demand. An interviewee has shared: *"When they are buying flowers for their valentines or mothers, they don't know the pain of women behind the flowers. ... These women knowingly go to the greenhouses as temporary workers, they know they will be spoiled and they have no intention to seek remedies. They are thinking: "I am not here long enough to complain." They are just there to pay for the bills of that month, nothing more. Even if serious violations happen, they know - and the employers know that these women will not and can not go to the courts."*[1155]

A similar attitude and sentiment is among seasonal agricultural worker women in Türkiye, as seeking for remedies, even proving their employment is highly unlikely since they work with no contracts or no registration and their payments are directly made to the men of the household. In addition, the attitude and expectation towards working-class women, specifically migrant women to be grateful and content with less, and condemning them for claiming their rights, or blaming them for being "covetous" is prevalent, even among women employers.

There are other cross-cutting problems with regard to feminist remedies, which have been raised through the interviews. The first one is questions with regard to how the remedies, which are in the form of financial compensation, are delivered and whether local women, widows of the deceased workers, survivor women workers, and other women dependents, are in full control of the awarded money. South African and Colombian interviewees have mentioned cases in which widows who have lost their partners in mining accidents, often start living with their in-laws and the money they received are under the control of the eldest male members of the household and not properly spent on the raising of the dependent children. The total amount of financial compensation is often not disclosed, through confidential agreements among families of the victims and the companies. One shortfall of financial compensation remedies following large-scale labour accidents is that pre-determined, lump sum payments are made to the families, without proper consideration to the collective healing of the communities, psycho-social support for family members of the victims, and further support for the education, skill-building, training and employment of the widows and children, for the long-term welfare of the families and local communities. For example, following the collapse of Rana Plaza which resulted in 1,134 deaths and 2,500 injured victims. Claims were

[1155] Michael Zelenko, The Human Cost of Your Mother's Day Flowers, Vice, (8 May 2014), available at: https://www.vice.com/en/article/exmbnp/the-human-cost-of-your-mothers-day-flowers

processed between March 2014 and September 2014, and were accepted for 720 deceased and 148 missing workers; in total 2,559 dependants of these workers were provided with awards resulting from these claims: the minimum amount awarded for claims for deceased, missing workers was set at 1,050,000 BDT (11,500 EUR), and 2027 claims were received from injured workers and each was provided with awards starting at a minimum of 105,000 BDT (1,200 EUR) for workers with a minor or temporary injury, rising to a minimum of 1,050,000 BDT (11,500 EUR) with serious and life-changing injury[1156]. The processes in which such compensation limits are determined are rarely held with the engagement of local women and an integrated gender perspective, and the paid amount, the sustainable impact of such compensation schemes and the accountability of the companies to deliver payments to the Trust Fund remain non-transparent.

In addition, immediately after the Rana Plaza Incident, the public debates in the Global North turned to questions regarding ethical sourcing, transparency, and accountability within global textile supply chains, which is described as *"the emergent hyper mediatized discourse of ethical production and consumption"*[1157], and as well as the reputation of Euro-American multinationals. Three weeks after the Rana Plaza collapse, the Accord on Fire and Building Safety in Bangladesh was signed, which is a legally binding document providing independent inspection and remediation of Bangladeshi manufacturing units used by its signatories for a period of five years. Nearly 150 (mostly European) retailers signed the Accord, welcoming a strong role to ILO[1158] and supporting the Bangladesh government's National Action Plan on Fire Safety. Along with financial commitments, the Accord has the mandate to recommend closure of factories deemed unsafe, until appropriate repairs are undertaken. While the legally binding nature of the document was celebrated, the text remains to be (it was first signed in 2013, with a further 5 years extension in 2018 with several updates) completely gender-blind, with no mention of women workers or gender equality in Bangladeshi garment sector[1159]. It should be noted that a majority of the workers who died in the Rana Plaza collapse were women - although it is confirmed that a significant majority were women, the exact number is unknown, and furthermore proving what is termed as the disposability of Third World women

[1156] Clean Clothes Campaign, Rana Plaza Three Years On: Compensation, Justice and Workers' Safety, (2016), available: https://archive.cleanclothes.org/resources/publications/rana-plaza-three-years-on-compensation-justice-and-workers-safety#:~:text=Claims%20were%20accepted%20for%20720,GBP%209%2C500%2F11%2C500%20EURO).
[1157] Dina Siddiqi, Starving for Justice: Bangladeshi Garment Workers in a 'Post-Rana Plaza' World, International Labor and Working-Class History 87, (2015).
[1158] ILO, The Rana Plaza disaster ten years on: What has changed?, (2023), available at: https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#better-work
[1159] Accord on Fire and Building Safety in Bangladesh (2013), available: https://bangladeshaccord.org/

and their labour within factories of global supply chains[1160]. There have been intense debates around such initiatives, expressing *"discomfort with the emergence and supranational power of international private sector inspection bodies operating with evident ease in a supposedly sovereign nation state"*[1161] questioning what are the implications of US and European retailers having the mandate to close down factories they deem unsafe. Critics have raised questions of who will be paying for the improvement, to whom they are accountable, and who is more culpable: the multinational corporations, or the Bangladeshi factory owners? In the midst of this heavy debate, the experiences and needs of Bangladeshi women workers, the headstone of the much-debated textile supply chains were invisibilized. The Bangladeshi example is taken into consideration here due to the example of the Accord initiative, however, the discussion applies to the invisibilization of women workers in Turkish, Colombian and South African contexts.

Kimberlée Crenshaw argues that social justice work is based on narrative reconstruction, through with the disregarded, invisibilized and taken for granted aspects of social life are the focus as new stories are being built and told[1162]. The question with regard to feminist remedies is also about the stories to be told, and how to tell them. Rina Siddiqi questions: "*What critical facts are routinely "disregarded, invisibilized, or taken for granted" (in Crenshaw's words from the epigraph) in the global telling of Bangladesh's garment workers' empowerment? What is normalized and what is invisibilized within the logic of supply chain production? A (contextually-specific) neoliberal logic inflects the way stories of the Bangladeshi garment industry are told..... In this telling, the market is innocent of power relations; access to waged labor assures empowerment; and the apparel supply chain is a neutral mechanism whose efficiency is interrupted either by local inefficiency/corruption (as in the case of Rana Plaza) or through acts of nature beyond the control of humans (COVID-19)*."[1163]

What is fundamental for transnational feminist solidarity and to provide feminist remedies for women in host states, in low-income communities is *"recuperating silences and erasures, re-centering and re-signifying"*[1164]. In other words, the hyper mediatized remedy which is offered to us (not the claimants, and not the workers producing the goods who have their rights

[1160] Melissa Wright, Disposable Women and Other Myths of Global Capitalism, Routledge, (2006).
[1161] Dina Siddiqi, Starving for Justice: Bangladeshi Garment Workers in a 'Post-Rana Plaza' World, International Labor and Working-Class History 87, (2015).
[1162] Kimberlé Crenshaw in Youtube (video), "Under the Blacklight: Narrating the Nightmare and (Re)Imagining the Possible", available at: https://www.youtube.com/watch?v=E0ppfjbESV4&t=148s&ab_channel=AfricanAmericanPolicyForum
[1163] Dina M. Siddiqi, Rescripting Empowerment? Post-COVID Lessons from Bangladeshi Garment Workers, Kohl: A Journal for Body and Gender Research 7, (2021).
[1164] Ibid.

violated) is ethical production and consumption, which spotlights either the middle to high class, conscious, and good consumer, making "ethical" choices, or the B-corps, who provide these options, and we are missing the part of the story in which how Third World women benefit from this ethical exchange of goods.

4.17.6. Who Speaks on behalf of Women?

An important question to be asked is who speaks on behalf of women workers as remedies are seeked. The methodology of this dissertation was specifically planned to ensure the experiences of the actual subjects of gender-focused business and human rights issues in Türkiye, Colombia and South Africa, women workers and members of communities can be heard and their knowledge and experiences can be transferred and used in this research. Reaching out to them proved to be a difficult task, since it was not possible to have direct access to women working in factories (these spaces were not open to outsiders), they were reluctant to share their experiences with fears of being exposed as whistleblowers, many have worked temporarily in precarious jobs or they were not willing to talk about past traumatic experiences, but most importantly, because the mainstream BHR platforms are disproportionately occupied by other actors, the intermediary persons and organizations, who have second-hand experiences, yet had bigger spaces and higher volumes, described by some scholars as "a new class of cosmopolitan labor organizers" or newly emerged "niches for labor activism and advocacy" where *"multiple actors jostle to represent the authentic voice or interest of the garment worker."*[1165]

These actors are either NGOs, collectives of academics, progressive local intellectuals, or charismatic and flamboyant labour leaders or activists who proceed in their paths as rising stars of labour activism and proceed to found their own NGOs or platforms, but never the affected women workers or community members themselves.[1166] This observed invisibilization of the women as subjects, is closely connected with another risk, raised by feminist legal scholars, of the advocacy efforts and methods of feminist groups involved in BHR: " to reduce the woman worker to the emblem rather than the subject of multinational exploitation". This is risky because it is reminiscent of the "plight of the factory worker" discourse of the 1980s[1167] in which the Third World Women worker, according to Siddiqi, is

[1165] Dina Siddiqi, Starving for Justice: Bangladeshi Garment Workers in a 'Post-Rana Plaza' World, International Labor and Working-Class History 87, (2015). doi:10.1017/S0147547915000101
[1166] Ibid.
[1167] Nash, June, and M. P. Fernandez-Kelly, Women and Men in the New International Division of Labor, Albany State University Press, (1983); Diane Elson and Ruth Pearson, Nimble fingers make cheap workers': An analysis of women's employment in Third World export manufacturing, Feminist review 7(1), (1981).

appropriated by different groups: *"for global feminists, she stood for the universal subordination of women; for critics of imperialism and capitalism, she was the embodiment of exploitation by (western) predatory capital; and for human rights activists, she represented the violations of the dignity of labour that occur in the absence of regulation and accountability."*[1168]

While being in solidarity with, and supporting women in host states, feminists should balance the local particularities with the global BHR movement, and avoid top-down approaches. Siddiqi, inspired by the insightful and groundbreaking essay title Lila Abu- Lughod's (2002) insightful and much-cited essay, 'Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others' and asks: do factory worker women need saving? She warns against the possibility of globalized movements erasing certain power relations while highlighting others: *"De-contextualized critiques derived from abstract notions of individual rights, and corresponding calls for change from above - calls on the conscience of the feminist and the consumer, for instance - can entail troubling analytical simplifications and a disturbing loss of detail."* Indeed to make sure workers' own experiences and solutions are well-understood, they must be positioned as the subjects of the remedial process as well.

As Muslim feminist scholar Lila Abu-Lughod argues, rather than seeking to save women (which implies superiority), in this dissertation's case, the working women or rural women in Türkiye, Colombia, and South Africa, we should be thinking of ways to work with them is crucial.[1169] Labour activism is produced and reproduced discursively without much attention paid to the realities, priorities and desires of the workers themselves, and this discursiveness produces an ethical responsibility to save women workers, with the accountability often directed away from the patriarchal exploitative structures.[1170] While this dissertation focuses on the gender responsiveness of BHR mechanisms in three typical host states, it should be self-critical and beware of reproducing what it criticizes: "*to present women workers as homogeneous, faceless and voiceless creatures, attributing more personality and action to capital and patriarchy than to the subjects of exploitation."*[1171]

[1168] Dina M. Siddiqi, Do Bangladeshi factory workers need saving? Sisterhood in the post-sweatshop era, Feminist Review 91(1), (2009).
[1169] Lila Abu-Lughod, Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others, American Anthropologist 104(3), (2002).
[1170] Dina M. Siddiqi, Do Bangladeshi factory workers need saving? Sisterhood in the post-sweatshop era, Feminist Review 91(1), (2009).
[1171] Ibid.

In contemporary understanding of business and human rights from a corporate or global development perspective, when a story is presented, it is mostly a Third World female empowerment story, through which "Ayşe", or "Mariana" or "Rethabile" is a hardworking factory worker, who earns enough for regular meals, serves as the happy face of capitalist development. Her physical exhaustion, and working conditions her "aching back" broken from hard work is an ordinary part of her life, as she earns enough to provide basic goods for her family and dreams to make her family rise out of poverty, to provide a better life for her children.[1172] These kinds of stories of "sweet female faces of hardwork" need to be rewritten not with a global, ethical gaze, but by themselves and including the active role and accountability of multinational corporations.[1173] Remedies should not be interpreted as quick , individualized fixes (they mostly remain as such), but should aim to fix entrenched systemic patriarchy. Well-meaning campaigns, and initiatives such as the Accord are piecemeal solutions, which sometimes fail to include gender at all. Capitalist, neo-colonial, racial understanding of capitalist development discourse produces interventions that do not take into account the agency of women workers. This is a mistake feminists in the Global North also tend to fall into, reinforcing a racialized social hierarchy, assuming that *"women workers of the Global South are unable to determine the causes and solutions to the exploitative practices they endure."*[1174] In other words, the provided remedies are thought out for them, not by them, with a "take it or leave it" approach. Narrative reconstruction requires changing the narrator as a first step, as it is evident that remedial phases of business and human rights crises remain to exclude women who are the subjects.

For gender-responsive remedies, the Third World feminists lead the way by asking feminists elsewhere to "refuse the seductions of mainstream empowerment theory, which traffics in Orientalist fantasies of saving impoverished brown bodies elsewhere".[1175] Remedies and restitution are closely connected to story-telling. Although emphasizing story-telling and narration can be criticized for its lack of concrete benefits, it immensely contributes to transitional justice and systematic improvement and it is lacking in a business and human rights context. Colombia and South Africa, although imperfect, have successful examples of active engagement and leadership of women in story-telling for systematic change, and

[1172] Supriya RoyChowdhury, Women Workers in Bangalore's Garment Export Companies. In City of Shadows: Slums and Informal Work in Bangalore, Cambridge University Press, (2021).
[1173] Dina M. Siddiqi, Rescripting Empowerment? Post-COVID Lessons from Bangladeshi Garment Workers, Kohl: A Journal for Body and Gender Research 7, (2021).
[1174] Bonacich, Edna, Sabrina Alimahomed, and Jake B. Wilson, The racialization of global labor, American Behavioral Scientist 52(3), (2008)
[1175] Dina M. Siddiqi, Rescripting Empowerment? Post-COVID Lessons from Bangladeshi Garment Workers, Kohl: A Journal for Body and Gender Research 7, (2021).

Türkiye offers alternative, small-scale economic models founded on the principle of women's solidarity and collective labour. These examples are from post-conflict transitional justice contexts, or based on rural models of collective labour, which are different from exploitative business practices or large-scale corporate violations of rights, however, BHR experts can borrow lessons from such examples, especially when it comes to giving a voice and agency to the impacted women.

Fragmentos in Bogotá, is a counter-monument, a space dedicated to contemporary art and memory, whose floor is made up of 37 tons of weapons handed over by the FARC guerrilla. These weapons were melted down, and a group of women survivors of sexual violence during the armed conflict were invited to reconfigure and shape the metal, hammering it for days through a therapeutic process, symbolically ending the power relationship imposed by the arms and the armed conflict, and building a new space, designed to be horizontal and non-hierarchical with a new purpose. The space, for example, has been used by the Transitional Justice System (JEP) and the Truth and Reconciliation Commission (CEV) to present their reports. This seemingly irrelevant example shows the importance of the change of power relations (although symbolically), finding a space and a platform to unite divergent experiences and memories of women, to allow active participation of survivors of sexual violence in the creation of an artwork (a monument) and a space (functioning as a platform) for transitional justice. [1176]

[1176] MCHAP, "Fragments - Counter Monument", (2022), available at: https://www.mchap.co/mchap-2022-projects/fragments---counter-monument



Figures 4.16.a., 4.16.b., 4.16.c.: Fragmentos counter-monument and contemporary art space, with floors covered in metal sheets hammered and shaped by sexual violence survivors. (February 2023, photographs taken by the author).

Women had significant influence and contributions to the South African Truth and Reconciliation Commission. Although the truth and reconciliation process is criticized for the lack of women in leadership and the deprioritization of gender equality, women commissioners' interpretation of victim-friendly processes to facilitate testifying about traumatic events, and the creation of safe, separate spaces for women such as the Johannesburg Women's hearing in which women could testify about sexual violence in a way which validated them and contributed to a much more complex, gender-responsive understanding and record of the apartheid era. Women commissioners, while equally[1177] complying with the

[1177]Pumla Gobodo-Madikizela, "Women's contributions to South Africa's truth and reconciliation commission", Women Waging Peace Policy Commission, (2005), available at: https://www.inclusivesecurity.org/wp-

binding principles of the TRC Act and a legal interpretation as their male counterparts, were reported to be more likely to be guided by the spirit of the TRC Act, and what it meant to develop a victim-friendly model. This was often praised by the anti-apartheid leadership, including the Commission Chair Desmond Tutu, with an emphasis on women's nurturing role and how their distinct and different perspective was a rich attribute. This approach to women's contribution to political processes is common in South African political discourse, and while it is well-intentioned and praiseful, it holds the risk of creating other dichotomies in political life by positioning women in a nurturing, motherly role in politics, based on gender stereotypes. Having said this, scholars generally agree on how women's participation in TRC in significant numbers have contributed positively to the effectiveness and execution of the TRC, with their courage to hold special hearing focusing on women's apartheid experiences,[1178] and by providing a safe space for them who would otherwise not be able to come forward to testify about their experiences of gross human rights violations. They used forgiveness language, and an understanding of collective healing and restoring a common sense of humanity, with an emphasis on the indigenous philosophy of ubuntu (a person is a person through other persons). The intentional communication methods such as speaking out on behalf of others in their communities and encouraging them, created strong bonds through sharing their stories of pain and forgiveness, and overall contributing to the establishment of the truth and a gender-focused public record of apartheid crimes. While forgiveness and transitional peacebuilding may not be perfectly applicable to corporate violations of human rights, women's interpretation and truth and reconciliation offer a lot for more efficient testifying, including women's voices and providing survivor-friendly remedial procedures.

In Türkiye, women's cooperatives (specifically in the form of women-led agricultural cooperatives) are becoming widespread and slowly proving to be an increasingly efficient and successful business model, combining agroecology and rural practices of collective labor sharing models commonly known as "imece" in rural areas. They are proven to bridge the resource gap that hinders the ability of women farmers to reap the benefits of their labour, and to create systemic, enduring change for gender-transformative food systems.[1179] One example

content/uploads/2012/08/11_women_s_contributions_to_south_africa_s_truth_and_reconcilliation_commission.pdf

[1178] Lyn Graybill, The contribution of the truth and reconciliation commission toward the promotion of women's rights in South Africa. In Women's Studies International Forum, 24(1), (2001); Fiona C. Ross, Bearing witness: women and the Truth and Reconciliation Commission in South Africa, Pluto Press, (2002); Sheila Meintjes and Beth Goldblatt, "Gender and the truth and reconciliation commission", A Submission to the Truth and Reconciliation Commission. Witwatersrand, South Africa: University of Witwatersrand, (1996).

[1179] Paige Kollhoff and Fikir Zelalem, Stronger Together: Converging Women's Cooperatives and Agroecology to Create Gender-Transformative Food Systems, IISD SDG Knowledge Hub, (1 December 2021), available at:

is Demeter Women's Cooperative in Hakkari[1180] Türkiye. Through the cooperative, local women are trained on keeping financial records and maintaining savings accounts to purchase materials and pay down loans. Women farmers and beekeepers are mobilized to pool their resources in order to boost collective income, bargaining power, and access to productive resources. Interviews with cooperative members have indicated that they have also mobilized the community to contribute and repair the community library, provided scholarships for local students who are studying in other cities, and turned their profits into further investments, for example by running a breakfast saloon with their products and honey, and training local youth in the hospitality sector. They have shared that multinational corporations are interested in women's cooperatives, however, they tend to buy products for gifts and merchandise, and they struggle to compete with large-scale manufacturers in the market.

Yet, the co-founders of the cooperative are optimistic and have shared that their income and confidence have increased as the intermediaries are off the picture and that they can fully benefit from their income. For many members, the co-operative is the first source of income that they have ever earned independently. There is, however, further need for empirical studies on the impact of women's cooperatives, their economic potential, further legal reforms to accommodate women's cooperatives' dual economic and social function, active engagement and inclusion in agricultural policy-making, and further affirmative measures under the Law No. 1163 on Cooperatives, such as the 2021 amendment which provided certain fee exemptions for women's cooperatives.[1181]

Another important case from the Turkish context is how following large-scale, tragic, and traumatic incidents, such as the 2014 Soma Mining Disaster in Manisa, Türkiye, the support and aid from various stakeholders are distributed and delivered in an unplanned manner that is not gender-responsive. First responders who have worked in the aftermath of the Disaster have shared that widow women and children were showered with support messages, small gifts, and short-term psycho-social support. A significant part of such efforts came from businesses and educational institutions. Similar to the post-earthquake relief efforts in 2023, such acts of support were not delivered in a planned manner, and many of them remained short-term. Psychosocial support was given exclusively to women and girls, and men and boys

https://sdg.iisd.org/commentary/generation-2030/stronger-together-converging-womens-cooperatives-and-agroecology-to-create-gender-transformative-food-systems/

[1180] "Demeter Tarımsal Kalkınma Kadın Kooperatifi", Sosyal Ekonomi, (30 March 2022), available at: https://sosyalekonomi.org/demeter-tarimsal-kalkinma-kadin-kooperatifi/

[1181] Fiona Duguid, Gökçen Durutaş, and Michael Wodzicki. The current state of women's co-operatives in Türkiye. World Bank, (2015), available at: https://www.aile.gov.tr/KSGM/PDF/Turkiyede_Kooperatifcilik_Kadin_ENG.pdf

(injured survivors, colleagues, family members, or community members) were left out. However, in parallel with the post-earthquake process - the psychological first aid and support efforts are scarce for men and boys in the aftermath of such traumatic events, and they struggle to express their grief and feelings. Following natural disasters or large-scale work accidents, or individual injuries due to work accidents causing life-changing injuries that hinder men's ability to do physical labor or cause them not to be considered able-bodied, men are stressed about being unemployed, uncertainty around their family's future, and financial difficulties. Such situations increase the risk of men inflicting verbal, physical, and sexual violence on their partners and family members. It should be noted that a major need for gender-responsive remedies is the need to further studies on masculinity and to offer psychosocial support for men and boys too. In addition, the short-term and extraordinary attention given to the children of dead or injured workers and the management of the process by untrained first responders following the Soma Mining Accident has caused some imbalances within the local communities, with shared testimonies of mothers not knowing how to manage the crisis and young children of surviving workers sharing "they wish their dads were dead so that they could get similar gifts and attention" or complex feelings of guilt and conflictions by surviving workers seeing the extraordinary support that their deceased colleagues' families are getting. Gender-responsive long-term response and relief plans for possible accidents must be included within the risk reduction and management plans of extractive businesses or other high-risk industries.

Companies must include collective reparation plans for local communities in addition to providing compensation for the families of the victims, and a transition from the empowerment and idealizations of an image of individual strong widows to collective empowerment and strengthening of local women is of need. Reparations for gender-focused corporate violations must not be limited to individual forms of reparations, but also collective reparations aiming at changing gender inequalities and understanding root causes in the workplace, and guarantees of non-repetition, which combines the possibility to bring claims if necessary yet prevent harm in the future[1182].

An undesirable reflex of multinational corporations, in the aftermath of exposure to human rights violations, environmental harm, or exploitative labour conditions for women workers, is to withdraw from the relevant factories, and region of the country market. Withdrawing

[1182] Paulina Madero Suarez, Sexual harassment in the workplace and the Mexican labour reform: an analysis under the International Labour Organization Convention concerning the elimination of violence and harassment in the world of work and the UN guiding principles on business and human rights, (Doctoral dissertation, University of Essex), (2019).

completely along with employment opportunities and main sources of income for the local communities is a harmful practice, and this risk is often used as a threat, by pro-business groups and host state agents against women human rights defenders to make them lose their local community's support. Similarly, an interview with a trade unionist in South Africa has shown the practice of dismissing women who dare to report cases of gender-based violence or sexual harassment as another problematic attempt of "sweeping the problem under the rug" and threatening and silencing other women to come forward with similar experiences. Proper addressing and mitigation of human rights impact under the UNGPs require gender-transformative remedies, and long-lasting improvement of labour conditions and better human rights due diligence, instead of taking away the economic independence and bargaining power from breadwinner women, or silencing them.

In addition to accountability and availability of remedies, rewarding good practices is important, and often overlooked. Corporate communications representatives have exclusively shared the gender-focused diversity projects that they have initiated, mostly within office spaces of the headquarters, yet none of them have shared incentives for suppliers with good practices. In an interview with a Turkish tier one textile supplier to European brands have shown that suppliers, who are within the value chains of global brands are almost never awarded for their good practices. They are constantly pressured with short term relationships, and experience price pressure, unrealistic turn around times and financial penalties for delays. These problematic buying practices and their approach to mid-sized and small-sized suppliers "drive unrealistic cost-cutting and heightened business risk, which is then passed down to the weakest link in the supply chain – women workers"[1183]. Instead of transforming their unrealistic expectations and pressurizing buying practices, they indirectly threaten suppliers with switching markets, where they can find cheaper labour force. The supplier has shared: *"I am treated as the greedy capitalist boss. We are under so much pressure as well. At the end of the day, they care about the price. I would love to provide my workers a decent wage, and better benefits. Some of them I have known for years, I have supported them to marry, and now they have children. I know how hard they work. But especially when it comes to gender, the brands have a standardized questionnaire where they want to know what percentage of women workers we employ and that's it. They don't reward good practices or incentives for gender equality. Once you are not awarded, praised or even appreciated for your efforts, you start to feel there is no need."* The interview has indicated that the tier-one suppliers see the

[1183] BHRRC, "The Price You Pay: How Purchasing Practices Harm Türkiye's Garment Workers", (July 2019), available at: http://mhssn.igc.org/The%20price%20you%20pay%20-%20Türkiye%20garment%20workers%20-%20BHRRC%20-%20July%202019.pdf

lack of incentivizing good practices and the problematic buying practices of global brands as the main problem.

One of the biggest challenges before gender-responsive access to justice and remedies, commonly shared in Colombia, Türkiye and South Africa, is the lengthy legal processes and the long periods of time which women have to wait in order to be compensated (and if so, almost always for less than what they claim, as perceived by the interviewees), while their need to financial support for themselves and if relevant, the dependent children is the biggest in the aftermath of large-scale work accidents. For example, following the aftermath of the Soma Mining Accident in Manisa, 301 workers died and 90 were injured. 255 women were widowed and 432 children with an average age of 10, were left as orphans, and dependent on the care of their mothers as reported by the Turkish Bar Associations Union.[1184] 682 suits for damages have been filed, approximately 309 million TRY has been paid as pecuniary and non-pecuniary damages, however as of 2022, 194 households with pendings lawsuits have not been able to receive compensations, after more than 8 years.[1185] Short-term and flexible trust funds for immediate financial support for survivors and family members must be arranged, which indicates the need for better risk management and relief strategies in high-risk industries, in addition to taking measures for the prevention of such accidents.

The Bravo Tekstil case is another widely-known case which attracted international attention. Bravo Tekstil was a supplier for brands such as Zara, Mango, and Next, allegedly owing 140 workers three months wages and severance allowance amounting to 2,739,281 TRY (approximately 545,346 EUR) when it went bankrupt and suddenly closed overnight in June 2016, with the employers gone missing. The textile workers, a majority of which have been middle-aged women with long years of experience in the textile sector[1186], came up with a creative campaign in collaboration with Clean Clothes Campaign (CCC) by leaving or sewing notes in the pockets of clothes sold in Zara stores in Istanbul, which received considerable attention worldwide. The Turkish notes read: "*I made the item you are going to buy, but I haven't been able to get my money!*".[1187] Upon the pressure from consumers, petition

[1184] Turkish Union of Bar Associations Center for Human Rights, Soma Mining Disaster Report, (2014), available at: https://www.barobirlik.org.tr/dosyalar/duyurular/20141112_somamadenfaciasipdf.pdf
[1185] Ibid; İlker Kılıçarslan, "Soma Faciası'nın üzerinden 8 yıl geçti, 194 aile hala tazminat alamadı", Sözcü, (16 Mart 2022), available at: https://www.sozcu.com.tr/2022/gundem/soma-faciasinin-uzerinden-8-yil-gecti-194-aile-hala-tazminat-alamadi-7014674/
[1186] Selin Girit, "Türkiye: Zara shoppers find labour complaints inside clothes", BBC News, (15 November 2017), available at: https://www.bbc.com/news/world-europe-41981509
[1187] Mortimer, Caroline, "Unpaid labourers who slipped pleas for help into Zara clothes 'have not received their backwages' ", Independent (24 November 2017), available at: https://www.independent.co.uk/news/business/news/zara-workers-unpaid-help-notes-clothes-back-wages-turkish-workers-bravo-tekstil-clean-clothes-a8073136.html

campaigns, and international media, the Inditex group owning Zara and Mango, and NEXT, which had significant reputational damage, agreed to set up a "voluntary" hardship fund for the workers to be overseen by the global trade union IndustriALL, as a first of its kind practice. Following negotiations that took a considerable amount of time, partial payments began in April 2018.[1188] As for the gender dimension of the case, a majority of the workers with unpaid wages and legally owed severance were women, who had to experience dire consequences with reporter cases of interrupted cancer treatment, postponed weddings and some workers not being able to send their children to school.[1189] While the campaign is considered to be a successful case of consumer mobilization, similar to the case of gender-based violence or femicides, unless women come up with a groundbreaking, creative campaign that is colorful enough to attract attention globally, specifically on social media, their chance of having access to some kind of remedy is significantly low. This pushes vulnerable groups into an obligation to perform, to find creative ways to have their voices heard, to visibilize themselves exceptionally in order to be able to enjoy their fundamental rights.

This need for performance normalizes the prevalence or commonplace status of violations, and burdens the claimant, women, who often have to play the victim's part well. What is more problematic and requires further attention with regard to Bravo Textile case and its implications on problems regarding gender-responsive remedies, is that once women workers are successful in building a campaign, attract the attention and constitute a reputational damage threat for the multinationals, the male-led labour union officials take over and push the actual subjects to the background or tend to "mansplain" and "advise" women workers, while they lead negotiations. In Bravo Textile's case, IndustriAll, who were not actively engaged in Bravo workers' campaign from the very beginning, had bypassed the workers' committee in negotiations, and actively tried to convince the workers to accept partial payments, telling them "*that a continued refusal to accept the low settlement from the brands would result in all offers of financial payment being withdrawn by the brands*."[1190] Many women workers who were worn out from the campaign, had dire consequences in their

[1188] Clean Clothes Campaign, "Bravo workers forced to take partial payments from Zara, Mango, Next", (12 April 2018), available at: https://cleanclothes.org/news/2018/04/12/bravo-workers-forced-to-take-partialpayments-from-zara-mango-next; Chowdhury, Rashedur, The Rana Plaza disaster and the complicit behavior of elite NGOs, Organization 24(6), (2017); Duvar, "Zara İşçilere Ücretlerini Hala Ödemedi", (24 November 2017), avalable at: https://www.gazeteduvar.com.tr/gundem/2017/11/24/zara-iscilere-ucretlerini-hala-odenmedi

[1189] Selin Girit, "Türkiye: Zara shoppers find labour complaints inside clothes", BBC News, (15 November 2017), available at: https://www.bbc.com/news/world-europe-41981509

[1190] Clean Clothes Campaign, "Bravo workers forced to take partial payments from Zara, Mango, Next", (12 April 2018), available at: https://cleanclothes.org/news/2018/04/12/bravo-workers-forced-to-take-partialpayments-from-zara-mango-next

personal lives and were struggling to afford and take the risk of continuing the campaign accepted the partial payments, however, they noted " that the bypassing of the official workers committee representing the workers by the labour union was the final blow to their struggle for proper payment."[1191]

While emphasizing the need for preventive mechanisms in this dissertation, a prerequisite for gender-responsive business and human rights mechanisms is to be well prepared to mitigate risks and to have comprehensive road maps and effective mechanisms when remediation is needed, through which the negotiations must actively engage and include claimant women. Multinational corporations' buying practices and their relationships with their suppliers require further scrutiny: factory closures and bankruptcies of suppliers are commonplace in textile sectors and often happen due to decisions of major buyers to withdraw orders, without warning or explanation to the female-dominated workforce. Mandatory human rights due diligence must include how to protect workers should their supplier go bankrupt, *"to avoid abuses to unprotected workers and put an end to voluntary and discretionary patches used by leading garment companies to limit their reputational risk",* as put by Clean Clothes Campaign.[1192] The workers had to accept the partial payments from Inditex's "hardship fund", although they have stated "*their acceptance of these payments in no way constitutes an agreement that this amount covers their legal due*".[1193] This creative campaign was a way out that workers had to find, and was a more preferable method compared to waiting for the owed wages and allowances under the Turkish Bankruptcy and Enforcement Law, in which the receivables of the hypothec owners and the state have priority over owed workers' wages in a typical bankruptcy case.[1194]

The long wait for justice phenomenon is a common theme for South Africa and Colombia as well, similar to the Wal-Mart case above mentioned, some legal battles may surpass generations and the trust towards justice mechanisms and expectations for a just remedy decrease as time goes by, with an increased, collective sense of injustice. In an interview with a Colombian labor rights activist, upon sharing the Wal-Mart case example, they shared:

"So we both have to wait for generations for justice to be done. I will fight so my grandchildren can enjoy a small compensation for my suffering, huh? The difference between them and us is, that we have to riks our safety when we read a press statement in front of the Supreme

[1191] Ibid.
[1192] Ibid.
[1193] Ibid.
[1194] Turkish Bankruptcy and Enforcement Law, No. 1241, (2004), Art. 206.

