

Corporate Due Diligence in Human Rights and Environmental Protection: Navigating the Regulatory Frameworks

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Abstract

This paper examines the evolution and current challenges of corporate due diligence in human rights and ecological protection. It highlights how conventional corporate legal structures—separate legal personality, limited liability, and director duties—were designed over 200 years ago and are now misaligned with modern global challenges, often prioritising profit over societal and environmental sustainability. The paper traces the development of voluntary and mandatory due diligence frameworks, such as the UN Guiding Principles and recent EU regulations, arguing that meaningful reform requires integrating sustainability and human rights obligations into hard law and corporate governance. It contends that only by embedding mandatory due diligence—encompassing both human rights and ecological sustainability core company law can corporations be held accountable, ensure a level playing field, and effectively contribute to a sustainable future.

Keywords: *Cooperate Due Diligence, Human Rights, Environmental Protection*

Introduction

Corporations today have vast opportunities to operate globally, yet the standards holding them accountable have not kept pace. Complicated corporate frameworks and expansive supply chains enable companies to reduce expenses and increase profits by operating in countries where legal enforcement is lax and human rights safeguards are insufficient (Ribstein, 2006). Astonishingly, the largest corporations in Europe are mostly linked to adverse human rights and its negative

environmental impacts worldwide. Forced labour, once generating approximately \$150 billion annually, has surged to \$236 billion in earnings globally (IPIS, 2014; International Labour Organisation, 2024). Industries such as clothing, food manufacturing, shipping, electronics, and mining are frequently implicated. Multinational corporations have also been responsible for severe environmental violations, from oil spills in Nigeria to destructive sand mining in Uganda (Sanni, 2019).

It is imperative that governments update legislation to ensure companies respect human rights and the environment wherever they operate. Establishing human rights due diligence as a legal requirement is an essential advancement (UN, 2011), particularly considering the United Nations (UN) Human Rights Council's acknowledgment of the right to a clean and healthy environment (UN Human Rights Council, 2023).

This paper aims to analyze the evolution and challenges of corporate due diligence in human rights and environmental protection and to propose legal and regulatory reforms-particularly the integration of mandatory due diligence requirements into company law-to promote greater corporate accountability and sustainability.

Methodology

The analysis adopts a qualitative, doctrinal approach, reviewing the historical development of company law and its intersection with human rights and environmental standards. The paper examines international frameworks such as the UN Guiding Principles on Business and Human Rights. It evaluates both voluntary and mandatory approaches to due diligence, drawing on legal texts, policy documents, and comparative legal analysis to assess the effectiveness of current frameworks and identify gaps.

Discussion

Due Diligence and Human Rights

In general, due diligence involves exercising reasonable care to identify regulatory, reputational, ethical, financial, legal, and operational risks associated with a partner, project, or investment or business (DLR Projektträger, 2024).

The United Nations guiding principles on human rights and business first voiced the importance of human rights, and its due diligence was articulated in 2011(UN, 2011). But it was years later when a few companies started to practice it. The practicing companies were mostly undermined by those companies that did not follow, hence unfair competition. Human rights due diligence was made mandatory by France, becoming one of the first countries which make it mandatory for its largest corporations (French Corporate Duty of Vigilance Law, or "Loi de Vigilance 2017). Furthermore, the due diligence standards were enacted by the European Union while specifically targeting the businesses in minerals with conflict-affected areas (EU, 2017). More demand from the public for responsible business conduct was responded to by these legislations; however, a significant gap was still to be bridged. The reforms needed to be operational from farms and factories in developing countries to department stores and marketplaces in Europe.

Evolution and Character of Company Law

The evolution and nature of company law can be understood through three important considerations. In the first place, the company as it exists today is essentially a legal construct, deliberately fashioned by humans to fulfill particular objectives. Secondly, the core characteristics of the modern corporation started to crystallize toward the end of the eighteenth century, to be more specific, in the late 1700s in the US, while at the start of the 1800s in some states of Europe. This means that the foundational design of the corporation is now over two centuries old. Thirdly, the essential legal framework that was established at that time, and which continues to underpin companies today, is composed of three principal legal characteristics: the existence of a distinct legal personality, the provision relating to limited liability for shareholders, and the imposition of duties on directors to ensure that their decisions serve the best interests of the company (Williston, 1888). It is significant that this model, with only minor modifications, has been adopted in nearly every jurisdiction globally and is widely acknowledged as one of the most successful legal innovations of modern civilization (Delahaye et al., 2009).

