

# Conference "The Politics of Supply Chains: Between Regulation, Resistance, and Resilience"

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Re-centering Global South Stakeholders in HREDD Developments: Prospects and Pitfalls?



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### Friedrich-Alexander-Universität Center for Human Rights Erlangen-Nürnberg | CHREN

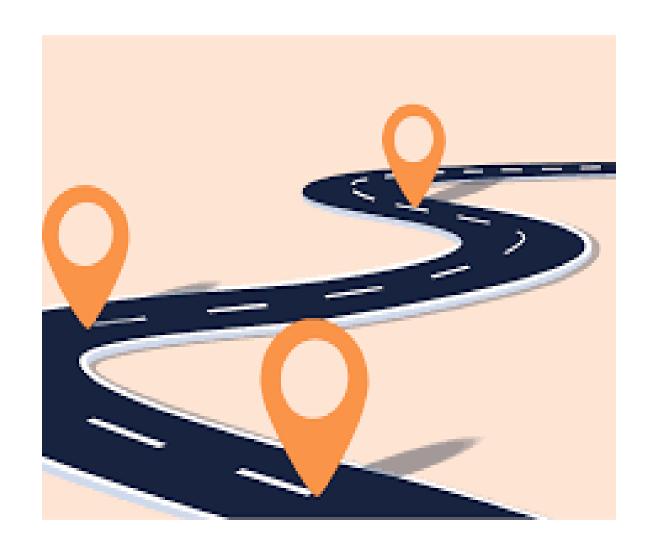
**Presentation Outline** 

Setting the Stage: The Necessity of a Global South Perspective on BHR

The Utility of TWAIL as a Theoretical Framework

Prospects and Pitfalls of Mandatory Human Rights Due Diligence (mHRDD) Laws

Conclusion: Spotlight on Developments Outside Europe





## 1. Setting the Stage: The Necessity of a Global South Perspective on BHR

#### **Setting the Stage**

The Necessity of a Global South Perspective on BHR



- > Regulatory developments in BHR are geared towards finding ways to close the corporate accountability gap.
- ➤ The aim is to compel companies to internalize the human rights and environmental costs of their activities costs which are borne primarily by Global South rightsholders.
- > A Global South lens can turn our attention to:
- i. BHR norm development and law-making processes (whether national, regional or international);
- ii. The design of such laws (and attendant "design-flaws");
- iii. The implementation of such laws (the question of effectiveness of such laws).
- ➤ In all these instances a Global South perspective seeks to center Global South stakeholders in BHR developments.

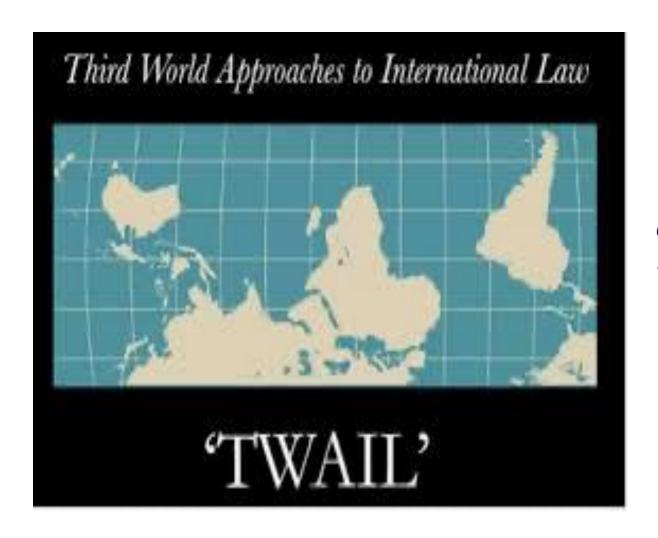


## 2. The Utility of TWAIL as a Theoretical Framework

The Utility of a TWAIL Lens in BHR Research







"The Third World consists of the victims and the powerless in the international economy .... Together we constitute a majority of the world's population and possess the largest part of certain important raw materials, but we have no control and hardly any influence over the manner in which the nations of the world arrange their economic affairs. In international rule-making, we are recipients not participants."

(Julius K. Nyerere ca. 1983).

