

UNIVERSITY OF SEVILLE
European Master's Programme in Human Rights and Democratisation
A.Y. 2020/2021

The Business Case for Addressing Sexual Harassment through the Business and Human Rights Framework: Bulgaria case study

Author: Olga Peneva
Supervisor: Laura García Martín PhD

ACKNOWLEDGEMENT

I am truly grateful for the excellent support and encouragement from my supervisors Laura García Martín and Profa. Dra. Carmen Márquez Carrasco. I wish to thank sincerely prof. Samentha Goethals who skilfully navigated me in the early stages of the process to formulate my thesis question and methodology.

I wish to thank the team at UNICEF Bulgaria and most importantly my mentor and friend Marina Stefanova for her support and inspiration to keep growing.

I am sincerely grateful for the opportunity to write a thesis in one of the most beautiful spots in the world and to watch the ocean every day.

In this journey, I received amazing support from the EMA students, and I am truly grateful! Thank you, all amazing people, from EMA!

*I wish to thank my family for their support during those last months and for believing in me! I am sincerely grateful to my partner in crime, Marti, who did not hesitate to join me on this journey and was my rock every time I was going through a difficult time. He supported me and pushed me to grow and to get the maximum out of this experience. Thank you!
I am grateful that I faced my fears, and I conquered another significant challenge in my life!*

Abstract

The objective of this master thesis is to focus on gender-inclusive policies/laws adopted by the Bulgarian state and companies, and how building on these practices the business and human rights framework can be advanced. Different methods are used in answering the main research question: literature review to establish a theoretical framework; legal research on existing legislation and practices of gender equality in Bulgaria; content analysis of human rights, and gender-inclusive policies and practices adopted by global and local companies. Although there is a call to adopt the UNGPs from a gender lens, the theory does not provide much guidance on how this can be achieved. Bulgaria, like other states, has focused on developing CSR and sustainable business practices for the last 10 years. The COVID-19 pandemic has shown the need for better collaboration between state and businesses in the process of recovery. Arguably, seeking implementation of the business and human rights agenda may not be a priority. In addition, COVID-19 has exacerbated gender inequality and urgent measures have to be taken to address the growing ‘shadow pandemic’ of violence against women.¹This thesis recommends that businesses can improve their gender-inclusive practices when addressing sexual harassment and gender-based violence through the implementation of the business and human rights framework from a gender lens.

Key words: Gender-inclusive policies, Bulgaria, Business and Human rights, UNGPs from gender lens, gender inequality, sexual harassment and gender-based violence.

¹UN Women, ‘The Shadow Pandemic: Gender-based violence during COVID- 19’
<<https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-COVID-19-response/violence-against-women-during-COVID-19>> accessed on 1 June 2021.

Table of Contents

CHAPTER 1 INTRODUCTION	7
1.1 The problem	7
1.2 Background	9
1.3 Concepts and definitions.	10
1.4 Research question:	12
1.5 Methodology	12
1.6 Presentation	13
CHAPTER 2 THEORETICAL FRAMEWORK	14
2.1 Introduction	14
2.1.1 Organisations and gender equality in the workplace	15
2.1.2 Organisation's response to SH	16
2.1.3 Organisations response to gender-based violence (GBV hereinafter)	19
2.1.4. Applying different organisational theories to organisational change	20
2.1.5 Rights discourse and mobilisation	22
2.1.6 Legal consciousness theory	23
2.1.7 Social movement and feminism	25
2.2 BHR Framework and UNGPs	27
2.2.1 Introduction	27
2.2.2 UNGPs	27
2.2.3 Human Rights Framework UN	28
2.2.5 International Labour Organisation	30
2.2.6 OECD, Women Empowerment Principles, UNSDGS	31
2.2.7 EU	32
2.3 Conclusion	33
CHAPTER 3 BULGARIA	34
3.1 Introduction	34
3.1.1. Brief historical overview	35
3.2 The EU accession and gender mainstreaming in Bulgaria	36
3.2.1 Legal framework establishing gender equality in Bulgaria	37
3.2.2 Anti-discrimination legislation	38
3.2.3 Gender equality legislation	39
3.2.4. Extending gender equality legislation to other laws	40
3.2.4.1 Code of Social Insurance and Labour Code	40
3.2.4.2 Employment Promotion Act	41
3.3 EU Gender Equality	41
3.3.1 EU's response to Sexual Harassment	42

3.3.2 EU's response to GBV and Bulgaria's position on the Istanbul Convention	44
3.5 Summary of points	45
3.6 Role of companies in responding to sexual harassment and GBV	46
3.6.5. Companies response to sexual harassment	46
3.6.6 Sexual harassment and trade unions	47
3.6.7. Domestic violence at work	48
3.7 Conclusion	49
CHAPTER 4 CSR AND BHR	50
4.1 Introduction	50
4.1.1 Current state of play of the BHR framework	50
4.1.2 Corporate Social Responsibility, Responsible Business Conduct and BHR	52
4.1.3 BHR in Bulgaria	53
4.1.4 NGO and other organisations	54
4.2 Corporate Social Responsibility in Bulgaria	55
4.2.1 State's involvement in CSR Strategy	55
4.2.2 Comparison between Strategy and EU CSR Policy	56
4.2.3 State of CSR for 2018 – 2020	57
4.2.4. BHR advancing the gender-equality agenda	58
4.5 Conclusion	60
CHAPTER 5 COMPANIES	61
5.1 Introduction	61
5.2 Reporting under UNGC	62
5.2.1 SMEs Respect for Human Rights	63
5.2.3 SMEs Gender	64
5.2.4 SMEs Transparency	64
5.2.5 Large Companies Respect for Human Rights	64
5.2.6 Large Companies Gender	65
5.2.7 Large companies Transparency	65
5.3 Bulgarian Business Forum Leader	66
5.3.1 Respect for Human Rights	66
5.3.2 BBFL – Gender	67
5.3.3. BBFL Transparency	68
5.4. Women's perspective on human rights at work and responding to sexual harassment	69
5.4 Conclusion	69
CHAPTER 6 CONCLUSION AND RECOMMENDATIONS	71

REFERENCE LIST:	76
Appendix 1 Table 1	86
Appendix 2 Table 2	87
Appendix 3.	88

LIST OF ABBREVIATIONS

BHR	Business and Human Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic Social and Cultural Rights
ECHR	European Court of Human Rights
EIGE	European Institute of Gender Equality
EU	European Union
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic Social and Cultural Rights
NGO	Non-government organisation
ECHR	European Court of Human Rights
FBHR	Forum on Business and Human Rights
HRC	Human Rights Council
HRIA	Human Rights Impact Assessment
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNGC	United Nations Global Compact
UNGPs	Guiding Principles on Business and Human Rights
WB	World Bank
WEP	Women's Empowerment Principles
WG	Working Group on Business and Human Rights

Chapter 1 Introduction

1.1 The problem

The adoption of gender-inclusive policies by states and businesses can undoubtedly address gender inequality and the widening gender gap. This is even more pertinent to the current COVID-19 crisis which disproportionately impacts women.² From job losses to health impact, lockdowns and heightened risk of abuse, home-schooling and mental health deterioration, these are just some of the examples of the impact of COVID-19 on women. I question how businesses will respond to the challenges and how women's rights will be better protected, especially in the workplace. The latest developments of the UNGPs framework indicate that both businesses and states have responsibilities to respect and protect human rights.³ Understandably, states are preoccupied with responding and prioritising post-COVID-19 recovery, however this should not be in the expense of domestic violence victims. The growing shadow pandemic requires for states to take urgent measures to protect women and girls.

The gender equality topic has been highly contentious and often misconstrued depending on the position of the actors involved in the debate. I have personally observed the developments of the gender debate in Bulgaria since 2018 which has inspired the research on this topic.

From one point of view, looking at the response to the ratification of the Istanbul Convention there is no evidence suggesting the unwillingness of the state to change the status quo. Instead of taking action, the state and the Constitutional court have argued that by adopting the Istanbul Convention a third gender will be created thus challenging the traditional Christian family. This reasoning fails to recognise and acknowledge the protections that the Convention provides to women, victims of gender-based violence.⁴ Following this is the combination of different

² Clare Wenham., 'The Gendered Impact of the COVID-19 Crisis and Post- Crisis Period' September 2020 <[https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2020\)658227](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2020)658227)> accessed on 1 June 2021.

³ United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (UNGPs) (2011) HR/PUB/11/04.

⁴ Constitutional Court of the Republic of Bulgaria (2018). Decision N 13, Sofia, 27 July 2018, promulgated in SG 65/7 August 2018 (Решение № 13, София, 27 юли 2018 г., обн. ДВ, бр. 65 от 07.08.2018 г.). Retrieved

legislative steps to respond to the growing international concerns of the treatment of women in Bulgaria. In light of the recommendations by the CEDAW committee and the Commissioner for Human Rights Dunja Mijatovic, Bulgaria has taken steps to address discrimination and gender-based violence through the adoption of comprehensive gender equality legislation. This will be discussed in more details in Chapter 3 with the objective to ascertain whether they have been implemented effectively into business management practices.

A logical question is how these legislative changes have impacted business organisations. Answering this question will clarify whether companies have adopted a more gender-inclusive policy and how these policies impact human rights and particularly women's rights in the workplace. An interesting observation that I have established in my more recent research is that many companies in Bulgaria have very active CSR practices. Yet, after reviewing the latest CSR reports in the 300 top hundred employers in Bulgaria, I noted that in the reports from 2018 and 2020 gender equality is not on the CSR agenda.⁵ Furthermore, one of the most active multi-stakeholder networks, the UN Global Compact Bulgaria, has mentioned SDG5: 'Achieve gender equality and empower all women and girls, only briefly in its action plan since 2015 and there are no initiatives related to gender as part of their annual activities.'⁶ In addition, the limited references to gender in the reports published by the network, indicate that SDG Goal 5 has not been listed as a key priority area to which businesses can contribute.

The research seeks to ascertain whether the legal system provides the needed support for women and what are the attitudes towards gender inequality in the workplace. Many feminist scholars, practitioners and NGOs would argue that Bulgaria has not reached gender equality. Yet, from the data presented below it appears that there has been significant progress made with regards to gender-inclusive policies. The goal of this thesis is to review these practices and assess how they have been implemented by businesses. My contention is that hidden

on 28 February 2020, from <<http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>>

⁵ Marina Stefanova, 'State of CSR in Bulgaria 2018' (2019) 53 CSRAB 1689. ; Marina Stefanova 'State of CSR in Bulgaria 2020' <<https://www.csrab.com/bg/products/csr-%D0%B0%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7%D0%B8.html> 'State-of-Csr-in-Bulgaria 2020_single.Pdf' > accessed 30 March

⁶The Global Compact Bulgaria <https://www.unglobalcompact.bg/en/?page_id=2463 >accessed 30 March 2021.

behind the equal treatment discourse business managers and decision-makers have ignored the complexity of gender inequality. Gender inequality is deeply embedded in society that women are unaware of what rights they may claim in the workplace. In addition, fearful of job loss or repercussion, women remain silent to reporting sexual harassment, discrimination practices and gender-based violence in the workplace. The UNGPs are encouraging businesses and states to provide dispute mechanisms to support victims. Arguably, these mechanisms will be rendered inefficient if women in the workplace lack awareness to seek their rights. The UNGPs encourage states to implement the principles through the adoption of a gender lens approach whilst recognising that this approach may not be sufficient to address the systemic gender inequality and gender stereotypes. The contention is whether the gender lens allows us to go deeper into the complexity of the gender discourse. This will be assessed in the research by adopting a socio-legal approach when looking into the gender-inclusive policies and their applications by states and businesses.

1.2 Background

Bulgaria scores 59.6 out of 100 and ranks 19th in the Gender equality index in Europe.⁷ Although there has been a significant improvement in the engagement of women in the labour market since 2010 the gender pay gap is still persistent especially for parents and persons aged 25-49.⁸ Women are also at a higher risk of getting into poverty, which is likely to increase due to the high job loss rate and the growing gender inequality as a result of COVID-19.⁹ According to a study conducted by the World Bank Bulgaria has scored 93.75 out of 100 in ‘protection of women’s legal rights at work’.¹⁰ Bulgaria is scoring well in the employment of women in the IT sector by reaching 31 % percent of women employed in the sector.¹¹ Bulgaria is among the

⁷ European Institute for Gender Equality <<https://eige.europa.eu/gender-equality-index/2020/BG>> accessed 11 March 2021.

⁸ *ibid.*

⁹ The World Bank in Bulgaria <<https://www.worldbank.org/en/country/bulgaria/overview>> accessed 16 March 2021.

¹⁰ The World Bank ‘Women, Business and the Law: A decade of reform 2019’ <<https://www.worldbank.org/en/news/press-release/2019/03/01/bulgaria-emerges-as-champion-in-women-legal-rights-affecting-work>> accessed 16 March 2021

¹¹ Women in Tech Bulgaria is Leading According to Eurostat <<https://www.coding-girls.com/blog/women-tech-bulgaria-leading-according-eurostat>> accessed 16 March 2021

few EU states where 40% percent of managers are women.¹² Most recently, Bulgaria has been voted the best country for employment for women.¹³ The evidence indicates that significant progress has been made, however addressing gender inequality, gender-based violence and sexual harassment are real and complex problems that require an adequate response.

1.3 Concepts and definitions.

The thesis seeks to identify how the business and human rights framework can be advanced through mainstreaming gender-inclusive policies and laws. The purpose of this part is to clarify some key concepts that will be used in the thesis. After defining the key concepts, the next part will cover the research question.

Non-discrimination and equality between men and women

The principles of non-discrimination and equality between men and women are central to the human rights framework.¹⁴ Discrimination is prohibited under the ICCPR¹⁵ and CEDAW¹⁶ and may take different forms. It is important to highlight that gender equality does not render equal treatment of men and women but rather considering their specific needs and requirements. Therefore, the human rights law focuses on results to achieve quality, not on equal treatment. In fact, this may result in different treatment of women and men that has to take into consideration the biological differences and ‘redress the historical discrimination’.¹⁷ This concept is known as ‘substantive equality’ that can only be achieved through addressing root causes of inequality, transforming gender norms and attitudes and allowing women and men the full enjoyment of their rights.¹⁸

¹² Eurofound (2018) Women in Management: Underrepresented and overstretched? Publications Office of the European Union.

¹³ The best European Countries for Women to Work < <https://www.rebootonline.com/digital-pr/assets/best-countries-women-work-europe/#breakdown-of-data> > accessed 16 March .

¹⁴ UN Office of High Commissioner of Human Right, ‘Women Rights are Human Rights’, 2014. pp. 29, <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> > accessed 30 March 2021

¹⁵ International Covenant on Civil and Political Rights (ICCPR), signed on 19 December 1966, entered into force on 3 January 1976.

¹⁶ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed on 18 December 1979 in New York, entered into force on 3 September 1981.

¹⁷ OHCHR (n.15), pp. 34.

¹⁸ *ibid*, pp.31.

Gender mainstreaming

Gender mainstreaming is a strategy that aims to achieve equality between men and women through assessing implications for men and women at every stage of any planned intervention. It takes into account men's and women's perspectives as an essential part of policy and programs development and applies to economic, political and social areas.¹⁹

Gender and human rights

The gender lens analysis of international law and international human rights law provides a perspective that women and men experience human rights violations differently.²⁰ The United Nations Guiding Principles on Business and Human Rights (UNGPs) endorsed in 2011 are the standard-setting document on prevention, mitigation and remediation of human rights violations caused by business enterprises through their activities.²¹ The 'Protect, Respect and Remedy' Framework is founded on 3 pillars: state duty to protect human rights; the corporate responsibility to protect and access to remedy for victims of business-related abuses. The established UN working group was mandated with promoting, disseminating and implementing the UNGPs in states and businesses. Since 2017 the working group has adopted a 'gender lens approach' in its work as a recognition of the importance of adopting a gender lens approach in implementing the UNGPs.²²

¹⁹ Ibid, pp. 37.

²⁰ Ibid, pp.36.

²¹ United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (UNGPs) (2011) HR/PUB/11/04. pp. 13.

²² Special Rapporteur, 'Gender Guidance for the UNGPs'.A/HRC/41/43 Published by the HRC Working Group in 2018.

1.4 Research question:

The main research question is how have gender-inclusive policies/laws influenced businesses practices in Bulgaria, and how can this experience be brought into the Business and Human Rights framework to advance women's rights in the workplace.

The research question addresses the following sub questions:

- 1) How have gender-inclusive policies been mainstreamed and led to change in business and management practices in Bulgaria?
- 2) What are the obstacles to adopting the business and human rights-based policy framework?
- 3) How do companies address cases of discrimination, gender-based violence and sexual harassment through their current gender-inclusive policies/laws and mechanisms?
- 4) How through adopting gender-responsive practices companies may advance a gender-responsive BHR policy/legal framework?

1.5 Methodology

The thesis adopts a qualitative case study methodology on the mainstreaming of gender-inclusive approach in business to theorise how a gender-responsive BHR approach could be developed and advanced as part of a COVID-19 recovery plan in Bulgaria. To answer the main question the paper adopts a qualitative method by analysing the case study of Bulgaria which is the primary method of research. Data collection for the case study will rely on secondary data to provide an in-depth understanding of the challenges and the opportunities in implementing the UNGPs from a gender perspective. The case study was chosen mainly because of the unique position in Bulgaria where despite the adoption of gender equality policies there is no recognition of women's rights, especially in the workplace. The second method used is legal research that seeks to identify the legal mechanisms available in responding to sexual harassment and discrimination cases. And finally, the third method used is a content analysis of CSR practices, human rights and gender-inclusive policies implemented

by companies that have been recognised as the most responsible employers and/or businesses in Bulgaria. The choice of companies applies methodology on transparency and reporting of the following criteria: human rights policy, active CSR policy, gender equality, sexual harassment and gender-based violence policies.

1.6 Presentation

The research paper is divided into 6 parts, starting with an introduction outlining background information, main concepts, literature review, methodology, thesis question and limitations. Part 2 contains a literature review conducted from a socio-legal gender lens and an overview of the international human rights framework relevant to the gender discourse. Part 3 provides a theoretical framework including an overview of the legislation and case law related to sexual harassment and discrimination in the workplace. Part 4 reviews the CSR strategy in Bulgaria and whether it can provide an entry point to advance the BHR framework. Part 5 includes examples of how some of the leading companies in Bulgaria implement BHR, gender agenda and CSR policies. This part also includes the results of a short survey presenting women's views on business and human rights and sexual harassment in the workplace. The findings of the survey represent some of the limitations of the study in conducting a more comprehensive survey. One main limitation was the unwillingness of the respondents to answer the questions due to a lack of awareness about sexual harassment. Similarly, the limitation of interviewing representatives from the human resources departments who would have been in a position to discuss in more detail the types of policies they had in their organisations. This is why my research relied primarily either on reporting and/or on the availability of information on companies' websites. The limitation here is primarily related to the visibility of the information on human rights and sexual harassment policies on the relevant websites. In the last part, I have summarised the findings of the research and I have made some recommendations to the state and businesses aiming at providing some tangible and practical solutions. The overall goal of the thesis is to identify the development of gender-inclusive policies in Bulgaria and how have they been implemented into business practices. Although the UNGPs framework in Bulgaria has not been directly implemented through a NAP or due diligence legislation, a few companies

have reported under the non-financial directive and through active CSR practices.²³ Yet, the CSR contribution to the gender equality agenda covered is very limited, this is why my research will contribute to both legal scholarship and businesses by connecting gender-inclusive practices and respect for human rights.

Chapter 2 Theoretical Framework

2.1 Introduction

Mainstreaming of gender into human rights and policy framework has attracted academic, political and legal interest. With the development of the UNGPs framework, it is evident that human rights and legal scholars are also developing interest in the field. Yet, as indicated earlier there are no concrete guidelines on how to adopt the business human rights (BHR) framework through the study of gender. This thesis will extend the BHR scholarship to focus on gender-based violence and sexual harassment in the workplace. The focus will be on looking at the research relevant to sexual harassment and gender-based violence from a socio-legal perspective. By combining the socio-legal theory, rights mobilisation and organisational theories, I attempt to find a conceptual framework that can provide a response to the experience of sexual harassment and rights mobilisation to bring a sustainable systemic change. Bringing a sustainable change, thus requires the involvement of different actors from an organisational perspective to the employees as individuals and the actions of the collective movement. The thesis adopts the approach of looking firstly at the organisations' response to sexual harassment and gender-based violence before looking at the individuals' responses and the collective movement.

