
Volume 20

Issue 3 *Selected papers from the Fourth, World
Conference on Women's Studies, Colombo Sri Lanka*

Article 11

Mar-2019

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Recommended Citation

Leite, Marianna (2019). Pluralizing Discourses: Multinationals and Gender Equality. *Journal of International Women's Studies*, 20(3), 116-138.

Available at: <https://vc.bridgew.edu/jiws/vol20/iss3/11>

Pluralizing Discourses: Multinationals and Gender Equality

By Marianna Leite¹

Abstract:

This article investigates the impact of multinational corporations with respect to the concept of gender equality. According to legal pluralism theory, in every society, two or more legal systems not belonging to a single 'system' coexist. It is, however, unknown to what extent non-state actors contribute to the 'bending and breaking' of rules in legal systems that are inherently pluralistic in the juristic sense. Although, the use of the language of rights has grown rapidly amongst development policy and practice, the rhetoric of formal rights as advocated by international development bodies has not always improved the everyday reality. This is because public policies geared towards social justice have no effect if not inserted into a wider culture of political measures for positive change. In this sense, an empirical examination is proposed to understand the role exerted by multinational corporations in the development and implementation of International Human Rights Law by focusing on the concept of gender equality. It relies of legal pluralism theories combined with critical discourse analysis to map the processes associated with the transformation of key terms and their meanings. It attempts to understand the nuances in the use of human rights-based discourses by four different multinationals, and their relation to the de-politicisation of the wider human rights movement.

Keywords: Gender Equality, Critical Discourse Analysis, Multinational Corporations

Introduction

At the 4th World Conference for Women's Studies 2018, conference participants discussed the role of gendered scholarships and activism in breaking with hegemonic paradigms. Many of my colleagues focused on storytelling as a way to bridge the gap between academics and 'research subjects' by relying on the literature on reflexivity and epistemologies of the global south. Mostly, we focused on failures as a tool of proposing the way forward. I decided to look at how the concept of gender equality is affected and/or impaired by multinational corporations.

The United Nations 17 Sustainable Development Goals (SDGs) establish a framework for action over the next 12 years. SDG number 5 specifically notes that the achievement of gender equality and the empowerment of women and girls must be a priority for all state and non-state actors. According to the 2017 SDGs report (p. 8), "[w]omen are still underrepresented in managerial positions". Moreover, "[i]n the majority of the 67 countries with data from 2009 to 2015, fewer than a third of senior- and middle-management positions were held by women" (ibid.). As rightly noted by the SDGs report (United Nations 2017), high quality, timely, disaggregated data is crucial for the advancement of the goals.

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Legal pluralism theories establish that legal norms have plural sources, are relational and non-static (Engle Merry 1988; 1992). In light of legal pluralism theories, it is possible to say that International Human Rights Law is as much affected by official as by unofficial legal orderings. Given the growing power of multinational corporations and non-state actors, it is important to map out the changes suffered and promoted by multinationals when it comes to International Human Rights Law principles and concepts.

This question aims to understand the role global conglomerates have on human rights and human rights-based discourses and, as a result, on social policy framing and outcomes. Its objective is to expand the gendered scholarship looking at the use of social justice discourses and their effects over social policies and programmes. This is justified by a gap in the scholarship dealing with social policy framing. That is, although there is a growing literature in the area of social policy making and analysis, not enough is known about the effects of the use of the language of human rights in policy making and implementation. Understanding this gap is important because social policies are the result of political struggles rather than merely their outcome (Pierson 2004). For example, the gendered character of welfare provision in Latin America - i.e. patriarchal and maternalistic – serves to confirm the inherently unequal character of social policy making (Guy 1990). Indeed, most social policies in the region rely on poverty reduction programmes that reinforce gendered constructions and tend to re-traditionalise gendered roles and responsibilities (Molyneux 2007).

The Case Study

In order to perform an empirical examination of the role exerted by multinational corporations in the development and implementation of International Human Rights Law, I decided to analyse four Brazilian multinationals, their key internal documents dealing with gender equality as well as judicial decisions involving these companies focusing on a three-year period, 2015, 2016 and 2017. Aiming at exploring the strengths of my professional background, I decided to choose multinational companies with headquarters in Brazil and created under Brazilian law. First, I looked at two lists ranking Brazilian companies in terms of their size and profits in 2016, namely Valor1000 of Valor Economico² and the ranking created by Tatiana Vaz for Revista Exame³.

From that list, I chose four companies from different business sectors and with headquarters in different cities. I did this in order to guarantee geographic representation as well as sector diversity. My first pool was formed by Eletrobrás, Banco do Brasil, Telefónica and Vale. However, it became clear after the first meeting with my supervisor that Telefónica was not comparable to the other companies in the pool since its holding was Spanish and, therefore, initially formed under Spanish Law. While re-analysing the aforementioned rankings, I decided to replace Telefónica with Braskem. As a result, the final pool is formed by four multinationals; two private multinationals and two mixed-economy multinationals, i.e. institutions legally formed as a public-private partnership. I believed this contrast between fully private and mixed-economy companies would add an interesting layer to the analysis. Notwithstanding, this limited the geographical diversity as most mixed-economy institutions in Brazil are based in the capital, Brasília.

² See <http://www.valor.com.br/valor1000/2016/ranking1000maiores>.

³ See <https://exame.abril.com.br/negocios/as-19-empresas-brasileiras-entre-as-maiores-do-mundo-em-2016/>.

Banco do Brazil is a mixed-economy retail bank headquartered in Brasília with operations in Argentina, Mexico, Paraguay, Venezuela, the United States, Uruguay, France, Italy, Singapore, South Korea, Japan, China, Austria, Chile, Angola, Spain, the United Kingdom, Portugal, Peru, Bolivia, Cayman and the United Arab Emirates. Braskem is a Brazilian petrochemical company headquartered in São Paulo with operations in Singapore, Chile, the Netherlands, Colombia, Argentina, Venezuela, Peru, Germany, Mexico and the United States. Eletrobrás produces and/or transfers electricity in Brazil, Paraguay, Uruguay, Argentina, Bolivia and Venezuela and, similarly to Banco Brasil, is also a mixed-economy institution headquartered in Brasília. Vale, previously known as Vale do Rio Doce, is privately-owned mining company headquartered in Rio de Janeiro with operations in Australia, Indonesia, Japan, Canada, Mozambique, New Caledonia, Malaysia, Oman and China.⁴

I collected the materials for the above-mentioned case study in the following manner. I used three key terms when searching for institutional documents at each company website: gender, gender equality and gender equity. The search resulted in: 10 entries for gender, 10 entries for gender equity and 10 entries for gender equality at Eletrobrás' website; 124 entries for gender, 31 for gender equity and 70 for gender equality at Banco do Brasil's website; 66 entries for gender, 17 for gender equity and 10 for gender equality at Vale's website; and 19 entries for gender, 6 entries for gender equity and 6 entries for gender equality at Braskem's website. The institutional materials for Banco do Brasil, Eletrobrás and Vale were collected on 20 December 2017. The institutional materials for Braskem were collected on 26 February 2018. Most searches included news pieces and publicity items. Since, I was only interested in institutional materials, I then selected the relevant documents that came up in each search. Due to the sheer size of this analysis, the study was divided into three articles: one article discussing the methodology used (legal pluralism and critical discourse analysis); one article focusing on the analysis of institutional materials (internal rules); and one article focusing on the jurisprudence (external rules). The present article is the second piece of this series and, therefore, delves, mainly, into institutional materials.

