

The EU Corporate Sustainability Due Diligence Directive: Migrant Workers and Emerging Challenges in Respecting Human Rights

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Abstract: The EU Corporate Sustainability Due Diligence Directive (CSDDD) represents a significant advancement in regulating mandatory human rights due diligence (mHRDD). However, its potential to promote mHRDD processes that fully respect the rights of migrant workers, particularly those facing intersectional discrimination in lower tiers of the value chain, remains uncertain. This paper critically analyzes the CSDDD through an intersectional lens, with a focus on its personal scope, material scope, and approach to non-discrimination. It identifies key shortcomings in these areas and underscores the need for a more expansive, holistic and comprehensive regulatory framework in the transposition of CSDDD.

Keywords: EU Corporate Sustainability Due Diligence Directive (CSDDD) Mandatory Human Rights Due Diligence (mHRDD) Intersectional Discrimination Migrant Workers.

(A) INTRODUCTION

The business and human rights (BHR) framework can be understood as a system of polycentric governance.¹ This framework includes a coexistence of actors and regulatory instruments that reflect its complexity.² It facilitates adaptation to diverse regulatory contexts, while also being open to paradigmatic shifts. Scholars have identified a growing trend in the adoption of binding instruments that establish specific obligations and mandatory standards for private actors regarding mandatory human rights due diligence (mHRDD).³ The traditional model, based on soft law instruments and voluntary business initiatives, is undergoing significant transformations. At the same time, a hybrid model that combines voluntary elements with legal obligations is gaining strength. The European Union (EU) and its Member States have played a key role in this process.⁴ In the European sphere, several national and EU binding instruments regulating mHRDD have already been adopted. The most recent milestone towards mandatory requirements

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¹ S. Deva, ‘Business and human rights: alternative approaches to transnational regulation’, 17 *Annual Review of Law and Social Science* (2021) 139-158, at 142 [doi: 10.1146/annurev-lawsocsci-113020-074527].

² C. Rodríguez-Garavito, ‘Business and Human Rights: Beyond the End of the Beginning’, in C. Rodríguez-Garavito (ed), *Business and Human Rights: Beyond the End of the Beginning* (Cambridge University Press, Cambridge, 2017) 11, at 12-13.

³ S. Joseph and J. Kyriakakis, ‘From soft law to hard law in business and human rights and the challenge of corporate power’, 36 *Leiden Journal of International Law* (2023) 335-361 [doi: 10.1017/S0922156522000826].

⁴ S. Bijlmakers, *Corporate Social Responsibility, Human Rights and the Law* (Routledge, London, 2018), at 135-163.

has been the adoption of the EU Corporate Sustainability Due Diligence Directive⁵ (CSDDD) by the European Parliament and Council on 13 June 2024. The CSDDD sets ambitious aims, including to “comprehensively cover human rights” (Recital 32 CSDDD). While the Directive represents a remarkable development in the BHR framework, its ability to fully achieve the intended goals through its legal provisions remains uncertain.

The HRDD obligations established in the CSDDD framework significantly extend to the production processes of in-scope companies.⁶ This approach has the potential to promote mHRDD as an important mechanism for managing the risks of business-related human rights abuses, particularly in those production processes where such violations are more prevalent. Scholars have noted that these processes often share two key characteristics: concentration at the lower tiers of the value chains and adverse incorporation of individuals in vulnerable situations.⁷ Given that human rights abuses are not neutral with respect to migratory status, these corporate activities frequently involve migrant workers, whether in formal or informal employment.⁸ While these individuals should not be understood as intrinsically or ontologically vulnerable, many experience intersectional discrimination, which exposes them to harmful labor practices involving severe human rights violations. These practices may include, among others, labor exploitation and indecent work promoted by phenomena such as human trafficking⁹ and contemporary forms of slavery.¹⁰

From this basis, the paper analyzes some CSDDD legal provisions that are directly or indirectly applicable to the respect of the rights of migrant workers exposed to intersectional discrimination in productive activities, particularly those taking place at the lower tiers of the value chain. For this purpose, the paper is structured in three main parts. First, it examines the mHRDD approach within the CSDDD framework. Second, it adopts intersectionality as a theoretical and methodological framework for analyzing CSDDD legal provisions. Finally, it focuses on three critical aspects that jeopardize the CSDDD potential in addressing business-related human rights abuses. The first aspect relates to its personal scope; the second, to its material scope; and the third, to its approach to addressing discrimination. After the analysis, it calls for a more expansive, holistic and comprehensive approach in the transposition of CSDDD.

