Gender Impact Analysis of Irresponsible Corporate Behaviour in Regional Trade and Value Chains

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Research report for the African Women's Development and Communication Network (FEMNET)

June, 2023

FEMNET
The African Women's Development and Communication Network

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Acknowledgements

The African Women's Development and Communication Network (FEMNET) acknowledges and is grateful for the contribution and support of the following individuals and teams towards the compilation and production of the Gender Impact Analysis of Irresponsible Corporate Behaviour in Regional Trade and Value Chains.

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1 Introduction: Setting the Context

International trade has been said to carry immense economic growth opportunities through employment, increased access to income and purchasing power. International trade can be a useful tool to foster economic growth, and job creation as producers begin to gain from economies of scale, and specialisation, and consumers can access goods at better prices due to competition and market self-correction. International trade can enhance efficiency and support a transition from the production of raw materials to the production of semi-processed and finished goods through industrialisation and the use of related technologies, leading to improved quality of both goods and services for purposes of trade as business adjust in the pursuit of and as a result of comparative advantage, as framed by David Ricardo. International trade can also facilitate or support regional integration, and through cross-border value chains bring smaller actors onboard to participate in the global economy. However, trade has historically been regulated as though it were gender-neutral, yet we know now that trade affects and includes women differently from men.

In recent years, evidence suggests that international trade can encourage economic participation of vulnerable groups, including women, by bringing them into the paid labour market, and increasing access to goods (thus promoting food security. Although this is contentious in relation to culturally appropriate food, and expulsion of women from their traditional role as custodians of seeds and grains), as market competition pushes prices down, it can improve livelihoods and reduce inequalities. It can also be argued that international trade can assist in increasing female labour participation, thus facilitating women's agency, and thereby promoting the realisation of socio-economic rights by women and by extension, realisation of socio-economic rights by society as a whole due to the reproductive role women play in the broader society. However, over time the challenge has been that simply having businesses engaging in trade has not translated into the realisation of these gains. International or regional trade does not automatically create these benefits, especially in an environment where corporations are not adequately regulated. There must of necessity be a level of regulation to ensure that the stronger actors do not abuse their power or dominance in relation to the weaker actors, and thus create balance.

Unfortunately, international trade inherently creates winners and losers within countries, and across countries.[1] Trade tends to benefit those countries with already well established manufacturing and export industries, and this can over time force smaller and less competitive businesses to shut down. This can have marked impacts on some countries. For example where there are underdeveloped sectors- so called 'infant industries', which may fail to withstand the pressure of larger, foreign or transnational firms once markets are opened, and get pushed out of business. Moreover, there can also be disproportionate impacts specifically on women. When trade policy is export oriented and in its implementation the emphasis is placed on women-dominated sectors, (or conversely women-scarce sectors), trade can become a tool for advancing one sector and disadvantaging another, and for further disadvantaging marginalised and vulnerable groups such as women, hence amplifying the various intersections of inequality that women experience. Weaker economies, despite trade offs, and longer periods of compliance, may struggle to fully develop some sectors if markets are liberalised too early, hence the country context is as important as the regional context, if not more. In recent years it has also become clear that corporate misconduct can have adverse impacts on human rights for all, and increasingly attention is being paid to corporations to avoid, reduce and mitigate these adverse impacts through the duty of corporations to respect human rights, and the duty of

1 Michael Gasiorek, Julia Magntorn Garrett and Ilona Serwicka 'Winners and losers from International Trade: What do we know and what are the implications for policy?' (2019) Briefing Paper 33 available on https://blogs.sussex.ac.uk/uktpo/publications/winners-and-losers-from-international-trade-what-do-we-know-and-what-are-the-implications-for-policy/ (accessed 09 June 2023).

states, to respect, protect, promote and fulfil human rights, including through the implementation of measures such as human rights due diligence.

Moreover, globalisation and the liberalisation of trade, investment and finance, have together, facilitate the production, assembly and distribution of goods at different geographical locations, across borders, and although this has been done for centuries, the implications of this and how the various components all come together in creating a final product for a consumer across borders is under the spotlight now more than ever. The profit motive continues to be the primary objective of corporations, and it is clear that trade policy, and trade agreements tend to be historically framed in supposedly 'gender-neutral' language, focusing primarily on liberalisation, and thereby failing to take marginalised stakeholders at various stages of the value chain, such as women into account.

Global value chains are defined as 'a series of stages involved in developing a product or service that is sold to consumers, with each stage adding value, and with at least two stages being produced in different countries'.[2] Globalisation has influenced trade, industrialisation and labour markets through the creation of value chains that span across borders. Global value chains may include a wide range of actors, including smallholder farmers, small-scale producers, factory workers, miners, manufacturers, retailers and wholesalers, across the spectrum of high and low end of production, until the good reaches its final state. Thus, there is often a long chain in the production of a single item. These chains in which value is added by different actors are what is referred to as value chains, and they can be global, regional, or domestic, for example. However, due to globalisation, regional and domestic value chains often feed into global value chains, so this paper uses the term global value chains for ease of reference.

In Africa, women tend to be the majority of actors at the lower ends of global value chains in lower value, and low remuneration roles. Moreover, the very nature of the products produced in Africa, being primarily commodity-based, unprocessed raw materials, often relegate women to informal cross border trade, which adds to the difficulties that women face in trying to engage competitively in global value chains.

A further challenge is that women are actively involved in various aspects within global value chains of export-oriented industries. This often leads to the assumption that because women play a role in global value chains, they automatically enjoy the benefits of economic benefits of trade. However, evidence suggests that this assumption is false as it fails to take into account

2 Pol Antràs and Davin Chor 'Global Value Chains' Working Paper 28549 National Bureau of Economic Research available on http://www.nber.org/papers/w28549 (accessed 18 April 2023).

the 'nature and quality of work, the implications of how women and men participate in [value] chains, and what this means for the type of integration [of women] into [global value chains] and economic and social upgrading prospects.'[3]

This paper argues that not enough consideration is given to the fact that the promise of economic development tends to eclipse the existing realities of gender segregation in labour markets, gender wage gap, poor working conditions, lack of access to productive resources such as land, labour, technology and capital or financing, as well as various intersectional inequalities including disability, race, access to education, income, skills and human capabilities. In this regard the paper spotlights key issues emanating from corporate misconduct within value chains for regional trade in Africa. This paper examines the implications of corporate misconduct on women in Africa, within the context of trade and global value chains. It focuses on women, while acknowledging the importance of further disaggregated gender analysis to interrogate the impacts of trade and global value chains on men and non-binary conforming persons among other configurations. The paper refers to selected examples from across the continent as an overview and it does not attempt to cover every scenario or every country.

In the following sections, the report will briefly explore: the context of regional trade in Africa; (ii) the evolution of the regulation of corporations; (iii) corporate misconduct and implications on women within value chains by analysing selected sectors- manufacturing, agriculture, extractives and export processing zones which although not a sector, is an important area of analysis due the impacts of EPZs on women; (iv) the impact in relation to five core areas, economic participation, decent work, unpaid domestic and care work, gender based violence, taxation and women's rights; (v) provide a conclusion; and (vi) provide recommendations for consideration by states and corporations.

3 Penny Bamber and Cornelia Staritz 'The Gender Dimensions of Global Value Chains' International Centre for Trade and Sustainable Development Issue Paper available on https://www.tralac.org/images/docs/10585/the-gender-dimensions-of-global-value-chains-ictsd-september-2016.pdf (accessed 20 February 2022).

2 Trade by African Countries

Understanding the nature of goods produced for export can help us to narrow down and evaluate the types of value chains involved, in order to reach our aim of analysing the impacts on women. Despite economic growth and diversification of markets to some extent, it is concerning that corporations continue to produce goods in the same 'extractive' way used during the colonial era, taking raw materials for export from the global South to the global North.

2.1 Patterns of Global Trade of African Countries

Evidence shows that the colonial legacy lives on as the majority of export trade in Africa still comprises minerals, precious metals, oils, and raw agricultural goods.[4] Figure 1 below, illustrates this tendency with oil, gas, minerals and

4 WTI World Bank 'Top 5 export products/imports at HS 6 digit level' available on https://wits.worldbank.org/countrysnapshot/en/SSF (31 March 2023).

precious stones taking the lead. This is excarbated by bilateral investment treaties which largely favour investors against the host states, and facilitates irresponsible corporate behavior as will be discussed in sections 4 and 5 below.

Africa's Regional Exports Show Ongoing Colonial Legacy

Main export goods of African countries in 2020

* other minerals: aluminum, titanium, salt
** cocoa, coffee, tea, nuts, spices, cotton, tobacco, essential oils
Source: The Observatory of Economic Complexity (OED)[5]

Although minerals, and precious metals are in the lead in terms of export figures, other goods such as coffee, grains and livestock are also important for trade within the African region. Certain goods have greater importance in some regions than in others. For example, in East Africa, coffee, grains and livestock are important sectors for export, whereas, textiles and clothing are more important in Morroco, Tunisia and Lesotho, and cotton is important in Mali, Togo and Benin. In Southern Africa, precious metals and minerals are the biggest exports, for example, gold exports are high in Tanzania and South Africa, while diamonds exports are high in Namibia and the Democratic Republic of Congo (DRC), and platinum in Zimbabwe.[6]

In spite of the existing Regional Economic Communities (RECs) such as the East African Community (EAC), Southern Africa Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), Economic

5 5 Available on https://www.statista.com/chart/27459/africas-regional-exports/ (accessed 20 March 2023).

6 Joe Myers 'Which are Africa's biggest exports' available on https://www.tralac.org/news/article/9642-which-are-africa-s-biggest-exports.html & https://www.weforum.org/agenda/2016/05/which-are-africas-biggest-exports/ (accessed 20 February 2023).

Community of West African States (ECOWAS), and the Arab Maghreb Union (AMU) whose major objective is to increase intra-Africa trade, its levels remain low. It is also clear that African states are still predominantly trading with countries outside Africa, including primarily the global North, China, India and South Africa as the exception.[7] MacLeod and Luke note that Africa largely exports primary fuels, ores and metals, while importing mostly manufactured goods, accounting for at least 60 percent of total exports from Africa annually between 1995 and 2022, and to a smaller extent food items, which constitute 1 percent of Africa's exports on average each year for the last ten years.[8] However, 'fuels, ores and metals rely more on foreign capital and expertise' and as a result tend not to create as many jobs. Their value tends to be undermined by illicit financial flows, and as raw commodities, their prices are volatile making planning difficult and rendering their rents 'susceptible to elite capture'.[9] For example, the top export partners for South Africa are China, United States, Germany, United Kingdom,[10] for Nigeria are India, Spain, Netherlands, South Africa and China,[11] for Ghana are China, Switzerland, India, South Africa and the Netherlands,[12] for Morroco are Spain, France, Italy, India and Brazil.[13]

But this does not explain why Africa's trade is highest with non-African trading partners, this is explained below.

2.2 Patterns of Intra-Africa Trade

There are many reasons why intra-regional trade has not taken root and is uneven across the region, including the fact that Africa is home to 33 least developed states (LDCs), which constitutes over 60 percent of the countries on the African continent.[14] Moreover, the lack of industrialization, production of similar raw commodities leads to a homogeneity of products, and calls for leveraging regional value chains to increase regional cooperation and trade. Further, offering better trade terms to third countries, while inter-African trade is ridden with non-tariff barriers and trade tensions presents challenges for intra-African trade.

7 WTI World Bank 'Top 5 Export and Import Partners for Sub-Saharan Africa' available on https://wits.worldbank.org/countrysnapshot/en/SSF (acccessed 31 March 2023).

8 Jamie MacLeod and David Luke 'Trade and investment flows and a perspective for analysing trade policy in Africa' in David Luke (ed) *How Africa Trades* (LSE Press, London, 2013) pp 1-21, at p3.

9 UNECA *Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa* (UNECA Publications, Addis Ababa, 2015) also available on https://perma.cc/R38E-9NDZ (accessed 9 June 2023); MacLeod and Luke (2022).

10 WTI World Bank 'South Africa Top 5 Export and Import Partners' available on https://wits.worldbank.org/countrysnapshot/en/ZAF (accessed 31 March 2023).

11 WTI World Bank 'Nigeria Top 5 Export and Import Partners' available on https://wits.worldbank.org/countrysnapshot/en/NGA (31 March 2023).

12 WTI World Bank 'Ghana Top 5 Export and Import Partners' available on https://wits.worldbank.org/countrysnapshot/en/GHA (accessed 31 March 2023).

