

# Please Give Me a Remedy: Women Human Rights Defenders Mobilize for Occupational Safety and Health<sup>1</sup>

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## Abstract

This article investigates the strategies that women human rights defenders use to engage in legal mobilization and overcome gendered barriers to justice. It does so through analysis of a specific health and safety dispute involving women workers and the Republic of Korea's biggest semiconductor corporation.

**Keywords:** access to justice; business and human rights; gender; third pillar; women human rights defenders

## 1. Introduction

Nowadays, many feminists devote their energy to engaging with the state, as opposed to avoiding such engagement altogether (Halley 2018: xiii). Some feminists find that engaging in political battles allows for greater influence over the framing of issues than litigation in the courts (Butler 1997: 23–4; Banaszak et al. 2003: 4). Other feminists have acknowledged that engaging with the court system is useful (McCann 1994; Hunter et al. 2010). Engagements with courts have multiplied since the United Nations (UN) Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) wrote General Recommendation 33 on access to justice for women in 2015. The discussions have mainly focused on violations of women's rights at home. Yet, attention has also shifted to access to justice for women outside the confines of their homes. Notably, the UN Working Group on business and human rights (WGBHR) considered gender dynamics in various reports. This working group reinterpreted the 'respect, protect and remedy' framework (UN Human Rights Council 2008a) and the accompanying UN Guiding Principles (UN Human Rights Council 2011: Annex)—crafted by John Ruggie, the UN Special Representative on business and human rights between 2005 and 2011—in its Gender Guidance to address the deficits in these documents (UN Human Rights Council 2019a: Annex).

<sup>1</sup> References to 'women' should be understood to include girls as well as transgender and intersex women. This article follows the convention of putting the Korean family name first, followed by the given name. The first part of the title of this article quotes the lyrics of the song 'Jamais Vu' by the K-pop band BTS. This band has learned to recognize gendered patterns over the course of their careers (Nissen 2018).

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In General Recommendation 33, the CEDAW calls upon academic researchers ‘to highlight practices, procedures and jurisprudence that promote or limit women’s full access to justice’ in order to improve the accountability of justice systems and develop gender expertise (20(e)). Similarly, the WGBHR calls for input from experts to carry out gender-responsive assessments (UN Human Rights Council 2019a: 39). This article aims to answer these calls by assessing how women human rights defenders (WHRDs) engage in legal mobilization and overcome gendered barriers to justice. Human rights defenders working on corporate accountability are important allies in struggles for justice. While all defenders face grave risks, there are specific and serious risks for WHRDs because they serve as agents of social change in gender relations (Nissen 2023b: 370). WHRDs are not just ‘women and girls working on any human rights issue’ but ‘people of all genders who work to promote women’s rights and rights related to gender equality’ (UN Human Rights Council 2010: 30; UN Human Rights Council 2019b: 12).

This article investigates the strategies that WHRDs use to overcome gendered barriers to justice for rights violations in export industries, and specifically in the semiconductor industry. The feminisation of labour in various export industries around the world has been well documented (Bergeron 2016). In the semiconductor industry, women are disproportionately represented in jobs with the lowest levels of autonomy and job security, while the positions with more authority are occupied by men (Marchand and Osorno Velázquez 2016: 438). It is also known that rights violations take a gender-specific form in industries in which the use of toxins is poorly regulated and industry-wide unions do not exist (UN Forum on Business and Human Rights 2018).

The article discusses the landmark case of (family members of) Hwang Yu-Mi and four other sick Samsung factory workers in the Republic of Korea (Korea), internationally known as South Korea. Hwang Yu-Mi was subsequently in charge of diffusion and wet etching processes in Samsung’s Giheung plant between 2003 and 2006 before her death from acute myeloid leukemia in 2007 (Seoul Administrative Court ruling, 23 June 2011, Case No. 2010 GU HAP 1149 Seoul, hereafter Administrative Court ruling 2011). Her father, Hwang Sang-gi, started a social movement to overcome gendered barriers to justice in 2005 to ultimately obtain a partial victory in Korea’s courts between 2011 and 2016 (Administrative Court ruling 2011; Seoul High Court ruling, 21 August 2014, Case No. 2011 NU 23995; Supreme Court ruling, 30 August 2016, Case No., 2014 DU 12185). While civil society is also affected by gendered dynamics (Fraser 1992: 56), the women’s movement and the labour movement have long been connected in Korea (Kim and Kim 2014: 23). Even under the dictatorship of Park Chung-Hee (1963–79)—who is widely credited with sponsoring Korean electronics companies’ economic success (Nissen 2023a: 249–50)—women workers tried to organize to improve working conditions in semiconductor factories. The studied landmark case has no strong transnational activist dimension. This is not atypical, as ‘home-grown’ social movements frequently move to litigation (Vanhala 2018: 391).

Triangulation—‘the use of multiple research methods and types of data’—allows ‘a more holistic picture of the complex phenomena that social movement scholars study’ to emerge (Ayoub et al. 2014: 68). Therefore, the author conducted a feminist deconstruction (Reinharz 1992: 149) of data drawn from (i) a doctrinal analysis of case law and legislation (cf. Davies 2022: 125); (ii) archival research of press articles and documents provided by UN Special Procedures, social movements and Samsung (cf. Bosi and Reiter 2014: 128); and (iii) a secondary analysis of interview data collected for a previous case study on the role of the European Union in rendering emerging market transnational corporations accountable (Nissen 2022a; Nissen 2023a: 14–7 and 248–97). Interviews were conducted with ten experts—five women and five men—in Korea in 2018, and two additional informal phone interviews were undertaken with female experts in Europe in 2019 and 2020. The experts had experience in dispute settlement and most of them worked in government

or civil society. Ignorance about data collection affected the data collection. Four out of five of the male experts did not answer the question ‘Are there any barriers [to justice] that women experience?’ The sample was rather small and female experts do *not* have privileged knowledge of gender issues in patriarchal societies (Intemann 2016: 262–63). Yet, all interviewees had specific expertise regarding the barriers that are known to have a disproportionate impact on women.

