

Gender justice in the global economic system

An international agreement on business and human rights (“UN treaty”) in the sense of a feminist foreign and development policy

By Karolin Seitz

In spring 2023, guidelines for a feminist foreign and development policy were presented to the German Federal Cabinet. An international treaty on business and human rights, as negotiated in the United Nations (UN) Human Rights Council since 2014, would address the discriminatory global power structures and structural causes of global inequality and contribute to a systemic change in the sense of a feminist foreign and development policy. Women and marginalized groups are particularly affected by exploitative business practices in global value chains. The current draft agreement, also known as the “UN treaty”, focuses on the rights and protection of those affected by human rights violations in the business context and, unlike the German Supply Chain Act and the EU Corporate Sustainability Due Diligence Directive (CSDDD), takes gender justice into account comprehensively. The treaty would strengthen the rights, resources, and representation of women and marginalized groups in line with the 3-R approach.

On 1 March 2023, Germany’s Federal Minister for Foreign Affairs Annalena Baerbock and Federal Minister for Economic Cooperation and Development Minister Svenja Schulze presented guidelines for a feminist foreign and development policy.¹ The German government’s coalition agreement of 2021 already refers to the concept of “Feminist Foreign Policy”. Sweden was the first country to commit to a feminist foreign policy in 2014 under its Minister of Foreign Affairs Margot Wallström, and significantly shaped the concept.

Both Germany’s feminist foreign policy and the feminist development policy guidelines are based on the assumption that societies are more peaceful, prosperous, and sustainable if everyone can par-

ticipate equally in political, social, and economic life. In this context, the approaches are not only directed at women. The focus is on the realization of human rights for all. Existing power structures, discrimination in all forms and intersectional inequality are to be overcome and all marginalized groups protected and promoted. The two guidelines of the German Federal Ministry of Foreign Affairs (AA) and the Federal Ministry for Economic Cooperation and Development (BMZ) also follow the 3-R approach based on the Swedish model, according to which equal rights, representation, and resources of women and marginalized groups are to be promoted worldwide. The approach is to be applied at the various policy levels and includes gender budgeting. Both guidelines also mention the overcoming

¹ Federal Foreign Office (AA) (2023): Shaping Feminist Foreign Policy. Federal Foreign Office Guideline, online <https://www.auswaertiges-amt.de/blob/2585076/4d2d295dad8fb1c41c6271d2c1a41d75/ffp-leitlinien-data.pdf> and Federal Ministry for Economic Cooperation and Development (BMZ) (2023): Feminist Development Policy. For Just and Strong Societies Worldwide, online <https://www.bmz.de/resource/blob/153806/bmz-strategy-feminist-development-policy.pdf>

of racism and colonial structures and an equal partnership with the Global South as a goal. The BMZ goes even further, and describes the overcoming of patriarchy and classism as explicit goals.

Transformation of the global economic system – an essential element of a feminist foreign and development policy

Some (civil society) organizations criticize that the guidelines lack concrete measures that would address the structural and systemic causes of gender inequality, especially in the global economic system.² The current economic system, based on a capitalist and patriarchal order, is indeed fundamentally grounded on inequalities and exploitation of women and the environment.

Women are particularly affected by exploitative business practices in global value chains. They often work in areas such as the textile and agricultural sector, which are characterized by low wages, unhealthy working conditions, lack of social protection, disregard for sexual and reproductive rights, discrimination, and gender-based violence and harassment at the workplace. The unequal distribution of (unpaid) care work leads to gender-specific socio-economic disadvantages and a double burden for women. Women and marginalized groups also suffer particularly from environmental destruction and climate damage caused by companies. Those affected hardly succeed in gaining access to justice because of numerous hurdles.

The BMZ guidelines recognize the importance of gender justice in value chains and at the same time praise the German Supply Chain Act as a “milestone in eliminating existing patriarchal power structures”.³ While the law is an important step toward protecting human rights in value chains, it does not address the particular discrimination experienced by women and LGBTIQ+ in the business context (see “Failure to address gender equality in the Supply Chain Due Diligence Act and the EU Supply Chain Act”). In this context, policies that ignore gender equality run the risk of further reproducing discrimination and inequalities.

