Article

Compliance and due diligence regarding business and human rights in Chile





Patricio Valdes-Fuentealba

PhD in Economics from the Complutense University of Madrid (UCM). Master of Bussines Law from Universidad de Barcelona, Master of Tax Law from Universidad del Desarrollo. Professor of Law, Universidad Autonoma de Chile. Former Director of the School of Law , Universidad Autonoma de Chile (Santiago). Former Dean of the Law School at the Universidad Central de Chile. E-mail: patricio.valdes@uautonoma.cl. His main research line is focused on Law & Economics

Patricio Masbernat

Professor of Law, Universidad Autónoma de Chile, Santiago, Chile. Lawyer, LLM by Universidad de Chile, PhD in Law by the Universidad Complutense de Madrid. Orcid: https://orcid.org/0000-0001-7137-9474. His main research line is focused on economic and tax problems in the global arena. He is the author of dozens of scientific articles published in international journals and book chapters published by international publishers. E-mail: pmasbernat@santotomas.cl

Received 18 March 2026, Accepted 04 May 2026

KEYWORDS:

Business and Human Rights; Due Diligence; Compliance; Corporate Responsibility.

ABSTRACT:

The paper examines the evolution of the relationship between business activities and human rights, focusing particularly on compliance and human rights due diligence in Chile. It analyzes the United Nations Guiding Principles on Business and Human Rights, structured around the pillars of protect, respect, and remedy, and emphasizes their soft-law nature. It also considers OECD guidelines and Chilean National Action Plans, together with legislative initiatives aimed at establishing corporate due diligence obligations. The article distinguishes compliance, understood as an internal regulatory and organizational framework, from due diligence, which primarily seeks to identify, prevent, mitigate, and remedy adverse impacts on third parties. Particular attention is given to supply chains and activity chains, including transnational and extraterritorial situations. Finally, the study examines European Directive 2024/1760 and comparative legislative experiences, highlighting the gradual transformation of voluntary standards into binding legal obligations and the continuing need for an international legally binding instrument regulating business activities and human rights.

PALABRAS CLAVES:

Empresas y derechos humanos; Debida diligencia; Compliance; Responsabilidad empresarial.

RESUMEN:

El artículo analiza la evolución de la relación entre empresas y derechos humanos, con especial atención al compliance y la debida diligencia en Chile. Examina los Principios Rectores de Naciones Unidas, estructurados en los pilares de proteger, respetar y remediar, y destaca su carácter de soft law. Asimismo, aborda las directrices de la OCDE y los Planes Nacionales de Acción chilenos, junto con iniciativas legislativas orientadas a establecer obligaciones empresariales de debida diligencia. El trabajo distingue entre compliance, entendido como sistema interno de cumplimiento normativo, y debida diligencia, orientada principalmente a identificar, prevenir, mitigar y reparar impactos sobre terceros. También analiza su aplicación a cadenas de suministro y cadenas de actividades, incluyendo situaciones transnacionales y extraterritoriales. Finalmente, examina la Directiva europea 2024/1760 y experiencias legislativas comparadas, destacando la progresiva transformación de estándares voluntarios en obligaciones jurídicas vinculantes y la necesidad de avanzar hacia un instrumento internacional sobre empresas y derechos humanos.

MOTS CLES :

Entreprises et droits humains ; diligence raisonnable ; conformité ; responsabilité des entreprises.

RESUME :

Cet article examine l'évolution des relations entre les activités des entreprises et les droits humains, en portant une attention particulière à la conformité et à la diligence raisonnable en matière de droits humains au Chili. Il analyse les Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'homme, structurés autour des piliers « protéger, respecter et réparer », et souligne leur caractère de droit souple. Il examine également les principes directeurs de l'OCDE et les plans d'action nationaux chiliens, ainsi que les initiatives législatives visant à établir des obligations de diligence raisonnable pour les entreprises. L'article distingue la conformité, comprise comme un cadre interne réglementaire et organisationnel, de la diligence raisonnable, qui vise principalement à identifier, prévenir, atténuer et réparer les incidences négatives sur les tiers. Une attention particulière est portée aux chaînes d'approvisionnement et aux chaînes d'activités, notamment dans les situations transnationales et extraterritoriales. Enfin, l'étude examine la directive européenne 2024/1760 et des expériences législatives comparées, en soulignant la transformation progressive de normes volontaires en obligations juridiques contraignantes et le besoin persistant d'un instrument international juridiquement contraignant encadrant les activités des entreprises et les droits humains.

