Informality and gender:

Major absentees in the discussion on the right to work

The United Nations has proposed a human rights and business agenda as a framework for countries to take action to prevent human rights violations that some companies have committed throughout history. However, this initiative exemplifies the situation in developed countries, where labor informality, which is widely represented by women and predominates in developing countries, is not taken into account. To analyze the absence of this gender approach in the context of labor informality within the agenda, researchers of the Faculty of Law at Universidad del Rosario studied the informal mining in Colombia, a field historically related to violence and discrimination against women.

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"This is a simple story, but it's not easy to tell. As in a fable, there is pain, and as a fable, it is filled of wonders and happiness."

Roberto Benigni (*Life is Beautiful*, 1997)

It was 1928. The scene took place on a street in Macondo, where the army began shooting at workers who had been protesting for weeks for their labor rights in front of a fruit company. José Arcadio Segundo Buendía barely managed to hold his son to put him in a safe place in the middle of the revolt. The next day, José Arcadio woke up on a train on an unusually soft ground. They were all human remains.

It was 1945. The scene took place in a Nazi concentration camp in Italy, where thousands of detainees were forced to work in inhumane conditions. There, the Jewish Guido Orefice carries his son who sleeps in his arms, to discover with horror a mountain with a nauseating smell. They were all human remains.

Both scenes are fictional. The one from 1928, narrated by Colombian Nobel Prize winner Gabriel García Márquez in his book *One Hundred Years of Solitude*. The one from 1945, is told by Italian actor, screenwriter and director Roberto Benigni, in his film *Life is Beautiful*. However, both works horrifyingly depict historical facts of a crude reality of human death perpetuated by other humans.

Transforming them into memorable artistic and literary legacies is not the result of fortuitous selection, given that in both cases it was shown how companies can directly or indirectly influence human rights violations, as occurred in the banana massacre in Colombia (1928) or during the Holocaust in Nazi concentration camps in Europe (from 1933 to 1945).

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The company at the center of the Banana massacre was the now defunct American United Fruit Company, whose poor working conditions sparked a strike among workers. The directors of this company managed to exert influences in the national government, so the Colombian army intervened in the strike killing a number of workers, whose exact number is unknown, but which many scholars estimate in a wide range ranging from 13 to 2 000.

Grave in the Banana Plantation
The air smells foul (...)
Bullet comes, bullet goes
You no longer know from where
The bullet will reach you...

Lyrics from the song *El platanal* by the group 1280 Almas

During World War II several German companies benefited from the Holocaust by using detainees from Nazi con-

> There has been a struggle to ensure that informality is not understood within the realms of illegality, especially given that it is women who, by supporting their children or caring for the family, are historically overrepresented in informal work.

centration camps as free labor. These people were forced to work under inhumane conditions, and in most cases almost all died in such conditions. Human rights violations were a constant, and mainly women were subjected to different types of gender-based violence. For this reason, and as a way to guarantee the fundamental rights of the people, one of the consequences of the Second World War was the adoption, on December 10, 1948, of the Universal Declaration of Human Rights by the newly created United Nations General Assembly.

"However, this statement does not consider the role that companies can play in the violation of human rights," states Enrique Prieto Ríos, professor in the Faculty of Law at Universidad del Rosario.

Globally, millions of children are forced to work as victims of relatives or industries, and many workers around the world are in poverty. This situation is more common in the so-called Global South, made up of the so-called underdeveloped or developing countries. In the sixties and seventies, 77 developing countries grouped under the name of G-77 (also known as the "non-aligned"), used the United Nations General Assembly to demand and protect their rights. "These nations, led by Latin Americans like Argentina and Mexico, began the discussion at that time on the creation of an international treaty that established limits on international companies operating in the states classified as developing, in order to promote respect for sovereignty, territory and human rights. This initiative originated primarily in the face of the political influence that some multinational companies exerted on local governments to violate human rights in Latin America," explains Prieto Ríos.