Court, the ('bosses') will not wait respectfully as Wal-Mart does in the U.S. Maybe in Bogotá, you can join the political protests, but the Bogotá experience does not reflect the whole Colombia. Things work differently in remote places. If the business owners are annoyed, they would like to be involved, to take down those who speak loudly. Of course, they would hire people to do it, they would not have blood on their hands. So we have to be careful while seeking justice: shall we attract attention to get public support, or shall we choose our safety?" [1195]

In addition, the legal steps towards the transitional justice process have their strengths and weaknesses[1196]: for example, on one hand, the adoption of the Victims and Land Restitution 1448/2011[1197] brings positive steps with its commitment to gender justice in land titling and addressing the marginalization of women as landowners.[1198] On the other hand, there are more than 8.6 million Colombians who have registered as victims of the armed conflict under the *Registro Único de Víctimas* (RUV) and still waiting for reparations[1199]. The reparations under the Victim's Law are designed to be holistic and inclusive, covering a wide range of rights from land restitutions to access to education and healthcare, with possibilities of individual and collective applications. However, there are discussions concerning the infeasibility of justice mechanisms, and overall frustration and lack of trust towards them, due to over-promised and under-delivered reparations, including rural, indigenous and Afro-Colombian women, disproportionately affected by the armed conflict[1200]. In parallel with the transitional justice process, in business and human rights cases, women feel frustrated for not receiving their reparations or compensation for long periods of time, causing them to question the effectiveness of justice mechanisms and the good faith of the stakeholders, reflecting this on their own legal representatives with anger, frustration, and confusion. If and when reparations arrive, they are often partial, lower than expected, intermittent, or devalued, creating a sense

[1195] Oral interview with a labour rights activists from Colombia (February 2023).
[1196] Amnesty International, Colombia: The Victims and Land Restitution, (2012), available at: https://www.refworld.org/pdfid/4f99029f2.pdf
[1197] Nelson Camilo Sanchez and Adriana Rudling, Reparation in Colombia: Where to?: Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict, Queen's University Belfast Publications (2019) available at:https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf
[1198] Nelson Camilo Sanchez and Adriana Rudling, Reparation in Colombia: Where to?: Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict, Queen's University Belfast Publications (2019), available at:https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf
[1199] Julia Zulver, Feasible Justice: Has Colombia Overpormised and Under Delivered Reparations for its 8.6 million victims?, Justice Info, (12 June 2018), available at: https://www.justiceinfo.net/en/37686-feasible-justice-has-colombia-over-promised-and-under-delivered-reparations-for-its-8-6-million-vic.html
[1200] Ibid.

of precarity, further frustration, lack of self-esteem, and even a sense of guilt for putting themselves, their children, and families through a draining experience.[1201]

"Marikana Widows", is a group of surviving miners, and widows, and family members of the 34 striking miners who were shot dead by police outside the Lonmin platinum mines in South Africa. They have similar experiences and continue to gather and protest regularly and pursue their advocacy efforts for justice. The case is still reported to be under investigation, with no arrests or concrete action taken with regard to police brutality.[1202] There is a pending civil case against President Ramaphosa, who was a non-executive director at the time, however, the case was postponed after the presiding Judge Colin Lamount withdrew from the case after disclosing he had shares in Sibanye-Stillwater, a mining company operating in the region which was not found not liable for the Inquiry Committee.[1203] The South African solicitor general, Fhedzisani Pandelani, reported that as of 2022, the 10th anniversary of the massacre, only around half of all claims made for compensation have been paid out so far. The women who are leading the Marikana widows groups have expressed their frustration with the lack of support from the government, that President Ramaphosa has not visited them since the incident which is recorded as the biggest police brutality incident in the country's post-apartheid era. It was reported that there was no official apology and a ripple effect on the community with cases of parents and unborn babies being lost due to the shock of the news[1204], and cases of surviving miners having to work at the same mine without any improvement in conditions.[1205]

Last but not least, a commonly shared problem with regard to business and human rights remedies in Türkiye, Colombia, and South Africa, along with other draw examples from the Global South[1206] is the unaccounted losses that women have to endure and to fight for acknowledgment with disproportionate burdens of proof in order to be included within the remedial processes. Examples include elderly women in Çeşme, Türkiye who are suffering

[1201] Ibid.
[1202] "Victims of the Marikana mine massacre still await for justice", Africanews, (12 August 2022), available at: https://www.africanews.com/2022/08/12/victims-of-the-marikana-mine-massacre-still-await-for-justice//
[1203] Bongeka Gumede and Sonri Naidoo, Marikana victims demand an apology and R1-billion from Ramaphosa, The Mail & Guardian, (3 June 2022), available at: https://mg.co.za/news/2022-06-03-marikana-victims-demand-an-apology-and-r1-billion-from-ramaphosa/ .
[1204] Nkosikhona Duma, "AMCU Says Sibanye-Stillwater Should Also Pay for Marikana Massacre Deaths", Eyewitness News, (10 August 2022), available at: https://mg.co.za/news/2022-06-03-marikana-victims-demand-an-apology-and-r1-billion-from-ramaphosa/
[1205] Hassan Isilow, "After 10 years, unions, families of Marikana massacre victims demand justice", Anadolu Ajanası, (16 August 2022), available at: https://www.aa.com.tr/en/africa/after-10-years-unions-families-of-marikana-massacre-victims-demand-justice/2662578;
[1206] Juliana Bertholdi and Danielle Anne Pamplona, A feminist analysis of the legal mechanisms of protection and repair in the context of the Brazilian extractive industry: The Doce river case, Business and Human Rights Journal 7(1), (2022).

from hearing loss due to the wind turbines' constant vibration and low levels of noise;[1207] or women who have no direct relations with the companies, yet, who experience miscarriages resulting from environmental or labor-related disasters caused by corporate operations to have their losses acknowledged.[1208]

In addition, specifically concerning remedies, large-scale disasters, and extractive operations impact the small-scale economic activities of local women, often described as the "backyard economy", carried out informally and mostly at home by women, such as sewing, cooking, handcrafts, small scale beauty and catering services, which sometimes constitute the sole income of some households. Such informal businesses are completely disregarded as they do not fit the "norm" types of livelihood and income, which deserve compensation. In the aftermath of disasters, local women who are not employed by the companies in question are not recognized as right holders[1209] and do not receive adequate reparations, especially in cases where there is one man from a household who has received some sort of compensation, eventually erasing women's financial economy and assuming men's compensation to be adequate. In trust fund or hardship fund solutions, women are statistically less successful than men when it comes to successful registration, let alone receiving full compensation. This is often due to the way such systems are built on patriarchal assumptions, in which registration systems accept one member per family as "responsible for the family", which are typically accepted to be men. In addition to the difficulties of being identified as right holders, there are reported cases of divorced women struggling to be re-registered to receive indemnity payments or to receive compensation for childcare which their deceased or injured ex-husbands have supported with alimony.[1210] Emotional and mental suffering due to the loss of loved ones, housework overload, and childcare becoming more difficult, are rarely included in the reparation schemes. The often more complex (due to marital status, the difficulty of proving breadwinning status, and additional paperwork on behalf of children) paperwork and procedures cause women to be admitted late in the proceedings and if the company or the trust

[1207] Oral interview with a BHR expert from Türkiye (May 2023).
[1208] Cintia Paes, Patricia Fiúza and Laura Marques, "Mariana: mulher que abortou na tragédia luta há 4 anos para que bebê seja reconhecido vítima", G1 Minas Gerais (29 October 2019), available at: https://g1.globo.com/mg/minas-gerais/noticia/ 2019/10/29/mariana-familias-ainda-sofrem-impacto-de-rompimento-de-barragem-e-tentam-retomar-suasvidas.ghtml
[1209] Nabuco, Joana, and Leticia Aleixo,Rights holders' participation and access to remedies: Lessons learned from the Doce River dam disaster, Business and Human Rights Journal 4(1), (2019).
[1210] Scabin, Flávia Silva, Júlia Lambert Gomes Ferraz, Marcela Garcia Corrêa, and Paloma Gerzeli Pitre, A situação das mulheres atingidas pelo desastre do Rio Doce a partir dos dados da Ouvidoria da Fundação Renova, FGV, 2019.

fund goes bankrupt due to the financial impact of the incident, they are not likely to receive promised compensation.

The states and businesses are often aware of BHR and gender issues, and there are few yet comprehensive documents such as the Gender Guidance of the Working Group to provide a basic understanding of gender-responsive BHR mechanisms. As long as remedy mechanisms remain gender-neutral, and disregard the unique experiences of women, existing structural inequalities will be reinforced without proper reparation and possible further gendered harms.[1211]

Türkiye, Colombia, and South Africa have institutions capable of addressing gender issues within a gender-responsive understanding, however, a lack of political will is combined with a lack of capacity to implement. Accounting for the specific position of women (their overrepresentation in the informal economy), and avoiding a gender-neutral approach to compensation eligibility (difficulty of registration procedures for entitlement to compensation and additional burden of paperwork regarding children's benefits falling mostly on to mothers) are two important steps to be taken. Furthermore, better integration and localization of gender-focused BHR frameworks such as Gender Guidance of the Working Group into remedy structures are recommended by the scholars.[1212]

4.18. Culture: A Major Factor or an Excuse?

Interviews with informants who were state representatives and private sector representatives showed a similar approach to gender equality; seen as a slow process requiring patience and for certain contexts a highly unlikely mission due to how patriarchy is engrained in some parts of their culture, or because "one can not change deeply rooted social structures in a short amount of time". Mostly, men in such positions have shown a more pessimistic approach to the prospects of improvement in national business and human rights mechanisms, with an undertone implying that they took socio-economic inequality as a separate and more prioritized problem compared to gender equality when it comes to business and human rights. Upon their comments about gender inequality or "the social roles of men and women" as a part of their culture, when they were asked to clarify whether they meant social culture or work culture, they answered "both". The blurred lines between different understandings of

[1211] Bertholdi, Juliana, and Danielle Anne Pamplona, A feminist analysis of the legal mechanisms of protection and repair in the context of the Brazilian extractive industry: The Doce river case, Business and Human Rights Journal 7, no. 1, (2022).
[1212] Ibid.

culture and its normative effect require clarification. While the norm in law is "an indication that prescribes certain conduct, which is enforced by a defined formal authorized entity", a cultural norm is less tangible, more open to interpretation, capacious, fluid, imposed by, and induced or derived from social changes and is dependent on the social relations' dynamics.[1213] The set of social norms that govern the behavior and attitudes of a group, constitutes culture, which includes gender norms. These gender norms, looking through feminist legal theory's perspective, are often male, heterosexual, and cis-gender norms that govern society with male rules, male hierarchies, gendered social structures, and male interest. However, gender norms, and along with it, cultures are dynamic and changeable if communities can be significantly influenced to behave differently and shift what is seen as normal.[1214] What feminist legal scholars do is to analyze such systems and institutions starting from the recognition of their intrinsic gendered structures, the subtle dichotomies between the norm male and another female, and exposing, challenging, and aiming to transform the pervasive dualism, produced oppression and invisibility.

What needs to be done, as concluded from the interviews is that feminist legal theory needs to extend its focus from purely legal analysis to both social and cultural practices throughout the global supply chain (in our case, the host states) as well as workplace (corporate, fabric, workshop) culture, if one aims to progress further than formal equality on paper (as the gender-responsive yet unimplemented legal framework of Colombia and South Africa has shown) towards substantive equality (with tangible results and actual implementation). This would of course include the well-known path of challenging supposedly objective rules in business, such as the seemingly neutral yet gender-biased recruitment processes, but also a reconsideration of male breadwinner-focused workplace practices, such as the so-called 'culture of domesticity' underpinning the workplace, within which the perfect worker is available to work overtime, and to travel, without being restricted by personal and familial responsibilities. Another problem observed commonly in Türkiye, Colombia, and South Africa was the observation that certain norms built for transformation, affirmative action, and corrective measures, such as the concept of "flexible work" has turned against women, not providing an opportunity to maintain a work-life balance with care responsibilities for the employer but implying "flexible hours" in a "dynamic workplace", making men without care responsibilities into ideal employees who can fulfill performance expectations, since they are

[1213] Ibid.
[1214] UN Women, Respect: Preventing Violence Against Women, Strategy Summary, (202), available at: https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/RESPECT-implementation-guide-Strategy-summary-Transformed-attitudes-beliefs-and-norms-en.pdf

expected to work outside office hours for long periods of time, and travel frequently, as pointed out by an interviewee.

The culture of the host state, where multinational corporations are operating, is often used as an excuse for lack of implementation or low performance in gender equality. Interviewees have shared that "respecting the culture of the host state" implies justification for lower standards, as multinational corporations do not pay particular attention to having a deep understanding of local culture, and have postcolonial connotations of the supremacy of home states' culture. Culture can be defined as a set of social norms that govern the behavior and attitudes of members of a group. Without a doubt, gender stereotypes and discriminatory practices are embedded within culture, and "cultural gender discrimination" may manifest itself in corporate-related contexts. For example, in Kenya and South Africa, there are cases in which indigenous women were forced out of their homes due to extractive business operations as local customs dictated that women could not own land, or benefits and compensation were directly given to male members of the households.[1215]

Multinational corporations also have their unique corporate cultures, closely related to the image they want to build in the eyes of their investors, employees, and clients/consumers, but also non-fabricated, organic behaviors, attitudes, and work environments accumulated over years of operation. With the rise of the popularity of sustainability and ESG (environmental, social, and governance) gender equality, often included in a broader term, "diversity and inclusion" became a part of company values, and thus, company culture. Building a rights-respecting company culture, from employers' perspective (and in contemporary practice) means showing commitment to respect human rights and signaling to its employees, partners, and other stakeholders that the business – and its leadership – that the company is serious about respecting human rights, and expects those who work with the company to do the same. It must be noted, however, that the company culture, if not sealed with a formal and binding commitment, such as a binding policy or a code of conduct, or tangible KPIs with actual implementation, follow-up, and evaluation, remains soft and abstracts, as critiques of UNGPs point out to the soft language of "business responsibility to respect" which is more on the voluntary territory, rather than legal accountability. A common argument with regard to low levels of gender equality performance or gendered impact of corporate activities, raised by

[1215] Global Alliance for Green and Gender Action, "Impacts of Extractives on Land, Environment and Women's Rights in East Africa" (2018), available at: https://gaggaalliance.org/impacts-of-extractives-on-land-environment-and-womens-rights-in-east-africa/

multinational corporations' management is that they have limited ability, or deeply rooted sexism in the prevailing culture despite their best efforts. The following paragraph is from a Business and Human Rights FAQ Guide prepared for companies by the International Organization of Employers:

"At the same time, we know that it is not always easy to meet legal standards. For instance, the prevailing culture in a specific operating context may make it particularly challenging to meet health and safety laws. Or corrupt practices that exist in the sector may make it a challenge to protect communities during a large-scale project. Therefore, we cannot assume that our business partners, and indeed our own company, is always in line with human rights-related laws."

This is a problematic approach in some ways. Firstly, this creates a vicious cycle: in the eyes of the multinational corporations, bare minimum legal compliance within the host states is sufficient, and the responsibility to set high standards and legal frameworks for gender equality belongs to the host states, and the company can not and will not push and change what is culturally acceptable. Potentially exploitative or discriminatory practices, however, prove to be preferable (or more profitable) for business imperatives, such as price and speed considerations. The lower cost of labour force, the flexibility and lower levels of labour standards to be maintained in terms of employment, management, and auditing or lack of gender quotas make host states more lucrative in the eyes of the investors, and take them one step forward in competitive supply chains. In parallel, Türkiye, Colombia, and South Africa, while pursuing their efforts for the improvement of women's status in business, are aware of this delicate balance to be preserved. It is proven, for example, that despite the deterioration of Turkish economy and the effects of the pandemic, this has attracted investors for global supply chain manufacturing and Türkiye benefited from the shift of supply chains away from China, which is marketed by Turkish business community as leveraging the crisis into an opportunity[1216]. Türkiye is promoting its labour force as a "well-educated, competitive labor force with high productivity", yet the textile supplier informants have shared that Türkiye holds the cheap cost of its labour force as its biggest advantage.

There are very rare examples in which multinational corporations standardize favorable gender-equal practices and initiatives among headquarters and subsidiaries (almost never

[1216] Tuba Şahin, "Türkiye can benefit most from supply chain shift", Anadolu Ajansı, (2020) available at: https://www.aa.com.tr/en/economy/Türkiye-can-benefit-most-from-supply-chain-shift/1880204

including suppliers), and implement higher and more gender-equal business practices than the bare minimum required by domestic legislation. Even if there is some uniformity with regard to gender diversity in management or paternal leave, such benefits are mostly limited to middle-class white-collar workers in subsidiary offices. Some suggest and work towards building a business case for gender equality, proving gender-equal workplaces earn more profit. This might be helpful and is often used as an argument by UN Global Compact, or sustainability-focused business associations. It must be noted, however, that gender equality and building gender-responsive mechanisms must come with legal accountability, and not be conditional on being profitable.

The transfer of practices between home and host countries, the parent companies and subsidiaries is an important discussion where culture plays an important role, however this should not necessarily mean the need for lower standards of host states must catch up with the higher, more gender equal practices in home states. Gender inequality issues such as traditional gender roles, glass ceilings, and women's disproportionate care work responsibilities are proven to be prevalent in both home and host state contexts, with various examples. Compared to some U.S. multinationals, social security and maternal leave benefits for women workers in subsidiaries are much more favorable in certain formal employment schemes in Türkiye, Colombia, and South Africa. Moreover, bilateral or multilateral trade relationships result in countries with different levels of gender equality performance establishing subsidiaries in each other's jurisdictions.

International business literature highlights that subsidiary practices, where there are institutional distances, are strongly influenced by the institutional conditions and capacities in both the home country of the MNC and the host country it operated in, with subsidiaries needing *" to respond to host country pressures (local responsiveness) by adopting local practices, as well as parent company pressures (global integration pressures) by maintaining corporation-wide standards, which are determined by the MNC's home country institutions"*, surviving and doing business in an "institutional duality" and having to balance multiple, sometimes contradicting institutional demands.[1217] It must be noted that the harmonization of standards in between subsidiaries and headquarters, how MNCs respond to conflicting

[1217] Anna Katharina Bader et al., Gender diversity management in foreign subsidiaries: A comparative study in Germany and Japan, Journal of International Management 28(3), (2022); Christopher A. Bartlett and Ghoshal Sumantra, Managing across borders: The transnational solution, Harvard Business Press, (2002); Ayse Saka-Helmhout et al., The MNE as a challenge to institutional theory: Key concepts, recent developments and empirical evidence, Journal of Management Studies 53(1), (2016).

institutional demands in terms of general human resource management (HRM) practices[1218], corporate social responsibility[1219], or political strategies[1220] are well-studied and informative, yet the translation of gender equality practices,[1221] is understudied with a complete lack of feminist legal theory's perspective. Business and human rights scholars and practitioners need to develop a multidisciplinary approach and build on the comparably well-developed international business and human management literature.

There are a few studies that have covered how subsidiaries in host countries with a lower level of gender equality received less institutional pressure on gender equality than in the home countries, and that gender equality practices are particularly dependent on the host context, at the discretion of the subsidiaries.[1222] A comparative study on Türkiye and Pakistan, discussing the transferability of workplace gender equality practices from West to Muslim majority countries has found *"superimposing a model of gender equality that is inconsistent with local institutional and contextual considerations, not taking into account the structural conditions, organizational processes and individual choices within each respective country*" is unsuccessful[1223]. The common belief that change should come through local adaptation instead of by superimposing a foreign understanding of gender equality, is notwithstanding the desire for a more gender-equal business life. Similar to the challenges posed by the transfer of gender equality practices (shaped by institutional and cultural factors), different cultural understandings of gender roles can impair the success of gender-equal practices in home and host countries where gender equality levels are similar, as shown in Moore's research of German subsidiaries operating in the UK. In the reversed scenario, as shown in Kemper and others' research, even in cases where headquarters (HQ) control is absent, subsidiaries may strongly implement gender-equal practices, as seen in the studies'

[1218]Anna Katharina Bader et al., Gender diversity management in foreign subsidiaries: A comparative study in Germany and Japan, Journal of International Management 28(3), (2022).
[1219] Ibid.
[1220] Ibid.
[1221] Ibid.
[1222] Rosenzweig, Philip M., and Nitin Nohria. "Influences on human resource management practices in multinational corporations." Journal of international business studies 25 (1994); Alhejji, Hussain, Eddy S. Ng, Thomas Garavan, and Ronan Carbery, The impact of formal and informal distance on gender equality approaches: the case of a British MNC in Saudi Arabia, Thunderbird International Business Review 60(2), (2018).
Campos-García, Irene, Miguel Olivas-Luján, and José Ángel Zúñiga-Vicente, Managing Gender Diversity in Companies Operating in Different National Contexts: The Case of Spanish MNCs in Latin American Countries, Diversity within Diversity Management, (Vol. 22), Emerald Publishing Limited, (2019); Kemper, Lena Elisabeth, Anna Katharina Bader, and Fabian Jintae Froese,Promoting gender equality in a challenging environment: The case of Scandinavian subsidiaries in Japan, Personnel Review 48(1), (2019).
[1223] Mustafa F. Özbilgin, et al., International transfer of policies and practices of gender equality in employment to and among Muslim majority countries, Gender, Work & Organization, 19(4), (2012).

example of Scandinavian managers integrating more egalitarian working practices from their home countries to the host countries.[1224]

Another research focusing on subsidiaries in a country with either higher (Japanese subsidiaries in Germany) or lower (German subsidiaries in Japan) levels of gender equality in the host country than in the home country, has concluded that although earlier research focusing on specific dependency on host states for gender equality integration, the role of the HQ of the MNCs in home states is crucial in how subsidiaries engage with and implement gender equality. This is important with regard to the business-connected informants' tendency in interviews to focus exclusively on the capacity and limitations of Turkish, Colombian, and South African culture. In line with the evolving literature, the enforcement of gender equal practices, and whether MNCs use global integration practices for gender equality (which is not always the case, according to the interviewees) by the headquarters play the most significant role. Evolving, recent research concludes that not only the host context is of relevance, but also whether the HQ is concerned with gender equal practices, or whether gender responsive mechanisms are localized in subsidiaries depends on the home context of the multinational corporation too. Bader and others' comparative study on Japan and Germany has proven that German subsidiaries experience more global integration pressure than Japanese subsidiaries, echoing the relevance of gender equality in the home country.[1225] In addition, research has shown that Spanish multinational corporations' subsidiaries in Latin America are showing significant progress in compliance with gender-equal practices and sometimes exhibiting better gender equality performances than national averages in Latin American countries[1226].

In other words, gender responsiveness of business and human rights can not be only attributed to the limitations of the host culture. Interviews with private sector representatives have shown that local employees and managers of subsidiaries change their approach to gender equality, depending on the expectations and instructions coming from the corporate headquarters, and that although the culture of the home and host states matter, they are not primarily influential.

[1224] Kemper, Lena Elisabeth, Anna Katharina Bader, and Fabian Jintae Froese,Promoting gender equality in a challenging environment: The case of Scandinavian subsidiaries in Japan, Personnel Review 48(1), (2019); Moore, Fiona, An unsuitable job for a woman: a 'native category' approach to gender, diversity and cross-cultural management, The International Journal of Human Resource Management 26(2), (2015).
[1225] Anna Katharina Bader et al., Gender diversity management in foreign subsidiaries: A comparative study in Germany and Japan, Journal of International Management 28(3), (2022).
[1226] Campos-García, Irene, Miguel Olivas-Luján, and José Ángel Zúñiga-Vicente, Managing Gender Diversity in Companies Operating in Different National Contexts: The Case of Spanish MNCs in Latin American Countries, Diversity within Diversity Management, (Vol. 22), Emerald Publishing Limited, (2019).

The interviewees have pointed out that gender equality principles with regard to women's employment are more easily practiced across subsidiaries, however, LGBTI+ representation and rights, and corporate celebrations of pride are selectively practiced in certain jurisdictions, while completely absent in others. This was often criticized as "corporate hypocrisy" by the interviewees.

The impact of culture on gender responsiveness of business and human rights mechanisms is incontestable. However, some business and human rights stakeholders see culture as an inhibitor of progress in Türkiye, Colombia, and South Africa. Türkiye, Colombia, and South Africa all have rich and diverse cultures which have their fair share of gendered aspects. A male-dominated and male-led family structure, idolization of self-sacrificing and nurturing motherhood, expectations towards women to be submissive and obedient, and on the contrary, a "macho" understanding of masculinity where assertiveness, aggression, dominance, and leadership are attributed to men, are the most mentioned problematic aspects of their cultures, as identified by the interviewees.

There has been a considerable amount of literature focusing on the similarities and differences in cultural and work-related attitudes and beliefs, showing that *"the convergence of cultural beliefs and work attitudes is far from universal"*[1227]. Research on organizational business behavior, specifically focusing on Muslim Majority Countries with Türkiye and Pakistan as case examples has revealed the primacy of national contexts over essence in developing effective ways to construct gender equality policies and practices, and that in the absence of robust empirical evidence from Muslim majority contexts, gender equality regimes and discourses which are created elsewhere, and applied with home-made models do not fit well. Non-local discourses on gender equality carry the risk of being locally non-compatible.[1228] While contextualization and cultural adaptation of gender equality through business and human rights mechanisms are important, one must beware of two important points: cultural relativism arguments and how cultures are understood.

[1227]Mustafa F. Özbilgin, et al., International transfer of policies and practices of gender equality in employment to and among Muslim majority countries, Gender, Work & Organization, 19(4), (2012).
[1228]Jawad Syed and Peter A. Murray, A cultural feminist approach towards managing diversity in top management teams. Equal Opportunities International, 27(5),(2008); Anthony Ferner et al., Institutional theory and the cross-national transfer of employment policy: The case of 'workforce diversity in US multinationals, Journal of International Business Studies 36, (2005); Lisa H. Nishii and Mustafa F. Özbilgin, Global diversity management: towards a conceptual framework, The International Journal of Human Resource Management, 18(11), (2007); Ahu Tatlı et al., Gendered Occupational Outcomes from Multilevel Perspectives: The case of Professional Training and Work in Turkey in Helen M. G. Watt and Jacquelynne S. Eccles (eds.), Gender and occupational outcomes: Longitudinal Assessments of Individual, Social and Cultural Influences. Washington, D.C.: American Psychological Association, (2008).

The first problem is the limitations with regard to how we understand culture, which is manifested in how business and human rights stakeholders in Colombia, Türkiye, and South Africa see misogynistic (and dogmatic, therefore unchangeable) culture as the inhibitor of gender-responsive business and human rights mechanisms. A simple and narrow classification of egalitarian, developed, and gender-equal countries (qualities often attributed to home states) vs. oppressive, inequalitarian, and misogynistic countries is damaging and fails to reflect the heterogeneous, complex societal dynamics in Colombia, Türkiye, and South Africa. There are other aspects of cultures, which are worth considering for potential gender-responsiveness of BHR systems. Information gathered by interviewees and country profiles of Türkiye, Colombia, and South Africa under Hofstede's cultural dimensions, can provide some examples for it. Hofstede's cultural dimensions extended with the contribution of several researchers[1229], aim to critically distinguish, classify, and compare different cultures focusing on six dimensions: power distance[1230], individualism[1231], masculinity, uncertainty avoidance[1232], long-term orientation[1233], and indulgence.[1234] The masculinity dimension requires some attention: Accordingly, "masculine" cultures are driven by competition, achievement, and success, with success being defined by the winner / best in the field, versus "feminine" cultures that have caring for others and quality of life are dominant values and signs of success. This dichotomous understanding is in striking conflict with feminist legal theory's critique of seemingly gender-neutral yet deeply divided and polarized systems attributing higher values to what is perceived as masculine.

[1229] Geert Hofstede, Culture's consequences: International differences in work-related values, Vol. 5, Sage, (1984).; Hofstede, G., Hofstede, G. J., & Minkov, M., Cultures and Organizations: Software of the Mind, USA: McGraw-Hill, (2010); Shihanah Almutairi, Michael Heller, and Dorothy Yen, Reclaiming the heterogeneity of the Arab states, Cross Cultural & Strategic Management 28(1), (2020).

[1230] Power Distance is defined as "the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally".

[1231] In Individualist societies people "are supposed to look after themselves and their direct family only". In "Collectivist societies, people belong to 'in groups' that take care of them in exchange for loyalty".

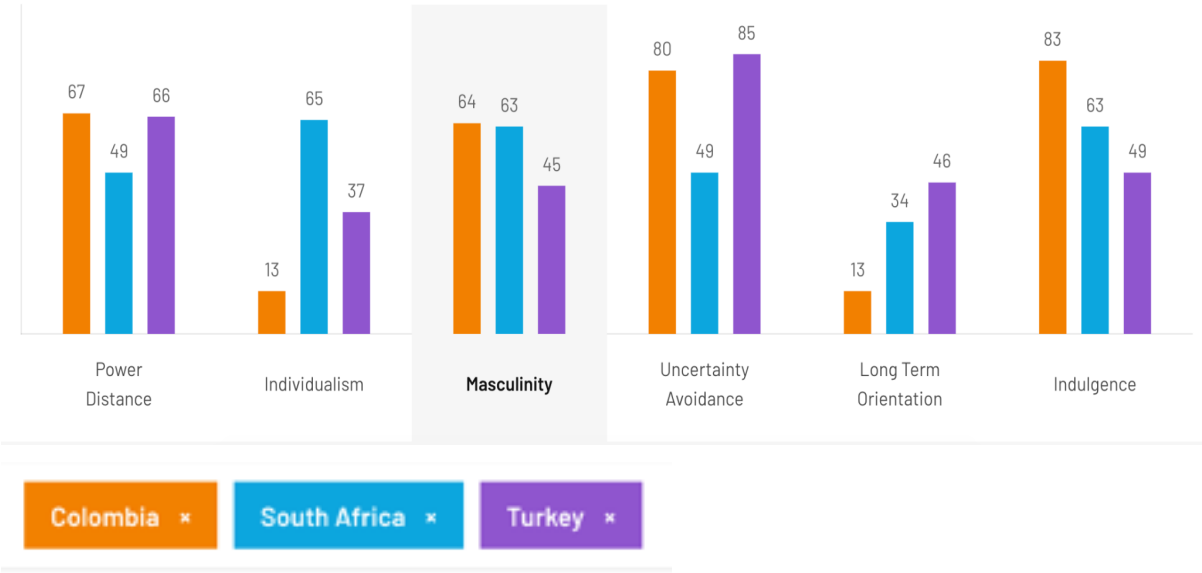
[1232] The dimension of Uncertainty Avoidance is about "the way that a society deals with the fact that the future can never be known: should we try to control the future or just let it happen? This ambiguity brings with it anxiety and different cultures have learnt to deal with this anxiety in different ways. The extent to which the members of a culture feel threatened by ambiguous or unknown situations and have created beliefs and institutions that try to avoid these is reflected in the score on Uncertainty Avoidance."

[1233] This dimension describes "how every society has to maintain some links with its own past while dealing with the challenges of the present and future, and societies prioritize these two existential goals differently". Normative societies which score low on this dimension, for example, prefer to maintain time-honoured traditions and norms while viewing societal change with suspicion. Those with a culture which scores high, on the other hand, take a more pragmatic approach: they encourage thrift and efforts in modern education as a way to prepare for the future.

[1234] This dimension is defined as "the extent to which people try to control their desires and impulses, based on the way they were raised", through which relatively weak control is called "Indulgence" and relatively strong control is called "Restraint".

Keeping this critique and other critiques towards its generalization tendency in mind, Hofstede dimensions remain to be one of the most commonly used models in literature to capture intercultural differences, used by many fields,[1235] including gender studies, but most importantly in business organization studies and corporate diversity management teams. For example, the Hofstede dimensions were quoted by a private sector representative interviewee. Below, the six Hofstede cultural dimension scores of Colombia, South Africa, and Türkiye are available:[1236]

Table 4.4: Hofstede cultural dimension scores of Colombia (orange), South Africa (blue) and Türkiye (purple).



Culture can be changed for the better, and cultural contextualization[1237] can further boost gender responsiveness of business and human rights systems with context-appropriate strategies. For example, in parallel with the interviews and Hofstede dimension scores, Colombia and Türkiye are collectivistic societies, in which belonging to a group and aligning oneself with that group's opinion or direction are considered important, showing individualistic discourses of women's empowerment may not result in permanent and compatible change. On another note, all three societies tend to accept hierarchical orders, including business life, where managers and leaders hold centralized and concentrated power.

[1235] James Madison University Center for Global Engagement, Hofstede'S Cultural Dimensions, available at: https://www.jmu.edu/global/isss/resources/global-campus-toolkit/files/hofstede-masculinity.pdf; Hofstede, G., Hofstede, G. J., & Minkov, M., Cultures and Organizations: Software of the Mind, USA: McGraw-Hill, (2010).
[1236] Hofstede Insights, Country Comparison Tool, Türkiye-Colombia-South Africa, available at: https://www.hofstede-insights.com/country-comparison-tool?countries=colombia%2Csouth+africa%2CTürkiye
[1237] Willy SJ Moka-Mubelo, Towards a contextual understanding of human rights, Ethics and Global Politics 12(4), (2019).