Nevertheless, despite their remarkable achievements as well as the advantages they bring to communities, direct and indirect responsibility lies with the companies for substantial harm to people, communities, and the environment in numerous ways (Carroll and Shabana, 2010).

Why, then, are these three factors, along with the historical progression of company law, so important when considering the relationship between companies, human rights, and the environment? The first reason is that the fact that a corporation is a legal entity created two centuries ago inherently means it is subject to reform and adaptation in the future (Thompson, 2017). There is no inherent reason why it cannot be redesigned. Just as a robot designed by humans that begins to operate undesirably can be reprogrammed and modified, so too can the legal structure of a corporation be altered if necessary. A good illustration of this is how the United Kingdom amended its company law to allow a single person to form a company- a trend that was soon followed by countries such as Uganda and Maldives.

The second point is that the corporation's formal design was established over 200 years ago, if we must reiterate be long before the emergence of many of the challenges currently confronting states and the international community. It was not conceived with the complexities of contemporary multinational enterprises, extensive global supply chains, parent-subsidiary relationships across jurisdictions, or modern stock markets in mind, nor the wide-ranging implications these entail (Thompson, 2017).

The third point is the fundamental aspect of the legal structure of the corporation. Separation of directors' duties, limited liability, and legal personality have individually and collectively inflicted a negative role on human rights as well as on the environment (Arnold, 2016). Separating legal personality, for instance, can give a way out to the companies and their directors in a corporate group of the liabilities and violations against human rights, and against the environment. (Petrin and Choudhury, 2018). While this has changed in some jurisdictions, it is still the case in many others. In a similar vein, limited liability protects shareholders from being held accountable for such abuses. Furthermore, the duties imposed on directors often require company managers to make decisions that prioritise the protection of shareholders' investments (Turner, 2021). This threefold liberal structure tends to steer corporate decision-making toward financially profitable outcomes,

which may not always align with the interests of external stakeholders, such as individuals, communities, or the environment (Plesch and Blankenburg, 2008). There are no indications this would not continue to be a challenge even in jurisdictions that have witnessed integration of Environmental, Social and Governance requirements in company law such as EU through a new commendable regime of criminal corporate liability in the European Union's environmental directive and legislation (EU Environmental Crime Directive, 2024; EU Convention on the Protection of the Environment through Criminal Law, 2025; Faure, 2024).

Consequently, the fact that this legal architecture was constructed over two centuries ago inevitably raises questions about its adequacy and effectiveness in addressing the complex global issues of today. It is therefore unsurprising that this late-nineteenth-century legal framework sometimes fails to align with the demands and realities of the modern world in a variety of significant respects.

Historical Foundations and Modern Approaches to Business and Human Rights

The historical development of the corporation is closely linked to current ideas attributed to the corporate sector and corporate social responsibility (human rights). The association occurs due to the international community's response to human rights concerns that lie within the legal framework of the organization (Sjåfjell, 2020). More importantly, limited liability, separate legal personality, and directors' duties strongly and often subtly influence corporate decision-making toward outcomes that focus on commercial success, even if this means human interests and environmental concerns are sometimes sidelined or ignored (Lipton, 2015). This understanding helps explain the context in which human rights due diligence has arisen. It shows why corporations are structurally inclined to prioritize commercial decisions over those based on necessity or a commitment to human rights and environmental protection. It also sheds light on the historical developments that have shaped what we now know as human rights due diligence and the ongoing debate about mandatory human rights due diligence (Sherman, 2021).

Looking back over the past decades, since the United Nations first actively engaged with these issues, we observe the challenges that have arisen due to the power, ubiquity, and seeming inevitability of the corporation's legal structure. Various non-binding or voluntary initiatives or soft law have contributed to progress in this area (UN, 2011). For example, a code of conduct was adapted for multinational corporations by the UN in the early 1970s (E/RES/1987/57). Subsequently, frameworks such as the UN Guiding Principles on Business and Human Rights (UN, 2011), the UN Global Compact, and the OECD Guidelines for Multinational Enterprises (OECD, 2000) have emerged. Today, multiple accountability regimes require companies to report on their human rights protocols, violations, and policies as well as their concerns for the environment. These reports are associated with the Dow Jones Sustainability Index and FTSE 100 indices (Karassin and Perez, 2018).

