Gender-based violence
Transnational corporations fall short on due diligence
#Me too
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Gender-based violence is rampant in the world of work, affecting all professions and sectors. This has been widely documented in the course of preparation of the first international standard aimed at ending violence and harassment in the workplace: Convention No. 190 of the International Labour Organization, which entered into force on 25 June 2021.

Gender-based violence and harassment is considered to be any harmful act directed at persons because of their sex or gender, or violence and harassment affecting persons of a particular sex or gender disproportionately. This definition includes sexual harassment.

While men can be victims of gender-based violence at work, women experience gender-based violence three times more often, and in 98% of cases in France the perpetrators are men. Women, as a social group, may be targeted differently and disproportionately depending on their sexual orientation, origin or status.

In the world of work, gender-based violence can take multiple forms, ranging from sexist remarks and “jokes” to physical assault. Sexual harassment is one of the most prevalent forms of gender-based violence. It encompasses a range of behaviour and practices that, although unwanted, is often “normalised” and persistent: sexual comments and advances, obscene remarks, posting of pornographic photos or images and unwanted physical contact.

In France, one in three women have experienced sexual harassment or assault in the workplace. A number of scandals that have emerged since the beginning of the #MeToo movement have revealed just how widespread gender-based violence is within transnational corporations such as Ubisoft and McDonald's, and the extent to which this violence goes unpunished.

Aside from the situation in France or in other countries of the Global North, where most transnational corporations are headquartered, these companies are implicated in various ways.

The International Labor Organization (ILO) estimates that approximately one in five jobs today is linked to global supply chains, i.e., workers involved in the conception, production and provision of products and services intended for consumption.

A total of nearly 190 million women work in these value chains. They represent 80% of the workforce in global garment supply chains. They represent the majority of workers in horticulture, telephony and tourism as well many other sectors. They often have insecure, unskilled and/or low-paid jobs and are particularly vulnerable to violence and harassment.
Moreover, it appears that gender-based violence is systematic in a number of sectors. For example, over 90% of women working in tea harvesting or production in Kenya have been victims or witnesses of sexual or physical abuse in the workplace. 80% of female garment workers interviewed in Bangladesh state that they have experienced or witnessed gender-based violence at work.

While gender-based violence at work has long remained a taboo subject, and can be difficult to assess, these figures should have alerted the companies concerned and prompted them to intervene in order to reduce the risks. However, an analysis of the application of France’s law on the “duty of vigilance for parent and instructing companies” shows a very different reality.

Adopted on 27 March 2017, this pioneering law applies to companies based in France and which employ at least 5,000 people in France or 10,000 people worldwide. Under the law, companies must identify risks and prevent infringements of or harm to human rights and the environment resulting not only from the company’s own activities but also from the activities of companies it controls, including subcontractors and suppliers with which it maintains an established business relationship.

Anyone with legal standing, including human rights or environmental organisations, trade unions and, of course, people and communities whose rights have been violated, are entitled to take action against the transnational corporations concerned, which may result in legal proceedings.

“Duty of vigilance” is based on a prevention and compensation approach. Companies affected by the law should not wait for human rights violations to occur before they take action but must take preventative measures in order to stop these violations from occurring altogether. Vigilance measures of companies affected by the law should include prevention of gender-based violence at work, as this constitutes a serious human rights violation.

However, four years after the law was enacted, transnational corporations are failing to meet their “duty of vigilance” obligations, primarily because their risk mapping fails to include risks of gender-based violence. Have transnational corporations forgotten that women’s rights are human rights?

Four different industries have been analysed in order to identify risk factors specific to each and assess the effectiveness of measures adopted so far.
The tech industry has not escaped the #MeToo movement and its wave of denunciations. A number of women have spoken out in the US, revealing the sexism to which they have been routinely subjected in Silicon Valley companies, as well as the sexual harassment that certain women have faced. The situation is no better in France. An increasing number of women have spoken out in order to denounce an unhealthy and chauvinistic work environment that is evident as soon as women set foot in the industry: according to a survey by Social Builder, seven in ten women say that they experienced sexist behaviour during their training in the sector.

The fact that the industry is predominately male means that women working in this sector are particularly at risk. Lack of job security and being young are two additional risk factors. In addition, few women work in the tech industry. In France they represent just 23% of staff. Employees tend to be younger than in other sectors and are often hired on temporary contracts.

Despite these known risk factors, tech companies do not appear to be leading the way in combatting gender-based violence, as the case of Ubisoft illustrates.

In June 2020, an investigative article, as well as an outpouring of public statements by a number of female employees, revealed that senior executives at the firm, including the former vice-president of the editorial team (now dismissed), had got away with acts of sexual misconduct.

