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HUMAN RIGHTS DUE DILIGENCE IN AFRICA

Understanding the effectiveness, legitimacy and implications of due diligence mechanisms

COMPILED BY THE CENTRE FOR APPLIED LEGAL STUDIES,
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Introduction

Corporate accountability and human rights due diligence

In the modern era of globalised commerce, transnational corporations (TNCs) have become powerful actors, often rivalling or surpassing the influence of many states.[1] While their contributions to economic development, investment and employment are acknowledged, these same corporations have also been implicated in human rights violations, environmental destruction and labour exploitation, particularly in resource-rich regions of the Global South.[2] Nowhere is this tension more pronounced than in Africa's extractive sector, which continues to be a site of contestation between economic imperatives and human rights obligations.[3]

The past two decades have seen growing pressure placed on corporations to account for their role in human rights violations, especially those operating across borders.[4] This evolution in global corporate responsibility is most evident in the increasing traction around Human Rights Due Diligence (HRDD). HRDD refers to the processes through which companies identify, prevent, mitigate and account for how they address their adverse human rights impacts.[5]

The concept was first articulated in the United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted by the Human Rights Council in 2011, which established a tripartite framework: the State's duty to protect, the corporate responsibility to respect, and the need for access to remedy.[6] While the UNGPs are not legally binding, they have significantly shaped both soft law and hard law frameworks, such as the jurisprudence of the African Court on Human and Peoples' Rights and the EU Corporate Sustainability Due Diligence Directive (CSDDD).[7]

The European Union's CSDDD, as amended through the legislative process concluded in December 2025 and February 2026, applies to a narrower group of companies than initially proposed. The revised framework primarily targets large EU and third-country companies meeting higher thresholds, including those with more than 1,000 employees and significant turnover within the Union. These amendments reflect a shift towards reducing regulatory burden and limiting the scope of mandatory obligations to the largest market actors, while maintaining the Directive's core due diligence objectives.[8]

These developments raise critical questions regarding the effectiveness, legitimacy and implications of HRDD mechanisms for the Global South, particularly in contexts where legal systems are underdeveloped or weakened by historical and structural inequalities.

This report interrogates these dynamics, centring on the implications of the CSDDD for TNCs operating in Africa, and explores some of the broader challenges of implementing HRDD mechanisms in the Global South.

What is human rights due diligence?

Human rights due diligence is a proactive process where businesses are expected to identify and prevent any negative impacts on human rights across their supply chains. These frameworks aim to shift the burden from seeking accountability after the fact to managing risk before any harm is committed.

Recent amendments adopted by the European Parliament on 16 December 2025 introduce an important structural clarification to the operation of human rights due diligence under the Directive. While the CSDDD continues to impose binding due diligence obligations on companies within its scope, the revised framework reflects a more differentiated, two-level approach in practice. At the first level, a reduced group of large EU and third-country companies are subject to direct legal obligations, including administrative supervision and civil liability.

At the second level, companies operating within their value chains, including suppliers and subsidiaries, are not directly regulated by the Directive but remain subject to indirect compliance expectations through contractual and commercial relationships. This distinction is reinforced by provisions limiting the extent to which reporting companies may request information from smaller entities in their value chains, thereby recognising both the continued relevance and the constrained reach of due diligence obligations beyond the entities formally covered by the Directive.[9]

The emergence of HRDD as a global norm

Complementary efforts have been undertaken through the OECD Guidelines for Multinational Enterprises (2011) and various national laws, such as the French Corporate Duty of Vigilance Law (2017), Germany's Supply Chain Due Diligence Act (2021), and Norway's Transparency Act (2022). These developments suggest there is a growing consensus amongst law and policy makers that human rights can be protected through their incorporation in corporate governance.

Adopted by the European Parliament in 2024, the CSDDD represents a shift from voluntary standards to legally enforceable obligations on certain companies operating within or linked to the EU market.[10] The directive requires companies to identify and address adverse human rights and environmental impacts in their operations and value chains. Specifically, the CSDDD imposes mandatory due diligence obligations on large EU-based companies (and some non-EU companies active in the EU) to integrate human rights and environmental considerations into corporate governance and risk management frameworks.[11] Implicated corporations must map their value chains, conduct risk assessments, implement preventive and corrective measures, engage with stakeholders and establish grievance mechanisms. Non-compliance may result in administrative sanctions, civil liability, and reputational harm.[12]

The CSDDD is significant because it applies extraterritorially, meaning that African suppliers, subsidiaries and business partners of European companies could be indirectly bound by the due diligence expectations, without necessarily having access to the legal or financial resources to comply.[13] This extraterritorial reach has been met with both optimism and concern within African jurisdictions. On the one hand, the Directive potentially fills governance gaps by holding European corporations accountable for their operations abroad.[14] On the other hand, its application in Africa remains highly contentious, especially because many African states do not have national due diligence laws of their own.[15]

While its extraterritorial reach is commendable in theory, there are concerns about enforcement, the burden on Global South suppliers and whether the Directive meaningfully empowers affected communities.

The CSDDD's designed has also raised debates around corporate impunity versus regulatory overreach. Critics argue that it tends to consolidate power in EU-based parent companies while subjecting Global South suppliers, including African entities, to onerous compliance requirements without reciprocal investment in capacity-building.[16] Others worry that in the absence of meaningful enforcement in host states, the burden of holding companies accountable will fall disproportionately on communities already facing limited access to justice.[17]

It has been argued that the lack of local legal frameworks that mirror or complement the CSDDD creates regulatory loopholes, weakens enforcement and raises questions about sovereignty, fairness and the risk of neo-colonial regulatory imposition.[18] In effect, the CSDDD may create a fragmented landscape in which compliance is governed by external norms with limited domestic institutional support, leading to a situation where local affected communities may be excluded from the design and implementation of grievance mechanisms, and where African states are reduced to enforcement agents of European law without reciprocal influence.[19]

Perhaps more concerning for African states is the presence of investors and companies from jurisdictions other than the EU – including China, Russia, the Gulf States and parts of the Global South – which are not bound by the CSDDD.[20] This selective regulatory application allows non-EU actors to bypass human rights and environmental standards altogether, potentially incentivising a "race to the bottom" and creating a double standard for corporate accountability on the continent.[21] This asymmetry undermines the goal of universal due diligence and exposes African states to continued exploitation, particularly in extractive and infrastructure sectors where state oversight is already weak.[22]

Africa's legal and regulatory landscape

Africa's regulatory context is characterised by weak enforcement systems and persistent economic dependencies. While many African countries have adopted legal provisions related to corporate regulation, environmental protection and community rights, enforcement often remains fragmented, under-resourced or compromised by political and economic pressures.[23]

These challenges are reflected in the three case studies discussed below. In South Africa, despite a robust constitutional and legal framework, transnational corporations in the extractive sector have faced persistent allegations of environmental harm and rights violations, with limited accountability or effective remediation. Anglo American, one of the country's largest and most influential mining conglomerates, has been accused of severe environmental pollution and community displacement, most notably in connection with the Kabwe lead poisoning case and other legacy mining operations.[24] Similarly, in Namibia, the activities of Reconnaissance Energy Africa (ReconAfrica) in the Kavango Basin have triggered widespread concerns among local communities, indigenous rights groups and

Case studies

Legislation	South Africa	Namibia	Zimbabwe
HRDD-specific legislation	None	None	None
Constitutional recognition of rights	Yes, strong	Yes	Yes
Corporate accountability for HR violations	Indirect via other statutes	Weak and indirect	Minimal enforcement
Sectoral regulation (extractives)	Comprehensive but poorly enforced	Fragmented and outdated	Outdated and politicised
Civil society engagement	Active, litigates often	Active but under-resourced	Suppressed and vulnerable
Legal enforcement capacity	Uneven	Weak	Very weak

environmental experts. These concerns stem from inadequate consultation processes, violations of land and integrity rights, and environmental degradation, despite existing constitutional and legislative protections. In Zimbabwe, Bikita Minerals, owned by the Sinomine Resource Group, has drawn criticism for labour exploitation, poor working conditions, and opaque community benefit arrangements associated with lithium extraction operations.[25]

These examples highlight the mismatch between corporate responsibilities under domestic and international law and African states' capacity to enforce them effectively. Moreover, reliance on foreign direct investment in extractives often creates strong incentivesfor regulatory leniency, reinforcing a race to the bottom in terms of legal standards. Across South Africa, Namibia and Zimbabwe, HRDD remains largely absent in domestic law, and enforcement of existing protections is patchy and politically influenced.

While constitutional and statutory frameworks recognise human rights and environmental protections, corporate obligations remain diffuse and voluntary. The introduction of binding HRDD laws like the CSDDD could exert indirect pressure for reform but must be adapted to African institutional realities and concerns.

Why a critical assessment of the CSDDD in Africa matters

The extraterritorial nature of the EU's CSDDD introduces significant regulatory tensions. While its ambitions to extend accountability beyond EU borders are laudable, its implementation in African contexts raises critical issues, including:

- **Jurisdictional friction**: The imposition of regulatory obligations by EU law on activities occurring within states can appear paternalistic, echoing colonial-era legal interventions. Without adequate consultation or alignment with local priorities and regulations, such initiatives risk undermining African sovereignty.
- **Access to remedies**: The CSDDD provides for civil liability for companies that fail to comply with its due diligence requirements. However, the practical ability of affected communities in Africa to litigate in the courts of European states is constrained by cost, distance and procedural barriers.
- **Contextual inadequacy**: The CSDDD assumes a baseline level of corporate transparency, state cooperation and civil society participation. In contexts where civic space is closing or co-opted, due diligence may devolve into tokenistic reporting with little substantive impact.
- **Power imbalances**: There is also a real risk that companies will push compliance costs and liability risks down the supply chain, burdening smaller African firms and contractors without enhancing protection for rights-holders.

Methodological approach and case study focus

This study adopts a mixed-methods research design, combining legal analysis, policy review and case studies.

- A literature review includes leading texts on HRDD, corporate accountability and African legal reform.
- Case studies in South Africa, Namibia and Zimbabwe examine the HRDD performance of major transnational corporations such as Glencore, ReconAfrica, TotalEnergies, GALP and Bikita Minerals.
- A comparative legal analysis assesses the alignment (or disjuncture) between EU frameworks and national laws in target African countries, while also considering insights from Asia and Latin America, where HRDD has followed alternative trajectories.

Project objectives and intended contributions

This research is guided by four core objectives, namely to:

1. critically evaluate the normative and operational assumptions of the CSDDD;
2. analyse the impact of HRDD frameworks on TNCs operating in African legal and
3. identify domestic legal and institutional gaps in African states that may hinder effective implementation of HRDD; and
4. formulate context-sensitive policy recommendations that are both realistic, inclusive and rights-based.

