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Transnational responsibility in Global South mining: human rights and due diligence in light of European Union directive 2024/1760

A responsabilidade transnacional na mineração do Sul Global: direitos humanos e devida diligência à luz da diretiva da União Europeia 2024/1760

La responsabilidad transnacional en la minería del Sur Global: derechos humanos y debida diligencia a la luz de la directiva de la Unión Europea 2024/1760

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Abstract

This study analyzes the normative transition in mining governance in the Global South resulting from the implementation of Directive (EU) 2024/1760 (CSDDD). The research contrasts the limited results of self-regulation models and soft law instruments with the new due diligence obligations imposed by the European legal order. The CSDDD institutionalizes the duty of continuous conduct in the value chain, imposing compliance criteria related to human rights and environmental protection on transnational corporations. The text examines how the standing granted to actors from third countries alters the procedural dynamics of European courts and impacts the traditional legal protection of extractive operations. The analysis indicates that the norm promotes a reinterpretation of legal certainty, balancing the requirements of foreign investment protection with socio-environmental oversight duties.

Keywords: due diligence; corporate responsibility; mining.

Resumo

O presente estudo analisa a transição normativa na governança da mineração no Sul Global, decorrente da implementação da Diretiva (UE) 2024/1760 (CSDDD). A pesquisa confronta os resultados limitados dos modelos de autorregulação e dos instrumentos de soft law com as novas obrigações de due diligence impostas pelo ordenamento europeu. A CSDDD institucionaliza o dever de conduta contínua na cadeia de valor, impondo critérios de conformidade relativos aos direitos humanos e à proteção ambiental às corporações transnacionais. O texto examina como a legitimidade ativa concedida a atores de países terceiros altera a dinâmica processual dos tribunais europeus e impacta a proteção jurídica tradicional das operações extrativistas. A análise indica que a norma promove uma reinterpretação da segurança jurídica, equilibrando as exigências de proteção ao investimento estrangeiro com os deveres de supervisão socioambiental.

Palavras-chave: devida diligência; responsabilidade corporativa; mineração.

Resumen

El presente estudio analiza la transición normativa en la gobernanza de la minería en el Sur Global derivada de la implementación de la Directiva (UE) 2024/1760 (CSDDD). La investigación contraponen los limitados resultados de los modelos de autorregulación y de los instrumentos de soft law con las nuevas obligaciones de due diligence impuestas por el ordenamiento jurídico europeo. La CSDDD institucionaliza el deber de conducta continua en la cadena de valor, imponiendo a las corporaciones transnacionales criterios de cumplimiento relativos a los derechos humanos y a la protección ambiental. El texto examina cómo la legitimación activa concedida a actores de terceros países modifica la dinámica procesal de los tribunales europeos e incide en la protección jurídica tradicional de las operaciones extractivas. El análisis indica que la norma promueve una reinterpretación de la seguridad jurídica, equilibrando las exigencias de protección de la inversión extranjera con los deberes de supervisión socioambiental.

Palabras clave: debida diligencia; responsabilidad corporativa; minería.

1 Introduction

The energy transition, guided by the goals of the 2030 Agenda and the European Union's climate targets, intensifies the demand for critical minerals such as lithium and copper. In this context, there is an expansion of extractive

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activities in regions of the Global South, where regulatory fragility and pressure for foreign investment stand in opposition to the protection of human rights and the preservation of local ecosystems.

The possibility that the foreign investment protection model may prevail in International Law, reinforced by arbitral interpretations, operates to the detriment of public interests, such as environmental protection and the rights of local communities, which remain in a peripheral and weakened position vis-à-vis investor-state dispute settlement mechanisms.