13 WTI World Bank 'Morocco Top 5 Export and Import Partners' available on https://wits.worldbank.org/countrysnapshot/en/MAR (accessed 31 March 2023).

14

The AfCFTA is important for the world at least partly because Africa has numerous critical minerals needed in emerging digital and green technologies such as cobalt, for batteries, caesium and rubidium for mobile cellular global positioning systems, and 'about 42 of the 63 elements used in low-carbon technologies and the Fourth Industrial Revolution'.[15]

There is an expectation that the African Continental Free Trade Agreement (AfCFTA) will help to bridge this gap by reducing customs duties (tariffs) when trading among African countries, and thereby boost intra-Africa trade. 54 African countries have signed the AfCFTA, and 46 have ratified it. The aim is to boost intra-Africa trade by 60 percent by 2034, through the elimination of most tariffs (97% tariff liberalization, to the exclusion of 3 percent being excluded goods). Developing countries within Africa will have 5 years to eliminate tariffs on 90 percent of their products in equal annual reductions, while LDCs will have 10 years to do the same. The 7 percent of tariff lines, being 'sensisitve goods' are not exempt from tariff elimination, but are given a longer time frame for reduction and eventual elimination, that is 10 years for developing countries, and 13 years for LDCs to eliminate the 7 percent 'sensitive goods' tariffs. The remaining 3 percent consists of goods excluded from tariff reduction. This would create 'an economic bloc of 1.3 billion people with a combined gross domestic product (GDP) of US$3.4 trillion'.[16] This would be a major boost compared to the current 14.4 percent intra-Africa trade, and has the potential to lift several families out of poverty which currently stands at 34 percent living below the international poverty line (<US$2 per day).[17] As of January 2023, 46 member states had submitted their tariff schedules;

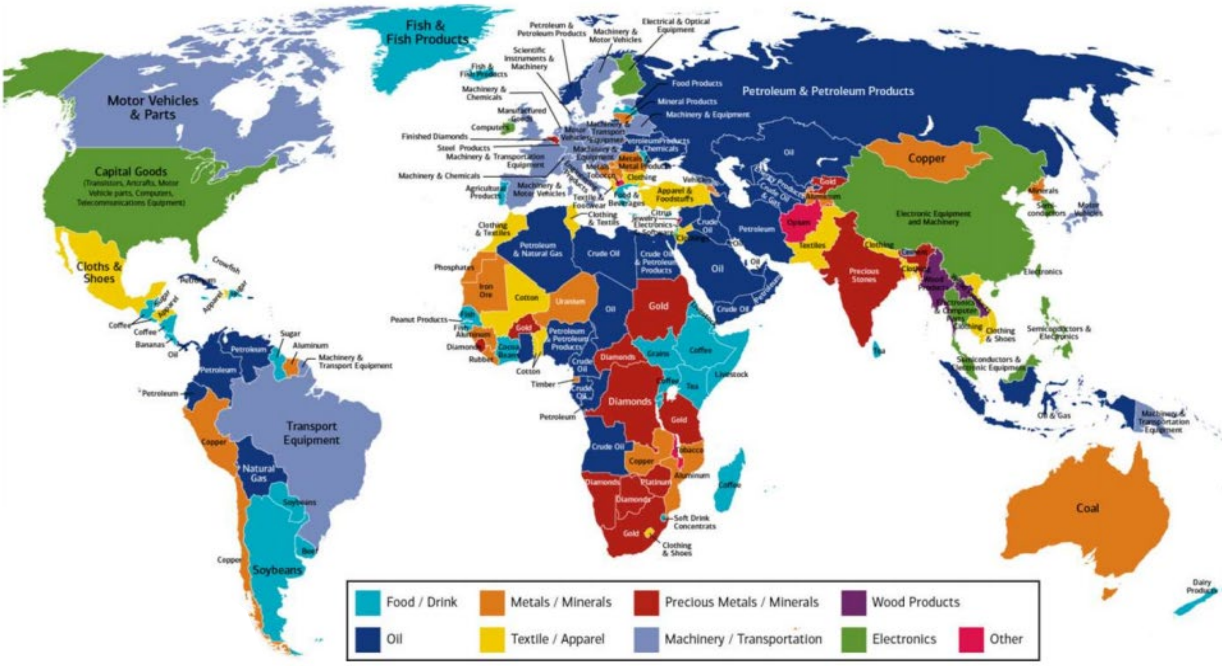
There is a further expectation that the AfCFTA Protocol on Women and Youth, once finalised, will facilitate women's economic participation and help women to benefit from trade across the region. However, the rushed manner in which the continental trade agreement and subsequent protocols including the Women and Youth Protocol are being concluded, shrouded in privacy, undermines these efforts and is likely to lead to a trade agreement for women, that does not transformatively address the trade competitiveness challenges experienced by women intra-Africa trade, it will be useful to tap into value

15 United Nations University Institute for Natural Resources in Africa 'Africa's Development in the age of strandred assets' (2019) Discussion Paper available on https:perma.cc/N9F2-WCBC (accessed 9 June 2023).

16 Africa News 'African Union' [Africa News, 16 February 2023] available on https://www.africanews.com/2023/02/16/african-leaders-to-re-initiate-free-trade-zone-discussions// (accessed 20 March 2023).

17 Douglas Okwatch 'Africa's free trade on track, more efforts needed' [Africa Renewal, 06 January 2023] available on https://www.un.org/africarenewal/magazine/january-2023/africa%E2%80%99s-free-trade-track-more-efforts-needed#:~:text=UNCTAD%20forecasts%20show%20the%20AfCFTA,day)%2C%20according%20to%20UNCTAD. (accessed 20 March 2023).

addition and exportation of consumer goods, including new technologies and machinery as is done by our global trading partners, as illustrated in Figure 4 below.



NOTE: Does not include services export
SOURCE: CIA World Factbook

Now that we have an overview of the regional trade statistics, let us delve into what exactly international/regional trade is. International trade is, simply put, the exchange of goods and services across borders for consideration. International trade largely operates within the framework of the multilateral trading system of the World Trade Organisation (WTO).

The WTO has 164 members across the world, including the majority of African States, to the exclusion of Algeria, Libya, Sudan, South Sudan, Ethiopia, Somalia and Equatorial Guinea, which have Observer Status.[18] Although the WTO framework of trade agreements is globally binding, as an exception, it allows WTO member states to enter into preferential trade agreements with more tariff reductions (preferential tariffs) for example, free trade areas within sub-regions or regions. In practice, several free trade areas have been established in geographical sub-regions through the establishment of regional economic communities (RECs) such as the following free trade areas, East African Community (EAC), the Southern African Development Community (SADC), and Economic Community of West African States (ECOWAS) and common markets such as the Common Market for Eastern and

18 WTO 'Members and Observers' available on https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (accessed 20 February 2022).

Southern Africa (COMESA). The AfCFTA is a regional free trade area covering 54 of the 55 states in the African Union (being the whole African continent except Eritrea).[19]

As the AfCFTA does not undo existing legislative frameworks, it is important to briefly take note of key instruments that advance gender-equality among the African RECs, such as the SADC Gender Protocol on Trade and Development, which calls on member states 'to adopt policies and enact laws which ensure equal access, benefit and opportunities for women and men in trade and entrepreneurship, taking into account the contribution of women in informal and formal sectors'.[20] Article 18(b) of the SADC Gender and Development Protocol also speaks to ending discrimination in relation to water rights and property ownership, particularly tenure of security over land which is especially important for women as land is a key factor of production. Similarly, the 7th COMESA Summit of Heads of State and Government held in Addis Ababa, Ethiopia in May 2002 adopted the COMESA Gender Policy (CGP) and the Addis Ababa Declaration on Gender. The COMESA Treaty provisions on the simplified trade regime are especially useful for women and men cross border traders as it facilitates 'formalised cross-border transactions enabling small scale cross broder traders to benefit from the tariff preferences available under regional integration'.[21] In 2018, COMESA adopted the Framework for the Comprehensive Support for Women and Youth Cross Border Traders in the COMESA Region. Although its focus is on peace and security, the ECOWAS Commission's Women, Peace and Security Guidelines are also important, because conflict has consequences on regional trade and movement of persons. However, countries in the region have taken different approaches to gender equality and inclusion, including those that have not ratified the Convention on the Elimination of Discrimination against Women (CEDAW), which is one of the nine core international human rights instruments, and those that give priority to patriarchal customary or religious prescripts.

Where do women feature in regional trade in Africa? The majority of women's participation in regional trade that has been captured is in cross- border trade and women-owned businesses, as well as women women working in either production or service value chains.

19 Some authors count 54 countries in Africa in total, excluding Western Sahara.

20 The original protocol was signed by 14 members, but the amended protocol was signed by only 12 SADC Member States: Angola, Botswana, DRC, ESwatini, Lesotho, Madagascar, Mozambique, Namibia, Seychells, Tanzania, Zambia and Zimbabwe see generally SADC available on 'Gender Equality and Women' https://www.sadc.int/pillars/gender-equality-women-empowerment (accessed 02 April 2023).

21 COMESA 'Studies to address impediments to small cross border trade complete' available on https://www.comesa.int/studies-to-address-impediments-to-small-cross-border-trade-complete/ (accessed 02 April 2023).

2.3 Zooming into the AfCFTA

The AfCFTA came into force on 30 May 2019. The AfCFTA is a regional trading system which, like the WTO, comprises of a parent agreement, 'the AfCFTA' that is supported by various trade agreements on specific aspects of trade in this case comprising of various 'Protocols' some of which are still being drafted and negotiated.

Specifically, the AfCFTA goes further than the RECS, by aiming to create a common market across the whole continent for trade in goods and services, to contribute to the movement of capital and natural persons, to facilitate investments and ultimately pave the way for creating a customs union in the region. The AfCFTA is being negotiated in two phases as follows:

Phase I: comprises of negotiations for the protocols on (i) Trade in Goods, (ii) Trade in Services, and (iii) Rules and Procedures on the Settlement of Disputes. These protocols have been adopted.

Phase II: negotiations for protocols on (iv) investment, (v) e-Commerce, (vi) Intellectual Property and (vii) Competition and (viii) Protocoal on Women and Youth. The protocols on investment, competition and intellectual property have been adopted, while the remaining two protocols on women and youth and digital trade are still under negotiation.

The idea was birthed decades ago envisioned in the Abuja Treaty which aimed for a phased approach towards the establishment of an African Economic Community. Negotiations were launched in June 2015, the AfCFTA entered into force on 30 May 2019, and trading started officially on 1 January 2021.

It must be noted that protocols carry the same force and effect and are as legally binding as the parent agreement. The AfCFTA does not replace existing RECs, or evade the multilateral trading system under the WTO, but co-exists with them. This complex intersection of trade rules is often referred to as 'spaghetti bowl' of trade rules that co-exist and intertwine. To illustrate the intricacy of the link between the WTO and regional trade agreements such as the AfCFTA, many RECs and even the AfCFTA make direct references to provisions in the WTO framework, such as the WTO General Agreement on Tariffs and Trade (GATT).[22] The AfCFTA is premised on similar principles as the WTO, being those of free markets through trade liberalisation,[23] guided by the core principles of non-discrimination through the most-favoured nation

22 See Article 5 AfCFTA for example.
23 Article 4 AfCFTA Treaty.

treatment and national treatment.[24] The principle of most favoured nation means that member states are required to give other member states the most favourable tariffs and regulatory requirements given to like products from any one member state.[25] The principle of national treatment refers to treating local and foreign goods alike in terms of the regulatory framework so as not to discriminate against imported goods within the domestic market.

