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Tracing Accountability: The Role of Due Diligence in Addressing Business-Related Human Rights Violations

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Abstract

This article examines whether compliance with human rights due diligence (HRDD) can reduce, reshape, or defeat civil liability when business activity results in serious human rights harm. The paper addresses a specific gap in the literature: while much scholarship treats HRDD as a policy or governance tool, fewer studies analyse how HRDD operates inside domestic negligence law, especially through the concepts of duty of care, foreseeability, breach, and causation. Using a doctrinal and comparative legal method, the article reads the United Nations Guiding Principles on Business and Human Rights (UNGPs), the OECD due diligence framework, the French Duty of Vigilance Law, the EU Corporate Sustainability Due Diligence Directive, and leading parent-company liability cases such as Vedanta and Okpabi alongside one another. It argues that HRDD should not be treated as an automatic defence. Properly understood, it is better viewed as an evidentiary and normative benchmark that assists courts in judging whether corporate harm was reasonably foreseeable and whether reasonable preventive steps were taken. The article further contends that this debate cannot remain Eurocentric. An ASEAN-focused discussion of Indonesia and Malaysia shows that the accountability question is particularly acute in labour-intensive and extractive sectors where supply-chain opacity, migrant labour, weak enforcement, and group corporate structures frequently combine. The paper concludes that governments in developing jurisdictions should move beyond disclosure-only models and design mandatory, risk-based HRDD regimes tied to supervision, remedy, and sector-specific enforcement.

KEYWORDS *UNGPs, Human Rights Due Diligence, Corporate Liability, Duty of Care, Mandatory HRDD, Extraterritoriality, ASEAN*

Introduction

The central difficulty in business and human rights is no longer identifying abuse. The harder question is one of legal translation: how should legal systems attach responsibility to corporate actors whose operations, subsidiaries, contractors, and supply chains extend across several jurisdictions? Traditional international human rights law was built around states. Corporations, even though they possess legal personality in domestic law and often exercise immense economic power, do not fit neatly into that architecture,[1] hence the result is a familiar accountability gap. Harm may be real, foreseeable, and severe, yet responsibility becomes fragmented between parent companies, subsidiaries, host states, and private contractors.[2] That structural problem becomes especially acute in negligence-based litigation. In domestic tort law, liability commonly turns on duty of care, breach, causation, and damage.[3] In transnational cases, however, claimants must first overcome the argument that the parent company did not owe them any relevant duty at all, or that the harm was caused solely by a legally separate subsidiary operating abroad. Corporate defendants have often relied on separate legal personality, limited liability, jurisdictional objections,

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1 John C.P. Goldberg and Benjamin C. Zipursky, "The Restatement (Third) and the Place of Duty in Negligence Law", 54 *Vanderbilt Law Review* 657 (2001). https://scholarship.law.vanderbilt.edu/vlr/vol54/iss3/2

2 Qiang He, Jia-Ling Feng, Wan-Yun Huang, "Law of Negligence: Duty of Care, Standard of Care, and the Notion of Personal Responsibility", *International Conference on Management Science and Management Innovation.* (Atlantis Press, 2016).

3 W. Jonathan Cardi, "Reconstructing Foreseeability". *Boston College Law Review* 46 (2005): 921-988.

and fragmented operational structures to distance themselves from downstream human rights harm.

It is in this setting that HRDD has assumed new significance. The UNGPs present due diligence as a continuing process through which companies identify, prevent, mitigate, and account for adverse human rights impacts. Yet the legal meaning of that process remains contested. For some businesses, due diligence still appears as a managerial exercise in reputational risk reduction. For courts and regulators, by contrast, it increasingly functions as a benchmark for what responsible corporate conduct should look like when serious risks are known or knowable.[4] Bueno's analysis in the International & Comparative Law Quarterly illustrates how legislative models (such as the French Duty of Vigilance Law) use HRDD failures as a basis for civil claims, and, in so doing, link the quality of a firm's due diligence to findings on duty, breach and causation in negligence.[5] Taken together, this article advances a narrower and more legally focused claim than much of the existing literature. Its concern is not whether HRDD is normatively desirable in the abstract. Rather, it asks how the quality of HRDD should affect findings of corporate accountability in negligence and related duty-of-care claims. The argument is that HRDD does not provide an automatic shield against liability. Instead, rigorous HRDD can help demonstrate that the company identified salient risks, designed preventive measures, monitored compliance, and responded to warning signs. Conversely, superficial or cosmetic HRDD can strengthen a claimant's case by showing that the company knew of serious risks but failed to act meaningfully on them.

The article also addresses a second weakness of current discourses: the tendency to view HRDD as one-sidedly with respect to European legislative developments. Though the European efforts have played a role, the practical sense of urgency of the problem is also evident in Southeast Asia. Indonesia and Malaysia can be particularly interesting examples, as the two jurisdictions have in various degrees and at various rates shifted to business and human rights models, although they also have been under constant scrutiny in areas like plantations, extraction, and labour-intensive production. The introduction of that ASEAN view into the analysis provides the paper with a sense of context and emphasizes its original contribution.

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4 Jonathan Bonnitcha and Robert McCorquodale, "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights". *European Journal of International Law* 28, no. 3 (2017): 899–919.

5 Nicolas Bueno, and Claire Bright, "Implementing Human Rights Due Diligence Through Corporate Civil Liability". *International and Comparative Law Quarterly* 69, no. 4 (2020): 1–30.

