



## CHILDREN'S RIGHTS AND HUMAN RIGHTS DUE DILIGENCE

How the Federal Government and Federal Parliament should protect children's rights in global supply chains



## IMPRINT

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## Introduction

Children's rights violations along global production and value chains are direct consequences of corporate behavior. These violations are often irreversible for the affected children, who then suffer from them throughout their lives. However, beyond the widely discussed violation of child labor, further violations of children's rights as a result of corporate behavior have hardly been addressed in the debate on the planned due diligence law.

Currently, the COVID-19 pandemic shows how unstable and vulnerable global supply chains are and how important it is that governments and companies protect human rights along global supply chains. It is estimated that an additional 86 million children could fall into poverty by the end of the year due to the COVID-19 crisis.<sup>1</sup> The economic and social crisis triggered by the pandemic has a serious impact on workers in production countries. They are now struggling with cuts to their wages, or even the complete loss of income—and they are often not able to rely on social protection mechanisms. International companies, including many European companies, have cancelled orders of finished goods or goods already in the process of being made.<sup>2</sup> Lost household incomes also have a direct impact on children.<sup>3</sup> Past epidemics such as the Ebola crisis have shown that the economic pressure on families associated with a health crisis often leads to increased poverty, school drop-outs, dangerous child labor and sexual exploitation of children.<sup>4</sup>

Against this background, it is all the more important that the German government legally requires companies to assume their responsibility

to respect human rights in their business activities and global supply chains. The rights of children must play a central role in this respect due to their special need for protection.

The United Nations Guiding Principles on Business and Human Rights are considered the most important international standard for corporate responsibility with regard to human rights.<sup>5</sup> They define the duty of states and the responsibility of companies and list procedures, guidelines and processes that are necessary for companies to effectively implement their obligations in terms of human rights due diligence.<sup>6</sup> The UN Convention on the Rights of the Child, the ILO Core Labor Standards and the 2030 Agenda, which aim for decent work for all and the abolition of exploitative child labor, are further foundations for the protection of children's rights in corporate operations and global supply chains.<sup>7</sup> In fact, almost all of the Sustainable Development Goals relate directly to one or more of the rights enshrined in the UN Convention on the Rights of the Child.<sup>8</sup>

Germany established a national, voluntary framework for implementing the UN Guiding Principles. The National Action Plan for Business and Human Rights (NAP)<sup>9</sup> defines both the state's obligation to protect human rights and the due diligence obligations. The result of the NAP monitoring is clear: voluntary due diligence measures are not enough.<sup>10</sup> Therefore it is now all the more important and urgent that the German government fulfill its obligation to protect children's rights and provide a binding framework for action for companies with international operations and supply chains.

<sup>1</sup> Save the Children and UNICEF (2020): <https://www.unicef.de/informieren/aktuelles/presse/2020/covid-19-kinderarmut/219494>.

<sup>2</sup> Human Rights Watch: "Brands Abandon Asia Workers in Pandemic," April 1, 2020, <https://www.hrw.org/news/2020/04/01/brands-abandon-asia-workers-pandemic>.

<sup>3</sup> ILO and UNICEF (2020): "COVID-19 and Child Labor: a time of crisis, a time to act," <https://www.unicef.de/blob/220554/763fcd8bfaf8c2f6eb657a0a375feef1a/covid-19-and-child-labour-publication-data.pdf>.

<sup>4</sup> Plan International (2015): "Ebola: Beyond the Health Emergency," available online at: <https://plan-international.org/publications/ebola-beyond-health%C2%A0emergency>, last accessed on June 5, 2020.

<sup>5</sup> UN (2011): "Guiding Principles on Business and Human Rights," available at: [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), last accessed on June 4, 2020.

<sup>6</sup> UNICEF and Save the Children published recommendations for the implementation of children's rights. UNICEF/ Save the Children (2012): "Children's Rights and Business Principles," <https://resourcecentre.savethechildren.net/node/5717/pdf/5717.pdf>.

<sup>7</sup> With regard to children's rights, this relates particularly to the ILO Minimum Age Convention, 1973 (No. 138) and No. 182, which calls for the prohibition and immediate action for the elimination of the worst forms of child labor (1999), in German: <https://www.ilo.org/berlin/arbeits-und-standards/kernarbeitsnormen/lang--de/index.htm>. The 2030 Agenda comprises 17 global sustainable development goals, available in German at: <https://17ziele.de/>.

<sup>8</sup> UNICEF, the global Sustainable Development Goals and the United Nations Convention on the Rights of the Child, <https://www.unicef.de/blob/185336/75bf24108c857e3d6fc2d5336e42ef6c/sdg-krk-mapping-pdf-data.pdf>.

<sup>9</sup> German Foreign Office (2017): National Action Plan for Business and Human Rights (NAP), available at: <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/-/227580>, last revised on June 4, 2020.

<sup>10</sup> German Foreign Office (2020): NAP Monitoring: 2020 result forecast for survey, <https://www.auswaertiges-amt.de/blob/2375460/543e6de4d80a95b8e26186ca4da44f27/nap-monitoring-ergebnisindikation-data.pdf>.