As noted above, it is accepted that international trade creates winners and losers, and the same can be expected in relation to regional trade under the framework of the AfCFTA.[26] It is therefore worthwhile to consider among other factors, the economic standing of African countries. The so-called 'big 6' countries that is Algeria, Angola, Egypt, Morocco, Nigeria and South Africa, each have at least $25 billion worth of exports annually, whereas the medium-sized economies such as Gabon, Ghana, Kenya and Tunisia are important collectively, and have annual exports over $5 billion despite having relatively small economies.[27] The remaining 36 countries include 33 least developed countries (out of 46 LDCs worldwide),[28] and this group collectively has lower trade volumes and small markets, for example, Chad, Comoros, Malawi, Niger, and Uganda. A closer look at the trade statistics of these countries shows that fuels, ores and metals, and food stuffs and to a small extent manufacturing are among the most dominant for export, but this is not spread evenly as can be seen from figure 2 below.[29]

- **12 countries rely heavily on the exportation of fuels, for 6 of these 12 countries, more than 90 percent of their exports were fuels as at 2016 (including large exporters such as 'Nigeria, Algeria and Angola, and smaller oil dependent exporters, such as Chad, South Sudan and Equatorial Guinea'**
- **17 countries rely largely on ores and metals**
- **17 other countries rely heavily on exporting food stuffs**
- **8 countries rely on manufacturing as their largest export sector indicating the achievement of some level of industrialization. This includes 'a mix of large industrial economies- such as South Africa, Egypt, Morocco and Tunisa- but also smaller ones that have managed to develop export bases or integrate into the industrial value chains of their larger neighbours, including Lesotho, Eswatini, Mauritius and Djibouti'.**

24 Article 5 AfCFTA Treaty; Articles 4 and 5 of the AfCFTA Protocol on Trade in Goods. The principle of most favoured nation means that member states are required to give other member states the most favourable tariffs and regulatory requirements given to like products from any one member state. The principle of national treatment refers to treating local and foreign producers alike in terms of the regulatory framework so as not to discriminate against imported goods within the domestic market.

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26 See further, Fatimah Kelleher 'The African Continental Free Trade Area (AfCFTA) and Women: A Pan African Feminist Analysis' FEMNET (2021) available on https://femnet.org/wp-content/uploads/2021/04/AfCFTA-Paper-Policy-Brief-English-2.pdf (accessed 16 April 2023).

27 MacLeod and Luke (2022) at p.5.

28 UNCTAD 'List of LDCS' These are: Angola, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Togo, Uganda, United Republic of Tanzania and Zambia

available on https://unctad.org/topic/least-developed-countries/list (accessed 19 April 2023).

29 MacLeod and Luke (2022) at p.7.

There are two prominent view points, among others. The first advances a neoliberal agenda, and the other challenges it. Pro-liberalisation sentiments argue that trade helps to improve livelihoods, job creation, cheaper goods and improved efficiency as the market regulates itself, and each country focuses on producing the goods where it has a comparative advantage. This viewpoint is challenged by those who argue that pro-liberalisation organisations, such as the WTO are co-opting women and gender language, and pink-washing by making only cursory references to women without addressing the underlying issues, where in fact women's rights are undermined as a direct or indirect consequence of trade. The fact that trade is shaped as part of a neoliberal agenda that undermines women's participation thus presents it at times as an obstacle for women. It is also argued that the ongoing drafting of the Protocol on Women and Youth to supplement the AfCFTA is an afterthought as the primary agreements dealing with trade and investment will determine the real impacts of trade on women. Moreover, the AfCFTA only mentions the words women and gender three times in all 78 pages of the agreement. It is important to understand both perspectives. However, this paper leans more into the second perspective as it explores the adverse impacts of trade and value chains related to trade, and supports the argument that trade 'is incompatible with women's human rights and gender equality when corporations exploit women's cheap labour as a source of comparative advantage'.[30]

Trade also tends to transfer large tracts of land from the hands of women subsistence farmers who are displaced in favour of large corporations for large scale production for export processes. Even where women participate in value chains, they tend to be at the lower levels of value chains as noted above, their involvement tends to be in the production of primary goods, which have low profits, and women tend to be excluded from the benefits of trade as they earn a fraction of the profits. As noted by Kucera and Tejani 'although women constitute over 60% of the African labour force in certain sectors such as cocoa and coffee, they only earn a third of the income in these sectors'.[31] Neoliberalism can trap women in lower employment positions through casual work, and can perpetuate existing human rights violations against women through gender-based violence in the workplace, stereotypes and discrimination and exacerbate the plundering of natural resources and abuse of human resources through extractivism, thereby depleting the state's ability to provide basic public services.[32] Disparities between women and men's unemployment rates, labour force participation, wage gap and quality of work are high. Globally, women's unemployment is estimated at 6.3 percent

30 Aishu Balaji, Diyana Yahaya, and Michelle R. Maziwisa 'Creating a Feminist Alliance for Trade Justice' available on https://www.openglobalrights.org/a-feminist-alliance-for-trade-justice/ (accessed 03 April 2023).

31 Balaji, Yahaya and Maziwisa above.

32 Women's Legal and Human Rights Bureau, Inc (WLB) 'Providing a Gender Lens to the UNGP on Business and Human Rights'.

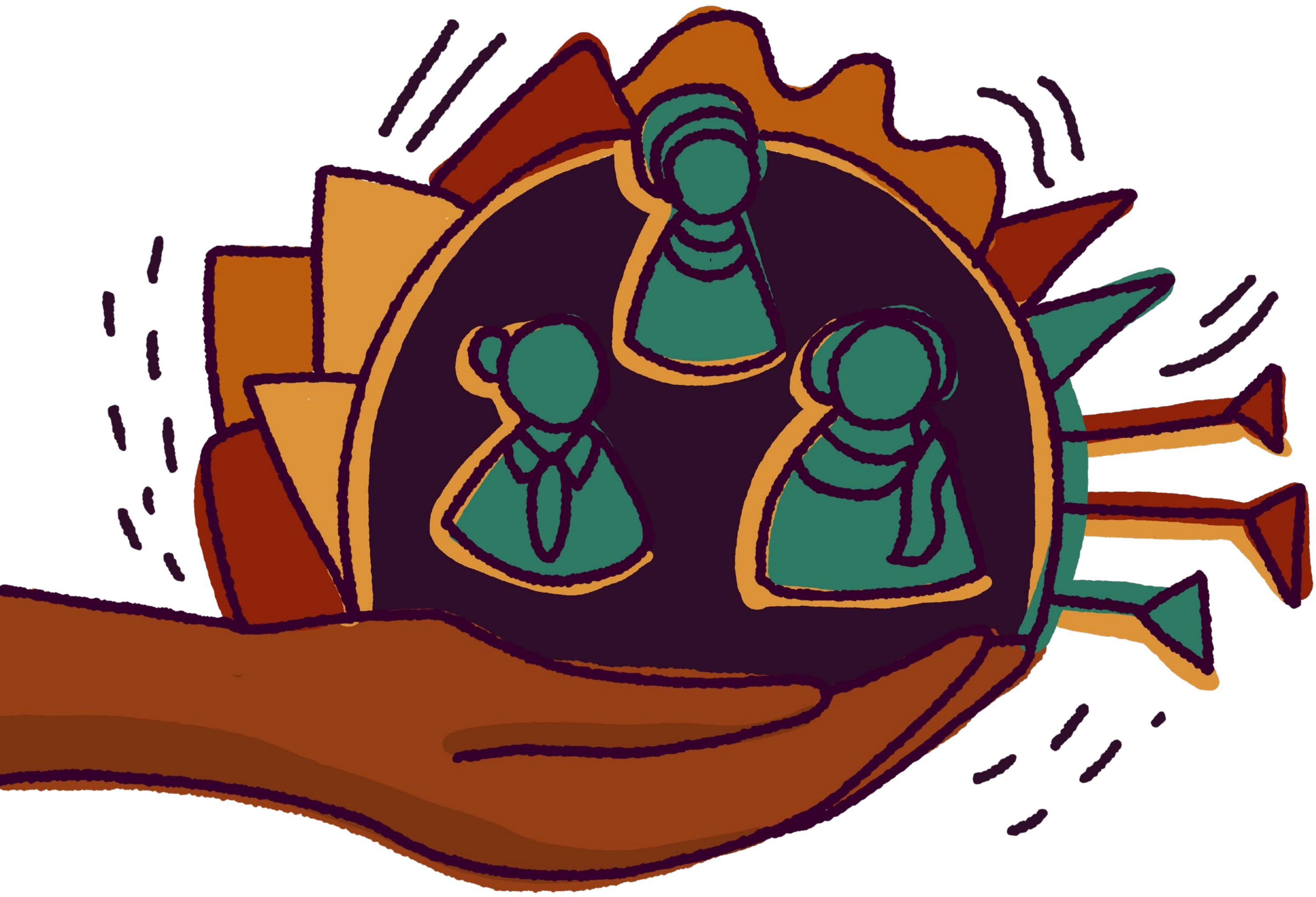
having dropped from 6.7 percent during the Covid-19 period,[33] whereas men's unemployment rate is 6.2 percent, having dropped from 7 percent in 2020.[34] Whether these figures of 2021 are still accurate in 2023 is debatable, so one cannot say with certainty that women and men's unemployment rate has levelled off. We also know that women constitute 80 percent of migrant workers, estimated to be a total of 53 million, which positions them poorly as having limited legal protection, and exposing them to sexual abuse without access to justice.[35] Much of this migrant work includes working on farms and textiles that produce goods for exports as part of global value chains. Export processing zones, which are known for enabling relaxation of regulations on corporations, and often corpoations operating in EPZs 'do not follow labour standards, including payment of minimum wages', yet in some cases up to 70 percent of workers in these EPZs are women.[36]

33 World Bank 'Unemployment: female (% of female labour force)' available on https://data.world-bank.org/indicator/SL.UEM.TOTL.FE.ZS (accessed 03 April 2023).

34 World bank 'Unemployment: male' available on https://data.worldbank.org/indicator/SL.UEM.TOTL.MA.ZS (accessed 03 April 2023).

35 Women's Legal and Human Rights Bureau, Inc (WLB) 'Providing a Gender Lens to the UNGP on Business and Human Rights'.

36 Women's Legal and Human Rights Bureau, Inc (WLB) 'Providing a Gender Lens to the UNGP on Business and Human Rights'.



3 Evolution of the Regulation of Corporate Conduct

Due to the centrality of trade for both economic growth (increase in production, gross domestic product, income per capita etc), and economic development (human development, attainment of socio-economic rights), trade becomes an unavoidable topic in relation to the conduct of corporations, particularly in relation to women. Evidence suggests that although corporations can do good for local communities, workers, and other people through forward and backward linkages within their value chains, the misconduct of corporations can have negative implications for various stakeholders and offset the benefits. These implications are worsened for vulnerable groups such as women, people living with disabilities, youths, children, the elderly etc. As the focus of this paper is on the disproportionate impact of corporate misconduct on women, the discussion does not specify in each section, however, it must be noted that women are not a homogenous group, and they may experience corporate misconduct differently based on various intersections of inequalities, including those listed above, as well as race, income, agency, capacity etc.

Naturally, a discussion such as the present one leans more towards the more vulnerable segments of society, such as women in rural contexts and women living in poverty. Although it is acknowledged that trade can have some benefits for the small margin of women who are involved in trade as entrepreneurs, they too experience challenges. In terms of who actually is involved in export trade as a woman in Africa, the World Economic Forum notes that at 25 percent sub-Saharan Africa has the highest percentage of women entrepreneurs (this includes those trading domestically at local markets, and in various sectors). Although women constitute 58 percent of those self-employed in Africa, the World Bank notes that women entrepreneurs in sub-Saharan Africa earn 34 percent less profits than men in the region.[37] Majority of women entrepreneurs produce on a small scale and may struggle to compete with large corporations. They further meet challenges with technical barriers to trade and non-tariff barriers such as sanitary and phytosanitary measures which hinder their ability to benefit from export trade and may end up at the lower ends of production value chains, with lower profits. Moreover, women entrepreneurs are often excluded from supply chains and procurement processes of larger firms and government organisations. This exclusion is often exacerbated by the difficulties in accessing trade finance and other credit lines, which restricts their participation in regional or global value chains. Consequently, they may encounter challenges in the achievement and maintenance of suitable product quality in order to meet sanitary and phytosanitary requirements in relevant sectors. In addition, other barriers behind the scenes for women entrepreneurs include limited role models and networks, limited experience and skills, low societal positions, limited wealth, land and support in fulfilling other roles, time tax, finance and sex discrimination, being overtaken by spouse or partner leaving the women as 'shadow business owners' accountable to their spouses or husbands for the running of their own business.[38] Barrientos considers opposing views on the implications of global value chains on women. On one hand, some argue the global value chains can create immeasurable opportunities for women, through increased access to the labour market, and income, while on the other hand, others argue that global value chains can exacerbate the exploitation of women, poor employment conditions, low wages and job insecurity, and can also be an avenue for sexual harassment.[39]

Corporate misconduct is wide-ranging, and can include 'pollution, land grabbing, exploitation of workers, [and] violence against human rights

37 World Economic Forum 'How female led start-ups can transform Africa' available on https://www.weforum.org/agenda/2022/08/how-female-led-start-ups-can-transform-africa/ (accessed 19 April 2023).

