

# The Need For Due Diligence Legislation

Why Due Diligence Legislation Is Essential for a World in Which People and Nature Thrive in Harmony

The Rainforest Alliance is an international non-profit organization working in more than 70 countries at the intersection of business, agriculture and forests. We are building an alliance to create a better future for people and nature by making responsible business the new normal.





# Introduction

**In the past 30 years the voluntary approach to sustainability has seen an increase in more sustainable practices being adopted by producers, traders, companies and governments. The work of the Rainforest Alliance is based on the voluntary commitment to sustainability of our partners throughout the supply chain.**

However, voluntary measures alone are not enough to make our vision a reality. A smart mix of complementary approaches is needed, in which governments, companies, NGOs, producers and communities all take their respective responsibilities, while constantly assessing and, if necessary, fine-tuning their policies and approaches.

We believe that legislation on corporate due diligence is an essential part of this smart mix in order to protect human and environmental rights.

Due diligence legislation can ensure companies identify, prevent, mitigate, and account for potential negative impacts their business processes may have on people and nature. It fulfills part of a government's responsibility under the UN Guiding Principles for Business and Human Rights (UNGPs), to protect people and nature against adverse impacts from business activities. It can create a level playing field for companies already taking their responsibility and helps create an environment for voluntary commitments to be effectively implemented.

## What is due diligence?

Agricultural and forestry supply chains are often characterized by a power imbalance between a small number of large companies and a large number of smallholders. These farmers are in some cases the victims of adverse human rights and environmental impacts, such as child labor, discrimination, deforestation, and climate crisis as well as the ones causing the direct harm. However, while these impacts happen at the production level, all actors in the supply chain can play a role in their occurrence and should take steps to mitigate and remediate them.

As defined by the OECD Guidelines for Multinational Enterprises and the UNGPs, companies can "cause", "contribute to" or be "directly linked" to these adverse impacts through their supply chains. A company can for example contribute to child labor by placing unrealistic demands on a producer, or be directly linked to child labor by working with a supplier that uses this practice. This means the respective company will also bear corporate responsibility for such impacts.

Human rights due diligence as defined in the UNGPs is an important means for companies to make sure they respect human rights in their entire supply chain. Due diligence was introduced as a risk management process implemented by a company to identify, prevent, mitigate, and account for how it addresses human rights risks and

impacts in its operations, supply chains, and investments. The OECD revised its guidelines for multinational enterprises in 2011 in line with the UNGPs and broadened the scope to also include environmental risks, including deforestation and conversion of other natural ecosystems<sup>1</sup>. Due diligence, according to the OECD, is thus defined as going beyond financial and legal issues and including environmental and social issues<sup>2</sup>.

Even though the principles of human rights due diligence itself are based on international human rights law, governments have mainly relied on voluntary initiatives to promote due diligence in supply chains. In recent years, however, an increasing number of governments have started adopting or proposing legislation which include elements of human rights due diligence. These proposals and laws vary from reporting obligations on due diligence, like the UK Modern Slavery Act, to more complete due diligence obligations, such as the EU Timber Regulation, and to full human rights and environmental due diligence requirements, such as the French Vigilance Law<sup>3</sup>.



## As per the United Nations Guiding Principles on Business and Human Rights (UNGPs), companies have the responsibility to respect human rights.

"In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute<sup>1</sup>."

<sup>1</sup> [UN Guiding Principles on Business and Human Rights \(2011\)](#)

<sup>1</sup> [OECD Guidelines for Multinational Enterprises \(2011\)](#)

<sup>2</sup> For a further exploration of human rights and environmental due diligence, see the Accountability Framework Initiative's [Core Principles and Definitions](#).

<sup>3</sup> [ECCJ Position Paper](#), June 2018. Key features of mandatory human rights due diligence legislation.

## Benefits of due diligence legislation

Mandatory due diligence legislation can provide many benefits.

- When implemented well, it helps protect producers, communities, and landscapes from adverse human rights impacts and environmental harm.
- It is an important stimulus for companies to evaluate their potentially adverse impacts, which can in turn help them make smarter investments.
- It can create a culture of accountability, in which companies and other supply chain actors are motivated to identify, prevent, mitigate, and account for social and environmental risks in their supply chains.
- It can create a level playing field for companies that are already taking their responsibility in addressing social and environmental risks in their supply chains and gives laggards a push to do so.
- It provides momentum for sector-wide collaboration in critical landscapes. If a company's influence over a supplier is too small to have an impact on their behavior, the UNGPs require companies to increase their leverage over this supplier if it causes harm. This is often done through collaboration with other stakeholders, including companies.
- It sends a market signal for more responsible production to both companies and producing country governments.