Ubisoft's 2021 vigilance plan, published a year after allegations of gender-based violence were made against several of the firm's studios, mentions harassment and discrimination as risks. However, it states: "The risks identified by the Group in relation to its position as a responsible employer do not currently constitute a risk of any serious violations." This is a surprising preamble. Should this be taken to mean that gender-based violence is not a serious violation of human rights?

A brief paragraph outlines the measures taken after the scandal. The vigilance plan states that "a crisis unit" has been set up, as well as a "survey and dedicated sessions" (…) "to listen to all team members". An "overall audit of HR processes" and "training on harassment and non-discrimination" (…) "on all sites" was also rolled out.

However, Ubisoft's 2021 vigilance plan could have assessed why its "non-discrimination, anti-harassment and non-violence" policy, which had been in place since 2018, had failed, and to report on it. This is indeed what the law requires in order to improve, from one year to the next, measures aimed at preventing or mitigating infringements of or harm to human rights and the environment, described by the companies concerned.

But neither this policy nor Ubisoft's vigilance plan assess the measures included in the plan, their effective implementation or their effectiveness. Among the measures announced by
Ubisoft in 2020 is a potential revision of the company’s “code of conduct”. Establishing a code of conduct is a fairly common practice that falls under corporate social responsibility (CSR). Although its content and name may vary from one company to another, a “code of conduct” is a written document that provides guidelines drawn up by the company on the behaviour that the company and its team members (managers, other employees, interns, CEOs, etc.) should adopt in order to adhere to a certain number of “values”, usually concerning the respect of persons and the environment, etc.

Codes of conduct, by which companies set the rules they intend to comply with and define the way in which they will ensure compliance with these rules, are the ultimate voluntary measure. But do they ensure companies meet obligations under the duty of vigilance law?

A code of conduct does not in itself seem to have a decisive influence on behaviour within a company, as illustrated by the Enron scandal. Although the company boasted an extensive collection of ethical standards, its top executives were taken to court after it was discovered, in 2001, that the company was engaging in fraud and manipulating financial statements.

Current codes of conduct increasingly use legal language but are generally written in such a way that makes them non-binding for the company. In addition, there is generally no mention of a mechanism to ensure the code of conduct is complied with. **As they currently exist, codes of conduct therefore seem to be protective “screens” designed to protect a company’s reputation, without any real impact.** Such documents could potentially serve as internal information on the values upheld by the company but should not be used in external communication as proof that these values are being adhered to.

Consequently, moral commitments such as codes of conduct and other ethics charters do not seem to be sufficient to ensure a company is meeting its duty of vigilance obligations in accordance with the law.
Gender-based violence is particularly prevalent in the hospitality industry. It is one of the most high-risk work environments. A report by ActionAid Greece published in 2020 highlights the scale of the issue: 94% of women working in the hospitality industry have experienced or witnessed gender-based violence. Greece is far from being an isolated case. A US survey of 688 employees working in hospitality show that gender-based violence is a systemic problem that affects women (particularly transgender people) and men alike. However, again, women are by far the most affected: 90% of waitresses have been victims of sexual harassment or violence at work.

The pervasiveness of such violence is due to several factors, such as the sector’s use of contracts providing little job security (seasonal or temporary) and the fact that employees work unusual or irregular hours. Although it is not necessarily intentional, uniforms also play a role in objectifying and eroticising the bodies of employees who wear them. According to a survey on gender-based violence in the workplace in France, 52% of women required to wear a uniform that “shows the shape of their body, their breasts or their legs” have experienced such violence on at least one occasion, against 19% for women who don’t wear a uniform. In the hotel trade, the fact that employees are required to enter a client’s room, i.e., an intimate setting, is an additional risk factor.

Subcontracting is very common in the industry. Several hotels in the Accor group use housekeeping staff employed by a subcontractor, i.e., a company that is legally distinct from the Accor group, to which it is bound only by contract. The company’s vigilance plans, however, don’t seem to include its subcontractors. Although they are mentioned in the “indirect sphere, suppliers and subcontractors” heading, only the suppliers are mentioned in the paragraphs that follow.

