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Upholding human rights in the fight against deforestation and ecosystem conversion



How the EU should integrate human rights in a product-based due diligence framework for forest and ecosystem-risk commodities

INTRODUCTION

The European Commission has committed to publish a legislative proposal this year¹ to minimise the risk of deforestation and forest degradation associated with products placed on the EU market ("**Legislative Proposal**"). This proposal will target specific commodities that are known to have a high risk of being linked to deforestation and forest degradation, as well as products made from or containing them (collectively described as forest and ecosystem-risk commodities or "**FERCs**") and impose specific requirements on companies placing FERCs on the EU market. The intention is to ensure that EU consumption of FERCs is not linked to deforestation or forest degradation.

This Legislative Proposal is part of a larger initiative communicated by the Commission in 2019² "to step-up EU action to protect the world's forests [...] and restore forests in a sustainable and responsible way". The new Legislative Proposal is the primary demand-side measure and the only new legislative action being proposed. It must therefore play a central and instrumental role in minimising the EU's global deforestation footprint.

When proposing the sustainability requirements for FERCs to enter the EU market, it is crucial the European Commission does not take a one-sided approach to deforestation that looks only at forests and excludes the people who own, inhabit, depend on, and defend them. This would ignore clear evidence that deforestation is often associated with a range of human rights abuses, particularly targeting Indigenous Peoples and local communities in FERC production and sourcing areas, including their leaders and human rights defenders. It would also ignore the growing body of evidence that recognising and protecting the rights of Indigenous Peoples and other groups with collective customary tenure rights (hereafter referred to as "**other customary rights-holders**") leads to less deforestation and better protection for forests and other ecosystems. Furthermore, it would deviate from the approach taken in existing EU legislation that requires human rights due diligence on products with specific human rights risks.³

This briefing explains why and how specific human rights requirements should be included in the Legislative Proposal and integrated into a product-based due diligence framework for FERCs placed on the EU market.⁴

1 Why human rights should be included in the Commission's legislative proposal

a The agricultural products most associated with deforestation are also highly associated with negative human rights impacts

Just as deforestation and ecosystem conversion have significant ecological, biodiversity, and climate impacts, they can also have significant human rights implications. The conversion of forests and other ecosystems to agricultural production is often linked to land-grabbing, conflict, violence, and adverse human rights impacts, particularly for Indigenous Peoples and other customary rights-holders whose territories include forests or other natural areas at risk of conversion to agricultural use.

The 2019 Global Witness report⁵ into violence against land and environmental defenders around the world shows that Indigenous Peoples experience significantly greater risks of conflict and violence related to their land. Between 2015 and 2019, over a third of all fatal attacks against land and environmental defenders have targeted Indigenous Peoples, even though Indigenous communities make up only 5 percent of the world's population⁶. Overall, the report documented 212 known killings of land and environmental defenders in 2019, with unreported figures likely to be higher. The agribusiness and forestry sectors are consistently linked to high

levels of violence against land and environmental defenders and their communities, and were clearly linked to half of the global killings in 2019 for which a responsible industry could be identified. In addition, the dynamics of threats to forest defenders are also highly racialized – with Indigenous Peoples, ethnic minorities, and communities of colour disproportionately vulnerable and targeted, often exacerbating their existing social, political, and economic marginalisation.

On 5 June 2021, more than 50 United Nations human rights experts issued a joint statement⁷ emphasising that “environmental human rights defenders have been facing a shocking rate of killings, threats, arbitrary arrests, harassment and intimidation as a direct result of their legitimate work on human rights and the environment”. They called for urgent, transformative action “not only to address the COVID-19 pandemic but to protect the environment and human rights, and to address the drivers of climate disruption, toxic pollution, biodiversity loss, and zoonotic diseases, including by requiring businesses to respect the rights of affected communities and the environment”.

b | Protecting human rights increases protection for forests and natural ecosystems

Ignoring the human rights dimension of deforestation is particularly inconsistent with the way in which Indigenous Peoples and other customary rights-holders often experience their relationship with the forests and other natural ecosystems in their territories. This relationship is often described in reciprocal and holistic ways in which the culture, language, spiritual beliefs, traditions, history, identity, well-being and the very existence of Indigenous Peoples and other customary rights-holders is entwined with the natural world they inhabit.

Unsurprisingly, Indigenous Peoples and other customary rights-holders in FERC production and sourcing areas have unparalleled knowledge and expertise in sustainable forest management. The UN Food and Agriculture Organisation⁸, the Intergovernmental Panel on Climate Change⁹ and the scientific community¹⁰ have widely acknowledged the expertise and stewardship of Indigenous Peoples and other customary rights-holders in protecting the world's forests. Studies¹¹

have confirmed that deforestation rates are lower in Indigenous and tribal territories where governments have formally recognised collective land rights. For example, between 2006 and 2011, deforestation rates in formally recognised Indigenous territories in the Peruvian Amazon reduced twice as much¹² as protected areas with similar ecological conditions and accessibility, and this pattern is seen across many other Latin American countries. Recognising and protecting customary land rights, including advancing women's participation in forest governance, has been shown to curb deforestation and promote forest regeneration¹³. The problem, however, is that while Indigenous Peoples and other customary rights-holders are estimated to hold as much as 65 percent of the world's land area¹⁴ through customary, community-based tenure systems, national laws only recognise 10 percent of land as belonging to them, with another 8 percent designated for their use¹⁵.



Members of the Kayapo Indigenous tribe block a highway in Para State, Brazil, as part of a larger Indigenous protest in the Brazilian Amazon in 2020 that called for help during the Covid pandemic and an end to illegal mining and deforestation in Indigenous territories.

Credit: JOAO LAET/AFP via Getty Images

Essentially, efforts to preserve the world's forests in a sustainable and responsible way are unlikely to succeed without respecting and protecting the rights of Indigenous Peoples and other customary rights-holders. EU measures to protect forests will be most effective when they recognise, respect and protect the rights of Indigenous Peoples and other customary rights-holders, as they have a presence 'on the ground' and can quickly detect and prevent potential impacts, have an interest in preventing deforestation and supporting sustainable development, and will be an invaluable source of information to support effective implementation and enforcement, particularly in remote forest areas. Without acknowledging and addressing the risks posed by industrial agricultural operations to the rights, livelihoods, culture, safety and security of Indigenous Peoples and other customary rights-holders – the very people fighting to defend and protect forests – the Legislative Proposals risks undermining the objective of the Commission's initiative – to protect the world's remaining forests.

In contrast, incorporating specific human rights requirements in the Legislative Proposal would increase the level of protection it provides for forests and other natural

ecosystems. Conversely, excluding human rights protections from the forthcoming Legislative Proposal would put Indigenous Peoples and other customary rights-holders in FERC production and sourcing areas at higher risk of harm, increasing their vulnerability to land-grabbing, violence and rights violations, and would signal to companies that deforestation is considered an isolated risk without the need to address associated human rights impacts, in contrast to the reality on the ground. It could also lead to unintended consequences, such as the eviction of local communities from non-forested lands to make way for industrial farming operations that can access the EU market which would otherwise have expanded into forested areas. This may in turn have negative spill-over effects where dispossessed communities move into and clear new forest areas out of necessity to maintain their livelihoods and avoid being forced into landlessness and poverty. Including specific human rights requirements is therefore also critical to ensure that businesses don't attempt to suppress the rights of Indigenous Peoples or other customary rights-holders as a means of securing FERC production and sourcing areas that comply with the legislation's environmental safeguards.

c | The EU is legally bound to respect and protect human rights globally

The EU was founded on the value of respect for human rights¹⁶. The fundamental rights contained in the *European Convention for the Protection of Human Rights and Fundamental Freedoms* constitute general principles of EU law¹⁷ and the *Charter of*

Fundamental Rights of the European Union is directly and legally binding on the EU institutions¹⁸. In its relations with the wider world, the EU is obliged by its founding treaty to "contribute to [...] the protection of human rights [...] as well as to the strict observan-

ce and the development of international law, including respect for the principles of the United Nations Charter”¹⁹. Its actions on the international scene must be guided by and conducted in accordance with its founding principles, including “the universality and indivisibility of human rights”, and “respect for the principles of the United Nations Charter and international law”, and must pursue the objective of consolidating and supporting human rights and international law²⁰. The EU is required to respect these principles and pursue these objectives in the development and implementation of its external actions as well as “the external aspects of its other [internal] policies.”²¹