The article is structured as follows. Section 2 analyses the CEDAW’s General Recommendation 33 on access to justice for women, and the WGBHR’s Gender Guidance. Section 3 details the position of women working in the Korean semiconductor industry. Section 4 turns to the health risks in this industry, and touches upon their gendered impacts. In Section 5, the dispute between (family members of) Hwang Yu-Mi and four other sick Samsung factory workers is introduced. The antecedents of this dispute are structured with the help of the ‘naming, blaming and claiming’ framework that has been proposed by William Felstiner and his co-authors in 1980. This framework—which has received the 2011 Lasting Contribution Award of the American Political Science Association’s Law and Courts section (Olesen and Hammerslev 2021: 291)—is a ‘useful starting point’ to study legal consciousness in legal mobilization research (Vanhala and Kinghan 2022: 23). This framework tracks how experiences transform into legal disputes (Bedner and Vel 2011: 8; Cohen and Alberstein 2019: 13). In so doing, it allows researchers to ‘focus on how legal and social categories and everyday practices mirror broader social structures’ (Olesen and Hammerslev 2021: 297). In the context of women’s rights, this requires ‘tailor[ing] this framework to women’s experiences’ (Gilleri 2020: 1235). Section 6 of this article analyses the dispute through the framework of legal mobilization that was conceptualized by Emilio Lehoucq and Whitney Taylor on the basis of a systematic review in 2020. Their framework also needs to be customized to account for women’s experiences. Finally, Section 7 investigates the barriers that the involved human rights defenders faced during the lawsuit. The defenders experienced harassment while they attempted to challenge stereotypes about feminised labour. Furthermore, they disproportionately felt the costs of litigation as well as procedural barriers to justice. The strategies that the defenders employed to overcome these barriers are studied.

## 2. International norms

Access to remediation lies at the heart of international human rights law. Article 8 of the Universal Declaration of Human Rights (UN General Assembly 1948) states: ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted *him* by the Constitution or by law’ (emphasis added). While the UN has historically marginalized and excluded women (Charlesworth and Chinkin 2000), the Convention on the Elimination of all Forms of Discrimination against Women (UN Convention 1979), the Vienna Declaration and Programme of Action (UN General Assembly 1993) and the Beijing Declaration and Platform for Action (UN Women 1995) reflect the need to adopt specific measures to achieve substantive gender equality. More specifically, the CEDAW’s General Recommendation 33 on access to justice for women and the WGBHR’s Gender Guidance are milestone documents in the quest for equal access to justice for women whose rights have been violated by corporations. In this section, both frameworks are discussed in turn.

To begin, CEDAW’s General Recommendation 33 on access to justice examines the obligations of States Parties to the Convention on the Elimination of all Forms of Discrimination against Women (which was ratified by Korea in 1984). The CEDAW writes that States Parties should ‘ensure an innovative and transformative justice approach and framework’ (18(c); see . They have obligations to provide access to competent, gender-sensitive dispute resolution systems, as well as equal access to effective and timely remedies under articles

2(c), 3, 5(a) and 15 of this Convention (CEDAW 2015: 11). Article 2(c) stipulates that States Parties must take all appropriate measures to guarantee the substantive equality of men and women in all areas of life, including through the establishment of competent national tribunals and other public institutions to ensure the effective protection of women against any act of discrimination. Article 15(1) provides that women and men must have equality before the law and benefit from equal protection of the law. Women should be 'treated equally in all stages of procedure' by civil courts and tribunals according to Article 15(2). Article 3 mentions the need for appropriate measures to ensure that women can exercise and enjoy their human rights and fundamental freedoms on a basis of equality with men. Finally, under Article 5(a), States Parties have an obligation to modify the social and cultural patterns of conduct of men and women to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. General Recommendation 33 is a milestone document in the United Nations when it comes to gendered barriers to justice (UN Human Rights Council 2019a: 19; UN Human Rights Council 2019c: 80). It identifies many (but not all) issues that stand as added barriers to accessing justice for women (including women who face intersectional forms of discrimination) and other vulnerable groups. It explains that States Parties need to expose and remove such barriers.

Furthermore, Ruggie had a UN mandate to 'integrate a gender perspective throughout his work' following the adoption of the 'respect, protect and remedy' framework in the field of business and human rights (UN Human Rights Council 2008a; UN Human Rights Council 2008b: 4(d)). Nevertheless, scholars have argued that there is an androcentric bias in the UN Guiding Principles (Corsi 2021: 322–25; Grosser 2021: 1632). They take on an 'add women and stir' approach to addressing women's human rights, rather than providing a holistic analysis and reimagining of structural challenges (Simons and Handl 2019: 120). For the purposes of this article, it is useful to note that various barriers to justice are mentioned in the UN Guiding Principles but that it is not acknowledged explicitly that women (and other vulnerable groups) may face added layers of barriers to accessing justice. Other relevant UN documents—such as the General Comment 16 on State obligations regarding the Impact of Business on Children's Rights of the UN Committee on the Rights of the Child (2013), and General Comment 24 on Business and Human Rights of the UN Committee on Economic, Social and Cultural Rights (2017)—also do not refer to difficulties experienced by women who seek remediation. This approach towards remediation hides from the world the negative impact of business on women. However, a report of the UN Office of the High Commissioner for Human Rights (UN OHCHR) Accountability and Remedy Project (UN OHCHR 2020) refers to gender issues in relation to remediation. The report emphasizes, among other things, the importance of a gender-perspective. These references were inspired by the work conducted by the WGBHR.