The intended contribution is both academic and practical. It aims to influence policy debates, support civil society advocacy, and inform institutional reform processes in Africa and beyond.

Towards a transformative HRDD agenda

The global push for HRDD, symbolised by the CSDDD, offers an opportunity to redefine corporate responsibility and foster accountability across borders. Yet, its promise will remain hollow if it replicates colonial governance structures, ignores African regulatory contexts or sidelines affected communities. As such, this project does not reject HRDD, it reclaims it.

By situating HRDD within Africa's political economy, legal history and development trajectory, this report advocates for a transformative approach to due diligence that is legally robust, socially just and globally equitable. Such a vision requires not just importing norms from the North, but co-creating accountability mechanisms that affirm the dignity, autonomy and rights of people across the continent.

Critical review

The EU Corporate Sustainability Due Diligence Directive and its implications for transnational corporations in Africa

The European Union's CSDDD, adopted in June 2024, potentially represents a watershed moment in the longstanding efforts to ensure corporate responsibility for human rights violations.[26] This legislative instrument seeks to enshrine binding due diligence obligations across value chains for large corporations, encompassing environmental protection and respect for human rights. While the CSDDD is primarily aimed at corporations operating within the EU's internal market, its due diligence obligations apply extraterritorially to the operations of EU-based companies or their subsidiaries, including in many African states.[27]

When it was first adopted, the CSDDD was intended to impose sweeping mandatory human-rights and environmental due diligence obligations on large companies operating in and beyond the European Union. In its original adopted form (Directive (EU) 2024/1760 of 13 June 2024) the directive obliged covered companies to embed human-rights and environmental due diligence into their corporate policies, to identify and assess actual or potential adverse impacts across their operations and entire value chains (including subsidiaries and business partners), to take appropriate measures to prevent or mitigate identified harms, to establish meaningful stakeholder-engagement and grievance-mechanisms, and to publicly report annually on due-diligence activities, subject to regulatory oversight.[28] It further contained an EU-wide civil-liability regime, minimum administrative-penalty thresholds, and phased application dates beginning from 26 July 2027 for the largest companies.

However, the Directive's ambitious scope and accountability framework were recalibrated through the Omnibus legislative process concluded between December 2025 and February 2026. While the core due diligence model remains intact, the final amendments introduce several important changes:[29]

- The scope of application has been significantly narrowed. The Directive limits mandatory sustainability obligations to the largest undertakings, raising thresholds to focus on companies with substantial turnover and workforce size. This reflects a deliberate effort to reduce regulatory burden and target entities considered most capable of absorbing compliance costs.[30]

- The revised framework is explicitly driven by a broader policy objective of simplification and competitiveness. The Directive emphasises the need to streamline sustainability reporting and due diligence requirements while maintaining core policy goals.[31]

- The Directive introduces explicit protections for smaller undertakings within value chains. In particular, reporting companies are restricted in the type and extent of information they may request, and smaller undertakings are granted a statutory right to refuse requests that exceed prescribed limits.[32]

- The approach to due diligence is clarified as risk-based and proportionate. Companies are required to identify and assess areas where adverse impacts are most likely and severe, but are not required to identify every possible adverse impact across their operations and value chains.[33]

- The framework limits the extent of the "trickle-down" effect of due diligence obligations. Companies are only required to request information from business partners where necessary and proportionate, particularly in relation to smaller entities.[34]

- The Directive reduces the level of harmonisation in relation to liability. The earlier proposal for a uniform EU-wide civil liability regime is removed, with Member States retaining responsibility for ensuring access to remedy in accordance with national legal systems.[35]

- The revised framework reflects a shift towards a more differentiated system of responsibility. Binding legal obligations are concentrated on companies within the Directive's scope, while value chain actors are affected primarily through indirect compliance expectations rather than direct regulation.[36]

Although the Directive remains legally adopted, the Omnibus package amounts to a material rollback of many of its original substantive obligations and a delay in enforcement. In short: the directive that was once envisioned as a game-changer in corporate accountability has been scaled back, postponed and de-risked for business (even if formally still in force).

Despite this "walking-back" of the CSDDD by the EU, when (or perhaps if) it comes into force, it will create legally binding obligations on a number of transnational corporations operating in Africa (via their EU parent or via EU market presence or supply-chain linkages). Once the compliance phase begins for a given company in scope, that company must (subject to the directive's rules) undertake human-rights and environmental due diligence (albeit now within a more limited scope), and could face regulatory oversight, liability risks (where applicable) and heightened expectations from civil-society stakeholders.

For African operations that form part of the value chains of covered EU-linked TNCs, this means potential downstream pressure — via contractual assurances, required due diligence information requests, enhanced corrective-action planning, suspension of business relationships and increased transparency. In that sense, even with the diluted obligations, the CSDDD remains a significant instrument of extraterritorial corporate governance risk for TNCs active on the continent.

This chapter offers a critical review of the CSDDD, focusing on its likely impact on TNCs operating in Africa. It evaluates both the promises and the limitations of the CSDDD for addressing structural human rights challenges prevalent on the continent – such as forced displacement, resource extraction-related abuses, labour exploitation – as well as strengthening weak regulatory environments. The final part of the chapter turns to the UNGPs, analysing their complementary role and potential integration with the CSDDD framework.

Overview of the CSDDD: Scope and objectives

The CSDDD applies to EU companies with more than 3,000 employees and a global turnover exceeding €450 million, as well as non-EU companies generating at least €900 million in turnover within the EU.[37] It imposes a duty of care across the entire "chain of activities," extending to both upstream and limited downstream operations.[38] Under the Omnibus amendments, the directive's scope has been significantly narrowed. It continues to cover subsidiaries but now extends primarily to direct business partners with whom the company has established commercial relationships.

The broader obligation to conduct due diligence across indirect or downstream partners has been largely removed, except in cases where the company has plausible information or concrete indications of potential adverse impacts. As a result, the reach of the CSDDD over entities operating in or sourcing from African countries has been substantially reduced, limiting its capacity to address human rights and environmental risks deeper in global value chains.[39]

At its core, the CSDDD still obliges companies to identify, prevent, mitigate, and remedy adverse human rights and environmental impacts, but the Omnibus amendments have narrowed these duties considerably.

Article 6 now limits due diligence mainly to a company's own operations, subsidiaries, and direct business partners, extending to indirect partners only where there is plausible evidence of risk. Article 8 allows companies to continue engagement with non-compliant partners under an action plan rather than mandating termination, while Article 11's remediation duty remains but without a harmonised EU civil-liability regime, leaving enforcement to Member States.[40]

Human rights and environmental due diligence: New benchmarks

The CSDDD represents a shift from voluntary to mandatory corporate responsibility. However, its legal construct is based on obligations of conduct rather than result.[41] This raises concerns about its enforceability in contexts where abuses are systemic and deeply rooted in local socio-political dynamics, such as those in many African extractive sectors.

Crucially, the CSDDD incorporates a broad range of rights based on international instruments, including the ILO core conventions and the International Covenant on Civil and Political Rights.[42] Environmental due diligence also features prominently, requiring companies to prevent measurable environmental degradation.[43] This means special consideration of impacts such as deforestation, pollution and loss of biodiversity.

Despite this ambition, critics argue that the CSDDD does not go far enough to disrupt entrenched systems of corporate impunity. The directive, for example, does not automatically confer standing to third-country victims within EU legal systems, leaving much to the discretion of Member States.[44] Furthermore, Article 12 provides companies with significant latitude to rely on industry or multi-stakeholder initiatives, many of which have been criticised for weak accountability mechanisms.[45]

Implications for transnational corporations in Africa

1. Value chain accountability and legal risk

For TNCs with operations in Africa, the CSDDD introduces a new layer of compliance obligations. While it may encourage improved governance and more responsible sourcing, the Omnibus amendments have diluted many of its transformative ambitions. The narrowing of due diligence duties and the weakening of enforcement mechanisms reduce the directive's potential to drive meaningful accountability across global value chains. Although Article 10(2)(e) encourages companies to provide "targeted and proportionate support," this remains a discretionary and non-binding obligation, reflecting the overall softening of the directive's normative force.[46]

In practice, companies may respond by disengaging from high-risk African markets rather than investing in ethical and sustainable practices, thereby exacerbating exclusion rather than enabling inclusive development. This mirrors concerns about the de-risking behaviour of multinational firms in response to regulatory pressure.

2. Missed opportunity to address structural power imbalances

The CSDDD fails to directly address the adverse effects of global supply chains and the structural economic subordination that African states face. It places the onus for reform largely on companies, without corresponding obligations on the EU to support regulatory and institutional strengthening in affected countries. There is also no clear mandate for meaningful engagement with affected communities, beyond the general requirement for "stakeholder engagement".[47]

For instance, in resource-intensive economies like the Democratic Republic of Congo where corruption and state complicity in rights violations are prevalent, companies may be formally compliant while operating within contexts that make genuine due diligence impossible.[48] The directive's silence on state complicity and its reliance on companies to exert "leverage" over their partners reveal a technocratic and depoliticised view of corporate accountability.[49]

3. Climate change

The Directive also introduces a novel climate duty under Article 1, requiring large companies to adopt a transition plan aligned with the Paris Agreement.[50] While laudable, this duty is weakly enforced: failure to meet the targets does not automatically trigger penalties unless tied to broader governance failures. More importantly, it is disconnected from the lived realities of environmental injustice in Africa, where local communities bear disproportionate exposure to the externalities of corporate-led carbon-offset projects and "green" mining.[51]

Civil liability and enforcement gaps

One of the most significant features of the CSDDD is its introduction of civil liability for harm.[52] However, liability is restricted to cases where a company has failed to take appropriate measures to prevent or mitigate adverse impacts. The burden of proof, especially for African victims, remains formidable.

Moreover, the CSDDD excludes liability where impacts result from state intervention.[53] This carve-out creates a loophole for corporate actors operating in partnership with host governments in Africa, such as those involved in mega-infrastructure or extractive ventures that often entail forced displacement or land grabbing with state approval.

The limited accessibility of EU courts for African claimants, coupled with procedural and cost barriers, risks undermining the directive's effectiveness as a remedy mechanism. Without complementary reforms to judicial co-operation, access to justice will remain largely theoretical for African communities.

A critical perspective through the lens of the UN Guiding Principles

The CSDDD was explicitly inspired by the UNGPs, which have become the global benchmark for responsible business conduct since their endorsement in 2011.[54] The UNGPs establish a tripartite framework based on (1) the state duty to protect, (2) the corporate responsibility to respect and (3) access to remedy.[55]

Principles 17 – 21 of the UNGPs outline the due diligence responsibilities of corporations, including impact assessment, integration, tracking and communication.[56] The CSDDD adopts these procedural elements and codifies them into binding law, representing a significant evolution from the UNGPs' soft law status. Yet, it also deviates in important ways.