Empirical Material

As previously mentioned, this case study focused on a three-year period from the beginning of 2015 until the end of 2017. Most of the research material analysed is from 2015 and 2016. Some documents such as annual reports have not been found in their 2017 version. For this reason, an exception was made in the case of a relevant corporate documents. In these cases, I used the most recent document available. Alongside the website entries resulting from the searches mentioned above, the following internal documents were analysed for this study:

⁴ All information taken from the companies' website in February 2018.

Banco do Brasil	Braskem	Eletrobrás	Vale
Relatório Sustentabilidade 2009 (BB SR 09)	Código de Conduta 2016 (CC)	Código de Ética e Conduta (EL CCE)	Relatório Sustentabilidade 2016 (VL SR 16)
Relatório Anual 2016 (BB AR 16)	Código de Conduta de Terceiros 2017 (CCTP)	Política de Responsabilidade Social (SRP)	Livro Nossa História (BOH)
Conexão BB 2011 (CBB 11)	Relatório Anual 2016 (BK AR 16)	Plano de Ação Equidade de Gênero e Raça (RGEAP)	Relatório Fundo Vale (FVR)
Apresentação Institucional 2017 2T (IP 2T17)	Matriz de Materialidade (MM)	Cartilha Empoderamento (EB)	Guia de Direitos Humanos (HRG)
Política de Indicação e Sucessão (PSN)	Relatório Anual 2015 (BK AR 15)	Cartilha Violência Doméstica (DVB)	Código de Ética e Conduta (VL CCE)
Código de Governança Corporativa (BB CGC)		Cartilha Saúde Emocional (EHB)	
		Folder Câncer de Mama (BCF)	

Banco do Brasil	Braskem	Eletrobrás	Vale
		Promoção Diversidade (DP)	
		Guia Conduta Fornecedores (SCC)	
		Política Gestão Pessoas (PMP)	
		Relatório Anual 2016 (EL AR 16)	

Banco do Brasil

The 2017 2T Institutional Presentation (hereinafter IP 2T17) states that Banco do Brasil is a banking institution with over 66 thousand service points within Brazil and 34 service points across 24 other countries. IP 2T17 also states that 53,9% of Banco do Brasil's shares are under the control of the Brazilian Federal Government. The presence of both public and private capital and control puts the bank at a peculiar position. Its corporate governance rules determine that all decisions are made by a collegiate body formed by executives representing each capital participation and in proportion to their shares blurring the lines between politics and economic interests. Banco do Brasil's former president, Aldemir Bendine, has been found guilty of receiving a bribe and has been convicted to 11 years in prison by Operação Lava Jato (Operation Car Wash), a major judicial program aimed investigation politicians and business owners allegedly guilty of corruption. But, according to documents related to communication n. 230/2017/CVM/SEP/GEA-1 available on its website, the company is not liable for Bendine's personal faults.

The bank's 2016 Annual Report (hereinafter BB AR 16) is based on its 'materiality' which is basically a periodic review of the company's strategy involving the analysis of key documents and interviews with stakeholders. The bank's materiality is composed of 25 challenges divided within 5 thematic areas based on the pillars of the UN's Sustainable Development Goals (prosperity, partnership, people, planet and peace). Challenge 11 aims at guaranteeing greater racial and gender representation across all hierarchical levels (BB AR 16: 7). While Challenge 21 aims at developing the process of 'environmental and social due diligence' to monitor environmental, labour and human rights issues (BB AR 16, p. 7). This creates two new terms, environmental and social due diligence, adding a social and environmental dimension to corporate legal due diligence (the financial analysis of assets coupled with a comprehensive legal appraisal usually requested by company buyers). This reflects a tendency of merging human rights terms with economic terms. Another example of this tendency is BB AR 16's use of six capitals as cornerstones: manufactured capital; social and relationship capital; human capital; intellectual capital, financial capital; and natural capital.

A 2011 document entitled *Conexão Banco do Brasil* (hereinafter CBB 11) affirms its social and environmental directive is reliant upon transparency, sustainability, ethics and respect. CBB 11 mentions a constant search for innovation aimed at creating a development model that goes beyond economic and financial aspects. CBB 11 cites the Eco-efficiency Program as an attempt at reducing waste, improving environmental monitoring and creating eco-friendly mindsets within the bank. Again, this shows that the bank tends to merge economic terms (efficiency) with non-economic ones (eco). Banco do Brasil's corporate governance objectives are established according to each governing body and are directly linked to the existing legislation, policies and internal norms. According to Banco do Brasil's website, it follows the 'New Market B3' benchmark which is supposed to relate to the segment of companies that follow high standards of corporate governance compliance necessary for their listing in stock markets. This corporate governance system is composed of a three-pronged cycle based on reporting/transparency, retro-feeding and consultation/projection. Its main goal is to create/maintain a good reputation and please the bank's investors. The system is based on a series of voluntary agreements related to international standards such as UN's Sustainable Development Goals. See the list of agreements Banco do Brasil is part of (IP 2T17, p. 95) below.



The 2009 Sustainability Report (hereinafter BB SR 09) also highlights the importance of the bank's Pro-Gender Equity program and notes the importance of progressing towards gender equality in the workplace. BB SR 09 does not, however, mention the rate at which and how gender equity in the workplace will be achieved within the bank's the structure. Notwithstanding, BB SR 09 does mention that all contracts with third parties must abide by all internal rules upholding international human rights law such as the ban on child labour and slavery. According to the website and BB AR 16, the Sustainability Report/Plan is now called Agenda 30 BB (previously also cited as Agenda 21 BB) supposedly in response to the Sustainable Development Goals.