The WGBHR paid considerable attention to gender issues on various occasions. The WGBHR considered gender dynamics most substantially in 2019. It reinterpreted the 'respect, protect and remedy' framework and the accompanying UN Guiding Principles in its Gender Guidance (UN Human Rights Council 2019a: Annex). The WGBHR proposed a three-step gender framework: gender-responsive assessments, gender-transformative measures and gender-transformative remedies (39–40). States and businesses should periodically carry out gender-responsive assessments of the terrain of laws, policies, norms, practices and activities to identify existing gender inequalities and discriminations, as well as the impact of their respective current and future actions or omissions on this terrain. Such an assessment process should make use of 'sex-disaggregated' data and engage gender-sensitive experts and women's organizations, including those operating at the grassroots level. The assessment should be responsive: it should be able to respond to differentiated, intersectional and disproportionate adverse impacts on women's human rights as well as to

discriminatory norms and patriarchal power structures. The findings of the assessments should inform states and businesses in taking a full range of measures to achieve substantive gender equality in all spheres of life. Remedies should change existing power structures that discriminate against women and achieve substantive gender equality. The measures and remedies should be transformative. The prefix ‘trans’ in ‘transformative’ indicates that ‘the form goes beyond its existing form’ ‘to bring attention to ... gender’. (Kjaer 2022: 769, 777). The WGBHR specified that such measures and remedies bring change to patriarchal norms and unequal power relations that underpin discrimination, gender-based violence and gender stereotyping (see Nissen 2023b). States should take proactive and targeted measures to reduce additional barriers that may be faced by women in holding businesses accountable for human rights violations (UN Human Rights Council 2019a: Annex 52(a) referring to CEDAW 2015). The Gender Guidance also identifies various (but not all) barriers to judicial or non-judicial remediation in its ‘illustrative examples’.

### 3. Semiconductors

The Korean semiconductor industry is built on gender stereotypes about women (UN OHCHR 2014). Of all the Member States of the Organization for Economic Co-operation and Development (OECD), Korea has the biggest gender wage gap (OECD 2021). Women are segregated in repetitive jobs in which they can be relatively easily disciplined (Carr and Chen 2004: 140; Kim et al. 2014: 106; Seoul Administrative Court ruling, 12 June 2008, Case No. 2007 GU HAP 45057). For example, 47 per cent of factory workers were women, while 20 per cent of desk workers were women in Samsung’s large Giheung plant in 2008 (Administrative Court ruling 2011). This segregated labour system is not an accident. It had been designed on purpose. In his relentless pursuit of capital the dictator Park Chung-Hee—in co-optation with corporations and banks—mobilized neo-Confucian values of collectivism and interpersonal harmony to position some people as cheap labour (Kim 1997: 7). Neo-Confucianism stresses hierarchical relationships between elders and juniors, and between men and women (Yoon 2008: 523). Propaganda depicted women workers as ‘industrial soldiers’ and nudged them to carry out factory jobs before marrying (Kim 1997: 58–61). Compared to jobs in the service industry, semiconductor jobs were low paid. They were, however, framed as more respectable. While not as respectable as office jobs, their status as semiconductor factory workers allowed women in their twenties to marry ‘respectable men’. A typical shift in the Giheung plant was eight hours a day for six days, in the morning, during the day or at night. After two days of rest, the shift schedule changed (Administrative Court ruling 2011). Overtime was normal. Workers who had to do household work that benefited their family members, faced additional challenges. There seemed to be an assumption that they could extend themselves indefinitely (cf. Noh and Kim 2015: 104).

The described dynamics have been embedded in the neoliberal world order that undervalues practices and traits associated with women (Fraser 2013). After the 1997 Asian financial crisis, the International Monetary Fund imposed a stringent set of neoliberal structural adjustment policies on Korea (Douglas et al. 2004: 296). These policies minimized the security of formal wage employment and pushed many households into informal labour. The effects of these policies continue to exist today. It is estimated that more than one-third of the workforce in Korea worked on an irregular basis in 2021 (Kim and Kim 2023: 5). Their relative wage compared to regular workers is only 72.9 per cent. Women are disproportionately represented in such precarious forms of employment; two-thirds of Korean women workers have flexible jobs (CEDAW 2018: 38).

It needs to be emphasized here that feminised forms of factory labour are carried out by *all* kinds of people that live in marginalized circumstances (Mills 2016: 286). Gender and class hierarchies interact with other social forces to devalue the labour of certain people

(Collins 2019). For example, migrant workers are particularly at risk of exploitation. Generally speaking, it is as certain that they cannot meet the Korean beauty stereotype of ‘glass skin’ (Shin J. 2016: 173), as they are vulnerable to exploitation under the Employment Permit System that is embedded in the Foreign Workers Employment Act (Act No. 6967, 16 August 2003; Kim M. J. 2015). This system allows few rights to negotiate a change of job. Single mothers also face grave forms of stigmatization in Korea, while progressive voices are silenced by the Christian Liberty Party (UN Human Rights Committee 2015; South Korean NGO coalition 2017: 7). The CEDAW has emphasized that intersecting forms of discrimination have a negative effect on access to justice for specific groups of women (CEDAW 2015: 3, 8, 14(c); Nissen 2023b: 381–4).

#### 4. Semiconductors and health

In the semiconductor industry, there are considerable risks to workers’ occupational safety and health, a fundamental aspect of the right to just and favourable work according to the International Covenant on Economic, Social and Cultural Rights (UN Covenant 1966, Article 7). Recent focus group interviews with former and current semiconductor workers (conducted by an Ombudsperson Committee) indicate that there has been exposure to chemicals, noise and odours in Samsung factories in the past (Lee et al. 2019: 26). A range of diseases has also been reported in Samsung factories including aplastic anaemia, birth defects, brain cancer, breast cancer, leukemia, lung cancer, malignant lymphoma, multiple sclerosis, non-Hodgkin lymphoma and ovarian cancer (UN Human Rights Council 2016; Nissen 2023a: 264).

