



© A. Weltz-Rombach/Oxfam

THE END OF EXPLOITATION?

What the German Supply Chain Act
means for migrant workers and women
in agriculture



OXFAM
Deutschland

GERMANY HAS A SUPPLY CHAIN ACT!

After lengthy negotiations, accompanied by an ambitious lobbying campaign of the civil society organization Initiative Lieferkettengesetz, the Federal Republic of Germany, in June 2021, finally adopted the “Act on Corporate Due Diligence Obligations in Supply Chains” (*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*). It goes into effect in 2023. Its goal is to improve compliance with human rights standards on an international level by obligating enterprises to shape their global supply chains with a view to global equity.

The law was long overdue: As early as 2011, the Human Rights Council of the United Nations, in its UN Guiding Principles on Business and Human Rights, had formulated such duties as an answer to the grave human rights abuses occurring in global supply chains. Attention had often been drawn to German companies, too, for instance on account of fires in textile factories, the destruction of rain forests, or the systematic exploitation of farm workers on plantations. With regard to the exploitation of labor, in particular, Oxfam has published several detailed reports over the years.¹

The German Supply Chain Act breaks with the paradigm of voluntary compliance for businesses. That is an achievement. For numerous studies have clearly contradicted the claims made for years by business leaders that companies would meet their obligations without government regulation.² Nevertheless, the Act represents a compromise between the coalition partners and contains significant gaps.

Up to now, sub-living wages, pesticide poisoning, and discrimination against women and union members on plantations were everyday occurrences, particularly in economically disadvantaged countries. Will the situation of migrant workers and women in agricultural production improve as a result of the German Supply Chain Act? This text will try to provide some initial answers to these questions.

What has changed since the time of our studies on the farming of pineapples, bananas and grapes? In February 2022, Oxfam will publish a follow-up report which takes a look at the current situation of migrant workers in Costa Rica and South Africa.



On the pineapple plantations in Costa Rica, work is carried out all year round, in some cases using heavy equipment.

© A. Weltz-Rombach/Oxfam

Bitter Fruits: Human rights abuses in global agricultural supply chains

Tropical fruits have become standard fare in the aisles of German supermarkets: You can find a kilogram of bananas for just over one Euro here; for a little more, you can have a whole pineapple. Bananas are the second most popular fruit in Germany and the demand for pineapples has nearly tripled between 2000 and 2019.³

On the plantations where these sweet fruits grow, working conditions are all too often bitter: Miserable pay, pesticide poisoning, and discrimination against union members are par for the course in the production of bananas and pineapples. An Oxfam report released in 2016 makes this clear, using the examples of Costa Rica and Ecuador.⁴ The powerful German supermarket chains do all too little to combat these abuses and in fact contribute to wage dumping through their price policies. Women and migrant workers are especially hard hit by this system of exploitation.

Agricultural workers cannot live from their wages

The wages that agricultural laborers earn for hard work in the fields in most cases do not suffice to feed a family. In addition, the cost of living in Costa Rica has risen sharply. Plantation owners increasingly resort to middlemen for the hiring of farm workers, and these middlemen pocket part of the wages. As a result, the workers end up with less than they need to live on.



“We have to save on food so we can pay the school fees for our children,” says Yensy, the wife of a farm worker on a pineapple plantation that supplies Lidl via the export company Finca Once (2016).

At the bottom line, the wages earned by many farm workers amount to less than half of what qualifies as a living wage, as the above-mentioned report by Oxfam concludes.

Discrimination against unions in Costa Rica and Ecuador

Migrant workers, in particular, have little chance of improving their situation. If they organize themselves in a union, in order to demand their rights, they risk reprisals: In Ecuador as well as Costa Rica, it is customary to simply fire union members.