The historical evolution of corporations and their legal framework remains highly relevant here because each element of the company's legal structure constitutes hard law in virtually all jurisdictions. Separate legal personality is a legal requirement, directors' duties are legally binding, and limited liability is firmly established by law (Carrol, 2008). As a result, any corporate lawyer assessing their firm's responsibilities will recognize and advise that compliance with these hard laws must take precedence.

This recognition is important due to the fact that incremental and gradual measures are preferable to inaction. The landscape of the international community comprises indigenous peoples and vulnerable communities, but it also includes companies, directors, shareholders, and governments. For meaningful progress to occur, a pathway must be charted that all these actors can eventually follow (Dumbuya, 2014). At the same time, it is important to acknowledge the limitations of public international law and, therefore, the significance of frameworks such as the defender of respect and redress and the evolving concept of human rights due diligence. These frameworks provide a practical pathway around which the aforementioned stakeholders can meaningfully engage. It follows logically that the field must be cautious of overambition, which risks disrupting or even derailing legitimate, steady, and progressive improvements (Dumbuya, 2014).

Nevertheless, history and the corporation's legal design teach us that the ultimate goal must be a kind of change that embodies the key features of that early historical evolution (Andrés et al., 2019). In other words, reform must culminate in hard law that is universally present across jurisdictions and fully integrated into corporate law and its operation (Douglass and Anita, 2016). While debates about the best reform strategies can sometimes obscure a bigger picture, history reminds us never to undervalue the tripartite legal structure of the organization and its pros. Our own ability to redesign the organization must not be overlooked as well, just as it was done over two centuries ago when the structure was created and has shaped the company and company law we have inherited today.

The Connection Between Corporate Law and the Obligation to Conduct Due Diligence

At the core of this issue lies the role of corporate law and the responsibilities of the corporate board. Any meaningful reform in this area must explicitly and directly incorporate the duties of the board of the corporation or the risk of repeating the limitations of our initiatives, for example, the so-called Non-Financial Reporting Directive, which lacked clarity on required actions and was not legally binding (OECD, 2014). Consequently, the gap between the board's corporate social accountability (CSA) obligations and the firm's expected outcomes remains unbridged. Despite company law not mandating corporate governance that undermines sustainable futures by exploiting people or damaging the environment, this is precisely the situation currently observed (Commonwealth Climate Law and Initiative, 2021). This phenomenon can be explained by the entrenched societal view of the primacy of the shareholder, which is a shorthand for complicated links between expectations from the financial markets and economic incentives that have become a legal illusion because of its dominance (Craig and Rönnegard, 2016). Many perceive corporations as the property of their shareholders, with the board's primary duty being the maximisation of shareholder returns. To put it bluntly, the board ensures profits override people and planet. Under this paradigm, externalising responsibility for societal and environmental impacts is not considered a board-level concern during decision-making (Palladino, Karlsson, and Roosevelt, 2019).

As long as this social norm remains unchallenged, any emerging norms, standards, or principles advocating for companies to internalise societal and environmental interests will inevitably clash with the dominant shareholder primacy ethos directing board focus (Kinzig, Ehrlich, Alston et al., 2013). The explanation of why most reporting, whether it is corporate social responsibility, sustainability briefs, or non-financial reporting, is given by this disconnect, and it has largely been

transferred to departments dealing in public relations for major corporations (Christensen, Hail, and Hail, 2021).

To bridge this divide, it is essential to embed corporate board responsibilities within binding legislation, demonstrating that sustainability is as critical as financial governance and that the welfare of people and the planet must be regarded with equal seriousness as financial outcomes have been for generations (Christensen, Hail, and Hail, 2021). Corporations cannot be managed solely for financial gain. Achieving this requires robust sustainability regulations and due diligence frameworks that are integral to governance and risk management, both for corporations and society at large. Given the focus on human rights due diligence, it is vital that Given the focus on human rights due diligence, it is essential that this shifts toward sustainability due diligence (Hoffmann, 2022). Protecting human rights and ensuring corporate compliance will have limited effect unless broader sustainability objectives are prioritized, securing social foundations for humanity both now and in the future within planetary boundaries. corporate compliance will have limited effect unless broader sustainability goals are pursued, ensuring social foundations for humanity now and in the future within planetary boundaries (Beate, Tiina, and Sarah, 2020).