Banco do Brasil's Corporate Governance Code (hereinafter BB CGC) defines equity as fair and isonomic treatment. Indeed, the statistics show that internal parity exists but does not specify at which level. BB AR 16 states that amongst its workforce of 100.622 people, 59.073 were men and 41.549 were women. The Policy for Succession and Nomination (hereinafter PSN) recognises the importance of diversity in academic background, gender, age and race in the banks' management positions. Although PSN enumerates the mandatory requirements for the candidacy to management positions, it does not specify how it intends ensure diversity. BB AR 16 affirms that there is no gender disparity in remuneration within the bank. Again, it is not clear if the higher paying jobs are divided equally among men and women as gender-disaggregated data is not broken down into categories of employment. According to the website, Banco do Brasil's Pro-Gender Equity Objective is defined as the development of policies and actions that stimulate management practices that promote gender equity within the bank. This is broken down into six specific objectives: i) training and capacity building procedures; ii) professional development and career and position plan; iii) health and safety programs; iv) salary and remuneration; v) benefits policy; and vi) mechanism for the combat of discriminatory practices. Specific actions include the expansion of maternity and paternity leave, affirmative action in career development programs, internal complaint system identifying discrimination against women, national and state ethics committees, representativeness in these committees and the increase of number of women in upper level positions. This is the result of a progressive commitment towards gender equality. See below Banco do Brasil's gender equity timeline (IP 2T17, p. 94):



Braskem

Braskem is largest producer of chemicals and plastics of the Americas. On a global scale, at 20 million tons of products every year, it is the fifth largest petrochemical producer, according the company's latest annual report. The sheer scale of its production and the global reach of its operations put the company in a privileged political position. Additionally, being a company of its

size, Braskem has the attribution of setting an example to other companies, within and outside the same sector. According to the company's website 22% of its workforce is made by women and 29% by afro-descendants and 23% of its leadership positions are filled by women and 13% by afro-descendants. As will be discussed below, all of the multinational's relevant documents mention commitments to ethical behaviour, diversity and non-discrimination. However, the company is controlled by Organizações Odebrecht which has been recently found guilty of corruption and influence peddling by Operação Lava-Jato. As a result, Braskem will pay US\$ 957 million in leniency agreements.

The number of search results for gender equality and gender equity were the same. This led me to think that Braskem used gender equity and gender equality interchangeably. Although, the results were slightly different for both terms, the relevant entries were identical. Actually, the search for all three terms, i.e. gender, gender equality and gender equity, resulted in the same set of relevant documents. The relevant entries mention Braskem's commitment to LGBT rights, UN guidelines on gender equity, diversity and women's empowerment, conformity in applying diversity policies and voluntary application of human rights rules. Braskem's policy on diversity and inclusion affirms that the objective of gender equity policies is to: "promote gender equity through equality of opportunities and women's empowerment". According to the multinational's annual report, this means that the diversity and inclusion policy actively seeks to invest in an environment where women have access to work opportunities where they can develop professionally and to value diversity as creator of an enriching work environment crucial for business survival, continuity and growth. The policy also mentions the importance of race and ethnicity, LGBT rights, socioeconomic inclusion of 'vulnerable' people between the ages of 18 and 24, as well as, the rights of people living with disability.

Moreover, one of the Braskem's website entries entitled 'Voluntary Commitments' mentions the company's involvement with a handful of environmental projects led by NGO's. The website also mentions a commitment to abiding by international human rights law and a mechanism of complaints and consultation called Linha Ética (the 'Ethical Line' is a phone number receiving claims of human rights violations). The website particularly mentions the importance of the UN Universal Declaration of Human Rights (hereinafter UDH), the International Labour Organization's (hereinafter ILO) directives, UN Women Women's Empowerment Principles, the UN Guiding Principles on Business and Human Rights. See below the human rights chart available on Braskem's website:



Interestingly enough, Braskem created a committee for the analysis of the company's image and reputation which seems to be a benchmark for the petrochemical sector. It seems that most (if not all) of its outreach initiatives are somehow linked to the image and reputation program. Regardless of the motives, it is indisputable that some initiatives must be applauded such as the Braskem Women's Forum devoted to the discussion of life and careers of women leaders and workers or even the Women at Braskem program, which expands maternity and paternity leave with an additional focus of improving women's working conditions. Both initiatives seem to be overly focused on women, almost as if gender equality was only a women's concern. Another initiative that I also would like to highlight is the Forum for Corporations and LGBT Rights which Braskem is a member of. The Forum for Corporations and LGBT Rights is an informal Brazilian initiative that was created in 2013 with the purpose of engaging companies in LGBT rights and creating ten basic corporate commitments guaranteeing respect for LGBT rights.

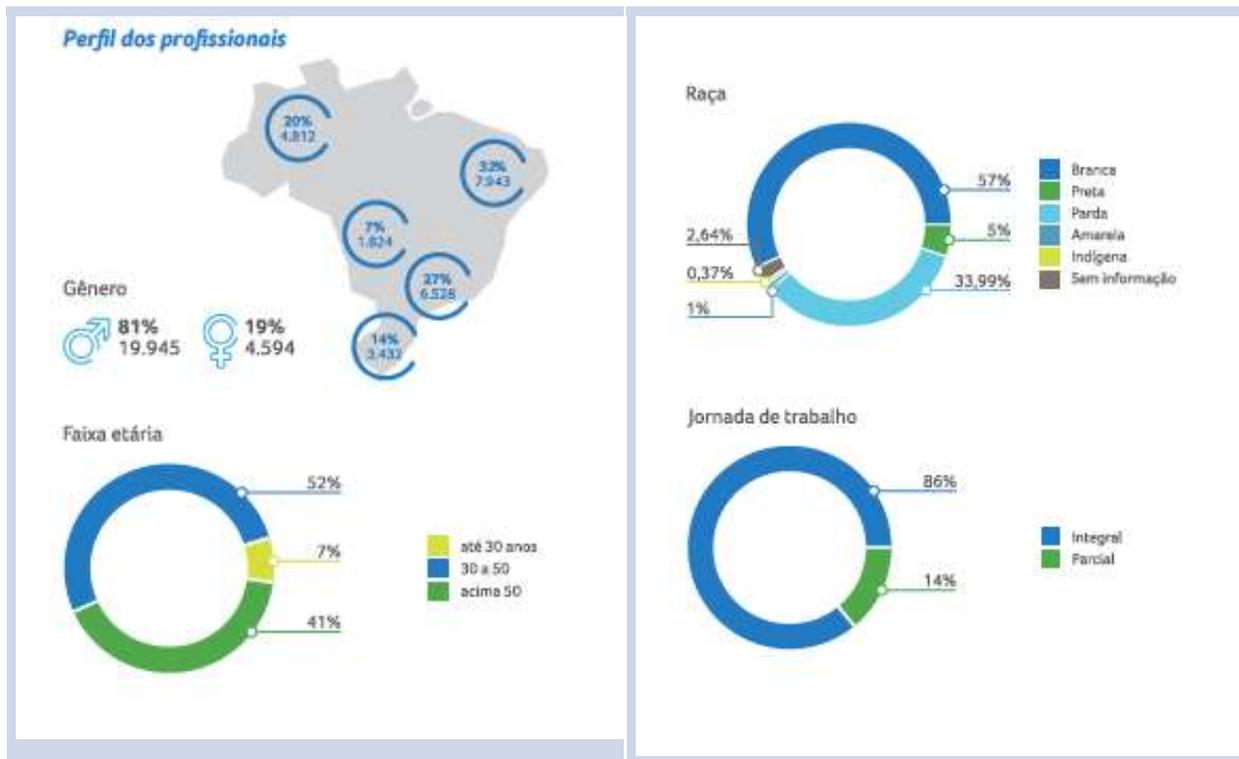
Braskem's 2017 Code of Conduct for Third Parties (herein after CCTP) stressed in the section entitled 'guidelines' that no third party shall act in a way that puts the Braskem's reputation at risk. In further sections, the CCTP prohibits third parties from infringing confidentiality and intellectual property rights. It also requires third parties to act with integrity and in a transparent and ethical manner and recommends third parties to respect UDHR's and ILO's rules. CCTP prohibits harassment, discrimination, child/forced labour, human trafficking and sexual exploitation. The same recommendation is made by Braskem's 2016 Code of Conduct (hereinafter CC). The CC requires a more proactive promotion of legal standards by requesting members of Braskem to promote integrity, transparent and ethical behaviour and to prevent improper behaviour. But, as with the CCTP, the CC also states that members must adopt all fitting measures when gaining knowledge of irregular practices that might compromise Braskem's interests and reputation. Again, as seen above, the issue of human rights compliance and accountability is framed in terms of the company's image. Following that same rationale, the CC defines social responsibility as the responsibility of a member to fulfil their fundamental duties productively and guaranteeing good services and quality product observing basic rules such as human rights. In fact, throughout all of Braskem's relevant documents, the client is put first and centre.

