



# EU law. Global impact.

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



**Worker on a coffee plantation in Brazil**

Image: Marcel Gomes, Repórter Brasil

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## Contents

<b>Chapter 1:</b>	Outline	<b>4</b>
<b>Chapter 2:</b>	Context	<b>5</b>
<b>Chapter 3:</b>	Research methodology	<b>6</b>
<b>Chapter 4:</b>	Overview of legislative developments	<b>7</b>
<b>Chapter 5:</b>	Snapshots of Brazil and India	
	<b>5.1</b> Brazil	<b>10</b>
	<b>5.2</b> India	<b>15</b>
<b>Chapter 6:</b>	Case study conclusions	
	<b>6.1</b> Empirical considerations for mHREDD implementation	<b>20</b>
	<b>6.2</b> Legal considerations for mHREDD implementation	<b>21</b>
<b>Chapter 7:</b>	Implications of findings and recommendations	
	<b>7.1</b> Recommendations for EU legislators	<b>24</b>
	<b>7.2</b> Recommendations for national governments of producer countries	<b>32</b>
	<b>7.3</b> Recommendations for companies implementing mHREDD	<b>34</b>
	<b>7.4</b> Recommendations for NGOs and trade unions	<b>36</b>
	<b>7.5</b> Recommendations for donors	<b>38</b>
<b>Chapter 8:</b>	Conclusion	<b>39</b>
<b>Glossary</b>		<b>40</b>
<b>Endnotes</b>		<b>41</b>

# CHAPTER 1

## Outline

Labour exploitation is defined as a continuum that ranges from poor labour and employment practices to more extreme forms of exploitation amounting to forced labour. This rapid research and scoping paper outlines how defining labour exploitation as a continuum promotes efforts to tackle forced labour by addressing the whole range of labour violations which can lead to extreme exploitation.

It is important to consider the needs and interests of workers, communities, trade unions and NGOs in producer countries, and to reflect these in the development of policy and law that acts to address forced labour. This paper outlines the critical role that these stakeholders must play in the proposed framework for EU mandatory human rights and environmental due diligence (mHREDD) and calls for their greater involvement in the ongoing debate in order to develop meaningful law.

Specifically, the research centres around two case studies of high-risk forced labour contexts in EU private sector supply chains: Brazil's coffee industry and India's leather industry. To assess the potential impact of EU mHREDD on labour rights in producer countries, this report offers an evidence and legal review of business and human rights, labour violations, and access to remedy and justice in these contexts. In doing so, it makes recommendations for what is needed at local, national and international level to ensure that the law is effective in addressing forced labour, and proposes initiatives at local and national levels to enable this.

While recognising the intricate relationship between labour exploitation and environmental damage that cuts across sectors worldwide, this report limits its scope to labour exploitation.

The recommendations outline the key elements in the scope and design of the law to ensure it meaningfully addresses forced labour. Recommendations with regards to the monitoring and enforcement of the law include the need for effective access to justice, liability provisions, and meaningful involvement of civil society organisations and trade unions from producer countries in the design, monitoring and implementation of the law. Simultaneously, national governments of producer countries should focus upon strengthening their domestic legal frameworks and enforcement mechanisms, making sure access to justice and remedy is enabled. NGOs, trade unions, together with donors, can support the process through greater support to grassroots organisations and trade unions, and by promoting horizontal and local engagement.

This report makes recommendations targeted at the European Commission, producer country governments, national and international NGOs, companies and donors to ensure effectiveness of the proposed EU law.

It is hoped that these recommendations will inspire further dialogue on how to make sure the proposed EU mHREDD framework is meaningful for workers, communities, trade unions and NGOs in producer countries. This report is a summarised version of the full research findings, which can be requested from Anti-Slavery International at [info@antislavery.org](mailto:info@antislavery.org).

## CHAPTER 2

### Context

#### **Human rights are fundamental rights and freedoms that belong to all people everywhere.**

Although states are the primary duty bearers of human rights obligations, corporate responsibility and accountability for human rights abuses have become a key concern. Numerous frameworks have emerged to protect against adverse human rights impacts surrounding business operations, notably the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs).

These guiding principles cover three pillars:

1. State duty to protect human rights.
2. Corporate responsibility to respect human rights.
3. Access to remedy for victims of business-related abuses.

Pillar 2 requires companies to undertake human rights due diligence (HRDD). HRDD has been further defined by the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises as the process by which companies should identify, assess, prevent, mitigate and account for adverse human rights in their value chains.<sup>A</sup> HRDD focuses on risks posed to people, not to the business. The process is not an end in itself nor a one-off box ticking exercise, but rather a means to protect and promote human rights continuously. Therefore, its effectiveness depends on transparency, liability and participation of rights-holders and stakeholders at all stages of the process.

Since 2011, many states and national bodies have established National Action Plans (NAPs) to implement the UNGPs, and introduced other voluntary and legal instruments on business and human rights. Increasingly, states have come to understand the need to legislate for mandatory human rights due diligence – “mHRDD”. Approaches have varied: some states have only required due diligence on adverse impacts on human rights (i.e. mHRDD), while others have included the environment (i.e. mHREDD). These proposals for mHRDD/mHREDD also incorporate access to justice regimes.

Following years of calls for EU mandated due diligence requirements, mid-2021 will see the European Commission table a proposal for EU mHREDD within a wider Sustainable Corporate Governance initiative.<sup>1</sup> In December 2020, the European Council called for the European Commission to table a proposal for cross-sector corporate due diligence obligations along global supply chains. Further, in March 2021, the European Parliament voted for its own cross-party proposal<sup>2</sup> on the design of EU mHREDD.

The EU is the world’s largest single market, and EU company value chains stretch across the globe. Therefore, as we move towards near certainty that some form of EU mHREDD will be passed, it is important to understand the potential impact this could have on countries and sectors where forced labour is prevalent, and to analyse which mechanisms are needed to ensure meaningful change for current and future workers in producer countries.

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<sup>A</sup> A company’s value chain includes entities with which it has a direct or indirect business relationship, understood as all types of business relationships – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers – and any other non-state or state entities linked to its business operations, products or services, as per OECD Guidelines, and which either (a) supply products or services that contribute to the company’s own products or services, or (b) receive products or services from the company. Supply chains and value chains are similar terms that refer to the entire production chain. However, while “supply chain” may be used to specifically refer to the production and distribution of a commodity, “value chain” includes the set of interrelated activities by which a company adds value to an article.

## CHAPTER 3

### Research methodology

This report focuses on two case studies of high-risk forced labour contexts in EU private sector supply chains: Brazil's coffee industry and India's leather industry. Research involved evidence and legal reviews, interviews and focus groups.

The **legal review** focused on examining business and human rights related regulatory frameworks at an EU-level and in Europe, Brazil and India.

The **evidence review** was case study specific and combined data from sources in academic literature, government and non-government reports, and media.

In total, 24 semi-structured **interviews** and two **focus groups** were conducted with workers, community organisations, unions, labour inspectors, prosecutors and lawyers representing victims and international NGOs in Brazil and India.



A homeworker in Tamil Nadu

Image: Cividep India

## CHAPTER 4

### Overview of legislative developments

Several European countries have adopted mHREDD in the last decade or are considering enacting similar legislation in the near future. These laws are diverse in their scope of obligations, monitoring mechanisms and types of liability.

The legislation outlined below highlights some of the key elements that should be considered in the proposed EU mHREDD law. These include the duty of companies to undertake due diligence, the scope of the law in covering human rights and the environment, and access to justice and liability provisions.

The **French** Corporate Duty of Vigilance Law requires companies to adopt a vigilance plan (which must contain a map of risks to the company and their suppliers), actions to prevent serious harm, mechanisms (negotiated with workers' unions) to report risk, as well as measures taken to monitor their effectiveness. The Law has been praised for covering all human rights, environment and public health, but criticised for its narrow practical scope – companies registered in France with 5,000 or more employees in the company and their direct/indirect subsidiaries also registered in France, or at least 10,000 employees in the company and their direct/indirect subsidiaries registered abroad. The Law is ambiguous on whether it covers the first tier of a supply chain only or all tiers, and whether it includes the financial sector. A report assessing filed vigilance plans shows that companies apply the Law differently, with most focused on the risks for the company, not for third parties or the environment. Originally, the Law contained provisions on the shifting of burden of proof for victims and on substantive fines, but lobby from businesses blocked these two essential components. The French Constitutional Court invalidated some of the Law's provisions, weakening its mandatory power and its potential to hold companies liable for human rights abuses.

In the **Netherlands**, the new Bill for Responsible and Sustainable International Business Conduct was submitted in March 2021 to parliament. It proposes a duty of care to prevent negative human rights and environmental impacts. This duty of care also applies to negative impacts in company value chains, across all tiers. It also stipulates a mix of criminal and administrative sanctions, and proposes the creation of a public regulator who can issue financial sanctions on non-compliant companies. In addition, the responsible company director is subject to up to two years' imprisonment. The Bill is significant in that it enables third parties to hold companies liable for harms suffered as a result of non-compliance with the Bill's provisions.

The **German** proposal concerns large German companies operating in high-risk sectors. The proposed legislation has been criticised as it only applies to 600 companies (>3,000 employees) from 2023, and approximately 2,900 companies (>1,000 employees) from 2024. Consequently, it does not capture SMEs (99% of German companies) operating in high-risk sectors. Moreover, while the proposal allows for significant fines to be applied for non-compliance, it does not provide for a new legal avenue of redress. The civil liability provision is limited, as only NGOs and unions can file lawsuits on behalf of victims from abroad, not the victims themselves. The German proposal is also problematic as it requires companies to act when they have 'substantial knowledge of an abuse occurring' and not as a precautionary measure, which limits the mandated due diligence obligation to the top tier of supply chains. As of May 2021, the proposal was yet to be voted on.



