

Business and Human Rights

BRIEFING PAPER FOR POLICY MAKERS

WHAT'S THE ISSUE?

Many of the problems facing people in middle and low income countries (indirectly) result from the practices and policies of multinational corporations at the top end of the supply chain. This is especially a problem in the supply chains of the food production. The global food system is of foremost importance to global employment, culture, environment, conservation, peace, stability and of course nutrition. A third of the working population worldwide is involved in agriculture. Work in food and agriculture is often harsh, dangerous, underpaid and precarious.

Across the globe, people face enormous challenges in securing respect for their rights and receiving remedy for corporate-related abuses. The following examples illustrate the gravity of this development:

CHOCOLATE

The global chocolate confectionery market generated approx. 80 billion dollars in 2015, a number that tends to rise. While European supermarket chains account for more than 47% of global sales in the value chain of chocolate, the part of the margin of cocoa farmers from the main exporting countries in West Africa only constitute 6.6%, a figure that has decreased significantly in the past few decades. The small scale of the farms, the relatively low yields and low, fluctuating prices for cocoa result in difficulties for farmers to earn themselves a living income and pay even minimum wage, let alone a living wage to their farmhands. Due to lack of jobs, many workers are forced to work overtime and even children must leave school or are abducted and forced to work on cocoa farms. In 2015, up to 2 Million children were working on cocoa farms in Ghana and Ivory Coast, 500.000 even involved in the hazardous steps of cocoa production.¹

PALM OIL

Almost half of all supermarket goods contain palm oil. The characteristics of palm oil particularly favourable for food production have significantly increased the demand for it. The primary areas of cultivation are in Indonesia and Malaysia, that produce roughly 85% of the world's supply of palm oil. Nearly 70% of the palm oil comes from huge plantations, mostly run by national or international corporations rather than by small farmers. This obviously has considerable environmental impacts, like deforestation, drainage of peatlands, fires and massive water consumption of the palms, which lead to a number of social problems. Local farmers face increased shortage of water and can no longer grow their own crops, many villages are destroyed to build more plantations and plantation workers very often suffer from discriminatory employment practices, like poor wages, precarious working conditions and hazards from chemicals.²

¹ For more information on **chocolate**, see: Caroline Sommeregger, Martin Wildenberg. (2016) *Bittersweet Chocolate: The Truth Behind the International Chocolate Industry*. Südwind [online] available from: http://www.supplychainge.org/fileadmin/reporters/eu_files/Chocolate_032016_Langversion_web.pdf (22.03.2017)

² For more information on **palm oil**, see: Martin Wildenberg, David Horvath. (2016) *Palm oil. Environmental destruction, stolen land*. Südwind [online] available from: http://www.supplychainge.org/fileadmin/reporters/eu_files/cookie_campaign/G2_216_Palmoil_REPORT_EN_WEB.pdf (22.03.2017)



ORANGE JUICE

Brazil is the major exporting partner of the EU for orange juice. Brazil produces half of the world's orange juice supply and the EU imports roughly two thirds of Brazils' production. However, none of the retailers takes social responsibility for the orange juice industry. Oranges are one of the fruit crops most intensive in the use of pesticide, a fact that leads to many reported cases of human intoxication (4.537 in 2013) and even deaths linked to pesticide poisoning (206 in 2013), with estimated actual figures a lot higher. Workers are left with no legal protection facing precarious working conditions, which is especially true for women who are reportedly victims of even lower wages and constant psychological, physical and sexual attacks.³

Over the past decades, most small, local grocery stores have been replaced by branch stores of internationally operating supermarket chains. One reason for this development is the increasing demand for processed food which, in combination with the consolidation of retail, processing and logistics' chains, has led to a further expansion and a restructuring of supply chains in favour of the major buyers, for example Aldi, Lidl and Carrefour. This increasingly concentrates economic power over suppliers in the Global South in the hands of only a few European retailers⁴. Heavy competition, the race for lower prices, high demand and tight coordination allow only sizable producers and exporters to be cost effective. However, value is not primarily allocated to the real suppliers of the physical product, but rather to management instances.