## **The Federal Government and the German Parliament (Bundestag) should:**

- **Submit and adopt an effective due diligence law in this legislative period that requires companies to take children's rights into account in all areas of human rights and environmental due diligence. In addition, as children's rights and other human rights are indivisible and interdependent, companies must respect the rights of all people along their supply chains.**
  
- **The due diligence law must ensure that:**
  - **Companies respect the rights enshrined in the UN Convention on the Rights of the Child in their business activities and relationships and commit to them in their policy statements.**
  - **Companies systematically survey and evaluate the risks and consequences of their business activities and relationships with regard to children's rights.**
  - **Companies are required to report publicly on identified risks and measures taken, including explicit indicators of identified risks to the rights of children, and to ensure access to redress and compensation in the event of human rights violations.**
  - **Companies are required to take appropriate measures to prevent negative impacts and consequences of their business activities, including in supply chains, and to provide redress to those affected in the event of damage.**
  - **Companies create and design complaints mechanisms in such a way that they are accessible to young workers in particular.**
  
- **To ensure the effectiveness of the law we ask that:**
  - **A business and human rights commissioner (or similar function) is appointed whose mandate also includes the full protection of children's rights in global supply chains beyond the prohibition of child labor.**
  - **Close consultation with and participation of children and child rights actors in any legislative process, as well as in the implementation of measures, is ensured.**
  - **The serious barriers that impede children and their representatives from taking legal action and using civil law remedies are recognized and dismantled, including through cooperation with children and child rights actors in the respective countries.**
  
- **We also call on the German government to promote a binding and cross-sectoral EU regulation on the obligations of companies in terms of human rights and environmental due diligence within the framework of the 2020 EU Council Presidency and beyond, including the respect and protection of children's rights.**

## Children's rights in global business activities and supply chains

Adopted in 1989, the United Nations Convention on the Rights of the Child (UNCRC) establishes that children have their own inalienable rights.<sup>11</sup> The Convention focuses on the principle of the best interests of the child (Art. 3 of the UNCRC): The best interests of the child must be given priority in all measures affecting children. The UNCRC is the most widely ratified UN human rights convention in the world. It obliges states to protect and promote the rights of children. This obligation also applies to the impact of corporate action on children's rights.<sup>12</sup>

Children are particularly vulnerable and violations of children's rights are commonplace in global supply chains. Child rights abuses affect all areas of life and have long-term effects. Accordingly, respecting children's rights should be central to all corporate activities. However, the current NAP addresses the specific rights of children only sporadically and exclusively in relation to child labor as one of the violations of children's rights. The NAP monitoring, which examines the implementation of the NAP, similarly does not monitor with regards to children's rights as a whole. This goes to show that the rights of children are not sufficiently considered in current debates and processes.

### Child labor

Child labor is probably the most widely acknowledged violation of children's rights in global business activities and supply chains.<sup>1</sup> Worldwide 152 million children aged 5 to 17 work under conditions that deprive them of their childhood, dignity and development potential and that have a negative impact on their physical and mental development, according to estimates by the International Labor Organization (ILO). About half of them (73 million) are forced to work under particularly exploitative and life-threatening conditions.<sup>2</sup> Boys are estimated to be affected by child labor slightly more often (88 million) than girls (64 million). However, girls are often employed in less visible jobs, such as domestic help or home-based work, and are more at risk of sexualized violence or exploitation.

This kind of child labor is sometimes connected to global business conduct and supply chains, even though it does not appear that way at first glance.

Banning child labor may lead to a situation where children are no longer working, for instance, in a mine or in a factory. However, if, as an alternative, they have to work 14 hours a day as domestic workers (or similar) because the family's earnings are below minimum subsistence level, the mine or factory cannot be accused of a lack of compliance, but children's rights are still being violated.

The exact number of children working directly in international supply chains or business activities is difficult to determine.<sup>3</sup> However, the ILO's figures on child labor give an important indication of the global extent of the problem. The causes of child labor are complex (see, e.g., the situation in the cocoa sector in West Africa, p. 10).

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*"Some children work because they need the money; some because they have no choice; some because they want to support their families; some because it is common in the local culture and some simply because they like it. On all continents, in all countries and in all cities, the experiences of working children are very different." (from a speech on the occasion of the 30th anniversary of the Convention on the Rights of the Child by Katherine, 14 years from Peru, and Jed, 17 years from the Philippines)<sup>4</sup>*

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As the causes of child labor are complex and multifaceted, solutions must be designed with due caution and ensure that they do not lead to further violations of children's rights. The implementation of a ban on child labor in factories, for example, remains ineffective from a child rights perspective if no alternatives are available for the affected children and young workers, such as school or vocational training.

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<sup>11</sup> For the purposes of the Convention on the Rights of the Child, a child is any human being below the age of eighteen years unless the legal age is younger under the law applicable to the child.

<sup>12</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en).

When children and adolescents have to work or help secure the family income, there is a high risk that children will be forced into other even less regulated and informal labor markets and their situation will deteriorate further. In order to prevent this, in addition to education and training opportunities, decent labor opportunities can be created for young people of legal working age that do not infringe on children's rights.

Effective protection of children's rights in supply chains requires adequate prevention and remediation mechanisms that promote the best interests and well-being of the child. The development of such mechanisms requires building competencies, capacities and knowledge along the supply chain as well as the appropriate systems, processes and structures that are focused on the wellbeing of children, such as recruitment, procurement, contracts, or the handling of suspected and confirmed cases of child labor.

Decent working conditions and living wages for parents and guardians, but also equal access to free, inclusive and high-quality education and the strengthening of social security systems are equally important.

1) Child labor is any kind of work that deprives children of their childhood, potential or dignity or that impairs their physical or mental development. Child labor is defined by the ILO Convention No. 138 (Minimum Age Convention, 1973), No. 182 (Worst Forms of Child Labor Convention, 1999) and the UNCRC. Other work that does not fall into these categories can be performed by children without any problems. They then do not fall under the term child labor.