While a male-dominated hierarchical structure is what feminist legal theory stands up against, a gender-responsive transition in business and human rights could be initiated through a bigger focus on the behaviors, attitudes, and management styles of managers and leaders. All three jurisdictions are also characterized as normative societies, meaning they maintain time-honored traditions and norms and view societal change with suspicion: this may be a sign of the need for a sociological approach, deeper attention to be paid to transforming deeply rooted understandings, and strengthening intergenerational dialogue. Culture's role in gender responsiveness of BHR mechanisms is not limited to gender stereotypes and roles in overall society, but also to communication methods, approaches to and criteria for promotion and success in business, and preferred leadership styles.

The second important issue that requires attention (and precaution) is the risk of falling into cultural relativism. Business and human rights mechanisms should be contextualized for more effective compatibility, and to better reflect the lived intersectional experiences of women in Colombia, Türkiye, and South Africa, however, this does not mean corporate abuses of women's rights, or their complete exclusion from decision-making are permissible due to the cultural context. Charlesworth and Chinkin define cultural relativism as "[t]he claim [that] if international human rights norms conflict with particular cultural standards, the particularity of culture must take precedence over universalizing trends."[1238] The importance of cultural context, local dispute resolution, and avoidance of colonial understandings of seemingly egalitarian, supremacist practices should not be confused with dangerous cultural relativist tendencies. Business and human rights mechanisms are at a crossroads in Colombia, Türkiye, and South Africa: they both hold the potential to avoid and the risk to reproduce the cultural relativism discussions over the human rights canon. Gender-responsive initiatives within business and human rights mechanisms can challenge the notion of culture, and under that, the role of culture in business contexts being impermeable.

It must be noted here, that the selected jurisdictions for this triple comparison, while offering important lessons for gender responsiveness in BHR of host states, as this dissertation initially aimed, have proven to be archetypes of exception in cultural, political, and economic analysis, and it is difficult to say that Colombia is representative of the whole Latin American context, Türkiye is comparable with the whole Euroasian (typical to its unique position) business and human rights progress, or South Africa provides a general representation for the Sub-saharan

[1238] Hilary Charlesworth and Christine Chinkin. The boundaries of international law: A feminist analysis, with a new introduction. Manchester University Press, (2022).

experiences. They can all be considered an upper-middle income economy within their regions as host states of global supply chains, despite the equally high levels of socio-economic disparities. South Africa is seen as a good example for the critique of universalism and its potential to unsettle assumptions and to de-centering generalizing theories, and this finding is applicable to both Türkiye and Colombia. In other words, one should be wary of generalizing the discussions around business and human rights context in host states, and of the analyses shifting to a one-dimensional poor host state and exploited poor third-world communities vs. powerful multinational corporations and wealthy white-collar staff binary. This attention must be paid to discussions around culture and gender equality as well.

One important discussion which is often raised is how gender responsiveness is managed across foreign subsidiaries, throughout the global supply chains. In other words, how subsidiaries of multinational companies respond to differences in gender equality between home and host countries, with regard to differences in gender diversity in executive boards, legal frameworks, and workplace policies on sexual harassment or other gender-responsive labour standards. Assuming that the headquarters in the home state performs higher when it comes to gender equality (which may not be the case at all times), do they impose such higher standards, due diligence practices, and gender-responsive working conditions in their foreign subsidiaries, if not throughout the supply chains? This is often a challenging case for multinationals operating in multiple countries, as each host exhibits unique conditions, institutional capacity, and political will, differing from those in the home state, affecting the role and experiences of women across different countries an MNC is operating.[1239]

Informants from Colombia, South Africa, and Türkiye have mentioned that gender equality policies and standard practices are often planned and imposed with a top-down approach from the headquarters, and much influence is done and vice versa. Unlike the inclusion of gender equality principles within the internal codes and policy documents, they have shared that gender equality practices are only deemed important if they are included within the key performance indicators of subsidiaries, with actual sanctions or incentives. If they are suggested voluntarily, there is a dilution of such principles and commitments as one goes down in hierarchical steps of management, with not much attention paid to the suppliers. Headquarters are reported to grant subsidiary executives a “cultural” margin of appreciation,

[1239] Anna Katharina Bader et al., Gender diversity management in foreign subsidiaries: A comparative study in Germany and Japan, Journal of International Management 28(3), (2022); Mustafa F. Özbilgin, et al., International transfer of policies and practices of gender equality in employment to and among Muslim majority countries, Gender, Work & Organization, 19(4), (2012).

or options to selectively implement gender equality policies and initiatives which are culturally acceptable. They have also noted, with several providing the same example of selective celebration of pride month by corporations' subsidiaries, that they never take risks that may draw strong reactions from the local community, and that "at the end of the day, the biggest priority is to see their subsidiaries working with maximum profit." The examples that informants have discussed are mostly gender or sexual orientation-focused initiatives and projects, rather than rights-based, legally binding regulations.

Inditex's Code of Conduct and Responsible Practices of Inditex Group provides a good example since it operates in Colombia, Türkiye, and South Africa, and many corporations adopt similar statements, defined as "*the main policy that inspires and governs all of the companies operations and provides the binding principles that apply in each and every area of its activities. The purpose of the Code consists of exacting ethical and responsible professional conduct of (the company name) and its workforce in the conduct of its business anywhere in the world, as part of its culture of ethics and compliance*." Having said this, except for strict principles such as zero tolerance against child labour, the soft language around gender equality leaves room for interpretation according to the local context. Informants have shared this through examples of beneficial practices and higher labour standards for women (paid and longer maternity leaves) of the headquarters in home states not being turned into a global standard for all subsidiaries, and headquarters selectively practicing less costly and highly marketable practices instead of tangible improvements of labour conditions.

Feminist legal theory has not yet studied the cultural aspect of the transfer of gender equality standards and practices between countries in a business and human rights context. International business and human resource management literature, however, has a much deeper empirical investigation of the issue. One might argue or warn against the use of human rights management literature within a feminist legal review, due to the risk of shifting the discussion from legal accountability to corporate social responsibility. However, legal scholars must make the best use of the available intercultural studies and be open to a multidisciplinary approach, especially in the area of business and human rights.

5. CONCLUSION

In this dissertation I aimed to explore whether the BHR mechanisms in Türkiye, Colombia and South Africa are gender-responsive by providing a triple comparison from feminist legal theory's perspective. The hypothesis was that these three selected jurisdictions did not offer gender responsive BHR mechanisms. This hypothesis was and still is accompanied by the idea that a detailed analysis of these issues both from a theoretical and practical nature can lay out important points for building gender equal, just, and effective BHR mechanisms that can serve the needs of women and girls in host state contexts. Feminist legal theory has guided this analysis which combined a review of the literature and relevant normative frameworks, with semi-structural in-depth interviews conducted with representatives of five major stakeholders: the states (state officials); businessses (private sector and business association representatives); international organizations (UN entities, ILO, OECD); labour movement (labour unions and workers); feminist and local human rights defenders (feminist and rural/indigenous organizations and activists). It is not possible to simply conclude that all available business and human rights mechanisms are of a gender discriminatory nature, or that they have failed in gender responsiveness as a whole since this would fail to illustrate the reality. Instead, the significant, complex, deliberate gender-blindness of many of these mechanisms requires further consideration, as they make women's experiences and needs invisible and excluded without direct discrimination. Deeply gendered aspects of corporate liability lack a gender perspective most of the time, and when it is included, it rarely surpasses a one-axis victim portrayal of women and girls. The failure to include gender perspectives effectively within legal frameworks and justice mechanisms is vastly unique and different from the home states, yet this does not mean that the home states are in an advanced position with regard to gender responsiveness. There are several lost and potential opportunities to build gender-responsive and just BHR mechanisms, that can serve the needs of women impacted by corporate violations. Scrutinizing such weaknesses of business and human rights mechanisms in the most important and violation-prone industries operating in host states is necessary for three main reasons: firstly, to illustrate how "gender-neutrality" of such mechanisms are actually deliberately gender-blind and how this deepens the gendered structures of business and human rights; secondly, to see the difference in between how gender-focused policies and tools available for women actually function in practice, different

than what is on paper and lastly, to show and expand the liability to the multinational corporations which have artificially remain untouched and non-liable, and which are based in the home states meanwhile the sole responsibility of building gender-responsive mechanisms are often put on the host states.

Following the introdcution in Chapter one, in Chapter two, the study began with reviewing generations and schools of feminist legal theory, specifically the feminist arguments, contributions, and critique of law beyond white Western feminism, and the importance of integrating an intersectional approach towards the business and human rights mechanisms. This review laid out some points, most importantly that there is no overarching feminist legal theory, given its diversity and dynamism. However, certain demands and perspectives from various feminist legal thoughts resonated well with the gender dimensions of business and human rights as a whole. Some of them are; socialist feminism's focus on working-class women's experiences and the patriarchal nature of capitalism; ecofeminism's focus on the interconnectedness between women's oppression and environmental degradation caused by extractive businesses; intersectional, third-world, and post-colonial feminism's foci on various forms of oppression and discrimination experiences, the living impact of the legacy of colonialism and the feminization of poverty on how global supply chains operate.

These highlights further informed the following Chapter three, where the international business and human rights normative frameworks and mechanisms were analyzed with a gender lens. From pioneer normative frameworks such as the UNGPs, the ILO MNE Declaration and the OECD Guidelines, to the voluntary initiatives such as the UN Global Compact and its Women's Empowerment Principles, the analysis indicated five major issues. First, was the inefficacy of umbrella non-discrimination clauses when it came to gender-responsiveness. Second, was the deliberate and prevalent use of gender-neutral, or to put it in more valid words, gender-blind language in which women's experiences or gender equality aspects were completely missing from the texts. Third, was the one-dimensional characterization of women as victims where women's experiences could not be recognized without a disproportionate emphasis on their vulnerability and the failure to acknowledge their agency, the deeply gendered structure of power relations, or the intersectional identities. Fourth was the soft terminology and the semi-voluntary responsibility over multinational corporations. Fifth and final, was the creation of a hierarchy of human rights norms and/or issues where women's rights and experiences are shadowed by more important and prioritized -bigger-than-gender- human rights or labour rights documents. These five problems have been

replicated in many international, regional and national documents and frameworks, and have later reappeared and resurfaced in the comparative studies of the business and human rights mechanisms in Türkiye, Colombia, and South Africa, and further consolidated with the shared experiences of the interviewees.

This thesis addresses the two main functions of a feminist analysis of law: deconstruction and reconstruction. Deconstruction requires an exposure of the explicit and implicit sexism built in legal systems; challenging the apparent and claimed rationality and objectivity of law, and discovering its gendered nature. The deconstructing and exposing function of feminist legal theory, on the analysis of normative frameworks, most importantly, of the UNGPs and the national business and human rights policies is crucial, as the business and human rights awakening is still happening in the three selected jurisdictions. A feminist analysis and review of such texts and policies can prevent the reproduction and copying of problematic approaches to gender equality. Some of the problematic approaches detected within the UNGPs, mainly, the approach to gender-based violence as an exceptional atrocity in armed conflict situations instead of a prevalent problem engrained within everyday experiences of women, or the constant labeling of women among vulnerable communities in need of sensitive protection, have already started to reproduce and are reflected on the national policies and documents on the three selected host states. Analyzing and exposing them at an early stage is important, giving the younger area of business and human rights a higher chance to transform itself, compared to other branches of international law with heavy, deeply rooted practices with harder to erase gender-bias. The exposure of gender bias is not enough of course. For business and human rights mechanisms to become ultimately gender-transformative, they need to serve removing the structural barriers, explicitly focusing on removing gender inequality. This can be done with some ground work on gender-responsiveness, through reviewing and renewing the main normative frameworks at hand, for example, through renewed editions, as done in the ILO MNE Declaration and the OECD Guidelines, and continuing building preventive mechanisms and mechanisms of remedy on these foundations.

Once the myth of neutrality is debunked through deconstruction, reconstruction can finally begin: by identifying the possibilities of change, rebuilding the basic concepts of relevant areas of law, and suggesting and building new and inclusive language. This dissertation serves mostly for the deconstruction aspect since gender-focused, detailed analyses of host state mechanisms are very rare in the current literature in the first place. The findings and some

initial recommendations provided under this conclusion will hopefully provide a foundation for rebuilding better, stronger and gender-responsive mechanisms.

First of several issues that were evident as a result of the triple comparative analysis of the BHR mechanisms available in Türkiye, Colombia and South Africa is the complexity of women's representation. Women's representation in decision and policy-making, more extensively, starting early from the preparation and consultation processes of law making to the implementation, follow-up and evaluation of BHR mechanisms matter to a great extent and is one of the pre-requisites for gender-responsive mechanisms. Representation of women, with their diverse, intersectional identities and constituencies mean further than presence within the spaces: it means active engagement, with space and time being given to them to express their demands, questioning the reasons behind their absence in such mechanisms and procedures, promoting their engagement and leadership through affirmative measures, and accommodating and redesigning these mechanisms to ensure their access, their continuous, sustainable and long-term involvement and their safety, given the burdensome cost of advocacy on women human rights defenders. Women's deliberate or unintentional absence in such processes can result in completely gender-blind normative frameworks, as seen in the example of Türkiye's National Guidelines on Work Life. On the other hand, in cases where women's representation and leadership are supported with some affirmative measures, yet it is not internalized and seen as one of the boxes to be checked and not properly implemented, similar to the cases of Colombia and South Africa, the relatively gender-sensitive normative frameworks fail to transform the patriarchal system in practice, with tangible results impacting women's experiences. Women's representation is often understood, reported and evaluated with a limited focus on the percentage of female labour workforce or the number of women in high managerial positions. However, the mere presence of women in the workforce or in policy spaces may not always result in feminist policies. Women's representation needs improvement in all three jurisdictions, from law-making, to consultations and dispute resolution. There are several proven cases in which women's active engagement has resulted in improving the success of dispute resolution's progress, such as the Peace Accord in Colombia or the Truth and Reconciliation Commission in South Africa[1240]. It is evident from the interviews that in rare cases where women's organizations, gender-focused public institutions or gender experts are involved in consultation procedures during the preparatory

[1240] Global Network of Women Peacebuilders, Government of Ireland and UN Women, Building Peace from the Grassroots: Learning from Women Peacebuilders to Advance the WPS Agenda, (2020), available at: https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/Building-peace-from-the-grassroots-Oct-2020.pdf

work of normative frameworks prior to corporate operations, their experiences and demands are recorded and more efficiently integrated into the process, and their involvement specifically during these stages change the course of such texts in terms of gender responsiveness and future policy implementations based on them. Lastly, the collected data, the relevant evaluation and goal setting should go beyond female participation in workforce and the number of female manager in high executive levels. A closer, nuanced look into the available data can provide a more realistic illustration of other form of representation: these include, the managerial leadership and representation of female-dominated labour forces, the time on the floor and opportunities to speak provided to women present in the decision-making spaces, the leadership of non-family member women in leadership and C-level positions of businesses (questioning whether women leaders' respectability comes exclusively from their well-proven competency beyond their affiliation), the diversity and constituencies women represent (with further data on their intersectional identities) and the gender representation not only to the home state headquarters but also in the subsidiaries, subcontractors and throughout the global supply chains.

The lack of coordination and the asymmetry of knowledge among institutions, from the ministries of labour and the public institutions focused on women's rights, to the trade unions, business associations, and feminist civil society; is evident. In addition to the need for stronger coordination, there is a need to build an understanding of multistakeholdership for gender-responsive business and human rights, which is currently lacking in all three selected jurisdictions. Based on the available BHR mechanisms and in-depth interviews, specifically on how the interviewees responded to the questions concerning the other stakeholders, the multistakeholdership in BHR is perceived with a simplified, formal and disconnected approach, where the host states and large-scale multinational corporations are the leading, superior actors, while there is a third, "other" lump representing vulnerable, impacted and violated communities. This big third lump includes civil society, trade unions, women's rights organizations, indigenous communities etc. They are gathered and categorized under one big group, not positioned as equals, and the channels of communication and engagement are weak and limited. On the contrary, the ideal multi-stakeholdership requires an understanding similar to what is represented with the scheme on the right below, where various and diverse stakeholders (not limited to those represented below) are closely engaged and connected to each other as equals, not in terms of governance power or financial capacity, but in terms of positionality, agency and the method of engagement, information and communication.

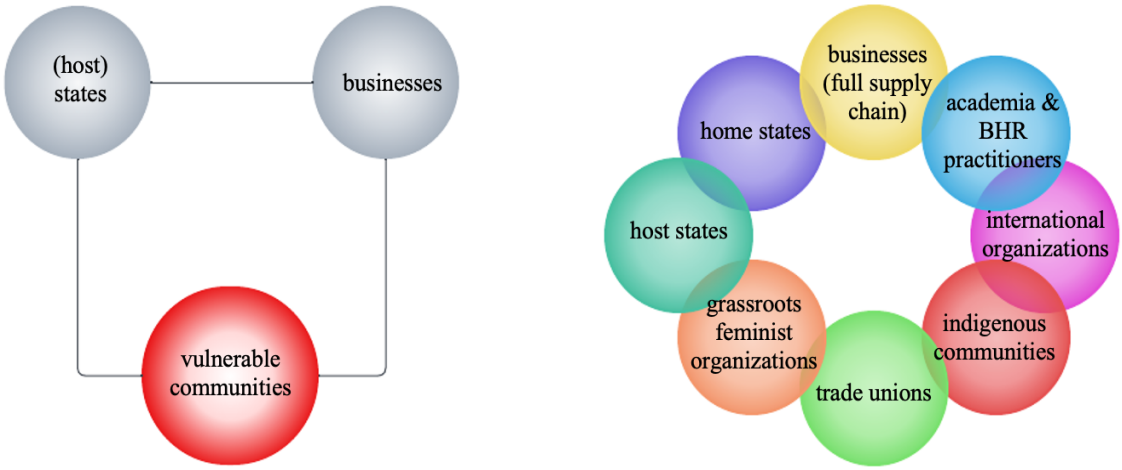


Figure 5.1.: Two schemes representing how multistakeholdership is currently perceived in host state contexts (left) and how it should be understood for ideal engagement and communication to take place (right).

Feminist legal theory requires a critical questioning of the systems, and to expose and identify the inherent gender bias. This includes institutions that may typically be seen as the expected allies for working class and/or rural and indigenous women, such as labour unions or indigenous justice mechanisms. However, these institutions also often have patriarchal and deeply gendered structures and male-dominated leaderships that are resistant to address women's demands. For gender-responsive BHR mechanisms to become a reality, these institutions must also be exposed and transformed. This is highly visible in some problematic labour union practices. Women are often able to attract the attention and raise their voices against a certain violation. They mobilize well within their communities, and their stances as "rightful hardworkers" or "wronged proud local community members" constitute a reputational damage threat for the abusive corporartions. However, once women labouriously attract the attention, the male-led labour unions take over and push women, the actual subjects of corporate abuse, to the background or use women workers' demands as a bargaining chip to leverage their prioritized "gender-neutral" demands. Labour unions have been led by men historically, even in sectors where women's labour workforce is overrepresented. Despite a few emerging women leaders, and comprehensive gender policies and constitutions, the problematic practice of pushing and limiting women workers into women's committees or sub-departments without mainstreaming a gender-focused approach to the labour movement remain prevalent. The transformation of the unions and the construction of gender-responsive policies are only possible through the stable presence and presssure of a strong, independent feminist labour movement and the mainstreaming of gender-focused policies. Beyond the

progressive discourse of comradeship, the power holders and beneficiaries are benefiting from the current system. The patriarchal governance is replicated within such labour and social movements, with similar, resistant-to-change male leaderships. This is most visibly evident in working class women being positioned and depicted as mother or sister figures in solidarity or noble martyrs and sacrificers, and not as equals with agency or leadership capability deserving a seat at the negotiation table.

The "burning" BHR issues needing most attention and directly impacting women in Türkiye, Colombia and South Africa are the issues that fall off the radar, or to put it in other words, issues that are nearby the BHR discussions, yet deliberately not included within the scope. In order to build gender-responsive business and human rights systems in host states, there is an urgent need to redefine business and human rights with a broader scope which is able to cover informal economies and different layers of global supply chains effectively. The way business and human rights is understood and is currently growing in Türkiye, Colombia and South Africa, is mostly limited to the operations of multinational corporations, and the violations experienced by the formal/registered workers, without efficiently addressing the informal economy, subcontractors and lower, opaque levels of supply chains, and eventually, the most exploited communities, including women and girls. A majority of the gender-focused violations in host states are committed in small and medium sized, national or regional businesses, and in non-traditional, informal and unregistered labour relationships. These are the grey areas, where the dense majority of violations happen, and businesses are able to distance themselves, or wrap themselves in the corporate veil. A new dichotomy that feminist legal theory should position itself against is the presumptive "evil, multinational corporation from Global North vs. vulnerable, exploited women workers and community members from the Global South" illustration. The understanding of business and human rights should be expanded further than this, in a way that ensures the role and liability of national, smaller-scale businesses and suppliers are recognized and the informal labour force and non-traditional labour relationships can be addressed. The elimination of separating domestic labour law and business and human rights area, and embracing their interconnectedness can be a good start. On one hand, setting boundaries and having a clear understanding of what business and human rights connotates can be a necessity in host states contexts, specifically with regard to separating legal liabilities from the voluntary corporate social responsibility, or to raise fine-drawn claims and to demand accountability from the right actors. On the other hand, limiting the availability and scope of business and human rights mechanisms only to the formal, visible supply chains and labour relationships (in which men take disproportionately bigger space and

have stronger access) further push women's experiences and gender dimensions to the background and puts them on a sidetrack. Addressing the business and human rights in host states with an approach that creates two polarized extremes (evil, male Northern corporation vs. vulnerable female Southern victim) is out of sync with the zeitgeist and the realities of business and human rights, and can further reinforce post-colonial patriarchal assumptions and a superiority-inferirority approach that many BHR actors tend to fall into.

In relation with the scope disucssions, another common issue in Türkiye, Colombia and South Africa is the disproportionate focus on "green economy" and climate impact when it comes to corporate accountability. Sustainability agenda is often seen as an issue solely concerning carbon foot-prints, and environmental impact, while social aspects of sustainability, primarily, gender equality, and in addition, poverty, violence, discrimination access to and enjoyment of fundamental human rights, peace and security, are often seen as irrelevant topics on which corporations may opt out to work on. Private sector representatives have pointed out to the difficulty in measuring the impact of or conducting due diligence with regard to human rights as they are not as measurable and actionable as the environmental impact, showing the need to provide clear guidelines and indicators with regard to human rights or social impact reporting.

Türkiye, Colombia and South Africa all share problems with regard to women's access to justice as a whole, not only specifically in the business and human rights context. Correspondingly, the need for gender-responsive justice mechanisms and strengthening women's access to justice must be prioritized not only in the three studied jurisdictions, or the host states, but globally. Without transforming the deeply gendered structures of justice mechanisms, applying the same methods and dispute resolutions on BHR issues would have little effect. Despite the limitations, there are specific methods which feminist movements have developed to communicate their BHR related demands and to claim their rights, as in the examples of creative consumer mobilization in Turkish garment sector, political mobilization of rural women against extractive businesses as in the marches led by Francia Marquez in Colombia, or competent, specialized strategic litigation or the efficient use of "amicus curiae" position specifically for the rights of domestic workers as in the example of South Africa.

There are a few issues with regard to the limited access to justice mechanisms and remedies and their gender dimensions in host state contexts. The reliance on the civil society for supporting women result in NGOs and advocates, almost undertaking the responsibilities of

the states when it comes to informing and providing legal aid, bringing strategic litigation and conducting baseline assessments with already limited resources is disproportionate and not sustainable. This was solidified in the examples of certain public institutions referring domestic workers to the experts in SADSAWU in South Africa, or consulting with them with regard to possible domestic remedies; or the accion de tutela system in Colombia, almost being used as a mainstream method, "the extraordinary becoming the ordinary" as provided by an interviewee, to claim rights and to receive remedies, further burdening and slowing down the system, with an increasing judicial backlog. Women are pushed to rely on extraordinary methods or the supporting actors as their main possible source for support and remedies. When it comes to building functional, flexible, accessible and gender-responsive justice mechanisms -not only for traditional dispute resolution, but also alternative dispute resolution and internal grievance mechanisms- the host states and the businesses should be positioned as the primary actors with accountability and liability, in terms of providing the resources and ensuring functionality. The supporting institutions' overcapacity work and failure to provide efficient support to women further reinforce major effects: for businesses and host states, it deepens the culture of impunity and the lack of compliance, and in connection, intentionally or unintentionally, creates a space for tolerable neglect. For the impacted women and girls, there is a collective, growing sense of despair, misdirected frustration (towards human rights defenders in their communities or their legal representatives instead of the perpetrator institutions) and lack of faith in justice mechanisms, resulting in submission and indulgence, and vulnerability for further exploitation.

With regard to access to justice, several improvements are needed with regard to the available mechanisms and the judiciary. Women's access to justice and gender-responsiveness of the judiciary are almost exclusively understood within the framework of gender-based violence cases in all three jurisdictions. This approach, causing the gender-blindness in labour law and environmental law, needs to change for gender-responsive business and human rights mechanisms to become a reality. In addition, the plurality of available fora and the ambiguity of limited mandates and binding nature of business and human rights mechanisms are detrimental to the gender responsiveness of business and human rights mechanisms and discourage women from claiming their rights. Further than the national judiciary, powerful human rights actors who have stayed in the shadow for long, specifically, regional human rights mechanisms offer ample opportunities for the development of gender-focused regional jurisprudence. It is important that the regional human rights mechanisms (in this comparative case, European, Inter-American and African mechanisms) integrate a gender dimension within

the business and human rights related cases. Vis a vis the progressive and developing gender focused jurisprudence of regional human rights mechanisms, especially, with regards to gender-based violence and discrimination, the business and human rights-related small jurisprudence (mostly, focused on labour rights, workplace discrimination or environmental impact) remain gender-blind. Gender equality and corporate abuse of human rights remain as (and approached as) two separate, non-intersecting areas. The unique approach of Inter-American human rights system with symbolic reparations and a deeper focus on collective healing and reconciliation (also a part of South African Truth and Reconciliation Commission's legacy) is among good practices which can support women's active engagement and better access to justice.

Access to justice discussions are closely linked to systemic gender bias that sometimes lead to the misguided presumption of women not knowing their rights. Women involved in or affected by business activities in Türkiye, Colombia and South Africa are mostly aware of the problems and the violation of their rights, however, they refrain from taking action due to possible (and often previously experienced or observed) repercussions. The lack of impartiality and gender representations within internal grievance mechanisms of businesses, the lack of safety and anonimity for whistleblowers, the stigma and risk of claiming for rights, (registrations and social security) especially in informal sectors or non-traditional labour relationships contexts, the risk of bad references for future job prospects and the chilling effect caused by the killings, attacks, targetings, threats and social exclusion experiences by women human rights defenders and limited financial resources (the need to prioritize financial survival and income) are the major reasons setting women back. Offering worker/rural/indigenous women trainings about their rights without addressing these barriers, specifically, whistleblowing and the safety of defenders/protestors/ objectors, without ensuring gender-responsive, operating and safe justice mechanisms that women can apply to without repercussions, is inadequate, inconclusive and out of touch.

There are some critical actors with responsibility and accountability that should be addressed for the intended gender-responsive BHR mechanisms in host states. These are not new actors, yet spotlights have not been on them, or their involvement and role have not been looked at from the critical perspective of feminist legal theory. First among these actors are the intermediary recruiters, or in the terms created for this dissertation, the "labour brokers". Recruitment agencies, which vary from intermediary individuals, informal collectives or registered yet unmonitored companies create a protective barrier/distance between employing

businesses and the hiring/labout related violations. These recruitment agencies mentioned here are not the human resources departments of multinational corporations. Sectors where informality is prevalent, such as seasonal agriculture or fresh-cut flower industry to large-scale factories still use such intermediary agencies for hiring, and local and rural women predominantly use such agencies for jobs. Their gatekeeping, discriminatory selection and hiring practices, ability to shape labour migration in certain regions and sectors (such as seasonal miners or foreign care workers) can worsen as prevalent abusive practices such as debt bondaging through exorbitant recruitment fees and confiscation of passport and identity documents which amount to forced labour and trafficking in certain contexts. The formal and informal networks of intermediary recruitment agencies require further scrutiny. The complexity of global supply chains are often explained and analyzed with the structures of headquarters in home states, subsidiaries in host states and further subcontractors. However, the hiring chains and practices also require further attention and must be addressed explicitly in addition to the supply chains of multinational corporations.

Bar associations, law firms and strategic litigators, all in all, the role of legal practitioners involved in business and human rights mechanisms also require further scrutiny. Internal guidelines and codes of ethics on legal representation in SLAPPs and the use of lawfare, a clarification of the definition of SLAPPs, as seen in the South African judiciary, and the addition of reporting of lawsuits against protestors/human rights defenders and press members, into mandatory sustainability reporting and due diligence processes are necessary steps to be taken. Companies' and international law firms' track records and histories of SLAPPs must be included within the mandatory human rights due diligence, investment reviews and the selection criteria of awards and certifications. On the other hand, the pro bono and low bono support and legal aid providers and legal representatives of indigenous and rural women, or women victims of corporate abuse should also develop and be attentive to gender-responsive conduct of legal representation. This is of specific importance with regard to refraining from tokenization of women victims, ensuring that legal strategies and steps are chosen transparently with the informed consent of claimants, paying regard to their agency and their narratives, and maintaining open communication throughout long legal processes, within the bounds of possibility.

Providing access to gender-responsive justice mechanisms and remedies are crucial, and national efforts to improve women's access to just remedies should continue. In the meanwhile, preventive mechanisms need equal attention and focus, and further improvement.

Preventive mechanisms are more amenable to the compliance of states and businesses, as some of them continue their resistant stance before a possible legally binding treaty on business and human rights, making the prospects of such a document distant. In the interim, the current EU Directive and legislations on preventive mechanisms, specifically, mandatory human rights due diligence and sustainability reporting offer an important momentum, although they lack a gender perspective in line with the general tendency. Business and human rights communities in host states, however, must avoid allowing the preventive mechanisms to remain voluntary and ineffective. Instead, there is a need for a stringent and standardized framework for sustainability and due diligence reporting. The establishment of a standardized format with a clear set of questions (determined in collaboration with the feminist organizations and gender experts) to be answered by businesses can provide the clearer, much needed data. Inspiration can be drawn from the state reporting mechanisms of UN Human Rights Treaty Bodies, where states are provided with a set of questions. Without such a standardized preventive mechanisms approach, there is a risk that initiatives may devolve into corporate social responsibility reports that merely praise women's empowerment projects, lacking the necessary substance and accountability for gender responsiveness, and failing to address the needs of women. Standardization of reporting and human rights diligence would also prevent selective reporting and cherry picking, where certain aspects of working conditions of women workers, or the engagement of women living in impacted communities are skipped in reports. Businesses can be pushed to comply with making certain information publicly available through standardized reporting. While doing so, impact measurement and reporting should include the gender responsiveness of all stations within the global supply chain, including the overseas subcontractors. It is important for multinational corporations and investors to conduct due diligence with the support of local experts, who have comprehensive knowledge of the national or regional context. Fact checking practices and gathering information from shadow reports of women's rights NGOs can support the fact-finding processes.

The seemingly gender-responsive or empowering solutions or achievements with regard to business and human rights in host states are significant and require a critical approach. For example, the efforts for formalization of typically informal sectors where women are overrepresented, such as domestic work or seasonal agriculture are planned and served in a way that prioritizes and protects the rights of and facilitates the procedures for the employers, companies or investors, failing to address the needs and rights of women workers. This is observed in the legislative efforts to formalize domestic workers, where the facilitation is only provided for the employer, to prevent them from getting fined. While the triple comparison

has clearly showed the importance of simplified and facilitated paperwork and bureaucratic procedures as factors that help corporate compliance, the focus should not remain solely on the business instead of the impacted women and their fundamental rights. This way, the systems remain far from being gender-responsive and become rather pro-business. This tendency is also visible in the bilateral trade and investment agreements in which the clauses and conditions are made desirable for potential foreign investors, sometimes at the cost of the human rights of the women from vulnerable communities who are either deliberately emmited, or their cheap labour emphasized as yet another lucrative business feature.

In addition, in rare cases where women have effectively mobilized and drew attention to corporate abuses of human rights or grave environmental impact, the results of such successful efforts are mostly the cease of operations or the relevant businesses withdrawing from the region, from the project they are operating, or from the national market. This highly problematic and common corporate exit strategy leaves the communities with no jobs, resources or tools for long-term recovery and development. In addition, it puts women protestors and human rights defenders in a more vulnerable position, as their "scapegoat" status exacerbates and they can receive further threats and targetings, with eventual socio-economic deterioration in their community due to lost jobs or withdrawn capital. Gender-responsive remedies can and should be developed in a way which businesses can prosper and flourish with gender-equal practices, they remain in the region or in the market with their financial investments while redressing its wrongdoing and reaching common ground through reciprocal compromise.

Türkiye, Colombia and South Africa, have their internal, historical and unique root causes of gender inequality, gender discrimination and violence reflected upon the business and human rights area, with concrete examples such as the low representation of women in leadership positions (with the exception of relatively better representation in South African politics), retrogressive steps such as the withdrawal from Istanbul Convention in Türkiye, and the weak implementation and follow-ups of promising targets, national action plans or legislation, showing the lack of political will. In business and human rights mechanisms where gender equality or women and girls' unique experiences and needs are mentioned, they are often done so in a way where they are placed in a one-axis position of victimhood and vulnerability. They are often among the listed vulnerable groups alongside the elderly, indigenous persons, minorities, children and disabled persons. This positioning is not wrong in the sense that women are positioned in an inferior place, being alongside other groups with unique needs.