Braskem's Materiality Matrix (hereinafter BK MM) is supposed to establish a periodic review of sustainability themes to be included in the company's sustainable development strategy which is detailed in each annual report. The only BK MM found online refers to the 2013 review which delineates five strategic priorities: freedom of association, equality of opportunities; safe use of products; social private investments and relationship with communities; and transparency and integrity. The BK MM correlates equality of opportunities with non-discrimination and diversity. It is also interesting that it merges some strategic objectives and leaves some objectives out of Braskem's strategy. For example, child labour, forced labour were removed from the strategy because they were "considered basic corporate obligations" (BK MM, p. 2).

Similarly, the 2016 Annual Report (hereinafter BK AR 16) and the 2015 Annual Report (BK AR 15) also make certain assumptions as to what are obvious and non-obvious corporate rights. For example, the BK AR 15 states that Braskem follows best corporate governance practices without explicitly defining what are all the best corporate governance practices. BK AR 16 cites the creation of a conformity committee aimed at detecting, preventing and remedying non-conformity within Braskem's system based on the UN Framework for Business and Human Rights. It creates an intricate program nominating key actors/areas that need to be assessed in terms of their conformity with Braskem's codes of conduct. However, both BK AR 15 and BK AR 16 fail to discuss what constitutes corporate governance and describe substantial corporate governance obligations in detail. Both reports mention that salaries are equal for men and women working in the same function but arguably, subjective rules apply in determining the scope of functions such as the existence of an internal review process that assesses each individual competence and performance (BK AR 16, p. 60). Also, while BK AR 16 seems to be more detailed in terms of describing Braskem's commitment to human rights, it indicates the use of some troublesome tools for the promotion of gender equality such as workshops detailing the difference between feminine and masculine brains (BK AR 16, p. 57). This essentialises women's roles and re-affirms socially constructed gender roles which is a disservice to the wider gender equality movement. At the same time, the three strategic pillars of its business models are surviving, growing and perpetuating. Therefore, within this corporate model, human rights are always subsumed to economic interests.

Eletrobrás

Eletrobrás is largest energy company of Brazil. According to the company's website, it produces enough energy to fulfil one third of Brazil annual energy needs. Like Banco do Brasil, a substantial amount of Eletrobrás' shares are under the control of the Federal Government. As stated above, the presence of both public and private capital and control puts the company at a peculiar position. And, like Braskem, some of Eletrobrás subsidiaries have also been cited in corruption scandals and later been subjected to investigation. Since 2008, the multinational has been expanding its international operations focusing mostly in the Latin America region. Within the pool analysed, Eletrobrás has stood out as the company who produced the greatest amount of documents dealing with issues related to gender equality. Nevertheless, only 19% of Eletrobrás workforce is composed by women. See the graphics obtained from its annual report below.



According to Eletrobrás' 2016 Annual Report (hereinafter EL AR 16), the company abides by the Global Reporting Initiative's rules, the UN Global Compact Principles and the Sustainable Development Goals. In fact, Eletrobrás 'materiality' is based on 13 themes: ethics management; corruption; conformity; risk and crisis management; water; energy provision; communities; satisfaction of interested parties; energy efficiency; environmental policy; waste management; climate change and; human rights. In spite of it rhetoric, Eletrobrás still bases its scheme of promotions and remuneration on a subjective system arguably based on personal merit. As a result, men are paid more in medium and high level positions across the company, furthering the already existing pay gap. See the EL AR 16 chart with the ratio between women's and men's salaries below.

Razão matemática do salário e remuneração entre mulheres e homens

Empresa	Nível gerencial		Nível superior		Nível fundamental / médio	
	Salário	Remuneração	Salário	Remuneração	Salário	Remuneração
Holding	0,90	0,94	0,97	0,93	1,12	1,27
Cepel	0,93	0,92	0,83	0,76	1,15	0,98
Acre	0,29	0,03	0,30	0,24	0,09	0,89
Furnas	1,02	0,99	0,88	0,78	0,98	0,62
Eletrosul	0,97	0,89	0,93	0,81	1,04	0,84
Eletronuclear	0,87	0,90	0,81	0,71	0,94	0,82
CGTEE	0,74	0,74	0,77	0,77	0,84	0,84
Eletronorte	0,81	0,78	0,84	0,72	0,98	0,84
Chesf	0,92	0,85	0,89	0,81	1,09	1,01
Itaipu	0,93	0,90	0,90	0,82	0,92	0,78
Rondônia	0,85	1,01	0,90	0,98	0,95	0,80
Amazonas	0,93	0,93	0,88	0,88	1,14	1,14
Roraima	1,16	1,05	0,97	0,92	1,09	1,19
Piauí	0,81	0,74	0,97	1,00	1,28	1,06
Alagoas	1,05	0,85	0,83	0,80	1,84	1,13
Amazonas GT	1,00	0,99	1,00	0,92	1,00	0,78

Eletrobrás Code of Conduct and Ethics (hereinafter EL CCE) stresses the importance of respecting all people and human dignity. According to EL CCE (p. 8) this means “valuing life and affirming citizenship respecting physical and moral integrity of all people, individual differences and diversity of social groups, with equality, equity and justice”. Here, equity and equality seem to be used in a complimentary manner. But, when defining non-discriminatory career progression practices, CCE states that all employees shall be awarded with equality of opportunity which is more in line with the hegemonic definition of equity. Similarly, the People Management Policy (hereinafter PMP, p. 7) states its commitment to creating gender equity policies enabling “equal opportunities to all, regardless of sex, colour, religion, impairment, marital status, family situation, age or any other condition”. Supplier’s Code of Conduct (hereinafter SCC) determines that all Eletrobrás suppliers must respect and value diversity refuting all forms of discrimination based on gender, sexual orientation, ethnicity, race, belief or any other form.

