
Tools for accountability: the French “duty of vigilance” law

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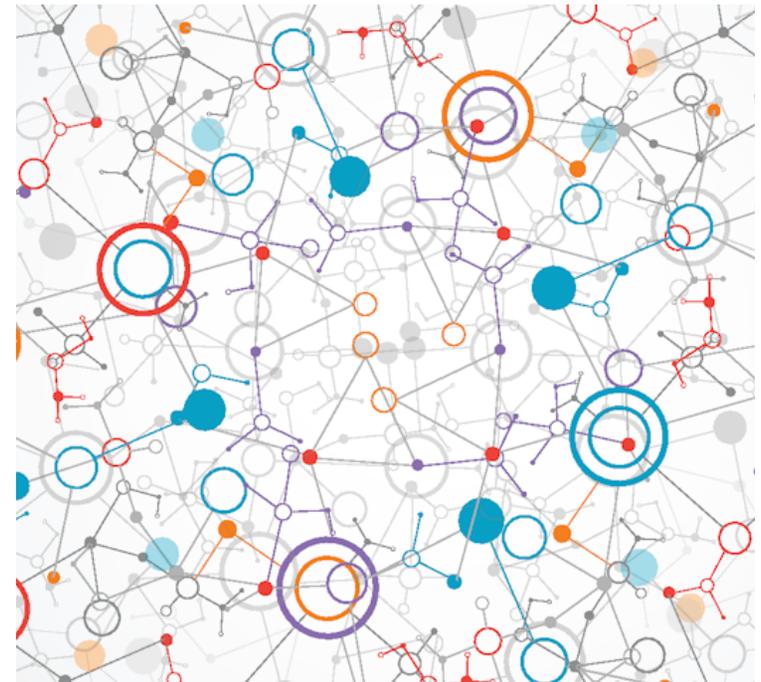
Outline

1. Main features of the French “duty of vigilance” law
2. Implementation
3. (Teaching) resources in English (and French)



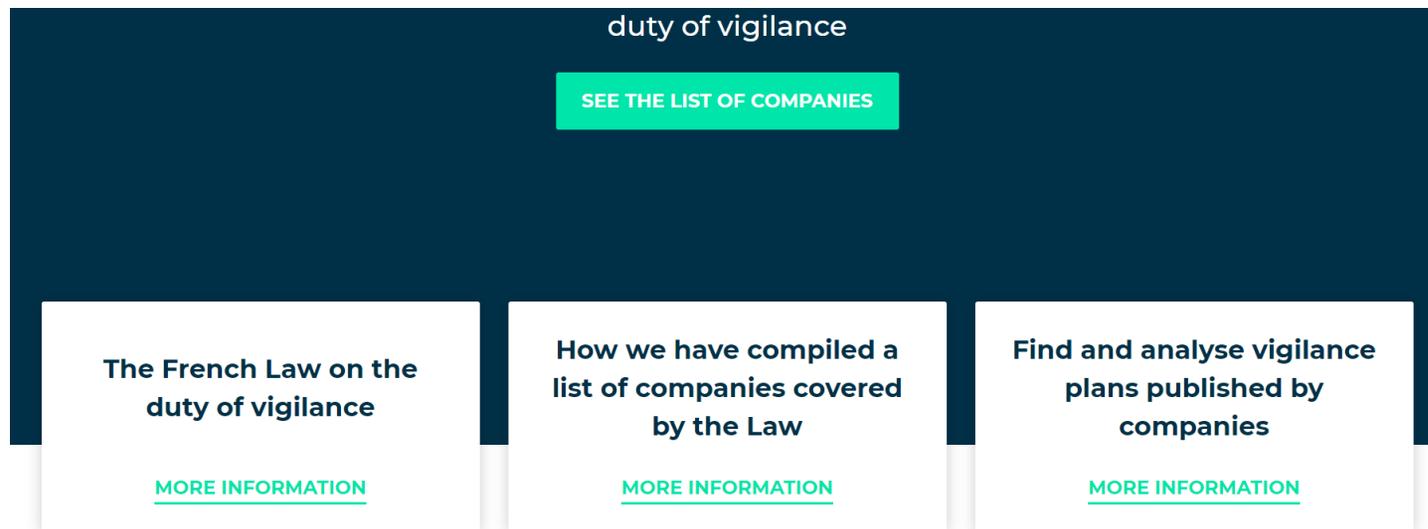
1. Main features of the French “duty of vigilance” law

- LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre
- = « Duty of vigilance » law
- Creates a **broad responsibility** to prevent human rights and environmental impact for companies of a certain size
- Concerns activities of parents companies and those of their subsidiaries, suppliers and subcontractors, wherever located



Duty of vigilance law

- Applies to companies based in France with over 5,000 employees in France, or 10,000 employees in the world (within the companies + foreign subsidiaries).
- → Estimated 300 companies
- NGO-run website lists companies: <https://vigilance-plan.org/> - in English!



Duty of Vigilance Law

- Companies required to establish, publish and implement an annual “vigilance plan” (*plan de vigilance*) and to report on its implementation
- If the company does not establish its vigilance plan, make it public or efficiently implement it: can be forced to do so by a Court with financial penalties.
- In case of non-compliance, civil liability can arise and company may be ordered to pay damages



Vigilance Plan

- “The plan shall include **adequate, reasonable vigilance measures to identify risks and to prevent serious impacts** on human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the activities of the company and of the companies that it controls (...)
- as well as the activities of subcontractors or suppliers **with whom they have an established commercial relationship**, when these activities are related to this relationship.”