Between the need to ensure the supply of minerals essential to the energy transition and the urgency of holding transnational companies accountable for the socio-environmental damage caused throughout their value chains, the question arises as to what extent Directive (EU) 2024/1760 of the European Parliament and of the Council, of 13 June 2024, on corporate sustainability due diligence, is capable of transcending traditional voluntary self-regulation and offering an effective mechanism of extraterritorial accountability, capable of mitigating the risks inherent to extractivism in the Global South and aligning mineral exploration with the Sustainable Development Goals.¹

Directive (EU) 2024/1760 represents a shift by institutionalizing due diligence as a continuous duty. By making conduct standards that previously operated under the *soft law*² regime mandatory, the EU creates a regulatory mechanism that not only imposes duties of prevention and remediation on European parent companies, but also redefines legal certainty in International Law.

The investigation is grounded in a qualitative, legal-dogmatic, and analytical methodology. The scientific approach combines a specialized literature review with an examination of Directive (EU) 2024/1760, comparing the new regulatory framework with the reality of transnational disputes and investment arbitrations in Latin America.

Finally, the authors declare that they did not use generative artificial intelligence tools for the preparation, drafting, analysis, interpretation of data, or review of the scientific content of this manuscript. All stages of the research and intellectual production were carried out exclusively by the authors, who assume full responsibility for the content presented.

2 From Non-Binding Guidelines to European Regulation

The implementation of the UN Guiding Principles (UNGPs) has brought greater complexity to the field of Business and Human Rights (BHR). We observe that, while some countries move forward with legislative frameworks, other corporate and social actors still disagree on the effectiveness of *soft law* as a mechanism for protection and compliance (Roy Grégoire *et al.*, 2023).

The protection of human rights and environmental preservation form the basis of the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda³. However, the regulatory gap that still pervades extractive activities in various contexts represents an obstacle to achieving the SDGs. Such operations, when lacking adequate safeguards, undermine progress toward the UN targets (Preller Bórquez *et al.*, 2026).

The promotion of clean energy, through large hydroelectric projects, while mitigating emissions, can also degrade ecosystems and compromise the livelihoods of local populations (Preller Bórquez *et al.*, 2026). From a transnational perspective, decarbonization strategies can radiate negative effects to downstream states, affected by the impact on water resource management and on food security (Preller Bórquez *et al.*, 2026).

Conditioning access to the European market on compliance with human rights due diligence duties has driven a structural shift in global governance. The EU's transition toward a regime of binding rules, outlined since the 2018 Action Plan and reinforced by the requirements of the 2020 supply chain rules and the 2021 parliamentary deliberations, demonstrates the bloc's intent to project its sustainability standards beyond its borders (Roy Grégoire *et al.*, 2023).

Directive (EU) 2024/1760 establishes the duty to observe human rights, environmental, and governance standards for companies operating in the internal market, requiring the mitigation of negative impacts throughout the entire supply chain. This regulatory framework makes it possible to understand the transition from CSR toward the

¹ Cfr. VEIGA, F. da S. La Regolamentazione Della Sostenibilità Alla Luce Degli Standard Dell'unione Europea. **REVISTA JURISFIB**, [S. l.], v. 16, p. 179-189, 2025. Disponível em: <https://revistas.fibbauru.br/jurisfib/article/view/833>. Acesso em: 20 maio 2026.

² For a comparison between the *civil law* and *common law* systems, see: VEIGA, F. da S. O dever de cuidado dos administradores e a concepção da business judgement rule em ordenamentos jurídicos de civil law. **Revista de Estudos Jurídicos da UNESP**, Franca, v. 18, n. 28, p. 1-28, 2015. Disponível em: <https://ojs.franca.unesp.br/index.php/estudosjuridicosunesp/article/view/1470>. Acesso em: 20 maio 2026.

³ For an analysis of the normative development of rules concerning business and human rights, see: VEIGA, F. da S.; DOMINGOS, I. M. Responsabilidade social das empresas e direitos humanos. **Veredas do Direito**, Belo Horizonte, v. 20, e202545, 2023. Disponível em: <http://revista.domhelder.edu.br/index.php/veredas/article/view/2545> Acesso em: maio 2026.

field of BHR, allowing for observation of the effectiveness of such obligations in light of the diversity of institutional contexts (Roy Grégoire *et al.*, 2023).

