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Research on Transnational Corporate HRDD Dispute Resolution Mechanisms from a Power Reconfiguration Perspective—Institutional Design Based on Mandatory Equal Negotiation and Third-Party Supervision Introduction

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Abstract: In the context of globalization, multinational corporations significantly impact human rights, with violations increasingly scrutinized, especially in developing countries. These issues stem from power imbalances, where corporations exploit economic and legal advantages to evade responsibility. The current Human Rights Due Diligence (HRDD) framework attempts to address these through negotiation clauses but lacks mandatory enforcement mechanisms, leading to selective compliance and inadequate remedies for victims. This study addresses the core issue of overcoming "pseudo-negotiation" caused by resource inequality by introducing mandatory negotiation requirements. It explores mechanism designs to achieve substantive equality, ensuring victims receive fair treatment and effective compensation. This approach fills a research gap in HRDD implementation and shifts dispute resolution from "compliance checks" to "rights remedies." The study analyzes the deficiencies of the existing legal framework, using comparative studies, case analysis, and institutional design to propose an innovative mandatory negotiation mechanism. The aim is to provide actionable legal advice for multinational corporations' HRDD, promoting global human rights protection and offering theoretical and practical guidance for policymakers to enhance the legal framework.

Keywords: HRDD, Multinational Corporations, Power Imbalances, Dispute Resolution Mechanisms

1. Introduction

In the global value chain, multinational corporations systematically shift human rights responsibilities through jurisdictional arbitrage and supply chain stratification, leading to a structural void in redress for victims. For example, in the garment industry, brand companies control the core profits but transfer legal liabilities such as workers' compensation to financially weaker end suppliers. More seriously, the judicial system, through the principle of privity of contract, transforms economic advantages into de facto judicial immunity, causing the "protect-respect-remedy"

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framework advocated by the UN Guiding Principles on Business and Human Rights to fail continuously in developing countries.

Current HRDD legislation attempts to resolve this dilemma through mandatory negotiation clauses but faces three institutional deficiencies: firstly, the issue of agenda exclusivity, where the shareholder primacy principle in corporate law marginalizes human rights issues to Corporate Social Responsibility (CSR) projects, such as Broken Hill Proprietary Billiton Ltd. systematically excluding cultural rights protection in negotiations with Australian Indigenous peoples. Secondly, the cost-shifting trap, where although Section 12 of Germany's Supply Chain Act requires the establishment of complaint mechanisms, it allows companies to shift travel and legal consultation costs onto victims [1]. Lastly, the oversight mechanism is hollow, as the Europe Corporate Sustainability Due Diligence Directive (EU CSDDD) Article 10 requires disclosure of high-risk suppliers but does not grant victims access to data, creating a structural contradiction of "publicly available but inaccessible" [2]. Although existing research has revealed these phenomena, it has not yet proposed a systematic balancing solution that integrates legal enforcement and technological empowerment, which is one of the research gaps.

This paper innovatively proposes the "Three Pillars Model for Power Rebalancing," which achieves substantive equal negotiation through institutional reconstruction. First, a mandatory dual-track system is initiated, drawing on the tiered penalties of France's Duty of Vigilance Law Article 15, authorizing host country agencies to order parent companies to engage in cross-border negotiations when more than five victims jointly declare or Non-Governmental Organizations (NGOs) report on-site. Second, institutionalizing agenda co-decision rights, granting victims more than 50% of agenda nomination rights to break through unilateral corporate decision rights, and build a dynamic adjustment mechanism to ensure core demands are not filtered out. Lastly, a reverse compensation fund, with a pre-funded pool by companies to cover participation costs, complemented by encrypted voting and blockchain record-keeping technologies to prevent retaliation.

The core breakthrough of this study lies in deconstructing the fundamental conflict between "shareholder primacy" and HRDD human rights objectives, promoting corporate governance from unilateral dominance to stakeholder co-governance through the three-pillar framework, providing an institutional interface for cross-border enforcement and cultural adaptability challenges, and filling gaps in current research in related fields.

2. Barriers to implementation of HRDD dispute resolution mechanism

2.1. Structural manifestations of power asymmetry

In examining the structural manifestations of power asymmetry within transnational enterprises, it becomes evident that the intricate interplay between legal frameworks, supply chain dynamics, and information control mechanisms systematically consolidates corporate dominance. This section delves into how these elements collectively fortify a corporate power monopoly, beginning with the legal institutionalization that underpins and perpetuates these imbalances.