CREATIVE COMMONS LICENSE

This work is licensed under a Creative Commons Attribution 4.0 International License.

Contents:

1 INTRODUCTION; 2 FUNDAMENTAL CONCEPTS; 3 DUE DILIGENCE AND COMPLIANCE REGARDING BUSINESS & HUMAN RIGHTS; 4 CONCLUSIONS; 5 REFERENCES

1 INTRODUCTION[1]

Human rights are defined and delineated by International Human Rights Law. Notable international instruments includethe Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; thefundamental conventions of the International Labour Organization.Other documents have also addressed this area, for instance, the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,amended most recently by the International Labour Organization in 2022 (International Labour Organization [ILO], 2022).

In the Americas, the American Convention on Human Rights is, of course, relevant, and the Inter-American Court has issued rulings on these matters (Iglesias Márquez, 2020; Espósito & Acacio, 2023; Lago de Ávila, 2025).

Since then, the field has advanced with the United Nations Guiding Principles on Business and Human Rights —known as the Ruggie Principles—[2]which provide a baseline for the field of business and human rights. This work follows earlier, unsuccessful efforts, such as the United Nations draft Code of Conduct for Transnational Corporations, developed within the UN Economic and Social Council during the 1970s and 1980s(Berdeja, 1979; Cantú, 2018, 21 et seq.).

The UN Guiding Principles rest on three pillars: protecting human rights (an obligation of the State, requiring appropriate measures, regulatory activities, and judicial oversight); respecting human rights (an obligation of business enterprises, entailing due diligence to avoid infringing upon rights and providing remedy should such infringements occur); and remedying (an obligation to ensure victims have access to effective avenues of redress, whether judicial or non-judicial).

However, the UN Guiding Principles constitute "soft law"; consequently, the international community has long been committed to adopting an international convention, an effort that has not yet come to fruition (Roland et al., 2018; Cantú, 2016).

The United Nations has continued this work by establishing a Working Group on Business and Human Rights, which has issued a series of studies and documents to advance progress in these areas.

Furthermore, the Organisation for Economic Co-operation and Development (OECD)—of which Chile has been a member since 2010—has produced a series of documents and guidelines, most notably the Guidelines for Multinational Enterprises on Responsible Business Conduct and the OECD Due Diligence Guidance for Responsible Business Conduct. Chilean public bodies also monitor compliance with these standards, specifically through the Ministry of Foreign Affairs, the Undersecretariat for International Economic Relations, and the OECD National Contact Point for Responsible Business Conduct.

Despite its "soft law" nature, many countries—such as Chile—have committed to implementing these non-binding standards through national plans, as they ultimately represent general State commitments regarding human rights (Cantú, 2017; Guamán, 2022).

1 This paper is a product of the internal project titled "Evaluation of Current Developments in International and National Regulations Regarding Human Rights and Transnational Corporations" (DIUA 303-2024), funded by the Vice-Rectorate for Research and Doctoral Studies at the Universidad Autónoma de Chile under the "Research Support" scientific project competition ("Evaluación de desarrollo actual de la normativa internacional y nacional en materia de derechos humanos y empresas transnacionales", DIUA 303-2024 de la Vicerrectoría de Investigación y Doctorados, *Universidad Autónoma de Chile,* concurso de proyectos científicos de "Apoyo a la Investigación").

2 For the full framework, see Ruggie (2011).

Indeed, influenced by the UN and the OECD, voluntary state initiatives known as National Action Plans have been developed. Chile has signed and implemented two such plans and has a third currently underway: the First National Plan (2017–2020), the Second Action Plan (2022–2025), and the Third Action Plan (2026–2029). These plans have undergone various forms of monitoring and evaluation—including by the Corporate Sustainability Program at the Pontifical Catholic University of Chile. Additionally, an Inter-Ministerial Committee for the National Action Plan on Business and Human Rights was established.

These plans have also been analyzed by specialists in various reports—often critical in nature—such as those by Schönsteiner (2016, 2019)and Aylwin et al. (2020).

Furthermore, legislative initiatives have been introduced in the National Congress. All of them are currently being processed, but none have been enacted into law.

