



LEGITIMACY AND EFFECTIVENESS OF THE EUDR: SOME REFLECTIONS WITH REFERENCE TO BRAZIL

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Workshop on the EUDR

European University Institute (EUI)

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THEORIZING CIVIL SOCIETY AGENCY IN HREDD REGIMES

Critical role of civil society organizations:

- Norm contestation => shaping the meaning of human rights and environmental due diligence
- Improving traceability and monitoring, reducing knowledge gaps, 'ground-truthing' in all stages of a due diligence process
- Participating in accountability mechanisms, building alliances and transnational advocacy networks, division of tasks

Transnational advocacy networks (TANs):

- The importance and functioning of TANs (Della Porta, Tarrow, Rodríguez Garavito, Keck, Sikkink)

Theories on accountability:

- Accountability in transnational settings
- Mechanisms of accountability (Grant and Keohane, MacDonald, Koenig-Archibugi, Rubenstein)

Literature from the field of business and human rights:

- Literature on civil liability
- Literature on transnational legal cases (Bernaz, Bright, Krajewski, Deva, Dehbi, Marin-Ortega)

Legitimacy of EUDR from CSO perspective in Brazil

General support, but also important points of critique

Definition of forests

Critique of narrow definition of forests and exclusion of other ecosystems, such as the Cerrado, importance of territories and landscapes

Lack of inclusion of international human rights

Strong push by civil society to strengthen human rights dimension in EUDR, especially in relation to land tenure rights, free, prior and informed consent, Indigenous peoples' rights, forest observatory should include human rights etc.

Lack of influential participation

Critique of EUDR and other supply chain regulations because of their unilateral character, little meaningful participation of stakeholders and rightsholders in policy-making

Weak access to remedy for victims, lack of mechanisms to reduce power asymmetries

Equity dimension in EUDR should be stronger, e.g., focus on remedy and remediation, meaningful participation, social safeguards, focus on unintended consequences, empowerment of local communities

MUCH GOING ON IN BRAZIL



- ❖ Awareness-raising and training
- ❖ New alliances between different types of CSOs (grassroots organizations, investigative journalists, researchers, data scientists, environmental and human rights organizations etc.)
- ❖ Better data and traceability systems
- ❖ New channels for more serious direct dialogue with companies
- ❖ Preparation and submission of complaints to different fora (EUDR competent authorities – working group, NCP, competent authorities in EU states, Courts, grievance mechanisms)



CONTAR 8 ANOS
Comitê Nacional das Organizações Não Governamentais e Ambientalistas do Brasil

PROGRAMAÇÃO 17 e 18 de abril, Brasília/DF

ENCONTRO DE FORMAÇÃO SOBRE CERTIFICAÇÃO E DEVIDA DILIGÊNCIA

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| 16/04 | Chegada das delegações |
| 17/04 | Primeiro dia |
| 09h | Abertura política e boas vindas: CONTAR |
| 09h30 | Panel 1: Introdução à Devida Diligência: Princípios orientadores da ONU, práticas voluntárias, certificações e os trabalhadores rurais nas cadeias de commodities agrícolas que saem do Brasil (Gustavo Ferroni - OXFAM) online |
| 10h30 | Debates |
| 11h | Panel 2: Certificação: principais selos (Heidi Buzato - Inmaflora) online |
| 11h30 | Debates |
| 12h | Almoço |
| 14h | Panel 3: A regulação no mundo – as legislações nacionais de devida diligência na Europa (Manfred Brinkmann – Adido Social da Embaixada da Alemanha) |
| 15h | Debates |
| 15h30 | Coffee break |
| 15h45 | Panel 4: A regulação sobre Direitos Humanos e Empresas no Brasil: PL 517-22 e Política Nacional (Manoela Roland – Instituto Brasileiro de DH e Empresas - HOMA) |
| 16h45 | Debates |
| 17h30 | Encerramento |
| 18/04 | Segundo dia |
| 09h | Panel 1: Direitos para os trabalhadores e obrigações para as empresas: pelo trabalho decente e contra a precarização e o assédio (Laura – Auditora fiscal do Trabalho - MTE) |
| 10h | Debates |
| 10h30 | Panel 2: Papel da Aliança pelos Direitos Humanos em devida diligência: atuação da Repórter Brasil. (Tássia – RB) online |
| 11h30 | Debates |
| 12h | Almoço |
| 14h | Trabalhos de grupo: Qual o papel da devida diligência para o movimento sindical e nas negociações coletivas de trabalho? |
| 16h | Encerramento |

