

Corporate Environmental Responsibility under the OECD Guidelines: Integrating Human Rights and Environmental Impacts into Unified HRDD Frameworks

Otgontuya Davaanyam¹

Abstract

This paper examines how corporate environmental responsibility is interpreted under the OECD Guidelines for Multinational Enterprises, with particular emphasis on the integration of human rights and environmental due diligence into a unified corporate accountability framework. While recent regulatory developments, including the OECD Guidelines (2023 update) and emerging mandatory due diligence regimes such as the EU Corporate Sustainability Due Diligence Directive, formally integrate environmental and human rights obligations, the extent to which such integration is conceptually coherent and operationally effective remains contested.

Drawing on qualitative doctrinal analysis and systematic content analysis of 28 OECD National Contact Point (NCP) cases involving environmental harm, the paper demonstrates that NCP practice reflects a persistent tension between environmental and human rights approaches. Environmental harms are often assessed through technocratic and procedural frameworks, prioritising impact assessments, mitigation measures, and compliance-based management systems. This approach frequently marginalises procedural environmental rights, particularly access to information, public participation, and meaningful stakeholder engagement, thereby limiting the identification and redress of associated human rights impacts.

Moreover, NCP outcomes remain predominantly forward-looking, with limited emphasis on remediation for past and ongoing environmental harm. The paper argues that effective integration requires a substantive recalibration of corporate due diligence frameworks to reflect the interdependence of environmental and human rights harms, incorporating both procedural environmental rights and more robust approaches to remediation.

Key words: Corporate environmental responsibility, Human rights and environmental due diligence (HREDD), OECD Guidelines for Multinational Enterprises, National Contact Points (NCPs), Environmental rights

I. Introduction

The right to a clean, healthy, and sustainable environment is increasingly recognised as a fundamental component of international human rights law, shaping corporate environmental accountability framework. This right highlights the inextricable link between environmental

¹ Otgontuya Davaanyam, Friedrich-Alexander-Universität Erlangen-Nürnberg, Erlangen, Germany
otgontuya.davaanyam@fau.de

degradation and the enjoyment of human rights, both individually and collectively.² Recent climate litigation demonstrates that environmental harm directly interferes with the enjoyment of broad range of human rights, reinforcing the need for corporate human rights due diligence (HRDD) to include environmental and climate-related risks.³ Accordingly, assessments of human rights impacts must also account for adverse environmental impacts and their broader effects on human well-being.⁴

Although environmental concerns were not a central focus of the UN Guiding Principles on Business and Human Rights (UNGPs) at the time of their adoption in 2011, the interconnection between human rights and environmental harm in the context of corporate responsibility has become increasingly evident.⁵ In comparison, the 2011 version of the OECD Guidelines for Multinational Enterprises (MNEs) provided a clearer mandate for companies to identify and address environmental risks.⁶ The convergence is further reflected in recent mandatory due diligence legislation, including France's Duty of Vigilance Law, Germany's Supply Chain Act, and the recently adopted Corporate Sustainability Due Diligence Directive (CSDDD).⁷ These instruments require companies to identify and mitigate not only human rights impacts but also adverse environmental impacts across their operations and value chains. Compliance necessitates the integration of international environmental standards into corporate risk-based due diligence systems, particularly in response to the interconnected crises of pollution, climate change, and biodiversity loss.⁸ A persistent challenge remains how human

² Alan Boyle 'Human Rights and the Environment: Where Next?' (2012) 23 (3) *The European Journal of International Law*, 613-642.

³ *Milieudefensie v. Royal Dutch Shell* [2021] C/09/571932 / HA ZA 19-379 (by 2030 RDS must reduce greenhouse gas emissions across its own operations and from the oil it produces by 45 percent) <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/> (accessed 15 July 2025).

⁴ Olga Martin-Ortega, Fatimazahra Dehbi, Valerie Nelson and Renginee Pillay 'Towards a Business, Human Rights and the Environment Framework' (2022) 14 *MDPI Sustainability* 14, 18 <https://www.mdpi.com/2071-1050/14/11/6596> (accessed 15 July 2025).

⁵ UNHRC, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/8/5, 7 April 2008. UN Guiding Principles on Business and Human Rights (UNGPs), UN Doc. A/HRC/17/31, 21 March 2011.

⁶ Organisation for Economic Cooperation and Development (OECD), *OECD Guidelines for Multinational Enterprises*. 2011, OECD Publishing Paris.

⁷ Loi de vigilance – Duty of Vigilance Law, 2017, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/> (last accessed 15 July 2025); Lieferkettensorgfaltspflichtengesetz (LkSG) - Act on Corporate Due Diligence Obligations in Supply Chains, 2021 <https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html> (accessed 15 July 2025); Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, [OJ L 2024/1760, 5.7.2024 (CSDDD), <http://data.europa.eu/eli/dir/2024/1760/oj> (last accessed 15 July 2025).

⁸ *Ibid*, CSDDD, Preambles 32 and 38.

rights and environmental impacts can be addressed coherently within a single due diligence framework.⁹

The OECD Guidelines provide a key framework for interpreting corporate environmental responsibility in practice through National Contact Points (NCPs)—non-judicial, mediation-based grievance mechanisms that address specific instances of alleged non-compliance.¹⁰ Since the early 2000s, at least 31 functioning NCPs have received nearly 685 complaints related to corporate non-compliance with the Guidelines, many involving operations in the Global South.¹¹ Approximately 160 of these cases have explicitly addressed environmental harm caused by MNEs.¹² This paper focuses on 28 of those cases in which NCPs explicitly articulated expectations regarding corporate environmental responsibilities, whether briefly or in detail.¹³ This purposive selection enables a focused analysis of how environmental harm is assessed under the OECD Guidelines and how it is connected to human rights impacts.

This paper examines how corporate environmental responsibility is interpreted under the OECD Guidelines, with particular emphasis on the integration of human rights and environmental due diligence (HREDD) into a unified framework. This paper contends that NCP specific instances expose a recurrent reliance on technocratic environmental due diligence that omits procedural environmental rights, notably access to information and effective participation. Such practices result in superficial assessments that fail to identify or address the human rights impacts experienced by affected communities. The paper therefore argues for a harmonised human rights and environmental due diligence framework that reflects the substantive and procedural interdependence of these harms.

To ensure analytical rigour beyond descriptive reporting, this paper adopts a structured methodological approach. It examines how OECD NCPs interpret corporate environmental responsibility under the OECD Guidelines and assesses whether HREDD are treated as substantively integrated in practice. The analysis proceeds from the premise that, despite the formally integrated structure of the Guidelines, NCP practice often reflects a technocratic

⁹ Virginie Rouas, Julia Otten and Daniel Torán ‘New Wine in Old Bottles Environmental and Climate Aspects of the EU’s Corporate Sustainability Due Diligence Directive’ *VerfBlog*, 2024/6/10, <https://verfassungsblog.de/new-wine-in-old-bottles-csddd/> (accessed 15 July 2025); Finn Robin Schufft, Ceren Yildiz and Anna Aseva, Towards Planetary Boundaries for Business?: The EU’s Ambivalent Approach to Corporate Environmental Due Diligence, *VerfBlog*, 2024/6/07, <https://verfassungsblog.de/towards-planetary-boundaries-for-business/> (last accessed 15 July 2025).

¹⁰ OECD Guidelines (n 5), Part II: Implementing Procedures of the OECD Guidelines for Multinational Enterprises, I. National Contact Points.

¹¹ According to the OECD Database of Specific Instances, there are currently 685 recorded cases, encompassing both ongoing and completed matters, as well as their initial and final statements. OECD, Database of specific instances <https://mneguidelines.oecd.org/database/> (last accessed 15 July 2025).

¹² Ibid, there are at least 160 specific instances in the OECD database where provisions from the Environmental chapter have been referenced. However, only in these 28 cases, NCPs explicitly addressed the corporate environmental responsibilities.

¹³ See, Table 1. Table of cases.

approach to environmental assessment that insufficiently captures related human rights impacts. Methodologically, the paper combines qualitative doctrinal analysis with systematic legal content analysis of NCP decisions. Using predefined analytical criteria, the full set of NCP cases was screened to identify 28 instances in which corporate environmental responsibilities were explicitly addressed. These cases were then analysed to assess how environmental impacts are identified, linked to human rights concerns, and addressed through preventive and remedial corporate measures.

Finally, the paper examines access to remedy under the OECD NCP mechanism. While the NCPs offer an accessible non-judicial grievance mechanism, they face challenges in delivering effective remediation, particularly in cases involving severe, cumulative or transboundary environmental harm.