First, there is the bill establishing and regulating corporate due diligence regarding compliance with and respect for human rights, the environment, and climate change, introduced by Senator Isabel Allende on April 3, 2025 (Senate Bulletin No. 17.446-17). This bill comprises a single substantive article covering corporate actions, state agency oversight, and penalties for violations, as well as a transitional article empowering the Ministry of Justice and Human Rights to issue the regulations necessary for the law's implementation.

Subsequently, on May 5, 2025, a group of lawmakers introduced a bill mandating the incorporation of human rights due diligence for companies operating within national territory (Chamber of Deputies Bulletin No. 17520-17). This legislative proposal consists of 18 articles organized into four titles: General Provisions; Corporate Obligations; Public Complaint Mechanisms; and Sanctions. Title II contains two sections: obligations applicable to all companies, and obligations applicable to large enterprises.

Title I sets out the bill's purpose and scope. Article 1 states that its objective("to promote and safeguard respect for human rights in the business sector, ensuring that companies conducting economic activities within the national territory do so in accordance with the United Nations Guiding Principles on Business and Human Rights, as well as other relevant international instruments ratified by Chile that are currently in force"); Article 2 covers the scope—specifically medium-sized and large enterprises, or "commercial, industrial, and service centers or complexes that, even if composed of distinct establishments, are managed under the same corporate name or legal entity and, in the aggregate, employ a number of workers equivalent to that established for medium-sized or large enterprises"; and Article 3 sets out legal definitions.

Title II of the bill addresses the duty of due diligence (Art. 4), the legal compliance process (Art. 5), in-company training and education (Art. 6), and inter-institutional and multisectoral collaboration (Art. 7). It also establishes the liability of large enterprises in relation to production and supply chains (Art. 8); requirements for consistent contracting conditions for suppliers and subcontractors (Art. 9); and mechanisms for periodic monitoring, audits, supervision, and corrective measures concerning suppliers and subcontractors (Art. 10). It further provides for appropriate human rights training for those suppliers and subcontractors.

Title II of the bill stipulates that grievance mechanisms must be adequately publicized and communicated (Art. 12), and that grievance processes must ensure the confidentiality and protection of complainants (Art. 13) as well as due process (Art. 14). Finally, an annual public report on grievances must be prepared, containing specific information outlined in the bill (Art. 15).

Finally, Title IV of the bill provides for sanctions for non-compliance that are proportionate to the severity and impact of the violation and the size of the offending company (Art. 16). The criteria for determining these sanctions include: repeat offenses; the number and nature of unresolved grievances; failure to implement due diligence mechanisms; the absence or inadequacy of corrective measures; and the

company's level of cooperation during the sanctioning process (Art. 17). The bill establishes a minimum sanction of 20 Monthly Tax Units, payable to the public treasury (Art. 19).

2 FUNDAMENTAL CONCEPTS

Business activities—particularly in the context of cross-border business and the operations of transnational or multinational corporations—can affect the human rights of individuals and communities. Consequently, the issue of liability is significant, as are procedural matters such as court jurisdiction regarding the service of process, the conduct of judicial proceedings, the enforcement of judgments, and various evidentiary rules. Also relevant are the practical obstacles victims face in accessing justice—such as litigation costs—and the forms of reparation for human rights violations, given the unique nature of such rights. All these matters present significant complexities.

In light of the foregoing, companies are expected to commit to respecting human rights through various legal instruments, such as compliance mechanisms or due diligence. Under international human rights law, States are the responsible entities and must enforce their commitments within their own territories. This has led to the development of the "Business and Human Rights" agenda; given its global nature, the United Nations is considered the appropriate forum for discussing it.

Ruggie (2011) explains that, the UN framework on business and human rights rests on three pillars: protect, respect, and remedy. "Protect" refers to the State's obligation to provide protection against human rights abuses committed by third parties—including businesses—through appropriate measures, regulatory activities, and access to justice. "Respect" entails the obligation of businesses to respect human rights, meaning they must act with due diligence to avoid infringing upon the rights of others and address the negative consequences of their activities. "Remedy" highlights the need to improve victims' access to effective avenues of redress, whether judicial or non-judicial.

In the context of companies or businesses, the definition of human rights is closely linked to international normative frameworks that establish minimum standards. Respect for human rights is framed as a negative obligation—that is, an obligation to refrain from violating or interfering with them—and applies regardless of a company's size, sector, or location.The responsibility to respect human rights is operationalised through internal processes that companies develop to identify and manage risks in their relationships with other parties, including those in supply chains, value chains, and activity chains(Lopez, 2020).