A coffee farm in Brazil

Credit: João Paulo Britto, Conectas

The **Swiss** Coalition for Corporate Justice (SCCJ), which represents more than 80 NGOs in Switzerland, launched the Responsible Business Initiative (RBI) in 2015 to amend the country's Federation Constitution by introducing mandatory human rights due diligence for Swiss companies. The RBI proposal covered all companies across all sectors and their entire supply chain, requiring parent companies to ensure that human rights and environmental standards are respected. Swiss-based companies would become liable for violations caused by companies "under their control. Under the proposal, if a parent company had proven it carried out its due diligence obligation appropriately, it could not be held liable. In November 2020, the RBI was narrowly rejected. While the initiative received 50.7% of the popular vote, it only gained 8.5 of the required 12 regional majorities across Switzerland's cantons. Due to RBI failing to secure the popular vote, the reporting-centred proposal put forward by the Council of States without liability provisions was favoured and is expected to come into force in 2021. Under this counter-proposal, Swiss companies will be required to report on due diligence measures. However, it is limited in scope as it is restricted to issues concerning conflict materials and child labour and does not include parent company liability for activities of their controlled companies abroad. Nevertheless, it includes criminal sanctions for failing to comply with the reporting requirements. There remains great appetite for mandatory human rights due diligence legislation, with 27 global institutional investors with a combined total capital of CHF 808 billion [€738 billion] calling for parliament to support the introduction of mHRDD.<sup>3</sup>

The **UK** Modern Slavery Act 2015 focuses on transparency and disclosure of information concerning a company's potential exposure to the risk of modern slavery and how this risk is addressed in corporate policies and practices. As such, it only represents a reporting legislation without a mandated due diligence obligation, though the lessons learnt from the Act are being used to guide mHREDD legislative developments elsewhere. Although companies can be compelled by a court order to publish an annual statement, this avenue has not been used in practice. The Act's 'light-touch' approach and limited scope – addressing only companies of a specific size (over £36m turnover), not mandating the precise information that must be included in modern slavery and human trafficking statements or the steps that should be taken to prevent slavery in supply chains, and lack of official monitoring mechanisms and credible sanctions – has resulted in it having a limited impact on corporate behaviour. UK law has been criticised for delegating to civil society the role of 'applying pressure where they believe a business has not taken sufficient steps'.<sup>4</sup> It is estimated that around 40% of eligible companies are not compliant.<sup>5</sup>



## CHAPTER 5

### Snapshots of Brazil and India

Brazil and India are two of the world's largest producers of popular global commodities. This report takes Brazil's coffee industry and India's leather industry in Tamil Nadu as case studies, examining four areas:

- 1. Existing legal foundations for addressing business and human rights**, to identify the intersection and conflicting areas between national frameworks and the proposed EU law.
- 2. Key labour violations** that highlight the required efficacy of the proposed EU mHREDD in order to prevent, mitigate and remedy such labour violations.
- 3. Key drivers and root causes of forced labour and labour exploitation**, including corporate business models and strategies, to show how important it is for meaningful EU mHREDD to be adopted, and to lead to action to address these key drivers in any context.
- 4. Collective bargaining and access to remedy** to determine current obstacles and examine how the proposed EU law and complementary measures may strengthen workers' ability to access their rights.



Coffee beans in Brazil

Image: Marcel Gomes, Repórter Brasil



Coffee plantation in Brasil  
Image: Lilo Clareto, Repórter Brasil

## 5.1 Brazil

### 5.1.1 Legal foundation for addressing business and human rights issues

Brazil has ratified the main human rights treaties and International Labour Organization (ILO) conventions protecting workers' human rights. Brazilian law recognises the concept of slave labour<sup>B</sup> and working conditions analogous to slavery. It protects workers from slave labour and imposes penalties on employers whose names appear on the Dirty List – a list of employers found to have submitted workers to conditions comparable with slavery, published every six months by the Brazilian government.<sup>C</sup>

Brazilian law does not regulate HREDD. Although the 2018 Guidelines on Business and Human Rights<sup>6</sup> established a corporate duty to exercise human rights due diligence, these are not binding.<sup>7</sup> The country has not yet enacted a NAP. Brazilian corporate laws have a regime of varying degrees of legal liability for corporate misconduct for violations of environmental and consumer rights.<sup>8,9</sup>

However, sector-specific human rights and environmental due diligence regulations do exist in the financial sector. This has led to the Brazilian Central Bank adopting regulations prohibiting financial institutions (FIs) from lending to individuals or companies listed on the Dirty List.<sup>10</sup> A more comprehensive rule is expected to come into force in early 2022 requiring FIs to integrate environmental, social and climate (ESC) risks into their risk management processes.<sup>11</sup>

While Brazil has an internationally recognised anti-slavery framework, the long periods of time it takes to reach final decisions in court, together with a tumultuous political decade that saw attempts to dismantle legislation and a flawed law enforcement system, have allowed corporations to escape punishment for violations committed. As an indicator, it is estimated that just 3% of environmental fines are paid by offenders.<sup>12</sup>

<sup>B</sup> In Brazil, the term 'slave labour' rather than 'forced labour' is customarily used.

<sup>C</sup> Inclusion in the list occurs after the exhaustion of all administrative appeals available to the offender, which can last up to two years. Many employers try to remove their names from the list by judicial means, claiming they have not been convicted by the criminal justice system. Sometimes they succeed, though the government usually appeals these decisions and proceedings can take some time to resolve.

## 5.1.2 Key violations in Brazil's coffee industry

**Brazil is the world's largest producer and exporter of coffee<sup>13</sup> and the main supplier to Europe (27% of imports).<sup>14</sup> In 1995, the Brazilian government acknowledged the existence of contemporary forms of slavery and took steps to address it, but forced labour and human rights violations remain a concern particularly within the coffee industry. In 2019, the Secretary of Labour Inspection stated, 'The number of workers toiling in slave-like working conditions in Brazil's coffee industry is now at the highest level in 15 years'.<sup>15</sup>**

### Health risks

Health risks are systemic, recurrent and can be identified in various operational practices, such as long workdays, long journeys to work (sometimes walking more than an hour), carrying heavy bags of coffee from plantation to weighing station, and inadequate protective equipment.<sup>16</sup> Some workers rescued from plantations holding a certification co-owned by Starbucks were required to work arguably long unaccounted hours, six days a week and with no holiday pay entitlement.<sup>17</sup> Starbucks denied having purchased from the farm in recent years. Others rescued from a different coffee plantation supplying coffee to both Starbucks and Nespresso reported 17 hour shifts and living in unhygienic conditions.<sup>18</sup> The Covid-19 pandemic also saw an increase in workday hours as production did not stop during this period. Workers also reported being refused paid leave, even when they were ill, and having to work when a close relative had Covid-19.<sup>19</sup> In one case, a worker reported that the only medicine received was tea.<sup>20</sup>

### Inadequate accommodation

Raids by the labour inspectorate found workers living in shanty houses, often with entire families in the same room, without beds or mattresses, and sharing their sleeping space with stoves, showers and toilets.<sup>21</sup> Other workers reported unhygienic conditions, including water tanks used for drinking and cooking and accommodation infected with mice and bats.<sup>22</sup> There are also reports of breaches related to food – unlawful salary deductions for food costs or not being given food at all.<sup>23</sup>

### Payment fraud

Workers reported that payment fraud is common. At one farm, the weighing of the harvested bags was fraudulent, aiming to reduce corresponding payments, and workers were paid only at the end of the season – which lasts approximately three months.<sup>24</sup>

### Debt bondage

An interview with a group of three rescued workers from the south of Minas Gerais, a state in Brazil, describes the reality of their routine: 'We started work at 5.30am, walked more than 5km to the coffee field and continued non-stop until after 6pm every day, except for a few Sundays when the farmer allowed us to rest. The sleeping facilities were built to be a home for animals, not humans. The gate was always locked with a dog preventing us from escaping. The farmers and their gatekeepers were constantly humiliating us.' Workers confirmed they experienced debt bondage, saying they were obliged to buy food in the farmer's family-owned grocery store and the equipment farmers required workers to use was not provided for free, but sold to them so they were always in debt.<sup>25</sup>

## 5.1.3 Key drivers of forced labour and labour exploitation

### Supply chain complexity and lack of traceability

The coffee supply chain usually comprises harvesting; coffee bean drying; cleaning, separating and bagging; transferring to cooperatives and warehouses; purchasing by exporting companies or selling to local distributors responsible for roasting and grinding the coffee and distributing to customers. These steps can be differently assumed by producers, intermediaries, cooperatives and importers. Generally, non-Brazilian companies, such as EU companies, first appear in the supply chain as exporting companies of beans of already roasted and ground coffee. The variety of supply chain models and strategies in the coffee sector affects traceability. Direct supply chains have no intermediaries, and the buyer has to maintain relationships with producers – although this facilitates traceability, efficiency may be affected and purchasers' liability for risks of a supply failure are increased.<sup>26</sup> Most labour abuses happen at the very start of the process, highlighting the importance of thorough due diligence along the supply chain.

### Mixed picture with certification schemes

Most buyers rely on certification standards to provide assurances around labour rights. There is evidence that certification has worked and improved standards in some cases. However, in others, certification has failed to protect labour rights. In 2018, after inspectors found that two multinational companies had purchased cocoa beans from farms using slave labour,<sup>27</sup> the farms had their UTZ certification revoked,<sup>28</sup> a renowned certification that is meant to show consumers that products have been sourced, from farm to shop shelf, in a sustainable manner.

### Discrimination

Four out of five workers rescued in all operations conducted by authorities between 2016 and 2018 were non-white – mostly men (91%), aged 15 to 29 (40%) and born in north-eastern states (46%).<sup>29</sup> The north-east region, home to the largest black population in Brazil, is one of the largest pockets of rural poverty in Latin America, with 44% of households where most of the income comes from agricultural activities facing poverty or extreme poverty.<sup>30</sup> It is important to highlight that inspections in rural areas focus on violations of labour norms, i.e. on security and health provisions of rural workers in the field, while women cooking and cleaning under slavery conditions remain invisible. The situation in Brazil is a good reminder of the 'blind spots' in research that need to be addressed.

### Migration triggered by socio-economic factors, combined with unethical recruitment on isolated farms

Poverty and lack of employment opportunities, particularly during droughts, make people from certain parts of the north-east more susceptible to being lured with false promises of work. Every year, thousands of migrants from the north-eastern state of Bahia and north of Minas Gerais<sup>31</sup> set out on migration journeys to the centre-south of Minas Gerais, a state that produces more than half of the national coffee exported.<sup>32</sup> Migration is also encouraged by unethical recruiters, who make false promises about good pay, lodging and food,<sup>33</sup> and are a major source of risk for forced labour, human trafficking<sup>34</sup> and labour exploitation. Mid-sized farms and those located in hilly terrains may pose a greater risk of labour law violations<sup>35</sup> and forced labour. As they are not large enough to justify the capital investment for mechanisation, they generate significant demand for unskilled labour. According to inspectors interviewed, mechanisation reduces migrant worker employment figures, opening opportunities for those able to purchase and manage the machines, but leaving some workers in a situation where they are likely to accept more easily whatever employment opportunities are available, even when conditions are precarious. This is further exacerbated by workers' lack of education, social support and economic opportunities.