⁵ European Parliament and Council Directive 2024/1760, OJ 2024 L1/58.

⁶ The CSDDD outlines that in-scope companies' HRDD processes extend to subsidiaries and business partners throughout the “chain of activities” (Articles 7 to 15 CSDDD). Buhmann and Feld describe this as “cascading due diligence”, see K. Buhmann and L. Feld, ‘Shifting boundaries: a transnational legal perspective on the EU Corporate Sustainability Due Diligence Directive’, 15 *Transnational Legal Theory* (2024) 1–27, at 13 [doi: 10.1080/20414005.2024.2426961].

⁷ N. Phillips, ‘Informality, global production networks and the dynamics of ‘adverse incorporation’’, 11 *Global Networks* (2011) 380–397 [doi: 10.1111/j.1471-0374.2011.00331.x].

⁸ J.M. Diller, ‘Protecting the vulnerable: migration, work and human rights due diligence’, in K.A. Elliot (ed), *Handbook on Globalisation and Labour Standards* (Edward Elgar Publishing, Massachusetts, 2022) 84, at 89–90.

⁹ L.H. Garbellini Filho, ‘La lucha contra la trata de seres humanos en la cadena de valor: construyendo vías hacia nuevos marcos normativos sobre diligencia debida empresarial’, 2 *Revista Española de Empresas y Derechos Humanos* (2024), 129–174, at 138–141 [doi: 10.69592/3020-1004-N2-ENERO-2024-ART6].

¹⁰ J. Nolan and G. Bott, ‘Global supply chains and human rights: spotlight on forced labour and modern slavery practices’, 24 *Australian Journal of Human Rights* (2018) 44–69, at 48–49 [doi: 10.1111/j.1471-0374.2011.00331.x].

(B) THE CSDDD AND ITS MHRDD REGULATORY MODEL

The CSDDD represents the first supranational and cross-sectoral binding instrument regulating mHRDD as a *process* that in-scope companies must implement to meet respect for human rights throughout their production activities. The Directive establishes a framework that not only details a set of specific measures that companies must adopt but also mandatory minimum standards that must be followed to ensure respect for human rights and environment.¹¹ It assigns various responsibilities to EU Member States, including implementing accompanying measures (Article 20 CSDDD) and supervising compliance by creating national supervisory authorities (Article 24 CSDDD). At the same time, EU institutions are entrusted with measures such as issuing guidelines to support effective implementation (Article 19 CSDDD) and establishing a European Network of Supervisory Authorities (Article 28 CSDDD). To be transposed into national laws by July 2026, the Directive is anticipated to play an important role in complementing existing sectorial EU instruments and promoting regulatory harmonization among Member States.¹² Except for the mHRDD provisions concerning the identification, prevention, and cessation of adverse impacts, Member States have the flexibility to exceed the CSDDD requirements by imposing stricter obligations or expanding its scope (Article 4 CSDDD).