2.1.1. Legal institutionalization of corporate power monopoly

In the current transnational governance framework, companies systematically evade responsibility through jurisdictional arbitrage. The core strategy is to take advantage of the separation of the legal jurisdictions of the parent company's place of registration and the place where the infringement

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occurred, and invoke domestic laws such as the Foreign Sovereign Immunities Act to block cross-border litigation. A typical example is the Chevron v. Ecuador case. Although the country ordered to pay $9.5 billion in compensation in 2011, the company have overturned this decision through the Permanent Court of Arbitration in The Hague, citing the Bilateral Investment Treaty referred to in PCA Case No.2009-23 [3]. This legal framework essentially places the principle of private law autonomy of corporate governance above the public law obligation of protection, creating a "responsibility vacuum zone."

2.1.2. Exploitative stratification of global supply chains

In restructuring production relations, Multinational Corporations (MNCs) maintain core pricing and brand control with de-owned supply chain structures, but relinquish legal responsibility to end-users in an orderly manner. This is done through a hierarchical arrangement: brand owners control price and design; first-tier original equipment manufacturers receive orders; second-tier subcontractors disperse operational risks; and family workshops finish the work. Brand owners capture the highest profit, whereas end workers earn very low wages.

Global value chains have two striking features: mismatch of perceived and actual bearers of responsibility, and jurisdictional distance between them. Upstream brands in Bangladesh's Rana Plaza tragedy captured public anger, but responsibility lay first with local suppliers [4]. In law, MNCs use the doctrine of privity in the law of contract to disclaim employer-worker relations with end workers and thereby avoid tort liability. This structural arrangement converts economic control into judicial immunity, leaving a relief vacuum for victimized workers. While core companies do not necessarily cause injuries directly, they gain economic advantages and therefore owe moral responsibility for resulting injustices.

2.1.3. The power reproduction mechanism of information control

Information asymmetry is not a technical defect, but an institutional barrier carefully constructed by enterprises. Taking Tesla's Congolese cobalt mine supply chain as an example, although the company pointed out the risk of child labor violations in cobalt mines, it did not disclose the name of the first-tier supplier, only promised to "ensure compliance through audits", which makes it impossible for child labor victims to track down the infringers [5]. The deeper contradiction is that current corporate law regards supply chain data as a business asset rather than an element of governance. Although Article 10 of the EU CSDDD requires the disclosure of high-risk suppliers, it does not give victims the right to access data [2]. This creates a structural contradiction of "information can be disclosed but not accessed."

2.2. The root cause of the failure of the existing negotiation mechanism: the fundamental conflict between company law and humanity

In the previous section, we analyzed the superficial causes of the failure of existing negotiation mechanisms, particularly the power imbalances and legal liability insulation within supply chains. This section will delve into the fundamental reasons for these failures, namely the inherent conflict between corporate law and stakeholder interests. This conflict primarily stems from the structural deficiencies of corporate law, whose core principle is "maximizing shareholder value," posing an insurmountable obstacle in negotiations. First, we will thoroughly examine these deficiencies and

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explore how the institutional exclusion of non-shareholder interests creates systemic barriers to fair negotiations.

2.2.1. Fundamental flaws in corporate law: institutionalization of shareholder primacy

The priority of the shareholders approach in corporate law leaves out essential concerns, but also establishes inequality in the name of formal equality. Even in the context of Environmental, Social and Governance frameworks, business enterprises tend to cut corners instead of working on meaningful issues. According to Choudhury, such characteristics as separate legal personality and limited liability allow to achieve assets partitioning, which provides firms with the opportunity to externalize the impact of human rights violations and evade liability [6]. It is part of a more general trend of managing exclusions strategically as issues are broken down through corporate law in order to serve the interests of shareholders. In the end, the law fosters organized and counterproductive exclusion, and not positive negotiating.

