

# EXECUTIVE SUMMARY



## MAKING HUMAN RIGHTS DUE DILIGENCE WORK FOR SMALL FARMERS AND WORKERS IN GLOBAL SUPPLY CHAINS

V. Nelson, O. Martin-Ortega, M. Flint | June 2020

## KEY MESSAGES

- Human rights abuses are an endemic issue in global supply chains and form part of the dominant business model. However, while an insufficient measure on its own, if well-designed and implemented, HRDD could play an important role in ensuring human rights in reformed global supply chains.
- Human Rights Due Diligence (HRDD) frameworks are diverse and fragmented. Implementation is weak, monitoring of compliance inconsistent, and monitoring of impacts on the ground virtually non-existent. When monitoring does occur, this tends to be led by civil society. There is no clear role for stakeholders and those directly impacted by corporate harm; few provisions for liability, either civil and criminal; and many obstacles which prevent victims of harm from accessing justice.
- There are potential unintended or negative effects for workers and small farmers in agricultural and garment supply chains. If poorly implemented, HRDD could lead to companies cutting and running, or passing the additional costs of compliance to suppliers, rather than investing in their suppliers. The other significant risk is that HRDD is implemented partially or poorly, and masks inaction by companies on human rights in supply chains.
- HRDD frameworks, as currently designed and implemented, do not guarantee that issues such as living wages, living incomes, fair purchasing practices will be adequately addressed, nor systemic issues such as unequal power relations, land tenure security and environmental damage.
- Explicit consideration of living wages, living incomes and fair purchasing practices is needed in HRDD, as well as effective oversight of HRDD more generally. This is necessary to ensure that HRDD leads to fairer purchasing practices and business models, enables observance of human rights and reduces environmental damage, so leading to positive outcomes for workers and small farmers.
- Effective design and implementation of HRDD are essential, but they are only part of the solution. More far-reaching, systemic changes need to be instituted in political and economic systems, so that the latter are resilient (i.e. can recover from shocks and stresses) and regenerative (protects and restores environments and communities).