These concerns are interconnected; it is neither feasible nor effective to prioritise climate change mitigation first and then address biodiversity, water, and land use, nor to safeguard human rights separately from protecting the fundamental conditions for life. Mandatory sustainability due diligence must become a core component of company law to create a level playing field for businesses contributing to the sustainability transition and to provide legal certainty for all stakeholders both inside and outside the corporation, especially given the current fragmented landscape of sector-specific rules (European Parliament, 2020).

Due diligence obligations, reporting requirements, societal expectations, and various principles collectively create a complex and often confusing environment for corporations attempting to navigate these demands (Sjåfjell, 2021). This complexity discourages companies from performing comprehensive due diligence and maintaining transparency, as such actions might expose them to appearing less favorable compared to competitors who engage in greenwashing, bluewashing, or SDG washing (OECD, 2017). Consequently, sustainability due diligence constitutes a crucial element of the corporate board's responsibility to guarantee that the company creates sustainable value while respecting the planet's ecological boundaries.

Implementation and Enforcement of Corporate Due Diligence Obligations

Corporate groups consist of multiple legally distinct businesses connected through stock ownership, contracts, or informal ties (Dau, Morek, and Yeung, 2021). These include parent companies acting as supply chain leaders, subsidiaries, affiliates, contractors, subcontractors, joint ventures, and other partners. However, under the principle of separate corporate personality, each entity is legally distinct, meaning the corporate group is not considered a single legal entity, although in practice it often functions as one to varying degrees (Cheng-Han, 1999).

Parent or lead companies exert control over affiliates, enabling group-wide strategies and coordinated functioning (Fiechter, Ötoker-Robe, Ilyina et al., 2011). Separate personality is closely linked with limited liability, whereby shareholders are generally liable only up to the value of their

shares (Ireland, 2010). This legal separation allows parent companies to influence and control subsidiaries while limiting their own liability, a feature exploited by multinational enterprises to navigate global economic and regulatory environments (Maher and Andersson, 1999). For example, parent companies can limit liability risks by undercapitalizing overseas affiliates that may be exposed to claims related to human rights or environmental harm, while still benefiting economically from their activities (Faure, 2020).

Victims seeking remedies against parent companies face significant obstacles in proving the parent's responsibility for harm caused by subsidiaries or suppliers (Tocher, 2016; Sanni, 2022). A notable case is *AAA & Others v Unilever PLC and Unilever Tea Kenya Limited* (2018), where 218 Kenyan claimants took a mass tort legal action against Unilever Plc and its subsidiary in Kenya over ethnic violence on a tea plantation. The claimants argued that Unilever PLC was responsible for ensuring proper management at the subsidiary. However, Unilever invoked separate corporate personalities and limited liability to defend itself. The English Court of Appeal ultimately rejected jurisdiction, finding insufficient evidence that Unilever PLC was liable for the subsidiary's actions (*AAA & Others v Unilever PLC and Unilever Tea Kenya Limited*, 2018). The court noted that Unilever's parent-level policies were generic and delegated specifics to subsidiaries, exposing vulnerabilities in protecting employees globally (Jones, 2018).

Legislative duties and remedies can help overcome these barriers. Compulsory human rights and environmental due diligence requires companies to identify and map risks using frameworks like the UN Guiding Principles' saliency approach to pinpoint where the greatest threats exist. This obligation prevents parent companies from distancing themselves from affiliates to avoid liability. Yet, whether due diligence alone suffices to overcome the legal hurdles of separate personality and limited liability remains uncertain. Some jurisdictions have expanded tests for the liability of parent entity by examining the closeness of the parent-subsidiary relationship and the parent's intervention in harmful operations, as seen in *Okpabi and others v Royal Dutch Shell Plc* (2021). This represents progress but confirms that proving close intervention remains a significant challenge for victims (Gibson Dunn, *Okpabi v Shell*, 2021).