Article 1 of the project “Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises” (version 2023), discussed within the UN, defines Human rights abuse as “any acts or omissions that take place in connection with business activities and results in an adverse human rights impact”(Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights [OEIGWG], 2023, art. 1.3). Likewise, it defines various terms, including “Business activities”, “Business activities of a transnational character”, “Business relationship”, “Human rights due diligence”.

The conceptual framework also posits thatcorporate respect for human rights is not directly linked to international legal obligations. It is grounded in reputational considerations rather than binding norms, although States may enact specific legal regulations(Sánchez González, 2021). The matter concerns social expectations rather than legal rules. Indeed, the legal issues involved include distinguishing between liability for human rights violations and national civil liability rules, the extraterritorial liability of domestic companies, and technical difficulties regarding access to a legal forum (Assenza, 2024, p. 20). These legal obstacles

are such that they effectively relegate the link between companies and human rights to the realm of corporate social responsibility.

Another important aspect concerns the framework of rights within the scope of the Business and Human Rights issue. While there is no doubt regarding the established, traditional set of rights derived from specific international instruments, the scope of human rights has expanded through the progressive development of international law. Furthermore, there is an ongoing debate distinguishing between rights based on treaties and those rooted in customary law. Calls are being made to extend these binding rights to new areas and to deepen the protection of rights related to the environment and ecosystems (Jiménez & Tous, 2023; Iglesias, 2021). Specialized literature has also addressed the impact of new technologies; their intensive use creates novel risks and even intangible threats—such as those associated with "neurorights"—the prevention of which necessitates adapting existing processes (Tole et al., 2022, p. 7).

Matters of this kind are also being debated within the UN during discussions on the drafting of the aforementioned legally binding instrument.Including or excluding those acts would determine whether attacks on individuals and communities fall within the legal framework(Assenza, 2024, p. 36).

It must be borne in mind that regional and international instruments—as well as the prospective legally binding instrument—impose obligations on states, which are required to ensure respect for human rights within their jurisdictions, which is the only way to fulfill the international obligations they have undertaken.

Ultimately, according to the literature, the operational definition arises from a combination of a minimum normative core derived from universal human rights instruments; conceptual expansions extending to environmental dimensions or emerging rights linked to nature, climate, and the intersection of rights and new technologies; a functional formulation based on mandatory internal processes for identifying and managing risks; a voluntary or non-binding framework underpinned by transnational social expectations; and pronouncements regarding draft international conventions on the subject.

The foregoing reveals a scenario characterized by tension between, on the one hand, the strict legal aspiration to bind companies under international law and, on the other, the persistence of an approach based on social responsibility. The very coexistence of these dimensions shapes how the concept of human rights as applied to the business sphere is defined today. This is reflected in initiatives such as the ISO 26000:2010 standard on corporate social responsibility, which establishes the following guidelines: “6.3.3 Human rights issue 1: Due diligence 6.3.3.1 Description of the issue to respect human rights, organizations have a responsibility to exercise due diligence to identify, prevent and address actual or potential human rights impacts resulting from their activities or the activities of those with which they have relationships. Due diligence may also alert an organization to a responsibility to influence the behavior of others, where they may be the cause of human rights violations in which the organization may be implicated.”

Currently, regarding the Business and Human Rights, there is a lack of clarity across all aspects—a fact reflected in the debate surrounding the Legally Binding Instrument. At its human rights core lies a set of principles, obligations, and responsibilities encompassing both binding normative instruments and non-binding guidelines for conduct; ultimately, the objective is for corporate activity to avoid infringing upon the rights of others and to address any adverse impacts generated.

Such adverse human rights impacts may be caused by the company itself—either directly or indirectly (i.e., arising from operations, products, or services linked to business relationships, commonly defined as supply chains)—a matter of particular importance in the context of

transnational business. Consequently, risk management must also be addressed at this level.

Supply chains are a complex issue in their own right, though attention must also be paid to the concept of "chains of activities"—a focus emphasized by EU Directive 2024/1760.

The Directive (UE) 2024/1760 of 13 June 2024, on corporate sustainability due diligence and amending, states the following: "Whereas: … 24. Adverse human rights and environmental impacts might occur in companies' own operations, operations of their subsidiaries and of their business partners in the chains of activities of the companies, in particular at the level of raw material sourcing and manufacturing. In order for the due diligence to have a meaningful impact, it should cover human rights and environmental adverse impacts generated throughout the majority of the life-cycle of production, distribution, transport and storage of a product or provision of services, at the level of companies' own operations, operations of their subsidiaries and of their business partners in their chains of activities."