### The study

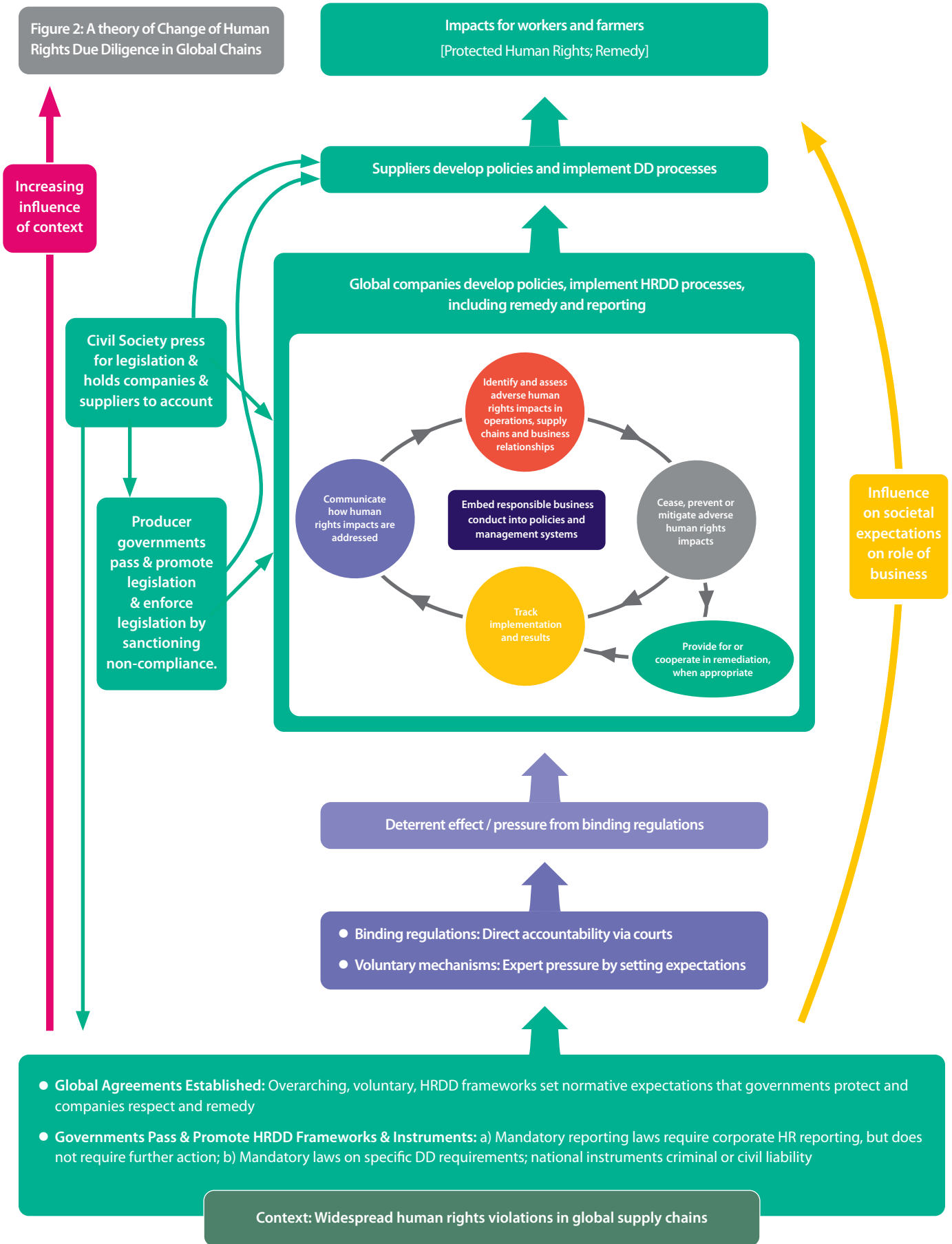
This report explores the potential effectiveness and impact of Human Rights Due Diligence (HRDD) frameworks and instruments, focusing on the agriculture and garment sectors. The study unpacks a theory of change for how HRDD frameworks are anticipated to have an impact, assembles and analyses available empirical evidence to assess effectiveness and impact and identify evidence gaps, and explores the specific risks of unintended, negative impacts for workers and small farmers associated with HRDD implementation. It also provides a legal analysis of living wages and living income within HRDD, because both are fundamental to the fulfilment of other human rights and are not currently part of the mainstream HRDD conversation.

The study is based on a literature review, conceptual work on a theory of change, interviews with a number of key informants and stakeholders, small case studies on garments (Bangalore, India) and horticulture (Kenya), plus further stakeholder consultations. While the limited experience and evidence around HRDD design, implementation and impact has proved to be a limitation, this study is an important first step in identifying and analysing the available evidence and the likely risks. Recommendations focus on improving the design and implementation of HRDD, and the additional measures needed, and are applicable at global, regional or national levels. The report serves as a basis for further discussion and research on how to ensure HRDD frameworks have a positive impact on small farmers and workers.



*Growing organic jasmine rice in Thailand | Photo: Tobias Thiele*

Figure 2: Theory of Change for Human Rights Due Diligence



Source: own work

## The challenge

Workers and small farmers, especially women and migrant and child workers, in low and middle income countries who are part of global supply chains – including the garment and agricultural sectors - face systemic human rights challenges. The International Labour Organisation (ILO) estimates that 450 million people currently work in supply chain related jobs globally. The opacity of complex supply chains allows human rights abuses, such as forced and child labour, exploitative and dangerous working conditions, to continue. Whilst occasionally exposed in media stories, the vast majority, and the private suffering involved, remain hidden and unacknowledged.

## The response – Human Rights Due Diligence

Due diligence is commonly used by companies to comply with legal obligations. Over the past 20 years it has been taken up in legal frameworks and instruments to address human rights issues in global and national supply chains. Moving beyond a concern with material risks to a company, HRDD addresses the salient risks of corporate practices in terms of impacts on human rights. Most of the frameworks are voluntary, but mandatory requirements have been introduced in France and the Netherlands (regarding child labour), and are under development in other countries, such as Switzerland. Binding measures include either legal reporting requirements, or more stringent examples of regulations requiring companies to implement due diligence processes including mitigation actions. HRDD is a process-oriented, rather than performance based standard, and comprises the following steps: identify, assess, prevent, mitigate, monitor and remedy negative impacts on human rights in the supply chain, and embed responsible business conduct into company policies and management systems. Voluntary global frameworks such as the United Nations Guiding Principles on Business and Human Rights or OECD Due Diligence Guidance set expectations on business, but do not create new legal requirements, and there are no provisions if there is a failure on the part of companies to comply. In contrast, mandatory HRDD require companies to conduct DD, and can lead to civil or criminal liability for any shortcomings.