II. Corporate Environmental Responsibility in Business and Human Rights: Scope, Integration, and Limits

a. Historical and Conceptual Foundations of Corporate Environmental Responsibility

As environmental degradation and climate change continue to escalate, the global community increasingly recognises the essential role of corporate environmental responsibility within the broader framework of human rights.¹⁴ The interconnection between environment and human rights has led to significant normative developments, signalling an evolving understanding that environmental protection is not just an ethical concern but a fundamental human right. This shift is seen, *inter alia*, in the recent UN General Assembly resolution recognising the right to a clean, healthy, and sustainable environment.¹⁵

At the same time, corporate engagement with the environmental protection predates the contemporary business and human rights (BHR) agenda. Early international instruments, including the Stockholm Declaration, the Rio Declaration, and the World Summit on Sustainable Development in Johannesburg, articulated expectations that businesses should comply with environmental standards and contribute to sustainable development.¹⁶ As Morgera noted, these instruments signalled an early awareness of corporate environmental responsibilities, even if they were framed in broad and largely non-binding terms.¹⁷ In parallel, sustainability-oriented standards and safeguards developed well before 2011—most notably earlier versions of the OECD Guidelines, the World Bank environmental and social safeguard

¹⁴ Ben Boer and Alan Boyle ‘Human Rights and the Environment’ 13th Informal ASEM Seminar on Human Rights: Background Paper’ 21-23 October 2013, 5 <https://asef.org/wp-content/uploads/2020/10/Background-Paper-FINAL.pdf> (last accessed 15 July 2025).

¹⁵ UNGA ‘The human right to a clean, healthy and sustainable environment’ Resolution adopted by the General Assembly on 28 July 2022, A/RES/76/300.

¹⁶ Elisa Morgera ‘Corporate Accountability’ in Elisa Morgera and Kati Kulovesi Research Handbook on International and Natural Resources (Edward Elgar 2023), 121.

¹⁷ *Ibid.*

policies, and the International Finance Corporation (IFC) Performance Standards—addressed environmental risks associated with business activities, particularly in high-impact sectors such as extractives and mining.¹⁸ These frameworks imposed environmental impact assessment, risk management, and mitigation requirements on corporate actors well before the consolidation of HRDD frameworks, thereby shaping early conceptions of corporate environmental responsibility that predate and underpin the UNGPs and the OECD Guidelines.

Despite these early developments, environmental and human rights discourses largely evolved as distinct regulatory and normative domains. Turner argues that international human rights law and international environmental law developed as separate branches, shaped by different institutional histories and technical priorities.¹⁹ Building on Bantekas and Oette, Martin-Ortega and others observe that human rights law is rooted in principles of dignity, equality, and liberty, whereas international environmental law is guided by principles such as prevention, precaution, and the polluter pays principle, with a primary focus on limiting transboundary harm and protecting the global commons.²⁰ This divergence has historically complicated efforts to develop coherent approaches to corporate accountability that address both human rights harms and environmental degradation.²¹

This conceptual separation continues to shape contemporary debates. While environmental harm increasingly affects the enjoyment of human rights, the environment is often still treated instrumentally, valued primarily insofar as it impacts human well-being. As several scholars have noted, this anthropocentric framing risks overlooking environmental degradation that may not produce immediate or clearly attributable human rights violations, but which accumulates over time and disproportionately affects future generations and vulnerable communities.²²

b. Integrating Human Rights and Environmental Due Diligence: Possibilities, Limits, and Practice

Over time, the integration of environmental concerns into corporate human rights responsibilities has received growing attention. Global frameworks such as the UNGPs and the

¹⁸ IFC, Former Environmental and Social Safeguards and Supporting Materials, <https://www.ifc.org/en/what-we-do/sector-expertise/sustainability/policies-and-standards/pre-2006-safeguards-and-supporting-material#:~:text=and%20supporting%20material-Former%20Environmental%20and%20Social%20Safeguards%20and%20Supporting%20Materials.process%20after%20January%201%2C%202012> (last accessed 27 January 2026).

¹⁹ Stephen J. Turner ‘Business, Human Rights and the Environment—Using Macro Legal Analysis to Develop a Legal Framework That Coherently Addresses the Root Causes of Corporate Human Rights Violations and Environmental Degradation’ (2022) 13 (1) *Sustainability*, 1.

²⁰ Martin-Ortega, Olga, Fatimazahra Dehbi, Valerie Nelson and Renginee Pillay (n 3), 3; Ilias Bantekas and Lutz Oette *International Human Rights Law and Practice* (Cambridge University Press 2016), 263-264

²¹ *Ibid.*

²² Sara De Vido *Feminist legal methods and environmental chronic emergencies: challenging the anthropocentric and androcentric international legal system* in Sara De Vido, Deborah Russo and Enzamaría Tramontana ‘Gendering International Legal Responses to Environmental Chronic Emergencies’ Edward Elgar 2026, 2-22.

OECD Guidelines represent important steps in this direction, although they differ in how they conceptualise and operationalise corporate environmental responsibility. Earlier version of the OECD Guidelines already addressed environmental responsibility by requiring MNEs to establish environmental management systems, including the assessment of environmental information, the setting of measurable objectives and regular monitoring.²³ The 2011 version of the OECD Guidelines, however, marked clear articulation of risk-based environmental due diligence, shifting the focus from procedural management towards the identification, prevention, and mitigation of environmental impacts across the enterprise and, where appropriate, its supply chains.²⁴

By contrast, the UNGPs contain only limited and indirect references to environmental harms. While the Commentaries to Principle 18 acknowledge that environmental impacts may affect human rights, the framework provides little guidance on how environmental responsibility should be integrated into HRDD in practice.²⁵ This ambiguity prompted interpretive interventions, most notably by the UN Special Rapporteur on human rights and the environment, who has clarified that under the UNGPs businesses have clear responsibility to avoid causing or contributing to human rights violations through environmental harm and to take preventive and remedial actions where such risks arise.²⁶

The 2023 update of the OECD Guidelines strengthens expectations regarding corporate responsibility for climate change, biodiversity loss, pollution, and waste management. Nevertheless, a central question remains unresolved: whether and to what extent human rights and environmental due diligence can be coherently integrated within a single framework, and whether such integration is more effective than maintaining distinct but coordinated approaches.²⁷ While harmonisation is often presented as a normative ideal, practical experience suggests that integration remains uneven and contested.

Empirical and doctrinal scholarship reflects this tension. Macchi and Bernaz argue that climate-related risks must be incorporated into corporate due diligence, particularly in financial sector, even where the UNGPs and OECD Guidelines do not explicitly refer to climate

²³ OECD, The OECD Guidelines for Multinational Enterprises, Revision 2000, https://www.oecd.org/en/publications/2003/10/oecd-guidelines-for-multinational-enterprises_g1gh3b38.html (last accessed 28 January 2025).

²⁴ OECD Guidelines, Chapter VI: Environment (n 5).

²⁵ UNGPs (n 4), Commentary to Principle 18; Fatimazahra Dehbi and Olga Martin-Ortega ‘An integrated approach to corporate due diligence from a human rights, environmental, and TWAIL perspective’ (2023) 17(4) *Governance and Regulations*, 927-928.

²⁶ UN Special Rapporteur on human rights and the environment ‘Policy Brief No. 3: Essential elements of effective and equitable human rights and environmental due diligence legislation, A policy brief by David R. Boyd, UN Special Rapporteur on human rights and the environment, and Stephanie Keene, Independent Consultant, International Human Rights Lawyer, June 2022, 9 <https://reilukauppa.fi/wp-content/uploads/2022/07/20220701-sr-environment-policybriefing3.pdf> (last accessed 20 July 2025).

²⁷ OECD, OECD Guidelines for Multinational Enterprises for Responsible Business Conduct, June 2023, OECD Publishing Paris.

change.²⁸ Schilling-Vacaflor's empirical research on French companies operating in Brazil demonstrates that companies frequently prioritise either human rights or environmental risks, rather than addressing both in a balanced and integrated manner.²⁹ Other scholars, including Martin-Ortega and others similarly caution that meaningful integration of HREDD requires clearly defined corporate environmental responsibilities, encompassing both substantive and procedural environmental rights, and meaningful stakeholder participation in environmental decision-making process.³⁰ Bright and Buhmann also argue that while integrated due diligence is often presented as essential for addressing climate change and advancing a just transition, its effectiveness depends on whether it moves beyond a narrow climate focus to address biodiversity and other standalone environmental risks.³¹ Together these contributions emphasise that a unified due diligence approach must comprehensively integrate all environmental and human rights risks, ensuring that neither is treated in isolation.

