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# **DECONSTRUCTING THE BUSINESS AND HUMAN RIGHTS PHENOMENON THROUGH THE GENDER LENS**

A Case Study of Gender Equality in the Workplace in Slovenia

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## **ABSTRACT**

Since inclusivity has proven to have a positive effect on economy, the principles of non-discrimination and equality play a major role in the newly emerging field of business and human rights. Considering gender as a personal circumstance shared by everyone, it is crucial to make it a part of the organisational structure, culture and working processes of individual business units in order to enhance the inclusivity-based outcomes on a greater scale. Nevertheless, although regulation in this field is already in place at the international level (though, for the time being still vague), and Slovenia has already transposed it into its national legislation (and is comparatively one of the most advanced countries when it comes to gender equality), a certain discrepancy between legal norms and the actual practice in Slovenia persists. The three research questions of this thesis examine to which extent is Slovenian national legislation aligned with the emerging business and human rights standards, and their aim to promote gender equality, how employees' gender affects them in the Slovenian companies, and whether there is a domain of gender equality in which men feel less privileged than women. Using the gender audit method, an exhaustive empirical research encompassed both a survey with employees and interviews with the managements at four Slovenian companies. The results showed that there was no aspect of gender (in)equality where men would feel less privileged, although it is clear from statistics from practice that traditional behaviour related to work-life balance reflects the incapability of men to shift it in favour of their families. Gender stereotypes seem to be prevalent and adequately recognised on both sides. While company ownership (public or private) does not affect the results in the gender audit, the size of the company does. The scientific contribution created with this thesis encompasses the extensive linking of two otherwise separated fields – business and human rights and gender equality – through examination of relevant international documents.

**Key words:** business and human rights, non-discrimination, gender equality, employment and workplace, inclusivity, Slovenia

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## LIST OF ABBREVIATIONS

ECHR	European Court of Human Rights
EIGE	European Institute for Gender Equality
EU	European Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FRA	Fundamental Rights Agency
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
ILO	International Labour Organization
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
PADA	Protection Against Discrimination Act
STEM	Science, Technology, Engineering and Mathematics
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGC	United Nations Global Compact
WEP	Women's Economic Principles

## 1. INTRODUCTION

When addressing the emerging area of business and human rights in international law (IL), it is of utmost importance to not only relate to the power imbalance between developed countries, transnational corporations (TNCs) and developing societies, but to also endorse the need for inclusivity of the latter on the individual level. Individuals still seem to be struggling for equal treatment regardless of their personal circumstances, one of which is also gender. Gender inequality is yet another form of already well-documented power imbalance, which plays a significant role in the business environment, and is strongly linked to the self-perception of both men and women in the workplace and beyond (Mayo 2016).

While efforts to achieve economic and social equality between men and women started already in the 1960s during the second wave of feminism (Feree 2004), a major breakthrough on gender in relation to the workplace was delivered by liberal feminism. The latter is not only perceived as a major expression of gender inequality (Schaeffer 2001), but also argues that the claim for equality between men and women must be reasoned on the fact of gender inequality being a result of a sexist patterning of the division of labour (Lorber 1994). According to liberal feminism, gender equality can only be achieved through a re-patterning of key institutions—law, work, family, education and the media (Bem 1993; Friedan 1963; Rossi 1964; Pateman 1999).

However, gender inequality has later on been associated with men as well. It has been established that the socially constructed idea of women and men affects each member of the global society differently, hindering or even disabling them in their efforts in certain situations (UN 2007, 3). Yet women continue to be the ones who generally more often face the challenge of this type of inequality in all spheres, including in recruitment and the workplace. Frequently, the narrative of sexual division of labour in modern societies divides production in terms of both gender as well as spheres denoted as *public* and *private*. While women are primarily given the responsibility over the private sphere, men usually have the privileged access to the public sphere (Blakely 2008). Even though the two spheres constantly interact, the interaction is much more common for women (Press 2009), whose experience within the public sphere might still be limited by practices of discrimination, marginalisation and harassment (Benokraitis 1997; Gardner 1995; Hagan and Kay 1995; Reskin and Padovic 1994; Ridgeway 1997). Moreover, they might find themselves in a time bind as they return from work to their “second shift” of

home and child care (Hochschild 1989; Shelton 2000; McDowell 2008). Apart from issues relating to work-life balance, there is also a widening economic gender gap, stemming from the gender pay gap, which consequently leads to a gender pension gap, which is also strongly present in the countries of the European Union (EU) where it is as high as 16.2% on average (European Commission 2018a). Furthermore, women are underrepresented on company boards—on average only 23.3% of board members of the largest publicly listed companies in EU-28 are women (European Commission 2016). The most recent analysis conducted by the World Bank Group (2019), which examined ten years of data using an index structured around the economic decisions women make as they go through their working lives, shows that a typical economy only gives women three quarters of the rights of men in the measured areas. Nevertheless, men also tend to encounter discrimination or stigma, especially when trying to engage in the so-called private sphere of life, e.g. men trying to take parental leave instead of women, active fatherhood, etc. (Fatherhood Institute 2019).

Because of the realisation that the struggle for gender equality needs to include both women and men, the struggle for women's human rights has transformed into an inclusive approach called gender mainstreaming (GM). Its aim is to assess the adverse impacts of decision-making on all levels (including the level of private enterprises) on women and men (Rees 2004, 4). It adds a broader, long-term approach to gender equality, combining the inclusion of women's equality on policy agendas with monitoring and analysis of policy impacts to record progress in addressing gender inequalities and whether they are being re-produced (Rubery 1998). Within organisations, GM demands that the issue of gender equality is applied to all mainstream policy processes and impact analyses, to the level of gender equality being embedded in their organisational structure and organisational culture (Walby 2004; Beveridge et al. 2000).

So far, three notable frameworks for promoting gender equality when regard to corporations and businesses have been established on the global level: the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>1</sup>, the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>2</sup>, and the Women's Empowerment Principles (WEP) (UN Global Compact 2019). While CEDAW and WEP mainly focus on

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<sup>1</sup> The 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, with the required ratification by 20 states.

<sup>2</sup> The United Nations Guiding Principles on Business and Human Rights were unanimously endorsed by the United Nations Human Rights Council on 16 June 2011 in Geneva.

women's human rights (enabling equal access, opportunities and benefits in both private and public life, and empowering women to participate fully on all levels of economic life), the UNGPs are all-encompassing, and can therefore be used as a reference point when addressing gendered social relations in the workplace. Promoting a protection, respect and remedy framework, they tend to be a step further in the direction of ensuring human rights in the business environment. Furthermore, the UNGPs also establish the responsibility and accountability of companies. All three frameworks are inherently based on the principle of equality and non-discrimination—a relatively modern construct, which has been translated into anti-discrimination legislation (Fredman 2011, 8).

In Slovenia gender-based discrimination in employment has been made illegal through several legislative instruments. Employment tends to be the most comprehensively covered field of life in terms of provisions guaranteeing equal treatment, e.g. the Employment Relationships Act<sup>3</sup>, among other things, prohibits direct and indirect discrimination, sexual harassment at the workplace and victimisation (European Parliament 2016, 16). Moreover, the Protection Against Discrimination Act<sup>4</sup> of 2016 further prohibits any kind of discrimination both in the private and public sector. Public authorities in Slovenia, particularly after 2000, have also introduced certain measures to address the situation regarding the work-life balance, but with limited success (ibid.). Legislation in Slovenia also provides for flexible working time arrangements (European Parliament 2016, 19). Yet, statistics for Slovenia show a different picture. There is still a pay gap of 6.7% (and 23% for the management level), which results in a huge pension gap, making single women over 65 the poorest citizens of Slovenia. Moreover, Slovenia struggles with a low share of women on corporate boards. At lower levels of leadership, the share of women is higher, but the higher in company hierarchy we go the fewer women we will find—in 2010 there were 29.5% of female managers of production or operational units, 45.9% of female managers of other company units, 26.4% female directors in company managements, and 32.9% female managers of companies (Kanjuro Mrčela et al. 2015). However, data of the European Institute for Gender Equality (EIGE 2017a) show that the numbers started declining later, dropping to 22.9% in 2015 and as low as 19% in 2016. Other data further reveal that 76% of joint-stock companies, 60% of limited liability companies and 40.7% of public institutes had

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<sup>3</sup> Employment Relationships Act—*Zakon o delovnih razmerjih* (Official Gazette of the Republic of Slovenia, No 21/13, 78/13 – as amended in 47/15 – ZZSDT, 33/16 – PZ-F, 52/16 in 15/17 – Constitutional Court ruling).

<sup>4</sup> Protection Against Discrimination Act—*Zakon o varstvu pred diskriminacijo* (Official Gazette of the Republic of Slovenia, No 33/16 in 21/18 – ZNOrg).

never had female managers in their workforce before (Robnik 2015). Also, a survey conducted by the Managers' Association of Slovenia shows that 81% of the 101 best performing companies in Slovenia (in 2014) were managed by male-only boards (Združenje Manager 2017). According to OECD research for 2014, the work-life balance still represents an issue, since women on average perform 286 minutes of unpaid work per day, while the average for men is only 166 minutes. On the other hand, men dedicate 337 minutes of their free time to leisure activities, while women are only able to do so for 212 minutes per day (OECD 2014). In addition, according to a 2018 national opinion poll conducted by the Slovenian equality authority (Advocate of the Principle of Equality 2018), almost 55% of those who felt discriminated against in the preceding year reported that the area of discrimination was recruitment or the workplace. Among these, almost 20% felt that the discrimination occurred due to their gender—most of them being women (ibid.). As far as gender stereotypes and perceptions in the Slovenian society are concerned, a thorough research was conducted in 2016 by the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Its findings were as worrying as other statistics regarding gender equality; e.g. women do not expect employers to show understanding of men who want to engage more in family responsibilities, men do not spontaneously think of family life when asked to consider equal opportunities, women and men mostly believe that issues pertaining to equal opportunities have mainly already been resolved in Slovenia. Even such a brief summary shows the inadequate awareness of Slovenian citizens with respect to gender equality and their human rights in the workplace (Ministry of Labour, Family, Social Affairs and Equal Opportunities 2016, 20).

## **1.1 Analytical framework**

### **1.1.1 Identifying the research problem**

Slovenia has signed and ratified all of the relevant documents pertaining to the protection of the human rights of its citizens in the workplace (CEDAW, UNGPs, ILO Conventions, etc.). In 2019 it also adopted a National Action Plan on Business and Human Rights. However, the concern for gender equality remains obvious, as the discrepancy between Slovenia's legislation and statistics from real-life practices illustrated above is disquieting. Whether this is a consequence of a low level of awareness on human rights issues in the business environment or the state's shortcomings remains a mystery. Therefore, there is a persistent need for research

on the effects of Slovenian legislation on the ability of both men and women to have their human rights respected and protected in the workplace. Since gender equality practices in companies differ according to their size (micro, small, medium-sized and large companies) and nature of their ownership (public and private), this master's thesis will strive to provide comprehensive insight in the gender equality practices of the business sector as a whole, including different types of companies.

In this context Slovenia's business sector must be scrutinised as an independent sphere in which its agents (companies) are individually responsible for the human rights violations maintaining the current level of gender equality and reproducing the existent patterns of discriminatory behaviour, but also as a sector dependant on the state, as the latter still plays the central role when it comes to responsibility and accountability for human rights violations on its territory.

### **1.1.2 Research questions and methodology**

Aiming to provide added value to gender equality on the Slovenian labour market, the thesis will try to answer the following two research questions:

Q1: To which extent Slovenian national legislation is aligned with the emerging business and human rights standards, and their aim to promote gender equality?

Q2: How does their particular gender affect Slovenian employees in terms of the realisation of their human rights?

Q3: In which business domains in terms of gender equality do men feel less privileged than women?

For the theoretical part of the thesis, analysis of primary and secondary sources will be used. This method was chosen due to its preciseness in collecting information in order to review the existing legislative frameworks and practices. When examining primary sources, a comparative research method will be used to develop a comprehensive framework of ideal measures for fostering gender equality in enterprises. This allows the researcher to evaluate the similarities, differences and links between chosen entities (in this particular case between international

documents on human rights concerning gender equality at work, such as CEDAW, WEP and UNGPs on Business and Human Rights, as well as other relevant documents), which helps in constructing equivalence and identifying causality.

The empirical part of the thesis will assess the results with regard to gender equality of four Slovenian companies (a single company serving as the basic unit of the study)—one of which is public, while the other three are privately owned. These particular companies were chosen based on their extensive efforts in the field of corporate social responsibility, all of them having been awarded the title “women-friendly companies” by the Managers’ Association of Slovenia. In this sense, the chosen companies already represent examples of good practice, with their leadership having developed a positive attitude towards remedying the unpleasant externalities of their companies, and already working on this. The private enterprises were also carefully chosen for their size—each being of a different size (small, medium and large). The public company is also medium-sized, which will allow comparing it to the private company of similar size. The companies are not expected to differ significantly in the degree of realising gender equality with regard to their size and ownership.

The method of gender audit will be applied on all four companies. The method consists of six important elements: (1) considering existent internal practices for gender mainstreaming, (2) monitoring and assessing progress in gender mainstreaming, (3) establishing a baseline for the audited unit, (4) identifying critical gaps and challenges, (5) recommending new strategies for addressing, and last but not least, (6) documenting good practices for achieving gender equality. It is important to track them chronologically in order to be able to assess their development (ILO 2019a). The gender audit used for the purpose of this thesis will consist of a survey among the companies’ employees, and half-structured in-person interviews with their directors or managements. The surveys will include closed and open-ended questions. Closed questions will be used to allow specifying the parameters, and later isolate individual aspects to develop a conceptual model. On the other hand, open-ended questions will give respondents an opportunity to articulate their answers and choose the terms with which they wish to formulate the descriptions and highlight the topics they find meaningful (Given 2008, 582). Also, there are no presumptions made in advance, which makes it easier for respondents to use their imagination. Employees will thus have to take a standpoint with regard to certain already recognised aspects, but they will also have a chance to emphasise particularities that might be

important to them, but are not yet included in the section with closed questions. Furthermore, in-depth interviews were chosen as a method because of their extensiveness in terms of collecting information. Since the interviews will be conducted in the semi-structured format, the information collected will be more objective, as there will be no predetermining of results. Nevertheless, the interviews alone will not provide the details required to establish the connections needed to answer the research questions. Therefore, a comparative analysis of the results from both the interviews and surveys will be used to prepare a set of general recommendations for improving the practices at enterprises in terms of fully respecting and protecting their employees' human rights in the field of gender equality and non-discrimination.

### **1.1.3 Structure**

This master's thesis first provides a context for gender equality in the field of human rights. This is done by examining the development of the principle of non-discrimination, which has later led to the integration of the concept of substantive equality within the international (and European) human rights framework. Moreover, we elaborate on the most recognised comprehensive strategy for realising gender equality through the rights-based approach—gender mainstreaming. In the third chapter, we take a look at the ever stronger link between business and human rights, which allows us to further contextualise its role within the framework of corporate social responsibility. A comparative analysis of European national action plans will be made in order to illustrate the strengths and weaknesses of the Slovenian national action plan, taking into consideration the focus on gender equality. Furthermore, the three most notable documents of the existent framework (CEDAW, UNGPs and WEP) and European case law will be examined from the perspective of gender, aiming to identify the ideal model of gender equality measures to be implemented in companies. Chapter four will serve as an in-depth analysis of the Slovenian regulations governing gender equality in the workplace, one part focusing on the progress Slovenia made in the EU accession process. Furthermore, several action plans and other undertakings will be scrutinised in terms of effectiveness and contribution to achieving gender equality in Slovenia. Finally, the situation regarding gender equality in Slovenia will be described thoroughly using insights from various research and studies. Chapter five presents the empirical part of the thesis. This includes an analysis of the actual state of mind in Slovenian companies regarding gender equality. With the help of case studies of four participating companies of different sizes that are both public and privately

owned, a comparative analysis of gender audits will be prepared. The thesis concludes with recommendations, based on an analysis of the actual situation, on how to improve the normative structure and organisational culture in Slovenian companies by promoting gender equality and gender mainstreaming.

## **2. CONTEXTUALISING GENDER EQUALITY IN THE FIELD OF HUMAN RIGHTS**

In order for the notion of human rights to become relevant, the idea of human nature had to be deconstructed and exceeded (Reidy and Holder 2013, 25). Even though the international human rights regime now purports to grant extensive rights to individuals, this expansion has been accompanied by criticism of exclusively conveying a Western, and perhaps masculine, vision of the world (Alston et al. 2007; Bauer and Bell 1999, Cook 1994). Throughout Western history, the concept of human nature was broadly developed, too many times on the expense of the so-called “others”, i.e. the people or peoples the Western cultures got familiar with on their expedition journeys when conquering the unknown (Brown 2013, 26). However, in the 20<sup>th</sup> century, the sociological trends reversed—they started rejecting human nature by producing evidence in support of the view that features of what had been thought of as human nature and universal were in fact the product of modern, Western, industrial societies (Boas 1995). The denunciation of the human nature theory became part of the intellectual discourse as a reaction to Social Darwinism<sup>5</sup> and the political implications of scientific racism (Reidy and Holder 2013, 36). All this was possible due to the studies comparing Western society with other societies (such as Samoan for example)<sup>6</sup>, which undermined the universalism of human nature, and thereby widened the space of humans or equals—this is no longer true only people from Western societies, but also for people from other parts of the world (Winch 2007). Thus a message of tolerance was spread, aimed at proving that the end result of evolution are not white, European men and women (Reidy and Holder 2013, 29). The idea of superiority of Europeans over inferior non-European peoples was therefore soon replaced—not by the old idea of all humans being essentially the same—by the value system of acknowledging and valuing the differences. Regardless of radical differences between people or peoples, they were rather welcomed than used as a basis upon which a judgement of a value of difference could be made

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<sup>5</sup> A theory that applies the evolutionary concept of natural selection to human society (Claeys 2000, 225).

<sup>6</sup> A research of Margaret Mead showed that the trauma associated with sexual awakening and the preservation or loss of virginity that characterised adolescence in the West was absent in Samoa (Brown 2013, 29).

(ibid.). The philosophical postulates of the new era enabled the development of the principle of non-discrimination as the core of the human rights nexus, overarching every single right, and also standing on its own as a potentially violable provision. On these very grounds the first universal international document on human rights was adopted in UN General Assembly—the Universal Declaration of Human Rights (UDHR)<sup>7</sup>. In light of these intellectual events, it was not founded on the premise of human nature (not even was there a reference to the divine origin of human rights due to impediments of certain nations), but rather based its epistemic footing on the horrors that took place during the Second World War (Gomez Isa and De Feyter 2009, 175).