The adoption of CSDDD suggests a significant advancement in the EU's commitment to sustainability and addressing the adverse impacts of business activities on human rights and environmental matters. One of its main contributions lies in the adoption of an mHRDD model that must be observed by in-scope companies. To develop this model, the CSDDD, though not entirely, draws from the approach adopted by the OECD's Guidelines for Multinational Enterprises¹³ and the United Nations Guiding Principles on Business and Human Rights¹⁴ (UNGPs). The UNGPs was developed under John Ruggie's leadership and endorsed by the UN Human Rights Council in June 2011.¹⁵ According to the UNGPs, HRDD is conceived as an ongoing management process that all companies must carry out to identify, prevent, mitigate, and account (actual and potential) adverse human rights impacts. The interpretive guidance adopted by the UN indicates that this process must be undertaken to meet a company's responsibility to respect human rights.¹⁶ While the concept, as originally formulated in the UNGPs, allows for various interpretations and adaptations, many scholars agree on the need for mHRDD regulations to align with these principles, thereby consolidating their relevance as one of the major international normative references.¹⁷

¹¹ I. Pietropaoli, J. Elliot and S.G. Aguinaga, *Towards New Human Rights and Environment Due Diligence Laws: Reflections on Changes in Corporate Practice* (British Institute of International and Comparative Law, London, 2024), at 8-10.

¹² Buhmann and Feld, *supra* n. 6, at 2.

¹³ OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, (OECD Publishing, Paris, 2011/2023)

¹⁴ OHCHR HR/PUB/11/04, 16 June 2011.

¹⁵ HRC Res. 17/4, 06 July 2011.

¹⁶ OHCHR HR/PUB/12/02, 21 September 2012.

¹⁷ Pietropaoli, Elliot and Aguinaga, *supra* n. 11, at 14 and G. Holly and M. Dicalou, *Transposition of the Corporate Sustainability Due Diligence Directive: a practical guide for national human rights institutions* (Danish Institute for Human Rights, Copenhagen, 2024), at 10.

The CSDDD adopts a model centered on a wide range of measures: i) integrating due diligence into corporate policies and risk management; ii) identifying and assessing actual and potential adverse impacts; iii) preventing and eliminating such impacts; iv) providing remediation; v) meaningfully engaging with stakeholders; vi) establishing a notification mechanism; vii) monitoring the effectiveness of due diligence measures; and viii) publicly communicating (Articles 7 to 16 CSDDD). The Directive adopts a risk-based approach to human rights and environmental matters¹⁸, requiring companies to identify and manage adverse impacts arising from their activities, including those of subsidiaries and business partners within the “chains of activities”. In terms of responsibility, it establishes “obligations of means” instead of “obligations of results”¹⁹, meaning that companies must take appropriate measures to achieve the due diligence objectives in line with human rights respect. Finally, the Directive provides for enforcement mechanisms, including administrative enforcement, and civil liability (articles 27 and 29 CSDDD).

(C) INTERSECTIONALITY AS A FRAMEWORK FOR LEGAL CRITIQUE AND PRAXIS

To develop the analysis of CSDDD relevant legal provisions in this paper, it is crucial to establish intersectionality as a theoretical-methodological framework. The intersectional framework emerged in the 1980s, proposing that categories such as gender, race, and class can interrelate to produce hierarchies that place certain subjects at an advantage or disadvantage positions in various spheres of society. At the same time, this framework also sought to establish forms of resistance and transformation of reality.²⁰ The term “intersectionality” was first popularized by Black feminist legal scholar Kimberlé Williams Crenshaw, who used it to analyze judicial responses to discrimination cases experienced by Black women in the United States labor market.²¹ With the growing sophistication of the field, intersectionality has evolved into a complex and diverse body of social theory and critical praxis. Beyond being conceived as a complex theoretical field about oppression, discrimination, or identity²², it has become a transformative tool oriented toward action and political resistance.²³ Specifically, in the field of law, it has been recognized as a key tool for institutionalizing social justice²⁴ and as an essential mechanism for the feminist legal project.²⁵ Although the law may be “neutral”

¹⁸ P. Narayanan, *Decolonising Corporate Sustainability Due Diligence Directive (CSDDD)* (Global North Dominance Watch, Bangkok, 2024), at 4.

¹⁹ Pietropaoli, Elliot and Aguinaga, *supra*. n. 11, at 8.

²⁰ A. Denis, ‘Review essay: Intersectional analysis: A contribution of feminism to sociology’, 23 *International Sociology* (2008) 677-694, at 679 [doi: 10.1177/0268580908094468].