Women face differentiated risks when exposed to toxics in labour relations, due to physiological and hormonal differences (CEDAW 2015: 52; UN Human Rights Council 2019c: 27). For example, women are ‘more likely to store higher levels of environmental pollutants in their adipose tissues than men’ (UN Human Rights Council 2018: 6). Yet, the ‘slow’ violence that toxics cause to women’s bodies usually remains under the radar (Seck 2018: 149; Handl et al. 2022: 218). This is not right, as such violence is structurally embedded in the unequal power relations that fuel neoliberal globalization (CEDAW 2017: 15 and 35(a); UN General Assembly 2018: 19).

There have been various indications that working women and their bodies have been differently and disproportionately affected by toxins in Samsung factories. Instances of breast cancer, ovarian cancer and birth defects have been reported. Anastasia Taylor-Lind made these issues visible with her haunting pictures of sick Samsung workers in her essay ‘These Women are Paying the Price for Our Digital World’ (Taylor-Lind 2017). A former worker described the existence of a maternity anti-dust uniform (Banollim 2010a). She claimed that pregnant women were asked to sign consent letters to avoid the letter of the law (Labor Standards Act, Act No. 11270, 1 February 2012, Article 65), which stated that women who are pregnant or have given birth within the last year shall not be employed for hazardous or dangerous work. Such consent letters also violate the UN Principles on Human Rights and the Protection of Workers from Exposure to Toxic Substances (UN Human Rights Council 2019c: 39). Reproductive health needs to be safeguarded from hazardous working conditions, even before women of reproductive age may know they are pregnant (ibid.: 34). During lactation and menopause women might also be at an increased risk of suffering health impacts from toxic exposure (UN Human Rights Council 2017: 37).

Unfortunately, medical science has disproportionately invested in research relating to men’s health (Benach et al. 2016: 236). Health is part of the androcentric dialogue in medical institutions that disempowers women and discredits their experiences (Grigg and Kirkland 2016: 337). Epidemiological studies have to date mainly focused on violations of reproductive rights, including subfertility, spontaneous abortion, prolonged time to pregnancy and menstrual aberration (Choi et al. 2019: 817; Kim et al. 2022a: 1; Rim 2022: 2) There

is, however, currently insufficient research on cancer and semiconductor work (Kim et al. 2014: 98; Kim et al. 2022b: 8), let alone on gender impacts of cancer and semiconductor work. In their epidemiologic review, Kim Myoung-Hee et al. describe how existing studies in this field suffer from selection, information, confounding and misclassification biases, ‘all of which are associated with underestimation’ (Kim et al. 2014: 100). In this context, ‘data interpretation solely based on statistical significance could result in a faulty conclusion’ (ibid.: 103). Nevertheless, they suggest that there may be elevated risks for some types of cancers—brain cancer, breast cancer, leukemia and non-Hodgkin lymphoma—across international studies (ibid.: 101). Furthermore, a 2019 study by the Korea Occupational Safety and Health Agency (KOSHA), an agency of the Ministry of Employment and Labour, found that female workers employed before 2010 were at significantly higher risk of developing leukemia and non-Hodgkin lymphoma than male workers in six semiconductor companies, including Samsung and its Korean competitor SK Hynix (Yoon et al. 2020: 501 referring to Kim et al. 2019). A significant incidence rate of non-Hodgkin lymphoma among female assembly workers has also been found in a study in eight semiconductor factories, including Samsung factories (Lee et al. 2011).

While the researchers supporting the Ombudsperson Committee consider that workers ‘are no longer directly exposed to chemical substances or harsh environments’ at Samsung because the current processes have been automated (Lee et al. 2019), this conclusion seems to be too hasty. To innovate, products are constantly being introduced in the semiconductor industry without the health effects being known. While there are regular check-ups, vulnerable workers have relatively fewer resources—including time and money—to allocate to visits to specialized doctors outside their work facilities when they get sick (Kim 1997: 281). Furthermore, it is unclear whether there are sufficient safeguards to ensure that managers do not ignore health and safety measures while there are extreme production targets (UN Human Rights Council 2019c: 5). Another red flag is that Samsung Electronics’ Corporate Social Responsibility Reports emphasize that its publication of an incomplete list of hazardous materials—in place since 2018—concerns *voluntarily* disclosure that is not required by law (Samsung 2018: 84; 2019: 14).

## 5. Naming, blaming and claiming

William Felstiner and his co-authors (Felstiner et al. 1980–81: 631) write that there are three phases in the process by which unperceived injurious experiences become claims that are expressed before they enter the courts (or other institutions for conflict resolution). The three steps are naming, blaming and claiming. Attrition of claims occurs in each phase (ibid.: 636). Gender is one of the social structural variables—alongside others, including class, ethnicity, age and their intersections—which contributes to such attrition (ibid.: 640). This section uses this three-step framework to explain the antecedents of the strategic lawsuit brought by the families of Hwang Yu-Mi and four other Samsung workers.

In the ‘naming’ phase, people identify a particular experience as problematic. An unperceived injurious experience becomes a perceived injurious experience (Olesen and Hammerslev 2021: 297). This means that the ‘acceptability’ of such experiences is reduced (Gilleri 2020: 1235). Awareness processes entail that the ‘uninformed cancer victims must learn that they are sick’ (Felstiner et al. 1980–81: 633; Cohen and Alberstein 2019: 20). Hwang Yu-Mi learned that she had acute myeloid leukemia in 2005, two years after she started working in Samsung’s Giheung plant (Administrative Court ruling 2011).

Such awareness processes require considerable resources, including time and academic capital (CEDAW 2015: 3, 13, 32; UN Human Rights Council 2019a: Annex 52(a)). Disadvantaged groups face specific barriers in accessing such resources (Cohen and Alberstein 2019: 19). Women workers are—in general—less empowered to obtain such resources and to overcome information omission or manipulation due to the gender pay

gap, a lack of power and a lack of time due to a disproportionate share in household responsibilities (UN Human Rights Council 2019b: Annex 52(b)). The concept ‘feminisation of poverty’ captures the fact that poverty refers to all these dimensions and is not just about income (Chant 2008: 166; Noh and Kim 2015: 96).