Regarding the specific issue of gender-based violence, it seems that the Accor group is well aware of the risk of gender-based violence in the hospitality industry. However, measures adopted by the group seem vague and ineffective. In its 2020 vigilance plan, the Accor group mentions a whistleblowing mechanism to combat all forms of harassment, including sexual harassment and bullying, “tested in 2019 in France, Dubai and Switzerland in partnership with AccorInvest”, its property investment subsidiary. The system consists of a button worn on employees’ uniforms, which allows “any person who is equipped with it to alert management in the event of harassment”. Unfortunately, the plan fails to mention the hotels in which the system was tested or the persons equipped with it. Nor does it detail specifically what happens when the button is activated. AccorInvest’s 2020 vigilance plan doesn’t mention the system or provide any additional information. There is no information in the Accor group’s 2020 or 2021 vigilance plan regarding the results of the test. The 2021 plan doesn’t mention the system at all, suggesting perhaps that it has been dropped.
Among the measures implemented to combat gender-based violence is a whistleblowing hotline, in operation since 2018, “available in 29 languages for employees at head offices, owned and leased hotels and new businesses”. However, communication around this system could be improved, as we talked to both employees of hotels owned by Accor and representatives of female housekeeping staff employed by subcontractors, both of whom were unaware of the whistleblowing hotline.

McDonald’s and its “duty of vigilance”

In 2020, nearly 78 McDonald’s workers spoke to the media about discrimination and violence experienced in the workplace. 37 of these cases involved sexual harassment.31

France is not the only country concerned by such complaints, and similar allegations have been made against McDonald’s in other countries, including the US. An international coalition of labour unions filed a complaint against the company at the Organization for Economic Cooperation and Development (OECD) for “systemic sexual harassment” in its restaurants in at least seven countries.

Following the investigation, the company undertook to implement measures to combat sexism in its restaurants. However, according to the French collective “Collectif McDroits” (McRights), it seems that nothing concrete has yet come of it.33

At the same time, an employee was made redundant after talking to the collective about the sexual harassment she was subjected to at work.34

McDonald’s restaurants are franchised: they benefit from the brand’s processes and reputation, and in return they give the company a percentage of its turnover.35 This is an effective way of dividing up the company’s legal accountability. McDonald’s France therefore deems that the duty of vigilance law does not apply to it, even though its website states that it employs “over 74,000 people”.36 It has been demonstrated that the control that the franchisor has over the franchisee is three-pronged: control of compliance in operations, control over management and social control.37
The garment industry employs approximately 60 million people worldwide, three quarters of whom are women. Women represent up to 85% of the workforce in Bangladesh and 90% in Cambodia. Opportunities for salaried employment in this industry have greatly increased over the last two decades. However, women are generally hired under temporary or casual contracts, or no contract at all. The positions they hold are mostly low-ranking, rarely management roles. In most countries, their wages aren't enough for them to support themselves and their dependents, forcing them to work overtime and finish late at night. Added to this is a demanding work environment and the pressure to achieve unrealistic production targets demanded by global brands. Extremely long working hours, pay that falls below a living wage and unrealistic production targets are all risk factors for gender-based violence identified by the Committee of Experts of the International Labor Organization (ILO). These factors increase the dependence of workers, who are afraid of losing their jobs, and isolate them. The ILO has also observed a link between incentive pay aimed at increasing production and the likelihood of gender-based violence. Female Haitian workers have reported that there is a higher chance of experiencing gender-based violence in factories where female employees receive a performance bonus. The choice of whether to give or withhold this bonus seems to give male supervisors the upper hand in an already imbalanced relationship. The vigilance plans of transnational corporations in the industry should therefore specifically identify the risk of gender-based violence within subsidiaries, subcontractors and suppliers in order to establish adequate prevention measures and sanctions. However, most of the time, the risk of gender-based violence is not specifically identified, or the tools for detecting such violence are unsuitable. This is the case of the vigilance plans of French companies Kiabi, Carrefour and Auchan. In order to assess the prevalence of sexual harassment cases within supplier companies, transnational corporations conduct social audits, which are not an effective tool for detecting human rights violations, as one of the goals of these audits is to legitimate the companies’ activities. These social audits usually fail to detect gender-based violence,
because although it is easy to count the number of fire extinguishers and emergency exits in a factory, and relatively easy to identify wage gaps between men and women, or situations where women are underrepresented in certain positions, gender-based violence is a taboo subject. Victims say little or nothing. It is difficult to measure the incidence of such violence, as women are not always comfortable confiding in a stranger, fear retaliation or feel ill at ease. In addition, specific training is required to conduct audits with a gender-sensitive focus and carry out surveys on the prevalence of gender-based violence.

It's important to know how to respond to a person in psychological distress, taking care to “do no harm”. The victim should not experience additional suffering nor relive any trauma. One should be aware of the complexities involved in the interview process as certain vague words or expressions can hide gender-based violence.