²¹ K.W. Crenshaw, ‘Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics’, 1 *University of Chicago Legal Forum* (1989) 139-167.

²² S. Cho, K. W. Crenshaw and L. McCall, ‘Toward a field of intersectionality studies: Theory, applications, and praxis’, 38 *Signs: Journal of women in culture and society* (2013) 785-810, at 788-789 [doi: 10.1086/669608].

²³ P. H. Collins and S. Bilge, *Interseccionalidade* (Boitempo, São Paulo, 2020), at 52-69.

²⁴ E. Holzleithner, ‘Law and social justice: intersectional dimensions’, in K. Davis and H. Lutz (eds), *The Routledge international handbook of intersectionality studies* (Routledge, New York, 2023) 251, at 262.

²⁵ J. Conaghan, ‘Intersectionality and the Feminist Project in Law’, in E. Grabham *et al.* (eds), *Intersectionality and Beyond Law, Power and the Politics of Location* (Routledge, London, 2009), 21, at 40.

to intersectionality, it can offer an important framework for its development and for addressing complex forms of subjugation and oppression.²⁶

Despite the plurality of perspectives that make up intersectional feminisms, two key contributions are useful for this study. The first is intersectionality's ability to offer a comprehensive model of analysis that encompasses different social levels (micro, meso, and macro). It allows exploring the multi-level nature of the intertwining of categories from a multi-level and interactive approach.²⁷ The holistic reading provides a systemic and interconnected approach to understanding the composition of "intersectional vulnerability".²⁸ In this way, law and state political decisions, as well as production dynamics adopted by companies – whether large corporations or small businesses – can contribute to generating risks of human rights violations. For instance, migrants may be exposed to such violations due to normative models with weak protections for migrant workers.²⁹ Moreover, they can be affected by anti-migrant policies that restrict and/or securitize migration flows³⁰ and increase the risks of human trafficking and exploitation³¹, or even by immigration policies that restrict certain groups of immigrants to particular categories of jobs.³² In turn, economic actors can take advantage of the situational disadvantages of migrants to incorporate them adversely into their value chains³³, particularly those in irregular situations or employed as low-skilled temporary workers.

The second contribution lies in intersectionality's ability to overcome unitary and multiple approaches to discrimination. This analytical framework allows for more complex readings, considering not only the interaction of two or more indicators of inequality but also their complex, contingent, and variable interconnections in specific contexts.³⁴ The migratory status indicator interacts with other indicators (such as gender, race, age, disability, etc.) and they are mutually constituted in everyday life.³⁵ This interaction leads to specific forms of inclusion and exclusion, as well as advantages and disadvantages, with direct impacts on the guarantee or denial of human rights. At the

²⁶ S. Atrey, *Intersectional discrimination* (Oxford University Press, Oxford, 2019), at 212-214.

²⁷ G. Winker and N. Degele, 'Intersectionality as multi-level analysis: Dealing with social inequality' 18 *European Journal of Women's Studies* (2011) 51-66, at 52 [doi: 10.1177/1350506810386084].

²⁸ D. Mendola and A. Pera, 'Vulnerability of refugees: Some reflections on definitions and measurement practices', 60 *International Migration* (2022) 108-121, at 116 [doi: 10.1111/imig.12942].

²⁹ L. Palumbo, *Taking Vulnerabilities to Labour Exploitation Seriously: A Critical Analysis of Legal and Policy Approaches and Instruments in Europe* (Springer, Cham, 2024), at 75-113.

³⁰ K. Jaskulowski, 'The securitisation of migration: Its limits and consequences', 40 *International Political Science Review* (2019), 710-720 [doi: 10.1177/0192512118799755].

³¹ K.E. Bravo, 'Business and Human Rights A Call for Labor Liberalization' in J. Martin and K.E. Bravo (eds), *The business and human rights landscape moving forward, looking back* (Cambridge University Press, New York, 2016) 574, at 579-580 and 583.

³² L. McDowell, 'Thinking through work: complex inequalities, constructions of difference and trans-national migrants', 32 *Progress in Human Geography* (2008) 491-507, at 497 and 501 [doi: 10.1177/0309132507088116].