Agricultural supply chains have become a flagrant example of the growing asymmetries in market power on a global level. The dependency of exporting countries in the Global South on just a few large retailers increases the economic pressure on producers which results in the exacerbation of violation of human rights and environmental standards.

INTERNATIONAL BUSINESS AND HUMAN RIGHTS FRAMEWORK

Corporations have a responsibility to respect human rights wherever they are active. A growing number of initiatives and standards try to stimulate corporate accountability, from corporate codes of conduct and certification schemes to international guidelines:

- OECD Guidelines for Multinational Enterprises and the OECD-FAO Guidance for Responsible Agricultural Supply Chains⁵
- UN Guiding Principles on business and human rights⁶

These frameworks spell out clearly that governments have a duty to protect human rights and that companies have a responsibility to respect human rights and avoid adverse impacts. Companies are expected to undertake a process called 'due diligence' to identify, prevent, mitigate, and account for adverse impacts to human rights and the environment. Importantly, companies are not only expected to identify, prevent, and mitigate impacts that they themselves cause or to which they contribute, but they are also expected to mitigate any impacts caused by other businesses or governments that are linked to their products or services.

Unfortunately, the implementation and enforcement of these frameworks by signatory states remains patchy and is largely left to the voluntary efforts of companies. Business-related human rights and environmental abuses remain all too common. The voluntary initiatives and guidelines fall short. Firm measures are needed to ensure that businesses respect human rights, labour rights, and the environment, and that victims of abuse obtain the remedy they deserve.

³ For more information on orange juice, see: Martin Wildenberg, Sandra Dusch Silva. (2015) *Squeeze out. The Truth behind the orange juice business*. Global 2000 [online] available from:

http://www.supplychange.org/fileadmin/user_upload/SC_Squeeze_out_EN.pdf (23.03.2017)

⁴ For more information on European retailers, see: http://www.fairtrade-advocacy.org/images/Whos_got_the_power_full_report.pdf (20.4.2017)

⁵ For more information on the OECD Guidelines, see: <http://www.oecd.org/daf/inv/mne/48004323.pdf#> (23.03.2017); for more information on the OECD-FAO Guidance for Responsible Agricultural Supply Chains, see: <http://mneguidelines.oecd.org/OECD-FAO-Guidance.pdf> (20.4.2017)

⁶ For more information on the UNGP's, see:

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (23.03.17)





We advocate for binding enforceable regulations and laws, effective judicial and non-judicial grievance mechanisms, and a strengthened international legal framework to protect human rights in the context of business operations.

EXAMPLES FOR BINDING REGULATIONS

UN BINDING TREATY

The UN Treaty is a work in progress initiated by the UN Human Rights Council (UNHRC). The goal is to formulate a legally binding instrument that regulates, in international human rights law, the activities of transnational corporations. It aims to implement the UN Guiding Principles on Business and Human Rights as well as standards set by the International Labour Organisation (ILO) and the World Health Organisation (WHO), to prevent, investigate, redress and provide access to remedy to human rights violations whenever these occur. In the 34th session of the Human Rights Council in February and March 2017, general outlines of the treaty have been worked on.⁷

The UN Treaty is now in further development. It is the goal to formulate a specific treaty together with other States, Unions, NGOs and international organisations. In 2017 the UN treaty process was moving into a new phase, when the third session of the Open-Ended Intergovernmental Working Group (IGWG) to elaborate on the binding treaty took place in October. The high presence of representatives showed that civil society stands ready contributes actively to the process.

EU REGULATION

In 2014, the EU ratified the Directive on non-financial reporting by certain large firms, which requires companies with more than 500 employees to submit a yearly report on principal risks to human rights, the environmental and social impacts linked to their operations, relationships, products and services – as well as aspects related to bribery and diversity – and their due diligence procedures for identifying, preventing and mitigating those risks. The Directive will enhance the transparency of European business and sets a signal against human rights violations by large corporations.