That argument is reflected in the structure of the article. It initially explains why the historical presuppositions of corporate distinctiveness as well as territorial disintegration persist in creating remedial lapses. It subsequently looks at the operation of HRDD within the context of negligence reasoning, particularly foreseeability, breach, causation and parent-company oversight. The next topic of discussion is the shift towards voluntary standards to compulsory legislation and what that shift accomplishes, and does not accomplish, in regard to accountability. Another section is devoted to Indonesia and Malaysia to demonstrate how those problems manifest themselves in jurisdictions where export-driven industries, resource extraction, and migrant labour aggravate the practical significance of proactive corporate governance. The last section emerges with the policy suggestions to developing countries who want to make HRDD legally significant without diminishing it into checklist compliance.

Providing a comprehensive structure of Ethical Agility and emphasising the necessity of adaptable due diligence as a core component of the contemporary business processes, the current study is an addition to the discussion about corporate responsibility and human rights. The research contributes to a new approach to understanding the duties of businesses in relation to their human rights issues by questioning the traditional forms of governance, often ignoring the complex connection between social norms and a business. Through case studies of the best firms to have successfully involved themselves in ethical and sustainable practices in their basic strategic plans, we demonstrate that stakeholder engagement in advance is not only risk-reducing but enhances long-term sustainability and corporate image. Also, the current report develops certain policy recommendations that advocated the establishment of international due diligence principles that would require transparency and responsibility. Offering a connection between theoretical knowledge and practical implications, this study not only enhances the scholarly knowledge but also becomes an agent of the game changer, calling on businesses to approach more ethically the decision-making process, which may reflect the moral and social demands of the contemporary global market.

The current literature on the UN Guiding Principles on Business and Human Rights (UNGPs) and Human Rights Due Diligence (HRDD) has devoted much attention to their policy, governance, and ethical consequences and has utilized them mainly as soft-law tools of responsible business behavior. Nevertheless, the evidence of how exactly rigorous application of HRDD should operate in domestic negligence systems, particularly concerning such central characteristics as foreseeability and violation of the duty of care is rather limited in legal-doctrinal terms. That is, most authors reference that HRDD is used as an aid to risk management and corporate social responsibility, but they rarely delve into the potential impact on the court of the quality and depth of the HRDD processes at a company on whether the harm was reasonably foreseeable, the standard of care was met or breached, and the impact of those issues on the liability of later civil claims of negligence or breach of duty of care. This overlooked intersection of the soft law due diligence norms and the hard law tort principles is the area of research gap that this article seeks to address.

This article is used the doctrinal and comparative law with a normative aspect. It is doctrinal in that it interprets existing sources of the law which are: court cases, international practice, statutory systems and policy tools that apply to corporate responsibility of human rights abuses. It is comparative in the sense that it pits soft-law and hard-law systems into dialogue and, it reads European developments in addition to the new ways of thinking in Southeast Asia. It is normative in the sense that the article is not a mere description of the law, but an assessment of the legal design options that are most apt to lead to real corporate responsibility and not formal compliance.

The principal sources under analysis are the UN Guiding Principles on Business and Human Rights, the OECD Due Diligence Guidance to responsible business conduct, the French Duty of Vigilance Law, Directive (EU) 2024/1760 on corporate sustainability due diligence, and the best UK Supreme Court cases in Vedanta Resources plc v Lungowe and Okpabi v Royal Dutch. The selection of these sources is explained by the fact that they reveal the shift between voluntary expectations to mandatory due diligence, as well as by the fact that they help to understand how courts rationale about parent-company responsibility, operational control, foreseeability, and preventive corporate behavior. New empirical fieldwork is not offered in the article.

The mention of industries like palm oil, mining, migrant labour and labour intensive manufacturing are viewed as legally relevant illustrations and not as socio-legal case studies in the narrow methodological sense. They serve the purpose of testing the behavior of HRDD when there are recurrent, structural, and transnational risks. Such reduced methodological explanation is significant since the goal of the article is to formulate a legal argument regarding accountability, rather than a descriptive survey of corporate practice. Another methodological fact needs to be mentioned here as it plays a significant role in the study. The comparison made in this article is not a mechanical process of lining instruments together. It is meant to analyze the interaction of various legal materials in the cases when the court or regulators are called upon to determine whether a corporation was reasonable in the face of the known human rights risk. That is why soft-law standards are not considered as irrelevant in this case and similar to binding rules. They are important as they determine what responsible conduct should resemble, shape the making of laws, shape judicial anticipations, and aids in the transformation of general human rights issues into actual organizational actions. In that regard, the doctrinal approach adopted here follows a functional assumption: in which international standards, national law, and corporate governance documentations overlap in terms of repetitive preventive measures, the latter become harder and harder to reject as being optional. The article also has its limits, which can be explained through this approach. It does not assert that all the failures of HRDD ought to create liability. Instead, it considers the context within which the presence, quality or absence of HRDD ought to affect legal determination concerning proximity, foreseeability, breach and the sufficiency of preventive action.

Corporate Personhood, Separate Personality and the Accountability Gap.