3 Mining Activity and the Duty of Diligence: Lithium

Foreign investment is indispensable to meet global lithium demand, driven by European decarbonization targets and the transition to electric mobility. Although global production has tripled over the last decade and a half, with projected annual growth of 20% through 2030, exploration in the main global reserves, located in Bolivia, Argentina, and Chile, frequently occurs under insufficient or ineffective regulatory frameworks (Preller Bórquez *et al.*, 2026).

At the same time, mineral extraction brings risks of environmental degradation and social vulnerability. This challenge takes on specific contours when one observes the European Union's strategic dependence on suppliers whose operational practices, throughout the value chain, often diverge from the bloc's normative sustainability expectations (Preller Bórquez *et al.*, 2026).

In lithium extraction, corporate *due diligence* obligations are fundamental, insofar as they involve extraterritorial duties. This is because there is only one lithium mine in operation within European Union territory, located in Portugal, with most of the resource imported from countries of the Global South. In this scenario, companies in the sector tend to rely on self-regulation models that have frequently proven insufficient to prevent human rights violations (Preller Bórquez *et al.*, 2026).

Lithium extraction requires a holistic analysis through the lens of human rights, given the intrinsic tension between sustainability objectives. If the resource is vital to the European energy transition and to carbon neutrality, its extraction frequently compromises biodiversity and social rights in producing states.

This scenario highlights tensions between decarbonization objectives and socio-environmental protection in producing states. However, models such as shared-use mining and ethical value chain management suggest ways to mitigate such impacts, allowing extractive activity to act as a potential vector for sustainable development.

The vulnerability of those affected in extractive regions is not a phenomenon isolated to lithium, but a constant in the trajectory of large Andean operations, as demonstrated by the cases of Espinar and Alumbra.

4 Extractivism in the Global South and the Reconfiguration of Human Rights

In Bolivia, access to water and the privatization of resources are conflicts intensified by mining. Mineral extraction causes the depletion and contamination of groundwater, harming metropolitan areas such as La Paz and El Alto. In addition to impacts on workers' health, a phenomenon observed in mining countries such as Chile, the Potosí region faces high demand driven by the search for lithium, which replicates the history of environmental degradation and water pollution previously observed in silver mining (Preller Bórquez *et al.*, 2026).

Latin America has established itself as a strategic hub for mineral exports, with Chile and Peru standing out, together accounting for more than a third of global copper production. The significant presence of these resources in the Andean region coexists with complex dynamics of local interaction. In various localities, the implementation of mining projects requires in-depth dialogue with indigenous and rural communities, which seek to ensure the continuity of their traditional land-use practices and the sustainable management of natural resources (Grados-Lázaro *et al.*, 2025).

In Peru, the second-largest global copper producer, 15% of its territory is under concession, with 1.8 million hectares in operation, mostly in Andean areas above 3,000 meters, historically devoted to agriculture and family livestock farming. Mining, through resettlement, forced urbanization, and drastic physical changes to the landscape, such as river diversions and large-scale excavations, promotes a profound reconfiguration of local communities' livelihoods (Grados-Lázaro *et al.*, 2025).

The start of operations at the Tintaya copper mine, in the Cusco region of the Peruvian Andes, catalyzed the mobilization of local communities around their demands. In the early 2000s, under the management of the Australian mining company BHP, the strengthening of this social articulation allowed residents to establish a network of strategic dialogue with national and international civil society organizations, aimed at monitoring the impacts of the extractive activity (Paredes, 2023).

5 Mining Activity in Peru

For two decades, the province of Espinar has faced a socio-environmental crisis characterized by technical evidence of contamination, addressing of which has been limited by the inaction of public authorities. Notably, the region maintains a persistent history of social mobilizations, demonstrating the enduring political mobilization capacity of local communities, even amid fragile social cohesion and the cumulative impacts on the territory (Paredes, 2023).