The 2016 Social Responsibility Policy (hereinafter SRP) defines good corporate governance practices as all of those that “convert principles of transparency, equity, accountability and corporate responsibility into objective recommendations, aligning interests with the aim of preserving and optimising the organisation’s value” (p. 3). SRP notes that objective recommendations should be based on international norms such as ISO 26000 (the International Organization for Standardization’s social responsibility guidelines) and references the standard for all the corporate responsibility recommendations as arising out of the UN system. The 2017 Race and Gender Equity Action Plan (hereinafter RGEAP) was created after Eletrobrás accessioned to the Race and Gender Pro-Equity Program of the Special Secretariat for Women’s Policies, which recently lost its status of Ministry. RGEAP focuses of three pillars: access, remuneration and

careers; people management and organisational culture; and good practices. Its 2017 version specifically aims at the following: implementing a 20% quota for hiring black people; gender and race training and capacity building at leadership levels; monitoring women's participation at management levels; expanding paternity leave; creation of a breastfeeding support room; sexual harassment awareness raising; gender identity deconstruction campaigns in the electricity sector; reporting of results of the social project "Quilombo da Rasa"; production LGBT integration material; and deployment of a study for the implementation of an independent complaint system.

Some of Eletrobrás documents have a purely informative mission. For instance, the Domestic Violence Booklet (hereinafter DVB) sets out the background and details of Law Maria da Penha of 2006 and its role in the expansion of women's rights in Brazil. And the Breast Cancer Folder (hereinafter BCF) gives advice on healthy living, cancer prevention and instructs on how to perform a breast cancer self-diagnose. Eletrobrás Empowerment Booklet (hereinafter EB) adopts the UN's Global Pact slogan "Equality Means Business". As a result, EB is set out as an informative outlet promoting gender equality in leadership positions; equality of opportunities; health, safety and the end of violence; education and training; corporate development and value chain; community leadership and engagement; as well as transparency and reporting.

At the same time, other documents produced by Eletrobrás present highly contested issues as facts. For example, the Emotional Health Booklet (hereinafter EHB) focuses on psychological diseases that have occurred predominantly amongst women such as depression and anxiety. Although it has the positive effect of informing its readership of the symptoms for such diseases, it tends to re-affirm traditionally prescribed gender roles. For instance, the booklet affirms that "the brains of men and women are anatomically, chemically and functionally different" (EHB, p. 9). This hardly stimulates managers to hire women for traditionally male functions. More worrisome is the fact that, according to Eletrobrás' website, all of its subsidiaries are part of the Permanent Committee for Gender Issues of the Ministry of Mines and Energy. That is, Eletrobrás' gender equity policies might be a reflection of the current's government public policy and/or, on the contrary, it might influence the current government's public policy.

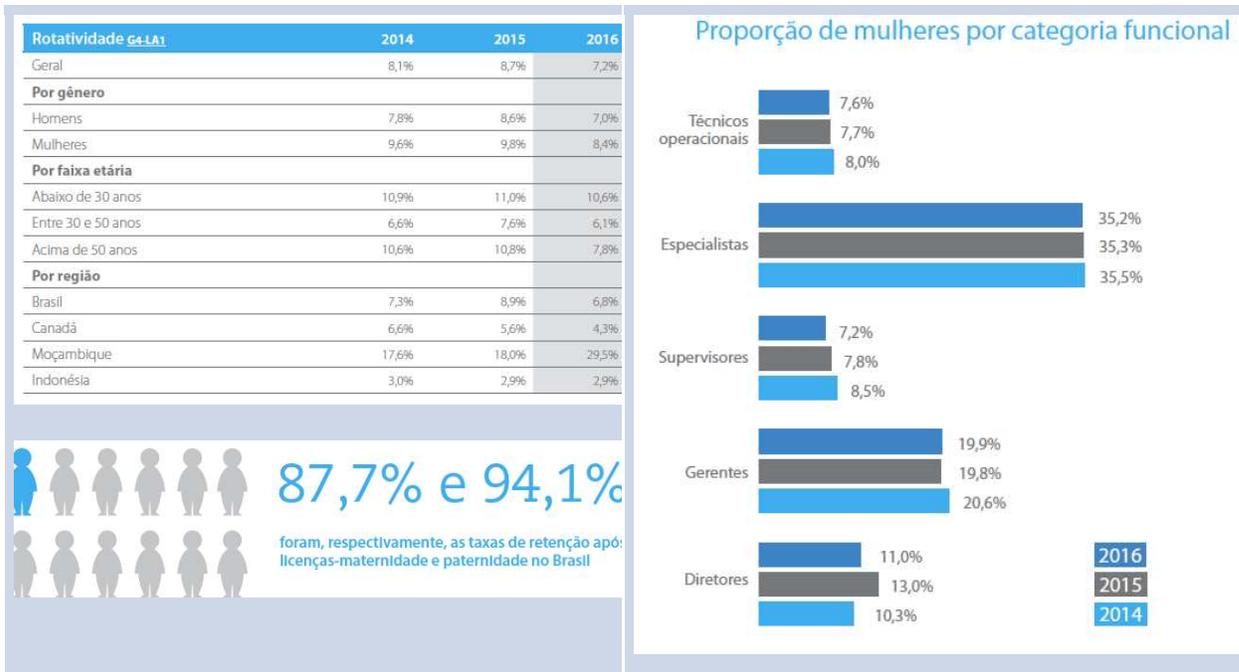
The multinational's website says that women make up only 22% of high management positions; only 21% of junior management positions; and 10% of core business positions (called "income making functions"). Eletrobrás' Diversity Promotion (hereinafter DP) presents a toolkit for the deconstruction of gender roles with group exercises and audiovisual resources to stimulate and support diversity training sessions. DP (p. 24) refers to gender as "the way as our identities of men and women are socially produced and lived". It adds by saying that gender "refers also to the way roles and models, usually stereotypical, are internalised, thought and reinforced by all people, on a daily basis" (ibid.). DP also notes that gender inequality need to be understood in conjunction with other forms of inequality such as race and class and that sexist oppression falls upon women as well as men, to different extents. Finally, DP (ibid.) affirms that "equality from a purely formal standpoint does not guarantee access to rights". This is so far the most comprehensive document I found addressing gender theory in a systematic manner. It is not clear as to how much of it can be attributed to the company's internal culture since DP was developed with the help of the government of the Netherlands. It would be interesting to know how much this toolkit has actually been used and if/how it influenced Eletrobrás' internal culture. So far, no related data is available on the company's website.