It is namely the corporate form that provides economic benefits by providing separation of legal entity, risk allocation, and capping liability. Such architecture is practically useful in commerce, but it may impede remedy in business and human rights controversy.[6] A parent company is allowed to establish group-wide strategy, introduce compliance systems, grant capital expenditure and track risk, but may still claim that day-to-day business was run by a foreign subsidiary that had independent legal personality. Although this argument is very pleasing in the form of it but, functionally speaking it can blur the real organization of corporate power. The problem is aggravated by the extraterritorial aspect. Any number of severe maltreatments can be found in situations where institutions of the host-state are under-funded, politically limited or reliant on the economic input of the concerned industry. Claimants may then face procedural barriers, weak enforcement, lack of available evidence, or practical inability to pursue the matter in local courts..They face another group of objections when they seek to sue the parent company in the home state: jurisdiction, forum issues or the argument that the parent did not exercise adequate control over the operations in question.[7] Whether the harm did or did not happen is not the question, but can law follow the organization of the economic reality across the borders? HRDD is important in this case as it reduces the gap between formal structure and operational responsibility. When

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6 Nurul Jannah Mustafa Khan, Hasani Mohd Ali, and Hazlina Shaik Md Noor Alam. "Addressing sustainability challenges as part of director's duty in Malaysia". *International Journal of Law and Management* 65, no. 6 (2023): 538-559.

7 Bonnitcha, Jonathan, and Robert McCorquodale. "The concept of 'due diligence' in the UN guiding principles on business and human rights." *European Journal of International Law* 28, no. 3 (2017): 899-919. https://doi.org/10.1093/ejil/chx042

a parent firm formulates group-wide human rights policies, directs risk assessment, internal reporting, conditions the suppliers, or intervenes in high-risk operations in a technical manner, then these acts are not legally neutral. They can be used to prove that the parent took up the responsibility, valued the risk, and could have affected preventive action. Instead of extinguishing liability, corporate governance documents can thus turn out to be the testimony of proximity, knowledge, and control. This is also the reason why there is conflict between legal personhood and accountability. Separate personality is still a principle of company law. It is not that the principle ought to be abandoned.[8] The reason is that the courts may not allow the corporate groups to claim the separation which is formal in circumstances when the parent has substantially influenced the risk architecture that caused the harm. The importance of HRDD is that it documents, and occasionally discloses, the very governance decisions in accordance with which that architecture is constructed[9].

HRDD as an Evidentiary and Normative Standard in Negligence

In the doctrine of negligence, HRDD is best applied when it can be conceived as evidentiary and normative.[10] Determinative It is evidentiary in the sense that the presence, quality and application of HRDD can guide a court in deciding what the firm knew, what it ought to have known and what it actually did. It is normative in the sense that HRDD is increasingly forming the basis on which it is possible to evaluate reasonable corporate behaviour. That is to say, as soon as due diligence becomes a norm in high-risk operations, the lack of meaningful HRDD can in itself imply unreasonable behavior.

Additionally, there are certain points which must be kept in mind such as at first one is the contract foreseeability. A company with undertaken serious human rights impact assessment, supplier mapping, worker consultations, grievance reviews and escalation procedures will typically produce a record of known risks. Such a record can be of help to the company in case it demonstrates

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8 Nora Götzmann. "Human rights impact assessment of business activities: Key criteria for establishing a meaningful practice." *Business and Human Rights Journal* 2, no. 1 (2017): 87-108. https://doi.org/10.1017/bhj.2016.24

9 Nazruzila Razniza Mohd Nadzri and Kamal Halili Hassan. "Covid-19 Outbreak: Opportunity or Risk for Gig Economy Workers". *INTI Journal* 57 (2020). http://eprints.intimal.edu.my/1478/

10 Susanna Niemi. "Improving The Corporate HRDD: Human Rights Risk Identification in Global Supply Chains". *Thesis.* (Jyväskylä: Jyväskylä University School of Business and Economics, 2025).

early detection and actual mitigation.[11] However, it can also help claimants. The more advanced the internal knowledge system, the more difficult it is to prove that the damage was unforeseen. HRDD does not merely control risk therefore, it tends to rectify the area of corporate awareness.[12]

The second one is breach. Courts are becoming more and more skeptical of policy statements that are aspirational in nature and weak in application.[13] It does not matter whether a company has published a code but whether it has constructed procedures that were adequate to the risk, allocated responsibility, monitored compliance, or did something when red flags were raised. The fact that a written programme is written can imply a social commitment, however, it can also show a discrepancy between alleged norms and reality. Law-wise, that hiatus constitutes a breach only in the instances that reasonable steps have not been considered, but not just because polished language has been used.

The third one is causation. HRDD does not abolish causation analysis, it just organizes it. In case a well-structured and implemented due diligence procedure would have probably revealed the threat and provoked preventive measures, then the negligence or insufficiency of HRDD can be included in the causal story[14]. Also, when a company performed due diligence, determined a serious risk, and still proceeded without taking an appropriate mitigation, the record of due diligence might substantiate instead of disrupt the causal connection. That is why, sophisticated HRDD is not necessarily exculpatory. It can be knowledge as well as prudence can be.

This shows that the quality of the process is more important than the label attached to it. A firm can refer to its compliance systems as due diligence and do little more than disseminate a code of conduct, solicit supplier signatures, and provide periodical audits, which are primarily aimed at meeting reporting requirements. It is possible that this documentation will develop a formal paper trail, although this does not guarantee that risk is mitigated. A more plausible model of human rights due diligence generates more operational indicators, such as a risk-based assessment, serious issues escalation mechanisms, clearly allocated management responsibility, grievance channels readily available by

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[11] Amanda Mpedi. "Due Diligence and Due Remedy? A Critical Evaluation of Human Rights Due Diligence in the UN Binding Treaty on Business and Human Rights: Lessons from Marikana and Comparative Case Studies." *Thesis*. (Lund: Lund University, 2025).