²³ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

2.1.1 Organisations and gender equality in the workplace

Companies can play a significant role in changing social and gender norms through their power to influence political, economic and social life. Given their added responsibility for respecting human rights and promoting gender equality, companies have to better integrate ‘gender-responsive practices’ in their work.²⁴ Yet, this may be difficult to achieve given that the modern workplace is a pivotal arena for shaping ‘societal gender inequalities’.²⁵ The reference to the arena includes examples of companies adopting ‘formal equality models’ that treat men and women equally but without producing the same results.²⁶ Thus, resulting in gender discrimination and gender stereotyping where women can feel subordinate in the workplace. Similarly, gender stereotyping can have a negative impact on advancing women’s rights, thus creating unconscious bias and gender bias and forming the belief that men and women should be evaluated in ‘achievement-oriented’ contexts in the workplace.²⁷ Arguably, companies can promote social change if they address adequately discrimination, gender bias and gender stereotyping. One major challenge for companies when developing strategies for gender equality in the workplace, is how to promote ‘an equality sensitive approach in human resource management’.²⁸ As Wynn and Correll (2018) suggest that future direction for research can focus on improving diversity outcomes in the workplace by applying intersectional lenses to combat gender bias.²⁹ Whilst companies have engaged in different initiatives to tackle gender bias and improve diversity, there is a recognition of the importance of inclusion of managers for the success of diversity programs.³⁰ Acker (2006) argues that diversity training does not address the deeply rooted assumptions and stereotypes that often favour ‘white men’.³¹ Acker

²⁴ J Martignoni and E Umlas, *Gender-Responsive Due Diligence for Business Actors: Human Rights-Based Approaches Acknowledgements* (2018), pp.28.

²⁵ Alexandra Kalev and Gal Deutsch, *Gender Inequality and Workplace Organizations: Understanding Reproduction and Change* (Springer International Publishing 2018) <http://dx.doi.org/10.1007/978-3-319-76333-0_19>., p.257.

²⁶ Rangier De Silva De Alwis, ‘Examining Gender Stereotypes in New Work: Family Reconciliation Policies. *The Creation of a New Paradigm for Egalitarian Legislation* (Alwis, 2011)’ (2011) 18 *Duke Journal of Gender Law & Policy* 305., p.305.

²⁷ Alison T Wynn and Shelley J Correll, *Combating Gender Bias in Modern Workplaces* (Springer International Publishing 2018) <http://dx.doi.org/10.1007/978-3-319-76333-0_37>., pp.509.

²⁸ Etta Olgianti and Gillian Shapiro, *Promoting Gender Equality in the Workplace* (2002).p.3.

²⁹ Wynn and Correll, (n 29), pp.517.

³⁰ Ibid.

³¹ Joan Acker, ‘*Inequality Regimes: Gender, Class, and Race in Organizations*’ (2006) 20 *Gender and Society* 441., pp.457.

purports that the inequality is invisible by those with privilege, thus rendering it difficult to bring the needed change.³² Furthermore, many companies adopt CSR strategies to respond to gender inequality by the adoption of gender-inclusive practices that are often criticised for being focused on individuals and women's empowerment rather than addressing broader equality issues that women face.³³ But as Ramasastry (2015) argues BHR framework can draw from the CSR 'to allow states to create incentives for businesses to promote human rights in their operations'.³⁴ Arguably, there is a contradiction between the adoption of gender equality initiatives in CSR policies without assessing the negative impact of the activities, thus failing to take responsibility for the potential of contributing to sexual harassment and gender-based violence.³⁵ An illustration of this would be a company that I came across in my research with an active D&I policy but despite their efforts to set up speak out culture, there was no evidence of a mechanism for addressing sexual harassment in an industry heavily represented by male employees. If the company does not take steps to improve its policies and mechanisms for redress of sexual harassment, the company is failing to recognise that gender discrimination goes beyond diversity training and improving women's participation in management boards.

2.1.2 Organisation's response to SH

The current practice shows that businesses do not address openly sexual harassment and gender-based violence through their CSR policies. This may raise questions as to how the BHR framework can advance gender equality in the CSR agenda. The BHR framework can provide solutions by firstly looking at companies' responses to both sexual harassment and gender-based violence and then looking at the role of individuals as employees and as activists. Sexual harassment in the workplace as a socio-legal perspective has emerged with the work of Catharine MacKinnon and Lin Farley as part of the radical feminist movement where women shared their experiences at work.³⁶ Catherine MacKinnon in her work purports that 'Sexual

³² Ibid.

³³ Kate Grosser and Meagan Tyler, 'Sexual Harassment, Sexual Violence and CSR: Radical Feminist Theory and a Human Rights Perspective' (2021) *Journal of Business Ethics*.

³⁴ Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 *Journal of Human Rights* 237.

³⁵ Grosser and Tyler (n 34), p.4

³⁶ Paula McDonald, 'Workplace Sexual Harassment 30 Years on: A Review of the Literature' (2012) 14 *International Journal of Management Reviews* 1. Directions in Sexual Harassment Law, edited by Catharine A.

harassment perpetuates the interlocked structures by which women have been kept sexually in thrall to men in the bottom of the labour market'.³⁷ Similarly, Lin Farley purports that sexual harassment is to be considered in the 'micropolitics of the patriarchy'.³⁸ Both advocates argue that 'sexual coercion' which women experience in the workplace is part of a 'social order that situates sexual relations between men and women in relations of economic dependence', thus reinforcing the subordinate role that women have in the marriage and the market place.³⁹ Sexual harassment is a human rights violation that impacts women and men and can have a negative impact on their performance, career advancement, it has a psychological impact and is especially common amongst women. With the rise of the #Metoo movement and the recent research, it appears that sexual harassment has become prevalent and it appears that there is no adequate redress by companies.⁴⁰

One of the most current forms of redress the grievance management processes in response to sexual harassment are critiqued for being ineffective (Marshall 2005, MacDonald 2012, Grosser 2020). As McDonald (2012) purports that such practices are 'bureaucratic vaccine against lawsuit' adopted to serve the interest of the employers, not the employees.⁴¹ Similarly, the implementation of anti-sexual harassment policies can be viewed as an organisation's intention to limit their occurrence and reduce legal costs.⁴² Presumably, given the low reporting rate of sexual harassment and the literature that supports their ineffectiveness in supporting the victims, it would be difficult to ascertain whether the existence of a policy limits the acts of sexual harassment and reduces the disclosure rate.⁴³ It is important to consider that reductions in sexual harassment can be a combination of changing 'culture, climate and leadership' or other measuring tools that can get implemented when a policy has been changed.⁴⁴ As Jacobson and Eaton (2017) point out, when comparing different policies only zero-tolerance policies

MacKinnon, and Reva B. Siegel, Yale University Press, 2003. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/uses/detail.action?docID=3420225>, accessed on 27 April 2021.

³⁷ Ibid., p.9.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Grosser and Tyler (n 34).

⁴¹ McDonald (n 37), p.9.

⁴² Ryan K Jacobson and Asia A Eaton 'How Organizational Policies Influence Bystander Likelihood of Reporting Moderate and Severe Sexual Harassment at Work' (2018) 38 *Employ Respons Rights J* (2018) 30:37–62 <<https://doi.org/10.1007/s10672-017-9309-1>>.

⁴³ Ibid.

⁴⁴ Ibid, pp.39

have the potential to decrease sexual harassment due to a higher probability of reporting the harassment.⁴⁵ In assessing what factors contribute to supporting an organisational culture Fitzgerald (1994) summarises, ‘male-dominated working group’, a culture tolerating harassment evidenced by ‘lenient management norms’ and a weak mechanism to support victims.⁴⁶ The level of support to victims seems to be very limited due to fear of retaliation and lack of trust in the grievance mechanisms. Furthermore, victims are often seen as causing problems therefore, the onus is on them to make out the complaint regardless of whether the claim will be considered within the organisation or in a court of law. Given the limited knowledge and transparencies about the managerial response and collection of data on incidents of sexual harassment, it could be argued that companies do not want to carry legal liability on what seems to be an ambiguous claim that may have serious consequences to the parties involved, difficult to prove and bearing costs.⁴⁷

Correspondingly, the above discussion presents two competing issues that companies may face in responding to sexual harassment. On one side, grievance mechanisms are the common response to dealing with sexual harassment and the bigger the organisation the more sophisticated is the mechanism for complaints. On the other hand, such grievance mechanisms and policies seem to be rendered ineffective to support victims to report and to receive remedy. The complexity of the issue requires a more holistic approach where companies do not only implement anti-sexual harassment policies but also change culture and management structures to provide a supportive and transparent environment, which condones the sexual harassment and takes firm action to respond to it and to eliminate it. But if a company implements a policy and establishes a mechanism to reduce legal liability, this potentially confirms that their focus is on protecting the company’s interest rather than protecting women’s rights, in such culture, it is more likely to find low reporting and limited level of responsibility towards victims.

⁴⁵ Ibid.

⁴⁶ Louise F Fitzgerald, Charles L Hulin and Fritz Drasgow, ‘The Antecedents and Consequences of Sexual Harassment in Organizations: An Integrated Model’ <<http://dx.doi.org/10.1037/10165-004>>.

⁴⁷ Ibid.

2.1.3 Organisations response to gender-based violence (GBV hereinafter)

The debate about businesses role in GBV is considered outside the proximity of the business as opposed to sexual harassment which is linked within the organisation. The external aspect of gender-based violence almost renders the assumption that companies are not involved directly in gender-based violence. Although the UNGPs have placed sexual harassment and gender-based violence firmly on the CSR gender equality agenda, there still seems to be some resistance from companies to accept responsibility in some cases and implement change. The resistance comes from the fact that, especially in some states or cultures, GBV is seen as something private, happening inside the home or relationship, away from the public. Yet, the growing recognition of GBV as a public problem has resulted in the expectation that both state and non-state actors, such as businesses have a role to play to provide support for victims. Gender-based violence takes different forms: sexual harassment, sexual violence, domestic violence, yet there seems to be little recognition of the impact of domestic violence on businesses. Rather than looking at domestic violence from an operational perspective, it can be looked like violence purported outside the workplace but having a significant impact within the workplace.⁴⁸ Here the focus is on the extent of responsibilities that employers have over their employees and whether it includes responding to domestic violence.⁴⁹ The impact can take different forms, such as limited productivity, absenteeism, job loss, security risks for employees and staff, blurred boundaries between work and home, especially during the current COVID-19 pandemic. The cost of domestic violence to businesses is constantly raising, yet the response seems to be very slow whilst a number of lives get impacted by its prevalence.⁵⁰ Therefore, businesses are required to mitigate and prevent risks but whether those risks extend to the private sphere is a question that needs further clarification, and it would be difficult to answer within this thesis.⁵¹ Hence, it is a very key consideration for companies to take into account especially when the private sphere is impacting the public sphere to extent that may be putting people at risk. The reliance on the legal system may be inadequate given the similar

⁴⁸ Alice de Jonge, 'Corporate Social Responsibility Through a Feminist Lens: Domestic Violence and the Workplace in the 21st Century' (2018) 148 *Journal of Business Ethics* 471.

⁴⁹ Ibid.

⁵⁰ EIGE 'Estimating the Costs of Gender-Based Violence in the European Union' <<https://eige.europa.eu/gender-based-violence/estimating-costs-in-european-union>> accessed on 28 April 2021.

⁵¹ Ibid.

approach observed with regards to resistance and distrust in support mechanisms when it comes to sexual harassment or domestic violence disclosure. These are not separate phenomena therefore if companies adopt a gender-responsive approach in all their operations and sphere of influence it can bring better support for victims of sexual harassment and gender-based violence.

2.1.4. Applying different organisational theories to organisational change

Having discussed the response of companies to gender equality, sexual harassment and gender-based violence, this section will highlight some of the theories about the organisations. The goal is to highlight a theory that may be better applied by companies in their efforts to change. I argue that one of the critical preconditions of change is not the implementation of a policy or a mechanism, but the engagement in a holistic organisational change where decision-makers become leaders of change, subsequently the new norms and values are inverted in the organisation. For example, when looking at the organisational level there is a criticism of organisational theory for being male-dominated and linked with the notion of organisational power.⁵² Further to this is the examination of organisations as a ‘gendered process’ where the gender-neutral approach may obscure gender and sexuality while at the same time use them as a process of control.⁵³ In contrast, the institutional theory is viewed as protecting the organisation’s interest over employees’ ones therefore, as Edelman cited in Mashall (2005) contends that the creation of grievance procedures becomes a symbolic alignment with established norms, such as fair treatment and equal opportunity.⁵⁴ In contrast, Schrempf-Stirling and Van Buren (2020) view the institutional theory as an opportunity for organisations to act in accordance with accepted social norms and ‘perceived standards’.⁵⁵ This approach can provide companies with a better assessment of what factors facilitate or hinder the adoption and implementation of corporate human rights policies.⁵⁶ The institutional theory’s

⁵² Acker (n 32).

⁵³ *ibid*, pp. 140.

⁵⁴ Anna Maria Marshall, ‘*Idle Rights: Employees’ Rights Consciousness and the Construction of Sexual Harassment Policies*’ (2005) 39 *Law and Society Review* 83.,pp. 86.

⁵⁵ Judith Schrempf-Stirling and Harry J Van Buren, ‘Business and Human Rights Scholarship in Social Issues in Management: An Analytical Review’ (2020) 5 *Business and Human Rights Journal* 28.

⁵⁶ *Ibid*.

contribution to logic may also raise some questions about whether different cases that companies face, such as modern slavery or conflict minerals may require different approaches to their corporate policies. If this reasoning is applied to gender equality and the different cases and forms of gender-based violence, it would be interesting to analyse how will companies adopt policies to respond to these cases and issues at stake.

The response here may come from the theory of organisational moral legitimacy that intersects with the business and human rights discourse.⁵⁷ Suchman cited in Schrempf-Stirling and Van Buren (2020), states that legitimacy within an organisation is a general agreement that ‘the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions’.⁵⁸ The moral legitimacy is then the result of co-creating of values and norms with the participation of different actors that aim to establish the best ways of applying universal human rights into company policies and finding the best remedy for human rights abuses.⁵⁹ Some key considerations that may arise here are how companies introduce human rights policies if there is low legitimacy or what will be the impact to business legitimacy if there are claims against for human rights violations.⁶⁰ By adopting both theories companies that introduce human rights policies can benefit from applying both theories. The institutional theory can help companies to establish what factors they need to address in adopting a human rights policy. The moral legitimacy theory then can assist them to move away from the narrow self-interest and to apply a set of moral criteria that is in line with the organisation’s goals but also is aligned with the companies’ responsibilities.⁶¹ Having discussed the way companies respond to sexual harassment and GBV, and potential theories that organisations can adopt conceptually to bring organisational change, the next section will cover the role of individuals as rights holders and how they can bring change individually and collectively.

⁵⁷ Ibid, pp.48.

⁵⁸ Ibid.

⁵⁹ Ibid, pp.48.

⁶⁰ Ibid, pp. 49.

⁶¹ Mark C Suchman, ‘Managing Legitimacy : Strategic and Institutional Approaches’The Academy of Management Review , Vol . 20 , No . 3 (Jul ., 1995), Pp . 571-610 Published by : Academy of Management Stable (1995) 20 The Academy of Management Review 571.

2.1.5 Rights discourse and mobilisation

The application of the concept of human rights to sexual harassment and gender-based violence in the workplace can be difficult to apply to everyday experiences and outside the legal norms. The challenge is in the comprehension of how universal human rights brought through the UN system in a ‘law-like form’ can be invoked to fight injustices.⁶² The strength of human rights is founded in the protection of powerless groups through the process of vernacularisation, which is the process of bringing universalistic ideas and practices into local experiences that speak to the values of the community.⁶³ The translation of human rights within the local context does not render the development of rights consciousness capable of raising against deeply rooted social and gender norms. But rather provides an added value to already existing structures and organisational frameworks.⁶⁴ Despite some of the ‘drawback of the human rights’ concept, it is still seen ‘the only global vision of social justice currently available’.⁶⁵ Thus, leading to successfully institutionalizing and expanding the women’s rights movement and advancing gender equality through improving women’s status and protecting women from gender-based violence.⁶⁶ But for women experiencing violence redefining their problem as a rights violation depends on ‘individuals experience with the law’.⁶⁷ Therefore, victims’ participation in defining that sexual harassment or gender-based violence as a problem is critical for social movements.⁶⁸ Similarly, women experiencing sexual harassment may use different ‘frames’ to define their experiences.⁶⁹ Through these frames, rights claims can be connected to ‘emerging grievance’ with the current law, thus challenging participants to

⁶² Sally Engle Merry and Peggy Levitt, ‘*The Vernacularization of Women’s Human Rights*’ (2017) *Human Rights Futures* 213., pp.231.

⁶³ Ibid.

⁶⁴ Sally Engle and others, ‘*Law From Below : Women ’s Human Rights and Social Movements in New York*’ City Published by : Wiley on Behalf of the Law and Society Association *Law From Below : Women ’s Human Rights and Social Movements in New York City*’ (2016) 44 101.

⁶⁵ Justice Sally and others, ‘*Human Rights and Gender Violence : Translating In- The “ Culture ” of the Global Anti – Gender Violence Social Movement*’ (2008) 110 511., p.515.

⁶⁶ Dorothy L Hodgson, ‘*Introduction: Gender and Culture at the Limit of Rights*’ (2011) *Gender and Culture at the Limit of Rights* 1., p.1.

⁶⁷ Sally Engle Merry, ‘*Rights Talk and the Experience of Law: Implementing Women’s Human Rights to Protection from Violence*’ (2003) 25 *Human Rights Quarterly* 343., p.346.

⁶⁸ Ibid.

⁶⁹ Anna-Maria Marshall, ‘*Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment*’ (2003) 28 *Law Social Inquiry* 659., pp.664.

interpret new meanings by raising rights consciousnesses and mobilizing social movements.⁷⁰ Despite the success the rights movement has been criticised for bringing promises which is unable to deliver and leaving participants in a ‘thrall’.⁷¹ Similarly, McCann cited in Merry (2014) purports that although the rights discourse may increase awareness of rights it does not address systemic and structural human rights violations.⁷² And if institutions do not protect effectively the rights they purport to protect, the rights can lose power, especially when confronted with powerful corporations where the state is unable to interfere.⁷³ And finally, raising awareness about rights can shift the subjectivity of an individual’s experience but the effectiveness depends on implementation and support of the legal system to reinforce the experience of these rights.⁷⁴ In brief, the rights consciousness is critical for providing voices to victims and helping them to redefine the problems and choose whether to rely on the law or not. Once they have made the choice, it would be necessary for the legal system to provide adequate support. But if the institutions fail to protect women then they will choose to remain silent and not invoke the law. Provided that this is the case in some companies where women become more aware of their rights and are encouraged to speak up, if the systems and policies in place do not provide adequate grievance support in practice but just the theory, the same issue will be observed, organisational policies failing to reinforce and protect the women in exercising their rights.

2.1.6 Legal consciousness theory

The role of the legal system in resolving disputes is to provide women with resolution and the opportunity to exercise their legal rights. Yet, only a small proportion of disputes enter courts thus posing the question of how conflicts get resolved outside the legal arena and how one shapes their consciousness of law.⁷⁵ Understanding how law shapes the lives of everyday

⁷⁰ Ibid.

⁷¹ Austin Sarat and Thomas R. Kearns eds. ‘*Identities, Politics, and Rights*’, University of Michigan Press, (1997) ProQuest Ebook Central, pp.305

⁷² Sally Engle Merry, ‘*Inequality and Rights: Commentary on Michael McCann’s “The Unbearable Lightness of Rights”*’ (2014) 48 *Law & Society Review* 285.

⁷³ Ibid.

⁷⁴ Acker (n 32), pp.381.

⁷⁵ Sally Engle Merry, ‘*Constructing a Global Law-Gender-based violenceWomen and the Human Rights System*’ (2017) *The Globalization of International Law* 325., pp.943.

experience has been demonstrated through the work of scholars studying legal consciousness (Sarat 1990, Ewick and Silbey 1992, Marshall 2005, Merry 2009).⁷⁶ Although researchers take different approaches when applying the legal consciousness theory, they all study how individuals react when confronted with problems. This approach is used in placing legal consciousness in an organisation where women are confronted with sexual harassment. The value in this approach provides an opportunity to see how women identify the behaviour as sexual harassment and how they respond to it. Marshall (2005) argues that the meaning women assign to their experiences at work combines legal rules with broader social and political discourse about equality.⁷⁷ This is how women become legal actors in a dynamic process of legal consciousness where they ‘express a perspective on legality’ ‘but also shape its meaning and boundaries’.⁷⁸ Navigating through these different legal and injustice frames women decide whether to rely on informal actions or invoke the law through grievance procedures in the workplace.⁷⁹ As Hoffman (2003) purports the grievance culture of a company may empower or constrain workers to take action depending on their legal consciousness.⁸⁰ One major limitation is that there is a gap between theory and practice where even though rights are ‘formally available they are rarely invoked’.⁸¹ Therefore, it is important to avoid rights to remain idle, when women reject to question sexual harassment at work or invoke rights, they are at risk of limiting the power of law to shape their legal consciousness.⁸²

The discussion of the two sections presents the important role of law in helping women to address sexual harassment in the workplace. Yet, it confirms that the majority of such conflicts neither enter the legal arena nor the company arena. This can be explained by highlighting 2 key points with somewhat similar outcomes. Firstly, increasing the rights consciousness is

⁷⁶ Anna-Maria Marshall and Scott Barclay, ‘*In Their Own Words: How Ordinary People Construct the Legal World*’ (2003) 28 *Law Social Inquiry* 617.

