Regulation & Governance

Regulation & Governance (2023) doi:10.1111/rego.12538

An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective

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Abstract

Ten years since the adoption of the UN Guiding Principles on Business and Human Rights, we have witnessed an increasing trend in Europe toward the adoption of mandatory human rights and environmental due diligence. Focusing on due diligence legislation from France, Germany, Norway, and the EU, this article examines the extent to which these laws are laying the foundations for the articulation of an integrated, comprehensive, and robust framework that effectively fosters corporate accountability through preventing, addressing, and remedying corporate-related human rights and environmental harms. In this examination, we draw on international human rights and environmental standards and Third World Approaches to International Law, to identify the lessons learned from current approaches and that ought to be considered in future frameworks.

Keywords: corporate responsibility and accountability, due diligence, human rights and the environment, mHREDD, TWAIL.

1. Introduction

One does not have to look far to see the harmful impact of corporate activities on the environment, human-life, and human rights. For many, such a sight exists on their doorstep, manifesting in various forms of environmental degradation including climate-related disasters, the destruction of ecosystems, and biodiversity loss; as well as significant impacts on human wellbeing such as water scarcity, forced displacement, and exposure to exploitative labor conditions in global supply chains UNGA, 2019, 2020; UN Human Rights Council (UNHRC), 2008, 2011, 2022). Victims often have little recourse for an effective remedy for adverse impacts at international and national levels.

The consolidation of a corporate responsibility to respect human rights under international human rights law through the concept of human rights due diligence (HRDD) has developed as a means of addressing the accountability gap in the international framework (UNGPs, Principles 11–24). Through the process of HRDD corporate actors can identify and assess potential and actual human rights impacts arising from their own operations, products, services, and within their supply chains, with a view to preventing, mitigating, and accounting for how they address such impacts (UNGPs, Principle 17). This process includes providing remedies to the victims of harm, directly or through their business relationships. Ten years since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs), we have seen a gradual transition in the approach to HRDD, moving from voluntary initiatives to the adoption of mandatory obligations for corporations by home states, as well as the inclusion of environmental aspects in their scope (HREDD) (Gustafsson et al., Forthcoming, p. 1; Martin-Ortega, 2014; Quijano & Lopez, 2021, p. 243). More recently, the regulation of corporate actors through

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Accepted for publication 20 May 2023.

mandatory human rights and environmental due diligence (mHREDD) is on the rise across Europe. Legislative developments are being implemented in France, Germany, and Norway, are being considered in the Netherlands, Spain, and the European Union, and advocated for in the UK.

This should come as no surprise given the well-established impact of the private sector on both human rights and the environment, and the growing scope of developments at international, regional, and national levels that are addressing such impacts from the premise of the interrelation between the environment and human rights. Most notably, the UN Human Rights Council's and General Assembly's landmark Resolutions which recognized the human right to a clean, healthy, and sustainable environment (UNGA, 2022; UNHRC, 2021). We are also witnessing increasing efforts toward the integration of environmental issues in the business and human rights field, accompanied by calls for the development of a comprehensive framework which accommodates both (Bright & Buhmann, 2021; Macchi, 2022; Martin-Ortega et al., 2022; Morgera, 2020; Schilling-Vacaflor, 2021; Seck, 2018; Turner, 2021).

These developments prompt the following question: What should mHREDD look like to effectively address corporate harm? This question sits at the heart of this article. In striving to provide an answer, we draw on international human rights and environmental standards and Third World Approaches to International Law (TWAIL) to assess the extent to which mHREDD legislation is laying the foundations of an integrated and comprehensive corporate accountability regime. TWAIL scholarship is grounded in an examination of international law and its institutions from the perspective of Third World/Global South states and peoples, which exposes the inherent problems with our international legal regime, particularly its legitimization and sustainment of power-structures that benefit the Global North at the expense of the Global South (Chimni, 2006; Mutua, 2000). Mandatory HREDD laws are necessarily grounded in international human rights and environmental standards, and while adopted as a means through which to "humanize" corporations' global supply chains (Lichuma, 2021, p. 512; Simons, 2012, p. 9), often replicate such unequal power structures. Through this reflection, we seek to explore the lessons that can be learned from current approaches and that ought to be considered in the formulation and adoption of mHREDD regulation.

2. Framing business, human rights, and the environment

2.1. The need for an integrated approach

The link between the environment and human rights has been recognized for centuries within the traditional legal systems of many of the peoples of the Global South, including Indigenous Peoples (Gonzalez, 2015, p. 423), but was only recognized at inter-state level in the late twentieth century in Resolution 2398 (XXIII) (UNGA, 1968), the Stockholm Declaration of the United Nations Conference on the Human Environment (1972, Preamble and Principle 1) and the Rio Declaration on Environment and Development (1992, Principle 1). Today, the existence of a relationship between human rights and the environment has become indisputable.

Human rights are directly impacted by environmental degradation. Climate change increases extreme weather events, the decline of biodiversity and ecosystem services, water scarcity, the continuing spread of disease, and the vulnerability of local communities, all of which have severe impacts on human rights (O'Connell, 2021; UNGA, 2019; UNHRC, 2011). Furthermore, biodiversity is in significant decline because of human activity such as intensified and industrialized livestock production and fishing, land clearing for agriculture, mining, and GHG emissions (Balvanera et al., 2019). Biodiversity is intimately linked with human livelihoods and rights: We are dependent on biodiversity for biological resources, the maintenance of a healthy biosphere which supports all life on earth, the maintenance of our mental and psychological health, and engagement in our various cultures (Sands et al., 2018, p. 385; UNGA, 2020, paras 31–61; UNHRC, 2017, paras 5–25).

Human rights and the environment are inextricably linked and interdependent: a safe, clean, healthy, and sustainable environment is a crucial precondition for the full enjoyment of all human rights and human rights are also tools through which environmental issues can be addressed (UNHRCt, 2019, para 62; UNHRC, 2011, paras 7–8, 15–22, 2012, paras 25–33). There are clear synergies between states' obligations under both regimes, which could inform an assessment of the effectiveness of current mHREDD laws and the development of future mHREDD frameworks (Martin-Ortega et al., 2022, pp. 2–7). For example, states' environmental obligations, including duties to ensure the participation of potentially affected persons in environmental decision-making

processes and the provision of remedies for victims of environmental harm (Rio Declaration, 1992, Principle 13; Sands et al., 2018, pp. 657, 735–737) find their twin within states' human rights obligations to guarantee individuals and communities access to and enjoyment of their substantive rights (ILO Convention No. 169, 1989, arts 6–7; Aarhus Convention, 1999; Escazu Agreement, 2018). Acknowledgment of these synergies and the impact of environmental harm on human rights has led to the recognition that states ought to utilize standards under both frameworks to effectively implement their obligations (UNHRCt, 2019, para 62; UNHRC, 2018, p. 15, Principle 12, Commentary, para 34).

