Proceedings of the 4th International Conference on International Law and Legal Policy
DOI: 10.54254/2753-7048/2025.LD25548

Structural Dilemmas in Labor Rights Protection and the Colonial Paradox of Global Governance

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Abstract: This article studies the systematic breakdown of labour rights protection in developing countries under globalization and unveils the mechanisms behind this breakdown by examining three structural dilemmas. It finds that national regulatory capacity is locked into a vicious circle of scarce resources and ineffective enforcement; legal systems institutionalise exploitation via biased rules; and capital in Global Value Chains (GVCs) undermines host-state sovereignty through pricing power, regulatory races to the bottom, and misallocation of resources. These three interlocking mechanisms cause the breakdown of labour rights. In reaction, the Human Rights Due Diligence (HRDD) mechanism seeks to overcome these dilemmas through parallel governance, transnational litigation, and piercing corporate liability. Yet it succumbs to a neocolonial paradox. Northern-dominated standard-setting persists alongside compensation cycles rooted in colonial history and geographically selective remedies. These practices collectively perpetuate global power asymmetries. The conclusion contends that although HRDD improves governance effectiveness to some extent, it does not break free from colonial logic. Global labour rights protection must transcend the current capital-centred paradigm.

Keywords: Global Value Chains, Human Rights Due Diligence, Neocolonialism

1. Introduction

The spread of global value chains during deepening globalization has promoted economic interdependence while radically transforming global labor governance. Systemic failures in securing labor rights within developing countries have become severe global problems. A tripartite set of structural dilemmas, collapsing regulatory regimes, institutionalized legal discrimination, and capital-driven sovereignty erosion has rendered labor protection expendable in the race for development. This crisis impacts the basic human dignity and survival rights of millions and challenges the foundational justice and sustainability of global governance, problems that defy state-centric solutions.

This article analyzes the emergent human rights due diligence mechanism. It systematically maps how HRDD aims to break the triple bind through three channels parallel governance involving sovereignty give-ups, transnational litigation leveraging colonial legacies, and piercing corporate liability to re-anchor capital accountability. Simultaneously, it exposes the neocolonial paradox within HRDD. While improving localized governance efficacy, HRDD reproduces and entrenches

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global power asymmetries via Northern-led standard export, compensation cycles built on colonial legacies, and geographically targeted redress.

The study employs a tripartite analytical approach. First, empirical evidence from cross-national comparisons involving countries like Vietnam, Bangladesh, Saudi Arabia, and the US, using indicators such as inspector-to-worker ratios, rights violation rates, and fine collection rates, demonstrates the concrete forms and coupling mechanisms of state regulatory failure, legalized exploitation, and GVC capital pressure. Second, key cases, including the Bangladesh Accord on Fire and Building Safety, the EU Corporate Sustainability Due Diligence Directive, and French Duty of Vigilance Law cases like Sherpa v. Groupe SEB and Doe v. Walmart, alongside legislative texts, decode HRDD's inner logic. This reveals its three-dimensional reconstruction hardening obligations, judicializing rights, and piercing liability. Third, a critical evaluation uncovers the colonial dilemmas underpinning HRDD's effectiveness gains, explaining its structural dynamics and inherent limitations in deconstructing labor rights protection. This provides both a theoretical critique and a practical orientation for seeking truly decolonial pathways in global labor governance.

2. The deep roots of labor rights failure: the interlocking triple structural dilemma

The systemic collapse of labor rights protection in host states stems not from accidental failure but from the deep coupling of three factors: state regulatory capacity collapse, institutionalized discrimination within legal systems, and GVC capital pressure. Path dependency locks these dilemmas into a self-reinforcing cycle, creating a governance deadlock [1].

2.1. The vicious cycle of scarce regulatory resources and enforcement inefficiency

The disintegration of labour regulation in developing countries starts with the structural deprivation of resources. In Vietnam, the labour inspector to worker ratio is 1:35,000, less than a third of international benchmarks [2]. This scarcity does not result from a lack of money, but from developmentalist ideology, which consistently undervalues regulatory functions. Governments see labour inspection as an environmental cost rather than an investment in rights protection and deliberately slash their budget and personnel.