The concept of the supply chain remains relevant, as demonstrated by Vogt and Subasinghe (2025, p. 294): "The term 'chain of activities' is also a new concept within the DDDSE and refers to the activities of business partners in the upstream (towards the producer) and downstream (towards the consumer) phases. Although broad, the concept does not necessarily encompass all relevant activities within global supply chains. Certain downstream activities where labor rights abuses could occur—such as product use and disposal (e.g., shipbreaking) or the delivery of goods via a third party—are excluded from the definition. Also excluded from the list of downstream activities are the distribution, transport, and storage of arms, ammunition, and military equipment. This is particularly problematic given the high risk of negative human rights impacts associated with arms sales."

For his part, Tortajada Chardí maintains that the aforementioned EU Directive "establishes a paradigm shift in the conception of corporate responsibility by introducing the concept of a 'chain of activities,' which transcends the traditional notion of the supply chain […] an approach that significantly expands the scope of corporate obligations, requiring due diligence to be applied to all upstream and downstream activities related to the production, distribution, transport, and storage of products or services" (Tortajada Chardí, 2025).

Beyond binding regulations, companies also have a responsibility to address these issues, including through self-regulation and corporate social responsibility initiatives(Salamanca, 2025; Vaudo Godina, 2024). In the context of transnational business, this issue entails an extraterritorial effect, creating a need for due diligence to extend to impacts caused by entities operating outside the national territory but linked through commercial relationships—such as foreign subsidiaries or suppliers (Assenza, 2024, p. 42).

3 DUE DILIGENCE AND COMPLIANCE REGARDING BUSINESS & HUMAN RIGHTS

Human rights in the context of business activities encompass many areas, such as relations with workers, individuals and communities, the environment, consumers, free competition, taxation, etc. (Masbernat & Ramos-Fuentes, 2026). There are multiple alternative or complementary ways for States to fulfill their obligations to protect human rights in this sphere (Masbernat & Ramos-Fuentes, 2026).

These issues range from reputational risk to legal liability and relate to codes of conduct, soft law, due diligence, and compliance.Due diligence and compliance in human rights present important similarities (identification, evaluation, and mitigation of risk) and some differences.

From a general perspective, compliance—which constitutes a system for adhering to regulations—"refers to a firm's effort to ensure that it and its agents adhere to legal and

regulatory requirements, industry practice, and the firm's own internal policies and norms" (Root, 2019, p. 205). This mechanism enables the company to identify risks, organize functions and responsibilities, prevent misconduct, and demonstrate that it has genuine oversight mechanisms in place.

In the field of business and human rights, Cantú Rivera and Esparza García (2021) explain that compliance focuses on the processes within the organization, implemented to ensure compliance with regulatory, ethical, and social responsibility requirements and to protectthe company against regulatory risks.By contrast, due diligence focuses on people outside the company whose human rights may be affected. It seeks to prevent adverse impacts and provide remedies when harm occurs.

Human rights compliance is part of the corporate responsibility to respect those rights, as established by instruments such as the United Nations Guiding Principles on Business & Human Rights.

Ultimately, compliance transforms respect for human rights from a statement of intent into a verifiable system, featuring impact assessments, operational integration, monitoring, communication, and remediation mechanisms.

Its main characteristics are as follows: a preventive and proactive approach (seeking to identify risks before they materialize into harm and to correct them should they occur); continuity and dynamism (establishing an ongoing cycle of assessment, action, and improvement); proportionality and contextualization (adapting to the company's size, sector, operational context, and risk level); a cross-cutting nature (involving the entire organization and the supply chain); verifiability and transparency (requiring documentation, auditable controls, public reporting, and grievance mechanisms); and a focus on actual and potential impacts (covering both harm that has already occurred and future risks within the company's own operations and its value chain) (Sanclemente-Arciniegas, 2021).

The compliance process entails designing a compliance program that incorporates both general and specific elements regarding Business & Human Rights. Primarily, this involves a set of clear rules and the most precise standards possible, establishing the minimum standards of conduct that companies must adopt to ensure the effectiveness of their compliance programs. These conditions and characteristics are aligned with the specific needs and approaches of the field in question—in this instance, the impact of business activities on the human rights of individuals and communities.