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The "Third World" in TWAIL

## B.S. Chimni in, "Third World Approaches to International Law: A Manifesto"

Despite the heterogenous nature of the countries that make up the Third World, the term remains fitting to countries in Asia, Africa and Latin America given their common history of "subjection to colonialism, and/or the continuing underdevelopment and marginalization" countenanced by a complicit international law."

## Obiora Okafor in," Newness, Imperialism and International Legal Reform in Our Time: A TWAIL Perspective"

The Third is a flexible concept
that can be used to refer to
groups of states or populations
that self-identify as such,
"coalescing around a historical
and continuing experience of
subordination at the global level
that they feel they share."

## Antony Angie in "Rethinking International Law: A TWAIL Retrospective"

Third World has been extended and reinterpreted to refer not only to the so-called Third World states but also, more intimately, to the struggles and experiences of the most marginalized peoples of the

Third World and, indeed, the First World itself. The term 'Third World' retains a certain power because it suggests 'an alternative "epistemology" or system of knowledge.

The Utility of a TWAIL Lens in BHR Research





A critical scholarly network that challenges the hegemony of dominant narratives of international and transnational law

Critiques the asymmetrical power relationships entrenched in the structure of international law from the perspective of Third World peoples

### **TWAIL**

Is hyper-aware of colonial histories and continuities that continue to shape relationships between the Global North and the Global South

TWAIL deconstructs but also (re)constructs by offering oppositional discourses to Eurocentricity in international law. Resistance and reform are at the heart of the TWAIL project

The Utility of a TWAIL Lens in BHR Research





Concerned about the invisibilization and subordination of Third World Peoples and States through, and as a consequence of, international law

Shines light on the (white) savior complex that is deeply embedded in the human rights enterprise and that facilitates the Savages-Victims-Saviors

Narrative

### **TWAIL**

TWAIL contextualizes the historical (colonial) and continuing complicity of MNCs in large scale human rights and environmental abuses in the Global South

TWAIL offers counter-hegemonic alternatives to contemporary legal forms, practice and scholarship



## 3. Prospects and Pitfalls of Mandatory Human Rights Due Diligence (mHRDD) Laws

#### **What Next?**

TWAIL as a lens to Critique developments in BHR from a Global South Perspective









#### **Developments in mHRDD**

**Prospects and Pitfalls** 



#### HRDD Norm Development and Lawmaking Processes

- Despite the global reach of mHRDD laws these laws have been made unilaterally by European countries such as France (Loi de Vigilance, 2017), Germany (Lieferkettengesetz, 2021), Norway (Transparency in Supply Chain Law, 2021), EU (CSDDD, 2024 + Omnibus)
- mHRDD stands out for its hardening of otherwise soft BHR norms.
- But, who are the drivers of these processes?
- Do Global South stakeholders have a seat at the table?
- If not, what are the consequences of their exclusion from BHR norm development and law-making processes?

#### **Design Flaws of Such Laws**

- Lack of clarity on the nature of due diligence obligations (See the French Loi de Vigilance)
- Inadequate meaningful engagement provisions (See sec 4(4) German LkSG, as well as Article 1 of the Loi de Vigilance, Sec 4(e) Norwegian Transparency in Supply Chain Law; Compare with Article 13 EU CSDDD)
- Due diligence limited to direct suppliers

   (tier one) and extended to indirect suppliers only where there is "substantiated evidence" or "plausible information" of violation (LkSG, sec 9; Omnibus proposal)
- Lack of civil liability mechanisms (in German Law, and in Omnibus proposal)
- Lack of administrative enforcement (French Law)
- Too much discretion granted to companies further entrenching power asymmetries

#### Questions of (In)effectiveness of Such Laws

- Are these able to positively impact lived realities of Global South rightsholders?
- The experience of the French Courts thus far, is telling (very few "legal wins" for rightsholders)
- What is the experience of BAFA in Germany?
- The EU CSDDD is not yet transposed has been severely weakened through the omnibus process (is this simplification or deregulation?)
- mHRDD laws delocalize justice without corresponding efforts to reduce barriers faced by rightsholders e.g. financial barriers, legal and procedural barriers such as the burden of proof, or standing. See, Art. 29 EU CSDDD (now threatened by omnibus)