Observações:

Atividade em parceria com o Departamento de União Europeia (DUE) - Oportunidades para a garantia de direitos no Brasil

Datas: 10 a 11 de abril - Brasília
Local: Escritório da WWF-GLS 114 Bloco D-35, Av. Sul, 07, 70377-540

A oficina "Entendendo a Regulação Ant-Denúncia da União Europeia (EUDR): Oportunidades para a garantia de direitos no Brasil" é organizada pela Articulação dos Povos Indígenas do Brasil (APIB), Tem e Migra Earth.

A oficina nos dois dias de duração e possui como principais objetivos: 1) Informar sobre o funcionamento da EUDR; 2) apresentar como a EUDR pode ser um instrumento adicional para defesa de direitos no Brasil; 3) promover espaços interativos em formato dinâmico de rotação de eixos de eixos de autoridades competentes da União Europeia.

O evento contará com a presença de peritos e especialistas brasileiros, representantes de movimentos sociais, e especialistas da sociedade civil que debaterão sobre os principais aspectos que a regulamentação nacional apresenta para atingir a proteção dos direitos humanos e ambientais no Brasil.

NORM CONTESTATION AND DOMESTICATION

- *Due diligence is a global norm that has been interpreted differently (Gustafsson et al. 2022).*
- *Brazilian CSOs have actively contested how this norm is interpreted by influential actors both at the EU- and the national level, thus contributing to the contestation of this norm across scales.*



Bottom-up attempts to influence law-making processes

- Brazilian CSOs have participated in public consultations, stakeholder dialogues and webinars to influence the institutional design of the two EU-regulations.
- However, EU regulations are weak in relation to topics that Brazilian grassroots organizations have emphasized as particularly important (e.g., definition of forests, indigenous peoples' rights, burden of proof, access to remedy).



Domestication of HREDD

- Brazilian CSOs have been active in discussing HREDD more or less critically and some participate in developing a NAP.
- CSOs have developed a law proposal (PL 572/2022) on business and human rights, which includes several of their key demands that were left out in the EU regulations (e.g. support for victims, access to remedy for victims, reversal of the burden of proof).

CHEGA DE IMPUNIDADE CORPORATIVA NO BRASIL!



#RegrasParaAsEmpresasDireitosParaOsPovos

<https://mab.org.br/publicacao/cheга-de-impunidade-corporativa-no-brasil/>

PUSH FOR POLICY-MAKING IN BRAZIL

Law proposal PL 572/2022:

„The right of affected people and communities to full reparation for human rights violations committed by companies”

„Ensure full access to all documents and information that may be useful in defending the rights of those affected;”

„Respect the territorial and self-determination rights of indigenous peoples, quilombolas and traditional communities”

„Disseminate information about business activities to affected communities by appropriate means of notification, taking into account the situation of remote, isolated, internet-deprived or non-literate communities”

„Commit to combating obstacles to the production of evidence by those affected and contribute to investigations”



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CRIANDO UM OBSERVATÓRIO DE FLORESTAS E DIREITOS:

UM ESTUDO DE CASO BRASILEIRO

DOCUMENTO DE DISCUSSÃO



Toward a “Rights’ Observatory”

Workshop participants:

„There is a lot of work to be done (over the next two years) to ensure that the EUDR is based on transparent data that reflects the reality on the ground and fully includes human rights violations”

“I think that having a Social Observatory for the EU regulation, independent of its specific objectives, will be a useful push, I would say, for us to organize social information on Brazil.”