[12] Amanda

[13] James Harrison. "Human rights due diligence: Lessons from a regulatory intermediary perspective". Netherlands Quarterly of Human Rights 44, no. 2 (2026): 19=09-131. https://doi.org/10.1177/09240519261433385

[14] Zahra Shirgholami, "The ambivalent role of multinational corporations in ending labour exploitation." *Dissertation*. (Guildford: The University of Surrey, 2022).

workers and other impacted populations, and documented follow-up in case of warning signs. It also involves the desire to view repeat incidents as governance failures but not isolated accidents. The practical importance of such a distinction is evident in those situations when harm is apparent but not well dealt with. As an example, a report released by the World Bank and ILO noted that the living conditions of foreign workers were deplorable with poor drainage and waste disposal systems, dusty and overcrowded housing, darkness and poor ventilation.[15]The report also indicated that the government could not force the contractors to offer decent housing to them either administratively or legally. Such types of conditions are not just regulatory deficiencies; they pose predictable health hazards to employees and can also play a role in transmitting disease to the general population. Courts are hardly convinced by abstract commitments in negligence terms.[16]

Also, the failures that were revealed during and after the COVID-19 serve as an additional illustration of this fact. An example is Amnesty International that claimed that the mass detention of refugees and migrants during the pandemic was a grave breach of civil rights and the prosecution of an already vulnerable population despite the fact that refugees and migrants, regardless of status, are entitled to fair treatment, justice, and wellbeing.[17]The post-COVID era thus demonstrated that due diligence could not be simplified to the creation of formal statements of compliance; it needs to be a functioning governance process that is able to spot vulnerability, avoid anticipated damage, and assure that legal and institutional responses are sufficient to prevent the escalation of crises.[18]

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[15] World Bank. *Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers.* (New York: World Bank, 2020). *See also* ILO. "COVID-19: Impact on migrant workers and country response in Malaysia", ILO, 2020. Retrieved from https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/documents/briefingnote/wcms_741512.pdf

[16] World Bank, *Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers.*

[17] Amnesty International Malaysia, "Covid-19 Compounds Rights Violations Internationally, and in Malaysia", *Amnesty International Malaysia,* April 7, 2-21. Retrieved from https://www.amnesty.my/2021/04/07/covid-19-compounds-rights-violations-internationally-and-in-malaysia/

[18] OECD, "More resilient public administrations after Covid-19 Lessons from Using The Common Assessment Framework (CAF) 2020". *OECD Public Governance Policy Papers,* No. 29 (2020). Available online at https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/04/more-resilient-public-administrations-after-covid-19_4d50e035/8d10bb06-en.pdf

Transnational Control and Parent-company Liability

The Vedanta and Okpabi cases of the UK Supreme Court are of particular significance since they demonstrate how courts go beyond the apparent separation of corporations and scrutinize the reality of group control.[19] The Court in Vedanta accepted that the question of whether a parent had a duty of care in respect of environmental damage caused by its subsidiary in Zambia was at least a matter of interpretation given that the parent had publicly claimed to be exercising such oversight and had even adopted group-wide environmental and operational standards.[20] The Court in Okpabi also found that in cases where there was a real issue to be tried regarding the parental control over the group policies and their implementation in Nigeria, the claim against the parent should not be struck out.[21]

These cases do not establish a blanket statement that parent companies are liable by default on foreign subsidiaries. Their value is in other things. They deny the categorical thinking and demand the fact sensitive questioning of management, supervision, control and taking responsibility. HRDD is placed directly in that question. A parent which centralizes risk management, requires due diligence systems, examines audit findings, or orders remediation, can no longer afford to depend by itself upon the abstract language of separate personality. It becomes the question of reality in corporate practice.

Extraterritoriality is thus not to be considered as an all-inclusive obstacle to accountability. The more satisfactory legal way of looking at this is to see that foreign states are not on trial before domestic courts; but rather the actions of companies before them are being judged, of which parent companies incorporated or domiciled within their jurisdiction are included. In cases where the choices of the parent, the institutional foundations of oversight, or their absence, cause foreseeable injury in the host country, the home-state adjudication is more compelling.

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[19] Dalia Palombo. "Okpabi v Shell and Lungowe v Vedanta Dispel Three Myths". *Business and Human Rights Center,* February 18, 2021. Retreievd from https://www.business-humanrights.org/en/latest-news/okpabi-v-shell-and-lungowe-v-vedanta-dispel-three-myths/

[20] *See Lungowe and Ors. v Vedanta Resources Plc and Konkola Copper Mines Plc* [2017] EWCA Civ 1528.

[21] *See also* Claire Bright. "The Civil Liability of the Parent Company for the Acts or Omissions of its Subsidiary: The Example of the Shell Cases in the UK and the Netherlands." In *Business and Human Rights in Europe.* (London: Routledge, 2018), pp. 212-222.

It is also essential to make a difference between parent-company responsibility and the far more limited doctrine of piercing the corporate veil. Claimants in HRDD cases rarely have to demonstrate that the subsidiary was a sham or that distinct personality ought to be totally ignored[22]. The more specific question is, did the parent company in its own actions take responsibility or did it take that degree of supervision that the risk was within the legal range of its failure not to act? That question can be made to depend on issues like group-wide safety manuals, human rights reporting lines, centrally approved contractors, compulsory audit procedures, or interference with technically challenging operations. Viewed in this light, extraterritorial accountability is not the radical alteration of private law as much as the transfer of common sense of negligence to contemporary corporate entities. The challenge is a practical one, not a conceptual one: the relevant evidence can be scattered among several jurisdictions, vital documents are frequently in the possession of the defendants, and communities that have been harmed may be unable to supply the resources necessary to show how internal governance was actually practiced.[23] The practical imbalance is one of the reasons why disclosure obligations, record-keeping obligations and access-to-information mechanisms are essential should HRDD be to acquire any real legal value.

