



What if?

Case studies of human rights abuses and environmental harm linked to EU companies, and how EU due diligence laws could help protect people and the planet.

Researched and written by

Chloe Cranston,
Rocío Domingo Ramos
and Claire Ivers
(Anti-Slavery International),
and Alejandro García Esteban,
Christopher Patz and
Sofia Gualandi (ECCJ).
Final oversight by Ryna Sherazi
(Anti-Slavery International)
and Claudia Saller (ECCJ).

Edited by Stephanie Ross.

Designed by Berie Stott, www.dot-ink.com.

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Cover image: Nile Sprague



Anti-Slavery International

Anti-Slavery International works in the UK and around the world to help provide freedom from slavery for everyone, everywhere. The world's oldest human rights organisation, Anti-Slavery International works with people affected by slavery, governments, civil society and business to find and implement sustainable solutions to ensure people's freedom.

Contact

Thomas Clarkson House
The Stableyard
Broomgrove Road
London
SW9 9TL
United Kingdom

E: euadviser@antislavery.org

W: antislavery.org

Follow us: [@Anti_Slavery](https://twitter.com/Anti_Slavery)



European Coalition for Corporate Justice (ECCJ)

With 20 member groups from 17 countries, ECCJ brings together campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote European laws that guarantee corporate accountability and transparency, and ensure justice for victims of corporate malpractice.





Contact

ECCJ Secretariat
Rue d'Edimbourg 26
1050 Brussels
Belgium

E: claudia.saller@corporatejustice.org

W: corporatejustice.org

Follow us: [@ECCJcorpjust](https://twitter.com/ECCJcorpjust)

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Introduction

Over the past few decades, some of the EU's largest and most well-known companies have been involved in appalling human rights abuses and environmental harm in countries across the globe. The companies have failed to address abuses perpetuated by subsidiaries or business partners in their global value chains, over whom they often have considerable control or influence. In many cases, the costs in these global value chains are kept down as a result – directly or indirectly – of those same abuses.

EU-based automobile and cosmetic companies have been linked to child and forced labour in India and Madagascar. Some of our chocolate companies stand accused of being linked to the exploitation of workers in West Africa and Turkey. Oil companies have been polluting communities and the environment in African countries for decades. A German textile manufacturer ignored (and allegedly signed off) lax health and safety procedures in the Pakistani factory they source most of their products from. Not long afterwards, a fatal fire killed 258 people.

The uncomfortable truth is that many European companies are linked to human rights abuses and environmental harm throughout their global value chains in the countries where they operate every single day, and they face few or no obstacles. A lack of strong corporate accountability laws, alongside complicated corporate structures and convoluted supply chains, make it difficult, often impossible, to hold these companies accountable.

In many of the foreign countries we have investigated, human rights abuses arise as a consequence of or are compounded by weak governance systems, and victims of corporate abuse face huge obstacles in standing up to them. The weakness of these governance systems is a matter of widely available knowledge. By driving down costs elsewhere in the supply chain, it can enable companies to minimise their costs and maximise their profits, while operating with no due diligence.

This report details a number of case studies where EU-based companies have been linked to corporate abuse and environmental harm in their global value chains and have so far managed to avoid liability before the courts. The companies which are the focus of the case studies in this report were given the right to respond. Where responses were provided, these are summarised in the report.

The case studies clearly demonstrate how **EU-wide mandatory cross-sectoral human rights and environmental due diligence legislation, with a strong liability and enforcement regime and improved access to remedy rules, would make a difference in these cases.** There is already strong recognition of the need for change. The European Commission published a report in February 2020 highlighting the urgent need for regulatory action at EU level. Many EU and non-EU countries are already adopting or considering their own due diligence legislation. In April 2020, the EU Commissioner for Justice committed to an EU-wide initiative on mandatory human rights and environmental due diligence legislation, to be presented in 2021.

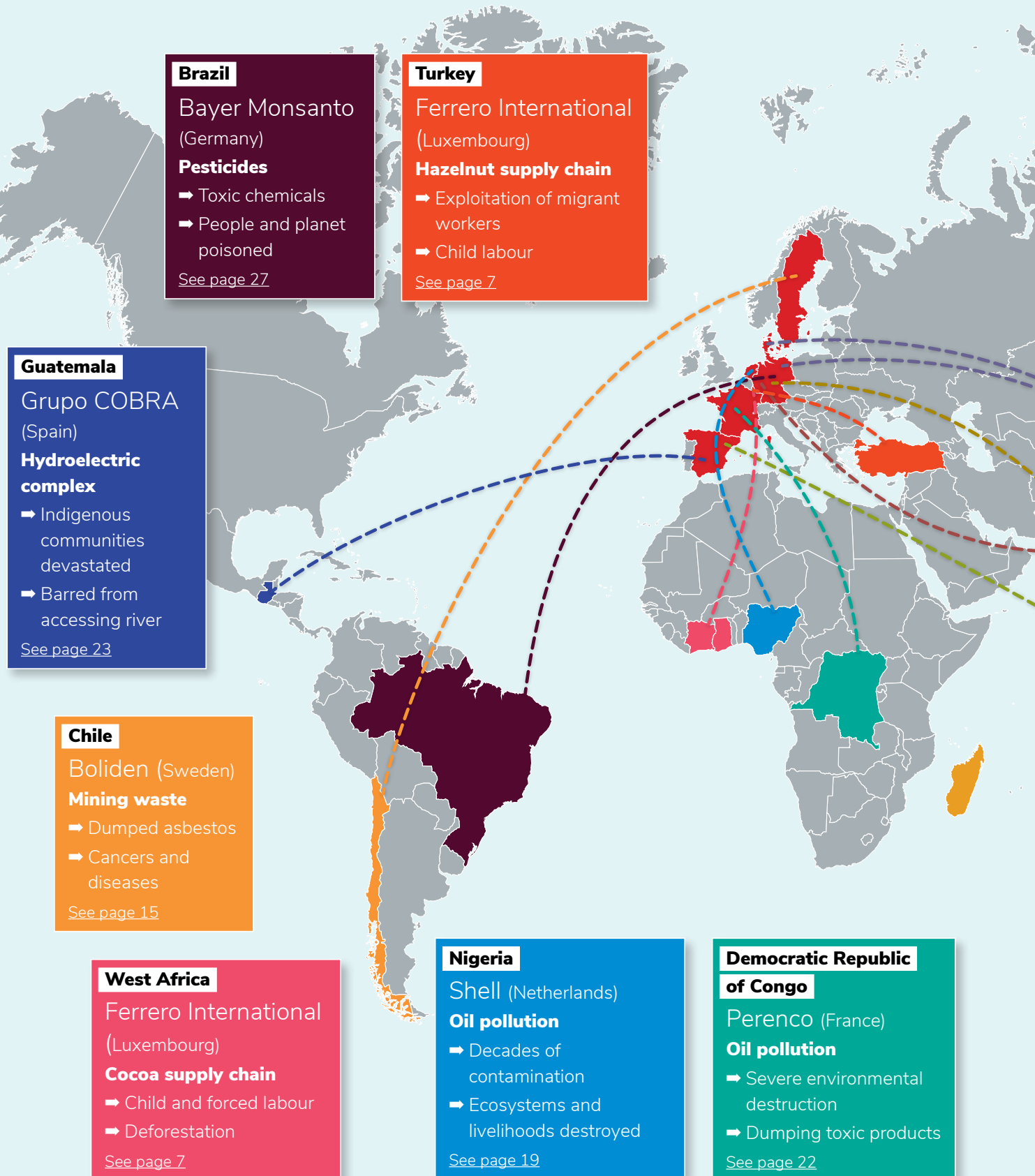
A number of leading businesses and business associations have supported calls for the law, arguing for the need to level the playing field and drive a uniform standard. **Businesses taking appropriate steps to respect human rights and the environment face considerable disadvantages if competitors profit from lower costs gained through exploitation and disregard for these issues.**