In addition, there is a lack of commitment on the part of the ministry to advocate for the consider-

ation of gender equality in the negotiations on a supply chain regulation at the level of the European Union (EU) and to work toward corresponding binding regulations at international level. Such a commitment would also do justice to the gender mainstreaming undertaken by both ministries.

In addition, the AA’s guidelines recognize the particular discrimination experienced by women and members of marginalized groups in the global economic context. The ministry announces that it will “give even greater consideration to their rights as well as gender-specific risks in economic processes”⁴ when revising the National Action Plan on Business and Human Rights. It further commits to work for the ratification of International Labor Organization (ILO) Convention No. 190 on the Elimination of Violence and Harassment at Work by more states. However, the AA’s guidelines also lack a commitment to strive for a gender-responsive EU Corporate Sustainability Due Diligence Directive (CSDDD) and a corresponding regulation at international level.

At least the ministry wants to integrate feminist approaches into foreign trade promotion, EU trade policy and at the level of the World Trade Organization (WTO) as well. However, the ministry’s announcing its supporting the implementation of the Joint Declaration on Trade and Women’s Economic Empowerment and the work of the WTO’s Informal Working Group on Trade and Gender is not enough.

The **Gender and Trade Coalition** criticizes that this declaration and the working group would not address the essential problems. For example, the negative impacts of the WTO’s neoliberal policies on fisheries, agriculture and food on women, especially in the Global South, would not be addressed. Flexibility in intellectual property rights, such as a patent suspension for Corona vaccines (TRIPS waiver), would also be excluded. Yet it is a well-known fact that women were at particular risk of infection during the COVID-19 pandemic, given their disproportionate role in (unpaid) care work. The Working Group would not even suggest that WTO measures and negotiations be systematically assessed for their potentially negative impact on gender equity.

2 See https://www.swp-berlin.org/publications/products/comments/2022C48_FeministForeignPolicy.pdf, p. 8 and <https://saubere-kleidung.de/wp-content/uploads/2022/09/FEMNET-BMZ-Feministische-Entwicklungspolitik-formatiert.pdf>

3 BMZ, p. 4

4 AA, p. 51

In the area of trade and investment policy, the mechanisms of investor–state dispute settlements (ISDS) should also be abolished. They allow investors and companies to sue states for lost profits, for example when states enact new laws and regulations for environmental and consumer protection or higher social standards – measures that are central to achieving gender equality.⁵ Already in 2015, several **UN experts** warned of the negative impact of trade and investment agreements and the ISDS mechanisms they contain on human rights.

The BMZ only addresses trade policy aspects by announcing that it seeks to increasingly advocate for the protection of local farmers, especially those in remote regions, in free trade agreements.

If the ministries want to live up to their feminist approach, they must also consistently pursue a transformative approach in their trade and economic policy and implement it in practice. Such a transformative approach must go beyond the plans mentioned above.

A UN agreement on business and human rights in the sense of a feminist foreign and development policy

Requiring companies to respect human rights, environmental standards and climate protection in all their business activities along the entire value chain and to reduce barriers to access to justice are important steps toward stopping exploitative and unjust practices. Appropriate regulations are necessary at national, European and international level to achieve systemic change in unjust and discriminatory economic structures.

An international legally binding instrument on business and human rights, as negotiated in the UN Human Rights Council since 2014, would address the discriminatory global power structures and structural causes of global inequality, especially in the global economic system. It would contribute to a systemic change in the sense of a feminist foreign and development policy.

In line with the 3-R approach, the strengthening and protection of the rights of those affected by human rights violations in the business context are at the center of the **updated draft treaty**, which

was published in August 2023 (including a separate article). It takes gender justice into account comprehensively. The preamble already refers to the special discrimination against women and marginalized groups in the global economic context. The text of the treaty calls on states and companies to take gender justice into account in all their measures and to be guided by the UN Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration, ILO Convention No. 190 on the Elimination of Violence and Harassment in the World of Work, and other relevant international standards. It is also important to take into account the guidance on the gender dimension of the UN Guiding Principles on Business and Human Rights, which was published by the UN Working Group on Business and Human Rights in 2019.

In addition, human rights defenders shall receive special protection. The draft treaty also provides for the removal of numerous barriers to access to justice and remedy for those affected, and in this respect goes further than the EU CSDDD. Special gender-specific barriers shall be taken into account, and remedies and access to justice are to be designed in a gender-responsive manner. An international fund to provide legal and financial aid to victims should also consider additional barriers to access that affect women.