Despite these synergies the human rights and environment dynamic encounters conflict when operationalized both legally and in practice. International human rights law and international environmental law have developed in isolation from each other in a way which does not necessarily facilitate the fulfillment of these obvious synergies, resulting in principles, obligations, and rights that exist and are often operationalized in opposition with one another (Turner, 2021, pp. 4–5; Martin-Ortega et al., 2022, p. 3). This is evident even in the growing consolidation of a corporate responsibility to respect human rights and the environment (Morgera, 2020). While soft law instruments draw on standards from both international human rights *and* international environmental law the operationalization of this responsibility fails to effectively address interrelated impacts. Despite an early acknowledgment by the Special Representative to the Secretary General of the environment-human rights nexus in the context of patterns of alleged corporate-related human rights abuses (UNHRC, 2008, para. 27), the UNGPs themselves do not reflect the relationship between human rights and the environment beyond a mention of regulating corporate actors via legislation and possible integration of human rights considerations in environmental impact assessments (Principles 3 and 18, Commentary). Similarly, the OECD Guidelines (chapters IV and VI) and the International Finance Corporation Performance Standards on Environmental and Social Sustainability (2012, 1, 4, 7) provide guidance on corporate human rights and environmental standards, but fail to make any explicit link between the two sets of standards for the adoption of an integrated approach (dos Santos & Seck, 2020, pp. 158–159; Morgera, 2020, p. 126). The result, as we have argued elsewhere, is 10 years of development of policy and practice of corporate responsibility and accountability in which environmental concerns have been considered in an "ad-hoc and piecemeal manner, as an "add-on" to existing frameworks and mechanisms that have since evolved, thus continuing to perpetuate the division between human rights and the environment, and a lack of clarity as to how such a relationship could be operationalized" (Martin-Ortega et al., 2022, p. 17).

Failure to adopt an integrated approach will ultimately continue to lead to trade-offs and contradictions between legal and policy fields, which have resulted in negative impacts on human rights and an accountability gap (Gustafsson et al., Forthcoming, p. 11). Therefore, it is imperative that an integrated human rights-environmental approach is taken in the creation and implementation of standards.

2.2. Why a TWAIL perspective?

International law has a long history of being utilized to facilitate and benefit corporate activity and Global North states through the exploitation of Global South states and peoples (Lichuma, 2021, p. 512; Simons, 2012, p. 19). International law was utilized during the colonial encounter, which was framed as a "civilizing mission," to legitimize colonial conquest: non-Europeans were either regarded as inferior, lacking any legal status, and thus the lands inhabited by them *terra nullius* (territory belonging to no-one); or were recognized as possessing "quasi-sovereignty" in so far that they could enter into treaties to transfer sovereign powers and rights over their territories and resources to imperial European powers (Anghie, 2006, p. 745). Chartered companies through this same international law enjoyed certain sovereign powers that provided them with the privileges of a colonizing State, such as rights to recruit armed forces, levy taxes, and make and implement regulations, making them a "prime instrument" of colonization from the sixteenth to the nineteenth centuries (Bedjaoui, 1979, p. 36; Ratner, 2001, pp. 452–454). This was achieved through the awarding of authorization by the Crown in the form of Charters which defined the sovereign powers transferred to the corporations, as well as the scope of their operations in overseas territories which included not only trading activities, but also governance practices to control territories and populations (Bragato & da Silveira Filho, 2021, p. 43; Bedjaoui, 1979, p. 36; McLean, 2004, pp. 365, 375). When describing this phenomenon in Europe, George reminds us that chartered companies were corporate enterprises which were operating with the "express authority" of the Crown, to advance the public purpose of

conquest, and therefore "served to expand and strengthen European rule over large parts of the Americas, Asia, and Africa" (George, 2016, pp. 34–36). This history of global commerce conducted by these chartered companies "can be understood as the antecedents of today's modern multinational" (George, 2016, pp. 34–36).

Yet, those doctrines of international law, which were devised to legitimize the colonialism and subjugation of the Global South, did not expire into the ether at the fall of colonial empires. They have shaped the foundations of our international legal order, establishing patterns of economic and political dominance that persist to date (Anghie, 2006, pp. 748–749; Bedjaoui, 1979; Gathii, 2011, p. 38). These doctrines are also embedded in states' legal systems and institutions, as is evident in the fact that, for example, seeking a remedy for human rights and environmental harm arising from corporate activities in either host or home states continues to be an uphill battle, as shall be explored in Section 4.

In response to this, TWAIL scholarship centers the history, lives, experiences and voices of the Global South in its confrontation with the power-hierarchies that are deeply entrenched in our global legal order, seeking to establish an international legal order which is sensitive to the concerns of the Global South (Gathii, 2011, p. 39; Mutua, 2000, p. 31). TWAIL has been described not as a single "Third World" (or Global South) approach or perspective (Mickelson, 1997, p. 353), but rather "a broad dialectic (or large umbrella) of opposition to the generally unequal, unfair, and unjust character of an international legal regime that all-too-often (but not always) helps subject the Third World to domination, subordination, and serious disadvantage" (Mutua, 2000, p. 31; Okafor, 2005, p. 176). As such, TWAIL scholars have generated debates around questions of colonial history, power, identity, and difference, considering what this means for the various intersecting fields of international law, and exploring the "possibilities for egalitarian change" (Gathii, 2011, p. 27).

The importance of considering a TWAIL lens in an analysis of mHREDD legislation lies in the potential of these laws to further entrench existing power-imbalances to the detriment of Global South peoples. Indeed, Global South governments, stakeholders, and rightsholders have largely been absent from policy-making processes in Europe, thus calling into question the legitimacy and appropriateness of these rules in addressing corporate impacts on the ground (Gustafsson et al., Forthcoming, p. 10; Lichuma, 2021, pp. 512–513; Seck, 2008, 2011). These concerns should feature prominently in any discussion of mHREDD.

3. The scope of mandatory human rights and environmental due diligence

Many European states are turning towards the adoption of mHREDD as a means of regulating negative impacts of corporate activities. These developments are based on assumptions regarding the potential effectiveness of mHREDD, given that evidence regarding its potential positive impact on the ground is missing (Nelson et al., 2020; Quijano & Lopez, 2021, p. 243).

