Legal Framework Quick Reference

The four frameworks a legacy claim runs into most often, each reduced to what it actually does to historical harm: CERCLA, the CSDDD after the 2026 Omnibus reform, the IFC Performance Standards, and the UN Guiding Principles.

From *Legacy Grievances and Historical Claims: A Guide to Post-Operational Dispute Resolution* by Thomas Gaultier

This appendix provides concise summaries of the four legal frameworks most frequently referenced in legacy grievance resolution. Each summary focuses on how the framework applies to post-operational disputes and legacy claims, not on the instrument as a whole. Practitioners should consult the full text and relevant jurisdiction-specific guidance for detailed implementation.

B.1 CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act)

Element	Detail
Jurisdiction	United States (federal)
Year enacted	1980 (amended 1986 by SARA)
Common name	Superfund
Core mechanism	Strict, joint, and several liability for cleanup costs at contaminated sites
Liable parties	Current owners/operators, owners/operators at time of disposal, generators, and transporters of hazardous substances

Key features relevant to legacy claims

Status-based liability. Current owners of contaminated property are liable regardless of whether they caused, contributed to, or knew about the contamination at the time of purchase. The fact of ownership is sufficient.

Run-with-the-land character. Environmental obligations under CERCLA attach to the property itself and transmit with the title. They cannot be contractually excluded through purchase agreements, though indemnity provisions between buyer and seller remain enforceable as between the parties.

Retroactive application. CERCLA applies to contamination that occurred before the statute was enacted. This retroactive reach is critical for legacy sites where the contaminating activity may have occurred decades before any regulatory framework existed.

Joint and several liability. Any single responsible party can be held liable for the entire cost of cleanup, regardless of its proportionate contribution to the contamination. This means a current owner with minimal operational history can bear the full cost if predecessor operators are insolvent or dissolved.

Practitioner implication

Any acquisition of a contaminated site in the United States exposes the buyer to CERCLA liability. Contractual protections (indemnities, representations) protect only against the seller, not against the government or third-party claims. Environmental insurance and escrow provisions are essential complements. See Chapter 3 for detailed transaction structuring guidance.

B.2 CSDDD (Corporate Sustainability Due Diligence Directive)

Element	Detail
Jurisdiction	European Union (member state transposition required)
Year adopted	2024 (Directive (EU) 2024/1760), substantially amended in 2026 by the Omnibus I simplification package (Directive (EU) 2026/470, in force 18 March 2026). Member States must transpose by 26 July 2028; the rules apply from 26 July 2029.
Scope	EU companies with more than 5,000 employees on average and net worldwide turnover above EUR 1.5 billion, and non-EU companies with net turnover above EUR 1.5 billion generated within the EU. The Omnibus I reform of 2026 raised these thresholds sharply, reducing the number of companies in scope. A separate franchising and licensing limb applies above EUR 75 million in royalties and EUR 275 million in turnover.
Core mechanism	Mandatory due diligence obligations to identify, prevent, mitigate, and account for adverse human rights and environmental impacts across the chain of activities

Key features relevant to legacy claims

Inherited impacts. The CSDDD requires in-scope companies to identify, prevent, mitigate, and account for adverse human rights and environmental impacts in their own operations and across their chain of activities. A company that acquires a mining asset with unresolved community grievances is therefore expected to identify and address those impacts, not merely those arising from its own operational decisions.

Climate transition plans. The Directive originally required in-scope companies to adopt and put into effect a climate change mitigation transition plan, but the Omnibus I reform of 2026 deleted that obligation (former Article 22) in full. Climate transition plan disclosure now survives only for companies within the scope of the EU's separate corporate sustainability reporting regime, not as a due diligence duty under the CSDDD. Extractive companies managing both fossil fuel closures and critical mineral expansion should track this as a reporting question rather than a due diligence obligation.

Civil liability. The Directive no longer establishes a single, harmonised EU cause of action. The Omnibus I reform of 2026 deleted the EU-wide liability standard and re-anchored civil liability in the national law of each Member State. Where a company is held liable under national law for damage caused by a failure to meet its due diligence obligations, the Directive guarantees affected persons a right to full compensation, without overcompensation. Whether and when such liability arises now depends on how each Member State transposes the Directive, so the litigation pathway available to communities affected by legacy harms will vary by jurisdiction.

Practitioner implication

The largest European-headquartered mining companies, and non-EU companies with very substantial EU revenues, must integrate legacy grievance assessment into their due diligence processes. Following the 2026 Omnibus reform, the directly bound population is much smaller than under the 2024 text, but the directive still signals a regulatory trend toward holding acquirers accountable for historical impacts, and national transposition may extend equivalent duties more widely. See Chapter 3.