2) ILO (2017): "Global estimates of child labor results and trends, 2012–2016," available online at: [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575499.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf), last accessed on May 5, 2020.

3) ILO, OECD, IOM, UNICEF (2019): "Ending Child Labor, Forced Labor and Human Trafficking in Global Supply Chains."

4) Kindernothilfe and terre des hommes (2019) Listen to our Voices and Respect our Rights; [https://www.time-to-talk.info/wp-content/uploads/2018/05/T2T\\_Report\\_EN.pdf](https://www.time-to-talk.info/wp-content/uploads/2018/05/T2T_Report_EN.pdf) und <https://www.time-to-talk.info/en/2019/12/02/t2t-delegates-hold-speech-on-childrens-work/>

## Violations of children's rights in global business activities and supply chains

Children suffer from a variety of different rights violations in the context of global business activities and supply chains. If parents are not paid a living wage, it directly impacts their children; for example, when parents cannot pay for health services or education or when children suffer from persistent malnutrition.

Other labor law violations affecting adults, such as forced overtime, lack of safety precautions, or insufficient opportunities to breast-feed infants, often have a direct impact on the wellbeing of their children (see, e.g., in the garment and shoe industry, p. 9).<sup>13</sup>

Often, the activities of agricultural or mining companies can result in forced resettlement and the loss of basic means of subsistence as well as the ability of entire families to earn a living. This makes it more difficult to overcome poverty and deprives children of their future prospects. The rights of girls and boys to health, an adequate, high-quality education and appropriate living conditions are directly related to the access to and the possibility of using land.<sup>14</sup> Environmental pollution and pollution from economic activities often affect children more than adults; proportionately, their bodies absorb larger amounts of pollutants, and they are still developing and are thus subject to greater stress (see, e.g., in Brazil, p. 8).<sup>15</sup> In addition, environmentally harmful production processes exacerbate climate change — the effects of which also significantly affect children, both directly and indirectly.<sup>16</sup>

In armed conflicts, children repeatedly become victims of cruel human rights violations which sometimes involves being recruited in armed forces or armed groups. In some crisis areas, such groups can be financed through economic activities such as mining and trading of raw materials.<sup>17</sup>

These and other violations of children's rights throughout supply chains can only be addressed with a holistic approach. When the wellbeing of the child is the central focus and the situation is assessed from multiple perspectives, effective preventive measures and remedies can be developed to protect children's rights along global operations and supply chains.

<sup>13</sup> Article One and UNICEF (2020): "Children's Rights in the Garment and Footwear Supply Chain," [https://www.unicef.org/sites/default/files/2020-06/CHILDR~1\\_0.PDF](https://www.unicef.org/sites/default/files/2020-06/CHILDR~1_0.PDF).

UNICEF (2016): "Children's Rights in the Cocoa-Growing Communities of Côte d'Ivoire," <https://www.unicef.org/csr/css/synthesis-report-children-rights-cocoa-communities-en.pdf>.

UNICEF (2016): "Palm Oil and Children in Indonesia: Exploring the Sector's Impact on Children's Rights."

<sup>14</sup> Fian International (2017): "Land Grabbing and Human Rights: The Role of EU Actors Abroad," [https://www.tni.org/files/publication-downloads/web\\_eng.pdf](https://www.tni.org/files/publication-downloads/web_eng.pdf).

<sup>15</sup> UNICEF (2018): "Understanding the Impacts of Pesticides on Children: A Discussion Paper."

<sup>16</sup> <https://undocs.org/en/A/HRC/35/13>.

<sup>17</sup> PowerShift (2015) (in German): "Verantwortung entlang der Lieferkette im Rohstoffsektor," <https://germanwatch.org/sites/germanwatch.org/files/publication/11788.pdf>.

## Impacts of the COVID-19 pandemic

The COVID-19 pandemic clearly demonstrates that resilience is key in times of crisis—not only in supply chains, but also with regard to children, their families, the broader social context as well as of social security systems. After all, the COVID-19 crisis is also a children’s rights crisis. Millions of people have lost their jobs in global supply chains and slipped into poverty; it is estimated that 86 million more children could be pushed into poverty as a result of the pandemic by the end of 2020. Economic hardship is one of the main risk factors for exploitative child labor, and there are fears that due to the effects of the pandemic, more children will have to work, and under increasingly dangerous conditions.<sup>18</sup> 1.19 billion girls and boys around the world have not attended school for months due to the pandemic and will face significant barriers in returning to school in many countries.<sup>19</sup>