Processing cocoa in Ivory Coast | Photo: Éric St-Pierre

## The findings

The proliferation of regulatory instrument is not matched with research on impacts. Overall, experience in, and available evidence for evaluating HRDD effectiveness and impact is very limited, and lack of transparency is barrier to assessment. However, drawing upon the available evidence and a wide range of stakeholder perspectives, it is clear that HRDD awareness and momentum are rapidly growing in Europe and the US, especially support for mandatory HRDD. However, the legislation is partial and fragmentary. Evidence suggests that implementation is not well advanced and there are cost and capacity barriers. There are a few cases of concrete and positive action by global companies, but empirical evidence of effectiveness and impact is thin.

Firstly, in terms of HRDD impacts on workers and small farmers, evidence is very limited. This could change as implementation increases and improves.

Secondly, while there is evidence of increased attention to human rights issues by companies, this tends to be selective, with priorities and processes framed more by companies than local communities and workers and their representatives. Thirdly, the wider evidence that human rights abuses continue to bedevil most global supply chains – particularly agricultural and garment supply chains – is very strong.

### Potential risks of unintended consequences:

Possible risks for small farmers and workers in agriculture and garment supply chains, if HRDD obligations are imposed without proper analysis of the context and supply chain dynamics, and relating to HRDD instrument design are as follows:

- Not all companies will be willing to invest in making the improvements required to prevent or address human rights abuses. Some will cut and run, (i.e. they may stop buying from one location where risks are perceived to be higher and start buying from other places with fewer perceived human rights violations. Another potential shift is from independent small farmers and their organisations, to large plantations and aggregation and contract growing arrangements. Increasing or changing standards could translate into further burdens on suppliers in terms of costs, and / or lost business as sourcing or business models are changed.
- In the agriculture and garment industries, there are specific issues which require more attention in the design of HRDD, such as risks to food security in the former, and marginalization of women and gender issues and enhanced risks for those working in the informal sectors in both.
- Many small producer and worker representation organisations in global and regional supply chains in general, and across both sectors, lack sufficient capacity to adequately respond to HRDD and any unintended impacts.



Harvesting pineapples in Ghana | Photo: Nathalie Bertrams

While all these risks are real, the greater risk for workers and small farmers, at least in the short-term, is that HRDD continues not to be properly implemented. There is a risk that it remains or becomes a paper exercise for some companies.

#### Potential issues relating to HRDD implementation:

- Different marginalized social groups amongst workers and small farmers will face greater challenges in terms of their capacity to organize and respond to the demands of HRDD processes. But, for all groups, the common need is for HRDD to be fully and effectively implemented.
- Power relations between multinational buyers/retailers and suppliers/producers in the global South are asymmetric and characterized by downward pressures on prices. These power relations are not significantly altered by HRDD. To the contrary, power imbalances are likely to influence who bears the cost of compliance with HRDD requirements.
- To respond to the capacity challenges of small farmer and worker organisations, there may be a case for less demanding requirements with respect to HRDD for small farmer organisations.
- Engagement of, and support for, producer governments may be required by donors and NGOs.
- The focus of companies, states and civil society must move beyond public reporting by companies to reliably identifying the actual evidence of change (or no change) on the ground.

Current HRDD frameworks do not directly refer to, or address trading practices which maintain power imbalances. Companies exert downward pressures on their suppliers by engaging in diverse forms of unfair purchasing practices. Among the direct consequences of these unfair trading practices are the lack of access of workers and small farmers to living wages or capacity of achieving living incomes. This study has focused on how fair trading practices, living wages and living incomes can be addressed by HRDD frameworks and instruments. There are two main challenges to adequately addressing living wages and living incomes through HRDD frameworks. The first regards the nature and legal force of living income and living wages as international human rights. The second main challenge regards the implementation of HRDD with respect to living wages, living incomes and fair trading practices. The adequacy of implementation depends on firstly, the extent to which living wages and living incomes are accepted as fundamental to other human rights and as systemic issues within HRDD; secondly, the definition used for a living wage and living income; and thirdly, the prioritisation of living wages and living incomes as human rights risks and their location in the supply chain.