With regards to respecting and protecting human rights under international law, the Court of Justice of the European Union (“**CJEU**”) has held that international law is binding on the EU institutions, including customary international law and “provisions of international agreements in so far as they codify customary rules of general interna-

tional law”²². Therefore, the EU institutions “must respect international law in the exercise of their powers”²³. According to the Grand Chamber of the CJEU, this means that “when [the EU] adopts an act, it is bound to observe international law in its entirety”²⁴. This includes human rights obligations under international law. While the EU is itself a signatory to only one international human rights treaty (the Convention on the Rights of Persons with Disabilities²⁵), it is nevertheless directly bound to ensure that human rights which form part of customary international law are respected, including human rights recognised in international treaties that codify or are regarded as constituting customary international law. According to the Regional Office for Europe of the UN High Commissioner for Human Rights, this means that “there is a strong case [...] that the EU is directly bound by a significant body of international human rights law and that this body of law is in substance identical to the standards contained in the UN human rights treaties”.²⁶



The European Commission, like the other EU institutions, is therefore legally obliged to respect and protect human rights under international law *as well as* the human rights and fundamental freedoms enshrined in the *European Convention and Charter* when exercising its law-making powers with regards to both external and internal policies.²⁷

The obligation to respect and protect human rights requires states to ensure that their actions do not harm or negatively affect human rights, to take active measures to ensure that human rights are not negatively affected by third parties (including by business enterprises) under their jurisdiction, and to provide redress for impacts that occur (often described collectively as the state 'duty' to protect human rights).²⁸ In this regard, it

should be noted that the European Commission confirmed in 2015 that the EU shares the state duty to protect human rights in "areas of exclusive or shared competence" (referring to the EU's law-making jurisdiction vis à vis Member States)²⁹. In other words, in areas where the EU institutions exercise legislative competence, such as when the Commission proposes legislation, they should ensure that their actions fulfil the state duty and protect human rights.

As noted above, it is arguable that ignoring the human rights dimension of commodity-driven deforestation in the Legislative Proposal would breach the obligations to respect and protect human rights because it would expose Indigenous Peoples and other customary rights-holders to higher risks of land-grabbing, violence and rights violations.

Addressing the human rights dimension of deforestation *and* including requirements that ensure respect and protection for human rights in the Legislative Proposal is therefore necessary to satisfy the Commission's legal obligations to respect and protect human rights in the exercise of its law-making powers. At a minimum, this should be done by obliging EU operators to ensure, on the basis of their compliance with prescribed human rights due diligence requirements, that their FERCs are not linked to human rights risks or impacts before they are placed on the EU market. In order to comply with the obligation to protect human rights, the Legislative Proposal should also provide rights of redress before EU courts for victims of human rights impacts linked to FERCs placed on the EU market.



Customary landowners walking along logging road in illegally logged forest, New Hanover, PNG
Credit: Global Witness.

Specific requirements for specific products, common standards for all companies - complementarity with the EU Sustainable Corporate Governance initiative:

As part of its Sustainable Corporate Governance ("**SCG**") initiative³⁰, the Commission has committed to present a legislative proposal that should require EU-based companies and those doing businesses in the EU to conduct due diligence along their whole value chains to prevent and mitigate their harmful human rights, environmental and governance impacts. While this legislative proposal, anticipated by the end of 2021³¹ in the form of a new EU Directive, is expected to include some form of human rights due diligence requirements, it will be fundamentally different from the FERC Legislative Proposal.

The SCG directive is expected to establish common standards for all businesses operating in the EU that will apply across all sectors. It is not expected to include product-based requirements or requirements for specific kinds of products. Nor is it expected to impose any conditions for the placement of products on the EU market. In contrast, the FERC Legislative Proposal will address a different area of legislative competence (the regulation of products placed on the EU market) and will apply to a targeted category of products (forest and ecosystem-risk commodities) as opposed to a broad scope of businesses. It will need to provide specific criteria for those products to be placed on the EU market that effectively minimise the risks that they are linked to impacts associated with deforestation and forest degradation, including associated human rights impacts. Given its focus on specific products with specific risks for a specific purpose, the FERC Legislative Proposal requires targeted measures that respond to the specific human rights risks associated with FERCs (including their production) and clear criteria that minimise those risks for FERCs to be placed on the EU market.

There is therefore obvious benefit in having both a cross-sectoral due diligence framework that establishes common standards for businesses to assess and reduce the risks of negative impacts in their wider operations and value chains (and hold them accountable for those impacts), as well as targeted requirements for certain commodities that are highly associated with environment and human rights risks.

d EU citizens, businesses and the European Parliament want strong and clear legal requirements that protect human rights in forest and ecosystem-risk commodity supply chains

There is strong support from EU citizens, businesses and the European Parliament for an ambitious legislative proposal that addresses the human rights impacts, as well as environmental impacts, linked to FERC products and supply chains.

In December 2020, nearly 1.2 million citizens³² called for ambitious legislation that gives confidence to consumers that the products they buy are not linked to forest and ecosystem destruction or human rights violations, and also that EU-based banks are not directly or indirectly financing those impacts. There are also increasing examples³³ of EU businesses voicing their support for an ambitious FERC regulation that includes consideration of human rights impacts.

Significantly, the European Parliament sent a strong and clear signal to the Commission on 22 October 2020 with the adoption of a legislative initiative report³⁴ that formally calls on the Commission to develop an EU legal framework, based on mandatory due diligence, to address the risks of deforestation and ecosystem conversion as well as human rights abuses, including violations of the formal and customary rights of Indigenous Peoples and local communities, linked to FERCs placed on the EU market. Similarly, the report also calls for equivalent due diligence obligations to be applied to financial institutions that provide financial services to FERC sectors and producers.



Indonesians protesting against the controversial Omnibus Law on Job Creation that aims to increase investment by reducing regulatory requirements for business permits and land acquisition processes, which many fear will harm labour rights and Indigenous land rights.

Credit: Algi Febri Sugita/SOPA Images/LightRocket via Getty Images.

2 How human rights should be included in a product-based due diligence framework for forest and ecosystem-risk commodities

a Incorporating a human rights due diligence component into the market access requirements for specific products

It is common practice for the EU to impose specific requirements on agricultural and other products in order for them to be placed on the EU market.³⁵ When regulating specific products with particular human rights risks, the EU has also required EU operators to carry out due diligence on their supply chains with respect to potential adverse impacts on human rights.

For example, the **EU Minerals Regulation**³⁶ obliges importers of a targeted category of products associated with particular human rights risks (minerals and metals potentially originating from “conflict-affected and high-risk areas”) to establish and implement a supply chain due diligence system and use that system to identify and assess the actual and potential “risks of adverse impacts” in their supply chain, including risks of adverse impacts on human rights.³⁷

On 10 December 2020, the Commission presented³⁸ a legislative proposal concer-

ning batteries and waste batteries (“**Batteries Proposal**”)³⁹ that builds on the supply chain due diligence requirements in the EU Minerals Regulation. Importantly, the Batteries Proposal clarifies that those due diligence requirements should address the “actual and potential risks linked to the sourcing, processing and trading” of the relevant products on several risk categories, including human rights⁴⁰ “in line with international human rights law”,⁴¹ and imposes these requirements on businesses placing the relevant products on the EU market (i.e. product requirements that must be met in order for those products to access the EU market, as opposed to requirements imposed on importers of products under the EU Minerals Regulation). While the Batteries Proposal is not yet law, it illustrates that a human rights component can be integrated into product-based due diligence requirements for operators placing specific products associated with human rights risks on the EU market.

Compliance with local laws does not ensure respect for human rights:

The EU Timber Regulation⁴² is another EU law that establishes due diligence obligations for specific commodities (timber and timber products). While these commodities are associated with high environmental and human rights risks, due diligence is not required on risks of human rights or environmental impacts. Instead, the Timber Regulation adopts a 'legality' approach, and requires companies that first place timber products on the EU market to conduct due diligence on the risk that their products were harvested illegally in contravention of "applicable legislation" in the country of harvest. Placing products harvested in contravention of those applicable local laws on the EU market is prohibited.