## Lack of labour cards

About 59% of rural workers in Brazil do not have labour documents, and many others have inaccurate records (such as the start and termination dates of employment). The accurate registration of a worker's complete labour history is an essential prerequisite to access social security and unemployment benefits. Brazilian federal government estimates that the percentage of workers without labour cards<sup>36</sup> is even higher (up to 61%) in the south of Minas Gerais, where coffee is the main agricultural activity. However, even those who do have a contract can miss out on social benefits, because many cannot read or write and are not aware of their rights. Of the workers rescued by authorities between 2016 and 2018, 56% had not completed school and 14% were illiterate.<sup>37</sup> One of the Ministry of Economy's main powers is the instant issuing of labour cards for workers who do not have them, making the role of Ministry inspections so essential.

## Short-term contracts

Short-term contracts are becoming more frequent in Brazil. By working on different farms for shorter periods of time, workers are more exposed to exploitation and less likely to be covered by inspections. With limited resources available for inspection raids, workers are less likely to have their working conditions inspected.<sup>38</sup>

## Lack of knowledge about labour rights

Labour legislation – Consolidation of Labour Laws (CLT) – is little known by rural workers. In interviews, the only labour right known by rescued workers was the minimum wage. This unfamiliarity with the range of worker entitlements is related to the history of labour legislation in Brazil. When CLT was created in 1943, the focus was on urban workers. Rural workers were only afforded the same level of protection with the passing of the Federal Constitution of 1988. The latest labour reforms have also weakened trade unions' role in increasing workers' awareness around labour rights.

## Decreasing budget allocation for labour inspections

In 2016, inspection bodies were weakened. This is reflected both in the shortage of auditors and financial resources,<sup>39</sup> particularly with cuts to the Mobile Group<sup>D</sup> at the Ministry of Labour and Employment (MTE).<sup>40</sup> The cuts jeopardise law enforcement and increase the risk of violations. In 2019, the MTE was abolished and the Secretariat for Labour Inspections, dedicated to combating slave labour, was moved under the Ministry of Economy where it holds minimum influence in the public policy decision-making.<sup>41</sup>

## Covid-19 pandemic

Brazil was already facing an economic crisis when the Covid-19 pandemic hit the country, resulting in business closures and record levels of unemployment.<sup>42</sup> The pandemic has exacerbated the vicious cycle of vulnerability due to a reduction in employment opportunities and limited support to enable full rehabilitation and reintegration into society and the labour market.<sup>43</sup> Some farms adopted relief measures offered by the government to save jobs, such as suspending labour contracts, albeit without remuneration. Many farms did not adopt the minimum hygiene and Covid-19 preventative measures, such as social distancing and mandatory wearing of face masks. The complete absence of personal protective equipment (PPE) for workers is already common in the coffee industry.<sup>44</sup> Farmers have also denied workers' requests to provide masks and hand sanitisers during the pandemic.<sup>45</sup>

<sup>D</sup> The Mobile Group is a multi-agency mechanism involving labour prosecutors, the federal police and servants from the labor departments of the federal government. It works to ensure labour rights, while combatting slave and degrading labour in Brazil. Since its creation in 1995, it has rescued more than 54,000 workers..

**Coffee beans in Brazil**

Image: Marcel Gomes, Repórter Brasil



### 5.1.4 Collective bargaining and access to remedy

To provide effective remedies for rescued workers and prevent workers from re-entering the labour exploitation cycle, 'integrated action' initiatives have been launched in some regions, including Bahia, the origin state of many workers in coffee plantations in Minas Gerais. These initiatives, supported by the ILO, are led by NGOs and involve a wide collaboration between state and non-state actors. Their aim is to locate rescued workers and identify those who are vulnerable to forced labour to support them with social development, education, work and employment policies. The initiatives are critical in stopping the vulnerability cycle for rescued workers who would otherwise risk slipping back into labour exploitation due to a lack of opportunity and support. However, they do not fill the gap left by the lack of a federal workers' rescue policy.

In 2019, 11.2% of the workforce, i.e. 10.56 million workers, belonged to a union.<sup>46</sup> In the agriculture sector, small and family producers rely heavily on unions to safeguard their rights, such as access to social security. However, workers' fear of retaliation by employers has historically affected unions' activities against labour illegalities in rural areas. Additionally, the majority of workers on coffee plantations are temporary, informal or migrants, and beyond union protection. This position was aggravated when the Brazilian Congress approved a comprehensive Labour Reform (Law N. 13467/17) in 2017, which removed certain protections for all workers and weakened trade unions.<sup>47</sup> The reform withdrew the mandatory validation of unions on issues such as minimum and maximum working hours and shift compensation, which can now be negotiated by employers and employees directly without union mediation. Bearing in mind workers' general lack of awareness of their rights, this change creates a greater risk of exploitation. Unions also had their main source of income – the union tax – removed, significantly diminishing their capacity to defend workers. At the same time, workers lost their right to exemption from legal fees in the case of defeat and can no longer seek the 'gratuitous justice' benefit, which also exempted them from court fees. These measures are a barrier for workers to access labour justice and, as a consequence, the number of new cases decreased by 32% in the two years after the Reform.

The extent of the informal sector in the Brazilian coffee industry and workers' lack of knowledge about their basic rights means that very few workers seek judicial remedies. For informal workers, this is estimated to be as low as 5-6%.<sup>48</sup> Moreover, it is common practice for employers to share information about workers who have sued their former employer, and this form of retaliation can create insurmountable barriers to future employment.<sup>49</sup>

## 5.2 India

### 5.2.1 The legal foundation for addressing business and human rights issues

India's constitutional and legal framework incorporates several issues relevant to the business and human rights agenda, although India has not ratified key labour standards, such as the ILO's Right to Organise and Collective Bargaining Convention, the Freedom of Association and Protection of the Right to Organise Convention, or the Optional Protocols to the International Covenant on Civil and Political Rights.<sup>50</sup>

India has no mHREDD law. Legislation on corporate social responsibility (CSR) requires voluntary reporting which reinforces the classic approach of addressing CSR outside of the core business operation. The National Guidelines on Responsible Business Conduct (NGRBC) also provide a framework for guiding Indian multinational companies in their overseas operations. Its business responsibility framework has indicators and questions on supply chains, but most companies answer with a simple 'yes or no' with very few providing detailed responses on measures taken to ensure supply chains are covered under their existing policies. This makes it difficult to monitor human rights violations.

The ongoing process of adopting a NAP signals the government's willingness to align India's policy framework with the UNGPs. However, it does not address current gaps in law and policies, nor does it propose binding law to ensure business compliance with the UNGPs.<sup>51</sup>

The legislative framework on human rights, labour rights and environmental protection provides for civil and criminal liability for non-compliance. Under the Bonded Labour System (Abolition) Act, a person can face imprisonment for the enforcement of bonded labour and penalties are imposed for the infringement of the Occupational Safety, Health and Working Conditions Code (2020).

Key challenges to advancing India's legal framework and business' respect for human rights include the country's reliance on the private sector to generate economic growth, a lack of transparency in how public resources are allocated to the private sector, and a lack of labour resources.



A leather workshop in Tamil Nadu  
Image: Cividep India

## 5.2.2 Key labour violations in India's leather industry

**India is the world's second largest producer of leather goods, garments and footwear after China. The state of Tamil Nadu, with 750 tanneries, is the leading producer of such goods in India.<sup>52</sup> The sector employs more than 2.5 million people. More than 90% of footwear is exported to the EU.**

**As detailed below, the most common labour abuses raised in interviews with workers, NGOs and trade unions were unpaid overtime, pay below the national minimum wage, lack of leave days and social security that ties in with fraudulent business behaviour and threatening behaviour towards employees.**

### Forced and unpaid overtime

Forced and unpaid overtime (usually 1-2 hours per shift) indicates that workers are not receiving statutory provisions, which requires remuneration at double the usual rate.<sup>53</sup> This is a widespread problem, with the Fair Wear Foundation reporting that excessive overtime practices were found in 79% of factories, and that overtime records were either poorly maintained or falsified in almost two-thirds of factories.<sup>54</sup> Long working hours are common in all industries, including the leather industry, with some people working 60 hours a week.<sup>55</sup>

### Below minimum wage

Workers employed on a piece rate, temporary or casual basis are sometimes paid below minimum wage. For unskilled leather factory workers this can be €1.68-2.25 a day, and around €2.92 a day for skilled stitchers.<sup>56</sup> Therefore, wages are closer to the Tamil Nadu urban poverty line, approximately €50 a month, than to the living wage sufficient to meet the basic needs of a family of four, approximately €168 a month.<sup>57</sup>

### Illegal wage deductions

Fraudulent deductions of social contributions from workers' wages were widely reported. A small organisation in Ambur, Tamil Nadu supporting workers' rights, said: 'In some cases, companies who have as many as 600 employees have not contributed to their Employees' Provident Fund (EPF) [state pension scheme] for the last three years. If asked, they say they have issues in their business. It is common practice for employers to deduct 12% EPF from workers' pay without proof that it is paid into the pension scheme.<sup>58</sup> Unions are not taking action.'<sup>59</sup>

### Health risks

In factories, work is subject to tight deadlines which contributes to negative health outcomes, particularly for women who predominantly undertake sewing. Impacts include hand numbness, eye strain and back problems.<sup>60</sup> In tanneries, workers face other health risks such as respiratory issues, skin disease, burns and even death<sup>61</sup> due to working with toxic chemicals. India Committee of the Netherlands (ICN), a human rights organisation, reports that workers rarely receive safety training or protective equipment.<sup>62</sup> Furthermore, less than half of workers from the informal sector have access to social protection, such as life or health insurance. Employee State Insurance (ESI), designed to support workers during times of illness or incapacitation, does not cover most leather workers who are employed on a daily or piece rate basis. This means that when workers are ill they need to self-fund their treatment while, at the same time, not getting paid because they do not have health cover.<sup>63</sup> In some cases, home-based work is provided to avoid the payment of ESI and EPF.<sup>64</sup>



## Covid-19 pandemic

The Covid-19 pandemic has amplified certain vulnerabilities. Workers are threatened that they will lose their jobs during future lockdowns if they take any time off. A representative from a trade union, which has 1,600 members, stressed the problem of temporary contracts and the ease with which companies can fire workers – a problem amplified by the pandemic and the availability of a larger pool of workers seeking employment.<sup>65</sup> While some hygiene measures were put in place, such as guidelines for handwashing and the provision of hand sanitiser, workers were asked to purchase their own personal protective equipment. Despite guidelines during the lockdown in Tamil Nadu from May 2021 allowing certain businesses to run with a 50% workforce, leather businesses continue to ask all of their employees to attend work, threatening them with dismissal otherwise. Moreover, as public transport stopped during lockdown, workers had to find their own way to the factories with no transport provided by the company.<sup>66</sup> Work pressure has also increased significantly during the pandemic due to a reduction in the number of workers required as orders declined or were cancelled. Consequently, those who remained in employment were asked to work longer hours with no pay and faced higher targets. For example, one factory now employs 40 workers to do the work of 60.<sup>67</sup> Some organisations report that workers' wages have also reduced, companies using to their advantage the large number of people made redundant and the excess supply of workers.<sup>68</sup>