Furthermore, another important notion had to be deconstructed in order for us to be able to discuss gender equality—the rights of women. Already in Ancient Greece, Aristotle, one of the most influential philosophers of Western thought, believed that “the relation of male to female is by nature a relation of superior to inferior and ruler to ruled” (Smith 1983). Nevertheless, this kind of attitude towards women spread throughout Europe, and was later adopted by the Catholic Church. Therefore, it comes as no surprise that also Aristotle’s adherents developed the thought of philosophy in which women were constantly demeaned, e.g. Father Thomas Aquinas described women as defective men (Meany 2018). Moreover, during the Enlightenment period, women were merely seen as pretty distractions. Immanuel Kant, for example, said they “need to know nothing more of the cosmos than is necessary to make the appearance of the heavens on a beautiful evening a stimulating sight to them” (Clack 1999). However, there have been thinkers who stood against the prevailing misogynist attitudes—Christine De Pizan, for instance, proposed that education should be available to women of all social standings (Meany 2018). Nonetheless, the early 15<sup>th</sup> century’s political and social environment was not progressive enough to embrace such an idea, let alone implement it. The long history of women being seen as irrational, intellectually hollow and merely existing for beauty and procreation (ibid.) was finally broken in the 18<sup>th</sup> century with Mary Wollstonecraft’s idea of a social and political order in which women would be regarded as rational, independent beings capable of independence and virtue. In her work *A Vindication of the Rights of Woman*, she managed to base freedom in a completely innovative way, and applied the lack of it to the position of women in the context of that time. She believed that a human being is devoid of value with subordination of any kind, and that freedom is the birth right of each and every one

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<sup>7</sup> Universal Declaration of Human Rights (UDHR). 1948. Adopted and proclaimed with the Resolution of the UN General Assembly No. 217A(III), 10 December.

regardless of their sex. Moreover, she fostered a thought of a society of equals—she did not want a society in which women would have power over men, but a society in which women would have power over themselves. In her work, the situation of women was often compared to slavery, since the dominated individuals do not have control over their fate, which makes it impossible for them to possess virtue—slave life bore slave behaviour, within the limits of which it is impossible to expect virtuous posture. Insofar as we want a society of equals and a society of virtue, according to the criteria of Mary Wollstonecraft, women should be empowered with their independence of mind and civil independence—as virtue cannot be achieved solely in the mind, but is measured through the actions of an individual, women must be granted an equal spectrum of potential actions in form of decisions, i.e. women must have the right to decide on everything men do (Wollstonecraft 1792). Other female philosophers and authors also followed Mary Wollstonecraft’s revolutionary thought, which had a spill-over effect and resulted in early feminist movements. However, a lot of work needed (and remains) to be done, multiple barriers needed to be overcome, and in general a long way had to be walked to reach the final destination of gender equality becoming one of the key political issues of our time.

## **2.1 Principle of non-discrimination as a foundation of human rights**

Since the early stages of human rights development, the principle of non-discrimination was perceived as a precondition for their actualisation as it sets the scope of human rights in each particular legal document. The origins of this notion can be traced already in the Magna Carta Libertatum (1215)<sup>8</sup>, which states right at the beginning: “To all free men of our kingdom we have also granted, for us and our heirs for ever, all the liberties written out below /.../.” One of the most important legal documents for the creation of the principle of equality was without a doubt the US Declaration of Independence<sup>9</sup> from 1776, which claimed “/.../ that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness”. Furthermore, equality was greatly enhanced also in 1789 when the French revolution took the same direction as the United States, proclaiming in the Declaration of the Rights of Man and of the Citizen<sup>10</sup> that “men are born and

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<sup>8</sup> Magna Carta Libertatum (Great Charter of Liberties) was a peace treaty created in 1215 between King John of England and his barons.

<sup>9</sup> Declaration of Independence. 1776. Adopted and proclaimed in by the Second Continental Congress, 4 July.

<sup>10</sup> Declaration of the Rights of Man and of the Citizen. 1789. Adopted by the National Constituent Assembly as the first step towards writing a French constitution, 26 August.

remain free and equal in rights. Social distinctions may be based only on considerations of the common good” (Article 1). All these partial endeavours were never universal, but rather geographically limited. The earliest attempt to establish a universal non-discrimination clause took place within the League of Nations, the first ever international governmental organisation (Barić Punda 2005, 29). The Covenant of the League of Nations<sup>11</sup> carried a particular message of equality between men and women in terms of work (Article 23), and fair treatment of indigenous peoples (Article 22). Before 1945 some other treaties also included provisions prohibiting discrimination—between the Allies and Poland, Czechoslovakia, Yugoslavia, Romania, Greece, Austria, Bulgaria, Hungary and Turkey—but they had a rather narrow scope, as they only dealt with minorities and guaranteed rights solely when members of protected minorities were affected (Weiwei 2004, 5). Nevertheless, addressing only a couple of personal grounds for discrimination is not even near to the principle of non-discrimination in its fullness. Its scope was not even widened with the United Nations Charter in 1945, where the wording “/.../ to reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women” again focuses only on non-discrimination on the personal grounds of sex. However, the UN Charter was, unlike the Covenant of the League of Nations, at least able to reach universal status, as today the UN consists of 193 member states. Nonetheless, the provisions of the UN Charter did not establish any immediate obligations to guarantee or monitor human rights, nor did they identify what this wording was trying to define (Buergethal 1997, 707). It was not until the UDHR that the non-discrimination principle was established as it is known today. Article 2 of the Declaration stipulates that “/e/verybody is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status /.../”. Not only were new personal grounds, such as race, colour, political opinion or social origin, mentioned in the UDHR for the first time, there was also a ground-breaking open-end clause at the end of this article, leaving room for inducting any other potential personal grounds for discrimination (Farrior 2015, 413). Furthermore, other formulations are used to reinforce the protection of equal access to human rights, such as “without any discrimination” (Article 7 and Article 23). Although theories attribute the UDHR at least a certain amount of legal value (Gomez Isa and De Feyter 2009, 220)<sup>12</sup>, it was not meant

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<sup>11</sup> Covenant of the League of Nations, signed on 28 June 1919 in Paris, entered into force on 10 January 1920. The Covenant expired on 20 April 1947.

<sup>12</sup> There are three most common theories explaining the current legal value of the UDHR: (1) the UDHR as an authentic interpretation of the UN Charter, (2) the UDHR as customary international law, (3) and the UDHR as an expression of general principles of law (Gomez Isa and De Feyter 2009, 217–234).

to be a legally binding international document. On the other hand, the International Covenant on Civil and Political Rights (ICCPR)<sup>13</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>14</sup> were meant to be precisely that. Both entering into force in 1966, they provided the first two universal legally-binding definitions of the principle of non-discrimination. While in the ICESCR the non-discrimination principle was put in Article 2, reiterating the same personal grounds together with the open-end clause from the UDHR, we can find the exact same notion in Article 26 of the ICCPR. However, Article 26 of the ICCPR does not solely state the non-discrimination principle, but is also related to equality before the law. As far as the scope of protection of the two Covenants goes, two theories can be found in academic discourse. The first one claims that the mandate of non-discriminatory treatment is determined with the rights set out in the respective human rights instrument concerned. Although the compound of rights within a single treaty must be guaranteed to all persons on a non-discriminatory basis, the non-discrimination clause cannot be read as if it establishes a general norm of non-discrimination, i.e. a norm that would be inviolable also in other contexts (Cassese 1986). The second theory, however, asserts that Article 26 of the ICCPR provides an autonomous human right, which means that it may be violated regardless of whether any other rights of the Covenants are also violated or applicable (Weiwei 2004, 17).

After the two Covenants, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>15</sup> was the first field-specific treaty, explicitly elaborating on the contents of one of the discrimination grounds. It was later followed by many more, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>16</sup>, the Convention on the Rights of Persons with Disabilities (CRPD)<sup>17</sup>, and the Convention on the Rights of the Child (CRC)<sup>18</sup>. Although the non-discrimination clauses in these treaties largely repeat the provisions of the Covenants, their existence in form of separate instruments underscores the significance placed on non-discrimination by the international community

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<sup>13</sup> International Covenant on Civil and Political Rights (ICCPR), signed on 19 December 1966, entered into force on 3 January 1976.

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), signed on 16 December 1966, entered into force on 3 January 1976.

<sup>15</sup> Convention on the Elimination of All Forms of Racial Discrimination (CERD), open for signatures from 21 December 1965, entered into force on 4 January 1969.

<sup>16</sup> 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 with the required 20 ratifications.

<sup>17</sup> Convention on the Rights of Persons with Disabilities (CRPD), signed on 30 March 2007, entered into force on 3 May 2008 with the required 20 ratifications.

<sup>18</sup> Convention on the Rights of the Child (CRC), signed on 20 November 1989, entered into force on 2 September 1990 with the required 20 ratifications.

(Weiwei 2004, 7). Furthermore, their importance also lies in the fact that neither of the Covenants define the term discrimination, while CERD and CEDAW provide such definitions for the specific grounds of race and sex they are protecting. Even if each definition was meant for one particular field only, we can draw the parallels and extract that discrimination under international law should be understood as

to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms (General Comment No. 18)<sup>19</sup>.

From the definitions of discrimination, provided in the above-mentioned documents, we can take three elements that make up a universal definition of discrimination: (1) it stipulates a difference in treatment, (2) and has a certain effect, (3) which is based on a certain prohibited ground (McKean 1983, 82).

Non-discrimination provisions can also be found in international human rights treaties of regional character. For the purposes of this thesis, we will only focus on the ones promulgated within the European context as they are the ones that are relevant for the case study of Slovenia. The key European human rights document is the European Convention on Human Rights (ECHR)<sup>20</sup>, where a non-discrimination clause is found in Article 14, and it is elaborated further in Protocol No. 12 to the Convention<sup>21</sup>.

## **2.2 Gender (substantive) equality as more than non-discrimination**

It is widely accepted that equality and non-discrimination represent two sides of the same coin, being a positive and a negative statement of the same principle (Bayefsky 1990, 5). Sex discrimination is relatively self-explanatory—it refers to discrimination that is based on the fact that an individual is either a woman or a man (FRA 2018, 162). However, solely refraining

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<sup>19</sup> General Comment No. 18: Non-Discrimination. Adopted by the Human Rights Committee in 1989.

<sup>20</sup> European Convention on Human Rights, signed on 4 November 1950 in Rome, entered into force on 4 September 1953.

<sup>21</sup> Protocol No. 12 to the European Convention on Human Rights, opened for signatures on 4 November 2000, entered into force on 1 April 2005 with the required 10 ratifications.

from discriminatory treatment is sometimes not sufficient to achieve factual or substantive equality (FRA 2018, 70). The European Institute for Gender Equality (EIGE) defined gender equality as equal rights, responsibilities and opportunities of women and men, and boys and girls (2019). It further elaborates that:

equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born female or male. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, thereby recognising the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development (ibid.).

One of the particularly significant breakthroughs for substantive equality was the development of the concept of disparate impact before the Supreme Court of the United States of America, which was advanced by the landmark case *Griggs v Duke Power*<sup>22</sup>. In the EU, the concept is known under the notion of indirect discrimination, which makes an apparently neutral criterion, provision or practice unlawful to apply if it puts persons of one sex at a particular disadvantage (UN Women 2015, 7). It is of utmost importance that we understand sex and gender as personal grounds that we all possess (ibid.). Although the patriarchal patterns of behaviour, fuelled by gender stereotypes influencing gender roles, are still very much present in today's societies, which engender a systemic sense of inferiority and oppression for the women there, it is still crucial that men are also included in the equation of gender equality. Therefore, the inclusive approach is necessary when addressing the issues of gender equality (Martin 2013, 70).

As already shown above, under international law, gender equality is also recognised as central to human rights. Various United Nations bodies have stressed that in most cases women are the victims—often even of multiple counts of discrimination, and intersectional discrimination (several grounds operate and interact with each other at the same time in such a way that they

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<sup>22</sup> The employer applied a uniform aptitude test to both Caucasian and African American job candidates. But because African American applicants had long received inferior education in segregated schools, the test operated to disqualify such applicants at a substantially higher rate than Caucasians. The court held that, under Title VII of the Civil Rights Act, equal treatment could be discriminatory if it leads to unequal results unless justified by business necessity (UN Women 2015, 7).

are inseparable)<sup>23</sup> (FRA 2018, 170). Likewise, the harms of gender stereotypes<sup>24</sup> have been addressed by UN bodies, since less favourable treatment may lead to discrimination against women (or men) (ibid.). It is therefore essential that governments, employers and service providers make sure they alter the regulations and practices in such a way as to take relevant differences into account (FRA 2018, 70). This special measures (a.k.a. specific measures, positive actions, or positive obligations) significantly contribute to ensuring substantive equality, rather than a merely formal one—if these measures are not properly in place, the risk of indirect discrimination increases (ibid.).

### 2.2.1 Gender mainstreaming

Gender mainstreaming, adopted in 1997 with the Treaty of Amsterdam<sup>25</sup>, has been marked as one of the most important strategies for achieving gender equality (Bendl and Schmidt 2013, 367). It consists of four change-driven elements: (1) (re)organisation, (2) improvement, (3) development, (4) and evaluation of the policy process, and enables incorporating the gender equality perspective in all policies, at all levels and at all stages (Council of Europe 1998, 13). By doing so, the arenas of gender equality actions broaden, which results in a broadening of the outputs of such policy-making (Woodward 2003; Squires 2005; Kantola 2010). Compared to the other two strategies—equal opportunities and positive action—gender mainstreaming does not focus on individuals and their rights, but rather examines systems, processes and norms that tend to generate inequalities (Rees 1998). Its aim of transforming structures and processes can only be achieved by questioning the *status quo*, and consequently assuming that transformed institutions are necessary for substantive gender equality (Grosser and Moon 2005; Lombardo and Meier 2006; Plantenga et al. 2007; Verloo 2006). Gender mainstreaming was designed to overcome the barriers resulting from gender-specific models, expectations and attributions of male and female workers, which arises from binary-oriented (Hewitson 1999) and socially constructed gender roles (Martini 2004, 666). Thereby it offers a deliberate and systemic approach for integration of the gender perspective into analysis, procedures and policies (Schalkwyck and Woroniuk 1998). In short, gender mainstreaming does not concentrate on

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<sup>23</sup> See UN Committee on the Rights of Persons with Disabilities (2016), General comment No. 3 (2016) on women and girls with disabilities, CRPD/C/GC/3, 2 September 2016; UN, CEDAW (2010), 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, etc.

<sup>24</sup> For example, in CEDAW Communication No. 28/2010, *R.K.B. v. Turkey* and CEDAW Communication No. 18/2008, *Karen Tayag Vertido v. Phillipines* (Biholar 2014).

<sup>25</sup> Treaty of Amsterdam. Signed on 2 October 1997, entered into force on 1 May 1999.

women and men and their choices and opportunities, but aims at transforming the systems and structures that give rise to inequality (Ylöstalo 2016, 545).

However, there is a huge gap between the theory and practice of gender mainstreaming (Minto and Mergaert 2018, 205). Although the concept was once considered revolutionary (Hafner-Burton and Pollack 2009, 434), empirical reality has shown that there are major challenges when trying to put gender mainstreaming into practice (Squires 2005, 371). The first major problem are the bureaucrats responsible for the implementation of gender mainstreaming, since not all of them share the same level of awareness and understanding of the meaning of the concept (Ylöstalo 2013, 223). Furthermore, not everyone is on board with the concept and its potential outcomes, which disables or at least hinders its development in organisations (ibid.).

### **2.3 Embedding gender equality in the international and European human rights framework**

The most tangible push towards an integrated and all-encompassing understanding of substantive equality between men and women was made with the adoption of CEDAW. It was the first time discrimination of women (and its different forms) was given a common legal definition in the international arena (Article 1). The Convention addresses equal opportunities in critical areas of social lives of women, such as political participation, public life in general, education and training, culture, health and employment. But not only does it contain provisions enhancing equal opportunities and aiming towards *de iure* equality, it also imposes substantive equality by re-interpreting the meaning of so-called temporary measures (Article 4). Regardless of the controversy caused by introducing special measures of affirmative action due to their nature of enforcing preferential treatment, these were recognised as necessary for it had become clear that the advantageous treatment they impose was required to counter previous disadvantages (UN Women 2015, 17). The opposing opinions to positive measures are very much reflected in the Convention—even though the necessity of positive measures is recognised to an extent, they are still limited as “temporary” (Fredman 2003, 112). In 2002 an expert meeting was held in Maastricht where a new general recommendation on the issue of temporary special measures was discussed (Holtmaat 2003, 215), and an argument about

CEDAW pushing for transformative conception of equality<sup>26</sup> was made (Fredman 2003, 115). The meeting was followed by the cornerstone General Recommendation No. 25 on temporary special measures (2004)<sup>27</sup>, in which the CEDAW Committee emphasised that in their view “/.../ a purely formal legal or programmatic approach is not sufficient to achieve women’s *de facto* equality with men, which the Committee interprets as substantive equality”, and that “biological as well as socially and culturally constructed differences between women and men must be taken into account” (para. 10). The idea of substantive equality quickly gained momentum, and was soon followed up by the Committee on Economic, Social and Cultural Rights in their General Comment No. 16 (2005)<sup>28</sup>, where it elaborated Article 3 of the ICESCR in terms of interpreting the equal right of men and women to the enjoyment of all economic, social and cultural rights substantively. Heading back to CEDAW, we must also examine the obstacles to its implementation, first of which are the reservations of states parties. These often refer to the core articles, such as Article 2 (legislative changes) or 6 (prohibition of prostitution and human trafficking of women) (Shin 2004, 8). The second major obstacle is failure of states parties to report and long overdue reports, however, this kind of behaviour is not specific to CEDAW and can also be seen when it comes to reporting related to other UN treaties (ibid.). Furthermore, a huge drawback of CEDAW is definitely that it does not mention violence against women at all (which was later corrected with a general recommendation and UN Declaration on the Elimination of Violence Against Women in 1993) (Goonesekere 2003). In Article 17, CEDAW also foresees the establishment of a body for monitoring the situation in states parties to the Convention with respect to the rights it guarantees. It is a standard UN treaty-based body that oversees the obligation of states parties to submit reports detailing their compliance with the provisions of the Convention every four years, and has a competence of issuing general recommendations. One of the most important was certainly General Recommendation No. 19 (1992)<sup>29</sup>, which required from states parties to take all necessary measures to eliminate all forms of violence against women. The UN Declaration on the Elimination of Violence Against Women<sup>30</sup> resulted in the appointment of a Special Rapporteur

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<sup>26</sup> Transformative equality embodies a change stance, and might also be seen as a form of substantive equality with systemic and structural dimensions (Fredman 2003, 115).

<sup>27</sup> General Recommendation No. 25 on temporary special measures, on article 4, paragraph 1, of CEDAW, on temporary special measures. Adopted by the CEDAW Committee in 2004.

<sup>28</sup> General Comment No. 16: Substantive issues arising in the implementation of the International Covenant on Economic, Social and Cultural Rights. Adopted by the Committee for Economic, Social and Cultural Rights in 2005.

<sup>29</sup> General Recommendation No. 19: Violence against women. Adopted by the CEDAW Committee in 1992.

<sup>30</sup> UN Declaration on the Elimination of Violence Against Women. 1993. Adopted by the UN General Assembly at the 85<sup>th</sup> Plenary Meeting, 20 December.

on the causes and consequences of violence against women (UN Women 2019), whose tasks are to investigate and monitor violence against women, and recommend and promote solutions for its eradication (ibid.). The efforts for a rights-based approach to realising gender equality continued with the Vienna Declaration and Programme of Action<sup>31</sup>, which reiterated that women's rights are an intrinsic dimension of human rights, and identified gender-based violence as a subject of international human rights law (Goonesekere 2003), as well as with the Platform for Action of the Fourth World Conference on Women, which builds on the results of the meeting in Vienna. CEDAW was also followed by an Optional Protocol<sup>32</sup>, which provided two additional possibilities for the protection of women's rights provided by the Convention—the individual complaint procedure (Article 2), and the inquiry procedure in case of grave or systematic violations (Articles 8–9).