Given the failure of social audits in this regard, companies need to give thought to effective monitoring mechanisms to ensure suppliers and subcontractors are respecting human rights, i.e., regular, in-depth monitoring mechanisms in line with the principle of “worker-driven social responsibility”, instead of irregular social audits conducted by external firms.
Women represent 20-30% of people employed in the agriculture sector worldwide. They often have worse working conditions than men, and are often hired on a temporary basis for manual tasks that require a large number of workers. In a context where discrimination against women is already rife, gender-based violence has been reported in different areas of agricultural production. According to a 2015 report, sexual harassment is a major problem in the banana industry. In the UK, a complaint was filed at the High Court in London (March 2021) against the transnational corporation PGI and one of its subsidiaries in Malawi for failing to protect its female employees from gender-based violence in its tea plantations. Yet on its website, PGI states that its subsidiaries aim to provide higher standards than those required by local labour laws. In 2011, the transnational corporation Unilever was also the focus of criticism in a report by the NGO SOMO on working conditions and gender-based violence in tea plantations in Kenya. According to the report, certain plantation managers demanded sexual favours in exchange for employment, and retaliated if female employees were uncooperative (overworking them, forcing them to work in isolated and dangerous areas, etc.). And yet the company has received sustainable agriculture certification from the Rainforest Alliance, although the audits conducted by the certification body did not mention gender-based violence.

In Spain, Moroccan seasonal workers have filed several rape and sexual assault complaints. Whether employees are specialised in agricultural production or harvest raw materials, transnational corporations need to pay particular attention to the risk of gender-based violence in agricultural supply chains as well as the working conditions that increase this risk. However, most companies in this sector have not identified gender-based violence as a risk and have not therefore put measures in place to address the issue, as the vigilance plans of French companies Bonduelle and La Compagnie Fruitière illustrate. Even when they do identify it as a risk, companies only mention the fact that they conduct social audits. It would be more effective if companies identified this risk and established measures to address it, instead of measuring this risk with tools recognised as inadequate – without anticipating measures to prevent gender-based violence from happening altogether.
Conclusion
Vigilance required on women's rights

Four years after France’s law on the duty of vigilance for parent and instructing companies was passed, transnational corporations are still failing to meet their obligations under the law. Some are failing to implement the prevention and mitigation measures described in their vigilance plans. Others don’t mention risks of gender-based violence in their risk mapping or have an inadequate monitoring system, and some haven’t published a vigilance plan at all.

We have found that when companies claim to have taken steps to address gender-based violence, these fall short in a number of ways. They either lack ambition (when measures don’t apply to subsidiaries and subcontractors), monitoring (when there is no genuine assessment of the implementation or impact of these measures), or coherence, and there is little evidence of any concrete results on the ground. Moreover, it is misleading for companies to claim that they are reducing gender-based violence without tackling the root cause, i.e., gender prejudices and representation of women in the work environment, as well as the business model and corporate business practices, which are at the root of workers’ insecurity and vulnerability. After analysing vigilance plans in detail, it was also found that companies failed to consult with stakeholders, particularly employee representatives, non-governmental organisations and feminist organisations and movements.

More needs to be done to combat gender-based violence in the world of work. Effective prevention and mitigation measures could include providing training and sensitising all stakeholders (employees, unions, companies’ human resources departments, suppliers and subcontractors) on the issue of gender-based violence. Companies should also establish a user-friendly and easily accessible complaints system that can be accessed without discrimination, as well as protection and redress measures for victims.

In addition, ActionAid France recommends that suppliers and subcontractors are given funding and support, with the involvement of trade unions and other relevant stakeholders, in order to ban gender-based violence and harassment and punish perpetrators. Female workers must be guaranteed freedom of association and collective bargaining so they can effectively defend their rights.

The French government must assume its responsibilities and ensure companies comply with the duty of vigilance law. It needs to establish ambitious laws that enshrine the International Labor Organization’s Convention No. 190 on gender-based violence and harassment in the world of work.

For further information, see the full report “Vigilance 0 : les violences sexistes et sexuelles et les multinationales”, published by ActionAid France on 8 July 2021.
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5. Ibid


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17. For example, in the EU, only a quarter of female IT graduates find work in the tech industry, compared to half of male IT graduates. In the USA, only 25% of IT engineers are women. “(To be smart, the digital revolution will need to be inclusive”, excerpt from the UNESCO Science Report: https://unesdoc.unesco.org/ark:/48223/pf0000375429


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ActionAid France is an international solidarity and human rights association. Founded in 1983 under the name Peuples Solidaires (People in Solidarity), the association has been part of the ActionAid federation since 2009, present in 45 countries. With its 37 local groups and the 180,000 signatories of its Urgent Appeals, it supports the struggle of those who are mobilising for the respect of their economic and social rights in the world. It mobilises citizens, strengthens civil society movements and puts pressure on governments and companies for concrete results: improvement of working conditions, access to land, increased regulation of companies and respect for women’s rights.

Find more and take action: www.vigilance0.org

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