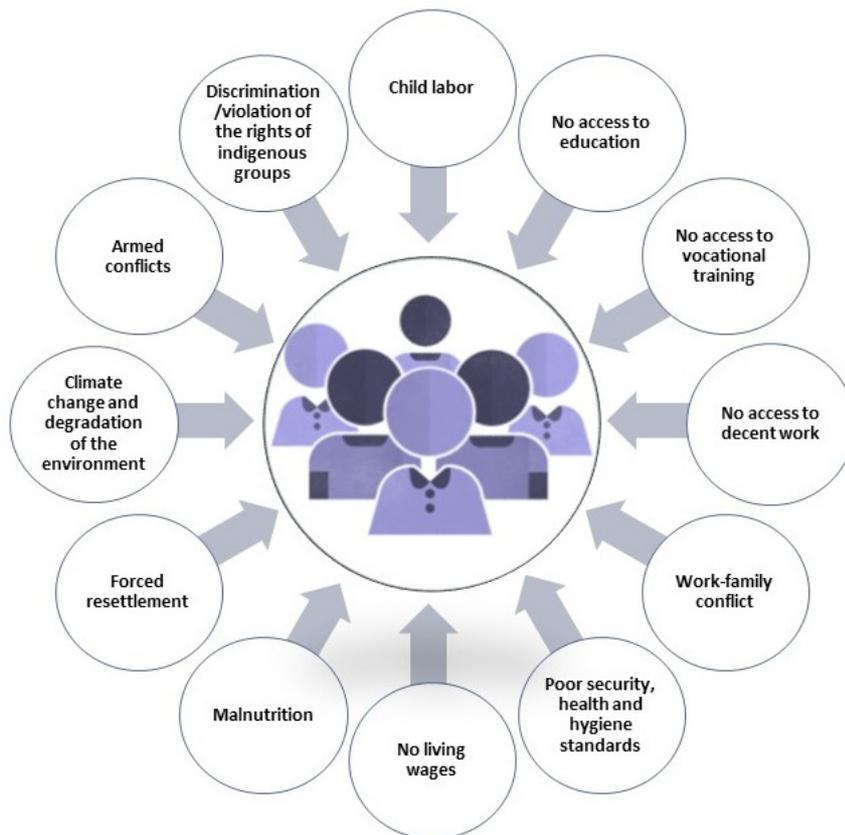
Therefore, there is a danger that child labor, sexual exploitation and child marriage will increase dramatically. This effect has already been seen in other health crises, such as the outbreak of Ebola.<sup>20</sup> It is also to be feared that the economic and social rights of children, such as the right to healthcare, to sufficient food, to clean water and to housing will be further restricted in the future.

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*“The most difficult part during COVID-19 was that many things came to a standstill. I stopped going to school and spent my time at home. Before the outbreak I loved to play soccer with friends. I also helped my family to sell charcoal. When COVID-19 ends, I want to work with my parents to earn money.” (from the report of an eleven-year-old boy, street hawker in Zambia)<sup>21</sup>*

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## Violations of children’s rights in global business activities and supply chains



<sup>18</sup> ILO and UNICEF (2020): “COVID-19 and Child Labor: a time of crisis, a time to act,” <https://www.unicef.de/blob/220554/763fcd8bfaf8c2f6eb657a0a375feef1a/covid-19-and-child-labour-publication-data.pdf>.

<sup>19</sup> UNESCO figures, available at: <https://en.unesco.org/covid19/education-response>, last accessed on June 4, 2020; Human Rights Watch, “Covid-19 and Children’s Rights,” April 9, 2020, <https://www.hrw.org/news/2020/04/09/covid-19-and-childrens-rights>.

<sup>20</sup> Plan International (2015): “Ebola: Beyond the Health Emergency,” available online at: <https://plan-international.org/publications/ebola-beyond-health%2%A0emergency>, last accessed on June 5, 2020.

<sup>21</sup> Kindernothilfe (2020) (in German): “Die Auswirkungen der COVID-19 Pandemie auf das Leben arbeitender Kinder,” [https://www.kindernothilfe.de/-/media/knh/04-presse/dokumente-und-downloads/informationen-zu-mp/kindernothilfe\\_befragung-arbeitende-kinder-in-der-corona-pandemie.ashx](https://www.kindernothilfe.de/-/media/knh/04-presse/dokumente-und-downloads/informationen-zu-mp/kindernothilfe_befragung-arbeitende-kinder-in-der-corona-pandemie.ashx).

## CASE STUDY

### Children's rights in gold supply chains

Children are exposed to extreme dangers while working in small-scale gold mining. They are injured and killed in mining accidents, develop respiratory diseases and suffer mercury poisoning. Mercury is used to recover gold and can lead to brain damage and other serious and irreversible health conditions. Children living near mines are also exposed to this heavy metal. Such violations of children's rights in the mining of raw materials take place worldwide, for example, in small-scale gold mining in [Mali](#), [Ghana](#), [Tanzania](#) and the [Philippines](#).

Gold trading companies buy the raw material again and again without observing their human rights due diligence and sell it to international gold refineries. International [gold refineries](#) and [jewelry companies](#) rarely fulfill their due diligence obligations along the supply chain.

Gold from mines in which children work under exploitative conditions and suffer poisoning in the surrounding area is sold on international raw material markets, which supply gold for the electronics sector, jewelry and banks.

But there are also companies that are taking steps in the right direction. For example, a Swiss jeweler obtains traceable gold from small mines that have been certified according to the comparatively strict Fairmined standard—a standard that aims to strengthen the rights of artisanal gold mining. Several [small jewelers](#) in Germany also obtain their gold from Fairmined certified mines. All companies should be legally obliged to comply with obligations in terms of human rights due diligence to ensure that such comparatively higher standards do not represent a competitive disadvantage.

A boy and a girl work in a small gold mine in Odahu, Amansie West District, Ghana.



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## CASE STUDY

### Pesticide poisoning in Brazil

Children have suffered [acute poisoning](#) at various locations in Brazil due to the use of pesticides in agriculture. Around [half](#) of the pesticides used in Brazil are supplied by foreign companies, including German pesticide manufacturers. Some German companies have [exported](#) pesticides that are banned in the EU.

Pesticides sprayed on large plantations enter classrooms of schools and homes throughout rural Brazil. Children have described cases of acute poisoning, including headaches, nausea and vomiting. In some cases, children had to be taken to hospital immediately.

The symptoms occur when pesticides sprayed from tractors or airplanes drift during application, or when pesticides evaporate and are blown across nearby areas in the days after spraying.