Recent mandatory HRDD legislation, including the French Duty of Vigilance Law, the German Supply Chain Act, the ongoing negotiations on a Legally Binding Instrument (LBI), and the adoption of the CSDDD, reflects a growing regulatory commitment to addressing both human rights and environmental risks.³² These instruments increasingly acknowledge that human rights and environmental harms are interconnected and that corporate responsibility frameworks must respond to both. At the same time, however, they reveal significant divergences in how such integration is conceptualised and operationalised, raising questions about whether fully coherent human rights and environmental due diligence can be achieved through shared regulatory instruments.

The French and German laws illustrate these tensions clearly. Both require large companies to identify and address human rights and environmental risks, yet they differ in scope and enforcement and underlying assumptions. The Duty of Vigilance Law mandates a vigilance plan to prevent serious harms, including environmental damage, across a company's operations and supply chains, with civil liability for non-compliance.³³ however, scholars noted

²⁸ Chiara Macchi and Nadia Bernaz 'Business, Human Rights and Climate Due Diligence: Understanding the Responsibility of Banks' (2021) 13(5) *Sustainability* 1-21.

²⁹ Almut Schilling-Vacaflor 'Integrating Human Rights and the Environment in Supply Chain Regulations' (2021) 13(17) *Sustainability* 1-15.

³⁰ Martin-Ortega, Olga, Fatimazahra Dehbi, Valerie Nelson and Renginee Pillay (n 3), 16.

³¹ Claire Bright and Karin Buhmann, Risk-Based Due Diligence, Climate Change, Human Rights and the Just Transition (2021) 13(18) *Sustainability* 1-18.

³² Duty of Vigilance Law (n 6); Act on Corporate Due Diligence Obligations in Supply Chains (n 6); CSDDD (n 6); Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) Updated draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, July 2023 <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf> (last accessed 15 July 2025).

³³ Duty of Vigilance Law (n 6), Article 1. The plan shall include the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls within the meaning of Article L.233-16, II, as well as from the

that the environmental aspects of compliance remain underdeveloped and not adequately enforced.³⁴ By contrast, the German Supply Chain Act addresses environmental harm only where it is linked to specific human rights violations, such as pollution affecting health or access to resources, and provides more limited avenues for legal action.³⁵

At the international level, the second draft of the LBI explicitly recognises ‘environmental rights’ as human rights and incorporates the right to a clean, healthy, and sustainable environment.³⁶ Similarly, the CSDDD integrates human rights and environmental risks within a unified corporate due diligence obligations.³⁷ While widely seen as advances in corporate accountability, these frameworks have been criticised for its selective scope and internal hierarchies, particularly for excluding certain environmental impacts, such as plastic pollution.³⁸

As Martin-Ortega and Dehbi argue, while mHREDD regulations in represent progress from previous voluntary standards, they remain constrained by limited substantive coverage and weak remediation mechanisms.³⁹ Building on this critique, Schilling-Vacaflor argues that integrated legislation must confront institutional, political, and economic barriers rather than assuming that harmonisation will automatically improve effectiveness.⁴⁰

c. Concept of the Human Rights and Environmental Due Diligence and Competing Normative Logics

operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship.

³⁴ Schilling-Vacaflor (n 29), 8-9.

³⁵ Ibid.

³⁶ OEIGWG, Second draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises 6 August 2020 https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf (accessed 15 July 2025); Kinda Kinda Mohamadieh, Otgontuya Davaanyam, Stephanie Regalia and Markus Krajewski ‘Complementarity of the Legally Binding Instrument on Business and Human Rights and the EU Corporate Sustainability Due Diligence Directive’ A study paper CIDSE, 20 March 2025.

³⁷ According to the CSDDD, Preamble 20, the due diligence process set out in the CSDDD 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.

³⁸ Virginie Rouas, Julia Otten, and Daniel ‘From Paper to Practice: Moving to a Coherent Implementation of the EU Corporate Sustainability Due Diligence Directive’s Environmental and Climate Obligations’ *Verfassungsblog*, 10 June 2024 <https://verfassungsblog.de/from-paper-to-practice-csddd-implementation> (accessed 15 July 2025).

³⁹ Fatimazahra Dehbi and Olga Martin-Ortega (n 25), 927-928.

⁴⁰ Schilling-Vacaflor (n 29), 11-12.

Efforts to integrate HREDD are a welcome development, however, it calls for closer scrutiny. While integration is often presented as inherently desirable, it remains unclear whether a single due diligence architecture can adequately address the distinct normative foundations, evidentiary standards, and remedial logics of human rights and environmental protection. The persistent challenges surrounding the notion of a ‘just transition’ illustrate this challenge. Despite broad consensus on reconciling environmental objectives with social justice, transition policies frequently expose conflicts between climate mitigation, labour rights, Indigenous land rights, and local livelihoods. These dynamics suggest that integration involves trade-offs rather than seamless coherence and that shared instruments may struggle to deliver equal protection across domains.⁴¹

This concern is particularly salient in relation to environmental due diligence, which has traditionally developed as a state obligation grounded in the principles of prevention and precaution. Principle 2 of the Rio Declaration requires reasonable measures to prevent environmental harm, while Principle 15 establishes that scientific uncertainties must not delay cost-effective preventive action.⁴² While state responsibility is often contextualised by resource and capacity constraints, such justifications are less persuasive when applied to powerful MNEs. Yet existing HREDD frameworks have only partially translated these principles into corporate responsibilities, often subordinating environmental protection to human rights risk assessments.

Regulatory approaches have largely prioritised environmental harm insofar as it affects human rights, such as health, access to water, or livelihoods. While this anthropocentric focus is inevitable, it risks obscuring the intrinsic value of the environment and the need for protection independent of immediate human harm. Recent jurisprudence of the Inter-American Court of Human Rights signals a significant shift beyond this framing, recognising Nature—including rivers and ecosystems—as an autonomous subject of rights and requiring states not only to prevent harm but to actively protect, restore, and regenerate ecosystems to ensure their integrity.⁴³ This approach builds on national developments in the region, such as judicial recognition of river rights in Peru’s Marañón River case, and reflects an emerging ecocentric legal framework for environmental protection in the Americas.⁴⁴ These developments reinforce the need for due diligence frameworks to move beyond an instrumental understanding of the environment as a resource for human use.⁴⁵ As highlighted by the ClientEarth and Frank Bold

⁴¹ Yuwan Malakar et al, Just trade-offs in a net-zero transition and social impact assessment (2024) 106 *Environmental Impact Assessment Review*, 1-9.

⁴² Rio Declaration on Environment and Development, Jun. 13, 1992 31 ILM 874 (1992), Principles 2 and 15.

⁴³ Inter-American Court of Human Rights, Climate Emergency and Human Rights, Advisory Opinion OC-32/35 of 29 May 2025 requested by the Republic of Chile and the Republic of Colombia https://admin.climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250703_18528_decision-1.pdf (last accessed 26 January 2026).

⁴⁴ Eco Jurisprudence Monitor, Peru court case: rights of the Marañón River, <https://ecojurisprudence.org/initiatives/rights-of-maranon-river-case/> (accessed 26 January 2026).

⁴⁵ ClientEarth and Frank Bold ‘Environmental Due Diligence and Reporting in the EU Legal analysis of the EU Directive on Corporate Sustainability Due Diligence and policy recommendations for transposition into national

report, effective due diligence must address not only immediate human rights impacts but also cumulative, long-term, and intergenerational environmental harms that may not manifest as direct rights violations.⁴⁶

Scholars therefore emphasised that embedding corporate responsibility for environmental harms within HREDD requires the recognition of both substantive and procedural environmental rights, including access to information, participation in decision-making processes and access to remedy.⁴⁷ As Morgera highlights, international environmental instruments such as the Convention on Biological Diversity (CBD), offer valuable guidance for embedding corporate accountability within this integrated framework.⁴⁸ The CBD promotes corporate responsibilities related to consultation with diverse stakeholders, the conduct of comprehensive impact assessments and fair and equitable benefit-sharing.⁴⁹ Notably, the CBD goes beyond conventional environmental and social impact assessments by also requiring consideration of cultural impacts, particularly those affecting Indigenous peoples.⁵⁰ Its emphasis on benefit-sharing introduces a broader accountability mechanism that extends beyond impact assessment and mitigation, pointing toward more inclusive and participatory corporate environmental responsibility.⁵¹ However, incorporating these principles into HREDD frameworks raises further questions about institutional capacity and enforcement rather than guaranteeing effectiveness through formal integration alone.