This and following sections explore the scope and implementation of mHREDD, analyzing the 2017 French Duty of Vigilance of Parent and Instructing Companies Law (French Law); the 2021 German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (German Act); the 2021 Norwegian Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Norwegian Act); and the 2022 Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (EU Directive). While other national laws exist which establish due diligence (-esque) obligations in specific contexts (Dutch Child Labour Due Diligence Law, UK, and Australian Modern Slavery Acts), the four laws analyzed here are the only ones that currently establish substantive due diligence obligations covering both human rights and environmental impacts.

3.1. The substantive scope of human rights and environmental impacts

The Norwegian Act's due diligence requirements cover adverse impacts on fundamental human rights and decent working conditions. While the Act does not explicitly refer to environmental impacts outside of health and safety in the work place (s. 3(c)), there is a possibility for these to be covered where they adversely impact fundamental human rights or decent working conditions (Krajewski et al., 2021, p. 554). Furthermore, the Act confers authority on the Ministry to issue regulations defining what is considered to fall within the scope of "fundamental human rights" and "decent working conditions" (s. 3) which could include environmental impacts or the right to

a safe, clean, healthy, and sustainable environment. As such, there is potential for the adoption of an integrated HREDD approach in the implementation of this Act. In comparison, the French, German, and the EU Laws make explicit reference to human rights and environmental impacts and seem to adopt an integrated HREDD approach to varying degrees.

The French Law provides that due diligence should cover "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks" (art. L. 225-102-4 (I)). While covering both human rights and environmental impacts, the French Law tends to do so in an isolated manner. This is evident from the lack of clarity within the law's provisions, which not only distinguishes between the two but also fails to define them. Does "human rights and fundamental freedoms" include those that are not enshrined in any international human rights treaty such as the right to a healthy environment? What constitutes serious environmental damage? Could it include environmental damage arising from corporate contributions to climate change (Duty of Vigilance Radar, 2021; Henriot, 2021, p. 16), or biodiversity loss? The consequence of this is a fragmented approach to due diligence in which companies may selectively address specific human rights and environmental issues while neglecting others. As Schilling-Vacaflor notes from the vigilance plans of four French companies involved with soy and beef supply chains from Brazil, companies prioritized certain human rights and environmental impacts such as deforestation or labor rights, while neglecting others such as biodiversity loss and rights to water, health, or food (Schilling-Vacaflor, 2021, p. 10). Those impacts that had been prioritized by companies were high on the global agenda and prominent in the environmental discourse of Global North states, while those impacts which were neglected were those that were of concern to local communities in Brazil (Schilling-Vacaflor, 2021, p. 10). The adoption of such a cherry-picking approach to due diligence here reflects "asymmetric power relationships that have [disfavoured] actors from the Global South with comparatively little voice and purchasing power" (Schilling-Vacaflor, 2021, p. 10) and illustrates the need for both an integrated approach to impacts covered, and clarity in defining these impacts.

The German Act's coverage of human rights and environmental impacts is broader in comparison. A human rights risk is defined as any situation that with "sufficient probability" may result in the violation of an internationally recognized human right such as child labor or prohibiting employees from forming or joining trade unions (s. 2(2)), which seems to be defined with reference to international treaties (Annex). In defining the scope of human rights risks, the Act includes causing any harm to the environment (through pollution to soil, water, or air) which significantly impacts human health, the natural environment for the preservation, and production of food, and denies an individual access to safe and clean drinking water, or sanitary facilities; as well as the violation of rights of indigenous and local communities, such as unlawful eviction or acquisition of land and water on which those persons are dependent for their livelihood (ss. 2(2)(9)–(2)(10)). This definition provides an integrated approach.

Furthermore, the German Act also covers environmental risks, albeit in a limited manner. Defined as a situation that violates prohibitions relating to the use and manufacture of mercury, the irresponsible handling and disposal of waste, and the export of hazardous waste, environmental risks are limited to actions which contravene specific international environmental treaties to which Germany is party to (s. 2(3) and Annex). For example, among the treaties cited in the Act, there is no reference to the Paris Agreement or the Convention on Biological Diversity (CBD) (1992), leaving climate change and biodiversity-related impacts outside of its scope.

The EU Directive similarly takes a broader approach to human rights and environmental impacts. Human rights impacts are defined as any adverse impact on protected persons arising from violations of one of the rights or prohibitions named in the Annex, or enshrined in one of the international treaties listed in the Annex (art. 3 (c)), which include the International Covenants and ILO Conventions, the Convention on the Rights of the Child, and the UN Declaration on the Rights of Indigenous Peoples (Annex, Part I). Prohibitions include the causing of any "measurable" environmental degradation (such as harmful soil change, water or air pollution, or harmful emissions), which impacts the natural environment in terms of its ecological integrity, preservation and production of food, human health and safety, and a persons' access to safe and clean drinking water, sanitary facilities, and the normal use of their property or land (Annex, Part I).

The Directive defines environmental impacts as any "adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II" (art. 3(b)). While these obligations and prohibitions are drawn from a broader range

of environmental treaties (in comparison to the German Act) such as the CBD, the Annex does not list international environmental treaties in the same way that it lists international human rights treaties. Instead, it refers to specific provisions within environmental treaties, rather than the treaties themselves, making the reference to environmental impacts narrower. For example, the Annex only refers to the CBD in terms of the obligation to take necessary measures in the use of biological resources to ensure that adverse impacts on biodiversity are avoided or minimized in line with its Article 10(b). This results in a failure to incorporate other relevant provisions, such as article 10(e) concerning the cooperation of state actors and the private sector in developing methods for the sustainable use of biological resources, which ought to be operationalized to ensure that a comprehensive approach to preventing, mitigating and addressing corporate environmental impacts is adopted.

As in the German Act, the Annex fails to mention the Paris Agreement. Instead, the Paris Agreement is directly referred to in the Directive, which confers an obligation on applicable companies to adopt a plan to ensure that their business model and strategy is "compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement" (art. 15(1)). The absence of climate change or the Paris agreement in the context of environmental impacts suggests the adoption of a distinction between climate impacts and other environmental impacts. This could potentially lead companies to focus more on climate impacts, while neglecting other environmental impacts, including where they intersect with human rights impacts, and ultimately narrow the scope of the obligations.

One characteristic that the German Law and EU Directive share—and possibly the French and Norwegian Law, although given the vague references to human rights and the environment, it is difficult to confirm—is the Eurocentricity of their standards. This will become evident in the discussion that follows.