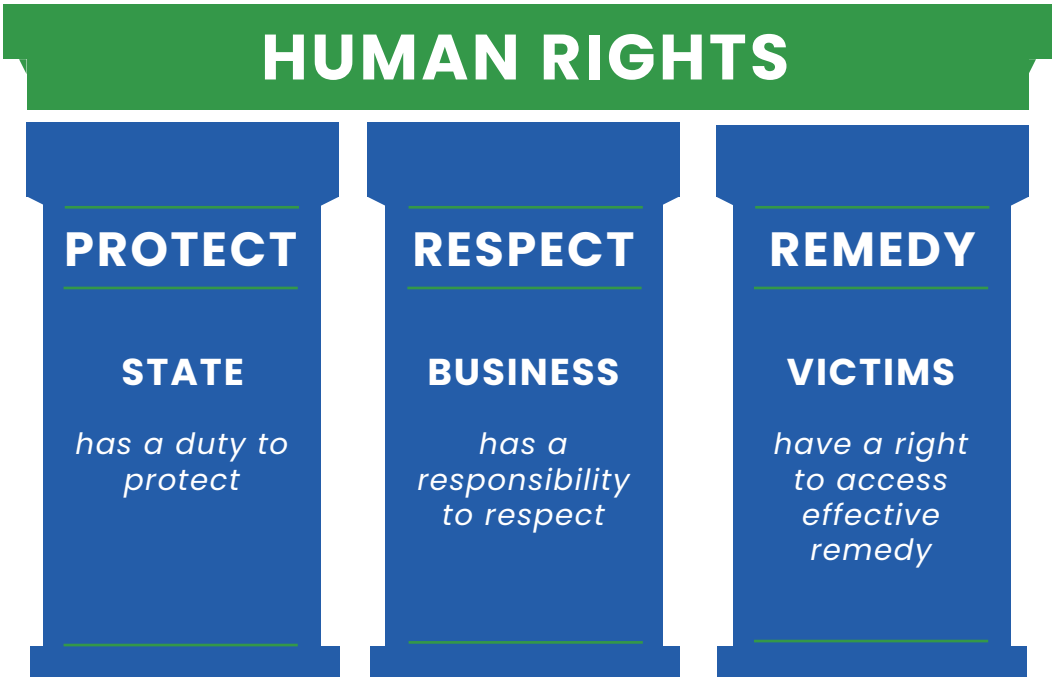
1. The illusion of leverage

While both the CSDDD and the UNGPs emphasise "leverage" as a tool to influence business partners, neither offers sufficient guidance on how to exercise such leverage effectively, especially in weak governance contexts like many African states.[57] The reliance on contractual clauses or third-party audits often serves to shield companies from liability without necessarily changing ground-level conditions.

What are the UNGPs?

The United Nations Guiding Principles (UNGPs) on business and human rights were developed by John Ruggie in 2011. The UNGPs introduced the "Protect, Respect and Remedy" framework, which places the primary duty on states to protect human rights, but also introduces a corporate responsibility to respect human rights.

THREE PILLARS OF THE UN GUIDING PRINCIPLES



2. Weakness in state duties and extraterritorial protection

Principles 1 – 10 of the UNGPs stress that states must regulate business conduct domestically and extraterritorially to protect against human rights abuses.[58] Yet, the CSDDD stops short of robustly requiring EU Member States to exercise extraterritorial jurisdiction and does not clearly operationalise the duty to protect in cross-border contexts. This perpetuates the longstanding gap that transnational corporate abuse is structurally facilitated by legal fragmentation and weak home-state regulation.

3. Remedy and victim-centricity

While Principle 22 of the UNGPs calls on companies to "enable the remediation of any adverse human rights impacts they cause or to which they contribute", the CSDDD limits actual access to remedy through procedural hurdles, absence of collective redress mechanisms and vague standards of liability.[59] This diminishes its transformative potential, particularly in contexts like South Africa's mining industry.

Towards a justice-oriented due diligence framework

The CSDDD marks a significant step toward embedding human rights and environmental concerns into EU law. However, its effectiveness in addressing structural injustices, especially those rooted in the legacy of colonial economic relations in Africa, remains doubtful. Without more explicit obligations for reparative justice, meaningful community participation, and support for local regulatory capacity, the CSDDD risks becoming a compliance tool that obfuscates rather than transforms.

In contrast, the UNGPs, despite their soft-law nature, provide a more holistic vision grounded in human dignity and the redistribution of power between corporations and affected communities. A justice-oriented application of the CSDDD must integrate the spirit of the UNGPs, particularly their emphasis on remedy and the role of states and go further by creating binding law while also engaging with Global South critiques that call for more radical realignments of global corporate governance.

Comparative analysis

States are increasingly adopting laws and policies that require businesses to identify, prevent, and address human rights and environmental risks in their operations and supply chains. While these initiatives share alignment with international standards such as the UNGPs and OECD Guidelines, their scope and enforcement mechanisms differ significantly.

This chapter examines and compares prominent domestic HRDD frameworks across several jurisdictions, highlighting their legal obligations, coverage, and accountability measures.

The French Duty of Vigilance

The French Duty of Vigilante 2017 in article 1 states that:

> *Any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad, must establish and implement an effective vigilance plan.*[60]

A vigilance plan must 'establish effective measures to identify risks and prevent severe impacts on human rights and the environment'.[61] These obligations extend beyond a company's own activities to include risks arising from entities within its corporate group, as well as from business relationships with subcontractors and suppliers, particularly where those relationships are ongoing and give rise to potential human rights or environmental impacts.[62]

The law establishes a formal notice procedure that enables designated stakeholders to request a company's compliance with its vigilance obligations. If the company fails to respond effectively to this notice within the prescribed timeframe, legal action can be pursued before a competent court.[63] The court may then issue an order compelling the company to fulfill its vigilance duties, this may include the preparation and implementation of a vigilance plan where one does not exist, or the enhancement of existing measures deemed insufficient or ineffective.[64]

Additionally, the court has the authority to impose periodic penalty payments for continued non-compliance, and these penalties can accrue daily until the company fully satisfies its legal obligations.[65]

The Dutch Child Labour Due Diligence Act

The Dutch Child Labour Due Diligence Act was passed by the Dutch Senate in 2019, but has not yet come into force. The Act was enacted to regulate child labour in supply chain. The Act requires due diligence from multinational corporates in Netherlands providing it with goods and services.[66]

It applies to all companies that supply goods and services to the country but also apply to all companies that are registered in the Netherlands. Companies would be required to submit to the not yet established Dutch supervising authority a disclosure statement declaring that there are adequate due diligence measures in place to prevent their products or services from being produced in a way that involves child labour.[67]

The Swiss Code of Obligations

Swiss law introduces targeted due diligence obligations for companies with a sufficient territorial link to Switzerland, but limits these obligations to specific areas of risk rather than establishing a comprehensive human rights due diligence framework.[68] These obligations arise, in particular, in relation to the sourcing or processing of certain minerals associated with conflict-affected or high-risk areas, including tin, tantalum, tungsten and gold, where applicable thresholds are met.[69] They also extend to commercial activities where there are credible indications that goods or services may be connected to child labour within the supply chain.[70]

The law also exists to combat corruption and provides for reporting mechanisms concerning environmental, social and labour-related issues as well as on human rights.[71] The reporting obligation applies essentially to large companies with at least 500 employees on yearly average and a minimum balance sheet turnover of CHF20 million or a minimum turnover of CHF40 million.The Swiss Criminal Code provides for avenues where there have been infringements to the set obligations in the Swiss Codes of Conduct. These entail that non-compliance with the reporting obligations can be subject to criminal sanctions up to CHF 100,000.[72]

The German law on supply chain due diligence

The German Act on Corporate Due Diligence Obligations in Supply Chains, which came into effect on 1 January 2023, is aimed at improving respect for human rights (including banning child labour and forced labour) and environmental standards (for example, with regard to mercury or waste management) in global supply chains.[73] The Act applies to all companies with more than 3,000 employees that have their headquarters in Germany or operate their companies in Germany.

Under this legislation, companies operating in Germany are required to implement comprehensive human rights and environmental due diligence processes.[74] This entails systematically assessing whether their business activities, both within their own operations and throughout their supply chains, pose risks of human rights violations or environmental harm.[75] Where such risks are identified, companies must adopt appropriate measures to prevent, mitigate, or terminate actual or potential adverse impacts. Furthermore, businesses must establish an accessible and effective complaints mechanism that enables individuals or groups who may be affected to report concerns and seek remediation.[76]

The Norwegian Transparency Act

The Norwegian Transparency Act was passed in July 2022. It applies to large companies that are registered in Norway, as well as foreign companies that offer goods or services within the Norwegian market, provided they are liable to pay taxes in Norway. The Transparency Act is rooted in existing international guidelines and principles for corporate social responsibility, including the[77] and the OECD Guidelines for Multinational Enterprises. Reflecting these frameworks, the core obligation imposed by the Act is the requirement to carry out human rights and decent working conditions due diligence.

This obligation is articulated in Section 4, which specifies that due diligence must be undertaken in accordance with the methodology set out in the OECD Guidelines. Section 4(a)–(f) further details the required elements of this process, including risk identification and assessment, the implementation of preventive and corrective measures, stakeholder engagement, and transparent communication of findings.[78] The Act therefore reinforces Norway's commitment to international best practices by embedding these standards into binding national legislation.[79]

The Japan National Action Plan on Business and Human Rights

The Japan National Action Plan on Business and Human Rights (NAP) was enacted on 16 October 2022. The Government of Japan considers the creation of a National Action

Plan (NAP) on business and human rights, now emerging as an international norm, to be an important way to strengthen the protection of human rights within corporate activities.[80] By promoting proactive efforts among Japanese companies to respect human rights in their business practices, Japan also aims to support and sustain the global competitiveness of its businesses.