2.2.2. The procedural justice paradox of negotiating cost shifting

The emphasis of corporate law on shareholder interests does not only exclude many important matters, but also promotes substantive inequality in the name of procedural fairness, especially in the allocation of bargaining expense. As an example, Article 12 of the German Supply Chain Act concerns the existence of the complaint mechanism, but practically, it gives the companies an opportunity to transfer the cost of participation (such as travel, expertise consultations, and legal expenses) to the vulnerable complainants [1]. This institutional design has created a profound paradox of procedural justice in practice. By imposing economic burdens entirely on complainants, the law transforms financial capital into a de-facto threshold for procedural participation, systematically excluding economically disadvantaged groups and undermining the substantive significance of negotiation mechanisms. As a result, procedural justice has become a mere formality that serves the convenience of capital rather than ensuring equitable redress.

2.2.3. Implementation gaps in HRDD legislation: taking mandatory consultation clauses as an example

Even though the emerging HRDD laws in such countries as Germany and France provide a concrete rule of consultation or complaint based on such instruments as the Supply Chain Act in Germany or Vigilance Duty Act in France, however, there is a serious lack of "trinity coercive guarantee" in general [7]. First, the victims are deprived of a right to co-determine issues, including the possibility to develop consultation agendas together. Second, there is no mechanism put in place that would force the companies to incur reasonable costs on consultation. Third, independent institutions are not allowed to steer and conduct consultations objectively. Such a flaw in structure debilitates the intent of legislation directly, as companies can limit consultations to the cosmetic show of the requirements of the legislation. In those systems where there is no right to issue co-determination, there is an easy control of corporate over agendas and does not subject workers core demands to formal discussions especially freedom of association and collective bargaining rights. At a time when victims are relatively able to attain the stage of participating due to the breached economic gaps, predetermined boundaries of the topics suppress the claims of the victims.

After all, unless there are profound changes to the corporate law, such as in the fiduciary duties of directors, or the governance structure, injecting HRDD shells will never change the deep-rooted

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motivation to shirk serious responsibility in those enterprises. This means that the implementation gap in mandatory HRDD consultations is never an issue of technical omissions but an unavoidable consequence of the clash between corporate legal rationality and the safeguard of human rights. Absent the trinity guarantee, consultation mechanisms remain powerless to address core power imbalances.

3. Innovative design of equal consultation mechanism

3.1. Specific core mechanism

In the context of globalization, the power of multinational corporations often transcends national borders, resulting in asymmetric advantages in due diligence. In order to correct this inequality, this paper proposes an innovative mandatory equal consultation mechanism. Three Pillars of Power Redistribution, aiming to achieve a rebalance of power through institutionalized design. It mainly consists of the following three parts. Mandatory Initiation Mechanism, Joint Decision-making Power on Issues and Resource Balance Fund.

3.1.1. Mandatory initiation procedure

The core of the mechanism lies in the introduction of a mandatory initiation procedure. The core contradiction of the current dispute negotiation mechanism for multinational companies lies in the unilateral monopoly of the initiation right. Taking Article 8 of the German Supply Chain Act as an example, it stipulates that "the company decides independently whether to initiate the negotiation procedure", which essentially alienates the complaint mechanism into a corporate public relations tool. In order to break this monopoly, this study proposes a two-track mandatory initiation mechanism.

On the one hand, the host country regulator possesses explicit authority under Article 20 of the EU CSDDD to mandate multinational parent companies to initiate transnational remedy consultations upon establishing preliminary evidence of rights violations [2]. Such evidence can be an authenticated testimony of a victim by five or more persons or through verified field reports that have been filed by accredited NGOs. The non-complying parent companies are subject to escalating levels of penalties with non-compliance in the first year landing hefty fines of 2 percent of worldwide sales and the second-year failure to comply facing a cumulative punishment of revenue fines of 5 percent and prohibition to importation. Such enforcement scheme is intentionally parallel to the system of increasing penalties, which is embodied in Article 15 of the French Vigilance Obligation Law and represents the means of deterrence by the imposition of escalating consequences [7].

On the other hand, workers who are affected receive the right to file collective remedy motions when they are estimated to take up at least 10% of a determined group of workers. Such motions have to be filed with the electronically notarized signatures submitted through the government-certified electronic services to the point the "Remedy HR" system enabled by the Department of Justice. To avoid a vexatious litigation, every motion should have a package of prima facie evidence that shows viable accusations against rights infractions. Such an evidence has to prove the claims based on documents as those regarding pay roll, medical assessment reports, or visual evidence which should be coeval.