³³ F. Bagnardi, G. D'Onofrio and L. Greco, 'The state in chains: public policies against adverse incorporation in Southern Italian production networks', 19 *Globalizations* (2020) 34-58, at 51 [doi: 10.1080/14747731.2020.1849908].

³⁴ A.M. Hancock, 'Intersectionality as a normative and empirical paradigm', 3 *Politics & Gender* (2007) 248-254, at 251 [doi: 10.1017/S1743923X07000062].

³⁵ H.J. Bürkner, 'Intersectionality: How gender studies might inspire the analysis of social inequality among migrants', 18 *Population, space and place* (2012) 181-195, at 191-192 [doi: 10.1002/psp.664].

same time, companies can play a central role in adopting policies and practices that can either reproduce or mitigate these dynamics.

(D) THE CSDDD'S PERSONAL SCOPE

The CSDDD personal scope covers both European and non-European companies that meet certain requirements (Article 2 CSDDD). Its implementation model follows a five-year phase-in approach, aiming to reach the final configuration by July 2029 (Article 37 CSDDD). While the gradual approach may seem reasonable from the perspective of allowing companies to adapt themselves to new regulatory obligations, it suggests a lack of urgency in addressing business-related human rights violations. For European companies, the Directive will apply to those with more than 1,000 employees and an annual turnover of more than 450 million euros. In the case of third-country companies with activities in the EU, the criterion of the number of employees is not relevant; only the aforementioned annual turnover is considered. Micro-companies and SMEs are excluded from the proposed provisions. On the other hand, these can be indirectly affected by mHRDD processes when they are commercially linked to in-scope companies.³⁶

The CSDDD incorporates a clear extraterritorial dimension.³⁷ In-scope companies are required to address the adverse impacts of their operations, regardless of the territory where they occur. While some scholars have expressed caution regarding the extraterritorial application of law³⁸, this approach remains particularly significant for three main reasons. First, large companies often outsource and fragment their production in jurisdictions distinct from the location of their parent companies' headquarters.³⁹ Second, they operate within international production structures marked by asymmetries of market, social, and political power.⁴⁰ They exert significant influence over production practices and the conditions of price and supply, which often negatively impacts the labor conditions of individuals in vulnerable situations including migrant workers.⁴¹ Third, their value chains often extend to countries with weak regulatory frameworks or insufficient enforcement of human rights, exacerbating abusive practices and perpetuating corporate impunity.⁴² Despite the fragmentation and

³⁶ Pietropaoli, Elliot and Aguinaga, *supra*. n. 11, at 9.

³⁷ N. Bueno *et al.*, 'The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise' *Business and Human Rights Journal* (2024) 1 7, at 5-6 [doi:10.1017/bhj.2024.10].

³⁸ C.O. Lichuma, '(Laws) made in the 'first world': A TWAIL critique of the use of domestic legislation to extraterritorially regulate global value chains' 81 *ZaōRV* (2021) 497-532, at 518-521 [doi: 10.17104/0044-2348-2021-2-497].

³⁹ G. Magnani, A. Zucchella and R. Strange, 'The dynamics of outsourcing relationships in global value chains: Perspectives from MNEs and their suppliers', 103 *Journal of Business Research* (2019) 581-595, at 582-583 [doi: 10.1016/j.jbusres.2018.01.012].

⁴⁰ N. Phillips, 'Power and inequality in the global political economy', 93 *International Affairs* (2017) 429 444, at 433 [doi: 10.1093/ia/iix019].

⁴¹ J. Nolan, 'Regulating human rights in the textile sector: smoke and mirrors', in A. Marx *et al.* (eds), *Research Handbook on Global Governance, Business and Human Rights* (Edward Elgar Publishing, Cheltenham, 2022) 291, at 307.

