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How Germany plans to uphold human rights in supply chains

Most companies disregard human rights and social standards in their supply chains. A German law may finally change that

Read this article in German.

For over half a decade, the German government has been working to enact mandatory compliance for companies regarding human rights and environmental protection in their supply chains. The United Nations has also pushed for this measure. Adopted in 2011 by the UN Human Rights Council, the UN Guiding Principles on Business and Human Rights (UNGP) provide for, among other things, corporate responsibility to respect human rights. In Germany, implementation is now entering the crucial final phase.

As part of the German action plan to fulfill the UNGP, two surveys were designed to determine whether companies are voluntarily complying with human rights and environmental standards in their global supply chains. Numerous studies have already been published on the topic. They prove that companies that do not introduce binding rules in the international division of labour end up with economic profit made at the expense of human rights.

The German government's plan to include German companies in the process of greater due diligence and to give them time to adhere to the UN's guiding principles has not worked. The very first survey results clearly exposed the situation concerning human rights at German companies. Just 18 per cent of them respect human rights adequately.

The second survey, the result of which was announced last week by Minister of Labour Hubertus Heil and Development Minister Gerd Müller, points to a similar conclusion: only 22 per cent of the companies surveyed meet these requirements. That means four out of five companies are failing to comply with their human rights obligations. This hits the point home: Voluntary action does not work. Binding

standards are needed in the form of a law. Both minister have therefore now proposed a binding Supply Chain Act.

Binding regulations are necessary

The list of human rights violations in which German companies are involved is just the natural outcome when binding regulations are lacking: from deadly fires in textile factories in Bangladesh and Pakistan to exports of toxic pesticides to India and Paraguay. While some cases have been revealed to the public, many others remain unknown. Around 450 million people are employed in the international division of labour. Unfair wages, exploitation, child labour, sexual violence, restrictions on trade union rights and inadequate fire and building security are a part of everyday life for a huge number of workers. Women in the Global South are particularly affected, as the devastating collapse of the Rana Plaza textile factory in Bangladesh showed, with 1135 deaths and 2500 injuries.

Global business relationships are resilient when human rights are respected. The Supply Chain Act is therefore a crucial building block in making globalisation more sustainable, with greater solidary and justice.

The German government needs to act now. The agenda is straightforward because the coalition agreement stipulates that, if the review concludes that the voluntary commitment of the companies is not sufficient, the government will pursue legal measures. And the time to act could not be better. Global supply chains and their design have rarely been so much discussed. the corona pandemic has highlighted global linkages as well as the fragility of global supply chains. The fact that around 80 per cent of global trade takes place in supply chains is evident in both the Global North and the South. There is general agreement that supply chains must be more resilient.

While this hias consequences for both sides, there's an imbalance of power. For example, while companies in the Global North cancelled orders worth millions in the textile industry, workers in Bangladesh, Pakistan and Cambodia lost their jobs from one day to the next. The loss in wages led to poverty and hunger, not least because of to the lack of social security systems. No further study is needed to recognise that during the pandemic we likewise have a system of globalisation where the prosperity of the Global North is based on the exploitation of the Global South.

Business associations got it wrong

If we are serious about the resilience of global supply chains, then we must also address this system. Global business relationships are resilient when human rights are respected. The Supply Chain Act is therefore a crucial building block in making globalisation more sustainable, with greater solidary and justice.

Some business associations may see things differently, however. With great effort and many questionable arguments, they are closely examining the methodology of the surveys and their informative value. They often exaggerate the resulting costs. Nevertheless, it has long been clear that the implementation of human rights due diligence would have minimal effects on corporate profits. In the long term, profits could even increase.

For many, the course of action in recent years has simply been a strategy to postpone legislation. Enamoured with the long-debunked corporate social responsibility models, the associations fail to understand what many of their members are demanding: a supply chain law. The number of supporters on the corporate side is growing continuously. While some have economic calculations in mind and weigh up the costs of potential damage to their image, others finally want legal and action security. Similarly, companies that have been fulfilling their human rights due diligence for years are finally demanding that they be given equal opportunities for competition. The current situation clearly disadvantages companies that invest in the protection of their supply chains and make them sustainable. It is precisely these companies whose experience must be built upon in the future.

Over the next few weeks, it will be important to continue to involve not only companies, but also civil society and unions worldwide.

Good business has always required knowledge of risks and taking the appropriate countermeasures. This requires reporting, communication, transparency and a system to make complaints and redress. What works successfully for German companies in terms of product quality, on the international level, must also apply to human rights. And there is nothing else lurking behind human rights due diligence. But we are still far from being able to pride ourselves on being international pioneers on due dilligence.

Germany's example can pave the way for European action

The timing – coming in the middle of the EU Council Presidency – stands as a clear signal to the rest of Europe. As a strong economy, Germany is moving ahead with legislation. This leverage must also be used at the European level. In this case too, much has happened since EU Justice Minister Didier Reynders pushed for a European directive. In contrast, the argument that the European directive can replace a national law is misleading. The road to legal steps at the European level is long and its precise form is still uncertain. If the EU takes legal action, Germany, including its economy, is already prepared. Other countries in the EU have also chosen this same route for themselves. France, for example, introduced its own law in 2017.

The Supply Chain Act is a matter of global justice. In order for it to actually work, however, it must apply to the entire value chain. It must cover not only large companies, but also those from sectors with high human rights risks and high turnover. Membership in a state-recognised industry initiative must not release companies from their responsibility to uphold human rights. Human rights and environmental protection must both be considered.

Governmental supervisory powers are essential for effective enforcement. This includes, for example, the option of imposing sanctions as well as fines. Those affected by human rights violations abroad must have an actual opportunity to sue companies for damages in German courts. At the same time, in order for a lawsuit to have a chance to succeed, the burden cannot be solely on the plaintiff. A reversal of the burden of proof is needed.

Over the next few weeks, it will be important to continue to involve not only companies, but also civil society and unions worldwide. Years ago already, trade union representatives in Bangladesh would probably have predicted the outcome of the lengthy corporate surveys with total accuracy.



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