3.2. The extraterritorial reach of due diligence legislation and its impact on the global south

There continues to be no legally binding recognition of the extraterritorial application of home states' obligations for human rights and environmental harm caused within the jurisdiction of host states (Seck, 2011, pp. 173–181) or to those working in supply chains. However, some recent mHREDD laws, including the laws discussed in this article, appear to have extraterritorial dimensions in their design and application. In the absence of a binding and integrated international framework, mHREDD is being utilized as a means through which home states can not only regulate the global supply chains of their enterprises, but also potentially set "environmental and human rights-related norms for third-party suppliers and their host governments via multinational companies" (Sarfaty, 2015, pp. 419–420). These laws are therefore evolving as a tool for shaping not only corporate conduct, but also the conduct of Global South states with regard to human rights and environmental standards (Lichuma, 2021, p. 502; Sarfaty, 2015, pp. 419–420). Therein lies a problem.

International environmental law (and international law more broadly) has, as Mickelson argues, failed to respond to the concerns of Global South states and peoples in a meaningful fashion (Mickelson, 2000, p. 54). This failure increases the risk of continuing to replicate the power-imbalances within our international legal order (Lichuma, 2021, p. 512; Mutua, 2000, pp. 33–35; Seck, 2011, pp. 188–189). It results in the transformation of international law into an "engine of injustice" which continues to erode multicultural ecological practices and values and facilitate ecological destruction in the name of profit (Aginam, 2003, pp. 24–25).

While mHREDD is based on international standards, given the failures of international law in centering the concerns of Global South states and peoples, it indirectly allows Global North states to set the status quo of environmental and human rights standards applicable in the corporate context. Doing so may lead to the development of norms in which Eurocentric legal principles and interpretations take precedence over Global South principles and law, and neglect the voices of those directly affected by the negative impact of corporate practices. The continued absence of sufficient provisions in mHREDD providing access to an effective remedy (as shall be discussed in Section 4) could be taken as an indicator of this. Additionally pointing to this is the tendency for these laws to cover a selective scope of human rights and environmental standards. For example, the EU Directive (like the German law before it) omits the Indigenous and Tribal People's Convention (ILO Convention No. 169, 1989) from their scope, despite including other ILO Conventions. Such regulatory gaps are concerning as they may be replicated within mHREDD frameworks across Europe, the consequences of which will ultimately be borne by rights-holders, including those in the Global South.

Unsurprisingly, earlier calls for home states to regulate corporations through supply chain regulations were met with reluctance by both states and industry, on the basis that such regulation would be imperialistic (Seck, 2011, p. 167). However, as argued by Seck such a claim "is suspect to the extent that it denies the ongoing history of infringement that dates from the colonial encounter to the neo-colonialism of today's economic order" (Seck, 2008, p. 582). Home states could utilize supply chain regulations to promote their internal economic goals under the mask of protecting human rights and the environment. Given the colonial foundations of international law, the principles concerning jurisdiction which suggest that home state regulation is a violation of host state sovereignty could in themselves be imperialistic: serving as the means through which home states and home state corporations are shielded from pressure to address corporate-related environmental and human rights impacts (Seck, 2011, p. 196). It is not only the actions of states, but also the inaction of states which can be imperialistic (Palombo, 2022, p. 24). Additionally, home state regulation is characterized as imperialistic in so far that it operates through, and is justified by reference to "universal norms" (Seck, 2011, pp. 196–199), based on European economic, legal, and socio-cultural norms and models (Anghie, 2006; Gathii, 2011, p. 35; Mutua, 2000; Okafor, 2005, p. 179).

The solution, therefore, must come from listening to the voices of those on the receiving end of the effects of home states' regulation and finding ways to involve host and producing states as well as affected Global South peoples (including indigenous peoples and local communities) and their perspectives in the design and implementation processes of laws that are intended to apply within their territories and jurisdiction (Aginam, 2003, p. 25; Lichuma, 2021, pp. 520–521; Nelson et al., 2020; Seck, 2011, pp. 200–202). This not only recognizes the historical disenfranchisement of Global South peoples on decisions affecting them, but could also potentially enhance the legitimacy and effectiveness of laws made in the pursuit of addressing corporate human rights and environmental impacts, and their impact on the ground (Lichuma, 2021, p. 521; Seck, 2008, pp. 568, 601).

Involving Global South peoples and voices in the development of home state mHREDD laws also provides an opportunity through which to challenge our (eurocentric) perception of human rights and the environment, and thus revolutionize our approach to addressing negative corporate impacts. As Gustafsson, Schilling–Vacaflor, and Lenschow note, ideas, and discourses can influence the formulation of public policy and contribute to the development of norms that challenge and steer the behavior of powerful actors (Forthcoming, p. 6), so that they move toward conduct that benefits people and planet, rather than facilitate their exploitation. To illustrate, rather than continue to operate within the boundaries of an international order that is based on the satisfaction of human desires through the dominion of nature, we could reconceptualize our international legal order to recognize the interdependence of humans and the environment and the rights of future generations (Gonzalez, 2015, pp. 423–424). This could be inspired by the environmental wisdom of ancient civilizations, traditional legal systems, and the legal systems of indigenous nations which are grounded not in the dominion of one entity over the other, but on reciprocal obligations and responsibilities between entities (Gabčíkovo-Nagymaros Project (Hungary v Slovakia), 1997, pp. 96–111; Gonzalez, 2015, pp. 424–426; McGregor, 2021, pp. 65–68; Ruru, 2021). One such operationalization of this is the endowment of natural entities with legal personhood under the umbrella of "rights of nature." This constitutes a potential means through which we can protect the environment and human rights, as highlighted by litigants in the Global South (Auz, 2022, pp. 120, 122; Setzer & Benjamin, 2020, pp. 85–87). The recognition of a natural entity as a subject of rights often comes with the imposition of specific duties on states (and other actors), such as regulating the use of that natural entity's resources and adopting measures to give effect to that entity's rights and to protect it from degradation (Acosta Alvarado & Rivas-Ramírez, 2018, pp. 521, 525; Andrea Lozano Barragán et al. v Presidencia de la República, 2019; Centre for Social Justice Studies et al. v Presidency of the Republic, 2016; Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros, 2021). For example, when the Ecuadorian Court recognized the Los Cedros Forest as a legal subject of rights, it revoked two previously granted permits for mining concessions in the reserve and ordered that any extractive activities within Los Cedros should not be carried out, given the adverse impact of such activities on the rights of nature, the right to a healthy environment, and the right to water (GARN, 2021; Prieto, 2021; Revisión de Sentencia de Acción de Protección Bosque Protector Los Cedros, 2021).