⁴² I. Bantekas, 'Business and Human Rights Foundations and Linkages', in I. Bantekas and M.A. Stein (eds), *Cambridge Companion To Business & Human Rights Law* (Cambridge University Press, Cambridge, 2021) 1, at 10.

outsourcing in value chains, an intersectional approach allows for identifying the links connecting large companies to human rights violations occurring outside their primary territories of operation. By including these companies within the scope, the CSDDD seeks to counteract such effects, positioning companies as agents of change toward more responsible practices.

However, the CSDDD personal scope reveals some limitations. Firstly, the criterion adopted to determine which companies are included in the personal scope does not fully align with the UNGPs, which establish that all companies, regardless of size and sector, must carry out HRDD processes (Guiding Principle 14 UNGPs). Although it seems reasonable that the turnover of a company is considered, this parameter could have been used as a basis to determine the proportionality of the mHRDD measures to be implemented, and not as a criterion for inclusion in personal scope. Similarly, the exclusion of companies that do not meet a specific employee threshold constitutes a critical limitation. From an intersectional approach, it is essential to consider how the activities of all companies (and not only the large ones) can interact with the structural factors that perpetuate rights violations – for instance, the exploitation of migrant labor.

Moreover, the CSDDD accounting model does not include the workers most exposed to adverse incorporation in the lower tiers of the so-called “chain of activities”. This model seems to assume that the risk of human rights violations in “chain of activities” is directly linked to the number of direct employees of the in-scope companies, rather than the total number of workers who, although not directly hired, contribute along the “chain of activities” to the final product or service. It is true that the CSDDD introduces some advances in counting the number of workers, such as considering part-time workers as full-time equivalents and including workers from temporary work agencies and non-standard forms of employment, in accordance with the jurisprudence of the Court of Justice of the European Union (CJEU) (Article 2, 4, CSDDD). Although including labor modalities with greater insecurity for workers could represent a progress in respect for migrant workers’ rights⁴³, the model does not adequately estimate the total number of workers throughout the entire “chain of activities”. Incorporating an intersectional perspective would involve a more comprehensive accounting for all workers involved in the parent company’s value chain.

(E) THE CSDDD’S MATERIAL SCOPE: RESPECT FOR HUMAN RIGHTS

The CSDDD establishes that companies must detect, assess, prevent, mitigate, eliminate, and remedy “adverse impacts”⁴⁴ (Article 5, 1, CSDDD). To identify the adverse impacts on human rights during mHRDD processes, the text employs a listing technique, which includes rights, prohibitions, and international instruments. The CSDDD opts to refer these elements to an annex divided into two parts. Part I

⁴³ According to the ILO, the migrant population is more likely to be overrepresented in atypical and temporary forms of employment, see ILO, *El empleo atípico en el mundo: Retos y perspectivas. Presentación resumida del informe* (Ginebra, 2016), at 7 and 9.

⁴⁴ “Adverse impact” means an adverse environmental impact or adverse human rights impact (Article 3, 1, d, CSDDD).

is subdivided into two sections: “rights and prohibitions included in international human rights instruments” (Section 1) and “instruments on human rights and fundamental freedoms” (Section 2). Part II focuses on “prohibitions and obligations included in environmental instruments.” While the CSDDD also contemplates that adverse impacts may arise from violations of rights not listed in the annex, it imposes a series of very restrictive conditions for companies to be required to consider these unlisted rights (Article 3, 1, c, ii, CSDDD).

Although resorting to the listing technique may seem useful to guide companies in the development of specific policies, the annex model adopted by CSDDD has substantial weaknesses. Compared to international frameworks, the Directive adopts a limited approach regarding material scope. The UNGPs, for example, state that (i) all human rights violations that may be impacted by a company must be considered, and (ii) companies must promote a comprehensive respect for human rights (Guiding Principle 12 UNGPs). This implies that the HRDD obligations should not be limited to an artificial selection of rights that does not reflect the entire body of existing rights and international instruments.