The **third revised draft treaty** of August 2021 not only required the Parties to commit companies to human rights due diligence, but also to take into account the human right to a clean, healthy and sustainable environment and the negative impacts of their activities on the climate. The updated draft treaty of August 2023 no longer specifically addresses the human right to a clean, healthy and sustainable environment and the obligation of environmental due diligence for companies. However, the violation of environmental standards should give rise to independent liability even without being linked to a human rights violation. This is because environmental damage often only leads to large-scale human rights violations in the medium and long term. In the updated draft treaty, not only the state obligation to introduce environmental but also climate-related due diligence obligations was deleted. However, as described earlier, it is essential, especially for women and marginalized groups, that environmental degradation and climate change

⁵ See <https://www.isds.bilaterals.org/?free-trade-or-women-s-rights&lang=fr>

mitigation in the business context are stopped, as these further reinforce inequalities – as rightly explained by the AA.

According to the draft treaty, companies should also take gender equality into account in all steps of their due diligence processes and, for example, conduct gender-sensitive risk analyses.

When implementing the treaty and monitoring its implementation, states shall pay special attention to addressing heightened risks (such as gender-based and sexual violence, especially in conflict-affected regions) of particularly vulnerable groups and groups affected by human rights violations, including women.

By reducing discrimination against women and marginalized groups in the world of work, equal access to resources will be made possible for them – in line with the second “R” of the feminist foreign and development policy. Furthermore, the draft treaty provides for investment and trade agreements to be interpreted and implemented in line with the gist of the UN treaty and other human rights agreements. While the third revised draft treaty of 2021 also provided that new bilateral trade and investment agreements must be compatible with the UN treaty, the updated draft agreement of 2023 has been weakened at this point, and no longer provides for such a regulation.

In terms of the third “R” – representation – according to the third revised draft treaty of 2021, companies should ensure that they consult women and women’s groups as well as other potentially affected persons particularly vulnerable to human rights violations in all steps of the due diligence process. The updated 2023 draft treaty continues to require companies to consult with potentially affected groups and other stakeholders during due diligence processes. However, it no longer calls for ensuring the inclusion of particularly vulnerable groups, such as women, among others. In order to review the implementation of the agreement, the updated draft agreement also provides for a panel of experts,

which should be balanced in terms of gender, age, and region.

In the negotiations on the agreement itself, those affected by human rights violations and environmental destruction by companies as well as human rights organizations repeatedly have their say. The civil society alliance *Feminists4BindingTreaty*, which consists of more than 30 organizations, closely accompanies the UN treaty process and regularly contributes its expertise to the debates on the draft treaty.

The treaty would not only contribute to overcoming inequalities between the sexes but also between countries of the Global North and South, as the negative externalities of consumption and production patterns of the countries of the Global North – exploitative working conditions – could no longer be passed on to the countries of the South.

Despite the impact of the EU CSDDD also beyond European borders, those affected by human rights violations and countries from the Global South were insufficiently involved in the drafting of the directive. The forthcoming directive is therefore sometimes accused of having a colonial approach. The UN treaty process, on the other hand, represents a post-colonial approach in the sense of a feminist foreign and development policy. The negotiations in the UN Human Rights Council provide a forum in which all UN Member States are equally represented and an international regulation can be shaped multilaterally. The initiative for the launch of the treaty lay with countries of the Global South (especially Ecuador and South Africa). To date, the countries of the Global South, in contrast to most industrialized nations, are actively participating in the negotiations. An entry of the German government and the EU into the negotiations would therefore make clear their willingness to shape joint rules for the global economy on an equal footing. The UN treaty is an initial step toward redefining and transforming economic and political power hierarchies in terms of a feminist foreign and development policy.

Lack of consideration of gender justice in the German Supply Chain Act and the EU CSDDD

After the UN Guiding Principles on Business and Human Rights were published in 2011, several countries implemented them in national action plans. Recognizing that only binding rules can effectively ensure that companies respect human rights and environmental protection, some countries have adopted due diligence laws. However, none of the plans or laws address the structural disadvantage of women in global value chains.

