



## Duty of Vigilance: corporate legal responsibility and impacts on agriculture in the Global South

The French Law on the Duty of Vigilance by Parent Companies and Their Contracting Enterprises (*loi française relative au devoir de vigilance des sociétés mères et entreprises donneuses d'ordre*) was adopted in March 2017 after a lengthy parliamentary procedure. This law, applied since 2018, makes it a legal obligation for companies to take into account the risks that they impose, throughout their value chain, on human rights and the environment. Meanwhile, the United Nations Human Rights Council (UNHRC) has, since 2014, been carrying out a negotiation process to elaborate an international legally binding treaty on the issue of human rights and transnational companies and other business enterprises. In this issue of "Notes," Coordination SUD examines the impacts that the Duty of Vigilance law and the future UN treaty could have on the agribusiness sector and on food sovereignty in the countries of the Global South.



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### 1. Why is this law important?

The French Duty of Vigilance Law was partially inspired by the UN Guiding Principles on Business and Human Rights (UNGPs), the first pillar of which sets forth that States have an obligation to protect human rights when these are infringed upon by third parties, including business enterprises. The Law should help guarantee better prevention and management of the negative impacts from the activities of multinational corporations. Legally establishing a law on the obligation of vigilance in human rights matters should also help business policy to shift gradually from corporate profit to concern about risks to human rights and the environment.

The Law must also help victims of harm to overcome the obstacles they face in obtaining access to courts and to remedy. Since 2018,<sup>1</sup> the people affected (victims of irreversible pollution or of armed militias, evicted populations, exploited employees, etc.) and associations can bring legal proceedings against a company, on the condition that they manage to establish a relationship between a serious abuse and a flaw in the company's vigilance plan and its implementation. The Law represents fundamental legal progress in the current context in which parent companies and their contracting companies manage to escape their responsibilities by taking

1. Olivier Petitjean, *Multinationals Observatory*, "Devoir de vigilance: les multinationales françaises pas à la hauteur", March 2019.

advantage of the complexity of their legal structures and their supply chains. It is also a significant victory considering the continuing prevalence of voluntary norms and self-regulation by companies, a system which has turned out to be grossly inadequate and has slowed down initiatives seeking to develop binding frameworks. It is also unique in its field, as it covers all sectors of business and a broad range of applications. For example, it covers “serious infringements on human rights, basic freedoms, health and the safety of persons, as well as the environment” [unofficial translation].

But the Law has weaknesses in its current state, due to its lack of international dimension. Indeed, it applies only to companies established in France that, at the close of two consecutive fiscal years:

- have at least 5,000 employees, including in their direct or indirect subsidiaries, and whose headquarters are established in France;
- or have at least 10,000 employees, including in their direct or indirect subsidiaries, and whose headquarters are established in France or abroad.

These thresholds are too high, because they apply only to an estimated 300 companies, and they thus represent one of the limits of this law.

## 2. What progress has been made at the international level?

In June 2014, at the initiative of Ecuador and South Africa, the UNHCR adopted Resolution 26/9, by which it created an inter-governmental working group (IGWG) on transnational corporations and other enterprises with respect human rights. The IGWG has a mandate to “elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”

It was thanks to the votes of the Southern countries that the resolution was finally adopted. Most of the Western countries (including France), which are home to the majority of corporate headquarters, opposed it. (As for the United States, it is still opposed to it and does not participate in the IGWG).

Even though it adopted its own Duty of Vigilance Law, France has a key role to play in these negotiations. Indeed, the Law has swiftly become an international reference and has frequently been cited within the framework of the UN process!

International civil society is hugely mobilizing to make this UN binding treaty a success, as seen by the creation of:

- the “Treaty Alliance,” which brings together more than 900 organizations around the world; and
- the “Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity,” which unites over 250 social movements, networks, affected communities, and organizations from around the entire world.

In this way, civil society is putting the spotlight on the victims of violations committed by multinationals and proposing alternative solutions respectful of human rights to defend social and environmental justice all over the globe.

The fourth negotiation session of the IGWG concluded on October 19, 2018. The text currently under negotiation seeks to be clearly “victim-oriented,” according to the Permanent Mission of Ecuador to the UN, which is leading the working group. The text must ensure victims effective access to justice, provide for remedy in the event of “violations in the context of business activities of translational character,” and “prevent the occurrence of such violations.”

**This draft treaty is an historic opportunity and a source of considerable hope for millions of people across the world who are victims of violations of human rights and of environmental harm committed by multinationals. It could at last protect people and guarantee that victims have access to justice.**

## 3. What impacts on food-sovereignty issues for the people of the Global South?

The food riots of 2007-2008<sup>2</sup> put the issue of agriculture and food security back on the top of the international agenda. Since then there have been numerous announcements to the effect of investments in agriculture in the Global South, not only by the international community, but also by private actors, who identified profitable financial opportunities for tapping into markets in the agricultural and food sectors.