Such a reconceptualization of our legal order need not be restricted to apply only to international law but could be attempted with national law, including mHREDD regulation. For example, the EU Directive's broad definition of stakeholders prompts the question as to whether stakeholders under these laws could be defined to

encompass nature, or specific natural entities via a guardian. The proposal defines stakeholders as including "entities" whose rights or interests are or could be impacted by businesses' operations and relationships (art. 3 (n)), but does not elaborate on what is meant by entities. Could "entities" here include natural entities such as forests, rivers, and their appointed guardians? If so, how could the rights of such entities be operationalized in the corporate context? What form could and should accountability and remedy take to address natural entities' impacted rights? While beyond the scope of this article, such an approach could have significant implications for business, human rights, and the environment, and consequently provide an alternative means of envisioning respect, accountability, and remedy to address corporate-related human rights and environmental harms (Martin-Ortega et al., 2022, pp. 4, 17–20).

4. Implementation of due diligence: monitoring, disclosure, enforcement mechanisms, and stakeholder engagement

Monitoring mechanisms to follow up and assess the implementation of due diligence duties are a key component of HREDD, while disclosure provides not only an opportunity for enterprises to demonstrate that they are respecting human rights in practice, but also greater transparency and accountability to all relevant stakeholders (Gustafsson et al., Forthcoming, pp. 4–5; Methven O'Brien & Martin-Ortega, 2022, p. 24; UNGPs, Principle 21). Both are key to ensure that implementation of due diligence is effective on the ground.

All four mHREDD laws require the adoption of a monitoring mechanism for tracking the implementation and results of due diligence and to provide for the opportunity to follow up to effectively address corporate human rights and environmental impacts, all of which must be disclosed in annual accounts or reports (French Law, art. L. 255-102-4 (I); German Act, ss. 3–4; Norwegian Act, ss. 4–5; EU Directive, art. 10). The German Law goes a step further, requiring that companies allocate responsibility to a person or a team (e.g., human rights officer) to monitor risk management and the implementation of the company's obligations (s. 4(3)).

While these laws require the establishment of company monitoring mechanisms, there is a concern with regard to the effectiveness of these mechanisms in practice, which tend to be reduced to compliance that is cosmetic in nature, and more akin to tick-box compliance (Landau, 2019, pp. 14–15; Quijano & Lopez, 2021, pp. 248–249). Cosmetic compliance can often occur in the absence of monitoring by public authorities (Methven O'Brien & Martin-Ortega, 2022; Nelson et al., 2020). In this case, the implementation of HREDD becomes business-centric: the standard of behavioral conduct of corporations, such as whether they have identified and assessed actual and potential impacts, is set by their own analysis of their activities, as is the extent of stakeholder engagement in their processes (dos Santos & Seck, 2020, pp. 166–167).

This disturbing transformation of HREDD from rights-centric to business-centric is also a major concern from a TWAIL perspective. Such obligations on corporations could result in the transfer of authority from regulators (the state) to private actors (corporations), who may outsource such regulation to subsidiaries and suppliers across their supply chain, or to other third-party actors such as private consultants (Lichuma, 2021, pp. 528–529; Sarfaty, 2015, pp. 435–436). This can impose significant repercussions. Not only may suppliers, workers, farmers, and communities end up bearing the financial cost of developing due diligence processes (Nelson et al., 2020). Such a practice has potential to reinforce unequal power structures inherent in the colonial period. The act of a transnational corporation implementing and enforcing due diligence standards as conceived by mHREDD laws against foreign subsidiaries and suppliers feels akin to the enforcement of charter mandates of the colonial expansion by charter companies. In both cases, there is a powerful sovereign government, delegating certain tasks to a private entity to implement and enforce regulatory standards on foreign corporate entities abroad. The result is not only the dilution of the authority of host states, but also the weakening of corporate accountability in global supply chains; it becomes increasingly difficult to hold corporate actors accountable when it is unclear who holds responsibility for a particular decision or action (Lichuma, 2021, p. 530; Sarfaty, 2015, pp. 436–437). The potential response to this, as Lichuma recommends, is the increased involvement of home states in the implementation and enforcement of HREDD. Monitoring and enforcement must be undertaken by national authorities who should also offer further guidance, or technical and financial assistance to corporations in the mapping of their global supply chain (Lichuma, 2021, pp. 530–531; SHIFT, 2021). This is important for the effective

implementation (and impact on the ground) of due diligence processes and discharge of states' obligations to protect human rights and the environment.

To this end, the French Law does not monitor via a public body. Instead, this role has been undertaken by concerned actors such as NGOs, trade unions, and impacted rights-holders who have been issuing formal notices to companies, or filing civil litigation against companies for violation of vigilance obligations (Duty of Vigilance Radar, 2021). Both NGOs and the General Council of Economy have noted this as a weakness in the effectiveness of the law's current implementation, and recommended for an independent body to promote and monitor effective implementation (Savourey & Brabant, 2021, pp. 150–151).

The Norwegian, German, and EU laws, in comparison, provide for monitoring to be undertaken by public bodies. Under the Norwegian Act, the Consumer Authority monitors corporate compliance and has the authority to, of their own volition or on the request of others, influence companies to comply with their obligations through engagement with companies or related entities (s. 9). The Consumer Authority and the Market Council (which processes appeals and decisions) can request information from companies, and this cannot be denied, unless on grounds of confidentiality under the Criminal Procedure Act (s. 3(10)).

The German Act confers responsibility for monitoring and enforcing corporate compliance with due diligence on the Federal Office for Economic Affairs and Export Control (s. 19). The Federal Office assesses companies' reports to ensure they meet the standard required by the Act (ss. 12–13); and is authorized to detect, end and prevent any violations of obligations through means such as summoning people (s. 15(1)), requesting further information from companies (ss. 15(2), 17), requiring companies to undertake specific actions to fulfill its obligations (s. 15(3)), and inspecting companies' premises (s. 16).

Under the EU Directive, Member States are to designate at least one supervisory authority to monitor and enforce compliance with corporate obligations (art. 17). These supervisory authorities have the power to request information; initiate investigations and inspections of company premises when there is sufficient information indicating a possible breach of obligations by a company; and take action to limit further harm, such as ordering the cessation of infringements and adopting interim measures to avoid the risk of severe and irreparable harm (arts. 18(1)–(3), 18(5)(a), 18(5)(c)). Furthermore, the EU Directive provides for cooperation between supervisory authorities through a series of obligations, such as the provision of mutual assistance in information requests, collaborative investigations and inspections in their member states, and the establishment of a European Network of Supervisory Authorities (arts. 18(3), 21). The Directive is silent on collaboration beyond member states' supervisory authorities, in which case it is unclear to which degree further collaboration, such as with affected stakeholders in states outside the EU, and between home and host states, could be sought. While it is welcome that the Norwegian, German, and EU laws provide for monitoring to be undertaken by national authorities, they do not necessarily completely address TWAIL concerns; the increased involvement of home states could still perpetuate imperialistic notions. Nevertheless, this could be addressed, as Lichuma recommends, through the involvement of Global South states and peoples in the implementation of mHREDD (p. 521). This could be achieved through consultations between home states and host states legislatures and regional and international organizations whose membership comprises potential stakeholders (Lichuma, 2021, pp. 520–521). Guaranteeing that Global South voices are heard and considered in the implementation of mHREDD may serve to ensure the effectiveness of these laws in facilitating corporate accountability for impacted peoples, and diminish (to a certain extent) concerns of interference in the domestic affairs, and thus infringement of the sovereignty of host states (Lichuma, 2021, pp. 520–521; Seck, 2008, pp. 600–601, Seck, 2011, pp. 199–200).