Following the enactment of the NAP, the Ministry of Economy, Trade and Industry (METI) issued the Guidelines on Respecting Human Rights in Responsible Supply Chains in September 2022. These Guidelines were enacted to establish human rights policy, conduct human rights due diligence and ensure that there are remedies available in the event that there is a violation of human rights and provide for the processes for obtaining these remedies.[81]

HRDD guidance for Mexican companies

In Mexico, a Bill for the creation of a General Law on Corporate Responsibility and Due Diligence was introduced in 2020 and remains under discussion. The Bill proposes issuing the General Law on Corporate Responsibility and Corporate Due Diligence, which aims to regulate responsible corporate conduct so that companies can avoid and, where appropriate, mitigate the negative impacts that could be associated with their activities, supply chains and business relationships regarding worker conditions; respect for human rights; environmental protection; combating corruption; protecting consumer rights; and ensuring the enforceability of corporate governance and control and compliance programmes.[82] It also proposes establishing corporate liability for human rights violations for both domestic and foreign companies operating in Mexico; in the case of domestic companies, they will be subject to the terms of this law.[83]

Similarly, it is proposed that the Ministry of Economy be made aware of activities that may produce negative impacts, so that companies can immediately develop prevention plans. In cases where such actions are not reported to the Ministry of Economy, the Ministry may be empowered to impose the appropriate sanctions.[84]

Additionally, to this proposed bill, there is also another bill that is pending before the Mexican Chamber. This proposed bill is known as the General Circular Economy Law Initiative and is hoped to be the bill that will bring about real change in the legal framework governing waste management and circular economy practices in Mexico.[85] The initiative introduces new roles and responsibilities for companies, including better product design, greater accountability for waste, and more transparency through digital tracking.[86] Consumers and local governments would play a stronger part too, while an official eco-label would help identify truly sustainable products and cut down on greenwashing.[87]

HRDD guidance for Brazilian companies

In Brazil, a Bill was introduced in March 2022 that aims to expand the existing voluntary National Guidelines on Business and Human Rights (Decree No 9.571/2018) and National Guidelines for a Public Policy on Human Rights and Business (Resolution No 5/2020 of the National Human Rights Council or "CNDH"). The Bill is called the Framework for Business and Human Rights (PL 572/2022). The Bill contains in its essence guidelines of Resolution 5 of CNDH. The Brazilian Constitution of 1988 had as a basic principle the granting of human dignity to everyone, guaranteeing basic human rights to life, work and equality, thus giving shape to a fairer society.[88]

The Bill seeks to establish a comprehensive legal framework governing the human rights responsibilities of transnational corporations and other business actors engaged in cross-border activities.[89] It emphasises the primacy of human rights norms over economic and commercial interests, including trade, investment and service-related agreements. In doing so, the Bill is aimed at addressing the social and environmental harms associated with corporate activity, particularly those affecting Indigenous and quilombola communities, whose rights and territories have often been adversely impacted by extractive and development projects.[90]

South Africa

Legal framework

The Constitution of the Republic of South Africa (1996) places binding obligations on both the state and private actors to respect, protect, promote and fulfil human rights (Section 8(2)). Courts have interpreted this to include duties on corporations in contexts of socio-economic rights and environmental justice.[91]

South Africa's corporate accountability framework is firmly rooted in its Constitution, which provides a progressive foundation for environmental protection, socio-economic rights and just administrative action.

Section 24 of the Constitution guarantees everyone "the right to an environment that is not harmful to their health or well-being" and requires the state to take reasonable legislative and other measures to prevent environmental degradation.[92]

This constitutional right is realised through various statutes, including the National Environmental Management Act (NEMA),[93] which establishes principles of sustainable development, public participation, and the "polluter pays" principle.[94] Similarly, the Mineral and Petroleum Resources Development Act (MPRDA)[95] imposes obligations on mining companies to submit and implement Social and Labour Plans (SLPs) as a condition for holding mining rights, with the aim of promoting economic development and social upliftment in mining-affected communities. Non-compliance with SLPs can result in suspension or cancellation of mining rights.[96]

Additionally, the National Water Act regulates water use through Water Use Licences (WULs), and any unauthorised discharges or failures to comply with licence conditions can lead to enforcement action and criminal penalties.[97] Moreover, under section 50 of the Promotion of Access to Information Act (PAIA),[98] affected individuals and communities have a right to request information held by private bodies if it is required for the exercise or protection of their rights.[99] However, while the regulatory framework for corporate accountability is comprehensive, its effectiveness is undermined by institutional and structural limitations.

1. National Environmental Management Act (NEMA)

The National Environmental Management Act 107 of 1998 (NEMA) serves as the cornerstone legislation for environmental governance in the country. Its primary aim is to promote sustainable development by integrating environmental protection into all development decisions. Under NEMA, certain listed activities, including those in mining and energy sectors, require Environmental Authorisations and Environmental Impact Assessments (EIAs) before commencement.

EIAs mandate a comprehensive analysis of potential environmental effects, public participation processes, and the development of management plans to mitigate adverse impacts. This process imposes a form of quasi-due diligence on corporations, obliging them to identify, assess and mitigate environmental harms that might affect communities and ecosystems. Specifically, sections 24(1) and 24(5) of NEMA regulate the environmental authorisation process and provide the Minister or delegated authorities the power to impose conditions on environmental approvals, which may include social and community considerations.[100]

2. Mineral and Petroleum Resources Development Act (MPRDA)

Parallel to NEMA, the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) governs the exploitation of South Africa's mineral and petroleum resources. The MPRDA's regulatory framework requires mining and energy companies to submit Social and Labour Plans (SLPs) as part of their licensing process, which function as key instruments of corporate accountability to local communities and workers. These SLPs outline commitments to socio-economic development, skills development, employment equity and community investment, reflecting an effort to balance economic interests with social justice imperatives.[101] The MPRDA also mandates environmental management aligned with NEMA principles through integrated environmental management processes that companies must follow to retain their rights to operate.[102]

While NEMA and the MPRDA create important environmental and social governance obligations, they fall short of comprehensive HRDD standards as outlined in international frameworks like the UNGPs. HRDD requires proactive and ongoing identification, prevention, mitigation and remediation of actual and potential human rights impacts across the entire value chain. By contrast, the NEMA and MPRDA requirements tend to be project-specific, episodic and often focused on environmental and labour matters rather than the full spectrum of human rights concerns, such as: indigenous rights, gender-based violence or broader community empowerment.[103] Moreover, while public participation is mandated in EIAs, meaningful inclusion and access to remedy for affected communities remain inconsistent in practice.

The lack of binding due diligence obligations on corporations beyond compliance with environmental and labour plans indicates a regulatory gap in South Africa's current framework.[104]

As such, these Acts represent important but partial steps towards embedding responsible corporate conduct within South Africa's extractive and energy sectors. Strengthening these frameworks with clearer HRDD provisions and integrating international standards into domestic law would enhance corporate accountability and better protect vulnerable communities from adverse human rights and environmental impacts.

3. The Companies Act 71 of 2008

The South African Companies Act incorporates elements of corporate social responsibility but lacks enforceable HRDD mandates. Directors are bound by fiduciary duties that may intersect with ESG concerns. The Companies Act does not expressly impose HRDD obligations on companies. However, several provisions within the Act, when read alongside constitutional principles and evolving jurisprudence, provide a normative basis for incorporating ESG responsibilities, including elements aligned with HRDD.

Directors' fiduciary duties and ESG considerations

Section 76 of the Companies Act prescribes the standards of conduct expected from directors, requiring them to act in good faith, for a proper purpose, and in the best interests of the company. They must exercise the care, skill and diligence that would be reasonably expected of someone in their position. While this section does not specifically reference human rights or sustainability, directors who ignore material human rights or environmental risks may be seen as falling short of these duties, particularly where such risks have reputational, legal or financial implications for the company.

In *Mthimunye-Bakoro v Petroleum Oil and Gas Corporation of South Africa (SOC) Limited*,[105] the Court described that fiduciary duties must be interpreted not only with reference to the letter of the Companies Act but also in light of the broader constitutional framework.[106] This case supports the argument that ESG-related obligations, even if not codified, can be read into directors' responsibilities, especially when they pertain to the social and environmental impact of corporate conduct.

The constitutional purpose clause and interpretive mandate

The purpose clause in Section 7 of the Companies Act sets the tone for a broader reading of corporate obligations. Among the stated purposes is to "promote compliance with the Bill of Rights as provided for in the Constitution, in the application of company law". This provision arguably invites a rights-based interpretation of corporate governance obligations, encouraging companies to align their conduct with socio-economic rights, including the rights to equality, dignity, health and environmental integrity. Further reinforcing this approach, Section 158 directs courts and regulators to interpret the Act in a manner that gives effect to the Constitution.

This interpretive mandate enables the use of strategic litigation and progressive legal argumentation to push for the recognition of HRDD principles within existing legal frameworks, even in the absence of express statutory provisions.

Social and Ethics Committees: A soft law mechanism

Perhaps the most direct but under-enforced reference to HRDD principles lies in section 72(4), which obliges certain high-impact companies (based on a public interest score) to appoint Social and Ethics Committees. These committees are tasked with monitoring the company's performance in relation to: social and economic development (including the 10 principles of the UN Global Compact), good corporate citizenship, labour and employment issues, consumer relationships and compliance with anti-corruption laws. Although the committee's monitoring function gestures toward voluntary due diligence, especially concerning human rights and sustainability, its powers are largely advisory, with no enforcement mechanism built into the legislation. The Social and Ethics Committees reflect a soft law approach to HRDD, raising concerns about their efficacy and independence, particularly in high-risk industries such as extractives.

The Companies Act requires the preparation of financial statements under section 29, but these do not extend to mandatory non-financial disclosures such as sustainability reporting, human rights performance, or environmental risks. This stands in contrast to evolving global standards, such as the EU's Corporate Sustainability Reporting Directive (CSRD) – that explicitly integrate human rights and ESG disclosures. The absence of binding reporting obligations on HRDD in South Africa thus creates a significant transparency gap, limiting the ability of civil society and regulators to hold companies accountable for human rights violations or environmental harms, particularly where such harms occur in transnational operations or subcontracting chains.

South Africa does not yet have a comprehensive or standalone legal framework on HRDD that mirrors the structure or extraterritorial ambitions of the EU's CSDDD. Instead, its approach is characterised by a fragmented but evolving set of legal, constitutional and policy instruments that promote corporate accountability in more limited or sector-specific ways. The CSDDD imposes proactive and mandatory obligations on companies to conduct due diligence throughout their operations and value chains, to identify and mitigate adverse human rights and environmental impacts, and to provide remedies to affected stakeholders.

In contrast, South Africa's legal regime relies on a combination of constitutional duties, tort law, sectoral regulation, public procurement rules, and soft law mechanisms, each of which contributes incrementally to corporate human rights responsibilities, but none of which compels HRDD in a manner akin to the CSDDD.

Constitutional and statutory foundations

The South African Constitution, guarantees a broad set of justiciable rights, including the rights to dignity, equality and a healthy environment.[107] It imposes both vertical and horizontal obligations under Section 8(2), which permits the direct application of constitutional rights to private actors,

including corporations. This is a progressive foundation that could, in theory, support a robust HRDD regime. However, the courts have not yet interpreted this provision to impose proactive due diligence obligations on companies in the way the CSDDD requires.

South Africa's Companies Act 71 of 2008 introduces limited provisions related to stakeholder governance and corporate social responsibility, such as the requirement for social and ethics committees in certain companies (Section 72(4)).[108] These committees are tasked with monitoring corporate compliance with relevant social and environmental laws, but their powers are largely advisory rather than regulatory or punitive. Moreover, they lack the binding force, risk-mapping obligations, or remedy mechanisms that define the CSDDD model.