Children are much more [vulnerable](#) to the harmful effects of pesticides than adults. When children inhale pesticides sprayed from airplanes, they inhale about twice the amount as the average adult. Additionally, because of the relatively small size of their livers and kidneys, the same amount of pesticides is about ten times more toxic to children than to adults.



*Jovana, a woman, in her mid-twenties, with her daughter in the Brazilian state of Minas Gerais. She reports that she and her children suffered from headaches, nausea, dizziness and vomiting when planes sprayed pesticides over her village. Children suffer particularly from pesticide poisoning because their bodies are still developing.*

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## CASE STUDY

### Children's rights in the textile and garment industry



© UNICEF/UN07003/Lynch

Umeh Saleha, 40, checks in at the textile factory. It is before 8 a.m. and her shift will last between 8 and 12 hours. "I would like to have more time for my children, but what can I do? That's the way things are. I have to work hard. I don't have any other options," she says.

It is estimated that the impact of textile supply chains affect more than [100 million children](#) globally: as workers, children of employees, and members of communities around factories and farms. Parents' [living and working conditions](#) in particular have a direct impact on children's rights. Family-friendly working conditions, such as adequate maternity protection, breastfeeding support in the workplace, access to adequate childcare during working hours and appropriate working hours and wages have an impact on children's health, education and level of protection.

Of the more than three million employees in the textile and garment industry in Bangladesh, about 60% are women. According to a [survey](#), about 30% of interviewed workers feel that their wages are insufficient to pay for education and health services for their children; only 5% of breastfeeding mothers had a place to store their pumped breast milk at work and 50% did not live with their children. Child labor, particularly in the downstream stages of the supply chain, is also a well-known problem and is closely linked to the above-mentioned rights violations.

Many German clothing brands produce in Bangladesh. A commitment of companies to better working conditions benefits the businesses as well. [Initial surveys](#) show, for example, that the mere possibility of breastfeeding regularly and in an appropriate environment leads to lower absenteeism among working mothers, because children who are sufficiently breastfed are less likely to be ill. Breastfeeding facilities are also part of the right to non-discrimination at work. If the numbers are extrapolated, this could lead to savings amounting to millions of dollars in a women-dominated industry.

The COVID-19 pandemic has also [shown](#) how precarious the situation of workers in textile supply chains is. The [imbalance in the contractual and trade relations](#) between fashion companies and textile suppliers have led to far-reaching payment delays and order cancellations—including even of finished goods. Millions of workers have lost a significant part or even all of their income, which before the crisis, had already been insufficient to cover their basic needs. Growing poverty contributes to increasing child labor, but also to a deterioration of living conditions in general. Among global companies only a few pioneers ensure human rights due diligence on a voluntary basis.



© UNICEF/UN067101/Mawa

Josna Begum, 29, gets her son Abir, 5, ready for the day care center before she goes to work in the textile factory.

## CASE STUDY

### Child labor in cocoa farming



© UNICEF/UNI129891/Asselin

Koffi Affoue Ange (10) and Drissa Amoin Rose (11) are clearing dry leaves using machetes. During the week they are attending school and working on their family's cocoa farm on the weekends.

About 40% of cocoa produced worldwide comes from Ivory Coast; the chocolate we buy in Germany is often also sourced in the region. Child labor and child trafficking are common on farms in Ivory Coast. The daily income of cocoa farmers is around US\$0.50–\$1.25, i.e. one of the lowest in comparison to other producing countries. Low wages of parents and lack of access to education are some of the causes of child labor and child trafficking.

The cocoa farmers receive only a small portion of the value created in the cocoa supply chain and their intermediaries often put even more pressure on prices. Poverty means that families are unable to afford the costs of education, health services or healthy food. Nor can they invest in the long-term productivity of their land. This is also one of the reasons for harmful child labor; almost one fifth of children aged 5 to 17 work on cocoa farms and even one in four children aged 12 to 17. Children often carry heavy loads or have to handle agrochemical products.

## CASE STUDY

### Child labor in bauxite mining

Children in Guinea in Western Africa are affected by the [bauxite mining boom](#). Guinea is one of the world's leading exporters of bauxite, which is used to produce aluminum for cars and other products. The German automotive sector sources part of its aluminum from Guinea.

Bauxite mining companies in Guinea have expropriated ancestral farmland without adequate compensation and forced families to grow food elsewhere. The loss of land and livelihoods as a consequence, has made it more difficult for families to feed their children. "Much of the fertile land has been taken from us," said a community leader from a village near five mines. "The company has destroyed our livelihood."

The expropriation of land for mining has also denied some residents access to water and mining itself seems to have reduced the water level and quality of local rivers, streams and wells. Women and girls, who are mostly responsible for fetching water, are forced to travel longer distances and wait longer to use the overloaded remaining sources such as boreholes or wells as a result of the water shortage. "We can't find water, that is the biggest concern here," said one woman. Another mother said: "I get up at 4 or 5 a.m. to stand in line for water. (...) I take my children with me so that they can go to school when we are finished."



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## Why we need a due diligence law

We ask that the German Federal Government and the German Parliament (Bundestag) present and adopt an effective national due diligence law that requires companies to comply with their due diligence obligations and, in this context, specifically consider children's rights:

→ Because child and human rights abuses are commonplace in global business activities and supply chains.

Globalization offers vast opportunities and has great benefits for the German economy and consumers. Consumers benefit from a varied range of goods at favorable prices, while companies often benefit from low production costs, limited national regulation and lower labor and environmental standards. Although this creates important and urgently needed jobs and income opportunities in countries of the Global South, far too often corners are cut when it comes to human rights and environmental standards. As described in the previous section, the record on the human and children's rights situation is extremely unsatisfactory.