In the ‘blaming’ phase, injurious experiences are attributed to the fault of a responsible actor. Again, disadvantaged groups face specific struggles (Cohen and Alberstein 2019: 21). They face a particular challenge in making sense of the multifactorial nature of epidemiological diseases (Nissen 2021: 62). Such diseases can be caused by a combination of factors, such as suspected exposure to carcinogens and radiation, and overwork. There have long been rumours that work in the Korean semiconductor industry was toxic. For example, in her field research at the end of the 1980s, the anthropologist Kim Seung-Kyung described how she had to rotate work in the soldering section of KTE semiconductor factory to diminish the chances of lead poisoning (Kim 1997: 14). She also describes that she heard many rumours about the long-term health effects on the factory floor. Almost three decades later, Special Rapporteur Tuncak wrote that ‘Samsung workers (all women) and their family members ... explained that they would still smell fumes from the workplace long after returning home’ (UN Human Rights Council 2016: 55).

Semiconductor companies encouraged workers to see themselves as ‘employees’ or ‘family’ of the company rather than workers at a factory (for example Banollim 2010a). Such narratives promote the idea that considerable personal sacrifices would be acceptable to serve the company’s goals (Kim 1997: 62). Many workers would also rationalize risks because they needed to gain an income. They would, for example, plan to leave their job before any serious condition developed (ibid.: 45). Hwang and various of her co-workers did, however, not have such choices. Like many of her co-workers, Hwang started working in the semiconductor industry after high school. She worked in Samsung’s Giheung plant until 2006 and died in 2007 (Administrative Court ruling 2011).

In the ‘claiming’ phase, people voice their grievance to the actor believed to be responsible and engage this actor to ask for a remedy. People who feel aggrieved will, however, often only voice their concerns to their nearest and dearest because there are various asymmetries between businesses and affected people (UN Human Rights Council 2019a: Annex 56(a)). There are many indirect consequences that influence such decisions, including fear of social stigmatization, job loss and further victimization (CEDAW 2015: 9, 35; UN Human Rights Council 2019b: Annex 52(c), 58(d), 62(a)(ii)). Women are less economically empowered to overcome these consequences (UN Human Rights Council 2019b: 3; UN Human Rights Council 2019c: 80). Gendered stereotypes about ‘appropriate’ behaviour constitute additional limitations for women in voicing their concerns and being heard (CEDAW 2015: 3; UN Human Rights Council 2019b: Annex 50(d), 52(a)). Similarly, the activities of WHRDs are often labelled as hostile in order to ostracize and silence them (Mireanu 2014: 102). In Korea, those who have questioned the activities of the semiconductor industry and unbridled economic growth have often been called ‘communists’ (author interview 2018). For WHRDs, being stigmatized in this way undermines their already disadvantaged position (cf. Deonandan and Bell 2019: 48).

In theory, operational remedies at the company level could have been highly useful (UN Human Rights Council 2011: Annex Principle 29 and Commentary to Principle 22). Such mechanisms help ‘businesses to identify systematic human rights problems on the basis of an analysis of complaint patterns’ in a timely and harmonious way (UN General Assembly 2017: 71). According to the WGBHR, companies should in particular take proactive measures when confronted with ‘irremediable’ harm such as exposure of workers to hazardous chemicals that ‘result in irreversible health conditions’ (ibid.: 70). Importantly, however, operational remedies may not preclude access to other remedial mechanisms (UN Human Rights Council 2011: Annex Commentary to Principle 29). People who experienced injurious experiences should be able to bring claims in other remedial mechanisms. Otherwise,



remedies that are being proposed to (the families of) victims can be an attempt at avoiding accountability. Hwang's father, Sang-gi, a taxi driver, alleged in this regard that Samsung promised him monetary compensation for his daughter's medical costs (Minbyun 2013: 18). He allegedly had to enter into a non-disclosure agreement in which she would submit her resignation (*ibid.*: 19; author interview 2018). Later, he allegedly had to agree not to pursue or participate in any legal action against Samsung. Allegedly, only a part of the promised compensation was paid out (Minbyun 2013: 19). Family members of two other workers, a 23-year-old woman who died from myeloid leukemia, and a 27-year-old man who died from mediastinal cancer, reported similar alleged settlement offers (Corporation for All 2012; Banollim 2010b). These accusations seem to indicate that remedies were perceived as something that can be negotiated away by the more powerful party (cf. Fisk 2020; Bachar 2022: 73). Victims and their families lack equal bargaining power. Such non-disclosure practices should be forbidden (UN Human Rights Council 2019a: Annex 58(c)). They redirect women's illnesses, suffering and deaths out of the public eye to their secret private lives (cf. Wendell 1997). In so doing, they harm not only the claimants, but also other victims of structural core labour rights violations in feminised factory labour.

After Hwang Yu-Mi's death, her father mobilized victims and their families, and an exceptionally broad coalition of civil society groups to form the 'Committee for Investigation on the Mass Outbreak of Leukemia at Samsung Semiconductors and Securing Basic Labour Rights' in 2007 (Minbyun 2013: 18). Medical, legal and other experts were involved. Their participation was invaluable because they were able to 'connect the dots' and consider strategies to engage with state institutions (cf. Han 2012: 2). Soon after its inauguration, the Committee was further expanded to cover all occupational diseases and embrace other semiconductor workers who did not work at Samsung. As a result, the civil society organization 'Supporters for the Health and Rights of People in the Semiconductor industry' (SHARPS or Banollim) was founded in 2008 (Minbyun 2013: 19). A collective voice is important to raise disputes (cf. CEDAW 2015: 15(h-i); UN Human Rights Council 2019b: Annex 45(d)). Thereto, Article 9 of the UN Declaration on Human Rights Defenders stresses that 'everyone has the right, individually and in association with others, to benefit from an effective remedy' (UN General Assembly: 1999, emphasis added). Broad coalitions of human rights defenders can empower vulnerable people to pool resources, add visibility to their grievances and claims, and not see violations of the rights of women as isolated incidents (Council of Europe and UN Women 2016: 84). Through their activities, WHRDs enable discussion of masculinist practices and norms and stereotypes (UN Human Rights Council 2010: 85; Shin K.Y. 2016: 315).