Agribusiness is the top French industrial sector, and agriculture is often presented as a key element of our trade balance. Furthermore, many companies rely on agricultural or food production (of cotton, soy, palm oil, etc.) in the countries of the Global South.

The French Ministry of Agriculture and Food (MAA) launched a strategy in 2018 to promote the internationalization of French agrifood businesses. This strategy makes specific resources available and indicates the Government’s desire to support them in capturing markets and in developing their export sectors. This encouragement warrants all the more vigilance specifically on the agribusiness sector.

### The impacts of conventional agriculture and of agribusiness

This production-oriented agriculture generates a series of negative impacts, environmentally and socially. The technical and economic choices behind this agriculture created an illusion for fifty years but are now facing reality. Its economic, social, environmental, and cultural costs are alarming, as they include unemployment, suicides, evictions, land and water grabbing, farm loss, irreversible pollution, erosion and land abandonment, a distressing loss of biodiversity, decrease in pollinizing insects, deforestation, greenhouse gas emissions in particular through the spreading of nitrogen fertilizer, human pathologies, and others. At the same time, climate events are largely underestimated or treated with solutions than can only be characterized as “false,” as it will not be possible to resolve these problems with more chemicals, irrigation, or genetically modified organisms, which are incompatible with the planet’s sustainable development.

2. Coordination SUD, *Les Nouvelles de SUD* no.172, “Le ‘Faim Zéro’ doit rester un axe fort du quinquennat”, October 2018.



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In its search for efficiency, this industrial agriculture has moreover led to specialization in production based on excessive use of fertilizers and pesticides, a standardization of seeds that has led to their no longer being adapted to the various climate contexts or to different crop environments, and to significant energy consumption (from mechanization, inputs, transport, etc.). Through it, agricultural production and trade become massively concentrated, with large structures developing to the detriment of the labor and survival of small farms.

Industrial agriculture also too often leads to producers becoming increasingly dependent upon both their suppliers and their buyers. The outcome can be unstable income, both in the South and the North.

Likewise, industrial agriculture tends to make agricultural work insecure. Agricultural workers often suffer violations of their rights. Indecent and dangerous working conditions have been observed by ActionAid France - Peuples Solidaires during its missions to Latin America and Africa, on plantations where bananas, pineapples, sugarcane, and flowers are grown. Furthermore, excessive mechanization leads to job losses for millions of salaried personnel, even while they are deprived of their land without compensation.

Agribusiness currently benefits essentially the multinationals working in supply, trade, processing and mass merchandising. Not only does it not help remedy the problem of hunger in the world, but it also aggravates inequalities.

**Despite its negative consequences, most States have chosen—under pressure from international organizations such as the World Bank, the World Trade Organization, and the International Monetary Fund—to support agribusiness, resulting in severely reduced budget allocations for the development of small-holder agriculture and of agroecology. But for how much longer?**

#### **Inconsistency in the European Union's development policy**

The new-generation free-trade treaties that are under negotiation or that have been recently ratified by the European Union risk aggravating the fragilities and crises of global agriculture, especially in the countries of the Global South. They seek to strengthen the ultra-free market process that is favorable to multinationals, without putting priority on the Paris Agreement and on agriculture. They are going to ensnare these countries—and Europe with them—into systems of agricultural exportation that are subject to speculation. Such systems also prevent any empowerment and crush efforts made toward local regionalization to promote food-producing peasant agriculture and domestic markets. As Braulio Moro from France Amérique Latine emphasizes, *"It's essential that the future Treaty recognize the primacy of human rights over trade and investment treaties."* Similarly, Senegalese activist Guy Marius Sagna points out that *"We must draw up a global balance of power of peoples against the multinationals."*<sup>3</sup>

#### **Access to land by women: a fundamental right**

Inequalities in access to land ownership, especially via the acquisition of registered land deeds, are especially blatant in Africa and Asia, where legislation is clearly discriminatory. This situation is all the more paradoxical because women ensure most of the production and agricultural processing in the countries of the Global South. *"In India, 75% of farm workers are women, but they own neither the land nor the farm,"* states Ekta Parishad, a partner of ActionAid France - Peuples Solidaires. Access to land as a means of subsistence is a human right and must therefore be guaranteed as much for women as for men.

### **4. What obligations are imposed by the Duty of Vigilance Law?**

Since 2018, companies have been obliged to draw up and implement a vigilance plan that corresponds to their sector of activity.