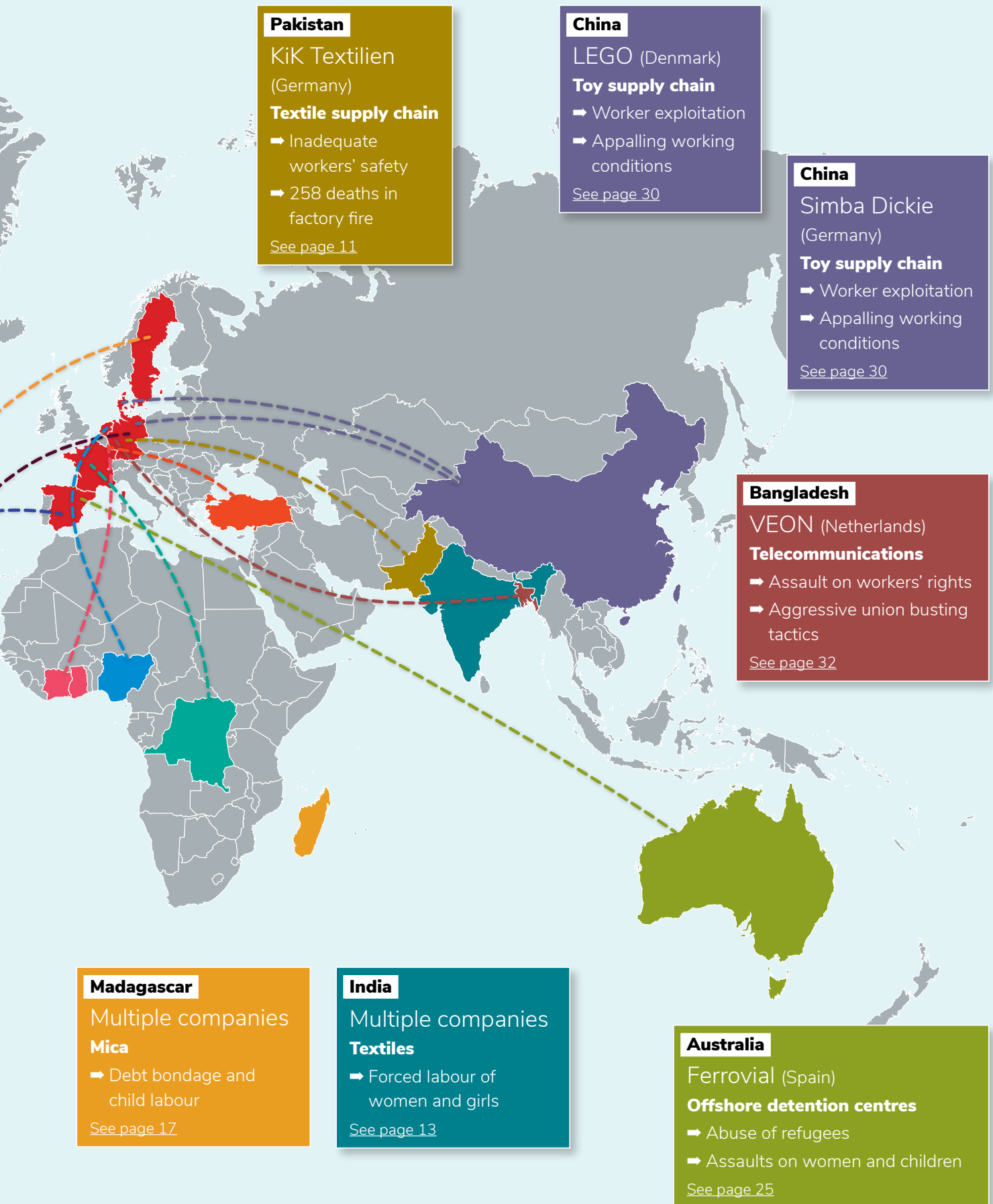
Only by introducing binding legislation can we truly protect people and planet, tackle human rights and environmental abuses linked to European operations, products and services, and finally hold EU-based companies to account.

Now is the time to make it happen.

Where harm happens:

EU companies and their links to human rights and environmental impacts worldwide





Case studies

West Africa: Ferrero International, child labour and deforestation

Sector

Cocoa

Theme

Child trafficking, child and forced labour, deforestation

The company

Ferrero International SA is headquartered in Findel, Luxembourg. It manages a group of chocolate and confectionery subsidiaries.

Its subsidiary, **Ferrero SpA**, is headquartered in Alba, Italy. Ferrero SpA is one of the biggest chocolate producers and confectionery companies in the world, founded by the Ferrero family in 1946 in Italy. Its most famous brands include Ferrero Rocher, Nutella and Kinder.

2019 revenue

Ferrero International SA, €11.4 billion.¹

Affected communities

In **West Africa**, most cocoa farmers live below the poverty line. Structural poverty is the prime challenge of the cocoa sector and one of the root causes of child labour. More than two million children are involved in child labour, particularly in Côte D'Ivoire and Ghanaian cocoa plantations. Child trafficking, a form of modern slavery, is also found in cocoa plantations in these countries, with children trafficked from Mali, Burkina Faso, Niger, Nigeria, Togo and Benin.

Summary

As a key buyer from the region, Ferrero should take more action to address the high risks of child labour, child trafficking and forced labour in the West African cocoa supply chain. Widespread deforestation has also been taking place to make room for cocoa plantations, causing devastation for both wildlife and the climate. The absence of binding regulation has meant there is little incentive to drive change in the sector.

Details

Every year, 70 per cent of the world's cocoa beans are produced on small farms in **West Africa.**² Côte D'Ivoire and Ghana are the two largest producers: together they produce more than half the world's cocoa.³ But the industry is rife with child labour, forced labour and environmental damage.

Recent estimates suggest that 30,000 children and adults work in forced labour on cocoa plantations in Côte D'Ivoire and Ghana alone – and researchers noted this was likely to be an underestimate.⁴ Child trafficking in particular is a known but under-addressed issue in the region. **Children as young as five are kidnapped or bought in Mali, Burkina Faso, Niger, Nigeria, Togo and Benin, and trafficked to cocoa plantations in Côte D'Ivoire and Ghana.** There are reports of traffickers selling these children to owners of cocoa plantations for the equivalent of €230.⁵

Child trafficking and forced labour occur within the context of very high levels of child labour. **There are an estimated 2.1 million children in child labour in the two countries' cocoa sectors, of which 96 per cent are thought to be in hazardous forms of labour.**^{6,7} A combination of factors drives child labour in the region, including chronic poverty, lack of access to education, insufficient land and the low bargaining power of farmers to secure prices that provide a living income.

According to an investigation by Mighty Earth,⁸ **the cocoa industry in West Africa has also been the primary driver of deforestation.** As reported by the Ivorian government, less than 11 per cent of the country remains forested, and less than 4 per cent remains densely forested. Besides legal deforestation, more than 90 per cent of the national parks and protected areas in Côte D'Ivoire have been cleared of forest and replaced with cocoa plantations.⁹ Approximately one quarter of deforestation in Ghana has been linked to the cocoa industry: almost 300,000 acres levelled between 2001 and 2014 were part of protected areas.¹⁰ Elephants and chimpanzees have been decimated by this overwhelming loss of habitat.¹¹

The issues above affect the entire cocoa sector sourcing from West Africa. Ferrero International has a particular role to play – as the world's third largest chocolate company in 2017/18,¹² sourcing its entire cocoa supply from West Africa and Ecuador. But the company can do much more to address the issues occurring at the sharp end of its supply chains. While Ferrero states it has “zero tolerance for any form of human rights abuse along ... [its] value chain”,¹³ and that it is “committed to production that respects the environment”,¹⁴ the company ranks near the bottom of an annual civil society analysis of confectionery companies' commitments to making chocolate sustainable.¹⁵ Ferrero was alleged to be “lagging” in its commitments to address deforestation, agroforestry, child labour and living income.

The negative impacts of the cocoa industry have been known for decades. Yet, voluntary commitments, such as the 2001 Harkin-Engel Protocol¹⁶ aiming to end child labour, have proven insufficient to transform the sector and drive all companies to meet the same standards.

**Cocoa harvest in Côte D'Ivoire**

Image by Nile Sprague

Going nuts for Nutella

Meanwhile in Turkey, Ferrero buys a third of the country's hazelnut harvest every year. At farms along the Black Sea coast, Syrian and Kurdish refugee families pick the hazelnuts that go into the brand's famous delicious nutty spread. These workers are extremely vulnerable to exploitation and inhumane working conditions. They work long hours, but do not even earn the minimum wage. That means many are forced to bring their children to pick with them. Children work for up to 12 hours a day, often in hazardous conditions for low pay, without a contract or adequate health and safety equipment, and missing the beginning of the school year.

You would think Ferrero would be going nuts over this. But it is not. It is failing to exercise leverage and use its dominant position in the hazelnut market to ensure environmental and human rights are respected at the bottom of the supply chain. Farmers say Ferrero does not pay a fair price for their hazelnuts. Given that the company is one of the major buyers of Turkish hazelnuts, Ferrero should use its power and influence to ensure adult workers are paid living wages and children are not picking their products for a pittance instead of going to school. In response to the investigation on conditions in its hazelnut supply chain, Ferrero acknowledged the problem of child labour in Turkey's agricultural sector and said that it is "determined to prevent and eliminate child labour" in its supply chain.^{17,18,19,20,21}

What if

Under an EU-wide mandatory human rights and environmental due diligence law, Ferrero would be obliged to ensure respect for internationally recognised human and labour rights in its global value chains.