Voluntary and Mandatory Frameworks: From the UNGPs to the EU Corporate Sustainability Due Diligence Directive

The UNGPs continue to be the global reference point, however, not a full enforcement regime. Their power is in the clarity of conception. Principles 17 to 21 introduce HRDD as a process of identifying, preventing, mitigating, and accounting adverse impacts which is a continuous process. The UNGPs transformed the language of corporate responsibility by turning due diligence into the usual expectation and not a best practice. Their weakness, however, is institutional: as soft law instruments, they do not by themselves create a direct civil cause of action or provide a formal enforcement mechanism.

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22 Cheng-Han Tan, Jiangyu Wang, and Christian Hofmann. "Piercing the Corporate Veil: Historical, Theoretical and Comparative Perspectives". *Berkeley Business Law Journal* 16, no. 1 (2019): 140-204.

23 Michele Panzavolta, Elise Maes, and Anna Mosna. "Streamlining the exclusion of illegally obtained evidence in criminal justice". *KU Leuven Research Project Report,* 2022. Available online at https://jpcoopsproject.eu/wp-content/uploads/2022/06/Panzavolta.studio.rule_.exclusion.pdf

That is the gap that mandatory regimes attempt to bridge, though not necessarily in a similar fashion. According to the French Duty of Vigilance Law, some large enterprises will have to develop, publish and enforce a vigilance plan that will include severe human rights and environmental risks associated with their own business, subsidiaries, and known business relationships. The legal emphasis is not then limited to disclosure, rather is the sufficiency and execution of the plan. The EU Corporate Sustainability Due Diligence Directive is further enhanced by introducing a corporate due diligence obligation into an extended supervisory framework of companies in scope. The Directive is a clear indication of a shift in practice towards more than mere voluntary practices although its practical impact will be affected by domestic implementation.

The distinction between voluntary and mandatory systems must not be exaggerated but it should not be reduced to the minimum. Voluntary instruments are generally norm-setting in character: they help define what responsible conduct looks like and, in doing so, influence judicial reasoning, investor expectations, and administrative practice. Mandatory regimes operate differently. They impose legally structured duties, designate supervisory authorities, and connect failures in due diligence with consequences such as penalties, injunctions, or civil liability. The transition is important as it transforms HRDD into an issue of corporate choice into an institutional requirement.

Meanwhile, mandatory HRDD is not a self-executing concept. A system that obliges companies to release plans and does not audit their content will encourage box-ticking. A regime that concentrates on first tier suppliers will fail to see a lot of the risk. And a system in which compliance documentation is the main goal can provide an incentive to procedural sophistication instead of actual prevention. The actual legal dilemma is then not whether to require HRDD, but how to structure it in a way that documentation, supervision, remedy and stakeholder involvement stay connected to one another.

The legal shift can be better explained by relating the UNGPs to the newer mandatory instruments more closely. Within the UNGPs, due diligence is established as a primary duty that entails the respect of human rights. The language is persuasive and elaborated, but the structure is based too much on voluntary adoption, social pressure, investor pressure and the potential that domestic law might appeal to its rationale. In contrast, some laws, including the French Duty of Vigilance Law and the EU Corporate Sustainability Due Diligence Directive, transform components of that reasoning into positive law. They compel covered corporations to recognize undesirable effects, embrace preventive strategies, observe execution, and remediation in certain environments. The difference has at least three implications on accountability.

To begin with, it minimizes the argument that human rights due diligence is nothing more than an aspiration. Secondly, it puts supervisory hooks on regulators and courts, since a company can be questioned not only what they promised to do, but what the law demanded it do. Thirdly, it alters litigation approach: a claimant can employ the mandatory due diligence regulations to argue the point that the risk in question was not new or distant, but adequately known to the law to warrant organized precautionary measure.

Comparison of Major HRDD Models

Nevertheless, the shift of the voluntary to the mandatory regulation cannot be idealized. This is because poorly designed mandatory regimes can exhibit the same weak points that characterized the less rigid model. A company can react to this by outsourcing compliance to consultants, increasing the number of questionnaires, and pushing the risk of contracts down the chain without altering the commercial pressures making abuse predictable.[24] The suppliers can then be instructed to achieve high targets whilst at the same time being exposed to impractical delivery schedules, fluctuating purchasing levels or conditions of payments that promote subcontracting and informality of labour. Where it takes place, the company maintains the distance of law but keeps on organizing the circumstances that give rise to the abuse[25]. Mandatory HRDD should then go beyond formal adoption and explore leverage, buying habits, remediation budget, and the alignment between human rights commitments of a corporation and its business model.[26] Devoid of such further examination, law runs the risk of rewarding form instead of prevention.

The four HRDD models vary greatly with regard to their legal nature, accountability impacts and practical constraints. The UN Guiding Principles on Business and human rights are still a soft law tool. Their primary contribution lies in the fact that they establish the minimum standard of human rights due diligence and give an idea of what might be considered as reasonable corporate behaviour, although they do not establish automatic direct enforcement and independent civil remedy. The OECD Guidance is also soft law but in more operational terms. It translates due diligence into more practice-based risk-

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[24] Henk Akkermans, et al. "Contracting outsourced services with collaborative key performance indicators." *Journal of Operations Management* 65, no. 1 (2019): 22-47.

[25] Akkermans, et al., p. 24.