Vigilance Plan

- Should be elaborated in cooperation with stakeholders
- Shall include:
 - **1. A mapping of risks** designed to identify, analyse and prioritise them;
 - **2. Procedures to regularly assess** the situation of subsidiaries, subcontractors or suppliers, in line with the risk mapping
 - **3. Appropriate actions** to mitigate risks or prevent serious impacts
 - **4. A whistleblowing** mechanism
 - **5. A system monitoring** the implemented measures and evaluating their effectiveness.

Judicial enforcement – 2 scenarios

- **1. Company has failed to establish an adequate plan:** anyone with standing (incl. NGOs) can send them a letter asking them to comply and giving them 3 months to do so (*mise en demeure* = formal notice).
- If no/inadequate compliance: anyone with standing can ask a court to force the company to comply, with daily penalties in case of non-compliance.



Judicial enforcement – 2 scenarios

- **2. Company has failed to comply with their plan, or has an inadequate plan** and damage (human rights/environmental) has occurred: victims can seek damages for negligence.
- Civil liability will arise when the failure to comply with their obligations can be linked to the harm suffered by the injured party.
- The burden of proof lies on the claimant, who has to prove that the failure to comply led to the harms suffered.



2. Implementation

- February 2019: report by French NGOs
- *The Law on Duty of Vigilance of Parent and Outsourcing Companies. Year 1: companies must do better*
- 80 plans reviewed
- Includes sectoral analysis Extractive, Arms, Agri-food, Banking, Garment
- → insufficient plans



Formal notices sent

■ **Total**

- Group of NGOs and cities sent a formal notice regarding measures Total have taken (and not taken) on climate change.
- 19 Sept. 2019: deadline to comply.

■ **Teleperformance**

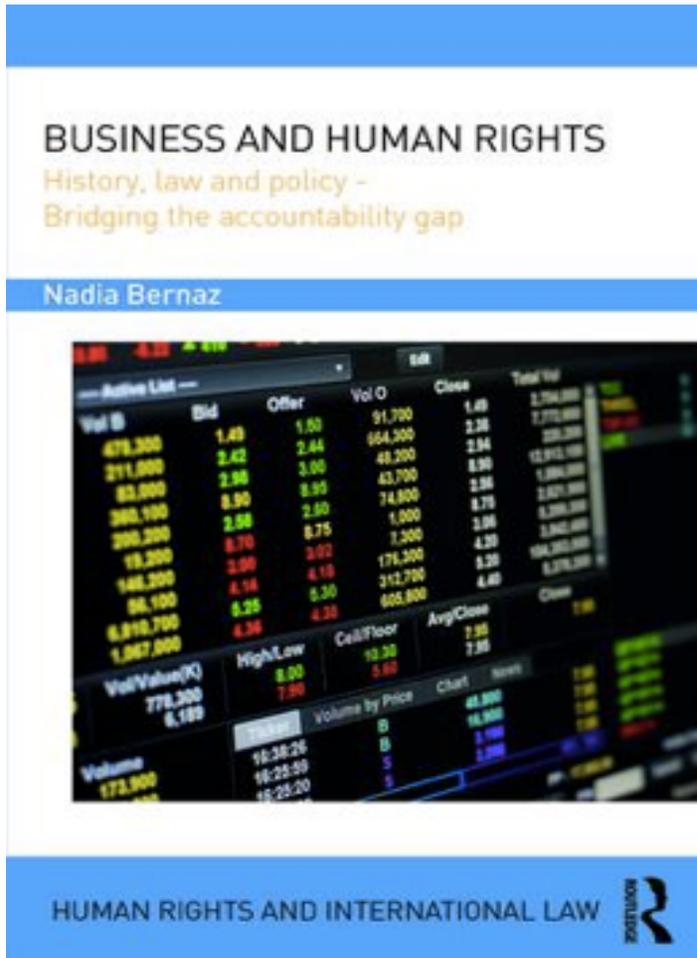
- Sherpa and UNI Global Union sent a formal notice regarding working conditions in call centres in different countries (Philippines, Mexico, Colombia)
- 18 Oct. 2019: deadline to comply

3. (Teaching) Resources [English]

- “The Law on Duty of Vigilance of Parent and Outsourcing Companies. Year 1: Companies Must Do Better” (2019)
https://www.amisdela terre.org/IMG/pdf/2019_collective_report_-_duty_of_vigilance_year_1.pdf
- “End of the Road for Transnational Corporations ? Human rights and environment: from a groundbreaking French law to a UN treaty”
http://www.amisdela terre.org/IMG/pdf/end_of_the_road_for_tncs_foef-aaf-oct17.pdf
(2017)
- [Vigilance on the Menu \(2019\) https://vigilance-plan.org/wp-content/uploads//2019/06/2019-04-10_-_vigilance_on_the_menu_-_uk.pdf](https://vigilance-plan.org/wp-content/uploads//2019/06/2019-04-10_-_vigilance_on_the_menu_-_uk.pdf)
- PALOMBO, “The Duty of Care of the Parent Company: A Comparison between French Law, UK Precedents and the Swiss Proposals”, *BHR Journal* (2019)
- COSSART, CHAPLIER, BEAU DE LOMENIE, “The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All”, *BHR Journal* (2017)

(Teaching) Resources [French]

- Lawyers briefing on the first implementation of the law:
<http://www.avocatparis.org/system/files/worksandcommissions/e.-daoud-s.-sfoggia-premiers-contentieux-devoir-de-vigilance.pdf>
- Entreprise pour les droits de l'homme, "Plans de vigilance 2018-2019: Application de la loi sur le devoir de vigilance (2019):
<https://www.e-dh.org/userfiles/EDH%20-%20Etude%20plans%20de%20vigilance%202019.pdf>



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