38 Most of these examples are drawn from (and explained further in) OECD Conference of Ministers responsible for Small and Medium Sized Businesses (2004) available on https://www.oecd.org/cfe/smes/31919215.pdf (accessed 11 June 2023) and are set in the context of the OECD countries, however, it is the present author's view that the examples are equally applicable in the African context.

39 Stephanie Barrientos 'Gender and Global Value Chains: Challenges of Economic and Social Upgrading in Agri-Food' p2, EUI Working Paper RSCAS 2014/96 available on https://cadmus.eui.eu/bitstream/handle/1814/32897/RSCAS_2014_96.pdf (accessed 18 February 2023).

defenders'.[40] The misconduct of corporations is what has prompted a closer look at corporate conduct, through introspection by corporations themselves corporate (legal) accountability, and through third parties and states, through corporate accountability mechanisms, guidelines for corporate conduct, litigation, and now a move towards a legally binding instrument on business and human rights. These are discussed below.

The socially related conduct of corporations is often framed as corporate social responsibility and its variants ranging on a scale from non-binding to legally binding, such as corporate accountability, corporate philanthropy, business ethics, and now more recently, business and human rights. As can be denoted from these terms, they range in their nature and extent. Corporate philanthropy is the most relaxed, most voluntary form, whereas business and human rights lean more into the peremptory space and at the very least social pressure.

3.1 Corporate Philanthropy

Corporate philanthropy is a form of charitable donations by business entities, which has evolved over time to what some have called 'strategic philanthropy'. Porter and Kramer note that '[i] increasingly, philanthropy is used as a form of public relations or advertising, promoting a company's image or brand through cause-related marketing or other high-profile sponsorships'.[41] Corporate philanthropy is also referred to by some authors as corporate social investment. This refers to conduct which is outside the corporation's standard line of business, and its aim is to improve the quality of life of the affected community. CSI 'encompasses projects that are external to the normal business activities of a company and not directly for purposes of increasing company profit',[42] such as building a recreation centre in a local community.

3.2 Corporate Social Responsibility (CSR)

In the early 1990s, corporations were given much latitude as to how they operate their businesses, as the free-market ideology was advanced. In developing countries across Africa, corporations were seen as instrumental for job creation, construction of infrastructure, such as roads and schools, and in some areas, even hospitals and boreholes. In this way, corporations served a social function (seemingly) beyond the profit motive. In many ways, the infrastructure and services provided by investors (greenfield investments) had two elements, in one way it benefited the community by filling a void left by

40 Kelly Groen and Lis Cunha 'We Mean Business: Protecting Women's Rights in Global Supply Chains' Action Aid available on https://actionaid.nl/wp-content/uploads/2020/02/We-Mean-Business-Protecting-Womens-Rights-in-Global-Supply-Chains_ActionAid_March-2020.pdf (accessed 20 February 2022).

41 Michael E. Porter and Mark R. Kramer 'The Competitive Advantage of Corporate Philanthropy' (2002) *Harvard Business Review* available on https://hbr.org/2002/12/the-competitive-advantage-of-corporate-philanthropy (accessed 10 March 2023).

42 CSI Solutions '*The What and Why of CSI*' (2020) http://www.csisolutions.co.za/why-csi.php (accessed 16 April 2023).

the investment host state, and in another way, it helped the corporations to bring workers closer to the job, in many instances, closer to the mines. Having clinics nearby meant workers could get medical assistance and quickly return to work, building houses for workers, meant they could live with their families and reduce time taken going on long vacations, and reducing production time and outputs. In this way, corporations regulated their own interactions with the communities in which their business was operated. This is what most have come to know as 'corporate social responsibility'.

Corporate Social Responsibility (CSR) can be defined as a concept in terms of which 'companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'.[43] It speaks to 'how a firm's operational behaviour impacts on society', and this is sometimes confused with corporate philanthropy (gifts discussed above), branding, and corporate legal compliance (complying with minimum legal standards in the jurisdiction of a company's operations).[44] Deloitte defines CSR as 'how a firm manages its business processes to generate stakeholder value while having a positive impact on the community and minimising any adverse impact on the environment.'[45] In other words, this is conduct that has positive spillover effects that benefit the community, while still advancing the bottom line (profit).

3.3. Corporate Accountability

Corporate Accountability goes a step further than CSR as it requires corporations to reflect on the impact of their own conduct.[46] There are also international guidelines provided to guide corporations. While there are numerous guidelines available, here I will discuss the ILO standard 190, OECD Guidelines for Multinational Corporations, OECD Base Erosion and the Africa Mining Vision before moving on to discuss business and human rights under the Ruggie Framework in the following sub-section.

The International Labour Organisation (ILO)

All 54 African countries are members of the ILO, and thus governed by its provisions.[47] The ILO has various guiding instruments to regulate corporate conduct in relation to labour. Principle 12 of the UN Guiding Principles speaks to the ILO Declaration on Fundamental Principles and Rights at Work.

43 Delbard O 'CSR Legislation in France and the European Regulatory Paradox: An Analysis of EU CSR Policy and Sustainability Reporting Practice' (2008) 8 4 *Corporate Governance* 397 at 398; Promoting a European Framework for Corporate Social Responsibility: Green Paper' COM (01) 366 Final at 5 available on http://europa.eu.int/comm/employment_social/socdial/csr/greenpaper_eu.pdf (accessed on 03/02/2011).

44 UNCTAD 'The social responsibility of Transnational Corporations' (UN, New York, Geneva, 1999).

45 Deloitte Malta '*Corporate Responsibility & Sustainability*' (2020) available on https://www2.deloitte.com/mt/en/pages/about-deloitte/articles/mt-crs.html (accessed 16 April 2023).

46 Business and Human Rights Resources Centre 'Corporate Legal Accountability' available on https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/ (accessed 18 February 2023).

47 ILO 'Countries Covered (Africa)' available on https://www.ilo.org/africa/countries-covered/lang--en/index.htm (accessed 17 March 2023).

This includes core aspects of labour rights also covered in ILO conventions, on the subjects of 'freedom of association and right to collective bargaining; non-discrimination and equal pay for equal work; elimination of forced labour and child labour'.[48] These are all important provisions for the realisation of women's labour rights, particularly in relation to the rights to equality and non-discrimination and equal pay for equal work. The ILO Resolution C190 requires corporations to ensure that violence and harassment are prohibited in the workplace, to have a strategy for implementing, enforcing and monitoring the mechanisms for the prevention and combatting of violence and harassment, as well as developing tools and training to raise awareness and education in accessible formats.[49] The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) is also instructive and specifically makes reference to the UNGP in principle 10 of the MNE Declaration.

The Organisation for Economic Cooperation and Development (OECD)

The OECD membership comprises mostly the global North, and no African countries, however, it is accepted that these countries constitute investors and trading partners of Africa hence the provisions of the OECD are useful. Of particular note are the OECD Guidelines for Multinational Corporations which gives various guidelines, including for example the call on multinational enterprises to avoid causing or contributing to adverse impacts through their own actions and more importantly for global value chains, to 'seek to prevent or mitigate an adverse impact where they have not contributed to that impact when the impact is nevertheless directly linked to their operations, products or services by a business relationship'.[50] The OECD also has other accountability standards including the OECD Due Diligence Guidance for Responsible Business Conduct which details implementation mechanisms for the OECD Guidelines for Multinational Enterprises. The OECD also has sector-specific guidelines for agricultural supply chains, extractive sector stakeholder engagement, financial sector due diligence, mineral supply chains, and textile and garment supply chains.

Africa Mining Vision

The Africa Mining Vision which was adopted by AU Heads of State and Government (2009) aims to have 'transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development' through various forward, backward and sideways linkages. It aims for a mining sector that is: sustainable and well-governed; effectively garners and deploys resource rents; and is safe, healthy, gender and ethnically inclusive; environmentally friendly; socially responsible

48 ILO Press Statement 'Introducing the ILO's Business and Human Rights Framework' available on https://www.ilo.org/newdelhi/info/public/sp/WCMS_679762/lang--en/index.htm (accessed 20 March 2023).

49 ILO Violence and Harassment Convention, 2019 (No. 190) (ILO - C190).

50 OECD Guidelines for Multinational Entreprises (2011) para 11-12.

and appreciated by surrounding communities. Despite the zeal with which the Africa Mining Vision was adopted, its domestication by member states has been slow. Some countries have cited a lack of funds, low political will, and there is little awareness of the Africa Mining Vision across the continent. For example, in August 2016, the Malawian government started discussions to address the gaps in the Malawian Mines and Minerals Act of 1981, to bring it into alignment with the Africa Mining Vision and to establish a Malawi Mining Vision, with aims towards 'Mining led development' in Malawi. Initially, these efforts received technical support from the African Development Bank for example, and financial support from AMDC for workshops, but soon after, the process stalled due to lack of funding.[51] In Zambia, Banda notes that implementation has been slow and the awareness is low.[52] Some of the gaps identified by Banda are that Zambia should reduce revenue losses arising from 'over-generous tax incentives'. This challenge is not unique to Zambia. [53] Although 24 out of 54 countries have started implementing the AMV, so far, it is only Lesotho that has fully domesticated it.[54]

The lack of domestication of the Africa Mining Vision undermines its efforts to recognise artisanal mining as an important tool for economic development, progressive taxation and the requirements for full, prior, informed consent which can promote gender equality and the protection of the environment and women's time, health, lives, and livelihoods.[55]

3.4 Business and Human Rights (BHR)

The conduct of corporations in relation to human rights is regulated through various non-binding guiding instruments. Within the framework of the United Nations, John Ruggie played an important role in highlighting and bringing the recognition of corporate conduct to the forefront during his term as the Special Representative of the United Nations Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises from 2005 until 2011. During his term and through his leadership, the UN Guiding Principles on Business and Human Rights were drafted and later adopted unanimously by the Human Rights Council in 2011. Ruggie's 'Protect, Respect and Remedy' Framework is instructive, and the Guiding Principles support the implementation of the Ruggie Framework.

51 Paul Justice Kamulongera 'Domesticating the Africa Mining Vision in Malawi: Approaches and Experiences' (2020) 41(3) *Canadian Journal of Development Studies* 467-485.

52 Betty Banda 'Zambia's Domestication of the Africa Mining Vision: A Gap Analysis' Centre for Trade Policy and Development (2019) 7 available on https://www.researchgate.net/publication/341845860_ZAMBIA'S_DOMESTICATION_OF_THE_AFRICA_MINING_VISION_A_GAP_ANALYSIS/link/640f106f315dfb4cce7885cd/download (accessed 03 April 2023).

53 Betty Banda 'Zambia's Domestication of the Africa Mining Vision: A Gap Analysis' Centre for Trade Policy and Development (2019) 7 available on https://www.researchgate.net/publication/341845860_ZAMBIA'S_DOMESTICATION_OF_THE_AFRICA_MINING_VISION_A_GAP_ANALYSIS/link/640f106f315dfb4cce7885cd/download (accessed 03 April 2023).

54 Uongozi Institute 'Enhancing national ownership in the mining sector: Domesticating the Africa Mining Vision' Africa Portal, 30 June 2020, available on https://www.africaportal.org/publications/enhancing-national-ownership-mining-sector-domesticating-africa-mining-vision/ (accessed 11 June 2023).

55 See generally Oxfam 'From Aspiration to Reality: Unpacking the African Mining Vision' available on https://www-cdn.oxfam.org/s3fs-public/bp-africa-mining-vision-090317-en.pdf (accessed 03 April 2023).

The Respect, Protect, Remedy Framework

While states tend to bear the primary responsibility to respect, protect, promote and fulfil human rights, the contributions of Special Representative of the United Nations (UN) Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, were instrumental in highlighting the important role that corporations play in the realisation or violation of human rights. Ruggie's position is that corporations have at the very least, a duty to 'respect' human rights,[56] including women's human rights. Ruggie notes that corporations need to have an 'ongoing human rights due diligence process, whereby companies become aware of, prevent, and mitigate adverse human rights impacts' guided by four key elements: (i) having a human rights policy; (ii) assessing human rights impacts of company activities; (iii) integrating those values and findings into corporate cultures and management systems; and (iv) tracking, [and] reporting performance. [57]

3.5 UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs) implement the 'Protect, Respect and Remedy' framework.[58] While noting states' duty to ensure compliance with international human rights standards by the businesses they allow to operate within their territories and contract with, the UNGPs also specifically call on corporations to respect internationally recognised human rights independent of the states' own human rights compliance. Principle 13 notes specifically that businesses should 'avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur, [and to] seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts'. Taking into account the nature and size of the business, corporations should (i) have a policy commitment to meet their duty to respect human rights; (ii) undertake human rights due diligence processes to identify, prevent, mitigate and account for how they address their impacts on human rights, and (iii) have processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

The UNGPs leave a gender gap in their formulation, in that they do not expressly address aspects that affect women differently from men. For example, a study by the Women's Legal and Human Rights Bureau, (a civil society organisation based in the Philippines) argues that there must be a

56 John Ruggie 'Protect, Respect and Remedy: A Framework for Business and Human Rights' (2008); John Gerard Ruggie 'Protect, Respect and Remedy: A United Nations Policy Framework for Business and Human Rights Proceedings of the Annual Meeting (American Society of International Law), Vol.103, International Law as Law (2009) 282-287.