On the European level, gender equality is not only one of the fundamental values of the EU (Article 2 of the Treaty on the European Union<sup>33</sup>), but also its objective (Article 3). Protection on this ground serves a dual purpose: an economic one because it helps eliminate competitive distortions in an integrated market, and a political one since it aims at social progress and the improvement of working and living conditions (FRA 2018, 162). Many equality directives have been put into place, but they differ in terms of grounds (and consequently groups) on which they prevent discrimination. One of the most important directives when it comes to discrimination on the grounds of gender is the Gender Goods and Services Directive (2004/113/EC)<sup>34</sup>, which covers both public and private sector stakeholders that make goods and services available to users. Then there are also the Gender Equality Directive (Recast) (2006/54/EC)<sup>35</sup>, which guarantees equal treatment on the grounds of sex in matters of pay (Article 4), occupational social security schemes (Article 5), and access to employment, vocational training and promotion and working conditions (Article 14). It also determines that sexual harassment is a specific type of discrimination, which is of utmost importance according to the FRA (2016, 96) EU-wide survey on gender-based violence against women, which

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<sup>31</sup> Vienna Declaration and Programme of Action. 1993. Adopted by the World Conference on Human Rights in Vienna, 25 June.

<sup>32</sup> Optional Protocol to the CEDAW, signed on 6 October 1999 in New York, entered into force on 22 December 2000 with the required 10 ratifications.

<sup>33</sup> Treaty on the European Union, signed on 7 February 1992 in Maastricht, entered into force on 1 November 1993.

<sup>34</sup> Gender Goods and Services Directive (2004/113/EC).

<sup>35</sup> 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).

showed that 75% of women in qualified professions or top management have been victims of sexual harassment, and one in ten women has experienced stalking or sexual harassment through new technologies (FRA 2016, 104). Moreover, there are also other directives ensuring the realisation of gender equality in the areas of state social security (Directive 79/7/EEC)<sup>36</sup>, equal treatment of self-employed men and women (Directive 2010/41/EU)<sup>37</sup>, relating to pregnancy (Directive 92/85/EEC)<sup>38</sup> and parental leave (Directive 2010/18/EU)<sup>39</sup> (FRA 2018, 38).

Apart from the EU, much the protection of human rights on the European level is performed by the Council of Europe (CoE), of which Slovenia has been a member since 14 May 1993 (Ministry of Foreign Affairs 2019a). The CoE has also significantly influenced Slovenian gender equality policy through its five main conventions and 14 further recommendations affecting gender equality directly. The conventions vary from the more general, mainly covering the aspect of non-discrimination (ECHR, European Social Charter<sup>40</sup>), to those with more specific orientation and covering the particular issues of gender (in)equality (Convention on Action against Trafficking in Human Beings<sup>41</sup>, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>42</sup>, Convention on Preventing and Combating Violence against Women and Domestic Violence<sup>43</sup>).

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<sup>36</sup> Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

<sup>37</sup> 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.

<sup>38</sup> Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC).

<sup>39</sup> Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

<sup>40</sup> European Social Charter, opened for signatures on 18 October 1961, entered into force on 26 February 1965. A legal document of the Council of Europe.

<sup>41</sup> Convention on Action against Trafficking in Human Beings, opened for signatures on 16 May 2005, entered into force on 1 February 2008. A legal document of the Council of Europe.

<sup>42</sup> Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened for signatures on 25 October 2007, entered into force on 1 July 2010. A legal document of the Council of Europe.

<sup>43</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), opened for signatures from 151 May 2011, entered into force on 1 August 2014. A legal document of the Council of Europe.

### 3. EXAMINING THE BUSINESS AND HUMAN RIGHTS PHENOMENON

Transnational corporations (TNCs) are increasingly gaining power in our globalised world, and are thereby beginning to challenge the powers and duties that traditionally belonged to states (Hazenbergh 2016, 480).<sup>44</sup> For example, the revenues of several multinational enterprises are substantially higher than the GDPs of several small nations (Keys et al. 2013), which undoubtedly contributes to the fact that the authority of governments to monitor corporate behaviour is being undermined (Cragg 2000). As the expansion and dimensions of business activity have blurred the boundaries, the work of governments in terms of regulating corporate behaviour has become significantly difficult (Arnold 2010, 378). As a result, the ongoing globalisation has—by creating a “governance gap” or “regulatory vacuum”—opened up national borders and allowed enterprises to take advantage of this (Cragg, 2000). Since their often unregulated conduct can affect public interests, the international community has agreed on a common approach to claiming corporate accountability in cases of human rights violations by business entities (ibid.). During the 20<sup>th</sup> century, human rights were never able to penetrate the international legal framework—enterprises were subject to international investment law, while people working for (or in other ways interacting with) them were the holders of rights under international human rights law (Chen 2015, 2). Although this entitles them to file complaints against states in case of human rights violations, there were no legal possibilities of individuals suing business entities within the international legal framework (Amao 2011). To this day, no major changes have been made in the international community regarding legally binding regulations on business enterprises, even though involvement of businesses in human rights abuses dates far back, e.g. the leaking of deadly methyl gases from the Union Carbide Corporation plant in Bhopal, India (1984)<sup>45</sup>, Royal Dutch Shell oil spills affecting the Ogoni people in Nigeria (1960s)<sup>46</sup>, the environmental damage of Chevron oil operations in Ecuador<sup>47</sup>,

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<sup>44</sup> The evolution of obligations under the international law has been rapid, however, not thorough enough to actually transfer the latter completely to non-state actors. Therefore, one can still observe the system in which nation states are the primary subjects of rights and obligations under the international law, only in a small number of international legal norms – primarily those relating to war crimes, crimes against humanity and forced labour – apply directly to non-state actors. However, these non-state actors are mainly individuals as the legal entities are still in the process of gaining this international legal subjectivity (Vazquez 2005, 927).

<sup>45</sup> In 1984, a Union Carbide pesticide plant in Bhopal, India leaked poisonous gas methyl isocyanate into the community surrounding the plant (Business and Human Rights Resource Centre 2019a).

<sup>46</sup> The military government of Nigeria has been directly involved in oil production through a state oil company. This production has caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people (Business and Human Rights Resource Centre 2019b).

<sup>47</sup> In 1993, a group of Ecuadorian citizens filed a lawsuit in US federal court against Texaco (Aguinda v. Texaco), alleging that between 1964 and 1992 Texaco’s oil operations polluted the rainforests and rivers in Ecuador,

etc. Although international legal obligations include states' commitments to protect human rights also against third parties, and while business enterprises have the responsibility to respect human rights as required by national legislation and domestic policies of states (Chen 2015, 2), different actors have still been making efforts to address the growing human rights abuses and violations by enterprises, since not only are the majority of the existing standards on business and human rights not legally binding, but many national legislations proved to be inadequate as well (FIDH 2014, 6).

### **3.1 Differentiating between corporate social responsibility and human rights**

The intersection of corporate social responsibility and human rights initially emerged with respect to labour rights and employment concerns in the 1980s (Munchus 1989, 818; Wettstein 2012, 741). The notion of corporate social responsibility has been stretched on a continuum between the economic concept of maximising profit (Friedman 1970), and the improvement of social welfare and the benefit of organisations (Keith and Blomstrom 1975), and the idea of corporate social responsibility itself covers a wide range of concepts. However, they all seem to converse in the same direction of a growing demand for enterprises to create sustainable social value, and to communicate with every stakeholder that has a direct or indirect relationship with corporate business activities (McFarland 1982). Yang and Rivers (2009, 159) suggest that corporate social responsibility cannot be imposed on corporations—instead, it is of voluntary nature. On the other hand, human rights are obligatory, and are often seen as international standards that could specify and strengthen the voluntary concept of corporate social responsibility (Wettstein 2009, 127). Hence, corporations tend to embrace human rights standards when implementing corporate social responsibility practices (Engle 2004, 40). There are two other major differences between corporate social responsibility and business-related human rights that can be observed from the literature. The first one is the origin of the concepts. While the literature on corporate social responsibility was developed by business scholars, the studies of human rights have roots in law (Engle 2004, 41; Avery 2006, 89). This also resulted in emphasising the responsibility of states to protect human rights over that of enterprises (Mongelard 2006, 668; Preuss and Brown 2012, 291). Secondly, there is a difference between the narratives and the discussions on the respective topics. On the one hand, the literature on corporate social responsibility observes the impact of this concept on enterprises and their

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resulting in environmental damage and damage to the health of those who live in the region (Business and Human Rights Resource Centre 2019c).

competitive advantages on the market (Porter and Kramer 2007), and enterprises' performance (Brammer and Millington 2008, 1334). But on the other hand, the literature on business-related human rights puts the emphasis on the role of enterprises as well as government (Ramasastry 2015, 245). Ruggie (2008, 194) also stresses that this emphasis must be a consequence of the fact that most human rights violations are caused by the governance gap, which should, as a result, be the primary concern when addressing these infringements. Nevertheless, there are also certain similarities between the two fields. Both concepts aim at enterprises acting in a responsible way (Osuji and Obibuaku 2014, 3). Moreover, they both function in a complementary way, i.e. while corporate social responsibility fosters a voluntary approach, human rights can serve as a tool of strengthening obligations in this field (Kolk 2016, 26).

One of the most important pillars of addressing negative business externalities by advocating corporate social responsibility standards have undoubtedly become the self-regulatory initiatives—one of which is also the UN Global Compact (UNGC), launched in 2000 (Voegtlin and Pless 2014, 183).<sup>48</sup> It is the largest voluntary global governance initiative that addresses corporate responsibility of TNCs (ibid.). The ten principles of the UNGC cover the areas of human rights, labour, environment and the fight against corruption (UNGC 2018). Furthermore, it is a membership-based initiative that includes not only corporate members but also other stakeholders, such as NGOs, public sector organisations and academic institutions. Although it is headquartered in New York, there are many national, regional and local networks involved in its activities, which mostly take the form of conferences, meetings and workshops (Jastram and Klingenberg 2018, 26).<sup>49</sup> Until now almost 10,000 companies from more than 160 countries voluntarily pledged to respect the UNGC's core principles (UNGC 2018). After becoming a signatory, each company must report on its progress once a year by publishing a “communication on progress” (COP) report (Voegtlin and Pless 2014, 186). In 2011 a “differentiation programme” was introduced by the UNGC to further differentiate participants by evaluating their engagement, and classifying them in one of three categories—learner, active or advanced. If a participant fails to hand in a COP report for two subsequent years, it is delisted. However, a comparative analysis of the examples of BP and Shell<sup>50</sup> evidently shows the UNGC

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<sup>48</sup> Parts of this sub-chapter are taken from the author's previous essay titled *The Unchallenged Dichotomy of CSR and Human Rights: Can Soft Law Replace the State-led Regulation?* It was submitted on 24 December 2018.

<sup>49</sup> Its operation was well summarised as a global amalgamation of strategic and wide public policy learning networks that cultivates integrative learning through inter-organisational interaction (Kell and Levin 2003, 161).

<sup>50</sup> BP and Shell were removed from the Dow Jones Sustainability Index in 2010—BP because of a disaster in the Gulf of Mexico, and Shell due to environmental degradation of the Niger Delta. Shell was later even found guilty

is not sufficiently equipped with measures to effectively implement the ten principles (Voegtlin and Pless 2014, 180).

Nevertheless, the initial success of the UNGC was soon followed by a fire in the Tazreen Fashion factory in 2012 and the collapse of the Rana Plaza building in 2013, both in Bangladesh, which unleashed an era of scepticism regarding such initiatives, and a lot of criticism was drawn to them as well (Jastram and Klingenberg 2018). The criticism of the UNGC can be divided into three major categories: (1) arguments related to the idea of a lack of verification and independent monitoring mechanisms, (2), vagueness of the UNGC's content, and (3) the matter of the initiative being housed by the UN. As was already briefly indicated when mentioning the process of obtaining UNGC membership above, the initiative does not provide any credible monitoring mechanism, let alone suitable sanctions in case of a breach or insufficient implementation. The UNGC is not a code of conduct—its central tool is dialogue. This means that the UN does not possess the mandate that would enable it to monitor or verify corporate practices (Deva 2006, 134). Furthermore, corporate executives will most likely prefer to maintain *status quo* by continuing to resist the creation of any kind of transparent and robust system for evaluating their corporations' conduct (ibid.). The unresolved question of a potential juror in such a system also does little to give an impetus for the UNGC to overcome this deadlock. The second category of criticism relates to the ten principles themselves. In order to attract as many TNCs as possible, the principles listed are basically one-liners, and do only represent the lowest common denominator of consensus on the global level (Deva 2006, 136). Even some TNCs (e.g. Novartis) have advised the UN to use more precise wording, since the generality of the text limits the implementation, which depends on each particular context (Simpson and Taylor 2013, 230). Moreover, the countries of the global North more or less have rigorous legal frameworks for human rights protection in place, therefore the UNGC does not really do much for TNCs located there. On the other hand, there is little evidence that even such vague principles, with almost no expectations, could actually be realised in the poor and developing countries. This leads to an important divide along which approximately 75% of the participants of the UNGC originate from the global North, which already mostly takes care of human rights violations in national legislations (Gomes et al. 2017, 106). In addition, companies only need to take measures “within their sphere of influence”, which poses a question whether

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by a Dutch court. Nevertheless, both companies were (and still are) signatory members of the UNGC; both with active status (Voegtlin and Pless 2014, 180).

they are responsible for the doings of the parent corporation's subsidiaries and affiliate companies (ibid.).<sup>51</sup> The last group of critics is concerned by the idea of the UN being the entity to carry out the UNGC initiative, since historically there are no links between the organisation and private sector companies. What is more, the UN's role has always been perceived more as interventionist, and by getting involved in private sector matters it could supposedly lose its privileged position granting it the neutrality needed to perform its core activities (Gonzalez-Perez and Leonard 2015). Moreover, there has been further criticism by NGOs stating the UN was being used as a "bluwashing tool" of private enterprises (Ruggie 2001, 371). Regardless of the criticism, the UNGC cannot be denied the credit for at least some kind of progress in the field of corporate social responsibility. The latter can be seen particularly in the growing consensus on shared values or moral norms in the global community. A good example is a comparison between the response time to allegations Nike faced in the 1980s regarding the sweatshop conditions of subcontractors, and the response time of Apple in 2012 when it was heavily criticised for the treatment of workers by its supplier from China. While it took Nike almost 20 years, Apple responded immediately. It can therefore be assumed that initiatives, such as the UNGC, and other awareness-raising activities in the field of corporate social responsibility among TNCs and other enterprises payed off, leaving a legacy of TNCs being aware of their moral and ethical obligations towards the entities and people within their influence sphere (Williams 2014, 248).

### **3.2 Business and human rights field of studies**

The rocky road of UNGC's ups and downs has led to a whole new era of corporate social responsibility in global business, which officially started in 2011 with the adoption of the UN Guiding Principles on Business and Human Rights.<sup>52</sup> Already in June 2008, the special representative of the UN secretary-general on the issue of human rights and transnational corporations and other business enterprises of that time, professor John Gerard Ruggie, presented the Protect, Respect and Remedy Framework for Business and Human Rights, which rests upon three complementary principles: (1) the state duty to protect against human rights

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<sup>51</sup> The issue of responsibility for supply chains was partly solved with the Shanghai Declaration, as corporations agreed they would ensure that their supply chain capacities are built to effectively implement the UNGC (Deva 2006).

<sup>52</sup> Parts of this sub-chapter are taken from the author's previous essay titled *United Nations Guiding Principles on Business and Human Rights: The Corporate Responsibility to respect as a Human Rights Opportunity of the 21<sup>st</sup> Century*. It was submitted on 24 December 2018.

abuses by non-state actors, (2) the corporate responsibility to respect human rights, and (3) the need for greater access by victims to effective remedy (Seck 2013, 93). Following extensive multi-stakeholder consultations, the Guiding Principles on Business and Human Rights were unanimously endorsed by the Human Rights Council (HRC) three years later (HRC 2011, para. 6). This was, after a long period of time, the first step of the international community back towards the state-led system in the field of corporate social responsibility. The document was adopted partly due to the constant and systemic lagging behind<sup>53</sup> of human rights principles from the ten UNGC principles (Principle 1 and Principle 2)<sup>54</sup>. The above mentioned Guiding Principles were again a voluntary code of conduct. However, they demanded a further act of preparing national action plans.

### 3.2.1 UN Guiding Principles on Business and Human Rights examined

The UN Guiding Principles on Business and Human Rights are a non-legally binding instrument that consists of 31 principles and sets a global standard for the field of human rights in the international business arena (Letnar Černič 2013, 4). The document presents general principles and three major pillars: (1) the state duty to protect human rights, (2) the corporate responsibility to respect human rights, and (3) access to remedy (OHCHR 2018a). Each pillar is further divided into foundational principles, emphasising the main ideas behind the pillars, and operational principles, which usually provide for more concrete examples of actions transnational corporations and other business entities should take to ensure the actual respect, protection, and remedy by those actors (Ruggie 2008, 193). The content of the first pillar encompasses preventive measures—it reiterates the obligation of states to protect human rights within their given territories and jurisdictions, and highlights the importance of predictability ensured by clearly set expectations (OHCHR 2018a, 4). Under the operational principles in this pillar, the document first highlights the legislative role of the state, and then focuses on the state-business nexus, within which states should further give their attention to public enterprises and those business entities that receive substantial support from state, since in these cases the state is not only connected to the business arena, but even acts in its name (Ruggie 2014, 14). Further on in the first pillar, additional emphasis is laid on supporting the respect of businesses

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<sup>53</sup> The lagging behind can also be identified in the last UNGC Progress Report from 2017, where the principles related to human rights are only mentioned once in the section on future focus—by the goal called *Tackling inequality, fostering inclusion* (UNGC 2017, 81).

