

FAIRTRADE'S VISION FOR HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE

STRENGTHENING LEGAL FRAMEWORKS FOR BUSINESS AND HUMAN RIGHTS

September 2020

KEY MESSAGES

To strengthen farmers' and workers' rights, Fairtrade calls for national, regional, and global regulation, as part of a smart mix of measures, to ensure that companies conduct transformative due diligence, including mitigation of human rights abuses and environmental harms.

Fairtrade calls for human rights due diligence (HRDD) policies that:

- initiate action to achieve living income and living wages, which are key enablers to human rights protection and promotion, and prerequisite for decent livelihoods;
- cover trading and pricing practices to ensure transparency;
- apply to all companies regardless of their size, with appropriate support for small and medium sized enterprises (SMEs);
- push companies to address salient human rights and environmental issues rather than abandon or avoid high-risk sourcing areas;
- promote the meaningful engagement of rights-holders at each step of the HRDD process, as well as dialogue with civil society and producing country governments;
- include robust remediation mechanisms to allow and support harmed persons, especially the most vulnerable, to bring complaints or lawsuits against the person(s) or company(ies) involved, with the burden of proof carried by the person(s) and/or company(ies) causing harm.

The average income of a West African cocoa farmer is just one third of a living income¹. Globally, almost 152 million children – 71% of them in the agricultural sector – are in child labour, doing work that may damage their overall wellbeing and development, health and schooling. 80% of people in extreme poverty live in rural areas. By 2050, up to half of the current coffee cultivation area may become unsuitable for that use due to climate change.

Voluntary instruments for responsible business conduct have proven insufficient in addressing the structural causes of human rights violations. Human rights abuses remain widespread and systemic in global supply chains.

¹ https://www.fairtrade-deutschland.de/fileadmin/DE/01_was_ist_fairtrade/05_wirkung/studien/fairtrade_international_response_study_cocoa_farmer_income_2018.pdf

Mandatory human rights due diligence (HRDD) – including environmental harms – can benefit all actors in supply chains. HRDD regulation can provide common intent and a consistent set of rules which foster sustainable production and trading practices. Mandatory HRDD also supports transparency and consumer trust, while tackling environmental harm that contributes to climate change.

“STATES SHALL PROTECT PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS AGAINST ABUSES BY NON-STATE ACTORS”

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), Article 18 (5)

As such, robust HRDD regulation is central in advancing human rights², upholding commitments under the Paris Agreement on climate change and reaching the Sustainable Development Goals (SDGs).

Fairtrade advocates human rights and environmental due diligence legislation that would help create both greater **legal certainty and a level playing field that raises the bar for all**. Such legislation would ensure every company is held to the same standard and that no company is able to evade its responsibilities without consequences. Requirements and responsibilities should be clearly defined in such legislation to provide all players with a clear and unambiguous framework. In addition, the requirements must not create undue burdens that hinder the development and success of small and medium-sized enterprises.

LIVING INCOME AND LIVING WAGE ARE STEPPING STONES TO HUMAN RIGHTS FULFILMENT

Living incomes and living wages make crucial contributions towards human rights and the SDGs. They are a pre-requisite for the fulfilment of rights to nutritious food, water and sanitation, decent housing, rest, education, health care and resilience to climate change, among others.

“EVERYONE WHO WORKS HAS THE RIGHT TO JUST AND FAVOURABLE REMUNERATION ENSURING FOR HIMSELF AND HIS FAMILY AN EXISTENCE WORTHY OF HUMAN DIGNITY.

EVERYONE HAS A RIGHT TO A STANDARD OF LIVING ADEQUATE FOR THE HEALTH AND WELL-BEING OF HIMSELF AND OF HIS FAMILY, INCLUDING FOOD, CLOTHING, HOUSING AND MEDICAL CARE AND NECESSARY SOCIAL SERVICES”.

The Universal Declaration of Human Rights, Articles 23 & 25, 1948

Without a living income for farmers and living wages for workers, supply chains will never be able to meet consumers’ needs in a sustainable way. When farmers are forced to choose between feeding their family and respecting labour rights and the environment, it isn’t really a choice.

Fairtrade therefore holds that:

- Guidance on HRDD should be **explicit on the right to decent livelihoods**, and on the need for **living incomes and wages to be understood as fundamental human rights** in that context.
- Regulations must clarify – for example in the preamble or introductory part of the legal text – that workers’ and farmers’ **rights to fair remuneration and labour rights are human rights**.

² As laid out in the Universal Declaration of Human Rights, the International Covenant on economic, social and cultural rights, the International Covenant on civil and political rights, the ILO conventions and in the more recent UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP, 2018).

