

Briefing note:

EU law. Global impact. A report considering the potential impact of human rights due diligence laws on labour exploitation and forced labour.

Context

The European Commission will soon publish a proposal for an **EU business and human rights law** that would require companies operating in the EU to prevent and address human rights abuses and environmental damage in their global supply chains. This commitment to mandatory human rights and environmental due diligence could help tackle forced labour and child labour in supply chains around the world.

In order to understand how the proposal could affect workers' human rights, we, together with Civedep India and Repórter Brasil, commissioned research from the following partners:

- The Rights Lab at the University of Nottingham (UK)
- The Pontifical Catholic University, Rio de Janeiro (Brazil)
- The Institute for Climate and Society (Brazil)
- Partners in Change (India)

The researchers explored the potential impact of the proposed EU business human rights law through two case studies: the leather industry in India, and the coffee industry in Brazil. The research included a legal and evidence review, interviews, and focus-group discussions in India and Brazil undertaken between March and May 2021. **You can read the full report online here.**

NOTE: The report's content is the sole responsibility of the authors and cannot be taken to reflect the views of Anti-Slavery International, Civedep India or Repórter Brasil.



Snapshots of Brazil and India

The case studies give examples of forced labour and labour exploitation risks in EU supply chains. In both the coffee and leather industries, exploitation is more likely in lower tiers of the supply chain – for example, in isolated farms and small factories. Businesses' voluntary schemes generally fail to reach lower tiers of production, and their failure to guarantee the visibility and traceability of goods the further they are from the shop shelf leaves workers in these settings subject to abuse and exploitation.

As in other sectors and countries across the globe, exploitative labour practices in India and Brazil disproportionately affect people who are poor and marginalised, including migrant and homebased workers and workers considered lower-caste. These people face challenges including discrimination, poverty and fewer employment opportunities which can leave them relying on exploitative labour relations. Workers generally face limits on their freedom of association, and weak trade unions and the risk of reprisals prevent workers from accessing and securing their rights.

Brazil and India show varied examples of how producer countries meet international human rights obligations, introduce and enforce anti-slavery laws, and approach the corporate duty to respect human rights. Even when laws exist, poor enforcement increases workers' and marginalised people's vulnerability to corporate exploitation and abuse. The Brazilian and Indian case studies also follow a trend that we see in several countries, of rolling back on social and environmental safeguards. All of this shows that the EU law must guarantee the highest human rights standards, and must make sure safeguards are not weakened.

In both Brazil and India, victims of labour abuse have limited access to justice and remedy. There are few easily accessible routes for workers to secure their rights through state-based systems, and workers are often reluctant to use these systems because of the high legal costs, the limitations on the reversal of the burden of proof and fear of reprisals. Instead, many victims may have to rely on non-judicial and non-state-based grievance mechanisms, which can lack legitimacy and are often ineffective.

Neither the Brazilian nor the Indian government has introduced mandatory laws on business and human rights. Instead, both countries rely on domestic labour and employment law, and on voluntary schemes intended to promote responsible business conduct. Brazil has some avenues of holding businesses accountable, particularly through information provided by the Dirty List; court judgements in the country have also set legal precedents that impose a duty of care on powerful businesses. By contrast, India relies on voluntary guidelines, which often lack enforcement and are poorly monitored, offering limited scrutiny of businesses' protection of workers' rights. Neither Brazil nor India puts a legal obligation on companies to avoid any measures which would cause harm to rights holders.

The implications

The EU's proposed law has great potential to tackle abuses in value chains* across the world. If it is designed, implemented and enforced effectively the new law should encourage governments to fill gaps in their domestic laws so that value chains are monitored properly and made transparent. The law would also convert existing 'soft' measures (including guidelines and voluntary agreements) into binding laws, and open up more ways for workers to know and secure their rights and seek redress and remedy for corporate-related human rights abuses.

But if the law lacks ambition, robust monitoring and enforcement, or fails to engage with the legal and social realities of producer countries, then it could fail to improve workers' rights and businesses' respect for human rights. Crucially, the proposed law and/or complementary measures must be designed to encourage producer countries to create an environment where businesses are required to respect human rights, and where decent work is protected.

* A company's value chain covers the entire journey of how a product is made, and also how it is used. In this sense, it covers all the suppliers, sub-suppliers and business partners that were involved in the production, manufacture, transport or other processes in a company's own products or services, as well as all business partners which receive products or services from a company.

Recommendations

This report makes recommendations targeted at the European Commission, producer country governments, national and international NGOs, companies and donors to make sure the proposed EU law is effective.

Recommendations include:

- The law should protect human rights for formal, semi-formal and informal workers and homeworkers. It should: include specific criteria relating to living incomes and wages, freedom of association, health and safety, and risks to groups in vulnerable situations; cover entire value chains; include supply chain disclosure requirements; require an assessment of business models and/or strategies; and mandate disclosure of processes to assess businesses' impact on human rights and the environment.
- The law should cover financial institutions and small and medium enterprises (SMEs), while maintaining some flexibility to allow for the unique circumstances in which many SMEs operate in both consumer and producer states.
- The law should mandate meaningful and effective stakeholder consultation by companies throughout the entire due diligence process, and should guarantee protection for stakeholders at risk of retaliation.
- Enforcement of the law should secure effective access to justice, including the reversal of the burden of proof, and liability provisions, including joint and several liability, targeted strict and absolute legal liability, administrative liability and liability on auditors.
- Civil society organisations, trade unions and (credible) government agencies from producer countries should be involved in monitoring and implementing the law, and should be supported to do this.
- The proposed law should work effectively with EU trade, investment and development policy, and purchasing practices should be regulated.
- Governments of producer countries should focus upon strengthening their domestic legal frameworks and enforcement mechanisms, making sure workers can access justice and remedy.
- Companies must tackle all forms of labour exploitation and human rights violations and their drivers, addressing issues including living wages and incomes, health and safety, anti-discrimination and freedom of association as priorities across value chains.
- Companies must work closely with suppliers and address the key drivers of exploitation, working across different industries where necessary.
- International and national-level NGOs, international trade unions and donors must work together to provide better support to grassroots organisations and trade unions to make sure workers know and can access their rights, and can hold companies accountable.

We hope this report will inspire further dialogue between policy makers and stakeholders on how to make sure the proposed EU law on business and human rights makes a positive difference for workers, communities, trade unions and NGOs in producer countries.

The report is a summary of the full research findings; you can request a copy of the full findings via info@antislavery.org.