While the kinds of "applicable legislation" on which due diligence is required - if they exist - includes legislation on "third parties' legal rights concerning use and tenure that are affected by timber harvesting"⁴³, this approach provides *very little* protection for human rights. Firstly, this approach could only cover - at best - a narrow scope of human rights related to land use and tenure. Secondly, that limited scope of human rights would only be covered if they are adequately recognised and protected under local laws. Thirdly, those rights will only be protected if they are affected by timber harvesting in ways that contravene local laws. In other words, if the laws in the country of harvest do not provide legal protection for tenure and land-use rights against logging activities, timber harvested in that country – even in contravention of internationally recognised human rights – could still be considered legal under the Timber Regulation.⁴⁴

Laws protecting the rights of Indigenous Peoples and other customary rights-holders in producer countries are often non-existent, weak, or poorly implemented. In many countries there is no formal recognition of or security for Indigenous or customary land tenure rights⁴⁵, and where local laws do recognise those rights, this often happens in a piecemeal and partial manner for small portions of Indigenous and customary territories⁴⁶ and is often heavily influenced by political interests. Unfortunately, the global reality is that Indigenous Peoples and other customary rights-holders have very little security over their customary lands, territories, or resources. This situation reinforces the need for EU legislation that ensures the FERCs placed on the EU market are not linked to human rights violations and that human rights are respected in the production of FERCs consumed in the EU regardless of whether those human rights are not recognised or protected by local legal frameworks in the place of production.

b Due diligence under the Legislative Proposal should determine whether FERCs may or may not be placed on the EU market

Given the purpose of the Legislative Proposal is to “minimise the risk of deforestation and forest degradation associated with products placed on the EU market”, it is essential that the outcome of the due diligence process determines whether or not the relevant FERC may be placed on the EU market. To achieve this result, the Legislative Proposal should set clear sustainability criteria for FERCs to be placed on the EU market and require that operators may only place FERCs on the market where the completion of the due diligence process indicates that their products have *no more than a negligible risk* of breaching those sustainability criteria. The criteria which FERCs must satisfy in order to be placed on the EU market should include requirements that they are not linked to deforestation or forest degradation, the conversion or degradation of other ecosystems, or

to human rights violations associated with those environmental impacts, in particular violations of the rights of Indigenous Peoples and other customary rights-holders.

To ensure that operators can conclusively determine whether their FERCs satisfy these criteria, the due diligence requirements should specify the human rights risks (as well as deforestation, forest degradation and ecosystem conversion risks) that must be investigated and the minimum scope of due diligence. As noted above, to ensure that risks of negative impacts associated with FERCs placed on the EU market are *minimised*, a ‘negligible risk’ threshold should be applied, meaning that FERCs may be placed on the EU market where there is no residual reason for concern that the FERC does not meet the prescribed sustainability criteria.⁴⁷

c The Legislative Proposal should specify the minimum human rights risks on which due diligence is required

In order to ensure quality and reliability in operators’ assessments of whether their FERCs satisfy the prescribed sustainability criteria, the Legislative Proposal should specify the risks on which operators placing FERCs on the EU market must conduct due diligence. These risks should include the actual and potential risk of adverse impacts on human rights linked to the production of the FERCs in their supply chain. Minimum proce-

dural requirements that operators must satisfy in conducting due diligence and addressing any risks that are identified should also be specified.⁴⁸ These risks and procedural requirements should give special attention to the rights of vulnerable groups that are particularly at risk of adverse impacts associated with FERC supply chains, such as Indigenous Peoples and other and other customary rights-holders.

The human rights risks on which due diligence should be conducted, at a minimum, should include actual and potential risks of adverse impacts on:

1. Human rights recognised under international law, in particular the rights of Indigenous Peoples and other customary rights-holders;
2. Customary and other legitimate tenure rights held pursuant to traditions, custom, or arising from a special dependency on and attachment to land; and
3. Rights of Indigenous Peoples and other customary rights-holders to give or withhold their free, prior, and informed consent ("FPIC")

to the commencement of any activity that may affect their rights, resources, territories, livelihoods, or food security, including as described in the United Nations Declaration on the Rights of Indigenous Peoples.⁴⁹

Due diligence on these human rights risks should be conducted in addition to due diligence on other relevant risks (i.e. deforestation, forest degradation, and degradation and conversion of other natural ecosystems) and according to the minimum procedural requirements described below.

d | The Legislative Proposal should specify the minimum scope required for human rights due diligence investigations

Given many human rights impacts associated with FERCs occur during the land acquisition phase (as outlined above) as well as during the production stage, the Legislative Proposal should specifically require operators to investigate the activities undertaken to access, acquire and use land for FERC production, the FERC production activities, and the area that has been affected (directly and indirectly) by those activities. Given the Legislative Proposal will cover a range of forest and ecosystem-risk commodities that have different

production processes, the requirement to investigate the production process should be cast broadly to cover all acts that contributed to producing the relevant commodity in the operator's supply chain, including all production, farming, harvesting and extraction activities (collectively referred to as "**Production Activities**").

The Legislative Proposal should therefore require investigation of the following matters (for the human rights risks listed above) as mandatory steps in the due diligence process:

1. The actors involved in Production Activities;
2. The human rights policies, protocols, assurance processes and performance of the actors involved in Production Activities;
3. The areas utilised for Production Activities, including areas used as offsets, buffer zones or set-aside for conservation purposes;
4. The location, rights and interests of all Indigenous Peoples, other customary rights-holders, and other local communities, including any land or natural resources owned, used or occupied by them, that may be affected by Production Activities;
5. The legal status of land used for Production Activities, the existence of any third-party interests in that land, including claims on the basis of customary or collective land tenure rights, and the historical use and tenure history of the land, including any historical or unresolved land conflicts;
6. The rights relied upon for Production Activities, including details of any concessions, licences or approvals and the circumstances in which they were obtained;
7. Any agreements with third parties relied upon to use the land for Production Activities and, where agreements have been made with Indigenous or customary land-owners, evidence of the agreement-making process and that FPIC was genuinely secured and has not been withdrawn;
8. The direct and indirect effects of Production Activities on local communities, including environmental, health, social, cultural and economic effects;
9. Land governance and land administration practices in the country and sub-national jurisdiction of origin, particularly regarding the extent of formal recognition and protection given to the rights, including customary and collective tenure and property rights, of Indigenous Peoples and other customary rights-holders, the potential for overlapping tenure claims, the grant of commercial land use rights in a manner that is inconsistent with the rights of Indigenous Peoples and other customary rights-holders, and the prevalence of land conflicts;
10. Publicly available information indicating contemporary or historical disputes associated with Production Activities or participants in the FERC supply chain, or disputes between Indigenous Peoples and other customary rights-holders and third parties, such as government and political actors, with interests in Production Activities, including reports from local media and civil society organisations.

Risk-based and proportionate:

While a comprehensive list of mandatory matters to be investigated as part of a product-based due diligence framework may give the initial impression of implying an administrative burden, it is important to recognise that due diligence investigations are inherently risk-based exercises. The amount of work required will ultimately depend on the risk profile of the relevant FERCs and will be proportionate to the risks that businesses take in buying those commodities and structuring their supply chains. Operators would need to obtain information about and consider most of the matters listed above in order to assess the risk that their FERCs are linked to deforestation or forest degradation in any case. A comprehensive due diligence requirement will not only provide businesses with clarity as to their legal obligations and scope of their human rights responsibilities but would also support businesses to identify and address the human rights risk profile of their products, supply chains and operations. It is fundamentally in the interests of businesses to obtain a realistic and accurate understanding of their human rights risk exposure.



An area of deforestation on the border of the Amazon rainforest in Pará State, Brazil, burned down to produce charcoal and to grow soybeans or raise cattle.
Credit: Eduardo Martino/Panos

e | The Legislative Proposal should include requirements to consult with affected rights-holders

To ensure the Legislative Proposal upholds the EU's duty to respect and protect human rights, and to ensure that operators appropriately respect human rights in their efforts to avoid or mitigate risks of adverse impacts, the Legislative Proposal should include additional requirements where risks of adverse impacts on the human rights of local people are identified.

In particular, when an actual or potential risk of adverse impacts is identified, operators should be required to:

1. Ensure genuine and good faith consultations take place with those stakeholders whose rights or interests may be affected in a safe and culturally appropriate manner and in the language and with the representatives or through the governance structures that they choose. Consultations should seek those stakeholders' views about the risks and impacts they perceive or experience and how any risks or impacts should be addressed. Consultation should provide stakeholders with the option of withholding, or providing, their free, prior and informed consent for any planned activities, including potential risk mitigation measures, and should be undertaken by someone with relevant expertise and credibility.

2. Take the views of those stakeholders into account in determining and assessing the actual and potential human rights risks and impacts that affect them, and in developing and implementing any risk management strategies and measures to avoid or mitigate those risks and impacts. This should include a requirement to respect any decision to withhold FPIC to any activities that may affect their rights, including potential mitigation measures.

While FPIC is primarily associated with Indigenous Peoples, FPIC processes are critical to safeguarding against a range of human rights abuses and should apply to all Indigenous Peoples and other customary rights-holders whose human rights may be impacted, including potential impacts caused by proposed risk management or mitigation measures.

3 Is it 'implementable'? Putting human rights due diligence into practice

To be effective, a product-based due diligence framework with a human rights component must be 'implementable' for operators placing FERCs on the EU market. One practical challenge is that those operators may not have direct contact or relationships with producers in their FERC supply chains. While identifying human rights impacts associated with FERC production may not be as simple as checking satellite images for deforestation, identifying risks of human rights impacts is nevertheless very straightforward.

