

Emerging Market Perspectives on Business and Human Rights Measures and Economic Development

How are business and human rights measures experienced in supply chains and what increases positive impacts while minimising unintended consequences?

Background

Business and Human Rights (BHR) measures for companies and investors have developed significantly over the last few years, from voluntary principles to mandatory regulations - to varying degrees in different contexts. In parallel, donor approaches to inclusive economic development have evolved towards greater emphasis on the role of business, market access and investment in emerging economies to create decent jobs, livelihoods and growth. Both have the potential to promote the realisation of Sustainable Development Goal (SDG) 8: to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

BHR regulations aim at raising standards, through means such as excluding imports or placing responsibilities on companies to ensure that BHR principles are upheld across the supply chain. BHR voluntary standards seek to encourage changes to business behaviour, and provide positive choices for consumers, businesses, government procurement and investment markets. Together, such measures underpin efforts to identify, prevent, mitigate, and remediate human rights abuses, while many also seek to enable businesses to have a positive impact on jobs and livelihoods, families and communities throughout value chains.



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TRADE REPRESENTATIVE, GHANA

Business and Human Rights (BHR) measures

BHR measures include regulations, frameworks, standards, certifications, auditing and more. For example:

- **Regulations:** Laws designed to protect workers from business and human rights abuses, ensure due diligence in supply chains, or provide transparency on modern slavery or child labour risks
- **Frameworks:** Guiding principles and recommendations for businesses, governments and others, including the UN Guiding Principles on Business and Human Rights, ILO Fundamental Principles and Rights at Work, OECD Guidelines for Multinational Enterprises on Responsible Business Conduct and the Ethical Trading Initiative Base Code (these frameworks and standards also shape other BHR measures)
- **Certifications and Auditing:** Designations such as Fairtrade, Rainforest Alliance, Sedex, company specific audits and trading terms

The term ‘requirements’ was commonly used as a catch-all phrase by participants in this research, as although many standards and other BHR measures are voluntary, they are still experienced as mandatory by exporting businesses in Emerging Markets and Developing Economies (EMDEs) due to their critical dependence on access to the markets that are demanding these standards.

Intersecting factors can create barriers to achieving positive human rights and development outcomes through BHR measures — especially in Emerging Markets and Developing Economies (EMDEs). The nature of global commodity value chains creates challenges for cascading BHR measures to all levels of the supply chain, as well as for transparency and traceability efforts to monitor their implementation.

This is particularly the case where informal sectors form large parts of the national economy and/or where their place in supply chains is unclear. This makes it especially difficult to detect or address human rights abuses. Sub-Saharan Africa has the largest share (85%) of the population engaged in informal labour¹, with informal cross-border trade accounting for 30-40% of trade in the region.² This creates clear challenges for adhering to BHR measures, leading to reduced chances of securing critical access to global markets. Lost market opportunities can result in lower incomes, contributing to cycles of poverty, cultural norms and a lack of access to quality education which all increase vulnerability to human rights abuses and violations, including modern slavery and the worst forms of child labour.

The impacts, complexities and unintended consequences of BHR measures are best understood from the perspective of those most affected by them. This research sought to identify how the implementation of BHR measures are experienced in EMDEs through a series of firsthand accounts.



“Why are people in Europe asking for this to be done? What is the context? Because it feels like you are wanting to destroy our industry.”

TRADE REPRESENTATIVE, GHANA



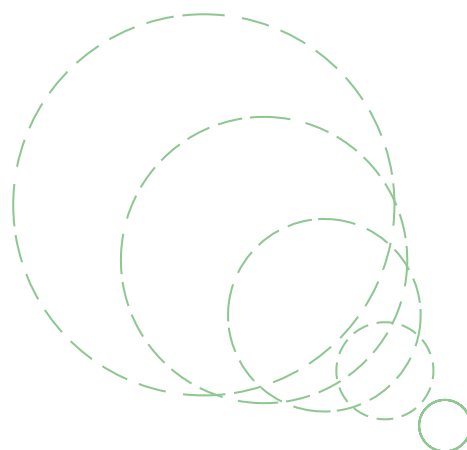
“If you look at all of these requirements and their evolution, and if they were implemented today in the way they were designed, the impact on our local economy would be huge and detrimental.”