Resource scarcity necessitates passive regulatory contraction. Inspectors move from proactive inspections to a dependence on corporate self-reporting. In Bangladesh's garment sector, brand snap audits drive systematic factory fraud 37% of factories forge wage records to hide wage theft, and understaffed inspectors are unable to verify [3]. This illusory self-regulation offers institutional cover to violations. With costs of violation close to zero, infringement spreads exponentially. Pakistani safety data indicates the rate of missing protective equipment increased from 42% in 2018 to 67% in 2023, with fine collection rates falling by 28% [4].

Ultimately, the regulatory regime gets locked into a vicious cycle of self-destruction. First, resource scarcity compels selective enforcement, which creates enforcement havens. Second, when violation costs fall, infringement becomes widespread and legal deterrence is eroded. Third, as credibility collapses, workers stop making complaints. For example, in Cambodia, complaint rates amongst garment workers fell by 19%. This further undermines the legitimacy of the regulatory regime. The cycle begins again, with governments citing declining complaints to justify cutting inspection budgets even further, exacerbating resource scarcity. Somewhere within this cycle, the state regulator has been transformed from a protector of rights into an instrument for legitimising corporate compliance, a hallmark of fundamental alienation.

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2.2. Institutionalized exploitation through discriminatory legal design

Legal systems legitimize and normalize the oppression of vulnerable groups through sophisticated rule design. The core logic of this institutional discrimination lies in creating legally impaired subjects, stripping them of full legal capacity [5].

2.2.1. Systemic dependence of migrant workers

The Saudi Labor Law (Art. 39) allows employers to legally confiscate the passports of migrant workers who, together with the visa-sponsorship system (kafala), are under the control of their employers' freedom. A survey conducted in 2023 showed that 43% of the migrant workers in the Gulf had their passports confiscated [6]. Obstacles to redress lie not only in the cumbersome judicial procedures but also in Anti-Vagrancy Laws, which criminalize passportless individuals as illegal residents and subject them to arrest, making the law an instrument of oppression.

2.2.2. The statutory exclusion of agricultural workers

In the US, the Fair Labor Standards Act (FLSA) 213(b)(12) exempts farm owners from paying overtime wages [7]. In twenty-six states, seasonal farmworkers are also excluded from workers' compensation. This policy decision transforms economic costs into physical exhaustion: Florida's sugarcane workers toil for ten hours per day in temperatures up to 45 degrees Celsius, but they cannot sue for heatstroke because they are statutorily excluded [8].

2.2.3. Legal abandonment of refugees

Thailand's Alien Employment Act (B.E. 2551) prohibits refugees from obtaining work permits, forcing them into the informal economy. When Myanmar refugees work in Bangkok seafood processing plants, employers threaten "reporting for deportation" to withhold wages [9]. Domestic law, by denying legal status, creates an institutional breeding ground for exploitation.

2.2.4. Structural violence through law

Such legal devices, through asymmetrical rights allocation, granting work rights while denying social security rights, provide institutional backing for exploitative relationships, revealing structural violence beneath the discourse of the rule of law.

2.3. GVC capital power and the systemic erosion of regulatory sovereignty

Multinational corporations (MNCs), leveraging buyer power within GVCs, reshape host-state regulatory logic, precipitating a crisis of substantive sovereignty transfer to capital. This power erosion operates through three reinforcing mechanisms.

First, through Oppressive Pricing Power, where brand control of end profits creates extreme cost compression down the chain. Lead firms capture 86% of end profits in electronics , putting pressure on suppliers to shift costs onto labour [10]. Apple supplier Pegatron demanded average monthly overtime of 140 hours, well above China's legal 36-hour limit, with liability avoided via carefully crafted voluntary overtime declarations. This demonstrates how GVC pricing power operates as a de facto instruction for systematic rights violations.

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Second, via Institutionalized race to the bottom, where capital mobility induces regulatory competition. Cambodia, to keep important clients such as H&M, postponed the minimum wage revision for 18 months and introduced a pre-approval system for union registration in Export Processing Zones [11]. It rejected 60% of applications [12]. This policy option reveals the state's self-paradox, while labour protection is proclaimed in legislation, its implementation works actively to dismantle regulatory teeth to appease capital.

Third, by the Strategic misallocation of regulatory resources under the pressure of capital. In Bangladesh, 80% of inspectors were deployed in the garment export sector to satisfy the Corporate Sustainability Due Diligence Directive (EU CSDDD) audit requirements [13]. The coverage for agricultural safety inspection dropped below 7%; the disabled tea farmers there were poisoned by pesticides with no remedy. Such allocation represents neither sovereign rational choice nor passive submission to the regulatory preferences of transnational capital.