⁷⁷ Anna-Maria Marshall, ‘*The Legal Consciousness of Injustice: A Theoretical Framework*’ (2005) *Confronting Sexual Harassment: The Law And Politics Of Everyday Life (Law, Justice and Power)* 216.

⁷⁸ Amy Blackstone, Christopher Uggen and Heather McLaughlin, ‘*Legal Consciousness and Responses to Sexual Harassment*’ (2009) 43 *Law and Society Review* 631., pp.633.

⁷⁹ Engel (n 65).

⁸⁰ Elizabeth A Hoffmann, ‘Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies’ (2003) 28 *Law & Social Inquiry* 691., p.692.

⁸¹ Marshall, ‘Idle Rights: Employees’ Rights Consciousness and the Construction of Sexual Harassment Policies’ (n 55)., 84.

⁸² *Ibid.*

critical for invoking rights and fighting injustice but if the institutions fail to protect women, they become ineffective. Secondly, if women choose not to question sexual harassment or invoke their rights, they are limiting the power of the law to shape their legal consciousness. Thus, resulting in the same outcome where the rights are formally available but are rarely exercised. My contention is that relying on rights and bringing awareness is the foundational step to bring change from an individual's point of view but to bring systemic change it is important to expand the awareness to legal consciousness. When women become more active legal actors in exercising their rights, the support of the social movement will bring the collective effort to influence systemic change and address sexual harassment.

2.1.7 Social movement and feminism

As indicated above both the legal system and the organisations play a significant role in how women respond to sexual harassment in the workplace. The social movement theory also plays a role in shaping individual consciousness through the circulation of messages often based on 'rights-based arguments' which make the law a key driver for the social movement activists.⁸³ An interesting question is how social actors mobilize individuals that have raised their legal consciousness to create a social change. Drawing from the approach of Grosser and McCarthy (2019) we can look at the challenges that the 'feminist social movements' face in the context of the rising power of corporations in societal governance⁸⁴ and the contestation of 'corporate neoliberalization of the gender equality agenda'.⁸⁵ Due to the scope of limitation, the focus will be on the feminist response and the link to BHR, although the CSR agenda needs further research on gender equality and sexual harassment. Given that business power is growing, feminist social movements are seeking ways to influence business and advance the gender equality agenda and despite criticism, they are adopting innovative ways in challenging the neoliberalism.⁸⁶ Perhaps one such approach could be the application of radical feminist theory

⁸³ Merry and Levitt (n 64).

⁸⁴ Kate Grosser and Lauren McCarthy, 'Imagining New Feminist Futures: How Feminist Social Movements Contest the Neoliberalization of Feminism in an Increasingly Corporate-Dominated World' (2019) 26 *Gender, Work and Organization* 1100.,p.1104.

⁸⁵ Kate Grosser, 'Gender, Business and Human Rights: Academic Activism as Critical Engagement in Neoliberal Times' (2020) *Gender, Work and Organization* 1., p.2.

⁸⁶ Ibid.

within the corporate domain, which ‘focuses on structures of inequality’ and can provide ‘hope for challenging structures and creating change’.⁸⁷ Radical feminism recognises the importance of including men’s violence against women as part of the gender inequality solution.⁸⁸ Through successfully mainstreaming their concerns into human-rights discourse and practices, radical feminists have established ‘men’s violence against women as a human rights issue’.⁸⁹ There is growing recognition that sexual harassment and gender-based violence impose serious challenges to businesses not only on their employees, stakeholders but also through the value and supply chains. As Ozkahanc-Pan cited in Grosser (2021) purports that CSR discourse is preoccupied with ‘reproduction of gender neo-colonial relations in the context of globalised capitalism’.⁹⁰ The solution in challenging this new direction is radical feminism in which gender, business and human rights agenda may either choose to ignore the growing problem or engage with it. Engagement will not result in companies adopting a radical feminist approach that can be seen as unsuccessful in the ‘white-supremacists capitalist patriarchy’ but rather influence change by analysing and interpreting international instruments and frameworks, thus influencing business operations.⁹¹ When adopting the human rights approach to sexual harassment and gender-based violence as wider gender equality issue businesses shift to addressing gender-based violence as systemic discrimination perpetuated not only by the individuals but also the organisation in ‘an unequal gendered power relations that underpin sexual harassment’.⁹² The radical feminist approach this thesis adopts focuses on challenging the neo-colonial direction of CSR whilst highlighting the importance of gender equality and the recognition of the role of men in perpetuating violence. The inclusion of men is critical for tackling gender inequality and particularly GBV. This choice is deliberate as the goal is to move away from the revolutionary nature of radical feminism but to look at the feminist social movement and its impact on the private sector.

⁸⁷Grosser and Tyler (n 34).pp.5

⁸⁸ Ibid, p.5.

⁸⁹ Ibid, p.9.

⁹⁰ Ibid, pp. 14.

⁹¹ Ibid, pp.13.

⁹² Ibid, pp.14.

2.2 BHR Framework and UNGPs

2.2.1 Introduction

The International Human Rights framework provides a wide range of instruments setting out obligations to states for the protection and promotion of gender equality. There is also a shift towards holding non-state actors, particularly enterprises responsible to respect human rights under international law. The argument that only states have obligations under IHRL is no longer valid as companies have a role to play not only to respect human rights but also when adversely impacting human rights through their business activities. The instruments discussed in the thesis look at the UN system, the intergovernmental organisations and the EU. It builds on the BHR framework and includes frameworks that have developed in response to the recognition of business and human rights nexus and the growing concern about gender-based violence and sexual harassment as fundamental human rights violations, and the impactful role that businesses together with states can play to advance the gender-equality agenda.

2.2.2 UNGPs

The UNGPs make a reference to gender through the principle of non-discrimination in the preamble and guiding principles 3, 7, 12 and 20.⁹³ However, the Guidelines have been criticised for not providing specific guidance on how to implement a gender lens approach. Whilst recognising the vulnerabilities of women and girls especially during armed conflict or a crisis, or COVID- 19. The UNGPs do not offer a solution on how states and companies can improve gender inequality despite the international body of law guaranteeing ‘substantive gender equality’ in all spheres of life.⁹⁴ The response to this comes from the report of the UN Working Group on Business and transnational corporations and other business enterprises, released in June 2019, which outlines that business in their activities can directly or indirectly cause or contribute to human rights violations against women who have limited access to remedies. The report also highlights the need for addressing discrimination through a three-step gender

⁹³ UNGPs) (2011) HR/PUB/11/04.

⁹⁴ MARTIGNONI and UMLAS (n 25).

framework that businesses and states can adopt to ‘achieve substantive gender equality’.⁹⁵ The application of the framework is then applied to all UNGPs principles to illustrate how they can be put into practice. Although the Gender Guidelines make a positive step forwards, they require specificity and resources for effective implementation and collaboration between all stakeholders in implementing gender-responsive BHR framework.⁹⁶ Here there is a focus on the state’s role in fostering a multi-stakeholder approach in challenging social norms that normalise gender discrimination, sexual harassment and GBV.⁹⁷ Gotzman (2020) critiques the UNGPs for not unpacking the gender concept and calls for the inclusion of men in the process as a recognition of their important role in the negative impact on women and girls.⁹⁸ The author also argues that to achieve ‘meaningful contribution’ to realise ‘substantial equality’ when adopting the UNGPs a gender - responsive approach is required, focusing on women who are at the centre of the BHR process.⁹⁹ The impact will be limiting the adverse impact on women, limiting gender discrimination and improving gender equality in a more systemic way.

2.2.3 Human Rights Framework UN

The human rights framework provides comprehensive protection against sex and gender discrimination starting with the UDHR and the 2 covenants, ICCPR and ICESCR.¹⁰⁰ Both covenants prohibit discrimination on basis of sex and guarantee equality of men and women in the enjoyment of rights. Provisions on non-discrimination are contained in other international conventions but they will not be covered in this section. Rather the focus will be on the international instruments relevant to the business and gender discourse with the view of highlighting protections available and the roles of states and non-state actors in the gender equality discourse. In *General Comment no (24) the Committee on Economic, Social and Cultural Rights* notes the significant role that businesses play in the realization of a range of

⁹⁵ See above (n 23).

⁹⁶ Linnea Kristiansson and Nora Götzmann, ‘National Implementation Processes for the United Nations Guiding Principles on Business and Human Rights: Towards Gender-Responsive Approaches’ (2020) 26 *Australian Journal of Human Rights* 1 <<https://doi.org/10.1080/1323238X.2020.1769919>>.

⁹⁷ Grosser and Tyler (n 34).

⁹⁸ Kristiansson and Götzmann (n 97)

⁹⁹ *ibid.*, pp.94.

¹⁰⁰ UDHR, ICCPR Arts 2(1), 4(1), 24, 26; International Covenant on Economic, Social and Cultural (ICESC) 16 December 1966 entry into force 3 January 1976, Arts 2(2), 3

rights through the creation of employment and development.¹⁰¹ It also underlines that discrimination is common to the private sphere including employment and labour market.¹⁰² Therefore, there are obligations on states to guarantee the enjoyment of rights and eliminate all forms of discrimination caused by non-state actors.¹⁰³ It also recognises that business activities disproportionately affect women and girls and calls for states parties to address the specific impact on women and girls.¹⁰⁴ And finally, there is a recommendation to adopt a gender lens into ‘all measures to regulate business activities that may adversely affect economic, social and cultural rights’.¹⁰⁵

2.2.4. Convention on Elimination and Discrimination against Women

As pointed out earlier in the introduction, the CEDAW Convention provides the definition of sex-based discrimination and obliges states to take measures to achieve substantive equality.¹⁰⁶ Further to the definition, the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee) has adopted clarification that the definition includes gender-based violence, ‘violence which is directed against a woman because she is a woman or that affects women disproportionately’.¹⁰⁷ Although states are responsible to comply with their international treaty obligations, states are also required to address discriminatory acts against women caused by businesses. This obligation of states is further articulated by the CEDAW Committee as it sets out the requirement for states parties to exercise ‘due diligence to prevent violations’ and regulate activities of the private actors with heightened risk for engaging in discrimination.¹⁰⁸ The measurement of whether state parties have complied with their international human rights obligations is whether they have exercised due diligence in the

101 Committee on Economic, Cultural and Social Rights (CESCR), General comment no 24 (2017), UN DOC E/C.12/GC/24

102 Ibid, para 7.

103 Ibid.

104 Ibid, para 9.

105 Ibid.

106 CEDAW Article 1.

107 Committee on the CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19

108 Committee on the CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women;

protection of rights.¹⁰⁹ Matrignoni and Umlas (2018) argue that there has been a shift towards minimising the distinction between the human rights duties of public and private actors, which is disintegrated by the acceptance that non - state actors have direct responsibilities under international human rights law to respect and even facilitate the implementation of human rights.¹¹⁰

2.2.5 International Labour Organisation

Another major player in advancing the gender equality agenda whilst protecting workers right is the International Labour Organisation (ILO).¹¹¹ Several gender equality standards have been adopted throughout the years relevant to the principle of equal remuneration, prohibition of discrimination based on sex, equal opportunity and equal treatment and supporting women's reproductive rights.¹¹² During the conference 8 June 2018 the ILO confirmed its commitment to tackling gender-based violence by setting the standard and expanding the term violence by adding 'violence and harassment'.¹¹³ This report is a follow up to the preceding one, *Ending violence and harassment against women and men in the world of work*, which confirms that violence and harassment is a human rights issue that is unacceptable and has a significant impact on workers and businesses, therefore dealing with is a 'matter of urgency'.¹¹⁴ By putting this on the agenda and through its tripartite structure, the ILO engages governments, workers' and workers' organisations to take a proactive role in tackling violence and harassment in the workplace. To further establish its position as one of the leaders in tackling gender-based violence and harassment, the ILO adopted Convention No. 190.¹¹⁵ The Convention is the 1st international instrument produced by the ILO adopting gender-responsive approach in

¹⁰⁹ OHCHR (n 15)

¹¹⁰ MARTIGNONI and UMLAS (n 25).

¹¹¹ ILO, Report of the Director-General, The Women at Work Initiative: The Push for Equality, International Labour Conference, 107th Session, 2018, <https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_629239.pdf> accessed 17 April 2021

¹¹² ILO: The Principle of Equal Remuneration 1951 (100); The prohibition of discrimination on the basis of sex; Discrimination in respect of Employment and Occupation Convention' 1958 (No.111); Workers with Family Responsibilities Convention, 1981 (No.156), Maternity Protection Convention, 2000 (No,183).

¹¹³ See above (n 112), p.1.

¹¹⁴ ILO: Ending violence and harassment against women and men in the world of work, Report V(1), International Labour Conference, 107th Session, Geneva, 2018 (published in 2017) accessed on 17 April 2021(Para 1 and 2)..

¹¹⁵ ILO: Violence and Harassment Convention, 2019 (No. 190)

protection against gender-based violence and harassment. The cooperation between the three different actors is an indication that moving the gender equality agenda and tackling gender-based violence can only be achieved through strategic involvement of all state and non-state actors and the victims.

2.2.6 OECD, Women Empowerment Principles, UNSDGS

The OECD Guidelines for Multinational Enterprises is another intergovernmental initiative, that covers responsible business conduct and the recognition that businesses impact adversely human rights, workers' rights, etc.¹¹⁶ There is no explicit reference to gender in the document but in the '*Human rights section*' the term 'women' is used in several paragraphs.¹¹⁷ The reference to gender is included in the additional Guidelines providing practical recommendations for businesses on how to conduct 'a risk-based due diligence' into supply chains from a gender perspective.¹¹⁸ Other global initiatives that focus on gender equality are the 2030 Agenda on Sustainable Development¹¹⁹ and Women Empowerment Principles.¹²⁰ The agenda sets out 17 Goals with 169 associated targets which are integrated and indivisible. It sets out a global commitment between multiple actors including businesses and states to achieve the goals. The Agenda recognises the protection of human rights and promotion of gender equality, which is included in the preamble and sets out the strong commitment to achieving gender equality. The Agenda also recognises that gender equality will have a positive impact on achieving the goals and targets. This will be achieved through the inclusion of men and boys in tackling discrimination and violence and through gender mainstreaming when implementing the Agenda.¹²¹ Arguably, achieving gender equality may sound very optimistic especially for human rights defenders, yet the system is deemed to fail with reference to

¹¹⁶ OECD Guidelines for Multinational enterprises < <https://www.oecd.org/daf/inv/mne/48004323.pdf>> Organisation for Economic Development Organisation for Economic Development - <http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf> - accessed 17 April 2021>

¹¹⁷ Ibid, p.1.

¹¹⁸ OECD Due Diligence Guidance for Responsible Business Conduct < <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>> accessed 17 April 2021

¹¹⁹ UNGA, Resolution 70/1 of 21 October 2015, 'Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/701

¹²⁰ Women's Empowerment Principles < <https://www.weeps.org>> accessed on 17 April 2021

¹²¹ See above (n 120).

reporting and monitoring on human rights indicators as included in the agenda.¹²² The WEP initiative is formed by the UN Global Compact and UN women and provides practical guidance to businesses on the promotion of gender equality and empowerment at work.¹²³ The critique of the guidance is that WEPs are founded on the ‘business case for corporate action to promote gender equality and women’s empowerment’.¹²⁴ Despite some of the challenge raised latest developments in global business show that businesses are willing to engage in sustainable and responsible businesses practices. The UN Global Compact initiative mentioned earlier is the biggest platform for corporate sustainable business practices. The initiative encourages businesses to incorporate 10 principles focusing on human rights, labour, environment and anti-corruption into their strategic planning by looking at long-term results for the planet, people and prosperity.¹²⁵ With regards to gender equality, in 2020 an accelerator program was initiated ‘Target Gender Equality’ to assist companies to strengthen implementation of the WEPs and improve companies’ performance in achieving Goal 5 of the SDGs.¹²⁶

2.2.7 EU

The European commitment to implementing the UNGPs is evident through several documents that complement the obligations that the EU states have under the European Convention on Human Rights, the European Social Charter and other human rights instruments.¹²⁷ The recommendation of the Committee of Ministers recommends that Member States take positive steps to implement the UNGPs as the ‘current baseline for business and human rights’.¹²⁸ The Committee of Ministers makes a recommendation for the adoption of gender perspective when assessing risks associated with groups at higher risks of marginalisation, which is even more prevalent in 3rd countries where businesses may be operating directly or through subsidiaries. The Parliamentary Assembly of the Council of Europe (PACE) adopted a follow-up

¹²² Ibid.

¹²³ See above (n 121).

¹²⁴ WEPs Gender Gap Analysis Tool <https://weps-gapanalysis.org/case-for-gender-equality/> accessed on 17 April 2021.

¹²⁵ See above (n 120).

¹²⁶ SDG Target Equality < <https://www.unglobalcompact.org/take-action/target-gender-equality>> accessed on 17 April 2021.

¹²⁷ Council of Europe, ‘Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on Human Rights and Business’ 1.

¹²⁸ *ibid*, para 1.

recommendation to the above recommendation, calling for the ‘adoption of legally binding instrument’ stressing the need to adopt more a gender-responsive approach in the implementation process.¹²⁹

The EU legal framework on sustainable corporate governance and the EU action plan 2021 on the promotion of ‘human rights, social and environmental due diligence’ makes a strong commitment to the implementation of the UNGPs.¹³⁰ The Council of the EU responds to the call for adopting legislation on due diligence by recommending all member states to engage to step up the implementation of UNGPs through National Action Plans and adopting a smart mix of measures in the process.¹³¹ Although the Council refers to the impact of gender-based violence on women and girls throughout the value chains and supply chains, it appears that the gender perspective approach is only mentioned with the discussion of SDG 8 of promoting decent work in line with other pressing issues. The commitment of the EU to the elimination of gender-based violence and harassment is the adoption of Istanbul Convention.¹³² It is the most comprehensive Convention covering all types of gender-related concerns including women’s employment, includes the definition of gender-based violence and harassment and provides mechanisms for redressing gender-based violence.¹³³ GBV is a human rights violation that can impact negatively women’s opportunity for work thus impacting their economic status and enjoyment of rights.

2.3 Conclusion

The chapter discussed the organisational response to sexual harassment and GBV and the 3 organisational theories. It also covered the theories behind human rights consciousness and legal consciousness and their implications for women who are confronted with sexual harassment at work. It also highlighted the impact of the rights mobilisation of the feminist

¹²⁹ European Agency for Fundamental Rights, Business and Human Rights Access to Remedy - https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-business-human-rights_en.pdf

¹³⁰ Council of the European Union, ‘Council Conclusions’ on Human Rights and Decent Work in Global Supply Chains’ (2020) 2020 1.

¹³¹ Ibid, para 37.

¹³² Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (2011) 25 International Women 124.

¹³³ By March 2021 -21 states have ratified the Istanbul Convention- <https://www.europarl.europa.eu/legislative-train/theme-area-of-justice-and-fundamental-rights/file-eu-accession-to-the-istanbul-convention> accessed on 17 April 2021.

social movements and the importance of empowering victims to be part of the change, not only through rights mobilisation but also through engaging victims to be active legal actors even if conflicts that they face may not end up in court. The chapter also included the international human rights framework and how can the soft law advance BHR and the gender equality agenda. The conceptual framework that I rely on builds on the legal consciousness theory, institutional and moral legitimacy theory, and social movement theory namely radical feminism. The approach is to highlight that tackling gender inequality requires a multi-stakeholder approach. The BHR instruments provide a set of tools that can further advance business implementation of the framework from a gender lens. The next part examines the gender equality framework in Bulgaria and its scope of protection and impact on businesses in Bulgaria.