Disclosure provisions require the external communication of risk assessment processes and results as part of due diligence. While not explicitly clear in its provisions, the obligation to produce a vigilance plan under the French Law has been widely interpreted as including an obligation on companies to publish the plan and the report of its effective implementation to the public and in their annual management report (art. L. 225-102-4; Savourey & Brabant, 2021, p. 146). In comparison, the German, Norwegian, and EU laws explicitly confer on companies an obligation to report. The German and EU laws require companies to prepare and publish on their website an annual report on the fulfilment of their due diligence obligations in the previous year, with the German Act promoting further transparency by requiring that annual reports are publicly available on companies' websites for 7 years (German Act s. 10; EU Directive, art. 11). While the Norwegian Act frames this similarly, requiring companies to publish on their website an annual account of their due diligence processes (s. 5), it also

goes a step further, enshrining a right to information in the Act (s. 6). This provides that any person upon written request, has the right to information from an enterprise regarding how they address actual and potential adverse impacts, regardless of whether this information is general or relating to a specific product or service (s. 6). Although access to such information can be denied in limited circumstances, this provision is promising given its potential to not only strengthen the ability of rights-holders to hold corporations accountable and exercise those rights that are reliant on such information (i.e. remedy), but also shift unequal power-imbalances between corporations and rights-holders.

Enforcement of the legal obligation to exercise due diligence takes different forms in these laws, including through civil liability. The French law adopts a two-stage enforcement mechanism which can be utilized by any person with legitimate interest (art. L. 255-102-4(II); Bueno & Bright, 2020, p. 801). As with monitoring, enforcement falls to the shoulders of stakeholders such as NGOs, trade unions, or impacted rightsholders who would trigger this mechanism. The first stage consists of a formal notice issued by the interested person to the company to comply with their vigilance duties. Second, where 3 months have lapsed since receiving the formal notice and a company has still failed to meet its obligations, a competent court can be requested to issue an injunction ordering compliance and payment of a fine (art. L. 255-102-4(II)). In the case of the second stage, an application could also be made to the president of the Court to issue emergency measures (art. L. 255-102-4(II)). The French law also provides for civil liability where a company has failed to comply with their duties. Since 2019, when the enforcement mechanism could be triggered, there have been over a dozen formal notices issued, with some of them progressing to the filing of civil lawsuits (BHRRC, 2023). In particular, these concern human rights and environmental issues, such as impacts on indigenous peoples and local communities rights, biodiversity, and contamination of water sources (Duty of Vigilance Radar, 2021, pp. 5–6, 9–14), which demonstrates the potential of this mechanism in addressing corporate accountability for human rights and environmental harm in an integrated manner, despite the lack of an integrated approach in the text of the law itself.

In comparison, enforcement under the Norwegian, German, and EU Laws are primarily operationalized by the monitoring bodies: the Consumer Authority Act (Norway), the Federal Office for Economic Affairs and Export Control (Germany), and member states' supervisory authority (EU). Under all three laws, where a company is found to have violated its due diligence obligations, the relevant body has the authority to order cessation of any violations and that specific action be adopted (such as remedial action) to ensure the fulfillment of due diligence obligations, as well as impose financial penalties (Norwegian Act, ss. 9, 11–14; German Act, ss. 15, 24; EU Directive, arts. 18(5), 20). While enforcement actions can be triggered primarily at the discretion of the relevant body, there is also a possibility of enforcement being triggered on the request of persons who have reason to believe that a company is failing to comply with their obligations (Norwegian Act, s. 9; EU Directive, art. 19) or their rights have been or will be imminently violated due to noncompliance (German Act, s. 14(1)). Furthermore, sanctions for noncompliance with due diligence obligations are not only financial but also include exclusions from public procurement (German Act, s.22) or public support (EU Directive, art. 24). Finally, the EU Directive provides for enforcement via the triggering of civil liability where a company has failed to comply with their obligations and this failure has resulted in harm, much like the French law.

4.1. Rights-holder and stakeholder involvement

The involvement of rights-holders and stakeholders is directly related to and essential for the effectiveness of due diligence implementation, monitoring, and access to remedy (Methven O'Brien & Martin-Ortega, 2022), and the challenging of power-imbalances which perpetuate negative dynamics. Rights-holders include individuals, workers, and communities who are impacted by harms. They know the circumstances of their lives and environment and as such can provide invaluable insight as to how certain activities may impact them including how impacts vary according to different rights-holders (such as women, children, LGBTQIA+ persons, older persons, persons with disabilities, minorities, migrants, Indigenous Peoples, and local communities) and consequently how best to remedy such impacts.

While a framework for engagement with specific rights-holders and stakeholders, such as Indigenous People, exists there is both a lack of respect for their engagement rights and a lack of understanding of how other groups should be engaged. Ensuring that consultations with Indigenous Peoples are grounded in the implementation of

free, prior, and informed consent so as to guarantee a "distinguishable voice" for Indigenous Peoples within society and to effectively safeguard their rights (Morgera, 2020, pp. 193–194), while required by international law, is still not sufficiently practiced. In practice, stakeholder engagement has been superficial: many companies may choose to consult with a limited selection of rights-holders, on a single occasion, or settle for consulting with actors such as civil society without any interaction with affected rights-holders (UNGA, 2018, p. 25; Wilde-Ramsing et al., 2022, p. 24). Meaningful engagement must be facilitated through mHREDD as part of companies' due diligence obligations. There is, however, limited reference to this within legal provisions to date.

The French Law contains no provision on engaging in consultations with rights-holders, but rather focuses on engaging with industry stakeholders such as subsidiaries or trade union representatives in the drafting of vigilance plans and in the implementation of impact reporting alert mechanisms (art. L. 255-102-4). In practice, there is little evidence to suggest that companies covered by the French Law have engaged in meaningful consultation with stakeholders. Civil society is challenging this by filling formal notices and civil lawsuits against French companies based on insufficient, or complete lack of consultations with stakeholders (Duty of Vigilance Radar, 2021, pp. 7–10,13–14).