Similar challenges arise in remediation. Environmental harms often require long-term and collective forms of redress, such as ecosystem restoration, rehabilitation and compensation, which do not align neatly with individualised human rights remedies.⁵² Structural issues, such as modern slavery and child labour in supply chains require long-term remediation strategies that also address environmental harm, including ecosystem restoration and climate mitigation. HREDD frameworks should therefore incorporate access to remedy under international environmental law, as reflected in regional agreements such as the Aarhus Convention and the

law' September 2024 <https://media.business-humanrights.org/media/documents/2024-09-17-legal-analysis-on-cs3d-transposition-final-version-designed-1.pdf> (last accessed 15 July 2025).

⁴⁶ Ibid, 32; Martin-Ortega, Olga, Fatimazahra Dehbi, Valerie Nelson and Renginee Pillay (n 3), 2-3.

⁴⁷ Ibid, 4.

⁴⁸ Morgera (n 15), 123; Convention on Biological Diversity (CBD), June 5, 1992 1760 U.N.T.S. 79, 143; 31 I.L.M. 818 (1992).

⁴⁹ Morgera E, 'Benefit-Sharing as a Bridge Between Environmental and Human Rights Accountability of Multinational Corporations' (2014) 13 University of Edinburgh School of Law Research Paper, 1-33.

⁵⁰ CBD Decision VII.16F, 'Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities in Article 8(j) and related provisions (13 April 2004) UN Doc UNEP/CBD/COP/7/21 Part II. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf> (last accessed 15 July 2025).

⁵¹ Ibid, IV. Integration Of Cultural, Environmental and Social Impact Assessments as a Single Process.

⁵² UN General Assembly 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' 18 July 2017 UN Doc A/72/162, para 39.

Escazú Agreement.⁵³ These instruments are pivotal in ensuring access to justice. The Aarhus Convention guarantees access to environmental information, public participation, and justice in environmental matters,⁵⁴ while the Escazú Agreement expands these protections to environmental human rights defenders.⁵⁵ Together these treaties highlight the need for comprehensive corporate responsibility for environmental remediation, including inclusive, participatory and transparent grievance mechanisms accessible to affected communities.

Empirical evidence presents a different picture. The recent Business and Human Rights Resource Centre (BHRRC) Transition Minerals Tracker shows that among 111 companies linked to human rights and environmental allegations, only 39% have a publicly available human rights policy, despite the longstanding existence of the UNGPs and the OECD Guidelines.⁵⁶ Allegations most frequently concern environmental harms, particularly water pollution and restricted access to water, as well as attacks on human rights and environmental defenders, disproportionately affecting Indigenous and local communities.⁵⁷ This casts doubt on assumptions that increasingly complex integrated frameworks will automatically produce improved outcomes.

Reports co-authored by the BHRRC and Indigenous Peoples Rights International co-authored demonstrated that achieving a just transition in the mineral sector must be grounded in a rights-respecting business model, that includes co-ownership, and shared prosperity with Indigenous Peoples.⁵⁸ These findings challenge simplified narratives of integration by exposing deep structural tensions between extractive development, environmental protection, and Indigenous rights.

Taken together, these developments suggest that while integrated HREDD frameworks hold normative appeal, their effectiveness cannot be presumed. Existing regimes frequently fail to address human rights and environmental risks in a comprehensive and balanced manner, leaving significant gaps in prevention, accountability, and remediation. A more critical approach is therefore required—one that examines the conditions under which integration enhances protection, as well as those in which differentiated or complementary instruments

⁵³ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 3388 U.N.T.S. 14 (Aarhus Convention); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, March 4, 2018, 3388 U.N.T.S. 333.

⁵⁴ Ibid, Aarhus Convention, Articles 4, 6 and 9.

⁵⁵ Ibid, Escazú Agreement, Article 9.

⁵⁶ BHRRC ‘Transition Minerals Tracker: 2024 Global Analysis’ 16 May 2024 <https://www.business-humanrights.org/en/from-us/briefings/transition-minerals-tracker-2024-global-analysis/> (last accessed 19 July 2025).

⁵⁷ Ibid, 13.

⁵⁸ BHRRC and Indigenous Peoples Rights International ‘Exploring Shared Prosperity: Indigenous leadership and partnerships for a just transition’ 15 October 2024 <https://www.business-humanrights.org/en/from-us/briefings/exploring-shared-prosperity-indigenous-leadership-and-partnerships-for-a-just-transition/> (accessed 19 July 2025).

may prove more effective. Only by confronting these challenges directly can HREDD move beyond formal harmonisation toward genuinely transformative corporate environmental accountability.

III. OECD NCPs Specific Instances and the Limits of Integrated Environmental and Human Rights Due Diligence

This section examines how OECD NCPs interpret corporate environmental due diligence in practice and assesses whether these interpretations support the commonly held assumption that human rights and environmental risks can be coherently integrated within a single due diligence framework. It considers what effective integration requires in terms of corporate HREDD responsibilities, including how companies should identify, prevent, and mitigate interconnected environmental and human rights harms. Rather than presuming that integration necessarily leads to stronger protection, the analysis critically evaluates whether NCP practice demonstrates that such coherence is practically achievable and normatively effective across different contexts.

OECD NCPs are non-judicial grievance mechanisms through which individuals or organisations may submit a complaint alleging that an enterprise operating within an adhering state's jurisdiction has breached the OECD Guidelines. Where a case is accepted, NCPs offer their good offices, typically through mediation or conciliation, to assist the parties in addressing the alleged issues and reaching a mutually agreed solution.⁵⁹ If a company declines to participate or no agreement is reached, the NCP may conclude the process by issuing a statement that outlines the issues, summarises the parties' positions, and sets out the NCP's analysis; in some cases, this includes findings on non-compliance and recommendations for future conduct.⁶⁰ The OECD allows NCPs significant institutional flexibility, allowing them to operate as independent bodies or within government structures, and their effectiveness varies accordingly, shaped by levels of independence, capacity, and the political commitment of the host state.

The analysis draws on 28 OECD NCP specific instances⁶¹ decided between 2011 and 2024 in which environmental harm constituted a central element of the complaint. These cases span multiple sectors, with extractive industries most prominent, alongside agribusiness, energy, logistics, manufacturing, and marketing. Although more than 160 OECD NCP cases raise allegations of environmental harm, this study is limited to 28 cases in which NCPs engaged, either in detail or in a more limited but explicit manner, with corporate environmental responsibilities under the OECD Guidelines.

⁵⁹ OECD Guidelines (n 6), Procedures, I. Commentary on the Procedures for NCPs, para 25.

⁶⁰ *Ibid*, para 44.

⁶¹ See Table. 1 Table of Cases.

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| No. | Completed year | Case Name | NCP Country | Status |
|-----|----------------|---|--------------------|-----------------------------|
| 1 | September 2009 | Survival International v. Vedanta Resources PLC | NCP United Kingdom | Completed without agreement |
| 2 | March 2011 | Green Peace India v. Dredging International | NCP Belgium | Completed without agreement |
| 3 | July 2011 | Norwegian Society for the Conservation of Nature/Friends of the Earth Norway ² and Forum for Environment and Development (Forum) v. Cermaq ASA | NCP Norway | Agreement |
| 4 | November 2011 | The Future in Our Hands (FIOH) v. Intex Resources Asa and The Mindoro Nickel Project | NCP Norway | Completed without agreement |
| 5 | June 2013 | The Siemenpuu Foundation, Friends of the Earth Finland et al v. Pöyry Plc and Xayaburi hydropower | NCP Finland | Completed without agreement |
| 6 | June 2013 | Sherpa v. Bollore and Socapalm | NCP France | Agreement |
| 7 | July 2013 | Two Indian NGOs et al v. Michelin Group | NCP France | Completed without agreement |
| 8 | July 2014 | Green Peace v. Jan De Nul NV | NCP Belgium | Completed without agreement |
| 9 | July 2014 | WWF v. SOCO International | NCP United Kingdom | Agreement |
| 10 | June 2015 | FIVA et al v. Norconsult | NCP Norway | Agreement |
| 11 | August 2016 | Mr. Dominic Whiting v. NORDEX SE | NCP Germany | Completed without agreement |