Chapter 3 Bulgaria

3.1 Introduction

In the previous chapter, the theoretical discussion highlighted the key international instruments and their contribution to strengthening the human rights framework from a gender lens perspective. The discussion also highlighted the role of legal consciousness theory in bringing systemic change and the position of women as legal actors in responding to sexual harassment and GBV. The analysis of this chapter will focus on two main issues: the scope and protections of gender-equality legislation in Bulgaria and Europe, and how these policies have influenced business practices. The discussion will start with a brief historical introduction, which aims to establish whether there is a link between the current response to gender inequality and the pre - EU accession period. Then a short analysis of the Bulgarian and EU legislation will be presented. And finally, the chapter will cover how businesses have mainstreamed the legislation into their practice by focusing on their response to sexual harassment and GBV.

3.1.1. Brief historical overview

The emancipation of women in Bulgaria during the pre-EU accession presents a complex social reality.¹³⁴ The state feminism model in Bulgaria (1944 – 1989) represents a successful model showing that women’s movements can improve women’s rights despite the strong connection to the state.¹³⁵ Whilst Western scholars have criticised the communist regime for exacerbating gender inequality, they have adopted a monolithic approach, and failed to acknowledge the male domination in the West.¹³⁶ At times when Western women were fighting for the right to work, organisations like the Committee Women’s Movement in Bulgaria (CWMB) were active in promoting women’s rights. For instance, during communism women received full legal rights and gained employment that became a form of self-actualisation and opportunity to improve women’s quality of rights.¹³⁷ CWMB work was focused on improving women’s rights by addressing the challenges women were facing to balance work and family life, feminization of certain professions and lack of women in politics.¹³⁸ According to Ghodsee (2012) what modern feminists should consider is that the state socialist movement in Bulgaria embraced the problems instead of covering them up and this is how it became a driver in shaping the international women’s movement during the communist era.¹³⁹

The main debate coming from the West is whether communism and feminism are compatible, thus resulting in painting a somewhat ‘negative image of feminism’.¹⁴⁰ This explains to an extent why feminism in Bulgaria historically is seen as something unnecessary, threatening the traditional values and influenced by the West.¹⁴¹ Daskalova (2002) argues that despite the deeply rooted gender differences and stereotypes in the post-communist states there is ‘a lack

¹³⁴ Krassimira Daskalova, ‘How Should We Name the “Women-Friendly” Actions of State Socialism?’ (2007) 1 *Aspasia* 214.pp.218

¹³⁵ Kristen Ghodsee, ‘Pressuring the Politburo: The Committee of the Bulgarian Women’s Movement and State Socialist Feminism’ (2014) 73 *Slavic Review* 538., p.542

¹³⁶ Krassimira Daskalova, ‘A Woman Politician in the Cold War Balkans from Biography to History’ (2016) 10 *Aspasia* 63.

¹³⁷ Ghodsee (n 140), pp. 541.

¹³⁸ Kristen Ghodsee, ‘Rethinking State Socialist Mass Women’s Organizations’ (2012) 24 *Journal of Women’s History* 49.

¹³⁹ *Ibid.*

¹⁴⁰ Daskalova (n 141).

¹⁴¹ Krassimira Daskalova, ‘Bulgarian Women’s History an Socialists Myths’ Centre for Women’s Studies and Politics, http://www.cwsp.bg/upload/docs/history_and_myths_en.pdf accessed on 21 July 2021.

of any real sense of gender inequality'.¹⁴² This can be explained by the communist ideas of gender equality associated with economic independence and the right to work as if the 'old regimes' of thinking are still prevalent.¹⁴³ But if seeing labour as a liberation may result in failing to consider discrimination and deeply rooted gender stereotypes. Women during communism were facing a double burden of managing work and family life, lack of political participation and feminization of women's profession. Interestingly, some of these problems are persistent even today.¹⁴⁴ Women's sensitivity to gender equality in Bulgaria is often motivated primarily when women's roles as mothers are affected.¹⁴⁵ The negative image of feminism formed throughout the years makes women insensitive about gender inequality. Women become insensitive to resist the deepening gender pay gap, low political and company boards representation of women, poverty, increased gender-based violence, sexual harassment in the workplace. The danger in this is that by hiding behind the advancement of working rights women become complacent to challenge the gender norms and stereotypes in the traditional Bulgarian patriarchy. To sum up, the communism brought up some positive aspects by improving women's legal rights and access to employment, yet it did not address the broader and intersecting gender inequality issues. The reality today is that there is no sense of gender inequality because of women's economic empowerment and freedoms.

3.2 The EU accession and gender mainstreaming in Bulgaria

The EU and international agreements have had a substantial influence on gender mainstreaming policies in Bulgaria. The process of the EU accession in 2000 has put pressure on the Bulgarian government to align its legislation with EU 'acquis communautaire'.¹⁴⁶ Understanding some of the specifics during this period provides useful context to better understanding of the developed legislation that was ultimately developed and its impact today. The period of adoption of new legislation for Bulgaria and other post-communist states is influenced by the EU process of legislative changes that contained a very broad definition on

¹⁴² Ibid.

¹⁴³ Ibid, pp. 7

¹⁴⁴ Ghodsee (n 143).

¹⁴⁵ Ana Luleva, 'Post-Socialist Gender Order in Bulgaria : Between State-Socialist Legacy and EU Gender Regulations' (2016) 29 33.

¹⁴⁶ EIGE 'Bulgaria' < <https://eige.europa.eu/gender-mainstreaming/countries/bulgaria> > - accessed on 22 May 2021

gender amongst other things.¹⁴⁷ Subsequently, a precondition for the EU membership became the transposition, implementation and enforcement of the new gender equality framework.¹⁴⁸ Whilst the majority of EU candidates had a poor record in complying with the requirements for EU accession, Bulgaria had adopted quite comprehensive legislation on anti-discrimination law.¹⁴⁹ Despite these efforts, there was a lack of implementation mechanism and weak institutions to support the advanced legislation, thus resulting in gaps between statute books and the effective application of legislation in practice. In addition, the lack of a monitoring mechanism of the EU in relation to the implementation of the gender equality legislation has slowed down the advancement of the gender equality agenda that is not considered as a priority issue.

3.2.1 Legal framework establishing gender equality in Bulgaria

The Constitution of the Republic of Bulgaria (the Constitution) is the supreme law of the state.¹⁵⁰ If any of the provisions of the Constitution contradict the EU law, the EU law takes precedence over the national legislation. The Constitution prohibits all forms of discrimination under Article 6(2).¹⁵¹ The Constitution contains several provisions pertaining to gender equality, such as the right to have a family under article 14, the protection of mothers under article 47 (2), freedom to choose work article 48(3). The rights guaranteeing social security and assistance are included in article 51. In addition to the Constitution guaranteeing equality and protection of the rights of women and men, there is a number of laws enacted to provide further protection.

¹⁴⁷ Cristina Chiva, 'The Limits of Europeanisation: EU Accession and Gender Equality in Bulgaria and Romania' (2009) 10 Perspectives on European Politics and Society 195.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Constitution of Bulgaria No. 56/1991 art. 5(2).

¹⁵¹ Constitution of Bulgaria No. 56/1991 art 6 (2).

3.2.2 *Anti-discrimination legislation*

The Law on Protection from Discrimination (LPFD) 2004 further develops the prohibition against discrimination as stipulated in the Constitution.¹⁵² The law covers the prohibition of discrimination on a broad range of grounds, including sex/gender discrimination, it addresses direct 4(2) and indirect discrimination in article 4 (3) and Parts 1 and 2 are dedicated to discrimination and the right to work. Under article 5 harassment and sexual harassment are explicitly forbidden by the law as a form of discrimination. Sexual harassment claims can be lodged in courts or in the Commission for Protection from Discrimination (the Commission), which is the mandated body to deal with claims of discrimination as prescribed by the LPFD.¹⁵³

The role of the Commission is to exercise control over the implementation and observance of the anti-discrimination and equal treatment legislation and to submit annual reports to the National Assembly.¹⁵⁴ The majority of complaints brought in front of the Commission by women fall under multidisciplinary discrimination, such as work-related claims; lack of recognition, pregnancy-related claims, harassment. The Commission deals with sexual harassment as a form of discrimination under article 5 of the LPFD. In general, cases of sexual harassment are considered highly sensitive, difficult to prove due to lack of witnesses, often heard in public hearings where victims face the respondents, thus impacting truthfulness of disclosing information, fear of retaliation, and loss of jobs.¹⁵⁵ This explains the low number of sexual harassment cases - 16 in the period between 2014 – 2019.¹⁵⁶ Victims who seek compensation can bring claims only in front of the civil courts after the act of discrimination has been established however, the courts cannot award compensation for sex discrimination.¹⁵⁷ As Tisheva (2016) contends, victims not only face barriers in getting compensation but there

¹⁵² Law on Protection from Discrimination (Закон за защита срещу дискриминацията). SG No. 70 of 10 August 2004 supplemented, last amended SG No. 30 of 11 April 2006.

¹⁵³ Law of protection from discrimination Chapter 3.

¹⁵⁴ Commission for Protection against Discrimination – Annual Report 2019 < <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf>>– Bulgarian Version, accessed on 22 May 2021.

¹⁵⁵ Ibid, pp. 31

¹⁵⁶ Ibid, pp.21.

¹⁵⁷ Genoveva Tisheva Country Report ‘Bulgaria Gender Equality’ (2016) https://ec.europa.eu/information_society/newsroom/image/document/2017-3/2016-bg-country_report_ge_final_en_41875.pdf accessed on 22 May 2021.

are also enforcement issues and the compensation does not correspond to the harm suffered.¹⁵⁸ Overall, there is a sense that awarding proportionate compensation is a challenge for lawyers and courts, thus questioning whether the legal process protects victims or makes things more difficult for them. It can be concluded that accessing the complaints process is not difficult however, the fact that the court may not recognise the Commission's decision on seeking compensation, makes the process inefficient.

3.2.3 Gender equality legislation

In 2016 the law on Equality between Women and Men was enacted as a response to the gap in the structure of the gender equality legislation.¹⁵⁹ The law sets out an obligation for the implementation of gender mainstreaming however, there are no sanctions for non-compliance.¹⁶⁰ Article 8 (2) point 3 sets out the obligation on conducting a gender impact assessment when drafting policies, legislations and other strategic documents.¹⁶¹ In parallel with the legislation, there is a National Gender Equality Promotion Strategy 2016–2020. The policy focuses on 5 key areas: 'Increasing women's participation in the labour market and equality of economic independence; reducing the gender pay gap; promoting equality between women men in decision making; combating gender-based violence and protection and support for victims; changing gender stereotypes. Despite the adopted legislative measures, the statistics show that gender equality between women and men is still lacking especially with regards to access to employment, gender and pension pay gap, decision making roles, balancing family and work life, gender-based violence.¹⁶² Some of the limitations of the Gender Equality act are: the lack of: substantive law provisions, redress of gender stereotypes,¹⁶³ established

¹⁵⁸ Ibid.

¹⁵⁹ Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women – Bulgaria 27 July 2012

¹⁶⁰ Law on Equality between Women and Men (Закон за равнопоставеност на жените и мъжете). SG No. 33 of 26 April 2016. article 4 (1) (1)

¹⁶¹ Ibid, article 8 (2) (3)

¹⁶² Ministry of Labour and Social Policy (2018). Report on Equality between Women and Men in Bulgaria for 2017 ([Доклад за равнопоставеността на жените и мъжете в България за 2017 г.](#)).

¹⁶³ Report of the Commissioner for Human Rights of the Council of Europe following her visit to Bulgaria on 25-29 November 2019

rules for sanctioning of non-compliance and monitoring ‘imposition of sanctions.’¹⁶⁴ Undoubtedly, the obligation of conducting a gender impact assessment indicates the intention of the state to incorporate gender mainstreaming in public policy. However, it is unclear what concrete steps are taken after an assessment is conducted and how are social indicators measured. Arguably, this may be considered as another example of a comprehensive legislative measure that lacks appropriate implementation.

3.2.4. Extending gender equality legislation to other laws

3.2.4.1 Code of Social Insurance and Labour Code

Another legislation relevant to gender equality is the Code of Social Insurance article 3 (3). It states that the social security system in Bulgaria is based on the principle of equality between the insured people.¹⁶⁵ The principle of prohibition of less favourable treatment is also covered in the Labour Code in article 8 (3) which provides special protection against discrimination. The principle of equal pay for equal or equivalent work is covered in article 243. Although the European standards for equal pay are transposed in the Bulgarian legislation, as Tisheva (2017) points out, there is gap between theory and practice in the application of the principle.¹⁶⁶ This is further indicated in the case practice of the Commission where the majority of cases against employers are brought under article 14 (1) for failing to apply the principles of equal remuneration.¹⁶⁷ The Labour code also provides the possibility for flexible working arrangements under article 139 (2), which is primarily based on the agreement between employer and employees. With regards to maternity leave, women are entitled to 410 days of leave as stated in section 163(1) of the Labour Code. With regards to paternal leave, fathers are entitled to 15 days after the birth of the child and have protection like the mothers under the law to return back to their job on the same conditions prior to the leave.

¹⁶⁴ Kadieva and Krumova (n 155), pp. 5

¹⁶⁵ Social Insurance Code (Кодекс за социално осигуряване). SG No. 110 of 17 December 1999.

¹⁶⁶ Tisheva (n 139), pp.16.

¹⁶⁷ Law of protection from discrimination article 14.

3.2.4.2 Employment Promotion Act

The gender equality legislation has also been extended by imposing obligations to employers. For example, in the Employment Promotion Act article 2 prohibits discrimination on the basis of gender and other factors. Article 21 imposes the obligation on employers not to place requirements on gender when announcing vacant positions. Under article 53a employers are incentivised to employ single parents of children under the age of 5.¹⁶⁸ In 2019 there were 208 people engaged in employment through the scheme. The legislation also provides an opportunity for the parents to attend training and focus on career development.

Another measure developed as a result of this legislation is relevant to one of the Commission's projects on increasing the awareness amongst employers about the rights of pregnant women and parents with regards to work-life balance. The aim of the program is to limit the discrimination against expecting mothers and parents.¹⁶⁹ In the National Action plan of action for promoting gender equality 2019-2020 under point 9, employers are incentivised to employ women and men with disabilities and adapt working conditions to respond to their needs.¹⁷⁰

3.3 EU Gender Equality

The previous sections presented the current anti-discrimination and gender-equality legislation in Bulgaria that has been influenced by EU developments. This section will present some of the EU gender equality legislation to provide a complete account on the current state of play in the EU regarding gender equality agenda. The Charter of Fundamental Rights prohibits discrimination based on gender and other forms and ensures equality between women and men in all areas of their life.¹⁷¹ The EU legislation on gender equality consists of a number of directives and soft law instruments addressing different issues relevant to the gender equality

¹⁶⁸ Employment Protection Action SG No. 26/2008, amended and supplemented many times, last in SG SG No. 54/17.07.2015.

¹⁶⁹ CPD Reports (n 159), pp.87.

¹⁷⁰ Ibid, pp.28.

¹⁷¹ Charter of Fundamental Rights of the European Union 2012/C/326/02

agenda.¹⁷² The new Gender equality strategy 2020 – 2025 (the Strategy) focuses on the proposal for the directive on work-life balance to provide flexible working arrangements; improving the share of children accessing childcare; equal pay initiatives; introduction of quotas in political and company boards.¹⁷³ Despite the numerous achievements, there are a number of challenges that need to be addressed, including: tackling gender-based violence; the gender pay gap is still 11.5 percentage points; high discrimination rates of working parents; high poverty rates amongst women; low participation of women in leaderships positions in business and politics.¹⁷⁴ The approach in implementing this new strategy is to achieve gender equality by including gender mainstreaming in all EU policies whilst using intersectionality as a cross-cutting principle.¹⁷⁵ This approach will provide a better understanding of how combining gender with age, disability, social status, sexuality may result in the intersection in cases of discrimination. Nevertheless, the EU gender equality policy has its limitations: primarily focused on equality of rights at work, excluding structural inequalities outside the workplace, proclaiming equal treatment its efficacy on challenging the structural inequalities that impede women accessing employment, and finally for the adoption of gender mainstreaming into all public policies in MS without clear instructions on how to implement this ‘soft-law measure’ that carries no legal sanctions for non-compliance.¹⁷⁶

3.3.1 EU’s response to Sexual Harassment

The recognition that gender-based violence is one of the key concerns in the EU is the adoption of different directives, conventions and documents addressing prevention and responding to gender-based violence and sexual harassment. In 2014 FRA has conducted an EU wide survey that has indicated that the majority of women experience two types of violence – intimate partner violence or sexual harassment.¹⁷⁷ The definition of sexual harassment is provided in a

¹⁷² European Commission Directorate-General for Justice and Consumers, 2015, Strategic Engagement for Gender Equality 2016-2019

¹⁷³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Union of Equality: Gender Equality Strategy 2020-2025
¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*, p.2.

¹⁷⁶ Gwenaëlle Perrier, ‘European Union Policy on Gender Equality: The Scope and Limits of Equality in the Single Market’ (2018) *Reducing Inequalities: A Challenge for the European Union?* 149.,p.154

¹⁷⁷ European Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey Main Results*
Violence against Women: An EU-Wide Survey (2014)

different legal documents with different focus, yet it is recognised as discrimination on the grounds of sex as it breaches the realisation of the principle of equal treatment between women and men.¹⁷⁸ Sexual harassment disproportionately affects women and is perpetrated by men. Within the EU gender equality framework, sexual harassment is gendered in nature and addressed primarily under labour rights.¹⁷⁹ The prohibition of sexual harassment and the principle of equal treatment between men and women are covered in several directives.¹⁸⁰ Sexual harassment is further recognised as a violation of fundamental rights, therefore is accorded adequate protection.

In 2018 the EU Parliament acknowledges the urgency on addressing sexual harassment as a human rights violation at work and makes a number of key recommendations.¹⁸¹ For example, the need for collection of a segregated data by government and private sectors, including employers; improving data on reporting by improving awareness through combined efforts on training; active engagement with different stakeholders on establishing barriers of women to report; sharing of good practices of tackling sexual harassment; calling states to ratify the Istanbul convention; states to support companies in implementing policies and increasing of workers awareness about rights; establishing transparency and confidentiality in complaints processes and adequate sanctions for perpetrators; improving monitoring mechanism and providing adequate resources for equality bodies to respond effectively to gender discrimination.¹⁸²

¹⁷⁸ *ibid.*, pp. 96.

¹⁷⁹ European Union Agency for Fundamental Rights, Crime, Safety and Victims' Rights – Fundamental Rights Survey (2021).

¹⁸⁰ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

¹⁸¹ European Parliament resolution of 11 September 2018 on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU (2018/2055(INI))

¹⁸² *Ibid.*

3.3.2 EU's response to GBV and Bulgaria's position on the Istanbul Convention

The commitment of the EU to the elimination of gender-based violence and harassment is the adoption of the Istanbul Convention. Gender-based violence affects women disproportionately and is one of the persistent problems of gender inequality.¹⁸³ The Convention is considered as the benchmark for combatting and preventing women from violence and domestic violence. Therefore, the EU encourages Member States to ratify the Convention. The process of ratification in Bulgaria was a controversial resulted in the Constitutional court declaring the Convention unconstitutional.¹⁸⁴ One of the cornerstones of the debate was the language construction of 'gender' because in the Bulgarian language there are no two separate words for 'sex' and 'gender'.¹⁸⁵ Given that the legal order in Bulgaria does not recognise the term 'gender', the introduction by the Convention of such a term was perceived as allowing people to choose their gender rather than providing protection of women against violence. The ambiguous definition of the term was used very wisely to manipulate the opinion and 55 % of the population declared themselves against the ratification of the Convention.¹⁸⁶

Some of the arguments against the Convention were as follows: the envisaged education aimed at challenging the gender stereotypes on contrary would go against the right of family life as envisaged in the UDHR.¹⁸⁷ Furthermore, the teachings would have the potential to spread out the 'gender ideology' which can be perceived as a form of 'psychological violence' targeting children.¹⁸⁸ The main concern of the state was that gender-equality education challenging gender norms would intervene with parental responsibilities in raising and educating children.¹⁸⁹ Similarly, the state's position on violence was that whilst recognising its impact on

¹⁸³ Istanbul Convention article 3 (d).

¹⁸⁴ Constitutional Court of the Republic of Bulgaria (2018). Decision No 13, Sofia, 27 July 2018, promulgated SG issue 65/7 August 2018 (Решение № 13, София, 27 юли 2018 г., (обн., ДВ, бр. 65 от 07.08.2018 г.) <<http://www.constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>> accessed on 22 July 2021.

¹⁸⁵ Shaban Darakchi, 'The Western Feminists Want to Make Us Gay': Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of "Anti-Gender Campaigns" (1234) 23 *Sexuality & Culture* 1208.

¹⁸⁶ *Ibid.* pp. 1209.