- ✓ Ferrero would be obliged to carry out risk-based due diligence to identify, prevent, cease, mitigate and account for its adverse impacts, including by seeking to ensure that its suppliers meet international human and labour rights standards, notably with regard to forced and child labour, and environmental standards.
- ✓ Ferrero would have to increase transparency and take action to **trace and map its supply chain, down to farm level.**
- ✓ As part of HRDD, Ferrero should assess the drivers of risk in its supply chain, and therefore take action to assess the impact of its own purchasing practices. As a result, Ferrero would need to **consider how these practices and its pricing may obstruct suppliers' capacity to pay farmers and their workers a living income**, thereby addressing one of the most salient root causes of forced and child labour.
- ✓ Child labour, child trafficking and environmental damage are systemic in the cocoa industry, and occur due to a cumulative impact of business models and contextual causes, such as lack of access to education. An EU due diligence law would encourage companies to cooperate and collaborate to address the root causes, including by working with the EU and governments of cocoa-producing countries. It would level the playing field between chocolate companies, and ensure companies such as Ferrero cannot enjoy the position of being the third largest chocolate company in the world while also lagging behind in its efforts to respect human rights and environmental standards.
- ✓ **Farmers and farmworkers, communities and their representatives could challenge Ferrero's alleged failure to ensure respect of their rights** before Luxembourg's judicial and administrative authorities and seek remediation.
- ✓ Ferrero could be held liable for harm arising from human rights, labour and environmental abuses in its supply chain which it failed to prevent, if allegations were proven.

Case studies

Pakistan: KiK Textilien and the fatal factory fire

Sector

Garments and textiles

Theme

Labour rights, health and safety

The companies

KiK Textilien und Non-Food GmbH is Germany's largest textile discount chain, operating approximately 3,500 stores across central and eastern Europe. KiK is a subsidiary of Tengelmann Group, a holding company also headquartered in Germany. KiK contracted **Ali Enterprise**, a Pakistani textile company operating a factory in Karachi, Pakistan.

2019 revenue

KiK: €2.13 billion.²²

Tengelmann net income: €8.1 billion.²³

Affected communities

Millions of workers in Pakistani garment factories are paid below minimum wage, forced to work overtime with insufficient breaks and unable to join independent trade unions.²⁴ Despite the garment sector being a female-dominated industry in many countries, in Pakistan men account for 59 per cent of garment workers. However, men are paid on average three times more than women in the sector. Despite violating domestic legislation, children under 14 can also be found working in some Pakistani factories.²⁵

Summary²⁶

On 11 September 2012, 258 workers died and hundreds were seriously injured when a fire broke out in the Ali Enterprise garment factory in Karachi, Pakistan.²⁷ Due to lax fire safety measures, workers were at first unaware of and then trapped by the fire. At the time, the factory was producing jeans for its main client, German retailer KiK. Victims sought justice in the European courts, but failed due to the fact that Pakistani law was applied.

Detail

About 70 per cent of Pakistan's exports to the EU are textile and garment products.²⁸ But people working in Pakistani garment factories are often paid below minimum wage, forced to work overtime and barred from joining independent trade unions.²⁹

Pakistani textile factories are also frequently piled high with cotton, fabrics and chemical dyes – representing a deadly fire risk. KiK had been buying up at least 70 per cent of the factory's production for several years³⁰ and therefore should have been aware of the risks at the Ali Enterprise factory. **As the factory's main customer, KiK should have met its responsibility under the UN Guiding Principles on Business and Human Rights to seek to ensure the safety of the people who worked there.**

A few weeks before the fire, the factory had managed to gain an SA8000 certificate, supposed to guarantee health and safety.³¹ But this assessment was made by auditors who reportedly had not even visited the building.³² Despite reports of KiK representatives conducting in-person visits³³, the investigation that followed the fire found the factory also had bars on the windows and exits.³⁴

Three months after the Ali Enterprise fire in Pakistan, another 117 workers died in a factory fire in Bangladesh. This factory was also producing for KiK, as well as various other Western brands.³⁵

After the Ali Enterprise fire, KiK immediately agreed to pay US\$1million (approximately €900,000) in compensation to the victims and survivors.³⁶ Negotiations for further compensation to cover the victims' redress did not materialise. In March 2015, four of the victims initiated a civil claim against the company at the Regional Court in Dortmund, Germany, where the company is incorporated. The German courts decided to apply Pakistani law, as this was where the harm occurred. **In January 2019 the court dismissed the action, deciding that according to Pakistani law the statute of limitation had expired³⁷ and the claimants were too late to seek justice.**

As a consequence of the case's dismissal on procedural grounds, issues around corporate responsibility and liability for harms were never tested in court. As a result of public pressure surrounding the legal proceedings, KiK agreed to a negotiated compensation settlement, and committed to an additional US\$5.15 million (approximately €4.69 million) in compensation for the 'pain and suffering' of surviving victims and families.³⁸



The survivors and families waited many years for justice, to be told we waited too long. It takes a lot of time to organise such a case from Pakistan. Our children still go to factories with the same conditions.

Abdul Aziz Khan, Ali Enterprise Factory Fire Affectees' Association



What if

Under a mandatory EU-wide human rights and environmental due diligence law KiK, in its role as the major buyer, would have been obliged to seek to ensure respect for internationally recognised human and labour rights at the Ali Enterprise factory, and would have been unable to defer this responsibility to a third-party auditor.

- ✓ KiK would be obliged to carry out risk-based due diligence to identify, prevent, cease and mitigate the risk to human life at production factories within its supply chain, and **push factory owners to ensure that they identify and reduce risks to workers' lives and safety. This would mean addressing the complete absence of fire safety measures, and complying with internationally recognised health and safety standards** such as the provision of fire alarms and extinguishers on the factory floor.
- ✓ KiK should have assessed the impact of its own purchasing practices on the ability of Ali Enterprise to meet these standards, and to **ensure, in general, that its suppliers had the financial capacity to comply with decent human rights and environmental standards.**
- ✓ The victims' families and survivors of the fire would not have had to resign themselves to charitable action by KiK in order to receive compensation, achieved only as a result of public pressure. They **would have had a legal right to access justice** to make a claim for compensation for the harm they suffered, and would **be able to rely on German (EU) law in seeking the right to claim compensation against KiK.**
- ✓ Victims would have had more time to bring their transnational claim under German (EU) law, as opposed to the more restrictive Pakistani law that held their claims to be time-barred.



Bystanders look on outside the burnt-out Ali Enterprises clothing factory in Karachi.

Image by Rehan Khan



**Young girls are commonly exploited
in clothing factories in India.**

Image by Dev Gogoi

The Sumangali system: forced labour of women and girls in the textile industry of South India

The textile industry plays a fundamental role in India's economy. In 2018-2019, the sector employed more than 45 million people, contributing to 15 per cent of India's export earnings.³⁹ Home to one-third of India's textile business, Tamil Nadu is sometimes referred to as 'The Textile Valley of India'.⁴⁰

EU companies including H&M, C&A, Primark and Inditex all source from Tamil Nadu.⁴¹ A 2016 report with a sample of more than one-third of Tamil Nadu's spinning mills unveiled the presence of forced labour in 91 per cent of them. The prevalence of forced labour is such that it is likely that many EU companies sourcing from Tamil Nadu have, however unwittingly, utilised forced labour in their clothing manufacture.⁴²

Anti-Slavery International explains that the forced labour of women and girls in the region's spinning mills and factories is known as the 'Sumangali system'. Unmarried girls aged between 13 and 18 are tied to three-year contracts in mills that operate 24 hours a day. Girls live in unsanitary hostels with poor living conditions that inflict chronic illnesses. Confined to the mills, girls are permitted only occasional visits from their parents, who believe the mills are providing their daughters with safe work. Working conditions are appalling: unpaid overtime, 12-hour shifts, no days off, pay below minimum wage and frequent injuries in the workplace. Despite a lump sum being promised at the end of the contract, which girls hope to use to arrange their marriage, in reality, many girls leave the mills before ending their contract, often due to ill health, thus unable to receive the final payment.⁴³

In contravention of both domestic legislation and international standards such as ILO conventions on child labour,⁴⁴ some brands continue to benefit from a system of exploitation perpetrated by Indian manufacturers to meet international demand for low-cost garments. The exploitation in Tamil Nadu was brought to the attention of European brands almost a decade ago. Yet a series of voluntary initiatives in this time have failed to drive change. We need a mandatory EU human rights and environmental due diligence law to bring about effective change in the sector.

Case studies

Chile: Boliden's toxic dumping ground

Sector

Mining

Theme

Environment, health

The companies

Boliden Mineral AB is one of Sweden's largest mining corporations.⁴⁵ It employs about 5,800 people,⁴⁶ with operations in Sweden, Finland, Norway and Ireland. Before being declared bankrupt, **Promel** was a Chilean mining company and contractor to Boliden that operated mines and bought up mining waste.

2019 revenue

Boliden: approx. €4.7 billion,⁴⁷ net profit €547 million.⁴⁸

Affected communities



Itchy spots started appearing on our arms. Nobody minded, nobody knew how dangerous that was. Now I am worried about my daughter. Who knows how the polymetals will affect her?