More precisely, the EU has also started to implement some measurements for corporations to protect fundamental rights in international supply chains. The most recent example is the regulation on conflict minerals. In an attempt to stop financing armed groups in developing countries, the EU will implement regulations to ensure that several minerals (tin, tantalum, tungsten and gold) are sourced responsibly. Measurements address specifically the “upstream” part of the mineral supply chain, which includes importers of raw material. In addition, the regulation aims to support smaller companies by exempting recycled minerals, and imports of very small volumes. Companies who import refined forms of these materials are monitored via new reporting tools and standards, as well as a transparency database. Finally, the new regulation will be combined with a number of foreign policy and development cooperation efforts to promote change in the affected regions.⁸

In April 2017, Development Committee MEPs voted for a similar resolution for the garment industry. Apart from binding due diligence obligations for European Companies, the MEPs advocate introducing EU tariff preferences and labels for sustainably-produced garment and footwear.

⁷ For more information on the UNHRC Report, see: Espinosa, Maria F. (2017). Report on the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. Human Rights Council 34th Session. [online] available from: http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/WGTransCorp/Session2/A_HRC_34_47_en.docx&action=default&DefaultItemOpen=1 (23.4.2017)

⁸ For more information on the EU regulation, see: Cecilia Malström. (2016) *Big step against conflict minerals*. [online] available from: https://ec.europa.eu/commission/commissioners/2014-2019/malmstrom/blog/big-step-against-conflict-minerals_en (23.03.2017)



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NATIONAL LAWS

France has been the first European country to introduce a law which obliges companies to care about fundamental rights. It is a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers. It applies only to companies with at least 5000 employees and requires just a due diligence plan, not results, from the companies. The French example shows that implementation at a national level is possible and it has become an example for some other European countries, who aspire similar laws (Belgium, Spain, Switzerland).⁹

Other European Member States introduced more specific laws, for example the Dutch Law on Child Labour, which requires firms to examine, eliminate and prevent child labour from their supply chain, which was adopted by parliament in 2017 and still awaits approval by the Senate. Another example would be the UK Modern Slavery Act from 2015, which, similar to the EU Directive on non-financial reporting, requires corporations to submit an annual report on the risks of modern slavery and human exploitation along their production and supply chain. However, it does not bindingly require the companies to take actions against basic human rights abuse.

Also, eight EU State Parliaments have launched the Green Card Initiative to call on the EU Commission to initiate a legislative procedure to enhance corporate respect for human rights and the environment. So far, the movement has not yet fully reached the EU level, which is why all efforts in this direction are so important. As illustrated, the problems are extremely worrying and the impact of European countries is immense. The brief overview of regulations shows that stopping corporate impunity and making (transnational) corporations accountable for adverse impacts caused by their business activities are both possible and necessary on various political levels, nationally as well as on EU and UN levels.

WHAT SHOULD THE EUROPEAN UNION DO?

The EU must establish an adequate legal framework to hold corporations responsible for the violations of fundamental rights caused by transnational business activities and guarantee access to remedies for the victims, irrespective of the nations' legal system. Only legally binding instruments will ensure that transnational corporations can be held responsible for their actions by the victims of their human rights abuse. Individuals will have access to remedy only if the transnational corporations are legally required to meet human rights standards.

1. A UN binding treaty could clarify the legal process and in combination with the establishment of mechanisms for monitoring and implementation, could ensure fundamental rights and help as an authoritative, persuasive set of standards to develop international law and implement it at a national level. The European Commission and the Council should participate constructively in the international negotiations for an effective and binding UN Treaty that regulates transnational corporations and other business enterprises regarding fundamental rights.
2. The current mandatory due diligence or reporting regulations shows the EU's potential to promote human rights internationally. Similar steps should be followed regarding the food sector. Based on the OECD-FAO Guidance for Responsible Agricultural Supply Chains, the EU could introduce a mandatory set of measurements to ensure fundamental rights along the entire agricultural supply chain.

REAL CHANGE REMAINS A MATTER OF POLITICAL PRIORITY SETTING.

⁹ Euractiv. (2017) France leads EU on duty of care requirements for multinationals. [online] available from: <http://www.euractiv.com/section/global-europe/news/france-leads-eu-on-duty-of-care-requirements-for-multinationals/>