57 Ruggie (2009) 282-287.

58 John Ruggie annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31); The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

‘women’s access to justice framing’ in order to implement Ruggie’s principle of access to remedy in the context of the UNGPs. This is argued because of the gender-specific difficulties that women experience in relation to access to justice, such as the absence of laws protecting women in some jurisdictions, the availability of legal representation, enforcement of court orders, costs of access and so forth. They argue further that there must be adequate remedies which respond to women’s needs both de jure (by law) and de facto (in practice) including a well-funded formal and informal justice system and support services, that there must be room for women’s critical engagement and participation, as well as an effective and accountable legal system to address impunity, and in this regard, this speaks to ‘a competent, impartial, independent and gender-sensitive legal system and duty bearers’ inter alia.[59]

Corporations not only have a duty to comply with human rights in general but also specifically take cognisance of women’s unique needs. The UN Working Group on Business and Human Rights notes that ‘women’s human rights are an inalienable, integral and indivisible part of universal human rights, both states and business enterprises should take concrete steps to identify, prevent and remedy gender-based discrimination and inequalities in all areas of life’.[60]

In 2014 an open-ended intergovernmental working group was established to work on developing a legally binding instrument to regulate business and human rights in response to the Human Rights Council’s Resolution 26/9. The treaty process is currently at the third draft stage, although it has been difficult to get buy-in from some state parties. The draft speaks to the obligations of domestic and multinational corporations to conduct human rights due diligence and the recognition of the rights of the victims and access to remedy. Among developing countries, South Africa and India have been at the forefront.

These instruments can play a valuable role in guiding corporations operating at different stages of global value addition and can protect developing countries from the unbalanced power of multinational corporations, especially where mechanisms are enforceable by their own governments over and beyond the remedies available in African countries. For example, the case of Vedanta in which remedy had to be sought in the United Kingdom after human rights violations by a Zambia-based subsidiary of a UK-based multinational corporation.

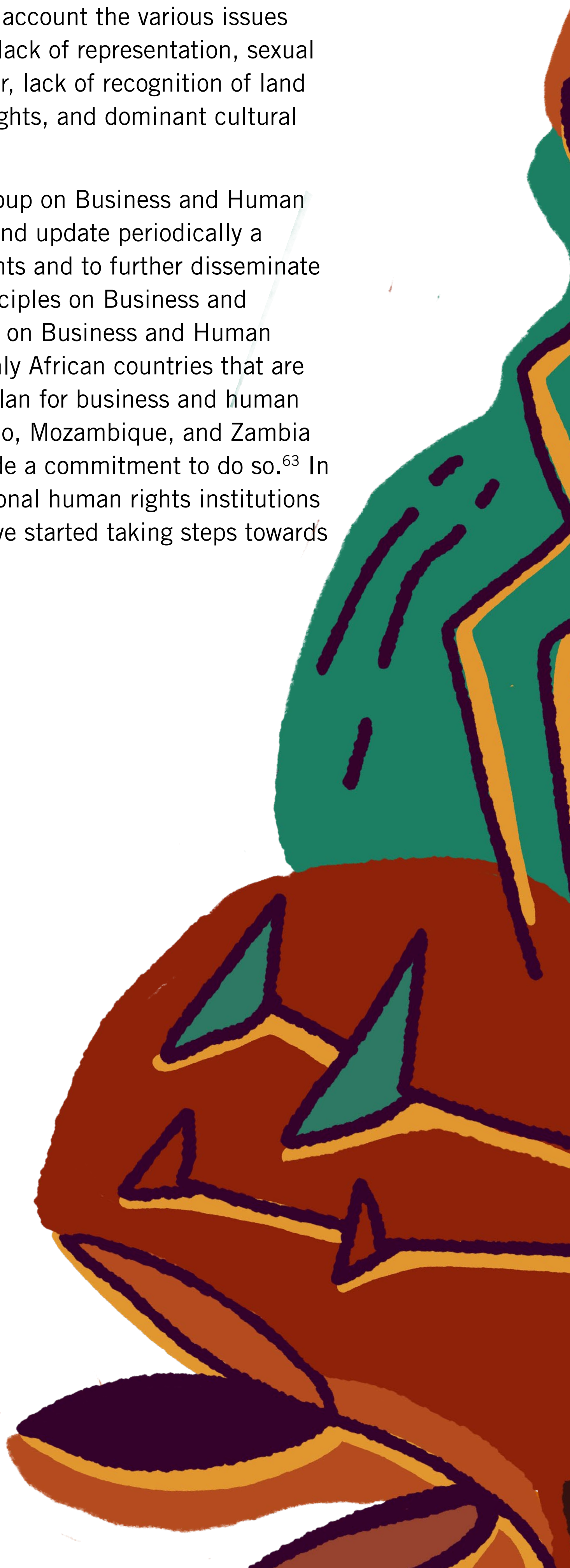
However, more can be done to entrench a gender dimension in Business and Human Rights. It is important to not only consider gender, but also have a ‘normative shift’ that views gender issues both as impacts and

59 Women’s Legal and Human Rights Bureau, Inc (WLB) ‘Providing a Gender Lens to the UNGP on Business and Human Rights’ available on https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Gender/WLB.pdf (accessed 16 April 2023).

60 UN Working Group on Business and Human Rights ‘Gender Dimensions of the Guiding Principles on Business and Human Rights’ available on https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Gender_Booklet_Final.pdf (accessed 16 April 2023).

factors, and that goes beyond the business case, towards transformation.[61] Such a transformative approach would take into account the various issues experienced by women such as ‘discrimination, lack of representation, sexual harassment, the invisibility of the informal sector, lack of recognition of land rights, access to finance, lack of awareness of rights, and dominant cultural expectations’.[62]

In terms of implementation, the UN Working Group on Business and Human Rights ‘encourages all states to develop, enact and update periodically a national action plan on business and human rights and to further disseminate and implement the United Nations Guiding Principles on Business and Human Rights’. According to the Working Group on Business and Human Rights (WG-BHR), Kenya and Uganda are the only African countries that are recorded as having produced a national action plan for business and human rights (NAP), whereas Liberia, Mauritius, Morroco, Mozambique, and Zambia have either started to develop NAPs or have made a commitment to do so.[63] In Ghana, Nigeria, South Africa and Tanzania, national human rights institutions (NHRIs) or civil society organisations (CSOs) have started taking steps towards developing NAPs.



61 Netherlands Network for Human Rights Research and Asser Institute (NNHRR) ‘The Gender Dimension of Business and Human Rights’ Workshop Report, 4.

62 NNHRR and Asser Institute above, 3.

63 UN Working Group on Business and Human Rights (WG-BHR) ‘National action plans on business and human rights’ available on https://www.ohchr.org/en/special-procedures/wg-business/national-action-plans-business-and-human-rights (accessed 11 June 2023)./

4 Value Chains of Regional (and International) Trade

While this study is looking specifically at the context of the African region, the terms global value chains and regional value chains will be used interchangeably. This is because the implications in both chains are very similar and are interconnected. Production often takes place in several countries, or continents before the consumer receives the final product. Notably, many of the processes, particularly the production of the raw materials is takes place in developing countries, such as those found in Africa. This is often because corporations are always trying to reduce production costs to meet their profit motive, the so-called 'bottom line'. Within global value chains, lead firms acquire goods and services from higher or lower-value suppliers to meet their market demands. The lead firm will usually focus on higher value work, and the customer interface. However, lead firms tend to have control or power over their suppliers to determine the terms of supply. This control is particularly pronounced in dealings with lower-value chain suppliers, whose bargaining power is substantially weaker in comparison to that of the lead firm's or higher-value supplier firms.. It then becomes crucial to evaluate at which end of the supply chain women predominantly find themselves. If they find themselves as the lead firm or a high-value intermediary, much can be gained from the value chain. However, if they find themselves predominantly as low-end sub-contractors, their bargaining power can be significantly weakened, for example, if services or goods are outsourced. In other words, value creation, value capture and value distribution must be analysed through a gendered lens to see the impact on women and women's participation and benefit.

A gendered division of labour tends to happen as a result of patriarchal socialisation where women are targeted for specific tasks or stages of production within value chains. This can create difficulties where certain skills or job roles are perceived as 'feminine', particularly if this results in women being employed in lower value, lower skilled and lower paid jobs, while higher tasks are framed as 'masculine' or benefits enjoyed by lead firms.[64]

In order to understand the gender dynamics of value chains, one must consider the 'economic' and 'social' upgrading or downgrading of women. Barrientos distinguishes between 'economic upgrading' as moving to higher value activities, and 'social upgrading' as improved conditions and realisation of human rights.[65] Barrientos gives three examples, of economic and social upgrading and downgrading in (i) floriculture in Kenya and Uganda, (ii) South African fruit production and (iii) West African Cocoa production.[66]

Evidence suggests that women are predominantly found in sectors of food production, clothing, and services, while men's employment in global value chains tends to be more widely distributed across various sectors.[67] For example, Figure 2 below shows the distribution of women across various sectors in South Africa, with community and social services having the highest numbers of women, and mining having the lowest. Moreover, women's

64 Elson and Pearson 1981 and Barrientos 2001; Mayoux and Mackie 2008 as cited in Stephanie Barrientos 'Gender and Global Value Chains: Challenges of Economic and Social Upgrading in Agri-Food' p2, EUI Working Paper RSCAS 2014/96 available on https://cadmus.eui.eu/bitstream/handle/1814/32897/RSCAS_2014_96.pdf (accessed 18 February 2023).

65 Stephanie Barrientos 'Gender and Global Value Chains: Challenges of Economic and Social Upgrading in Agri-Food' EUI Working Paper RSCAS 2014/96 available on https://cadmus.eui.eu/bitstream/handle/1814/32897/RSCAS_2014_96.pdf (accessed 18 February 2023).

66 Stephanie Barrientos 'Gender and Global Value Chains: Challenges of Economic and Social Upgrading in Agri-Food' p2, EUI Working Paper RSCAS 2014/96 available on https://cadmus.eui.eu/bitstream/handle/1814/32897/RSCAS_2014_96.pdf (accessed 18 February 2023).

67 Penny Bamber and Cornelia Staritz 'The Gender Dimensions of Global Value Chains' (2016) available on https://www.tralac.org/images/docs/10585/the-gender-dimensions-of-global-value-chains-ictsd-september-2016.pdf (accessed 20 March 2023).

participation in the mining sector tends to be more informal, and at lower ends of the spectrum including panning, cooking for mine workers, as well as sex work in mining areas.

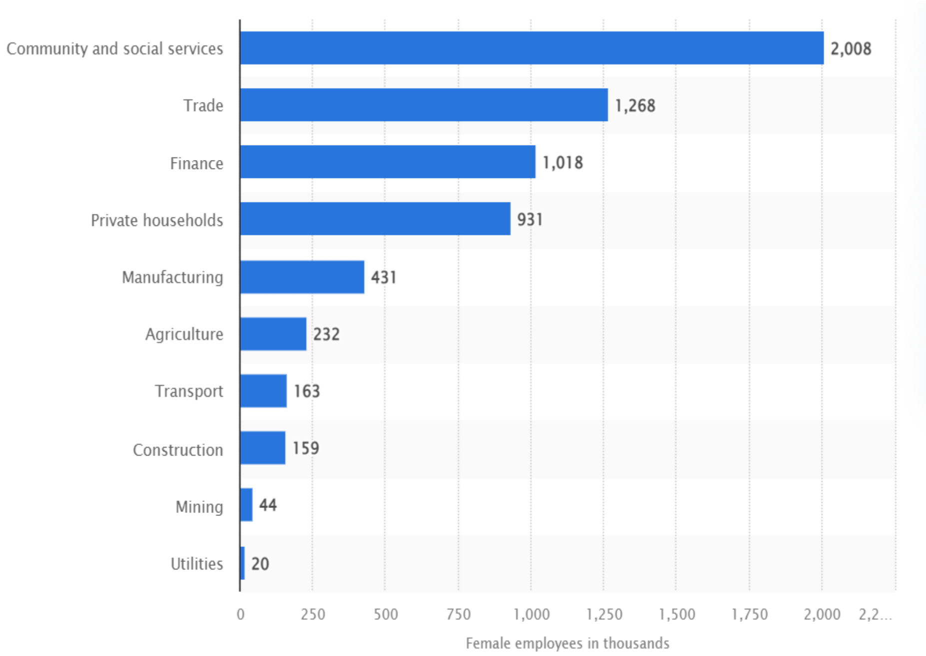


FIGURE 1: Number of female employees in South Africa in Q4 2021, by industry(in 1,000s)[68]

Women's involvement in specific value chains

Also important is to evaluate women's participation in sector specific value chains, and there is a dearth of consolidated statistics in this regard.