The pandemic and resultant lockdown in 2020 had a brutal impact on millions of India's informal workers who, overnight, were left without a daily wage. The Public Distribution System (PDS) – a system of managing food scarcity – should play an important role in addressing issues, especially during a crisis. However, most migrant workers were unable to access it because their documents were not valid in the city in which they had found temporary work. More than 100 million people were excluded from the PDS in India.<sup>69</sup> To ease the situation, the Civil Supplies Department was asked to allow people from other states working in Tamil Nadu to register for food allocations.<sup>70</sup> Regardless, many workers did not receive food and, even if they did, it came weeks after they were struggling to survive.<sup>71</sup>



**A homemaker sewing shoes**

Credit: Partners in Change

## 5.2.3 Key drivers of forced labour and labour exploitation

### Supply chain complexity, lack of visibility and pressure on suppliers

The leather product supply chain has many layers – animal husbandry, tanneries, home-based workers and manufacturing units, and worldwide export. The complexity of the supply chain is derived from the number of actors involved. Intermediaries transport animals and chemicals to tanneries, wholesalers generally sell the tanned leather to manufacturers, and suppliers distribute the work either directly to homeworkers or, more usually, to village-based intermediaries. With minimal vertical control, when companies do not map their supply chains, increased complexity and contractualisation within the informal leather sector generates greater possibilities for labour exploitation. Facing tight lead times and pressure on pricing from buyers, subcontracting remains popular, contributing to the maintenance of a large informal work sector operating outside the law.<sup>72</sup>

### Monopolisation of employment and casualisation

The structure of the leather supply chain has increasingly relied on monopolising employment available for the local community, alongside the casualisation of the workforce.<sup>73</sup> As most leather industry manufacturers employ casual labour, paid either daily or piece rate, and have a low number of workers, they are able to escape the legislative framework for factory operations and workers' rights.<sup>74</sup>

### The relaxation of law

Rather than strengthening the inspection mechanism, the new Wage Code (2019) weakens it. Small employers, considered low risk, can now self-certify that they adhere to labour standards. While larger companies, considered medium risk (more than 30 employees) or high risk (more than 100 employees) will be inspected every three to five years and with prior notification.<sup>75</sup> Labour inspections in Special Economic Zones (SEZ) have also been under repeated scrutiny over the last decade. Inspectors lack adequate resources and the ability to enter premises freely, without prior warning.<sup>76</sup> Moreover, SEZs are governed by weaker regulations, restricting workers' rights to strike and making no clear stipulation on minimum wage. Meanwhile companies operating in the area often do not comply with basic labour regulations.<sup>77</sup> At a national level, with the ease of doing business a priority for central government, states were given a free hand to revise labour laws. In 2019, Rajasthan was applauded for changing the restrictive labour laws that enhanced job creation and expanded industrial output. However, data shows that since the reforms were put in place in 2014-15, contract work has become increasingly common, wage growth has decelerated but per worker output has increased, indicating potential labour abuse.<sup>78</sup>

### Homeworking

Homeworking is seen as a benefit of an increasingly flexible workforce. However, payments are frequently made at a piece rate and so the whole family, including children, are often involved in the work. Not only can rates be as low as half the minimum wage, but workers have no security – they are employed informally, often via contractors, with no or limited documentation.<sup>79</sup>



A closed shoe factory in Ambur  
Image: Cividep India

## Vulnerability of certain groups and communities

Despite the modernisation of processes and operations in the leather industry, the traditional workforce structure persists. Associated with being 'dirty' and 'polluting', work in the leather industry is mainly undertaken by the Dalit community, who have traditionally been responsible for the handling of dead animals. Dalits are considered lower caste and among society's most vulnerable communities, facing significant discrimination. Placed in a weak bargaining position in the labour market, discrimination is reflected in the low wage they receive and their economic position.<sup>80</sup> Women make up nearly 30% of the leather industry workforce.<sup>81</sup> They are often perceived as docile and, in some cases, are preferred to male workers.<sup>82</sup>

Like other sectors in India, the leather industry employs a large migrant workforce. Many male migrant workers, from the poorer eastern and northern states, travel to work in tanneries in West Bengal and Tamil Nadu. In Tamil Nadu, workers are usually given accommodation on the tannery premises, posing health and safety concerns. In January 2015, 10 migrant workers were killed as they slept when a tannery wall collapsed in Ranipet, Tamil Nadu – one of India's worst tannery accidents.<sup>83</sup> Workers in tannery accommodation are often asked to do more overtime.<sup>84</sup> Language barriers force migrant workers to live in isolation, cutting them off from the general population in the region<sup>85</sup> and hindering their engagement with trade unions, thereby reducing their bargaining power and increasing their vulnerability.<sup>86</sup>

### 5.2.4 Collective bargaining and access to remedy

The fundamental right to freedom of association is lacking in practice in India, as reflected in just 13.4% of the workforce being unionised.<sup>87</sup> In the Tamil Nadu leather industry, efforts to bring workers together, especially homeworkers, have met with strong resistance and often threats to workers and harassment of union activists;<sup>88</sup> this reflects the national trend where "employer sponsored action to break legitimate unions in the private sector" is common, as well as "many instances of management actively offering incentives to workers to dissuade them from joining a genuine union".<sup>89</sup> Interviewees confirmed these findings and described workers' fear of being made redundant if they joined a union or disclosed their union membership. Businesses constantly block discussions among workers about working conditions both within the factory and outside. The situation is more precarious for homeworking settings, where collective action is minimal and the boundaries between formal and informal work are blurred.<sup>90</sup> While all interviewees recognised the important role of a principled and independent union in representing workers' rights, concern was expressed about unions' political affiliation, bias in supporting businesses rather than workers and generally their passive stance.<sup>91</sup>

Successful cases of access to justice and remedy were reported in just one interview. An employee who was injured by a conveyer belt running at a higher speed than legally allowed, contacted an NGO who guided her in taking steps in approaching labour officials. Her case was successful, and she received compensation of INR 7,000-8,000 (about €75). However, travelling two hours from her home to the labour office was expensive, costing INR 600-700 (€7) per trip.

In India, each business has multiple work committees (e.g. internal complaints, health and safety), but interviewees reported that these are too weak to act, either because they only exist on paper or because workers are fearful of retaliation if they approach a committee.<sup>92</sup> In other instances of labour disputes, NGOs reported that workers were scared to come forward and support a colleague's complaint for fear of dismissal. In Tirupattur, Tamil Nadu, where a local NGO interviewed for this report operates, most women working in the leather industry are widowed, divorced or single parents, making them the sole breadwinner – they do not want to take any risk because they cannot afford to be unemployed.

Lack of alternative employment, fear of reprisal and, more often, lack of awareness about labour rights or recognition of an abusive situation are the main barriers to seeking justice and redress.

# CHAPTER 6

## Case study conclusions

The Brazil and India case studies provide illustrative examples of forced labour and labour exploitation risks in EU supply chains. The legal and empirical contexts in which these violations take place form the backdrop to any human rights due diligence that will be implemented as a result of mHREDD. Understanding the commonalities and divergences across the two case studies highlights key considerations that must be taken into account in the debate on the design, implementation and monitoring of the proposed EU mHREDD law.

### 6.1 Empirical considerations for mHREDD implementation

- a. **Lower tiers in supply chains, isolated farms and small factories are more susceptible to exploitation.** In Brazil's coffee industry, exploitation is most prevalent in planting and harvesting of raw materials (on plantations and rural farms). In India's leather industry it is most prevalent across processing and manufacturing sites, such as tanneries, factories or home-based working. Workers employed in smaller and unregulated farms in Brazil and factories in India (common in the leather industry) are more likely to be exploited, including as child labourers.<sup>93</sup>
- b. **Limited supply chain visibility and traceability fails those most affected by rights abuse.** Supply chains in the coffee and leather industries are complex, and businesses generally fail to undertake a complete mapping and traceability of their entire chain, therefore failing to identify where exploitation risks are particularly high. In Brazil's coffee industry, numerous activities and actors are involved in the harvesting, storing, purchasing and selling of coffee beans. In the Indian leather industry, businesses rarely have visibility over the multiple-working arrangements and activities across husbandry, tanneries, home-based work, manufacturing units and production facilities. This points to the need for companies to strengthen mapping and traceability. Some international companies are voluntarily advancing mapping and traceability across supply chains, proving that the work is possible and does not impact competitiveness.<sup>94</sup>
- c. **Voluntary initiatives lack the enforcement and reach needed to prevent abuse in lower tiers.** Certification standards and audits usually only reach the first tier of a supply chain and are not binding. This risks legitimising company violations. In Brazil, the standards and requirements of certification schemes do not reflect the law. In some cases, certifiers delegate the role of monitoring farmers' compliance with certification requirements to cooperatives and other intermediaries.<sup>95</sup>
- d. **Poverty and historical legacies of discrimination and marginalisation have yet to be addressed as root causes of forced labour.** As in other sectors and countries across the globe, exploitative labour practices in India and Brazil disproportionately affect the poorest and most marginalised. These individuals face numerous challenges including discrimination, poverty and lack of viable employment opportunities, compelling them to enter into exploitative labour relations. In Brazil, data on labour exploitation is evidence of the high proportion of non-white victims due to three centuries of colonisation, in which almost four million Africans were enslaved in Brazil.<sup>96</sup> In India, caste-based discrimination – the world's oldest surviving system of social hierarchy – continues to fuel the exploitation of people considered low caste within their communities, with many individuals and in some cases generations of families, trapped in bonded forms of labour.

- e. **Migrant workers face heightened vulnerability to abuse and exploitation.** Existing research identifies low and/or unskilled migrant workers as vulnerable to poor labour and employment practices. This is due to a variety of factors, such as language barriers, lack of awareness of their rights, unethical recruitment practices, irregular or insecure migration status and, consequently, limited labour and employment rights, and reliance on employers for transport (the costs of which can lead to debt) and/or accommodation. Both Brazil's coffee industry and India's leather industry employ low-skilled internal migrant workers who are at a greater risk of exploitation.
- f. **Fragile freedom of association, weakened unions and the risk of reprisals provide significant enabling conditions for exploitation.** Unions in both Brazil and India face significant challenges due to recent legal changes that restrict their ability to represent workers. In India, in particular, workers are targeted by employers if they are found to be part of a union and risk dismissal. Seeking legal action against employers is less likely if workers are not unionised. Fear of retaliation, limited employment alternatives and dependence on one person as the sole family breadwinner are key factors contributing to worker disempowerment.