## 6. Legal mobilization

Developing from the 'naming, blaming and claiming' framework, scholarship on legal mobilization has demonstrated the 'potentially transformative effects of leveraging the law for social struggles' (Lehoucq and Taylor 2020: 169, referring to Felstiner et al. 1980–81, and McCann 1994). Lehoucq and Taylor systematically reviewed 41 papers on legal mobilization that have been published in the journals *Law and Society Review* and *Law and Social Inquiry* to identify three dimensions of legal mobilization. This framework is used here to analyse Banollim's actions.

First, Lehoucq and Taylor advocate for legal mobilization that involves litigation or other claims in pseudo-judicial and administrative legal procedures (Lehoucq and Taylor 2020: 182). Hwang Sang-gi started a strategic lawsuit, which has the potential to catalyse deeper transformations for women (Chiongson et al. 2011: 9; UN Human Rights Council 2019b: Annex 44(c)). He was joined by four other claimants. Together with Lee Seonwon and Jeong Aejeong, Hwang filed for dependency and indemnity compensation and funeral expenses. Lee lost his wife, Lee Sukyoung, while Jeong lost her husband, Hwang

Minwoong. Like Hwang Yu-mi, they died of myeloid leukemia. The diseased workers all worked at the Giheung plant. This is a high number, as myeloid leukemia is a disease that only two in 100,000 Koreans develop (Ahn et al. 1991: 301). While Hwang Yu-mi and Lee Sukyoung worked in Line 3, Hwang Minwoong worked in Line 5. They were joined by two more former Samsung workers from Samsung's Onyang factory who filed for medical care expenses: Kim Eungyeong, a housewife, who was diagnosed with myeloid leukemia and Song Changho, who was diagnosed with non-Hodgkin lymphoma. The family of a woman worker from Onyang factory who died from myeloid leukemia during the preparation of the lawsuit decided to not pursue the claim further (Kong 2012). Strategic litigation needs to be acknowledged and supported by the state because it helps the state in discharging its duty to protect women's human rights and to support corporations in respecting those rights. However, women and their allies are frequently not supported by states when grievances transform into disputes. Various additional obstacles exist, as analysed in section 7 of this article with reference to the CEDAW's General Recommendation 33 and the WGBHR's Gender Guidance.

Second, Lehoucq and Taylor write that legal mobilization can be used for narrow self-interests as well as for broader political goals (Lehoucq and Taylor 2020: 174; Bedner and Berenschot 2023: 82–3). Banollim made considerable efforts to have a much bigger impact beyond the case of these five workers. Banollim initiated parallel mediation and arbitration procedures for other sick Samsung workers (and/or their families) (cf. UN General Assembly 2017: 75). Banollim and Samsung first started mediation procedures in 2008. Throughout the procedures, Samsung tried to transform Banollim's collective struggle into an individual struggle (cf. Felstiner et al. 1980–81: 639–40). As a result, a subset of families of workers was willing to defect when they were offered higher compensation. This 'family committee' subsequently accused Banollim of misrepresenting its interests (Kim Y. C. 2015). Banollim remained undeterred and was ultimately able to get a comprehensive agreement in follow-up arbitration proceedings in 2015 (Nissen 2023a: 292–5). This agreement covers a relatively large group of workers: people who suffered from a range of diseases—including workers' blood disorders, cancers, pulmonary conditions as well as miscarriages and congenital illnesses of the worker's children (Bartlett 2019)—and had worked longer than a year at Samsung Electronics' semiconductor and LCD production lines since 1984, the start of production in Korea. In addition, as part of the deal, the above-mentioned Ombudsperson Committee was created to supervise toxic materials in Samsung's semiconductor factories and prevent future causalities.

Third, Lehoucq and Taylor stress that 'even legal mobilization aimed at changing the behavior of private actors necessarily involves state actors' (Lehoucq and Taylor 2020: 182). The interests of chaebols—large family-owned conglomerates in Korea—and Korea have historically been intertwined (Nissen 2023a: 249–56). While Korea has the international human rights obligation to protect workers against corporate harm, it has often failed to do so. In an ideal world, legal premises compatible with a form of economic globalization that agrees with corporate wealth maximization would be left behind (De Schutter 2021; Leite 2023). A rights-based political economy no longer shifts negative externalities to workers and society. Yet, like many other countries in the world, Korea's regulation benefits business elites (Pearson 2007: 737; Krygier 2015: 127). Accordingly, the law is a 'deeply entrenched part of the problem' (Beckers et al. 2022: 753) that has been converted into an instrument at the expense of worker's rights (Rodríguez-Piñero Royo 2019: 17). For example, the Act on Special Measures for the Deregulation of Corporate Activities (Act No. 4900, 5 January 2015)—which had been issued in 1995 and has been regularly amended—relaxes the identification of chemical substances and safety control regulations. Similarly, the Trade Union and Labour Relations Adjustment Act (Act No. 5310, 13 March 1997) embodies 'the conflict between labour and capital' by severely limiting trade union rights (Rittich 2022: 799; Nissen 2022b: 620–1 and 627). Violations of the right to occupational health and safety

are correlated with violations of the freedom of association and the right to organize (UN Human Rights Council 2019c: 64). Workers find strength in numbers when it comes to defending a safe and healthy workplace. The Korean government admitted its failure to protect human rights sufficiently in the Samsung Ulsan service centre in the International Labour Organization's (ILO) Committee on Freedom of Association in 2017 (Report No. 381, Case No. 3047, 2017: 337). Samsung apologized for its 'no union' policy in 2020 (Kim 2020). Yet, it took until 2021 for Korea to ratify ILO core labour convention 87 on the Freedom of Association and Protection of the Right to Organize (ILO 1948) and ILO Convention 98 on the Right to Organize and Collective Bargaining (ILO 1949), following a dispute with the European Union (see Nissen 2022b: 628). Corporate state capture will be further addressed at the end of the next section of this article.