TRANSFORMING POWER (IM)BALANCES

HRDD legislation must be designed to protect the rights of farmers and workers, with particular attention paid to vulnerable and marginalised groups in each context, including women, children, youth, and migrant workers. HRDD policies must result in fairer producer prices and purchasing practices by traders, brand companies and retailers. If HRDD legislation results in a proliferation of requirements posed solely on marginalized farmers and workers, it would have failed its purpose of empowering and protecting the vulnerable. HRDD legislation must always keep the balance between the actual capability to prevent or mitigate abuses and individual and organisational accountability.

Similarly, HRDD policies must not deter companies from investing in low-income areas with known human rights risks. The worst-case scenario is an increase in ‘cut and run’ behaviour, with companies shifting their business to areas deemed less ‘risky’, instead of investing in long-term relationships with their suppliers to prevent, cease, mitigate and remedy exploitation.

BACKGROUND

The [UN Guiding Principles on Business and Human Rights](#) (UNGP, 2011), have established a global consensus that companies have a responsibility to respect human rights. In practice, they are expected to carry out ongoing human rights due diligence (HRDD) to identify, mitigate, remedy and report the salient human rights violations in their operations and value chains.

This consensus is enshrined in the [OECD Guidelines for Multinational Enterprises and National Action Plans](#) (NAPs). National legislation, such as the French Duty of Vigilance and Dutch Child Labour Due Diligence laws, makes HRDD mandatory for some companies operating in France and the Netherlands. Modern Slavery Acts in [the UK](#) and [Australia](#) have introduced a reporting requirement for large companies. Related regulations are also being considered in other areas including the EU, Switzerland, Germany, Finland and Canada.

At the global level, governments are negotiating on the UN Binding Treaty on Business and Human Rights.

Therefore, Fairtrade calls for UNGP-compliant legislation that:

- Covers **trade and buying practices** and encourages companies to **commit to longterm relationships** with producers³.
- Requires companies to **address salient human rights issues rather than abandon or avoid high-risk sourcing areas**.
- **Covers all actors in supply chains**.
- Establishes an inclusive monitoring system to **ensure transparency and accountability of actions undertaken, in cooperation with marginalised producers and communities at risk**.

³ Unfair trading practices are widespread in agri-food value chains, they sustain power imbalances and human rights violations <https://fairtrade-advocacy.org/our-work/eu-policies/unfair-trading-practices/>

RIGHTS-HOLDERS ENGAGEMENT

As a producer-driven system – 50% owned by smallholder farmers and workers – Fairtrade strongly believes in listening to and incorporating the experiences and knowledge of affected people and enabling them to influence policies that directly impact them. As laid out in the UNGP and OECD Guidelines, HRDD policies must employ a human rights-based process⁴, in which meaningful engagement with rights-holders is essential.

For HRDD policies to be beneficial to the most vulnerable, Fairtrade calls for:

- **Rights-holders’ engagement in each step** of the HRDD process.
- **Rights-holders’ access to timely and sufficient information** to enable active and effective involvement in HRDD, as well as capacity building around HRDD frameworks and tools
- Participation and **empowerment of those who fight against human rights violations, such as trade unions, civil society and human rights organisations.**
- **Involving the producing country governments** in dialogue on legislation, effective policies and resource allocation to find means to address the root causes of human rights violations.

Levelling the playing field

Some companies are making considerable efforts to meet their responsibility to respect human rights and the environment. However, too many others contribute to exploitation and abuse in global supply chains – whether knowingly or passively. The UNGP notes that *every* business organization has the duty to respect human rights.

Fairtrade holds that:

- The **HRDD obligation should cover all companies** that place products on the market, regardless of their form or where they are based or registered, as all companies must respect internationally recognized human rights and international environmental standards in their country and abroad. SMEs whose business bears severe human rights risks⁵ should also be included.
- The **HRDD obligation extends to the entire organization** of the company, including controlled companies, business relationships, service providers and entire supply chain.

⁴ <https://www.unfpa.org/human-rights-based-approach>

⁵ The extractive economy (mining, renewable and fossil energies), agriculture, construction, timber and forestry were ranked as the highest-risky sectors for human rights defenders in 2019
<https://www.business-humanrights.org/en/human-rights-defenders-business-annual-snapshot-0>

HUMAN RIGHTS ARE INDIVISIBLE

Because the state of the environment and human rights are intricately linked to each other, any HRDD process should also cover environmental and climate change related rights. Indeed, tackling the worst human rights violations requires tackling environmental abuses, and vice versa⁶. Further, climate change and environmental degradation have more negative impacts on many vulnerable groups such as farmers, women and children, indigenous communities.