A victim who unknowingly played on a toxic dump containing Boliden toxic waste as a child.⁴⁹



Chile, with the highest GDP in South America, attracts many people looking for a better life; in the past 30 years there has been a spike in immigration into the country.⁵⁰ Arica province is in northern Chile, bordered by Peru. Many of the people who live in Arica are migrants from countries such as Haiti or Bolivia, living in precarious conditions⁵¹ in impoverished neighbourhoods.

Summary⁵²

In the 1980s, Boliden paid Promel to export industrial waste to Chile, where Promel disposed of it without removing the arsenic. This caused awful health effects, including cancers and neurological disorders, for people living near the site. In 2013 victims took legal action against Boliden in the Swedish courts but eventually lost their case, leaving them not only with life-threatening diseases, but €3.2 million in litigation costs.⁵³

Detail⁵⁴

Between 1984 and 1985, Boliden paid Promel approximately €1 million to export 20,000 tons of mining waste. This toxic sludge was shipped to Arica, a port city in northern Chile. But **Promel failed to reprocess the sludge and extract the arsenic, and the mining waste was dumped, unprocessed and unprotected.**⁵⁵ In 1994, many families moved to newly built social housing on the outskirts of Arica. Residents did not realise that the mounds their children were playing on was a toxic waste dump.⁵⁶

In 1998 **a wave of serious diseases including cancer, skin diseases and neurological disorders were observed in about 3,000 people.**^{57,58} Given that the contaminated territory was being used as a playground,⁵⁹ children were severely affected.⁶⁰ In 2007, after 374 residents filed civil proceedings against Promel,⁶¹ the Chilean Supreme Court ordered Promel to restore the contaminated area. However, Promel was declared bankrupt and did not comply with the order.⁶² In 2009 the Chilean government, acknowledging the high levels of arsenic, lead, cadmium, mercury, copper and zinc, ordered 1,880 houses demolished and the sludge removed to a different area east of Arica.⁶³ The waste is now held just outside Cerro Chuno, another impoverished neighbourhood where the majority of people are migrants.⁶⁴

In 2013 Arica Victims KB, a group representing 796 Chilean citizens, filed a lawsuit before a Swedish court⁶⁵ arguing that Boliden had breached a duty to ensure that the sludge was appropriately processed by Promel. The court **dismissed the action on the basis that Boliden could not have reasonably foreseen the outcome.** However, the court found Boliden was negligent in continuing its relationship with Promel after realising any exported waste would end up in an uncovered pile close to populated areas. Boliden has not faced legal consequences for this negligence.

In March 2019, after the claimants appealed, the court decided to apply Swedish law – but dismissed the appeal on a new basis: that **the claim for damages had been filed too late and the cause of action was time-barred.**⁶⁶ In Swedish law, a claim for damages must be made within 10 years of the event. As a consequence, claimants were required to pay both their own litigation costs and those of Boliden. Victims have been left not only with life-threatening diseases, but €3.2 million in litigation costs.⁶⁷

What if

Under an EU-wide mandatory human rights and environmental due diligence law, Boliden would be obliged to seek ways to ensure respect for internationally recognised human rights and the environment in its global value chains, **which includes waste management activities.**

- ✓ Boliden would be obliged to identify, prevent, cease and mitigate the effects of its waste management process in Chile and elsewhere, notably with regard to the environment and to the health and safety of local communities and to **use its leverage towards its local partners for them to prevent and mitigate the identified adverse impacts and take action in support of local communities.**
- ✓ Under a mandatory due diligence law, victims could challenge Boliden's alleged failure to seek to ensure that its contractor respected international environmental standards before the Swedish judicial and administrative authorities. Boliden could be held **liable for harm arising from its mining waste management as a result of its failure to conduct adequate due diligence,** if allegations were proven.
- ✓ **Barriers to justice that have prevented the victims of the waste pollution from enjoying their rights** in line with international human rights and environmental standards **would be removed.** Notably, victims would not have to take on the burden of proving Boliden's alleged failures and their connection to the harm they suffered, but rather Boliden would be required to prove it undertook reasonable human rights and environmental due diligence.
- ✓ **Victims of Boliden would have been guaranteed the right to remedy under Swedish law automatically,** under an overriding mandatory provision. Effective EU legislation with reasonable time limitations for bringing legal actions would allow foreign victims – such as the communities of Arica – **sufficient time to file a lawsuit in the EU.**



A man wheels his bicycle through the waste in the contaminated neighbourhood of Cerro Chuno (10 August 2019).

Image by Pablo Cepeda



**7-year-old Karulal working underground
in a mica mine next to his father.**

Image by Peter Bengtsen

Mica: are our phones and cars worth the human cost?

Mica refers to a group of minerals found in a wide range of everyday products. The electronics industry is the biggest buyer of mica (electronic devices have components containing some form of it), followed by paints and coatings (used by the automotive industry), construction and cosmetics.

Sheet mica mining is a labour-intensive process, predominantly carried out by very poor and often exploited workers, that requires traveling deep into narrow mining shafts. **India and Madagascar are the main exporters of sheet mica, and in both countries there are reports of child labour and whole families in debt bondage (a form of forced labour) in this sector.** As reported in 2015, **up to 22,000 children** were involved in mica mining in the Indian states of Jharkhand and Bihar.⁶⁸ Research in 2016 uncovered the deaths of seven children in a period of just two months.⁶⁹ **In Madagascar, an estimated 11,000 children are involved in the mica sector.**⁷⁰

After a 2016 investigation, the Guardian revealed links between the suppliers of car paint companies and cosmetics brands such as L'Oréal to illegal mines in India.⁷¹ Afterwards, some of the world's biggest carmakers, including BMW and Volkswagen, launched investigations into their paint supply chains. However, as reported in 2019,⁷² **despite increased attention, none of the brands in focus have improved public supplier transparency over the past five years.**

The European Parliament recently approved a resolution on mica mining⁷³ calling for “the harmonisation and strengthening of import and supply chain controls, including through working towards binding due diligence and implementing OECD standards”. Regrettably, **the EU Conflict Minerals Regulation, which will come into effect in January 2021, does not apply to the mica sector.**

Case studies

Nigeria: Shell's shameless pollution and empty excuses

Sector

Oil

Theme

Environment, public health, indigenous rights

The company

Royal Dutch Shell, known as Shell, is one of the world's largest oil and gas companies and the biggest public company in Europe.⁷⁴ The company is headquartered in The Hague, with its registered office in London. **Shell Petroleum Development Company of Nigeria (SPDC)**⁷⁵ is the operator of a Joint Venture Agreement involving the Nigerian National Petroleum Corporation (a state-owned company), Shell and two other Nigerian corporations.⁷⁶ SPDC was jointly financed by the Shell Group of Companies and the British Petroleum (BP) Group. The company operates in the Niger Delta and adjoining areas in an oil mining lease area of around 31,000km².

2019 revenue

Shell: US\$344.9 billion (approx. €312 billion), net profit \$16,4 billion.⁷⁷

Affected communities

Ogoni is both a region in the **Niger Delta** of southern Nigeria and the name of the ethnic group that lives there. For the Ogoni and the Nigerian people, oil companies have brought **poverty, environmental devastation and widespread human rights abuses** to their region and to their lives.⁷⁸ They have been fighting for justice for decades.

The Ogoni Nine were a group of nine activists who actively opposed Shell's practices in the Niger Delta. In 1995, the Ogoni Nine – Ken Saro-Wiwa, Saturday Dobe, Nordu Eawo, Daniel Gbooko, Paul Levera, Felix Nuate, Baribor Bera, Barinem Kiobel and John Kpuine – were brutally executed by the Nigerian government. Since then, the victims' families have brought charges against Shell, alleging the company's complicity in the executions. A case filed against Shell by four widows of the Ogoni Nine was still unfolding in The Hague in 2019, marking 24 years of the victims' families seeking – and being denied – justice.

Summary

Shell is ravaging the Niger Delta through its decades-long quest for oil. Pollution caused by the activities of its subsidiary SPDC is having a devastating effect on both the ecosystem and people living in this area. Victims of Shell's irresponsible business conduct sued the company before Dutch courts, but claimants have faced endless legal barriers, challenges and uncertainty. They still have not won justice.

Details

The Niger Delta contains the biggest oil reserves in Nigeria. Within it lies Ogoni, home to an important wetland and coastal marine ecosystem, and more than 30 million people. Shell, through SPDC's operations, has been extracting oil from this area for more than half a century. **Oil spills have been reported** since the 1950s: several million barrels of oil have been spilled over the decades, causing widespread contamination, affecting innumerable lives and leaving a number of villages uninhabitable.⁷⁹ More than 60 years of continual gas flaring has also caused severe environmental and health problems.

In 2011, a study carried out by the UN Environment Programme (UNEP)⁸⁰ found the pollution was having **a severe impact on vegetation, crops and fisheries**, posing serious threats to ecosystems, as well as to the health and livelihoods of citizens.