[26] Lise Smit, Gabrielle Holly, Robert McCorquodale, and Stuart Neely. "Human rights due diligence in global supply chains: evidence of corporate practices to inform a legal standard." *The International Journal of Human Rights* 25, no. 6 (2021): 945-973.

management but its effectiveness remains reliant on corporate adoption, sector-specific mechanisms and facilitative state intervention.[27]

In comparison, the French Duty of Vigilance Law is an obligatory national regime. It imposes covered companies to develop and put into operation a vigilance plan that will address the severe threats posed by their operation, subsidiaries, and developed business relationships. Its weakness, though is that it is mostly applied to large companies and litigation under it is still demanding. The EU Corporate Sustainability Due Diligence Directive takes it a step further by introducing a binding regional framework that imposes due diligence responsibilities, regulatory controls, and punishments to firms that come under its jurisdiction[28]. Still, its practical impact will rely heavily on how well it will be implemented and enforced domestically.[29]

HRDD in ASEAN: Indonesia and Malaysia

A more convincing account of HRDD must engage with Southeast Asia, not merely as a site of risk but as a site of legal development. Indonesia and Malaysia illustrate why. Both jurisdictions have faced sustained concern over business-related human rights impacts in sectors tied to land, labour, migration, and export-oriented production. Both have also moved, albeit differently, toward formal business and human rights frameworks. Those developments matter because they show that the future of HRDD is not confined to European corporate regulation.

Indonesia approved Presidential Regulation No. 60 of 2023 on the National Strategy for Business and Human Rights, signalling a state-level commitment to integrate business and human rights into governance and to support implementation through national and regional task forces.[30] The legal significance of that move lies less in immediate private-law transformation than in institutional direction. It creates a platform for administrative coordination, risk awareness, and future regulatory development in sectors where diffuse

[27] Michael Rogerson, Francesco Scarpa, and Annie Snelson-Powell. "Accounting for human rights: Evidence of due diligence in EU-listed firms' reporting." *Critical Perspectives on Accounting* 99 (2024): 102716.

[28] Business and Human Rights Center, "France's Duty of Vigilance law", online at https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/

[29] Business and Human Rights Center, "France's Duty of Vigilance law".

[30] Republic of Indonesia. *Regulation of the President of the Republic of Indonesia Number 60 of 2023 on National Strategy on Business and Human Rights (Perpres No 60/2023),* 2023. Online at https://globalnaps.org/wp-content/uploads/2026/01/Indonesia.pdf

supply chains and land-based business operations have long generated controversy.[31]

Malaysia has also entered a new phase through its first National Action Plan on Business and Human Rights, launched for 2025–2030, aligns domestic policy with the UNGPs and gives particular attention to labour-related concerns such as forced labour, fair recruitment, non-discrimination, wages, freedom of association, and social dialogue. [32] That emphasis is legally and practically important, because in Malaysia, as in several other labour-importing economies, migrant labour governance is inseparable from business and human rights. HRDD that ignores recruitment channels, dormitory conditions, subcontracting chains, and worker grievance mechanisms is not genuine due diligence; it is partial compliance framed as completeness.[33]

The ASEAN relevance of these examples is twofold. First, they demonstrate that the debate is not simply about importing European legislation into Asian markets. It is about adapting accountability frameworks to economies in which state capacity, informal contracting, and labour migration shape the risk profile.[34] Secondly, they show that prevention cannot be separated from remedy. In plantation, mining, and labour-intensive manufacturing settings, human rights harms often arise not from a single rogue act but from a business model that externalizes cost onto vulnerable workers or communities. A thin due diligence process will miss that structural reality.[35]

Another reason that HRDD should be assessed on the substance and not on paperwork is a Southeast Asian viewpoint, specifically in risky industries like palm oil or extractives, questions at hand are real , such as , did the company engage in consultation with the communities concerned prior to acquiring or expanding land? Has it checked on recruitment costs, passport retention, salaries and accommodation conditions of migrant workers? Was there access and trust of grievance systems in practice? Did the local discoveries get hyped to parent-company decision-makers and were they given the ability to act?

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31 *See* Perpres No 60/2023.

32 ILO, "ILO welcomes Malaysia's first National Action Plan on Business and Human Rights and the country's commitment to promote decent work", *Online News,* August 19, 2025. Retrieved from https://www.ilo.org/resource/news/ilo-welcomes-malaysias-first-national-action-plan-business-and-human-rights

33 Nisar Mohammad Ahmad. "National Action Plan on Business and Human Rights (NAP-BHR) In Malaysia: Current Status and Future Prospects for A Governance Tool". *Seminar Antarabangsa Islam dan Sains 2021* (SAIS 2021), pp, 944-952.

34 Zhuosi Li. "Revisiting the regional integration of ASEAN: A comparison with the EU." *Transactions on Social Science, Education and Humanities Research* 5 (2024): 432-437.

35 Li.

When the questions cannot be answered with a lot of conviction, then the due diligence record should not have much defensive value.

This is due to the fact that harm does not occur in abstract form in these areas; rather, it manifests as environmental degradation, intimidation, labor exploitation, dispossession, and the suppression of complaints.[36] If a company's detailed policies, risk matrices, and audit trails don't change behavior on the ground, it may still be unable to stop abuses. Therefore, the ability of HRDD to detect warning indicators early, initiate intervention, and lessen foreseeable harm should be evaluated rather than the amount of documentation generated. Paper systems that document procedures without altering results only give the impression of accountability while maintaining underlying dangers.[37]

These are the causes that make the ASEAN approach offer the new information that is often lacking in a general survey. It also shows that the most helpful role of HRDD in jurisdictions developing may be hybrid: both compliance tool and part of the evidentiary record and governance mechanism that ensures corporate groups have a more difficult time denying knowledge of harm that is recurrent.[38]

The case of Southeast Asia explains the reason why legal transplantation should be done carefully. European regulatory paradigms are more inclined to be based on a relatively advanced administrative base, with better access to documentation and a greater belief in the ability of courts to demand disclosure or to investigate corporate decision-making.[39] Building the relevant policy frameworks is underway in Indonesia and Malaysia, but will be implemented under varying institutional realities, such as sector specific regulators, the ability to inspect labour, the relationship between federal and subnational authorities, and the economic importance of export-based industries. The model which was used reasonably effectively by a large listed company with built-in reporting systems might be ill-applied to fragmented supply chains, using contractors,

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36 Helge Hoel, C. Rayner, and Cary L. Cooper. *Workplace Bullying: what we know, who is to blame and what can we do?*. (New York: Taylor & Francis, 2002).