GVCs therefore function as channels of capital power, forcing host states to deregulate labour rights protection in the race for development, causing the real death of regulatory sovereignty under its formal existence. Global capital mobility is the catalyst for the disintegration of regulatory sovereignty when states compete for attracting Foreign Direct Investment by giving up regulatory autonomy, labour rights become the institutional victim of globalization.

3. HRDDs governance pathways addressing the structural dilemmas

The HRDD mechanism attempts to deconstruct the triple dilemma through three interwoven pathways parallel governance involving sovereignty concession, transnational litigation leveraging colonial legacy, and piercing liability aimed at re-anchoring capital. These paths reveal both institutional innovation and deep-seated global governance paradoxes.

3.1. Parallel governance pathways functional substitution and legitimacy crisis

When state regulation collapses due to resource scarcity, evident in Vietnam's one inspector per thirty-five thousand workers ratio, HRDD fosters private-power-led parallel governance systems to fill the regulatory vacuum. The evolution of the 2013 Bangladesh Accord on Fire and Building Safety exemplifies its complex tensions.

Functional effectiveness emerged through the market clout of signatory brands. Their zero tolerance for non-compliance provision mandating order termination after thirty days of non-remediation compelled sixteen hundred factories to complete structural and fire safety upgrades. The Accord's personnel technical team conducted thirty-eight hundred inspections annually [14]. This sharply contrasted with the Bangladeshi government's burden of eighty-four factories per inspector and its actual inspection rate below eight percent, revealing systemic state failure [15].

Normative sovereignty became contested when Bangladesh Garment Manufacturers and Exporters Association (BGMEA) sued the Accord for breaching regulatory sovereignty. The Supreme Court in BGMEA versus Accord Foundation 2021 ruled on its constitutionality under Article 32 concerning the right to life. The judgment stated that where the state abdicates its primordial protective obligation, the right of the citizen to self-preservation may reach out for transnational cooperation, paragraph 27. This led to embedding Accord standards into the Factory Safety Act 2021, Article 5, representing the transformation of private norms into public law.

The resulting paradox reveals a fatal flaw. This retreat for progress model sees the state trade key public powers like fire approval and accident investigation to a capital consortium in exchange for government effectiveness. This endows brands such as Zara with quasi-administrative enforcement

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power. Cutler correctly identifies this as sovereign self-colonisation under neoliberalism, where short-term gains obscure capital's permanent transformation of the public legal order [16].

3.2. Transnational litigation: re-subjectification of rights and the colonial compensation cycle

Confronting legal systems exclusion of marginalized groups including Saudi passport confiscation and US farmworker exemptions, HRDD constructs transnational judicial pathways yet becomes entangled in colonial legacies.

Extraterritoriality and substantive justice operate through mechanisms like the EU CSDDD granting extraterritorial jurisdiction based on value chain control per Article 3. This makes EU companies accountable for supply chain violations. Should Carrefour purchase cocoa from Côte dIvoire failing to meet the Directives Article 22 requirement of 5 annual child labour reduction, it must pay 15 of end profits as compensation [17]. This directly overrules Côte dIvoires lenient Child Labour Law permitting light work from age 12 subjecting domestically legalised exploitation to transnational judicial review.

A procedural revolution enhancing victim agency emerges in Frances Duty of Vigilance Law. Its 2024 amendment Article L225-102-5 enabled direct standing as demonstrated in Sherpa v. Groupe SEB. Burmese fishermen barred from suing their Thai employer directly sued the French buyer in Paris. The court imposed a reversed burden of proof requiring the company to demonstrate it had not purchased forced labour products Judgment para 18. This transforms labour from legal object to judicial subject materialising Frasers trans-scalar recognition of justice [18].

Belying this surface is a colonial dynamic. When Ugandan farmers received 5.2 million in the TotalEnergies case, the compensation fund derived from Totals super-profits 42% profit margin from extracting African oil profits grounded in resource extraction and environmental sacrifice zones in the Niger Delta. Sankaran excoriates this as colonial economy self-laundering: Europe extracts Africas resources at predatory prices, and allocates a portion to compensate for the resultant harm, thus sustaining the colonial relationship [19]. Transnational litigation, whilst breaking down legal barriers, entrenches global economic hierarchies.