In the environmental realm, NEMA imposes a duty of care and the 'polluter pays' principle, creating obligations on individuals and companies to prevent environmental degradation.[109] However, these duties are often reactive and limited in scope, lacking the forward-looking supply chain scrutiny envisioned by the CSDDD. Similar gaps exist in labour law, where the Basic Conditions of Employment Act and Labour Relations Act regulate workplace standards but do not extend liability to South African companies for rights violations in overseas subsidiaries or suppliers.

Access to remedies and legal accountability

One of the strongest elements of the CSDDD is its provision for civil liability in the event of harm caused by failure to meet due diligence obligations. This is a notable gap in South African law. While victims can bring civil claims in delict, these are costly, complex and procedurally inaccessible – particularly for marginalised communities impacted by transnational business operations.

Moreover, there is no generalised duty of care in South African law that applies across value chains or imposes liability on companies for the conduct of their suppliers. The access to remedy mechanisms available in South Africa – such as the South African Human Rights Commission, Public Protector, or environmental tribunals – offer important oversight, but they do not mandate company-wide human rights assessments or link business practices to enforceable legal consequences in the way the CSDDD aspires to.

Opportunities for alignment and reform

Despite these gaps, South Africa's legal framework contains the seeds for HRDD evolution. The horizontal application of the Constitution, the existing statutory responsibilities of social and ethics committees, and the environmental due diligence embedded in NEMA can be strengthened and harmonised through legislative reform. For instance, the Companies Act could be amended to transform the soft law obligations of ethics committees into enforceable due diligence mandates. Likewise, procurement legislation could be leveraged to require HRDD compliance as a condition for state tenders, echoing elements of the CSDDD's incentive-based model.

The country's experience with strategic litigation and class actions, such as the N*kala & others v Harmony Gold Mining Company & Others* silicosis lawsuits, indicates an evolving willingness to hold corporations accountable for systemic harm, even if these mechanisms remain underdeveloped.[110]

South Africa's leadership role in continental institutions like the African Union and the African Continental Free Trade Area (AfCFTA) positions it strategically to advocate for a regional HRDD instrument.[111] In this way, the country could address one of the main critiques of the CSDDD, its extraterritorial and selective application, by championing a pan-African legal standard that levels the playing field for all foreign and domestic companies.

While South Africa lacks a codified HRDD regime comparable to the CSDDD, its constitutional commitments to human rights and environmental justice, coupled with a growing body of jurisprudence on corporate accountability, provide a strong normative foundation.

The opportunity lies in bridging the gap between principles and practice, by translating fragmented legal duties into a coherent, enforceable due diligence framework. Doing so would not only protect rights-holders within South Africa but also guard against regulatory arbitrage in a context where many foreign investors remain beyond the reach of EU legislation.

Case studies

South Africa holds the world's largest reported reserves of gold, platinum group metals, chrome ore and manganese ore, and the second-largest reserves of zirconium, vanadium and titanium.[112] South Africa's abundant mineral resources have long drawn the interest of powerful transnational corporations, particularly from the Global North. While companies often frame their operations as contributing to development, the reality on the ground frequently tells a different story: one marked by environmental harm, weak state oversight and community exclusion. This case study highlights the broader limitations of current due diligence frameworks in addressing the systemic nature of corporate harm in the Global South.

1. Glencore

Glencore Operations South Africa (Pty) Ltd is a major producer of coal, chrome ore, ferrochrome and vanadium, with its headquarters in Switzerland.[113] The company produces thermal coal for both export and domestic power generation from its operations in Mpumalanga. Its ferro-alloy mines are located in the North West and Limpopo provinces, while its vanadium mine is situated in the North West.[114] In addition, Glencore has expanded its presence in the fuel and refining sector through the acquisition of the Astron Energy refinery and its associated service stations from Chevron.[115]

On their website, Glencore asserts that they "collaborate closely with our communities, prioritising their health, safety and well-being and working to create strong and resilient societies that will thrive long after their operations close".[116] Furthermore, Glencore would fall within the scope the CSDDD, which would require it to "identify and address adverse human rights and environmental impacts of their actions inside and outside Europe".[117] However, a critical examination of its actual practices in South Africa raises serious questions about the alignment between these stated values and its operational reality.

In 2019, the Centre for Environmental Rights (CER) published the *Full Disclosure* report, which investigated compliance with Water Use Licence (WUL) conditions at several coal mines in Mpumalanga, including Glencore's Goedgevonden and Tweefontein South collieries.[118] The findings revealed that Glencore was significantly non-compliant with key WUL conditions.[119]

Most notably, at Goedgevonden Colliery, the company failed to implement the necessary infrastructure to manage pit water in accordance with its licence, instead diverting polluted water into an unauthorised stormwater dam.[120] This act not only breached legal obligations but also posed substantial environmental risks, particularly in the context of the severely water-stressed Olifants River catchment. The failure was compounded by the fact that Glencore's external auditor inaccurately marked the violation as "not applicable" – exposing weaknesses in the independence and reliability of environmental audits in the mining sector.[121] Furthermore, Glencore's refusal to release its water monitoring data to CER,[122] despite requests, undermined public transparency and accountability – principles it claims to uphold.

These actions stand in sharp contrast to Glencore's public commitments to environmental responsibility.

While the company claims adherence to international frameworks such as the UNGPs, the documented instances of environmental degradation and regulatory non-compliance suggest a pattern of superficial compliance rather than substantive, rights-based engagement. The environmental harms linked to Glencore's operations have significant human rights implications, particularly for poor and rural communities who depend on natural water sources for daily use.

In addition to environmental concerns, Glencore's social performance has also come under scrutiny. In Bethanie, a village outside Brits in the North West province where Glencore's Rhovan vanadium mine is located, the community embarked on a three-week protest in response to the company's failure to consult them on the development of its Social and Labour Plan (SLP), a legal requirement under the Mineral and Petroleum Resources Development Act (MPRDA).[123]

Community members alleged that the mine was operating without an approved SLP, which would render its operations unlawful.[124] The community's frustration was directed not only at Glencore's lack of engagement but also at the exclusionary nature of its decision-making processes, which appeared to involve only select stakeholders and political elites.[125]

The protest led to the intervention of the North West Provincial Government, which facilitated negotiations resulting in an agreement to implement short-, medium-, and long-term solutions.[126] These included the employment of local residents and plans for infrastructure development, yet the belated nature of the response underscored the reactive rather than proactive approach Glencore has taken in managing its social obligations.

Taken together, these incidents highlight a troubling disconnect between Glencore's policy rhetoric and its operational realities. The companies' failure to meaningfully engage with affected communities, comply with environmental regulations, and promote transparency and accountability reveals systemic weaknesses in its human rights and environmental due diligence. It also raises concerns about the efficacy of state oversight, as regulatory bodies have often failed to enforce compliance or hold companies accountable for breaches. While Glencore maintains that it is committed to creating lasting positive impacts in its host communities, its actions in Mpumalanga and the North West province suggest that profitability and project advancement continue to take precedence over social justice, environmental stewardship and community inclusion.

2. Shell

Shell is one of the largest multinational oil and gas companies in the world. It is headquartered in London, United Kingdom, and operates in over 70 countries. Shell has over six hundred (600) service stations across South Africa.[127] It markets itself as a global leader in environmental sustainability.[128]

It claims adherence to the UNGPs and its own internal environmental policies, which commit to minimising harm to biodiversity, conducting robust environmental impact assessments, and ensuring inclusive stakeholder engagement. However, these corporate commitments were starkly contradicted by Shell's conduct in its 2021 attempt to conduct 3D seismic surveys off South Africa's Wild Coast, a region of exceptional ecological and cultural significance.

In late 2021, Shell initiated offshore seismic testing along the Wild Coast, with the intent to explore oil and gas reserves.[129] The project was met with immediate resistance from local communities and environmental organisations, who argued that Shell had not engaged in any meaningful consultation with directly affected rural communities, many of whom rely on marine ecosystems for their livelihoods, food security, and spiritual practices.[130] Critics also pointed to Shell's use of an outdated 2013 Environmental Management Programme (EMPr) that did not meet the current requirements of South African environmental law.

The Eastern Cape High Court, in its 2022 ruling found that Shell's exploration rights had been unlawfully granted.[131] The Court ruled that Shell had failed to comply with statutory consultation obligations under the National Environmental Management Act (NEMA) and had violated section 24 of the South African Constitution.[132]

Shell's actions in the Wild Coast case exemplifies a pattern common among TNCs operating in the Global South.

While corporations may adhere to sustainability principles on paper, in practice they often exploit weak regulatory environments and limited state capacity to cut costs and fast-track extractive projects. South Africa's regulatory framework, while constitutionally robust, suffers from enforcement gaps, particularly where powerful foreign investors are concerned.

Shell's reliance on inadequate consultation processes and an outdated EMPr combined with its persistence in defending the legality of its exploration rights despite widespread community opposition, highlights the limitations of voluntary standards in curbing harmful corporate behaviour.

Why the CSDDD and other HRDD instruments fall short

The CSDDD is, among other things, applicable to companies who either have more than 3,000 employees and a net worldwide turnover exceeding 900 million euros in the last financial year; they are the ultimate parent company of a group that met the thresholds; and they or their group engaged in franchising or licensing agreements in the EU".[133] Both Glencore and Shell meet the thresholds specified in Article 1, therefore the Directives are fully applicable to them.

However, despite being within the scope of the CSDDD, both Glencore and Shell have demonstrated practices that fall significantly short of their obligations under Articles 8 to 13. Article 8 requires companies to identify and assess actual and potential adverse impacts. Shell's failure to engage in meaningful consultation with rural communities along the Wild Coast and its reliance on an outdated 2013 Environmental Management Programme indicates a disregard for identifying or assessing risks in line with current environmental and human rights standards. Similarly, Glencore's failure to manage polluted water illustrates a failure to properly

assess and prioritise environmental harm under Article 9, which requires companies to prioritise and take action on the most severe impacts.

Article 10 mandates companies to prevent or mitigate potential harm through appropriate measures, yet both companies pursued operations despite known risks to high-risk environments and marginalised communities. Article 11 requires the cessation or minimisation of actual harm, but Glencore's continued non-compliance with its Water Use Licence conditions and Shell's persistence in defending its seismic exploration even after court findings of unconstitutionality underscore a failure to take timely or effective corrective action.

Under Article 12, corporations are also obligated to provide or facilitate remediation where harm has occurred. Both companies, however, have consistently failed to provide transparent data or engage in inclusive, community-led grievance processes. Glencore's refusal to release water quality data to the Centre for Environmental Rights and Shell's dismissal of community opposition until compelled by litigation point to a clear avoidance of this duty. Furthermore, there is no evidence that these companies took any remedial action.