37 Robert McCorquodale, and Justine Nolan. "The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses". *Netherlands International Law Review* 68 (2021): 455–478 https://doi.org/10.1007/s40802-021-00201-x

38 McCorquodale, and Nolan.

39 Charlotte Villiers. "New directions in the European Union's regulatory framework for corporate reporting, due diligence and accountability: The challenge of complexity." *European Journal of Risk Regulation* 13, no. 4 (2022): 548-566.

labour intermediaries, and small manufacturers.[40] To the ASEAN states, it is not whether one should borrow off the global standards, but how to translate them into administratively feasible obligations which will not undermine the fundamental requirement of prevention and remedy.

Sectoral examples make this point clearer, for example in palm oil production, the most serious human rights risks often do not arise from a single dramatic event but from a chain of ordinary operational decisions: land acquisition without meaningful consultation, insecure conditions for smallholders, excessive production targets, dependence on labour brokers, deductions linked to recruitment debt, and weak grievance channels for migrant workers who fear dismissal or immigration consequences.[41] In mining, the pattern may involve different facts but a similar legal structure: community displacement, environmental contamination, security incidents, subcontracting, and opaque responsibility between licence holders, operators, and affiliated service providers. In both sectors, a parent company or lead firm may argue that local entities managed the relevant site.[42] Yet the same group may also impose output expectations, compliance templates, audit schedules, and reporting systems from the centre. That is precisely why HRDD becomes legally significant because it captures whether the company merely documented risk at a distance or actually used its leverage to alter conditions that were predictably producing harm.

Policy Recommendations: Preventing HRDD from Becoming a mere formality

The conclusion that follows from the foregoing analysis is not that every jurisdiction must copy the same legislative model. It is that certain design choices which are more likely than others to make HRDD meaningful.

First, governments in developing jurisdictions should prioritize risk-based mandatory due diligence in sectors where severe harms are predictable, including extractives, plantations, construction, and labor-intensive

[40] Abdur Razzak Chowdhury. "A systematic review of risk-based procurement strategies in retail supply chains: Sourcing flexibility and vendor disruption management." *American Journal of Advanced Technology and Engineering Solutions* 1, no. 1 (2025): 466-505.

[41] Fair Labor Association. "Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia: A Research Report by the Fair Labor Association for the Consumer Goods Forum". *Report*, November 2018. Available online at https://www.fairlabor.org/wp-content/uploads/2022/01/palm_oil_report_fla-cgf_final.pdf

[42] Fair Labor Association. "Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia."

manufacturing.[43] Blanket disclosure duties have some signaling value, but where the risk profile is well known, law should require substantive preventive systems rather than generic transparency alone.[44]

Secondly, legislation and regulatory guidance should expressly address corporate groups and business relationships. If the law focuses only on the operating subsidiary, parent companies may continue to benefit from strategic distance while exercising practical control. Rules should therefore look at oversight, decision-making power, supplier leverage, and internal reporting structures, not merely at formal ownership boundaries.

Thirdly, supervision must be matched with remedy. Administrative oversight is useful, but victims also need pathways to complain, obtain information, and pursue relief. Grievance mechanisms should not displace judicial remedy; they should complement it. Where companies rely on operational-level grievance systems, the systems must be accessible, trusted, multilingual where necessary, and designed so that retaliation is realistically prevented.

Fourthly, HRDD should be informed by worker and community participation. A purely internal compliance process will often miss the facts most relevant to actual harm. Consultation must therefore be treated as evidence-generating rather than symbolic. This is especially important in contexts involving migrant labour, indigenous communities, or rural land use, where silence may reflect dependence or fear rather than the absence of abuse.

There is also a strong case for phased but differentiated implementation. Legislators in developing jurisdictions may hesitate to impose broad duties because they fear imposing disproportionate compliance costs on domestic firms. That concern is real, but it should not produce blanket exemptions that remove high-risk sectors from scrutiny. A better approach is to calibrate obligations according to risk, leverage, and corporate capacity. Large firms, state-linked enterprises, parent companies, and buyers with substantial market power should bear heavier duties of mapping, prevention, and reporting. Smaller firms should not be ignored, but they can be supported through model guidance, sectoral templates, shared grievance infrastructure, and technical assistance.[45]

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[43] Business and Human Rights Research Center. *Towards EU Mandatory Due Diligence Legislation: Perspectives from Business, Public Sector, Academia and Civil Society.* (Zurich: Business and Human Rights Research Center, 2020). Online at https://media.business-humanrights.org/media/documents/BHRRC_EUPresidency_mHREDD_Compendium _11-2020.pdf

[44] Business and Human Rights Research Center.

[45] OECD. *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.* (Paris: OECD Publishing, 2022).