Nonetheless, the listing technique limits the interdependent, comprehensive, and indivisible approach to human rights. The CSDDD suggest reducing human rights to a catalog of isolated rights and instruments, losing the conception of rights as an interconnected whole. Moreover, it is an insufficient list. Key treaties are excluded, such as those from the UN and the Council of Europe, as well as ILO conventions that are crucial for the protection of human rights in specific contexts, such as migrant labor. For example, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴⁵ is not included under the UN framework. Under the Council of Europe, the European Convention on the Legal Status of Migrant Workers⁴⁶ is missing. Under the ILO, treaties related to migrant workers, such as Conventions No. 97⁴⁷ and 143⁴⁸, are absent. The lack of integration of these instruments hampers the creation of a regulatory framework within the CSDDD that addresses the specific needs of migrant workers from a human rights perspective.⁴⁹

From an intersectional perspective, many migrants are often exposed to a *continuum* of exploitation and violence, which can begin in the early stages of their migratory processes and continue even after they reach their final destination.⁵⁰ In contexts

⁴⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted on 18 December 1990, entered into force on 1 July 2003) 2220 UNTS 3.

⁴⁶ European Convention on the Legal Status of Migrant Workers (adopted on 24 November 1977, entered into force on 1 May 1983) ETS No.93.

⁴⁷ Migration for Employment Convention (Revised) (No. 97) (adopted on 1 July 1949, entered into force on 22 January 1952) 120 UNTS 70.

⁴⁸ Migrant Workers (Supplementary Provisions) Convention (No. 143) (adopted on 24 June 1975, entered into force on 9 December 1978) 120 UNTS 323.

⁴⁹ This perspective “can be distinguished from other approaches to progressive change on the basis that it involves the explicit identification of rights holders and duty bearers”, see R. McDermott, P. Gibbons and S. McGrath, ‘Protection of Displaced Persons and the Rights-Based Approach’, in P. Adey *et al.* *The Handbook of Displacement* (Palgrave Macmillan, Cham, 2020) 109, at 117.

⁵⁰ I. A. Domínguez and E.J. Barbuzzano, ‘The Continuum of Violence and Interstices in the Journeys and Bodies of Women on the Move From West Africa’, *Violence Against Women* (2024) 1-27 [doi: 10.1177/10778012241263107].

of forced mobility resulting from armed conflict and/or climate change, the risks of human rights violations tend to be amplified even further. Migrant workers who have integrated forced migration flows may come from countries with problematic socio-political and economic conditions, as well as face barriers such as strict border controls and intersectional discrimination based on gender, ethnicity, and migratory status, which further exacerbates their exposure to human rights violation risks. For this reason, respect for rights must be comprehensive, considering the interconnectivity of the various forms of abuse that can be experienced by migrant workers. Instead of adopting a holistic approach that considers how business activities interconnectedly impact people's rights, including those of migrants, the CSDDD model tends to reduce addressing adverse impacts on human rights to a fragmented exercise, where rights are examined in isolation⁵¹, oversimplifying the complex nature of human rights violations.

(F) THE CSDDD'S APPROACH TO NON-DISCRIMINATION

The CSDDD, in its Annex Part I, Section I, establishes that one of the prohibitions in-scope companies must observe is the prohibition of unequal treatment in employment. The CSDDD specifies the prohibition of "discrimination on grounds of national extraction or social origin, race, colour, sex, religion, political opinion" (Article 14(b), Annex Part I, Section 1, CSDDD). This provision suggests being appropriate, as access, remuneration, and working conditions can vary within the same labor environment. Moreover, parent companies can perpetuate these inequalities through their production practices, which induce actors in the "chain of activities" to engage in discriminatory practices. However, this provision exhibits certain shortcomings. From an intersectional perspective, it is essential to consider a broader range of inequality indicators and recognize how these intersect and interrelate, creating specific forms of discrimination and human rights violations. One criticism lies in the use of the conjunction "or" instead of "and" in the list of discrimination grounds, which suggests a unitary model of discrimination. Although the CSDDD mentions seven indicators, it does not explicitly state that these factors can intersect. Furthermore, the list is both limited and closed. To better align with an intersectional approach, the inclusion of language such as "any other condition" would have allowed for the list to account for other possible factors of discrimination and their intersections. Additionally, migratory status itself is not explicitly recognized as a factor of discrimination. Other indicators of inequality that may intersect with migratory status, such as age, disability, sexual orientation, and gender identity, are also absent. By adopting a unitary and closed model, the CSDDD misses the opportunity to establish a comprehensive and effective framework for addressing the intersecting dimensions of discrimination faced by migrant workers adversely incorporated to value chains.