## Rainforest Alliance's work and corporate due diligence

Due diligence requires companies to identify, prevent, mitigate, and account for human rights and environmental risks in their supply chains. The Rainforest Alliance supports supply chain actors to carry out some of their due diligence in several ways.

Our Rainforest Alliance and UTZ certification programs can support companies to develop and implement their responsible sourcing commitments. This includes providing transparency on and reducing the risk of human rights abuses, while driving positive social and environmental change. In addition, the Rainforest Alliance promotes multi-stakeholder and landscape-based approaches and encourages collaboration with different stakeholders, including governments, companies, and civil society organizations.

However, the full obligation for companies to implement due diligence in their supply chains always remains with the company itself. The continuous process to identify, prevent, mitigate, and account for human rights and environmental risks with necessary embedded policies cannot be completely outsourced. Depending on the supply chain, responsibility and leverage a company has, as per the UN Guiding Principles, certification can play a bigger or smaller role in fulfilling its due diligence obligations.



*Fofana Danon and his family, a cocoa farmer in Agboville - Côte d'Ivoire*

## Assess and Address – due diligence at farm level

In our 2020 Sustainable Agriculture Standard, the Rainforest Alliance will introduce an Assess and Address approach on human rights topics such as child labor, forced labor, discrimination, workplace violence and harassment. These issues still will not be allowed on certified farms, but farmers/farm groups will have access to training and required to have systems in place to assess, mitigate, and monitor risk, identify such incidents on farms and take immediate action.

Where there is a risk of these issues, farms/farmer groups must implement risk mitigation measures in accordance with the risk assessment and mitigation tool. This could include training, awareness raising, monitoring, and other measures to prevent the issues from occurring and to identify and remediate any cases that do occur. These activities need to be recorded in the Annual Management Plan.

If the Rainforest Alliance sees a risk of for example child labor, but an auditor finds that a farm has not put an assess and address system in place, this would be a breach of our standards and could lead to suspension or decertification, even if no cases of child labor are found by the auditor. If a farm or farmer group finds and remediates cases of child labor, they can continue to be certified, as this is evidence that the system is working as it should.

This approach is aligned with the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, because it means engagement in identifying risk, mitigating that risk, and taking actions to remedy it.

Through our tailored programs, we support businesses to effectively drive action on sustainability in their supply chains within our certification program and beyond. The Rainforest Alliance's due diligence services include an analysis of compliance with environmental and social requirements set by the private sector, for example on deforestation-free supply chains. In addition, we offer field-based monitoring and evaluation services. At the field level, we also work with these company partners to dig into greater detail to understand sustainability risk and performance across various landscapes.

For companies looking beyond their certified volumes the Accountability Framework initiative, supported by the Rainforest Alliance, provides a roadmap for companies to deliver on ethical supply chain commitments, including due diligence, and can serve as a guide for them for moving towards more sustainable supply chains.

### **A call to act**

The Rainforest Alliance believes that a smart mix of voluntary, regulatory, and financial measures are the only way in which responsible business can become the new normal. We therefore call on governments, in particular, in the countries where global enterprises are located,—including the European Union and member states—to adopt human rights due diligence legislation as a part of this mix.

Any due diligence legislation must include:

- All elements of due diligence, and not single out a few. Due diligence includes a system to prevent, identify, mitigate, and account for adverse impacts, and is clearly defined in the OECD Guidance for Responsible Business Conduct.
- The expertise from producing countries at the beginning of the supply chain, so that requirements can be effective and realistic.
- Assurance that smallholder producers do not end up carrying the burden of mandatory due diligence.
- Encouragement for collective action, rather than individual sustainability programs and audit regimes, to avoid fragmentation of sustainability efforts.
- A strong public monitoring agency responsible for the law's meaningful implementation<sup>4</sup>.

The Rainforest Alliance believes that if all supply chain actors work together, a world where people and nature thrive in harmony can become a reality. Due diligence legislation can be a key step towards this reality. We are committed to working with governments, producers, companies, and civil society to ensure that an effective legislative environment is created.

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<sup>4</sup> [OECD Due Diligence Guidance for Responsible Business Conduct](#) (2018)



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