INDUSTRY ORGANISATION, GHANA

The research involved consultations with 118 individuals in Kenya, Ghana and the Democratic Republic of the Congo (DRC). These individuals represent a broad range of stakeholders including producers and suppliers, processing companies, traders, industry organisations, investors, community organisations, civil society, local government and trade unions. Findings from the DRC build on existing research from the four year [Partnership Against Child Exploitation \(PACE\) programme](#).

For most participants, taking part in this research was the first time they had been asked about their experience of implementing BHR measures, as well as their perspective on what is working or not from efforts to-date. Stakeholder perspectives are increasingly drawn upon in the development of BHR measures (such as the EU Corporate Sustainability Due Diligence Directive or CSDDD) in order to try to ensure they are fit for purpose and avoid unintended consequences. However, the research found a need for a stronger bottom-up approach to creating and implementing BHR measures. Regulations have been criticised due to power imbalances in the supply chain between the top and the bottom as well as between buying and production countries. For example, while there is an inherent expectation in regulations that buyers, donors and governments in regulated markets should bear most of the responsibility for resourcing implementation of BHR measures, much of the resource burden ultimately falls to EMDE companies and other upstream stakeholders.

In many contexts, the research produced evidence that BHR measures *do* lead to greater respect for human rights. In DRC, for example, BHR traceability measures have contributed to reducing conflict at some mineral sites and have, to some extent, helped reduce the presence of children working on dangerous tasks. The research went beyond this, however, to obtain views on the balance between positive impacts, challenges and unintended consequences — for example in DRC where alongside desired outcomes, unintended consequences for jobs and livelihoods were also clearly highlighted. The experiences reported, and the recommendations made are invaluable for development and implementation of new BHR measures, guidance, interventions and future policy development.



1 The transition from the informal to the formal economy in Africa, ILO 2020

2 Informal Cross-Border Trade and Trade Facilitation Reform in Sub-Saharan Africa, OECD Trade Policy Papers 2009

Key findings: What do companies, investors, government officials and civil society in EMDEs say about BHR measures?

What is the level of awareness of BHR measures?

41% of participants reported not being aware of any BHR regulation, whereas 100% of participants mentioned at least one standard or certification.

- **Awareness of BHR certifications and standards is greater than for BHR regulations** although overall awareness varies across regions and sectors.
- **ESG (Environmental, Social, Governance) requirements help increase awareness** of BHR measures due to their link with access to finance.

What are the positive impacts of BHR measures?

100% of participants in Kenya and Ghana reported a positive impact from implementing BHR measures, whereas it was only 30% of participants in DRC.



- **Increased access to new markets, buyers and investors**, results from the implementation of BHR measures that are no longer viewed as needed “just to comply”, but as critical to operations and market access.
- **Improved worker safety, well-being and productivity** is a key benefit of implementing BHR measures. Increased productivity was reported through consistent working hours and enforcement of rest hours, fair wages, environmental standards, access to maternity leave and health and safety improvements.
- **Enhanced relationships and industry involvement** including more direct relationships between producers and buyers were a key outcome of implementing BHR measures. BHR measures can ensure social inclusion as farmers feel part of an industry that values their views and contributions.
- **Increased measurement of BHR impacts**, particularly on behalf of international buyers. Some interviewees reported collecting data on labour standards, farming practices and rights of children – however there are significant challenges to achieving this at scale.
- **Increased knowledge and capacity** from industry and government support, as well as support from buyers, donor funded programmes and other NGO activities. Programmes providing training on specific BHR issues, implementation support, and advice on how to obtain and share data have also been made available.



“[BHR measures] have helped us access the global market. The positive impact has been at all of the levels of production and export, which has helped us deliver a safe and accurate product to our buyer.”

SME OWNER, KENYA



“Regulation not linked to business and human rights, i.e. the EUDR, is perceived to have potential positive impacts on traceability in supply chains, with the potential to enhance business and human rights activities as a result.”