Additionally, Article 13 emphasises the importance of meaningful stakeholder engagement throughout the due diligence process. This includes ongoing dialogue with affected communities, workers, civil society and indigenous groups. Both Shell and Glencore failed in this respect. Shell bypassed rural communities in the Wild Coast and relied on outdated stakeholder processes, while Glencore excluded residents in Bethanie from the development of its legally mandated Social and Labour Plan, engaging only selected elites. Collectively, these failures illustrate how both corporations have prioritised procedural formalities and reputational protection over the substantive, participatory, and remedial obligations required under the CSDDD. As such, their operations in South Africa reveal a pattern of non-compliance that undermines the directive's central objectives of protecting human rights and the environment beyond EU borders.

The EU's CSDDD is primarily procedural, requiring companies to conduct due diligence, publish reports, and adopt mitigation plans. However, they lack strong enforcement mechanisms, particularly outside the EU. Case studies of Glencore and Shell in South Africa show how companies can appear compliant on paper while violating environmental laws and human rights in practice. Both examples reveal how HRDD frameworks like the CSDDD are often incapable of preventing harm or ensuring remedy in practice. Their lack of binding enforcement mechanisms, extraterritorial liability provisions, and accessible grievance pathways for affected communities undermines their effectiveness. This gap allows transnational corporations to continue operating under a disguise of responsibility, especially in the Global South, where state capacity to regulate powerful foreign investors is often limited.

In both the Glencore and Shell cases, corporate violations were not only the result of internal company decisions but were also enabled by structural weaknesses in state oversight and the unequal power dynamics between transnational corporations and local authorities. In South Africa, regulatory institutions such as environmental and mining authorities often lack the resources, independence or political will to effectively monitor and enforce compliance, particularly when dealing with powerful multinational entities. These failings highlight how foreign investors can exert significant influence over regulatory and political processes in host countries, often bypassing meaningful consultation with affected communities and shaping outcomes to suit corporate timelines and financial goals.

Such asymmetric power relationships are rarely acknowledged in the design of HRDD frameworks like the CSDDD, which implicitly assume the existence of a level playing field, effective governance and access to remedy in all jurisdictions. This assumption is both unrealistic and dangerous in contexts where state capture, weak enforcement and political patronage are prevalent. As a result, it is marginalised and vulnerable communities, often rural, indigenous or socio-economically disadvantaged, who bear the brunt of environmental harm and social exclusion, while corporations and political elites extract the economic benefits.

Additionally, both Glencore and Shell's actions have had broad and systemic implications that extend far beyond isolated incidents or once-off violations. These were not minor procedural oversights, they reflected deep-rooted patterns of exclusion, disregard for community agency, and prioritisation of extractive profits over environmental and social well-being.

HRDD instruments often treat harm as isolated incidents that can be mitigated through checklists, audits and risk management plan. This approach assumes that harms are accidental and manageable rather than systemic and embedded in global patterns of corporate impunity and regulatory inequality. As a result, the structural conditions that enable rights violations, such as unequal power relations between corporations and communities, weak state enforcement and the suppression of affected voices, are often overlooked. Without addressing these root causes, HRDD frameworks are merely box-ticking exercises that legitimise harmful operations under the guise of procedural compliance.

Conclusion

The case studies of Glencore and Shell in South Africa highlight the gap between corporate commitments and actual practices, revealing patterns of environmental harm, regulatory non-compliance and exclusion of affected communities. Despite South Africa's strong legal framework, weak enforcement and unequal power dynamics enable such violations. Current HRDD frameworks like the EU's CSDDD are limited by their procedural focus and lack of strong enforcement, especially outside the EU. To ensure real accountability, these frameworks must address structural inequalities, strengthen enforcement, and centre the voices of affected communities.

Namibia

Legal framework

Namibia's 1990 Constitution is notably progressive, embedding socio-economic rights and environmental stewardship while allowing the direct application of international law under Article 144. Article 95(1)(l) to guide the state to maintain ecosystems and sustainable use of natural resources, and courts may refer to this in interpreting legislation. Through Article 144, treaties and general international law automatically become domestic law unless Parliament states otherwise creating a monist legal system.[134]

Despite this aspirational constitutional framework, there is no specific legislation in Namibia requiring businesses to conduct HRDD.

The Environmental Management Act 7 of 2007 mandates Environmental Impact Assessments (EIAs) and environmental management plans for development projects, but these are limited to specific projects rather than enterprise-wide, supply chain due diligence.[135]

Namibia's legal framework theoretically provides strong protections for communal land rights, environmental conservation, and Indigenous participation. The Environmental Management Act (2007), the Water Resources Management Act (2013), and the Communal Land Reform Act (2002) require impact assessments, public consultation, and permits for land and water use. However, enforcement is uneven, and government institutions often lack the capacity or political independence to regulate foreign investors.

Namibia's reliance on extractive industry investment, coupled with limited regulatory capacity, means environmental and social oversight is often weak. A striking example is the controversy over ReconAfrica's oil exploration in the Kavango Basin, where the Environmental Clearance Certificate (ECC) focused narrowly on project-level compliance and community consultation fell short. Despite constitutional guarantees of public participation and environmental protection, institutional weaknesses, such as a lack of effective grievance mechanisms remain. Furthermore, although Namibia operates under progressive constitutional principles, the absence of a binding HRDD framework means corporate participation in socio-economic initiatives is voluntary. Projects like ReconAfrica, backed by foreign investment and undertaking limited environmental assessments, illustrate how affected communities may enjoy minimal protection unless constitutional provisions are translated into enforceable corporate obligations.[136]

Case study: RenconAfrica in the Kavango Basin

The case of ReconAfrica, a Canadian oil and gas exploration company operating in Namibia's ecologically sensitive Kavango Basin, offers a stark and deeply troubling insight into the inadequacies of current corporate due diligence mechanisms. While ReconAfrica falls outside the direct scope of the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), the violations documented in its Namibian operations parallel the very harms the Directive purports to address.

This case study critically evaluates ReconAfrica's operations in light of its human rights and environmental impacts, exposing serious failures in consultation, environmental protection and compliance with both domestic and international legal norms.

It simultaneously highlights the CSDDD's structural and jurisdictional limitations, revealing how such instruments remain insufficient to prevent harm in the Global South.

Drawing from the April 2024 complaint submitted to the Canadian Ombudsperson for Responsible Enterprise (CORE), as well as external reports, this analysis demonstrates how existing HRDD frameworks, including the CSDDD and the UNGPs, are often ill-equipped to confront the realities of extractive projects in Africa.

1. ReconAfrica's corporate footprint and operations in Namibia

ReconAfrica was incorporated in Canada in 2015 and operates primarily through its wholly owned subsidiaries in Namibia and Botswana.[137] The company holds a Petroleum Exploration Licence (PEL 73) covering over 8 million acres in the Kavango region, which includes ecologically protected zones within the Kavango-Zambezi Transfrontier Conservation Area (KAZA TFCA).[138]

The region spans five countries and is home to the world's largest population of African elephants, endangered species such as African wild dogs and rhinos, and indigenous groups including the San and Bantu peoples.[139]

ReconAfrica began operations in Namibia in 2019, initiating seismic surveys and exploratory drilling activities under ECCs (Environmental Clearance Certificates) granted by Namibia's Ministry of Environment, Forestry and Tourism. Despite its public narrative of promoting environmental stewardship, ReconAfrica's practices on the ground have shown a systematic disregard for domestic laws and community rights.[140] Between 2019 and 2023, the company engaged in multiple rounds of exploration and drilling activities, often without the required permits, without free, prior and informed consent (FPIC), and in violation of both Namibian environmental law and international human rights standards.[141]

2. Violations of human rights and environmental law

The most egregious violation committed by ReconAfrica pertains to its failure to obtain FPIC from indigenous communities, a cornerstone principle of international human rights law as articulated in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).[142] The company entered and operated on communal lands, including conservancies and community forests, without the knowledge, participation or consent of affected groups.[143]

In one instance, ReconAfrica began clearing land in the Kawe village within the Ncaute Community Forest without prior consultation or the necessary land rights from the Communal Land Board.[144] This conduct not only contravened Namibian law, particularly the Communal Land Reform Act of 2002, but also violated the constitutional right to administrative justice and due process.

ReconAfrica's seismic operations further damaged protected forest areas and conservancies, including the Kapinga Kamwalye Conservancy and the Likwaterera and Ncumcara Community Forests, leading to soil degradation, crop destruction, and threats to biodiversity.[145] The company's exploration activities endangered water access by failing to secure water use and disposal permits prior to drilling, and it compounded these risks by improperly lining waste pits, leading to possible contamination of water sources.[146]

Such conduct directly undermines the right to water as recognised under the ICESCR and under Namibian law (Water Resources Management Act, 2013). Communities also reported disruptions to food security and sovereignty, linked to the destruction of agricultural land and the displacement of livelihoods.[147] Moreover, by failing to engage in public consultation or disclose environmental impact assessments (EIAs), ReconAfrica violated its legal obligations under the Environmental Management Act (No. 7 of 2007), which requires public participation in ECC applications.[148]

3. Failures in corporate due diligence and risk assessment

Despite being listed on Canadian and German stock exchanges and subject to international investor scrutiny, ReconAfrica's internal due diligence processes have proven hollow and performative. The company repeatedly failed to carry out proper human rights impact assessments (HRIAs), environmental impact assessments (EIAs), or any meaningful stakeholder engagement. According to the CORE complaint, ReconAfrica's 2019 EIA did not list affected communities or interested parties, even though seismic and drilling activities would directly affect communal lands.[149]

The company also failed to implement the minimum standards outlined in the UNGPs and OECD Guidelines, particularly Principles 17 to 21 of the UNGPs, which require businesses to identify, prevent, mitigate and account for how they address adverse human rights impacts. There is no indication that ReconAfrica developed or disclosed a grievance mechanism accessible to affected communities, as envisioned under Principle 31 of the UNGPs. Instead, communities were often met with opaque bureaucratic processes, intimidation, or disregard, which further entrenched power imbalances and denied them access to remedy.[150]

ReconAfrica's corporate communications contrast sharply with its actions. While claiming to promote sustainability and community engagement on its website and investor materials, the company circumvented domestic law by commencing operations before securing land, water or environmental permits. This disconnect between stated policy and operational conduct highlights the limits of voluntary CSR frameworks and the urgent need for binding obligations with independent monitoring and enforcement.