“Last summer we founded a union, because our working conditions were really bad. In October, they threw us all out.” – Isidro Ochoa, farm worker on banana plantations and member of the union ASTAC in Ecuador, 2016

Migrant workers and women are especially impacted

Exploitation and repression often have an especially hard impact on migrant workers and women. In Costa Rica, for instance, a large part of the farm workers come from neighboring Nicaragua. Many migrants cannot afford to pay for a work permit, which is expensive. They are thus totally dependent on their employers and do not dare demand their rights. As a result, it happens that the plantation owners themselves report foreign workers to the police after they have protested against inadequate pay. This puts them at risk of deportation.⁵

Women face additional pressure: Many of them are saddled with the duties of unpaid care work in addition to a job at which they find themselves discriminated against. In Ecuador, for example, the wages paid in the packaging plants, where the majority of women work, are one third lower than the wages paid to workers in the fields, where the majority of men work. Moreover, women are exposed to additional discrimination and health risks. Employers ask for pregnancy tests in job interviews – even on certified plantations. In Ecuador, as in Germany, this is in theory prohibited by law. Anyone who gets pregnant not only risks losing her job, but puts her own health and the health of her child at risk:



“My baby had a heart problem. On the plantation, the plane sprayed pesticides during the day-time, even when we had our lunch break.” – Paula Quinto, former farm worker for the banana producer Reybanpac in Ecuador, 2016



Toxic pesticides are applied, even while workers are in the field. Many suffer from health problems as a result.

© Andrés Mora/Oxfam

THE SUPPLY CHAIN OF TROPICAL FRUITS USUALLY CONSISTS OF:



Profits before responsibility: the role of the supermarkets

The vast majority of our food is sold in supermarkets. Rewe, Aldi, Edeka and the Schwarz-Group (Lidl and Kaufland) together account for more than 85 percent of the German market—and their share continues to grow. The supermarkets are also the ones who earn the most on the products they sell. More than 42 percent of the sales price of a pineapple stays with the retailer, while not even 10 percent goes to the farm workers on the plantation. In the case of bananas, the share attributable to farm worker wages is only 6.7 percent.⁶ Moreover, Aldi and Lidl, in particular, are rapidly expanding internationally.

And yet the fat profits made on cheap fruits do not seem to have inspired a corresponding sense of corporate responsibility, as Oxfam's Supermarket Scorecard (see P. 7) shows: Although a few retail chains have made progress over the past few years, they are a long way from being in full compliance with the UN Guiding Principles on Business and Human Rights, particularly with regard to the rights of women. While Lidl, Rewe and Aldi, in response to public pressure, have at least shown some movement on this issue, Edeka for years has staunchly defended its spot at last place in the league—even by an international standard.



The supermarkets, however, are themselves in part responsible for the precarious conditions prevailing on the plantations, owing to the immense pressure they exert to lower prices, as various Oxfam reports have shown.⁷ Their market power enables them to dictate unfair prices and conditions to their suppliers. Suppliers can only stay in business if they are capable of delivering, continuously, large quantities of products in unvarying quality and at bargain-basement prices. This results in ever-increasing pressure on producers to lower their costs—which they do by lowering wages.

Too many companies, moreover, review conditions within their supply chains exclusively in reliance on audits, i.e., through occasional reviews of operations, at which abuses are hidden time and again. This is easy enough, if plantation operators have advance notice of any audit and impacted workers and unions are given no voice in the process.⁸ In this way, seals and certifications are stamped onto our products, while injustice persists on the plantations.

WHO EARNS MONEY ON PINEAPPLES?

Shares in the sales price of Costa Rican pineapples in German supermarkets





Source: Calculations by BASIC using data from Eurostat, CIRAD, Comtrade, Sopisco



* * * * * * * * * *  * * * * * * * * * *

SUPERMARKT-SCORECARD 2020

* * * * * * * * * * * * * * * * * * * *

| SUPERMARKET | OVERALL SCORE | TRANSPARENCY & ACCOUNTABILITY | WORKERS | SMALL-SCALE FARMERS | WOMEN |
|---|---------------|-------------------------------|---------|---------------------|-------|
|  | 32% | 40% | 38% | 25% | 24% |
|  | 25% | 31% | 35% | 21% | 10% |
| REWE | 25% | 29% | 25% | 33% | 10% |
|  | 18% | 29% | 13% | 21% | 10% |
|  | 3% | 0% | 8% | 4% | 0% |

* * * * * * * * * * * * * * * * * * * *



www.oxfam.org/en/take-action/campaigns/end-suffering-behind-your-food/supermarkets-scorecard

What will change under the German Supply Chain Act?