¹⁸⁷ Miriana Ilcheva, 'Bulgaria and the Istanbul Convention – Law, Politics and Propaganda vs. the Rights of Victims of Gender-Based Violence' (2020) 3 *Open Journal for Legal Studies* 49.

¹⁸⁸ *Ibid.*, pp. 52

¹⁸⁹ *Ibid.*

women, children, men and older people, that was already addressed in the existing international instruments and national instruments. Therefore, gaps could be fulfilled by criminalizing certain acts in the criminal code.¹⁹⁰ As Ilcheva (2020) argues, this devalues the specifics of gender-based violence and the need for systemic change of the societal gender norms to provided needed protection for victims. Following from the above, it can be concluded that the anti-gender campaign in Bulgaria used tactics of ‘moral panic’ or ‘politics of fear’ in the mobilisation of supporters against the ratification of the Convention.¹⁹¹ As if the false sense of achieved gender equality during socialism has resulted in ‘lack of stable feminist culture’ which is struggling to fight collective action to challenge the anti-Convention supporters.¹⁹²

3.5 Summary of points

The above sections outlined the impact of the gender-equality legislation of the EU in Bulgaria and some of the developments. Overall, it can be concluded that there has been some progress in the gender equality agenda, represented by the different legislative measures, and several report: Beijing action plan and the voluntary report on UNSDG.¹⁹³ It is also evident that the principles of non-discrimination and gender equality are enshrined in the respective national and EU laws. Yet, one of the most notable differences is that under Bulgarian legislation victims are better protected under discrimination claims given the higher number of claims in the Commission.¹⁹⁴ Although the developments in the gender equality strategy and legislation cover many of the issues raised by the EU, the main difference in Bulgaria is the lack of substantive provisions and no mechanism for non-compliance with the law. Similarly, the discussion presented the limitations available for women to seek compensation and protection against sexual harassment claims. Furthermore, due to limitations of the thesis the discussion presented the debate on the ratification of the Istanbul Convention without going into the domestic violence law. The reasoning behind this is in line with the main argument that despite

¹⁹⁰ Ibid.

¹⁹¹ Darakchi (n 192).pp. 1215.

¹⁹² Ibid, pp. 1225.

¹⁹³ National report of the Republic of Bulgaria on the implementation of the Beijing Declaration and Platform for Action in the context of the 2020 Beijing+25 (2019) Global review and 5 years of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals UNSGS’

¹⁹⁴ National Report Bulgaria, Violeta Ivanova, Diana Georgieva, Teamwork Project Targeting Sexual Harassment at work (2014 -2020)

comprehensive work in developing gender-equality agenda, the state is still falling behind on responding to the GBV and sexual harassment. This is further supported by the recent UPR report where the Bulgarian state is praised for what has been achieved however, the majority of recommendations are related to: ratification of the Istanbul convention, taking effective measures to combat gender-based violence and sexual harassment, criminalising domestic violence and marital rape, recognition of all forms of gender-based violence in the legislation, data collection and capacity building for justice personnel, improving accessibility to services for vulnerable groups, addressing discrimination and xenophobia against LGBTIQ.¹⁹⁵ To illustrate this the next section will look at how companies respond to sexual harassment and GBV.

3.6 Role of companies in responding to sexual harassment and GBV

3.6.5. Companies response to sexual harassment

A study was conducted recently to establish the attitudes towards sexual harassment in the workplace by interviewing four key groups representing a state agency, national employers' organisation, an NGO and a trade union.¹⁹⁶ The main goal of the study was to assess attitudes towards sexual harassment by the different stakeholders and to find better ways for prevention and redress. The main findings of the study indicated that there was agreement about the existence of sexual harassment across various segments of the economy however, sexual harassment has not been discussed, as it has often been interpreted as 'part of the human rights in the workplace, accordingly, there are no specific measures for behaviour assessment'.¹⁹⁷ On one hand, this statement is true as sexual harassment is a human rights violation and impacts mainly women's rights in the workplace. On the other hand, specific measures can be taken by implementing the tools that the UNGPs can offer, such as conducting gender-responsive due diligence and looking at available policies, improving grievance mechanisms and remedies for victims. The behavioural change may come from improved awareness about the rights of

¹⁹⁵ United Nations Report of the Working Group on the Universal Periodic Review* Bulgaria (21 December 2020) /A/HRC/46/13

¹⁹⁶ Teamwork (n 200).

¹⁹⁷ Ibid, pp.12.

victims and increased accountability of companies. However, it is difficult to bring such change when employers state that the issue is not a priority, or the overall attitude is that there is no systemic problem but rather isolated cases of interpersonal relationships.¹⁹⁸ Further to this, the results showed the recognition of the important roles of companies in implementing effective policies however, given that it is not recognised as a form of violence at work, it does not receive adequate attention and support. In fact, it appears that there is a denial for such behaviour and there is no awareness raised by companies, which could improve access to remedies and support for victims. Despite the limited work in addressing the issue, there seems to be more emphasis on the role of business in implementing such policies and there is more emphasis on the role of the employer and management teams in setting the right organisational culture, and there is a focus on the obligation of employers under Law on Obligations contracts to work with the trade unions on preventative measures against discrimination and harassment in the workplace.¹⁹⁹

3.6.6 Sexual harassment and trade unions

The role of trade unions has been critical especially in their recent activities associated with its recent lobbying for the ratification of the ILO Convention on Violence and Harassment, which can provide some measures against sexual harassment at work. Similarly, CITUB - one of the trade unions in Bulgaria - has been involved in the preparation of a national agreement on violence and stress at work in line with the EU framework.²⁰⁰ The draft agreement proposes a multi-level partnership and the development of policies focused on stress and prevention of harassment and violence at work.²⁰¹ Despite the long negotiation process, the National agreement has not been signed yet, although the trade union believes that eventually, the employers' organisations in Bulgaria will sign because of their connection with the EU organisation that may pressure them to do it. In some sectors however, there has been progress in the inclusion of clauses against discrimination and prevention of sexual harassment, but without setting out measures on how to combat sexual harassment at work. Overall, the trade

¹⁹⁸ Ibid.

¹⁹⁹ Ibid, pp. 14.

²⁰⁰ Jane Pillinger, 'Etuc " Safe at Home, Safe at Work" Country Case Study - Trade Unions' (2017).)

²⁰¹ Ibid.

unions point out the following challenges: low awareness about sexual harassment in the workplace; low visibility and understanding of the illegal nature of the conduct; traditional stereotypes and gender roles in the society; limited focus of women's NGOs on the problem of the GBV without looking into the workplace.

3.6.7. Domestic violence at work

Expanding on the work in the area of sexual harassment, the trade unions acknowledge that their next focus will be on the impact of domestic violence at work.²⁰² This will be achieved through building awareness of the issue and negotiating, amongst other things, domestic violence leave as part of the collective agreements. The trade unions highlight the connection between private and working lives, which is even more pertinent to be addressed given the situation of a number of women working from home due to the COVID-19 pandemic. Although it is difficult to ascertain the exact number of women that experience violence in 2014, 28 % of women have reported having been a victim of violence.²⁰³ One of the challenges that trade unions envisage is persuading employers that domestic violence is also a workplace issue. This seems to be a very challenging task given that many employers continue to perceive gender-based violence as a private issue and not a broad societal problem.²⁰⁴ Similarly, to the awareness of sexual harassment, the business sector does not recognise GBV as a topic recognised by their CSR policies, therefore there is an overall lack of awareness about the scope of the problem. The work of NGOs on awareness building in the business sector is critical however, companies are reluctant to work with state institutions, which is a necessary condition for a combined response.²⁰⁵ It is important to acknowledge that more businesses are willing to support victims at work as they start to comprehend the impact that it may have on business and on the people. However, employers admit that there is limited information and they do not know where to seek help, especially in the smaller cities.²⁰⁶ Therefore, it is critical to develop

²⁰² Ibid.

²⁰³ Violence against women: an EU-wide survey, Fundamental Rights Agency, March 2014, Available on line at: <http://fra.europa.eu/en/vaw-survey-results>

²⁰⁴ Carve project National Study for Bulgaria' Involvement of Companies in the fight against Gender-Based Violence' (2014 - 2016) < https://asceps.org/makingprojects/carve-daphne/national-study-bulgaria_en/> accessed on 15 July 2021.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

resources and tools, and to have more engagement with state institutions, police and women's organisation on how to support the victims. Sharing of good practices has always been beneficial but as the research will later show, the problem is that very few companies include gender equality in their CSR agendas.

3.7 Conclusion

The chapter provided an overview of the gender-equality legislation in Bulgaria and how it has been mainstreamed in business practices. It is evident that the adopted policies provide good protection against all forms of discrimination, however, protections are limited with regards to sexual harassment and gender-based violence in the workplace. The research also presented the influence of the EU accession and current EU trends on the development of gender-equality legislation. One main limitation is the issue with the 'compliance gap' between theory and practice.²⁰⁷ The compliance gap comprises of adoption of comprehensive legislation as a result of the EU conditionality without an adequate support for implementation by the relevant institutions. Added to this is the adoption of the Gender Equality Act that lacks substantive provisions and adequate monitoring mechanism for the sanctions imposed under the legislation. In the case of sexual harassment there is low awareness and opportunities for redress and limited interest in addressing the issues from companies and states whilst victims lack awareness about their rights. Although trade unions have been successful in including sexual harassment as part of their work, employers are still reluctant to sign the national agreements and to include clauses against sexual harassment in the collective agreements. And finally, although trade unions and NGOs are starting to raise the issues about the impact of domestic violence on workers, businesses are struggling either to understand their role or where to seek help. Therefore, it has become critical for state institutions to work with businesses to increase awareness and to find better support for victims.

²⁰⁷ Jill Irvine, 'Gender (In)Equality and Gender Politics in Southeastern Europe' (2015) *Gender (In)equality and Gender Politics in Southeastern Europe*, pp.68.

Chapter 4 CSR and BHR

4.1 Introduction

The previous chapter covers the gender equality framework and how it extends to business. The discussion points out that there is comprehensive legislation that seems to lack enforcement mechanisms, thus failing to provide adequate support for women against sexual harassment and gender-based violence. Given that the UNGPs have changed the roles of businesses to become more active actors in fighting social injustices, it is without a doubt their responsibility to protect their workers, especially women from violence and SH. Of course, this does not mean taking out the function of the state but implementing codes of conduct and organisational culture condoning any forms of violence against women, adopting human rights and sexual harassment policies, establishing grievance procedures to support victims. To understand better the situation in Bulgaria, this section will review how is the BHR framework implemented by the states and the businesses, the state of CSR and whether the developed CSR practice on responsible business can be an entry point for advancing the BHR framework.

4.1.1 Current state of play of the BHR framework

The UNGPs 10+ project marks the 10th anniversary of the adoption of guiding principles and their establishment as the authoritative set of principles to promote responsible business conduct.²⁰⁸ The report presented by the WG shows the significant advancement of the UNGPs agenda globally and the improvement in several key areas, however, the agreement is that overall, more collective effort is required for corporate responsibility for human rights to be fully implemented by companies. Some of the key outcomes that the Guidelines have brought up are changing the meaning of the traditional corporate social responsibility to corporate respect for human rights; increasing the number of companies globally are adopting the UNGPs; improving access to remedies for human rights abuses; moving away from corporate

²⁰⁸ Working Group on Business and Human Rights “UN Guiding Principles on Business and Human Rights at 10: taking stock of the first decade” 28 June 2021
<https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx> accessed on 25 July 2021

philanthropy to corporate accountability; more companies exercising human rights due diligence thus resulting in a shift towards a mandatory legal requirement.²⁰⁹ Correspondingly, some of the key challenges on a state level are associated with policy coherence on a domestic and international level; from a business perspective whether business models are compatible with respect for human rights; improvement of access to non-judicial and judicial remedies; the unclear relationship between SDGs and human rights; the existence of business-related abuses and how they will be addressed post-COVID.²¹⁰

According to the WG, one of the most positive results is the development concerning mandatory due diligence. On an international level, there is a debate on the adoption of internationally binding documents whereas the European Union is currently in the process of debating the adoption of ‘a cross-sectoral mandatory human rights and environmental due diligence directive’.²¹¹ The rationale for establishing the directive is the urgent need for the adoption of a binding document in the EU that can address the potential adverse impact by businesses on people and the environment and provide remedies for victims. The scope of the directive is broad and will include all large businesses including SMEs that are publicly listed or operate in a high-risk sector.²¹² The scope of the directive is broad and will include all large businesses including SMEs that are publicly listed or operate in a high-risk sector. The directive will be founded on the principles of transparency and accountability with monitoring and implementation mechanism to ensure that the due diligence process is not a ‘box-ticking exercise’.²¹³ The focus is on creating a ‘quality’ human rights due diligence to avoid the risk of ‘superficial commitments’ to human rights without bringing any significant change to the lives of people. Although the adoption of the directive is still in process of debate and comments by different stakeholders, it has shown the willingness of companies to have a more even playing field when addressing human rights violations.²¹⁴ Although the adoption of the

²⁰⁹ Guiding Principles on Business and Human Rights at 10: taking stock of the first decade Report – A/HRC/47/39

²¹⁰ Ibid.

²¹¹ Ibid, p. 8.

²¹² European Parliament Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL))

²¹³ Ibid para [16].

²¹⁴ Shift project 2020, *Accountability as Part of Mandatory Human Rights Due Diligence: Three Key Considerations for Business*. < <https://shiftproject.org/resource/accountability-mhrdd/> > accessed on 25 July 2021.

directive is still in process of debate and comments by different stakeholders, it has shown the willingness of companies to have a more even playing field when addressing human rights violations. For the Bulgarian context, this is an indication that companies have to acknowledge the potential risks of human rights violations and change business models that include human rights as part of their sustainability efforts.

4.1.2 Corporate Social Responsibility, Responsible Business Conduct and BHR

As pointed out in the previous section, there has been a shift in the meaning of corporate social responsibility. This section will analyse how the shift has impacted the EU advancement of the BHR agenda. The recognition that companies have a strong influence on people and the environment in which they operate is key to understanding the added responsibilities and expectations that they have to consider.²¹⁵ Within the EU context companies influence people through products, services, employment, environment, human rights, etc. The expectation is that companies proactively seek ways to address, prevent and mitigate negative impacts on the community and environment through exercising their duty 'corporate social responsibility'(CSR) or 'responsible business conduct' (RBC).²¹⁶ Despite the support of EU and other public authorities, the rationale is that engagement in responsible business conduct is a company led initiative supported by the state through the implementation of smart-mix of measures, implementation of the UNGPs and in line with the SGDs agenda. The promotion of the CSR/RBC and UNGPs is strongly emphasised in the work of the EU Commission in line with the EU CSR Strategy 2011.²¹⁷ The commitment to human rights of the EU is confirmed in the Action Plan on Human Rights and Democracy by recognising the need for more systemic efforts in responding to the complex crisis where human rights protection fundamental freedoms are at risk.²¹⁸ The EU focuses on non-discrimination policies, gender equality and advancing women's empowerment. With regards to advancing BHR the main focus is on

²¹⁵ Commission Staff Working Document: 'Corporate Social Responsibility, Responsible Business Conduct, and Business and Human Rights: Overview of the progress' SWD (2019) 143 final COMMISSION.

²¹⁶European Commission 'Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress EN' https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en> accessed on 10 June 2021.

²¹⁷ Ibid.

²¹⁸ Council Conclusions on the Action Plan on Human Rights and Democracy 2015 - 2019 https://ec.europa.eu/anti-trafficking/sites/default/files/action-plan-on-human-rights-and-democracy-2015-2019_en.pdf> accessed on 10 June 2021.

capacity building, knowledge about different tools; awareness-raising on CSR as part of the external work; promotion of NAPs and working closely with companies; proactive engagement with NGOs and human rights bodies on BHR issues; integration of UNGPs in national CSR strategies.²¹⁹

4.1.3 BHR in Bulgaria

The state plays a critical role in the advancement of the BHR framework through the adoption of a national action plan/NAP/.²²⁰ NAPs articulate state commitment to the implementation of the UNGPs and highlight key priority areas. The Bulgarian position is to follow a strategy on Corporate Social Responsibility which is aligned with the European common policy on BHR.²²¹ The adoption of a NAP is still debated by the relevant departments and as there is no state body responding to BHR and there is uncertainty as to whether to be included in the CSR strategy or a separate document. The state further elaborates that BHR is not a priority due to its small size with a low number of companies that do not impose risks to human rights violations in their operations.²²² The main concerns of the state are that BHR may deter foreign investment and that no companies are operating abroad.²²³ The above statement indicates a lack of understanding and awareness of human rights within the government and the adverse impact businesses may have in their operations regardless of their size or location. Added to the above is the lack of consensus and awareness about BHR in the government, issues of coordination and monitoring, lack of resources and opposition of influential groups.²²⁴ Added to this is a lack of action from the civil society sector which appears to be focusing primarily on human rights from a legal and political lens and there is no activism concerning BHR.²²⁵ Whilst the organisations focusing on CSR have limited capacity to include BHR as part of their agenda, thus supporting businesses in the development of the SGD agenda as a priority and improving the responsible business conduct. In summary, it appears that the government position of not

²¹⁹ Action plan (n.221) pp.18.

²²⁰ National Action Plan on Business and Human Rights <https://globalnaps.org> accessed on 10 June 2021.

²²¹ Business and Human Rights Resource Centre 'Bulgaria' < <https://old.business-humanrights.org/en/bulgaria-0> > accessed on 10 June 2021.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Bulgarian Helsinki Committee 'Human Rights in Bulgaria 2019' <https://www.bghelsinki.org/en/reports/human-rights-in-bulgaria-in-2019-summary> - accessed on 7 July

advancing the BHR agenda comes from a lack of awareness within the government and limited activism from the NGO sector and the companies themselves.

4.1.4 NGO and other organisations

Unlike, other states in the EU and Central Europe there is not a leading NGO or NHRI advocating for business and human rights like the Belgrade Centre for Human Rights,²²⁶ the Inter Partes Law Firm in Macedonia,²²⁷ UN Global Compact Georgia.²²⁸ In Bulgaria, currently the focus is primarily on: developing responsible business practices, improving sustainability performance; advancing the SGDs responding to the ESG criteria within the Sustainable finance strategy.²²⁹ This explains why the majority of organisations are active in the CSR field, such as: CSR Bulgaria²³⁰, BBLF, CSR Advice Box²³¹, BIA²³² and UN Global Compact. The only organisation that currently does some work on business and human rights is UNICEF Bulgaria, which has conducted the first situational analysis on impact of business on child rights.²³³ In addition, a Bulgarian Business and Child Rights Academy was established between UNICEF Bulgaria and Sofia University to increase capacity in the area of Business and child rights and put on the agenda BHR as part of the contribution to the SDGs.²³⁴ Given that sustainable business is a priority to some of the above listed NGOs it would be important to clarify their position on the role of the business and human rights as part of the responsible business conduct.

²²⁶ Belgrade Centre for Human Rights <<http://www.bgcentar.org.rs/bgcentar/eng-lat/?s=baseline+assessment+&submit=Search>> accessed on 7 July 2021.

²²⁷ Inter Partes Law firm - <<http://www.interpartes.mk/en/бизнис-и-човекови-права/>> accessed on 7 July 2021.

²²⁸ UN Global Compact Georgia - <http://globalcompact.ge/en/forum-on-business-and-human-rights/> - accessed on 7 July 2021.

²²⁹ Commission Action Plan on Financing Sustainable Growth https://ec.europa.eu/info/publications/sustainable-finance-renewed-strategy_en - accessed on 7 July 2021.

²³⁰ CSR Bulgaria - <https://www.csr.bg/social-responsibility?start=20> - accessed on 7 July 2021.

²³¹ CSR Advice Box - <https://www.csrab.com/en/> - accessed on 7 July 2021.

²³² Bulgarian Industrial Association - <https://en.bia-bg.com/> - accessed on 7 July 2021.

²³³ UNICEF Bulgaria - <https://www.unicef.org/bulgaria/en/reports/the-impact-business-sector-childrens-rights-bulgaria> - accessed on 7 July 2021.

²³⁴ UNICEF Bulgaria - Bulgarian Business and Child Rights Academy (August 2020) <<https://www.unicef.org/bulgaria/en/stories/bulgarian-business-and-child-rights-academy-unicef-and-faculty-economics-sofi-university>> - accessed on 24 June 2021.