On the contrary, this is telling of a greater problem in which abled, white men with socio-economically higher status are positioned as the norm once again, and the need to "attend" those in need, those who are most vulnerable, those who are most hurt from corporate operations are mentioned only through their need of help and support, as told from a superior position, and erasing their agency, their narrative and their power. In other words, a wider problem is reflected upon the way business and human rights mechanisms are built in host states, where most of the abuse and negative impact happen, and the role played by private sector and exacerbated poverty deepens and complexifies the situation. This can only be transformed by transforming the narrative through integrating the agency and power of those who have been historically oppressed, in our case, women and girls.

Women's victimhood vs. agency is a pattern which is often encountered in Turkish, Colombian and South African context and is deeply connected to the core research question of this dissertation. The solution to many of the abovementioned systemic problems starts with positioning and treating women and girls as equal stakeholders with agency, not as vulnerable victims in need of protection. Women's empowerment discourse, the addressing of gender-equality, and ultimately, the gender-responsiveness of business and human rights systems should not only focus on their vulnerability, victimhood, and what they lack. Instead, they should build systems on the foundation of what they have, how they contribute and lead with agency and knowledge.

Last but not least, visibilizing the invisible, everyday experiences of women with complex, multidimensional identities and equally complex experiences of oppression is only possible through an intersectional approach. The unique experiences of migrant women and domestic workers, how cultural appropriation practices of garment and clothing MNCs have hurt indigenous women, and how rural women living in remote areas often have few options for income and the national or regional monopoly institutions oblige them to endure exploiting labour conditions are some of the examples that have emerged from this comparative analysis. The intersectional nature of discrimination, and different variables such as age, race, class, ethnicity, language, literacy, socio-economic status, marital and parental status, sexual orientation, gender identity, disability, indigenous, minority, migrant or refugee status can impact women's experiences, are often noted as relevant and welcomed among BHR stakeholders. However, the lack of an intersectional approach is explicit, showing that the understanding and implementation remains inadequate. This limited understanding is exacerbated by the tokenism and bias of multinational corporations in home states, with a

higher tendency to homogenize the women working and living in Türkiye, Colombia and South Africa, through the stereotypes of poor, non-white women, ignoring the complex and diverse identities and constituencies these women belong. On another note, intersectionality is only understood from the vulnerability and the "worst of the worst" experiences and not applied on building inclusive, accessible, gender-responsive remedies that can actually support women and fulfill their long-term needs, or combining connected areas and disciplines together for holistic empowerment, for example, by reviewing discriminatory legislations or facilitating the proof of labour relations for working women, not for the legal protection of the employer and supporting these initiatives with gender budgeting to ensure their implementation, evaluation and follow-up.

It is not possible to reach a universal conclusion or to illustrate a definitive state of the art with regard to the gender dimension of business and human rights mechanisms available in Türkiye, Colombia and South Africa. However, there is a newly emerging consciousness with regard to gender equality, with promising gender responsive mechanisms and initiatives. This comparative analysis has put forward both the challenges unique to the host states with problematic gender equality records, and evidence of an increase in the integration of gender equality in business and human rights. However, despite much progress achieved over the years, there is a long way to build fully gender-transformative systems. The recognition of women and girls' unique experiences and needs remain low and inadequate, let alone gender-transformative measures to eliminate the structural barriers of patriarchal systems. It is important to start a strong, gender-responsive foundation for business and human rights mechanisms in the host states, where the majority of impact happen on the livelihoods of women and girls either through direct impact of corporate operations, livelihoods made within the supply chains or their disrupted environment and communities.

The gender-focused research and reporting on business and human rights typically conclude with overgeneralized recommendations, that are applicable to any gender-focused policy analysis. The Gender Framework for the UNGPs prepared by the Working Group is a typical example, calling for "gender-transformative remedies" including engaging with governments and other stakeholders to reform discriminatory laws; "gender-responsive assessment" such as collecting sex-disaggregated data; and "gender-transformative measures" like "making a public commitment to achieve substantive gender equality". These steps, while necessary and important, are well-known remedies for every other aspect of life, and the lack of implementation in the three selected jurisdictions shows the ineffectiveness of such broad

guidance and soft language. This might be the right direction, yet it fails to enforce corporate accountability. As the hardwork should continue to systematically challenge the root causes of gender inequality, feminization of poverty and discrimination, women and girls in host states should be carefully listened to, and their needs, contexts and experiences should guide business and human rights mechanisms.

The top to bottom "gender awareness" led and imposed by corporations, and the selective recognition and owning of accountability within the complex global supply chains must change. Corporations tend to own good practices, profits, innovative solutions and inspiring stories of non-white women in capillary vessels of their supply chains, even far away subcontractors. Yet they disown potential corporate abuse, exploitation and discrimination, placing the blame upon outsiders with whom they merely have transactions, or the underdeveloped culture that women and girls are living in, which they can not intervene. The expansion of accountability throughout the supply chains and the prevention of selective liability are prioritized issues for gender-responsive business and human rights mechanisms in host states.

The soft, voluntary language of "corporate responsibility to respect" vs "state duty to protect" embedded within the UNGPs must also be transformed. While corporate social responsibility, when done properly can provide some contribution to sustainable development (the engagement of private sector and the use of their resources is a must in contemporary socio-economic reality), too much emphasis on voluntary contribution is dangerous. Firstly, with selected, strategic women's empowerment initiatives, multinational corporations have incomparable competitive advantage over middle and small-scale businesses, which can end up with gender equality becoming a new benchmark of competition (in marketing) in which multination corporations will naturally dominate. In addition, the business case for human rights, and promoting how gender-equal business practices is good for business, can not and should not overshadow the inherent value of women's rights as human rights and the universal accountability of all stakeholders to respect and protect human rights.

In order to prevent "add women and stir" approach, the gender dimension of business and human rights must be grounded on women's human rights as an inherent element of business operations. Instead of focusing on specific, easy-to-measure or easy-to-implement singular aspects of gender issues, such as gender representation at executive leadership, or awareness around the use of corporate language, the interconnectedness of gender inequality experiences

should be highlighted with a holistic approach circling back to questioning how partriarchal structures can be transformed for all women, in all spaces in which the corporations have a reach, and not exclusively the white-collar workers in the Global North.

The future will show us whether gender-responsive business and human rights mechanisms will grow, develop and eventually lead to gender-transformative systems in Türkiye, Colombia and South Africa. In the meanwhile, the feminist chants borrowed from each jurisdiction, "*Ni Una Menos*" (not one less) from Colombia; "You strike a woman, you strike a rock" from South Africa (notwithstanding there is no necessity for women to always be as strong as a rock) and "*Asla Yalnız Yürümeyeceksin*" (you will never walk alone) from Türkiye, despite being chanted against gender-based violence, are illustrative of the collective feminist anger, solidarity and the urgency of the matter which business and human rights community must listen to carefully. I conclude with feminist solidarity and hopes for more research and advocacy work to be done, focusing on women's experiences and opening more space for their narratives in the host states and aiming for gender-transformative business and human rights systems.

BIBLIOGRAPHY

Chapter 1

- Amnesty International, Nigeria: Shell complicit in the arbitrary executions of Ogoni Nine as writ served in Dutch court, (2017), available at: https://www.amnesty.org/en/latest/news/2017/06/shell-complicit-arbitrary-executions-ogoni-nine-writ-dutch-court/.
- Anne Smith, Constitutionalising Equality: The South African Experience, International journal of Discrimination and the Law 9(4), (2008).
- Bhupinder S. Chimni, Third World Approaches to International Law: A Manifesto in The Third World and International Order, Brill Nijhoff, (2003).
- Catherine A. MacKinnon, Feminism, Marxism, method, and the state: An agenda for theory, Signs: Journal of Women in Culture and Society 7(3), (1982).
- Chandra Talpade Mohanty, "Under western eyes" revisited: Feminist solidarity through anticapitalist struggles, Signs: Journal of Women in Culture and Society 28(2), (2003).
- Dianne Otto, Feminist Approaches to International Law, In Anne Orford, and Florian Hoffmann (eds), The Oxford Handbook of the Theory of International Law, Oxford Handbooks (2016).
- Hilary Charlesworth, Feminist Methods in International Law, American Journal of International Law, 93(2), (1999).
- Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991).
- Isabelle Gunning, Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries, 23 Columbia Human Rights Law Review 191, (1992).
- John G. Ruggie, Just Business: Multinational Corporations and Human Rights, WW Norton & Company, (2013).
- Martha Albertson Fineman, Introduction in Martha Albertson Fineman and Nancy Sweet Thomadsen (eds.), At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory, Routledge, (2013).
- Martha Chamallas, Introduction to Feminist Legal Theory, Wolters Kluwer Law & Business, (2013).
- Melisa N. Handl, Sara L. Seck, and Penelope Simons, Gender and Intersectionality in Business and Human Rights Scholarship, Business and Human Rights Journal 7(2), (2022).
- Michael Safi and Dominic Rushe, "Rana Plaza, five years on: safety of workers hangs in balance in Bangladesh". Guardian, (24 April 2018), available at: https://www.theguardian.com/global-development/2018/apr/24/bangladeshi-police-target-garment-workers-union-rana-plaza-five-years-on
- Nicola Lacey, Women's Law: An Introduction to Feminist Jurisprudence, Cambridge University Press, (1988).

- Ranjoo Seodu Herr, Reclaiming Third World feminism: Or why transnational feminism needs Third World feminism, Meridians 12(1), (2014).
- Suzana Sawyer and Edmund T. Gomez, (eds.), The Politics of Resource Extraction: Indigenous Peoples, Multinational Corporations and the State, Palgrave Macmillan, (2012).

Chapter 2

- Adam P. Romero, Methodological Descriptions: "Feminist" and "Queer" Legal Theories, 19 Yale Journal of Law and Feminism 227, (2007).
- Adrienne Rich, Compulsory Heterosexuality and Lesbian Existence, Signs: Journal of Women in Culture and Society 5(4), (1980).
- Amanda Cawston, The feminist case against pornography: a review and re-evaluation, Inquiry, 62(6), (2019).
- Angela P. Harris, Race and Essentialism in Feminist Legal Theory, Stanford Law Review 42(3), (1990).
- Ann Scales, Legal feminism: activism, lawyering, and legal theory, New York University Press, (2006).
- Anna Carasthathis, Intersectionality: Origins, Contestations, Horizons, University of Nebraska Press, (2016).
- Arlie Russell Hochschild and Anne Machung, The second shift: Working families and the revolution at home, Penguin, (2012).
- Audre Lorde, The Master's Tools Will Never Dismantle the Master's House, Penguin UK, (2018).
- bell hooks, Sisterhood: Political solidarity between women, Feminist Review, 23(1), (1986).
- Bertha Wilson, Will women judges really make a difference?, 28 Osgoode Hall Law Journal 507, (1990).
- Brittney Cooper, Intersectionality in Lisa Disch and Mary Hawkesworth, (eds.), The Oxford Handbook of Feminist Theory, Oxford University Press, (2016).
- Camille Cottais, Marxist and Socialist Feminism, Gender in Geopolitics Institute, (2021), available at: https://igg-geo.org/wp-content/uploads/2021/04/Technical-Sheet-Marxist-and-socialist-feminism.pdf
- Caren Kaplan et al. (eds.), Between Woman and Nation: Nationalisms, Transnational Feminisms, and the State, Duke University Press, (1999).
- Carol Smart, Feminism and the Power of Law, Routledge, (2002).
- Carol Smart, Feminist Jurisprudence, (Speech at La Trobe University, Melbourne, 2 December 1987), (1987).
- Carolyn Merchant, Ecofeminism and Feminist Theory in Irene Diamond and Gloria Feman Orenstein, (eds.), Reweaving the World: The Emergence of Ecofeminism, Sierra Club Books (1990).
- Carrie Menkel-Meadow, The Trouble with the adversary system in a postmodern, multicultural world, 38 William and Mary Law Review 5, (1996).

- Catharine A. MacKinnon and Reva Siegel, (eds.), Directions in Sexual Harassment, Yale University Press, (2004).
- Catharine A. Mackinnon, Feminism Unmodified: Discourses of Life and Law, Harvard University Press, (1987).
- Catharine A. MacKinnon, From practice to theory, or what is a white woman anyway, Yale Journal of Law and Feminism 4(13), (1991).
- Catharine A. MacKinnon, Sexuality, pornography, and method:" Pleasure under Patriarchy, Ethics, 99(2), (1989).
- Catharine A. MacKinnon, Toward a Feminist Theory of the State, Harvard University Press, (1989).
- Chandra Talpade Mohanty and Rousse and Lourdes Torres, (eds.), Third World Women and the Politics of Feminism, Indiana University Press, (1991).
- Chandra Talpade Mohanty, Cartographies of Struggle: Third World Women and the Politics of Feminism in Feminism without Borders: Decolonizing Theory, Practicing Solidarity, Duke University Press, (2003).
- Chandra Talpade Mohanty, Under Western Eyes: Feminist Scholarship and Colonial Discourses, Boundary 2, (1984).
- Chaone Mallory, Toward an Ecofeminist Environmental Jurisprudence: Nature, Law, and Gender, (Master's Thesis, University of North Texas), (1999).
- Cheryl Johnson-Odim, Common Themes, Different Contexts in Chandra Talpade Mohanty, Ann Russo and Lourdes Torres, (eds.), Third World Women and the Politics of Feminism, Indiana University Press, (1991).
- Chicago Women's Liberation Union, Socialist Feminism: A Strategy for the Women's Movement, (1972), available at: https://repository.duke.edu/dc/wlmpc/wlmms01035.
- Cinnamon Carlarne, Environmental Law and Feminism in Deborah L. Brake, Martha Chamallas, and Verna L. Williams (eds.), The Oxford Handbook of Feminism and Law in the United States, Oxford University Press (2021).
- Darren Lenard Hutchinson, Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics, Buff L Rev 47(1), (1999).
- Devon W. Carbado, Colorblind Intersectionality, 38(4) Signs: Journal of Women in Culture and Society 811, (2013).
- Elizabeth Gross, What is feminist theory? in Carole Pateman and Elizabeth Grosz (eds.) , Feminist Challenges: Social and Political Theory, Allen and Unwin, (1986).
- Elizabeth Lapovsky Kennedy, Socialist Feminism: What Difference did it make to the History of Women's Studies?. Feminist Studies, 34(3), (2008).
- Elizabeth Schneider, Battered Women & Feminist Lawmaking, Yale University Press, (2000).
- Eve Kosofsky Sedgwick, Epistemology of the Closet, University of California Press, (2008).
- Frances E. Olsen, The myth of state intervention in the family, University of Michigan Journal of Law Reform, 18, (1984).
- Frances Olsen, Feminism and Critical Theory: An American Perspective. International Journal of the Sociology of Law 18, (1990).

- Frances Olsen, What Is Feminist Legal Theory and Why Should Gender Studies Care about It?, availabe at: http://www.igs.ocha.ac.jp/igs/IGS_publication/journal/01/01_03.pdf
- Frantz Fanon, Black Skin, White Masks, Grove Press, (2008).
- Gary Minda, Postmodern Legal Movements: Law and Jurisprudence at the Century's End, New York University Press, (1995).
- Grace Ajele and Jena McGill, Women's Legal Education and Action Fund (LEAF). Intersectionality in Law and Legal Contexts, (2020), available at: https://www.leaf.ca/wp-content/uploads/2020/10/Full-Report-Intersectionality-in-Law-and-Legal-Contexts.pdf.
- Guy Bouchard, Typologie des tendances théoriques du féminisme contemporain, Philosophiques, 18(1), (1991).
- Gwen Bergner, Who Is That Masked Woman? or, The Role of Gender in Fanon's Black Skin, White Masks, PMLA/Publications of the Modern Language Association of America, 110(1), (1995).
- Haneen Ghabra and Bernadette Marie Calafell, From failure and allyship to feminist solidarities: Negotiating our privileges and oppressions across borders, Text and Performance Quarterly, 38(1-2), (2018).
- Hilary Astor and Christine Chinkin, Dispute Resolution in Australia, LexisNexis Butterworths, (2002).
- Holly Graf, A Very Short Summary of Socialist Feminist Theory and Practice, (2012), available at: https://www.oakton.edu/user/4/ghamill/Socialist_Feminism.pdf
- Inderpal Grewal and Caren Kaplan, Global identities: Theorizing transnational studies of sexuality, GLQ: A Journal of Lesbian and Gay Studies 7(4), (2001).
- Institute for Intersectionality Research and Policy, Dialogue on Intersectionality and Indigeneity: Summary of Themes, (2012), available at: https://www.ualberta.ca/institute-intersectionality-studies/media-library/intersectionality-readings/sarah-hunt-2012-dialogue_on_intersectionality_and_indige.pdf
- Isabelle Gunning, Arrogant perception, world-travelling and mulitcultural feminism: the case of female genital surgeries, Columbia Human Rights Law Review 23(2), (1992).
- Janet Halley, Sexuality Harassment in Wendy Brown and Janet Halley, J. (eds.). Left Legalism/Left Critique, Duke University Press, (2002).
- Janet Halley, Split Decisions: How and Why to Take a Break from Feminism, Harvard University Press, (1995).
- Jenalee Kluttz et al., Unsettling allyship, unlearning and learning towards decolonising solidarity, Studies in the Education of Adults, 52(1), (2020).
- Jennifer C. Nash, Black Feminism Reimagined: After Intersectionality, Duke University Press, (2019).
- Judith Butler, Gender Trouble, Routledge, (2002).
- Judy Fudge, The effect of entrenching a Bill of Rights upon political discourse: feminist demands and sexual violence in Canada, International Journal of the Sociology of Law, 17(4), (1989).

- Karen J. Warren, Feminist Environmental Philosophy, The Stanford Encyclopedia of Philosophy, (2015), available at: https://plato.stanford.edu/entries/feminism-environmental/#LinPer
- Kate Sutherland, Marx and MacKinnon: The Promise and Perils of Marxism for Feminist Legal Theory, Science & Society, 69(1), (2005).
- Katherine O'Donovan, Sexual Divisions of Law, Weidenfeld and Nicholson, (1985).
- Ketu Katrak, Indian Nationalism, Gandhian 'Satyagraha' and the Engendering of National Narratives in Andrew Parker et al., (eds.), Nationalisms and Sexualities, Routledge, (1992).
- Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, University of Chicago Legal Forum, (1989).
- Kimberlé Crenshaw, Mapping the margins: Intersectionality, identity politics, and violence against women of color. Stanford Law Review, 43, (1990).
- Kumari Jayawardena, Feminism and Nationalism in the Third World, Zed Books, (1986).
- Leela Gandhi, Postcolonial Theory: A Critical Introduction, Edinburgh University Press, (1998).
- Leslia Francis and Patricia Smith, Feminist Philosophy of Law, Stanford Encyclopedia of Philosophy, (2017), available at: https://plato.stanford.edu/entries/feminism-law/#:~:text=Feminist%20philosophy%20of%20law%20identifies,not%20conform%20to%20cisgender%20norms.
- Linda Alcoff, Cultural feminism versus post-structuralism: The identity crisis in feminist theory, Signs: Journal of women in culture and society, 13(3), (1988).
- Marcelo Maciel Ramos, Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law, Revista Direito e Práxis 12(3), (2021).
- Margaret Jane Radin, The Pragmatist and the Feminist, 63 Southern California Law Review (1990).
- Maria Lugones, Radical multiculturalism and women of color feminisms. Journal for Cultural and Religious Theory, 13(1), (2014).
- Mark Stoddart and David Tindall, Ecofeminism, Hegemonic Masculinity, And Environmental Movement Participation In British Columbia, Canada, 1998-2007: "Women Always Clean Up The Mess", Sociological Spectrum 31(3), (2011).
- Martha Albertson Fineman, et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009).
- Martha Minow, (1990). Making All the Difference: Inclusion, Exclusion, and American Law. Cornell University Press, (1990).
- Martha T. McCluskey, How Queer Theory Makes Neoliberalism Sexy in Feminist and Queer Legal Theory in Martha Albertson Fineman et al., (eds.), Intimate Encounters, Uncomfortable Conversations, Routledge, (2009).
- Mary Joe Frug, Postmodern Feminist Legal Manifesto (An Unfinished Draft), Harvard Law Review, (1991).

- Maya Rosenfeld, I Don't Want My Body To Be a Bridge for the State: Palestinian Novelist Sahar Khalifa on Her Work and Issues of Women in the Intifada, Challenge 2(6), (1991).
- Michael Warner, The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life. Harvard University Press, (2000).
- Michel Foucault, The History of Sexuality, Pantheon Books, (1978).
- Michel Foucault, What is Critique? In What is Enlightement?, Bulletin de la Société Française de Philosophie, 84(2), (1978).
- Michele Barrett, Women's Oppression Today: The Marxist/Feminist Encounter, Verso Books, (2014).
- Nahla Abdo, Middle east politics through feminist lenses: Negotiating the terms of solidarity. Alternatives, 18(1), (1991).
- Nahla Abdo, Women of the Intifada: Gender, Class and National Liberation, Race & Class, 32(4), (1991).
- Nancy Naples, Changing the Terms: Community Activism, Globalization and the Dilemmas of Transnational Feminist Praxis in Nancy Naples and Manisha Desai, (eds.), Women's Activism and Globalization: Linking Local Struggles and Transnational Politics, Routledge, (2002).
- Nicola Lacey, Legislation against sex discrimination: questions from female perspective. Journal of Law and Society, 14(4), (1987).
- Nira Yuval-Davis, Women, ethnicity and empowerment in Ann Oakley and Juliet Mitchell, (eds.) Who's Afraid of Feminism? Seeing through the Backlash, The New Press, (1997).
- OHCHR, Strategic Litigation for Sexual and Gender-based Violence: Lessons Learned, (2019), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/OHCHR-StrategicLitigationforSV-workshopreport-web.pdf
- Patricia Hill Collins, Black feminist thought: Knowledge, Consciousness, and the Politics of Empowerment, (2009).
- Patricia J. Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights. Harvard Civil Rights-Civil Liberties Law Review, 22(2), (1987).
- Peter Kwan, Complicity and complexity: Cosynthesis and praxis, DePaul Law Review 49, (1999).
- Ranjoo Seodu Herr, Reclaiming Third World Feminism: Or Why Transnational Feminism Needs Third World Feminism, Meridians, 12(1), (2014).
- Ranjoo Seodu Herr, The possibility of nationalist feminism, Hypatia, 18(3), (2003).
- Richa Nagar and Amanda Swarr, Introduction: Theorizing Transnational Feminist Praxis in Amanda Swarr, and Richa Nagar, (eds.), Critical Transnational Feminist Praxis, University of New York Press, (2010).
- Ritu Tyagi, Understanding postcolonial feminism in relation with postcolonial and feminist theories. International Journal of Language and Linguistics 1(2), (2014).
- Robin West, Jurisprudence and Gender, The University of Chicago Law Review, 55(1), (1988).

- Rosi Braidotti, The exile, the nomad and the migrant: reflections on international feminism, 15 Women's Studies International Forum 7, (1992).
- Sandra Harding, The Science Question in Feminism, Cornell University Press, (1986).
- Simona Sharoni, Middle East politics through feminist lenses: Toward theorizing international relations from women's struggles, Alternatives, 18(1), (1993).
- Souad Dajani, Between national and social liberation: The Palestinian women's movement in the Israeli occupied West Bank and Gaza Strip, Routledge, (1994).
- Stephen Schulhofer, Unwanted Sex: The Culture of Intimidation & the Failure of Law, Harvard University Press, (1998).
- Susan B. Boyd, (Re) placing the state: Family, law and oppression. Canadian Journal of Law and Society/La Revue Canadienne Droit et Société, 9(1), (1994).
- Susan Estrich, Real Rape, Harvard University Press, (1987).
- Susan Estrich, Sex & Power, Riverhead Books, (2001).
- Swati Parashar, Feminism and Postcolonialism:(En) gendering Encounters, Postcolonial Studies, 19(4), (2017).
- Sylvia A. Law, Homosexuality and the Social Meaning of Gender, Wisconsin Law Review, (1988).
- Tamar Mayer, Women and the Israeli occupation: The politics of change, Routledge, (1995).
- Tariq Khokhar and Umar Serajuddin, Should we continue using the term 'developing world'?, World Bank Blogs, (2015), available at: https://blogs.worldbank.org/opendata/should-we-continue-use-term-developing-world
- Wendy Brown, States of Injury: Power and Freedom in Late Modernity, Princeton University Press, (1995).
- World Bank, "How does the World Bank Classify Countries?", (9 May 2022), available at: https://datahelpdesk.worldbank.org/knowledgebase/articles/378834-how-does-the-world-bank-classify-countries
- Zillah Eisenstein, Capitalist patriarchy and the case for socialist feminism, Monthly Review Press, (1979).
- Zillah Eisenstein, Constructing a theory of capitalist patriarchy and socialist feminism, Insurgent sociologist 7(3), (1977).

Chapter 3

- "A 2023 update on Netherlands' mandatory human rights and environmental due diligence legislation" (2023), available at: https://blog.worldfavor.com/the-netherlands-announces-human-rights-and-environmental-due-diligence-law
- Anne Hellum and Henriette Sinding Aasen (eds.), Women's Human Rights : CEDAW in International, Regional and National Law, Cambridge University Press, (2013).
- Anneloes Hoff, "Dutch child labour due diligence law: a step towards mandatory human rights due diligence", Oxford Human Rights Hub, (10 June 2019), available at: https://ohrh.law.ox.ac.uk/dutch-child-labour-due-diligence-law-a-step-towards-mandatory-human-rights-due-diligence/

- Asia Floor Wage Alliance and Global Labor Justice - International Labor Rights Forum, “Fact Sheet: The Dindigul Agreement to End Gender-Based Violence and Harassment”, (2022), available at: https://laborrights.org/publications/fact-sheet-dindigul-agreement-end-gender-based-violence-and-harassment
- Carsten Stahn, A Critical Introduction to International Criminal Law, Cambridge University Press, (2019).
- Clare Dalton, Where We Stand: Observations on the Situation of Feminist Legal Thought, 3 Berkeley Women's Law Journal 5 (1987).
- Francie Lund, Changing Social Policy:The Child Support Grant in South Africa, HSRC Press, (2008).
- Ganna Khrystova and Olena Uvarova, Gender Component of Internal Displacement in Ukraine: A Case of Business (In)Capability to Localize Human Rights Impact Assessment, 7 Business And Human Rights Journal, (2022).
- Hilary Charlesworth, What Are ‘Women’s International Human Rights?’ in Rebecca Cook, (ed.), Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, (1994).
- ICAR and DIHR, National Action Plans on Business And Human Rights: A Toolkit For The Development, Implementation, And Review Of State Commitments To Business And Human Rights Frameworks, (2017), available at: https://globalnaps.org/wp-content/uploads/2018/01/national-action-plans-on-business-and-human-rights-toolkit-2017-edition.pdf
- ILO Bureau for Workers’Activities, The ILO MNE Declaration: Your guide to the MNE Declaration 2017 ACTRAV Bureau for Workers' Activities What’s in it for Workers?, (2017), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_627351.pdf
- ILO, C190 campaign toolkit, (2022), available at: https://brand.ilo.org/d/XdDMx745iKTL/events-and-campaigns#/campaigns/c190-campaign-toolkit ; C190 Guide, available at: https://c190guide.ilo.org/en/
- ILO, Convention No. 190 and Recommendation No. 206 at a glance, (2020), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_738114.pdf
- ILO and OHCHR, The linkages between international labour standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/briefingnote/wcms_800261.pdf
- ILO, Maternity and paternity at work: Law and practice across the world, (2014), available at: https://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/publications/maternity-paternity-at-work-2014/lang--en/index.htm
- ILO, Maternity Protection Resource Package: From Aspiration to Reality for All Part One: Maternity Protection at work: What is it?, (2012), available at: https://mprp.itcilo.org/allegati/en/m1.pdf
- ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa (2019), available at:

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_724152.pdf

- ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in the Americas, (2014), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_311677.pdf
- ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa, (2015), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_420594.pdf
- ILO, Multinational Enterprises, Development and Decent Work: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Asia and the Pacific, (2016), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_534135.pdf
- ILO, OECD, EU and OHCHR, Responsible Business Key Messages From International Instruments, (2018), available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_724747.pdf
- ILO, Promoting decent work and protecting fundamental principles and rights at work in export processing zones: Report for discussion at the Meeting of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones, MEWEPZ/2017, (2017), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf
- ILO, Resolution concerning gender equality at the heart of decent work, International Labour Conference 98th Session, (2009).
- ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Europe and Central Asia, (2017), available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/documents/meetingdocument/wcms_574188.pdf
- ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in the Americas, (2018), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_644917.pdf
- ILO, Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy: Report on the promotion and application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy in Africa, (2019), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_724152.pdf

- ILO, Violence and harassment in the world of work: A guide on Convention No. 190 and Recommendation No. 206, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_814507.pdf
- International Center for Research on Women and ITUC, Ending Gender-Based Violence and Harassment in the World of Work: The Critical Importance of Implementing ILO Convention 190, (2021), available at: https://www.icrw.org/wp-content/uploads/2021/06/ICRW_ImplementingILO190_05.21.pdf ;
- International Federation of Journalists, "ILO Convention 190 on Violence and Harassment in the Workplace It can save lives!", available at: https://www.ifj.org/actions/ifj-campaigns/ilo-convention-190-it-can-save-lives.html
- International Organization of Employers and Konrad Adenauer Stiftung, Key developments in mandatory human rights due diligence and supply chain law: Considerations for employers, (2021), available at: https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5#:~:text=Human%20rights%20due%20diligence%20should,services%20by%20its%20business%20relationships.
- Joan Wallach Scott, Only Paradoxes to Offer, Harvard University Press, (1997).
- Joanna Bourke Martignoni and Elizabeth Umlas, Gender-Responsive Due Diligence For Business Actors: Human Rights-Based Approaches, The Geneva Academy of International Humanitarian Law and Human Rights, Academy Briefing 12, (2018).
- John Gerard Ruggie, Addendum-Human Rights and CorporateLaw: Trends and Observations from a Cross-National Study Conducted by the Special Representative, A/HRC/17/31 Add.2, (2011).
- John Gerard Ruggie, Addendum-Piloting Principles for Effective Company/Stakeholder Grievance Mechanisms: A Report of Lessons Learned, A/HRC/17/31 Add.1, (2011).
- John Gerard Ruggie, Addendum-Principles for Responsible Contracts: Integrating the Management of Human Rights Risks into State-Investor Contract Negotiations: Guidance for Negotiators, A/HRC/17/31 Add.3, (2011).
- John Gerard Ruggie, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, A/HRC/17/31, (2011).
- Juanita Elias, Davos Woman to the Rescue of Global Capitalism: Postfeminist Politics and Competitiveness Promotion at the World Economic Forum, 7(2) IPS. 154, (2013).
- Julie Mertus and Pamela Goldberg, A perspective on women and international human rights after the Vienna Declaration: The inside/outside construct, 26 New York University Journal of International Law and Politics 202, (1993).
- Kathleen Wainwright, Environmentally sound investment: EDD is key, Refinitiv, (5 June 2019), available at: https://www.refinitiv.com/perspectives/financial-crime/environmentally-sound-investment-edd-is-key/
- Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, 1989 University of Chicago Legal Forum139, (2001).