Any party can unilaterally initiate the negotiation process if it believes that its rights have been violated, and if the enterprise refuses to participate, it will face administrative penalties. This design

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is inspired by the compulsory arbitration clause in international commercial arbitration, but it has been transformed on this basis. By compulsory initiation, it ensures that the negotiation is no longer dependent on the unilateral will of the enterprise, thereby providing victims with an institutionalized channel to enter the negotiation table.

3.1.2. Joint decision-making power on issues

The introduction of the right to co-decision is another major innovation of the mechanism. The negotiation mechanism is often dominated by enterprises in setting the agenda, which leads to the marginalization of the core demands of victims. To this end, this article recommends that the victims should have at least 50% of the right to nominate the agenda. This design draws on the tripartite mechanism principle of the International Labor Organization and ensures the equal participation of victims in the agenda setting. In addition, in order to avoid the rigidity of agenda setting, the mechanism allows the agenda to be dynamically adjusted during the negotiation process to adapt to actual needs.

3.1.3. Resource balance fund

The establishment of a resource balancing fund provides financial support for negotiations. Before the start of negotiations, companies are required to prepay a sum of money to a special negotiation cost pool to cover the victims' participation costs. This approach not only reduces the economic burden on victims, but also promotes companies to actively participate in negotiations through economic leverage. Similar funding arrangements have been successful in the field of governance, such as the Superfund in the United States, which is used for the cleanup and restoration of contaminated sites.

3.2. Measures to ensure implementation of the mechanism

3.2.1. Introduce a third-party penetrating supervision mechanism

To maximize the efficiency of negotiation process, this article puts forward a third party, dual-track monitoring system that interposes sovereign and communiy-based monitoring mechanisms and upholds transparency and accountability.

The role of sovereign supervision is undertaken by its agencies in host countries that have trans-national investigatory abilities, in the wake of Article 12 of the EU CSDDD, which vests national agencies with the authority to oversee and punish corporate malpractices abroad [2]. Possible fines, which will be applied in the role of sanctions, can reach 5 percent of revenue per annum and market prohibition access.

In community supervision, the NGOs are certified in a manner that grants them an opportunity to launch surprise audits and live-stream the process of negotiations. This enhances openness in society and aids company responsibility as there is availability of instant viewing by the general's society.

The two track model is comparatively low on but effectual supervision. It allows victims to challenge the negotiating process without interfering with the results, between fairness in the procedures and exploitation in the negotiating commands. Despite possible difficulties, this framework is to defend the rights of victims without violating the national interests and national security.

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3.2.2. Innovation of countermeasure tools: technological empowerment and institutional reconstruction

The most obvious measures is technology-enabled anonymization protection. The issue of corporate retaliation against labor demands is a serious obstacle, and relief through a litigation process can be ineffective because of overwhelming proof of causation requirements. One of the possible solutions is the technology-based anonymous collective bargaining, which integrates both legal and technical protection of workers. One of them is called data desensitization and is inspired by the data protection by design principle of Article 25 of the EU GDPR [8]. This needs platforms to remove metadata such as device fingerprints and location before sending encrypted materials only. An encrypted voting is also practiced in Germany with a revised Supply Chain Act that has an end to end BSI-certified encryption and temporary keys that guarantee that workers will be able to vote anonymously [9]. Also, Article 22 of the EU CSDDD enables distributed storage verification through blockchain, which stores the secure and anonymous records of collective bargaining. Together, with the assistance of regulation, these combined technologies create a safe ecosystem of non-traceable collective action, eliminating the difference between technical protection and legal.

In addition, institutional design of dynamic representative system should be taken into account.The transnational corporation tends to use negotiation agenda controls by coercing or co-opting community leaders a prevalent approach in resource extraction industry. This practice diminishes the validity of rights claims as witnessed in the 2016 case in Liberia where authorities were charged to have taken a bribe of $950,000 to support Sable mining [10]. Three safeguards need to be incorporated into a dynamic representation framework that is used to counter such manipulation, which includes randomized rotation, eligibility audits, and accountability procedures.