What opportunities and challenges do value chains in international and regional trade present for women?

Of the five key export industries in Africa to the world, and intra-African trade, mining, agriculture and production sectors are likely to play the most prominent roles. Women's participation in export value chains vary widely, and may include women's participation as workers within corporations, such as in manufacturing, or in agricultural production. It may also include women's participation at the grassroots level as small-scale producers, or working in the informal sector, both of which can feed into regional or international export value chains through collaborations or contracts with corporations. Women may also participate as business owners, entrepreneurs, management, consumers, or various other roles. Here, the focus is on women as workers, (formal, informal, employed, casual or outsourced).

68 Statista 'Number of Female Employees in South Africa Q4, 2021, by Industry (in 1,000s) available on https:// www.statista.com/statistics/1129825/number-of-female-employees-in-south-africa-by-industry/ (accessed 20 March 2023).

4.1 Manufacturing Sector

Evidence provided beyond the region, such as in an OECD study to evaluate 'the relationship between gender and trade, focusing on the role of female employees in Global Value Chains',[69] suggests that there are more men working in export value chains than women. For example, in Germany as early as 2014, 23 percent women worked directly or indirectly in export value chains, compared to 34 percent men. Moreover, according to the OECD study, 'each job in manufacturing exports generates on average 1.5 additional jobs upstream, a third of which reflects female employment'.[70] The study also found that women tend to be more represented in upstream sectors (indirectly) as opposed to working for the exporting company themselves, in relation to men.[71] Further, in export value chains, women tend to be more involved in work related to services,[72] and in export processing zones.

The concept of 'export-oriented employment' of women/feminization of labour refers to the increase in paid employment of women for the purposes of production for purposes of export, which may include work in areas that are often under-regulated such as EPZs. However, the benefits of women's increased labour participation are counteracted by corporate misconduct in tandem with existing social prejudices and barriers. For example, global value chains of textiles are also pushing African women out of the market of manufacturing textiles and clothing due to cheap fast fashion imports, and even commonly worn African prints, are made from fabric mostly imported from the Netherlands 'Dutch Wax' and China. Women cross border traders are also important actors in regional value chains. For example, the exportation of African prints and Tie and Dye from West Africa for use in clothing manufacturing in East Africa and other countries in high end markets as designer clothes presents opportunities for women involved in making the fabric, retailers, designers and dress makers, for example. However, with steep competition from large corporations in production or imports with the opening of goods and services markets, the small and medium-sized women-owned businesses, and related value chains may be pushed out.

It must be noted that differences exist among and within countries when it comes to female labour participation and the absorption of economic shocks, for example those caused by the Covid-19 pandemic and the Russia-Ukraine conflict. Similarly, female labour participation also varies during economic recovery periods in different sectors and different countries or sub-regions. Hence one cannot take a blanket approach.

Global value chains can increase women's labour participation, and

69 OECD 'Women in Global Value Chains' available on https://www.oecd.org/sdd/its/Women-in-GVCs.pdf (accessed 19 March 2023).
70 OECD (Women in GVCs).
71 OECD (Women in GVCs).
72 OECD (Women in GVCs).

thereby contribute to women's increased agency and purchasing power. However, women's increased labour participation has been associated with a feminisation of labour in production for export, such as agricultural production, where there is increasing reliance on women in production, and women tend to constitute the majority of seasonal wage labourers. For example, the WTO and the World Bank concede that exporters particularly hire more women than men on average, and note that 'exporters employ more women- in developing countries, women make up 33 percent of the workforce of exporting firms compared with just 24 percent of non-exporting firms'.[73] It is argued by the author that this is precisely because of the profit motive, to benefit from cheaper and more flexible labour arrangements, not primarily or even necessarily to advance women. The global feminisation of labour can be explained as 'the increase in women's share of employment and the spread of conditions of employment- part-time, temporary work with low pay and no or limited benefits – which traditionally characterized jobs held by women'.[74]

Moreover, backward linkages in value chains can facilitate women's increased participation through small holder production. However, regional and global trade can change consumption patterns when women enter the workforce, they have less time at their hands, as they still carry the same reproductive responsibilities of cooking, cleaning and taking care of family. Unfortunately, despite their invaluable contributions, their care work still goes unrecognised. This disparity creates an opportunity for corporations to leverage on these gaps, by providing convenient solutions such as supermarkets that provide a wide range of day to day goods, including clothing, thus catering to the evolving needs of households. There is also an increase in machinery that is time saving for the completion of various household tasks, such as washing machines, dishwashers, microwaves, air fryers, blenders etc, as well as increased 'ready-to-eat' meals, instant meals, frozen meals etc, which are not only changing consumption patterns, but also health, and domestic production patterns. Global value chains are growing and have spread to grocery stores, which have become bigger and busier as people, including women, have more purchasing power. For example Walmart, 'the world's second largest company with an annual revenue of US$469.2 billion', estimates that over 70% of its purchases are made by women'.[75] As early as 1981, Elson and Pearson noted that 'women often play a key role at the intersection of quality and price in labour intensive industries given their socially acquired skills make an important contribution to enhancing quality and productivity, but at lower labour cost'.[76]

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73 The World Bank 'Women and Trade: The role of trade in promoting Women's Equality' available on https://www.worldbank.org/en/topic/trade/publication/women-and-trade-the-role-of-trade-in-promoting-womens-equality (accessed on 16 April 2023).

74 Marion Jansen, Ralf Peters, and Jose Manuel Salazar-Xirinachs 'Trade and Employment: From Myths to Facts' (ILO, Geneva, 2011) 179.

75 Stephanie Barrientos 'Gender and Global Value Chains: Challenges of Economic and Social Upgrading in Agri-Food' p2, EUI Working Paper RSCAS 2014/96 available on https://cadmus.eui.eu/bitstream/handle/1814/32897/RSCAS_2014_96.pdf (accessed 18 February 2023).

76 Barrientos (2014, p4.).

Moreover, despite being involved in creative industries, production, and processing, there are fewer women registering patents than men. This leaves a huge gap between men and women in intellectual property across all sectors,[77] hence a tendency to exclude women from the benefits associated with patents, such as protection of and compensation for their ideas, services and products, with these typically accruing to men or large corporations.

Increasingly, we also see an informalisation by design in global value chains, which targets unemployed and employed women as retailers and distributors of products of the global North, or far East. Brands such as Tupperware and Avon exemplify this model, selling their products through a pyramid of registered distributors across the world. However, these women operate without essential employment benefits, social protection, health insurance or even job security, hence perpetuating a system of vulnerability and instability.

4.2 Agricultural sector

While there are different views as to the estimated number of women involved in the agricultural sector, it cannot be denied that women constitute a large proportion of workers in the sector including in production, retail and marketing. Some studies suggest that 62 percent of women are involved in agricultural work, yet they are underrepresented in decision-making, leadership and research.[78] The 2015 African Development Bank (AfDB) Report highlights the significant role of women's involvement in agricultural value chains, particularly in the coffee sector. Despite comprising approximately 75 percent of the workforce in this sector, women only control 43 percent of the $20 billion earned from coffee in the global market.

Furthermore, the International Institute for Sustainable Development (IISD) reported that in spite of the Covid-19 pandemic, 'the coffee sector has grew into a lucrative business downstream, reaching a retail market value of approximately USD 102 billion in 2020'. At the time, the sector employed 125 million people, on 12.5 million farms, with 84 percent of coffee farms being small-holder farms of less than 2 hectares each, and smallholder farmers producing the majority of coffee globally.[79] However, women involved in coffee production in Africa, are not making the same gains as men according to the AfDB. This is at least partly because women are often employed in lower-paid positions or are working further down the value chain. More still, there exists unequal historical land distribution; access and patriarchal inheritance laws that disenfranchise women, hence a tendency for women to work in plots of land that they do not own. Further, wet milling,

77 ODI 'Intellectual Property and Women's Economic Development' available on https://cdn.odi.org/media/documents/ODI-PA-IP_Women_Africa-Wp-Mar23-final.pdf (accessed 16 April 2023).

78 Wanjiru Kamau-Rutenberg 'Gender Equality in African Agriculture: An Innovation Imperative' WIPO Magazine available on https://www.wipo.int/wipo_magazine/en/2018/02/article_0006.html (accessed 20 March 2023).

79 IISD 'Steffany Bermudez, Vivek Voora and Cristina Larre 'Coffee prices and sustainability' Global Market Report available on https://www.iisd.org/system/files/2022-09/2022-global-market-report-coffee.pdf (accessed 11 June 2023).

which increases the revenue from cocoa by 25 per cent, is done through cooperatives in some countries, such as Ethiopia, but few women are members of cooperatives, 'and the Ethiopia Commodity Exchange (ECX) does not allow for traceability to original producers. Therefore, coffee grown by women cannot achieve the higher price that specialty markets are willing to pay'.[80]

Moreover, there is a limited number of women registering patents over agricultural intellectual property, partly due to their exclusion in higher and tertiary education and are thus less likely to be cited as lead authors of scientific papers in some jurisdictions.[81]

Trottier argues that women's participation in agricultural production is often curtailed by 'time availability, traditions of land ownership, credit, labour, extension, and training'.[82] The absence of readily accessible and up to date statistics on gender disaggregated data on female labour participation in selected sectors, and in production within different levels at regional and global value chains, makes it difficult to provide a better assessment. Nonetheless, a 2015 report of the African Development Bank provides useful information, which in the least can be seen as indicative. The AfDB report notes cocoa, coffee, cotton and cassava as some of the crucial crops for Africa as they contribute to food security as well as USD12 billion in export value. However, these crops are largely exported unprocessed. To illustrate this, the AfDB report looks at Côte d'Ivoire being the largest cocoa producer (approximately one-third of the world's cocoa); Ethiopia, being Africa's largest coffee producer (exports up to USD 771 million); Burkina Faso, being Africa's largest cotton producer; and Nigeria, being the largest cassava producer globally.[83]

Women constitute 60 percent of the labour force in cocoa and coffee production in Africa but earn less than a third of the income.[84] Some insights from the AfDB report follow below:[85] In relation to cocoa production in Cote d'Ivoire most women working in cocoa production do so unpaid, on family farms, and are excluded from cooperatives which own land. In Ethiopia, although it's Africa's largest coffee producer, and supports 5 million people, women constitute 75 percent of labour, but earn only 43 percent of the revenue from coffee. They do not own the land on which coffee is produced and work lower in the value chain in lower paid jobs. Although African produced cotton does not occupy a large percentage of the global cotton

80 AfDB *Empowerment of African Women through Agricultural Value Chains* (AfDB, 2015).

81 Wanjiru Kamau-Rutenberg 'Gender Equality in African Agriculture: An Innovation Imperative' WIPO Magazine available on https://www.wipo.int/wipo_magazine/en/2018/02/article_0006.html (accessed 20 March 2023).

82 Trottier B 'Women in aquaculture production in West Africa' Conference Paper Symposium on the development and management of fisheries in small water bodies 1989 pp.129-138.

83 AfDB 'Economci Empowerment of African Women through Equitable Participation in Agricultural Value Chains' (2015) available on https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Economic_Empowerment_of_African_Women_through_Equitable_Participation_in___Agricultural_Value_Chains.pdf (accessed 16 April 2023).

84 AfDB (2015).

85 AfDB (2015).

market, it is Africa's third largest exported commodity. However, over 90% of Africa's cotton is exported as raw materials. In Burkina Faso, cotton contributes towards livelihoods of 4 million people, with men and women equally participating in the production of cotton. However, women receive less than 2 percent of the revenue because they do not get remunerated, and do not own the land on which cotton is produced. Less than 0.5 percent of cotton producer groups are run by women, with only 2 percent of the members being women, who lack decision-making power within these groups. In relation to Cassava, out of 6 million cassava producers in Nigeria, women constitute 25 percent, yet they earn a mere 17 percent of the income. One of the reasons for this is that women are largely represented in small holder farming, while men are more involved in commercial production of cassava in Nigeria.