Underpayment and discrimination on the basis of sex, ethnic or social origins, or membership in a union—under the wording of the Supply Chain Due Diligence Act, workers are protected from all these abuses. Starting in 2023, all enterprises with more than 3 000 employees in Germany must carry out measures intended to ending the violation of human rights obligations (cf. §3 LkSG).⁹ Among other things, companies are also required to establish a risk management system, take preventive measures and remedial action to address existing risks, and once a year publish a report on their efforts. Further, they must set up a complaints procedure, through which impacted parties can file notice of abuses occurring at supplier companies.

In the event that companies fail to comply with their due diligence obligations, they risk incurring public-law sanctions such as administrative fines and exclusion from public procurement contracts (§§ 22 –24 LkSG). The German Federal Office for Export Control (*Bundesamt für Ausfuhrkontrolle, BAFA*) is responsible for overseeing compliance with due diligence obligations. Here, as well, a procedure for the filing of complaints is being established, so that impacted parties can apply directly to the BAFA and demand that it take action (§ 14 Para. 1 No. 2 LkSG).

In principle, therefore, supermarkets like Edeka or Lidl will be obligated starting in 2023 to take effective measures for the prevention of human rights abuses within their supply chains. Paying workers at a level below the minimum wage qualifies as a human rights risk pursuant to § 2 Para. 2 No. 8 LkSG. But all sub-living wages, even if they comply with the locally prevailing statutory minimum—which, as in Costa Rica, may be inadequate to live on—will fail to qualify as “appropriate wages” within the meaning of the Act (cf. Schönfelder 2021, pp. 93-95¹⁰). Firing union members is a clear violation of the right to freedom of association under § 2 Para. 2 No. 6 LkSG, which states that “the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation.” Moreover, the Act prohibits “unequal treatment in employment, for example on the grounds of national and ethnic origin ... [or] gender” (§ 2 Para. 2 No. 7 LkSG). As a result, disadvantaging migrant workers and women on the plantation should constitute a violation. Finally, damages to health as a result of the spraying of pesticides without outfitting workers with adequate protective clothing are covered by the clause: “the absence of appropriate protective measures to avoid exposure to chemical ... substances” (§ 2 Para. 2 No. 5b LkSG).

Abuses on the plantations thus constitute violations against human rights protected under the Supply Chain Act.

? *Does that mean that Edeka and Lidl, starting in 2023, must break off business relationships with all plantations on which such abuses occur?*

No, not as a general matter. For the goal, above all, is to improve the situation on the production sites. To achieve that, the supermarkets must take remedial measures with a view to ending violations of law or at least work out a concept towards that goal together with the supplier. If they fail to do that, they risk incurring sanctions.

? *Do the due diligence obligations apply to the entire supply chain?*

This is a tough question. The Supply Chain Act distinguishes between the actions of an enterprise in its own business area and the actions of its direct and indirect suppliers. With regard to its own operations and those of its direct suppliers, the obligations are more extensive than those which apply to its indirect suppliers. Companies are required to address human rights violations by its indirect suppliers only if they already have knowledge of a possible violation (§ 9 Para. 3 LkSG). Where, for instance, an import company or other dealer acts as middleman between the plantations in Costa Rica and the German supermarkets, the supermarket has an obligation to get involved only once it has learned of relevant abuses on the plantations. Such knowledge may be derived from a company's own efforts, as from an audit review, or from complaints, filed for instance by farm workers themselves. But reports published by third parties are also imputed to the company's knowledge: Supermarkets have had knowledge of human rights abuses on the banana and pineapple plantations of Ecuador and Costa Rica at least since publication of the Oxfam report in 2016.