Moreover, ReconAfrica's strategic use of ECC amendments to bypass new EIA processes, despite commencing entirely new drilling operations, demonstrates a calculated approach to avoiding scrutiny.[151]

4. Why the CSDDD and other HRDD instruments fall short

ReconAfrica's case illustrates how corporate harm thrives in the jurisdictional blind spots of HRDD regimes. As a Canadian firm operating in Namibia, ReconAfrica falls outside the geographic scope of the CSDDD, which, even after recent amendments, primarily targets large EU-based or EU-active companies with over 3,000 employees and €900 million turnover.[152]

This jurisdictional gap is fatal for communities in the Global South, who suffer from the actions of smaller or non-EU multinationals that often lack any meaningful accountability mechanisms. Even if ReconAfrica were subject to the CSDDD, its enforcement mechanisms remain weak. The CSDDD relies on state-based supervisory authorities to monitor compliance, and remedies are largely contingent on victims initiating judicial proceedings within limited timeframes and through complex transnational litigation.[153]

Furthermore, the CSDDD adopts a risk-based approach to due diligence that assumes access to functioning legal systems, judicial independence and a robust civil society. In the case of ReconAfrica, communities faced institutional inertia, limited legal aid, and threats to those who spoke out. As such, due diligence becomes a technocratic and procedural exercise, devoid of transformative power or redistributive justice. The CSDDD also does not mandate extraterritorial remedies or impose strict civil liability for human rights harms, allowing companies to escape accountability by outsourcing risk or operating through local subsidiaries.

The exploration activities of ReconAfrica in Namibia's Kavango Basin have unveiled clear deficiencies in legal safeguards and grievance mechanisms for affected communities:

- **Environmental and cultural harm**: Recon began seismic surveys and test drilling in January 2021. Reports indicate these activities damaged conservancy land via unplanned seismic thumping, sometimes cutting roads and clearing bush within

protected conservancy areas, contrary to commitments made under its ECC. Local communities reported damage to home structures, and some were coerced into signing permission forms without proper explanation or informed consent.[154]

- **Lack of any informed consultation and procedural shortcomings**: Despite the statutory requirements outlined above for environmental impact assessments and public participation under Namibia's Environmental Management Act 7 of 2007, community leaders say public notices were only in English and meetings were limited in attendance.[155]

- **Institutional and financial barriers**: At the time that the Environmental Commissioner extended ReconAfrica's ECC in June 2022, local communities challenged the decision in court, citing inadequate environmental assessment and lack of meaningful consultation. Although action was taken, judicial remedies were impeded by public interest cost orders against the parties, saddling them with significant legal bills.[156]

- **Weakened conservancy governance and contradictory environmental approvals**: Approvals for drilling within conservancy boundaries were granted retroactively, sometimes without consulting conservancy boards, traditional authorities, or local land boards, in potential breach of the Communal Land Reform Act No. 5 of 2002. The Kavango East Communal Land Board admitted it had failed in oversight.[157]

Taken together, these developments show:

- **Regulatory weaknesses**, where project-level compliance under environmental laws does not translate into comprehensive corporate obligations or enforceable human rights due diligence.

- **Lack of robust grievance mechanisms**, which leaves affected communities without accessible remedies or participatory decision-making.

- **Structural imbalances in the capacity of local governance**, which allow corporates to proceed without meaningful oversight, even in sensitive ecological areas.

The controversy surrounding Recon's oil exploration in the Kavango Basin has cast a spotlight on the country's weak environmental governance and regulatory frameworks.

Critics argue that the project proceeded without adequate consultation with local communities and lacked comprehensive environmental impact assessments aligned with international standards.[158] Civil society organisations have raised alarm over the absence of accessible grievance mechanisms, the potential violation of customary land rights, and threats to a UNESCO World Heritage site, the Okavango Delta.[159] These developments highlight the limitations of Namibia's Environmental Management Act 7 of 2007, which mandates EIAs but lacks a robust enforcement mechanism or provisions for community redress.[160]

Moreover, the Petroleum (Exploration and Production) Act of 1991 and the Minerals (Prospecting and Mining) Act of 1992, the main laws governing extractive industries, are outdated and do not incorporate corporate human rights responsibilities or modern environmental safeguards.[161] The ReconAfrica case exemplifies the pressing need for legal reform in Namibia to align national law with international human rights and environmental obligations, as well as to introduce mechanisms for corporate accountability across transnational operations.[162]

In the ReconAfrica case, the Ministry of Environment repeatedly granted or extended ECCs despite the company's failure to meet basic legal conditions.[163] Traditional authorities and local conservancy committees, tasked with safeguarding land and forest rights, were either sidelined or pressured into acquiescence.[164] This institutional weakness is exacerbated by Namibia's developmental imperatives and its openness to foreign direct investment, especially in extractives.

LESSONS FOR THE CSDDD AND FUTURE HRDD REFORMS

1. ***The CSDDD should be amended to extend its scope to cover non-EU companies with links to the EU stock exchange, such as ReconAfrica, causing harm through value chains or investments in the Global South.***

2. ***The CSDDD must impose strict liability for environmental and human rights violations, not merely require procedural compliance.***

3. ***Due diligence obligations should explicitly mandate FPIC, especially for Indigenous communities, and require independent audits of EIAs and HRDD reports.***

4. ***Grievance mechanisms must be accessible, inclusive, and transparent, with standing granted to affected communities and civil society organisations to bring claims.***

5. ***Any effective HRDD regime must be grounded in the political economy of host states and include incentives for local capacity building, environmental restoration, and reparations for affected communities.***

Conclusion

ReconAfrica's operations in Namibia represent a textbook case of corporate impunity and the failure of due diligence frameworks to protect vulnerable communities and ecosystems. While the CSDDD and UNGPs offer useful normative benchmarks, they lack the binding force and contextual responsiveness needed to confront extractive sector abuses in Africa.

This case reveals that transnational corporations often exploit legal grey zones, regulatory inertia and socio-economic inequalities to pursue profit with minimal accountability. As such, ReconAfrica should not be viewed simply as a rogue actor, but as a predictable outcome of a global governance system that privileges capital mobility over human rights.

Zimbabwe

Legal framework

Despite the Constitution of Zimbabwe (Amendment No 20 of 2013) affirming rights such as dignity, equality and environmental protection (Arts 44, 56–57), the practical enforcement of these rights in corporate contexts remains weak. Scholars and international observers note that political interference, a compromised judiciary, and systemic corruption undermine the Constitution's role as a check against corporate overreach and ensure access to legal remedies is limited for affected communities.[165]

Zimbabwe currently lacks dedicated corporate human rights accountability legislation. While the Environmental Management Act (Chapter 20:27) establishes baseline environmental oversight through licensing and pollution control, it does not mandate proactive due diligence across supply chains or require transparent community consultation prior to investment.[166] Similarly, labour legislation, such as the Labour Act, offers minimum protections for employees but does not extend corporate liability to violations occurring in overseas operations or involving non-state actors.[167]

Relevant case studies, such as opaque joint ventures in mining and agriculture, illustrate how foreign firms from China, Russia, the UAE and India evade HRDD scrutiny, benefitting from Zimbabwe's weak regulatory and enforcement environment.[168] CSDDD's impact on Zimbabwe remains marginal: very few foreign investors in Zimbabwe meet the EU's jurisdictional thresholds, and those that do are often based in regions not bound by the Directive.[169] The result is regulatory forum-shopping in which companies favour operations in jurisdictions like Zimbabwe precisely because enforcement is lax.

The European CSDDD's potential impact in Zimbabwe is marginal. Most foreign investors in Zimbabwe originate from China, Russia, the UAE and India – jurisdictions which do not impose due diligence mandates akin to the CSDDD. Consequently, African states remain vulnerable to regulatory gaps and forum shopping, where companies avoid jurisdictions with strong due diligence laws in favour of those with weaker enforcement.

The global transition to green energy has triggered a surge in demand for "critical minerals" including lithium, cobalt and nickel – elements essential for electric vehicles (EVs), solar panel, and other clean technologies. Africa, long treated as a repository of raw materials, has once again become a focal point in this resource rush, and Zimbabwe's Bikita Minerals mine stands at the centre of this scramble. Once state-owned, Bikita Minerals is now a wholly owned subsidiary of the Chinese company Sinomine Resource Group, following a US$180 million acquisition in 2022.[170]

Despite being outside the EU's geographical scope, the operations at Bikita offer an essential case study for interrogating the CSDDDntended to ensure that companies identify and mitigate adverse human rights and environmental impacts in their global value chains, the CSDDD has been celebrated as a watershed. However, a closer examination of Bikita Minerals reveals how the CSDDD, much like other HRDD instruments, remains insufficient to tackle the layered injustices of the green transition in the Global South.

Bikita Minerals

Located in Zimbabwe's Masvingo Province, the Bikita Minerals lithium mine has been in operation since the 1950s, primarily extracting petalite, a lithium-bearing mineral.[171] However, with the global pivot to EVs, lithium has gained strategic significance, prompting Sinomine to aggressively expand the mine's capacity. By 2023, Sinomine had commenced a US$200 million expansion project aimed at building a processing plant and significantly increasing output.[172]

This rapid expansion has, however, come at a substantial cost to local communities, workers, and the environment. Reports from local NGOs and journalists document land degradation, water pollution, labour abuses and a pattern of community exclusion that is alarmingly reminiscent of historical resource exploitation in Africa.[173]

1. Human rights violations at Bikita: The price of green minerals

The operations of Bikita Minerals under Sinomine's control have triggered widespread human rights concerns. According to a report by the Centre for Natural Resource Governance (CNRG), the expansion led to forced relocations, inadequate compensation, and denial of FPIC for affected communities.[174] Villagers around Bikita claim that they were never consulted prior to land clearing and that compensation, where provided, was arbitrary and opaque. Furthermore, labour rights violations are rampant and workers have reported unsafe working conditions.[175]

The environmental toll is also stark. Lithium processing is water-intensive, and communities around Bikita report declining water quality, reduced access to water for farming and increased prevalence of livestock deaths. In some cases, toxic sludge and effluent from mining activities were allegedly discharged into local rivers.[176] This jeopardises the right to water as enshrined in ICESCR and Zimbabwe's own Constitution.

2. Chinese mining in Africa: Structural exploitation repackaged

The Bikita case is emblematic of broader patterns of Chinese extractivism in Africa, often marked by weak environmental oversight, labour exploitation and political patronage. While Chinese firms often present themselves as partners in South-South cooperation, their practices mirror colonial-era resource extraction models: extract maximum value while investing minimally in local development or governance.[177]

The Chinese approach to mining in Africa tends to prioritise infrastructure-for-resources deals and sideline community participation, legal compliance and environmental sustainability. This approach is enabled by fragile regulatory environments, debt leverage, and elite capture within host states.

3. Due diligence gaps: Bikita's internal policies and performative compliance

Despite the clear human rights and environmental risks, there is little public evidence that Sinomine or Bikita Minerals conducts any substantive HRDD. A search of Sinomine's website and public reports reveals no standalone human rights policy, no HRIA, and no community grievance mechanism.[178] The company's sustainability disclosures are limited, mostly focusing on production volumes and investor metrics rather than community impact.