## 6.2 Legal considerations for mHREDD implementation

- a. **The extent to which producer country governments fall short of international human rights obligations.** Brazil and India have ratified and, therefore, are bound by core international human rights instruments relevant to labour rights, and business and human rights agendas. At the time of writing, Brazil has made significant progress, with only two human rights instruments on which it has taken no action.<sup>E</sup> India has taken no action on eight core human rights instruments and has only signed, but not ratified, two. These legal shortcomings can weaken the protection of human rights and fundamental freedoms for workers in both countries.
- b. **Caveats to anti-slavery in domestic law.** Brazil and India have established domestic legislation relevant to addressing modern slavery, but limitations remain. Under Brazil's Penal Code, servitude is an element of the offence of human trafficking, though its prohibition arises only from Brazil's ratification of the American Convention on Human Rights. In India, the law does not expressly prohibit servitude, though Bonded Labour law and the Penal Code include some elements of it.<sup>97</sup>
- c. **Diverse realities in producer countries with different legal and political systems and varying degrees of institutional governance and enforcement.** In Brazil, corporate law still fails to integrate human rights into corporate decision-making. Meanwhile, in India the government has not ratified critical labour standards. Above all, poor enforcement of existing laws magnifies the vulnerability of workers and marginalised groups to corporate exploitation and abuse.

<sup>E</sup> The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

- d. A trend towards weakening standards.** The Brazilian and Indian case studies are illustrative of a trend observable in several jurisdictions across producer countries of rolling back on environmental and social safeguards enshrined in law. This highlights the need for the EU law to necessitate respect for the highest human rights standards, since the applicable legal standard for the due diligence process might be weakened over time. For example, a bill currently proposed in the Brazilian Congress would remove ‘degrading working conditions’ from the definition of slave labour, thereby severely limiting the situations where slave labour would be identified in practice, such as inadequate accommodation posing a risk to workers’ lives. In India, the Industrial Resolutions Code (2020) provides greater flexibility for employers to hire and fire workers without government permission. It has increased the threshold for layoffs and retrenchment in industrial establishments from 100 to 300 workers, thus leading to arbitrary decisions relating to terms of employment.<sup>98</sup>
- e. Victims of abuse have limited access to justice.** Brazil has a tradition of class-action lawsuits and India of public interest litigation, both of which act in defence against collective environmental and human rights harms, and in the public interest. However, litigators in both countries still face substantive practical and legal barriers in bringing suits and enforcing rulings issued in class-actions. Judicial mechanisms remain largely inaccessible to victims due to practical barriers such as a lack of legal empowerment for vulnerable workers, particularly those who lack viable options for obtaining an income, the high costs for taking legal action and lengthy legal proceedings. Legal barriers include limitations on the reversal of the burden of proof in cases involving human rights violations by corporate actors. Consequently, there are limited routes for accessing remedy via state-based judicial and grievance mechanisms, and many victims may have to rely on non-judicial and non-state based grievance mechanisms for the resolution of disputes. However, non-judicial alternatives often suffer from their own legitimacy and effectiveness problems, as recently illustrated in Brazil, where communities were not consulted on the design of settlement agreements and have remained without an effective remedy to human rights abuse for several years.<sup>99</sup>
- f. Business and human rights lacking in domestic legislation.** The Brazilian and Indian governments have not introduced mandatory laws on business and human rights, and rely on domestic law on labour and employment issues and voluntary initiatives aimed at promoting responsible business conduct. While Brazil has more deterrent mechanisms for holding businesses accountable, in particular via information provided by the Dirty List and by a growing body of court precedents imposing a duty of care on powerful economic actors in relation to modern slavery,<sup>100</sup> India relies on voluntary guidelines which lack enforcement, monitoring and, consequently, scrutiny of business actions.
- g. Duty of care is not generally a legally mandated standard in producer countries’ corporate laws.** Neither Brazil nor India has binding legislation stipulating duty of care owed by companies to rights-holders. In Brazil, the absence of clear legislation means case law defines the required level of care that a company ought to observe to avoid being held liable for third party labour violations in its supply chain.<sup>101</sup>
- h. The financial sector in Brazil.** Financial institutions operating in Brazil are required to carry out environmental and social due diligence, and forthcoming regulations will also include climate risks in the integrated risk management framework of FIs. While such due diligence requirements put Brazil in a relatively advanced position, a lack of monitoring and enforcement mechanisms have curtailed the ability of such rules to effectively redirect financial flows into more sustainable and human rights-abiding companies. Moreover, there is ongoing lobbying to downgrade the regime of legal liability applied to FIs, which would further contribute to the separation of due diligence and ensuing consequences, including civil liability.

## CHAPTER 7

### Implications of findings and recommendations

There are numerous challenges to regulating business conduct and enforcing corporate commitments and legal obligations in relation to human rights in Brazil and India.

The introduction of mHREDD in the EU could result in substantive impacts in both producer jurisdictions under review. If designed, implemented and enforced meaningfully, the EU due diligence law is likely to play a positive role in encouraging governments to fill gaps in the legislation of the two countries regarding transparency and monitoring of value chains, in order to improve their business attractiveness for EU-based companies bound by the new legislation.

If effective, the law could 'harden' existing 'soft' instruments (guidelines, voluntary agreements etc), convert them into binding laws, and open up more avenues for redress for the victims of corporate-related human rights abuses. However, for producer countries to reap all the potential benefits of the EU law, proper enforcement, monitoring and sanctioning mechanisms are essential.

If the EU law lacks ambition or robust enforcement or falls short of engaging with the legal and social realities of producer countries, the mHREDD law could fail to meet the objective of preventing and mitigating human rights abuses – including forced labour – and environmental harm in EU supply chains. It could even risk undermining protections under national laws in producer countries. Crucially, the proposed law and/or complementary measures must be designed to lead to a strengthening of a wider enabling environment in producer countries for corporate respect of human rights and decent work generally.

Having identified the empirical and legal contexts in which due diligence can expect to be implemented in respect of two major commodity supply chains, an analysis of findings allows us to draw out clear recommendations related to the proposed EU mHREDD legislation.

On the following pages, we provide an overview of the key findings and resulting recommendations for EU legislators on the design, enforcement and complementary measures attached to the mHREDD law. Further analysis and recommendations are provided for non-EU producer states, companies implementing mHREDD, NGOs, trade unions and donors.



## 7.1 Recommendations for EU legislators

### 7.1.1 The design of mHREDD

#### RECOMMENDATION 1: DEFINING THE SCOPE OF mHREDD

- a.** Align the definition of mHREDD with international due diligence standards as defined by the OECD and UNGPs.
- b.** Require companies to conduct due diligence on all human rights impacts, including all labour rights violations, contemporary forms of slavery and environmental degradation.
- c.** Require companies to cover the human rights of both formal, semi-formal and informal workers and homeworking in their due diligence practices.
- d.** Include specific criteria relating to living incomes and wages (or a piece rate that adds up to a living wage), freedom of association, health and safety and risks to groups in vulnerable situations.
- e.** Require companies to identify and assess the impact of business models and strategies, including trading, procurement and pricing practices.
- f.** Require due diligence across entire value chains, rather than just Tier 1 of supply chains.
- g.** Require mapping and disclosure of value chains, including disclosure of the origin of raw materials, and disclosure of information such as verifiable information on workers and wages and benefits paid.
- h.** Oblige transparent and full disclosure of mHREDD processes and impacts.

Human rights impacts occur across a spectrum. Labour exploitation can range from poor labour and employment practices to more extreme forms of exploitation amounting to forced labour and other contemporary forms of slavery. Human rights violations also occur within both formal and informal work sectors, and therefore due diligence requirements and disclosure practices should not be limited to businesses in the formal sector.

Some stakeholders in the EU mHREDD debate, such as Business Europe, propose restricting the legislation's application to Tier 1 of company supply chains only.<sup>102</sup> A restriction to Tier 1 would render mHREDD futile as the most precarious working conditions would escape scrutiny – the most extreme forms of human rights violations are likely to occur in lower tiers as illustrated in the cases of India and Brazil. The EU law must therefore require companies to undertake due diligence across their entire value chains. This includes mapping and disclosing suppliers, sub-suppliers and business partners throughout value chains, and taking steps to ensure that systemic factors – such as informality, unhygienic and hazardous working conditions, pay below minimum wage, restrictions to freedom of association and discrimination against vulnerable groups – are properly evaluated at the risk assessment stage. This is a key limitation of national frameworks such as the UK's Modern Slavery Act, whose scope covers only abuses defined narrowly as forced labour and modern slavery. Further, transparency and disclosure of information must be a central part of the mHREDD legislation, with access to information embedded in all steps of the process.



## RECOMMENDATION 2: PROVIDING CLEAR LEGAL DEFINITIONS

- a.** Provide clarity on key legal concepts.
- b.** Ensure that the highest available standard prevails when harmonisation of concepts is not achievable.

One of the challenges to ensuring business respect for human rights is the ambiguity of legal terminology and concepts. Failure to provide clear definitions results in differing interpretations within the state, as seen in the French case,<sup>103</sup> and across state and corporate actors. A trade union leader from the south of Minas Gerais expressed the concern that in some foreign jurisdictions, companies have not been held liable because the country does not recognise conditions analogous to slavery in the same manner that Brazilian law does.<sup>104</sup> Clear definitions and terminology are needed to ensure that different interpretations of legal concepts are not a barrier to an effective remedy. The law cannot encompass all possible situations, but a minimum can be outlined in the law itself, while specific guidance on what would be expected could be provided in the form of guidelines to actors involved in the law's implementation. Where legal systems of different jurisdictions differ in the definition or scope of rights, the most protective standard should prevail.

## RECOMMENDATION 3: ACCOUNTING FOR BUSINESS SIZE

- a.** Include businesses of all sizes within the scope of mHREDD.
- b.** Maintain some flexibility to take into account contextual factors such as risk exposure, potential severity and leverage for SMEs in both consumer and producer states.
- c.** To account for the different characteristics of SMEs, the law could provide for limited exceptions to the general rule of joint and several liability (see Recommendation 7) and allocate liability according to criteria such as the proportional participation in the resulting impacts.