#### **Developments in mHRDD**

Focus on Meaningful Engagement



#### In Theory

- Meaningful engagement is a cross-cutting issue in the UNGPs as well as in the OECD Guidelines. See e.g. principle 18 UNGPs and Guideline 15 OECD Guidelines
- The LkSG's meaningful engagement provision was rather weak. See section 4(4), "the enterprise must give due consideration..."
- The EU CSDDD's Article 13 is much more robust. Article 13(3) goes as far as to identify the stages of the due diligence process where stakeholders must be consulted, inter alia: when gathering information on actual or potential adverse impacts; when developing corrective action plans; in termination decisions; when adopting measures to remediate adverse impacts etc. Article 13 (5) requires that companies address barriers to engagement & protect participants from retaliation or retribution. (Omnibus proposes to reduce the scope of meaningful engagement)
- Omnibus also threatens to curtail the definition of stakeholders in Article 3 (n) of the CSDDD

#### In Reality

- What is meaningful engagement? Is it consultation? Is it collaborative implementation? Or everything in between?
- Are companies meaningfully engaging with "external" stakeholders (such as global south rightsholders) in reality?
- What happens if the company's meaningful engagement processes are mere window dressing? Do Global South stakeholders have any avenues for redress in this regard?



## 4. Conclusion: Spotlight on Developments Outside Europe

#### **Conclusion**

Spotlight on mHRDD Developments in Asia







South Korea: On **June 13, 2025,** South Korean Representative Jung Tae-Ho reintroduced the proposed "Bill for the Protection of Human Rights and the Environment for Sustainable Business Management



Thailand: In July 2025, the Ministry of Justice of Thailand (MOJ) prepared the draft Act on the Promotion of Business C.onduct ("HREDD Bill")



Indonesia: Plans to introduce mHRDD by 2028,

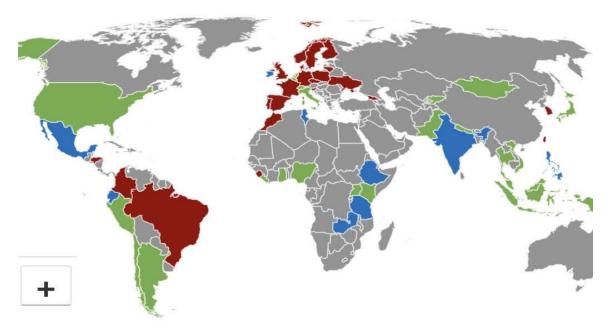
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#### Conclusion

Spotlight on Developments in Africa



- National Action Plans on
- Business and Human Rights



- 1. Kenya 2020
- 2. Uganda 2021
- 3. Nigeria 2024
- 4. Liberia 2024
- 5. Ghana 2025

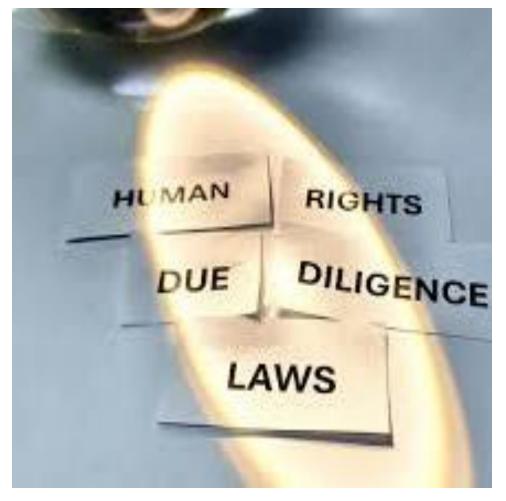
### \*\*\* The African Union also has a number of BHR related developments\*\*\*

Resolution on Business and Human Rights in Africa - ACHPR/Res.550 (LXXIV) adopted by the African Commission in 2023 calls on the AU to prepare the draft of an African Regional Legally Binding Instrument to Regulate the Activities of Transnational Corporations and other Business Enterprises

#### Conclusion

The Future of mHRDD





- ➤ It is clear that regardless of recent troubling developments in Europe HRDD is here to stay!
- The question is therefore how to effectively implement these laws for the benefit of Global South rightsholders.
- > However:

mHRDD (on its own) is not a silver bullet capable of altering the status quo of today's asymmetrical global order that has allowed TNCs to externalize the human rights and environmental costs of their activities to the detriment of Global South peoples, communities and individuals.



## Vielen Dank für Ihre Aufmerksamkeit!