3.3. Piercing liability rules rewriting capitals calculus and geographies of justice

To counter the oppressive logic of global value chains exemplified by Walmart's cost compression practices, piercing liability focuses on capital's substantive control over labor conditions while revealing stark North-South limitations.

3.3.1. Substantial control doctrine reshaping accountability

The European Court of Justice in Case C-62420 established the decisive influence test. When a brand specifies production parameters, such as Zara requiring eighteen minutes of sewing time per shirt in Bangladesh, this constitutes direct control over working conditions paragraph 89. Similarly, the US National Labor Relations Board's 2023 rule defines joint employers as entities exercising indirect control over working conditions [20]. In Doe versus Walmart, the Ninth Circuit ordered Walmart to pay seventeen million US dollars for wage theft in Honduras caused by its requirement for thirty percent cost reductions from suppliers, Ninth Circuit 2024.

DOI: 10.54254/2753-7048/2025.LD25548

3.3.2. Corporate governance revolution

The EU Corporate Sustainability Due Diligence Directive Article 25 integrates supply chain human rights into directors' fiduciary duties. Sweden's Financial Supervisory Authority fined H&M directors two hundred percent of their salary, totaling two point one million euros, signaling a paradigm shift from shareholder primacy to victim-centric governance [21].

3.3.3. Rewriting capitals calculus

The core effect fundamentally alters capital's pricing logic. When the H&M penalty of four point five million euros quintupled its compliance spending in Cambodia, nine hundred thousand US dollars, exploitative supply chains transformed from rational choice to financial disaster. This undermines the economic incentive for the race to the bottom [22].

3.3.4. Geographic fault lines in justice

This evolution reveals brutal limitations. The US Supreme Court dismissed the Doe versus Nestlé 2021 case involving Malian child labour, thereby excluding African workers from remedy systems. Gereffi and Mayer contend that piercing liability functions as moral ornamentation for core states. Western firms face accountability for violations in strategic chains like Latin American produce or Asian garments, yet remain exempt from abuses in African minerals or Middle Eastern oil supply chains. This exposes HRDDs global justice as a selective conscience-soothing [23].

4. HRDD's efficacy and colonial dilemmas: triple restructuring

HRDD aims to transcend soft law by restructuring the legal framework through hardening obligations, judicializing rights, and piercing liability [16]. While this self-reinforcing loop enhances enforceability, it remains trapped within the global power structures' colonial logic.

4.1. Hardening obligations: from procedural compliance to colonial standard export

The EU CSDDD breaks soft law conventions with its quantified outcome obligations and director liability [17]. Its compromises reflect institutional violence updated for the times. In order to gain German approval, the EU made the CSDDD applicable only to companies with more than 1,000 employees and a turnover above 450 million, a significant increase from the initial draft's threshold of 500 employees and 150 million turnover, which would have included 11,000 instead of 5,500 companies [18]. This adaptation is an example of neocolonial resilience: small capital is exempted under the guise of feasibility, whilst developing countries small scale operations such as family tin mines in Myanmar must bear the same costs of compliance as larger companies, giving up their locally adapted regulations and purchasing expensive European machinery [24]. This one-way traffic in law, where Southern states must pay the costs of transition without contesting the standards set by Northern states, is the current form of the civilising mission of old.

4.2. Judicializing rights: efficiency gains and the colonial compensation paradox

France's Duty of Vigilance Law creates efficient judicial relief via direct standing and a compensation fund 0.5% annual revenue yet harbors colonial capital cycles beneath procedural fairness [25].

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The colonial foundations of "efficiency" were exposed in the Citron deforestation case. Its swift 3.2-million-euro award achieved within 14 months relied directly on colonial legacies. Compensation funds stem from super-profits. For example, Total achieved a 42% profit margin. These super-profits are derived from resource extraction. The resource extraction occurs in sacrifice zones. The Niger Delta is one such sacrifice zone. The legal basis for this rests on remnants of the French Colonial Constitution's "universal interest representation". This concept was originally used to suppress colonial resistance. Now, this concept enables extraterritorial jurisdiction. Furthermore, an evidentiary advantage existed because key evidence came from colonial-era French military maps historically inaccessible to local communities.