<sup>54</sup> These two principles are: (1) *Businesses should support and respect the protection of internationally proclaimed human rights*; and (2) *make sure that they are not complicit in human rights abuses* (UNGC 2018).

for human rights in conflict-affected areas, and ensuring policy coherence on the national and international level (OHCHR 2018a, 6–11). The second pillar features the largest number of provisions, and redirects the focus from states’ obligations to protect human rights to corporate responsibility of respecting human rights. The foundational principles of this pillar therefore state that business enterprises, regardless of their size or place of operation, are the ones that need to respect human rights, and in doing so they need to take into consideration the Bill of Human Rights<sup>55</sup>, and the principles stemming from the eight core conventions of the International Labour Organization as set out in its Declaration on Fundamental Principles and Rights at Work (OHCHR 2018a, 13). Under operational principles, the document briefly mentions the importance of the policy commitment, remediation through a legitimate process, and the issues of context; however, the most stress is put on businesses’ human rights due diligence. The latter should be a guideline for enterprises and corporations when dealing with human rights (OHCHR 2018a, 16–23). An important part of this due diligence is a human rights impact assessment, and the integration of findings into the organisational structure and culture of a business entity. Furthermore, tracking of effectiveness of businesses’ response should be established in order to verify that adverse human rights impacts are being actively addressed, and external communication channels should be set up to provide information for the general public on the activities and actions of a business entity in the field of human rights (Sinha 2013). Last but not least, the third pillar is entirely focused on remedial measures, as it is the duty of states to take appropriate steps to ensure different means (judicial, administrative, legislative, etc.) for acting upon human rights abuses (OHCHR 2018a, 27). This pillar further on differentiates between state-based judicial mechanisms and state-based non-judicial grievance mechanisms, among which national human rights institutions also play an important role. Moreover, the document also explicitly mentions the option of non-state-based grievance mechanisms (those administered by an enterprise alone or with stakeholders), as well as the criteria for their effectiveness, such as legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility and others (OHCHR 2018a, 33). The document concludes by stressing efforts to advance engagement and dialogue, which are needed to address and resolve possible grievances (ibid.).

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<sup>55</sup> A term used to describe the entirety of three main internationally recognised human rights documents: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights (OHCHR 2018a).

### 3.2.1 Towards a binding instrument

The path towards a binding instrument was declared with the Ecuador Initiative<sup>56</sup>, which was launched in September 2013 when Ecuador presented a joint statement on behalf of more than 85 countries (the African Group, the Arab Group, Pakistan, Sri Lanka, Kyrgyzstan, Bolivia, Venezuela, Peru and Ecuador), which was later followed by several side events that served as a means to strengthen the idea of a legally-binding document in the field of business and human rights (South Centre 2014). In June 2014 a draft resolution was tabled, proposing the establishment of an open-ended intergovernmental working group with the mandate to “elaborate an international legally binding instrument to regulate /.../ the activities of transnational corporations and other business enterprises” (HRC 26/9 2014, para. 1)<sup>57</sup>. The resolution was passed, the working group was founded, and is now annually reporting on the particular aspects of the business and human rights field that need further research. When considering the necessity of a binding treaty, we easily find ourselves in the ambiguous situation of disagreement among scholars. On the one hand, Ruggie (2013, 202) stresses that the UN Guiding Principles have a potential for a “polycentric approach” to addressing business and human rights governance gaps, and to serve as a normative platform for implementing them in the policies of states, enterprises and other stakeholders. However, on the other hand, Deva (2014, 65) underscores a three-fold inadequacy in terms of existing regulations for holding enterprises accountable for human rights violations: (1) insufficient or contestable rationales for compliance with human rights norms, (2) lack of precise human rights standards that would be also measurable, and (3) undeveloped implementation and enforcement mechanisms. If we conclude there is a legal necessity for a binding treaty in the international community, it is important to determine whether such a treaty is politically and legally achievable. In terms of political plausibility, the adoption of Resolution 26/9 can be seen as a landmark achievement, since it aimed to pave the way towards a binding instrument. However, there was strong opposition from the EU and the United States of America, as well as an unclear position of China. Ruggie (2015) claims that a change in attitude, especially from the EU, is very much possible. Also, the potential power of BRICS countries to facilitate the negotiation process must not be overlooked, as they all voted in favour of the resolution (HRC 2012). With strong support from the civil society and a less extreme resistance from the business sector, the chances of a

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<sup>56</sup> Reference of scholars when discussing the binding proposal of Ecuador and other states (Ruggie 2015).

<sup>57</sup> 26/9 Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. Adopted by the Human Rights Council on 14 July 2014.

legally-binding treaty neither increase nor decrease (Chen 2015, 56). Nevertheless, along with the political we should also consider the legal achievability. Although the latter seems to be possible, there are several issues that need to be resolved prior to the adoption of such a treaty, e.g. its scope, who will bear the duties and the extraterritorial dimension. However, the process of adopting such a treaty itself could be a way of finding common ground on these issues and clarifying them once and for all (Chen 2015, 76).

### **3.2.2 Business and human rights through the gender lens**

Since women are disproportionately impacted by the negative consequences of business activities, because they occur in a context full of inequalities and entrenched patriarchy, business-related human rights violations are also not gender neutral (Awori et al. 2018, 2). Even before the existence of the UN Guiding Principles on Business and Human Rights, the CEDAW Committee has, in its General Recommendation No. 28 (2010)<sup>58</sup> raised the need for states to address the impacts (including extraterritorial ones) of business activities on women's rights through gender impact assessments for investments, and highlighted the need for gender-sensitive mechanisms, which will enhance women's access to corporate justice. In the process of adopting the UN Guiding Principles on Business and Human Rights, the position of women was heavily stressed—not only do they face multiple forms of discrimination, but they also experience additional barriers in seeking access to effective remedies for business-related human rights abuses (OHCHR 2018b, 1). In the document itself there are many references to women as well. For instance, the general principles part states that the document should be “implemented in a non-discriminatory manner” and “with due regard to the different risks that may be faced by women and men” (OHCHR 2018a, 1). Furthermore, the commentary to Principle 3 notes that states should provide guidance for enterprises to “consider effectively the issues of gender, vulnerability and/or marginalization”. Principle 7 underscores the importance of business enterprises' endeavours in terms of paying special attention to gender-based and sexual violence in conflict affected areas. Principle 12 stresses that further attention should be given to persons belonging to specific groups or populations, since enterprises' activities could have an adverse human rights impact on them (women included) (OHCHR 2018a, 6–13). Last but not least, the commentary to Principle 20 highlights the importance of using gender-

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<sup>58</sup> General Recommendation No. 28: Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women. Adopted by the CEDAW Committee in 2010.

disaggregated data where relevant, because this can allow tracking the effectiveness of measures addressing the impacts on groups or individuals (OHCHR 2018a, 23). The UN Guiding Principles on Business and Human Rights were soon followed by the General Comment No. 16 from the UN Committee on the Rights of a Child (2013)<sup>59</sup>, which drew attention to children’s rights in connection to the business sector. It also includes references to gender-based violence in conflict zones, and the gender division of labour. In 2017, the UN Committee on Economic, Social and Cultural Rights published its General Comment No. 24<sup>60</sup>, which underlines the role of state obligations in the context of business activities. It also calls for incorporating “a gender perspective into all measures to regulate business activities” (para. 9), and recommends positive measures to accelerate women’s representation in the labour market and women’s leadership in the corporate sphere (Awori et al. 2018, 3). Also in 2017, the HRC Working Group issued a report on the issue of human rights and transnational corporations and other business enterprises<sup>61</sup>, which examines the access to effective remedies from the perspective of women. The latest report of the Working Group (2018)<sup>62</sup> recognises the importance of preventive measures integrating the gender perspective.

The gender lens can also be applied when discussing the creation of a binding instrument. In October 2017, feminist organisations issued a briefing paper regarding the integration of the gender perspective into the legally binding document. They made three main recommendations: (1) the treaty should have an explicit reference to mandatory previously made human rights-based gender impact assessments, which would identify and analyse gender-specific risks, including experience with multiple and intersecting forms of discrimination; (2) removing procedural and practical barriers on the path to an effective remedy for women by establishing gender-sensitive justice mechanisms; and (3) the treaty should facilitate an environment in which women human rights defenders could do their work without reprisals, intimidation and violence (Awori et al. 2018, 5).

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<sup>59</sup> General Comment No. 16: State obligations regarding the impact of the business sector on children’s rights. Adopted by the UN Committee on the Rights of a Child in 2013.

<sup>60</sup> General Comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Adopted by the UN Committee on Economic, Social and Cultural Rights in 2017.

<sup>61</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the sixth session of the Forum on Business and Human Rights (A/HRC/38/49). Published by the HRC Working Group in 2017.

<sup>62</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the seventh Forum on Business and Human Rights (A/HRC/41/49). Published by the HRC Working Group in 2018.

### 3.4 Understanding gender equality in the business arena through human rights

Gender equality in the business arena can be understood on a continuum with two different ends—one representing gender equality in the workplace, and the other one describing it in the framework of the external functioning of an individual enterprise (e.g. in value chains, due diligence) (Geneva Academy 2018). In this thesis, we will focus solely on the internal aspect, examining human rights in view of gender equality in the area of work (the relation employer–employee), and not on the externalities enterprises can have on potential human rights violations on the outside (the relation enterprise–customer or enterprise–subcontractor).

#### 3.4.1 International and European framework for gender equality in the workplace

CEDAW already includes some essential provisions regarding women at work, such as the right to work, the right to same employment opportunities, the right to equal remuneration, as well as stipulations partially covering the topics of pregnancy and work-life balance (Article 11). Moreover, General Recommendation No. 13 (1989)<sup>63</sup> on equal remuneration for work of equal value offers states parties additional guidelines on *inter alia* considering making studies regarding traditional female and traditional male professions in their respective countries. Other important international documents aiming at realising gender equality in the workplace were mainly produced by the International Labour Organization (ILO). The core ILO Conventions promoting gender equality are: (1) the Equal Remuneration Convention<sup>64</sup>, (2) the Discrimination (Employment and Occupation) Convention<sup>65</sup>, (3) the Workers with Family Responsibilities Convention<sup>66</sup>, and (4) the Maternity Protection Convention<sup>67</sup>.

On the European level, the EU does the most in terms of regulating gender equality in the workplace. Although the Council of Europe has also adopted several documents relating to

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<sup>63</sup> General Recommendation No. 13: Equal remuneration for work of equal value. Adopted by the CEDAW Committee in 1989.

<sup>64</sup> Equal Remuneration Convention. 1951. Adopted at the 34<sup>th</sup> ILC session in Geneva, 29 June. Entered into force on 23 May 1953.

<sup>65</sup> Discrimination (Employment and Occupation) Convention. 1958. Adopted at the 42<sup>nd</sup> ILC session in Geneva, 25 June. Entered into force on 15 June 1960.

<sup>66</sup> Workers with Family Responsibilities Convention. 1981. Adopted at the 67<sup>th</sup> ILC session in Geneva, 23 June. Entered into force on 11 August 1983.

<sup>67</sup> Maternity Protection Convention. 2000. Adopted at the 88<sup>th</sup> ILC session in Geneva, 15 June. Entered into force on 7 February 2002.

gender equality in the workplace, none of them is on the level of a treaty—all of them are in form of further recommendations. Among them we can find a recommendation concerning the work environment, Recommendation No. R(96)51 on reconciling work and family life. Some others can also be indirectly linked to workplace, e.g. Recommendation No. R(79)10 concerning women migrants, Recommendation Rec(2007)17 on gender equality standards and mechanisms, and Recommendation Rec(2012)6 on the protection and promotion of the rights of women and girls with disabilities (Council of Europe 2019). On the other hand, the EU has adopted a special directive aiming towards equality in the workplace, which includes the grounds of sex. The Employment Equality Directive (2000/78/EC)<sup>68</sup> also prohibits discrimination on the basis of sexual orientation, religion and belief, age and disability in the area of employment, occupation and related areas, such as vocational training and membership of employer and employee organisations (FRA 2018, 38). Furthermore, a Recast Directive (its implications were already described in Chapter 2.3) was adopted in 2006, covering *inter alia* the issue of equal pay for men and women in the EU. In 2014, it was followed up by the Recommendation on strengthening the principle of equal pay between men and women through transparency<sup>69</sup>, which was unfortunately not legally binding, but four EU member states (Austria, Denmark, Finland and Sweden) have already reported on good practices (Eurofund 2019, 1). Within the wide-scale framework, two other noteworthy initiatives greatly concerning gender equality in the workplace in forms of proposed directives were also on the table in the past five years, i.e. the Directive on Gender Balance on Corporate Boards<sup>70</sup> (aiming to set a quantitative objective of a 40% presence of the under-represented sex among non-executive directors of companies listed on stock exchanges by 2020), and the Work-Life Balance Directive<sup>71</sup> (introducing paternity leave, making two out of four months of parental leave non-transferable from one parent to another and compensated).

In order to create an ideal model of gender equality practices for enterprises' internal organisational structure, culture and working processes, we tried scrutinising the most important existent international and European legal documents in the field of gender equality

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<sup>68</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>69</sup> Recommendation on strengthening the principle of equal pay between men and women through transparency, adopted by the European Commission on 7 March 2014.

<sup>70</sup> Directive on Gender Balance on Corporate Boards, proposed by the European Commission on 14 November 2012 to accelerate progress in improving the gender balance on corporate boards.

<sup>71</sup> Work-Life Balance Directive, proposed by the European Commission following the withdrawal of the Maternity Leave Directive in order to address women's under-representation in the labour market.

in terms of human rights and the workplace. By intersecting these three components, eight most prevalent (and consequently most crucial) aspects of gender equality on the level of enterprises were identified, and are discussed further on.

**Table 1:** Particular aspects of gender equality in the workplace and their presence in European and international legal documents on human rights

<b>Gender equality–related aspect</b>	<b>UN Guiding Principles on Business and Human Rights</b> (commentaries included)	<b>CEDAW</b> (general comments included)	<b>WEP</b>	<b>Other relevant international or European obligations</b>
<b>Gender stereotypes</b>		Article 5	Principle 4	Istanbul Convention (Article 12)
<b>Discriminatory practices in recruitment</b>	General Principles	Article 1 and Article 11	Principle 2	Istanbul Convention (Article 20); ILO Discrimination (Employment and Occupation) Convention; EU non-discrimination law
<b>Work-life balance</b>		Article 5 and Article 11	Principle 3	EU directives; ILO Workers with Family Responsibilities Convention, and Maternity Protection Convention
<b>Discriminatory practices in promotions</b>	General Principles	Article 1 and Article 11	Principle 4	EU non-discrimination law
<b>Pay gap</b>		Article 11		ILO Equal Remuneration Convention; Recast Directive;

				Recommendation on strengthening the principle of equal pay between men and women through transparency
<b>Gender-balanced corporate leadership</b>		Article 4 (further elaboration of affirmative measures in General Recommendation No. 25)	Principle 1	National legislation only (as the Directive on Gender Balance on Corporate Boards has not yet been adopted)
<b>Gender-based and sexual violence</b>	Principle 7	General Recommendation No. 35		Istanbul Convention (entire Convention—substantive law in Articles 29–48)
<b>Monitoring and advocating gender equality</b>	Commentary of Principle 20		Principle 6	Istanbul Convention (Article 9)

**Source:** Author’s own synthesis of UN Guiding Principles on Business and Human Rights (2011), CEDAW (1981) and WEP (2011).

**3.4.2 Relevant gender equality–related aspects in the workplace deconstructed**

The importance of gender equality and a gender-balanced workplace does not only derive from explicit legal stipulations in the field of human rights law that need to be respected and implemented, but is apparently also good for the individual enterprises. There are several factors conveying this message: (1) a gender-diverse and engaged workforce is a source of greater innovation and creativity (the workforce is more considerate, capable of communication from different angles, and has the ability to offer a wider range of solutions to organisational problems, which increases the efficiency and flexibility of the enterprise on the market); (2)

diversity enables opening up new markets (Greif 2009); (3) diversity and gender equality policy facilitates general organisational flexibility, and (4) strengthens the reputation of the organisation (Hajjar and Hugonet 2015). Furthermore, taking into account the new trend of population aging (by 2025 over 20% of Europeans will be older than 65), organisational responsiveness and flexibility will be the key to coping with pressures of this kind of phenomena (Diversity Charter Slovenia 2019). It has already been found that greater gender balance among corporate leaders can be associated with higher stock values and greater profitability (Noland et al. 2016, 2). Catalyst (2011) even discovered that Fortune 500 companies with the highest proportion of women on their boards performed better than enterprises with lowest proportions. Furthermore, McKinsey & Company (2012) found that mixed-gender boards tend to outperform all-male boards (Noland et al. 2016, 4). Several reports concerning economic benefits of gender equality were made as well, among which also an increase of GDP per capita, closing the activity gap and higher fertility rate are listed (EIGE 2017b, 38).

There are several barriers or aggravating circumstances that still make working and doing business more difficult for women than it is for men. While women tend to be more concentrated in small businesses run from home, they also globally face difficulties with inheritance law, access to credit, financial services, training and opportunities (Marston 2014, 18). In the following sub-chapters we will give more attention to the particular obstacles to realising gender equality in the workplace that are most relevant for women in developed countries, as Slovenia is categorised.

### **3.4.2.1 Gender stereotypes**

Although stereotypes are, from the point of view of cognitive action of an individual, a quite effective and not always negative tool (Dovidio et al. 2010), their understanding is essential to understanding discrimination. Firstly, because stereotypes allow attribution of characteristics to people based on their group affiliation (the so-called stereotyping) and the classification of people into different social groups (the so-called social categorisation), and secondly because they are the basis for the formation of prejudice (usually negative attitudes towards individual groups of people, or members of a particular group), which can act out in form of discrimination (Svetek 2019, 3). Gender stereotypes include generalised characteristics, and are a reflection of

how men and women, the differences between them and their social roles are perceived. For instance, while women are supposedly gentle, emotional, kind, sensitive, caring, men should be strong, brave and dominant (Ministry of Labour, Family, Social Affairs and Equal Opportunities 2016, 5). In real life, neither all women nor all men correspond to the descriptions above. One of the problems with gender stereotypes is that they attempt to show social differences between genders as a consequence of natural differences (ibid.). Thus, it is not surprising that authors dealing with the study of women in the labour market often cite gender stereotypes as the key cause of discrimination against women, as well as the vertical and horizontal gender segregation of the labour market (Heilman 2012). The latter starts showing already in the choice of field of studies, because gendered expectations towards women and men contribute to gender segregation in education (EIGE 2017a, 34). While women represent around three quarters of tertiary students in the fields of education (78%), health and welfare (71%), and humanities and arts (65%) in the EU, men accounted for only 21% of the students enrolled in these fields in 2015 (EIGE 2017a, 35). On the other hand, gender segregation is also very strong in STEM<sup>72</sup> study fields—in this case in favour of men. Women constitute only 30% of graduates on the tertiary education level in STEM fields (the highest under-representation of women in STEM is in ICT, construction, engineering and manufacturing; natural sciences, mathematics and statistics are quite gender-balanced) (ibid.). As a consequence, there are insufficient female or male talent pools to recruit from in certain industries (for example a lack of women in construction and a lack of men in nursing facilities) (ILO 2017, 12). This illustrative case later on translates into a very visible gender division in the labour market, reinforcing the idea of “traditionally female professions” (EIGE 2017a, 35).