- Leila Patel et al., The Gender Dynamics and Impact of the Child Support Grant in Doornkop, Soweto, University of Johannesburg Centre for Social Development in Africa, (2012), available at: https://www.empowerwomen.org/en/resources/documents/2014/4/the-gender-dynamics-and-impact-of-the-child-support-grant-in-doornkop-soweto?lang=en#:~:text=Download-,The%20Gender%20Dynamics%20and%20Impact%20of,Support%20Grant%20in%20Doornkop%2C%20Soweto&text=Since%20the%20introduction%20of%20the,of%20children%20in%20South%20Africa
- Milton Friedman, Capitalism and Freedom, University of Chicago, (1962).
- Natalie Hevener Kaufman and Stefanie A. Lindquist, Critiquing Gender-Neutral Treaty Language: The Convention on the Elimination of All Forms of Discrimination Against Women in Julie S. Peters and Andrea Wolper (eds.), Women's Rights, Human Rights: International Feminist Perspectives, Routledge, (1995).
- OECD, OECD Declaration and Decisions on International Investment and Multinational Enterprises, available at: https://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm#:~:text=First%20adopted%20in%201976%2C%20the,to%20economic%20and%20social%20progress.
- OECD, OECD National Contact Points (NCPs) for Responsible Business Conduct and Other Complaint Mechanisms Database, available at: http://mneguidelines.oecd.org/database/searchresults/?q=(Theme:(Human%20rights)
- OECD, Responsible Business Conduct and Gender, (2020), available at: http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf
- OECD, Responsible Business Conduct and the corporate responsibility to respect human rights, (2018), available: at http://mneguidelines.oecd.org/Responsible-business-conduct-and-human-rights.pdf
- Pacto Global Colombia, “Nuestra Voces”, available at: https://www.pactoglobal-colombia.org/
- Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law, 113, (2019).
- Rebecca Cook and Valerie Oosterveld, Select Bibliography of Women's Human Rights Law, A Conference on the Interventional Protection of Reproductive Rights, American University Law Review 44(4), (1995).
- Rebecca Cook, Introduction: The Way Forward in Rebecca Cook, (ed.), Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, (1994).
- Rosemary Hunter, Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism in Vanessa E. Munro and Margaret Davies (eds.), The Ashgate Companion to Feminist Legal Theory, Routledge, (2016).
- Sherpa, Mining With Meaning, Protecting Human Rights and the Environment in the Shift to Clean Energy: Frace’s Duty of Vigilance Law and the supply chains of the minerals used for energy transition, (2020), available at: https://vigilance-

plan.org/vigilance-plans-analysis/
- Surya Deva, Treating human rights lightly: a critique of the consensus rhetoric and the language employed by the Guiding Principles in Surya Deva and David Bilchitz (eds.), Human rights obligations of business: beyond the corporate responsibility to respect?, Cambridge University Press, (2013).
- UN Global Compact Türkiye, "Target Gender Equality (Hedef Toplumsal Cinsiyet Eşitliği) Programı Başladı", available at: https://www.globalcompactturkiye.org/un-global-compact-target-gender-equality-hedef-toplumsal-cinsiyet-esitligi-programi-basladi/
- UN Global Compact, "Business & Human Rights Accelerator", available at: https://www.unglobalcompact.org/take-action/business-and-human-rights
- UN Global Compact, "Target Gender Equality", available at: https://www.unglobalcompact.org/take-action/target-gender-equality?fireglass_rsn=true
- Ursula A. O'Hare, Realizing human rights for women, 21 Human Rights Quarterly 382, (1999).
- Widiarto A. Sutantoputra, Social disclosure rating system for assessing firms' CSR reports, Corporate Communications: An International Journal, 14(1), (2009).
- Women in Global Health Australia, "Respect@Work and ILO Convention 190", available at: https://www.wghaustralia.org/news/respect-at-work-international-labour-organization-ilo-convention-190
- Women's Legal Centre, "We need feminist places of work: How ILO Convention 190 can help to get us there", available at: https://wlce.co.za/we-need-feminist-places-of-work/
- Working Group on Business and Human Rights, "Corporate human rights due diligence – identifying and leveraging emerging practices", available at: https://www.ohchr.org/en/special-procedures/wg-business/corporate-human-rights-due-diligence-identifying-and-leveraging-emerging-practices
- Working Group on Business and Human Rights, "Gender Lens to the UNGPs", available at: https://www.ohchr.org/en/special-procedures/wg-business/gender-lens-ungps

Chapter 4

- "12% of working women in South Africa are domestic workers – yet they don't receive proper maternity leave or pay", (2022), available at: https://theconversation.com/12-of-working-women-in-south-africa-are-domestic-workers-yet-they-dont-receive-proper-maternity-leave-or-pay-189766
- "A History Of Using SLAPP Suits To Silence Women", (2020), available at: https://www.rcmediafreedom.eu/layout/set/print/News/A-History-Of-Using-SLAPP-Suits-To-Silence-Women
- "Ağaç kesimine karşı çıkan İkizköylülere hapis cezası", Duvar, (27 June 2023), available at: https://www.gazeteduvar.com.tr/agac-kesimine-karsi-cikan-ikizkoylulere-hapis-cezasi-haber-1625663

- “Almost half of human rights defenders killed last year were in Colombia”, Guardian, (4 April 2023), available at: https://www.theguardian.com/world/2023/apr/04/colombia-human-rights-defenders-killings-2022
- “Andre de Ruyter says cartels operated with impunity at Eskom”, IOL, (27 February 2023), available at: https://www.iol.co.za/news/politics/andre-de-ruyter-says-cartels-operated-with-impunity-at-eskom-4eba29aa-266a-4a88-9e1b-380b766c1856;
- “Çanakkale Dardanel hakkında suç duyurusu”, Turkish Communist Party, (4 August 2020), available at: https://www.tkp.org.tr/uncategorized-tr/canakkale-dardanel-hakkinda-suc-duyurusu/
- “Chief Justice Honorable Mogoeng Mogoeng”, available at: https://www.gov.za/about-government/contact-directory/mogoeng-mogoeng-honourable-0
- “Colombia Supreme Court ruling on abortion: Colombia Decriminalizes Abortion”, The New York Times, (21 February 2022), available at: https://www.nytimes.com/live/2022/02/21/world/colombia-court-abortion
- “Colombian Superior Council of the Judiciary -Acuerdos Y Circulares Relacionados Con El Ataque Cibernético A La Infraestructura De Ifx Networks”, available at: https://www.ramajudicial.gov.co/web/consejo-superior-de-la-judicatura/magistrados
- “COSATU”, available at: https://mediadon.co.za/cosatu/
- “Current Statistics on Race and Gender Composition in the Judiciary”, (2022), available at: https://www.judgesmatter.co.za/opinions/women-and-the-bench-what-justice-mandisa-mayas-interview-tells-us-about-a-womens-place-in-the-judiciary/#:~:text=The%20Constitutional%20Court%20currently%20has,men%2C%20and%201%20white%20man.
- “Danıştay, Sinpaş'ın projesine verilen 'ÇED gerekli değildir' kararının iptalini onadı!”, Cumhuriyet, (2022), available at: https://www.cumhuriyet.com.tr/turkiye/danistay-sinpasin-projesine-verilen-ced-gerekli-degildir-kararinin-iptalini-onadi-2016609
- “Dardanel'de 153 işçi enfekte, 56'sı hastanede”, Bianet, (7 August 2020), available at: https://bianet.org/bianet/print/228632-dardenel-de-153-isci-enfekte-56-si-hastanede
- “Dardanel 8 Mart Dünya Kadınlar Günü'nü 1000 kadın çalışanıyla kutluyor!”, Akşam, (6 March 2020), available at: https://www.aksam.com.tr/guncel/dardanel-8-mart-dunya-kadinlar-gununu-1000-kadin-calisaniyla-kutluyor/haber-1051276
- “Dardanel bildiğimiz gibi…”, Ekmek ve Gül, (12 November 2021), available at: https://ekmekvegul.net/gundem/dardanel-bildigimiz-gibi
- “Dardanel işçilerinin ton balığı kadar değeri yok mu?”, Ekmek ve Gül, (3 August 2020), available at: https://ekmekvegul.net/gundem/dardanel-iscilerinin-ton-baligi-kadar-degeri-yok-mu
- “Dardanel workers ‘taken hostage’ in the factory after Covid-19 outbreak”, Evrensel, (3 August 2020), available at: https://www.evrensel.net/haber/410846/dardanel-workers-taken-hostage-in-the-factory-after-covid-19-outbreak
- “Dardanel’deki insanlık dışı çalışma koşulları Meclis gündeminde”, Sendika.org, (15 November 2021), available at: https://sendika.org/2021/11/dardaneldeki-insanlik-disi-calisma-kosullari-meclis-gundeminde-636729/

- “Dardanel’in çalışma kampından İstanbul Sözleşmesi’ne bir yol var…”, Ekmek ve Gül (31 July 2020), available at: https://ekmekvegul.net/gundem/dardanelin-calisma-kampindan-istanbul-sozlesmesine-bir-yol-var
- “Demeter Tarımsal Kalkınma Kadın Kooperatifi”, Sosyal Ekonomi, (30 March 2022), available at: https://sosyalekonomi.org/demeter-tarimsal-kalkinma-kadin-kooperatifi/
- “Demirören’in gazeteci Canan Kaya’ya açtığı davada karar 18 Temmuz'a kaldı”, (2023), available at: https://www.mlsaturkey.com/tr/demirorenin-gazeteci-canan-kayaya-actigi-davada-karar-18-temmuza-kaldi/
- “DİSK'ten Dardanel fabrikasındaki çalışma sistemine tepki”, Habertürk, (5 August 2020), available at: https://www.haberturk.com/disk-ten-dardanel-fabrikasindaki-calisma-sistemine-tepki-2764592-ekonomi
- “DİSK’ten hükümete: ILO 190’ı uygulayın”, Bianet, (15 November 2022), available at: https://m.bianet.org/bianet/siyaset/270026-disk-ten-hukumete-ilo-190-i-uygulayin
- “Distopya değil Dardanel gerçeği”, Birgün, (8 November 2021), available at: https://www.birgun.net/haber/distopya-degil-dardanel-gercegi-365008
- “Families Settle With Chiquita Over Deaths of Americans in Colombia”, Daily Business Review Legal News, (5 February 2018), available at: https://www.law.com/dailybusinessreview/2018/02/05/families-sue-chiquita-over-deaths-of-americans-in-colombia/
- “Fears For Journalist Safety As Türkiye Passes New Law Against Disinformation”, EBU, (17 October 2022), available at: https://www.ebu.ch/news/2022/10/fears-for-journalist-safety-as-turkiye-passes-new-law-against-disinformation
- “Female judges in the Supreme Court of Appeals and First Instance Courts”, (2022), available at: https://www.turkiyehukuk.org/hakim-ve-savci-sayilari-2022/#:~:text=Yarg%C4%B1tay'da%20579%20kad%C4%B1n%2C%20282,Yarg%C4%B1%20%C4%B0lk%20Derece%20Mahkemeleri%3A%209.548
- “Five Questions With: Symplifica”, (2022), available at: https://contxto.com/en/five-questions/five-questions-with-symplifica/#:~:text=Salua%20Garc%C3%ADa%2C%20COO%20and%20cofounder%20of%20Symplifica.
- “Gender justice the “Turkish” way: anti-gender politics in the land of AKP” (Interview with Alev Özkazanç), Euromed Rights, (5 March 2020), available at: https://euromedrights.org/publication/gender-justice-the-turkish-way-anti-gender-politics-in-the-land-of-akp/;and https://blogs.lse.ac.uk/gender/2019/05/20/new-episode-anti-gender-turkey/.
- “Gıda İş'ten Dardanel açıklaması: Eldiven demek patron için maliyet demek”, Duvar, (25 February 2021), available at: https://www.gazeteduvar.com.tr/gida-isten-dardanel-aciklamasi-eldiven-demek-patron-icin-maliyet-demek-haber-1514415
- “Gustavo Petro and Francia Márquez: A new era for Colombia”, BBC, (2022), available at: https://www.bbc.com/news/world-latin-america-61863885
- “ILO 190’ı onaylayan ülkelerin sayısı 18’e yükseldi”, Kadın İşçi, (14 June 2022), available at: https://www.kadinisci.org/uluslararasi/ilo-190i-onaylayan-ulkelerin-sayisi-18e-yukseldi/

- “Indigenous women in Colombia protect rich Amazonian wetland from overfishing”, Mongabay, (2023), available at: https://news.mongabay.com/2023/04/indigenous-women-in-colombia-protect-rich-amazonian-wetland-from-overfishing/
- “İş dünyası İstanbul Sözleşmesi’nden çıkılmasına karşı: Kadınların yaşam güvenliği şart”, Independent Türkçe, (26 July 2020), available at: https://www.indyturk.com/node/216681/i%C5%9F-d%C3%BCnyas%C4%B1-istanbul-s%C3%B6zle%C5%9Fmesi%E2%80%99nden-%C3%A7%C4%B1k%C4%B1lmas%C4%B1na-kar%C5%9F%C4%B1-kad%C4%B1nlar%C4%B1n-ya%C5%9Fam-g%C3%BCvenli%C4%9Fi-%C5%9Fart
- “Judge Maya urges JSC to commit to ensuring gender transformation in the judiciary”, SABC News, (2022), available at: https://www.sabcnews.com/sabcnews/judge-maya-urges-jsc-to-commit-to-ensure-gender-transformation-in-the-judiciary/
- “Kadınlar ÇED toplantısını bastı, yetkililer toplantıyı terk etti”,
- “Kapalı çalışma ve Dardanel gerçekleri”, Birgün, (1 August 2020), available at: https://www.birgun.net/amp/haber/kapali-calisma-ve-dardanel-gercekleri-310336
- “Kapalı devre çalışma modelinin uygulandığı Dardanel'den açıklama: Sadece gönüllü çalışanlar katıldı”, Habertürk, (5 August 2020), available at: https://www.haberturk.com/kapali-devre-calisma-sistemini-resmi-makamlar-onerdi-2763895-ekonomi
- “Kapalı devre çalışma sistemini resmi makamlar önerdi”, Habertürk, (5 August 2020), available at: https://www.haberturk.com/kapali-devre-calisma-sistemini-resmi-makamlar-onerdi-2763895-ekonomi
- “Kazdağları’nda, Sarıkız’ın eteğinde yaşıyorum!”, Yeşil Direniş, (2021), available at: https://www.yesildirenis.com/2021/01/16/kazdaglarinda-sarikizin-eteginde-yasiyorum-fusun-kayra-2/
- “Keep the Volume Up For Rights Defenders in Turkey, Ikizköy Akbelen Resistance”, Sessiz Kalma, (12 September 2023), available at: https://www.sessizkalma.org/en/defender/ikizkoy-akbelen-resistance
- “Largest Companies In The World”, (2023), available at: https://www.gfmag.com/global-data/economic-data/largest-companies
- “Lessons from the assassination of Fikile Ntshangase: Climate violence, the ‘Right to say No!’, uncompensated resource extraction, financial profiteering and unpaid ecological debt in South Africa’s coal mining belt”, (2021), available at: https://www.cadtm.org/Lessons-from-the-assassination-of-Fikile-Ntshangase-Climate-violence-the-Right
- “Lockdown in Colombia leads to spike in domestic violence”, France 24, (2020), available at: https://observers.france24.com/en/20200706-colombia-domestic-violence-lockdown-covid-19-women
- “Murder of Turkish woman sparks nationwide protests”, Al Monitor, (2020), available at: https://www.al-monitor.com/originals/2020/07/turkey-murder-woman-withdraw-convention-combat-violence.html#ixzz7x8bvn9cO
- “Nadira Kadirova’nın hatırlattığı: Göçmen ev işçisi kadınlar ne yaşıyor?”, Evrensel, (3 Ekim 2019), available at: https://www.evrensel.net/haber/388148/nadira-kadirovanin-hatirlattigi-gocmen-ev-iscisi-kadinlar-ne-yasiyor

- “Plaintiff obtains 30,000 yuan in China’s first gender discrimination lawsuit”, China Labour Bulletin, (9 January 2014), available at: https://clb.org.hk/en/content/plaintiff-obtains-30000-yuan-china%E2%80%99s-first-gender-discrimination-lawsuit
- “Ramaphosa nominates Judge President of the Supreme Court of Appeal”, The South African, (2023), available at: https://www.thesouthafrican.com/news/ramaphosa-nominates-judge-president-of-the-supreme-court-of-appeal-2-february-2023/
- “Sinpaş’a karşı direnen yurttaşın davası ertelendi”, Birgün, (2023), available at: https://www.birgun.net/haber/sinpas-a-karsi-direnen-yurttasin-davasi-ertelendi-418907
- “Sinpaş’ın çevre aktivistine açtığı 300 bin liralık davada ikinci duruşma”, Yeşil Gazete, (2022), available at: https://yesilgazete.org/sinpasin-cevre-aktivistine-actigi-300-bin-liralik-davada-ikinci-durusma/;
- “Sinpaş’ın yaşam alanı savunucusuna açtığı davanın ikinci duruşması görülecek”, Evrensel, (8 March 2022), available at: https://www.evrensel.net/haber/456589/sinpasin-yasam-alani-savunucusuna-actigi-davanin-ikinci-durusmasi-gorulecek
- “South Africa Is Pioneering a Better World for Domestic Workers”, (2022), available at: https://reasonstobecheerful.world/south-africa-domestic-worker-rights-unions/
- “South Africa’s food system is broken and urgent government intervention is needed”, Daily Maverick, (1 November 2022), available at: https://www.dailymaverick.co.za/opinionista/2022-11-01-south-africas-food-system-is-broken-and-urgent-government-intervention-is-needed/
- “South African Constitutional Court”, available at: www.concourt.org.za
- “Spot the difference: Zara accused of stealing local brand MaXhosa's design”, Times Live South Africa, (2018), available at: https://www.timeslive.co.za/sunday-times/lifestyle/fashion-and-beauty/2018-04-24-spot-the-difference-zara-accused-of-stealing-local-brand-maxhosas-design/
- “Syria cement firm scandal: ‘Lafarge group knew they were treating with the Islamic state group’”, France 24, (3 March 2017), available at: https://www.france24.com/en/video/20170303-syria-cement-firm-scandal-lafarge-group-knew-they-were-treating-with-islamic-state-group
- “The Congress of South African Trade Unions (COSATU)”, available at: https://www.ecsecc.org/page/organised-labour
- “The Office of the Attorney General of Colombia”, available at: https://www.fiscalia.gov.co/colombia/
- “The Rape Capital of the World”, News24, (2014), available at: https://www.news24.com/news24/the-rape-capital-of-the-world-20140821 ; Endemic rape culture in South Africa, available at: https://www.google.com/search?q=endemic+rape+culture+in+southa+frica&rlz=1C5CHFA_enTR870TR870&oq=endemic+rape+culture+in+southa+frica&aqs=chrome..69i57.3709j0j7&sourceid=chrome&ie=UTF-8
- “There Is A History Of Using SLAPP Suits To Silence Women”, (2018), available at: https://www.shethepeople.tv/news/there-is-a-history-of-using-slapp-suits-to-silence-women/

- “TKDF Başkanı Canan Güllü: ‘Salgın Döneminde Kadına Şiddet Yüzde 80 Arttı’”, 5 Harfliler, (2020), available at: https://www.5harfliler.com/tkdf-baskani-canan-gullu/
- “Top Turkish court finds withdrawal from Istanbul Convention 'lawful'”, Duvar, (2 January 2023), available at: https://www.duvarenglish.com/top-turkish-court-finds-withdrawal-from-istanbul-convention-lawful-news-61665
- “Türkiye Largest and Top Companies List by Market Cap” (30 July 2023), available at: https://www.value.today/headquarters/turkey
- “Türkiye's new 'disinformation law' explained”, Bianet, (14 October 2022), available at: https://m.bianet.org/english/freedom-of-expression/268523-turkiye-s-new-disinformation-law-explained
- “UN Women terminates partnership with investment firm BlackRock after public outcry”, (2022), available at: https://19thnews.org/2022/08/un-women-partnership-blackrock-public-outcry/
- “Victims of the Marikana mine massacre still await for justice”, Africanews, (12 August 2022), available at: https://www.africanews.com/2022/08/12/victims-of-the-marikana-mine-massacre-still-await-for-justice//
- “What Will Petro’s Presidency Mean for Colombia?”, Latin America Advisor, (21 June 2022), available at: https://www.thedialogue.org/analysis/what-will-petros-presidency-mean-for-colombia/
- “Women in South African Politics”, (2022), available at: https://revistaidees.cat/en/women-in-south-african-politics/
- “Work conditions worsen for Venezuelan migrant women in Colombia: report”, Reuters, (7 March 2022), available at:https://www.reuters.com/world/americas/work-conditions-worsen-venezuelan-migrant-women-colombia-report-2022-03-07/
- “Working with artisans or cultural exploitation? Aesthetic racism on the catwalk”, El Pais, (2023), available at: https://english.elpais.com/culture/2023-05-27/working-with-artisans-or-cultural-exploitation-aesthetic-racism-on-the-catwalk.html
- “Yargılanan Akbelen savunucularına adli para cezası”, Ekmek ve Gül, (26 June 2023), available at: https://ekmekvegul.net/gundem/yargilanan-akbelen-savunucularina-adli-para-cezasi
- “Yine Dardanel; Yine kadın ve işçi düşmanlığı!”, Siyasi Haber, (2021), available at: https://siyasihaber9.org/yine-dardanel;-yine-kadin-ve-isci-dusmanligi/
- Abe Oyeniyi, The State of Business and Human Rights in South Africa, Friedrich-Ebert-Stiftung African Union Cooperation Office, (2022), available at: https://library.fes.de/pdf-files/bueros/fes-ua/19589-20221107.pdf
- Accord on Fire and Building Safety in Bangladesh (2013), available at: https://bangladeshaccord.org/
- Accountability Counsel and ACCA, Accountability in Africa: Harm from International Financial Flows and Strategies for Supporting Community-led Access to Remedy, (2020), available at: https://www.accountabilitycounsel.org/wp-content/uploads/2020/11/accountability-in-africa-web.pdf.
- ACHPR, “African Court in Brief”, available at: https://www.african-court.org/wpafc/basic-information/

- Adam Isacson, A Long Way to Go: Implementing Colombia's peace accord after five years", Advocacy for Human Rights in the Americas, WOLA, (2021), available at: https://www.wola.org/analysis/a-long-way-to-go-implementing-colombias-peace-accord-after-five-years/
- African Coalition for Corporate Accountability (ACCA), ACCA's submission to the call for inputs on "Business and human rights: towards a decade of global implementation" – UNGP 10+ (2020), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPsBHRnext10/inputs/acca.pdf
- African Commission on Human and Peoples' Rights Working Group on Extractive Industries, Environment and Human Rights, Background Study on the Operations of the Extractive Industries Sector in Africa and its Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights, (2022), available at: https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-3
- African Commission on Human and Peoples' Rights, "National Dialogue on the Rights of Indigenous Peoples and Extractive Industries, from 7 to 8 October 2019, Nairobi, Kenya", (2019), available at: https://achpr.au.int/ar/node/203
- African Commission on Human and Peoples' Rights, State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment, (2021), available at: https://achpr.au.int/en/node/845
- African Court on Human and Peoples' Rights, "20th Pre- Summit Consultative Meeting On Gender Mainstreaming In The African Union - Statement By Justice Gerard Niyungeko", (9 July 2012), available at: https://www.african-court.org/wpafc/20th-pre-summit-consultative-meeting-on-gender-mainstreaming-in-the-african-union-gimac-fas-by-justice-gerard-niyungeko/
- African Union, "African Union and Partners Organize First Ever African Business and Human Rights Forum to Promote Corporate Accountability in Africa", (24 October 2022), available at: https://www.peaceau.org/en/article/african-union-and-partners-organize-first-ever-african-business-and-human-rights-forum-to-promote-corporate-accountability-in-africa
- African Union, Advisory note to the African group in Geneva on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations, (4 November 2019), available at: https://achpr.au.int/en/news/communiques/2019-11-04/advisory-note-african-group-geneva-legally-binding-instrument
- African Union, Building a Sustainable Future for Africa's Extractive Industry: from Vision to Action – Action Plan for Implementing the African Mining Vision, (2011), available at: https://au.int/sites/default/files/documents/29812-doc-action_plan_final_version_jan_2012.pdf;
- African Women in Law, "Women Judges in South Africa: Breaking Barriers & Biases", available at: https://www.africanwomeninlaw.com/post/women-judges-in-south-africa-breaking-barriers-biases

- Agencia de Información Laboral, La Escuela Nacional Sindical presentó su Informe de Coyuntura Económica, Laboral y Sindical, (2023), available at: https://ail.ens.org.co/informe-especial/la-escuela-nacional-sindical-presenta-su-informe-de-coyuntura-laboral-y-sindical/ (This resource was translated via Google Translate and was used solely for fact checking.)
- Ahmet Talha Ağca, Crisis Management In Social Media: Analysis Of The Dardanel Crisis With The Situational Crisis Communication Model, 18 Kilad 170 (2021).
- Ahu Tatlı et al., Gendered Occupational Outcomes from Multilevel Perspectives: The case of Professional Training and Work in Turkey in Helen M. G. Watt and Jacquelynne S. Eccles (eds.), Gender and occupational outcomes: Longitudinal Assessments of Individual, Social and Cultural Influences. Washington, D.C.: American Psychological Association, (2008).
- Aimée-Noël Mbiyozo, Gender and migration in South Africa: Talking to women migrants, ISS Southern Africa Report 16 (2018).
- Alejandro Badel and Ximena Peña, Decomposing the Gender Gap with Sample Selection Adjustment: Evidence from Colombia, 25 Revista de Analisis Economico 169, (2010).
- Alejandro Hoyos, Ximena Peña and Hugo Ñopo, The Persistent Gender Earnings Gap in Colombia, 1994-2006, Documento SEDE, 2010(16), (2010).
- Alejandro Jiménez Ospina, "The role of economic actors in Colombia's armed conflict: How much do we know?", Dejusticia, (2 March 2018), available at: https://www.dejusticia.org/en/column/role-economic-actors-colombias-armed-conflict-much-know
- Alice Kern and Ulrike Müller-Böker. "The middle space of migration: A case study on brokerage and recruitment agencies in Nepal." Geoforum 65 (2015).
- Alicia Hendriks, Gruba and Others v. Russia: the ECTHR repeats its Konstantin Markin v. Russia jurisprudence but (again) misses a child-oriented perspective, Strasbourg Observers, (2021).
- Allan Findlay, et al., The Role of Recruitment Agencies in Imagining and Producing the "Good" Migrant, 14 Social & Cultural Geography (2013).
- Alpkan Birelma, Trade Unions In Turkey, Frierich Ebert Stiftung, (2022), available at: https://library.fes.de/pdf-files/bueros/tuerkei/19420.pdf
- Alpkan Birelma, Türkiye'de Sendikal Hareketin ve Hakların Yukarıdan Görünümü: Niteliksel bir Araştırma, Çalışma ve Toplum, 3, (2021).
- Ama Marston, Women, Business and Human Rights: A Background Paper for the UN Working Group on Discrimination Against Women in Law and Practice, Marston Consulting, (2014), available at: http://www.ohchr.org/Documents/Issues/Women/WG/ESL/BackgroundPaper4.pdf
- Amanda Gouws, "Women in South African Politics", IDEES, (2022), available at: https://revistaidees.cat/en/women-in-south-african-politics/#note-015
- AMDC, African Women in Artisanal and Small-scale Mining, (2015), available at: https://archive.uneca.org/publications/african-women-artisanal-and-small-scale-mining
- Amnesty International, Colombia and Peru: Abandoned by the state in host countries, Venezuelan women face increasing gender-based violence, (2022), available at:

https://www.amnesty.org/en/latest/news/2022/07/colombia-peru-venezuelan-women-face-gender-based-violence/;
- Amnesty International, Colombia and Peru: Protect Venezuelan Women and Diversities, available at: https://www.amnesty.org/en/petition/inclusion-has-no-borders/.
- Amnesty International, Colombia: The Victims and Land Restitution, (2012), available at: https://www.refworld.org/pdfid/4f99029f2.pdf
- Amnesty International, The State of African Regional Human Rights Bodies and Mechanisms (2019-2020), (2020), available at:https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR0130892020ENGLISH.pdf
- Amnesty USA, "One in Four Men Admits to Rape in South Africa", available at: https://www.amnestyusa.org/updates/one-in-four-men-admits-to-rape-in-south-africa/#:~:text=A%20leading%20research%20group%20in,raping%20more%20than%20one%20person.
- Amnesty, "Colombia and Peru: Protect Venezuelan Women and Diversities", available at: https://www.amnesty.org/en/petition/inclusion-has-no-borders/
- Amnesty, "Southern Africa: Homes become dangerous place for women and girls during COVID-19 lockdown", (2021), available at: https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/
- Anastasia Moloney, "Gender justice? Women judges to dominate Colombia war tribunals", Reuters, (28 September 2017), available at:
- Andrea Cornwall, Unpacking Participation: Models, Meanings and Practices, 43 Community Development Journal 269, (2008).
- Andreina Rodriguez, "How 'Cultural Appropriation' Fears Blur The Line Between Helping & Hurting Indigenous Creators", Refinery 29, (2021), available at: https://www.refinery29.com/en-us/2021/06/10512604/cultural-appropriation-indigenous-brands
- Angélica Guerra-Barón and Álvaro Méndez, A comparative study of foreign economic policies: the CIVETS countries, Working Paper 3(2015), London School of Economics and Political Science, (2015).
- Anglo American Coal, Khwezela Colliery Social and Labour Plan (2019-2023), available at: https://southafrica.angloamerican.com/~/media/Files/A/Anglo-American-Group-v5/South-Africa/our-difference/building-resilient-communities/social-and-labour-plan-downloads/khwezela-slp-2019-2023.pdf
- AngloGold Ashanti, Vaal River Operations Social and Labour Plan 2015-2019, (2014), available at: https://thevault.exchange/?get_group_doc=143/1502873985-VR-SLP2015-2019.pdf;
- Ann Scales, Towards a feminist jurisprudence, Indiana Law Journal 56 (1980).
- Anna Katharina Bader et al., Gender diversity management in foreign subsidiaries: A comparative study in Germany and Japan, Journal of International Management 28(3), (2022).
- Anna Minasyan, Board gender quotas bring women to the board but not to senior management, LSE Bsuiness Review Blog, (24 September 2020), available at:

https://blogs.lse.ac.uk/businessreview/2020/09/24/board-gender-quotas-bring-women-to-the-board-but-not-to-senior-management/

- Anthony Ferner et al., Institutional theory and the cross-national transfer of employment policy: The case of 'workforce diversity in US multinationals, Journal of International Business Studies 36, (2005).
- APEC Secretariat, Unpaid Care and Domestic Work: Counting the Costs, (2022), available at: https://www.apec.org/publications/2022/03/unpaid-care-and-domestic-work-counting-the-costs#:~:text=The%20ILO%20estimates%20the%20value,at%202.4%20percent%20of%20GDP.
- Aroop Chatterjee et al., Estimating the Distribution of Household Wealth in South Africa, World Inequality Database Working Paper No. 2020(06), (2020), available at: https://wid.world/document/estimating-the-distribution-of-household-wealth-in-south-africa-wid-world-working-paper-2020-06/#:~:text=They%20estimate%20that%20the%20share,waves%202%20and%204%20respectively.
- Arts of the Working Class, "Her Yer Kazdağları", available at: https://artsoftheworkingclass.org/text/her-yer-kazdalari-everywhere-kazdalari
- Aslı Aydıntaşbaş, "Turkey's new media law is bad news – but don't report it", Bianet, (18 October 2022), available at: https://www.brookings.edu/blog/order-from-chaos/2022/10/18/turkeys-new-media-law-is-bad-news-but-dont-report-it/
- Asociación Probienestar de la Familia Colombiana and Profamilia, Encuesta Nacional de Demografía y Salud 2015, (2016), available at: https://profamilia.org.co/wp-content/uploads/2019/05/ENDS-2015-TOMO-II.pdf (Sections of this resource were translated via Google Translate and was used for fact checking.)
- Aye Oyeniyi, Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions, Routledge, (2022).
- Ayşe Alnıaçık, Politik Bir Sorun Olarak Kadın İstihdamı ve Toplumsal Cinsiyet Siyasetindeki Kurumsallaşma in Osman Savaşkan and Mehmet Ertan (eds.), Türkiye'nin Büyük Dönüşümü, İletişim Yayınları, (2018).
- Ayse Saka-Helmhout et al., The MNE as a challenge to institutional theory: Key concepts, recent developments and empirical evidence, Journal of Management Studies 53(1), (2016).
- Barbara Pocock, Gender Strife and Unions in Barbara Pocock (ed.) Strife: Sex and Politics in Labour Unions, Allen & Unwin, (1997).
- Başak Çali, Autocratic Strategies and the European Court of Human Rights, 2 European Competition Law Review 11, (2021).
- Benson Chakaya, ECOWAS court challenges vagrancy laws that target women, Reprohealthlaw Blog, (30 November 2017), available at:. https://reprohealthlaw.wordpress.com/2017/11/30/africa-nigeria-ecowas-court-challenges-vagrancylaws-that-target-women/
- Bernard Duhaime, Women's Rights in Recent Inter-American Human Rights Jurisprudence in Proceedings of the ASIL Annual Meeting 111, Cambridge University Press, (2017).