? *Can farm workers from Costa Rica and Ecuador sue for damages in Germany, e.g., for lost wages or damage to their health?*

This is one of the biggest gaps in the Supply Chain Act. Even when it is proven that a supermarket has violated its due diligence obligations and that, as a result, damages were incurred, the Act provides the impacted parties with no additional remedy for claiming compensation under German law. As in the past, they can sue under the laws of a foreign jurisdiction, but there are significant barriers to doing so.¹¹

? *What if the supermarkets have themselves contributed to the human rights abuses—for instance, by insisting on dumping prices?*

This, too, may constitute a violation of the Supply Chain Act's due diligence obligations. The Act requires enterprises to put "appropriate procurement strategies and purchasing practices" into effect (§ 6 Para. 3 No. 2 LkSG). The legislature therewith recognizes that: Unfair trading practices and excessively low prices increase the risk of human rights abuses. The supermarkets are going to have to revise their purchasing practices with a view to compliance with this provision.

? *Does the Act address the rights of migrant workers and women in supply chains?*

Not explicitly. Unequal treatment of anyone is generally prohibited under § 2 Para. 2 No. 7 LkSG, but the disproportionate impact on these groups is not recognized.

Closing the Gaps: With Supply Chain Legislation in the EU!

Even as the German Supply Chain Act was being negotiated, EU Justice Commissioner Didier Reynders launched an Initiative for European Due Diligence Legislation. This would establish a level playing field for all enterprises that operate in the European market and close the gaps in the German statute. The European Parliament, as well, voted in favor of an ambitious Directive¹² in February 2021. If such a Directive is adopted, the Federal Government of Germany will be required to strengthen its Supply Chain Act. In the event of an EU Regulation, the EU provisions would even apply directly.

Both the report of the EU Parliament and the prospective measures announced by the EU Commission foresee clear provisions on civil liability for enterprises. This would ensure that parties impacted by human rights abuses on plantations in South and Middle America could obtain compensation of their damages on an individual basis from European companies, provided such companies have violated their due diligence duties.

Further, the scope of the legislation is not intended to be restricted, as in the German Act, primarily to an enterprise's immediate suppliers. Thus supermarkets are to be obligated to be proactive in analyzing human rights risks all along their supply chains; i.e., beyond their intermediaries and food processing plants. They would no longer be able to exonerate themselves from liability for farm worker exploitation, health damages, or discrimination against women and migrant workers by asserting that they did not know about such abuses.

There is, however, strong resistance to adopting such legislation in Brussels, as well. The business lobby has succeeded in postponing the Commission's publication of its proposal several times already. For this reason, we need a strong voice from civil society to ensure that the EU adopts, as soon as possible, ambitious supply chain legislation: a European law that places the human beings at the source of our supply chains ahead of corporate profits.



| Our demands



The German Supply Chain Act was an important first step. But it contains numerous gaps that urgently need to be closed:

1. The German federal government

- ▶ must ambitiously enforce the Supply Chain Act. This means, for example, that the Federal Office for Economic Affairs and Export Control (BAFA) should vigorously investigate complaints about human rights abuses in supply chains and take the purchasing policies of supermarket chains adequately into account. For the enormous pressure exerted by supermarkets forces small producers out of the market and drives wages down to below what workers need to live on.

2. The EU

- ▶ must adopt ambitious legislation on supply chains:
- ▶ The whole supply chain must be covered—without any gradations. For it is precisely the people at the source of the supply chain who are most exposed to human rights abuses!
- ▶ Civil liability: Impacted parties must have a remedy for seeking compensation of damages in European courts.
- ▶ Living wages must be firmly anchored as one of the objectives of the legislation. For minimum wages on the national level are often so low that workers cannot live on them.
- ▶ The due diligence obligations of European enterprises must include avoidance of detrimental pricing policies.
- ▶ The rights of women and migrant workers—for example, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families—must be explicitly incorporated into the legislation.