Vale

Vale is the largest mining company of the Americas and one of the largest mining company in the world. According to the multinational's website, it is the world's largest producer of nickel and was the second most traded company on the New York Stock Exchange in 2014. In 2017, it paid 4,721 billion Brazilian reais in dividends to 236,000 shareholders from all continents. Vale's 2016 Sustainability Report (hereinafter VL SR 16) states that in 2016 the multinational had a profit of 4 billion dollars having invested 16 million dollars in Fundo Vale, the social outreach arm of Vale. Since 2011, it has been implementing a project entitled Gender Equity in order to increase the number of women in its workforce and, since 2016, it has been a member of the Voluntary Principles on Security and Human Rights. VL SR 16 affirms that Vale is also a part of the Global Business Initiative on Human Rights and abides by UN's Global Compact, Sustainable Development Goals, and Guiding Principles on Business and Human Rights, WTO's Treaties and OECD's Guidelines for Multinational Enterprises.

Vale's 2009 Human Rights Policy led to the creation of the Human Rights Guide (hereinafter HRG). Human rights are, as per HRG (p. 8), "fundamental rights and liberties of every individual, like: the right to life, the right not to be discriminated, the rights to work, access to education, guarantee of human dignity, health and wellbeing conditions, amongst others". In turn, gender equality is defined as the push for "men and women to be equal in terms of legal rights, political participation, remuneration and personal relationships" (HRG, p. 16). Here, gender equality is understood as both a women's as well as a men's issue. The multinational's Code of Conduct and Ethics (hereinafter CCE) names six internal values. The third is human rights protection, promotion and awareness raising based on the principles prescribed by the UN Universal Declaration of Human Rights. CCE's rule 2.2 determines that discrimination based on ethnicity, origin, gender, sexual orientation, religious belief, union status, political conviction, ideology, social class, impairment, marital status or age is intolerable and shall be subject to disciplinary sanctions. HRG complements by saying that Vale has been working systematically in order to avoid human rights violations by preventing, remedying and mitigating the negative effects of violations. HRG mentions a communication channel called Fale Conosco that can be used when clarifying sustainability and human rights concerned. Different from Braskem's Linha de Ética, this channel seems to be a general line used for all questions concerning Vale.

VL SR 16 states that there are no differences between the basic salary for men and women in the same function. It states that variations may occur according to seniority and maturity of each employee in each function. Indeed, VL SR 16 affirms that Vale is committed to a meritocracy culture. However, a simple analysis of the data presented by the company shows that female workers continue to be disadvantaged when in comparison to their male counterparts. Only 12% of Vale's workforce is composed of female workers. VL SR 16 job turnaround chart disaggregated by gender, age and region demonstrate that the turnaround among women is usually higher than the one among men. A second chart demonstrates that the permanence rate for women after returning from maternity leave is 87,7% while the permanence for men returning from paternity leave is 94,1%. Also, a third chart presenting the proportion of women by level demonstrates that in 2016 women made up only 7,2% of supervisory positions, 19,9% of management positions and 11% of directorships. See the turnaround charts presented by VL SR 16 (p. 90 and 92) below.



Likewise Eletrobrás, Braskem and Banco do Brasil, VL SR 16 are also based on a “materiality” matrix, which in Vale’s case is based on 13 priority themes separated into 5 groups which in turn are linked to 76 indicators for monitoring and evaluations. The 6th priority theme is respect for human rights which, according to the report, includes: diversity and equality of opportunity; equality in remuneration between men and women; human rights; non-discrimination; child labour; forced labour or analogous to slavery; safety practices; traditional and indigenous people rights; indigenous rights (again); human rights evaluation of suppliers; and community. The 2013 Fundo Vale Report (hereinafter FVR) presents the different projects Vale supports across Brazil; these primarily focus on indigenous and environmental rights. Even though, some of the income generating projects involve women, gender equality is not the main objective of the projects presented by FVR. Vale’s Book Our History (hereinafter BOH) also stresses the importance of environmental issues for the company.

This environmental focus is also reflected in VL SR 16 and its strategy for the future. This seems to be particularly important now that Vale was named responsible for the 2015 tragedy of Samarco, one of its subsidiaries. In sum, one of Samarco’s dams containing mining waste collapsed in Mariana, Minas Gerais, leaving 18 people dead and 1 missing, a polluted river, and massive environmental losses affecting local livelihoods. Since then, Vale has signed an agreement with Ministério Público Federal (the Federal Public Prosecutor’s office) created Fundação Renova, a non-profit organisation responsible for implementing and managing the reconstruction, reparation and restoration of Mariana. According to website’s tab dedicate to Samarco, Fundação Renova aims to “reestablish and restore communities and the resources impacted by the collapse and, also, replace or compensate what is not amendable to remedying, always in an efficient, reputable, transparent and ethical manner”. Public opinion and independent reviews seem to affirm the contrary. Some organisations complain that Vale still did not pay damages (initially estimated at US\$ 48 billion and negotiated down to US\$ 680 millions), as a result the 375 families who were

victims of the tragedy still wait to be relocated.⁵ Public prosecutors now argue that the multinational (and its joint venture partner BHP Billiton) knew of the potential threat and decided to do nothing about it.

Cross-cutting Themes

All multinationals analysed in this case study explicitly confirmed their intention of abiding by international voluntary commitments such as UN's SGDs, Global Pact and Guiding Principles on Business and Human Rights, WTO's Treaties and OECD's Guidelines for Multinational Enterprises. Eletrobrás also mentioned ISO 260000 while Vale mentioned the voluntary Principles on Security and Human Rights. This does seem to indicate that they are all trying, at least in paper, to appear as abiders of international human rights rules and standards. It is important to notice that this does condition is not necessarily consistent with the multinationals acceptance of human rights as an intrinsic value. The discussion to this point has only been to establish that the language used indicates that human rights are dealt with as an instrumental value and that this inclusion has been aligned to furthering corporate reputations and through this channel, indirectly, seen as driver of profit.

A theme that cuts across all documents analysed is this notion that sustainability policies and processes need to be grounded in the concept of materiality or of a matrix of materiality. Materiality as a concept derives from accounting principles which determine that all important corporate issues must listed and quantified for auditing purposes. As most niches, materiality represents a specific culture based on financial analysis and jargon. Although, a materiality matrix may be useful in determining objective action such as how much money should be poured into social projects, it fails to address the complexities of sociological and legal issues. For instance, the materiality matrix requires businesses to enumerate in order of importance key issues by creating a hierarchy between them. But, human rights are indivisible and interdependent and are therefore not amenable to any hierarchy.