TRADE POLICY ADVISOR, DRC

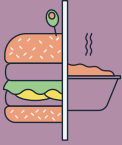


“Workers being able to flag issues through grievance mechanisms allows us to address risks before they become crises.”

PRODUCER, KENYA

What challenges in implementing BHR measures were reported?

100% of participants reported challenges in implementing BHR measures.



- **Expectations of BHR measures may not always align with local culture and local value chain realities**, particularly in the context of a high degree of informality across different sectors or where children are involved in work from a young age.
- **Lack of preparedness and resources to comply or demonstrate compliance** is felt by EMDE companies of all sizes, but acutely by smallholders in particular, who may be either willing to comply but lack the resources to do so, or are compliant but lack the time, resources or knowledge to show this. For local companies, a sense of BHR measures overload contributes to worry about the growing number of due diligence requirements.
- **The cost of compliance with BHR measures** relative to priorities of production and getting products to market is a concern, particularly in the face of investor pressures to achieve high productivity whilst keeping costs as low as possible. Local companies feel a lack of support for covering the costs of implementation across all sectors, which is further exacerbated by power imbalances in supply chains.
- **BHR measures and data requirements are created from a developed economy mindset**, which leads to data requests and standards that are based on a “western perspective” of what data is available. Participants highlighted that the realities of data availability and consistency in many EMDE contexts is generally at direct odds with BHR measure requirements, resulting in a mismatch between the demands of BHR measures, the capacity to understand and report meaningfully, and the data ultimately provided.
- **Misalignment between local laws, BHR measures, and highly regulated environments** adds complexity to ensuring compliance. This can result from the way local authorities interpret global requirements as needing a highly regulated environment to try to ensure BHR standards and compliance. The challenge of implementing BHR measures is further exacerbated in fragile contexts, including armed conflicts, cartel control, and population displacement.



“Fixed working hours with fixed breaks, which we had to implement to comply with the requirements, led us to lose Muslim workers who could not take breaks to pray throughout the day. For many of our female workers, they could not come to the site unless their children could come with them or be close by.”

MANUFACTURER, GHANA



“You are more likely to see due diligence in place if you are supplying to a big named organisation. Most companies are already contending with challenging national regulatory environments.”

TRADE SUPPORT INITIATIVE, KENYA



“Regulations and standards at times feel very difficult to implement and comply with in practice - because when legislation is developed it is top down without much input from local stakeholders. Legislation needs to be much more practically implementable.”

PRODUCER, KENYA

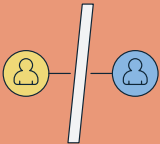


“We have had some long-term partnerships [with buyers] and they provide training and support CSR activities, but 90 per cent of the cost is left to us, the producer, and the best way they can support us is if they increase the price of the stem.”

PRODUCER, KENYA

What are the unintended consequences of BHR regulations or other measures?

97% of participants reported unintended consequences arising from BHR measures.



- **Jobs are at risk where EMDE companies are unable to resolve compliance issues**, particularly in complex, sensitive areas such as traceability requirements for minerals that present high levels of risk to supply chains in conflict settings. European Deforestation Regulation (EUDR) requirements were particularly highlighted as having potential to exclude EMDE smallholders from participating in EU markets.

- **Compliance over outcomes is a real risk** where BHR measures are implemented to the 'letter of the law' rather than identifying the best way to achieve BHR outcomes in-line with the local context. The resulting disruption to local practices and cultural norms presents a further risk for loss of employment or job market access, and can at times increase negative BHR outcomes.

- **EMDE companies acutely fear disengagement by developed economy buyers** where they struggle to meet or demonstrate compliance with BHR measures. This arises where a lack of communication between local producers and international buyers results in different understandings of how compliance challenges are approached and responded to by buyers.

- **Supply chain resilience can be affected** where the cost of compliance and disruption to productivity from BHR measures leads to EMDE products becoming less competitive in global markets. EMDE companies may then shift towards other markets that do not have the same BHR requirements, again potentially affecting job security and economic opportunities.