4.3 Extractives

The mining sector is of particular importance in this discourse as Africa has continued to suffer the resource curse. The negative effects of extractivism are experienced by men, women, children, youth, communities and entire states. As this paper is focusing on the impacts of women, comments will be restricted to women. Evidence shows that although women tend to be excluded from jobs in mines, they still bear the brunt of mining activity by corporations, and in many ways, women subsidise the state in caregiving when their husbands, partners, fathers, sons, or other relatives fall terminally ill after repeated exposure to toxic substances during their time working in a mine. Women tend to be involved in lower ends of the mining value chain, and their participation is often in precarious aspects of artisanal mining, such as panning, cooking, selling food to mine workers, and sex work. In other words, the activities that women are typically engaging in in the mining sector, are mostly in the artisanal mining, and not productive or competitive higher ends of the value chains, for example in the mining of tanzanite in Tanzania.[86] This often puts them at a risk of physical harm and sexual abuse. Furthermore, women are exposed to numerous health risks associated with extractives, such as water and air pollution, and they are exposed to the harm caused by toxic chemicals used in mining processes, such as mercury, which is harmful to plant, animal and human life and health. Due to women's socially structured role of caregiving, including cooking and cleaning, women also find themselves carrying the burden of fetching water.

With the arrival of new mining companies, women often find themselves displaced, such as in the criminal case against Kaweri Coffee farm, (which is supposedly a 100 percent subsidiary of Neumann Kaffe Gruppe, based in Hamburg, Germany). Fian reports that in 2001, the Uganda People's Defense Force forcibly evicted communities living in the villages of Kitemba, Luwunga,

86 The Citizen 'Strengthening women access and prosperity in Tanzanian mining sector: Policy and legal recommendations' (09 March 2022) available on https://www.thecitizen.co.tz/tanzania/supplement/strengthening-women-access-and-prosperity-in-the-tanzanian-mining-sector-policy-and-legal-recommendations-3742414 (accessed 11 June 2023).

Kijunga and Kiryamakobe in order to lease the said land to Kaweri Coffee Plantation Ltd.[87] In this case, the community argued that Uganda military forcefully evicted them from their land, in order to lease the land to Kaweri Coffee, which allegations were denied by Kaweri Coffee. The lawsuit was filed in 2013 and the matter seems to still be pending before the Ugandan courts. Further, women have to walk longer distances as their water sources are blocked off for use by mining corporations, or their water sources get polluted, and they have to travel longer distances to get potable water for themselves and for use by their families. This further reduces women's free time available time to do other economic activities, such as working, production or pursuing an education, the so called 'time-tax'.

Numerous cases across the globe illustrate the negative impacts of mining. In the region, the cases of SERAC in Nigeria's Ogoni region, and Xolobeni and Marikana in South Africa are illustrative.

The *SERAC* case,[88] relates to a major oil spill by Shell, in response to which the Nigerian government failed to act. The community challenged this inaction, on the basis that the oil had disrupted their lives and livelihoods, in terms of access to clean drinking water for the community and its livestock and plants, the damage to the rivers affected fishing livelihoods, and overall displacement of the community. The African Commission found that Nigeria had violated numerous rights in the African Charter, including those found in Articles 4, 14, 16, 18 and 24, which speak to the rights to life, property, physical and mental health, family and freedom from discrimination, and the right to a satisfactory environment for development respectively. What is not specifically articulated is the gendered impact of the oil spill, including increased time tax on women, increased risk of physical and sexual harm in the search for potable water, increased musculoskeletal harm due to longer distances walked to secure water (and food) for the family for drinking, cooking, cleaning and personal hygiene.

In the Xolobeni case, the community of Umgungundlovu of Xolobeni,[89] in the Wild Coast, Eastern Cape South Africa challenged the issuance of a mining permit to a corporation, Transworld Energy and Mineral Resources, which sought to mine titanium in Xolobeni. This was on a basis that there had been no meaningful consultation, the proposed mining project posed threats to the community's local environment, grazing land, culture, and would have led to the displacement of the community. In this case, the court considered various factors including the fact that although there had been collective consent, the

87 Fian International 'Human Rights Violations Exacerbate for Kaweri Evictees' (2019) available on https://fian.org/en/publication/article/human-rights-violations-exacerbate-for-kaweri-evictees-2243 (accessed 03 April 2023).

88 SERAC and CESR v Nigeria.

89 SAHRC 'SAHRC Welcomes the Xolobeni Judgment' (2016) available on https://www.sahrc.org.za/index.php/sahrc-media/news/item/1692-sahrc-welcomes-the-xolobeni-judgment (accessed 16 April 2023); Ground Up 'Ground Breaking Court Judgment on Mining and Community Rights' available on https://www.groundup.org.za/article/groundbreaking-court-judgment-mining-and-community-rights/ (accessed 16 April 2023).

consultative process was flawed because it had not been sufficiently inclusive. Vulnerable groups such as women had been excluded from meaningfully participating in the process, and key stakeholders such as the local municipality within whose jurisdiction the mining activity would have taken place had not been consulted. The court ruled that there had to be full, prior and informed consent in situations like these, and this was supported by the South African Human Rights Commission in its National Investigative Hearing Report on the Underlying Socio-Economic Challenges of Mining-Affected Communities in South Africa.

In the earlier *Marikana* case, which was resolved through the Marikana Commission, women are to date still waiting for compensation. The state normally had an interest in preventing or shortening strike action where foreign direct investment is concerned because of the legal implications this can have on the state in terms of compensation if sought by the corporation. In the case of Marikana of 2012, in South Africa, the police opened fire on protesting mine workers at Marikana, near Rustenburg in the Northwest Province in South Africa, injuring 78 and killing 34 of the protesters. The protest was ignited by calls for wage increases at Lonmin Mine. Despite the compensation not having been fully paid by 2022, Lonmin was sold to Sibanye StillWater in which several entities based in the global North have a stake and enjoy profits.

4.4 Export Processing Zones

An export processing zone is an area established to enhance exports by creating often a one stop shop for investors, and an area with a somewhat relaxed regulatory framework and reduced tariffs, to encourage investment in the country, and exportation of the goods produced in the EPZ. As noted above, international trade creates more jobs for men and women but is particularly useful in bringing more women into paid employment. With increased foreign direct investment, international trade tends to increase the number of jobs, particularly those are ‘low-skilled, labour-intensive as well as low valued-added jobs in developing countries. Most of these jobs are target women. Women Watch argues that one of the reasons for this is that ‘[w]omen workers have been particularly sought by the export-oriented industry because they are generally less unionised and consequently have lower bargaining power over their wages and working conditions and often work in substandard labour conditions’.[90] This is especially evident in Export Processing Zones because they tend to be exempt from legislative labour standards.[91] Countries may wish to establish EPZs to gain from employment effects, foreign currency,

90 Women Watch ‘Gender Equality and Trade Policy’ available on https://www.un.org/womenwatch/feature/trade/Effects-of-Trade-on-Gender-Equality-in-Labour-Markets-and-Small-scale-Enterprises.html (accessed 16 April 2023).

91 Women Watch ‘Gender Equality and Trade Policy’ available on https://www.un.org/womenwatch/feature/trade/Effects-of-Trade-on-Gender-Equality-in-Labour-Markets-and-Small-scale-Enterprises.html (accessed 16 April 2023).

demonstration effects, technology transfer and upskilling of the workforce.[92] Despite the increase of women's employment through EPZs, the World Bank and ILO report that 'direct employment impact of [export processing zones] is marginal'. 'EPZs account for less than 0.5 % of total global employment, and for less than 3% of employment in most individual countries with EPZs'. Although it is estimated that EPZs contribute to about 77 million jobs indirectly (that is outside the EPZ), it is conceded that it has been difficult to obtain accurate data on indirect jobs.[93]

92 Andrew Lang 'Trade Agreements: Business and Human Rights: The Case of Export Processing Zones' (2010) Corporate Social Responsibility Initiative Working Paper No. 57 Cambridge Massachusetts John F, Kennedy School of Government, Harvard University available on https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_57_lang%20FINAL%20APRIL%202010.pdf (accessed 16 April 2023).

https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_57_lang%20FINAL%20APRIL%202010.pdf (accessed 16 April 2023) 14.

93 Andrew Lang (2010) 16.

5 Impact Assessment

Corporate misconduct has effects on both men and women, but evidence has shown that women experience these effects differently, and often more severely than men. Women are often excluded from the negotiating tables and from the compensation where this is made available. Hence their voice remains unheard, and this prevents women from raising concerns that matter to them.

5.1 Economic Participation

It can be accepted that regional export trade can facilitate and indeed increase women's participation in the economy through increased access to paid jobs in the formal economy, which can improve women's agency and the realisation of various human rights for both women and children. It can also be accepted that women contribute to export trade through their role in various parts upstream of regional and global value chains, and that in these spaces, women's socio-economic rights are often violated (healthcare, equal wages, fair labour standards etc.).

Surprising Facts

- Women are concentrated in lower-paid, lower-skill work.
- For every dollar men earn, women earn 77 cents.
- Women are under-represented in decision-making roles.
- Women carry out at least 2.5 times more unpaid work than men.
- At the current rate, it will take 257 years to close the global gender pay gap.

Source: United Nations[94]

It is therefore important to understand the impact of corporate conduct through a gendered lens, which recognises the (pre-)existing social constructs. For example, in the context of women living in rural settings, due to limited access to land resulting from communal ownership, and the existence of male primogeniture and patriarchal structures. Therefore, women tend not to own land in their own right but have a 'soft ownership' akin to a usufruct through a male relative or husband.

When consultations are conducted between governments, corporations and communities, the discussions, which are usually in the hands of men, disenfranchise women, as they often have no say in the negotiations and no share in the compensation.[95] For example in Mozambique where a Swedish company initiated a biofuels project for the export of fuels to Europe, there were no women in the negotiations, no women among the traditional leaders, and no women among the representatives of the administration in the initial meeting.[96] Another example is given of a 'British company in Zambia, which failed to meaningfully consult with women when providing land compensation to male legal land owners in the context of a mining project'.[97]

Action Aid further notes the practical experiences of women in Guinea Bissau, Malawi and Zambia in its report on the implications of corporate misconduct. The report highlights a significant a land grab by a Spanish agribusiness company in Guinea Bissau. This saw a foreign company take over much of the land was that had been previously dedicated to rice cultivation, predominantly managed by small-scale women farmers for both subsistence and commercial purposes. 'The arrival of the company displaced women from the rice paddies,

94 UN 'Closing Gender Pay Gaps is More important than Ever' available on https://news.un.org/en/story/2022/09/1126901 (accessed 16 April 2023).
95 ; Tapiero 'Women mine the risks, men the benefits' (2010) 2 *Inside Mining* 13.
96 Action Aid p.8.
97 Action Aid p.8.

leading to a strong restructuring of household economies. For example, women who in the past would have produced their own rice for domestic consumption now had to buy rice from markets, and women who used to produce and sell rice on a small scale lost their income flows, thereby losing control over the family income, and 'eroding their position in the household'.[98] Similarly, in Malawi, the acquisition of land by corporations for sugar cane plantations in Nkotakota and Chikwawa, led to women losing their customary land as they had no say in land negotiations with corporations, and could not compete with them.

The sectoral gender segregation is an important consideration. For example within the extractive sector in Zambia, (Kankoyo and Kalumbila) more men were able to secure jobs than women due to men having technical skills, and also due to corruption and bribery etc. Moreover, the commencement of mining activity in Kalumbila has pushed the demand for basic goods up. With more men getting into paid employment at the mines, fewer of them are available to assist with local food production, hence creating shortages and pushing prices up in the markets. The fact that more men are able to secure jobs, than women, also means that fewer women have access to income. Loss of land to the mining company also means that women lose the resources necessary for food production, thus reducing women's food sovereignty and agency.[99] Further, forced displacement, which can occur in instances of land grabbing, can lead to gender-specific violence.

According to UN Women, women constitute 89% of the informal sector in sub-Saharan.[100] For women in informal settings, while trade may expand opportunities to contribute to regional export value chains, it poses bigger risks as many African markets have been liberalised prematurely such that the domestic manufacturing industries are still in the infant stage and cannot compete with large transnational corporations.