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|----|----------------|--|--------------------|-----------------------------------|
| 12 | June 2017 | Finance & Trade Watch Austria, Earthrights International Et Al v. Andritz Hydro Gmbh In Connection to the Xayaburi Hydropower Project in Lao Pdr | NCP Austria | Agreement |
| 13 | June 2017 | Survival International Italia v. Salini Impregilo S.p. A | NCP Italy | Completed without agreement |
| 14 | November 2018 | Notice Hou Friesland Mooi v. Nuon Energy N.V | NCP Netherlands | Completed without agreement |
| 15 | June 2019 | Frank Bold v. Grupa OLX | NCP Poland | Completed without agreement |
| 16 | December 2019 | Alliance for Solidarity v. Spanish MNE in Guatemala | NCP Spanish | Completed without agreement |
| 17 | May 2020 | Southeast Alaska Conservation Council v. Imperial Metals Corporations | NCP Canada | Completed without agreement |
| 18 | September 2021 | Port Hedland Community Progress Association v. BHP | NCP Australia | Completed without agreement |
| 19 | September 2021 | ASF v. Perenco in Tunisia | NCP France | Completed without agreement |
| 20 | January 2022 | Izabel Lopes Soares da Silva, represented by José Reinaldo Soares da Silva v. Bracell Bahia Specialty Cellulose S., p. | NCP Brazil | Completed without agreement |
| 21 | May 2022 | 14 Local Watch Committees and Centre of Actions for Life and Earth v. COPAGEF, SOMDIAA and SOSUCAM in Cameroon | NCP France | Completed without agreement |

| | | | | |
|----|----------------|--|--------------------|-----------------------------|
| 22 | January 2023 | AHN and CBVL v. Victoria Oil & Gas plc | NCP United Kingdom | Completed without agreement |
| 23 | February 2023 | Aminigboko Community v. the Shell Petroleum Development Company of Nigeria Limited and Shell Headquarters | NCP Netherlands | Completed without agreement |
| 24 | February 2023 | Individual v. Sia Omniva | NCP Latvia | Agreement |
| 25 | September 2023 | Human Rights Law Centre v. Rio Tinto | NCP Australia | Pending |
| 26 | October 2023 | Project Sepik and Jubilee Australia Research Centre on behalf of Sepik River communities against PanAust Limited | NCP Australia | Completed without agreement |
| 27 | January 2024 | Individual v. Valeo Autosystemy Sp. z o.o. | NCP Poland | Completed without agreement |
| 28 | November 2024 | AJTZP, RAID and PILC v. Glencore | NCP United Kingdom | Completed without agreement |

Table 1. Table of Cases

This study further excludes cases concerned exclusively with corporate climate change responsibility. Such climate-focused NCP cases have already been examined comprehensively in existing scholarship, including by Aristova and others, and revisiting them would risk analytical repetition without yielding significant additional insight.⁶² By contrast, non-climate environmental harms, such as biodiversity loss, pollution, ecosystem degradation, and impacts on Indigenous lands, have received less systematic attention in NCP scholarship, despite raising complex questions regarding the integration of environmental and human rights due diligence.

⁶² Ekaterina Aristova et al 'Corporate Climate Change Responsibilities under the OECD Guidelines for Multinational Enterprises' (2024) 73(2) International and Comparative Law Quarterly, 500-525.

a. Environmental Harm Between Autonomy and Integration in NCP Practice

Across the cases analysed, NCPs have addressed environmental harm through two partially overlapping but distinct approaches. In some instances, environmental responsibility is treated as an autonomous obligation under the OECD Guidelines, grounded in principles of prevention, precaution, and sustainable resource use, without requiring a direct link to human rights violations.

This approach is evident in cases before the Belgian NCP and the Norwegian NCP. Two cases filed by Greenpeace and Greenpeace India against Dredging International and regarding the Dhamra Port Project in India and against Jan De Nul NV in relation to the Sabetta Harbour Project in the Russian Arctic. Both cases focusing on adverse impacts on biodiversity.⁶³ The Greenpeace India report found that Dredging International failed to conduct an adequate environmental assessment, particularly regarding biodiversity, and did not apply the precautionary principle in ecologically sensitive areas, while also failing to contribute to sustainable development.⁶⁴ Similarly, the complaint against Jan De Nul NV focused on the impact of the Sabetta Harbour Project on marine biodiversity, notably whale populations.⁶⁵ Although such impacts may indirectly affect the right to food through ecosystem disruption, the case primarily centred on biodiversity conservation rather than direct human rights violations. In both cases, the Belgian NCP ultimately declined to find non-compliance, acknowledging serious environmental concerns raised by the complainants but concluding that the companies had taken adequate mitigation measures, while recommending enhanced environmental due diligence through additional impact assessments, continued engagement with expert bodies, early consultation with local NGOs, transparent public communication of environmental risks, and urging state authorities to incorporate precautionary environmental safeguards into future tenders and project approvals.

Comparable allegations were raised in the case against Cermaq before the Norwegian NCP, concerning aquaculture practices alleged to contribute to fish disease, and pose risks to biodiversity.⁶⁶ The NCP proceeding resulted in a joint agreement recognising that the sustainable use of natural resources—guided by the precautionary principle and corporate accountability in social and environmental impacts—is essential for the future of the aquaculture industry. Following the NCP proceedings, Cermaq expressed its commitment to comply with international environmental standards to minimise its environmental footprint.

Across the above cases, complainants relied on Chapter VI, Section 4 of the OECD Guidelines, which covers the precautionary principles by requiring companies, in line with

⁶³ NCP Belgium, *Greenpeace v. Jan De Nul NV*, Final Statement, 24 November 2014; NCP Belgium, *Greenpeace India v. Dredging International*, Final Statement, 11 March 2011.

⁶⁴ *Ibid* (Dredging International), 1-2.

⁶⁵ *Ibid* (Jan De Nul NV), 5.

⁶⁶ NCP Norway, *Norwegian Society for the Conservation of Nature/Friends of the Earth Norway2 and Forum for Environment and Development (Forum) v. Cermaq ASA*, Final Statement, July 2011.

scientific and technical knowledge, not to invoke scientific certainty as a justification to delay cost-effective measures to prevent or minimise serious environmental harm, including risks to human health and safety.⁶⁷ Although the NCPs acknowledged this provision and accepted that environmental harm may constitute an autonomous corporate responsibility under the Guidelines, their case-handling process ultimately reduced the precautionary principle to a largely procedural standard, recommending dialogue and forward looking mitigation while stopping short of making substantive findings of responsibility for environmental harms.

b. Corporate Environmental Responsibilities for Socio-Environmental Harms in NCP proceedings

Environmental harm linked to business activities routinely implicates a broad range of human rights. Yet NCP practice demonstrates that corporate environmental due diligence remains uneven, fragmented, and frequently subordinated to narrow compliance-oriented approaches. In particular, while extractive, energy, and agribusiness operations often undermine the rights to food, water, health, property, and a clean, safe, and sustainable environment through biodiversity loss, pollution, and ecosystem degradation, NCPs continue to address these impacts selectively rather than through an integrated socio-environmental lens.

Across NCP proceedings examined in this section, a recurring shortcoming is the failure to meaningfully integrate environmental risks into HRDD processes. Environmental impact assessments are frequently treated as technical or procedural exercises, detached from their human rights implications. At the same time, several NCPs demonstrate emerging good practice by interpreting the OECD Guidelines in light of specific environmental instruments and by consistently advocating more balanced approaches that address environmental and human rights impacts in an integrated manner.

In the Victoria Oil and Gas PLC (VOG) case before the UK NCP, complainants alleged that the company's environmental planning failed to adequately address impacts on local communities.⁶⁸ VOG responded that it complied with all applicable regulations and adhered to high environmental standards. The UK NCP reviewed VOG's environmental policies and management tools, including its Environmental and Social Management Plan, Environmental and Social Impact Assessments, and Integrated Management System, and found no breach of paragraphs 1 and 3 of Chapter VI (Environment) of the OECD Guidelines.⁶⁹ However, it concluded that VOG breached paragraph 6, which requires meaningful stakeholder engagement to improve environmental performance, including through target-setting and emissions-reduction strategies. The NCP recommended that VOG strengthen contingency planning to prevent, mitigate, and control serious environmental and health harms, including clear procedures for accidents, emergencies, and immediate reporting to competent authorities. This case demonstrates that environmental management system is insufficient where they lack

⁶⁷ Ibid (Dredging International), 1.

⁶⁸ NCP United Kingdom, Victoria Oil and Gas Plc, Final Statement, 22 October 2022.