It also comprises several stages. First, a diagnosis must be conducted to identifythe program's relevant risks. Next, internal policies, codes of conduct, contractual clauses,and the like must be designed with the specific objectives of protection in mind. This is followed by implementation, which entails training employees and third parties closely linked to the business, establishing processes and assigning responsibilities, and so forth. Another aspect involves monitoring, internal audits, and measurement against specific indicators. Finally, mechanisms for reparation and compensation must be incorporated, corrective measures implemented to limit the impact of adverse actions, and protocols updated based on experience (Addo, 2020). The aim is to evaluate the measures taken by the company to prevent illicit acts in this area.

The United Nations Office of the High Commissioner for Human Rights [OHCHR] interpretive guide to the UN Guiding Principles on Business and Human Rights (OHCHR, 2012, p. 6) cites Black's Law Dictionary (1990) for this definition of due diligence: "such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case" (Black's Law Dictionary, 1990, as cited in OHCHR, 2012, p. 6). The guide also states that"In the context

of the Guiding Principles, human rights due diligence comprises an ongoing management process thata reasonable and prudent enterprise needs to undertake,in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights" (OHCHR, 2012, p. 6). The United Nations Working Group on Business and Human Rights continues to consider related implementation issues.

The Guiding Principles on Business and Human Rights incorporate due diligence in various sections, particularly Principles 15 and 17 to 20.

According to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct(OECD, 2023, Chapter II, para. A.15), "for the purposes of the Guidelines, due diligence is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems."The Guidelines address due diligence throughout.

Human rights due diligence in business is a continuous and proactive management process through which companies identify, prevent, and mitigate—and explain how they address—actual and potential adverse impacts on people arising from their operations, value chains, and business relationships. The 2023 updated draft legally binding instrument prepared for the ninth session of the open-ended working group also incorporates this approach. Article 1.8 defines the process and outlines the steps involved in human rights due diligence:

"Human rights due diligence" shall mean the processes by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts. While these processes will vary in complexity with the size of a business enterprise, the risk of severe adverse human rights impacts, and the nature and context of the operations of that business enterprise, these processes will in every case comprise the following elements:

(a) identifying and assessing any adverse human rights impacts with which the business enterprise may be involved through its own activities or as a result of its business relationships;

(b) taking appropriate measures to prevent and mitigate such adverse human rights impacts;

(c) monitoring the effectiveness of its measures to address such adverse human rights impacts; and

(d) communicating how the relevant business enterprise addresses such adverse human rights impacts regularly and in an accessible manner to stakeholders, particularly to affected and potentially affected persons" (OEIGWG, 2023, art. 1.8).

In Assenza's view, the breadth of this wording implies that the obligation extends from direct activities to effects indirectly generated by third parties within complex global supply chains. The draft's approach would not be limited to the domestic territorial sphere. The obligations assigned to States Parties include ensuring that these requirements also apply extraterritorially where appropriate, through the exercise of their territorial prescriptive jurisdiction to prevent adverse impacts by companies both within their territory and beyond it. Thus, the legally binding instrument on Business & Human Rights seeks to regulate the activities of transnational corporations and transcend the traditional limits of territorial prescriptive jurisdiction, which restricts a State's capacity to legislate only regarding conduct occurring within its physical borders (Assenza, 2024, p. 29).

This perspective addresses prior debates regarding the need to close regulatory gaps arising from transnational operations where national rules prove insufficient. Regarding its legal nature, the proposed model seeks to transform what the UN Guiding Principles on Business and Human Rights present as a non-binding social expectation into enforceable

requirements. According to the UN Guiding Principles, companies must avoid infringing upon human rights and address adverse impacts with which they are involved, acting with due diligence to identify and manage risks to individuals affected by their operations or business relationships (Guamán, 2018).

Reference must be made to Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence. This directive adapts various points from the aforementioned OECD and UN documents and, in recital 20, outlines the six steps in this process (European Parliament & Council of the European Union, 2024, recital 20): "The due diligence process set out in this Directive should cover the six steps defined by the Guidance for Responsible Business Conduct, which include due diligence measures for companies to identify and address adverse human rights and environmental impacts. That process encompasses the following steps: (1) integrating due diligence into policies and management systems; (2) identifying and assessing adverse human rights and environmental impacts; (3) preventing, ceasing or minimising actual and potential adverse human rights and environmental impacts; (4) monitoring and assessing the effectiveness of measures; (5) communicating and (6) providing remediation."