### **3.4.2.2 Discriminatory practices in recruitment and promotions**

The biggest contributor to gender-based discrimination in the workplace is most definitely the unconscious gender bias, which is defined as unintentional and automatic mental associations based on gender, stemming from traditions, norms, values, culture and/or experience (ILO 2017, 3). In the research ILO conducted with many companies (2017), the second-most cited barrier to women’s leadership were the social roles of men and women, and the third was masculine corporate culture. The latter is reflected in various processes and programmes

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<sup>72</sup> The term STEM is an acronym educational fields of Science, Technology, Engineering and Mathematics. It was first used in 2011 by biologist Judith Ramaley, who as head of the Natural Science Institution of the U.S.A., was in charge of developing new educational programs (STEM Education 2019).

fostering a preference for stereotypically masculine characteristics, which negatively affect the opportunities of women by placing them in a worse starting position (e.g. one of performance indicators for leadership skills is also “total geographical mobility”, which is not easily obtainable for working mothers) (McKinsey & Company 2016, 22). Furthermore, gender stereotypes and the inherent gender bias in recruitment and promotions had been exposed by ILO already prior to this research (2015, 90). Barsh and Yee (2011) even claim that invisible barriers, such as gender bias in the mindset of managers, can prevent women from advancing into leadership positions. It is therefore of utmost importance for enterprises to (1) assess unconscious gender bias at work by gathering gender-disaggregated data on people’s experiences, (2) put great attention on language in job descriptions in order not to replicate and reinforce gender stereotypes (e.g. if job descriptions only demand characteristics of an employee that are usually associated with men, then male applicants might benefit from an unconscious bias in their favour), and (3) prudently analyse the gender gaps in both career advancements and payment, as well as in hiring and opportunities for mentoring and professional development (ILO 2017, 7). Nevertheless, when the leadership is aware of the unconscious bias phenomenon, it can be mitigated in numerous ways. The most obvious one is definitely blind evaluation during recruitment, in which applicants’ physical attributes, including the name, are hidden from the evaluator (McKinsey & Company 2018). Also, transparency and accountability, especially when talking about promotions, are essential—there are practices of career advancement processes that deeply nurture transparency by letting employees self-assess their progress and determine the steps they should take in order to develop the skills and experience for promotion to the next level (Warren 2009, 29).

### **3.4.2.3 Work-life balance**

In OECD countries, more than 11% of employees work 50 hours or more per week, which makes it quite difficult for both men and women to maintain a work-life balance, since the more they work, the less time remains for them to spend on other activities, such as personal care or leisure (OECD 2014). Nevertheless, work-life balance remains to be gendered issue, as research shows that women managers sacrifice their personal life more than their male counterparts (ILO 2015, 112). It is also generally accepted that interrupted working patterns hold back women’s career advancement and consequently wages, and encourage employers to think of them as less committed to work than men or other women with no family responsibilities (Albrecht et al.

1999, 302). It has also been established that, while men are able to have extra minutes of leisure time, women spend more time doing the unpaid housework (OECD 2014). This means that the gendered nature of this phenomenon has severe implications for women's participation on the labour market, and consequently, for the labour market itself (European Commission 2015, 34). Many different measures—whether prescribed by national legislation, or taken up by individual companies—can be used with the aim of improving work-life balance, e.g. flexible working arrangements, good childcare facilities, sharing parental leave and care leaves (European Commission 2015, 35–92). The last two are of particular importance, since the current distribution of childcare responsibilities between parents is such that women tend to shoulder a disproportionate share of childcare duties (Ruhm 1998, 278). However, some experts suggest another model of coping with work-life balance that strives to eliminate the notion of gender by perceiving it as a generational issue, since the attitudes and aspirations of millennial men and women are converging (Harrington et al. 2013). This is reflected in the fact that both men and women nowadays are family-oriented and seek personal life also outside the workplace. Therefore, it is crucial to offer them a working environment in which they are allowed to accommodate personal and family values as part of the way they accomplish their work (ILO 2015, 95).

#### **3.4.2.4 Gender pay gap**

In very short, gender pay gap can be described as a difference in average wages between all women and all men who are engaged in paid employment (ILO 2019c, 16). Regardless of the efforts on the international<sup>73</sup> or European level<sup>74</sup>, women still globally earn approximately 77% of what men earn (ibid.). Since the gender pay gap cannot be solely explained by looking into the differences among factors of education and age, one can seek its causes in (1) discrimination and bias in hiring and pay decisions, (2) women and men working in different industries with female-dominated ones attracting lower wages, and (3) a disproportionate share of unpaid caring and domestic work done by women (Workplace Gender Equality Agency 2019). As the gender pay gap is a widely used indicator of gender inequality, it is commonly used to monitor progress in this field. Therefore, it came as no surprise when the principle of “equal pay for work of equal value” became one of the targets within Sustainable Development Goal 8 (Decent

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<sup>73</sup> ILO Equal Remuneration Convention (No. 100) has so far been ratified by 173 respective countries (ILO 2019b).

<sup>74</sup> The gender pay gap in the EU has remained at 16.4% regardless of the endeavours of the European Commission or EU legislators (Eurofund 2019, 1).

work and economic growth) (ILO 2019c, 18). The gender pay gap also brings consequences for women in later stages of life, when it transforms into a pension gap. Thus, it should be in countries' and enterprises' interest to eradicate it. A good example of endeavours aiming at eliminating the gender pay gap is the Recommendation on strengthening the principle of equal pay between men and women through transparency, which envisages (1) employees' rights to request information on gender pay levels from their employers, (2) employers' duty to report on average gender pay levels, (3) to conduct audits on pay and pay differentials on the ground of gender, and (4) ensure equal pay is being discussed at the appropriate bargaining levels.

### **3.4.2.5 Gender-balanced corporate leadership**

In 2018 the proportion of women on boards of largest publicly listed companies reached 26.7% in the EU, with only France having at least 40% of each gender on boards (European Commission 2019b, 25). Globally, women occupy only 19% of managerial positions, there are 5% of female board presidents, and only 13% of companies have gender-balanced managing bodies in which each gender represents at least 40% (ILO 2017). As evidenced by the discrepancy between the high number of female graduates and the number of women in top-level positions, it is clear that much of the potential of highly skilled women remains untapped, which has both short-term and long-term consequences also for the economy<sup>75</sup> (ibid.). Unfortunately, no legislation in this regard has been adopted on the EU level, leaving this area entirely up to states' willingness. Yet, a few states have taken measures on their own, like France, which passed a law in January 2017 promoting a 40% gender quota in publicly listed companies, as well as those with revenues exceeding €50 million and with 500 or more employees (Deloitte 2017, 52), and now has 44% of women on company boards (European Commission 2019b, 25). However, it is even more difficult for women of colour or women with any other personal grounds (religious, disabilities, etc.) to become part of corporate leadership—for example in 2010, only 3.2% of board seats were occupied by female members of minorities, and only 0.6% by women of colour (Deloitte 2018).

### **3.4.2.6 Gender-based violence and sexual harassment in the workplace**

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<sup>75</sup> Gender parity in the workplace is also an economic one, as McKinsey found that \$12 trillion could be added to global GDP by 2025 by advancing women's equality (HoneyPot 2019).

Violence against women occurs in many different forms, and takes place in various areas, one of which is also the workplace. Until now, there has been no universally accepted definition to explain the terms “harassment” and “violence” in the context of work (De Haan 2008, 28). Nonetheless, there is a consensus on harassment and violence in the workplace encompassing more than just physical forms, but also forms that result in psychological and sexual harm (Chappel and Di Martino 2006, 30). In the EU context, harassment and sexual harassment have mostly become a matter of anti-discrimination law—sexual violence in the world of work is considered a form of discrimination on the grounds of sex, which combines a range of behaviour, such as unwanted advances, inappropriate comments, “jokes”, brief physical contact and sexual assault (McCann 2005, 2). Men and boys can be subject to gender-based violence or sexual violence and harassment as well; nevertheless, the majority of victims tend to be women and girls (ILO 2018, 11). The main problem with gender-based violence and sexual violence or harassment in the workplace is definitely the issue of underreporting, as victims are afraid of losing their jobs if they use any kind of judicial, or even non-judicial, remedies (ILO 2018, 78).

#### **3.4.2.7 Monitoring and advocating gender equality**

In order to successfully implement measures and enhance their effectiveness in particular enterprises, it is of crucial importance for them to track statistics and gender-disaggregated data, which comprehensively follow the satisfaction flow of the company’s employees (OHCHR 2018a, 23). Accordingly, individual gender equity plans can be developed and implemented. The most common tool for enterprises to do so is a participatory gender audit, which has already been described in the methodology part. Gender audits can also be performed at governmental bodies, such as ministries, and most of all, gender audits can also be applied to the state budgeting (Swirski 2002, 4). Along with the monitoring of progress, advocating gender equality by business entities is just as important. This can be done in numerous different ways, such as pledging to the UN HeForShe campaign (HeForShe 2019), becoming one of UNGC business entities, or even with less declarative action, but by supporting the local community in raising awareness on gender equality or its particular aspects (e.g. an IT company investing in women studying IT to encourage them in pursuing their careers in “traditionally male” professions) (Fortune 2019).

#### **4. AN OVERVIEW OF THE REGULATION AND SITUATION IN SLOVENIA REGARDING GENDER EQUALITY IN THE WORKPLACE**

The women's movement (or feminist movement) enjoys the title of the social movement with the longest tradition in Slovenia (Jogan 2001, 320). Women participants of the first wave of the movement fought for the right to vote, equal pay, pension and insurance for all workers, the right to abortion, and equality of children born in and out of wedlock (ibid.). Since this struggle took place during World War II, the movement was mainly focused on charity work, and also collaborated closely with the national liberation movements (Jogan 2001, 22). It was in 1946 that women's right to vote was enshrined in the Constitution of the then Yugoslavia, but already in 1942 the right to vote was granted to all women in the territory controlled by the national liberation movements. Moreover, the Constitution of that time also stipulated equality of women and men in marriage, and legalised divorce and the right to abortion (Leskošek 2006). The first wave was followed by the second one in the late 1970s, reaching its peak in the 1980s, which emerged from revolt against patriarchal attitudes towards women, also reflected in the ruling party's operation (Dobnikar 2009).

The women's movement of the Socialist Federal Republic of Yugoslavia significantly contributed to the later established gender equality policy in Slovenia, especially to its institutionalisation. A pivotal moment for gender equality in Slovenia was an attempt to revoke the right to abortion, an initiative led by conservative political parties when a new Constitution was being adopted after Slovenia became independent in 1991 (Jalušič 2002). This united a majority of political parties and all feminist organisations in a common struggle for gender equality, leading to the establishment of the Commission for Women's Politics by the National Assembly, and later the Office for Women's Politics (Humer 2007), and paved the way to the gender equality policy of today.

##### **4.1 Slovenia's advances in gender equality in the workplace due to EU accession**

While Slovenia started its EU accession negotiations in the late 1990s, the country officially joined the bloc on 1 May 2004 in the so-called big-bang enlargement, together with nine other countries (Blockmans 2014). In order to join, some of its national legal order had to be adapted to the *acquis communautaire* already before accession. In the field of gender equality, this

meant the adoption of a legal framework for gender equality and non-discrimination. The National Assembly therefore passed the Equal Opportunities for Women and Men Act<sup>76</sup>, and the Implementation of the Principle of Equal Treatment Act<sup>77</sup>, which also served as a basis for the adoption of the principal national policy document in the field of gender equality (European Parliament 2015, 7).

Gender equality is first and foremost one of the EU's founding values, and dates back to 1957 when the principle of equal pay for work of equal value became part of the Treaty of Rome<sup>78</sup>. On its journey of development, the EU has dedicated itself significantly to gender equality by adopting equal treatment legislation, gender mainstreaming, and guaranteeing specific measures for the advancement of women (European Commission 2019a). With the adoption of the Strategy for Equality Between Women and Men 2010–2015<sup>79</sup>, five key areas were identified, which are still valid and therefore promoted by the EU today. This was followed by the 2011–2020 European Pact for Gender Equality<sup>80</sup>, which promoted particularly the closing of the gender gaps in employment and social protection, promoting better work-life balance, and combating all forms of violence against women. Building on the previous two documents, the Strategic Engagement for Gender Equality 2016–2019<sup>81</sup> was adopted in 2016, highlighting the contribution of gender equality to economic growth and sustainable development. It established the European Commission's work programme with respect to gender equality for the respective period of time, and offered a comprehensive framework for its commitments in the following areas of action: (1) equal economic independence for women and men, (2) equal pay for work of equal value, (3) equality in decision-making, (4) dignity, integrity and ending gender-based violence, and (5) promoting gender equality beyond the EU.

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<sup>76</sup> Equal Opportunities for Women and Men Act—*Zakon o enakih možnostih žensk in moških* (Official Gazette of the Republic of Slovenia, No 59/02, 61/07 – ZUNEO-A in 33/16 – ZVarD).

<sup>77</sup> Implementation of the Principle of Equal Treatment Act—*Zakon o uresničevanju načela enakega obravnavanja* (Official Gazette of the Republic of Slovenia, No 93/07 – uradno prečiščeno besedilo in 33/16 – ZVarD).

<sup>78</sup> Treaty of Rome, signed in Rome on 25 March 1957, entered into force on 1 January 1958.

<sup>79</sup> The European Commission's Strategy for Equality Between Women and Men 2010–2015, adopted on 8 March 2011, which sets out the EU's priorities in the field of gender equality.

<sup>80</sup> The Council of the European Union's 2011–2020 European Pact for Gender Equality, adopted on 7 March 2011, which acts as a cornerstone for all further positions and directions taken by the EU regarding gender equality.

<sup>81</sup> The European Commission's Strategic Engagement for Gender Equality 2016–2019, adopted on 3 December 2015, setting the grounds for actions and activities on gender equality performed by the EU in 2016–2019.

With EU accession, Slovenia was also supposed to transpose its equality directives<sup>82</sup> into national law, establishing an independent and autonomous body tasked with promoting equality and combating discrimination—including discrimination based on gender. However, Slovenia did so with a 12-year delay, passing the Protection Against Discrimination Act (PADA)<sup>83</sup> only in May 2016, because the European Commission was on the verge of launching an infringement procedure. Although PADA—as will be shown in the next section—encompasses a wide range of personal grounds, areas and forms of discrimination, it was still written in a way that does not provide any true sanctioning powers. Furthermore, the Slovenian national equality body was not provided with enough resources to adequately sustain its organisational structure and operations (Advocate of the Principle of Equality 2018, 15).

#### 4.2 Scrutiny of Slovenian national legislation on gender equality in the workplace

The Slovenian legislative protection in the field of gender equality consists of the Constitution and two other laws, which address the issue in a holistic approach, offering general protection of the non-discrimination clause, and other specifically oriented legislation, providing legal substance for particular aspects of gender equality protection, such as working relations, work-life balance, etc.

Already the Slovenian Constitution<sup>84</sup> recognises gender as one of the personal grounds on which people should not be discriminated (Article 14). Since it defines Slovenia as a democratic and a welfare state governed by the rule of law, human rights and anti-discrimination as such must be one of its core values in order to make the system work. The Constitution also ensures mechanisms for dealing with human rights violations, such as the so-called constitutional

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<sup>82</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; 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 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); Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

<sup>83</sup> Protection Against Discrimination Act—*Zakon o varstvu pred diskriminacijo* (Official Gazette of the Republic of Slovenia, No 33/16 in 21/18 – ZNOrg).

<sup>84</sup> Constitution of the Republic of Slovenia—*Ustava Republike Slovenije* (Official Gazette of the Republic of Slovenia, No 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 in 75/16 – UZ70a).

complaint (Article 160). But the first to truly define gender equality and specify the areas of gender equality protection in Slovenia was the Equal Opportunities for Women and Men Act, which stipulates that

gender equality means that women and men are equally involved in all areas of public and private life, that they have the same status and equal opportunities to enjoy all their rights and to develop the personal potentials with which they contribute to social development, and the same benefits from the results of this development (Article 4).

Furthermore, the same law defines equal treatment of both sexes, and determines the state administration bodies as well as other stakeholders (political parties, the Ombudsperson) and their roles in promoting gender equality through their work. For example, each ministry must designate a coordinator for equal opportunities of women and men in their working environment. This law serves as a legal basis for the national programme on gender equality. It used to apply to the previously independent Office for Equal Opportunities, which also had powers to try individual cases. It was later downgraded to the Sector for Equal Opportunities, and now operates under the Ministry of Labour, Family, Social Affairs and Equal Opportunities (Antić Gaber 2012)<sup>85</sup>. In 2018, a proposal to amend the Equal Opportunities for Women and Men Act was made, but did not pass in the National Assembly. It envisaged a 40% gender quota on the boards of all public companies and in local government bodies (Državni zbor 2019).

In 2004, the equal treatment legislation was upgraded with the Implementation of the Principle of Equal Treatment Act, which aimed to ensure the implementation of this principle in all areas of social life regardless of an individual's personal grounds. Under this act, an advocate of the principle of equality was appointed—a public official within the structure of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, who is in charge of hearing cases of possible unequal treatment. Nevertheless, this law was replaced in 2016 by PADA. PADA was the first law in Slovenia to define the notion of discrimination (Article 4). In terms of gender equality in the workplace, this law made a huge step forward. It also provides other definitions related to discrimination—such as indirect discrimination (Article 6), harassment and sexual harassment (Article 8), incitement to discrimination (Article 10), victimisation (Article 11), and

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<sup>85</sup> Even the Office for Equal Opportunities in a sense meant a reduction in the importance of gender equality in Slovenia, since its predecessor was the Office for Women. Today Slovenia does not have a separate special body for dealing with gender equality issues only (Antić Gaber 2012).

severe forms of discrimination, i.e. mass discrimination, discrimination on multiple counts, persistent or repeated discrimination, and discrimination that is difficult to remedy due to the damage caused (Article 12). For gender-based discrimination in the workplace, PADA also brings another level of protection due to the scope of its mandate, which also extends to the private sector. This means that now people employed in private companies are able to report cases of alleged discrimination to the Advocate of the Principle of Equality, and claim damages if the employer is found guilty of discrimination against them (Article 2).

In addition to general anti-discrimination or gender equality legislation, Slovenia also adopted several more specific laws, which also relate to gender equality in the workplace. First and most important such law is definitely the Employment Relationships Act, which regulates all kinds of working relations between employers and employees. From the perspective of gender equality, the law clearly prohibits any sort of discrimination or retaliation (Article 6). Article 7 still represents the first legal prohibition of sexual harassment and mobbing in the workplace, prescribing the penalties for an employer that is found guilty of any of these assaults. This law also prohibits publishing job vacancies only for men or women (Article 27), and lists gender as one of the reasons on which it is illegal to fire employees (Article 90). Furthermore, the law stipulates the “equal pay for equal work” principle, regardless of one’s gender (Article 133). According to the law, an employer is penalised not only for mobbing or sexually harassing employees, but also for failure to ensure a safe environment for their employees resulting in them being harassed (Article 217). Potential violations are investigated by the Labour Inspectorate, which in 2017 found 235 cases of sexual harassment and mobbing in the workplace (Inšpektorat za delo 2018, 63).

Other laws setting the legal basis for gender equality during people’s working years are the Pension and Disability Insurance Act<sup>86</sup> (retirement criteria are almost equalised between men and women), and the Parental Protection and Family Benefits Act<sup>87</sup>, which ensures 105 days of maternity leave (starting 28 days before the child’s birth), and another 260 days of parental

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<sup>86</sup> Pension and Disability Insurance Act—*Zakon o pokojninskem in invalidskem zavarovanju* (Official Gazette of the Republic of Slovenia, No 96/12, 39/13, 99/13 – ZSVarPre-C, 101/13 – ZIPRS1415, 44/14 – ORZPIZ206, 85/14 – ZUJF-B, 95/14 – ZUJF-C, 90/15 – ZIUPTD, 102/15, 23/17, 40/17 in 65/17).

