

# Frontrunners vs Free Riders?

Mapping the Institutional Implementation of Human Rights  
Due Diligence in France and the Netherlands

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# Research Framework

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*what determined the differences in the implementation process of mHRDD in France versus the Netherlands?*

"a network of rules creating public classifications of persons and knowledge" - John Mayer

The institution of  
HRDD

Comparing doctrinal  
implementation  
processes

Historical  
Institutionalism

# Institutional Change

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- Periods of path dependence and stability alternated by **critical junctures**

## *Permissive Conditions*

- Heighten probability of institutional change
- Mark the duration of the critical juncture
- Crisis, economic shocks, social movements

## *Productive Conditions*

- Determine the outcome of the institutional change
- Legal frameworks, cultural and historical factors, socio-political arrangements

# HRDD: an International Soft Law Institution

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2003 | UN Draft Norms on corporate responsibility for human rights

2011 | UN Guiding Principles on Business and Human Rights

→ HRDD becomes an international soft law-based institution

## Soft law

- Non-binding, normative character, can signal intent to legislate
- Facilitates legal and institutional change

# Permissive Conditions

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## *International Institutional Actors*

2011 | HRDD included in OECD Guidelines

| Support from European Union Institutions

- European Commission: strategy for UNGP implementation
- European Parliament: support for HRDD and OECD Guidelines

# Permissive Conditions

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## *The Socio-political Shock of Rana Plaza*

2010s | Scandals involving European retailers and value chains

| Increasing public awareness on business and human rights

2013 | Rana Plaza tragedy

| Garment factory building collapse

deadliest incident of its kind in history

| Public uproar against MNEs' systemic exploitation of workers

| Surge in civil society action for better human rights protections in value chains

# Productive Conditions

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## *Institutional Development in France*

1995 | *Éthique sur Étiquette* whistleblowing campaign

2000s | Increase in civil society activity around HRDD

2012 | François Hollande Presidency campaign

- Declaration by Hollande regarding future action to hold MNEs responsible for HR harms ; subsequent lack of follow-through

2013 | Rana Plaza incident

- Involvement of major French brands in the disaster



# *La Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses de l'ordre*

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2013 | First legislative attempt at *Loi de Vigilance*

- Rejected by Commission of Laws

2015 | Second legislative attempt at *Loi de Vigilance*

- Various changes to 2013 text (some positive, some negative)
- Intense lobbying by business associations
- Majority of text changed or deleted by Senate

2016 | Resignation of Macron at Bercy ; appointment of Sapin

2017 | *Loi de Vigilance* passed in Parliament and Senate

- Final text passed very different from the 2015 proposal

2022 | Proposal CSDDD

2023 | First cases brought before court under *Loi de Vigilance*

# Productive Conditions

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## *Institutional Development in the Netherlands*

- 2011 | Policy on International Corporate Social Responsibility (ICSR)
- 2013 | Sector Risk Assessment on human rights and environmental risks in supply chains. 13 high-risk sectors identified
- 2014 | International Responsible Business Conduct (IRBC) Covenants
  - Voluntary, soft law multi-stakeholder agreements in industry sectors
- | Over time: concerns about the effectiveness of the Covenants
- 2019 | Hard law legislation on HRDD
  - the Dutch Child Labour Due Diligence (CLDD) Act

# The Child Labour Due Diligence Act

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2017 | Introduced to House of Representatives

2019 | Passed by slim majority in the Senate

**! Never entered into force !**

2020 | Waiting for EU level legislative outcomes

2021 | Plans for a horizontal HRDD law  
following the French, German and EU path

## *Compared to the Loi*

- Sectoral scope of application
- Foresees criminal enforcement

# Frontrunners and Free Riders?

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## **The nuances of institutional change**

- Key socio-political conditions
- Historical and cultural factors
- Still moving towards institutional convergence

## **Strategic choices and trade-offs?**

- France: frontrunner role, (mitigated) first-mover risk
- Netherlands: slower, cautious approach

# Concluding Remarks

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- Currently | European Union interinstitutional negotiation on the Corporate Sustainability Due Diligence Directive (CSDDD)
- Forecasts | Determining factor: outcome on CSDDD negotiations
  - | Possible convergence towards the CSDDD model
  - | French *Loi* a hollow success for mHRDD, but a strong signal for future developments
  - | Dutch IRBC policy and CLDD Act: unclear fate

# *Discussion & Questions*

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