→ Because voluntary measures are not enough

Nine years after the adoption of the UN Guiding Principles and four years after the establishment of the NAP it has become clear that voluntary self-commitments are not enough.

According to the final evaluation of the NAP monitoring, which examined the extent to which German companies voluntarily implement their human rights due diligence obligations, only 13–17% of 455 companies (i.e. 98 companies) fulfill the NAP requirements. The initial results of the survey published in the fall of 2019 were similarly poor (18%).<sup>22</sup> Research has furthermore shown that none of the 20 largest German companies meet the minimum requirements of the UN guidelines. These are the leading technology, automotive, retail, chemical, energy, logistics and financial companies that are

<sup>22</sup> These were companies with more than 500 employees who could participate in the monitoring on a voluntary basis.

<sup>23</sup> See: [https://www.business-humanrights.org/sites/default/files/Respect%20for%20Human%20Rights\\_PUBLIC.pdf](https://www.business-humanrights.org/sites/default/files/Respect%20for%20Human%20Rights_PUBLIC.pdf), February 19, 2020.

<sup>24</sup> See: <https://germanwatch.org/sites/germanwatch.org/files/Webansicht%20Bericht%202020%20Globale%20Agrarwirtschaft%20und%20Menschenrechte.pdf>, February 21, 2020.

<sup>25</sup> Lise Smit et al (2020): "Study on due diligence requirements through the supply chain," <https://op.europa.eu/en/publication-detail/-/publication/291b84d3-4c82-11ea-b8b7-01aa75ed71a1/language-sv>.

<sup>26</sup> MSI Integrity (2020): "Not Fit-for-Purpose. The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance," <https://www.msi-integrity.org/not-fit-for-purpose/>; see: Oxfam (2019): "Addressing The Human Cost of Assam Tea,"

deeply integrated into and benefit from global operations and supply chains.<sup>23</sup>

Even the 15 largest German agricultural companies have not managed to provide the minimum level of due diligence.<sup>24</sup> A detailed study by the EU Commission also comes to the conclusion that voluntary self-commitments have not led to significant changes in corporate behavior.<sup>25</sup>

With regard to sustainability certification and sector-specific voluntary standards, it has become clear that these are not effective. Even in certified supply chains, child and human rights violations frequently occur, and the measures required are usually not deemed suitable for ensuring effective and holistic protection of human and children's rights.<sup>26</sup> In addition, analyses and audits do not cover entire supply chains in most cases, but assess only certain conditions in individual sections (tiers).<sup>26</sup> Initiatives based on voluntary commitment can be important components of a smart mix of legal and other measures. In this context, they must also define, among other things, specific indicators and goals for the effective protection of children's rights as part of human rights due diligence in business behavior. However, experience has shown also in this context that without a legal framework, many companies do not adequately fulfill their due diligence obligations.<sup>27</sup> Therefore the responsibility of companies to respect human rights in their business practices and supply chains must not be left in the hands of voluntary industry initiatives. The future due diligence law should make sure that membership in an industry initiative does not release the respective companies from liability.

→ Because it creates legal certainty and a level playing field for companies

A binding, effective due diligence law will provide a much broader level of protection of children's rights than individual voluntary initiatives, thus fulfilling the obligation of the Federal Government. Such a law would enshrine the requirements of the UN Guiding

<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620876/bp-human-cost-assam-tea-101019-en.pdf>; See: Human Rights Watch, "The Hidden Cost of Jewelry. Human Rights in Supply Chains and the Responsibility of Jewelry Companies," February 2018, <https://www.hrw.org/report/2018/02/08/hidden-cost-jewelry/human-rights-supply-chains-and-responsibility-jewelry>; Human Rights Watch (December 2019): "Fashion's Next Trend. Accelerating Supply Chain Transparency in the Garment and Footwear Industry," <https://www.hrw.org/report/2019/12/18/fashions-next-trend/accelerating-supply-chain-transparency-apparel-and-footwear>.  
<sup>27</sup> <http://mneguidelines.oecd.org/Alignment-Assessment-Partnership-Sustainable-Textiles-PST.pdf>; <https://op.europa.eu/en/publication-detail/-/publication/291b84d3-4c82-11ea-b8b7-01aa75ed71a1/language-en/format-PDF/source-search>.

Principles in a binding commitment and provide for analysis, prevention, mitigating measures, remedy and reparation. It would bring about a shift away from reactive action after the occurrence of serious rights violations towards systematic preventive action. It could also take full account of the fact that human and children's rights are indivisible and interdependent.

Binding legal regulations can bring about advantages for companies as well. All companies operating on the German market would have to submit to the same standards, which would create fair competition in the sense of a level playing field. Companies that do not comply with their due diligence obligations would no longer have a competitive advantage. Similarly, a due diligence law provides a uniform and non-negotiable framework for all companies to apply to their partners in the supply chains in order to comply with their due diligence obligations. Ultimately, a uniform framework that applies to all will increase confidence in the actions taken and legal certainty.

Binding legal regulations have manageable consequences for companies. They would require that German companies provide the same level of protection as regards human and children's rights in their economic endeavors abroad as these companies are expected to ensure within the EU. It is estimated, especially for large companies, that the costs associated with due diligence obligations would not exceed approx. 0.005% of their turnover.<sup>28</sup>

#### → Because Germany, as the fourth strongest economy in the world, should set a good example

Germany, as the fourth strongest economy in the world, should lead by example. Two-thirds of German DAX-listed companies generate over 70 percent of their sales revenues abroad, and they are the reason for Germany's economic strength despite the fact that Germany accounts for only 1% of the world's population and is furthermore a country with minimal raw materials.<sup>29</sup> It is high time that not only corporate profits are globalized, but so are human rights commitments—including children's rights.