It was not until 2011 that the United Nations approved the Guiding Principles on Business and Human Rights. "These Principles are not a treaty, that is, they are not binding under international law and countries do not have legal obligations to comply with them, but they do provide a framework for countries to develop an agenda with regulations that require companies to respect human rights. Colombia was the first country in Latin America to have a National Action Plan for Human Rights and Business, adopted in 2015, not as a law, but as a public policy document, which also serves as an input for taking specific actions," clarifies the professor. Subsequently, in 2020, the government of the day published the second National Plan.

Human rights, gender and informality agenda

Prieto Rios adds that although it was the G-77 countries that began the discussion at the United Nations on the negative impact of multinational companies, which would be the first step in the construction of the Guiding Principles on Business and Human Rights, this final document was led mainly by developed countries (the so-called Global North).

"This is problematic in developing countries such as Colombia, since the human rights and business agenda established by the United Nations essentially reflects the labor situation of developed countries and does not offer a frame of reference regarding the labor informality that predominates in developing countries," emphasizes Prieto Ríos.

"The dilemma with informality is that it generates discussions about whether it is an illegal activity. However, poverty cannot be criminalized. It has been fought not to be understood within the fields of illegality, especially considering that it is women who, to support their children or care for the family, are historically overrepresented within informal work," adds Lina María Céspedes, professor in the Faculty of Law at Universidad del Rosario.

According to the Departamento Administrativo Nacional de Estadística (Dane) (National Administrative Department of Statistics), for the third quarter of 2023, the share of informal employment in the country was 56 percent; of them the 58 percent are men and 53 percent are women. Although current figures place more men than women in this type of work, a study carried out by María Cristina Bolívar Restrepo as part of her Master's thesis in Economic Sciences at Universidad Nacional de Colombia, revealed that women "find themselves in more precarious categories of informality, with wages below the poverty line and concentrated in activities of less recognition." This same analysis found that women are more likely to stay in the informal than men (due to domestic burden, which does not allow them to adjust to a fixed working schedule), and gender and economic gaps expose them more to conditions of human rights violations and gender abuse.

Informality and gender in mining

"This is why it is essential to understand the gender gap in the human rights agenda, but from the context of

It is urgent to raise the issue of the informal economy and action plans especially in countries that still have deep gaps in their development. This is essential to protect the human rights of women in the workplace and to ensure gender equity in this universe to which we are all equally entitled .

informal work," says Enrique Prieto. Under this premise, the professor, together with Céspedes and the former young researcher of Universidad del Rosario, Juan Pontón Serra, reviewed the current situation of these issues within the context of mining in Colombia. "This industry was chosen because it is one of the most important economic activities in the country, even since colonial times," clarifies Prieto. The work was published as an open access article in Business and Human Rights Journal as part of a special issue on business and human rights.

"It should be noted that in the implementation of Colombia's first National Action Plan on Human Rights and Business, a general mapping was made of the impacts of mining and gender-related issues, such as the risks of informality and gender-based violence. However, in the second National Plan the issue does not deepen," says Céspedes. In addition, "the issue of informal work is not very well represented in this agenda, despite the high violation of human rights to which workers, especially women, may be exposed," adds Prieto. That is why mining is an industry relevant to the study. It should be noted that in Colombia more than 50 percent of this activity is carried out informally.

The significant challenge, then, was to define informality in the mining context so that it can be understood globally. To simplify it, the authors categorized the concept as “all mining activity that does not develop in corporate environments, does not have mining titles when required by law, and develops in precarious conditions that are outside the structures of environmental regulation, marketing, employment, health and safety, techniques or employment.”