The **community had been exposed to elevated concentrations of petroleum hydrocarbons in air, soil, ground and water** for years. Water is contaminated 900 times above World Health Organization standards.

Shell has time and again failed to address the impact of their spills. Many sites that Shell claim they cleaned up were found by UNEP experts to still be polluted. The **methods Shell used for cleaning oil spills were declared ineffective and inadequate** by UNEP. The company has manipulated information to avoid accountability for old and leaking pipes.⁸¹ By 2020, not one of the sites documented by UNEP has yet been properly cleaned, with clean-up activities started in only 11 per cent of sites.⁸²

The damage and abuses resulting from the oil spills have given rise to numerous proceedings before the Nigerian and Dutch courts. **Friends of the Earth Netherlands, together with four Nigerian farmers,⁸³ filed a lawsuit against Shell in 2008 before the Dutch civil courts.** It was the first time a Dutch multinational company was sued in the Netherlands for abuses caused abroad by its foreign subsidiary. The claimants argued that Shell failed to protect them from the oil spills, as a result of which they suffered harm and loss, and sought compensation and remediation. The Dutch courts applied Nigerian law, as this was where the harm occurred.

In January 2013 the **court rejected the claims against Shell, on the grounds that under Nigerian law there was no general duty of care** on parent companies toward their subsidiaries.⁸⁴ The court did rule that SPDC was liable for the oil spills on a farmer's land and ordered it to pay compensation. Both SPDC and Friends of the Earth appealed the decision.⁸⁵ The Court of Appeal has already partly reversed the court's decision. It stated that it could not be totally ruled out that Shell, as the parent company, may owe a duty of care to the claimants and be liable for the human rights impacts arising out of SPDC's activities, because of its negligence in managing and monitoring its subsidiary. The next stage of the appeal will take place in autumn 2020.



Niger delta aerial (16 June 2014).

Marten van Dijk/Milieudefensie

What if

The people of Ogoni have been seeking justice and remedy for the harm caused by Shell in their home region for more than two decades. In recent years, numerous courts have ruled inconsistently on Shell's activities in Nigeria. Under an EU-wide mandatory human rights and environmental due diligence law:

- ✓ Shell would have to put in place a risk-based **due diligence process to identify, prevent, cease and mitigate human rights and environmental risks and impacts along its global value chain, including those by SPDC**. This would mean that Shell should work with SPDC to closely monitor the oil spills, clean up the soil and water, replace old and damaged pipelines and potentially cease operations if prevention and mitigation measures were found to be insufficient.
- ✓ Shell would assume responsibility for its subsidiaries' human rights and environmental alleged abuses, once proven, including those by SPDC, and could be held directly liable for harm arising from them.
- ✓ Shell would be required to publish reports on the effectiveness of its measures to prevent and mitigate negative harms. This would make the company more easily accountable for its use of methods declared inadequate by UNEP.

The story of Shell and SPDC has exposed the weakness of current EU law in allowing victims of corporate harm effective access to remedy and justice. In current law, parent companies are unlikely to be held liable for the activities of their subsidiaries. Furthermore, EU law currently dictates that cases must be considered under the law of the country where the damage occurred.⁸⁶

Had **effective legislation been in place, the victims in this case would have had a legal right to bring a claim against Shell in Dutch courts**, the case would have been considered under Dutch law, and Shell would have been required to prove it had undertaken effective due diligence to prevent and mitigate the harm caused.

It's not just Shell. Meet Perenco

Perenco is a leading Anglo-French oil and gas group operating in northern Europe, Africa, Latin America and Asia. It is the sole oil operator in the Democratic Republic of Congo (DRC), where it extracts 25,000 barrels a day and has been accused of causing severe environmental damage.⁸⁷ Several reports denounce the devastating consequences of spills of crude oil, discharge of toxic products and gas flaring in unsafe conditions.⁸⁸ Perenco France argued that these are activities carried out by other companies of the group and that it therefore, essentially, has nothing to do with them.⁸⁹

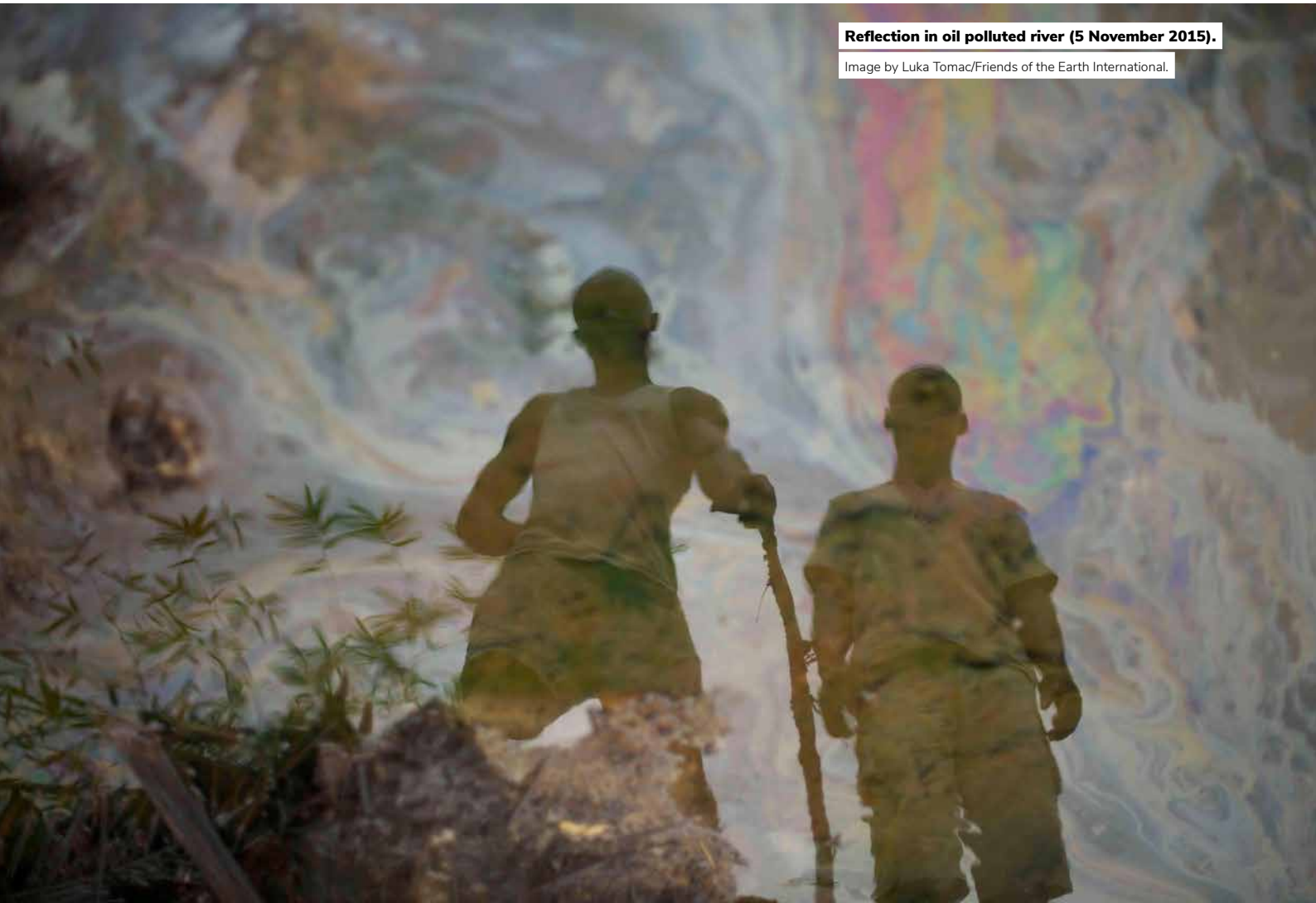
Perenco, well connected to political power in the DRC^{90,91} and a major contributor to its government budget, operates in the country through four different entities. In 2008 a local court ordered one of these local entities to compensate a community for the destruction of a forest, although this judgement was never executed. NGOs initiated legal actions against Perenco France before the French courts in order to clarify its role in this environmental harm.

However, Perenco France, the registered office of which is in Paris, does not fall within the scope of the French Duty of Vigilance Law, which only applies to very large companies above certain thresholds. Under a mandatory EU-wide due diligence law with a broad scope, covering all companies regardless of sector and size, Perenco would be obliged to ensure respect for internationally recognised human rights and the environment in its business relationships, including the companies that it factually or legally controls.

A company spokesperson declined to comment on these allegations as an investigation is ongoing.

Reflection in oil polluted river (5 November 2015).

Image by Luka Tomac/Friends of the Earth International.