Small and medium-sized enterprises (SMEs) constitute approximately 99% of EU business operators,<sup>105</sup> and excluding them would drastically reduce the impact of the legislation. Small companies can have significant impacts on human rights. For instance, small traders that control commodities can indirectly affect the due diligence of the companies that they trade with, due to the monopoly they hold. Control and leverage principles should be applied despite the size, to avoid human rights abuses. As highlighted in the case studies, labour abuse is more likely to take place in smaller, isolated farms or factory units.

In outlining how businesses should implement their due diligence processes, the law can offer some flexibility to SMEs by providing key principles rather than a strict description of a process. One of the principles, as recommended in the UNGPs, is that the scale and complexity of the due diligence should be determined by the risk exposure (scale, scope, irremediable character and likelihood), the potential severity of the impacts and other contextual factors of each business' activities. SMEs can also apply the principles of progressiveness and proportionality of efforts linked to their ability to exercise leverage, but are requested to address the most salient risks first and to prioritise impacts that have materialised or are imminent. Failure to do so would amount to failure to follow due diligence adequately.

## RECOMMENDATION 4: ACKNOWLEDGING THE ROLE OF FINANCIAL INSTITUTIONS

- a.** Include financial institutions in the scope of mHREDD.

The link between financial institutions and human rights abuses, including labour rights, is of a different nature from the link between non-financial companies and abuses. It should be highlighted that financial institutions, especially banks, can contribute to human rights abuses, not just be linked to them, as noted by the Office of the United Nations High Commissioner for Human Rights (OHCHR).<sup>106</sup> Legislation should acknowledge the role of financial institutions in the due diligence process as they benefit from the economic activity resulting from corporate operations, including adverse human rights impacts. The possibility of contributing to human rights abuses means that banks are under an obligation to participate in remediation processes, as provided in the UN Guiding Principles on Business and Human Rights. The EU law should clearly stipulate that financial institutions must conduct their own due diligence and may be the object of primary or secondary liability for human rights abuses. This will result in the participation of financial institutions in the remedial process and shared liability for third party violations. The law could be modelled on a regulation being discussed in Brazil, requiring FIs to include in their risk analysis and due diligence the institution's counterparts in credit operations, as well as its own and its counterparts' affiliates, contractors and third parties.

## RECOMMENDATION 5: MANDATING STAKEHOLDER CONSULTATION

- a.** Mandate meaningful stakeholder consultation to inform the entirety of the corporate human rights due diligence process.
- b.** To ensure adequacy of the stakeholder consultation, guidance should require companies to inform and invite representatives of all stakeholder groups, to guarantee the identification stage covers all potential human rights adverse impacts while, in addressing specific issues, only the (potentially) affected stakeholders may be involved.
- c.** Require corporate actors to ensure that due diligence involves human rights and environmental defenders and that they will be protected from retaliatory practices from private and state actors.
- d.** mHREDD disclosure obligations should include requirements to disclose stakeholder consultation processes, while protecting the safety and security of any consulted stakeholders.

In the course of a series of debates organised by the EU on trade and sustainable development (TSD) of the EU-Mercosur Association Agreement, Brazilian civil society emphasised the challenges for civil society participation in public and corporate decision-making in the current adverse political environment. This environment is characterised by the criminalisation of NGOs, genocide against indigenous peoples, destruction of the Amazon, and the eradication of councils that allowed the participation of Brazilian civil society in defining environmental, labour, anti-discrimination, climate and other key policies. In a report on business and human rights in Brazil, the UN Working Group on Business and Human Rights found that companies involved in serious human rights abuses were not listening to 'critical voices'<sup>107</sup> (victims and their representatives). Stakeholder engagement – including with civil society actors, trade unions, NGOs, migrant representative groups, marginalised group representatives, individual human rights and environmental defenders and local communities – should take place from the outset of the due diligence process of identifying, assessing and prioritising risks and actual or potential impacts, and should also include the process of remediation.

## 7.1.2 Implementing, monitoring and enforcing mHREDD, including access to justice

### RECOMMENDATION 6: ENSURING EFFECTIVE ACCESS TO JUSTICE

- a.** Require companies as part of their mHREDD obligations to create a special committee, sitting under the Board of Administrator, the Executive Director or equivalent decision-maker level proportionate to the organisation's resourcefulness, tasked with elaborating and implementing the EU human rights and environmental due diligence plan, in consultation with stakeholders.
- b.** Set up complementary state-based non-judicial mechanisms (such as Competent National Authorities) and/or ensure that existing ones (e.g. National Human Rights Institutions, national focal points) have a mandate to receive and process allegations of non-compliance with the EU law.
- c.** Ensure pathways to educating communities and vulnerable groups of their rights to access remedy.
- d.** Ensure the burden of proof falls on companies.

It is important that the legislation ensures complaints are addressed in a timely manner, and legal barriers to remedy, such as the high legal costs victims are likely to encounter, are taken into consideration. Our evidence and legal review highlights the high costs and delays associated with state-based judicial mechanisms in India and Brazil.

The 1984 Bhopal gas disaster in India continues to be fought in court today, delaying access to the remedies needed to rectify abuse and raising financial costs for victims. Those directly negatively affected by business activities, or CSOs representing them, must be able to challenge non-compliance before judicial or administrative authorities. Their legal challenges must be prioritised to ensure that they can do so in a timely manner. Interviewees in India proposed the establishment of a unit through which workers or grassroots NGOs and unions can raise labour issues and guide victims through the legal process.<sup>108</sup> Such a unit or contact person could also act as a deterrent for companies who might otherwise engage in labour violations. Additionally, EU courts should have processes in place to support trade unions and civil society organisations in countries such as India and Brazil to enable victims to bring claims against EU businesses. This would also ensure that communities and vulnerable groups are aware of their rights, how to enforce such rights and the remedies available to them.

## RECOMMENDATION 7: SETTING LIABILITY PROVISIONS

- a.** Include joint and several liability provisions.
- b.** Incorporate targeted strict and absolute legal liability rules, with the latter being the applicable standard at least in cases of egregious human rights abuses and large-scale environmental harms.
- c.** Establish administrative liability, including financial penalties and ‘name and shame’ mechanisms for non-compliant companies, without prejudice to criminal and civil liability mechanisms.
- d.** Hold auditors liable for failing, either through negligence or intent, to raise in their auditing reports points of non-compliance with the law, and for expressly or tacitly endorsing corporate policies, decisions and actions which conflict with it.
- e.** Audit reports and certification schemes, as well as membership in industry or multi-stakeholder initiatives for dialogue and learning, should not be considered evidence of due diligence.
- f.** Include positive incentives, such as including due diligence implementation requirements into export credits and EU and member states’ procurement criteria.

Judicial enforcement of due diligence standards and adjudication following allegations of harm are essential for holding companies accountable and ensuring victims have access to an effective remedy for these harms. Joint and several liability can be an important supply chain enforcement tool in supporting access to justice. Such provisions would not be new to many producer countries, e.g., under Brazilian consumer law, a claimant may pursue an obligation against any company involved in a consumer fault, and all are jointly and severally liable for any harm caused. Transferred to the coffee or leather industry, multiple buyers using the same supplier who engages in labour or human rights violations should be jointly and severally liable.

The UN Human Rights Council has recommended that states make appropriate use of strict and absolute legal liability in domestic civil liability regimes,<sup>F</sup> ‘as a means of encouraging greater levels of vigilance in relation to business activities that carry particularly high risks of severe human rights impacts. To level the playing field in both producer and consumer countries, EU mHREDD would need to accommodate both types of liability. Moreover, the EU law should address at least the most pressing issues arising from the practical experience of transnational corporate liability cases, particularly those involving parent company liability and indirect liability for violations occurring in value chains, such as the capacity to bring an action to court. The criteria for determining whether courts in the home country are in a better position to guarantee an effective remedy to victims, rather than those in the producer country, should take into account real practical obstacles victims face in bringing suits in courts where the violation has taken place.<sup>109</sup>

Brazil’s Dirty List has been considered a successful due diligence and transparency tool as financial institutions have begun to adopt it as a key instrument in their internal risk assessment of potential borrowers. A ‘name and shame’ mechanism should be adopted in the legislation and applied to EU companies who fail to comply with the mHREDD obligations. Non-compliance should result in a company’s exclusion from EU and member states’ mechanisms, such as public procurement and development financing. Further, as investors are now measuring the environmental, social and

**F** According to the OHCHR, offences of ‘absolute liability’ do not require proof that the defendant intended the relevant acts or harm, or that it was negligent, in order to establish legal liability. Instead, liability flows from the occurrence of a prohibited event, regardless of intentions or negligence. However, the relevant domestic public law regime may permit the company to raise a defence on the basis of its use of ‘due diligence’ to prevent the prohibited event. Where this is the case, the offence may be described as one of ‘strict liability’ (rather than absolute liability). See: OHCHR, “Improving accountability and access to remedy for victims of business-related human rights abuse: explanatory notes for guidance”, A/HRC/32/19/Add.1, 12 May 2016. At: <https://undocs.org/A/HRC/32/19/Add.1>

governance (ESG) credentials of companies to screen potential investments, highlighting business compliance with the EU law could prove impactful for data collected for generating ESG scores.

Auditors will probably continue to play a key role in many companies' due diligence and compliance activities. To strengthen the auditing process, they should be held accountable and sanctioned if they act negligently. Any provision for the liability of auditing companies should not come at the expense of the liability of the audited company or its directors. Similarly, audit reports and certifications should not be used by companies as proof of due diligence. Companies should be responsible for demonstrating that they have fully internalised human rights due diligence, including meaningful stakeholder consultation, to prevent abuses from occurring.

## RECOMMENDATION 8: INTEGRATING LOCAL STAKEHOLDERS

- a.** Integrate the risk of companies operating in countries with declining human rights provisions and enforcement in the due diligence process, including by adequately assessing the enforcement capacities of human rights and labour laws in producer countries and engaging with local governments where there are gaps.
- b.** Strengthen the independent and democratic nature of trade unions, civil society and actors from producer countries to enable them to actively monitor mHREDD implementation, include requiring independent and democratic unions to attest that the activities of businesses are free from forced labour and labour exploitation.
- c.** Establish an EU governance structure with civil society and trade union participation from producer countries to monitor the implementation of the law.
- d.** Hold quadripartite forums.

Mismatches between formal legal rules and weak real-world implementation and enforcement must be addressed by the EU law, and/or its accompanying measures. For example, the legislation should consider measures to strengthen independent and democratic trade unions and involve trade unions and civil society in the monitoring of the law, particularly in situations in which unions have been compromised in their ability to fairly represent workers, as seen both in Brazil and India.