- **Donor dependency by EMDE markets and companies** for continued compliance with ever-evolving BHR measures can lead to reduced decision-making power and autonomy, potentially stifling innovation and growth.



“Ensuring compliance with certification is expensive. We are prevented from increasing costs to cover this as we will lose customers, but at the same time are required to pay for audits and prove compliance with human rights standards.”

PRODUCER, KENYA



“We prioritise ensuring we are not at risk of being found non-compliant, rather than building systems that comply with certifications and at the same time support female workers in the local context. The risk of losing business is too high.”

MANUFACTURER, GHANA

Recommendations

The voices of stakeholders who are at the furthest reaches of global supply chains, including workers, local communities, and small businesses provide hard hitting recommendations. They focus on how to ensure positive outcomes and mitigate unintended consequences from measures in EMDEs, and for all stakeholders throughout the value chain – investors, buyers, governments and workers alike.

Taking a bottom-up view of the value chain helps identify and enable country and sector-specific strategies for BHR outcomes in ways which are realistic in terms of cost, practical implementation and data availability in the local cultural context.

This should help deliver a balanced approach to achieving SDG 8: optimising effective market investment and regulatory levers towards improved business standards; sustainably building local capacity to meet the human rights requirements of export market businesses; raising job and livelihood standards for the most vulnerable through investment and increasing export market participation; and reducing the pressures to follow riskier routes and options.

Sixteen recommendations are made in five groups:

- BHR regulations
- Contracting and pricing
- Traceability
- Capacity sharing
- Collaboration



“Ideally, national laws or industry-level policies and frameworks would be created which are easily implementable and which commit all players to a level playing field – but which are grounded in local context and realities. If these requirements can be agreed at the national level, and local governments can agree laws which are aligned to EU or other global regulations this would make alignment and support of local businesses more effective.”

PRODUCER, KENYA



Recommendations for BHR regulations, policies, laws and standards



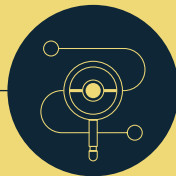
- Conduct bottom-up impact assessments of BHR regulations to evaluate their feasibility and potential consequences at a national sector level.
- Involve stakeholders from EMDEs in the design and implementation of regulations and other BHR measures.
- Strengthen and align local laws with global standards, including through the development of National Action Plans.
- Incorporate local cultural contexts and value chain complexities into EMDE national legislation and guidance, with particular focus on groups at heightened risk of vulnerability and marginalisation.

Recommendations for contracting and pricing



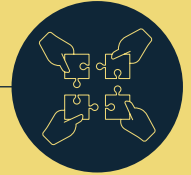
- Prioritise EMDE company and buyer dialogue and engagement over disengagement on issues of compliance, contracting and pricing.
- Address power imbalances in supply chains by explicitly recognising a principle of equal supplier-buyer partnership in BHR arrangements.
- Support the development of direct relationships between buyers and suppliers in emerging markets to enhance transparency and reduce reliance on intermediaries.

Recommendations for traceability, monitoring and evaluation



- Assess supply chain risk in the context of collaborative sector, commodity or geography focused initiatives in order to share learning and speed up progress towards outcomes.
- Develop innovative ways to ease the burden of proof for businesses adhering to due diligence and other BHR measures, linked to processes that enhance productivity.
- Reward EMDE companies for achieving positive outcomes, potentially through preferential market access, longer-term contracts, or pricing that reflects these outcomes.
- Engage with ESG data providers and benchmarks to balance ratings for better incorporation of BHR outcomes.

Recommendations for capacity sharing and support



- Promote initiatives that remove structural barriers to workers and communities in EMDEs participating in global markets.
- Support locally sustainable, disruptive innovations that enable positive BHR outcomes in global value chains.
- Provide direct financial and technical support to EMDE companies, particularly SMEs, but with a clear capacity trajectory and exit strategy to prevent long-term donor reliance.

Recommendations for collaboration



- Foster collaboration and dialogue that openly recognises the unintended consequences of BHR measures between stakeholders at all levels of the value chain.
- Encourage investments by both developed economy and EMDE investors that prioritise BHR and draw on consultation with investee companies, governments and workers.



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