3. The German Supermarkets

- ▶ must provide for and fulfill due diligence obligations all along their supply chains, as foreseen under the UN Guiding Principles.
- ▶ must pay commensurate prices to producers, instead of pursuing unfair trading practices and exerting enormous pressure to lower prices.
- ▶ must work together with and meet the demands of local unions, as well as migrant workers' and women's organizations.
- ▶ must insist that tangible improvements are made on site at the plantations, rather than be content with half-hearted audit reviews.

QUELLEN

- 1 Oxfam (2021): Not in this together; Oxfam (2019): Addressing the Human Cost of Assam Tea; Oxfam (2016): Sweet Fruit, Bitter Truth
- 2 Monitoring of Germany's National Action Plan on Business and Human Rights: <https://www.auswaertiges-amt.de/blob/2417212/9c8158fe4c-737426fa4d7217436acc7/201013-nap-monitoring-abschlussbericht-data.pdf>; EU Commission study on due diligence requirements through the supply chain: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.
- 3 Data from the UN trade database Comtrade.
- 4 Oxfam (2016): Sweet Fruit, Bitter Truth, available at: <https://www.oxfam.de/system/files/20160531-oxfam-sweet-fruit-bitter-truth-en.pdf>.
- 5 Interview with Mauricio Castro Méndez of the University of San José from 25.11.2021.
- 6 Oxfam (2016): Sweet Fruit, Bitter Truth; Oxfam (2014): Billige Bananen, wer zahlt den Preis?
- 7 Oxfam (2019): Addressing the Human Cost of Assam Tea; Oxfam (2017): Sold Cheap and Paid Dearly; Oxfam (2014): Billige Bananen, wer zahlt den Preis?
- 8 Interviewed workers reported that they were often told, in preparation for reviews or audits of operations, to hide chemicals with red labels from the auditors (Oxfam (2016): Sweet Fruits, Bitter Truth).
- 9 Starting in 2024, the scope of the Act will extend to enterprises with more than 1 000 employees.
- 10 Daniel Schönfelder: "Menschenrechtliche und umweltbezogene Risiken" (Risks involving human rights and the environment), in: Robert Grabosch, Das neue Lieferkettensorgfaltspflichtengesetz (The New Supply Chain Due Diligence Act), Nomos 2021.
- 11 The law suit filed by the surviving relatives of people who died in the factory fire at Ali Enterprises was dismissed in 2019: <https://www.ecchr.eu/en/case/kik-paying-the-price-for-clothing-production-in-south-asia/>.
- 12 European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html.

IMPRINT

Oxfam is an international confederation of 20 organizations working side by side with 3,500 local partners in 67 countries, as part of a global movement for change, to build a future free from the injustice of poverty.

Editor:
Oxfam Deutschland e.V.
December 2021

V.i.S.d.P.:
Marion Lieser, Oxfam Deutschland e.V.,
Am Köllnischen Park 1, 10179 Berlin,
Tel.: +49 (0)30 45 30 69 0, E-Mail: info@oxfam.de

Author: Steffen Vogel
Editors: Julia Jahnz, Jeasuthan Nageswaran (glokal e.V.)
Layout: Ole Kaleschke
Translation: Darrell Wilkins

Special thanks to: Magdalena Preis, Sonja Niekel, Franziska Humbert, Tim Zahn, Veronika Däges

**OUR FOOD
OUR FUTURE**

This publication was produced with the financial support of the European Union and Engagement Global. Its contents are the sole responsibility of Oxfam Germany and do not necessarily reflect the views of the European Union, Engagement Global or the German Federal Ministry for Economic Cooperation and Development.



Co-funded by the
European Union

Gefördert durch
ENGAGEMENT GLOBAL
mit Mitteln des



Bundesministerium für
wirtschaftliche Zusammenarbeit
und Entwicklung



OXFAM
Deutschland