Finally, it is worth mentioning that some Member States of the European Union have incorporated legislation on corporate due diligence: Relative au devoir de vigilance des sociétés mères et des entreprises donneuses, France; Dutch Child Labor Due Diligence Law; the German Act on Corporate Due Diligence Obligations in Supply Chains; Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions, Norway.

4 CONCLUSIONS

This brief overview aims to highlight the ongoing relevance of the Business & Human Rights agenda—particularly regarding corporate compliance and due diligence—as a component of Corporate Social Responsibility.

This does not, of course, imply that companies lack direct, binding obligations; however, the value of these mechanisms is both reputational and legal. They enable companies to mitigate risks and organize their internal processes to comply with the law while also meeting non-binding obligations toward communities within domestic and transnational business contexts. This is increasingly important as more countries enact legislation in this field.

From the perspective of Public International Law, significant steps are also underway, such as the development of an international convention on the subject (often referred to as a "Legally Binding Instrument").

With regard to international human rights law, activities are currently focused on the courts of regional human rights systems.

5 REFERENCES

Addo, M. (2020). Is Business and Human Rights Suitable for the Compliance Function? *The University of Chicago Law Review*, Online, Essay, January 07, 2020.

Assenza, E. (2024) From International Soft Law to Law in Business and Human Rights: The Role of the UNGPS in the Development of Formal Sources of International Law. En Andreas R. Ziegler, Damiano Canapa y Maria Izabel Cardozo (eds.), *Business and Human Rights*, Koninklijke Brill B.V., Neederlans.

Aylwin, J.; Didier, M. & Guerra, F. (2020). El plan de acción nacional de derechos humanos y empresas en Chile: análisis crítico. En *Planos Nacionais de Ação e Políticas Públicas na América Latina sobre Direitos Humanos e Empresas*. Cegraf UFG, Brasil. pp. 39-70.

Berdeja, T. (1979) Código de Conducta para Empresas Transnacionales. *Jurídica*, (11), 1979, pp. 185-210

*Black's Law Dictionary (*1990*)*, West, St. Paul, Minnesota, 6th ed., 1990.

Cantú, H. (2016**).** ¿Hacia un tratado internacional sobre la responsabilidad de las empresas en el ámbito de los derechos humanos? Reflexiones sobre la primera sesión del grupo de trabajo intergubernamental de composición abierta. *Anuario Mexicano de Derecho Internacional*. (16), pp. 425-460

Cantú, H. (2017**).** Planes de acción nacional sobre empresas y derechos humanos: sobre la instrumentalización del derecho internacional en el ámbito interno. *Anuario mexicano de derecho internacional*, (17), pp. 113-144

Cantú, H. (2018). *La responsabilidad de las empresas en materia de derechos humanos*, Comisión Nacional de los Derechos Humanos, México.

Cantú Rivera, H., & Esparza García, L. A. (2021). *Debida diligencia en derechos humanos y procesos de compliance*. Universidad de Monterrey.

Espósito, J., & Acacio, M. L. (2023). Los principios rectores sobre las empresas y los derechos humanos en la jurisprudencia de la Corte Interamericana de Derechos Humanos. *Revista Electrónica Iberoamericana*, *17*(1), 188–197. https://doi.org/10.20318/reib.2023.7807

European Parliament & Council of the European Union. (2024). *Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.* Official Journal of the European Union. https://eur-lex.europa.eu/eli/dir/2024/1760/oj

Guamán, A. (2018). Deber de vigilancia, derechos humanos y empresas transnacionales: un repaso a los distintos modelos de lucha contra la impunidad. *Homa Publica - Revista Internacional de Derechos Humanos y Empresas*, *2*(1), e:026.

Guamán, A. (2022). La diligencia debida en derechos humanos: Análisis crítico de los principales marcos normativos estatales. *Derecho y Trabajo*. 1-31

Iglesias Márquez, D. (2020). Estándares interamericanos sobre empresas y derechos humanos: Nuevas perspectivas para la conducta empresarial responsable en las Américas. *Anuario de Derechos Humanos*, 16 (2), pp. 347-379

International Labour Organization. (2022). *Tripartite declaration of principles concerning multinational enterprises and social policy* (6th ed.). https://www.ilo.org/publications/tripartite-declaration-principles-concerning-multinational-enterprises-and-3

Jiménez, H. & Tous, J. (2023). Integralidad derechos humanos-derechos de la naturaleza: Hacia la debida diligencia empresarial y la transición energética sostenible. *Revista Derecho del Estado*, 54, pp. 307–344.