<sup>28</sup> British Institute of International and Comparative Law, Civic Consulting and London School of Economics (January 2020): "Study on due diligence requirements through the supply chain," study for the EU Commission, p. 427, <https://op.europa.eu/de/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

<sup>29</sup> Glunz, A., Managing Partner International Business, KPMG AG Wirtschaftsprüfungsgesellschaft (2020), in Deutschlandfunk (in German): [https://www.deutschlandfunk.de/grenzen-der-globalisierung-wie-die-coronakrise-die.724.de.html?dram:article\\_id=474533](https://www.deutschlandfunk.de/grenzen-der-globalisierung-wie-die-coronakrise-die.724.de.html?dram:article_id=474533).

<sup>30</sup> <https://www.time-to-talk.info/en/home/>.

#### → Because a German due diligence law can be the basis for EU-wide regulation

In the Netherlands, a due diligence law for supply chains was passed that requires companies to exercise due diligence with regard to child labor. In France, a law on human rights due diligence was passed that holds companies liable if they do not comply with its provisions. Germany should follow the example of its neighbors by adopting a comprehensive due diligence law for human rights for companies with 250 or more employees.

There are repeated calls for regulations on corporate due diligence at EU level. An EU-wide regulation should undoubtedly be striven for, in addition to a German human rights due diligence law. A German law could significantly advance the debate at EU level and have a direct impact. It could also be more robust than one that is passed at EU level and come into force much earlier, as the process for EU regulations can take a significant amount of time. It is therefore important not to wait for the adoption of an EU-wide regulation, but to proceed with a separate due diligence law, as France and the Netherlands have already done.

#### → Because children around the world call on companies to respect their rights

As holders of their own rights, children around the world also demand compliance with due diligence obligations.<sup>30</sup>

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*"The Government also needs to make a policy or law on child labor that includes rules for the business sector to ensure that they will protect children from harmful work and abuse, and not exploit children. Businesses should not allow children to do hazardous work or heavy work. Children should not be exploited – girls and boys should not be asked to work long hours or be paid low wages. If we work, we should be paid fair wages and working conditions should be improved."*<sup>31</sup>

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<sup>31</sup> The two speakers Kesia und Fauza participate in "It's Time to Talk! – Children's Views on Children's Work," a global participatory project for working children. The project supports children and young people in recognizing grievances and violations of children's rights through their own political work, revealing them and actively engaging in dialogue with political decision-makers. Kindernothilfe & terre des hommes (2018): "The engagement of all people to improve the lives of working children," <https://www.time-to-talk.info/en/2018/04/11/global-child-forum-speech-of-working-children/>.



The two working youths Kesia and Fauza (both 17 years old) come from Medan, Indonesia. They have been working together there with other children and young people for years to ensure that companies respect children's rights.

## Requirements for a due diligence law from a children's rights perspective

A supply chain law should be designed to cover all sectors and, if possible, all major companies (Sect. 267 of the German Commercial Code) as well as small and medium-sized companies with relevant supply chains in defined sectors with particularly high risks for people or the environment. This is the only way to tackle the structural causes of children's rights violations in business activities and along global supply chains.

The UN Guiding Principles define binding regulations that anchor and ensure effective corporate due diligence. The German Supply Chain Law Initiative (*Initiative Lieferkettengesetz*) presented such regulations in a legal opinion specifically for the German context.<sup>32</sup> When designing a due diligence law, children's rights should be explicitly included, since the efforts made by the Federal Government in taking full account of children's rights in the realm of business and human rights have been insufficient so far.

A due diligence law should accordingly oblige companies that are based in Germany or conduct business in Germany to implement the core elements of corporate due diligence in their own business activities and their entire supply chains. This includes:<sup>33</sup>

- A **policy commitment** that aims to anchor human and children's rights in the entire corporate context and seeks to implement environmental standards.
- A **risk analysis** including a risk evaluation obligation to identify actual and potential impacts on human and children's rights as well as environmental impacts.
- **Preventive or remedial measures** to prevent or end violations of human and children's rights and environmental impacts.
- Effective **complaints mechanisms** to enable victims to report grievances and receive **redress** in case of violations.
- **Publicly reporting** on identified risks and measures taken.
- A due diligence law should apply to all large companies (over 250 employees or €20 million balance sheet total) that are based in Germany or have business operations there. The law should also apply to small and medium-sized companies if they are active in industries with particularly high risks for people or the environment.

In particular, it should be taken into account that children's rights are interdependent and indivisible, that there are special challenges in making violations of children's rights visible, that mere bans (as already explained) are usually insufficient to effectively counteract child labor, and that there is a direct connection between the violation of parental rights—especially maternal ones—and subsequent violations of children's rights. In addition to the workplace, analyses should also cover the broader context, such as the family and community context.

There must be sanctions for **violations of due diligence obligations** to ensure that companies comply with the legislation. Mechanisms such as fines, exclusion from public contracts and foreign trade promotion should be used for this purpose. In addition, an effective **liability system** must be in place to make it easier for those affected to go to court in Germany to seek redress. A reversal of the burden of proof should be applied and companies should not be exempted from liability regulations due to their membership in an industry initiative ("safe harbor" regulation).