⁶⁹ Ibid.

meaningful stakeholder engagement and fail to address community-level harm. However, in this case, UK NCP failed to recognise the communities claimed right to fair and equitable compensation. Referring to the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), and International Labour Organisations (ILO) instruments, it concluded that such a right is not recognised under existing international human rights law and therefore could not be examined under Chapter IV of the OECD Guidelines.

Similar limitation emerged in Nordex SE case before the German NCP. The complaint, filed by an individual in Turkey, alleged inadequate HREDD in Nordex's role as a supplier to a wind energy project.⁷⁰ The allegations concerned the absence of public consultation, lack of environmental impact assessment, unsafe transport and installation practices, and a failure to assess the impacts on property rights and biodiversity.⁷¹ Key issues included a lack of public consultation, the absence of an environmental impact assessment, and failure to ensure safe transport and installation of the turbines, as well as neglecting to assess potential impacts on local property rights and environmental adverse impacts. While mediation resulted in Nordex's commitment to strengthen its 'gate process' including review of permit, impact assessment, and community consultation, this case underlined that environmental due diligence cannot be limited to supply-chain screening but must proactively address cumulative socio-environmental risks affecting local communities.

The Pöyry Plc case before the Finnish NCP further clarifies the scope of corporate environmental responsibility, particularly regarding leverage. In relation to the Xayaburi hydropower project in Laos, the Finnish Ministry of the Environment emphasised that the OECD Guidelines apply even in the absence of a permanent local presence and extend to adverse impacts directly linked through business relationships.⁷² As a leading hydropower expert, Pöyry was expected to use its leverage to delay the dam's construction until key environmental studies on fish migration, sediment flows, flood risk, erosion, biodiversity and ecosystem were completed.⁷³ The Ministry also stressed transparency and consultation with affected communities across Mekong region. Pöyry contested this allegation and declined to alter its role; the NCP nevertheless issued a final statement affirming the company's responsibility to use leverage, demonstrating that corporate environmental responsibility requires active engagement rather than passive reliance on contractual or host-state processes.

Adding to this, the Nuon Energy case before the Dutch NCP also underlined the principle of corporate independent responsibility. The Dutch NCP rejected the company's attempt to shift environmental obligations onto host state, clarifying that companies must independently

⁷⁰ NCP Germany, Mr. Dominic Whiting v. Nordex SE, Final Statement, 31 August 2016.

⁷¹ Ibid, 3.

⁷² NCP Finland, the Siemenpuu Foundation, Friends of the Earth Finland, and 13 other NGOs v. Pöyry Plc and the Xayaburi hydropower project, Final Statement, 10 June 2013.

⁷³ Ibid, 2.

identify and address environmental risks associated with its operations, regardless of governmental roles.⁷⁴

Several NCP cases further indicate that corporate environmental responsibility extends beyond impact assessment to include procedural environmental rights, particularly access to information and participation. In the Shell case, the Dutch NCP referred the Disclosure chapter of the OECD Guidelines to stress that companies must provide timely, accurate and high-quality environmental information to workers and affected communities.⁷⁵ Similarly, in the Bracell case before the Brazilian NCP, the Ministry of the Environment found that inadequate disclosure of environmental impacts undermined both environmental responsibility and property rights; the company committed to improving information-sharing, and the case was closed following NCP recommendations, highlighting the interdependence of environmental due diligence and transparency.

Similarly, because of inadequate information-sharing and limited opportunities for participation, the Bracell case before the Brazilian NCP illustrates how an environmental compliance focus can obscure associated human rights impacts. While Bracell relied on domestic environmental licensing and impact assessments for its eucalyptus plantations, the NCP found that insufficient and inaccessible disclosure undermined affected communities' property rights and ability to engage meaningfully in decision-making.⁷⁶ The NCP concluded that formal environmental assessments alone are insufficient where companies fail to ensure transparency and participation, and closed the case with recommendations to improve disclosure and consultation practices, highlighting the procedural rights dimensions of environmental due diligence.⁷⁷

Furthermore, the case involving COPAGEF, SOMDIAA, and their subsidiary SOSUCAM under the French NCP centred on allegations that the companies failed to adequately address environmental and human rights impacts associated with its sugar production activities in Cameroon.⁷⁸ Allegations concerning water and soil pollution from sugar production in Cameroon, combined with inadequate consultation and pressure on community representatives, led the NCP to recommend a new environmental and climate-sensitive impact assessment, regular groundwater monitoring, disclosure of findings to communities, and

⁷⁴ NCP Netherlands, Notice Hou Friesland Mooi v. Nuon Energy, Final Statement, November 2018.

⁷⁵ NCP Netherlands, Aminigboko Community v. the Shell Petroleum Development Company of Nigeria Limited and Shell Headquarters, Final Statement, 10 February 2023.

⁷⁶ NCP Brazil, Izabel Lopes Soares da Silva, represented by José Reinaldo Soares da Silva v. Bracell Bahia Specialty Cellulose S.A, Final Statement, 14 December 2021.

⁷⁷ Ibid, 12-13.

⁷⁸ NCP France, 14 Local Watch Committees (“Comités Riverains de Veille”) and Centre of Actions for Life and Earth (“Centre d’Action pour la Vie et la Terre”) v. COPAGEF, SOMDIAA and SOSUCAM in Cameroon, Final Statement, 17 May 2022.

involvement of health authorities.⁷⁹ Additionally, there were claims that SOSUCAM had exerted pressure on community representatives who sought to voice these issues.

The French NCP reviewed SOSUCAM's latest social and environmental impact assessments conducted in 2012 and 2017 and recommended that a new impact assessment be carried out promptly to reflect current environmental and climate-related challenges.⁸⁰ This recommendation aligns with the Environmental chapter of the OECD Guidelines, that asks MNEs to assess and mitigate their environmental impacts continually. In response to alleged pollution risks, the NCP also recommended regular monitoring of surface and groundwater quality, expanding beyond preventive measures limited to the sugar plant's water usage.⁸¹ The NCP also stressed that the results of these studies should be made transparent to affected communities, given the direct implications for their health and livelihoods. Additionally, it was recommended that health authorities be involved in the consultation process to ensure that public health concerns are adequately addressed.

This case demonstrates that environmental procedural rights must be integrated into corporate environmental due diligence to adequately address human rights harms arising from environmental impacts. Effective integration requires the realisation of core rights, particularly access to information and meaningful engagement, through companies' HREDD responsibilities. It also highlights the French NCP's role in assessing the implementation and effectiveness of vigilance plan of the respondent companies and issuing recommendations to ensure compliance with the OECD Guidelines and the Duty of Vigilance Law.⁸²

Finally, several NCPs have also emphasised that access to timely and adequate environmental information must be linguistically and culturally accessible. In cases involving VOG and Vedanta before the UK NCP, Imperial Metals Corporation before the Canadian NCP, and Valeo Autosystemy Sp. z o.o. before the Polish NCP, the NCPs stressed that environmental information should be translated into local languages, and communicated in culturally appropriate form.⁸³ Specifically, in the Vedanta case, when interpreting environmental responsibility under the OECD Guidelines in reference to the CBD Awe: Kon Guidelines, the UK NCP concluded that the company's reliance on written disclosure was inadequate and recommended to improve community engagement highlighting the procedural dimensions of environmental harm.⁸⁴

⁷⁹ Ibid, 4.

⁸⁰ Ibid, 11-12.

⁸¹ Ibid, 14.

⁸² Ibid.

⁸³ NCP Canada, SEACC v. Imperial Metals Corporation, Final Statement, 08 May 2020; NCP United Kingdom, Survival International v. Vedanta Resources PLC, Final Statement, 25 September 2009; NCP Poland, Individual v. Valeo Autosystemy Sp. z.o.o, Final Statement, 24 January 2024.

⁸⁴ Ibid (Vedanta), para 83; Morgera (n 15), 128.