The trajectory of the Tintaya copper mine was marked by the transfer of operational control from the state to the private sector, with successive management by BHP Billiton, Xstrata, and, from 2013 onward, Glencore. This history has been marked by complex challenges related to population resettlement, land regulation, and water management. While local demands initially focused on the need for greater state oversight, from 2010 onward the communities' agenda consolidated around direct denunciation of damage to environmental integrity and the impacts of contamination in the territory (Paredes, 2023).

The province of Espinar has established itself as a mining hub of global relevance since the 1980s. Currently, the territory concentrates 362 concessions, among which the Tintaya and Antapaccay projects, operated by Glencore, predominate, covering 61% of the municipal area (Grados-Lázaro *et al.*, 2025).

Notwithstanding the creation of jobs, mining expansion has imposed socio-environmental disruptions and intensified disputes over access to water resources and to agricultural areas, directly affecting peasant communities. This scenario, marked by water and pasture scarcity, triggers displacement processes, accelerates peri-urban urbanization, and compromises community management, promoting the erosion of ancestral land management practices (Grados-Lázaro *et al.*, 2025).

As a palliative measure, decades after the expropriation processes, land exchange agreements were formalized with the communities of Alto Huarca and Tintaya Marquiri. However, relocation to arid areas lacking water resources proved ineffective, culminating in severe spatial disruption, the rupture of kinship networks, accumulated economic losses, and the emergence of new land disputes (Gorelli Hernández, 2025).

In contrast, the tightening of environmental governance in the Global South has been marked by monetary sanctions. A recent example is the fine of more than 36 Tax Units (UIT) upheld by the Environmental Enforcement Tribunal against Glencore's wholly owned subsidiary, a measure that reflects the trend toward greater corporate accountability for damage to local ecosystems (Organismo de Evaluación y Fiscalización Ambiental, 2025).

6 Mining Activity in Argentina

The Alumbra mine, a large-scale venture in Argentina operated by a consortium led by Glencore, in partnership with Newmont Goldcorp and Yamana Gold, remained active between 1997 and 2018. Its trajectory was aligned with the regulatory framework established by the 1993 Mining Investment Law, which promoted tax incentives and legal certainty for the sector, as well as the 1994 constitutional reform, which transferred mining oversight powers to the provincial level (Aspinwall, 2025).

Notwithstanding the implementation of compensation plans, the venture faced, in 2007, allegations regarding the operational integrity of its pipeline and tailings dam, associated with concerns about air quality and risks to public health. Such allegations, which underpinned investigations led by federal prosecutor Antonio Estofán, revealed critical challenges in the project's socio-environmental compliance management (Aspinwall, 2025).

Subsequent technical analyses confirmed the presence of substances such as cyanide and copper sulfate at critical levels. In 2009, studies conducted by the Gendarmería Nacional, ministerial bodies, and the concessionaire itself found that contaminant concentrations, including molybdenum, iron, manganese, arsenic, and boron, repeatedly exceeded established regulatory standards. Although the environmental degradation was documented, the institutional response remained limited, revealing a gap in the effectiveness of corrective measures by the competent authorities (Aspinwall, 2025).

In 2013, the federal court of Tucumán validated technical evidence establishing the causal link between the Alumbra mine's operations and water contamination, pointing to failures in the operator's risk management. The oversight history, which began in 1999, culminated in criminal proceedings that, despite provincial regulations considered permissive, resulted in the indictment of executives, including Julian Rooney and Raúl Mentz (Aspinwall, 2025).

After the closure of the Alumbra mine, the responsible consortium, formed by Glencore, Yamana Gold, and Newmont Goldcorp, continued operations through the Integrated MARA Project. This initiative makes use of

the installed infrastructure to explore the Agua Rica deposit, located 35 km from the previous mine, consolidating a new multi-mineral exploration strategy (Aspinwall, 2025).

7 From the Mining Production Cycle to Arbitral Interpretation: An Analysis of Transnational Responsibility

According to specialized literature (López, 2024), the mining exploration phase constitutes a process of progressive accumulation of geological knowledge, characterized by high economic risk. In accordance with the international guidelines of the *Committee for Mineral Reserves International Reporting Standards* (CRIRSCO), the results obtained at this stage are classified according to the level of technical confidence, subdivided into two main categories: mineral resources and mineral reserves.