The following section illustrates how human rights risks could have been identified in Brazilian beef supply chains using the human rights due diligence requirements discussed above.

a Human rights violations in Brazilian beef supply chains

In December 2020, Global Witness released the report *Beef, Banks and the Brazilian Amazon*, which shows how major Brazilian meat companies are failing to remove huge swathes of Amazon deforestation from their supply chains.⁵⁰ The report demonstrates how between 2017 and 2019, JBS, Marfrig and Minerva bought cattle from a combined 379 direct suppliers containing 20,000 football fields' worth of deforestation, and failed to check on other suppliers further up their supply chains - indirect suppliers - with an estimated total of 140,000 football fields of deforestation. Data shows that in the same period, banks headquartered in the EU provi-

ded or facilitated a combined €616 million to JBS, Marfrig and Minerva. The investigation also exposed that JBS and Marfrig bought cattle from ranchers accused by Brazilian authorities of land grabbing and that were linked to human rights abuses of Indigenous Peoples and land rights activists.

The case studies below demonstrate how EU operators and financiers doing business with JBS and Marfrig could have easily detected risks of human rights impacts using the due diligence criteria and process described above.



Brazilian beef: inside the supply chain. Global Witness has investigated how European banks and supermarkets are connected, through financial flows and beef supply chains, with Brazilian beef producers that have been linked to human rights violations and deforestation in the Amazon.

Credit: Nathan Hackett/Global Witness

b | Case study: JBS and the lack of any traceability system for indirect suppliers

In the case of JBS, Global Witness's research⁵¹ found it repeatedly purchased cattle from cattle rancher Rafael Saldanha, an influential rancher who has been fined for environmental crimes,⁵² linked to human rights abuses against landless peoples and accused by prosecutors of land grabbing⁵³ and even murder.⁵⁴ The rancher denied these allegations and the cases are ongoing.⁵⁵ JBS purchased from Saldanha through his Fazenda Santa Tereza ranch until 2015,⁵⁶ even though Brazil's environmental inspec-

tion agency (known as Ibama) had reportedly found illegal deforestation in the ranch.⁵⁷ JBS stopped buying cattle from Fazenda Santa Tereza in 2015, but continued buying from another of Saldanha's ranches between 2015 and 2019: Fazenda Primavera.⁵⁸ However, Fazenda Santa Tereza supplied 3,066 cattle to Fazenda Primavera between 2015 to 2019.⁵⁹ Fazenda Santa Tereza, where conflict with landless peoples⁶⁰ had been well reported,⁶¹ therefore remained in JBS's supply chain as an indirect supplier.

A desktop due diligence investigation using the human rights criteria and procedural requirements above, and using only publicly available and online information, would have enabled any operator or financial institution exposed to JBS's operations in Pará to discover that:

1. as early as 2015 and each year up to 2019, publicly available audits of JBS's compliance with its voluntary no deforestation pledge stated that it had no traceability system in place to monitor its indirect suppliers, although the company blamed this on a lack of public access to cattle transport permits (this should be a red flag in any supply chain due diligence investigation);⁶²

2. the independent auditor that audited JBS's Brazilian operations between 2017 – 2019, DNV-GL Business Assurance, took the unusual step of issuing a disclaimer in July 2020 asserting that its audit reports "cannot be used as evidence of good practices throughout [JBS's] entire supply chain" and that "JBS did not have systems in place to trace the indirect supply chain; thus, indirect suppliers were not assessed during the [2019] audit";⁶³

3. the ranches Fazenda Primavera and Fazenda Santa Tereza were in JBS's supply chain as direct and indirect suppliers respectively;⁶⁴

4. the size, location, boundaries, and owner, among other details, of the ranches Fazenda Primavera and Fazenda Santa Tereza;⁶⁵

5. between 2010 and 2018 there were various land conflicts between landless peoples and Fazenda Santa Tereza that have been reported, including referring to Mr Saldanha by name and including descriptions of many violent events over that period, incidents involving gunmen and the burning of community property – though the rancher's lawyers denied the claims;⁶⁶ and

6. Rafael Saldanha stands accused by prosecutors in an ongoing criminal investigation of being involved in the killing, in 1998, of two representatives of a national organisation that campaigns for land rights, the Landless Rural Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra*) – allegations he denies.⁶⁷

This information, drawn exclusively from publicly available and online sources, would alert any reasonable operator or financier to the risk of actual or potential human rights impacts linked to products from JBS's slaughterhouses in Pará.

"Companies like JBS should not

be buying from suppliers that

destroy forests and commit human

rights abuses against communities

like ours, and its western financiers should not profit from these failures.

That's why it's absolutely crucial the EU introduces a strong law to ensure

our rights are respected and that we are properly consulted and involved

throughout. The sustainability of products sold in the EU should not come

at the expense of losing our home."

– a member of the Movimento dos Trabalhadores Rurais Sem Terra

b | Case study: Marfrig and suppliers within Indigenous territories

Concerning Marfrig, Global Witness's investigation exposes how Indigenous Peoples' territories have been grabbed by ranchers for cattle grazing linked to Marfrig's supply chain. In 2007 the Brazilian Government recognised the Indigenous territory of Apyterewa⁶⁸ - an area more than five times the size of Mexico City⁶⁹ and home to the Indigenous Parákana Peoples. Global Witness's investigation revealed that a rancher by the name of Antonio Borges Belfort illegally reared cattle in Apyterewa between 2016 and 2019 at his ranch Fazenda Sol Nascente, and that this ranch is an indirect supplier linked to Marfrig's supply chain. Cattle transport permits show that cattle from this ranch was sent to another farm that Belfort owned outside Apyterewa, Fazenda Serra de Pedra, from which Marfrig bought 274 cows between 2018 and 2019.⁷⁰ The rancher declined to comment on the allegations.⁷¹

A desktop due diligence investigation using the human rights criteria and procedural requirements above, and using only publicly available and online information, would have enabled any operator or financial institution exposed to Marfrig's operations in Pará to discover that:

1. In 2015, 2017, 2018 and as late as 30 April 2020, publicly available audits of Marfrig's compliance with its voluntary no deforestation pledge stated that it did not systematically check its indirect suppliers and that Marfrig had not developed auditable procedures for verifying these ranches (this should be a red flag in any supply chain due diligence investigation);⁷²

2. in December 2019, the Bureau of Investigative Journalism reported that Marfrig had admitted that "huge gaps in its audit trail mean more than half of the cattle it buys could have been bred or raised elsewhere" and "that 53% of the cattle it slaughters originate from these indirect suppliers" (this should also be a red flag in any supply chain due diligence investigation);⁷³

3. Marfrig has indicated that it does not anticipate fully monitoring its indirect suppliers in the Amazon region until 2025;⁷⁴

4. the Fazenda Serra de Pedra ranch and Fazenda Sol Nascente ranch were in their supply chain as direct and indirect suppliers to Marfrig respectively;⁷⁵

5. the size, location, boundaries, and owner, among other details, of the Fazenda Serra de Pedra and Fazenda Sol Nascente ranches;⁷⁶

6. the area where the Fazenda Sol Nascente ranch is located, Apyterewa, is reported as an Indigenous territory that was officially recognised by Presidential Decree as Parákanã territory in April 2007 and that all non-Indigenous occupants, such as cattle ranchers, were required to leave the area by order of the Ministry of Justice;⁷⁷ and

7. there are many reports of illegal settlers entering, clearing, and occupying a significant portion of Apyterewa for logging, cattle ranching and mining in the years since it was

recognised as an Indigenous territory, with the rate of new arrivals and related deforestation and land conflicts increasing in recent years.⁷⁸

Based on the information above alone, a reasonable operator or financier would be alerted to a reasonable risk of human rights impacts linked to products from Marfrig's slaughterhouse in Para.

d | The availability of relevant information means that anyone with an internet connection can conduct human rights due diligence

These case studies illustrate that identifying risks of human rights impacts linked to particular commodities and derived products can be very straightforward. Given the wealth of digital information and online tools available,⁷⁹ any company or financier with access to the internet can carry out the initial steps of a risk-based human rights due diligence process. There is no excuse for companies or financiers turning a blind eye to information indicating that their products or financial services are linked to human rights impacts that they could have discovered by a single Google search for “[insert supplier/client’s name] and human rights”.

On the contrary, the fact that EU companies and financiers continue doing business with suppliers and producers despite publicly available information linking them to human

rights risks underscores the need for strong regulation to ensure that products placed on the EU market and EU financial services are not linked to human rights violations. Although producer countries like Brazil may have signed-up to international human rights conventions, like ILO Convention 169 on Indigenous and Tribal Peoples or the American Convention on Human Rights, this provides no guarantee that national laws or legal frameworks provide any protection for the human rights of Indigenous Peoples and other customary rights-holders. In order to ensure that products sold on the EU market are not linked to human rights impacts, the EU must enact legislation specifically requiring operators to conduct robust due diligence as described above before placing those products on the EU market.