4.2 Corporate Social Responsibility in Bulgaria

4.2.1 State's involvement in CSR Strategy

As pointed out earlier businesses in Bulgaria are primarily focused on responsible business but whether it is in line with the EU standards is another question. The development of the concept of responsible business companies in Bulgaria dates from 2005 with the creation of the Responsible Business Directory.²³⁵ The state's role in the promotion of CSR practices was introduced by the CSR strategy 2009 which was the first step towards a more strategic shift and work in the field of CSR.²³⁶ The development of the CSR in Bulgaria in this initial period can be described as relatively slow, lacking public awareness, often associated with quick CSR campaigns compensating for some questionable business practices and lacking good corporate models and standards, no long-term planning for sustainable growth and no commitment to respect human rights, improving labour conditions or improving environmental and social conditions.²³⁷ Subsequently, it became important to establish what was the role of the government in advancing the CSR agenda. Despite the limitations of the first strategy, the actions of both states and businesses were clear evidence of the commitment to the adoption of responsible business practices. This was strengthened after the adoption of the SDG agenda in 2015, which indicated the strong interest of companies and recognition of their role in the achievement of the SDGs. As mentioned above the responsible business conduct is a business-led initiative, but it needs the state's commitment and the implementation of a smart mix of measures.²³⁸ From the state's perspective the adoption of renewed CSR strategy (the Strategy) Bulgaria, covers the period of 2019 - 2023 is the response needed to support companies. Although the Strategy builds from the earlier document, it maintains several critical principles: the principle of voluntarism, the principle of doing good and the importance of considering the

²³⁵ Responsible Business Directory < <https://www.bblf.bg/bg/novini/239/2005-responsible-business-directory-launched-with-flying-start> > - accessed on 24 June 2021.

²³⁶ Social Policy Commission Opinion ESC/3/029/2015 < https://www.eesc.europa.eu/ceslink/sites/default/files/document-file-uploads/-opinion-corporate_social_responsibility_signed_en-2015.pdf > - accessed on 24 June 2021.

²³⁷ Ibid, p.56.

²³⁸ See above (n. 218).

interests of the different stakeholders.²³⁹ It also highlights ‘the responsibility of the businesses for the impact they have on society’ by including social, environmental, ethical and consumer issues.²⁴⁰ The Strategy also builds on the importance of accountability, transparency, publicity and responsible behaviour of the business. The main difference between the Strategy and EU CSR Policy is the lack of implementation of the BHR in the Bulgarian document, this is will be highlighted in the section below.

4.2.2 Comparison between Strategy and EU CSR Policy

In line with the contemporary understanding of CSR, the EU Renewed Strategy 2011 -2014 states that the CSR definition encompasses human rights. Firstly, the EU strategy calls for alignment of the EU with the global approached to CSR and particularly the adoption of the UNGPs, whilst the Bulgarian strategy refers to it as one of the other international frameworks without emphasizing the importance of its implementation, which according to the EU can contribute to addressing key human rights issues such as labour standards, gender equality and non-discrimination.²⁴¹ Secondly, the Bulgarian Strategy talks about human rights concerning jobs and opportunities and the terms of working conditions rather than focusing on how companies may have an adverse impact on human rights in conducting their business activities.²⁴² Whilst the EU in line with the UNGPs stresses the need for companies to mitigate and identify risks by conducting due diligence including in the supply chains, the Strategy does not refer to due diligence regarding companies but places expectations on companies to address any social and environmental concerns in their CSR policies.²⁴³ Following this reasoning, it is difficult to ascertain whether the policies that companies have to follow include the question of corporate accountability as envisaged in the UNGPs.²⁴⁴ Whilst the EU is recognising the need to shift from voluntary reporting and due diligence to binding instruments, the Strategy is showing the need for improving CSR reporting on social and environmental factors through the different reporting systems. It is evident that the

²³⁹Ministry of Labour and Social Policy, ‘Corporate Social Responsibility Strategy’ Bulgaria 2019 - 2023’ <https://www.mlsp.government.bg/strategii> – accessed on 1 July 2021

²⁴⁰ Ibid.

²⁴¹ A renewed EU strategy 2011-14 for Corporate Social Responsibility, p.14

²⁴² CSR strategy (n 242) pp. 10

²⁴³ Ibid.

²⁴⁴ OHCHR ‘Corporate responsibility to respect human – Interpretative guide’ HR/PUB/12/02

number of companies making sustainability reporting in Bulgaria is growing, and perhaps the changes planned by the EU under the mandatory due diligence directive will increase the number, however, the questions about corporate accountability, due diligence and transparent reporting have been raised and implemented by states and companies since 2011, whilst the Strategy hardly refers BHR and due diligence. This may indicate that companies may find challenging in conducting due diligence and ESG reporting that may become mandatory under the green deal and taxonomy legislation.²⁴⁵ The latter recognises human rights as part of social taxonomy or how business engage in environmental business practices.²⁴⁶

4.4.3 State of CSR for 2018 – 2020

The analysis of the CSR in Bulgaria amongst some of the leading employers provides valuable insight into current corporate behaviour and corporate social responsibility. By assessing the state of CSR, this section aims to clarify whether through the CSR agenda the BHR framework can be advanced. The majority of companies in Bulgaria that have implemented CSR into their business management models are driven by corporate social responsibility, sustainable development and stakeholder engagement. After reviewing some of the trends of the state of CSR in Bulgaria the following points can be drawn. Overall, the COVID-19 pandemic and global economic trends have shifted the CSR policies towards a more sophisticated business application by focusing on resilience and sustainability.²⁴⁷ Yet, the trends presented in 2018 continue to show the lack of awareness by consumers on responsible business behaviour and the international standards, including the UNGPs. This explains the limited dialogue amongst businesses and the states of the advantages of implementing the Guidelines.²⁴⁸ Similarly, 2 years later in the follow-up study on the state of CSR, the issue of human rights is still not an area of interest to the large – companies and hardly finds attention under the social indicators

²⁴⁵ Taxonomy: Final Report on the Technical Expert Group on Sustainable Finance https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf – accessed on 25 July 2021

²⁴⁶ REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088-article 18.

²⁴⁷ CSR Report 2020 (n 6).

²⁴⁸ CSR Report 2018 (n 6).

within the ESG criteria.²⁴⁹ Perhaps, a positive trend can be seen in the application of the internal management systems and the increase of reporting by applying international standards which contain human rights indicators, such as GRI, ISO 26 000 and the most widely used UN Global Compact.²⁵⁰ Added to this is the increased reporting under the non-financial directive that has been transposed into the Bulgarian legislation and since 2017 more and more companies have published CSR reports.²⁵¹ The benefit of the reporting mechanism is that through transparency investors can be attracted and similarly to the Guiding Principles Reporting Framework stakeholders and investors can monitor what are the human rights risks that companies engage with and how they mitigate them.²⁵² The disadvantage is that often companies focus on what they have done in contrast to what they have achieved.²⁵³ To sum up the focus on responsible business and sustainability has pushed away the business and human rights agenda. Therefore, it can be concluded that unless there is a shift of the responsible business model into including corporate responsibility of human rights, companies may fail to fully implement the UNGPs framework.

4.4.4. BHR advancing the gender-equality agenda

The discussion so far presented 2 key questions of this case study, firstly that the comprehensive gender-equality legislation in Bulgaria has been mainstreamed into business practices through the application of the principles of non-discrimination and gender equality. However, one limitation is that by focusing on the application of these principles and individual empowerment of women at work, the broader and more pressing issues that fall into gender inequality such as sexual harassment and GBV have been rendered invisible for the workforce and employers as if they don't exist. Secondly, the responsible business model and corporate social responsibility that companies have adopted do not include corporate responsibility for human rights. On contrary, as indicated earlier sexual harassment and human rights are not

²⁴⁹ CSR Report 2020 (n 6) pp. 36

²⁵⁰ Ibid pp.10.

²⁵¹ Non-financial Directive (n 24).

²⁵² UN Guiding Principles Reporting Framework <<https://www.ungpreporting.org/>>- accessed on 26 June 2021

²⁵³ See above (n 216).

seen as priority areas that require specific mechanisms for redress, therefore no active work is completed in this direction. I contend they have been acknowledged as issues; however, just as a tick-box exercise to show in their public reporting that companies respect human rights and prohibit discrimination in line with the current legislation. As if legal compliance with non-discrimination and human rights is a valid justification for companies not to engage with these topics. Of course, this does not apply to all companies and this is why it is important to build on what has already been achieved by some of the companies that I have analysed in chapter 5.

The best way to illustrate is how the BHR framework can advance the gender equality agenda is through its application on addressing sexual harassment and GBV at work. Two companies in my research represent the extractive industry with well-developed human rights policies and diversity inclusion practices embedded into their business operations. The issues associated with the industry are connected to labour risks linked to high-risk male-dominated professions with a higher likelihood of discrimination of women in the hiring process and daily work, and incidents of sexual harassment.²⁵⁴ Although the companies in question have addressed improving access of women to employment and have encouraged the speak out culture, there are no anti-sexual harassment policies in place or clarity on how their grievance mechanism address sexual harassment and GBV. The UNGP has established the process of conducting due diligence as a tool for risk assessment which can be adapted to address gender. Following from this the companies can conduct gender-responsive due diligence that will provide several answers to make a deeper assessment of the current gender equality policies and whether they include sexual harassment and addressing GBV; they can identify the risks of adverse impact in the business operations or supply chains and take steps to mitigate or minimise those risks; companies can also track and implement the results in a transparent way whilst trying to establish a better remediation process either internally or externally relying on the legal system.²⁵⁵ The rationale of this process is to provide a deeper analysis of current practices whilst recognising the gendered nature of the industry and perhaps changes corporate

²⁵⁴ <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-extractives-sector> - accessed on 26 July 2021.

²⁵⁵ <https://www.gendervediligence.org/what-is-due-diligence/> - accessed on 26 July 2021.

behaviour.²⁵⁶ Instead of separating human rights and gender inequality, the argument is to build on what has been achieved and use the tools that the UNGPs provide. However, there is a need to shift business management to corporate responsibility for human rights where human rights and gender inequality are seen as key sustainability issues in line with global trends.²⁵⁷ It is also critical that companies have obligations to respect human rights and if the state is not supporting them or not fulfilling its obligations under IHRL, companies can also be active in bringing change. The examples above presented a low level of sexual harassment disclosures and low case law practice. If companies conduct gender-responsive due diligence their findings can inform the state and the institutions and work together on remediation processes. To sum up, the discussion presented a more practical application of the BHR framework through the process of due diligence. The application of a business human rights approach through a gender lens provides an opportunity to go deeper in assessing whether businesses in their operations may have a negative impact on women's rights and how they can address them. Companies need to engage with the findings and put systems in place to make a sustainable change. The current practices of reporting may show good intentions but the changing nature of responding to societal problems will require companies to go beyond doing good and to be part of the positive and systemic change.

4.5 Conclusion

The purpose of this section is to provide an overview of the impact of the UNGPs on the concept of corporate responsibility and how embedded are the Guidelines in the work of the EU. It also shows that the current models of CSR policies and strategies in Bulgaria have to align with the EU and global strategy on the importance of including business human rights into the sustainability agenda. The comparison between the Bulgarian and EU CSR strategy aimed to highlight the differences between the 2 documents and approaches, and perhaps offer some insights on where the Bulgarian policy can be improved. The state of the CSR presents some of the challenges in advancing the BHR framework, namely the focus on CSR policies

²⁵⁶ MARTIGNONI and UMLAS (n 25).

²⁵⁷ Margater Jungk, 2016 'Why Businesses say Human Rights is their most urgent sustainability priority' <https://www.bsr.org/en/our-insights/blog-view/why-businesses-say-human-rights-most-urgent-sustainability-priority> - accessed on 26 July 2021.

that do not include human rights as part of their agenda but rather see it as part of legal compliance. The final section focused on how the BHR can contribute to the gender equality agenda through gender-inclusive due diligence. Thus, providing a solution to businesses to improve their assessment of their impact on human rights whilst addressing gender as a human's rights violation.

Chapter 5 Companies

5.1 Introduction

Having discussed in the previous section the state of CSR and some of the reporting systems, this section will include a more practical component highlighting the visibility of companies in Bulgaria with regards to human rights and gender. To provide examples, I adapted my methodology to *the Dutch Transparency Benchmark* which examines the reporting of companies on the area of CSR and added human rights and gender indicators.²⁵⁸ The goal of this analysis is twofold, on one hand to assess the public visibility of the companies as a key form of corporate accountability. On the other hand, by focusing on the good practices, I aim to highlight examples of the incorporation of BHR into business practices and gender and how this has been achieved.

With regards to visibility of human rights and CSR information on the website, the maximum score given is 3 which includes information on both local and global websites, if applicable. A score of 0.5 is given only where there is some reference to sustainability or CSR. The same score is awarded for companies that have a lot of information but none of them relates to human rights or corporate governance. For example, a company may be known as working on environmental projects and having a Code of ethics, but this is the maximum information provided. The maximum points 3 awarded is for companies that have easy to find comprehensive information on human rights and CSR on their Bulgarian site, if the information is accessible primarily on their global website the points will be 2. With regards to gender the

²⁵⁸ <https://www.transparantiebenchmark.nl/en/about-transparantiebenchmark/objective> - accessed on 8 July 2021.

maximum score is 3, which comprises of active diversity and inclusion policy, gender quotas for management teams, implementation of WEP and sexual harassment and gender-based violence policies. One point is awarded as a recognition to companies that make explicit reference to the principles of non-discrimination and equality.

To provide some practical examples I have looked at 2 organisations, the UNGC as the leading business network on advancement of the SDGs through sustainable and responsible business practices and the BBFL, which is the leader in celebrating companies' achievements and sharing good practices. Although both organisations have a voluntary participation, the communication procedure under the UNGC is an annual requirement which companies have to submit as part of their commitment to the network. BBFL an annual award that gives opportunity to companies to share their practices through voluntary participation. The progress is measured through consistent reporting, transparency and improvement of the range of initiatives. However, it is unclear how companies that report on implementation of the UNGC principles, measure their improvement from the time of joining the network until now. The issue is that without proper measurement, this reporting remains an activity tracker and does not provide results on improvement or change.

5.2 Reporting under UNGC

The Global Compact is the leading network specialising in CSR and sustainability by organising collective projects, education and connects responsible businesses in their efforts to achieve the SDG agenda. One of the requirements for joining the network is the incorporation of the principles of the UNGC, two of which are human rights focused. The implementation of the principles into the companies' policies and strategies is viewed as upholding basic responsibilities to the people and planet and contributing to achieving the global SDGs. This is why all members are required to submit annually a Communication on Progress (COP) on the application of the principles to all the stakeholders. The purpose of the document is to provide stakeholders with current information in a transparent manner to ensure accountability and commitment to sustainability and responsible business practices.

The analysis included 22 companies that submit COPs, 11 SMEs and 11 Companies. The methodology used in analysing the companies is by looking at their communications for the last reported period 2019 or 2020. The choice of separating them into ‘SMEs’ and ‘Companies’ is based on the different approaches to CSR strategies and incorporation of company policies. Often SMEs adopt informal practices and policies and do not have CSR policy but a commitment to pressing societal issues, unlike larger companies that have a more structured CSR policy.²⁵⁹

5.2.1 SMEs Respect for Human Rights

Every company has committed to respect human rights as part of its sustainable business practices and applies the principles of non-discrimination and equality. The majority of companies indicate compliance with the law and labour standards, and there seems to be a trend of stating respect for human rights but referring to labour rights. This is represented by the importance of communicating with employees, ensuring safe working conditions and improving the working environment. Presumably, there might be confusion between the protections available through the labour rights system and the human rights system. The debate whether labour rights are human rights is a complex question that requires a more thorough investigation of the issue and will not be covered in the thesis. Some companies also have mentioned that measuring human rights compliance is in the negative number of complaints, yet only one of the 10 companies has a grievance mechanism that encourages speak out culture. On the given information it is difficult to ascertain whether the grievance process is similar to the one prescribed by the UNGPs under principle 31. Company 4 explicitly recognises its potential impact on local communities and the environment, therefore integrates ESG standards into its operations. The company also considered ESG as part of its investment portfolio, thus invests mainly in companies with responsible business models of operations. Company 6 makes a reference to HR through its strict compliance with GDPR and mentions pay increase as part of the human rights activities. And finally, several of the reviewed companies report their CSR activities under the human rights section. This indicates that for many companies

²⁵⁹ See Appendix 1 Table 1.

following the law, contributing to the social good and respect for employees are also indicators of respect for human rights

5.2.3 SMEs Gender

Out of the 10 companies, only Company 4 makes an explicit reference to promoting gender equality whilst Company 1 mentions that the different genders are equally represented in management, which leaves the presumption for equal distribution in the leadership positions of the companies, however, there is no evidence presented in the report. Company 10 states the majority of their employees are women and although there is a reference to providing health services and training, there are no other policies mentioned. Only Company 7 refers to discrimination and harassment but there is no information on how they are addressed on the company level.

5.2.4 SMEs Transparency

In terms of transparency in this group, the highest score is 8 and the lowest is 1 given only for the acknowledgment of the human rights principle in the COP. Only Company 9 has a piece of very transparent information on its website regarding the CSR policies, however, none of the companies has published their reports on their website, thus questioning the legitimacy of their accountability, given that the information has limited publicity

5.2.5 Large Companies Respect for Human Rights

The next section will review the COP of the activities of 11 companies that employ more than 50+ people and are predominantly locally owned and operated companies. The majority of companies have made firm commitments to human rights through the implementation of different Codes of Conduct covering employees and external partners and in compliance with international and national laws. Several companies have recognised the importance of respecting human rights through their operations and through their supply chains. The two companies that have scored the highest points are multinational companies 11 and 15 that

have human rights principles embedded across their business operations and recognise human rights as a long-term sustainability strategy. Overall, most companies have a commitment to environmental and social impact through a range of CSR activities but none of them has a gender focus. Although most of the companies have indicated their commitment to human rights and respect for their employees, one key observation is that whilst Principle 2 talks about the commitment to companies not to be complicit in human rights abuses none of the companies has mentioned concrete steps on assessing risks or taking positive steps in this direction. Yet, the industries in which these companies operate such as energy, extractives or pharmaceuticals do not seem to acknowledge the human rights risks associated with their activities.

5.2.6 Large Companies Gender

The companies given the highest score also score high under gender as both companies have active D&I policies and work focused on achieving gender balance in management, they have policies in response to sexual harassment and one of them has endorsed the women's empowerment principles.²⁶⁰ Similarly, to the smaller companies, most companies strongly apply the principles of non-discrimination and equality. Whilst both principles are integral within the human rights framework, given that the majority of the companies made little or no reference to SDG5 or gender equality it is difficult to ascertain how the application of these principles encompasses gender in practice. With regards to monitoring and measuring progress, not many companies have indicated progress besides their reporting, but as Company 14 has reported that the best measurement is the lack of complaints neither from employees nor customers about human rights violations.

5.2.7 Large companies Transparency

In terms of transparency in this group, the highest score is 13 and the lowest is 3.5. This group of companies performs better in including information on their website, including some of the

²⁶⁰ Women Empowerment Principles (no. 125)

reports are available online, which is consistent with the principles of transparency and accountability.

5.3 Bulgarian Business Forum Leader

5.3.1 Respect for Human Rights

The second group of companies that will be reviewed are the winners of the Responsible Business Awards 2020.²⁶¹ Overall, most companies that have participated in the awards are subsidiaries companies of MNC or have some international connection. The practise shows that the information on the local site is more limited regarding CSR and HR. The available information on their websites includes an annual report, company human rights policy that includes diversity and inclusion, a CSR strategy and/or commitment to sustainability. However, when looking at the local websites, we can see only some local CSR activities. Therefore, the research goes beyond the local sites but maximum awards for visibility are given only to those companies which have information on their Bulgarian sites as well. All of the companies that have been reviewed in this group have shown a firm commitment to human rights by implementing Codes of conduct, human rights policies, incorporating responsible business and ethical conduct and incorporation of human rights through the supply chains. The focus here will be to highlight some of the most interesting parts of their work and particularly what is their position regarding gender. This has been prompted by the observation that since 2012 there have been only one or two campaigns each year that have been submitted that were focused on women. Whilst there seems to be so much focus on highlighting the commitment to engagement with environmental and social issues, there seems to be little or no attention to gender equality and empowerment.