Randomized rotation breaks deep-seated influence and enhances its openness because power does not have a chance to consolidate over time. The experimental approaches in development economy reflect change in community representatives high turnover rate on the improvement of outcomes on negotiations and participatory citizenship. To give an example, one of the governance randomization studies revealed that high turnover contributed to a higher amount of transparency and decision-making inclusion process [11]. Randomization allows negotiations to be more responsive to changing demands among population and less prone to elite control by establishing a more porous and inclusive representative rule.

Corporate capture is averted through eligibility audit which eliminates conflict of interest. As another example, Fox Resources in Queensland reformed its Regional Reference Group due to the conflicts between representatives of landholding proved by the scrutiny [12].

An accountability that can be followed in signed disclosure, records of meetings held in open format of books and a digital trail of consent holds the representatives to the community and discourages under-the-table agreements. Although none of these solutions is able to mitigate the interference, a combination of these steps will strengthen transparency, legitimacy and moral bargaining.

Lastly, the measures of cost shifting need to be corrected.The systemic externalization of supply-chain negotiation costs undermines the bargaining power of affected communities, especially when legislative frameworks do not expressly prohibit shifting participation expenses onto workers. Germany's Supply Chain Act, which mandates human-rights risk management but lacks explicit prohibitions on redirecting translation, travel, or legal fees to workers, exemplifies this legislative ambiguity. To counteract cost-based exclusion, a trilateral reverse-compensation system is proposed. First, mandatory enterprise escrow deposits should be established to cover victims' participation costs such as travel, translation, and legal representation, to encourage setting aside funds for

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stakeholder engagement. Second, NGOs should be empowered with subrogation rights to advance consultation costs and reclaim them from firms, transforming financial burden away from affected individuals; while direct case precedents are limited, grievance funds under multi-stakeholder initiatives and NGOs—such as those promoted by ILO—serve as structural models. Finally, punitive mechanisms must be reinforced: although California's Transparency in Supply Chains Act (SB 657) does not provide treble damages, wage-and-hour class actions—such as Estep v. Forever 21—demonstrate litigation can yield multi-million dollar settlements, effectively penalizing cost-shifting misconduct [13]. These corrective measures offer a disciplined, institutionally viable pathway to rebalance participation costs and restore equitable access to negotiation.

4. Institutional compatibility challenges and countermeasures

Following the analysis of barriers to effective HRDD implementation and the proposal of mechanisms to enhance negotiation equity, attention must now turn to the issue of institutional compatibility. Although Section 3 introduced theoretically robust solutions, their implementation may be constrained by conflicts between international legal standards and domestic legal or cultural frameworks. This section examines such institutional and legal frictions and outlines strategic countermeasures to ensure the practical viability of the proposed mechanisms across diverse governance contexts.

4.1. Reconstructing the rules for transnational enforcement conflicts

4.1.1. Restrained design of extraterritorial legal effect

In the era of globalization, multinational enterprises' HRDD must confront institutional compatibility challenges, particularly regarding extraterritorial legal reach. To avoid backlash similar to that provoked by the U.S. Alien Tort Statute—criticized for encroaching on states' jurisdiction—any extraterritorial mechanism must rest on international consensus. A suitable framework would anchor jurisdiction in the eight core ILO conventions, excluding culturally contentious clauses to preserve cross-civilizational legitimacy. Additionally, host-country law should predominate where it offers equal or stronger safeguards. A compelling example is the UK Supreme Court's 2019 Vedanta v. Lungowe decision: residents of Zambia successfully brought pollution and negligence claims against Vedanta's UK parent, as courts found prima facie jurisdiction based on Vedanta's operational control over its subsidiary [14]. Importantly, this judgment catalyzed a "sovereign compatibility" doctrinal shift, emphasising that extraterritorial actions must align with domestic court norms and respect host state sovereignty. By embedding jurisdictional self-restraints through parent-subsidiary causation and jurisdictional compatibility requirements, governments can reconcile cross-border enforcement with respect for national legal authority and fairness.