<sup>87</sup> Parental Protection and Family Benefits Act—*Zakon o starševskem varstvu in družinskih prejemkih* (Official Gazette of the Republic of Slovenia, No 26/14, 90/15, 75/17 – ZUPJS-G in 14/18).

leave, which can be divided among both parents equally (or the mother can transfer 100 days to the father, or the father can transfer all of his 130 days to the mother) (Article 30).

Another two laws worth mentioning when talking about gender (in)equality in the workplace are the National Assembly Election Act<sup>88</sup>, and the Local Elections Act<sup>89</sup>, both prescribing gender quotas. However, each prescribes the quotas in a different way. For local elections a zipper principle is used, requiring candidates to be listed in a continuous sequence of man-woman-man or woman-man-woman throughout the whole list (Article 70a). The gender quota for parliamentary elections, on the other hand, only requires a minimum of 35% representation of each gender on each slate, regardless of the position on the list (Article 43). Due to a persistent stigma in the Slovenian political environment, women therefore rarely make it to Parliament despite the quotas. Not only do political parties usually put just enough women on their lists to meet the 35% quota, but they also run in districts where the party does not enjoy sufficient support for the candidate to be elected (Antić Gaber 2011).

Other laws that do not regulate the particular field of gender equality in the workplace specifically, but nevertheless contribute to promoting and ensuring gender equality in Slovenia are: the Marriage and Family Relations Act<sup>90</sup> (enabling *inter alia* both men and women to get 50% of all the assets obtained by both partners during the time of marriage or civil partnership, referring to material and non-material work alike), the Inheritance Act<sup>91</sup>, and, of course, the Domestic Violence Prevention Act<sup>92</sup> (which is not gender specific, and applies to both men and women).

#### 4.3 Implementation of the legislation through action plans and other undertakings

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<sup>88</sup> National Assembly Election Act—*Zakon o volitvah v državni zbor* (Official Gazette of the Republic of Slovenia, No 109/06 – uradno prečiščeno besedilo, 54/07 – Constitutional Court ruling in 23/17).

<sup>89</sup> Local Elections Act—*Zakon o lokalnih volitvah* (Official Gazette of the Republic of Slovenia, No 94/07 – uradno prečiščeno besedilo, 45/08, 83/12 in 68/17).

<sup>90</sup> Marriage and Family Relations Act—*Zakon o zakonski zvezi in družinskih razmerjih* (Official Gazette of the Republic of Slovenia, No 69/04 – uradno prečiščeno besedilo, 101/07 – Constitutional Court ruling, 90/11 – Constitutional Court ruling, 84/12 – Constitutional Court ruling, 82/15 – Constitutional Court ruling, 15/17 – DZ in 30/18 – ZSVI).

<sup>91</sup> Inheritance Act—*Zakon o dedovanju* (Uradni list SRS, No 15/76, 23/78, Official Gazette of the Republic of Slovenia, No 13/94 – ZN, 40/94 – Constitutional Court ruling, 117/00 – Constitutional Court ruling, 67/01, 83/01 – OZ, 73/04 – ZN-C, 31/13 – Constitutional Court ruling in 63/16).

<sup>92</sup> Domestic Violence Prevention Act—*Zakon o preprečevanju nasilja v družini* (Official Gazette of the Republic of Slovenia, No 16/08, 68/16 in 54/17 – ZSV-H).

In order to ensure and monitor the implementation of this national legislation on gender equality, several bodies have been set up by the Slovenian government, and the National Assembly has also passed a Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020<sup>93</sup>. It is aimed at (1) eliminating imbalances between women and men, and gender segregation in the field of employment, (2) improving the social inclusion of women and men, (3) abolishing barriers in the way of achieving an appropriate work-life balance, (4) closing the gap between women and men in education and science, (5) improving women's and men's health, (6) zero tolerance towards violence against women, (7) eliminating gender stereotypes in the society, particularly in the media, culture and sport, (8) reducing obstacles in a way of reaching balanced participation and representation of women and men in different fields of political and social life, and (9) strengthening gender mainstreaming in Slovenia's development, peace-keeping and other extraterritorial initiatives.

In 2014, an Expert Council on Gender Equality was established by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which serves as a monitoring body not only for the previously mentioned Resolution, but also for the Equal Opportunities for Women and Men Act. Other tasks of the Expert Council include (1) monitoring and evaluating the situation and progress in achieving equality between women and men in various areas of social life, (2) making initiatives, proposals and recommendations for legislation and measures to achieve equality between women and men, (3) making initiatives for promoting education, awareness and research in the field of gender equality, and (4) consultation on cooperation with EIGE (Ministry of Labour, Family, Social Affairs and Equal Opportunities 2019). It has been working in its current composition since 2018, when a new government took office.

Otherwise, the main policy-maker with regard to equality between women and men is the Equal Opportunities Department of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. It prepares draft regulations and measures for improving the situation of women and men, and aims at the elimination of discrimination on the grounds of gender. It provides expert support to ministries and local communities in integrating the equality perspective of women and men into policies and measures (gender mainstreaming). It also prepares the National Programme for Equal Opportunities for Women and Men periodically, analyses and

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<sup>93</sup> Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020—*Resolucija o nacionalnem programu za enake možnosti žensk in moških 2015–2020* (Official Gazette of the Republic of Slovenia, No 84/15). Adopted by the National Assembly on 27 October 2015.

reports, carries out awareness-raising campaigns, cooperates with the EU, international organisations and the civil society. At the systemic level of the area of non-discrimination, it coordinates the tasks of ministries and government services in accordance with PADA (ibid.).

As regards the particular field of business and human rights, Slovenia is also subject to the Council of Europe's Recommendation on Human Rights and Business<sup>94</sup>, which seems very similar to the UN Guiding Principles, but has some particularities reflecting the European context, such as additional protection of workers, children, indigenous peoples and human rights defenders (paras 58–70). Moreover, there is another difference, which echoes loud and clear, which is the disagreement of the European states with the second pillar of the UN Guiding Principles. Instead of the responsibility of enterprises, the pillar in the Council of Europe's Recommendation speaks only of state action to enable corporate responsibility to respect human rights (paras 13–19). This might in part explain the absence of this pillar in Slovenia's National Action Plan, as examined below.

In late 2018, the Slovenian government (under the guidance of the Ministry of Foreign Affairs) finally adopted the National Action Plan on Business and Human Rights<sup>95</sup>, which serves as a strategy for the implementation of the United Nations Guiding Principles on Business and Human Rights on the national level. It was heavily criticised by several legal experts, as well as Slovenian non-governmental bodies, such as the equality watchdog. What for example Letnar Černič (2017) found surprising about the draft was that it presented no implementation plan for the second pillar of the UN Guiding Principles on the obligation of legal entities to respect human rights, and in particular Principle 11, which stipulates that economic operators must respect human rights. The introductory part of the draft's Chapter IV stipulates that legal entities must respect the current Slovenian constitutional and legislative framework, but their obligation is neither elaborated nor is a precise plan provided for the implementation of the second pillar. He even raised a point that some of the wordings in the draft were contrary to the current constitutional order, which already requires companies to respect and protect human rights. Legal entities must comply with the Constitution and laws of the Republic of Slovenia. Therefore, the absence of a chapter on obligations of companies for respecting human rights is

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<sup>94</sup> Recommendation CM/Rec(2016)3 on Human Rights and Business, adopted on 2 March 2016 by the Committee of Ministers.

<sup>95</sup> National Action Plan on Business and Human Rights—*Nacionalni akcijski načrt za spoštovanje človekovih pravic v gospodarstvu*. Adopted by the Government of the Republic of Slovenia on 8 November 2018.

difficult to understand, since it already has a legal basis in the Slovenian constitutional order (ibid.). The main drawback of the draft Action Plan is therefore that it fails to state clearly that Slovenian legal entities are obliged to respect and protect human rights already by the existing constitutional and legal system, and the draft completely ignores the second pillar and part of the third pillar of the UN Guiding Principles. Also, the state's efforts to monitor Slovenian companies in their foreign operations should be included among the priorities (ibid.). Problems in asserting companies' liability for human rights violations are evident in the Slovenian legal order, and do not arise only from a partially incomplete and ineffective domestic legal order. There is also an obvious lack of clarity in the practical implementation of the institutional and regulatory framework (ibid.). Nevertheless, from the perspective of gender equality, the Slovenian Action Plan is much more telling than the UN Guidelines themselves. Gender equality as such is already mentioned as one of the top priorities (Vlada RS 2017, 6). Furthermore, great emphasis is put on mobbing and sexual harassment in the workplace (Vlada RS 2017, 13). Not only does Principle 3 list equal opportunities for women and men as important, but it also provides two sets of activities for furthering gender equality in the business environment: (1) activities for sharing information and raising awareness on the rights of employees, and (2) increased inspection of provisions prohibiting discrimination in the workplace (Vlada RS 2017, 17). The aspect of gender equality can also be seen in the expansion of Principle 5 as the notion of women's empowerment (Vlada RS 2017, 25). Moreover, Principle 8 imposes *inter alia* the integration of gender equality in local policies and measures (Vlada RS 2017, 30).

The Human Rights Department of the Ministry of Foreign Affairs also hosts an Inter-Department Working Group on Human Rights, which *inter alia* coordinates the cooperation between the government and civil society in the field of human rights, also dealing with issues of gender equality when they are raised by the relevant stakeholders based on specific cases (Ministry of Foreign Affairs 2019b).

Furthermore, the Ministry of Education, Science and Sport set up in 2011 a Women in Science Commission, which monitors the situation of women in the field of science and produces proposals for improvement (European Parliament 2016, 18). Likewise, the Ministry of Agriculture, Forestry and Food also recently (in March 2019) established an Expert Council for Women in the Countryside (Ministry of Agriculture, Forestry and Food 2019).

By taking an overarching review of the action plans and other undertakings (primarily) by the Slovenian government to implement gender equality and mainstream gender across the state administration and private sector companies, we can see that many initiatives have been put in place. Yet, only a few of them are pursued with an inclusive approach that also includes men in the efforts for gender equality. Even fewer are result-oriented in terms of the benefits that men (or even companies) can reap from successfully implementing gender equality in the workplace. This strongly affects the actual implementation of gender equality, because not everyone feels they are on board.

#### **4.4 The situation of gender equality in Slovenia in practice**

At the end of 2018, women accounted for 50.3% of the total population of Slovenia. Since they also tend to live longer than men, only one third of the population aged 80 and more are men (SURs 2019). Furthermore, 58% of all students enrolled in tertiary education are women. Statistical data also show better academic performance for women—in 2017 for every 100 men, 159 women obtained a bachelor degree (*ibid.*). Nevertheless, these results are not translated into the statistics of different aspects of the workplace and beyond (or later in women's lives). The Gender Equality Index<sup>96</sup> measured by the European Institute for Gender Equality (EIGE), for example, showed that Slovenia made no progress in the domain of work in the period between 2005 and 2015 (EIGE 2017a, 14). Even before entering the labour market, we can detect segregation in the domain of knowledge, showing that women still tend to dominate studies in fields such as education (78% of female students), arts and humanities (65% of female students), and health and welfare (71% of female students), while men more often choose to study in STEM fields (EIGE 2017a, 35).

Nevertheless, when entering the labour market, differences start to emerge at the very beginning. The employment rate in Slovenia in 2018 was 79.8% for men, and only 71.6% for women (European Commission 2019b, 64). While only 6% of men in Slovenia work part time,

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<sup>96</sup> The Gender Equality Index is a comprehensive indicator that measures the complex concept of gender equality and, based on the EU policy framework, assists in monitoring progress of gender equality across the EU over time. It measures gender gaps between women and men, and considers them to be a detriment for either women or men, as equally problematic. Along the six core domains (work, money, knowledge, time, power and health) of the Gender Equality Index, scores are assigned to Member States between 1 for total inequality and 100 for full equality (EIGE 2019).

the figure for women is 13.7% (European Commission 2019b, 66). The gender pay gap in 2018 remained at 8% in favour of men, and the pension gap was 17.5% (European Commission 2019, 69). Furthermore, segregation continues, resulting in 25.9% of women having had to change their occupation, and 18.8% of women having had to change the sector where they work, in order to balance them in accordance with gender. Furthermore, analyses show that the increase in the number of hours women spend on the labour market does not directly correspond to more equal sharing of domestic and caregiving work. In Slovenia, there is still a more than 15-hour difference in weekly time dedicated to this between women and men (European Commission 2019, 10). A research by the OECD (2014) even measured the estimated time women and men devote to certain activities. Even though Slovenia may have performed much better compared to other European countries, the results still showed a significant difference between how women and men spend their time outside their workplace. Women, for example, tend to do 286 minutes of unpaid work per day, while men's average is only 166 minutes. On the other hand, men dedicate 337 minutes of their free time to leisure activities, while women are only able to do so with 212 minutes per day (ibid.).

In the domain of power, Slovenia has outdone itself by introducing gender quotas for parliamentary and local elections. However, it quickly became obvious that the quotas were not a sufficient tool to ensure gender balance in the National Assembly. For example, when the requirement to have at least 35% of candidates of each gender was introduced, the share of women in parliament jumped from 16.7% to 35.6% in the 2011 election. However, the share fell drastically to only 24.4% by 2018 (European Commission 2019b, 35). This means that despite the gender quotas, Slovenia still fell short of even the EU-28 average of 27.8% of female members of parliament. Another aspect in the domain of power is the economy, where women in Slovenia also experience underrepresentation. However, no gender quotas have so far been introduced in this area. Statistics show that in Slovenia women hold 47% of managerial positions (Eurostat 2019, 2), 28% of board members are women, and they hold only 25% of higher executive positions (Eurostat 2019, 5).

Overall, when comparing Slovenia to other countries in the EU or even globally, we can conclude that conditions for women in Slovenia in terms of gender equality are among the best in the world. Not only was Slovenia one of three countries that made greatest progress between 2005 and 2015, according to the Gender Equality Index (EIGE 2017a, 8), scrutiny of its laws

by the World Bank Group (2019, 29) ranked Slovenia as 39<sup>th</sup> in the world in the *Women, Business and the Law 2019* report, with a total score of 90.63 out of 100. This was also encouraged by Slovenia removing restrictions on women working in construction (World Bank Group 2019, 17), and being one of the countries that are gradually levelling out the retirement age for men and women (World Bank Group 2019, 19). It is also often praised for affordable childcare facilities of high quality, and for meeting the Barcelona objectives<sup>97</sup> (European Commission 2019, 18). However, the country performs worst in terms of women's chances of getting paid equally and getting equal pensions (World Bank Group 2019, 29).

Based on an analysis of statistical data provided by all relevant stakeholders involved in progressive initiatives regarding gender equality, we can conclude that the legislation itself is not nearly enough to tackle gender (in)equality in the workplace. There are also intangibles at play, such as gender stereotypes and gender roles deeply rooted in the Slovenian society. This can be further examined with the help of a research by the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities, which conducted a public opinion poll looking into the positions of Slovenian men and women on gender equality and equal opportunities. The results showed both men and women are aware of what the term “equal opportunities” means (Möller-Slawinski 2016, 7). Nevertheless, a majority of men believe that equal opportunities are already in place (ibid.). While most women are certain equal opportunities are primarily meant for improving their situation, men feel excluded from the issue of gender (in)equality (Möller-Slawinski 2016, 8). Regarding the division of roles and family responsibilities between the two sexes in Slovenian families or partnerships, there is a big gap between the positions and expectations, and practice, which is still quite traditional. While on the general level, there is almost no difference in the positions of women and men—they both want an equal partnership—real-life practice shows a different image. It turns out that in practice there are no equal opportunities and that the care for the balancing of professional and family life lies especially on the shoulders of women, who are still primarily in charge of the household and children (Möller-Slawinski 2016, 31). In general, the research concluded that there was no noticeable readiness from men to relieve the burden of their partners by taking over more of the parental and household responsibilities, even though everyone is aware that after the birth of a child, life also changes for men, and not just women. This is why after the

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<sup>97</sup> Barcelona objectives are standards set by the European Commission on the development of childcare facilities for young children, with a view to increase female labour participation, strike a work-life balance for working parents, and bring about sustainable and inclusive growth in Europe (European Commission 2018b).

birth of a child we can even detect a return to traditional patterns, as young women take over the majority of caretaking responsibilities. Some young men, however, prefer to defer parenting rather than sacrificing their careers (ibid.). A similar gap between the expectations and the actual situation in practice is also shown in terms of the options women and men have when trying to achieve leadership positions in the society. Women are aware, and men also confirm this claim, that the leading positions are still mostly in the male domain, and that women have to sacrifice more in order to reach them. Care for the family and household tasks were highlighted by women as one of the obstacles to taking on leading positions (Möller-Slawinski 2016, 32). Although we can generally argue that younger generations (both men and women) are striving to overcome the traditional understanding of the roles of the sexes, it is interesting that a majority of respondents still perceives the ideal woman as versatile—a woman who is able to equally control the household, children and paid work, i.e. a woman that combines both traditional expectations and qualities (good mother and housewife), and is also able to coordinate this with a successful career, independence, education and self-confidence (ibid.). On the other hand, men are concerned about their role in the family, partnership and society. It is noticeable that they feel a great deal of anxiety due to the disappearance of traditional male role models in the society, so they often cultivate the ideal of a man with an emphasised traditional character (Möller-Slawinski 2016, 33).

From the review of several statistical indicators, we can clearly see that Slovenia might be on the right track towards reaching gender equality; however, the path still seems much too long and pace much too slow. Moreover, we can again conclude that inclusion of men in the efforts for gender equality is not yet mainstreamed enough. Even when looking through the statistics, it is not difficult to detect how also data are women-focused, and do not show how men are being left behind (and in which areas of life) due to the inefficient implementation of gender equality.

## 5. A CASE STUDY OF GENDER EQUALITY IN THE WORKPLACE IN SLOVENIA

In order to investigate whether men and women have different perceptions regarding the realisation of their human rights in the workplace, four companies were thoroughly examined in terms of their employees' and leaderships' opinions, past efforts in the field of gender equality, and working processes—companies A, B, C and D<sup>98</sup>. The companies differed in terms of size and ownership, as well as industry sector. Company A is a micro-company, which started out as a start-up in 2014 and produces organic cosmetics. It became the most successful Slovenian start-up in 2016, and employed 7 people at the time of the research (2 of them men). Company B is a Slovenian subsidiary of a large multinational company, which operates in the IT field. At the time of the research, it had 82 employees, the majority of whom were men. Company C had a similar number of employees at the time of the research (93), but operates as a public utility. Last but not least, company D operates in the field of construction, and employed a bit less than 250 people at the time of the research.<sup>99</sup> While companies A, B and D are privately owned, company C is a public company (owned by one of the Slovenian municipalities). Furthermore, the companies were chosen from different geographical locations in Slovenia—companies A and B are based in Ljubljana (the Slovenian capital), while company C operates in the southern part of Slovenia, and company D in the eastern part. This is very important, because the eastern part of the country is the least developed one, while the central region (where Ljubljana is located) and the southern part are much more developed in terms of industry and economic activity.