Case studies

Guatemala: Grupo COBRA's abuses of indigenous rights

Sector

Infrastructure

Theme

Environment, indigenous rights, access to water

The companies

Grupo COBRA is headquartered in Madrid, Spain and creates and operates electricity, water, gas and communications infrastructure. It employs more than 38,000 people in more than 70 countries.⁹² Grupo COBRA is a wholly-owned subsidiary of **Grupo ACS**, a global leader in construction and engineering services.⁹³

Corporación Multi Inversiones (CMI) is a Guatemala-based family-owned company with more than 40,000 employees. In 2011, CMI subcontracted Grupo COBRA for the construction of a hydroelectric complex in Alta Verapaz, Guatemala. The complex is operated by **Recursos Naturales y Celulosas (RENACE)**, a daughter company of CMI.

2019 revenue

Grupo COBRA revenue 2019: €4,205 million.⁹⁴

Grupo ACS revenue 2019: €39,049 million,⁹⁵ profit €962 million.⁹⁶

Affected communities

The Q'eqchi' indigenous people are an ethnic group of Mayan descent, most of whom live in Alta Verapaz region, northern Guatemala.⁹⁷ More than 80 per cent of people there live below the poverty line.⁹⁸ The Cahabón River is of unique significance to this region and to the Q'eqchi' people, who rely on it for drinking water, to wash their clothes and to fish. The river is sacred to the Q'eqchi' as the place of Mayan spiritual practices.



Nobody was consulted, therefore, those projects are illegal. What we, the communities, want is that they leave our river alone. That they suspend those projects. [...] That river is going to end up massacred. These people are going to end up with no water.

Bernardo Caal Xol, Q'eqchi' Community Leader.⁹⁹



Summary^{100,101}

In 2011 CMI subcontracted Grupo COBRA for the construction of a hydroelectric project in Alta Verapaz. The project has **ravaged the surrounding environment and way of life of the Q'eqchi' people**. Grupo COBRA did not carry out a comprehensive risk and impact assessment to identify and assess the cumulative environmental, social and human rights risks of the project. Neither the government nor the company consulted the local indigenous community prior to or during implementation. By 2016 the river was being exploited by 15 different hydroelectric projects,¹⁰² further destroying forests and preventing indigenous communities from accessing their main source of water.¹⁰³

Detail¹⁰⁴

In 2011, CMI contracted Grupo COBRA for the construction of three phases of the RENACE project, the largest hydroelectric complex in Central America, on the Cahabón River in Alta Verapaz, Guatemala. **Local Q'eqchi' communities were consulted by neither the government or the company**, violating their right to Free, Prior and Informed Consent (FPIC), as recognised in international standards.¹⁰⁵

When Grupo COBRA started work, they put up towering fences and set opening hours and points of entry to the river,¹⁰⁶ **restricting the Q'eqchi' people's access to this vital resource**.^{107,108} These restrictions had serious effects on the cultural heritage of the Q'eqchi', due to the river's sacred status in the community. Construction also had an environmental impact as it led to **significant changes in the course of the river, leading to the potential flooding of naturally protected areas**.¹⁰⁹ The NGO Alianza por la Solidaridad reports that while Grupo COBRA did carry out some environmental impact assessments, they did not undertake a comprehensive assessment to consider the cumulative impact, including on human rights, of the hydroelectric complex.

Alta Verapaz, one of the poorest regions in Guatemala, also has one of the highest number of **attacks against human rights defenders in the country**.^{110,111}

Communities and organisations that opposed this and other similar projects have been threatened, defamed and criminalised.¹¹² Q'eqchi' leader Bernardo Caal was imprisoned after defending the Cahabón River against another hydroelectric project.^{113,114}

In November 2017, Alianza por la Solidaridad filed a complaint against Grupo COBRA with the Spanish OECD National Contact Point (NCP). The NCP concluded that **the company, in its role as contractor, was not exempt from carrying out due diligence**, and that prevention and mitigation of the impacts of its business activities was the company's responsibility.¹¹⁵

What if

Under a mandatory EU human rights and environmental due diligence law, Grupo COBRA would be obliged to seek ways to ensure respect for internationally recognised human rights and environmental standards in its global value chain.

- ✓ Grupo COBRA would be obliged to carry out risk-based due diligence to identify, prevent, cease and mitigate the human rights and environmental impacts of its operations, notably with regard to indigenous rights, to **use its leverage towards local partners for them to mitigate the identified human rights and environmental abuses, and to take action in support of local communities**. This would mean the company would have had to identify and mitigate the impact on the Q'eqchi' people of restricting access to the river.
- ✓ The company would have had to **ensure respect of the right to Free, Prior and Informed Consent, and cease construction activities until consent was obtained** in line with the standards set out in the UN Declaration on the Rights of Indigenous Peoples.
- ✓ The Q'eqchi' community and their representatives could challenge Grupo COBRA's alleged failure to ensure respect of their rights before the Spanish judicial and administrative authorities. Grupo COBRA could be held **liable for harm arising from human rights and environmental abuses as a result of its failure to conduct adequate due diligence**, if allegations were proven.



Locals look at the hydroelectric complex built along the Cahabon river.

Image by Pedro Armestre/Alianza por la Solidaridad

Ferrovial: the Spanish multinational profiting from Australia's abuse of refugees

As reported by Amnesty International¹¹⁶ and the Human Rights Law Centre,¹¹⁷ since 2012 Australia has pursued a deliberate policy of refugee and asylum seeker deterrence by indefinitely warehousing them in offshore detention centres (ODCs). Australia's offshore detention regime has been repeatedly condemned by human rights bodies, medical experts and the international community as breaching fundamental human rights.

At the ODC on the tiny island of Nauru, there have been **repeated allegations of sexual assaults on women and children held there**, in many cases with the direct involvement of guards employed by Wilson Security, the subcontractor providing security services. The majority have never been criminally prosecuted. There have been **allegations of systematic downgrading of complaints by the companies, and of contractors being paid to keep silent**.

Broadspectrum, an Australian services and infrastructure company, was the leading private contractor on Nauru from September 2012 to October 2017. In May 2016, it was acquired by **Spanish multinational Ferrovial**. Ferrovial faced strong criticism for its links to this system.¹¹⁸ After a prolonged public campaign against them, both Wilson Security and Ferrovial stated that they would not seek to renew their contracts with the Australian government.

Under a mandatory EU law, Ferrovial would have been obliged to seek ways to prevent and mitigate the human rights impacts linked to its business in Australia. In fact, it is common practice to conduct corporate due diligence prior to the acquisition of a business to identify and assess the risks of the potential acquiree. Such a process should have comprised **effective human rights due diligence which would have revealed the gross abuses that had long been denounced on Nauru**. As soon as the acquisition took place, Ferrovial should have taken all reasonable measures to **put an end to such abuses** and, in particular, to **mitigate and remediate any sexual assaults that took place on Nauru, and to prevent any further assaults, by exerting adequate leverage** towards its local partners.

Case studies

Brazil: Bayer Monsanto and the pesticide poisoning

Sector

Pesticides

Theme

Public health, environment

The company

Bayer Group is a chemical company headquartered in Leverkusen, Germany. Its business includes human and veterinary pharmaceuticals, consumer healthcare products, agricultural chemicals, seeds and biotechnology products. After buying agrochemical giant **Monsanto** for US\$66 billion in 2018, Bayer Group became the largest pesticide and genetically modified seed producer in the world.

2019 revenue€43.5 billion, net profit €4.1 billion.¹¹⁹**Affected communities**

Thousands of people in rural areas of Brazil are poisoned every year by pesticides. These areas are home to the majority of Brazil's 900,000 indigenous people from 305 different ethnic groups.¹²⁰ Brazil has a population of at least 11,000 *quilombos*, an indigenous group of enslaved African descent, many of whom are being directly exposed to Bayer's pesticides.¹²¹

Summary

Every year, thousands of Brazilian farm labourers and people from rural communities become ill or die from contact with highly toxic pesticides. Brazilian biodiversity and wildlife are being severely affected by the toxic spraying of agrochemicals. Bayer is benefiting from Brazil's weak pesticide regulations and contributing to lobbying efforts to approve chemicals that are harmful for people and planet. Meanwhile, the EU continues to import products that have been grown using the same pesticides that were denied approval in many of its member states.

Details

Chemical giant Bayer is a large EU-based transnational company that manufactures highly hazardous pesticides,¹²² some of which have been denied approval in the EU due to health and environmental hazards.^{123,124} Brazil, with more relaxed regulation around agricultural pesticides, has been heavily targeted by Bayer. **The company sells Brazil its herbicides, insecticides and fungicides with active ingredients that are not approved in other countries.** In 2018, more than a third of Brazil's 5,000 million tonnes of agricultural pesticides was glyphosate, a notoriously harmful substance for both humans and the environment.¹²⁵ One of the company's most infamous products, a weed killer containing glyphosate known as *Roundup*, classed by the World Health Organization's International Agency for Research on Cancer as "probably carcinogenic in humans".¹²⁶ Despite being denied approval in dozens of countries, *Roundup* is still the most used herbicide in Brazil.¹²⁷

In January 2019 alone, 474 new pesticide products were approved, dozens of which contain active ingredients classified as "highly hazardous".¹²⁸ Since 2016, more than 1,200 pesticides have been approved, of which 193 contain active ingredients not approved in the EU, and 87 contain glyphosate.¹²⁹ **As of February 2020, Bayer was selling Brazil 17 substances that are not approved in the EU.**¹³⁰ Studies suggest a strong link between politics and agribusiness lobbying, finding Bayer responsible for funding Brazilian agribusiness and employer associations.¹³¹

In response to the allegations above, Bayer argued that some products that have been withdrawn in Europe are used to treat crops, control pests and respond to conditions that don't exist in Europe.