In 2008 the Council of Europe (CoE) established GRETA (Group of Experts on Action against Trafficking in Human Beings) to monitor the implementation of the CoE's Convention on Action against Trafficking in Human Beings. GRETA conducts country visits and publishes regular reports on actions taken by member states to implement the provisions of the Convention. Such a group of experts can have a significant impact on the effectiveness of the EU law. In 2020, the EU promoted a series of dialogue sessions about the Chapter on TSD of the EU-Mercosur Trade Agreement in Brazil,<sup>110</sup> where mHRDD was brought up by civil society in the debates.<sup>111</sup> The EU's trade policy envisions the establishment of Domestic Advisory Groups (DAGs), formed by organisations selected according to the criteria of each party. DAGs can make recommendations on the application of the Agreement and can be consulted if there is a dispute between the parties involving the Chapter on TSD. The EU-Mercosur Agreement sets a good example by requiring a balanced representation of independent civil society organisations, businesses, employers and unions. In focus groups conducted for this report, Brazilian labour inspectors and public prosecutors also expressed the importance of workers and trade unions being represented in forums to monitor and discuss the implementation of the law. Further, they suggested that these forums should be quadripartite – that is, involving non-business actors and workers' organisations, who could perform a monitoring role and conduct advocacy.

### 7.1.3 Complementary measures

#### RECOMMENDATION 9: ENSURING POLICY COHERENCE

- a.** Ensure that international development and trade policies currently being designed under the multi-annual financial framework or in the context of the trade policy review take into account mHREDD developments and recommendations.
- b.** Ensure coherence between development policies, trade policies and, in particular, Generalised Scheme of Preferences rules (GSP, GSP+, EBA), investment policies (IPAs & EPAs) and other economic incentives.
- c.** Regulate purchasing practices for companies to address the power imbalance between multinational companies and suppliers in producer countries.

The EU needs to use its full available policy and legislative regime to ensure the success of the proposed mHREDD law. There is a pipeline of new agreements like the EU-Mercosur Agreement and EU-sponsored development projects, as well as numerous instruments and projects being implemented, whose governing rules do not explicitly require mHREDD. EU trade, development financing and international cooperation policies should be adjusted to incorporate the legally binding obligation to exercise mHREDD, and other complementary policies introduced. This should support the creation of an enabling environment in producer countries for labour rights, freedom of association, collective bargaining and, more generally, respect for the rule of law.

#### RECOMMENDATION 10: SUPPORTING CSOs, TRADE UNIONS AND LOCAL AUTHORITIES IN PRODUCER COUNTRIES

- a.** Provide the necessary resources to enable CSOs and trade unions to carry out their monitoring duties.
- b.** Support improvement of mechanisms of international collaboration and cooperation between investigation agencies to facilitate exchange of information and ensure that evidence can be used in court proceedings in the different jurisdictions.

For non-state actors to be able to perform monitoring tasks, particularly trade unions and independent NGOs, they need to be adequately funded and supported to make a meaningful contribution.<sup>112</sup> Further, the role of government agencies needs to be strengthened, so that governments in producer countries can strengthen their own inspection mechanisms, such as labour enforcement agencies, to contribute to an enhanced governance that also supports companies in better understanding the contextual risks they face in different realities. As an example, Amazon Fund in Brazil, a Reducing Emissions from Deforestation and Forest Degradation (REDD) instrument funded by Norway and Germany, has provided vital resources for environmental agencies to conduct inspections into deforestation in the Amazon.

### RECOMMENDATION 11: ENCOURAGING COLLABORATION BETWEEN EU AND LOCAL ORGANISATIONS

- a.** Implementation of EU mHREDD should support local inspectors, police officers and prosecutors in their duty of verifying on-the-spot compliance with slavery laws in supply chains, channels of grievance and public complaints.
- b.** Exchange knowledge and intelligence between EU and producer countries to improve understanding and investigations into human rights violations.
- c.** Human and environmental rights defenders need to be protected and these protection processes need to be factored into the cooperation process where possible.

Collaboration between EU-monitoring bodies and local state institutions, local laws and enforcement mechanisms is important. Encouraging collaboration and discussion among labour authorities in producer countries and within the EU will allow agencies to work in partnership to investigate human rights violations and share information and intelligence to protect against human rights abuses.

### RECOMMENDATION 12: ADVANCING ANTI-SLAVERY DISCUSSIONS

- a.** Encourage open discussion of slavery, colonialisation and caste-based discrimination.
- b.** Prioritise addressing power imbalances between ethnic groups and castes in bilateral political discussions, and development and trade policies and programmes.

The proposed EU law would need to have a firm commitment to eradicating forced labour by supporting anti-slavery laws.<sup>113</sup> For the proposed EU law to protect workers in India and Brazil from human rights violations, legislators need to encourage open discussions on slavery, colonialisation and caste-based discrimination. While this approach would advance the debate, it has to be acknowledged the EU law should also acknowledge that no single legal solution will fully address the issues relating to colonial legacy.<sup>114</sup>

## 7.2 Recommendations for national governments of producer countries

### RECOMMENDATION 13: STRENGTHENING DOMESTIC LEGAL FRAMEWORKS

- a.** Strengthen national human rights and labour rights frameworks in line with international standards, in particular raise legal wages to living wage levels to avoid price dumping and secure decent working conditions for all.
- b.** Stimulate debates on domestic mHREDD and labour legislation to support the implementation of EU mHREDD and prevent companies from prioritising a narrow focus to solely meet EU obligations.
- c.** Extend the concept of due diligence and duty of care of Boards of Directors in existing corporate laws to include human rights and labour exploitation.

Interviewees in India and in Brazil unanimously expressed hope that the EU law will increase the incentive for producer country governments to align with international standards in order to remain competitive with EU companies and, thus, compel the Indian and Brazilian governments to act more effectively in implementing and enforcing their own national sets of laws. For instance, in some Indian states and Special Economic Zones, lax labour regulations are still permissible despite conflicting with ILO standards.<sup>115</sup> In Brazil, the deficit in the number of labour inspectors is approximately 40%,<sup>116</sup> and needs to be improved significantly to enable an effective monitoring of mHREDD. This is a widespread problem in many developing countries, where only '1% of the national budget is allocated to labour administration, of which labour inspection systems receive only a small fraction'.<sup>117</sup> These gaps and weaknesses of domestic frameworks must be considered by national governments to pave the way for a functional EU law. Strengthening domestic legal frameworks will also prevent companies from building a 'clean' value chain for EU mHREDD, and a 'dirty' value chain otherwise. This emphasises the need for mHREDD legislation in all countries.

### RECOMMENDATION 14: STRENGTHENING ENFORCEMENT MECHANISMS

- a.** Strengthen enforcement mechanisms and equip law enforcement with the skills and resources needed to investigate and respond to forced labour and human rights abuses, including cross-border crimes.
- b.** Create or increase the value or amount of judicial and administrative sanctions, fines and moral compensation for anti-slavery and labour law violations, to increase their power of deterrence.

In Brazil, although slavery is considered a crime under the Penal Code, the number of criminal cases brought to court are insignificant. In India, a low judge-to-population ratio has led to a huge backlog, with 30 million cases currently pending in Indian courts.<sup>118</sup> States must also ensure that prosecuting authorities are equipped with the skills and resources needed to investigate human rights abuses by companies; and states may consider granting power to local authorities to close premises until remediation is ensured.



### RECOMMENDATION 15: ENABLING ACCESS TO JUSTICE AND REMEDIES

- a.** Establish mechanisms to make it easier for victims to hold companies accountable in their home courts.
- b.** Facilitate victims' access to justice by placing the burden of proof on companies, so they are responsible for demonstrating the steps they took to prevent abuses from occurring.
- c.** Strengthen access to both civil and criminal remedies to hold companies to account.
- d.** Protect the right to freedom of association and collective bargaining.

While national grievance redress mechanisms are generally in place, they do not always work effectively. Appropriate remedial mechanisms should include easy access to justice in home courts for individuals or their representatives, and access to both civil and criminal remedies to hold companies to account, in line with the UNGPs. Specific measures include establishing sentencing guidelines for crimes to ensure effective deterrents (e.g. high penalties). National laws should also emphasise the importance of positive incentives alongside contractual measures. This includes promoting capacity building and supplier engagement to ensure transparency of activities and address human rights throughout supply chains.

### RECOMMENDATION 16: IMPROVING TRACEABILITY

- a.** Use mapping technology to trace and measure the impact of business activities on human rights and the environment.
- b.** Create a state-based mechanism to ensure mapping and traceability of companies across value chains throughout the country as a competitive asset to attract EU-based businesses.

Supply chains can be complex, and a lack of visibility and transparency can hide labour exploitation. This renders traceability and disclosure of supply chains essential, along with details on contractual terms, gender balance of the workforce, working hours etc. In Brazil, the National Institute for Research Space (INPE) already has an effective tool in place that maps slavery risk areas in different biomes by tracing and measuring deforestation and illegal economic activities. Similar developments are taking place in the global cotton industry, where forensic methods have been applied to trace cotton origins.<sup>119</sup>

## 7.3 Recommendations for companies implementing mHREDD

### RECOMMENDATION 17: DUE DILIGENCE SCOPE

- a.** Engage in a robust and effective due diligence process through the entire value chain.
- b.** Tackle all forms of labour exploitation and human rights violations and their drivers, addressing issues such as living wages and incomes, health and safety, anti-discrimination and freedom of association as priority issues across value chains.
- c.** Identify and address the impact of trading and purchasing practices in driving abuses.

Due diligence should not be restricted to high-risk geographical sectors or industries, or to solely tackling forced labour. Labour exploitation is a continuum that includes poor labour and employment practices to more extreme forms of exploitation amounting to forced labour, and can be identified in a range of industries. Further, workers' health and safety need to be better addressed in relation to forced labour and modern slavery. Workers are vulnerable to work accidents, occupational diseases, unhealthy work, low quality of water and food, inadequate housing, unfair recruitment practices and unhygienic working and living environments.

### RECOMMENDATION 18: STAKEHOLDER CONSULTATION

- a.** Ensure that language, illiteracy, gender, power imbalances, other intersectional factors of discrimination, potential barriers to trade union membership, and other potential barriers – such as immigration status – are taken into account in designing and implementing stakeholder consultation.
- b.** Engage with grassroots stakeholders in an open, meaningful, transparent and fair manner throughout the HREDD process (identification, design, implementation, monitoring, evaluation, addressing grievances and providing remedy).
- c.** Ensure that disclosure of HREDD processes, results and impacts is communicated in accessible and transparent ways for all stakeholders.