CONCLUSION

Given the links between FERCs placed on the EU market and related human rights impacts, particularly on Indigenous Peoples and other customary rights-holders, it is crucial that any proposal to address the sustainability of the EU market also addresses the human rights impacts linked to products consumed in the EU. Including requirements to respect and protect human rights in the Legislative Proposal is likely to enhance its effectiveness in minimising the risk of products linked to deforestation and forest degradation being placed on the EU market, as well as increasing the positive impact it has on protecting the world's forests.

Human rights due diligence on forest and ecosystem-risk commodities is entirely feasible. It may be challenging in some cases, but it is not impossible, and there is a wealth of guidance available for companies, including financiers, to carry out human rights due diligence on their supply chains and business relationships, which could support operators in implementing specific due diligence requirements for FERCs to be placed on the EU market under the Legislative Proposal. This includes guidelines for consulting with Indigenous Peoples and other customary rights-holders and ensuring their rights to their customary territories, natural resources and to FPIC are respected.⁸⁰

Failure by the Commission to ensure that human rights are protected and to require EU market operators to respect human rights in the FERC Legislative Proposal would be inconsistent with: (i) the binding human rights obligations under the EU treaties with regards to external and internal EU policies; (ii) the jurisprudence of the CJEU that EU institutions must respect international law in its entirety – including human rights law – in the exercise of their powers; and (iii) the Commission's duty to protect human rights when exercising its legislative competence.

A critical step in protecting forests is to first safeguard the rights of those who have most successfully defended and protected them. As global deforestation continues at alarming rates, with escalating impacts on our climate and biodiversity, it is of utmost importance that the EU's efforts to protect the world's forests also recognise, respect, and protect the rights of Indigenous Peoples and other customary rights-holders and enables them to assert those rights in defence of the forests and other natural ecosystems in their territories.

In light of the above, it is imperative that the forthcoming Legislative Proposal to minimise the risk of deforestation and forest degradation associated with products placed on the EU market explicitly acknowledges the human rights dimension of deforestation and includes clear human rights requirements in the proposed product-based due diligence framework.

NOTES

1. Speech by European Commission's President von der Leyen at the One Planet Summit, 11 January 2021. Available at: https://ec.europa.eu/commission/presscorner/detail/en/speech_21_61. Although the European Commission's Work Programme for 2021 (https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF) originally indicated that the Legislative Proposal was going to be published in Q2 2021, this timeline has now been shifted to September/October 2021.
2. European Commission (2019) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Stepping up EU Action to Protect and Restore the World's Forests'*. COM/2019/352 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0352>.
3. For example, the EU Conflict Minerals Regulation (Regulation (EU) 2017/821 of the European Parliament and Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas). Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32017R0821>.
4. For a thorough analysis of the other elements required for an effective product-based due diligence framework that should also be included in the Commission's proposal, such as: coverage of natural ecosystems other than forests; supply chain transparency and traceability requirements; equivalent due diligence and reporting obligations for financiers; and a robust enforcement regime that includes monitoring, enforcement and complaint mechanisms in Member States as well as rights for impacted third parties to seek redress before courts in the EU, see the joint briefing *NGO recommendations on the future EU regulation to address the forest, ecosystem, and human rights impacts associated with products placed on the EU market*, published by ClientEarth, Conservation International, the Environmental Investigation Agency, Fern, Global Witness, Greenpeace, the Wildlife Conservation Society and WWF in April 2021. Available at: <https://together4forests.eu/resources/NGO%20recommendations-%20EU%20Regulation%20to%20address%20forest%20and%20human%20rights%20impacts.pdf>.
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7. United Nations Office of the High Commissioner for Human Rights (2021) *Joint Statement by UN human rights experts for World Environment Day*. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27130&LangID=E>.
8. Food and Agriculture Organization of the United Nations - FAO (2017) *Indigenous peoples are key to protecting wildlife and rural livelihood*. Available at: <http://www.fao.org/family-farming/detail/en/c/887065>.
9. The Intergovernmental Panel on Climate Change (2019) *Special Report, Climate Change and Land*. Available at: <https://www.ipcc.ch/srccl>.
10. Fa, J.E., Watson, J.E., Leiper, I. et al. (2020) 'Importance of Indigenous Peoples' lands for the conservation of Intact Forest Landscapes', *Frontiers in Ecology and the Environment*, 18(3), pp.135–140. Available at: <https://esajournals.onlinelibrary.wiley.com/doi/10.1002/fee.2148>.
11. World Resources Institute (2021) *4 Ways Indigenous and Community Lands Can Reduce Emissions*. Available at: <https://www.wri.org/insights/4-ways-indigenous-and-community-lands-can-reduce-emissions>.
12. FAO and FILAC (2021) *Forest Governance by Indigenous and Tribal People. An Opportunity for Climate Action in Latin America and the Caribbean*. Available at: <http://www.fao.org/documents/card/en/c/cb2953en>.
13. Nature Climate Change (2021) 'Forests in focus', *Nature Climate Change*, 11, 363. Available at: <https://www.nature.com/articles/s41558-021-01050-5>.
14. Up to 2.5 billion men, women and children, including more than 370 million Indigenous People, rely on land, natural resources and ecosystems – forests, rangeland and wetlands - that are held, used or managed collectively. About one in three people is dependent on communal land for their wellbeing and livelihood: see Oxfam, International Land Coalition, Rights and Resources Initiative and Land Rights Now (2016) *Common Ground: Securing land rights and safeguarding the earth*. Available at: https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp-common-ground-land-rights-020316-en_0.pdf; United Nations Permanent Forum on Indigenous Issues Factsheet, available at: https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf; Liz Alden Wily (2011) *The tragedy of public lands: the fate of commons under global commercial pressure*. Rome: International Land Coalition. Available at: <https://www.iccaconsortium.org/wp-content/uploads/2015/08/legal-example-the-tragedy-of-public-lands-2011.pdf>.

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16. Article 2, Treaty on European Union. Available at: https://eur-lex.europa.eu/eli/treaty/teu_2016/oj.

17. Article 6(3), Treaty on European Union.

18. Article 51, Charter of Fundamental Rights of the European Union. Available at: https://eur-lex.europa.eu/eli/treaty/char_2012/oj. Article 6, Treaty on European Union.

19. Article 3(5), Treaty on European Union.

20. Articles 21(1), 21(2) and 23, Treaty on European Union.

21. Article 21(3), Treaty on European Union.

22. CJEU, Case C-308/06, *Intertanko* [2008] ECR I-4057, para. 51. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62006CJ0308>.

23. Case C286/90 *Poulsen and Diva Navigation* [1992] ECR I6019, paragraph 9. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:61990CJ0286>; Case C162/96 *Racke* [1998] ECR I3655, paragraphs 45 and 46. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61996CJ0162>

24. CJEU Case C-366/10, *Air Transport Association of America* [2011] ECR I-13755, at para. 101. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62010CJ0366>.

25. See Council Dec. of 26 Nov. 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ (2010) L23/35.

26. Regional Office for Europe of the UN High Commissioner for Human Rights (2011) *The European Union and International Human Rights Law*, at p. 24. Available at: https://europe.ohchr.org/Documents/Publications/EU_and_International_Law.pdf.

27. For more discussion on the EU's human rights obligations see Lorand Bartels (2014) 'The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects', *European Journal of International Law*, Volume 25, Issue 4, pp. 1071–1091. Available at: <https://doi.org/10.1093/ejil/chu071>.

28. See the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Annex to the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, unanimously adopted by the UN Human Rights Council (Seventeenth session) on 21 March 2011: A/HRC/17/31. Available at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

29. European Commission (2015) *Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights - State of Play*, at pp. 2, 6. Available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2015\)144&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2015)144&lang=en).

30. See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en.

31. The European Commission Work Programme 2021 (available at https://eur-lex.europa.eu/resource.html?uri=cellar%3A91ce5c0f-12b6-11eb-9a54-01aa75ed71a1.0001.02/DOC_2&format=PDF) indicates this proposal would be presented in Q2, though the Commission has recently indicated that this timeframe is delayed until Q3 2021.

32. Together 4 Forests, <https://together4forests.eu/>.

33. Statement of support from businesses for an effective EU law to halt the trade in commodities and products linked to deforestation and conversion (May 2021). Available at: <https://drive.google.com/file/d/1x-QLvYEuzIMGz5kZMxNhj02UOgdY-BsrZ/view>.

34. European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.html.

35. See for example Title II of Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, and Articles 75(2) & (6), Article 86 in particular. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R1308&from=EN#d1686e5514-671-1>. Examples of other detailed sector-specific market regulations include Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), available at: <https://echa.europa.eu/regulations/reach/legislation>; Directive 2009/48/EC on the safety of toys, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0048-20191118>; and Regulation (EC) No 1223/2009 on cosmetic products, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009R1223-20190813>.