Only one or two of them explicitly refer to the UNGPs (Company L, Company A) as the majority of them refer to UDHR, the 10 principles of the UNGC, the ILO and national legislation. The majority of the companies are subsidiaries of MNC companies that have actively promoted respect for human rights, commitment to achieving SDGs, environment and

²⁶¹ See Appendix 2 Table 2.

diversity and inclusion. Here we can observe a level of maturity and understanding that the business may have a particular impact on human rights through its activities one of which is human rights at work. Whilst in the previous sections looking after workers and improving work conditions was one of the key aspects within the human rights compliance. Furthermore, companies here also acknowledge that corporate respect for human rights is ongoing progress that will be achieved through public reporting and transparency. Only Company H has introduced a global human rights training approach to all employees and has implemented a sophisticated case management system to handle complaints that are expected to cover 2022 all regions of operation. Similarly, Company I have incorporated a grievance mechanism that encourages speaking out and reporting which is done through an ethics hotline. Two companies G and F have set up a complaint's mechanism in line with the Whistle Blowing directive that encourages a culture of speaking out without fear of retaliation. What remains unclear is how these policies include remediation and whether there will be a more specific approach when responding to sexual harassment complaints? With regards to risks only company H has highlighted the importance of identifying and/or preventing human rights violations in their operations and supply chain, whilst recognising the reputational risks this may involve to the company's brands and corporate fines. The company recognises the need of conducting human rights due diligence as an important factor in addressing the risks of human rights violations. Only 2 companies in the research have mentioned about HRIAs, and this one highlights that by engaging stakeholders the company is going through a transformation journey whilst reinforcing respect for human rights through its operations, supply chains and external engagements. Company E not only recognizes the importance of HRIAs but has also employed due diligence in its recruitment and conducts risk assessments on goods suppliers, which is an integral part of the human rights due diligence process.

5.3.2 BBFL – Gender

Regarding gender, most companies have active diversity and inclusion policy, and some of them have gender balance metrics and gender goals to achieve better representation of women in leadership positions. Some of them have very clear targets whilst others have just mentioned this issue. Overall, only one of the companies has a Global Anti-Harassment policy with a clear

distinction of sexual harassment from other forms of harassment (Company K). The two companies that I have given maximum points to are the two companies that have a majority of men employed due to the nature of the industry, yet there are no sexual harassment policies incorporated or easy to locate on their respective websites. One of them addresses complaints through an online complaints' system but it mentions discrimination as one of the issues in focus. Similarly, one of the leading employers (Company J) in Bulgaria that is one of the 5 signatories of the WEP in Bulgaria, does not have a sexual harassment policy in its global operations. The only company L that has been very proactive on gender-based violence is through its local and global initiatives on bringing awareness around domestic violence.

5.3.3. BBFL Transparency

In terms of transparency in this group, the highest score is 13 and the lowest is 5.5 because there is no reference to human rights, gender and the information on the website only highlights the CSR activities. The majority of companies have a piece of very comprehensive information on their websites; however, one trend seems to be consistent that on the Bulgarian website the information is relevant mainly CSR activities. This is why looking from the Bulgarian perspective and communications on the website, it is difficult to ascertain to what extent the companies' policies on human rights are applied within the local context. This is the case with Company F that has information about Corporate responsibility on their Bulgarian website, including information on green and environmental projects, educational projects, caring about employees. In contrast, on its main website, there is information on Strategic direction, Responsible Business, Impact on SDGs, Supplier conduct, reference to Human rights. And the last example of Company D with the lowest scores has such an active CSR policy and visibility on the environment and social matters, however, in the case of human rights and gender, there is hardly any information. It appears that the focus on responsible business conduct is communicated by focusing on sustainability and ethical conduct whilst the focus on human rights centres around the notion of employees' rights.

5.4. Women's perspective on human rights at work and responding to sexual harassment.

Until now my research included analysis of companies' responses to BHR and SH, the state's position, the Trade unions, therefore I wanted to include the opinion of women, this is why conducted a short survey in May - June 2021.²⁶² Unfortunately, due to time constraints and COVID-19 restrictions I was not able to survey men and non-binary persons. The purpose of the survey was to identify the level of awareness of businesses about UNGPs and whether the respondents were aware of the availability of anti-discrimination policies and mechanisms to respond to sexual harassment in the workplace. In summary, the survey shows that although there is some awareness about the negative impact of businesses on human rights in their operations, there is still no practice of implementing human rights policies in the workplace. Furthermore, the survey indicates low awareness and knowledge about rights on raising concerns about harassment or sexual harassment. Although the majority of the respondents feel well supported to share information, it is difficult to ascertain the accuracy of this statement as most of the respondents own the businesses, thus it would be much easier for them to raise a concern than an employee. Similarly, given the size of the organisations, it is a common practice for issues to be resolved informally. I do acknowledge the low participation rate of 20 respondents, yet the results are consistent and confirm the findings up to now. Overall, it can be concluded: low awareness about rights especially when it comes to sexual harassment, limited support and grievance mechanisms addressing sexual harassment and violence against women on an organisational level and lack of commitment to the implementation of human rights policies.

5.4 Conclusion

The purpose of this section is to present some of the most responsible and proactive companies in Bulgaria. Firstly, I have presented a group of companies that implement the 10 principles of the UNGP and through the submission of reports, they are accountable to the public and their stakeholders. Indeed, their actions show a willingness to implement human rights, improve labour standards, contribute to the environment and adopt anti-corruption strategies. Whilst the

²⁶² Appendix 3.

focus is on human rights and gender, I identified a very proactive CSR culture of the Bulgarian businesses with a focus on local communities and the environment. Amongst the positive steps and progress, I found gaps and opportunities. The gaps I wish to discuss are first with the purpose of reporting and the extent to which it changes practices. I acknowledge that I only focused on the current COPs, thus I was unable to assess progress from previous years. But if the current COPs are the indication of the current activities and implementation strategies of the companies, there is a long way to go.

Secondly, the implementation of human rights principles has more reference to labour rights and compliance with international human rights instruments and national legislation. The fact that many companies included improving work conditions and ensuring work safety has indicated the need for revisiting protections under human rights law and labour laws. Even though the principles of prohibition of discrimination and equal treatment have been adhered to, yet only a few companies have diversity and inclusion policies, grievance mechanisms or anti-sexual harassment policies. And thirdly, the measurement for most companies is the lack of any complaints about human rights violations. Yet, only a few companies have conducted a human rights risk assessment of their business operations or their supply chain to measure potential impact and consider ways to mitigate risks and provide remediation.

I also mentioned opportunities as I referred to the great examples set out by the companies in the second group of companies. Although they have been very proactive in sharing their responsible business practices, there seems to be a gap between the application of certain policies or initiatives applied here in Bulgaria. Thus, raising the question of the rationale behind sharing good practices is to inspire change and lead by example. I question how can change be brought forward when companies remain silent about the importance of implementing human rights into business operations and addressing pressing societal issues, such as women and sexual harassment. The further elaborate on my argument for opportunities, I argue that the companies with more advanced business and human rights practices can extend them to the Bulgarian companies and the supply chains. By putting the same requirements to the local suppliers for respecting human rights, companies can provide training and improve practices not only in the value chain but within the supply chain. And with regards to gender companies

can include more gender initiatives as part of their CSR agendas and inspire change while respecting the specificity of the local environment.

Chapter 6 Conclusion and recommendations

In the course of my research, I presented the case study of Bulgaria, which showed a very active business community focused on responsible business conduct and achieving the SDGs. The role of the state appears to be in actively adopting a series of laws often lacking implementation, thus resulting in a somewhat confusing and inactive legislative framework lacking institutional support. This is especially evident with reference to the gender equality framework and particularly within the lack of implementation of the business and human rights framework. As both issues are not of a priority from a business's point of view, they have become so invisible as if almost rendered unnecessary. On the one hand, companies apply the principles against the prohibition of discrimination and equality of women and men, yet they have shown limited understanding of the impact of gender-based violence in the workplace, and the lack of support mechanism for victims of sexual harassment. On the other hand, the companies do not recognise the importance of implementing the UNGPs, which goes beyond the universal respect for human rights and protection of workers' rights. The Guidelines also stress that both states and businesses have a responsibility to respect human rights and work together to find ways to provide remedies to victims through judicial and non-judicial means.

My findings reflect on the challenges of the implementation of the BHR framework by looking at the framework in parallel with the gender equality framework. The key issues identified contribute to the debate that sexual harassment and gender-based violence can be addressed through the BHR framework. The **first implication** of my findings is that the extensive gender equality framework does not provide the needed protection to women especially with reference to sexual harassment and gender-based violence. Overall, there is a presumption that gender inequality is not a problem in Bulgaria as a result of women's economic empowerment and equal access to job opportunities as men. Therefore, there seems to be a lack of insight on the deeper and wider issues that gender inequality presents and their intersectionality, such as gender stereotypes, gender pay gap, pension gap, sexual harassment, the impact of domestic

violence at work, the political representation of women, etc. The majority of businesses operate in line with the national legislation and often rely on the application of principles of non-discrimination and equality. There is a lack of comprehension that sexual harassment and gender-based violence are human rights violation that require adequate response from states and businesses.

The second implication is that neither the state nor the businesses have taken proactive steps towards addressing sexual harassment at work, despite the mounting evidence worldwide of the growing incidents and difficulty in detecting the issues. Added to this is the lack of awareness of victims - who due to the lack of supportive structures and redress - are compelled to remain silent. The low number of cases within the Commission, and the inactive role of the Ombudsman and the courts are not a true reflection of the number of incidents. They are an indicator of low visibility and lack of awareness about the issues and how to seek help. Added to this, the majority of companies have no mechanisms to support victims, as demonstrated by the limited policies relating to the problem. Similarly, on the issue of domestic violence and its impact on the workplace, the companies still do not fully comprehend that domestic violence is no longer a private issue, that it impacts the lives of many people and extends to the workplace.

The third implication is that a number of companies in Bulgaria have adopted CSR policies and engage in responsible business conduct. However, the research has indicated that the practice is different to the corporate responsibility to respect human rights as envisaged in the UNGPs. The main difference sits in the CSR strategies that focus on addressing social issues with the main goal to improve public image and contribute to a pressing social problem. Given that their activities are voluntary in nature and serve companies' image there is no contribution to a systemic change. The corporate responsibility to respect human rights requires businesses to put in place policies that show commitment to human rights, conduct due diligence to prevent and remediate risks and establish processes to remedy victims. This process requires a change of business models and the adoption of CSR strategies that make companies accountable for their positive and negative impact on society and the environment. The preferred model in Bulgaria is to contribute to a pressing social need but engage in activities to

improve public image rather than contributing to a sustainable systemic change that requires accountability and transparency, and regular assessment of the impact of the business activities on human rights.

The **fourth implication** is the similarity between the current response to the adoption of gender-inclusive policies and the business human rights framework into business management practices. Most companies representing the Bulgarian business system are SMEs that often lack the resources to put more formal processes in place when responding to conflicts at work. The companies that have the required resources have set up some processes that may mention gender as a key concern but do so vaguely and reference to equal treatment and non-discrimination, whilst the notion of human rights is usually connected with labour rights. The presumption seems to be that businesses do not recognise their role in addressing gender inequality and that addressing those issues is only vested in the state's responsibility. As far as businesses have complied with national and international laws their responsibility to respect human rights ends there. The rest is the state's obligation.

The recommendations that I make following the implications of my research focus on a multi-stakeholder approach by including individuals, NGOs, NHRIs, state and businesses, and the society as a whole.

Recommendation 1: Raising awareness is not sufficient. We need systemic change, that can be brought through becoming active legal actors and the engagement of active social movement in addressing gender inequality.

The need to raise awareness about sexual harassment and the impact of gender-based violence in the workplace is important both for employees and management teams. Raising awareness at different levels can improve knowledge about rights and the scope of the problem, yet it may not bring systemic change. Women can become legal actors in the dynamic process of confronting sexual harassment by raising their legal consciousness. On the one hand, they can assign meaning based on the legal rules and broader social discourse, and on the other hand, they can decide whether to rely on informal actions or invoke the law through grievance

procedures in the workplace. A very critical role in this process is the feminist social movements that have two main tasks, firstly to mobilize legally conscious individuals to create social change; and secondly, to find ways to influence businesses and advance the gender equality agenda. This can be done through radical feminism that not only focuses on structures of inequality, but it also includes men's violence against women as part of the gender inequality solution. The strength of this approach is in mainstreaming men's violence against women as a human rights issue, therefore applying a human rights approach in gender inequality.

Recommendation 2: Businesses to conduct gender-sensitive human rights impact assessment

Whilst there is a recognition by businesses that they need to address gender inequality, they face challenges in how to implement change within organisations. The organisational theory offers some solutions for change, and the best approach is through the adoption of moral legitimacy that combines co-creation of values and norms through different actors' contributions and can result in an examination of the application of universal human rights into corporate codes and remediation for human rights violations. At a more practical level, whilst looking at the initiatives of the UNGC, the application of the business and human rights framework can encourage companies to improve their policies and improve reporting and accountability. And in the case of responding to the gender agenda, businesses can turn to conduct gender-responsive due diligence. By adopting a gender lens to the due diligence process companies will be better prepared to adopt necessary policies, identify risks, mitigate the adverse impact and provide remedies.

Recommendation 3: The State's consideration of women and girls whilst applying the BHR framework.

The state's duty to respect human rights is an obligation to protect individuals and groups from human rights abuses, including by business enterprises. With regards to addressing gender inequality and discrimination as human rights violations, the state can strengthen the institutions of the Ombudsman and the CPD and improve their relationship with business

whilst strengthening enforcement of legal provisions to protect victims of sexual harassment. Furthermore, the state - together with businesses - can work on adopting and improving non-judicial and judicial mechanisms for redressing sexual harassment and violence against women. And finally, it can make legislative changes for companies to adopt anti-harassment policies and establish grievance mechanisms.

Conclusion:

The above recommendations focus on three key aspects of this thesis, however, none of these recommendations can be achieved in isolation or without the involvement of different stakeholders. This is why in adopting any of the recommendations it is important to adopt a multi-stakeholder approach. The discussion identified the limitation of the adoption of the BHR framework due to a limiting CSR approach excluding the corporate responsibility to respect human rights. Despite the limitations, the recent EU developments will contribute to a more strategic shift in the CSR strategy in Bulgaria. The sense of achievement of gender equality is somewhat mainstreamed into business practices, yet the research indicates that despite the advancement of the gender equality framework, there is a need for an urgent response to address sexual harassment and GBV in the workplace. Lastly, it is time to start developing awareness on the importance of addressing sexual harassment and GBV by raising legal consciousness of both victims and decision-makers in companies. The latter are in a position to influence change by implementing a business and human rights approach to tackling gender inequality.

Reference list:

Books and Articles

- Acker J, 'Inequality Regimes: Gender, Class, and Race in Organizations' (2006) 20 *Gender and Society* 441
- Blackstone A, Uggen C and McLaughlin H, 'Legal Consciousness and Responses to Sexual Harassment' (2009) 43 *Law and Society Review* 631
- Chiva C, 'The Limits of Europeanisation: EU Accession and Gender Equality in Bulgaria and Romania' (2009) 10 *Perspectives on European Politics and Society* 195
- Darakchi S, "'The Western Feminists Want to Make Us Gay': Nationalism, Heteronormativity, and Violence Against Women in Bulgaria in Times of "Anti-Gender Campaigns"" (1234) 23 *Sexuality & Culture* 1208 <<https://doi.org/10.1007/s12119-019-09611-9>>
- Daskalova K, 'How Should We Name the "Women-Friendly" Actions of State Socialism?' (2007) 1 *Aspasia* 214
- , 'A Woman Politician in the Cold War Balkans from Biography to History' (2016) 10 *Aspasia* 63
- De Alwis RDS, 'Examining Gender Stereotypes in New Work:Family Reconciliation Policies. The Creation of a New Paradigm for Egalitarian Legislation (Alwis, 2011)' (2011) 18 *Duke Journal of Gender Law & Policy* 305
- de Jonge A, 'Corporate Social Responsibility Through a Feminist Lens: Domestic Violence and the Workplace in the 21st Century' (2018) 148 *Journal of Business Ethics* 471
- Engle S and others, 'Law From Below : Women ' s Human Rights and Social Movements in New York City Published by : Wiley on Behalf of the Law and Society Association Law From Below : Women ' s Human Rights and Social Movements in New York City' (2016) 44 101
- Fitzgerald LF, Hulin CL and Drasgow F, 'The Antecedents and Consequences of Sexual Harassment in Organizations: An Integrated Model' <<http://dx.doi.org/10.1037/10165-004>>
- Genoveva Tisheva, *Bulgaria Gender Equality* (2016)
- Ghodsee K, 'Rethinking State Socialist Mass Women's Organizations' (2012) 24 *Journal of Women's History* 49
- , 'Pressuring the Politburo: The Committee of the Bulgarian Women's Movement and State Socialist Feminism' (2014) 73 *Slavic Review* 538
- Grosser K, 'Gender, Business and Human Rights: Academic Activism as Critical Engagement in Neoliberal Times' [2020] *Gender, Work and Organization* 1
- Grosser K and McCarthy L, 'Imagining New Feminist Futures: How Feminist Social Movements Contest the Neoliberalization of Feminism in an Increasingly Corporate-Dominated World' (2019) 26 *Gender, Work and Organization* 1100
- Grosser K and Tyler M, 'Sexual Harassment, Sexual Violence and CSR: Radical Feminist Theory and

a Human Rights Perspective' [2021] Journal of Business Ethics

GROW - Internal Market DD, 'Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights: Overview of Progress EN' <https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>

Hodgson DL, 'Introduction: Gender and Culture at the Limit of Rights' [2011] Gender and Culture at the Limit of Rights 1

Hoffmann EA, 'Legal Consciousness and Dispute Resolution: Different Disputing Behavior at Two Similar Taxicab Companies' (2003) 28 Law & Social Inquiry 691

Ilcheva M, 'Bulgaria and the Istanbul Convention – Law, Politics and Propaganda vs. the Rights of Victims of Gender-Based Violence' (2020) 3 Open Journal for Legal Studies 49

Irvine J, 'Gender (In)Equality and Gender Politics in Southeastern Europe' [2015] Gender (In)equality and Gender Politics in Southeastern Europe

Jacobson RK and Eaton AA, 'How Organizational Policies Influence Bystander Likelihood of Reporting Moderate and Severe Sexual Harassment at Work' <<https://doi.org/10.1007/s10672-017-9309-1>>

Kadieva M and Krumova T, 'Women ' s Rights and Right-Wing Populism New Tools for Development of Democratic and Social Values'

Kadieva M and Krumova T, 'Women ' s Rights and Right-Wing Populism New Tools for Development of Democratic and Social Values'.(2017) - < <http://library.fes.de/pdf-files/bueros/sofia/14160.pdf>> accessed on 22 May 2021. Official Documents

Kalev A and Deutsch G, *Gender Inequality and Workplace Organizations: Understanding Reproduction and Change* (Springer International Publishing 2018) <http://dx.doi.org/10.1007/978-3-319-76333-0_19>

Kristiansson L and Götzmann N, 'National Implementation Processes for the United Nations Guiding Principles on Business and Human Rights: Towards Gender-Responsive Approaches' (2020) 26 Australian Journal of Human Rights 1 <<https://doi.org/10.1080/1323238X.2020.1769919>>

Luleva A, 'Post-Socialist Gender Order in Bulgaria : Between State-Socialist Legacy and EU Gender Regulations' (2016) 29 33

MacKinnon, A.C and Siegel R.B 'Directions in Sexual Harassment Law', edited by Catharine A. Yale University Press, 2003. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/uses/detail.action?docID=3420225>, accessed on 27 April 2021.