#### On living wages and living incomes we conclude that:

- Living wages and living incomes are fundamental to respecting internationally recognised human rights – either as rights themselves or as preconditions for other priority rights - and therefore need to be explicitly considered in HRDD.
- Existing laws and regulations are not sufficient to ensure living wages, living incomes in international supply chains.
- HRDD frameworks do not, at present, guarantee that insufficient wages or incomes will be covered and adequately addressed by such frameworks, especially when there is such as strong focus on prioritising salient and severe risks in HRDD. Access to living wages and incomes is seldomly considered salient and severe in company assessments. This will not change without a new approach to the way HRDD frameworks are designed and implemented. In particular, explicit reference to systemic issues, including living wages and living incomes throughout the supply chain is required in HRDD legislation and/or guidance.

#### HRDD legislation should include criminal liability or civil liability, and provide financial support for victims to claim redress.

1. Mandatory HRDD is essential at global, regional and national levels. EU wide regulation should be established covering all internationally recognized human rights and should also evolve to include environmental risks and damage.
2. Obligations to conduct substantive HRDD should require companies to set targets and to have transparent plans for measuring implementation and reporting on HRDD implementation and its effects

3. HRDD frameworks need to pursue compliance along the supply chain, including all of the affected workers, farmers and communities in the supply chain. DD guidance could potentially include reference to the importance of maintaining long term sourcing relationships with suppliers.
4. All HRDD instruments should explicitly address purchasing practices, recognizing that poor practices lead to human rights abuses.
5. HRDD should consider systemic risks such as land use change, food security, development priorities, and climate change – all of which are interconnected with human rights abuses.
6. HRDD instruments (and accompanying guidance) should explicitly address gender-related issues in a systematic manner. Gender issues should be mainstreamed within HRDD, including priority attention to gender-related issues in risk identification and responses, and in grievance and remedy systems.
7. Public authorities should have sufficient competencies and jurisdiction to implement and enforce HRDD. Non-corporate actors and stakeholders should have a specific role to provide independent compliance monitoring and evaluation of impacts.
8. HRDD legislation should include criminal liability or civil liability, shift the burden of proof on to companies rather than victims, and provide financial support for victims to claim redress.
9. Whilst the main target of the legislation should be multinational corporations, all businesses in the global supply chain should be considered for inclusion. Some tailoring is needed for SMEs, especially small farmer organisations, to avoid unintended impacts on smaller-sized suppliers.



Sewing garments | Photo: iStock - Greenaperture



Cocoa growing in Ivory Coast | Photo: Éric St-Pierre

### Recommendations for implementation of HRDD regulation (by States and the EU)

#### To ensure effective implementation of mandatory regulation and related initiatives. HRDD should:

1. Cover all internationally recognised human rights, with clear guidance regarding how to assess salience and severity of risks.
2. Require the implementation of UNGP and the OECD due diligence standards as a minimum.
3. Oblige the transparent and full disclosure of HRDD processes and outputs (the EU legislation should define transparency).
4. Be enforceable by criminal and civil liability.
5. Contain clear obligations and accessible avenues for victim redress which are implementable extra-territorially.
6. Include tailored requirements for SMEs and producer organisations
7. Provide effective oversight of compliance (state-based, judicial and/or non-judicial), with clear mechanisms for stakeholder involvement.
8. Include sector specific guidance with particular guidance on high risk issues, and additional requirements for high risk sectors.
9. Engage producer governments to encourage hybrid, sector-wide binding agreements linked to DD.
10. Include donor funding for capacity-strengthening programmes for producer governments to encourage implementation, support to civil society (NGOs and trade unions, cooperatives) to use due diligence to hold companies to account, including provision of independent worker and farmer driven monitoring. Funding is also needed to raise consumer and public understanding of human rights issues in supply chains.
11. Support accompanying measures and instruments, such as public procurement, trade agreements and donor funding for capacity building.