Informal miners generally do not have direct contracts with companies. In addition, in informality, women are not usually employed to carry out the activity, since there is a belief that the woman “dries the mine”, that is, that its presence in extraction or excavation sites makes the sought-after mineral disappear. “For this reason, women are located in the weakest and most precarious part of the mining value chain, including activities that involve the use of mercury to extract gold (even though it is prohibited in Colombia), putting their health at risk. And due to the lack of job opportunities, they are also exposed to sex work,” Cespedes reveals. “If women work in the informal sector, they are more exposed to risks of gender-based violence. Another factor that contributes to this phenomenon is that, traditionally, certain mining activities in the country have been concentrated in areas of armed conflict and with the presence or action of groups outside the law,” argues Professor Céspedes.

In the case of formal mining, women are also not adequately represented, nor is access to a job opportunity comparable to that of men. Data confirms this: the “Gender Equity Sector Study for the Mining-Energy Sector”, developed by the Ministry of Mines and Energy, revealed that by September 2020 women occupied only 8 percent of formal direct jobs in this field.

The study, which is part of the strategy to implement the Human Rights Policy for the Mining and Energy Sector and the Gender Guidelines for the Mining-Energy Sector in the country, recommended further research on this topic, as there is some evidence that women face higher rates of gender-based violence in informal mining settings. “The interesting thing about these types of recommendations is that they somehow emerged from the first National Action Plan for Rights and Business, which was designed based on United Nations initiatives. So these international agendas do have some impact and therefore can generate positive change in society,” concludes Lina Céspedes.

Indeed, the Organización Internacional del Trabajo (OIT) (International Labor Organization (ILO)), the United Nations’ specialized agency dedicated to promoting opportunities for men and women to access decent and productive work in conditions of freedom, equity, security and human dignity, at its 2018 meeting recommended moving forward a study on gender equality in the global mining sector, the report of which was published in 2021. This document also presents the role of

WOMEN AND MINING IN COLOMBIA

INFORMAL MINING FIGURES

These figures of women exposed to gender inequalities and violence are not included in the 2021 Ministry of Mines and Energy study

70%

of mining is represented by INFORMAL MINING. WOMEN ACCOUNT for 46 percent of informal mining.

60%

of ARTISANAL MINING is represented by WOMEN.

Data obtained from the DANE National Administrative Department of Statistics (November 2020) and the final report “Gender Analysis and Assessment” of USAID/COLOMBIA (May 2019).

THE FORMAL MINING FIGURES

In 2021, a gender equity sector study for the mining – energy sector was published (led by the Ministry of Mines and Energy of Colombia with the support of the Inter-American Development Bank), in which 71 companies from the mining, energy and hydrocarbons subsectors evaluated their performance on gender equity. Twenty-three mining companies participated in this study.

56.5%

of the company's leaders know and show interest in the gender equity approach and empowerment, but only 24.8% have translated it into formal commitments and/or concrete actions.

18%

of women are represented in management positions in mining companies.

70.4%

of companies has a gender diversity approach in recruitment processes but only 50.7% incorporate guidelines in this regard in their corporate policies.

Professors Lina Céspedes and Enrique Prieto of Universidad del Rosario analyzed the human rights and business agenda in the context of mining, informality and gender. Although mining was taken as a frame of reference, this study can open doors to understanding gender issues arising from informality in other labor fields in Colombia.

women in artisanal mining. However, more research detailing gender issues arising from the informal work context is still lacking.

The research led by Céspedes and Prieto has been one of the few that has substantially analyzed the topic of the human rights and business agenda in the context of mining, informality and gender. Although mining was taken as a frame of reference, it can open doors to understanding gender issues arising from informality in other labor fields in Colombia.

The follow-up by the researchers of Universidad del Rosario identified informality as a major obstacle to guaranteeing human rights at work; however, human rights agendas and companies are not comprehensively addressing this issue, although some efforts have been made in this regard. Therefore, it is urgent to raise the issue of the informal economy and the corresponding action plans in these agendas, especially in countries that still have deep gaps in their development. This is essential to protect the human rights of women in the workplace and to ensure gender equity in this universe to which we are all equally entitled.