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36. Regulation (EU) 2017/821 of the European Parliament and Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas). Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32017R0821>

37. See Articles 4 and 5 of the EU Minerals Regulation. The supply chain due diligence system should include an appropriate supply chain due diligence policy, risk management system, a chain of custody or supply chain traceability system, grievance mechanism, third-party audits and disclosure procedures. While the EU Minerals Regulation does not explicitly require due diligence on risks of adverse impacts on human rights, it incorporates due diligence on human rights norms in accordance with international law by requiring due diligence consistent with the standards prescribed in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, which are based on international human rights norms and requires human rights due diligence along the entire supply chain.

38. European Commission (10 December 2020) *Green Deal: Sustainable batteries for a circular and climate neutral economy* [press release]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2312.

39. Proposal for a regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 ("**Batteries Proposal**"). Available at: https://ec.europa.eu/environment/pdf/waste/batteries/Proposal_for_a_Regulation_on_batteries_and_waste_batteries.pdf.

40. See the definition of 'supply chain due diligence' in Article 2, Article 39 and 39(3)(a) in particular, and Point 2(h) in Annex X, Batteries Proposal.

41. Recital 67, Batteries Proposal.

42. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market ("**EU Timber Regulation**"). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995>.

43. Article 2(h), EU Timber Regulation.

44. See for example Forest Peoples Programme (2016) *Human Rights and Timber Supply Chains A rights-based analysis of EU FLEGT VPAs*. Available at: https://www.forestpeoples.org/sites/default/files/publication/2016/02/fpplegalcomparativestudyforweb_0.pdf.

45. See for example RRI (2015) *Who Owns the World's Land? A global baseline of formally recognized indigenous and community land rights*. RRI, Washington DC, pp. 6. Available at: https://rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf; Forests People Programme (2018) *Closing the gap: rights-based solutions for tackling deforestation*. Available at: <https://rightsanddeforestation.org/policy-paper/closing-the-gap-online.pdf>.

46. ClientEarth (2018) *Legal Toolkit on Forest Conversion Fact-sheet 5: Communities' rights – the need for recognition*. Available at: <https://www.documents.clientearth.org/library/download-info/legal-toolkit-on-forest-conversion-fact-sheet-5-communities-rights-the-need-for-recognition/>.

47. For more detail on the various requirements the FERC Legislative Proposal should contain in order to establish an effective product-based due diligence framework for forest and ecosystem-risk commodities, see ClientEarth, Conservation International, the Environmental Investigation Agency, Fern, Global Witness, Greenpeace, the Wildlife Conservation Society and WWF (2020) *NGO recommendations on the future EU regulation to address the forest, ecosystem, and human rights impacts associated with products placed on the EU market*. Available at: <https://together4forests.eu/resources/NGO%20recommendations-%20EU%20Regulation%20to%20address%20forest%20and%20human%20rights%20impacts.pdf>.

48. These elements are comprehensively addressed in ClientEarth, Conservation International, the Environmental Investigation Agency, Fern, Global Witness, Greenpeace, the Wildlife Conservation Society and WWF (2020) *NGO recommendations on the future EU regulation to address the forest, ecosystem, and human rights impacts associated with products placed on the EU market*. Available at: <https://together4forests.eu/resources/NGO%20recommendations-%20EU%20Regulation%20to%20address%20forest%20and%20human%20rights%20impacts.pdf>.

49. United Nations Declaration on the Rights of Indigenous Peoples (2007). Available at: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples>.

50. Global Witness (2020) *Beef, Banks and the Brazilian Amazon*. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

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51. For more information about this case study, see page 15 of the Beef, Banks and the Brazilian Amazon. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

52. Global Witness analysed the Brazilian environmental protection agency's (known as 'Ibama') public database (<https://servicos.ibama.gov.br/ctf/publico/areasembargadas/ConsultaPublicaAreasEmbargadas.php>), consulting embargoed areas and finding an embargo (TAD nº 353571) for illegal deforestation in the name of Rafael Saldanha de Camargo related to the Fazenda Vale Verde II ranch located in São Felix do Xingu/Pará.

53. Tribunal de Justiça do Estado do Pará, Processo Judicial Número: 0802823-96.2019.8.14.0028, pg. 28 "A condenação do réu RAFAEL SALDANHA DE CAMARGOS por dano moral coletivo causado à sociedade paraense em decorrência da prática de grilagem de terras públicas, tendo em vista os graves prejuízos econômicos, sociais e ambientais que tal prática ocasiona, no valor de 10 (dez) por cento do valor da causa." (English translation: The condemnation of the defendant RAFAEL SALDANHA DE CAMARGOS for collective moral damages caused to the Paraense society due to the practice of illegal occupation of public lands, considering the serious economic, social and environmental damage that such practice causes, in the amount of 10 (ten) per cent of the value of the cause). Available at: <https://www.tjpa.jus.br/PortalExterno/>. Other sources: Câmara dos Deputados, sessão 340.3.55.0, Orador: Edmilson Rodrigues, Psol-Pa. Available at: [https://cptnacional.org.br/quem-somos/12-noticias/conflitos/4158-enquanto-o-latifundio-quer-guerra-nos-quermos-terra](https://www.camara.leg.br/internet/SitaqWeb/TextoHTML.asp?e-tapa=5&nuSessao=340.3.55.0&nuQuarto=17&nuOrador=2&nuInsercao=89&dtHorarioQuarto=11:42&sgFaseSessao=OD&Data=09/11/2017&txApe-lido=EDMILSON%20RODRIGUES,%20PSOL-PA&txFaseSessao=Ordem%20do%20Dia&txTipoSessao=Deliberativa%20Extraordin%C3%A1ria%20-%20CD&dtHoraQuarto=11:42&txEtapas; Comissão Pastoral da Terra (14 December 2017) Enquanto o latifúndio quer guerra, nós queremos terra!. Available at: <a href=).

54. Judicial Process, State Court of Pará, site for public consultation (<https://consultas.tjpa.jus.br/consultaprocessoportal/consulta/principal#>) consulted on 04 May 2020 regarding process number (CNJ) 0000153-72.1998.8.14.0040.

55. See p.15 of the Beef, Banks and the Brazilian Amazon report for more details of this case. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

56. For an explanation of how Global Witness reached conclusions about the cattle trade between Rafael Saldanha and JBS, see the methodology on page 35 of the Beef, Banks and the Brazilian Amazon report. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

57. Based on a public 2017 report by the Pará State Legislative Assembly Commission on Human Rights and Consumer Protection seen by Global Witness. The Ibama embargoed deforestation area in Fazenda Santa Tereza can be found referenced on pages 5 and 27 of the report. Available at: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:6076f-f8d-6a60-4e25-be15-bcf-799c6226b>.

58. Based on an analysis of cattle transport permits for cattle from Rafael Saldanha's ranches. For an explanation of how Global Witness reached conclusions about the cattle trade between Rafael Saldanha and JBS, see the methodology on page 35 of the Beef, Banks and the Brazilian Amazon report. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

59. Based on an analysis of cattle transport permits for cattle from Rafael Saldanha's ranches. For an explanation of how Global Witness reached conclusions about the cattle trade between Rafael Saldanha and JBS, see the methodology on page 35 of the Beef, Banks and the Brazilian Amazon report. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon/>.

60. Brazil's Landless Workers Movement, *Movimento dos Trabalhadores Rurais Sem Terra* (MST) in Portuguese, is a mass social movement, formed by rural workers and by all those who want to fight for land reform and against injustice and social inequality in rural areas. See here for further information; <https://www.mstbrazil.org/content/what-mst>.

61. For example, local and national media reported conflicts in 2016 (Brasil de Fato (2016) *Pistoleiros atacam o acampamento Hugo Chaves, em Marabá* (PA). Available at: <https://www.brasildefato.com.br/2016/11/03/pistoleiros-atacam-o-acampamento-hugo-chaves-em-maraba-pa>) and in 2018 (Globo (2018) Polícia investiga suposto ataque em fazenda reocupada por trabalhadores rurais em Marabá. Available at: <https://g1.globo.com/pa/para/noticia/2018/07/28/policia-investiga-suposto-ataque-em-fazenda-reocupada-por-trabalhadores-rurais-em-maraba.ghtml>).