Another interesting tendency is the 'humanisation' of economic terms or the 'marketisation' of human rights terms. For example, Banco do Brasil's most recent annual report mentions the use of 'social due diligence' for the analysis of human rights accountability. As stated above, due diligence is the financial analysis of assets coupled with a comprehensive legal appraisal usually requested by company buyers. It is a particular tool used by corporate lawyers and auditors aimed at determining the net worth of a company during mergers and acquisition procedures. It is extensive and objective, which is hardly the best way of analysing long-term, complex and ever-evolving issues. Let us take the Samarco tragedy as an example. If environmental due diligence determines that the damages are quantified at US\$ 680 million, then there is not much room for inter-temporal impacts or risk uncertainties such as diseases that might be discovered and/or developed in the future by the local population due to the pollution of the Doce river.

Also, there seems to be a tendency of choosing the term gender equity over gender equality. Some academics contend that gender equity is a more technocratic term depoliticising demands arising from social movements while gender equality is perceived as a term in tune with social justice theories aimed at radically changing the hegemonic system. Although, it is not possible to determine the reason why the multinationals analysed prefer equity over equality, it is crucial to understand that choosing one over another might have a symbolic importance. That is, if gender

⁵ See <https://www.theguardian.com/world/2018/feb/28/brazil-dam-collapse-samarco-fundao-mining>.

equity is consciously chosen as a way to de-politicise gender justice movements, then this choice is important.

Banco do Brasil, Braskem and Eletrobrás, all frame their respective gender equity programs around women. Indeed, gender equity is mostly referred as a women's issue with paternity leave being the only exception in most discussions. Braskem and Eletrobrás even go as far as promoting workshops and materials prescribing socially constructed roles based on biological determinism. Although Eletrobrás DP's toolkit deals with gender theory in a comprehensive manner, it is not in line with the bulk of the materials produced by the company and available on its website. Vale was the only multinational that had materials affirming that gender equality was as much a men's issue as a women's issue. Given Vale's focus on environmental issues, it is difficult to determine how much of these materials are really representative of its internal culture.

Finally, all multinationals have, in one way or another, been involved in scandals. Banco do Brasil, Braskem and Eletrobrás have all been linked to corruption charges under Operação Lava Jato. Vale, as was just mentioned, is being prosecuted for the environmental tragedy of Mariana. In this sense, it is interesting to see that the increase in the production of documents related and/or mentioning human rights in the past decade, in a certain way overlap with episodes that negatively affected the multinational's reputation. So, it is hard to establish if the increase of interest in human rights issues is real or merely rhetoric aimed at maintaining or improving its reputation. Well, what does it all mean in terms of the existing literature?

The Concept of Hegemony and Legal Pluralism

There are no neutral laws. All laws are inserted in a historical and political environment that defines its actors, its purpose and hidden interests. "Law, while institution, contributes to a great extent to the maintenance of traditional masculine hegemony in society" (Dahl 1993, p. 7). To a great extent, men's cultural hegemony owes a great deal to Law in a strict positivist sense (Dahl 1993). Cultural hegemony means that non-hegemonic groups have to accept a pre-defined imposed vision of reality (a constructed reality) (Dahl 1993). New legislation introducing the concept of gender equality argue they have overcome historical discrimination and, therefore, portray a neutral approach to law and gender. Tove Dahl (1993), for example, affirms that the Norwegian Law of Equality is framed under the disguise of gender neutral vocabulary. However, as the author rightly concedes, "equality legislation do not produce, by themselves, equal and just results, not in the individual sphere nor in the collective sphere" (Dahl 1993, p. 4).

Dahl (1993) complements, "many times what happens is precisely the opposite, that is, for there to be equality it is necessary unequal treatment, in a way to guarantee to disadvantaged parties and groups equivalent merit". This prompts analysis that goes beyond the letter and spirit of the law and addresses consequences to individuals (Dahl 1993). Lack of assessment may accentuate even more inequality and injustice in settings where life courses, conditions, necessities, and opportunities are different for men and women (Dahl 1993). In this sense, Dahl (1993) argues that a feminist approach to law entails the systematic analysis of how law deals with and responds to women's realities and necessities. I would add that a feminist approach to law recognises the historical injustices inflicted upon women and attempts to address these injustices by acknowledging the intersectional and diverse character of this subjugation. Historically, legislation had been made to resolve men's needs and conflicts and, even when women's issues are dealt with, they are defined and prescribed by men for women (Dahl 1993).

Boaventura de Sousa Santos (2013) explains that human rights are now the hegemonic language defining and framing human dignity. It has, in this sense, become part of the same ideological hegemony consolidating and legitimising oppression (Santos 2013). By recognising that, historically, the rhetorics of human rights have been used for positive and/or negative purposes and often with conflicting objectives, a scholar can propose a counter-hegemonic and intercultural theory of human rights (Santos 2013). Santos extensive work on legal pluralism serves as basis for his proposed counter-hegemonic theory of human rights. This new paradigm relies on new critical theory of law (Santos 2009). Santos (2009) critical theory assumes that ‘legal constellations’ operate in local, national and global levels; can be found in domestic, productive, community, market, citizenship and global space-time; and are composed of rhetorics (present in legal practice); bureaucracy (present in procedures and standards) and violence (present in the use of physical force). This critical theory incurs in the recognition of co-existent and complex ‘legal constellations in all societies, including at the global level. For example, Santos (2013) contends that we need to recognise that forms of opposing globalisation processes are in place: the hegemonic neoliberal globalisation and the counter-hegemonic globalisation contextualising rights from the bottom-up. According to this theory, if we succeed in recognising and giving voice to counter-hegemonic globalisation, then we would be able to proceed with the advancement of counter-hegemonic human rights (Santos 2013).

Antonio Gramsci defines “big politics” or “high politics” in opposition to “little politics”, the latter dealing with the making of new States and the struggle to maintain certain structures of socio-economic power while the former with deals with “corridor” routine or the predominance of a group over another (2002, p. 21). Gramsci says it is great politics to try to exclude “big politics” from the realm of internal state routine reducing everything to “little politics” (2002). The same is true in international politics; big politics being related to reciprocal confrontation between States and little politics being related to diplomatic questions that perpetuate the existing equilibrium (Gramsci 2002). Gramsci (2002) recognises the role played by hegemonic discourse and advocates for the role of the State to be an educator, a promoter of a form of flexible law that reflects upon ever-changing social encounters including economic forces and structures. In brief, he advocates that there must be recognition that there are several legal constellations framing and reframing human rights discourses and that hegemonic legal constellations tend to depoliticise non-hegemonic thinking by transforming social justice constructs of human rights (big politics) into technocratic issues (little politics).

