

Mandatory Human Rights Due Diligence Laws and Labour Governance in Africa

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Outline

Mandatory due diligence laws: a component of transnational labour law

Implications of mandatory due diligence laws to workers' rights in Africa

Perceptions of the HRDD Laws: The German Due Diligence Act

Structural challenges

Concluding thoughts

Mandatory due diligence laws: a component of transnational labour law

- Rise of supply chains led to governance deficits in the global economy, including labour protection—Decent work deficits.
- Traditional international labour law proved insufficient.
- Public-private governance through soft and hard forms of regulation emerged: OECD guidelines, ILO MNE Declaration, International Framework Agreements, multi-stakeholder initiatives, private transnational labour governance.
- Absence of rigorous enforcement of standards in the context of public and private governance.
- The emergence of human rights due diligence (risk identification assessment, prioritization and mitigation): From Rights to Risks
- Critique-HRDD takes an approach on risk management and not labour Law approach.
- The implications of the emergence of HRDD as an instrument of transnational labour law.
- HRDD as a regulatory regime that is important in regulating working conditions in the supply chains.



Mandatory Due Diligence Laws – Implications for Workers Rights in Africa

Example of the German Supply Chain Due Diligence Act

5

OVERVIEW OF THE GERMAN SUPPLY CHAIN DUE DILIGENCE ACT

- Violations of human and environmental destruction are still a reality in value chains.
- The Act is an expression of a paradigm shift that the international trade union movement and actors have long worked towards the UN Guiding Principles on Business and Human Rights
- The aim of the law is to prevent risks from happening.
- The 1000 threshold of companies to be covered is high and limits the scope of the law.
- It is an important component to transnational labour law.
- It lacks civil liability in the German law.
- Non-profit enterprises are also covered, eg. cooperatives and social and solidarity enterprises.
- Temporary agency workers must be taken into account when calculating the number of employees – More than 6 months of work
- Companies have a duty to make an effort but they do not have to succeed.

HUMAN RISKS TO BE CONSIDERED (SEC 2 PARA.2 LKSG)

- Minimum age and worst forms of child labour
- Forced labour and all forms of slavery
- Occupational health and safety
- Freedom of Association – Individual, collective, workplace employee representation
- Equal treatment
- Living wage
- Causing Harmful environmental changes affecting people
- Unlawful taking of Land, forests, waters
- Use of security forces with excessive use of force

NOTE:



Reasonable wage section–Withholding of an appropriate wage is a human rights risk. According to the minimum wage according to the applicable law. Is Minimum wage already appropriate?



According to the purpose of the law , a broad definition of “employees” is to be applied. According to the explanatory memorandum, this also includes “self-employed persons who supply a company informally employed persons” e.g. undeclared workers



Domestic trade unions and workers’ representatives have no mandate for workers abroad and therefore cannot represent their interests –Consultations to legitimate groups/ reps of those directly affected.



Consultations can be done with GUFs

PERCEPTIONS OF THE LAW

- Elitist
- No broader Impact
- The relationship between external Law and national Law
- Sovereignty
- Reporting mechanisms not clear
- Potential benefits



VIOLATIONS

***“...HERI NUSU SHARI KULIKO SHARI KAMILI”...
(BETTER A LITTLE EVIL THAN A DISASTER)
WORKERS...”JUST WANT A MEAL AT THE END OF THE DAY”..***



Unpaid Overtime



Occupational Health and Safety



Environmental Rights Violations



Lower Wages for Workers in Casual Employment



More duties for Workers in Casual Employment

OBSTACLES FOR IMPLEMENTATION

Litigation cost

Inadequate labour inspectors

Institutional corruption making detection of violations difficult

Lack of awareness of SCDDA

Number of threshold may be misused by companies-Induce further casualization and Outsourcing

High Unemployment-Trade Off between reporting violations and termination

Lack of capacity (legal, financial and technical)

OPPORTUNITIES FOR TRADE UNIONS

Employee representative on the supervisory board

The law through explanatory memorandum refers to consultations with workers' reps

Enforcement of rights-Trade Unions can be authorised to take legal action in Germany

They can bring in Complaints and also on non-compliance before the Federal Office of Economics and Export Control.

Establishment of due diligence committee in CBAs

IFA-complement corporate measures to implement the law

Concluding thoughts



Does stronger legalization of HRDD strengthen transnational Labour governance?



HRDD should broaden spaces for workers and labour and human rights activists to challenge and seek to reshape state and corporate approaches to regulating working conditions in global supply chains



Trade Unions are important actors in achieving the goals of HRDD. GUF's play crucial intermediaries between MNEs and local trade unions.



Role of transnational company networks can be used as a direct instrument to build solidarity and union power along the supply chain



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