- Bertil Emrah Oder, Turkey's Democratic Erosion: On Backsliding and the Constitution, Social Research: An International Quarterly 88(2), (2021).
- Betine van Zyl Smit, From Penelope to Winnie Mandela–Women Who Waited, 15 IJCT 393, (2008).
- Betül Urhan, Türkiye'de Kadın İşçilerin Sendikal Örgütlenmesi: Zorluklar, Engeller ve Fırsatlar in M. Serdar Kayaoğlu (ed.) 2000'li Yıllarda Türkiye'de Sendikacılık, Epos, (2019).
- Beyza Erkoç, Sosyal Hizmet Perspektifinden Mobbing, Ombudsman Akademik 8, (2021).
- BHRRC, "Colombia: Colectivo juvenil de Cajamarca, Tolima denuncia campaña de desprestigio de AngloGold Ashanti, que pondría en riesgo la vida del líder Robinson Mejía; con respuesta de la empresa", (2021), available at: https://www.business-humanrights.org/es/latest-news/colombia-colectivo-juvenil-de-cajamarca-tolima-denuncia-campa%C3%B1a-de-desprestigio-de-anglogold-ashanti-que-pondr%C3%ADa-en-riesgo-la-vida-del-l%C3%ADder-robinson-mej%C3%ADa-con-respuesta-de-la-empresa/
- BHRRC, Human Rights Defenders & Business - Annual Snapshot, (2020), available at: https://www.business-humanrights.org/en/from-us/briefings/human-rights-defenders-business-annual-snapshot/
- BHRRC, "Business & Human Rights Defenders in Colombia", (2020), available at: https://media.business-humanrights.org/media/documents/files/Business__Human_Rights_Defenders_in_Colombia.pdf
- BHRRC, "S. Africa: Court slams mining giant for attempting to use a SLAPP suit to silence criticism and environmental activism", (10 February 2021), available at: https://www.business-humanrights.org/en/latest-news/s-africa-court-slams-mining-giant-for-attempting-to-use-a-slapp-suit-to-silence-criticism-and-environmental-activism/
- BHRRC, "S. Africa: Environmentalist sued for objecting to proposed projects by property developers", (4 March 2021), available at: https://www.business-humanrights.org/en/latest-news/s-africa-environmentalist-sued-for-objecting-to-proposed-projects-by-property-developers/
- BHRRC, Business And Human Rights Defenders in Colombia: Urgent Protection Needed For People Protecting Land, Territory And The Environment, (2022), available at: https://media.business-humanrights.org/media/documents/2020-2021_HRDs_in_Colombia.pdf
- BHRRC, Fikile Ntshangase - Mfolozi Community Environmental Justice Organisation (MCEJO), (2020), available at:https://www.business-humanrights.org/en/latest-news/fikile-ntshangase-mfolozi-community-environmental-justice-organisation-mcejo/
- BHRRC, SLAPPed but not silenced, Defending Human Rights In The Face Of Legal Risks, (2021), available at: https://media.business-humanrights.org/media/documents/2021_SLAPPs_Briefing_EN_v657.pdf
- BHRRC, The Price You Pay: How Purchasing Practices Harm Turkey's Garment Workers, (2019), available at:

http://mhssn.igc.org/The%20price%20you%20pay%20-%20Turkey%20garment%20workers%20-%20BHRRC%20-%20July%202019.pdf
- Birleşik Metal-İş, "Charter", (2019), available at: https://www.birlesikmetalis.org/index.php/tr/sendikamiz/anatuzuk
- Bongeka Gumede and Sonri Naidoo, "Marikana victims demand an apology and R1-billion from Ramaphosa", The Mail & Guardian, (3 June 2022), available at: https://mg.co.za/news/2022-06-03-marikana-victims-demand-an-apology-and-r1-billion-from-ramaphosa/ .
- Bonita Meyersfeld, Business and Human Rights and Gender: A Legal Approach to External and Internal Considerations In Surya Deva and David Bilchitz (eds.), Human Rights Obligations of Business Beyond the Corporate Responsibility to Respect, Cambridge University Press, (2013).
- Bonita Meyersfeld, Empty promises and the myth of mining: Does mining lead to pro-poor development?, Business and Human Rights Journal 2(1), (2017).
- Brenda Madumise, "Is the ANC Women's League really feminist?", News 24, (14 January 2018), available at: https://www.news24.com/news24/is-the-anc-womens-league-really-feminist-20180112
- Brendan Pierson, "Chiquita settles with families of U.S. victims of Colombia's FARC", Reuters, (6 February 2018), available at: https://www.reuters.com/article/us-usa-court-chiquita/chiquita-settles-with-families-of-u-s-victims-of-colombias-farc-idUSKBN1FP2VX
- Bridget Oghale Omoruyi and Mary Uhunoma Isibor, Women and Conflict in the Niger Delta, Port Harcourt Journal Of History & Diplomatic Studies 7(1), (2020).
- Bryce Covert, Nearly Two Decades Ago, Women Across the Country Sued Wal-Mart for Discrimination. They're Not Done Fighting, Time, (9 May 2019), available at: https://time.com/5586423/walmart-gender-discrimination/
- Çağla Ünlütürk Ulutaş and Nagihan Durusoy Öztepe, Ev Hizmetlerinde Mesleki Sağlık ve Güvenlik Sorunu, Çalışma İlişkileri Dergisi, 4(2), (2013).
- Çağla Ünlütürk Ulutaş, Evin İçi İşyeri: Ev Hizmetleri, Ücretli Emek ve Göçmen Kadın Emeği in Saniye Dedeoğlu ve Melda Yaman Öztürk (eds.), Kapitalizm, Ataerkillik ve Kadın Emeği: Türkiye Örneği, Sav, (2010).
- Camilla Wee, Regulating the Human Rights Impact of State-owned Enterprises:Tendencies of Corporate Accountability and State Responsibility, BHRRC, (2008), available at: https://media.business-humanrights.org/media/documents/files/reports-and-materials/State-owned-enterprises-Oct-08.pdf
- Can Kartoğlu, "Dardanel işçisinin evi neresi?", Health and Safety Labour Watch, (2 August 2020), available at: http://isigmeclisi.org/20492-dardanel-iscisinin-evi-neresi-can-kartoglu
- Capital Market Board of the Republic of Türkiye, Corporate Governance Follow-up Report, (2019), available at: https://spk.gov.tr/data/61e87f6a1b41c611a4c53a96/6c78f00c239fca0f7e2243dae27d69c7.pdf
- Capital Markets Board of the Republic of Türkiye, "Sürdürülebilirlik", available at: https://spk.gov.tr/surdurulebilirlik

- Carol Sánchez, et al., The Colombian Peace Accords: the dynamics of LGBTI and Gender Diverse inclusion in modern peacebuilding efforts, OHCHR, (2022), available at: https://www.ohchr.org/sites/default/files/documents/issues/sexualorientation/cfi-report-ga77/others/2022-11-10/GRN-Submission.pdf
- Caroline Mortimer, "Unpaid labourers who slipped pleas for help into Zara clothes 'have not received their backwages'", Independent, (24 November 2017), available at: https://www.independent.co.uk/news/business/news/zara-workers-unpaid-help-notes-clothes-back-wages-turkish-workers-bravo-tekstil-clean-clothes-a8073136.html
- case study of African immigrants in Cape Town, (Doctoral Thesis, University Of the Western Cape), (2015).
- Catalyst, "Women in the Workforce, Latin America", available at: https://www.catalyst.org/research/women-in-the-workforce-latin-america
- Catherine Albertyn, Law, gender and inequality in South Africa, Oxford Development Studies 39(2), (2011).
- Catherine MacKinnon, Feminism unmodified: Discourses on life and law, Harvard University Press, (1987).
- Catherine Pereira-Kotze, Tanya Doherty and Mieke Faber, Maternity protection for female non-standard workers in South Africa: the case of domestic workers, 22 BMC Pregnancy Childbirth 657, (2022), available at: https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-022-04944-0
- Cemile Gizem Dinçer, Türkiye- Gürcistan Bağlamında Göçmen Kadın Emeği: Güvencesizliğin ve Belgesizliğin Mekanı Olarak Ev İçi Alan in Lülüfer Körükmez and İlkya Südaş (eds.) Göçler Ülkesi İçinde, Ayrıntı Publishing, (2015).
- César Rodríguez Garavito and Carlos Andrés Baquero Díaz, The Right to Free, Prior, and Informed Consultation in Colombia: Advances and Setbacks, OHCHR, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/GaravitoAndDiaz.pdf
- Ceyhun Güler, Ev İşçiliğinin Türkiye'deki Görünümü: Kapsam, Boyut ve Sorunlar, ILO Türkiye, (2021), available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-ankara/documents/publication/wcms_803900.pdf
- Christopher A. Bartlett and Ghoshal Sumantra, Managing across borders: The transnational solution, Harvard Business Press, (2002).
- Çiğdem Toker, "Dardanel: Bütün Çalışanlara PCR Testi Yapılıyor", Sözcü, (10 August 2020), available at: https://www.sozcu.com.tr/2020/yazarlar/cigdem-toker/dardanel-butun-calisanlara-pcr-testi-yapiliyor-5978682/
- Cintia Paes et al., "Mariana: mulher que abortou na tragédia luta há 4 anos para que bebê seja reconhecido vítima", G1 Minas Gerais (29 October 2019), available at: https://g1.globo.com/mg/minas-gerais/noticia/ 2019/10/29/mariana-familias-ainda-sofrem-impacto-de-rompimento-de-barragem-e-tentam-retomar-suasvidas.ghtml
- Claire Methven O'Brien et. al, National action plans: Current status and future prospects for a new business and human rights governance tool, Business and Human Rights Journal 1(1), (2016).

- Claire Methven O'Brien, John Ferguson, and Marisa McVey, National Action Plans on business and human rights: an experimentalist governance analysis, Human Rights Review 23, (2022).
- Clean Clothes Campaign, "Bravo workers forced to take partial payments from Zara, Mango, Next", (12 April 2018), available at: https://cleanclothes.org/news/2018/04/12/bravo-workers-forced-to-take-partialpayments-from-zara-mango-next
- Clean Clothes Campaign, Rana Plaza Three Years On: Compensation, Justice and Workers' Safety, (2016), available: https://archive.cleanclothes.org/resources/publications/rana-plaza-three-years-on-compensation-justice-and-workers-safety#:~:text=Claims%20were%20accepted%20for%20720,GBP%209%2C500%2F11%2C500%20EURO).
- Cliffe Dekker Hofmeyr, The implications of the Constitutional Court's decisions on defamation and the existence of the SLAPP suit defence, (2022), available at: https://www.cliffedekkerhofmeyr.com/en/news/publications/2022/Practice/Dispute/dispute-resolution-alert-6-december-The-implications-of-the-Constitutional-Courts-decisions-on-defamation-and-the-existence-of-the-SLAPP-suit-defence.html
- Colombian Ombudsperson's Office, Advocacy Report: Violence Based on Gender and Discrimination, (2019), available at: https://www.defensoria.gov.co/public/pdf/Informe%20Defensorial-Violencias-Basadas-Genero-Discriminacion.pdf. (This resource was translated via Google Translate and was used for fact checking.)
- Colombian Ombudsperson's Office, Alerta Temprana, (2018), available at: http:// www.indepaz.org.co/wp-content/uploads/2018/03/AT-N%C2%B0-026-18-Defensores.pdf
- Colombian Secretariat for Women, "Ranking de Equidad de Género en las Organizaciones", (2019), available at: https://sdmujer.gov.co/el-ranking-de-equidad-de-genero-en-las-organizaciones-llega-a-su-quinta-edicion (This resource was translated via Google Translate and was used solely for fact checking.)
- Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, Hay futuro si hay verdad, (2022), available at: https://www.comisiondelaverdad.co/sites/default/files/descargables/2022-07/Informe%20final%20Mi%20Cuerpo%20Es%20La%20Verdad%20mujeres%20LGTBIQ.pdf,
- Commission for Gender Equality of South Africa, Challenges facing South Africa in relation to Gender Equality, available at: https://cge.org.za/challenges-facing-the-south-africa-in-relation-to-gender-equality/
- Commission on Human Rights Sub-Commission on the Promotion and Protection of Human Rights Working Group on Indigenous Populations, Standard-Setting Legal Commentary on the Concept of Free, Prior and Informed Consent, E/CN.4/Sub.2/AC.4/2005/WP.1, (14 July 2005), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=223729.https://www.ohchr.org/Documents/Issues/IPeoples/WG/E-CN4-Sub2-AC4-2005-WP1.doc

- Committee on Economic, Social and Cultural Rights, General Comment No. 23 on the right to just and favourable conditions of work, E/C.12/GC/23, (2016).
- Committee on the Elimination of Discrimination against Women, Concluding Comments: Mauritius, CEDAW/C/MAR/CO/5, (2006).
- Committee on the Elimination of Discrimination against Women, Concluding Comments: Bosnia and Herzegovina, CEDAW/C/BIH/CO/3, (2006).
- Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh and eighth periodic reports of Poland , CEDAW/C/POL/CO/7-8, (2014).
- Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Finland, CEDAW/C/FIN/CO/6, (2008).
- Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fifth and sixth periodic reports of Morocco, CEDAW/C/MAR/CO/5, (2022).
- Committee on the Elimination of Discrimination against Women, Twenty-fourth and Twenty-fifth Session Reports, A/56/38, (2001).
- Committee on the Elimination of Discrimination against Women: Twenty-sixth Session Report, A/57/38, (2002).
- Conall Mallory, A second coming of extraterritorial jurisdiction at the European Court of Human Rights?, QIL-Zoom In 82, (2021).
- Constance Backhouse, A feminist remedy for sexual assault: A quest for answers, Sexual Assault in Canada: Law, Practice, and Activism in a Post Jane Doe Era, (2012).
- Cornell Law School Legal Information Institute, "Women and Justice: Court: Constitutional Court of Colombia", available at: https://www.law.cornell.edu/women-and-justice/court/constitutional_court_of_colombia;
- Corporacion Humanas, Ni en tiempos de guerra ni en tiempos de paz: que la defensa de los derechos humanos no nos cueste una vida más, (2017), available at: https://www.humanas.org.co/ni-en-tiempos-de-guerra-ni-en-tiempos-de-paz-que-la-defensa-de-los-derechos-humanos-no-nos-cueste-una-vida-mas-2/ (Parts of the report were translated by the author using ChatGPT.)
- Corporación Sisma, Patrones de violencia sociopolítica de género contra lideresas y defensoras de derechos humanos en Colombia: Claves conceptuales y metodológicas 2016–2020, (2022), available at: https://www.sismamujer.org/lideresas-y-defensoras-publicaciones/. (This resource was translated via Google Translate and solely used for fact checking.)
- COSATU, "COSATU Central Executive Committee statement" (28 May 2008), available at: http://amadlandawonye. wikispaces.com/COSATU+Central+Executive+Committee+statement.
- COSATU, "COSATU Gender Review 2021", (2022), available at: http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-35-year-gender-review_30-November-2021.pdf
- COSATU, "Zingiswa Losi", available at: https://mediadon.co.za/bio-zingiswa-losi/

- COSATU, Gender Policy Booklet, (2022), available at: http://mediadon.co.za/wp-content/uploads/2022/01/COSATU-Gender-Policy-Booklet.pdf
- Council of Judges and Prosecutors of the Republic of Türkiye, 2022 Annual Activity Report, available at: https://www.hsk.gov.tr/Eklentiler/2103202309502022-yili-faaliyet-raporu-sonpdf.pdf
- Council of State of the Republic of Türkiye, "Organizational Structure", available at: https://www.danistay.gov.tr/icerik/236
- Court of Jurisdictional Dispute of the Republic of Türkiye, "Members", available at: https://www.uyusmazlik.gov.tr/Kisiler/HukukUye/
- creators?, 13 South African Journal of Economic and Management Sciences 376, (2010).
- Dalena Tran, Realities beyond reporting: women environmental defenders in South Africa realities beyond reporting: women environmental defenders in South Africa, 23 Feminist Media Studies 2152 (2022).
- Damiano De Felice and Andreas Graf, The potential of National Action Plans to implement human rights norms: An early assessment with respect to the UN Guiding Principles on Business and human rights, Journal of Human Rights Practice 7(1), (2015).
- Dan Eshert, Stolen Lives: The Indigenous Peoples of Canada and the Indian Residential Schools, Facing History & Ourselves, (2016).
- Daniel Augenstein and Lukasz Dziedzic, State Obligations to Regulate and Adjudicate Corporate Activities under the European Convention on Human Rights, EUI Department of Law Research Papers, 2017(15), (2017).
- Danielle DeLuca, "Rural Women's Right to Free, Prior and Informed Consent", Cultural Survival, (7 June 2016), available at: https://www.culturalsurvival.org/publications/cultural-survival-quarterly/rural-womens-right-free-prior-and-informed-consent;
- Danish Institute for Human Rights, Addressing the Gender Dimensions of Business and Human Rights: A summary of three thematic learning exchanges on the digital transition, national action plans and feminist approaches, (2021), available at: https://www.humanrights.dk/publications/addressing-gender-dimensions-business-human-rights
- Danish Institute for Human Rights, Nora Götzmann and Kayla Winarsky Green, Addressing The Gender Dimensions Of Business And Human Rights: A Summary Report From Three Thematic Gender Learning Exchanges On The Digital Transition, National Action Plans And Feminist Approaches, (2021), available at: https://www.humanrights.dk/publications/addressing-gender-dimensions-business-human-rights
- Danish Institute for Human Rights, Women in Business and Human Rights A mapping of topics for state attention in United Nations Guiding Principles on Business and Human Rights implementation processes, (2018), available at: https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/bhr_gender_mapping2018_web.pdf

- Danish Trade Union Development Agency, “Labour Market Profile Colombia – 2020/2021”, available at: https://www.ulandssekretariatet.dk/wp-content/uploads/2020/10/LMP-Colombia-2020-final1.pdf
- Dardanel, “Hakkımızda”, available at: https://www.dardanel.com.tr/8-hakkimizda/1189-surdurulebilirlik/
- David Du Toit, “We cannot discriminate against someone without an eye or a leg... But I do look at obesity": Statistical discrimination and employers' recruitment strategies at housecleaning service companies in Johannesburg, 40 South African Journal of Labour Relations 25, (2016).
- Deloitte, “ Gender equality, dealt a blow by COVID-19, still has much ground to cover”, (2022), available at: https://www2.deloitte.com/za/en/insights/economy/impact-of-covid-on-women.html/#endnote-4
- Dentons, “Dentons represents BC coalition of women’s rights groups in Supreme Court of Canada interventions: a focus on protecting the vulnerable against weaponized SLAPP suits”, (2020), available at: https://www.dentons.com/en/insights/alerts/2020/october/27/dentons-represents-bc-coalition-of-womens-rights-groups-in-supreme-court-of-canada
- Denys Uwimpuhwe and Greg Ruiters, Organising Somalian, Congolese and Rwandan Migrants in a Time of Xenophobia in South Africa: Empirical and Methodological Reflections, 19 Journal of International Migration and Integration 1119, (2018).
- Department of Energy of South Africa, Socio-Economic Impact of Electrification: Household Perspective, (2009), available at: https://www.energy.gov.za/files/media/explained/statistics_households_2001.pdf
- Department of Mineral Resources of South Africa, Guideline For the Submission Of A Social And Labour Plan As Required In Terms Of Regulation 46 of The Mineral And Petroleum Resources Development Act, (2010), available at: https://www.dmr.gov.za/Portals/0/social%20and%20labour%20plan_guideline.pdf
- Diane Elson and Ruth Pearson, Nimble fingers make cheap workers’: An analysis of women's employment in Third World export manufacturing, Feminist Review 7(1), (1981).
- Dianne Otto, Feminist Approaches to International Law in Anne Orford, and Florian Hoffmann (eds), The Oxford Handbook of the Theory of International Law, Oxford Handbooks (2016).
- Dina M. Siddiqi, Do Bangladeshi factory workers need saving? Sisterhood in the post-sweatshop era, Feminist Review 91(1), (2009).
- Dina M. Siddiqi, Rescripting Empowerment? Post-COVID Lessons from Bangladeshi Garment Workers, Kohl: A Journal for Body and Gender Research 7, (2021).
- Dina M. Siddiqi, Starving for Justice: Bangladeshi Garment Workers in a ‘Post-Rana Plaza’ World, International Labor and Working-Class History 87, (2015).
- DİSK, “Genel Başkanımız, BM İnsan Hakları Yüksek Komiserliği Kadına Yönelik Şiddet Özel Raportörü İle Görüştü”, (2022), available at: https://disk.org.tr/2022/07/genel-baskanimiz-bm-insan-haklari-yuksek-komiserligi-kadina-yonelik-siddet-ozel-raportoru-ile-gorustu/

- Doğuş Şimşek, İstanbul'daki Afrikalı Göçmenlerin Gündelik Irkçılık Deneyimleri, 10 Mukaddime 233, (2019).
- Dorothy Sue Cobble, Don't Blame the Workers, 59 Dissent (Winter) 35, (2012).
- Dorrit Posel, Have migration patterns in post-apartheid South Africa changed?, 15 Journal of Interdisciplinary Economics 277 (2004).
- Due Process of Law Foundation, Right to Free, Prior, and Informed Consultation and Consent in Latin America Progress and challenges in Bolivia, Brazil, Chile, Colombia, Guatemala, and Peru, (2015), available at: https://www.dplf.org/sites/default/files/executive_summary_consultation_2015_web_02-17-2016_c.pdf.
- Duvar, "Zara İşçilere Ücretlerini Hala Ödemedi", (24 November 2017), avalable at: https://www.gazeteduvar.com.tr/gundem/2017/11/24/zara-iscilere-ucretlerini-hala-odenmedi
- Earth Rights Defenders, "U'wa Indigenous People v. Colombia: Indigenous People in Colombia Fight for their Land and Culture Against Extractive Industries", available at: https://earthrights.org/case/uwa-indigenous-people-vs-colombia/#:~:text=The%20IACHR%20found%20that%20Colombia,their%20right%20to%20judicial%20protection.
- Earth Rights Defenders, "U.S. Court Orders Chiquita to Stand Trial for Colombians' Murder Claims", (2023), available at: https://earthrights.org/media_release/u-s-court-orders-chiquita-to-stand-trial-for-colombians-murder-claims/
- ECCHR, Lafarge in Syria: Accusations of complicity in grave human rights violations, available at: https://www.ecchr.eu/en/case/lafarge-in-syria-accusations-of-complicity-in-grave-human-rights-violations/
- Edna Bonacich, et al., The racialization of global labor, American Behavioral Scientist 52(3), (2008).
- Edward Uche Omeire et. al, Between the devil and the deep blue sea: Niger delta women and the burden of gas flaring, European Scientific Journal 10(26), (2014).
- Ekmek ve Gül, "Akbelen Ormanı'nda nöbet tutan İkizköylü kadın: Jandarma kolumu morarttı", (2021), available at: https://ekmekvegul.net/gundem/akbelen-ormaninda-nobet-tutan-ikizkoylu-kadin-jandarma-kolumu-morartti
- Ekmek ve Gül, (2018), available at: https://ekmekvegul.net/gundem/kadinlar-ced-toplantisini-basti-yetkililer-toplantiyi-terk-etti
- Emily Bridgeri. From 'Mother of the Nation' to 'Lady Macbeth': Winnie Mandela and perceptions of female violence in South Africa, 1985–91, 27 Gend. 446, (2015).
- Erik Gunnarson, How Feminists Responded to Aids Crisis, Karolinska Instituet, (2020), available at: https://faceofaids.ki.se/theme/women-and-aids/how-feminists-responded-to-the-aids-crisis
- Escuela Nacional Sindical, "El Sindicalismo Cuenta", available at: http://ens.org.co/apc-aa-files/45bdec76fa6b8848acf029430d10bb5a/Informe_ejecutivo.pdf
- Esra Tokat, "Dardanel'de işçilerin sesi duyulmuyor: 'AKP arkasında olduğu için…'", Dokuz8 Haberi (2021), available at: https://www.dokuz8haber.net/dardanelde-iscilerin-sesi-duyulmuyor-akp-arkasinda-oldugu-icin

- European Convention on Human Rights, (2018), available at: https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf
- European Court of Human Rights, Extra-territorial jurisdiction of States Parties to the
- Eva Gerritse and Cor Oudes, Funding Conflict: Heightened human rights due diligence in conflict-affected areas, with a case study on Lafarge and its investors, PAX for Peace, (2023), available at: https://paxforpeace.nl/wp-content/uploads/sites/2/import/2023-02/PAX_Rapport_Lafarge_2023.pdf; Lafarge case in Syria(2023), available at: https://www.asso-sherpa.org/lafarge-case-syria
- Eve Hill, Alternative dispute resolution in a feminist voice, Ohio State Journal on Dispute Resolution 5 (1989).
- Fairwear, "How does Covid-19 affect women garment workers?", available at: https://www.fairwear.org/covid-19-dossier/worker-engagement-and-monitoring/gender-analysis/;
- FAO, Free Prior and Informed Consent – An Indigenous Peoples' right and a good practice for local communities, (2016), available at: https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/
- Feminists for a Binding Treaty, Integrating a gender perspective into the legally binding instrument on transnational corporations and other business enterprises: Comments on the zero draft proposed by the OEIGWG Chair, (2018), available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/SubmissionLater/FeministsBindingTreaty.docx
- Ferhunde Özbay, Türkiye'de Ev Emeğinin Dönüşümü: Ondokuzuncu Yüzyıldaki Osmanlı Ev Kölelerinden Günümüzdeki Kaçak Göçmen İşçilere in Ahmet Makal and Gülay Toksöz (eds.), Geçmişten Günümüze Türkiye'de Kadın Emeği, Ankara Üniversitesi Yayınevi, (2012).
- Fiona C. Ross, Bearing witness: women and the Truth and Reconciliation Commission in South Africa, Pluto Press, (2002).
- Fiona Duguid et al., The current state of women's co-operatives in Turkey. World Bank, (2015), available at: https://www.aile.gov.tr/KSGM/PDF/Turkiyede_Kooperatifcilik_Kadin_ENG.pdf
- Fiona Moore, An unsuitable job for a woman: a 'native category' approach to gender, diversity and cross-cultural management, The International Journal of Human Resource Management 26(2), (2015).
- Flávia Silva Scabin et al., A situação das mulheres atingidas pelo desastre do Rio Doce a partir dos dados da Ouvidoria da Fundação Renova, FGV, (2019).
- Frontline Defenders, "Death Threat Against Woman Human Rights Defender Yirley Judith Velasco Garrido", (2020), available at: https://www.frontlinedefenders.org/en/case/death-threat-against-woman-human-rights-defender-yirley-judith-velasco-garrido
- Frontline Defenders, Statement – Colombia: Failure to protect, threats and killings of human rights defenders continue in Magdalena Medio with impunity, (2022), available at:

https://www.frontlinedefenders.org/sites/default/files/statement_colombia_magdalena_medio_eng.pdf
- Gabby de Cicco, "The gap between laws and reality for Colombian domestic workers", AWID, (5 Spetember 2014), available at: https://www.awid.org/news-and-analysis/gap-between-laws-and-reality-colombian-domestic-workers#:~:text=AL%3A%20Domestic%20work%20is%20the,by%20citizens%20and%20their%20institutions.
- Geert Hofstede and Michael Minkov, Cultures, and Organizations: Software of the Mind, McGraw-Hill, (2010).
- Geert Hofstede, Culture's consequences: International differences in work-related values, Sage, (1984).
- George W. Pring, and Penelope Canan, SLAPPs: Getting Sued for Speaking Out, Temple University Press, (1996).
- Gina Donoso, Inter-American Court of Human Rights' reparation judgments: Strengths and challenges for a comprehensive approach, Revista Instituto Interamericano De Derechos Humanos 49(1), (2009).
- Gisele Prasad, Improving access to energy in Sub-Saharan Africa, 3 Current Opinion in Environmental Sustainability 248, (2011).
- Global Alliance for Green and Gender Action, "Impacts of Extractives on Land, Environment and Women's Rights in East Africa", (2018), available at: https://gaggaalliance.org/impacts-of-extractives-on-land-environment-and-womens-rights-in-east-africa/
- Goldman Prize, "2018 Goldman Prize Winner: Francia Márquez", (2018), available at: https://www.goldmanprize.org/recipient/francia-marquez/
- Greta Friedemann-Sánchez and Margaret Grieve, General Background on Colombian Laws on Violence against Women, Orders of Protection, and Shelters, Hubert Humphrey School of Public Affairs, (2017), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/Shelters/FriedemannSanchezGrieve.pdf
- Gülriz Uygur and Eileen Skinnider, Understanding Barriers to Women's Access to Justice and Legal Aid in Türkiye, Council of Europe, (2022), available at: https://rm.coe.int/understanding-barriers-to-women-s-access-to-justice-and-legal-aid-in-t/1680a967d,
- Günseli Berik, Revisiting the feminist debates on international labor standards in the aftermath of Rana Plaza, Studies in Comparative International Development 52 (2017).
- Guolei Zhang et. al, HIV-1 and STIs prevalence and risk factors of miners in mining districts of Yunnan, China, 53 Journal of Acquired Immune Deficiency Syndromes 54, (2010).
- Güneş Dermenci, "Köylüler ÇEV Toplantısını Yaptırmadı", Güneşin Enerjisi, (30 January 2015) available at: https://gunesinenerjisi.wordpress.com/tag/dondurma-koyu/
- Gürdal Aslan, Gender poverty gap in Turkey, 1 FORCE 85 (2020).
- Hacettepe University Institute of Population Studies and Ministry of Family and Social Policies, Research on Domestic Violence against Women in Turkey, (2015), available

at:
https://hips.hacettepe.edu.tr/en/national_research_on_domestic_violence_against_wom-319
- Hannah Sharland, "U'wa nation's fight at international tribunal could set a precedent for Indigenous rights, Canary Workers Co-Op", The Canary, (2 May 2023), available at: https://www.thecanary.co/global/world-analysis/2023/05/02/uwa-nations-fight-at-international-tribunal-could-set-a-precedent-for-indigenous-rights/
- Hassan Isilow, "After 10 years, unions, families of Marikana massacre victims demand justice", Anadolu Ajansı, (16 August 2022), available at: https://www.aa.com.tr/en/africa/after-10-years-unions-families-of-marikana-massacre-victims-demand-justice/2662578;
- Helma Lutz and Ewa Palenga-Möllenbeck, Care workers, care drain, and care chains: Reflections on care, migration, and citizenship, Social Politics 19(1), (2012).
- Helma Lutz, Care migration: The connectivity between care chains, care circulation and transnational social inequality, 66 Current Sociology 577, (2018).
- Helma Lutz, Gender in the migratory process, 36 Journal of Ethnic and Migration Studies. 1647 (2010).
- Hilary Charlesworth and Christine Chinkin, The Boundaries of International Law: a Feminist Analysis, Manchester University, (2000).
- Hilary Charlesworth and Christine Chinkin. The boundaries of international law: A feminist analysis, with a new introduction. Manchester University Press, (2022).
- Hilary Charlesworth, Christine Chinkin, and Shelley Wright, Feminist approaches to international law, American Journal of International Law 85(4), (1991).
- Hina Shah, and Seville Marci, Domestic Worker Organizing: Building a Contemporary Movement for the Dignity and Power, Albany Law Review 413 (2011).
- Hofstede Insights, Country Comparison Tool, Turkey-Colombia-South Africa, available at: https://www.hofstede-insights.com/country-comparison-tool?countries=colombia%2Csouth+africa%2Cturkey
- HOLCIM, HOLCIM Affirms Support For Lafarge SA Resolution With The U.S. Department of Justice Regarding Legacy Lafarge Operations In Syria, (18 October 2022) available at: https://www.holcim.com/media/media-releases/statements-18-october-2022
- HOLCIM, HOLCIM Affirms Support For Lafarge SA Resolution With The U.S. Department of Justice Regarding Legacy Lafarge Operations In Syria, (18 October 2022), available at: https://www.holcim.com/media/media-releases/statements-18-october-2022
- HOLCIM, Human Rights and Social Policy (2021), available at: https://www.holcim.com/sites/holcim/files/images/21062021_holcim_sustainability-human-rights-social-policy.pdf
- HOLCIM, Lafarge SA Resolves U.S. Department of Justice Inquiry Related to Legacy Operations in Syria, (18 October 2022), available at: https://www.holcim.com/sites/holcim/files/2022-10/20221018_press_lafarge_sa_company_statement_en_5161029389.pdf
- Horman Chitonge, The Political Economy of Energy Policy in South Africa: From a Gender Agenda to a Class Project, JRD Tata Ecotechnology Centre, (2017).

- Human Rights Watch, 'We Know Our Lives are in Danger': Environment of Fear in South Africa's Mining-Affected Communities, (2019), available at: https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected
- Human Rights Watch, "South Africa Events of 2008", (2009) available at: https://www.hrw.org/world-report/2009/country-chapters/south-africa
- Human Rights Watch, Still No Justice for Killing of South African Mining Activist, (2021), available at: https://www.hrw.org/news/2021/10/22/still-no-justice-killing-south-african-mining-activist
- Humberto Cantú Rivera, National Action Plans on Business and Human rights: Progress or Mirage?, Business and Human Rights Journal, 4(2), (2019).
- Hussain Alhejji et al., The impact of formal and informal distance on gender equality approaches: the case of a British MNC in Saudi Arabia, Thunderbird International Business Review 60(2), (2018).
- İlayda Eskitaşçıoğlu, Access to Menstrual Products is a Constitutional Right.: Period, Verfassungsblog, (2019), available at: https://verfassungsblog.de/access-to-menstrual-products-is-a-constitutional-right-period/
- İlker Kılıçarslan, "Soma Faciası'nın üzerinden 8 yıl geçti, 194 aile hala tazminat alamadı", Sözcü, (16 Mart 2022), available at: https://www.sozcu.com.tr/2022/gundem/soma-faciasinin-uzerinden-8-yil-gecti-194-aile-hala-tazminat-alamadi-7014674/
- ILO and TurkStat, Measuring The Gender Wage Gap: Turkey Case, (2020), available at: https://www.ilo.org/ankara/publications/WCMS_756627/lang--en/index.html
- ILO Conference 99th Session, Report on Decent Work for Domestic Workers, (2010), available at: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf
- ILO Stat, "Data Country Profiles", available at: https://ilostat.ilo.org/data/country-profiles /
- ILO Türkiye Office, "ILO Türkiye Ofisi, 190 Sayılı Şiddet ve Tacizin Önlenmesi ILO Sözleşmesi ile Uyumlu Bir Çalışma Hayatı İçin 'Değişimin Öncüleri Eğitici Eğitimi' Verdi", (7 July 2022), available at: https://www.ilo.org/ankara/news/WCMS_850613/lang--tr/index.htm.
- ILO, "Fewer women than men will regain employment during the COVID-19 recovery says ILO", (2021), available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_813449/lang--en/index.htm
- ILO, "Gender Wage Gap is 15.6% in Turkey, according to the joint study by ILO Turkey Office and TURKSTAT", (2020), available at: https://www.ilo.org/ankara/news/WCMS_757055/lang--en/index.htm
- ILO, "Indicators of Forced Labour determined by the Special Action Programme to combat Forced Labour", available at: http:// www.ilo.org/sapfl/Informationresources/Factsheetsandbrochures/WCMS_203832/ lang--en/index.htm
- ILO, "SDG indicator 5.5.2 - Proportion of women in managerial positions (%) - Annual", available at:

https://www.ilo.org/shinyapps/bulkexplorer3/?lang=en&id=SDG_T552_NOC_RT_A
- ILO, "The Gender Pay Gap", (2022), available at: https://www.ilo.org/travail/areasofwork/wages-and-income/WCMS_867160/lang--en/index.htm#:~:text=Gender%20pay%20gaps%20represent%20one,are%20wide%20variations%20across%20countries.
- ILO, "The Rana Plaza disaster ten years on: What has changed?", (2023), available at: https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#better-work
- ILO, Addressing Forced Labor in Global Supply Chains: Lessons and Applications of the Brazilian Experience, (2011), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/presentation/wcms_183873.pdf
- ILO, Care work and care jobs for the future of decent work, (2018), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_633135.pdf
- ILO, Gendered impacts of COVID-19 on the garment sector, (2020), available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_760374.pdf,
- ILO, Women at Work, Trends, (2016), available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf
- IMF, "Colombia and the IMF", available at: https://www.imf.org/en/Countries/COL
- IMF, "Republic of Türkiye and the IMF", available at: https://www.imf.org/en/Countries/TUR
- IMF, "South Africa and the IMF", available at: https://www.imf.org/en/Countries/ZAF
- IMF, "South Africa's Economy Loses Momentum Amid Record Power Cuts", (2023), available at: https://www.imf.org/en/News/Articles/2023/06/15/cf-south-africas-economy-loses-momentum-amid-record-power-cuts ;
- IMF, Colombia: Financial System Stability Assessment, (2022), available at: https://www.imf.org/en/Publications/CR/Issues/2022/04/04/Colombia-Financial-System-Stability-Assessment-516087
- IMF, G-20 Report On Strong, Sustainable, Balanced, and Inclusive Growth, (2022), available at: https://www.imf.org/external/np/g20/pdf/2022/111322.pdf
- IMF, South Africa: Financial Sector Assessment Program-Financial System Stability Assessment, (2022), available at: https://www.imf.org/en/Publications/CR/Issues/2022/02/11/South-Africa-Financial-Sector-Assessment-Program-Financial-System-Stability-Assessment-513014
- IMF, Turkey: 2021 Article IV Consultation-Press Release; Staff Report; and Statement by the Executive Director for Turkey, (2021), available at: https://www.imf.org/en/Publications/CR/Issues/2021/06/11/Turkey-2021-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-50205
- income levels of domestic workers in post-apartheid South Africa, 80 GeoJournal 721, (2015).