## 7. Gendered barriers to justice

Section 7 of this article show how Hwang Sang-gi and his four co-claimants faced (and overcame) five categories of barriers when their claim transformed into a dispute in the court of first instance, the Seoul Administrative Court. This court remedied the violations by overturning a previous decision of the complaints mechanism of the Korean Compensation and Welfare Commission (COMWEL), part of the Ministry of Work and Labour (see Nissen 2023a: 282). The decision by the Seoul Administrative Court was subsequently upheld by the courts of appeal, the High Court and the ultimate court of appeal, the Supreme Court.

The first barrier faced by claimants is that participating in formal disputes in courts tends to be even more costly and time-consuming than voicing claims directly to the company believed to be responsible. There are considerable additional direct costs, including costs for filing fees, translation, transportation, expert reports and Internet, expenses for securing evidence and witnesses and potential 'loser pays' costs (Nissen 2023a: 287). Victims and their allies will normally also need representation by experienced lawyers to deal with the legal system and its gaps. Again, women are disproportionately unable to afford such costs due to systemic issues such as the gender pay gap (CEDAW 2015: 17; UN Human Rights Council 2019a: Annex 52(c); UN Human Rights Council 2019c: 80; Gilleri 2020: 1236). This also means that women and other less economically empowered people suffer disproportionately from the lack of comprehensive and effective legal assistance. Banollim has been able to overcome this barrier to a considerable extent by mobilizing pro bono expert lawyers who were prepared to face an opponent with outsized political and economic capital in court (cf. CEDAW 2015: 17(a); author interview 2018).

The second barrier is that legal systems often prevent people from joining forces (CEDAW 2015: 3, 15(a)). In defiance of CEDAW's recommendations regarding available justice (16(c)), Korean courts do not grant legal standing to groups and civil society organizations. In so doing, Korea deprives women and their allies of questioning gender-biased patterns (cf. Council of Europe 2016, recommendation 11). One large lawsuit creates more pressure than various smaller ones. Nevertheless, as explained in section 6 of this article, Hwang Sang-gi was able to obtain a certain degree of organization in the Seoul Administrative Court in 2010. Four other claimants joined him before court.

Third, human rights defenders who denounce corporate human rights violations are often targeted by corporations and their security staff because of their advocacy (Lumina 2018). Those who fight for the rights of women are particularly vulnerable (CEDAW 2015: 18(g); UN Human Rights Council 2019b: 35). Who they are, who they defend and their quest for corporate accountability attract opposition. Corporations frequently abuse the judicial system to harass WHRDs and deplete their resources (including time and energy). Banollim reported various instances in which Samsung and its staff turned to the judicial system to silence WHRDs to the UN Special Rapporteur on human rights defenders and two other rapporteurs in 2013 (Minbyun 2013: 19–25). For example, prosecutors charged

a father with attacking security guards when he staged a one-person protest in front of Samsung's main building to denounce the aplastic anaemia of his daughter, Yoo Myung-Hwa, a former Samsung worker. CCTV cameras allegedly showed, however, that security guards tried to stop the father and that both parties fell down. He was found not guilty in the first trial and on appeal.

Korean media were allegedly also harassed when they wanted to cover Banollim's actions in the lead up to the lawsuit (author interview 2018). This is unfortunate, as the effect of transformative lawsuits can be especially strong if the media are able and willing to publish about them (Johnson 2020: 1866). While progressive media such as *The Hankyoreh* and Korean journalists working for international press agencies criticized Samsung, various other Korean media remained extremely wary of doing so. There have been allegations that Samsung pressured journalists to not cover Hwang's case (Newton 2014). Other media went further and blamed Banollim for impeding Korea's economic growth (Oh 2015; cf. Leite 2023: 200). For example, journalists of the *Korea Times* repeatedly urged Banollim to stop its actions that, in their view, were hurting the Korean economy. (Note that this assumption is not correct. Violating occupational health and safety is estimated to amount to 1.8–6 per cent of Gross Domestic Product in-country costs (Takala et al. 2014: 326)). When the group of cases relating to diseases other than leukemia were proceeding, the newspaper published an article that stressed that Banollim went 'too far' and suffered from an 'identity crisis' (Kim 2016). Such stereotypes about 'appropriate behaviour' in relation to women's issues can be found in newspaper reporting in most patriarchal societies. Accordingly, women and the violations that they suffer ought to remain invisible (Sarikakis and Nguyen 2009; Kalra and Boukes 2020).

The fourth barrier is that legal systems do not always take into account that it can be near impossible for claimants to provide evidence of the damages, demonstrate the existence of a damaging act and show the causal link between the damaging act and the harm suffered (CEDAW 2015: 3, 15(g), 25(a)(iii); Gilleri 2020: 1236). Samsung, for example, does not collect complete information about toxic chemicals from suppliers (Samsung 2015; UN Human Rights Council 2016: 56–57). In addition, it is hard to prove a causal relationship for one single sick worker. The time lag between exposure to toxins and disease symptoms appearing is too long, and the relationship might be multifactorial. By the end of 2011, Banollim had profiled more than 45 cases of cancers (Kong 2012). However, for harm related to occupational health and safety, statistical evidence is often expected to show that the incidence of disease is abnormal. Samsung hired an American consultancy firm to prove that it was not responsible for the cancers of its five workers in the lawsuit. Banollim questioned the accuracy of the data that the consultants used in their epidemiological study, as they were provided by Samsung (Kim et al. 2020: 587), while scholars Paek Domyung and Thomas Gassert commented that their study was flawed, as it was not possible to assess past risks (Paek and Gassert 2015: e141). However, the consultants proved to be invested in their case. They framed the comment by Paek and Gassert as an 'emotional reaction' (Jones et al. 2015: e144–5). Kim Jongyoung and her co-authors recently wrote that a source within Samsung admitted that the consultants could not help 'being inadequate' 'because when you look at the data, no other data will really just come along' (Kim et al. 2020: 587).