<sup>32</sup> Initiative Lieferkettengesetz [Supply Chain Law Initiative] (2020) (in German): "Rechtsgutachten zur Ausgestaltung eines Lieferkettengesetzes," [https://lieferkettengesetz.de/wp-content/uploads/2020/02/200527\\_Ik\\_rechtsgutachten\\_webversion\\_ds.pdf](https://lieferkettengesetz.de/wp-content/uploads/2020/02/200527_Ik_rechtsgutachten_webversion_ds.pdf).

<sup>33</sup> UN Guiding Principles on Business and Human Rights (2011): [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf), OECD Guidelines for Multinational Enterprises (2011): [https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises\\_9789264115415-en](https://www.oecd-ilibrary.org/governance/oecd-guidelines-for-multinational-enterprises_9789264115415-en).

The protection of children's rights in business activities and global supply chains should be given special and explicit consideration in legislation. Legislation should therefore be consistent with the principles of the UNCRC wherever relevant and specifically refer to the respect for **children's rights** as a whole by designating the UNCRC as an equivalent reference document. A mere focus on child labor would not be sufficient here.

Likewise, children's rights should also be explicitly taken into account in **all the above-mentioned core elements of corporate due diligence**. This also applies to the implementation by companies, in particular. For each of the core elements, there are toolkits and aids for companies (some of which are sector-specific) that have been developed by child rights organizations, usually in cooperation with the business community. They support companies to integrate a child rights perspective into instruments, measures, processes and systems of human rights due diligence.<sup>34</sup>

Companies should be required to fulfill their due diligence obligations proportionally, i.e. according to their size and sector, the severity of the violation of rights or the level of risk, and the proximity of the supplier. **Proportionality** is part of the rule of law. Small and medium-sized businesses can, for example, not be obliged to take measures that would be disproportionate or inappropriate.

### **Possibilities of legal action for affected children and their representatives**

Access to justice is not only a human right in itself, but also a mechanism that brings to fruition all other rights. As with all rights, there must be a way to enforce children's rights, so that they do not remain mere promises.

Children often find it particularly difficult or impossible to seek legal recourse due to their age and standing. Power relations between companies and affected children are even more unbalanced and information is usually less accessible to them. Fear of retribution, physical distance to law offices, police stations and courts as well as lacking funds to pay costs or fees often present further obstacles to take to legal action. An

additional difficulty for children is the fact that legal recourse is only an option for them if adults are willing to inform and fully support them (financially, logistically and emotionally).

In the legal sense as well, the legal process and the possibilities of legal action should be adapted to the needs and requirements of children and the obstacles indicated should be removed if possible.

### **Participation of children's rights actors**

Children and child rights actors and experts should be closely involved in processes and measures to protect children's rights in business practices and supply chains. This applies to the development of a due diligence law, to other binding regulations, NAPs and the subsequent monitoring as well as to the resulting implementation measures. Children and child rights actors and experts can provide important information and support to make the processes more relevant, effective and sustainable. This can also help to combine measures and processes at the workplace as well as in the broader fields of action, for example, in the communities and in cooperation with local governments, thus paving the way for holistic approaches to improving complex situations in partnership—in line with the 2030 Agenda.

### **Conclusion and summary of results**

The COVID-19 pandemic forces us to see existing structures in a new light. The UN Guiding Principles and the NAP have defined clear expectations for corporate due diligence. Having concluded the NAP monitoring process in Germany, it must be recognized that voluntary measures are not sufficient to protect human rights, including the rights of girls and boys. Therefore, a German supply chain law is needed to ensure children's rights are protected. Corporate behavior must be based on a sustainable and socially responsible development and fully respect children's rights.

<sup>34</sup> Examples:

Global Child Forum and UNICEF, "Children's Rights and Business Atlas," <https://www.childrensrighsatlas.org/>;

Save the Children, the Global Compact and UNICEF (2012): "Kinderrechte und unternehmerisches Handeln" (in German), <https://www.unicef.de/blob/194578/307f64c5be-bec13308bb90dda329668f/kinderrechte-und-unternehmerisches-handeln-data.pdf>;

Save the Children and UNICEF (2013): "Children's Rights in Policies and Codes of Conduct"; [https://www.unicef.org/csr/css/Childrens\\_Rights\\_in\\_Policies\\_26112013\\_Web.pdf](https://www.unicef.org/csr/css/Childrens_Rights_in_Policies_26112013_Web.pdf);

Danish Institute for Human Rights and UNICEF (2013), Children's Rights in Impact Assessments, [https://www.unicef.org/csr/css/Childrens\\_Rights\\_in\\_Impact\\_Assessments\\_Web\\_161213.pdf](https://www.unicef.org/csr/css/Childrens_Rights_in_Impact_Assessments_Web_161213.pdf);

UNICEF (2014): "Children's Rights in Sustainability Reporting," [https://www.unicef.org/csr/css/Childrens\\_Rights\\_in\\_Sustainability\\_Reporting\\_Second\\_Edition\\_19092014.pdf](https://www.unicef.org/csr/css/Childrens_Rights_in_Sustainability_Reporting_Second_Edition_19092014.pdf);

UNICEF (2018): Discussion Paper "Operational Level Grievance Mechanisms Fit for Children," [https://www.unicef.org/csr/css/DISCUSSION\\_PA-PER\\_GRIEVANCES\\_final.pdf](https://www.unicef.org/csr/css/DISCUSSION_PA-PER_GRIEVANCES_final.pdf);

UNICEF (2014): "Engaging Stakeholder's on Children's Rights," [https://www.unicef.org/csr/css/Stakeholder\\_Engagement\\_on\\_Childrens\\_Rights\\_021014.pdf](https://www.unicef.org/csr/css/Stakeholder_Engagement_on_Childrens_Rights_021014.pdf).