“PEASANTS AND OTHER PEOPLE WORKING IN RURAL AREAS HAVE THE RIGHT TO THE CONSERVATION AND PROTECTION OF THE ENVIRONMENT AND THE PRODUCTIVE CAPACITY OF THEIR LANDS”

UNDROP, Article 18 (1)

Fairtrade stresses that:

- Legislation should cover **all internationally recognized human rights as well as environmental rights**, as enshrined in the *International Bill of Human Rights* and the International Labour Organisation’s (ILO) *Declaration on Fundamental Principles and Rights at Work*.
- Regulations must be aligned with the UNGP and OECD Guidelines for Multinational Enterprises.
- Companies should consider the **rights of particularly vulnerable groups or individuals** such as women, children and youth, migrant workers, indigenous peoples, and persons with disabilities.
- HRDD should always be gender-responsive and take into consideration the overlap between different sources of discrimination and vulnerabilities.
Companies should **identify and address the root causes** behind salient human rights and environmental violations.

MONITORING AND ENFORCEMENT OF THE LAW

Fairtrade is fully aware that any system is only as good as its controls and enforcement. To foster meaningful HRDD, laws must be backed up by strong monitoring and enforcement systems that include clear sanction policies.

Therefore, Fairtrade calls for HRDD laws that:

- Demand companies to subject their due diligence (DD) systems to **regular independent verification by human and labour rights organisations, unions and experts**.
- Require companies to communicate the design of their DD systems, make them public and accessible, and **inform their internal and external stakeholders about the outcomes**.
- Include **proportionate and dissuasive legal consequences**⁷ for companies that lack a legally compliant DD system.

⁶ For instance, the European Court of Human Rights has established that various types of environmental degradation can result in violations of several human rights including right to health, life and family life. Reversely, the Paris Agreement states that protecting human rights is needed to fight climate change. https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf

⁷ Such consequences can include fines in proportion with companies’ turnover and exclusion from public procurement, trade promotion and public funding.

- Allow and support all harmed persons, especially the most vulnerable, to **bring complaints or lawsuits against the parent companies of the perpetrators** to end the violations and have compensations considered.
- **Put the burden of proof on the company, not the complainant.**⁸
- **Set up appropriate national mechanisms, such as a dedicated public body**, to assess and monitor HRDD and remediation developments and support companies, especially SMEs, to comply.

ACCOMPANYING AND FURTHER MEASURES

Fairtrade acknowledges that mere HRDD legislation alone will not bring the improvement we want to see in supply chains, especially if the affected people are not adequately involved. We also recognise that thorough legislation will place an administrative burden on small business and small-scale producer organisations to comply with due diligence obligations.

Fairtrade therefore calls for accompanying measures, such as:

- **Awareness-raising and capacity-building measures on HRDD towards rightsholders**, i.e. through supporting CSOs and other field actors.
- **Adequate support** should be put in place **to assist SMEs** in undertaking any mandatory HRDD and remediation process.

Fairtrade is also supportive of:

- Establishing a **UN Binding Treaty on Business and Human Rights**⁹, enshrining these principles within a globally implementable and enforceable human rights framework with a universal perspective that is consubstantial to any human rightsbased approach.
- Negotiating **bilateral framework agreements with origin governments on high-risk commodities** like cocoa, coffee, tea, cotton/textile and sugar cane, among others, to create an enabling environment for sustainable production and pricing policies and to provide financial and technical support to these governments.
Other sector-specific and focused supply and value-chain initiatives that can bring expertise and ease collaboration to tackle the risks.
- **Making public procurement compliant** by restricting to companies respectful of their HRDD and remediation obligations and sustainable sourcing commitments.

⁸ A company may still exonerate itself from liability if it can demonstrate it carried out appropriate due diligence to prevent the damage from occurring.

⁹ <https://www.treatymovement.com/>

THE ROLE OF FAIRTRADE

The international Fairtrade system was borne out of a vision for fair and transformational trade. We take a rights-based approach to our work, strengthening farmers' and workers' voice by encouraging collaboration and ensuring their influence over our own strategy, standards and pricing policies. For our business partners, the use of Fairtrade certification can be a valuable instrument in mitigating many adverse human rights impacts in several global supply chains.

Fairtrade is committed to:

- Bringing the voice of farmers and workers in HRDD and remediation discussions and coalitions
- Sharing our learning and best practices from decades of human rights-related work in global supply chains
- Continuously questioning and improving our own procedures and ways of working
- Working with commercial partners to advance the understanding, prevention, mitigation and remediation of human and environmental rights violations in supply chains
- Promoting living incomes and wages as stepping stones of human rights and sustainability policies, and continuing to advocate for better pricing policies, fairer buying and trading practices.