62. See the 2015, 2016, 2017, 2018 and 2019 independent audit report of JBS's compliance with its "Public Livestock Commitment". Audit reports for 2017, 2018 and 2019 are available on JBS's own website: 2017 (available in Portuguese only): https://jbs.com.br/wp-content/uploads/2019/11/JBS_RelatoC3%B3rioAuditoria-CompromissoPublico_DNVGL-2017_PT.pdf; 2018: https://www.jbs.com.br/wp-content/uploads/2019/11/JBS_RelatoC3%B3rioAuditoriaCompromissoPublico_DNVGL-2018_EN.pdf; and 2019: https://jbs.com.br/wp-content/uploads/2019/11/JBS_Re

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[lat%C3%B3rioAuditoriaCompromissoPublico_DNVGL-2019_EN.pdf](#). Audit reports for 2015 and 2016 could not be found on the JBS website but are available here: 2015: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:d3268167-8114-4bbb-a887-5d1dd1e62e36>; 2016: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:7f-2c4a7b-298e-4ec6-be21-7648c3681e-db>.

In each audit report, JBS blamed its failure to develop a traceability system for its indirect suppliers on the lack of public access to cattle transport permits. In the *Beef, Banks and the Brazilian Amazon* report, Global Witness demonstrates how these cattle transport permits are publicly accessible; see the Methodology on p. 35 and pp. 39-42 in particular on the public character of cattle transport permits.

63. This could be discovered by a [Google search for "DNV GL JBS audit"](#), returning this search result: Amnesty International (22 July 2020) *Brazil: Auditor calls out meat packer JBS's use of its audits to claim compliant supply chain in the Amazon*. Available at: <https://www.amnesty.org/en/latest/news/2020/07/brazil-auditor-calls-out-meat-packer-jbss-use-of-its-audits-to-claim-compliant-supply-chain-in-the-amazon/>.

64. This could be discovered by consulting the website of the Sanitary Agency of the State of Pará (*Agência Sanitária do Estado do Pará - Adepará*) and searching the public database of Animal Transit Certificates (<https://siapec3.adepara.pa.gov.br/siapec3/portaldeservicos.wsp>) for cattle transported "for slaughter" to JBS's slaughterhouses in Pará. This would identify ranches supplying JBS directly, including Fazenda Primavera. Then searching the public database of Cattle Transport Permits for cattle transported to the Fazenda Primavera ranch in the preceding 15 months (the average fattening period for cattle between birth and slaughter), which would identify Fazenda Santa Tereza. The Brazilian Government requires Animal Transit Certificates (*Guia de Trânsito Animal*) for sanitary control as cattle are transported around the country and they

show movements of cattle from birth to slaughter: Ministry of Agriculture law Instrução Normativa MAPA Nº 19 DE 03/05/2011 and Para state law Decreto Estadual nº 2802/1998.

65. This could be discovered by consulting the website of the State of Pará rural environmental registry, SICAR CAR Pará (Rural Environmental Register/PA): <http://car.semas.pa.gov.br/#/consulta/mapa>.

66. This could be discovered by a simple [Google search for "Rafael Saldanha de Camargos and Fazenda Santa Tereza"](#). Results include: Márcio Zonta, Movimento dos Trabalhadores Rurais Sem Terra (23 June 2020) *As prisões no Pará e os impuníveis Dantas e Saldanha* (Translation: Prisons in Pará and the unpunished Dantas and Saldanha). Available at: <https://mst.org.br/2020/06/23/as-priso-es-no-para-e-os-impuniveis-dantas-e-saldanha/>; Movimento dos Trabalhadores Rurais Sem Terra (1 August 2018) *Titulação de fazenda onde pistoleiros atacaram Sem Terra no Pará foi resultado de fraude* (Translation: Title of a farm where gunmen attacked Sem Terra in Pará was the result of fraud). Available at: <https://mst.org.br/2018/08/01/titulacao-de-fazenda-onde-pistoleiros-atacam-sem-terra-no-para-foi-resultado-de-fraude/>; Luiz Felipe Albuquerque (28 July 2018) 'Pistoleiros atiram e ateiam fogo em acampamento do MST no PA; Polícia se nega a agir' (Translation: Gunmen shoot and set fire to MST camp in PA; police refuse to act), *Brasil de Fato*. Available at: <https://www.brasildefato.com.br/2018/07/28/pistoleiros-ati-ram-e-ateiam-fogo-em-acampamento-do-mst-no-pa-policia-se-nega-a-agir/>; Comissão Pastoral Da Terra (14 December 2017) *"Enquanto o latifúndio quer guerra, nós queremos terra!"*, (Translation: "While the land owners want war, we want land!"). Available at: <https://www.cptnacional.org.br/multimedia/12-noticias/conflitos/4158-enquanto-o-latifundio-quer-guer-ra-nos-queremos-terra>; Instituto Humanitas Unisinos (30 July 2018) *Comitê de Defensores de Direitos Humanos denuncia ataque em acampa-*

mento sem-terra, no Pará (Translation: Human Rights Defenders Committee denounces attack on a landless camp in Pará.) Available at: <http://www.ihu.unisinos.br/78-noticias/581303-comite-de-defensores-de-direitos-humanos-denuncia-ataque-em-acampamento-sem-terra-no-para>; Lillian Campelo (3 November 2016) 'Pistoleiros atacam o acampamento Hugo Chaves, em Marabá (PA)' (Translation: Gunmen attack the Hugo Chaves camp in Marabá (PA)), *Brasil de Fato*. Available at: <https://www.brasildefato.com.br/2016/11/03/pistoleiros-atacam-o-acampamento-hugo-chaves-em-maraba-pa>; Pará, Rede liberal (28 July 2018) *Polícia investiga suposto ataque em fazenda reocupada por trabalhadores rurais em Marabá* (Translation: Police investigate alleged attack on farm reoccupied by rural workers in Marabá). Available at: <https://g1.globo.com/pa/para/noticia/2018/07/28/policia-investiga-suposto-ataque-em-fazenda-reocupada-por-trabalhadores-rurais-em-maraba.ghtml>; Lillian Campelo (3 August 2018) 'Titulação da Fazenda Santa Tereza, onde sem-terra foram atacados, tem sinal de fraude', *Brasil de Fato*. Available at: <https://brasildefato.com.br/2018/08/03/titulacao-da-fazenda-santa-tereza-onde-sem-terra-foi-ram-atacados-tem-sinal-de-fraude>. For more information on this case study, including the various allegations against Saldanha – and his denials of them, please see pp. 15-16 of the *Beef, Banks and the Brazilian Amazon* report.

67. This could be discovered by a simple [Google search for "Rafael Saldanha de Camargos and Fazenda Santa Tereza"](#), which would return the following article: Comissão Pastoral da Terra - CPT da Diocese de Marabá (27 June 2014) *Prisão de líder do MST em Marabá é afronta aos movimentos sociais* (<https://www.cptnacional.org.br/multimedia/12-noticias/conflitos/2139-prisao-de-lider-do-mst-em-maraba-e-afronta-aos-movimentos-sociais>), and then by asking state prosecutors about the case, as well as searching the State Court of Pará's online case database using the case process no. 0000153-72.1998.8.14.0040: State Court of Pará, <https://consultas.tjpa.jus.br/consultaprocessportal/consulta/principal#>.

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68. Ministério da Justiça e Segurança Pública, Força Nacional permanece em Terra Indígena Apyterewa (PA), <https://www.justica.gov.br/news/collective-nitf-content-1552416420.47> (stating: “A Terra Indígena Apyterewa é território tradicional do povo Parakanã, homologado por decreto presidencial em 19 de abril de 2007 e integra o complexo de terras indígenas afetadas pela Usina Hidrelétrica de Belo Monte. A regularização fundiária, incluindo a retirada dos ocupantes não indígenas, é uma das condicionantes governamentais do processo de licenciamento ambiental do empreendimento”). English translation: The Apyterewa Indigenous Land is a traditional territory of the Parakanã people, approved by presidential decree on April 19, 2007 and is part of the complex of indigenous lands affected by the Belo Monte Hydroelectric Power Plant. Land tenure regularization, including the removal of non-indigenous occupants, is one of the governmental conditions of the project’s environmental licensing process.)

69. Mexico City has an area of 1458 km² (see https://en.wikipedia.org/wiki/Mexico_City), while Apyterewa has an area of 7,730km², (see <https://terrasindigenas.org.br/es/terras-indigenas/3585>) thus it is over five times the size of Mexico City.

70. Based on an analysis of cattle transport permits for cattle from Antonio Belfort’s ranches. For an explanation of how Global Witness reached conclusions about the cattle trade between Antonio Belfort and Marfrig, see the methodology on page 35 of the *Beef, Banks and the Brazilian Amazon* report. Available at: <https://www.globalwitness.org/en/campaigns/forests/beef-banks-and-brazilian-amazon>.

71. Reporter Brasil (June 2020) *Pirate cattle’ from indigenous land and its links with meatpackers Marfrig, Frigol and Mercury*. Available at: <https://reporterbrasil.org.br/2020/06/pirate-cattle-from-indigenous-land-and-itslinks-with-meatpackers-marfrig-frigol-and-mercury>.