NCP practice illustrates that corporate environmental impact assessments frequently fail to adequately capture social and human rights impacts. The Intex Resources case concerning its Mindoro Nickel Project (MNP) project before the Norwegian NCP further affirmed this finding.⁸⁵ Although comprehensive environmental impact assessment was conducted, the NCP identified significant gaps in both substance and disclosure, including inadequate analysis of environmental and social impacts, weak management and monitoring plans, and failure to share technical reports, maps, and studies necessary for meaningful community evaluation.⁸⁶ Intex rejected the conclusions, but the NCP nonetheless issued a final statement detailing non-observance of the Guidelines, particularly regarding risks to Indigenous communities related to siltation, flooding, and health impacts.⁸⁷

Taken together, NCP practice shows that although environmental considerations are increasingly recognised, corporate environmental due diligence remains reactive and procedurally thin. Many companies rely on technocratic environmental impact assessments that lack meaningful community engagement and adequate information-sharing, resulting in the under-identification of social and human rights impacts. Across these cases, NCPs have repeatedly emphasised that access to information and meaningful stakeholder engagement are essential components of effective due diligence. Without genuine participation, the integration of environmental and human rights risks within HREDD remains superficial, and human rights impacts continue to be marginalised within corporate environmental accountability frameworks.

c. Environmental Due Diligence, Indigenous Peoples' Rights, and FPIC under the NCP Mechanism

Furthermore, environmental harm directly disrupts the cultural and spiritual rights of Indigenous Peoples, whose longstanding relationship with their traditionally held lands is central to their identity, livelihoods, and spiritual life. Some NCPs acknowledged that environmental harm cannot be disentangled from Indigenous People's cultural and spiritual rights. In the case against PanAust, the Australian NCP recognised the impact on Indigenous cultural heritage and applied the principle of Free, Prior, and Informed Consent (FPIC) within an environmental context.⁸⁸ Notably, the Independent Examiner stressed that where FPIC cannot be meaningfully ensured, the project should not proceed, reflecting an unusually strong articulation by an NCP in support of the Indigenous People's rights.

A similar pattern emerged in cases involving MNEs operating abroad, where environmental harm assessed alongside violations of Indigenous Peoples' rights. In a complaint

⁸⁵ NCP Norway, *The Future In Our Hands (FIOH) v. Intex Resources ASA and The Mindoro Nickel Project*, Final Statement, 30 November 2011.

⁸⁶ *Ibid*, 46.

⁸⁷ *Ibid*, 17-19.

⁸⁸ NCP Australia, *Project Sepik and Jubilee Australia Research Centre on behalf of Sepik River communities v. PanAust Limited*, Final Statement, 3 October 2023.

against a Spanish MNE operating in Guatemala before the Spanish NCP, the company was accused of both environmental harm and failure to respect the rights of Indigenous People, including the FPIC.⁸⁹ While acknowledging the high-risk environment for environmental defenders in Guatemala, the NCP recommended that the company strengthen its human rights policy, ensure FPIC in future projects, and revise its CSR strategy to include systematic risk monitoring of local partners in line with OECD due diligence standards.⁹⁰ The NCP further stated that the Spanish MNEs had a responsibility for supporting its local partner in community engagement, contributing to improve living conditions, and collaborating with the judicial authorities through comprehensive, where necessary impact assessments. However, the company largely framed its response in forward-looking and policy-oriented terms, without fully addressing alleged past harms.

A comparable outcome delivered by the case against Norconsult concerning its operations in Malaysia, brought before the Norwegian NCP.⁹¹ The company was accused of contributing to environmental harm affecting the Indigenous communities. Although the agreement reached did not explicitly mention FPIC, Norconsult committed to respecting the rights of Indigenous Peoples and strengthening internal risk mitigation approaches, again emphasising prospective and forward-looking statement rather than actual remedial approaches.

These cases differ significantly from others in which NCPs declined to meaningfully engage with Indigenous People's rights and the FPIC. For instance, in the complaint against Salini Impregilo S.p.A before the Italian NCP, Survival International, which represents Indigenous Peoples in Ethiopia, alleged that Salini's role in the design, construction, and management of the Gibe III Dam eliminated the Omo River's natural flood cycle, depriving Indigenous communities in the Lower Omo Valley of flood-retreat agriculture and grazing resources central to subsistence and cultural survival, and that the project proceeded without adequate consultation or FPIC.⁹² Yet, at the initial assessment stage the NCP excluded claims framed under self-determination and the right to development from further examination, treated requests for renewed impact assessment as untimely, and approached key downstream Indigenous-rights concerns as falling outside its remit, thereby narrowing the scope of review without squarely addressing FPIC. The mediation collapsed when Survival refused to accept conciliation terms imposing strict confidentiality and limits on public communication, arguing that these would prevent accountability to affected communities. The NCP declined to amend the terms and closed the case, illustrating how procedural constraints and issue-narrowing can displace substantive engagement with Indigenous rights and undermine the accountability function of the OECD grievance mechanism.

Taken together, these cases expose a fragmented and discretionary NCP practice in which recognition of Indigenous Peoples' rights and FPIC remains contingent rather than systematic,

⁸⁹ NCP Spain, Alliance for Solidarity v. Spanish MNE in Guatemala, 19 December 2019.

⁹⁰ Ibid, 10-11.

⁹¹ NCP Norway, FIVA et al v. Norconsult, Final Statement, July 2015.

⁹² NCP Italy, Survival International Italia v. Salini Impregilo S.p.A, Final Statement, 8 June 2017.

thereby limiting the capacity of the OECD grievance mechanism to deliver meaningful accountability for environmental harm affecting Indigenous communities.

d. Corporate Environmental Responsibilities Across Corporate Structures and Sectors

Corporate environmental due diligence is particularly critical for parent companies, which bear responsibility for ensuring that subsidiaries comply with environmental standards, especially in high-impact sectors such as agro-industry. In the Socapalm case, the French NCP emphasised that Bolloré Group's responsibility extend beyond adopting environmental policies to actively monitoring and supporting Socapalm's compliance with OECD Guidelines.⁹³ This case demonstrates that parent company responsibility requires the active exercise of influence over subsidiaries through continuous oversight, guidance, and risk management, including training, transparent communication, and ongoing environmental risk assessment across corporate structures. While NCP found that Socapalm inadequately addressed environmental impacts, the NCP recommended Bolloré's support for Socapalm's Quality, Health, Safety, and Environment (QHSE) program could help remedy this deficiency, particularly through better integration of environmental considerations into decision-making and a more proactive approach to environmental management.⁹⁴

Parent company responsibility was similarly highlighted in the Perenco case involving its subsidiary in Tunisia.⁹⁵ The French NCP concluded that Perenco France was directly linked to the environmental impacts caused by its subsidiary and issued several recommendations. These included updating corporate policies to function as effective due diligence tools, establishing a governance framework to ensure consistent implementation of due diligence and sustainability policies across the Group and supporting subsidiaries in applying corporate standards. The NCP also encouraged Perenco France to consider creating a 'CSR' Committee at both the Group and country levels to facilitate stakeholder engagement, alongside enhanced training on the OECD Guidelines and meaningful stakeholder engagement in extractive sector.⁹⁶

Corporate environmental responsibility is not confined to extractive industries. A case before the Latvian NCP against SIA OMNIVA, a logistics subsidiary, highlighted environmental and public health concerns arising from courier vans idling in residential areas and children's playgrounds, contributing to air and noise pollution.⁹⁷ Similarly, a case before the Polish NCP, concerned a marketing company whose online platform facilitated the sale of hazardous products, including furnaces designed to burn processed oil and discarded railway sleepers, in violation of environmental protection laws.⁹⁸ Although the company did not

⁹³ NCP France, group of four non-governmental organisations (NGOs) and associations from Cameroon, France and Germany v. SOCAPALM, Bolloré Group, Report, 3 June 2013.

⁹⁴ *Ibid*, 12-13.

⁹⁵ NCP France, ASF v. Perenco, Final Statement, 7 January 2022.

⁹⁶ *Ibid*, 4-5.

⁹⁷ NCP Latvia, Individual v. SIA OMNIVA, Final Statement, 3 February 2023.

⁹⁸ NCP Poland, Frank Bold v. Grupa OLX sp. z.o.o, Final Statement, 13 June 2019.

directly sell these products, it was held responsible for enabling environmentally harmful activities. In both cases, companies acknowledged their environmental impacts and committed to updating their policies, strengthening monitoring, and enhancing environmental due diligence.

Taken together, these cases demonstrate across sectors that environmental assessments must be integrated with social considerations, particularly impacts on local communities, Indigenous Peoples, and other vulnerable groups whose livelihoods and cultural identities are closely linked to land and environment. Also, OECD NCP practice further confirms that effective HREDD depends on meaningful stakeholder engagement and that parent companies bear responsibility for ensuring robust and effective due diligence throughout their corporate structures in line with international standards.

e. Corporate Environmental Responsibility for Remediation of Environmental Harm

Among these NCP cases, several cases have resulted in joint agreements in which companies committed to strengthening ongoing HREDD, with greater emphasis on both human rights and environmental impact assessments. These commitments often involved ensuring that due diligence is continuous, regularly updated, and expanded to address a wider range of harms, including biodiversity loss and impacts on Indigenous Peoples and other vulnerable communities.