The German Law goes a step further requiring that companies, in establishing and implementing their risk management systems, give due consideration to employees (their own and those within their supply chain) and others who may be impacted by the operations of the company or those within its supply chain (s. 4(4)). However, it neglects to require that companies' consult with those persons who may or are impacted by corporate activities as part of its due diligence process (Krajewski et al., 2021, p. 555).

Contrary to the French and German Laws, the Norwegian Act defines companies' duty to carry out due diligence to include communicating with affected stakeholders and rights-holders regarding how adverse impacts are addressed (s. 4(e)). However, by not defining a minimum level of engagement, beyond the receipt of information, companies remain free to determine if and how to involve rights-holders and stakeholders in the specific actions and their outcomes.

In comparison, the EU Directive explicitly requires that companies engage with affected stakeholders via consultation, which should be held to gather information on actual and potential impacts, and in the development of preventative and corrective action plans, both for preventing and addressing adverse impacts (arts. 6(4), 7(2)(a), 8(3)(b)). However, it seems that the EU Directive also succumbs to a lack of clarity. Consultations with stakeholders in the development of preventative and corrective action plans are conditional, seeming to only be required "where relevant". Furthermore, the circumstances in which these consultations would be deemed relevant is not defined, seeming to leave this to be determined by companies themselves. Like the Norwegian Act, the EU Directive also falls into the same trap of bestowing companies with a significant degree of discretion which in practice perpetuates power-imbalances between corporations and rights-holders and stakeholders.

5. Access to justice and the provision of remedy for human rights and environmental harms

The provision of remedy is a core component of corporate accountability. As international law does not provide for direct corporate accountability mechanisms, victims must rely on either host or home states' domestic legal systems. This reliance has and continues to make it extremely difficult for victims globally to seek redress for such impacts (Bragato & da Silveira Filho, 2021, p. 36). Host states' legal systems are effective in adjudicating corporate accountability, but these successes often suffer as a result of the coloniality which underpins relations between the Global North and the Global South and enables the utilization of norms, such as international investment treaty regimes, to benefit corporate actors at the expense of rights-holders (Bragato & da Silveira Filho, 2021, p. 38–42, 58; Miles, 2010, p. 36). Contrary to host states, home states provide many potential points of control over corporate behavior—corporate laws and prescriptive environmental laws—which could be utilized to provide victims with an effective remedy (Seck, 2011, p. 172). However, additional barriers tend to manifest both in practical and structural issues. Victims may face limited access to financial resources and difficulty in gaining access to relevant information concerning corporate operations, especially where corporations are under no obligation to disclose by law, which, coupled with the imposition of the burden of proof on the victims, will result in a denial of justice for victims (De Schutter, 2020, p. 51; Jägers, 2020; Lichuma, 2021, p. 527).

Further hindering access to remedy is the continuity of legal principles which are often exploited by corporations to evade accountability. In particular, *forum non conveniens*, which operates on the basis that another jurisdiction (or forum) abroad would be more appropriate to hear the case than the local forum (Zhenjie, 2001, p. 144), has evolved into a tool of impunity. Rather than preventing forum shopping, it seems to have been reassigned by corporations as a defense against accountability for torts committed by their subsidiaries abroad, resulting in the case being dismissed on jurisdictional grounds. Furthermore, Courts have often justified its use on the concern of being "imperialist" for applying Global North laws to Global South contexts (In re Union Carbide Corp, 1986, p. 867; Palombo, 2022, pp. 5–8). Yet such concerns of being imperialistic are otherwise forgotten when implementing legal norms to protect Global North State investors operating in the Global South (Seck, 2011, p. 198). This is also apparent with the corporate veil doctrine which operates on the basis that the rights, liabilities, and activities of a corporation are distinct from that of its shareholders, meaning that a parent company cannot be held liable for the tortious decisions and conduct of its subsidiaries abroad (Meeran, 2013, pp. 386–387). While there has been a gradual circumvention of these principles in specific circumstances, this has been developed on a case-by-case basis with victims only meeting the merits stages of their cases decades after their initiation (Oguru and Efanga and Others v Royal Dutch Shell Plc and Shell Petroleum Development Company of Nigeria LTD, 2021; Okpabi and Others v Royal Dutch Shell PLC, 2021, paras 26, 143; Roorda, 2021; Vedanta Resources PLC and another v Lungowe and Others, 2019, para 49–60). Real power discrepancies between victims and corporate actors are not only deeply embedded, but also sustained within our legal architecture. Under international human rights law states have an obligation to eradicate such barriers, and this could be implemented in the context of mHREDD.

The French and EU laws both provide for remediation in the form of civil liability action for damages where an enterprise has failed to comply with their obligations, and this failure has resulted in harm (French Law art. L. 225-102-5; EU Directive, art. 22(1)). Although this is a significant step for access to remedy under mHREDD legislation, scholars have identified a number of issues that may arise in the utilization of these provisions in practice.

First, while there are slight distinctions between the circumstances in which civil liability could arise under each framework, both provide for liability to arise where an enterprise's noncompliance with their obligations has led to harm. As such, civil liability action under both frameworks is unlikely to be applicable in circumstances where an enterprise has caused or contributed to harm, but has nevertheless conducted due diligence in line with their obligations under the Law (Bueno & Bright, 2020, pp. 801–802; Methven O'Brien & Martin-Ortega, 2022, pp. 25–26). As both frameworks confer on companies an obligation to take all the steps possible to reach a certain result, rather than conferring on them an obligation of attaining a certain result, the courts could consider that the implementation of very general due diligence plans and limited actions is sufficient compliance and conclude that the company is not liable (Methven O'Brien & Martin-Ortega, 2022, pp. 25–26; Savourey & Brabant, 2021, p. 151; SHIFT, 2022, pp. 5–7). This could also lead to the development of due diligence processes, even superficial "tick-box" forms of due diligence, being utilized by companies as a defense (Quijano & Lopez, 2021, pp. 251–252). In fact, it seems that the EU Directive frames civil liability in such a way that companies are provided a shield against liability. This shield could only be counteracted (and liability could arise) where it is unreasonable in the circumstances to expect that the actions taken by the lead company would be sufficient to prevent, mitigate, minimize the extent of, or bring an end to the harm (art. 22(2)). The approach adopted in both frameworks operates through a conflation of two distinct duties under the corporate responsibility to respect human rights—an obligation to practice due diligence and an obligation to remedy any harm caused—which in turn would not only weaken the protection of victims but would completely deprive foreign victims access to an effective remedy, given the limited routes available to them (De Schutter, 2020, pp. 50–51; Quijano & Lopez, 2021, pp. 251–252).