Lago de Avila, Ernesto. "La obligación estatal de regular y exigir procedimientos de diligencia debida en derechos humanos. Apuntes desde el Sistema Interamericano de Derechos Humanos." *Revista de Derecho,* 31 (2025), e4264.

Lopez, A. F. (2020). Contemporary responses to Businesses' negative Human Rights impact. *Brazilian Journal of International Law* 17 (1).

Masbernat, P., & Ramos-Fuentes, G. (2025). Tariffs and non-tariff measures on multinational corporations linked to compliance with human rights standards. *Review of International and European Economic Law*, *4*(7), r3.1-r3.12. Retrieved from https://www.rieel.com/index.php/rieel/article/view/115

Masbernat, P., & Ramos-Fuentes, G. (2026). Human Rights and Multinational and Transnational Corporations: A Panoramic Review. *Review of International and European Economic Law*, *5*(8), s2.1-s2.22. Retrieved from https://www.rieel.com/index.php/rieel/article/view/128

OECD. (2023). *OECD guidelines for multinational enterprises on responsible business conduct.* OECD Publishing. https://doi.org/10.1787/81f92357-en

Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights. (2023). *Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.* https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf

Ortega, D. et. al. (2021). *Empresa y Derechos Humanos*. Serie de Documentos Materiales Docentes, Academia Judicial de Chile. Santiago.

Roland, M. C. & al. (2018). Desafios e perspectivas para a construção de um instrumento jurídico vinculante em direitos humanos e empresas. *Revista Direito GV*, 14 (2), pp. 393-417

Root, V. (2019). The Compliance Process, *Indiana Law Journal*: 94(1), Article 5.

Ruggie, J. (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework* (A/HRC/17/31). United Nations Human Rights Council. https://digitallibrary.un.org/record/705860

Salamanca, L. (2025). "Fortalecer las cadenas de suministro desde el enfoque de derechos, clave para la sostenibilidad empresarial." *Protección & Seguridad* 424: 23-28.

Sánchez González, A. (2021), The Interaction between Convergent and Divergent Approaches of Global Law in the Field of Business and Human Rights. *Anuario Mexicano de Derecho Internacional*, *XXI*, pp. 35–59. https://doi.org/10.22201/iij.24487872e.2021.21.15587

Sanclemente-Arciniegas, J. (2021). El compliance: repercusiones en la concepción de la empresa. *Rev. Esc. Adm. Neg* [online], n.90, pp. 193-212. Epub Feb 25, 2022. https://doi.org/10.21158/01208160.n90.2021.2975.

Schönsteiner, J. (2016): "Brechas de cumplimiento: el Estado, empresas, y derechos humanos", *Informe Anual sobre Derechos Humanos en Chile 2016.* Santiago, UDP. 123-172.

Schönsteiner, J. (2019). "O Plano Nacional de Ação sobre Direitos Humanos e Empresas do Chile: um balanço sobre o seu impacto discursivo e real." *Revista de Direito Internacional* 16.3.

Tole, J., Losada, M. & Lancheros, P. (2022). Desafíos de los Principios Rectores de las Naciones Unidas sobre las Empresas y los Derechos Humanos en contextos tecnológicos: una visión desde la evolución de los derechos humanos. *Opinión Jurídica*, *21*(46), pp. 1-19. https://doi.org/10.22395/ojum.v21n46a8

Tortajada Chardí, P. (2025). Sostenibilidad y género: Redefiniendo la cadena de actividades. *Derecho y género*, 2(1), 75–92. https://doi.org/10.5565/rev/derechoygenero.16

United Nations Office of the High Commissioner for Human Rights. (2012). *The corporate responsibility to respect human rights: An interpretive guide*. https://www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf

Vaudo Godina, L. (2024). Autorregulación para la gestión de seguridad en las cadenas de suministro. *European Public & Social Innovation Review,* 9, pp. 1-19.

Vogt, J., & Subasinghe, R. (2025). Protección de los derechos de los trabajadores en las cadenas de suministro globales: ¿Marcará una diferencia significativa la Directiva de la UE sobre la diligencia debida en materia de sostenibilidad empresarial? *Laborem, 25*(32), 283–322. https://doi.org/10.56932/laborem.25.30.1