5.2 Decent Work

In relation to women as workers:

> ***'Women are overrepresented in the lowest paid, most insecure and vulnerable jobs, and have fewer opportunities and access to resources to start and develop their own businesses than men'.***[101]

98 Action Aid p.8.

99 Action Aid available on https://actionaid.nl/wp-content/uploads/2020/02/We-Mean-Business-Protecting-Womens-Rights-in-Global-Supply-Chains_ActionAid_March-2020.pdf (accessed 20 February 2023).

100 UN Women 'Women in the Informal Economy' available on https://www.unwomen.org/en/news/in-focus/csw61/women-in-informal-economy (accessed 16 April 2023).

101 Action Aid p.9.

Evidence suggests that women dominate the low-paid, low-skilled work within global value chains for export as corporations try to reduce production costs. Often it is the uneducated, younger women who get taken advantage of because they are perceived to be ignorant, less aware of their rights and therefore unlikely to cause trouble. This is also perpetuated through the outsourcing of workers, where large corporations can hide behind small feeder companies within the lower levels of their value chains. However, it is now widely accepted that corporations are responsible for respecting human rights across their value chains.[102]

5.3 Unpaid Domestic and Care Work

UN Women notes that '[w]omen carry out at least 2.5 times more unpaid work than men'.[103] This is reiterated by the ILO, which reports that 'globally, women perform 76.2 per cent of total hours of unpaid care work, more than three times as much as men'.[104]

Although gender roles are switching in many households, women still carry a double role of both productive and (economically unrecognised work) reproductive work, while men tend to focus on one role, being (economically recognised) productive work in the majority of households.

For example, a working woman will typically go to work, but also do reproductive work such as cooking and cleaning for the family and taking care of the sick, whereas a man would focus on productive work primarily. Similarly, in a rural context, a woman may work in the fields with her husband and children, but after the fieldwork is done, the woman continues with her second role of caregiving, cooking and cleaning for the family, and often if the crops are for export, only the man will receive the consideration, to choose what the proceeds will be used for.

5.4 Gender Based Violence

The incidence of gender-based violence (GBV) is reproduced in global supply chains. For example, in cross-border trucking and factory settings, as well as the ripple effects of having heightened male presence in a particular area, there is a more noticeable rise among male mine workers taking up harmful behaviours such as excessive drinking and drug use. Evidence from beyond the region, e.g. in Cambodia shows that more than half of the women who

102 Mette Anderson and Tage Skjoett-Larsen 'Corporate Social Responsibility in Global Value Chains' (2009) 14(2) *Supply Chain Management* 75-86.

103 United Nations 'Closing Gendr Pay Gaps is more Important than Ever' available on

104 ILO 'Women do 4 times more unpaid care work than men in Asia and the Pacific' (2018) available on https://www.ilo.org/asia/media-centre/news/WCMS_633284/lang--en/index.htm (accessed 16 April 2023).

were interviewed by Action Aid in 2014 reported having been subjected to, or having witnessed sexual harassment, molestation or assault at the workplace and reported further that male supervisors often hurl insults and verbal threats. With more people looking for jobs, there tend to be more men loitering outside factory gates, which also creates a feeling of being unsafe for women working in factories. Closer to home, in Zambia mining projects have been reported as leading to higher reports of sexual violence against women due to increased alcohol and drug abuse by men who secure jobs in the mines, such as in Kalumbila and Kankoyo.[105]

5.5. Women Human Rights Defenders

While both male and female human rights defenders experience a huge risk to their personal security and lives, as well as that of their families and loved ones, evidence suggests that women human rights defenders tend to face gendered threats and gender-based violence. It is their personal and family life that is often threatened, as compared to men human rights defenders who tend to get threats about their work.

105 Action Aid.

6 Conclusion

It can be concluded that while trade can facilitate increased access to economic opportunities and paid employment for women, especially in rural areas, and value chains can bring in the work of women from different walks of life including rural, urban, formal and informal, young, old, etc, its ills have been overlooked for too long. Global and regional value chains have specific and general impacts on women, many of which are negative as has been illustrated in this report including the feminisation of labour or export-oriented female employment. Although this can increase female labour participation and the gains associated with this, such as increased access to money and agency, this type of labour tends to bring women in at the lower levels of production, in the least protected regulatory environment, and at the lowest ends of value chains. This often makes it difficult for women to climb the ladder in reaching higher ends of the value chain. Moreover, existing wage gaps, glass ceilings, precarious work, lack of recognition, abuses, and so forth, all point to the fact that there are some major gaps in the way in which trade and its related value chains currently operate. The impacts suggest that women's labour is targeted primarily for the bottom line, decent work is lacking, women's unpaid domestic and care work is not recognised or compensated, and women continue to be exposed to gender-based violence, and violation of their human rights, including in the workplace such as in factories and EPZs, as well as in the export value chains. Moreover, intra-Afican trade is currently hampered by the fact that African countries to a certain extent produce homogenous goods, and there is a concentration in the production of commodities which reduces the appetite for intra-regional trade, and thus an increased productive capacity is important before any significant gains can be reaped from intra-African trade.

7 Recommendations

In order to gain from trade and related value chains, it is important for women to participate in high-value skilled jobs and for governments to increase the upskilling of women, giving opportunities for on-the-job training, and advanced education in skilled and technical work. This will also prove useful in the emerging age of artificial intelligence and the changing nature of work globally.

The following recommendations are made to states:

Governments should not eschew their duties of protecting, promoting and fulfilling women's human rights. This includes in many cases, regulating corporations that produce goods and services for trade with export value chains. There must therefore be policy coherence between the governments' women's economic empowerment policies, trade policies, and legislation. The provisions of General comment No. 24 (2017) on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities require states to put consequences in place for corporate misconduct.

States should:

- Implement NAPs and other mechanisms to ensure human rights compliance by corporations
- Ratify key ILO provisions
- Address issues of land ownership and access to productive resources e.g., affordable credit to women-owned enterprises.
- Review their gender-neutral trade and investment policies and legal frameworks. This could be centred around revising trade agreements that are aimed at achieving higher levels of liberalisation that affect already marginalised women value chain actors if support mechanisms are not established.
- Ensure that EPZs follow labour standards including the payment of minimum wage and provision of employee benefits.
- Review mining contracts/policies through domestication of the AMV
- Ensure implementation of free prior and informed consent (FPIC)
- Invest in common user facilities to support women-owned businesses with affordable food grade value addition facilities.
- However, this cannot be achieved in isolation, states also have important obligations not only to respect, protect and fulfil human rights, but also to ensure that corporations respect human rights.

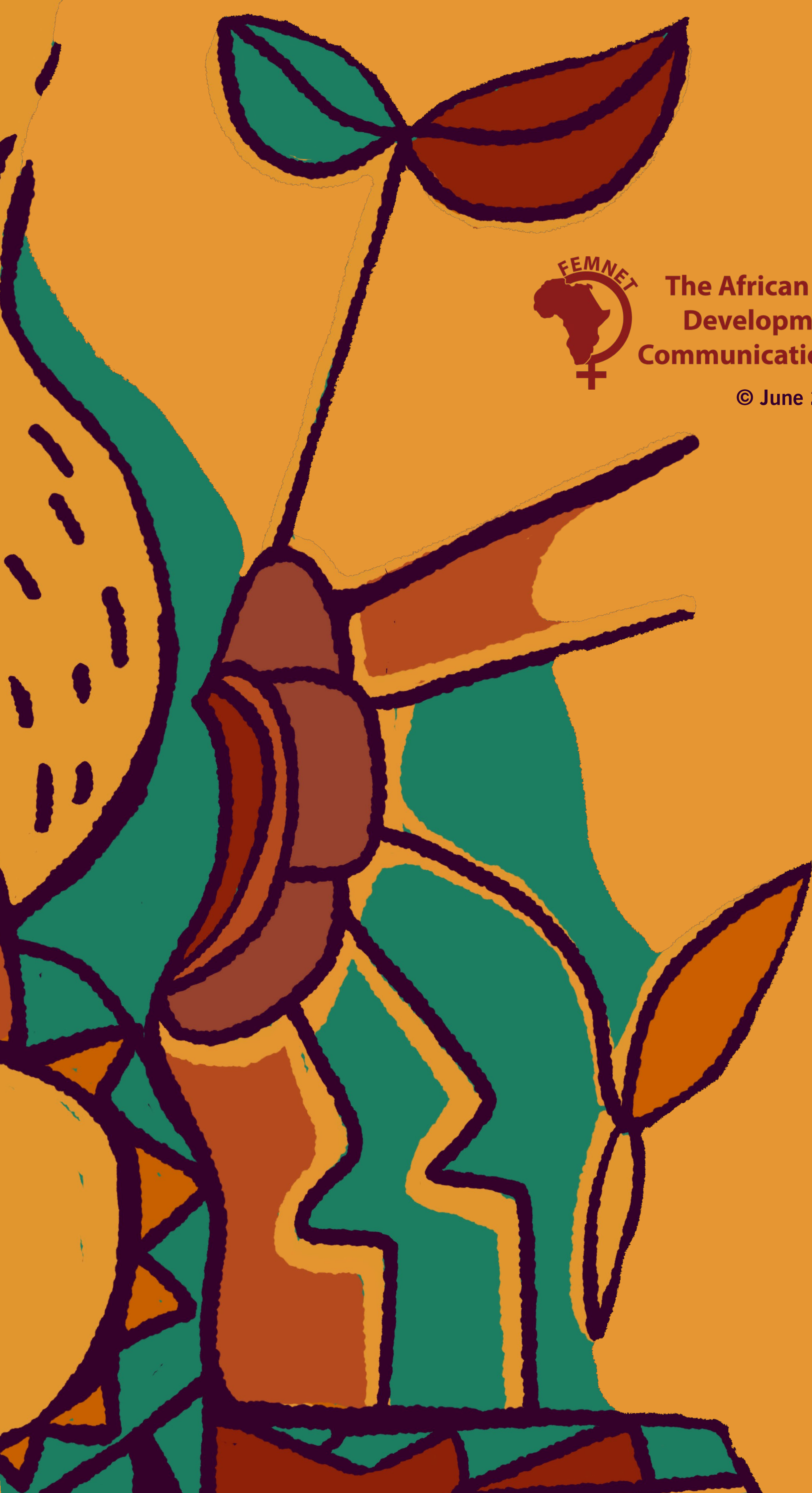
As noted by Barientos, it is important for corporations and states, in addition to human rights due diligence, to ensure that gender-due diligence is conducted to take into account 'looking in' and 'looking out' factors, where looking in speaks to introspection by the corporation of its own organisational setup, opportunities for women's participation in management, leadership and decision-making, protection from sexual abuse and gender-based violence within its factories or value chains broadly, and looking out speaks to external factors.

As proposed by Action Aid, 'gender-due diligence ought to be imposed as a compulsory measure across the export value chain. Below is a useful summary of the observations made by Action Aid in its 2014 report on gender within global value chains in relation to gender due diligence:

Corporations should:

- Conduct gender-sensitive risk and impact assessments, through meaningful consultations with potentially affected women, women's organisations and women human rights defenders
- Integrate findings from the impact assessment into all relevant processes and take gender-responsive measures to prevent and mitigate these impacts.
- In line with the ILO Convention No. 190 on Violence and Harassment, businesses should assess the risk of sexual harassment and gender-based violence in their supply chains, take appropriate steps to prevent sexual harassment and GBV, develop a reporting and handling procedures and make it known to all workers.
- Communicate adequate and easily accessible information to possible affected rightsholders, taking account of language and literacy levels.
- Track the effectiveness of their responses by using sex-disaggregated data in consultation with affected women, women's organisations and gender experts.
- Remedies should be effective, timely and gender-transformative, and consider the specific barriers women experience in accessing justice. Corporate grievance mechanisms must be accessible, efficient, safe and fair to women.
- Assess the risks posed to women's human rights through their tax strategies and structures, as corporate tax avoidance deprives governments of much-needed resources to fund gender-responsive public services.
- Ensure that their preferred suppliers have the financial capacity to comply with human rights and gender equality standards.
- Go beyond a 'do no harm' approach, to actively advance the rights of women with gender-transformative measures – that is; measures that transform underlying power structures and relations, in the form of affirmative action to advance gender equality and women's rights.

SOURCE: Text extracted from https://actionaid.nl/wp-content/uploads/2020/02/We-Mean-Business-Protecting-Womens-Rights-in-Global-Supply-Chains_ActionAid_March-2020.pdf



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