Second, the burden of proof under both frameworks seems to fall upon the claimants who will have to prove that their circumstances constitute a tort under law: that the damage/harm suffered is a result of a breach of obligations and that there is a causal link between the breach and harm (BHRRC, 2022, p. 7; Savourey & Brabant, 2021, p. 152). This is a heavy burden to bear, and one that becomes heavier the more remote in the supply chain the damage exists as it becomes even more complex to satisfy the three conditions under tort law (Bueno & Bright, 2020, p. 802; BHRRC, 2022, pp. 7–8; Methven O'Brien & Martin-Ortega, 2022, p. 26;

Savourey & Brabant, 2021, p. 152). Especially given that the relevant information which could prove these conditions would typically exist in the hands of the company rather than the victim (De Schutter, 2020, p. 51). To this end, liability provisions in mHREDD laws could alternatively be framed on the presumption that a duty of care has been breached, where a claimant has established that the harm suffered was connected to the company's operations, therefore shifting the burden to the company to prove that it took all reasonable measures that could have been taken in the circumstances to prevent the harm (De Schutter, 2020, pp. 51–52).

The EU Directive provides two additional paths toward remedy. The first is a national supervisory authority's substantiated concerns mechanism in which persons can submit concerns to any supervisory authority when they have reasons to believe that a company is failing to comply with their obligations (art. 19(1)). The supervisory authority must then assess and engage with the concern (for example, conduct an investigation), and communicate the results and reasoning of this assessment to the person who submitted the concern (arts. 19(3)–(4)). The second is a complaints mechanism which companies must adopt to enable persons (actual and potential complainants, trade unions, workers' representatives, and civil society organizations) to submit complaints to companies where they have "legitimate" concerns regarding actual or potential human rights and environmental impacts within a company's own operations, the operations of their subsidiary, or within a company's supply chain (art. 9(1)). Companies must ensure they establish a procedure for dealing with complaints, and that the complaints mechanism entitles complainants to, as a minimum, the option of requesting follow-up on the complaint submitted, and to meet with the company's representatives to discuss the subject matter of the complaint (arts. 9(3)–(4)). While these additional paths towards remediation are welcome, there are concerns around access, particularly for complainants who are extremely remote from the company where impacts have been caused by suppliers in host states.

In comparison, neither the Norwegian nor German Act include a provision on civil liability. The Norwegian Act is silent on civil liability, and even remediation, except when companies are, where required, obligated to provide for or cooperate in remediation (s. 4). While the German Act excludes civil liability from arising in circumstances of noncompliance with obligations under the Act, it does not completely exclude any possibility for remediation (s. 3(3)). In addition to the possibility for liability to arise independently from the Act such as through a tort, companies are obligated to either adopt an internal complaints procedure or participate in external procedures which enable persons to report impacts that have arisen within the company's supply chain (ss. 3 (3), 8(1), 9(1)). This procedure must be accessible to the potential parties, maintain the confidentiality of their identity and ensure effective protection of complainants against any disadvantage or retribution inflicted as a result of filing the complaint, and could offer a procedure for settlement (s. 8). A promising addition to the complaints mechanism under the German Act, which the EU Directive lacks, is that of confidentiality and nonretribution with regard to the complainant, which could help to protect rights holders such as Human Rights Defenders. However, there are concerns surrounding potential complainants' access to this mechanism in practice; and the extent to which this may provide effective remediation to complainants given that settlement is left to the discretion of the company (dos Santos & Seck, 2020, pp. 166–167).

6. Conclusion

Mandatory HREDD, while a promising development from voluntary initiatives that were prevalent in the decades prior, have largely failed to lay strong foundations within their provisions for the effective articulation of corporate responsibility and accountability for human rights and environmental harms. This is apparent from the various cracks in the French, German, Norwegian, and EU frameworks, such as little human rights-environmental substantive scope or limited avenues for remediation where corporate impacts lead to harm, all of which could serve to maintain the cycle of corporate impunity that mHREDD seeks to challenge and address. Yet, it is through these cracks that we can begin to forge a way toward a more robust framework of mHREDD which articulates in theory and practice clear avenues for addressing corporate-related human rights and environmental harms. Thus, as more States set about pursuing legislative initiatives on mHREDD, it is important that these reflect an integrated human rights and environmental approach which is sensitive to rights-holders.

This means, first, considering not just the immediate interrelations between harm to human rights as a direct consequence to the environment, but also the more complex needs of environmental protection in and of itself.

Second, not only are states taking an active role in the monitoring and enforcement of corporations through public bodies, but also cooperation between home states and host states in this context is enhanced, so as to lead to a more robust mHREDD framework. While the EU Directive provides for this between member states, cooperation should transcend regions, given the global nature of supply chains. This could help to overcome issues faced by national authorities, such as access to foreign subsidiaries and suppliers, and could also be applied to other contexts such as the provision of remedies. This leads to the third—access to remedy—which cannot be left to the hope that communities and individuals will find a way to materialize their rights to remedy and enforce civil liability provisions when they exist, or for courts alone to decide. It is important that legislation directly establishes routes for liability, removing the barriers which until now have been used to evade accountability. Finally, mHREDD must be sensitive to rights-holders. Essential to this is providing the necessary avenues for meaningful engagement of stakeholders and rights-holders to be part of the design, implementation, monitoring, and accountability processes derived from due diligence obligations, as well as the legislative instruments themselves. As TWAIL reminds us, the Global South is not only a recipient of the Global North's legal system and principles. Impacted and affected communities must not only be heard but also be active participants in the design, definition, implementation, and monitoring of developing standards. This would require legislators to open up avenues of dialogue and look to the legal systems and norms of the recipients for inspiration, including constitutional mechanisms for redressing violations of fundamental rights that are caused by companies abroad.

Acknowledgments

We would like to thank Maria-Therese Gustafsson, Almut Schilling-Vacaflor, and Andrea Lenschow for inviting us to contribute to this special issue on Foreign Corporate Accountability. We would also like to thank the anonymous reviewers and Almut Schilling-Vacaflor for their incredibly helpful comments. We are also grateful to Ceylan Akbas for her research assistance, and to Hayat Dehbi for her helpful comments on an earlier draft.

Conflict of interest statement

The authors declare no conflict of interest.

Data availability statement

Data sharing not applicable to this article as no datasets were generated or analysed during the current study.

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