The data for the analysis below were collected during the course of a project called *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector*, which the author implemented in Slovenia from July to December 2018. All the data collected during the project are available upon request. Information was gathered using surveys (consisting of statements that needed to be appraised, and open-ended questions that allowed the respondents to commend existing good practices and propose possible new solutions) conducted with individual employees of the companies involved in the research. Along with this methodological approach, interviews were

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<sup>98</sup> The actual names of the companies are stored by the author, and may be disclosed upon request.

<sup>99</sup> The classification in the Slovenian legislation therefore categorises company A as a micro-company, companies B and C as small companies, and company D as a medium-sized company (Article 55 of Companies Act – *Zakon o gospodarskih družbah* (Official Gazette of the Republic of Slovenia, No 65/09, 33/11, 91/11, 32/12, 57/12, 44/13 – Constitutional Court Ruling, 82/13, 55/15, 15/17 in 22/19 – ZPosS).

carried out with the corporate leadership of each company involved in the survey. The surveys for employees were available online and in printed form. From company A, all 7 employees (including the director) filled out the questionnaire. At the other three companies, the survey did not include all the employees, but company B had 45 respondents (26 men and 19 women), company C had 56 (31 men and 25 women), and company D had 173 (104 men and 69 women). Since companies B, C and D operate in traditionally male-dominated fields, it is not surprising that more men than women took part in the survey.

The average age of respondents at company A was 31.4 years, at company B 35.2 years, at company C 41.2 years, and at company D 42 years. Moreover, the respondents' average duration of employment was 2.5 years at company A, 7.8 years at company B, 3.8 years at company C, and 13.2 years at company D.

## 5.1 Gender stereotypes

The survey included five statements aimed at determining the presence of gender stereotypes in a direct (presence of gender stereotypes and company's attitude towards them) or indirect way (cooperation of both men and women in team work, promoting gender-sensitive language, different perceptions due to different sex). The statements were divided into two different units of analysis because the assessment techniques differed. While the first three statements were posed in a way that a higher average number meant a better score for companies' behaviour, the remaining two were posed in the opposite way, i.e. the lower the average mark, the better the situation at the particular company.

**Table 2:** Analysis of employees' answers regarding gender stereotypes in four companies examined (with higher average number resembling better score)

No.	Statement <sup>100</sup>	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S1	The company where I am employed promotes team work involving men and women as equal partners.	5	4.5	3.1	3.6	3.2	3.2	3.2	2.2
S2	The company where I am employed promotes gender-sensitive language, for example in terms of the language used, the suitability of jokes, etc.	4.5	4.3	3.2	3.2	2.8	4	3.3	3.2
S3	In the company where I am employed, gender stereotypes are considered undesirable and employees are consistently reminded of them.	4.4	2.5	2.4	3.2	2.3	2.2	3.8	3.8
	<b>TOTAL</b>	<b>4.6</b>	<b>3.8</b>	<b>2.9</b>	<b>3.3</b>	<b>2.8</b>	<b>3.1</b>	<b>3.4</b>	<b>3.1</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

From the total sum of the marks for specific statements, we can easily see a huge gap between the marks of company A and of the other three companies examined. This could be potentially explained as a consequence of the companies' size—while company A only employed 7 people at the time of the research, the other three companies all had over 80 employees, which makes it more difficult to foster particular relationships between corporate leadership and each individual employee. This gap will be visible throughout the survey results. When comparing the total results between the sexes, we can see that at companies A and D women on average more frequently think that gender stereotypes are not sufficiently addressed or taken care of, while it is the men who think so more at companies B and C. Nevertheless, this might also be

<sup>100</sup> To which extent do you agree with the given statement on a scale of 1–5 (1 meaning “completely disagree” and 5 meaning “fully agree”).

an indicator of women being more aware of gender stereotypes and their consequences, while men tend to take them less seriously in general. The most disturbing partial results can be observed for S3, where most of the respondents gave low marks—both among men or women (with the exception of company A, where men gave a substantially higher average mark than women). This leads to a conclusion that gender stereotypes within companies are still under-addressed, leaving open space for potential escalation of employees’ behaviour towards discriminatory practices. It is therefore not surprising that several respondents listed interactive workshops and lectures on gender equality among their proposals for improving the situation at their respective companies. Gender-balanced team work does not seem to be a problematic at the examined companies, while gender-sensitive language still poses some issues (which might be related to lack of awareness of its importance).

**Table 3:** Analysis of employees’ answers regarding gender stereotypes in four companies examined (with lower average number resembling better score)

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S4	In the company where I am employed, there is a difference between how issues are perceived by men and by women.	4.2	4.3	4.2	4.6	4.3	4.5	2.8	3.3
S5	Gender stereotypes are present in the company where I am employed.	4.5	4	3.6	3.5	4.2	3.7	3.1	2.7
	<b>TOTAL</b>	<b>4.4</b>	<b>4.2</b>	<b>3.9</b>	<b>4.1</b>	<b>4.3</b>	<b>4.1</b>	<b>3</b>	<b>3</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let’s Head Private: Gender Mainstreaming in Slovenia’s Private Sector* (2018).

For positive results in the last two statements regarding gender stereotypes, the average marks should be as low as possible. However, we can see that this is not the case, since the total points in some cases are even higher than in the previously examined statements. We could therefore say that some gender stereotypes are still very much inherently present among the employees

of the examined companies, such as the notion of different perceptions and understanding of the world solely on the grounds of someone’s sex (S4). Moreover, it is evident that gender stereotypes are still perceived as strongly present in the workplace (S5)—the interesting thing is that men tend to see them more than women.

## 5.2 Discriminatory practices in recruitment and promotions

Under this section, 14 statements from the survey can be categorised. The first 9 are aimed at higher marks, and in the last 5 lower marks describe the best possible situation in a particular company. Topic-wise they encompass various perceptions and feelings, which could show discontent or even discrimination in company practices with regard to gender equality—both in recruitment, as well as in terms of working processes and conditions.

**Table 4:** Analysis of employees’ answers regarding discriminatory practices in recruitment and promotions in four companies examined (with higher average number resembling better score)

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S6	I believe that in the company where I am employed the principle of gender equality in recruitment is promoted and implemented.	4.8	4.2	3.9	4.3	4.8	3	4.4	3.5
S7	I believe that in the company where I am employed, the principle of gender equality in the workplace is promoted and implemented.	4.8	4.8	4.3	4.5	4.7	4.2	4.8	3.5
S8	My superiors are familiar with my career aspirations.	5	3.8	4	3.8	3.4	3	3.9	2.5
S9	The work I do is in line with my career aspirations.	4.4	3.8	3.3	4.1	4	3.7	3.1	2.8

S10	I wouldn't have a problem to ask for a rise if I thought I deserved it.	4.8	4	4.5	3.6	3.7	3	3	2.8
S11	I feel accepted in the company where I am employed.	5	4.5	4.4	4.5	4.4	4.3	3.5	3.3
S12	In the company where I am employed, I do not feel the effects of unequal treatment on the basis of my gender.	5	4.5	3.6	4.2	4.3	3.3	2.8	3.2
S13	Gender issues are dealt with in a serious manner and are discussed by both men and women.	4.8	1.3	2.8	2.6	2	2.7	3.4	3.2
S14	I believe that the company where I am employed is friendly towards my gender.	5	4.3	2.1	2.3	1.7	1.8	2.4	3.2
<b>TOTAL</b>		<b>4.8</b>	<b>3.9</b>	<b>3.7</b>	<b>3.8</b>	<b>3.7</b>	<b>3.2</b>	<b>3.5</b>	<b>3.1</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

Taking a look at the total average marks, the first things that pops out is that women feel less content (or more discriminated against) in recruitment processes or in the workplace in 3 out of 4 companies (A, C and D). Only company B shows a different picture, but with a very small difference between the average totals for men and women. Nevertheless, this section consists of 9 statements, some of which definitely need further, more individual assessment. With S6 and S7, we can observe that women are less satisfied with the implemented practices of gender equality both when it comes to recruitment and in the workplace (except at company B where the opposite is the case). Moreover, a very troubling tendency seems to come forth when it comes to perceptions regarding promotions and career aspirations. According to the data from statements S8 and S10, women in all the examined companies would find it much more difficult to ask for a rise than men even if they thought they deserve it, and they also do not seem to

inform their employers of their career aspirations as much as men do. This situation gets even more worrying when comparing the data to the average marks for S9, where it is evident that women mostly (except for company B) do not work in a workplace that would be in line with their aspirations. The unwillingness or fear of asking for a promotion or a rise therefore seems to result in women’s incapability of pursuing their dreams or realising their true and full potentials. Nevertheless, when this is crossed with the age of individual women in the sample, this practice seems to be decreasing with women of younger age. We can thus conclude that a generational gap also plays a vital role in overcoming gender stereotypes in the workplace. This can also be linked back to the results concerning gender stereotypes—as they still seem to be strongly present in the workplaces of the examined companies, it is more difficult for women to overcome them, so they tend to remain timid and subordinated instead of following their ambitions in a more affirmative manner. In addition, the average marks for S13 show that in most of the examined companies women feel as if gender issues are not dealt with seriously enough (except for company D), while most average marks of men are notably higher (which means they feel more that gender issues are dealt with in a manner appropriate to their gravity). This indicates that men might be taking gender issues more lightly than women, and therefore believe that the way in which this issues are dealt with is serious enough. Lastly, women generally feel (except at company A) that the companies they work for are more friendly to their gender than men do. This seems very strange, since the other results tend to point in a different direction—that of an overall greater discontent of women than men. Yet, this can also be understood through the prism of women being more aware of what might affect their recruitment or conditions in the workplace (even when it comes to promotions), and hence take more factors into account when evaluating this statement. On the other hand, men do not feel as much pressure in terms of having to constantly strive for gender equality, and do not have as many factors weighed when creating the assessment for this statement.

**Table 5:** Analysis of employees’ answers regarding discriminatory practices in recruitment and promotions in four companies examined (with lower average number resembling better score)

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S15	I feel that people of the opposite sex in the company where I am	1	1.3	1.5	2.1	2.1	2	2.9	2.3

	employed are more valued.								
S16	The organisational culture in the company where I am employed is kinder to men than it is to women.	1	1.3	2	1.9	2.5	2	2.8	3.9
S17	The organisational culture in the company where I am employed is kinder to women than it is to men.	1.5	1	2.5	2.2	2.1	2.3	2.7	2.8
S18	In the company where I am employed, men are more dominant in meetings.	1	1	1.8	1.7	1.6	1.8	2.5	3.3
S19	In the company where I am employed, I feel disadvantaged in certain situations in comparison to persons of the opposite sex and therefore feel as if I do not have equal opportunities as my colleagues of the opposite sex.	1.2	1.3	1.6	1.8	1.7	2.2	2	2.4
<b>TOTAL</b>		<b>1.1</b>	<b>1.2</b>	<b>1.9</b>	<b>1.9</b>	<b>2</b>	<b>2.1</b>	<b>2.6</b>	<b>2.9</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

Comparing the total average marks for these statements, it is evident that women generally feel that the statements are more true than men do (and the statements represent negative perceptions of discriminatory practices). This clearly shows that women still feel, even if only to a small degree, more unprivileged in certain situations in the workplace than men. Consequently, this can affect their career and potential future job opportunities more substantially.

### 5.3 Work-life balance

This section features five statements altogether, all of which address relevant issues for the topic of work-life balance. Apart from flexible working arrangements, paternity and parental leave were also addressed, as there is still a significant gap between men and women in Slovenia using their full parental leave option (less than 5% of men chose to do so) (CSD 2019).

**Table 6:** Analysis of employees' answers regarding work-life balance in four companies examined

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S20	We are encouraged to employ flexible working arrangements.	4.5	4.3	3.9	4.2	3.7	3.3	3.4	2.8
S21	The company where I am employed has a paternity leave policy.	5	3.5	3.9	4.1	4.3	4.3	3.5	3.3
S22	I believe that the work process of the company where I am employed is designed in a way that enables me to enjoy family and/or private life completely.	4.8	4	3.3	3.7	3.3	4	3.7	3
S23	In the company where I am employed, men are encouraged to take parental leave.	5	3.8	4.6	4.6	4.8	4.3	3.2	2.5
S24	I feel that the company where I am employed pays attention to my needs outside the workplace.	4.8	4.3	4.3	4.7	4.2	4.2	3.7	2.7
	<b>TOTAL</b>	<b>4.8</b>	<b>4</b>	<b>4</b>	<b>4.3</b>	<b>4.1</b>	<b>4</b>	<b>3.5</b>	<b>2.9</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

Comparing the total average marks for statements regarding work-life balance, we can see that at most of the companies (except for company B) work-life balance is more of an issue for women, since they are less satisfied with how particular aspects of the observed topic are addressed. The marks for S23 show that men feel they are encouraged to take parental leave in the examined companies. However, due to low awareness on the different kinds of leave available when having a child (maternity, paternity and parental leave), it is highly possible that some respondents confused paternity leave and parental leave (which has huge impact on the results, since paternity leave in Slovenia is reserved for fathers and automatically granted and parental leave for men is not automatic), as the interviews with corporate leaderships of the companies revealed that not even their representatives were aware of the difference between parental and paternity leave, nor did any company affirm they had internal policies or procedures to encourage male employees to take parental leave. It is of utmost importance for men to take part in their family care obligations, since this strongly affects the labour market—if men took half of the parental leave, young women would automatically be less discriminated against when applying for a job, as the consequences of an employee of any gender getting a child would be the same for employers.

#### 5.4 Gender-balanced corporate leadership

As this aspect can also be objectively checked by examining the information on a particular company, this section was only included in the survey in order to find out whether the perceptions of men and women differ greatly. It consists of three statements regarding the senior management, management (board) of the company, and the diversity of corporate governance processes.

**Table 7:** Analysis of employees' answers regarding gender-balanced corporate leadership in four companies examined

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S25	In senior management, the number of women and men is balanced.	5	4	3.3	3.8	4.6	3.2	3.5	3.5

S26	Both women and men are represented in the management of the company where I am employed.	5	5	3.4	3.9	4.8	3.7	4	3.8
S27	In corporate governance processes, respect for diversity is evident.	5	4.5	3.6	4.2	4.4	4.2	3.4	3.5
<b>TOTAL</b>		<b>5</b>	<b>4.5</b>	<b>3.4</b>	<b>4</b>	<b>4.6</b>	<b>3.7</b>	<b>3.6</b>	<b>3.6</b>

**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

Examining the particular average marks (or the total average marks by company), no particular tendencies can be observed. We can therefore conclude that, even though it is obvious that perceptions of gender-balanced corporate leadership do differ, the research sample of the observed companies was too small to be able to establish any correlation based on sex.

### 5.5 Gender-based violence and sexual harassment

Gender-based violence and sexual harassment are perceived today as a form of discrimination (in some countries even as a form of severe discrimination), and can even be taken to court in Slovenia as a criminal act (or an offence—depending on the form it takes). The statement posed in this section of the survey therefore reflects the companies' additional efforts to assist potential victims of such acts.

**Table 8:** Analysis of employees' answers regarding gender-based violence and sexual harassment in four companies examined

No.	Statement	Company A		Company B		Company C		Company D	
		Men	Women	Men	Women	Men	Women	Men	Women
S28	The company where I am employed has informal procedures in place for cases	3	2.3	4.3	4.2	4	4.3	3.8	3.2

	of harassment or sexual harassment that lead to judicial protection of victims.									
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**Source:** Analysis of surveys conducted with individual employees of the companies involved in the research project *Let's Head Private: Gender Mainstreaming in Slovenia's Private Sector* (2018).

While the average marks show that women are less certain about informal procedures put in place to help them in case of sexual harassment or gender-based violence in the workplace (although statistically women constitute a vast majority of victims), what is most concerning here is that a majority of the answers at two companies (A and D) was 3, which actually stands for “I don't know”. This statement has the largest share of such answers, which is seriously troubling, since this is definitely the most salient and alarming manifestation of gender inequality in the workplace (and beyond). Not being aware of the possibilities of help in situations of this kind can be heavily traumatising for victims.

**5.6 Monitoring and advocating gender equality**

It is evident from the answers to the survey's open-ended questions that most of the employees who wrote their own proposals for improving gender equality in their respective companies felt the need for additional informing activities and gender-disaggregated data in the evaluations of employee satisfaction. The survey, as explained above, also included interviews with managerial staff of the companies whose employees were surveyed. The managerial staff were interviewed to gather insight in the strategic goals and guidelines used for achieving corporate social responsibility and protection of human rights within their respective organisations. In the interviews, members of corporate leadership of all four companies firmly asserted that gender equality was among their top priorities when discussing working processes and team work. Some of them even went as far as saying that their working processes already fully reflected gender equality in practice (companies B and D), which makes the element of advocating very evident. As an example of past major breakthroughs in the field of gender equality, company D stressed that they have obtained a certificate as a family-friendly company, which required implementing certain measures in the field of work-life balance. Furthermore, company B had a very active programme of female mentoring in the past, but it was discontinued because young

women were no longer joining the company. Moreover, as an IT company, they do encourage flexible working arrangements, and have a wide spectrum of employees using them frequently.

## **5.7 Gender pay gap**

The gender pay gap remains an important untackled aspect of gender equality in the workplace in Slovenia. However, we were unable to request from the observed companies information on the salaries of their employees, and could therefore not assess the situation in Slovenia from this perspective. Since the Recommendation on strengthening the principle of equal pay between men and women through transparency is far from transposed into national law in Slovenia, not only do researchers have no access to data on salaries, and consequently the gender pay gap, but the same goes for employees themselves. It would therefore be of paramount importance for Slovenia to fully implement this Recommendation, and finally allow people to compare their monthly wages and earnings, which would importantly contribute to eliminating the gender pay gap. Moreover, companies should somehow be forced to monitor their internal gender (and possible other minority-related) pay gaps, and try to fix them themselves.

## **5.8 Integrating the empirical results within the theoretical framework of gender equality in the workplace in Slovenia**

Although the sample of four companies (all of which already excel at corporate social responsibility) is not nearly large enough to see the outcomes of this thesis as generally applicable to the Slovenian business environment, we can still try to establish some important links between the empirical examination and the theoretical background. Below, we will try to examine the mentioned links topic-by-topic (taking a closer look only at those with a relevant link), starting with gender stereotypes. While these seem to remain very problematic, not only in theory but also in practice, as the empirical results show, it is incredibly difficult to eliminate them completely from day-to-day practice. Firstly, it is impossible to forbid them by law as stereotyping is a mental process that mainly exists in our minds. However, if they start manifesting in form of unconscious gender bias (e.g. in job interviews, job vacancy postings, etc.), this kind of behaviour already shows elements of discriminatory practices in the workplace. These are defined rather broadly. PADA obliges all legal entities (including

companies) and natural persons to ensure protection against discrimination or equal treatment of all persons in all fields of decision making, legal transactions and other operations or conduct, particularly with regard to conditions for obtaining employment, self-employment and profession, including selection criteria and employment conditions, regardless of the type of activity or the level of occupational hierarchy, including promotions, employment and working conditions, including termination of employment contracts and wages (Article 2). By further defining the implications and prohibiting both direct and indirect discrimination, the law makes it clear that discriminatory practices have no place in the workplace whatsoever. However, the empirical data paints a slightly different picture—the average mark for perceived non-discrimination exceeded 4 only among men working at company A, and nowhere else in the four observed companies. This shows the reality of companies' level of awareness and respect for statutory rights and freedoms. Notwithstanding the legal anti-discrimination protection, the majority of (potential) victims still do not choose to report their cases to the relevant authorities. A representative public opinion poll conducted by the Advocate of the Principle of Equality (2018, 79) showed that, when falling victim to discrimination, people much rather seek help within their family and network of friends than with the public authority that actually has the power to launch proceedings with regard to their case.