- Institut Català Internacional per la Pau, Companies in Conflict Situations: Building a research network on Business, Conflicts and Human Rights, (2013), available at: https://www.icip.cat/wp-content/uploads/2020/11/web_-_icip_research_num_01.pdf ;
- Institute for Human Rights and Business, Fees and IDs: Tackling recruitment fees and confiscation of workers' passports, (2013), available at: https://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf;
- Institute for Human Rights and Business, Fees and IDs: Tackling recruitment fees and confiscation of workers' passports, (2013), available at: https://www.ihrb.org/pdf/2013-09-06_IHRB_Fees-and-IDs-Report.pdf
- Instituto Nacional de Medicina Legal, "Feminicidio: desde el enfoque forense", (2022), available at: http://www.medicinalegal.gov.co/documents/20143/522189/Informe_INML_tres_meses_aislamiento.pdf/ab03caa2-8bce-45d5-d19e-e1e03060c4be
- Inter-American Commission on Human Rights Rapporteurship on the Rights of Women, Access To Justice For Women Victims of Violence in The Americas, available at: http://www.cidh.org/women/access07/chap1.htm#_ftn163
- International Corporate Accountability Roundtable (ICAR) and the Center for the Study of Law, Justice, and Society (Dejusticia), Assessment of the Colombian National Action Plan (NAP) on Business and Human Rights, (2016), available at: https://media.business-humanrights.org/media/documents/files/documents/ICAR-Dejusticia_Evaluacion_of_Colombian_NAP_FINAL.pdf
- International Domestic Workers Federation, "About Us", available at: https://idwfed.org/about-us/
- International Domestic Workers Federation, "IDWF Affiliates", available at: https://idwfed.org/affiliates/
- IPU, "Colombia House of Representatives", available at: https://data.ipu.org/content/colombia?chamber_id=13366
- IPU, "Global and regional averages of women in national parliaments", available at: https://data.ipu.org/women-averages
- IPU, "South Africa National Assembly", available at: https://data.ipu.org/parliament/za?chamber_id=13311
- Irene Campos-García et al., Managing Gender Diversity in Companies Operating in Different National Contexts: The Case of Spanish MNCs in Latin American Countries, Diversity within Diversity Management, Emerald Publishing Limited, (2019).
- ITUC CSI, "Survey of Violation of Rights: Colombia", (2013), available at: https://survey.ituc-csi.org/Colombia.html?lang=en#tabs-3
- ITUC, Hidden faces of the Gulf miracle, (2011), available at: https://www.ituc-csi.org/hidden-faces-of-the-gulf-miracle-9144
- IUF, "Turkey: Canned fish company held workers captive in production after COVID-19 outbreak", (2020), available at: https://www.iuf.org/news/turkey-canned-fish-company-held-workers-captive-in-production-after-covid-19-outbreak/
- James Madison University Center for Global Engagement, Hofstede's Cultural Dimensions, available at: https://www.jmu.edu/global/isss/resources/global-campus-toolkit/files/hofstede-masculinity.pdf.

- Janet Munakamwe, Women in the Trade Union Movement: Country Case Study: South Africa in Akua Britwum and Sue Ledwith (eds.), Visibility and Voice for Union Women: Country case studies from Global Labour University researchers, Deutsche Nationalbibliothek, (2014).
- Janet Rifkin, Mediation from a feminist perspective: Promise and Problems, Law & Inequality 2 (1984).
- Jawad Syed and Peter A. Murray, A cultural feminist approach towards managing diversity in top management teams, Equal Opportunities International, 27(5), (2008).
- Jeff Hearn and Wendy Parkin, Gender, Sexuality and Violence in Organizations: The Unspoken Forces of Organization Violations, SAGE Publications, (2001).
- Jennifer A. Schwartz, Piercing the Corporate Veil of an Alien Parent for Jurisdictional Purposes: A Proposal for a Standard that Comports with Due Process, 96 California Law Review 731, (2008).
- Jennifer Jagire, Indigenous African Knowledges and African Feminism
- Jennifer N. Fish, Rights across borders: policies, protections and practices for migrant domestic workers in South Africa in Darcy Du Toit, (ed.), Exploited, Undervalued– and Essential: Domestic Workers and the Realisation of their Rights, PULP, (2013);
- Jiska de Groot et al., Fueling women's empowerment? An exploration of the linkages between gender, entrepreneurship and access to energy in the informal food sector, 28 ERRS 86, (2017).
- Joana Nabuco and Leticia Aleixo, Rights holders' participation and access to remedies: Lessons learned from the Doce River dam disaster, Business and Human Rights Journal 4(1), (2019).
- Joe Nocera, Behind the Chevron Case, The New York Times, (22 September 2014), available at: https://www.nytimes.com/2014/09/23/opinion/joe-nocera-behind-the-chevron-case.html
- John Eligon, "New Amazon Headquarters Sparks Feud Among Indigenous South Africans", The New York Times, (26 February 2022), available at: https://www.nytimes.com/2022/02/26/world/africa/south-africa-amazon.html ;
- John Phillips and Saska Petrova, The materiality of precarity: Gender, race and energy infrastructure in urban South Africa, 53 Environ. Plan A. 1031, (2021).
- John Ruggie, Multinationals as global institution: Power, authority and Relative autonomy, 12 Regulation & Governance 317, (2008).
- Jonas Nzabamwita, Exploring the link between international migration and remittances: a
- Jonathan Crush, Abel Chikanda, and Godfrey Tawodzera, The third wave: Mixed migration from Zimbabwe to South Africa, Canadian Journal of African Studies/Revue canadienne des études africaines 49(2), (2015).
- Jonathan Russell, "Geoghegan digests and delivers new acronym", Telegraph, (12 July 2010), available at: https://www.telegraph.co.uk/finance/comment/citydiary/7886195/Geoghegan-digests-and-delivers-new-acronym.html

- Jorge Enrique Elias Caro & Antonino Vidal Ortega, The worker's massacre of 1928 in the Magdalena Zona Bananera-Colombia. An unfinished story, 18 Revista Digital de Historia y Arqueología desde el Caribe 2, (2012).
- Joshua Robertson, "Australian mining company denies role in murder of South African activist," Guardian, (25 March 2016), available at: https://www.theguardian.com/environment/2016/mar/25/australian-mining-company-denies-role-in-of-south-african-activist (accessed July 12, 2018).
- Juan Carlos R. Guataquí et al., Structural determinants of trade union membership in Colombia, Perfil de Coyuntura Económica 17, (2011).
- Juana Suarez, María Cano in Tompkins, Foster Cynthia, David William (eds.). Notable Twentieth-century Latin American Women: A Biographical Dictionary, Greenwood Publishing Group, (2001).
- Julia Lausch, Reinventing Intimacy and Identity: Filipina Domestic Workers' strategies for coping with family separation in Dubai. In: Maria Kontos & Glenda Tibe Bonifacio (eds.), Migrant Domestic Workers and Family Life, Springer, (2015).
- Julia Zulver, "Feasible Justice: Has Colombia Overpormised and Under Delivered Reparations for its 8.6 million victims?", Justice Info, (12 June 2018), available at: https://www.justiceinfo.net/en/37686-feasible-justice-has-colombia-over-promised-and-under-delivered-reparations-for-its-8-6-million-vic.html
- Juliana Bertholdi and Danielle Anne Pamplona, A feminist analysis of the legal mechanisms of protection and repair in the context of the Brazilian extractive industry: The Doce river case, Business and Human Rights Journal 7(1), (2022).
- Julien Debonneville, An organizational approach to the Philippine migration industry: recruiting, matching and tailoring migrant domestic workers, 9 CMS 1, (2021).
- July Samira Fajardo and María Adelaida Palacio, The marks of gender in the defence of human rights in Colombia, 31 Gender and Development 53, (2023).
- July Samira Fajardo and María Adelaida Palacio, The marks of gender in the defence of human rights in Colombia, Gender & Development 31(1), (2023).
- June Nash and M. P. Fernandez-Kelly, Women and Men in the New International Division of Labor, Albany State University Press, (1983).
- KAP, "BIST Şirketleri", available at: https://www.kap.org.tr/tr/bist-sirketler
- KAP, Dardanel Önentaş Gıda Sanayi A.Ş., 2022 Sürdürülebilirlik Raporu, (2022), available at: https://www.kap.org.tr/tr/Bildirim/1124205
- Kathryn Dovey et al., Comments on the Draft "Guiding Principles" for the Implementation of the 'Protect, Respect and Remedy' Framework: Integrating a Gender Perspectives, Institute for Human Rights and Business, (2011), available at: https://www.ihrb.org/pdf/2011_01_28_Submission_on_Draft_Guiding_Principles-Integrating_gender_perspective_FINAL.pdf
- Kathryn Henne, From the Academy to the UN and Back Again: The Travelling Politics of Intersectionality, 33 Intersections: Gender and Sexuality in Asia and the Pacific 1, (2013).
- Katrin Tiroch, Violence against women by private actors: The Inter-American Court's judgment in the case of Gonzalez et al.("Cotton Field") v. Mexico, Max Planck Yearbook of United Nations Law Online 14(1), (2010).

- Kellynn Wee, Charmian Goh and Brenda S.A. Yeoh, Translating people and policy: The role of maid agents in brokering between employers and migrant domestic workers in Singapore's migration industry, 54 International Migration Review 1015, (2020).
- Kimberlé Crenshaw, Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics, 1989 University of Chicago Legal Forum139 (2001).
- Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, 43 Stanford Law Review 1241, (1991).
- Kimberly Springer, Third wave black feminism?, 27 Signs 1059, (2002).
- KPMG, Dardanel Önentaş Gıda Sanayi A.Ş. 2021 Yılı Faaliyet Raporu, (2022), available at: https://www.dardanel.com.tr/_FILES/Contents/1179/dardanel_2021_yili_faaliyet_raporu.pdf;
- Kudakwashe P. Vanyoro, Zimbabwean migrant domestic worker activism in South Africa, University of Sussex, (2019), available at: https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/14871
- Lacey George, Gender-Based Violence Against Women in South Africa, (2020), available at: https://ballardbrief.byu.edu/issue-briefs/gender-based-violence-against-women-in-south-africa
- Laura Bedoya, The Political Empowerment of Women in Colombia Towards Gender Equality, Revista Harvard Review of Latin America, (2022), available at: https://revista.drclas.harvard.edu/the-political-empowerment-of-women-in-colombia/
- Laura Cossette and Kenia Saba Perez, Machismo & Mujerismo: Women's Perspectives On The Implementation Of The Colombian Peace Accords, Latin America Working Group, (2019), available at: https://www.lawg.org/machismo-mujerismo-women-colombia-peace-accords/
- Lauren Clark, Powering Households and Empowering Women: The Gendered Effects of Electrification in sub-Saharan Africa, Princeton University Journal of Public and International Affairs, (2021).
- Leah Mundell and Emma Caron, Models for migrant leadership: the Cape Town women's platform, 2 AHMR 489, (2016).
- Lee-Anne Bruce, "Constitutional Court rules 'SLAPP' suit defence forms part of our law", Wits University Centre for Applied Legal Studies (14 November 2022), available at: https://www.wits.ac.za/news/sources/cals-news/2022/constitutional-court-rules-slapp-suit-defence-forms-part-of-our-law.html
- Lena Elisabeth Kemper et al., Promoting gender equality in a challenging environment: The case of Scandinavian subsidiaries in Japan, Personnel Review 48(1), (2019).
- Leslie Bender, Overview of Feminist Torts Scholarship, Cornell Law Review78, (1992).
- Lila Abu-Lughod, Do Muslim women really need saving? Anthropological reflections on cultural relativism and its others, American Anthropologist 104(3), (2002).

- Lilian Chenwi, Women's Representation and Rights in the African Court, The Age of Human Rights Journal 18, (2022).
- Linda Dickens, Collective bargaining and the promotion of gender equality at work: opportunities and challenges for trade unions, 6 Transfer: European Review of Labour and Research 193, (2000).
- Linda Dickens, Collective bargaining and the promotion of gender equality at work: opportunities and challenges for trade unions, 6 Transfer: European Review of Labour and Research 193, (2000).
- Linda Givetash, "South Africa's Indigenous People Fight Planned Amazon Headquarters in Court", VOAV News, (21 January 2022), available at: https://www.voanews.com/a/south-africa-s-indigenous-people-fight-planned-amazon-headquarters-in-court-/6407067.html
- Lindiwe D. Makhunga, South African Parliament and Blurred Lines: The ANC Women's League and the African National Congress' Gendered Political Narrative, 28 Agenda 40, (2014).
- Lisa Chamberlain, Growing Threats to Environmental Human Rights Defenders: The Latest Slapp Suit Developments In South Africa, 26 SAJELP 5 (2020).
- Lisa H. Nishii and Mustafa F. Özbilgin, Global diversity management: towards a conceptual framework, The International Journal of Human Resource Management, 18(11), (2007).
- Loren B. Landau and Iriann Freemantle, Tactical cosmopolitanism and idioms of belonging: Insertion and self- exclusion in Johannesburg, 36 Journal of Ethnic and Migration Studies. 375, (2010).
- Lorena Trujillo, Evaluation of the national gender policy in Colombia, Departamento Nacional de Planeación, (2021), available at: https://nec.undp.org/sites/default/files/2021-03/Evaluation-of-the-national-gender-policy-in-Colombia.pdf
- Luis Jorge Garay Salamanca et al., Women and youngsters, the most impacted by poverty in Colombia, Periodico UNAL, (2020).
- Lyn Graybill, The contribution of the truth and reconciliation commission toward the promotion of women's rights in South Africa. In Women's Studies International Forum, 24(1), (2001);
- Maile Arvin et al., Decolonizing Feminism: Challenging Connections between Settler Colonialism and Heteropatriarchy in Carole McCann, Seung-kyung Kim and Emek Ergun (eds.), Feminist Theory Reader, Routledge, (2020).
- Maitrayee Mukhopadhyay, Gender and access to justice in sub-Saharan Africa: Conference Report, Royal Tropical Institute and Wits University Centre of Applied Legal Studies, (2008), available at: https://www.kit.nl/wp-content/uploads/2018/08/1530_Gender-and-access-to-justice_Conference-report-2008.pdf
- Marcelo Medeiros and Joana Costa, Is there a feminization of poverty in Latin America?, 36 World Development 115, (2008).
- Margaret Hodgins and Pat O'Connor, Progress, but at the expense of male power? Institutional resistance to gender equality in an Irish university, 6 Front. Sociol 1, (2021).

- María Carmelina Londoño-Lázaro et. al, The Inter-American court of human rights and multinational enterprises: towards business and human rights in the Americas?, The Law & Practice of International Courts and Tribunals 16(3), (2017).
- María Carmelina Londoño-Lázaro et. al, The Inter-American court of human rights and multinational enterprises: towards business and human rights in the Americas?, The Law & Practice of International Courts and Tribunals 16(3), (2017).
- María Carmelina Londoño-Lázaro, Las cortes interamericana y europea de derechos humanos en perspectiva comparada, Revista Colombiana de Derecho Internacional 3(5), (2005). (Sections of this resource was translated via Google Translate and was used for fact checking.)
- María Carmelina Londoño-Lázaro, Las garantías de no repetición en la jurisprudencia interamericana – derecho internacional y cambios estructurales del estado, Universidad de la Sabana, (2014), available at: https://intellectum.unisabana.edu.co/handle/10818/35829 (Sections of this resource was translated via Google Translate and was used for fact checking.)
- Maria Hengeveld, South Africa's Domestic Workers: Invisible labor in plain sight, Africa is a Country (2015), . available at: https://africasacountry.com/2015/03/south-africas-domesticworkers-bonded-labor-in-plain-sight
- Mariama Awumbila, Joseph Kofi Teye and Joseph Awetori Yaro, Social networks, migration trajectories and livelihood strategies of migrant domestic and construction workers in Accra, Ghana, 52 Journal of Asian and African Studies 982, (2017).
- Mariama Awumbilai Joseph Kofi Teye and Joseph Awetori Yaro, Of silent maids, skilled gardeners and careful madams: Gendered dynamics and strategies of migrant domestic workers in Accra, Ghana 82 GeoJournal 57 (2017).
- Mariko Takedomi Karlsson and Vasna Ramasar, Selling women the green dream: the paradox of feminism and sustainability in fashion marketing, 27 Journal of Political Ecology 335, (2020).
- Mariya Bikova, The Egalitarian Heart. Global Care Chains in the Filipino Au Pair Migration to Norway, (Doctoral Thesis, University of Bergen), (2017).
- Martha I. Morgan and Monica Maria Alzate Buitrago, Constitution-making in a time of cholera: women and the 1991 Colombian Constitution, Yale Journal of Law & Feminism 4 (1991).
- Martha I. Morgan, Taking Machismo to Court: The Gender Jurisprudence of the Colombian Constitutional Court, University of Miami Inter-American Law Review, 30 (1998).
- Martha Minow, Between Vengeance and Forgiveness: Facing history after genocide and mass violence, Beacon Press, (1998).
- Mavivi Myakayaka-Manzini, Political party quotas in South Africa, International Institute for Democracy and Electoral Assistance (IDEA)/Electoral Institute of Southern Africa (EISA)/Southern African Development Community (SADC) Parliamentary Forum Conference, Pretoria, (2003), available at: https://www.aceproject.org/ero-en/topics/parties-and-candidates/CS_South_Africa_Manzini-final2-6-2004.pdf
- Mayer Brown LLP, Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions, Institute for Legal Reform, (2013), available at:

https://instituteforlegalreform.com/wp-content/uploads/media/Class-Action-Study.pdf
- MCHAP, “Fragments - Counter Monument”, (2022), available at: https://www.mchap.co/mchap-2022-projects/fragments---counter-monument
- Melissa Wright, Disposable Women and Other Myths of Global Capitalism, Routledge, (2006).
- Meral Uğur Çınar, Construction of gender and national identity in Turkey: Images of the first lady in the Turkish media (2002–7), 50 Middle Eastern Studies 482, (2014).
- Mesut Yeğen, Sendikalar ve Kadın Sorunu: Kurumsal Gelenekler ve Cari Zihniyetler, 3 Sos. Ar. D. 1, (2000).
- Micaela Del Monte and Maria Díaz Crego, European Parliament EU Legislation in Progress Briefings: Strategic lawsuits against public participation (SLAPPs), (2023), available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf
- Michael Edward Stanfield, Of Beasts and Beauty: Gender, Race, and Identity in Colombia, University of Texas Press, (2013).
- Michael Zelenko, The Human Cost of Your Mother's Day Flowers, Vice, (8 May 2014), available at: https://www.vice.com/en/article/exmbnp/the-human-cost-of-your-mothers-day-flowers
- Michelle O'Sullivan and Christina Murray, Brooms sweeping oceans? Women's rights in South Africa's first decade of democracy, Acta Juridica 2005(1), (2005).
- Miguel Emilio La Rota, et al., Ante la Justicia: Necesidades Jurídicas y Acceso a la Justicia en Colombia (Prior to Justice: Legal Needs and Access to Justice in Colombia), Dejusticia (2014), available at: https://www.dejusticia.org/wp-content/uploads/2017/04/fi_name_recurso_665.pdf. (The resource was translated by Google Translate and was used solely for fact checking.)
- Mikateko Joyce Maluleke and Thuli Madonsela, Women and the Law in South Africa: Gender Equality Jurisprudence in Landmark Court Decisions, Department of Justice and Constitutional Development of the Republic of South Africa, (2009), available at: https://www.gov.za/sites/default/files/gcis_document/201409/2009womenlawcourt-decisions0.pdf
- Ministry of Family and Social Policies of the Republic of Türkiye, Women’s Empowerment Strategic Document and Action Plan 2018-2023, (2023), available at: http://www.sp.gov.tr/upload/xSPTemelBelge/files/RySPo+KADININ_GUCLENMESI_STRATEJI_BELGESI_VE_EYLEM_PLANI_2018-2023_.pdf
- Ministry of Labour and Social Security of the Republic of Türkiye, Çalışma Hayatı İstatistikleri 2015. Ministry of Labour and Social Security, (2016).
- Ministry of Labour and Social Security of the Republic of Türkiye, Çalışma Hayatı İstatistikleri 2020, Ministry of Labour and Social Security, (2021).
- Ministry of Trade of the Republic of Türkiye, “Bilateral Investment Treaties”, available at: https://www.trade.gov.tr/legislation/bilateral-investment-treaties
- Mondli Hlatshwayo, Research Report: COSATU’S Responses to Xenophobia, (2010), available at: https://www.atlanticphilanthropies.org/wp-content/uploads/2010/07/8_Cosatu_c.pdf

- Motoko Aizawa, and Salil Tripathi, Beyond Rana Plaza: Next steps for the global garment industry and Bangladeshi manufacturers, Business and Human Rights Journal 1(1), (2016).
- Msuthukazi Makiva, Isioma Ile and Omololu M. Fagbadebo, Evaluating transformation progress of historically disadvantaged South Africans: Programme perspective on the downstream petroleum industry, 7 AEJ 1 (2019).
- Munyaradzi Makoni, Power cuts and South Africa's health care, The Lancet 401(10386), (2023).
- Mustafa F. Özbilgin, et al., International transfer of policies and practices of gender equality in employment to and among Muslim majority countries, Gender, Work & Organization, 19(4), (2012).
- Naledi Refilwe Mashishi, The ANC Women's League is Dead, Africa is a Country, (2015), . available at: https://africasacountry.com/2015/12/the-anc-womens-league-is-dead/
- Natalia Flores Quiroz et al., Towards Understanding Fire Causes in Informal Settlements Based on Inhabitant Risk Perception, 4 Fire 39, (2021).
- Natalia Venegas, Colombian Truth Commission's Final Report, Geneva International Centre for Justice, (20 July 2022), available at: https://www.gicj.org/positions-opinons/gicj-positions-and-opinions/2810-colombian-truth-commission-s-final-report
- National Department of Health of South Africa, Statistics South Africa (Stats SA), South African Medical Research Council (SAMRC), and ICF, South Africa Demographic and Health Survey 2016, (2019), available at: https://dhsprogram.com/pubs/pdf/FR337/FR337.pdf
- Necla Akgökçe and Muazzez Pervan, "Günün Portresi: Dervişe Koçoğlu", Ekmek ve Gül, (15 June 2018), available at: https://ekmekvegul.net/sectiklerimiz/gunun-portresi-dervise-kocoglu
- Nelson Camilo Sanchez and Adriana Rudling, Reparation in Colombia: Where to?: Mapping the Colombian Landscape of Reparations for Victims of the Internal Armed Conflict, Queen's University Belfat Publications, (2019), available at:https://reparations.qub.ac.uk/assets/uploads/ColombiaReparationsPolicyReportFORAPPROVAL-SP-HR-NoCrops.pdf
- Nicky Touw and Jindan-Karena ('Nina') Mann, Relocalizing Justice: Addressing Colonial Legacies Through Business and Human Rights Cases in Global North Courtrooms, (Symposium: Colonization in, of and through Business & Human Rights, Tilburg University) (26 April 2023).
- Nkirote Laiboni, A Job at Any Cost: Experiences of African Women Migrant Domestic Workers in the Middle East, Global Alliance Against Traffic in Women, (2020).
- Nkosikhona Duma, "AMCU Says Sibanye-Stillwater Should Also Pay for Marikana Massacre Deaths", Eyewitness News, (10 August 2022), available at: https://mg.co.za/news/2022-06-03-marikana-victims-demand-an-apology-and-r1-billion-from-ramaphosa/
- Nkosinathi Gama and Lodene Willemse, A Descriptive overview of the education and
- Nneka Eke, Gender and the Political Economy of Oil in the Niger Delta: A Feminist Critique, (PhD Thesis, Syracuse University), (2021).

- Nneka Eke, Gender and the Political Economy of Oil in the Niger Delta: A Feminist Critique, (PhD Dissertation, Syracuse University), (2021).
- Norton Rose Fullbright, "Impacts of the amendments to the environmental impact assessment regime on Turkish infrastructure projects", (2022), available at: https://www.nortonrosefulbright.com/en/inside-turkey/blog/2022/09/impacts-of-the-amendments-to-the-environmental-impact-assessment-regime
- OECD Dutch National Contact Point, Final Statement NCP specific instance 4 Trade Unions (IUF, EFFAT-IUF, SEIU, UGT) vs APG Asset Management, (3 February 2022), available at: https://www.oecdguidelines.nl/documents/publication/2022/02/03/fs-4-trade-unions-vs-apg
- OECD Dutch National Contact Point, Final Statement NCP specific instance 4 Trade Unions (IUF, EFFAT-IUF, SEIU, UGT) vs APG Asset Management, (3 February 2022), available at: https://www.oecdguidelines.nl/documents/publication/2022/02/03/fs-4-trade-unions-vs-apg
- OECD German National Contact Point, Finanl Statement on ECCHR et al vs. TÜV Rheinland AG, (26 June 2018), available at: https://www.oecdwatch.org/complaint/ecchr-et-al-vs-tuv-rheinland-ag/
- OECD Norwegian Contact Point, "IUF, EFFAT-IUF, SEIU and UGT vs. NBIM", (9 March 2022), available at: https://www.responsiblebusiness.no/iuf-effat-iuf-seiu-and-ugt-vs-nbim/
- OECD Responsible Business Conduct Database, "Oil infrastructure project in Azerbaijan, Georgia and Turkey", (29 April 2003), available at:https://mneguidelines.oecd.org/database/instances/uk0002.htm
- OECD Responsible Business Conduct Database, "Swiss-Tibetan Friendship Association, Tibetan Youth Association in Europe, Tibetan Community of Switzerland and Liechtenstein and Tibetan Women's Association Switzerland & International Olympic Committee", available at: :http://mneguidelines.oecd.org/database/instances/ch0023.htm
- OECD Responsible Business Conduct Database, "Türkiye", available at: https://mneguidelines.oecd.org/database/?hf=10&b=0&r=%2Bf%2Fmne_hostcountry%2Fturkey&q=turkey
- OECD Turkish National Contact Point, Specific Instance "LSD v. Tosyalı", (27 August 2021), available at: https://www.sanayi.gov.tr/assets/pdf/anlasmalar/OECDInitialAssesmentLSDvsTosyaliENG.pdf
- OECD US National Contact Point, "Specific Instance between Divest Invest Protect, Indigenous Peoples Law and Policy Program, Women's Earth and Climate Action Network and Credit Suisse", available at: https://www.state.gov/specific-instance-between-divest-invest-protect-indigenous-peoples-law-and-policy-program-womens-earth-and-climate-action-network-and-credit-suisse/
- OECD US NCP, "Specific Instance between International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, and Allied Workers Associations (IUF), European Federation of Food, Agriculture and Tourism (EFFAT), Service Employees

International Union (SEIU), Unión General de Trabalhadores (UGT) and McDonald's Corporation", (14 March 2022): https://www.state.gov/specific-instance-between-international-union-of-food-agriculture-hotel-restaurant-catering-tobacco-and-allied-workers-associations-iuf-european-federation-of-food-agriculture-and-tourism-e/
- OECD Watch, "Colombian communities vs. Xstrata: BHP Billiton and forced evictions at the Colombian coal mine", available at: https://www.oecdwatch.org/complaint/colombian-communities-vs-xstrata/
- OECD, "Decile ratios of gross earnings: Gender wage gap", available at: http://stats.oecd.org/index.aspx?queryid=64160;
- OECD, "Gender Equality in Colombia : Access to Justice and Politics at the Local Level", (2020), available at: https://www.oecd-ilibrary.org/sites/99444453-en/index.html?itemId=/content/component/99444453-en#:~:text=Moreover%2C%20in%20comparison%20to%20many,lower%20than%20average%20female%20participation
- OECD, "OECD Family Database", available at: http://www.oecd.org/els/family/database.htm
- OECD, A long unwinding road: OECD Economic Outlook, (2023), available at: https://www.oecd.org/economic-outlook/june-2023/
- OECD, Gender Equality in Colombia: Access to Justice and Politics at the Local Level, (2020), OECD Publishing.
- OECD, Guide for National Contacts Points on the Initial Assessment of Specific Instances, (2019), available at: https://mneguidelines.oecd.org/Guide-for-National-Contact-Points-on-the-Initial-Assessment-of-Specific-Instances.pdf
- OECD, Ownership and Governance of State-Owned Enterprises: A Compendium of National Practices, (2021), available at: https://www.oecd.org/corporate/Ownership-and-Governance-of-State-Owned-Enterprises-A-Compendium-of-National-Practices-2021.pdf
- OEDAŞ, Stakeholder Participation Plan, (2018), available at: https://www.osmangaziedas.com.tr/CMSFiles/file/OEDAS_paydas-katilim-plani.pdf
- Office of the Chief Justice of South Africa, Annual Report 2021-2022, available at: https://www.judiciary.org.za/index.php/sajei-ar/annual-reports-sajei?download=10640:ocj-annual-report-2021-22
- OHCHR, "Annual thematic reports: Special Rapporteur on the rights of indigenous peoples", available at: https://www.ohchr.org/en/special-procedures/sr-indigenous-peoples/annual-thematic-reports
- OHCHR, "Human Rights Council Hears that It Is Crucial to Respect the Rights of Indigenous Peoples when Infrastructure, Development, and Natural Resource Extraction Projects in or near their Territories Are Undertaken", (27 September 2023) available at: https://www.ohchr.org/en/news/2023/09/human-rights-council-hears-it-crucial-respect-rights-indigenous-peoples-when
- OHCHR, Info Note: SLAPPs and FoAA Rights, available at: https://www.ohchr.org/Documents/Issues/FAssociation/InfoNoteSLAPPsFoAA.docx

- OHCHR, Women human rights defenders OHCHR and women's human rights and gender equality, available at: https://www.ohchr.org/en/women/women-human-rights-defenders
- OIG CEPAL, "Femicide or Feminicide", (2021), available at: https://oig.cepal.org/en/indicators/femicide-or-feminicide
- Oran Magee, Piercing the Corporate Veil? The Future of Transnational Civil Claims for Business-Related Human Rights Abuses under the Upcoming European Union Due Diligence Directive (Master's Thesis, University of Seville), (2021).
- Orhan Y. Mavioğlu and Bora Eruçman, "Turkey: Environmental Impact Assessment (EIA) In Turkish Environmental Laws", Mondaq, (25 June 2021), available at: https://www.mondaq.com/turkey/environmental-law/1084160/environmental-impact-assessment-eia-in-turkish-environmental-laws
- Osai Ojigho, Litigating gender discrimination cases before the ECOWAS Community Court of Justice and the African Court on Human and Peoples' Rights in J. Jarpa Dawuni (ed.), Gender, Judging and the Courts in Africa, Taylor & Francis, (2022).
- Oxfam, From Aspiration to Reality: Unpacking the Africa Mining Vision, (2017), available at: https://policy-practice.oxfam.org/resources/from-aspiration-to-reality-unpacking-the-africa-mining-vision-620208/
- Oxfam, Women Defenders of Agricultural, Territorial, And Environmental Rights In Colombia Risking Their Lives For Peace, (2019), available at: https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620872/bp-colombia-women-environmental-defenders-021019-en.pdf;jsessionid=24277269F3C6C2146E42DFFAA8B77A12?sequence=2
- Paige Kollhoff and Fikir Zelalem, Stronger Together: Converging Women's Cooperatives and Agroecology to Create Gender-Transformative Food Systems, IISD SDG Knowledge Hub, (1 December 2021), available at: https://sdg.iisd.org/commentary/generation-2030/stronger-together-converging-womens-cooperatives-and-agroecology-to-create-gender-transformative-food-systems/
- Paola Bonizzoni and Paolo Boccagni, Care (and) circulation revisited: a conceptual map of diversity in transnational parenting in Loretta Baldassar and Laura Merla, (eds.), Transnational families, migration and the circulation of care: Understanding mobility and absence in family life. Routledge, (2013).
- Patrick Bond and Greg Ruiters, Uneven development and scale politics in Southern Africa: what we learn from Neil Smith, 49 Antipode 171, (2017).
- Patrick Delaney, Legislating for equality in Colombia: Constitutional jurisprudence, Tutelas, and social reform, The Equal Rights Review 1, (2008).
- Patrick Radden Keefe, Reversal of Fortune, The New Yorker, (1 January 2012), available at: https://www.newyorker.com/magazine/2012/01/09/reversal-of-fortune-patrick-radden-keefe
- Paulina Madero Suarez, Sexual harassment in the workplace and the Mexican labour reform: an analysis under the International Labour Organization Convention concerning the elimination of violence and harassment in the world of work and the UN guiding principles on business and human rights, (Doctoral dissertation, University of Essex), (2019).