### Recommendations for implementation by companies

**Companies should ensure that HRDD implementation:**

1. Covers all internationally recognised human rights, with transparent and inclusive processes for judging priorities and salience.
2. Involves sufficient skills and resources to ensure compliance with the UNGP and relevant OECD due diligence standards as a minimum.
3. Explicitly includes and addresses the effects of company business practices, especially pricing and procurement. This should include consideration of how purchasing practices may obstruct suppliers’ capacity to exercise HRDD.
4. Provides for the active participation of stakeholders, including workers, small farmers, communities, harvesters and artisans and their representatives in the design and implementation of all due diligence processes.
5. Provides special consideration for the interests of and participation of women and marginalized groups.
6. Requires disclosure of supply chain structures and transparency over trading practices.
7. Covers the entire supply chain and all human rights impacts directly linked to company operations, products or services by business relationships, including access to living wages and living incomes throughout the supply chain.
8. Considers the inter-linkages between sectors and different human rights and systemic issues in the supply chain (e.g. purchasing practices, environmental issues).
9. Includes adequate provision for, or cooperation in, the remediation of any adverse human rights caused or contributed to.
10. Involves full and transparent disclosure of all HRDD processes, outputs and impacts through periodic reporting.



Picking cotton in India | Photo: Florie Marion

### Recommendations for measures to be taken by civil society and other actors

**Sufficient financial and technical resources need to be made available to support:**

1. The establishment of new collaborative civil society monitoring systems including the agricultural and garment sectors.
2. Engagement on the design and implementation of HRDD frameworks.
3. Independent research on the impacts of HRDD implementation – and how any adverse impacts can be mitigated - for workers and small farmers supply chains.

**Support needs to be mobilised for engagement on:**

4. Civil and criminal liability claims by those adversely affected
5. Adequate remediation procedures and funding.
6. Research and advocacy for the complementary action required to ensure a more equitable distribution of costs and benefits in global supply chains, such as corporate governance reform, inclusion of HR requirements in trade deals and public procurement, alternative economic systems etc.
7. Passing of supportive legislation and guidance, enforcement of regulation, and monitoring in producer countries.
8. Informing the definition of transparency by the EU in legislation.



Coffee farming in Kenya | Photo: David Macharia

## Conclusion

Mandatory HRDD has great potential for tackling human rights abuses in global supply chains. However, there is some evidence to suggest that as currently designed and implemented HRDD may entail some risks for workers and small farmers, such as companies deciding to cut and run from situations perceived as higher risk, and of companies passing additional costs onto their suppliers. There is also a risk that current models of HRDD, while beneficial, will not be fully and properly implemented by companies, and so will not benefit workers and small farmers to the extent expected. For this reason, the design and oversight of HRDD instruments needs to be as strong as possible, and the EU has a great opportunity to do so. Greater recognition is also needed that, while effective HRDD is one piece of the puzzle, other measures will need to be considered which address the underlying causes of human rights abuses in global supply chains and to address the systemic issues, such as imbalances of power in supply chains and environmental damage. The latter is intimately interlinked with human rights. HRDD is part of a possible reform process for the global economy, but ultimately more far-reaching changes are needed, such as progress towards economies that are fairer, resilient, and regenerative. This would mean addressing power imbalances in supply chains, integrating externality costs, ensuring transparency, introducing governance measures for global value chains and highly volatile markets, and localising and regionalizing trade wherever possible.



Coffee farming in Kenya | Photo: David Macharia

### For more information, contact:

Professor Valerie Nelson: [V.J.Nelson@gre.ac.uk](mailto:V.J.Nelson@gre.ac.uk) or Professor Olga Martin Ortega: [O.Martin-Ortega@gre.ac.uk](mailto:O.Martin-Ortega@gre.ac.uk)

### For the commissioning organisations, Brot für die Welt and Fair Trade Advocacy Office, contact:

Fabienne Yver: [yver@fairtrade-advocacy.org](mailto:yver@fairtrade-advocacy.org) and Teresa Hoffmann: [Teresa.Hoffmann@brot-fuer-die-welt.de](mailto:Teresa.Hoffmann@brot-fuer-die-welt.de)

**Production coordinator:** Gillian Summers, Natural Resources Institute, University of Greenwich.

**Art direction:** Simon Pointer, GDA Creative Design.