Brazil's citizens are increasingly alarmed by pesticide poisoning. In 2018, Human Rights Watch released a report revealing **plantation workers and rural communities were being poisoned by dangerous pesticides sprayed without precautions near their homes.**¹³² Regular exposure to pesticides is associated with infertility, negative impacts on foetal development, cancer and other serious health conditions.¹³³ Women and children are particularly vulnerable. **About 700 people have died every year in the past decade as a result of direct contact with agrochemicals.**¹³⁴ People are often scared to speak out: in 2010, a rural farmer and anti-pesticide activist was killed after pushing the local government to ban aerial spraying of pesticides.

It is not just farm labourers and rural communities who are at risk. **Many of these chemical pesticides persist in the food and water supply chain.**¹³⁵ The Brazilian Health Regulatory Agency found that about one fifth of the food they examined contained residues that either exceeded allowed levels or had unapproved products.¹³⁶ Carbendazim, one of Bayer's pesticides not approved in the EU, appeared in 21 per cent of food samples analysed.¹³⁷ Bayer claims to be voluntarily withdrawing products based on carbendazim in Brazil. As for drinking water, 27 agrochemicals were found in the water of one in every four Brazilian cities.¹³⁸

And then there are the devastating effects on Brazil's diverse wildlife. **Exposure to the pesticides produced by Bayer is harming millions of bees, tapirs and other wildlife.**¹³⁹ Animals are being exposed to toxic substances via direct contact with contaminated vegetation, soil and water, likely due to carelessly applied pesticides. Aldicarb, an insecticide produced by Bayer and prohibited in Brazil since 2012, is one of the most toxic substances to be found in tapirs' stomachs.¹⁴⁰

When given the right to reply, Bayer responded by stating its general commitment to only sell products that meet the company's and the local market's safety standards, to continue to train farmers around the world, and to increase the availability of personal protective equipment.

Social movements and environmental organisations in Brasília promote a march and public act to launch the Permanent Campaign against Pesticides and for Life, and protest against changes to the Forest Code (7 April 2011).

Image by Marcello Casal Jr/Agência Brasil



What if

If there were an EU-wide human rights and environmental due diligence law, Bayer would be obliged to ensure respect for internationally recognised human and labour rights and environmental standards in its global value chain, and **stop contributing to the poisoning of farm labourers and rural communities and their ecosystems through hazardous products that have been found unfit for sale in countries where adequate standards apply.**

- ✓ Bayer would be obliged to carry out risk-based due diligence to identify, prevent, cease and mitigate the human rights and environmental impacts of its products in Brazil and elsewhere, notably with regard to their pesticides.
- ✓ Bayer would have to **provide protective equipment and ensure appropriate labelling with information on safety risks and proper usage of pesticides.**
- ✓ Bayer would have to consider the **withdrawal of highly hazardous products**, the safe use of which cannot be guaranteed.
- ✓ Under effective EU-wide due diligence laws, victims of Bayer pesticides and their representatives could challenge Bayer before the German judicial and administrative authorities. Bayer could be held **liable for harm arising from human rights and environmental abuses** as a result of its failure to conduct adequate due diligence if proven.

Case studies

China: LEGO and Simba Dickie's links to worker exploitation

Sector

Toys

Theme

Labour rights, migrant workers, decent living conditions

Company 1

The **LEGO Group** is a Danish toy company owned by the Christiansen family, one of the wealthiest families in Denmark.¹⁴¹ LEGO is the most popular and highest value toy brand in the world.^{142,143} The company is supplied by **Dongguan Wing Fai Foam Products Co. Ltd**, a Chinese manufacturer of plastic toys, gifts, shoes and bags. Wing Fai employs 200-300 regular workers.¹⁴⁴

2019 revenue

LEGO Group: €5,159 million,¹⁴⁵ net profit €1.1 billion.

Company 2

The **Simba Dickie Group** is the biggest toy manufacturer in Germany¹⁴⁶ and the fifth biggest toy brand in the world. It is headquartered in Fürth, Germany. It is supplied by **Wah Tung (He Yuan) Toy Manufacturing Co. Ltd.**, based in Heyuan, China. Wah Tung's main products include plastic and electronic toys and accessories. Wah Tung employs approximately 2,000 regular workers.¹⁴⁷

2019 revenue

Simba Dickie Group: €702 million.¹⁴⁸



The line leader said that we needed to meet the quota regardless of how late we had to work or how much overtime we had to do. Workers should be working every second. If the quota was reached but the shift had not yet ended, workers still need to continue doing the task before them.

Undercover investigator, Wah Tung Factory



Affected communities

Workers in China's toy industry produce 75 per cent of the world's toys. But many are subject to long shifts, few breaks and dangerous and unsanitary conditions. Both Dongguan Wing Fai and Wah Tung's factories are located in Guangdong province, a huge industrial agglomeration and China's top manufacturing province. Serious violations of workers' rights were found in both factories.¹⁴⁹

Summary

Labour rights abuses were found in LEGO and Simba Dickie's supply chains in China. Working conditions in their suppliers' factories suggested serious violations of both Chinese labour laws and ILO Conventions.

Detail

Every year, millions of workers toil long hours inside the factories of China's toy industry, manufacturing a massive 75 per cent of the world's toys. In 2018 and 2019 civil society organisations published two reports on the exploitation taking place in Chinese toy factories linked to LEGO and Simba Dickie.¹⁵⁰ The reports revealed **dangerous and precarious living and working conditions**.

The undercover research revealed that employers do not give workers hard copies of their contracts and only verbally inform them of their rights and obligations. During peak production season, workers are made to work 11-hour shifts without rest breaks, six days a week, or to work continuous day shifts with shortened mealtimes. Safety and protection measures are virtually non-existent. **Unless they work overtime, wages do not even cover basic living costs, and with a lack of grievance mechanisms and no independent trade union to join, these conditions are non-negotiable.** If anybody does complain, they risk being made to resign – without being paid the wages owed to them.

Temporary workers fare even worse, with less social insurance cover and reduced leave. The research indicated a **high number of migrant workers in these remote factories**, meaning workers sometimes have no choice but to live in factory dormitories. **Onsite accommodation was described as unsafe, overcrowded, unhygienic and lacking in sanitary facilities.** Pictures taken as part of the investigation show exhausted workers falling asleep at their workstations, in corridors and at mealtimes.¹⁵¹

In response to this report, LEGO stated that, after civil society reports revealed workers' exploitation in the Dongguan Wing Fai factory, the company did an on-site investigation and an annual audit at the site through a third-party auditor, which identified non-conformities with the company's Responsible Business Principles. LEGO states that the supplier remedied those, according to a follow up audit in April 2020. The Simba Dickie Group declined to respond to the Business and Human Rights Resource Centre on the allegations of poor working and living conditions in Wah Tung's factories.¹⁵²

What if

Under a mandatory EU-wide human rights and environmental due diligence law, LEGO and Simba Dickie would be obliged to seek ways to ensure respect for internationally recognised human and labour rights in their global value chains.

- ✓ LEGO and Simba Dickie would be obliged to carry out risk-based due diligence to identify, prevent, cease, mitigate and account for the human rights abuses in their suppliers' factories in China, including by seeking to **ensure that their suppliers meet international labour rights standards, notably with regard to wage and contractual conditions, working time, rest and leave, equality of treatment, decent living conditions and occupational safety and health**. LEGO and Simba Dickie would also be obliged to consult relevant stakeholders, which would support the promotion of freedom of association.
- ✓ The companies would need to assess the drivers of identified human rights risks in their supply chain, and thereby should **assess the impact of their own purchasing practices in driving labour exploitation at supplier levels**. This would include assessing whether suppliers have the financial capacity to comply with human rights and environmental standards, both in workplaces and accommodation.
- ✓ Workers in the Dongguan Wing Fai and Wah Tung factories and their representatives, including local and international trade unions, could challenge LEGO and Simba Dickie's alleged failure to ensure respect of their rights before the Danish and German judicial and administrative authorities respectively. LEGO and Simba Dickie could be held **liable for harm arising from human rights and labour abuses perpetrated by their Chinese suppliers** that they failed to prevent, if allegations were proven.



Exhausted workers sleeping at their work stations.