- Pax for Peace, “Peace, everyone’s business! Corporate accountability in transitional justice: lessons for Colombia”, (2017), available at: https://www.dejusticia.org/wp-content/uploads/2017/05/PAX_COL_PZ_BIZ_FINAL_WEB.pdf
- Pax for Peace, Free, Prior and Informed Consultation in Colombia: the case of the expansion of the Cerrejón project, (2012), available at: https://paxforpeace.nl/wp-content/uploads/sites/2/2020/11/free-prior-and-informed-consultation-colombia.pdf
- PAX for Peace, Lafarge in Syria shows importance of heightened human rights due diligence in conflict-affected areas, (2023), available at: https://paxforpeace.nl/news/lafarge-in-syria-shows-importance-of-heightened-human-rights-due-diligence-in-conflict-affected-areas/
- PAX Policy Brief,Business, Conflict and Human Rights Conflict & Due Diligence Legislation, available at: https://paxforpeace.nl/wp-content/uploads/sites/2/import/2022-06/PAX%20Policy%20Brief%20-%20Conflict%20&%20Due%20Diligence%20Legislation.pdf
- Penelope Canan & George W. Pring, Strategic Lawsuits against Public Participation, 35 Soc. Probl. 506, (1988).
- Penelope Simons and Melisa Handl, Relations of Ruling: A Feminist Critique of the United Nations Guiding Principles on Business and Human Rights and Violence against Women in the Context of Resource Extraction, 31 Canadian Journal of Women and the Law 121, (2019).
- Peter Shand, Scenes from the Colonial Catwalk: Cultural Appropriation, Intellectual Property Rights, and Fashion, 3 Cultural Studies LR47, (2002).
- Philip M. Rosenzweig and Nohria Nitin, Influences on human resource management practices in multinational corporations, Journal of International Business Studies 25, (1994).
- Phillip I Blumberg, The law of corporate groups: Procedural problems in the law of parent and subsidiary corporations, Little Brown, (1983).
- Precious Baison, Cross-border care practices: Experiences of Zimbabwean migrant women engaged in care work in households in South Africa, (Doctoral Dissertation, University of Pretoria), (2021).
- Presley Mills, Fashioning decolonization: Telling stories of Canadian Indigenous women through fashion hacking, (Dissertation, Toronto Metropolitan University), (2018).
- Pumla Gobodo-Madikizela, Women's contributions to South Africa's truth and reconciliation commission", Women Waging Peace Policy Commission, (2005), available at: https://www.inclusivesecurity.org/wp-content/uploads/2012/08/11_women_s_contributions_to_south_africa_s_truth_and_reconcilliation_commission.pdf
- Rashedur Chowdhury, The Rana Plaza disaster and the complicit behavior of elite NGOs, Organization 24(6), (2017).
- Rebecca Davis, “How rape became South Africa's enduring nightmare”, Guardian, (29 September 2015), available at: https://www.theguardian.com/world/2015/sep/29/south-africa-rape-nightmare-crime-stats

- Rebecca Prentice, Just Compensation?: The Price of Death and Injury after the Rana Plaza Garment Factory Collapse, 39 Res. Econ. Anthropol. 1, (2019), available at: http://sro.sussex.ac.uk/id/eprint/80053/3/Prentice%20Just%20Compensation%20accepted%20version.pdf
- REDESCA, Business and Human Rights: Inter-American Standards (2020), available at: https://www.oas.org/es/cidh/informes/pdfs/EmpresasDDHH.pdf
- Republic of Turkey Ministry of Justice, "Legal Aid", available at: https://magdurbilgi.adalet.gov.tr/282/Adli-Yardim#:~:text=Adli%20yard%C4%B1m%20sistemi%20ceza%20davalar%C4%B1,a%C3%A7%C4%B1lm%C4%B1%C5%9Fsa%20adli%20yard%C4%B1m%20talep%20edilebilir;
- Resisting Eurocentric Ways of Knowing in Njoki Wane et al. (eds.), Ruptures: Anti-colonial & Anti-racist Feminist Theorizing, Sense Publishers, (2013).
- Rights CoLab, "Symplifica Case Study", available at: https://rightscolab.org/case_study/symplifica/
- Rinie Steinmann, The core meaning of human dignity, Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsbladi 19(1), (2016).
- Rob Turell, Diamonds and migrant labour in South Africa, 1869-1910, 36 History Today 45, (1986).
- Roger W. Reinsch and Sonia Goltz, You Can't Get There From Here: Implications of the Wal-Mart v. Dukes Decision for Addressing Second-Generation Discrimination, 9 Northwestern Journal of Law and Social Policy 265, (2014).
- Romy Listo, Gender myths in energy poverty literature: A critical discourse analysis, 38 ERSS 9, (2018).
- Rukiye Mehtap Özlü, The Comparison of the Public Participation in the Environmental Impact Assessment Process Implemented in France and Turkey, 5 Alanya Akad. Bakış 727, (2021).
- Ruth Milkman and Stephanie Luce, Labor unions and the Great Recession, 3 RSF 145, (2017).
- Susan Foster, The implications of HIV / AIDS for South African mines, 7 AIDS Analysis Africa 5 (1996).
- Sabancı University Corporate Governance Forum, 10th Annual Women On Board 2022 Türkiye, (2022), available at: https://iwdturkey.sabanciuniv.edu/sites/iwdturkey.sabanciuniv.edu/files/2023-03/report-2022-4.pdf
- SAHRC, Annual Report 2015/16, (2015), available at: www.sahrc.org.za/home/21/files/SAHRC%20 Annual%20Report%202016%20full%20report%20low%20res%20for%20web.pdf.
- SAHRC, Business and Human Rights Dialogue Report, (2018), available at: https://www.sahrc.org.za/home/21/files/Business%20and%20Human%20Rights%20Dialogue%20Report.pdf
- SAHRC, Response to Call for Input: UNGPs 10+ Next decade of business and human rights action, (2020), available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPsBHRnext10/inputs/nhris/south-african-commission.pdf

- Salimah Valiani, The Africa Mining Vision: A Long Overdue Ecofeminist Critique, Womin, (2015), available at: https://womin.africa/archive/country-studies/; https://surface.syr.edu/cgi/viewcontent.cgi?article=2438&context=etd .
- Sana Tariqi, Historicizing Fiction or Fictionalizing History: A Rediscovery of Colombian History via One Hundred Years of Solitude, 34 PENNSYLVANİA JUNİOR ACADEMY OF SCİENCE, (2021).
- Sandra Cossart et al., Multinational Lafarge Facing Unprecedented Charges for International Crimes: Insights Into the French Court Decisions, Opinio Juris, (2022) available at:http://opiniojuris.org/2022/11/15/multinational-lafarge-facing-unprecedented-charges-for-international-crimes-insights-into-the-french-court-decisions/
- Sandra Fredman and Beth Goldblatt, Gender Equality and Human Rights, UN Women, (2015), available at: http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights;
- Sarah Bott et al., Intimate partner violence in the Americas: A systematic review and reanalysis of national prevalence estimates, Pan American Journal of Public Health 43 (2019).
- Sarah Bradshaw et al., Challenges and changes in gendered poverty: The feminization, de-feminization, and re-feminization of poverty in Latin America, 25 Fem. Econ. 119, (2019).
- Saranel Benjamin, The Feminization of Poverty in Post-Apartheid South Africa: A Story Told by the Women of Bayview, Chatsworth, 23 Journal of Developing Societies 175, (2007).
- Seçkin Sağlam, "Gıda İş: Dardanel işçisi balık kadar değerinin olmadığını düşünüyor", Duvar, (16 November 2021), available at: https://www.gazeteduvar.com.tr/amp/gida-is-dardanel-iscisi-balik-kadar-degerinin-olmadigini-dusunuyor-haber-1541967
- Selin Girit, "Turkey: Zara shoppers find labour complaints inside clothes", BBC News, (15 November 2017), available at: https://www.bbc.com/news/world-europe-41981509
- Şemsa Özar, Türkiye'de 1980 Sonrası Dönemde Kadın Emeği ve İstihdamı Politikaları: Kadın Hareketi, Sendikalar, Devlet ve İşveren Kuruluşları in Ahmet Makal and Gülay Toksöz (eds.). Geçmişten Günümüze Türkiye'de Kadın Emeği, İmge, (2015).
- Ser & Berker, Dardanel Önentaş Gıda Sanayi A.Ş. 2020 Yılı Faaliyet Raporu, (2021), available at: https://www.dardanel.com.tr/_FILES/Contents/1069/dardanel_2020_yili_faaliyet_raporu.pdf;
- Ser & Berker, Dardanel Önentaş Gıda Sanayi A.Ş., Dardanel Önentaş Gıda Sanayi A.Ş. 2022 Yılı Faaliyet Raporu, (2023), available at: https://www.dardanel.com.tr/_FILES/Contents/1361/dardanel_2022_yili_faaliyet_raporu.pdf .
- Sessiz Kalma, "Halime Şaman", (2023), available at: https://www.sessizkalma.org/en/defender/halime-saman
- SFB, "Aesthetics of Resistance: The Ways of Spatializing Women's Ecological Struggle in Turkey", (25 November 2022), available at:

https://sfb1265.de/en/blog/aesthetics-of-resistance-the-ways-of-spatializing-womens-ecological-struggle-in-turkey
- Shannon Morreira, Seeking solidarity: Zimbabwean undocumented migrants in Cape Town, 2007, 36 Journal of South African Studies 433, (2010).
- Sheila Meintjes and Beth Goldblatt, Gender and the truth and reconciliation commission: A Submission to the Truth and Reconciliation Commission, University of Witwatersrand, (1996).
- Sheila Meintjes and Mary Simons, Women and Democracy, Women in Democracy, Gender and Democracy, Electoral Institute of Southern Africa (EISA), (2003).
- Shihanah Almutairi, Michael Heller, and Dorothy Yen, Reclaiming the heterogeneity of the Arab states, Cross Cultural & Strategic Management 28(1), (2020).
- Shireen Hassim, Women's organizations and democracy in South Africa: Contesting Authority. University of Wisconsin Press, (2006).
- South African Truth and Reconciliation Commission, Truth and Reconciliation Commission Report, (1998), available at: https://www.justice.gov.za/trc/report/finalreport/Volume5.pdf
- South African Truth and Reconciliation Commission, Truth and Reconciliation Commission Report Vol. 4 Chapter 2: Findings arising out of business sector hearings, (1998), available at: http://www.justice.gov. za/trc/report/
- Statista Research Department, Number of migrants from Venezuela residing in Colombia in 2022(2023), available at: https://www.statista.com/statistics/819401/entry-points-migration-flow-venezuela-colombia/
- Statistics South Africa (Stats SA), Quarterly Labour Force Survey Quarter 2, (2021), available at: http://www.statssa.gov.za/publications/P0211/P02112ndQuarter2021.pdf
- Steven Donziger, Laura Garr and Aaron Marr Page, Rainforest Chernobyl Revisited: The Clash of Human Rights and BIT Investor Claims: Chevron's Abusive Litigation in Ecuador's Amazon, Human Rights Brief 17(2), (2010), available at: https://biblioteca.corteidh.or.cr/tablas/r24170.pdf
- Sue Reisinger, "3 US Execs Indicted in Chiquita Terrorist Funding Probe in Colombia", Daily Business Review Legal News, (10 September 2018), available at: https://www.law.com/corpcounsel/2018/09/10/three-u-s-execs-indicted-in-chiquita-terrorist-funding-probe-in-colombia/
- Supreme Court of the Republic of Türkiye, "Presidents of Chambers", available at: https://www.yargitay.gov.tr/kategori/80/daire-baskanlari
- Supriya RoyChowdhury, Women Workers in Bangalore's Garment Export Companies. In City of Shadows: Slums and Informal Work in Bangalore, Cambridge University Press, (2021).
- Suzanne Franzway, Sexual politics and greedy institutions, Pluto Press Australia, (2001).
- Sylvia Chant and Nikki Craske, Gender in Latin America, Rutgers University Press, (2003).
- Tamar Frankel and Tomasz Braun, Law and Culture, Boston University Law Review, 101, (2021).

- Terri Maggott et al., Energy Racism Report: The electricity crisis and the working class in South Africa, e University of Johannesburg Centre for Sociological Research and Practice, (2022), available at: https://www.uj.ac.za/wp-content/uploads/2022/04/energy-racism-csrp-web.pdf
- Terry Gibbs, Voices from the Colombian left: Women and the struggle for social transformation, Labour, Capital and Society/Travail, capital et société, (2010).
- Thamasanqa Magubane, "He deserves to rot in jail and never see the light", Citizen, (27 July 2012), available at: https://www.citizen.co.za/witness/archive/he-deserves-to-rot-in-jail-and-never-see-the-light-20150430/
- The Guardian: Today In Focus South Africa (podcast), "The murder of Fikile: the woman who took on a coal mine", (17 September 2021), available at: https://www.theguardian.com/news/audio/2021/sep/17/the-of-fikile-the-woman-who-took-on-a-coal-mine
- The Office of the High Commissioner for Peace of Colombia, Colombian Peace Agreement, (2022), available at: https://www.ila-americanbranch.org/wp-content/uploads/2022/10/The-Columbian-Peace-Agreeement.pdf
- The United Nations Office on Drugs and Crime, Global Study on Homicide, (2019), available at: https://www.unodc.org/unodc/en/data-and-analysis/global-study-on-homicide.html
- TİHEK, "'İş Dünyası ve İnsan Hakları: Türkiye'de Sorumlu İşletme Davranışlarının Desteklenmesi Projesi' kapsamında TİHEK Farkındalık Artırma ve Eğitim Toplantısı düzenlendi", (22 December 2022), available at: https://www.tihek.gov.tr/is-dunyasi-ve-insan-haklari-turkiyede-sorumlu-isletme-davranislarinin-desteklenmesi-projesi-kapsaminda-tihek-farkindalik-artirma-ve-egitim-toplantisi-duzenlendi
- Tshipi éNtle Mining (Pty) Ltd, Social And Labour Plan (SLP) 2019 – 2023, available at: https://www.tshipi.co.za/slpdocuments/tshipi_slp_english_version.pdf
- Tsoaledi Daniel Thobejane and Sibongile Khoza, Becoming a Domestic Worker: The Case of Mpumalanga Province, South Africa, 12 International Journal of Sustainable Development 27, (2019).
- Tuba Şahin, "Turkey can benefit most from supply chain shift", Anadolu Ajansı, (2020) available at: https://www.aa.com.tr/en/economy/turkey-can-benefit-most-from-supply-chain-shift/1880204
- Eve Tuck and K. Wayne Yang, Decolonization is not a metaphor, Tabula Rasa 38 (2021).
- Turkish Grand National Assembly, "Representation of Seats the 28th Period of Turkish Grand National Assembly", available at: https://www.tbmm.gov.tr/sandalyedagilimi
- Turkish Grand National Assembly, Written Question submitted by MP Züleyha Gülüm, 7/54689, (2021), available at: https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/f72877c2-1203-037b-e050-007f01005610
- Turkish Union of Bar Associations Center for Human Rights, Soma Mining Disaster Report, (2014), available at: https://www.barobirlik.org.tr/dosyalar/duyurular/20141112_somamadenfaciasipdf.pdf

- Türkiye Women's Associations Federation, "Antalya Büyükşehir'den Çalışma Yaşamında Şiddeti ve Tacizi Önlemeye Yönelik İmza", (14 January 2023), available at: https://www.tkdf.org.tr/bizden-haberler/antalya-buyuksehirden-calisma-yasaminda-siddeti-ve-tacizi-onlemeye-yonelik-imza
- TÜSİAD, "İstanbul Sözleşmesi Yaşatır", (2020), available at: https://tusiad.org/tr/basin-bultenleri/item/10610-istanbul-sozlesmesi-yasatir
- Ummuhan Gökovalı and Aysun Danışman, Feminization of poverty: Does it really exist in Turkey?, 42 New Perspect. Turk.179, (2010).
- Ummuhan Gökovalı, Everyone's own poverty: Gendering poverty alleviation policies in Turkey, 41 Women's Studies International Forum 65, (2013).
- UMSIZI, "Social and Labour Plans", available at: https://umsizi.co.za/slp-a-z-everything-you-need-to-know-about-social-and-labour-plans/
- UN Academic Impact, "University Combats Xenophobia in South Africa", available at: https://www.un.org/en/academic-impact/university-combats-xenophobia-south-africa
- UN General Assembly Meetings Coverage, "Preventive Measures, Accessible Remedies Required to Address Myriad Human Rights Violations, Experts Tell Third Committee During Interactive Dialogues", GA/SHC/4206 (17 October 2017), available at: https://press.un.org/en/2017/gashc4206.doc.htm
- UN General Assembly, Resolution on the Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders, A/RES/68/181, (30 January 2014), available at: https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/RES/68/181&Lang=E
- UN Women Data Hub, "Country Fact Sheet: Colombia", available at: https://data.unwomen.org/country/colombia
- UN Women Data Hub, "Country Fact Sheet: South Africa", available at: https://data.unwomen.org/country/south-africa
- UN Women Global Database on Violence Against Women, "Türkiye", available at: https://evaw-global-database.unwomen.org/en/countries/asia/turkiye#5
- UN Women, "What does gender equality look like today?", (2021), available at: https://www.unwomen.org/en/news/stories/2021/10/feature-what-does-gender-equality-look-like-today
- UN Women, "Women In the Changing World of Work: Facts You Should Know", (2017), available at: https://interactive.unwomen.org/multimedia/infographic/changingworldofwork/en/index.html
- UN Women, Equal pay for work of equal value, available at: https://www.unwomen.org/en/news/in-focus/csw61/equal-pay#:~:text=Worldwide%2C%20women%20only%20make%2077,women%20are%20retiring%20into%20poverty.
- UN Women, Gender Equality and Women's Empowerment: Constitutional Jurisprudence, (2017), available

at:https://www.idea.int/sites/default/files/publications/gender-equality-and-womens-empowerment-constitutional-jurisprudence.pdf
- UN Women, Intersectionality Resource Guide And Toolkit An Intersectional Approach to Leave No One Behind, (2022), available at: https://www.unwomen.org/sites/default/files/2022-01/Intersectionality-resource-guide-and-toolkit-en.pdf
- UN Women, Respect: Preventing Violence Against Women, Strategy Summary, (2020), available at: https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/RESPECT-implementation-guide-Strategy-summary-Transformed-attitudes-beliefs-and-norms-en.pdf
- UN Working Group on Business and Human Rights, Summary of the UN Working Group's Report to the UN Human Rights Council: "Leading by example: The State, State-owned enterprises, and Human Rights", (2016), available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement
- UNCTAD, "Investment Policy Hub - South Africa Bilateral Investment Treaties", available at: https://investmentpolicy.unctad.org/international-investment-agreements/countries/195/south-africa
- UNDP, A Baseline Assessment on Business and Human Rights in Africa: From the First Decade to the Next, (2022), available at: https://www.undp.org/africa/publications/baseline-assessment-business-and-human-rights-africa-first-decade-next
- UNDP, Gender Inequality Index, (2021), available at: https://hdr.undp.org/data-center/documentation-and-downloads
- UNHCR and University of Witwatersrand African Centre for Migration and Society, Protection From Xenophobia: An Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programmes, (2015): available at: https://www.unhcr.org/sites/default/files/legacy-pdf/55cb153f9.pdf
- UNHRC, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/RES/26/9, (2014).
- UNHRC, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Rule of Terror: Living under ISIS in Syria, A/HRC/27/CRP3, (2014).
- UNHRC, Report of the Special Rapporteur on violence against women, its causes and consequences, (23 April 2010), A/HRC/14/22, available at: https://www.refworld.org/docid/4c0cb3812.html
- UNHRC, Statement on behalf of a Group of Countries at the 24rd Session of the Human Rights Council, (2013), available at: https://media.business-humanrights.org/media/documents/files/media/documents/statement-unhrc-legally-binding.pdf
- United Nations World Tourism Organization, "International Tourism Swiftly Overcoming Pandemic Downturn", (2023), available at: https://www.unwto.org/taxonomy/term/347

- University of Pretoria Centre for Human Rights, Shadow National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks, (2016), available at: www.chr.up.ac.za/images/centrenews/2016/ files/Shadow-SA-NBA-Final.pdf.
- UNSDCF, Turkey Draft Results Framework (2021-2025), available at: https://www.undp.org/sites/g/files/zskgke326/files/undp/library/corporate/Executive%20Board/2020/Second-regular-session/DPDCPTUR4_UNSDCF_Draft_Result_Matrix_26052020.pdf
- Valentina Montoya-Robledo, Laura Iguavita and Segundo López, Breathing in and out: Domestic workers high exposure to air pollution in Bogotá's public transportation system, Environment and Planning C Politics Space, (2022).
- Vivence Kalitanyi and Kobus Visser, African immigrants in South Africa: Job takers or job
- Vusilizwe Thebe, Two Steps Forward, One Step Back": Zimbabwean Migration and South Africa's Regularising Programme (the ZDP), Journal of International Migration and Integration 18(2), (2017).
- We Will End Femicides Platform, 2020 Femicides Report, (2021), available at: https://kadincinayetlerinidurduracagiz.net/veriler/2949/2020-report-of-we-will-end-femicide-platform
- WEF, Global Gender Gap Report, (2022), available at: https://evaw-global-database.unwomen.org/en/countries/asia/turkiye#5
- Wendy Jill Annecke, Women and energy in South Africa, 4 Energy Sustain Dev 44, (2000).
- Willy SJ Moka-Mubelo, Towards a contextual understanding of human rights, Ethics & Global Politics 12(4), (2019).
- Wits University Centre for Applied Legal Studies and Raith Foundation, Community Engagement Policy, (2014), available at: https://www.wits.ac.za/media/wits-university/faculties-and-schools/ commerce-law-and-management/research-entities/cals/documents/CALS%20Community%20Engagement%20Policy.pdf;
- Wits University Centre for Applied Legal Studies, Open Society Foundation for South Africa, and Raith Foundations, Social and Labour Plan Mining Community Toolkit, available at: https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/SLP%20Community%20Toolkit%202%20March%202017.pdf
- Women In Journalism, "Turkey: Defamation Lawsuit Filed Against Journalist Canan Kaya", (2022), available at: https://www.womeninjournalism.org/threats-all/turkey-defamation-lawsuit-filed-against-journalist-canan-kaya
- Women's Major Group, "Feminist Advocacy Ends UN Women's Partnership with BlackRock, Inc", (2022), available at: https://womensmajorgroup.org/feminists-demand-end-of-un-womens-partnership-with-blackrock-inc/;
- Womin, "Developmental Alternatives", available at: https://womin.africa/development-alternatives/

- World Bank, “Colombia Gender Landscape”, available at: https://documents1.worldbank.org/curated/en/099915006302225456/pdf/IDU0a852569b006d10423f09780038ba78bfc5b8.pdf
- World Bank, “Colombia Income Group: Upper middle income Region: Latin America & Caribbean Gender Landscape Brief”, available at: https://genderdata.worldbank.org/countries/colombia
- World Bank, “Colombia Income Group: Upper middle income Region: Latin America & Caribbean Gender Landscape Brief”, available at: https://genderdata.worldbank.org/countries/colombia
- World Bank, “Female labor force participation”, available at: https://genderdata.worldbank.org/data-stories/flfp-data-story/
- World Bank, “South Africa Gender Landscape”, available at: https://documents1.worldbank.org/curated/en/099101507042221723/pdf/IDU0a8cd1b01053fb0464509e000a3822d6f9865.pdf
- World Bank, “South Africa Income Group: Upper middle income Region: Sub-Saharan Africa Gender Landscape Brief”, available at: https://genderdata.worldbank.org/countries/south-africa
- World Bank, “Türkiye Gender Landscape”, available at: http://documents.worldbank.org/curated/en/099012307042210882/IDU0f11742f80896f04375097ed0ad0fe2ade52a
- World Bank, “Turkiye Income Group: Upper middle income Region: Europe & Central Asia Gender Landscape Brief”, available at: https://genderdata.worldbank.org/countries/turkiye
- World Bank, “Gender Equality in Colombia: Country Gender Assessment”, available at: https://documents1.worldbank.org/curated/en/665381560750095549/pdf/Gender-Equality-in-Colombia-Country-Gender-Assessment.pdf.
- World Bank, “Inequality In Southern Africa: An Assessment of the Southern African Customs Union”, (2022), available at: https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf
- World Bank, “Women, Business and the Law”, (2023), available at: https://openknowledge.worldbank.org/server/api/core/bitstreams/b60c615b-09e7-46e4-84c1-bd5f4ab88903/content
- Worldbank, “Firms with female top manager (% of firms) - Colombia, Turkiye, South Africa”, avaliable at: https://data.worldbank.org/indicator/IC.FRM.FEMM.ZS?locations=CO-TR-ZA
- Worldbank, “Understanding Poverty”, available at: https://www.worldbank.org/en/understanding-poverty
- Yachika Reddy and Peta Wolpe, Pathways to Urban Transformation in South Africa: The Case of the City of Johannesburg and Polokwane, Data First UCT, (2018), available at: https://www.datafirst.uct.ac.za/dataportal/index.php/citations/6621
- Yetunde Adenike Aiyedun, Fair trial and access to justice in South Africa how traditional tribunals cater to the needs of rural female litigants., (PhD Dissertation, University of Cape Town), (2013), available at:

.https://open.uct.ac.za/bitstream/handle/11427/4677/thesis_law_2013_aiyedun_yetunde_adenike.pdf?sequence=1&isAllowed=y

- Youtube (video), "Banana Land: Blood, Bullets & Poison Documentary", (2018), available at: https://www.youtube.com/watch?v=MoRmtQht8-E&ab_channel=WatchMeGrow
- Youtube (video), "Betty Dukes Speaking on Gender Panel", (2017), available at: https://www.youtube.com/watch?v=QMI9lVn-Qsg&ab_channel=RooseveltHousePublicPolicyInstituteatHunterCollege
- Youtube (video), "Dardanel 8 Mart Kadınlar Günü", (2020), available at: https://www.youtube.com/watch?v=s1UvOr64VMw
- Youtube (video), "Umut Her Zaman Var: İkizköy'ün Hikayesi", available at: https://www.youtube.com/watch?v=KNGD1U8ayK4&t=120s&ab_channel=350T%C3%BCrkiye
- Youtube (video), "Under the Blacklight: Narrating the Nightmare and (Re)Imagining the Possible", available at: https://www.youtube.com/watch?v=E0ppfjbESV4&t=148s&ab_channel=AfricanAmericanPolicyForum

Chapter 5

- Global Network of Women Peacebuilders, Government of Ireland and UN Women, Building Peace from the Grassroots: Learning from Women Peacebuilders to Advance the WPS Agenda, (2020), available at: https://www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/Building-peace-from-the-grassroots-Oct-2020.pdf

Appendix A
Interview Participants

Interviewee Name/ Affiliation	Date / Location	In-Person	Online/Phone Call/ Written Correspondence	Türkiye	Colombia	South Africa	International/ Independent	Represented stakeholder / expertise
Anonymous / Los Andes University	8 February 2023	x			x			Academia, Judiciary
Anonymous / Los Andes University	8 February 2023	x			x			Academia
Anonymous / UN Global Compact Colombia	9 February 2023	x			x			UN Entities, Business
Anonymous / Pavimentos Colombia SAS	10 February 2023	x			x			Business
Anonymous / BHRRC	10 February 2023	x			x			Activists, NGO, Advocacy
Anonymous / BHRRC	10 February 2023	x			x			Activist, NGOs, Lawyer
Anonymous / Los Andes University and Universidad del Rosario	15 February 2023	x			x			Labour lawyer, Academia
Anonymous / La Casa de la Mujer	14 February 2023		x		x			Lawyer, NGO, Feminist activist
Anonymous / ILO Colombia	13 February 2023		x		x			UN Entitites, Labour expert
Anonymous / University of Los Andes	13 February 2023	x			x			Academia, Labour expert
Anonymous / University of Los Andes	10 February 2023	x			x			Academia, Gender expert
Anonymous/ Former textile worker and trade unionist	12 Febraury 2023	x			x			Worker/trade unionist/feminist activist
Anonymous / Fundacion Buena Semilla	12 February 2023	x			x			NGO, Lawyer, Feminist activist, Faith group representative
Anonymous / Delegate for Women's Rights and Gender Issues, Ombudsperson's Office	16 March 2023		x		x			State Entity, gender expert
Anonymous / UN Women Colombia	15 February 2023	x			x			UN Entities, gender expert
Anonymous / Dejusticia, Los	13 February 2023	x			x			Academia, lawyer, strategic litigator, NGO

Andes University								
Anonymous / Presidential Council of Human Rights	14 February 2023		x		x			State entity / gender advisor
Anonymous/ Los Andes University	15 February 2023	x			x			Lawyer, academia
Anonymous / Red Fam Colombia	13 Febraury 2023	x			x			Feminist activist
Anonymous / University of Los Andes	13 February 2023	x			x			Academia, feminist activists
Anonymous / Colombian Constitutional Court	16 February 2023		x		x			Judiciary, Lawyer, Academia, State entities
Anonymous / University of Cape Town Law Clinic Director	23 February 2023	x				x		Lawyer, Strategic Litigator
Anonymous / GIWUSA	27 February 2023	x				x		Trade union, feminist activist
Anonymous / University of Wits Centre for Applied Legal Studies	24 February 2023		x			x		Lawyer, Academia, BHR expert
Anonymous / Saartje Baartman Centre for Women and Children	24 February 2023	x				x		NGO, Feminist activist, lawyer
Anonymous / The International Labour Research and Information Group (ILRIG)	27 February 2023		x			x		Labour expert, trade union
Anonymous / South African Domestic Workers' Union	28 February 2023	x				x		Trade unionist, worker, feminist activist
Anonymous / South African Commission for Gender Equality	26 February 2023	x				x		State organizations, gender expert
Anonymous / Women's Legal Centre	27 February 2023		x			x		Strategic litigator
Anonymous / University of Cape Town	20 February 2023	x				x		Academia, Lawyer
Anonymous / Labour Research Service	28 February 2023		x			x		Strategic litigator, gender and labour expert
Anonymous / Mineral Law in Africa Research Centre, UCT	23 February 2023	x				x		Academia, lawyer, extractive business expert

Anonymous / UCT Law School	23 February 2023	x				x		Academia, lawyer, violence against women expert
Anonymous / UCT Law School	28 February 2023	x				x		Lawyer, Academia, gender expert
Anonymous / UCT Law School	24 February 2023	x				x		Academia, labour lawyer
Anonymous / African Gender Institute	23 february 2023	x				x		Gender expert, academia, feminist activist, academia
Anonymous / Refugee Rights Unit	21 February 2023	x				x		Academia, lawyer, strategic litigator
Anonymous / UCT	23 February 2023	x				x		Academia, feminist activist
Anonymous / Minerva Business and Human Rights Association	20 May 2023	x		x				Lawyer, BHR expert, academia
Anonymous / Truth Justice Memory Center	8 September 2023		x	x				Lawyer, BHR expert, academia, feminist activist
Anonymous / Minerva Business and Human Rights Association	8 May 2023		x	x				BHR expert, academia, lawyer
Anonymous / Business and Human Rights Resource Centre	13 April 2022		x	x				BHR expert, NGO, activist
Anonymous/ Expert from Ministry of Labour	11 September 2023		x	x				State representative
Anonymous/ Expert from TİHEK	11 September 2023		X	X				State representative
Anonymous / UN Women Türkiye	15 August 2022	x		x				UN Entities
Anonymous / UNDP Türkiye	8 September 2023	x		x				UN Entities
Anonymous / Kadın İşçi, Petrol-İş	13 April 2022		x	x				Feminist activist, trade unionist
Anonymous / Former textile worker at Bravo Tekstil	7 September 2023	x		x				Worker, domestic worker
Anonymous / Boyner Holding, UN Global Compact Türkiye	15 April 2023		x	x				Business sector / UN Entities / ESG expert & director
Anonymous / Textile supplier	20 April 2023	x		x				Business sector
Anonymous / Turkey Impact Council	7 March 2022	x		x				Business sector, ESG expert

Anonymous / Ministry of Family and Social and Social Services	2 April 2022		x	x				State entities
Anonymous / Sabancı Foundation	30 June 2023	x		x				Civil society
Anonymous / UN Women HQ	9 December 2022		x				x	UN Entities
Anonymous / University of Warsaw	11 January 2023	x					x	Academia, labour lawyer
Anonymous / Polish Institute for Human Rights and Business	14 January 2023		x				x	BHR expert, advocate
Anonymous / Niezależny Samorządny Związek Zawodowy (Solidarność)	13 January 2023	x					x	Trade unionist, feminist activist, lawyer
Anonymous / ODIHR	12 January 2023	X					X	International Organizations