Including civil liability in legislation may help claimants surmount these obstacles. Various legislative models are under consideration globally (Smit, 2021). When civil liability is present, the basis for holding parent companies liable often depends on fault—such as failure to design or implement effective due diligence when subsidiaries or partners commit human rights abuses (Wagner et al., 2021; Holly and O'Brien, 2021). Some proposals, like the draft treaty by the OEIGW (2021), introduce a “failure to prevent” offense, requiring proof of a causal link between parent company actions and harm. The treaty distinguishes liability based on control—legal or factual—over the injuring entity (Krajewski, 2021) and whether the parent should have foreseen the risk of violations (European Parliament, 2019).

Certain commentators advocate for a “failure to prevent” model without such constraints, shifting the burden of proof to the parent company once harm is demonstrated, compelling it to prove due care in preventing human rights and environmental harms via its programs (Douglass and Anita, 2016).

Enforcement Mechanisms in Practice

The emerging Corporate Sustainability Due Diligence Directive (CSDDD) exemplifies a multifaceted enforcement approach combining administrative oversight and judicial enforcement through civil liability (Verfassungsblog, 2022; ECOFACT, 2021). Member States must designate supervisory authorities empowered to investigate compliance, request information, conduct inspections, and impose penalties or interim measures to prevent severe harm (Pinsent Masons, 2024; Sedex, 2025). These authorities can act proactively or respond to substantiated concerns from individuals or organizations.

Penalties under such frameworks include fines, corrective orders, exclusion from public procurement, and reputational damage (Sedex, 2025). Civil liability mechanisms allow affected parties to seek compensation for damages caused by failures in due diligence, although limitations exist regarding collective rights and environmental claims without identifiable individual victims (DIHR, 2023; ECOFACT, 2021).

The German Supply Chain Due Diligence Act (LkSG) provides a practical example of enforcement powers, including investigative authority, fines up to €800,000 or 2% of global turnover, and civil liability for damages resulting from non-compliance (Sedex, 2025). This model highlights the potential for robust enforcement but also underscores the complexity companies face navigating fragmented sectoral rules and varying national regimes (European Parliament, 2020; Sjøfjell, 2021).

In summary, while corporate groups benefit from legal separation and limited liability, evolving due diligence laws and enforcement mechanisms strive to hold parent companies accountable for harms caused by subsidiaries and partners. Effective enforcement requires a combination of administrative oversight, civil liability, and clear legislative duties to ensure that corporate due diligence translates into tangible protections for human rights and the environment.

Conclusion

Human rights due diligence is a fundamental process that corporations must undertake to systematically identify, understand, and address their human rights and ecological impacts. This process begins with companies conducting thorough assessments to identify, evaluate, and prioritise risks throughout their operations and supply chains, including issues such as forced labour, suppression of trade unions, and environmental harms like improper hazardous waste disposal. Following risk identification, companies are required to develop and implement effective strategies and systems to mitigate these risks, leveraging their influence over subsidiaries and suppliers to prevent harm. When harm occurs due to a company's failure to take reasonable precautions, it bears the responsibility to provide remediation, ensuring victims have access to effective judicial remedies in the jurisdictions where corporations operate, thereby guaranteeing accountability and justice.

Transparency is also critical; companies must openly report on how they identify, prevent, and mitigate human rights risks. Such reporting demonstrates genuine commitment and enables external scrutiny, fostering trust among stakeholders. The evolving global consensus underscores the urgency of updating the legal framework governing corporate responsibility and accountability.

Mandatory human rights due diligence, supported by meaningful consequences for non-compliance, – is essential for guaranteeing that businesses uphold human rights and safeguard the environment.

Integrating human rights due diligence into the heart of corporate practices, combined with ensuring victims have access to justice, will foster a more responsible and sustainable business environment—one that supports the well-being of both people and the planet. This approach is consistent with the UN Guiding Principles on Business and Human Rights, which stress that human rights due diligence is a continuous and evolving process involving risk identification, integration of findings, tracking effectiveness, and communication with stakeholders, particularly affected communities. Ultimately, human rights due diligence is not merely a compliance exercise but a strategic imperative that fosters sustainable and ethical business conduct in an increasingly complex global environment.

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