Image by China Labor Watch, Solidar Suisse

Case studies

Bangladesh: VEON's failure to protect workers' rights

Sector

Telecommunications

Theme

Freedom of association, labour rights

The companies

VEON Ltd. is a multinational telecommunications company headquartered in Amsterdam. It operates across Asia, Africa and Europe. With 212 million mobile subscribers,¹⁵³ VEON is among the top 10 world's largest terrestrial mobile phone network operators.¹⁵⁴ Its daughter company, **Banglalink Digital Communications Ltd.**, is headquartered in Dhaka, Bangladesh. Banglalink is one of the leading digital providers in Bangladesh. It is a fully owned company of Telecom Ventures Ltd, a Global Telecom Holding subsidiary, which in turn has more than half its shares owned by VEON.¹⁵⁵

2019 revenue

VEON: US\$8,863 million (€7,915 million approx.), profit US\$683 million (€610 million approx.).¹⁵⁶

Affected communities

Thousands of workers are employed in the growing telecommunications sector in Bangladesh. Anti-union behaviour is widespread and there is strong evidence of large telecommunications companies violating the right to freedom of association, with workers and union representatives subject to threats, harassment or unlawful dismissals. The Bangladeshi government has likewise been accused of failing to protect workers' rights to organise in this 'white collar' sector.¹⁵⁷

Summary

VEON has not exercised leverage over its daughter company Banglalink to ensure Banglalink respects the freedom of association of its employees. VEON refused to enter into dialogue after workers claimed they had been harassed and their right to form a union suppressed.

Detail¹⁵⁸

In February 2016, Banglalink employees attempted to register the Banglalink Employees' Union (BLEU).¹⁵⁹ As required by Bangladeshi law, they submitted an application to the Labour Director and notified their employer about it.

According to UNI-Global, the global union federation for skills and services, **not only did Banglalink speak out immediately against the union, but also engaged in a prolonged, aggressive union busting strategy, starting with the dismissal of a union leader only a few days after the attempt to register BLEU.**

Union members and employees gathered at Banglalink offices to protest against this dismissal, which was used as a justification to **dismiss four other prominent members of BLEU** in September 2016. Banglalink issued threats towards union members and employees. The company even attempted to force activists out by **offering a Voluntary Separation Scheme to departments where union members worked and threatening mandatory job cuts** if employees refused to leave voluntarily.

Some workers resigned due to pressure from management and the hostile working environment, and by November 2016 the company had managed to force out eight of 11 members of the union executive committee, including the president and the general secretary.

In the meantime, **the Labour Director rejected BLEU's application for registration, allegedly due to a mismatch in the signatures** – a tactic to deny union registration often reported in the country – and lack of representativeness, despite the fact that BLEU claimed to represent about 35 per cent of the company's employees, above the 30 per cent legal threshold.¹⁶⁰

The union filed a case in the Labour Court against the refusal of registration. Surprisingly, Banglalink promptly tried to influence the procedure by filing a petition to join the case as a defendant to fight against the registration.

These abuses led UNI-Global, after failing to receive a response from either Banglalink or VEON, to submit a Specific Instance, on behalf of the local union, to the Dutch National Contact Point (NCP), regarding an alleged violation of the OECD Guidelines for Multinational Enterprises. **VEON declined to engage in meaningful dialogue** with UNI-Global in the context of the NCP procedure, as observed by the NCP itself.

The NCP also confirmed¹⁶¹ that there had been **no formalised dialogue** of Banglalink with its workers and their representatives, and that VEON had not been acting in line with what can be expected from it under due diligence standards, and laid out a number of concrete recommendations for the company. One day before the NCP report was published Banglalink workers won the registration for their union from the Bangladeshi government.¹⁶²

In response to this report, VEON denied any wrongdoing and stated that it is studying the findings of the NCP report and assessing next steps.¹⁶³

Disregard for international labour standards

Bangladesh has ratified International Labour Organisation (ILO) Convention 87 on the Freedom of Association and Protection of the Right to Organise, which outlines the right to establish and join union organisations “without previous authorisation”. Despite ratifying the convention, under Bangladeshi law, **as long as a union has not been registered before, it cannot exercise any rights until its registration has been accepted**. Registration is complicated and the number of rejected applications is high, with rejections too often coming without explanation.¹⁶⁴

VEON should have looked at ways to exercise leverage to seek to ensure that its suppliers were meeting international labour rights standards on freedom of association, by working to prevent and mitigate the serious labour rights abuses directly committed by its local subsidiary, and to help overcome those by the public administration.

As stated in the OECD Guidelines, where domestic laws and regulations conflict with due diligence principles and standards, “enterprises should seek ways to honour such principles and standards to the fullest extent which does not place them in violation of domestic law”.

What if

Under EU-wide mandatory human rights and environmental due diligence legislation, VEON would be obliged to seek ways to ensure respect for internationally recognised human and labour rights in its operations in Bangladesh, including by identifying, preventing and mitigating serious violations of the fundamental right to freedom of association through anti-union actions.

- ✓ Had such legislation been in place, VEON would have been obliged to proactively on a continuous basis **exercise leverage to seek to ensure that its daughter company Banglalink promoted freedom of association and respected its employees’ rights to organise and bargain collectively** in line with international standards. This would have entailed Banglalink recognising BLEU and engaging in social dialogue with it.
- ✓ Under an effective mandatory human rights due diligence law, **trade unions** (either directly or through partner unions or transnational union federations) **could challenge VEON regarding their rights** before the Dutch judicial and administrative authorities.
- ✓ VEON could be held **liable for harm arising from human rights and labour abuses perpetrated by its Bangladeshi subsidiary**, if proven to have been perpetrated, unless it could prove that it took all reasonable measures to seek to ensure its subsidiaries respected workers’ rights, including freedom of association.

2016 May Day Rally organised by Banglalink Employees Union.

Image by Banglalink Employees Union



Recommendations

Behind the PR-driven words and empty excuses of well-known companies, people's lives and livelihoods in countries across the world are being devastated, with the scales of justice heavily tipped against them. The stories in this report lay bare the need for strong EU-wide mandatory human rights and environmental due diligence legislation, which would oblige companies to identify, prevent, cease, mitigate and remediate human rights abuses and environmental harm in their global business operations and value chains, and ensure appropriate enforcement and access to remedy mechanisms.

So far, reliance on voluntary and incentive-driven measures to promote business respect for human rights has proven absolutely insufficient.¹⁶⁵

In February 2020, the European Commission released a study on due diligence regulatory options that unequivocally confirmed that voluntary measures are failing, and that there is urgent need for regulatory action at EU level to protect workers, communities and the environment across the globe from systematic, ongoing and worsening human rights and environmental destruction.

The acknowledgement of the need for such rules has never stopped growing, with increasing numbers of national and international institutions, civil society organisations, trade unions and businesses calling for regulatory action.

ECCJ and Anti-Slavery International welcome the European Commissioner for Justice's commitment to present a legislative initiative in 2021.

As shown by the case studies in this report, in order to be effective, mandatory human rights and environmental due diligence legislation must:

- ✓ Apply to all businesses domiciled in the EU or operating in the internal market, regardless of sector or size.
- ✓ Cover all internationally recognised human rights, labour and environmental standards.

- ✓ Require businesses to ensure respect of such rights and standards in their global operations and value chains.
- ✓ Require businesses to exercise adequate due diligence to identify, prevent, cease, mitigate and report corporate abuse throughout their global value chains.
- ✓ Provide for dissuasive sanctions for breach of the due diligence duty.
- ✓ Provide for civil liability of businesses for harm arising from human rights or environmental abuse in their global value chains.
- ✓ Ensure a fair distribution of the burden of proof, which businesses must bear where claimants have provided reasonable evidence to support their action.
- ✓ Ensure a sufficient statute of limitations, considering the particularities of transnational legal action.
- ✓ Override any other legislation otherwise applicable under international law.

The devastating effects on workers, communities and businesses from the Covid-19 crisis have exposed the need for new approaches to economic globalisation. Global supply chains have been exposed as inherently fragile and vulnerable. Mandatory human rights and environmental due diligence, with the provisions above, is a fundamental condition to prevent and mitigate future crises.

We call upon the European Union and its member states to urgently introduce 'due diligence' legislation with a strong liability and enforcement regime, which is fit for purpose to hold companies accountable, prevent and mitigate further corporate abuse, enable access to justice for victims, and, ultimately, build an equitable world where people and planet are put before profit.

Notes

- 1 Ferrero, Key Figures, <https://www.ferrero.com/the-ferrero-group/business/key-figures>
- 2 Initiative Lieferkettengesetz, <https://lieferkettengesetz.de/fallbeispiel/kinderarbeit-in-westafrika/>
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European Coalition
for Corporate Justice

ECCJ Secretariat
Rue d'Edimbourg 26
1050 Brussels
Belgium

email: claudia.saller@corporatejustice.org
website: corporatejustice.org
Follow us: @ECCJcorpjust



Anti-Slavery International
Thomas Clarkson House
The Stableyard
Broomgrove Road
London SW9 9TL
United Kingdom

tel: +44 (0)20 7501 8920
email: euadviser@antislavery.org
website: www.antislavery.org

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