4.1.2. The deference framework for enforcement of judgments

The deference framework for the enforcement of judgments is critical in transnational legal regimes. Under Article 5 of the Hague Judgments Convention, states may refuse to recognize HRDD decisions citing "public order" concerns; however, such a clause risks abuse and demands procedural discipline [15]. Rather than speculative "compliance opinions" from international bodies, a more feasible safeguard is procedural transparency, where courts are required to publish detailed reasoning when invoking public-policy exceptions, allowing scrutiny by affected states and communities. Simultaneously, when host countries obstruct enforcement, alternative executive

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pathways are essential—most notably, authorizing restraint of corporate assets in the parent country under the commercial activities exception. Article 19 of the UN Convention on Jurisdictional Immunities of States and Their Property enables post-judgment execution against state-owned assets used for commercial purposes, establishing a doctrinal precedent for enforcing judgments against corporate entities linked to state assets. Such mechanisms bolster enforceability while preserving host country sovereignty, blending deference with accountability in extraterritorial application [16].

4.2. Procedural justice reform for cultural adaptation

4.2.1. Multifaceted recognition based on negotiation

Western adversarial negotiation models frequently prove ineffective in collectivist cultural contexts, where majority-voting clashes with consensus-based traditions such as Indonesia's musyawarah. While precise failure rates are unavailable, cultural misalignment remains a significant barrier. Accordingly, negotiation frameworks should formally integrate indigenous dispute mechanisms—particularly those rooted in local governance traditions. In countries like South Sudan, legal codes such as the Local Government Act recognize customary courts and empower traditional leaders to mediate community disputes and represent constituents in county councils [17]. Academic research further confirms the legitimacy and effectiveness of these bodies as low-cost, accessible legal channels that enhance rule-of-law efforts in post-conflict environments [18]. Embedding these community-based judicial models into national legal systems offers a culturally adaptive, legally binding path for multinational enterprises to engage authentically, thereby aligning modern legal frameworks with local conflict resolution traditions.

4.2.2. Rigid exemptions for cultural taboos

When projects impinge upon non-negotiable cultural sacred sites or religious shrines, even the most flexible negotiation frameworks fail—highlighting the necessity of explicitly predetermined protection thresholds. One example is the case of Machu Picchu in Peru. As a UNESCO World Heritage Site, its core and buffer zones have been under strict scrutiny. In response to threats such as potential mining activities near the area, UNESCO has invoked the provisions of the World Heritage Convention, particularly Article 11, to pressure the Peruvian government into upholding stringent protection measures, thereby establishing a precedent for cultural-heritage primacy over extractive interests [19]. In such cases, legal mechanisms should enforce absolute protection: first, relevant cultural-heritage bodies or special rapporteurs should conduct advance cultural impact assessments. Second, UNESCO designation must trigger automatic prohibition of extractive activities; finally, the principle of cultural rights primacy should be legally enshrined—meaning where a clash arises between cultural heritage and economic exploitation, legal protection of heritage must unequivocally prevail. This shift from ad hoc negotiation to codified international standards helps prevent systemic erosion of indigenous rights under cultural relativism.

5. Conclusion

The two fundamental causes of institutional governance failure in the human rights dispute (in respect to multinational corporations) identified in this study suggest themselves based on the nature of the problem: the shareholder primacy model of corporate law as the cause of the power imbalances in the system of agenda control and cost externalization as well as the low level of bearing legal regulations on human rights normative dispute due to the lack of three main provisions

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joint decision making rights, cost sharing mechanisms and independent oversight.To deal with this, the paper comes up with a procedural justice framework with three pillars namely mandatory initiation, joint decision-making, and a resource balancing fund. These are to ensure the breaking of consultation impasses, the rebalancing of negotiating position and narrowing of economic gaps.The mechanism is supported by a dual-track mechanism of supervision consisting of sovereign supervision and NGO involvement. Corporate evasion is challenged by a permeable box of tools that challenges information monopolies, stops representative manipulation, and economic pressure. This makes the adversarial compliance into substantive, rights based cures.

Finally, the research refutes the fake separation of human rights and corporate governance by calling the transfer of the governance based not on the hegemony of shareholders but shared co-governance of stakeholders. The three pillar model is a redefinition of the corporate responsibility whose center is shifted out of the manners of voluntary morality to those of legal commitment.

Future research needs to focus on the compatibility challenges of institutional transplantation. At the transnational level, it should deepen the rule design for jurisdictional conflict under "restrained extraterritorial effect" and optimize the sovereign coordination framework for judgment enforcement; at the cultural level, there is an urgent need to construct a certification system for localized consultation mechanisms and establish a priority principle for cultural rights through rigid cultural taboo thresholds to achieve global adaptability of procedural justice.

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