This lack of transparency contradicts the UNGPs, especially Principles 17 – 21, which require companies to identify, prevent, and mitigate adverse human rights impacts.[179] It also contravenes the OECD Due Diligence Guidance for Responsible Supply Chains, to which even non-OECD firms sourcing into OECD markets are expected to adhere. Bikita's failure to implement even the most basic HRDD practices, such as stakeholder mapping, impact assessments, or supply chain traceability, illustrates how voluntary frameworks have failed in practice. The CSDDD was supposed to make a difference here, but the Directive, in its current form, falls short of grappling with this reality.

4. Why the CSDDD doesn't work for Bikita Minerals and others like it

The CSDDD mandates EU-based companies (and certain non-EU companies with large EU footprints) to conduct due diligence across their value chains. However, its jurisdictional and substantive limitations render it ineffective in cases like Bikita:

- **Jurisdictional exclusion**: Neither Sinomine Resource Group nor Bikita Minerals meet the EU thresholds of 1,000 employees and €450 million net turnover within the EU (see Article 2(1)(a) and Article 2(2)(b) CSDDD). Thus, they are not directly bound by the Directive, even though their products (lithium) enter the EU market via battery manufacturers and EV producers.[180]

- **Weak value chain coverage**: Although the final version of the CSDDD covers upstream and downstream value chains in Articles 1 and 3, its enforcement hinges on contractual assurances and risk-based approaches, which are easily gamed in opaque, multi-tiered global supply chains.[181]

- **Limited enforcement and remedies**: Victims of corporate abuse under the CSDDD must bring claims in EU national courts, often against EU-based buyers or investors, not the direct perpetrators like Bikita.[182] This disconnect, combined with barriers of evidence, standing and jurisdiction, leaves communities with little hope of remedy.

- **No binding FPIC requirement or local consultation mandate**: The Directive requires stakeholder engagement but does not explicitly mandate FPIC for indigenous or local communities, nor does it impose criminal penalties or direct reparations.[183]

Thus, Bikita Minerals exposes a fundamental contradiction at the heart of the CSDDD: it aims to create ethical global supply chains while allowing harmful practices to flourish at the extractive source, outside its reach and without meaningful accountability.

5. What needs to change

The Bikita case highlights the need for a radical overhaul of HRDD frameworks. The CSDDD must be strengthened to ensure:

- **Expanded jurisdiction**: Include all companies whose goods enter the EU market, regardless of location or revenue.

- **Binding FPIC obligations**: Explicitly require FPIC for all projects with community impact, grounded in international human rights law.

- **Strict civil and criminal liability**: Attach penalties for failure to conduct due diligence and prevent foreseeable harms.

- **Supply Chain Transparency**: Mandate public disclosure of sourcing and supplier data, including audits and HRIAs.

- **Access to remedy for all affected parties**: Create EU-based ombud mechanisms or legal aid funds to support Global South claimants.

- **Climate and environmental justice integration**: Link due diligence to climate accountability, including restoration obligations and support for affected communities.

Conclusion

Bikita Minerals is not an outlier but a prototype of the "green colonialism" that defines today's energy transition. Extractive capital, now masked in sustainability rhetoric, continues to displace, exploit and marginalise communities in the Global South. At the same time, instruments like the CSDDD offer little more than procedural veneers of responsibility. The future of ethical supply chains lies not in fragmented compliance regimes but in transnational solidarity, binding regulation, and redistributive justice. Bikita's story reminds us that a truly just transition cannot be built on the backs of exploited people and poisoned lands. It must begin with reimagining what accountability means in a deeply unequal world.

Recommendations

A transformative human rights due diligence agenda for Africa must move beyond procedural compliance and confront the structural and historical forces that enable transnational corporate harm. The case studies, Glencore's chronic environmental non-compliance in South Africa, Shell's unconstitutional Wild Coast exploration, ReconAfrica's illegal land incursions and FPIC violations in Namibia, and Bikita Minerals' extractive practices in Zimbabwe's lithium sector, demonstrate that corporate abuses are not episodic failures but manifestations of systemic governance deficits, colonial economic legacies, and global value-chain asymmetries.

The following recommendations therefore propose a multi-layered framework that strengthens domestic accountability, reconfigures the CSDDD's extraterritorial reach, enhances regional regulatory autonomy, and reinvigorates the centrality of affected communities and indigenous peoples.

Strengthen domestic HRDD legislation and integrate binding, enterprise-wide duties

African states should adopt their own statutory HRDD frameworks that impose proactive, mandatory obligations on companies, mirroring but also exceeding the ambition of the CSDDD. Existing laws, such as South Africa's NEMA and MPRDA, Namibia's Environmental Management Act, and Zimbabwe's Environmental Management Act, remain fragmented and largely project-based, leaving wide gaps in value-chain scrutiny and corporate conduct. National HRDD legislation should require companies to conduct continuous human rights and environmental due diligence across all operations, subsidiaries and suppliers, coupled with explicit duties to identify, prevent, mitigate and remedy foreseeable harm. This would prevent corporations like Glencore and Shell from hiding behind outdated environmental authorisations or selectively complying with only project-level obligations. Statutory HRDD duties must be directly enforceable against both domestic and foreign companies operating within the territory.

Create independent, adequately resourced regulatory bodies with enforcement authority

Across South Africa, Namibia, and Zimbabwe, much of the harm documented in the case studies was facilitated by weak enforcement capacity, regulatory capture, or political interference. Institutions tasked with environmental, mining and water regulation need structural independence, ring-fenced budgets and legal mandates to sanction or suspend operations of non-compliant corporations.

ReconAfrica's ability to operate without water permits and to commence drilling prior to land allocation approval reflects institutional weakness, not legislative absence alone. Regulators should be empowered to conduct unannounced inspections, commission independent audits, publish compliance reports, issue administrative penalties and revoke licences. Capacity-building partnerships—funded jointly by states, regional bodies and international donors, should prioritise training in HRDD, forensic environmental assessment, data management, and community engagement.

Mandate FPIC and community-centred governance frameworks

All case studies reveal a persistent pattern of community exclusion, whether Shell's disregard for Wild Coast communities, Glencore's selective engagement with elites in Bethanie, or ReconAfrica's direct violation of FPIC in Namibia's communal lands. African states must codify FPIC as binding, particularly for indigenous peoples, rural communities and conservancies. This includes early-stage disclosure, accessible information in local languages, community-led consultations, culturally appropriate engagement methods, and participatory decision-making.

FPIC should operate as a condition precedent for the granting or renewal of licences, with penalties for bypassing community processes. Community Development Agreements (CDAs) should be mandatory in all high-impact sectors, ensuring legal recognition of benefit-sharing obligations and independent monitoring by local governance structures.

Establish regional HRDD standards through the African Union and AfCFTA

The CSDDD's selective application, binding EU companies while allowing Chinese, Russian and other non-EU investors to operate without due diligence obligations, creates a regulatory double standard that encourages forum shopping and deepens Africa's dependency. The African Union, in partnership with the African Commission on Human and Peoples' Rights (ACHPR), should develop a continental HRDD Protocol modelled on the African Charter.

Under the AfCFTA, member states could adopt a binding due diligence instrument requiring any company (regardless of nationality) operating in the African market to comply with harmonised HRDD obligations. This would level the playing field, strengthen collective bargaining power, and reduce regulatory fragmentation across the continent.

Reform the CSDDD to expand scope, strengthen liability and include Global South safeguards

While the CSDDD aspires to transform corporate accountability, its diluted enforcement following the Omnibus amendments and its narrow jurisdictional thresholds leave major gaps. The Directive should be amended to (a) extend coverage to non-EU companies listed on EU exchanges, such as ReconAfrica (b) lower employee and turnover thresholds to capture medium-sized but high-risk extractive operators, and (c) reintroduce strict EU-wide civil liability for failure to prevent harm.

The civil liability regime should reverse the burden of proof where victims face structural inequality and grant standing to foreign communities and NGOs. The CSDDD should also mandate independent and publicly available human rights impact assessments (HRIAs), prohibit reliance on outdated EIAs, and require companies to fund capacity-building for affected communities in third countries.

Introduce mandatory transparency and data disclosure obligations

The refusal of Glencore to disclose water monitoring data, and ReconAfrica's failure to publicise EIAs or drilling plans, exemplify how secrecy exacerbates harm. States should legislate for mandatory disclosure of environmental monitoring results, SLP performance reports, HRDD assessments, supply-chain mapping, and pollution incidents. Data should be published in open, accessible, multilingual formats. Mandatory environmental and human rights reporting, aligned with the CSRD and OECD Guidelines, should extend to subsidiaries and contractors. Failure to disclose should trigger administrative sanctions and civil liability.

Strengthen access to justice, including transnational litigation and collective redress

Communities across the case studies face prohibitive cost barriers, distance, procedural complexity and intimidation, making remedy illusory. African states should establish specialised Environmental and Human Rights Courts or Tribunals with jurisdiction over corporate abuses and powers to order restitution, reparations and restoration. Legal aid funds should be financed through a combination of state budget allocations and a levy on extractive companies. At regional level, protocols should ensure mutual legal assistance for transnational corporate litigation, allowing communities harmed in Africa to sue parent companies in their home states. The CSDDD must also integrate collective redress mechanisms, permit class actions by foreign plaintiffs, and prohibit cost orders that deter public interest litigation, as seen in Namibia.

Embed the "polluter pays" and "beneficiary pays" principles in HRDD enforcement

Environmental harms caused by Glencore's water pollution, Shell's marine ecosystem disruption, and ReconAfrica's waste mismanagement illustrate the need for more robust financial accountability. States should introduce legally mandated environmental bonds, rehabilitation guarantees and restoration funds for all high-impact operations. Companies must bear the costs of environmental monitoring, clean-up and long-term land rehabilitation. HRDD legislation should require corporations to internalise environmental and social costs in project valuation, preventing the externalisation of risk onto communities and ecosystems.

Institute independent grievance mechanisms with binding outcomes

Company-run grievance mechanisms are often inaccessible, biased or ineffective. States should require companies to participate in nationally or regionally administered grievance mechanisms that are independent, culturally sensitive and staffed by experts in human rights, indigenous law and environmental science. Outcomes should be binding, enforceable and accompanied by public reporting. These mechanisms must guarantee anonymity for whistle-blowers, protect community defenders from retaliation, and ensure that companies cannot operate without establishing legitimate remedy pathways.

Integrate climate justice into HRDD, with special consideration for "green" extractivism

The case study on Bikita Minerals illustrates how the green transition reproduces extractive injustices under the banner of decarbonisation. States should require climate-related due diligence that goes beyond corporate transition plans and explicitly measures distributive impacts on local communities, biodiversity, water security and cultural survival. HRDD legislation should require companies to disclose carbon offset projects and prohibit offset programmes that displace communities or degrade ecosystems. Climate-related obligations under the CSDDD must be strengthened to include penalties for failure to meet transition targets and protections for communities in green-mineral zones.

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