The Seoul Administrative Court—which has often made progressive decisions (Nissen 2023a: 228)—ultimately confirmed that it is not impossible that Hwang Yu-mi and Lee Sukyoung died as a result of exposure to toxic substances at work. It held that carcinogens such as ACT-CMI, trichloroethylene and sulfuric acid were used in Line 3 of the Giheung plant. It relied on a report by researchers from Seoul National University about Line 5 of Giheung plant site and Line 1 of the Onyang plant, which had similar working conditions as the line in which Hwang and Lee worked. The report sets out that cancerous substances like benzene and 2-methoxyethanol were found to be used in the Samsung semiconductor production process and that the facilities were not well managed (Corporation for

All 2012: 43). The court furthermore relied upon a post-mortem epidemiological survey conducted by KOSHA that compared the diseases of the standardized mortality ratio and the standardized incidence ratio to that of the general population. The court held that while these ratios were not statistically significant for the female workers, they were higher than those of the general population. Ultimately, the court considered that definitive scientific or medical evidence was not needed to establish a causal relationship between Hwang's and Lee's work environment and their leukemia. Such a connection could also be established by considering, among other things, their health at the time of working, the potentially harmful substances in the workplace and the time spent in the workplace. The court held, however, that the ratios measured for male workers in the post-mortem KOSHA survey were lower than those of the general population. This consideration—in combination with limited evidence of direct exposure—was sufficient for the court to reject Samsung's responsibility in Hwang Minwoon's death. The level of exposure to which former workers Kim Eungyeong and Changho Song were exposed was determined by the court to be non-continuous.

Finally, state institutions—including the state institutions entrusted with the authority and duty to render justice—have been captured by corporate interests (cf. UN General Assembly 2017: 72). Governmental institutions actively supported Samsung during the legal proceedings, in defiance of CEDAW's General Recommendation 33 (CEDAW 2015: 54–56). To begin with, Samsung's reluctance to collect information about toxic chemicals in its factories had been accepted by COMWEL. Like the court, COMWEL relied upon the post-mortem survey conducted by KOSHA. In addition, COMWEL directly opposed the plaintiffs, by appealing the above-discussed decision made in favour of Hwang and Lee in the Seoul Administrative Court. When asked about this appeal decision, COMWEL allegedly tried to blame this on the prosecutor's discretion (Banollim 2012). Banollim alleged, however, that COMWEL had requested the prosecutor to appeal (ibid.).

Since the court decisions, the Ministry of Work and Labour's institutions have increasingly acknowledged and supported sick workers in Samsung factories. KOSHA acknowledged the existence of carcinogens and harmful toxins in factories based on a second epidemiological study (which had not been published at the time of the court decisions) (Kim et al. 2020: 596). It has already been noted in section 4 of this article that KOSHA recently recognized the gendered impact of work in semiconductor factories in a new ten-year-long study. This 2019 study compared workers in semiconductor factories, not with the general public, but with other workers (who tend to be healthier than the general public). COMWEL has also frequently acknowledged the existence of occupational diseases in Samsung factories. However, other ministries are still reluctant to protect the right to health and safety at work. In a recent leukemia case from 2018, Samsung filed lawsuits to block the release of environmental reports, citing Korean regulations barring companies from disclosing or exporting economically valuable core national technologies (Kim 2018). In that case, Korea's Ministry of Trade, Industry and Energy backed Samsung (Song 2018). (Some of the researchers who are supporting Samsung's Ombudsperson Committee expressed the view that while semiconductor and LCD technologies are key national technology assets, trade secrets should be kept to a minimum (Lee et al. 2019)).

## 8. Conclusion

This article contributes to the literature on legal mobilization by discussing how women human rights defenders deal with gendered barriers to justice when corporations violate women's rights. This article demonstrated that one single father has been able to mobilize a wide coalition of stakeholders to identify patterns and openly accuse Korea's largest export corporation of considerable health and safety violations in feminised labour. These women human rights defenders employed various strategies to overcome barriers to justice and bring violations of women's bodies and health into the public eye. They disproportionately

felt the direct and indirect costs of litigation and faced harassment from the state, businesses and the media because they wanted to change persistent views of feminised and devalued labour. While gendered and intersectional dynamics play out differently in different contexts, we can learn that sticking together and combining multiple courses of action are important traits to obtain successful remediation for women. Motivated by the legal victory in the courts and complementary arbitration procedures, Banollim has continuously filed claims on behalf of sick workers in COMWEL and the courts. Banollim furthermore tries to build ever broader coalitions inside and outside Korea. Together with other actors in the Korean labour movement, the NGO has shifted its attention from regular workers in big companies to subcontracted workers and workers in small- and medium-sized semiconductor companies in Korea that are the exclusive suppliers to a handful of larger companies (Nissen 2023a: 250, 251, 255). More recently, Banollim questioned, for example, why sub-contracted labourers were not included in a recent government study. It also continues to fight for sick workers who were employed in Samsung's supply chains in small- and medium-sized companies but were excluded from the arbitration deal. Finally, Banollim has strengthened its contacts with activist networks abroad. Most notably, it provided input to the French NGO Sharps in its ongoing complaints against Samsung for misleading advertising relating to its labour rights track record in France (author interviews 2018, 2019; Sherpa 2018; see Nissen 2023a: 178–84).

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