72. As stated in the 2020 audit report by the independent auditor, GNV DL, of Marfrig’s compliance with its commitments under its “Public Livestock Commitment” for the year 2019, available (in Portuguese) on Marfrig’s website at https://www.marfrig.com.br/static/pdf/responsabilidade-social/Avaliacao_ao_Atendimento_do_Compromisso_Publico_da_Pecuaria_na_Amazonia.pdf. Similar audit reports for 2015, 2017, 2018 are not available on Marfrig’s website but are available (in Portuguese) here: 2015 - <https://docplayer.com.br/2631919-Avaliacao-ao-atendimento-do-compromisso-publico-da-pecuaria-na-amazonia-marfrig-global-foods-s-a.html>; 2017 - <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:3d789ff9-2d2c-4212-b033-00eae6da4e9e#pageNum=1>; and 2018 - <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:18ce-de6a-f18d-4a87-9500-5df5e4599545#pageNum=1>, which can also be found by a Google search for “DNV GL Marfrig audit”.

73. The Bureau of Investigative Journalism (10 December 2019) *Record number of fires rage around Amazon farms that supply the world’s biggest butchers*. Available at: <https://www.thebureauinvestigates.com/stories/2019-12-10/hundreds-of-thousands-of-fires-rage-around-farms-that-supply-the-worlds-biggest-butcher>. See also The Guardian (10 December 2019) *World Bank urged to rethink investment in one of Brazil’s big beef companies*. Available at: <https://www.theguardian.com/environment/2019/dec/10/world-bank-urged-to-rethink-investment-in-one-of-brazils-big-beef-companies>.

74. Marfrig has set itself the goal of achieving full traceability of its supply chain in the Amazon by 2025. See: Marfrig Landscape Protection Plan (April 2021) at p. 3, para 4, “Marfrig commits to trace 100% of the cattle it purchases to the farm of origin by 2025”. Available at: <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:587ac5dc-dc52-4069-b6f4-f74aa7f1488e>; and IDH (29 July 2020) *Marfrig’s production chain*

to be free of deforestation within ten years. Available at: <https://www.idhsustainabletrade.com/news/marfrigs-production-chain-to-be-free-of-deforestation-within-ten-years/>.

75. This could be discovered by consulting the website of the Sanitary Agency of the State of Pará (Agência Sanitária do Estado do Pará - Adepá) and searching the public database of Animal Transit Certificates (<https://siapec3.adepara.pa.gov.br/siapec3/portaldeservicos.wsp>) for cattle transported “for slaughter” to Marfrig’s slaughterhouse in Pará. This would identify ranches supplying Marfrig directly, and in turn searching the public database of Cattle Transport Permits for cattle transported to the Fazenda Serra de Pedra ranch in the preceding 15 months (the average fattening period for cattle between birth and slaughter). The Brazilian Government requires Animal Transit Certificates (*Guia de Trânsito Animal*) for sanitary control as cattle are transported around the country and they show movements of cattle from birth to slaughter: Ministry of Agriculture law: Instrução Normativa MAPA Nº 19 DE 03/05/2011 and Para state law Decreto Estadual nº 2802/1998. Once having accessed Marfrig’s cattle transport permits these then could be matched to publicly available ranch boundary data found on Para State’s official environmental rural registry (<http://car.semas.pa.gov.br/>), which can then be overlaid with publicly available maps of indigenous areas found in FUNAI’s web page (<http://www.funai.gov.br/index.php/shape>) to see if the ranches overlap, using platforms such as QGIS. Please see page 35 of the *Beef Banks and the Brazilian Amazon* report for the methodology used to discover these facts.

76. This could be discovered by consulting the website of the State of Pará rural environmental registry, SICAR CAR Pará (Rural Environmental Register/PA): <http://car.semas.pa.gov.br/#/consulta/mapa>.

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77. This could be discovered by a [Google search of “Apyterewa, Para”](#), which returns results such as: Ministério da Justiça e Segurança Pública (12 March 2019) *Força Nacional permanece em Terra Indígena Apyterewa (PA)* (Translation: National Force remains in Apyterewa Indigenous Territory (PA)). Available at: <https://www.justica.gov.br/news/collective-nitf-content-1552416420.47>; Reporter Brasil (8 June 2020) *O ‘boi pirata’ criado em terra indígena e a conexão com os frigoríficos Marfrig, Frigol e Mercúrio* (Translation: ‘Pirate cattle’ from indigenous land and its links with meatpackers Marfrig, Frigol and Mercury). Available at: <https://reporterbrasil.org.br/2020/06/boi-pirata-criado-em-terra-indigena-e-a-conexao-com-frigorificos-marfrig-frigol-mercurio/>; Wikipedia, *Terra Indígena Apyterewa*. Available at https://pt.wikipedia.org/wiki/Terra_Ind%C3%ADgena_Apyterewa; Folha de S. Paulo (5 September 2020) *Desmate, invasões e garimpo se alastram por terras indígenas perto do rio Xingu* (Translation: Deforestation, invasions and mining spread over indigenous lands near the Xingu River). Available at: <https://temas.folha.uol.com.br/amazonia-sob-bolsonaro/renascer-para-quem/desmate-invasoes-e-garimpo-se-alastram-por-terras-indigenas-perto-do-rio-xingu.shtml>; Radioagencia Nacional (17 February 2021) *Atuação da Força Nacional na Terra Indígena Apyterewa é prorrogada* (Translation: National Force's operation in the Apyterewa Indigenous Land is extended). Available at: <https://agenciabrasil.ebc.com.br/radioagencia-nacional/geral/audio/2021-02/forca-nacional-vai-garantir-seguranca-na-terra-indigena-apyterewa>; and a [Google search of “Parakanã Apyterewa”](#), which returns results such as: Povos Indígenas no Brasil (26 March 2018) *Parakanã*. Available at: <https://pib.socioambiental.org/en/Povo:Parakan%C3%A3>; Reuters (7 September 2020) *Brazil court decision sparks fears indigenous land could be handed to farmers*. Available at: <https://www.reuters.com/article/us-brazil-amazon-landrights-indigenous-idUSKBN25Y1TD>; Articulation of Indigenous Peoples of Brazil (15 June 2020) *Demarcação da Terra Indígena Apyterewa sob risco no STF* (Translation: Demarcation of the Apyterewa Indigenous Land at risk in the Supreme Court). Available at: <https://apiboficial.org/2020/06/15/demarcacao-da-terra-indigena-apyterewa-sob-ris>

[co-no-stff](#); and Climate Home News (11 September 2020) *Encouraged by Bolsonaro, land grabbers advance on Amazon indigenous territory*. Available at: <https://www.climatechange-news.com/2020/09/11/encouraged-bolsonaro-land-grabbers-advance-amazon-indigenous-territory/>.

78. This could be discovered from the same Google searches of “Apyterewa, Para” and “Parakanã Apyterewa”.

79. For the *Beef, Banks and the Brazilian Amazon* investigation, Global Witness's data investigation team developed a methodology that analysed publicly available data on deforestation, farms and cattle sales, which could also be applied to other Amazon states and commodities. For details about Global Witness's data analysis method and code, see <https://www.globalwitness.org/en/blog/brazilian-beef-supply-chain/>.

80. For example: UN-REDD Programme (2013) *Guidelines on Free, Prior and Informed Consent*. Available at: <https://humanrights.wbcsd.org/project/guidelines-on-free-prior-and-informed-consent/>; Oxfam (2019) *Consent is everybody's business: why banks need to act on free, prior and informed consent*. Available at: <https://policy-practice.oxfam.org/resources/consent-is-everybodys-business-why-banks-need-to-act-on-free-prior-and-informed-620854/>; Forest Peoples Programme (2020) *Discussion paper: Ground-truthing to improve due diligence on human rights in deforestation-risk supply chains*. Available at: <https://www.forestpeoples.org/en/ground-truthing-to-improve-due-diligence>; Forest Peoples Programme (2021) *Stepping up: Protecting collective land rights through corporate due diligence*. Available at: <https://www.forestpeoples.org/sites/default/files/docu->

[ments/Stepping%20up%20-%20Protecting%20collective%20land%20rights%20through%20corporate%20due%20diligence_0.pdf](#); Accountability Framework Initiative, *Operational Guidance on Respecting the Rights of Indigenous Peoples and Local Communities and Operational Guidance on Free, Prior and Informed Consent*. Available at: <https://accountability-framework.org/operational-guidance/respecting-the-rights-of-indigenous-peoples-and-local-communities/> and <https://accountability-framework.org/operational-guidance/free-prior-and-informed-consent/>.

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Upholding human rights in the fight against deforestation and ecosystem conversion

How the EU should integrate human rights in a
product-based due diligence framework
for forest and ecosystem-risk commodities

Design & layout : Clara Delboé