The point is to avoid two equally bad outcomes: symbolic rules that no one can implement, and minimalist rules that leave the most powerful actors under-regulated.[46]

Finally, governments should resist framing HRDD as a safe harbour. Due diligence should be capable of helping a company show that it acted reasonably, but it should not operate as an automatic defence triggered by the existence of forms, audits, or certification alone. There are several significant considerations that must remain in view. First, the legal investigation must continue to be substantive: what did the business know, what was under its control, what actions did it take, and was its response appropriate given the risk? Rather than focusing on the existence of policies or reporting structures, these questions highlight actual business behavior. They need an analysis of whether the business recognized obvious warning indicators, whether it exercised its leverage when it was available, and if it reacted appropriately and promptly to harm that was anticipated. Additionally, they keep HRDD from being reduced to a formal compliance process because the main concern is not whether procedures were documented but rather whether significant actions were made to avoid, lessen, or correct negative effects. In this way, the inquiry preserves the distinction between genuine diligence and symbolic compliance.

Second is related to judicial capacity. Courts asked to assess transnational corporate harm often confront asymmetry in information, cost, and legal expertise. Reform should therefore include practical procedural tools: targeted disclosure of group governance documents, preservation obligations once serious allegations arise, realistic limitation periods for latent or continuing harm, and rules that allow representative or collective claims where communities are affected in similar ways.[47] It is relevant to mention here that none of these measures guarantees success for claimants, nor should they. Their purpose is more modest because they ensure that the legal system can actually test whether a company's due diligence was serious, proportionate, and responsive, instead of allowing the issue to disappear behind informational inequality. In the absence of such tools, even well-drafted HRDD legislation may function more as a reporting framework than as an accountability regime.

An additional policy priority is procedural design. Many developing jurisdictions already possess labour, environmental, company, or consumer-

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46 Edward Donelan. *Regulatory Governance: Policy Making, Legislative Drafting and Law Reform.* (New York: Springer Nature, 2022).

47 Timothy Fish Hodgson, Mandipa Machacha, Elizabeth Mangenje, Audrey Frizzarin, Ian Seiderman and Carlos Lopez. *Corporate Accountability for Abuses of Economic, Social & Cultural Rights in Conflict and Transition.* (Geneva: International Commission of Jurists, 2020).

protection laws that speak indirectly to the harms now discussed under the HRDD label. The weakness is often not the total absence of law but fragmentation, under-enforcement, and the lack of a route by which affected persons can connect internal corporate knowledge to external legal remedy.[48] Governments should therefore consider complaint architectures that combine administrative supervision with disclosure powers, whistleblower protection, accessible community reporting channels, and the ability to refer serious matters for civil or criminal enforcement where appropriate.[49] Public procurement and state-backed finance can also be used more strategically. If firms seeking public contracts, export support, or development-finance benefits must demonstrate credible HRDD in high-risk sectors, the state creates incentives that are stronger than reputational pressure alone.

Conclusion

This article has argued that the most important legal function of HRDD is not to provide a universal corporate defence, but to reshape the assessment of accountability in business-related human rights cases. Read through negligence doctrine, HRDD helps courts evaluate foreseeability, breach, and causation in a manner that reflects how modern corporate groups actually operate. It captures knowledge, reveals governance structures, and records the choices companies make when serious risks are identified. That insight also clarifies why the distinction between voluntary and mandatory regimes matters. The UNGPs remain indispensable because they set the conceptual baseline for responsible corporate conduct. But soft law alone cannot close the accountability gap. Mandatory regimes such as the French Duty of Vigilance Law and the EU's due diligence framework show an important shift toward enforceable obligations, even if their practical success will depend on implementation and institutional design.

The ASEAN discussion further demonstrates that the doctrinal debate is not abstract. In Indonesia and Malaysia, business and human rights regulation is developing in sectors where labour vulnerability, land pressures, and transnational supply chains make formal compliance easy to perform but difficult to trust. In those settings, robust HRDD should be treated as evidence

48 Motoko Aizawa. "Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment". *OHCHR Report,* July 6, 2017. Available online at https://www.ohchr.org/sites/default/files/2022-01/Baseline-Study-on-the-Human-Rights-Impacts-and-Implications-of-Mega-Infrastructure-Investment.pdf

49 Fadiah Nadwa Fikri. *Gaps in the Act: A Legal Analysis of Malaysia's Current Whistleblower Protection Laws.* (Petaling Jaya, Malaysia: C4 Center Report, 2021).

of responsible governance only when it is embedded in real decision-making, stakeholder engagement, monitoring, and remedy. The final position is therefore a limited but meaningful one. HRDD should neither be dismissed as public-relations rhetoric nor elevated into a complete legal shield. Its proper role is more exacting. It is an evidentiary and normative standard that can either support or undermine a company's position, depending on whether the due diligence process was serious, risk-responsive, and implemented in fact. Once framed in that way, HRDD becomes central to tracing accountability across the contemporary corporate group.

This conclusion should not be misunderstood as a plea for unlimited corporate exposure. Private law still requires careful reasoning about duty, breach, causation, and remoteness, and not every overseas harm can fairly be attributed to a parent company. The stronger claim is narrower. Where corporations organise transnational production, collect risk information across the group, and hold themselves out as managers of human rights risk, the law is justified in examining whether those representations were matched by preventive action. HRDD becomes important precisely because it reveals the quality of that action. It shows whether the company had sight of the danger, whether it possessed leverage, and whether it used that leverage before the damage crystallised. Future research may test these arguments through sector-specific litigation or empirical study, but the doctrinal point is already clear: accountability in business and human rights will remain incomplete so long as due diligence is treated as public relations rather than as a legally relevant measure of responsible corporate conduct.

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