The viability of mining activity is conditioned by modifying factors of a technical, financial, socio-environmental, and legal nature, reaching the peak pre-development value upon confirmation of the mineral reserve. After the exploratory phase, the corporation must obtain the necessary licensing for construction and extraction, whose operational cycle can extend from 50 to 100 years. The cycle ends with the closure and post-closure stages, at which point the company becomes subject to legal obligations of ecological rehabilitation and mitigation of local socioeconomic impacts (López, 2024).

On the international level, the mining agenda of the 1990s was structured around two main pillars in Latin America: the opening of legal systems to foreign capital and the strengthening of the rule of law, assuming that the protection of constitutional rights and the commitment to sustainable development would be the guiding vectors of extractive activities (López, 2024).

National mining systems do not grant automatic extraction rights, conditioning them on compliance with cumulative requirements, such as the payment of fees, proof of technical and financial capacity, submission of feasibility and environmental impact assessment (EIA) studies, in addition to the regularization of land rights (López, 2024).

Aiming to mitigate risks, the legal certainty of concessions was consolidated in the region after 1996, through mechanisms such as the discoverer's right of preference, title unification, free transferability, the possibility of creating security interests, and the exhaustive listing of grounds for revocation. Additionally, efforts were made to resolve the regulatory time dilemma, harmonizing the validity of mining titles with the estimated duration of operational activity (López, 2024).

Despite this, legal literature points to an alternative conception: legal certainty as a guarantee of profitable exploitation. Although this absolute view is rejected by Latin American legal systems, as it is incompatible with the mining cycle, in which socio-environmental regulations impact economic viability, the concept of certainty as guaranteed profitability has been observed in certain arbitral decisions in foreign investment disputes (López, 2024).

The precedent *Eco Oro v. Colombia* illustrates the conflict between foreign investment protection and environmental regulatory sovereignty. In ruling on the denial of a mining license in an area overlapping a *páramo* ecosystem undergoing a delimitation process, the arbitral tribunal found that a duty to compensate had arisen. The reasoning was based on the doctrine of the indivisibility of the concession, according to which subsequent environmental restrictions that compromise the economic-financial balance of the contract are interpreted as a violation of the rights conferred on the investor (López, 2024).

8 The Impact of the CSDDD on the Mining Cycle: New Standards of *due diligence* and Corporate Responsibility

In light of the persistent insufficiency of self-regulation systems evidenced in the Andean cases, Directive (EU) 2024/1760, whose English acronym is CSDDD (*Corporate Sustainability Due Diligence Directive*), emerges as the European Union's regulatory response. Directive (EU) 2024/1760 applies to companies based in the EU and to foreign companies that operate in the European market or are part of their value chains, as in the case of lithium extraction in third countries (Preller Bórquez *et al.*, 2026).

The directive institutionalizes *due diligence* as a continuous duty of conduct, requiring companies to identify, prevent, and mitigate adverse impacts on human rights and the environment, both in their direct operations and throughout the entire value chain (Gorelli Hernández, 2025).

Under Articles 7 to 16 of the Directive, companies must incorporate *due diligence* into their internal policies, codes of conduct, risk management processes, and reporting systems, structuring a governance model inspired by the UN Guiding Principles. To ensure the effectiveness of such compliance, it provides for the adoption of model contractual clauses (Art. 18) and technical guidance in accordance with OECD guidelines (Art. 19) (Gorelli Hernández, 2025).

A distinction is drawn between two liability regimes: remediation (Art. 12), of a restorative nature, aimed at restoring the *status quo* — environmental or social — and civil liability (Art. 29), of a monetary and compensatory nature. The duty of supervision is of a permanent nature, requiring periodic review of risk assessments (Art. 8) (Gorelli Hernández, 2025).