Compared to the progress achieved in international human rights law, the anti-discrimination framework proposed by the CSDDD is limited. The annex does not incorporate some of the important international instruments for addressing complex forms of discrimination. Key international instruments, such as the International

⁵¹ G. Holly; S.A. Lysgaard, *Legislating for Impact: Analysis of the Proposed EU Corporate Sustainability Due Diligence Directive* (Danish Institute for Human Rights, Copenhagen, 2022), at 14.

Convention on the Elimination of All Forms of Racial Discrimination⁵², the Convention on the Rights of Persons with Disabilities⁵³, or the Convention on the Elimination of All Forms of Discrimination Against Women⁵⁴ (CEDAW), are not included. The absence of CEDAW in the annex is particularly concerning, given that this instrument is a milestone in addressing direct and indirect gender-based discrimination. It has also been instrumental in recognizing intersectionality as an essential approach to understanding the overlapping layers of discrimination and exclusion faced by women.⁵⁵ Without the listing of CEDAW, the CSDDD hinders the adoption of a comprehensive gender-based approach, especially in migratory contexts where it is crucial to highlight the conditions of migrant women in gendered labor roles that carry heightened risks of rights abuses.⁵⁶ Although the text mentions that “depending on the circumstances, companies *may need* to consider additional standards” (Recital 33 CSDDD, emphasis added), this approach suggests to be insufficient. For example, the recitals acknowledge that companies should adopt a HRDD approach that considers intersectional factors, such as migratory status. In this context, “companies should pay special attention to any particular adverse impacts on individuals who may be at heightened risk due to marginalisation, vulnerability or other circumstances” (Recital 33, CSDDD). However, this recognition of intersectionality and a gender-based approach is not reflected in the operational and annex part of the document, which limits its practical impact.

(G) CONCLUSION

The CSDDD represents a historic milestone in the regulation of mHRDD in the BHR framework. It offers a unique opportunity to respect human rights across global value chains, particularly for groups in situational vulnerability such as migrant workers that face intersectional discrimination in lower value chain tiers. Nevertheless, the Directive current limitations underscore the need for a more expansive, holistic and comprehensive regulatory framework during its transposition. To truly respect the rights of these individuals, Member States must adopt more robust measures that not only comply with the CSDDD provisions but extend beyond them, ensuring that human rights are respected in every aspect of business operations, both domestically and abroad.

⁵² International Convention on the Elimination of All Forms of Racial Discrimination (adopted on 21 December 1965, entered into force on 4 January 1969) 660 UNTS 195.

⁵³ Convention on the Rights of Persons with Disabilities (adopted on 13 December 2006, entered into force on 3 May 2008) 2515 UNTS 3.

⁵⁴ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (adopted on 18 December 1979, entered into force on 3 September 1981) 1249 UNTS 13.

⁵⁵ The CEDAW Committee, in its General Recommendation No. 28 on Article 2 of the Convention, highlights that intersectionality is crucial for understanding the obligations of States Parties, which must recognize and prohibit intersecting forms of discrimination that negatively affect women (para. 18). Moreover, the Committee emphasizes that States must take measures to eliminate discrimination against women, extending this responsibility to national companies operating outside their territory, ensuring that they do not perpetuate discriminatory practices at the international level (para. 36), see Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (adopted on 16 December 2010) UN Doc. CEDAW/C/GC/28.

⁵⁶ K. Brickell and J. Speer, ‘Gendered and Feminist Approaches to Displacement’, in P. Adey *et al.*, *The Handbook of Displacement* (Palgrave Macmillan, Cham, 2020) 131, at 137.