Stakeholders should be consulted throughout the due diligence process. Stakeholders such as CSOs, trade unions, local communities' and vulnerable groups' representatives can help businesses identify a variety of human rights risks within their value chains, and prioritise addressing the most salient ones. We therefore advocate against proposals that would allow companies to prioritise engagement with a selected pool of relevant stakeholders.<sup>120</sup> Engagement should be open, transparent and done on an equal footing and in good faith.

## RECOMMENDATION 19: WORK CLOSELY WITH SUPPLIERS AND ADDRESS DRIVERS OF EXPLOITATION

- a.** Work closely with suppliers to gain a closer understanding of workers' conditions, raise awareness of good practices and standards and of the EU mHREDD law requirements.
- b.** Adjust business models and purchasing practices to support suppliers to adhere to high standards of human rights respect.
- c.** When violations are identified, work and support suppliers to rectify issues, only considering ceasing engagement when a company lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage.
- d.** Engage with suppliers to build an enabling environment for freedom of association and collective bargaining at production/facility level.
- e.** Include adequate provisions for cooperation in or support of remedy for victims of labour exploitation and forced labour.
- f.** Collaborate cross-industry and with other stakeholders, including through government-directed advocacy, to strengthen the enabling environment for decent work in all contexts, and address the drivers of systemic violations.

Both the Brazilian coffee industry and Indian leather industry are in need of a reformed business model. In light of the implementation of mHREDD, companies should not push the burden on to suppliers. They should ensure that pricing, timelines and contractual commitments and terms mean suppliers have the financial capacity and resources to ensure labour rights are respected. It is essential to prevent production from being deviated to unauthorised subcontracts, which only increases the likelihood of labour exploitation.

Shorter supply chains, long-term contracts and direct buyers should be enhanced to facilitate supply chain mapping, traceability and monitoring. Moreover, companies should address and rectify jointly with suppliers, where possible, the issues identified,<sup>121</sup> with the caveat that if a supplier continuously fails to address human rights violations, then the company should responsibly terminate that relationship, in line with the UNGPs and OECD. However, even when necessary, suspending contracts or suppliers will not resolve systemic issues, so companies should support collaborative approaches to address industry-wide issues. As an example, certification companies, coffee industry representatives and coffee workers have started an important dialogue to improve labour conditions in Brazil. Civil society organisations have also taken part in the debate and have facilitated dialogue between the parties. This has led to greater engagement between the coffee sector and the Institute for the National Pact for Eradication of Slave Labour (InPacto).

## 7.4 Recommendations for NGOs and trade unions

### RECOMMENDATION 20: PROMOTING DEMOCRATIC AND INDEPENDENT WORKERS' REPRESENTATION

- a.** Proactively engage in trust building efforts and promote a closer collaboration between NGOs and unions to strengthen the protection of workers and the implementation of the EU law.
- b.** Support stronger, more democratic and independent unions at a local level.
- c.** Unions and work committees should be reflective of the workforce.
- d.** Trade unions should address limitations and obstacles for all workers' membership of trade unions, such as migrant workers and women.

Unions and NGOs share many objectives on the protection of workers and monitoring of legal enforcement. In the complaint lodged with the Brazilian National Contact Point in 2018 against six coffee brands for failure to exercise due diligence of the supply chain and to publicly disclose the list of suppliers, the human rights NGO Conectas partnered with the Association of Rural Workers of southern Minas Gerais. However, this type of collaboration appears limited in India where unions were almost unanimously criticised by all interviewees for upholding a positive bias towards political parties and businesses, or not being willing to challenge employers and adequately protect workers' rights. Stronger, better resourced and more democratic and independent unions are needed at a local level. In Brazil, there are cross-sector initiatives bringing together NGOs, trade unions and other stakeholders committed to eradicating slave labour (such as the National Commission for the Eradication of Slave Labour), and assisting rescued workers. But interviewees reported that sectors have not yet understood the emerging mHREDD laws and that a common language is needed in order to foster greater involvement and collaboration.

In India, the legal system provides for the existence of work committees within each business that employs over 100 employees which offers the opportunity to bring both employees and employers at the table to solve differences. However, work committees often exist just in name with many workers being enrolled in them by employers without their knowledge or participation. With appropriate support and training for workers sitting on these committees, they could become an active body to hold companies accountable in light of the proposed EU law. To be effective members should be adequately trained to understand their role and be able to perform their duties. Further, each committee would have to ensure a fair representation of workers from all castes and include women, in proportion to their presence in the company. Moreover, given the strong patriarchal nature of the state, women need a space where they can freely express their needs, and a group that represents their concerns and gives them a voice. Far too often, women work under male management who ignore their needs<sup>122</sup> and actively target them to repress or discourage them from joining unions.<sup>123</sup>

## RECOMMENDATION 21: INGO AND INTERNATIONAL TRADE UNION SUPPORT OF GRASSROOTS ORGANISATIONS

- a.** Establish partnerships and collaborate on an equal footing with local NGOs and grassroots organisations in producer countries.
- b.** Support grassroots organisations' outreach capacities to build links with international buyers.
- c.** Support knowledge exchanges and training to improve grassroots organisations' understanding of supply chains and existent due diligence frameworks, while allowing a more in-depth understanding of local constraints and contexts.

Local NGOs and trade unions work closely with workers whose trust they have gained over time and, hence, are key holders of information. However, multiple grassroots organisations in India reported not knowing 'how to reach western buyers'. This highlights the need for a disclosure of companies' supply chains and more support to equip grassroots organisations with the skills and knowledge they need to identify, contact and hold buyers accountable. Additionally, one union leader appeared reluctant to engage in discussions directly with western buyers for fear that it would undermine their independent standing. They said, 'If unions do [engage in discussions], we won't be able to raise our voice for workers and business', which stems from the perception that 'Western buyers only expect the factory products' with little consideration given to labour conditions and legislation.<sup>124</sup> International NGOs and trade unions need to offer more support to grassroots organisations to develop their skills and knowledge of supply chains and mHREDD and better involve them in the debate.

International NGOs should also strive to establish partnerships and collaborate on an equal footing with local NGOs and grassroots organisations in producer countries. Respected labour rights organisations in Brazil expressed the view that international NGOs often only work with them when they need to access information. They should take into account the views and concerns of local actors in the definition of their positions around the mHREDD debates in Europe.

## 7.5 Recommendations for donors

### RECOMMENDATION 22: SUPPORTING HORIZONTAL AND LOCAL ENGAGEMENT

- a.** Allocate more resources to strengthen local stakeholders' capacities, including through long term grants and core support.
- b.** Engage with local stakeholders from producer countries, directly or indirectly through consumer countries' organisations.
- c.** Support stakeholders and workers in running independent monitoring processes.
- d.** Facilitate the creation of platforms to enable a stronger and more horizontal dialogue between international donors and relevant stakeholders (civil society, trade unions, local communities, human rights and environmental defenders) in producer and consumer countries.

Unions, NGOs, social movements and research organisations from producer countries working on due diligence, human rights, labour rights and environmental and land rights should be considered active participants for research and implementation pilots. These actors have specific expertise that can be beneficial at all stages of a project, from conception to implementation. Stakeholders in producer countries should also be allowed to participate in legislative processes, such as those surrounding mHREDD, which are likely to impact developing and producer countries the most.

## CHAPTER 8

### Conclusion

**The proposed EU mHREDD law has great potential to effectively tackle abuses in value chains across the world.**

The law will be particularly relevant in producer countries where labour violations in many sectors are common, including Brazil's coffee industry and India's leather industry.

Evidence suggests that there are still several issues, general and country specific, that need to be considered when designing the EU mHREDD law to ensure its effective implementation, including:

- Ensuring the protection of the most vulnerable and sometimes invisible groups such as, but not exclusively: women, lower castes, home-based workers and migrants.
- Improving transparency in complex value chains to ensure brands know their suppliers and are liable for violations that occur in any tier of their supply chain.
- Strengthening unions' and CSOs' roles in protecting workers' rights and monitoring the implementation of the EU law.
- Overcoming structural and contextual barriers to citizens' participation in public decision-making and public oversight of corporate activities in a context of shrinking civic space in several jurisdictions.

Greater attention needs to be paid to the potential conflict between national and EU legislation frameworks. More comparative reviews of the legal systems of producer and consumer countries are needed to ensure that the emerging legal frameworks on corporate accountability in different parts of the world are harmonised and mutually reinforced, to deter behaviours by both private sector and governmental actors who may attempt to circumvent application of the law.

EU mHREDD can be transformative for global value chains and the economy, if companies – regardless of their size, income or influence – are compelled to source their products ethically and responsibly. In addition, national governments need to promote and enforce legislations that are aimed at fairer working conditions, and support proactive grassroots organisations and communities in informing workers of their rights, access to justice and redress.

## Glossary

<b>CoE</b>	Council of Europe.
<b>CSO</b>	Civil society organisation.
<b>CSR</b>	Corporate social responsibility.
<b>DAGs</b>	Domestic Advisory Groups.
<b>Dirty List</b>	A list of employers found to have submitted workers to conditions comparable with slavery, published every six months by the Brazilian government.
<b>EBA</b>	Everything But Arms
<b>EPA</b>	Economic Partnership Agreement.
<b>EPF</b>	Employees' Provident Fund (Indian state pension scheme).
<b>ESC</b>	Environmental, social and climate.
<b>ESG</b>	Environmental, social and governance.
<b>ESI</b>	Employee State Insurance (India).
<b>FI</b>	Financial Institution.
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings.
<b>GSP &amp; GSP+</b>	Generalised Scheme of Preferences.
<b>HRDD</b>	Human rights due diligence.
<b>HREDD</b>	Human rights and environmental due diligence.
<b>ILO</b>	International Labour Organization.
<b>IPA</b>	Investment Partnership Agreement.
<b>mHREDD</b>	Mandatory human rights and environmental due diligence.
<b>mHRDD</b>	Mandatory human rights due diligence.
<b>MTE</b>	Ministry of Labour and Employment (Brazil).
<b>NAPs</b>	National Action Plans.
<b>NGO</b>	Non-governmental organisation.
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights.
<b>PDS</b>	Public Distribution System (India).
<b>REDD</b>	Reducing emissions from deforestation and forest degradation.
<b>SEZ</b>	Special Economic Zone.
<b>SME</b>	Small and medium-sized enterprises.
<b>Supply chain</b>	All the steps required to get a product to the consumer.
<b>TSD</b>	Trade and sustainable development.
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights.
<b>Value chain</b>	A company's value chain includes entities with which it has a direct or indirect business relationship, understood as all types of business relationships, and which either (a) supply products or services that contribute to the company's own products or services, or (b) receive products or services from the company.



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A homemaker in Tamil Nadu

Image: Cividep India



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