Additionally, the Directive grants standing to victims from third countries to bring claims against parent companies before European courts, with extended limitation periods set at a minimum of five years, and with recognition of standing for non-governmental organizations (Gorelli Hernández, 2025).

On 24 February 2026, Directive 2026/470/EU (the “Omnibus I Directive”) was published⁴, significantly altering the European regulatory framework on corporate sustainability and substantially reformulating the content of the CSDDD Directive. The main objective of the Omnibus I Directive was to simplify the European corporate sustainability framework, reducing administrative burdens and strengthening the competitiveness of European companies. The result was a significant limitation of the scope of application of the Corporate Sustainability Reporting Directive and the *Due Diligence* Directive on Corporate Sustainability.

9 Final considerations

The energy transition, although essential to the 2030 Agenda, should not be interpreted as a decarbonization project restricted to European states. As demonstrated, green progress has fostered a sustainability paradox, whose socio-environmental costs are frequently transferred to states that produce critical minerals.

The experience of the Espinar and Alumbreira cases demonstrates the insufficiency of corporate self-regulation and *soft law* mechanisms in preventing environmental degradation and the erosion of fundamental rights of peasant and indigenous communities.

Furthermore, the clash between foreign investment protection and environmental sovereignty, exemplified by arbitral disputes, such as the *Eco Oro* case, revealed that the traditional interpretation of legal certainty ended up favoring greater protection for investors’ economic interests.

Directive (EU) 2024/1760 signals a limit to the excesses of the conventional corporate model. By institutionalizing *due diligence* as a continuous and structuring duty of conduct, the European Union signals a transition toward more binding regulatory mechanisms.

The Directive extends the jurisdictional reach of corporate obligations and redefines the content of legal certainty in International Law. By resolving the regulatory time dilemma and granting standing to non-governmental organizations and to victims in third countries, it further strengthens the duty of supervision within global value chains.

Although the CSDDD is an instrument of the European legal order, its practical effect extends beyond the Union’s borders. By establishing the concept of the chain of activities, the norm projects its functional jurisdiction over the entire extent of the value chain. Consequently, the Directive applies not only to companies based in the bloc, but also to transnational mining corporations that, although established in third states, are part of the production chain of European companies.

In this way, the CSDDD exerts extraterritorial normative force over mine operators in the Global South, even if they do not have a European headquarters. Should a transnational mining company wish to maintain its position as a supplier to automakers or battery manufacturers in the European market, it would be compelled, by contractual imposition or a requirement of *due diligence*, to align its operational practices with European standards for human rights and environmental protection. In the absence of such compliance, the client company in Europe, in order to ensure its own *compliance* and mitigate the risk of sanctions, would be forced to terminate the business relationship.

⁴ Cfr. UNIÃO EUROPEIA. **Diretiva (UE) 2026/470 do Parlamento Europeu e do Conselho, de 24 de fevereiro de 2026**. Altera as Diretivas 2006/43/CE, 2013/34/UE, (UE) 2022/2464 e (UE) 2024/1760 no que diz respeito a determinados requisitos de relato de sustentabilidade das empresas e determinados requisitos de dever de diligência das empresas em matéria de sustentabilidade. Jornal Oficial da União Europeia, Bruxelas, L series, 2026. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX:32026L0470>. Acesso em: 20 maio 2026.

The new regime changes the way the mineral sector is governed by making the duty of oversight of corporate activities permanent. By allowing non-governmental organizations and victims located in third countries to seek redress before European courts, the Directive expands the accountability mechanisms for transnational companies. In this way, it seeks to reduce the obstacles traditionally associated with contexts of weak regulation or limited state capacity to oversee large corporations in the extractive sector.

In continuation of this line of research, this study does not close the analysis of mineral sector governance. On the contrary, these findings serve as a basis for future stages to investigate the extent to which compliance with transnational sustainability standards may be invoked by states as a defense of legitimate regulatory sovereignty in international arbitration or other courts, harmonizing investment protection with the imperative of a just energy transition.

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