Marina Stefanova, 'State of CSR in Bulgaria 2018' (2019) 53 CSRAB 1689

Marina Stefanova 'State of CSR in Bulgaria 2020' < <https://www.csrab.com/bg/products/csr-%D0%B0%D0%BD%D0%B0%BB%D0%B8%D0%B7%D0%B8.html> 'State-of-Csr-in-Bulgaria 2020 single.Pdf' > accessed on 26 June 2021

- Marshall A-M, 'Injustice Frames, Legality, and the Everyday Construction of Sexual Harassment' (2003) 28 Law & Social Inquiry 659
——, 'The Legal Consciousness of Injustice: A Theoretical Framework' [2005] *Confronting Sexual Harassment: The Law And Politics Of Everyday Life (Law, Justice and Power)* 216
- Marshall A-M and Barclay S, 'In Their Own Words: How Ordinary People Construct the Legal World' (2003) 28 Law & Social Inquiry 617
Marshall AM, 'Idle Rights: Employees' Rights Consciousness and the Construction of Sexual Harassment Policies' (2005) 39 Law and Society Review 83
- MARTIGNONI J and UMLAS E, *Gender-Responsive Due Diligence for Business Actors: Human Rights-Based Approaches Acknowledgements* (2018)
- McDonald P, 'Workplace Sexual Harassment 30 Years on: A Review of the Literature' (2012) 14 International Journal of Management Reviews 1
- Merry SE, 'Rights Talk and the Experience of Law: Implementing Women's Human Rights to Protection from Violence' (2003) 25 Human Rights Quarterly 343
——, 'Inequality and Rights: Commentary on Michael McCann's "The Unbearable Lightness of Rights"' (2014) 48 Law & Society Review 285
——, 'Constructing a Global Law-Violence against Women and the Human Rights System' [2017] The Globalization of International Law 325
- Merry SE and Levitt P, 'The Vernacularization of Women's Human Rights' [2017] Human Rights Futures 213
- Naciones Unidas O de las, 'Report of the Working Group on the Universal Periodic Review. Bulgaria' (2010) 1 Anuario Mexicano de Derecho Internacional
- Olgati E and Shapiro G, *Promoting Gender Equality in the Workplace* (2002)
Parliament E, 'European Parliament Report on SEX HARASSMENT' (1972) 12 Representation 13
- Perrier G, 'European Union Policy on Gender Equality: The Scope and Limits of Equality in the Single Market' [2018] *Reducing Inequalities: A Challenge for the European Union?* 149
- Pillinger J, 'Etuc " Safe at Home, Safe at Work" Country Case Study - Trade Unions' (2017)
- Ramasastri A, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14 Journal of Human Rights 237
- Sally J and others, 'Human Rights and Gender Violence : Translating In- The " Culture " of the Global Anti – Gender Violence Social Movement' (2008) 110 511
- Sarat A and Thomas R. Kearns eds. *'Identities, Politics, and Rights'*, University of Michigan Press, 1997. ProQuest Ebook Central, pp.305.
- Schrempf-Stirling J and Van Buren HJ, 'Business and Human Rights Scholarship in Social Issues in Management: An Analytical Review' (2020) 5 Business and Human Rights Journal 28
- Suchman MC, 'Managing Legitimacy : Strategic and Institutional Approaches Author (s):

Mark C. Suchman Source : The Academy of Management Review , Vol . 20 , No . 3 (Jul . , 1995) , Pp . 571-610 Published by : Academy of Management Stable URL : <https://www.jstor.org/> (1995) 20 The Academy of Management Review 571

Wynn AT and Correll SJ, *Combating Gender Bias in Modern Workplaces* (Springer International Publishing 2018) <http://dx.doi.org/10.1007/978-3-319-76333-0_37>

Mantouvalou V, 'Are Labour Rights Human Rights?' (2012) *European Labour Law Journal*, Vol. 3, Issue 2, pp, 151-172.

Bulgaria

Bulgaria, Council of Ministers (2016). National Strategy for Promoting Equality between Women and Men 2016–2020 (Национална стратегия за насърчаване на рав- нопоставеността между жените и мъжете). Updated February 2016.

Civil Procedure Code (Граждански процесуален кодекс). SG No.59 of 20 July 2007, amended and supplemented many times, last in No. 65 of SG, 7 August 2018.

Commission of Protection of Discrimination – Annual Report 2019 <https://www.kzd-nondiscrimination.com/layout/images/stories/2015/otchet/ot4et2703.pdf> – Bulgarian Version, accessed on 22 May 2019

Committee on the Elimination of Discrimination against Women (2012). Concluding observations. CEDAW/C/BGR/CO/4-7.

Constitution of Bulgaria No. 56/1991 art. 5(2).

Constitutional Court of the Republic of Bulgaria (2018). Decision N 13, Sofia, 27 July 2018, promulgated in SG 65/7 August 2018 (Решение № 13, София, 27 юли 2018 г., обн. ДВ, бр. 65 от 07.08.2018 г.). Retrieved on 28 February 2020, from <<http://constcourt.bg/bg/Acts/GetHtmlContent/f278a156-9d25-412d-a064-6ffd6f997310>>

European Institute for Gender Equality (2014). Effectiveness of Institutional Mechanisms for the Advancement of Gender Equality Review of the Implementation of the Beijing Platform.

European Institute for Gender Equality (2015). Beijing+20: The 4th Review of the Implementation of the Beijing Platform for Action in the EU Member States. Report.

Family Code (Семеен кодекс). SG No. 47 of 23 June 2009, amended and supplemented many times, last in SG No. 55 of 3 July 2018.

Labour Code (Кодекс на труда). SG No. 26 of 1 April 1986, amended and supplemented many times, last amended in SG No. 59 of 17 July 2018.

Law for Protection against Domestic Violence (Закон за защита от домашното насилие). SG No. 27 of 29 March 2005, amended SG No. 82 of 10 October 2006, amended SG No. 102 of 22 December 2009.

Law of protection against discrimination 4 (1). - Law on Protection from Discrimination (Закон за защита срещу дискриминацията). SG No. 70 of 10 August 2004 supplemented, last amended SG No. 30 of 11 April 2006.

Law on Equality between Women and Men (Закон за равнопоставеност на жените и мъжете). SG No. 33 of 26 April 2016.

Law on Protection from Discrimination (Закон за защита срещу дискриминацията). SG No. 70 of 10 August 2004 supplemented, last amended SG No. 30 of 11 April 2006.

Ministry of Labour and Social Policy (2018). National Action Plan for Promoting Gender Equality for 2018 (Националният план за действие за насърчаване на равнопоставеността на жените и мъжете за 2018 г.)

Ministry of Labour and Social Policy (2018). Report on Equality between Women and Men in Bulgaria for 2017 (Доклад за равнопоставеността на жените и мъжете в България за 2017 г.)

Ministry of Labour and Social Policy (2019). National Action Plan for Promoting Gender Equality for 2019–2020 (Националният план за действие за насърчаване на равнопоставеността на жените и мъжете за 2019-2020 г.)

Ministry of Labour and Social Policy (n.d.). Institutional Mechanism. Equal opportunities for women and men. Gender equality and non-discrimination sector.

Ministry of Labour and Social Policy, ‘Corporate Social Responsibility Strategy’ Bulgaria 2019 - 2023’ <https://www.mlsp.government.bg/strategii> – accessed on 1 July 2021

Social Insurance Code (Кодекс за социално осигуряване). SG No. 110 of 17 December 1999.

EU

Commissioner for Human Rights Council of Europe Dunja Mijatovic, ‘Report following her Visit to Bulgaria’ Comm DH (2020)

‘Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ (2011) 25 International Women 124.

Council of Europe, ‘Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on Human Rights and Business’

Council of the European Union, ‘Council Conclusions on Human Rights and Decent Work in Global Supply Chains’ (2020) 2020 1

DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending

Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

ESC/3/029/2015 - Social Policy Commission; Labour, Incomes, Living Standard and Industrial Relations Commission

European Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey Main Results* *Violence against Women: An EU-Wide Survey* (2014) <<http://europa.eu>>

European Union Agency for Fundamental Rights ‘Business and Human Rights Access to Remedy’, <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-business-human-rights_en.pdf> accessed on 17 April 2021.

European Union Agency for Fundamental Rights F, *Crime, Safety and Victims’ Rights – Fundamental Rights Survey* (2021)

REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088-article 18

Taxonomy: Final Report on the Technical Expert Group on Sustainable Finance https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf – accessed on 25 July 2021

United Nations

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

United Nations, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’ (UNGPs) (2011) HR/PUB/11/04

Committee on Elimination of Discrimination against Women, 8th Periodic Report submitted by Bulgaria under article 18 of the Convention on Elimination of Discrimination against Women, pursuant to simplified reporting procedure CEDAW/C/BGR/8;

Committee on the CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19

Committee on the CEDAW, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women

Committee on Economic, Cultural and Social Rights (CESCR), General comment no 24 (2017), UN DOC E/C.12/GC/24

Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women – Bulgaria 27 July 2012

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed on 18 December 1979 in New York, entered into force on 3 September 1981.

UNGA, Resolution 70/1 of 21 October 2015, 'Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/701

UN, Human Rights Office of the High Commissioner, 'Gender lens to the UNG', available at <http://www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx> (consulted on 8 June 2018).

International Covenant on Civil and Political Rights (ICCPR), signed on 19 December 1966, entered into force on 3 January 1976.

International Covenant on Economic, Social and Cultural (ICESC) 16 December 1966 entry into force 3 January 1976.

Special Rapporteur, 'Gender Guidance for the UNGPS'.A/HRC/41/43 Published by the HRC Working Group in 2018.

ILO

ILO: Ending violence and harassment against women and men in the world of work, Report V(1), International Labour Conference, 107th Session, Geneva, 2018 (published in 2017) accessed on 17 April 2021(Para 1 and 2):

ILO, Report of the Director-General, The Women at Work Initiative: The Push for Equality, International Labour Conference, 107th Session, 2018, <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_629239.pdf > accessed 17 April 2021

ILO:The Principle of Equal Remuneration 1951 (100); The prohibition of discrimination on the basis of among others, sex('Discrimination (Employment and Occupation) Convention' 1958 (No.111); Workers with Family Responsibilities Convention, 1981 (No.156), Maternity Protection Convention, 2000 (No,183).

ILO:Violence and Harassment Convention, 2019 (No. 190)

OECD

OECD Guidelines for Multinational enterprises < <https://www.oecd.org/daf/inv/mne/48004323.pdf>> Organisation for Economic Development Organisation for Economic Development - <http://mneguidelines.oecd.org/mneguidelines/Responsible-Business-Conduct-and-Gender.pdf> - accessed 17 April 2021

OECD Due Diligence Guidance for Responsible Business Conduct < <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>> accessed 17 April 2021

Websites and reports

Belgrade Centre for Human Rights- <<http://www.bgcentar.org.rs/bgcentar/eng-lat/?s=baseline+assessment+&submit=Search>> - accessed on 7 July 2021.

BSR - <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-extractives-sector> - accessed on 26 July 2021.

Bulgarian Industrial Association - <https://en.bia-bg.com/> - accessed on 7 July 2021.

Business and Human Rights Resource Centre 'Bulgaria' < <https://old.business-humanrights.org/en/bulgaria-0> > accessed on 10 June 2021.

Carve project National Study for Bulgaria' Involvement of Companies in the fight against Gender-Based Violence' (2014 - 2016) < https://asceps.org/makingprojects/carve-daphne/national-study-bulgaria_en/> accessed on 15 July 2021.

Clare Wenham., 'The Gendered Impact of the COVID-19 Crisis and Post- Crisis Period' September 2020
<[https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2020\)658227](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2020)658227)>
accessed on 1 June 2021.

CSR Bulgaria - <https://www.csr.bg/social-responsibility?start=20> - accessed on 7 July 2021.

CSR Advice Box - <https://www.csrab.com/en/> - accessed on 7 July 2021.

Danish Institute of Human Rights 'Gender in Business and Human Rights'
<https://www.humanrights.dk/projects/gender-business-human-rights> accessed on 17 March 2021.

<https://www.genderduediligence.org/what-is-due-diligence/> - accessed on 26 July 2021.

<https://www.transparantiebenchmark.nl/en/about-transparantiebenchmark/objective> - accessed on 8 July 2021.

Eurofound (2018) Women in Management: Underrepresented and overstretched? Publications Office of the European Union.

European Institute for Gender Equality <<https://eige.europa.eu/gender-equality-index/2020/BG> >
accessed 11 March 2021.

EIGE '*Estimating the Costs of Gender-Based Violence in the European Union*
<<https://eige.europa.eu/gender-based-violence/estimating-costs-in-european-union> > accessed on 28 April 2021.

Global Compact Communication on Progress Policy -
<<https://www.unglobalcompact.org/library/1851>> accessed on 8 July 2021.

Inter Partes Law firm - < <http://www.interpartes.mk/en/бизнис-и-човекови-права/> > accessed on 7 July 2021.

Margater Jungk, 2016 'Why Businesses say Human Rights is their most urgent sustainability priority' <https://www.bsr.org/en/our-insights/blog-view/why-businesses-say-human-rights-most-urgent-sustainability-priority> - accessed on 26 July 2021.

National Action Plan on Business and Human Rights <https://globalnaps.org> accessed on 10 June 2021.

Responsible Business Directory - <https://www.bblf.bg/bg/novini/239/2005-responsible-business-directory-launched-with-flying-start> - accessed on 24 June 2021.

National report of the Republic of Bulgaria on the implementation of the Beijing Declaration and Platform for Action in the context of the 2020 Beijing+25 (2019) Global review and 5 years of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals UNSGS'

Responsible Business Directory < <https://www.bblf.bg/bg/novini/239/2005-responsible-business-directory-launched-with-flying-start> > - accessed on 24 June 2021.

SDG Target Equality < <https://www.unglobalcompact.org/take-action/target-gender-equality>> accessed on 17 April 2021.

Social Policy Commission Opinion ESC/3/029/2015 < <https://www.eesc.europa.eu/ceslink/sites/default/files/document-file-uploads/-opinion-corporate-social-responsibility-signed-en-2015.pdf>> - accessed on 24 June 2021.

Transparency Benchmark Dutch Government

UN Global Compact Georgia - <http://globalcompact.ge/en/forum-on-business-and-human-rights/> - accessed on 7 July 2021.

UN Guiding Principles Reporting Framework <<https://www.ungpreporting.org/>>- accessed on 26 June 2021

UNICEF Bulgaria - <https://www.unicef.org/bulgaria/en/stories/bulgarian-business-and-child-rights-academy-unicef-and-faculty-economics-sofi-university> - accessed on 24 June 2021

UNICEF Bulgaria <https://www.unicef.org/bulgaria/en/reports/the-impact-business-sector-childrens-rights-bulgaria> -

UNICEF Bulgaria - <https://www.unicef.org/bulgaria/en/reports/the-impact-business-sector-childrens-rights-bulgaria> - accessed on 7 July 2021.

UNICEF Bulgaria - Bulgarian Business and Child Rights Academy (August 2020)

<<https://www.unicef.org/bulgaria/en/stories/bulgarian-business-and-child-rights-academy-unicef-and-faculty-economics-sofi-university>> - accessed on 24 June 2021.

The Global Compact Bulgaria < https://www.unglobalcompact.bg/en/?page_id=2463 >accessed 30 March 2021.

The World Bank in Bulgaria< <https://www.worldbank.org/en/country/bulgaria/overview> > accessed 16 March 2021.

The World Bank 'Women, Business and the Law: A decade of reform 2019'< <https://www.worldbank.org/en/news/press-release/2019/03/01/bulgaria-emerges-as-champion-in-women-legal-rights-affecting-work> > accessed 16 March 2021

Women in Tech Bulgaria is Leading According to Eurostat < <https://www.coding-girls.com/blog/women-tech-bulgaria-leading-according-eurostat>> accessed 16 March 2021

The best European Countries for Women to Work < <https://www.rebootonline.com/digital-pr/assets/best-countries-women-work-europe/#breakdown-of-data>> accessed 16 March .

UN Office of High Commissioner of Human Right, ‘Women Rights are Human Rights’, 2014. pp. 29, <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf> > accessed 30 March 2021

UN Global Compact & UN Women, ‘Women’s Empowerment Principles’, available at <http://www.weprinciples.org/> accessed on 1 June 2021.

UN Global Compact < <https://www.unglobalcompact.org>> accessed on 17 April 2021.

State of CSR in Bulgaria 2020 - <https://www.csrab.com/bg/products/csr-%D0%B0%D0%BD%D0%B0%D0%BB%D0%B8%D0%B7%D0%B8.html> ‘State-of-Csr-in-Bulgaria_2020_single.Pdf’ - accessed

The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović, Report of the Commissioner for Human Rights of the Council of Europe following her visit to Bulgaria on 25-29 November 2019

UN Women, ‘The Shadow Pandemic: Gender-based violence during COVID- 19’ <<https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-COVID-19-response/violence-against-women-during-COVID-19>> accessed on 1 June 2021.

UN Global Compact COP <https://www.unglobalcompact.org/library/1851> - accessed on 8 July 2021.

Appendix 1 Table 1

Company	Human Rights (3 pts)			CSR Policy (3 pts)			Gender (3 pts)			Reporting (3 pts)		Website Visibility (3 pts)		Total
	Codes of Ethics/ Conducts	HR policy/ Statement	Suppliers/ HRIAs/ ESG	Environmental	Social	CSR Initiative	DI/ Discrimination/ ET	SH/ VAW	WEP	COP	Integrated reporting/ GRI/ Annual report	Bulgarian	Global	
Company 1	0	1	0	0	0	0	0.5	0	0	1	0	0	0	2.5
Company 2	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Company 3	1	1	0	1	0	1	0	0	0	1	0	1	0	6
Company 4	0	1	1	1	0	1	1	1	0	1	0	1	0	8
Company 5	0	1	0	0	0	0	0	0	0	1	0	0.5	0	2.5
Company 6	1	1	0	0	1	1	0	0	0	1	1	1	0	7
Company 7	0	0	0	1	0	0	0	0	0	0.5	0	0	0	1.5
Company 8	1	1	0	1	1	1	0	0	0	1	0	2	0	8
Company 9	0	1	0	0	1	1	0	0	0	1	0	1	0	5
Company 10														0
Company 11	1	1	1	1	1	1	1	1	1	0	2	0	2	13
Company 12	0	1	1	1	1	1	1	0	0	1	0	0.5	0	7.5
Company 13	1	1	0	1	0	1	1	0	0	1	0	1	0	7
Company 14	1	1	0	0	1	1	1	0	0	1	0	1	0	7
Company 15	1	1	1	1	1	1	1	1	0	1	2	1	1	13
Company 16	1	1	0	1	1	1	0	0	0	1	1	1	0	8
Company 17	1	1	0	1	1	1	1	0	0	0	1	1.5	0	8.5
Company 18	1	1	0	1	1	1	1	0	0	0	2	1.5	0	9.5
Company 19	1	1	0	1	1	1	1	0	0	1	0	2.5	0	9.5
Company 20	0	1	0	0	0	1	0	0	0	1	0	0.5	0	3.5
Company 21	1	1	0	1	0	1	1	0	0	1	0	1.5	0	7.5

Appendix 2 Table 2

Company	Human Rights (3 pts)			CSR Policy (3 pts)			Gender (3 pts)			Reporting (3 pts)		Website Visibility (3 pts)		Total
	Codes of Ethics/ Conducts	HR policy/ Statement	Suppliers/ HRIAs/ ESG	Environmental	Social	CSR Initiative	DI/ Discrimination/ ET	SH/ VAW	WEP	COP	Integrated reporting/ GRI/ Annual report	Bulgarian	Global	
Company A	0	2	1	1	1	1	2	0	0	0	2	1	2	13
Company B	1	1	1	1	1	1	2	0	0	0	2	1	2	13
Company C	1	1	1	1	1	1	1	1	0	0	2	1	2	13
Company A	0	0	0	1	1	1	0	0	0	0	1	1.5	0	5.5
Company B	1	1	1	1	1	1	1	1	0	0	2	1	2	13
Company C	1	1	1	1	1	1	1	0	0	0	2	1	1	11
Company A	1	1	1	1	1	1	1	0	0	0	2	2	1	12
Company B	1	1	1	1	1	1	1	1	0	0	2	1	2	13
Company C	1	1	1	1	1	1	1	0	1	0	2	3	0	13
Company A	1	1	1	1	1	1	1	0	0	0	2	1	2	12
Company B	1	1	1	1	1	1	1	1	0	0	2	1	2	13
Company C	1	1	1	1	1	1	1	1	0	0	0	1	2	11

Appendix 3.

1. Please, select the type of organisation you are working at or represent.

NGO

Business – small enterprise up to 10 people

Business - small enterprise up to 50 people

Business - medium enterprise up to 250 people

Business - large enterprise over 250 people

2. What is your current role in the organisation?

Employee/Consultant

Expert/Specialist

Manager/Director

Owner

Other

3. Please indicate whether your company has human rights policy or Code of Ethics.

Yes

If yes, can you please send it to me

No

4. Please indicate whether your organisation has direct or indirect human rights impact/dealings with clients, suppliers, employees/. Please consider in what ways there might be a negative impact on human rights.

Yes

No

Unable to answer

5. What are the main reasons/motivation for you to be part of this organisation?

Career development and stability

I feel respected and content

Support the organisation's mission

Value the organisation

Support the CSR policy/mission and goals

Transparency and responsibility

Flexible working time and care for employees

Support the organisation's diversity policy

6. Does your organisation have a policy or grievance process regarding sexual harassment?

Yes

No

Unable to answer

7. Do you know what your rights and how you can seek support or redress at work (sexual harassment, harassment)?

Yes

No

Unable to answer

8. If one of your co-workers discloses sexual harassment incident, would you feel comfortable to report it to your manager?

Yes

No

Unable to answer

9. How likely is for you to report/share with your management a problem at work? 0 – very unlikely; 10 very likely

10. Overall, do you think that employees are well supported to report/ share problems at work about harassment, sexual harassment?

Yes

No

Unable to answer

11. Do you think you need further information and awareness about such problems (harassment, sexual harassment) at work?

12. Would you like to receive more information on the impact of business on human rights?

Yes

If yes, please include your email.

No

13. Do you think you could add something which will be helpful for my research?

14. If you wish further information, please leave your email for future contact.