“The EU can be, let’s say, a receiver of this input. But we certainly should articulate ourselves in a way that we can also use this kind of information for the many other initiatives we have seen here. So, the EU regulation can be a trigger for this kind of coordination. That would be great and I think it is happening already.”

DIFFERENT TYPES OF DATA

Land use and deforestation

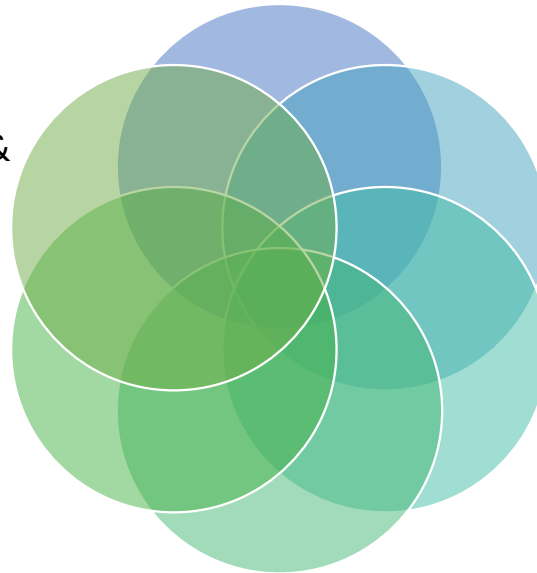
(PRODES; DETER; Mapbiomas (Alert);
CAR & IBGE)

Other social impacts

(List about modern slavery; SUS data about intoxication; SUS data about violence; SMART lab about violations of labor rights & ANA/EMPRAPA data about irrigation licenses)

Land tenure rights

(FUNAI; INCRA Agrarian settlements; INCRA Quilombolas; Public lands and forests; Fundação Palmares data on Quilombolas; Census & IBGE data)



Platforms

(Atlas Agropecuário;
Mapa dos Conflitos &
Tamo de Olho)

Community mapping

(Platform on traditional territories (MPF); To no Mapa; Nova Cartografia Social; databases by UFPA & UFBA)

Land conflicts and rural conflicts

(Database from CPT & Dataluta from the UNESP)

ACCOUNTABILITY MECHANISMS & STRONGER ALLIANCES

Interview with CSO representative:

*„So, in the meat chain, it's **the same work we did for the coalition of French, Colombian and Brazilian organizations.** In the Casino case, we also supplied the Federal Public Prosecutor's Office with the mapping of the meat chain in relation to deforestation. So, **this is one of our fronts, which also includes law enforcement authorities outside Brazil, such as in the United States and Europe [...] and there's also a very interesting front of working with investigative journalists, because we also want this data and these analyses to reach the widest possible audience.**“ (July 2022)*

Interview with grassroots organization:

*„In the production chains, we're not the ones who have the tools and know-how to do the job of filing cases. Well, this requires a degree of research and investigation capacity that we don't have. We can contribute with evidence, sometimes through our presence in the field, at the grassroots, through observation, in the cases that we raise concretely. **But now we increasingly rely on the serious investigative work carried out by the CCCA or Repórter Brasil, or other organizations. So I think the closer we get to these kinds of organisations, the better. The relationships have become closer**“ (March 2024)*

Discussion and outlook

Despite the fact that the institutional design of HREDD laws has important shortcomings in terms of participation, enforcement measures and access to remedy, the laws open up opportunities for pressuring companies and contributing to changes (e.g. lawsuits, public debates, challenging "double standards", direct dialogue with mother companies)



While it is early to assess the consequences of HREDD laws on the ground, our study shows that there has already been much agency by Brazilian stakeholders in relation to HREDD regimes.



Large NGOs have often acted as brokers and engaged with their European counterparts, creating risks that grassroots organizations and rightsholders' perspectives are overlooked.



Limitations of 'liability model':
Accountability for selected cases instead of deep sustainability transformation?
Cleaning up supply chains to Europe from particularly problematic cases?