Such outcomes were evident in cases before the Norwegian, Austrian, and French NCPs involving Cermaq, Andritz Hydro GmbH, Norconsult, and Bolloré/Socapalm.⁹⁹ Although these cases did not result in direct compensation or redress for past harms, they prompted significant corporate commitments, including enhanced stakeholder engagement, more proactive risk identification, and deeper integration of environmental and human rights considerations into corporate strategies and operations. However, in most instances, limited or absent follow-up—often without publicly available data or implementation reports—makes it difficult to assess whether and how these commitments were effectively implemented in practice.

Michelin before the French NCP illustrates the longer-term potential of sustained NCP engagement. Although no immediate remedy was provided, successive follow-up procedures revealed that Michelin had implemented the recommendations.¹⁰⁰ By the final follow-up in 2016, Michelin had undertaken a comprehensive ESIA, engaged extensively with local communities, and implemented environmental restoration initiatives.¹⁰¹ This case illustrates

⁹⁹ NCP Norway (n 66); NCP Norway (n 91); NCP France (92); NCP Austria, Finance & Trade Watch Austria, Earth rights International Et Al v. Andritz Hydro GmbH in Connection to the Xayaburi Hydropower Project in Lao Pdr, Final Statement, June 2017.

¹⁰⁰ NCP France, CCFD et al v. Michelin Group, Final statement, 27 September 2013.

¹⁰¹ NCP France, CCFD et al v. Michelin Group, Follow-up statement, 29 February 2016.

that persistent NCP monitoring can generate tangible improvements in corporate environmental and social accountability, even in the absence of formal redress mechanisms.

Other cases reflect varied company responses. WWF's complaint against SOCO International resulted in the cessation of activities in Virunga National Park.¹⁰² In the Dredging International case, Greenpeace India's concerns regarding the Dhamra port development were recognised as serious despite absent of full resolution, while in the Jan De Nul case the Belgian NCP urged consultations with International Union for Conservation of Nature (IUCN) to mitigate harm to whales. prompting state-level follow-up actions.¹⁰³

The Rio Tinto case, now under review by the Australian NCP, concerning the Panguna mine in Bougainville highlights the challenges of remediation for legacy harms.¹⁰⁴ Complainants alleged that Rio Tinto's abandonment of the site caused widespread pollution, health risks, and damage to sacred lands, despite prior knowledge of a rehabilitation plan.¹⁰⁵ Following a global backlash in a separate sacred site destruction, Rio Tinto committed in 2021 to fund an independent Panguna Mine Legacy Impact Assessment .¹⁰⁶ While the scope of the future remediation remains unclear, the assessment represents a rare acknowledgement of corporate responsibility for long-term environmental harm.

Nonetheless, many OECD cases failed to result in meaningful outcomes or agreements, and even when agreements are reached, their effectiveness is often uncertain due to limited follow-up and insufficient public reporting by NCPs. This is illustrated by the complaint brought by the Portland Community against BHP, where the Australian NCP against BHP acknowledged that the material and substantiated impact of dust pollution linked to BHP's operations but ultimately found the company's mitigation measures compliant with the Guidelines, referring broader air quality concerns to state authorities without transparent follow-up.¹⁰⁷

As of the time of writing, the only case concluded under the 2023 update of the OECD Guidelines substantively addressing environmental harm is the complaint against Glencore before the UK NCP.¹⁰⁸ The 2023 revision significantly strengthened the environmental dimension of the Guidelines by explicitly expanding environmental due diligence obligations, aligning corporate responsibility with climate change mitigation, biodiversity protection, and cumulative environmental harm, and clarifying that environmental impacts should be assessed

¹⁰² NCP United Kingdom, WWF v. SOCO International, Final Statement, July 2014.

¹⁰³ NCP Belgium (n 62).

¹⁰⁴ Ibid.

¹⁰⁵ NCP Australia (n 87).

¹⁰⁶ OECD Watch, Human Rights Law Centre and landowners from Loloho and Rorovana areas of Bougainville vs. Rio Tinto, <https://www.oecdwatch.org/complaint/human-rights-law-centre-vs-rio-tinto/> (accessed 22 March 2025).

¹⁰⁷ NCP Australia, Port Hedland Community Progress Association v. BHP, Final Statement, 1 September 2021.

¹⁰⁸ NCP United Kingdom, AJTZP, RAID, and PILC v. Glencore, Final Statement, 21 November 2024.

alongside human rights risks within HREDD.¹⁰⁹ Against this backdrop, the Glencore case concerned inadequate HREDD and community engagement in relation to wastewater spills and an alleged oil leak at the Badila Oilfield in Chad. Although the NCP found that Glencore Plc maintained a business relationship with PetroChad Mangara during the relevant period and should have exercised its leverage more effectively, it declined to attribute broader responsibility to the parent company following Glencore's divestment. This contrasts with French NCP practice in cases such as Perenco and Bolloré, where parent companies were explicitly called upon to strengthen group-wide due diligence and governance frameworks. This uneven application of the OECD Guidelines across different NCPs underscores the need for further clarification and harmonisation to ensure consistent interpretation and enforcement of corporate responsibility.

Overall, these cases show that while NCPs generally fulfil their procedural mandate under the OECD Guidelines, their focus remains largely on continuous, risk-based due diligence as an obligation of conduct rather than an obligation of result. Strengthening NCP practice would therefore require greater emphasis on concrete remedial outcomes, clearer articulation of corporate responsibility for environmental harm, and more effective mechanisms to ensure meaningful remediation for affected communities.

IV. Conclusion

This paper has shown that, although BHR frameworks increasingly invoke the integration of human rights and environmental impacts into the concept of HREDD, such integration remains conceptually and operationally fragile. While the OECD Guidelines and recent mandatory due diligence legislation formally combine environmental and human rights obligations, they continue to rely on divergent normative logics, evidentiary thresholds, and remedial assumptions. In practice, environmental harm is still predominantly assessed through an anthropocentric and risk-management lens, limiting recognition of cumulative, intergenerational, and ecological damage that does not translate into immediate human rights violations.

The analysis further demonstrates that integration is often treated as an institutional or regulatory design choice rather than a substantive recalibration of corporate responsibility. Mandatory HREDD regimes and soft-law frameworks alike tend to prioritise procedural compliance over substantive environmental protection and to subordinate environmental obligations to human rights risk assessments. As a result, integration frequently masks, rather than resolves, structural tensions between prevention- and precaution-based environmental norms and the individualised, reparative logic of human rights law.

¹⁰⁹ Leonard Feld 'A (Slight) Raise of the Bar: Due Diligence in the 2023 Update of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' OECD Watch and NOVA School of Law Blog Symposium, 9 November 2023.

NCP practice clearly exposes these limits. Across the 28 cases analysed, NCPs shift between treating environmental harm as an autonomous corporate responsibility and addressing it only through HRDD. Where environmental responsibility is considered on its own, NCPs often limit their analysis to procedural requirements, such as environmental impact assessments, mitigation plans, and technical monitoring.

This procedural focus is particularly evident in NCP approaches to stakeholder participation, Indigenous Peoples' rights, and the principle of FPIC. Procedural environmental rights, especially access to information and meaningful participation, are often absent from corporate environmental impact assessments, which results in assessments that are largely technocratic and disconnected from the lived human rights impacts on affected communities. As a consequence, NCPs frequently recommends the importance of the meaningful stakeholder engagement in the corporate environmental management.

Recognition of FPIC is inconsistent and often forward-looking, allowing projects to continue without addressing past or ongoing environmental harm to Indigenous lands, livelihoods, and cultural survival. Procedural features of the NCP mechanism further constrain meaningful engagement with these claims.

Finally, the cases reveal structural weaknesses in the enforcement of parent-company responsibility and in the provision of effective remediation. While some NCPs, most notably in France, have articulated clear expectations regarding group-wide governance and the exercise of leverage, others allow companies to limit responsibility through subsidiaries, business relationships, or divestment. Across jurisdictions, environmental due diligence is treated primarily as an obligation of conduct, with remediation framed as future risk management rather than as concrete redress for existing harm. Without clearer substantive standards, consistent interpretation of corporate environmental responsibility, and stronger follow-up mechanisms, NCP practice risks entrenching a technocratic model of integrated HREDD that remains inadequate to address the scale and persistence of corporate-related environmental harm.