B.3 IFC Performance Standards

Element	Detail
Issuing body	International Finance Corporation (World Bank Group)
Year adopted	2012 edition (in effect since 1 January 2012; remains the operative version as of 2026, with a Sustainability Framework update underway)
Scope	All IFC-financed projects; widely adopted by commercial banks through the Equator Principles as baseline standards for project finance
Most relevant standards	PS 1 (Assessment and Management), PS 5 (Land Acquisition and Involuntary Resettlement), PS 7 (Indigenous Peoples)

Key features relevant to legacy claims

PS 1: Grievance mechanisms. Requires project-level grievance mechanisms accessible to affected communities. In legacy contexts, the critical issue is that these mechanisms were designed for operational phases and typically cease to function after closure, creating the "after-phase gap" identified in Chapter 1.

PS 5: Livelihood restoration. Requires that displaced persons' livelihoods be improved or at minimum restored to pre-displacement levels. For legacy claims involving historical displacement (such as the Benga mine case in Mozambique), PS 5 provides the normative benchmark against which the adequacy of past resettlement can be assessed, even where the original resettlement predated the current version of the Standards.

PS 7: FPIC for Indigenous Peoples. Requires Free, Prior, and Informed Consent for projects affecting Indigenous Peoples' lands, resources, and cultural heritage. In legacy contexts, the absence of FPIC during the original operation is itself a grievance that must be addressed.

Practitioner implication

The IFC Performance Standards function as the de facto international benchmark for extractive industry social and environmental practice. Even where a legacy site was not originally IFC-financed, the Standards provide the normative framework against which community advocates, legal counsel, and investors will assess the adequacy of any resolution. See Chapters 5 and 8. Note that the IFC began a formal update of its Sustainability Framework, including the Performance Standards, in 2025; the dialogue phase was expected to conclude in October 2026 and a first draft to go to public consultation in late 2026, with the process running to 2028. The 2012 edition remains in force until that update is finalised. Practitioners should confirm the current edition on the IFC website before relying on it.

B.4 UNGPs (United Nations Guiding Principles on Business and Human Rights)

Element	Detail

Issuing body	United Nations Human Rights Council
Year endorsed	2011 (endorsed by UN Human Rights Council Resolution 17/4 of 16 June 2011)
Framework	Three-pillar "Protect, Respect, and Remedy" framework
Legal status	Soft law (not legally binding), but increasingly incorporated into binding regulations (e.g., CSDDD) and contractual standards

Source: OHCHR, Guiding Principles on Business and Human Rights (HR/PUB/11/04, 2011); UN Human Rights Council Resolution 17/4 (2011).

Key features relevant to legacy claims

Pillar I (State Duty to Protect). States must protect against human rights abuse by third parties, including business enterprises. For legacy claims, this creates an expectation that governments will establish regulatory frameworks that cover post-operational accountability in addition to operational-phase compliance.

Pillar II (Corporate Responsibility to Respect). Companies should avoid causing or contributing to adverse human rights impacts and should address such impacts when they occur. Critically, the responsibility to respect applies regardless of whether the state fulfils its duty to protect. For legacy claims, this means a company cannot justify inaction by pointing to regulatory failure.

Pillar III (Access to Remedy). States must ensure access to effective judicial and non-judicial remedy for business-related human rights abuses. Companies should establish or participate in operational-level grievance mechanisms. The "after-phase gap" identified in Chapter 1 is, in UNGP terms, a failure of Pillar III: the evaporation of grievance mechanisms after closure leaves affected communities without access to remedy. Within the European Union, access to remedy is reinforced by Directive (EU) 2024/1069 (the Anti-SLAPP Directive), which establishes procedural safeguards against manifestly unfounded claims and abusive court proceedings brought to silence community advocates, journalists, or researchers, with Member States required to transpose it into national law by 7 May 2026; its binding safeguards apply to civil and commercial matters with cross-border implications (see Chapter 8).

Human rights due diligence (Principles 17–21). Companies should carry out human rights due diligence to identify, prevent, mitigate, and account for adverse impacts. In the M&A context, this extends to due diligence on the human rights impacts of acquired assets, including historical impacts. This UNGP requirement is now being operationalised through binding legislation such as the CSDDD.

> **Practitioner implication**
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> The UNGPs provide the normative foundation for the corporate responsibility to address legacy harms. They are increasingly cited in litigation, investor expectations (including the Mining 2030 Commission), and regulatory standards. A practitioner designing a legacy resolution process should frame the process as fulfilling UNGP obligations, which strengthens both internal corporate buy-in and external legitimacy. See Chapters 2, 3, and 8.

Some obligations run with the land, whatever the contract says.