The topic of work-life balance in Slovenia clearly shows that, apart from the relatively extremely good regulations on maternal (105 days for mothers only), paternal (30 days for fathers only) and parental leave (a sum of 260 days, which can be divided into 130 days for each parent), Slovenian law does not provide many options for parents to work out their work-life balance. However, the interviews with company managements showed that they are aware of the importance of work-life balance, and are trying to enable their employees to successfully balance their work and private life. Still, male employees rarely take advantage of their parental leave, which might be not only a consequence of prevailing gender stereotypes stigmatising male employees if they take over caring responsibilities, but also a result of a very low level of awareness regarding this right—many male respondents of the online survey stated that they did not use the parental leave because they would not get payed (which is not true, since parental leave is covered by the state in Slovenia).

As regards the aspect of gender-based violence, harassment and sexual harassment in the workplace, it was interesting to observe that the legislation in place in Slovenia tends to be written well and is in line with international and European standards. Nonetheless, employees

do not seem to know about it, and are not aware of the internal procedures in place in their companies that can be used if they are (sexually) harassed.

While public authorities in Slovenia are obliged to produce periodical plans and biennial reports on the implementation of the National Programme for Equal Opportunities for Women and Men (Equal Opportunities for Women and Men Act, Articles 16–17), companies are not—regardless whether public or private. Therefore, the tracking of their efforts for now explicitly depends on their good will to do so. As for this research, only companies with exemplary records in corporate social responsibility were examined, most of which are already familiar with progress monitoring and advocating activities.

Since the aspect of corporate leadership within the empirical part does not show any tendencies, and the gender pay gap could not be assessed, no links can be established regarding these two aspects of gender equality in the workplace. Nevertheless, an important tendency seems to stand out when drawing links between theory and practice—although the Slovenian legislation has several provisions (and even entire legal documents) aimed at guaranteeing gender equality, including in the workplace, not all employees are aware of them. This poor awareness can translate into dissatisfaction of employees because they do not realise they already have several rights, and consequently cannot claim them within the scope of their work.

## **5.9 Proposed measures for the examined companies to enhance gender equality**

Based on the findings from the empirical part of this thesis, we were able to formulate certain proposals for measures that these four companies can implement to improve the state of gender equality with regard to human rights protection within their organisational structure, culture and working processes. The measures were broken down into five thematic sections:

- Eliminating unconscious gender bias: As unconscious gender bias plays an important role in recruitment and promotions, it is necessary to eliminate it in order to attain neutral processes in this field. In recruitment processes, unconscious gender bias can be eliminated by removing all gender-distinctive information from motivational letters and CVs job applicants send when applying for a job. Moreover, with regard to promotions, it is important for employers to have an objective set of criteria on which employees are chosen for promotion. As women tend to be more reserved in asking for a promotion or

a rise compared to men, career advancement and rises should not depend solely on actively expressed requests.

- Gender pay gap monitoring: According to statistical data, the gender pay gap in Slovenia is still inevitable. Since there is no state-led initiative to address this issue on a systemic level, it is important that companies do so on their own. From the author's discussions on the issue with the employers of the four companies examined, it was quite clear that none of them wishes a gender pay gap to exist in their company. However, this still is the case due to various factors, therefore, companies should somehow monitor the pay gap within their internal structures. Examples of good practices already exist in several other EU countries (Sweden, Finland, Denmark, Austria), and they are primarily based on enhancing pay transparency (Eurofund 2019).
- Improving work-life balance: Work-life balance in Slovenia is poorly guaranteed (with the exception of the leaves parents are entitled to after the birth of a child). It is therefore up to individual company policies to regulate and try to improve the situation in this regard. Additional measures that could be useful for companies and have already proven effective include: (1) flexible work arrangements, (2) work from home, (3) scheduling employees' vacation to coincide with school holidays, (4) introducing employees back to work after a longer period of absence, such as parental leave or severe illness, (5) promoting the possibility of taking parental leave among fathers, and (6) allowing flexible work arrangements also in cases when employees need to take care of elderly family members, since caring responsibilities predominantly affect women.
- Monitoring progress: The tracking of results must allow the employer to extract gender-disaggregated data, since this is the only way they get to see how the results differ between men and women. This can be easily done when annually checking the satisfaction of employees—surveys can of course remain anonymous, but the choice of gender must be mandatory information. After thorough analysis, this kind of tracking will chronologically show whether the measures implemented are effective, or what would be a reasonable way to change or adapt them.
- Raising awareness: The results of the empirical part of this thesis show that even though the Slovenian legislation guarantees a comprehensive spectrum of work-related human rights, many employees are still not aware of these rights, which further reflects in their uncertainty and dissatisfaction. It would therefore be of utmost importance for companies to raise awareness not only on the internal measures they are implementing,

but also on the legislative framework. Furthermore, enhancing the knowledge of both employers and employees on gender equality allows them to recognise inequalities faster, and equips them with the skills needed to eradicate them. The awareness-raising component also helps with acknowledging gender stereotypes and addressing them consistently and effectively.

## 6. CONCLUSIONS

This thesis aimed at (1) deconstructing the extent to which Slovenian national legislation is aligned with the emerging business and human rights standards, and their aim to promote gender equality, (2) establishing a correlation between gender and the realisation of work-related human rights, and (3) examining whether there are certain business domains where men feel less privileged than women. Reflecting on the first research question it is possible to conclude that Slovenian national legislation is formally in line with the endeavours of international community to guarantee work-related human rights, and even rather to successfully cover the field of business and human rights, i.e. Slovenia in 2018 adopted the National Action Plan on Business and Human Rights as prescribed by the UN. Furthermore, Slovenian legislation already covers the vast majority of gender equality topics included in the UN Guiding Principles on Business and Human Rights—an extensive anti-discrimination legislative framework was adopted in 2016 (PADA), which *inter alia* encompasses prohibition of discriminatory treatment caused by stakeholders from private sector, and possibility to monitor their activities. Additional emphasis on non-discrimination and gender equality was put in the National Action Plan on Business and Human Rights endorsed by the Slovenian Government in 2018, which stressed the importance of preventing mobbing and sexual harassment in the workplace, as well as empowering women in the business arena, and integrating gender equality in local business practices, policies and measures. Nevertheless, no positive measures promoting women's work-related human rights were presupposed by this plan, and men were barely included in the notion of gender equality. However, Slovenian labour market does not struggle to embrace women as well, and gender perspective is almost sufficiently represented by the anti-discrimination and labour legislation. What persists as a noticeable issue regarding business and human rights in Slovenia is the overarching problem with non-elaboration of a precise plan for the implementation of the second pillar of the UN

Guiding Principles on Business and Human Rights. Nonetheless, the absence of a chapter is concerning also due to the fact that obligation of companies to respect human rights is already a norm according to the Slovenian Constitution, therefore, it would make more sense if such obligation would be included in the National Action Plan as well. In general, however, the labour legislation presumed by the UN Guiding Principles was already in place in Slovenia before the latter even adopted the National Action Plan. However, some issues later exposed by the UN Guiding Principles, such as for example monitoring Slovenian companies in their foreign operations and asserting companies' liability for human rights violations, still remain unaddressed.

If most of the key research carried out on the international, European and national (Slovenian) level focuses on women as the ones who mostly feel left out in their work environment and career life due to their gender, the idea behind this thesis was to show how important the male counterpart is when it comes to gender equality in the workplace through the business and human rights framework of respect, protect and remedy. A review of the formal legal basis clearly showed that in Slovenia any kind of discrimination or unequal treatment is consistently forbidden—while already the Constitution prohibits discrimination, additional meaningful anti-discrimination legislation is in place, which even establishes a national equality body (the Advocate of the Principle of Equality) as a monitoring and recourse mechanism in case of discrimination, which includes discrimination against men or women in the workplace or in hiring. Furthermore, the National Action Plan on Business and Human Rights firmly reasserted the importance of anti-discrimination legislation and measures by stressing the significance of equality between men and women in the business arena. However, the analysis of the actual state in Slovenia clearly shows that gender equality in the workplace is still far away from effectively implemented. The effect on each particular gender already starts showing before men and women enter the labour market—strong gender stereotypes and socially prescribed gender roles predetermine the career paths of individuals through their choice of secondary and tertiary education. While women more often enrol in courses of social sciences, or humanities and arts, a majority of men are more drawn to STEM fields. This affects not only the labour market as a whole, but also individual entities on the level of companies in specific branches of industry (it is evident that in the examined companies from the IT, public utility services and construction sectors male employees prevail), as well as individuals themselves (there are still situations, such as the “sticky floor” or “dead-end jobs”, where women cannot climb the ladder

to top managerial positions regardless of the sector). Gender stereotypes also tend to bend the picture of substantial gender equality in the workplace—in Slovenia there are still only 25% of women in senior executives positions in companies, the gender pay gap is still evident and stands around 8% (it even grew in 2018), and less than 5% of men take advantage of their possibility to take a parental leave. This is a clear example of how women and men are affected by their gender—people of each gender feel certain societal restraints in the domains of life that are traditionally associated with the other gender. Men tend to struggle when it comes to family life even in the workplace, therefore, their unprivileged position can mainly be observed in their ability to balance the work-life relationship, but in favour of work. On the other hand, women also struggle with balancing work and private life; however, mostly on the expense of work and career, as the home domain tends to welcome them with less obstacles than the workplace. It is also evident from the empirical part of the thesis, that women in general feel less satisfied with the implementation of different aspects of gender equality in their workplace than men. However, it feels as if men are often not even aware of the gravity of some gender-related situations there. It would therefore be extremely important to address this lack of awareness by using an inclusive approach, which would also enhance men's ability to recognise inequalities and address them appropriately. Gender equality should never be perceived as merely a women's issue, not even in the workplace. Gender mainstreaming in Slovenian companies is something that is lacking in this big picture—existing regulation on the level of governmental and other state-led institutions should also be applied to the private sector and its individual legal entities to ensure that the poor awareness of the issues and aspects of gender equality–related human rights in recruitment and in the workplace is adequately addressed. Furthermore, the empirical part of the thesis made it even more evident that positive measures need to be taken, since persistent gender inequalities are patterns engraved in Slovenian traditions, which might otherwise take too long to be overcome.

With respect to the third research question, we can conclude from the survey that women in general feel less privileged in all aspects of gender equality–related human rights in recruitment and in the workplace. This is very interesting particularly with regard to work-life balance, since analysis of legislation and the actual situation proves that men are actually the ones who work longer hours on average, and consequently have less time to spend with their families. However, the results from the empirical part of the thesis reveals that women are nevertheless the ones who feel worse off in terms of work-life balance than men. This may be related to the persisting

strong presence of gender stereotypes in the Slovenian society, according to which women take over family and care responsibilities. Therefore, the domain of work-life balance still seems to be perceived as a women's issue that does not *per se* refer to men. The domain of gender stereotypes was almost equally recognised by both men and women. Furthermore, the bigger the company the more present stereotypes among employees seem to be. I believe this can be understood as a consequence of the variety of workers employed in big companies, since the latter tend to reflect the society as a whole more accurately. As the same trend seems to be visible in all other domains, we can conclude that the size of the company does affect gender equality within its working environment. As a matter of fact, this could potentially be a consequence of less personal relations between co-workers and the management, which is more common in major companies where there is less personal contact. Nevertheless, informal contact can be just as problematic, as people may become over-relaxed and are more likely to say something inappropriate—even if only in a form of a joke—than when communication remains more formal. On the other hand, ownership of the company—whether it is private or public—does not seem to play a role in most of the examined domains. The answer to this question can easily be summed up that women are still disproportionately affected in the workplace and in recruitment, as the results from the empirical part are very similar. It is therefore evident that, although the examined companies already have measures in place to uphold meritocracy within their organisation regardless of gender, purely merit-based performance appraisal may simply reinforce inequalities because the rewards for good performance may accrue in employees that already enjoy significant advantages—in the case of this thesis men. Nevertheless, the answers relating to certain domains showed that people in the business arena are aware of the importance of women working for and leading individual companies. A number of corporate social responsibility initiatives are also underway in Slovenia. However, none of them comprehensively addresses the wide range of aspects in the scope of gender-related human rights in the workplace and in recruitment. Therefore, some additional measures for enhancing gender equality in the working environment were proposed, mainly focused on work-life balance, harassment and sexual harassment and violence, gender pay gap, and unconscious gender bias, which can be identified as the main cause of numerous forms of discrimination on the grounds of gender.

Even though the debate on business and human rights seems to be a new phenomenon that implies responsibility for potential human rights violations also from individual companies,

demands to not discriminate men or women in the workplace and efforts to incorporate gender equality in working processes have been present for a long time. Yet, despite the growing awareness and initiatives taken, women continue to be excluded, under-represented and heavily hindered from performing equally in the working environment compared to men to a great extent. Nonetheless, it is not only women who are at a loss due to this kind of dysfunctional and discriminatory system—it is also men. Both men and women are affected by their gender, and this is also the way how the debate on gender equality should be framed. Greater economic empowerment for everyone, based on an inclusive approach, would enable higher growth records and thereby better living conditions for both women and men. Interesting insights and results from the analyses made in the empirical part of this thesis showed that the area of gender equality in the workplace and in recruitment in Slovenia has not nearly been dealt with enough. Many aspects could be addressed in further research in order to make the topic more scientifically relevant in terms of data collection and processing. Firstly, a much bigger sample would be needed to show statistically relevant differences between individual types of companies (in terms of size and ownership). This would make the results more representative and applicable to the general situation in Slovenia. Moreover, it might be good to also include in the sample companies that do not yet have an exemplary record in corporate social responsibility and additional measures for improving the state of gender equality, since there are not that many such good examples in Slovenia, let alone do they reflect the entire business environment. Secondly, since it was more than evident that most respondents were not aware of the actual definitions of certain gender equality phenomena (e.g. gender stereotypes), or did not realise that their respective company had already put in place internal measures or mechanisms to redress issues such as harassment and sexual harassment, their answers could not always reflect the actual situation. It might therefore be useful to perform awareness-raising activities before the surveys and interviews took place to ensure that everyone included understood the information sought in the research. Furthermore, we could ask ourselves of the reasons for this lack of awareness—whether this is a matter in the domain of the state, or whether the individual companies should be the ones to familiarise their employees with all recent gender equality (and other) legislative changes. Thirdly, when discussing additional measures that companies can take to ensure gender equality, it would be good to know whether they represent human rights directly or are a mere expression of corporate social responsibility. A critical and thorough study on the thin line between the two should be attempted, and later used for subsequent research. And last but not least, an interesting follow-up to the thesis would also be to actually implement the proposed measures in the organisational structure, culture and

working processes of the respective companies in order to test their effectiveness. Nevertheless, the most obvious need for further research that can be drawn from this thesis is research on why men feel as if the issues of gender equality do not pertain to them. Because it is of utmost importance for everyone (men and women alike) to feel included in their working environment regardless of their gender.

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## APPENDICES

### Sample of the survey for employees of four examined companies (*translated*)

Survey is anonymous and will only be used for the purposes of the project *Let's Head Private: Gender Equality Mainstreaming in Slovenia's Private Sector*.

**Gender:** M          F          Other

**Age:**

**Current working position:**

**Period of employment in the examined company:**

1. I believe that in the company where I am employed the principle of gender equality in recruitment is promoted and implemented.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

2. I believe that in the company where I am employed, the principle of gender equality in the workplace is promoted and implemented.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

3. In senior management, the number of women and men is balanced.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

4. Both women and men are represented in the management of the company where I am employed.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

5. In corporate governance processes, respect for diversity is evident.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

6. We are encouraged to employ flexible working arrangements.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

7. My superiors are familiar with my career aspirations.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

8. The work I do is in line with my career aspirations.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

9. I wouldn't have a problem to ask for a raise if I thought I deserved it.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

10. The company where I am employed has a paternity leave policy.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

11. I believe that the work process of the company where I am employed is designed in a way that enables me to enjoy family and/or private life completely.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

12. In the company where I am employed, men are encouraged to take parental leave.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

13. The company where I am employed promotes team work involving men and women as equal partners.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

14. The company where I am employed promotes gender-sensitive language, for example in terms of the language used, the suitability of jokes, etc.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

15. The company where I am employed has informal procedures in place for cases of harassment or sexual harassment that lead to judicial protection of victims.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

16. I feel that the company where I am employed pays attention to my needs outside the workplace.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

17. I feel accepted in the company where I am employed.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

18. In the company where I am employed, I do not feel the effects of unequal treatment on the basis of my gender.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

19. Gender issues are dealt with in a serious manner and are discussed by both men and women.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

20. Gender stereotypes are present in the company where I am employed.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

21. In the company where I am employed, gender stereotypes are considered undesirable and employees are consistently reminded of them.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

22. In the company where I am employed, there is a difference between how issues are perceived by men and by women.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

23. I believe that the company where I am employed is friendly towards my gender.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

24. I feel that people of the opposite sex in the company where I am employed are more valued.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

25. The organisational culture in the company where I am employed is kinder to men than it is to women.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

26. The organisational culture in the company where I am employed is kinder to women than it is to men.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

27. In the company where I am employed, men are more dominant in meetings.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

28. In the company where I am employed, I feel disadvantaged in certain situations in comparison to persons of the opposite sex and therefore feel as if I do not have equal opportunities as my colleagues of the opposite sex.

Completely disagree	Partly agree	I don't know	Agree	Fully agree
1	2	3	4	5

29. Which measures of the company you are employed in do you consider good for promoting gender equality?

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30. What regarding gender equality do you miss in terms of promoting gender equality? What improvements do you suggest?

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**List of questions posed to the executives (managers) of the examined companies**  
*(translated)*

1. Does your company have a gender equality policy that confirms the commitment to gender equality, which is enshrined in the constitution, statute or code of ethics?
2. Does the gender be taken into account during the strategic planning of the company's activities?
3. Are proactive strategies for employing or promoting women and men in senior management positions carried out evenly?
4. Does your company show a gender division? Is it reflected in the employment of more than one gender in certain sectors, are employees and employees evenly distributed in all sectors of the business?
5. Does the company offer its employees access to training of staff for awareness, sensitization and social responsibility?
6. Are advertising campaigns and media strategies planned in line with the gender perspective?
7. Does your organization use participatory methods to incorporate the views and preferences of men and women in project design?
8. Do your development strategies take into account the existing gender roles and the interests of women and men?
9. Does your company record and keep statistics of employees' salaries by gender?
10. Does your company regularly evaluate the satisfaction of its employees? Is it also analyzed according to the evaluation according to the gender of the employees?
11. Do your company's programs / projects contribute to strengthening the role of women and changing gender inequalities?
12. Does your company already act socially responsible? What are your current efforts in this area?
13. What are your current efforts in the field of gender equality in the company?
14. What aspects of gender equality in the workplace and in employment do you find most important for your company in the future?

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