The **German Supply Chain Act** (Lieferkettensorgfaltspflichtengesetz, LKSG) passed by the Bundestag in June 2021 is also “blind” when it comes to gender equality. Although Germany has committed to implementing the UN Convention on the Elimination of All Forms of Discrimination against Women, it was not included in the catalogue of human rights conventions to be protected by the law. Other relevant international conventions, such as ILO Convention No. 190 concerning the elimination of violence and harassment in the world of work, are not listed either. A gender-specific due diligence obligation for companies is also missing.

In this context, the responsible UN working group published its own guidelines in 2019 with the booklet “**Gender Dimension of the UN Guiding Principles on Business and Human Rights**”, which shows how gender justice should be taken into account in all steps of corporate due diligence. For example, it is important to consider the principle of intersectionality, which looks at gender and other personal characteristics or identities together and examines how these intersections contribute to experiences of discrimination. In order to be able to review the impact of their activities and policies on women and girls, companies should collect data disaggregated by gender and review gender-specific indicators (e.g. gender pay gap, gender pension gap, etc.). In addition, safe and meaningful consultations with women and women’s groups should be conducted in all steps of due diligence.

The LKSG also falls short in other areas, which reduces the protection of all those affected.⁶ It applies to too few companies and contains too many exceptions to the due diligence obligations. It not provide for a new cause of action in civil law holding companies liable for damage caused by failure to comply with their due diligence obligations. In addition, environmental damage in supply chains is taken into account only marginally.

The EU Commission has also missed the opportunity to improve its proposal for an **EU Corporate Sustainability Due Diligence Directive** with regard to gender-responsive due diligence obligations. The draft published on 23 February 2022 does mention the UN Convention on the Elimination of All Forms of Discrimination against Women in the list of human rights conventions to be protected. However, it does not contain a separate element of offense comprising, for example, forms of gender-based violence and discrimination in value chains that do not take place directly in the regulated workplace. The list of human rights instruments is also incomplete. For example, ILO Convention No. 190 is missing. Unlike in a draft leaked shortly before its official publication, the version of 23 February 2022 lacks the requirement for gender-responsive due diligence for companies. Improved procedural rules and a fair distribution of the burden of proof as well as the reduction of gender-specific barriers to access to justice are also missing.

Neither does the **position of the EU Council** adopted on 1 December 2022 address gender issues, and it has even deleted the UN Convention on the Elimination of All Forms of Discrimination against Women from the scope of the draft directive.

The **European Parliament**, in its position of 1 June 2023, is much more progressive and calls for gender justice to be taken into account in all steps of corporate due diligence. However, ILO Convention No. 190 is also missing, as is a separate offense prohibiting forms of gender-based violence and discrimination outside the workplace.

In Article 8 of the **Treaty on the Functioning of the EU**, the EU shall aim to eliminate inequalities and to promote equality, between men and women in all its activities. With its **Gender Equality Strategy** adopted in 2020, the EU Commission has also clearly committed to a gender mainstreaming approach. In order to live up to its own claim and to actually fulfil the commitment to gender mainstreaming, the EU Council, the EU Commission and the European Parliament should improve the Commission’s draft directive in the trilogue negotiations, among other things from a gender perspective.⁷

6 See the detailed analysis of the German Supply Chain Act by the Initiative Lieferkettengesetz: https://lieferkettengesetz.de/wp-content/uploads/2021/11/Initiative-Lieferkettengesetz_FAQ-English.pdf

7 See Open letter to the European Commission, Council and MPs by 140 Civil Society Organisations call for a gender-responsive Corporate Sustainability Due Diligence legislation (https://www.globalpolicy.org/en/news/2023-03-06/open-letter-european-commission-council-and-mps-140-civil-society-organisations#_ftn4)

Conclusion

As described above, the UN treaty offers an opportunity to translate the feminist foreign and development policy envisaged by the German government from theory into practice and to contribute to a structural transformation toward global gender justice, and the overcoming of discrimination against women and marginalized groups in the global economic context. In order for an effective and gender-equitable UN treaty to come into being and enter into force as soon as possible, all UN Member States should participate constructively in the negotiations in the UN Human Rights Council and seek consensus proposals. This also applies to the EU, which should finally enter into the negotiations. One prerequisite for this is an early **EU negotiating mandate**, for which the German government and the other EU Member States should campaign. In the negotiations, the countries should work to ensure that the comprehensive consideration of gender equality is maintained in the treaty text.

Imprint

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