When multinationals pervert the use of the term gender equality emptying it of its political clout, well, this is big/little politics at play. In spite what is normally contended, organisations are inherently gendered (Acker 2008). Joan Acker says that “[t]o say that an organisation, or any other analytic unit, is gendered means that advantage and disadvantage, exploitation and control, action and emotion, meaning and identity, are patterned through and in terms of a distinction between male and female, masculine and feminine” (2008, p. 301). This is expressed in the division of labour, symbolic representations, interactions, identities and structures. Each organisation has its legal system that operates in a specific space and time (2009).

Relying upon the work developed by Noam Chomsky, Manuel Branco (2012) affirms that the production of an ideology advancing and justifying an ideal economic *praxis* would also entail the creation of mechanisms for a ‘proper’ behaviour. This would then characterise what the author calls the political economy of human rights (Branco 2012). In this sense, one could say that the human rights rhetoric served, for example, to defend the geopolitical interests during the Cold War epitomised by the separation of civil and political rights (representing the interests of Western

countries) and social, economic and cultural rights (representing the Soviet Bloc) (Branco 2012). Branco (2012) further develops his arguments by saying that human rights language relies on economic concepts such as necessity which implicate the use of other economic concepts such as price and cost venturing into a complex web of subjective economic jargon paradoxically based on the notion of purchasing power. Although, I disagree with the obvious conclusion drawn from the authors arguments, i.e. that human rights were created with the purpose of supporting hegemonic economic practices, I do think that human rights law and policy has to a certain extent been hijacked by hegemonic politics.

As mentioned above, the use of language that refers to equity is perceived to be more conservative and less effective than language based on equality (Gideon 2012). This is because equity intends to set out equality of opportunity or access while equality aims to promote equality of outcome. Moreover, the way the concept of health equity is applied is contested particularly from Gideon's (2012) perspective in the sense that, despite claiming to promote gender justice, equity simultaneously depoliticises the issue of social justice. A vast scholarship argues that equity is based on ethical values of distributive justice, which are in turn based upon human rights principles (Almeida 2002; Diniz, d'Oliveira and Lansky 2012). Some authors go as far as affirming that fighting for equality is not the best strategy for attaining gender justice. Teresa Cunha (2015) contends that a post-colonial feminist approach is required to remove women from subaltern ontological existences. This approach would entail the deconstruction of patriarchal, colonial and capitalist power by acknowledging diversity and not searching for uniformity as it usually prescribed by gender equality discourses (Cunha 2015).

While analysing the concept of positive discrimination, Maria Angeles Unzueta (2002) divides equality theory into four schools of thought: (i) equality in treatment; (ii) non-neutral equality; (iii) political equality; and (iv) equality before the law. Equality in treatment means treating equals equally and unequals unequally (Unzueta 2002). This form of equality is based on the classical thought: whereby if not concerned with the consequences of the policy in question but the mere treatment afforded to individuals or groups in light of the concept of equality. Non-neutral equality entails the recognition of the instrumentalisation of the criteria for the determination of justice (based on age, sex, so forth and so on). According to Unzueta (2002), this type of inequality avoids presenting ideological/relevant arguments as if they were logical/impartial. Political equality is based on liberal theory by which legal concepts are intertwined with the concept of the modern State (Unzueta 2002). In this case, a false universalism (biased in favour of white wealthy men) is used to establish that everyone is equal and therefore should be treated equally. And, equality before the law is based on the premise that the law is equal to all (Unzueta 2002). Here, the differentiation between individuals would be unacceptable or only acceptable when justified and non-arbitrary.

Of course, the central idea behind liberal political equality is reliant upon liberal theories of citizenship. That is, it relies on the notion that unitary political identity promotes equality to all members of that group, citizenship. However, as Elizabeth Cohen (2009) puts it, many forms of exclusion exist nowadays putting many individuals and groups beyond the scope of the rights and duties of citizenship. This is because "citizenship is marked as a privileged form of political membership" that "defines a boundary of inclusion within which liberal democracies claim to institutionalise equality through the conferral of a public status upon all members" (Cohen 2009, p. 4). As a result, some individuals (such as undocumented migrants) and groups are framed in terms of what Cohen (2009) calls a semi-citizenship. Semi-citizens are those who belong to a

political group and, as a result, are awarded some but not all rights and duties of citizenship (Cohen 2009).

Conclusion

Multinationals are not monoliths. It is clear that there is no universal or common informal law between multinationals. In fact, the case study was able to demonstrate that each company creates its own internal law aimed at internal conformity and external acceptance. Therefore, it is evident that to a great extent, the corporations analysed herein, use a human rights rhetoric as part of their marketing strategy. However, not all is bleak in this scenario. Even though, human rights are not included due to an intrinsic value, the rhetoric is effective in raising awareness and raising money for social projects. Indeed, all companies have indicated in their materials that they act, in some capacity, as donors of environmental and/or social projects.

Also, as in the case of Banco do Brasil and Eletrobrás, the existence of public capital in mixed capital companies provides an advantaged position when it comes to lobbying. For example, we were able to see that Eletrobrás is a member of the Permanent Committee for Gender Issues of the Ministry of Mines and Energy. It would not be farfetched to conclude that these companies could easily become the informal representatives of their entire industry, increasing their political influence over key issues. This case study was able to confirm that it is undebatable that multinationals are crucial policy actors and that they do play a role (although it remains unclear to what extent) in the reframing of human rights terms such as gender equality.

This case study led to an obvious conclusion, that is, that business interests come first. Equality promotion is seen as a good marketing strategy by all the multinationals analysed here. As a result, equality as well as all human rights values are subsumed to market-values. Multinationals seek profit, therefore, social strategies and policies are only put in place when connected to profit. In this sense, human rights discourses are instrumentalised by these multinationals, i.e. human rights are not seen as a value in themselves but as a tool for profit and profit-driven interests. The not so obvious conclusion drawn from this case study is related to the repackaging of the key human rights terms such as gender equality and social responsibility. Gender equality and gender equity are used interchangeably leading to confusion and dissipation of the political clout accompanying each term. Moreover, gender equity is framed mostly as a women's issue which essentialises women and re-affirms socially constructed gender roles.

As a concluding item gender equality is not the best driver of justice given it has been to a great extent distorted and highjacked by different policy actors such as multinationals. However, in the absence of a better term, and, in the absence of an equally strong social justice movement, I still believe that the historical political clout constructed around the term gender equality can be useful when it is part of a counter-hegemonic strategy.

In the future, it would be good to assess what are the internal perceptions surrounding each gender equality/social responsibility policy. That is, what do companies have to say about it? Are they open to transparent debates? Do they have difficulties 'selling' these policies to their internal public. For instance, one could reach out to social responsibility managers, public relations representatives and labour union leaders linked to each multinational analysed here in order to understand the internal nuances and the struggles that each one of them face when trying to implement and/or push for the implementation of the above-mentioned policies. Finally, I believe it would be also important to understand the barriers that women experience when trying to access

remedies to business and human rights violations. In short, we must understand what happens when mediation fails and analyse if there are gaps that must be addressed in that regard.

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