This creates a "Plunder-Compensation-Replunder" cycle where compensation buys social license for continued exploitation, such as Total expanding pipelines in Uganda. Courtroom "justice performances" effectively transform colonial violence into moral indulgences.

Moreover, racialized double standards are starkly exposed by differential treatment. While Congolese farmers' oil pollution case against Total was dismissed in 2024 for "insufficient evidence," Citron's Brazilian deforestation case received swift remedy. This reveals a geopolitical judicial priority where Southern groups only enter the "human community" when their violations threaten European biodiversity consensus.

4.3. Piercing liability: capital re-anchoring and geographies of justice

The ECJ's decisive influence test and the US joint employer rule targeting capital's substantive operational control represent a Copernican shift from formal legal separation to factual economic domination [10]. This transforms the traditional corporate law tenet of limited liability: where brands intensely mediate labour processes via exacting production parameters, their authority extends beyond contract into the de facto controller of working conditions. Legal liability, therefore, swings from legal ownership to the substance of economic power, laying bare capital's naked domination over life behind the corporate veil.

When Walmart increased prices by 12% after paying $17 million to settle in Honduras, this seemingly self-disciplined behaviour of capital conceals a bitter redistribution of power [26]. The fine represented 3.2% of Walmart's yearly purchases in Honduras, well above its average margin in the supply chain there 1.8%, compelling capital to reassess the benefits of transgressions over compliance. Although locally interrupting the race to the bottom, this change in pricing reveals a more profound violence: the costs of human rights violations are shifted to the global consumer through higher prices. Blood and sweat of workers in the South propel the protection of rights, while consumers in the North complete their moral redemption through invoices for shopping, a novel cycle of exploitation.

The US Supreme Court's rejection of the Malian child labour case Doe v. Nestle 49 brutally deconstructs the universal pretense of piercing liability. By characterising African mineral supply chains as historical legacies instead of current violations, the Court has imposed an economic partition logic grounded in geopolitics: Asian manufacturing, as reformable strategic supply chains, is subject to joint-employer rules, while African minerals, as untouchable colonial legacy supply chains, are exempt. This double standard instrumentalises human rights: compensation for Asian factories is an investment in chain restructuring, whereas avoidance for African mines maintains resource dependency. Piercing liability, therefore, serves as a judicial cover for neocolonialism, entrenching the racialised division of labour in the GVC under the guise of human rights protection.

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5. Conclusion

This article demonstrates that the systemic breakdown of labour rights protection originates in three entrenched elements. The collapse loop of state regulatory capacity detailed in section 2.1, the institutionalisation of exploitation through legal systems, examined in section 2.2, and the erosion of regulatory sovereignty by global value chain capital analyzed in section 2.3. The current HRDD mechanism partially addresses these structural dilemmas in several ways. First, it promotes parallel governance through functional substitution and sovereignty concessions, as demonstrated by the Bangladesh Accord. Second, it facilitates transnational litigation that enables the re-subjectification of rights, exemplified by the EU Directive. Third, it introduces piercing liability rules that fundamentally rewrite capital's calculus, as illustrated by the Walmart case. However, despite these advancements, the mechanism ultimately succumbs to a Northern-dominated neocolonial paradox.

The hardening of obligations becomes a one-way export of colonial standards, evidenced by Myanmar mines compelled to comply with European norms such as European technical. Judicialisation of rights depends on colonial capital compensation cycles, demonstrated when TotalEnergies paid reparations using African super-profits. Piercing liability reveals geographically selective justice highlighted by the US Supreme Court dismissing the Malian child labour case while entertaining Latin American claims. Ultimately, beneath short-term efficacy benefits, HRDD perpetuates global power asymmetries.

These findings carry dual significance for global labor governance theory. First, they deconstruct the HRDD neutrality thesis, exposing it as a modernization guise for capital-centric governance. Second, they establish legal foundations for Southern resistance against standard hegemony, such as ASEAN collective action challenging EU due diligence thresholds, while supporting South-South judicial cooperation through litigation alliances for regional supply chains. Future research must prioritize decolonial governance pathways.

One normative path advocates multilateral responsibility allocation centered on the ILO to replace Northern unilateralism. Another operational approach develops worker-empowered blockchain traceability systems for supply chains, leveraging technological democratization to counter capital control.

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