#### **In its report *La Vigilance au Menu*<sup>4</sup>, CCFD-Terre Solidaire identified five risks:**

- **resource grabbing (land and water): 26.7 million hectares of land passed into the hands of foreign investors between 2000 and 2016;**
- **ainfringement upon the rights of peasants, especially given the asymmetrical balance of power between the peasants and companies, which can lead to unfair contracts;**

3. Interview with Nicolas Roux from *bilaterals.org* published on Nov. 3, 2018.

4. Published in March 2019.

- **infringement upon biodiversity, through the limitation of agricultural and food choices to a small number of industrial seeds;**
- **infringement upon the environment and upon people's health, e.g. through the use of pesticides;**
- **criminalization of rights defenders (the agrifood sector became the riskiest and most dangerous sector for them in 2017).**

However, in the first plans published in 2018, it is clear that these risks were hardly taken into account. The coalition of associations<sup>5</sup> that helped having the Law be adopted has just published an initial assessment that is not very encouraging.<sup>6</sup> Despite the obligation set forth by the Law, many companies have not yet published their vigilance plan or published the legally required minimum, thus showing that these companies are quite opposed to changing practices for now. Most are only adapting their reporting practices or their social responsibility commitments into their vigilance plan. More worrying still is that the companies have often mentioned the risks that possible human rights violations can have on their own company and its performance—instead of the risks that the company generates in terms of human rights and environmental infringements, which should be the subject of the plans.

Coordination SUD, through its Agriculture and Food Commission (C2A), considers that this Law could have been more ambitious, especially regarding the number of companies concerned and the ease of access by victims to justice. It is

nevertheless a first step towards greater justice and acts as a minimum objective in risk prevention for all companies.

With all this in mind, Coordination SUD makes following recommendations for the French public authorities:

- Guarantee the effective application of this Law and strengthen it by i) annually publishing the list of companies subject to the Law, ii) designating an administrative entity in charge of monitoring its implementation, iii) creating an independent body for this monitoring, iv) lowering the threshold so as to include a greater number of companies operating in risk sectors for human rights and the environment, and v) inverting the burden of proof.
- Support the internationalization of the duty of vigilance of multinationals by i) providing constructive support to the draft UN treaty on multinationals and human rights, ii) working to have the European Union adhere to this project, and iii) promoting the adoption of European binding legislation regarding the vigilance of multinationals.

Civil society and the peoples it represents have as much hope as ever of changing the current dominant economic system. On January 22, 2019, the new European campaign *"Stop Impunity! Rights for People, Rules for Corporations"* was launched by a coalition of more than 150 organizations from 16 European countries. Will it at last make it possible to give priority to human rights over investor rights? While multinationals enjoy a powerful legal mechanism (judges and arbitrators) to defend their rights within the framework of arbitration courts, the victims often find themselves helpless and without access to a judge.

5. ActionAid France - Peuples Solidaires, Amis de la Terre France, Amnesty international France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette and Sherpa.

6. *Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre, Année 1, les entreprises doivent mieux faire*: [www.amisdelaterre.org/IMG/pdf/2019-etude-interasso\\_devoir\\_de\\_vigilance.pdf](http://www.amisdelaterre.org/IMG/pdf/2019-etude-interasso_devoir_de_vigilance.pdf)

General sources: *Loi sur le devoir de vigilance des multinationales - Questions fréquemment posées*, document published in July 2017 by ActionAid France-Peuples Solidaires, Amis de la Terre France, Amnesty International France, CCFD Terre Solidaire, Collectif Ethique sur l'étiquette, and Sherpa, members of the Citizen Forum for Corporate Social Responsibility (Forum Citoyen pour la Responsabilité Sociale des Entreprises - FCRSE): [www.amisdelaterre.org/Loi-sur-le-devoir-de-vigilance-des-multinationales-Questions-frequemment-posees.html](http://www.amisdelaterre.org/Loi-sur-le-devoir-de-vigilance-des-multinationales-Questions-frequemment-posees.html)



This publication is produced by the Agriculture and food Commission (C2A) of Coordination SUD

As part of its mission to support the collective advocacy of its members, Coordination SUD has set up working committees. The Agriculture and food Commission (C2A) brings together international solidarity NGOs working to realize the right to food and increase support for smallholder farming in policies that impact world food security: ActionAid France, Action Contre la Faim, Agter, Artisans du Monde, AVSF, CARI, CCFD - Terre Solidaire, CFSI, Commerce Équitable France, Gret, Iram, ISF Agrista, MADERA, Max Havelaar, Oxfam France, Réseau foi et Justice Afrique Europe, Secours Catholique - Caritas France, SOL and UNMFREO.

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C2A publications are produced with the support of the AFD. The viewpoints expressed in this document in no way represent the official point of view of the AFD.

